

20<sup>TH</sup> OF APRIL 2020

## COVID-19

### IMPACT ON THE PROCESSING OF PERSONAL DATA

Among the many exceptional and temporary measures adopted in the context of the epidemiological situation of the new Coronavirus (COVID-19), none expressly refer to data protection.

Even so, COVID-19 has an impact on the processing of personal data, first and foremost because it has led companies and several public entities to **an increased need to process sensitive personal data (health data)** and to review the way this data is collected, stored and, in general, processed. Without this reorganization it would certainly be very difficult to carry out the preventive and virus mitigation measures that, in compliance with the law, companies and public entities are obliged to adopt.

Therefore, a conflict arises between the compliance of preventive and virus mitigation measures and the enforcement of the applicable personal data legislation <sup>(1)</sup>.

For instance, is it lawful for an employer to measure the body temperature of his employees? Is it lawful for a company to measure the temperature of its customers when they enter the shop/establishment? Is it lawful to collect information about travelling abroad? What about collecting information on someone's symptoms, or its relatives? Is it lawful to disclose internally, to other workers, that a particular employee tested positive for COVID-19?

Under normal circumstances, the answer would be no. **Under the current circumstances, and provided certain procedures and requirements are met, yes, it is lawful.** And it is also lawful even if the data subject does not express his consent.

The RGPD expressly provides the possibility to treat health data for reasons of public interest in the public health domain, exempting the controller to obtain the consent of the data subjects. And, regarding other personal data, they may also be processed on grounds of public interest and vital interest of the data subject. This same interpretation has been supported by

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<sup>(1)</sup> In particular the (EU) Regulation 2016/679 of the European Parliament and of the Council, of the 27<sup>th</sup> of April of 2016 (RGPD) and the Law n.º 58/2019, of the 8<sup>th</sup> of August.

the European Data Protection Committee.

It should be noted, however, that each case is a case and there are legal principles that must be respected and observed in each situation. Therefore, the processing of personal data and, in particular, health data, cannot take place in any way and certain rules must be observed, among others, (i) the collection and processing must cover as few data as possible, (ii) the data must remain confidential and anonymous (as far as possible), (iii) the data subjects must be informed of which data is being collected and for what purposes and, last but not least, (iv) all decisions that have impact on the processing of personal data, in particular those that under normal circumstances would not be admissible, must be duly grounded and recorded.

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**PARES | Advogados** is available to provide information on this and other matters in a more concrete and adequate way, suited to the reality of each Client, and is able to offer all necessary support regarding personal data protection.

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