

New Ways of Working

02. Outline the key data protection risks associated with remote working in your jurisdiction.

Argentina

Author: *Mercedes Balado Bevilacqua, Analía Verónica Durán, Cecilia Andrea Acosta*
at MBB Balado Bevilacqua

There is no specific statutory regulation on this matter related to employees under the home office framework. However, it is advisable to create a clear general policy on data protection or include in employment agreements provisions regarding data protection in order to clarify to employees the extent of their obligation. We recommend executing those documents in Spanish, due to the protective nature of local labour law; if there is a conflict with employees, a labour court is likely to dismiss all documents in a foreign language.

As a result, the Personal Data Protection Law (PDPL), Law No. 25,326, establishes the full protection of personal information recorded in personal files, registers, banks, or other technical means of data storage and processing. Therefore, employers must comply with the PDPL and take steps to ensure that this law applies throughout their organisation.

The main aspects of the PDPL are:

1. The purpose of collecting employee data must be communicated to employees and written consent needs to be obtained.
2. However, consent is not required if the data has been obtained from a public source; collected for the performance of the state's duties; consists of lists limited to name, ID number, tax or social security identification, occupation, date of birth, domicile, and telephone number; or arises from a contractual relationship, either scientific or professional, of the data owner, and are necessary for its development or fulfilment.
3. In addition, this Law establishes the employee's right to access and modify any incorrect or false information. Furthermore, the collection of information related to an employee's private life is permissible as long as the information collected complies with the following requirements: it is not used for discriminatory purposes; it does not violate the individual's right to privacy; and it is reasonably used.
4. When an employer requests personal data from an employee, they must be notified in advance and in an express and clear manner about: the purpose for which the data needs to be processed and who can use such data; the existence of the relevant data file or register, whether electronic or otherwise, and the identity and domicile of the responsible person; the compulsory or discretionary character of the information requested; the consequences of providing the data, of refusing to provide such data, or if it is inaccurate; and the data owner's rights to data access, rectification, and suppression.
5. Indeed, the processing of personal data requires express consent from the data owner, which must be accompanied by appropriate information, prominently and expressly explaining the nature of consent sought. This can be achieved by the employee signing a general consent form on entering employment. However, consent may be withdrawn by an employee.
6. Various restrictions apply to the disclosure of personal data to third parties. This is generally only allowed if it is in the legitimate interests of the database owner (eg, the employer) and the data owner (eg, the employee) has consented. This consent can be revoked at any time by the data owner.
7. The transfer of personal data to another country - which does not guarantee a proper level of data

protection – is forbidden. Nevertheless, such prohibition is not applied when the individuals, whose personal information is intended to be transferred, give their express written consent.

All data regarding employees' health is sensitive information, so the employer must get the express authorisation of the employee for any transfer of such data, and employers should stop or restrict the transfer to other companies or its employees that lack sufficient clearance to deal with health information, including covid-19 information.

Last updated on 13/07/2022

France

Author: *Béatrice Pola, Alexandra Stocki, Rachida Mahmoudi*
at Proskauer Rose

Employers must ensure the protection of their company's data but also of employees' data.

According to article L. 1222-10 of the French labour code, the employer must inform the teleworking employee of the company's rules regarding data protection and any restrictions on the use of computer equipment or tools. Once informed, the employee must respect these rules.

The collective national agreement of 26 November 2020, provides more details in article 3.1.4. It is the employer's responsibility to take necessary measures to protect the personal data of a teleworking employee and the data of anyone else the employee processes during their activity, in compliance with the GDPR of 27 April 2016 and the rulings of the National Commission for Technology and Civil Liberties (the CNIL).

The CNIL said in its 12 November 2020 Q&A on teleworking that employers are responsible for the security of their company's personal data, including when they are stored on terminals over which they do not have physical or legal control (eg, employee's personal computer) but whose use they have authorised to access the company's IT resources.

The National Agreement of 26 November 2020 recommends three practices:

- the establishment of minimum instructions to be respected in teleworking, and the communication of this document to all employees;
- providing employees with a list of communication and collaborative work tools appropriate for teleworking, which guarantee the confidentiality of discussions and shared data; and
- the possibility of setting up protocols that guarantee confidentiality and authentication of the recipient server for all communications.

Last updated on 21/09/2021

10. Are there some workplaces or specific industries or sectors in which the government has required that employers make access to the workplace conditional on individuals having received a Covid-19 vaccination?

Argentina

Author: *Mercedes Balado Bevilacqua, Analía Verónica Durán, Cecilia Andrea Acosta*
at MBB Balado Bevilacqua

No, there are not.

Last updated on 13/07/2022

France

Author: *Béatrice Pola, Alexandra Stocki, Rachida Mahmoudi*
at Proskauer Rose

Please see above (questions 8 and 9) regarding the workplaces and specific industries concerned by making the access to the workplace conditional on individuals having received a Covid-19 vaccination.

Last updated on 21/09/2021

Contributors

Argentina

Mercedes Balado Bevilacqua
Analía Verónica Durán
Cecilia Andrea Acosta
MBB Balado Bevilacqua

France

Béatrice Pola
Alexandra Stocki
Rachida Mahmoudi
Proskauer Rose