General Data Protection Regulation (GDPR)

Why is GDPR relevant to HR and Employment Law?

Key Changes

- More procedure – more information for data subjects
- More documentation for policies/procedures
- Greater scrutiny and Scope
- Higher potential penalties.

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Can employers continue to process information about staff if they consent to it?

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Lawful Purposes - Consent

- Consent must be a.) unambiguous and b.) freely given
- Requires clear, affirmative action
- For sensitive data – consent must be explicit
- Not available where there is a clear imbalance in the relationship
- Multiple purposes need multiple consents
- Can be withdrawn at any time

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Alternative basis for processing data

- Consent

- Legitimate interests of the data controller

- Necessity for the purpose of a contract

- Compliance with a legal obligation

- In order to protect the vital interests of the Data Subject or of another natural person

- Necessary for the performance of a task carried out in public interest

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What information do you hold about your staff?
Why are you keeping this?

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Data Audit

Carry out a data audit to:

- Understand the employee / applicant data you hold
- Analyse the personal data and determine the lawful purpose
- Just because processing was permitted under the DPA does not mean that it will be permitted under GDPR

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Data Retention

Set a Data Retention Policy:

- One size does not fit all
- For what purpose is this data being kept?
- Has the purpose been fulfilled?
- Do you have to keep the data for any future potential claims?
- How will the data be destroyed?
- Ensure that you have policies in place

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What enhanced rights will staff have?

Enhanced Data Subject Rights

- The right to be informed (obligation to an employer to provide transparency to how personal data will be used)

- The right to be forgotten under certain circumstances

- The right of access (including subject access requests)

- The right of rectification of data that is inaccurate or incomplete (similar to the DPA)

- The right to block or supress processing of personal data (similar to the DPA)

- The new right to data portability which allows employees to obtain and reuse their personal data for their own purposes across different services under certain circumstances

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Right to be forgotten

Circumstances that the request can be made can include:

- Use of the data no longer necessary
- Consent withdrawn and there is no other legal ground for processing data
- Data unlawfully processed
- To comply with legal obligation

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Right to be informed

- Data privacy notices
- Legal basis upon which data will be processed
- How long will personal data be retained
- If data is to be transferred overseas
- Data subject rights

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Subject Access Requests
– What is changing?

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Subject Access Requests

Increased right to information

- Retention periods?

- Does the controller intend to transfer data abroad?

- Information on right to rectification and right to complain

Increased right of access

- No fee in every case but a right to charge or refuse to comply if the request is 'manifestly excessive'

- Reduced timeframe from 40 to 30 working days – this can be extended if the request is excessive

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Next Steps - SARs

- Set policies and procedures for dealing with enhanced rights of individuals and SAR

- Plan how to handle SAR and provide any additional information within the new time scales

- Ensure that staff are trained in order to deal with SAR appropriately and quickly

- Develop template letters

- Access the organisations ability to isolate personal data in order to comply with SAR

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Next Steps - GDPR

- Consider the need for DPO

- Carry out data audit

- Review data flow – use reason for processing

- Be ready for SAR's

- Implement new Data Processing Policy

- Review internal HO policies and employment contracts

- Set a Data Retention Policy

- Carry out staff training

- Plan for breach

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What do you need to do with recruitment data?

Recruitment

- Categories of data
- Social media searches
- Subject access requests and discrimination claims
- Ditching the data

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Thank you for joining us.
Any questions?

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