



Balancing the risks: processing health data and keeping employees safe in the workplace

By **Deborah Margolis** - 29 May 2020

As we progress into the next phase of the pandemic, employers are considering how to safely reintegrate staff into the workplace whilst also managing the risks of processing health data (which is a special category of data under GDPR) and setting out the expectations for employees.

When processing employee health data, consent is unlikely to be an appropriate legal basis as it is unlikely to have been “freely given”. From an employment perspective, employers may want to instruct employees to disclose their symptoms or to take temperature tests and will therefore need to demonstrate that this is a reasonable instruction that their employees are required to comply with.

The ICO has published guidance confirming that it will take an “empathetic and pragmatic approach” to regulation during the pandemic, however employers still need to consider some tricky issues:

- Can employers ask employees to have their temperature screened when arriving at the workplace?
- Can an employer require employees to take a Covid-19 test?
- Can employers require employees to download the government approved contact tracing app?
- Can employers keep lists of employees who have symptoms or who have tested positive for Covid-19?
- Can employers share data about affected employees?
- Can employers ask their employees to self-declare Covid-19 symptoms?
- If immunity passports are introduced, can employers require employees coming into the workplace to have one?

Stay tuned for our data protection factsheet, where we will be addressing the practical implications for employers and how best to manage the risk.

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