

What do employers need to know about the new General Data Protection Regulation?

The new General Data Protection Regulation (“GDPR”) will have effect in the UK from 25 May 2018. It is expected that the obligations imposed by the GDPR will continue to apply post Brexit.

The GDPR makes some significant changes to the current data protection regime. Employers should familiarise themselves with the main provisions of the GDPR and begin planning how to implement any necessary changes within their business. Failure to do so could have significant consequences. Penalties for breach of the GDPR are more severe than under current legislation and include large fines.

The most important provisions of the GDPR from an employment perspective include:

1. **Consent**- the GDPR, like the current data protection legislation, permits employers to collect and use data relating to individual employees only if there is a lawful basis for doing so. In order to process the personal data of employees, many employers currently rely on an employee giving their consent as part of the employment contract. The GDPR includes more detailed conditions for the use of consent than is currently the case. Consent obtained in the employment contract is unlikely to be effective given that employees may not have a choice about signing the employment contract. The onus will be on the employer to show that employees gave adequate consent.

Employers should consider whether they can rely on other grounds to justify processing the data of their employees. Contracts and other relevant documents will need to be reviewed and updated.

2. **Withdrawal of consent** – employees should be able to withdraw their consent to processing as easily as they are able to give it. Employers will need to consider how employees can withdraw their consent and how to inform employees of this right.
3. **The right to be forgotten** – employees can require their employer to delete all of their personal data in certain circumstances. Employers will need to consider how such requests will be managed and whether their current systems are adequate to respond to such requests.
4. **Data portability** - employees will have a new data portability right which will allow them to request that certain personal data is transferred directly to a third party. Employers will need to consider how such requests will be managed.
5. **Subject Access requests** – the GDPR makes changes to the time frames for complying with a request. In most cases, employers will have up to one month to respond to a request rather than the current 40 days. Businesses will need to ensure that they have processes in place to deal with requests in a timely manner.
6. **Privacy notices** – employees and job applicants must be provided with certain information when their data is collected, often known as a privacy notice. Privacy notices should be carefully drafted to ensure that the employer has sufficient flexibility to process employee and job applicant data as required by the business.

Amongst other information, privacy notices must include:

- a) the legal basis upon which personal data will be processed;
 - b) how long personal data will be retained;
 - c) information about whether personal data will be transferred overseas; and
 - d) how an individual can make use of their data subject rights. This should include information about how to make a subject access request and how to request the deletion or rectification of personal data.
7. **Data Processors** - employee data is often processed by third party providers such as payroll companies. The GDPR imposes more onerous obligations relating to the use of data processors. Employers will need to understand the new rules and ensure that their arrangements are GDPR compliant.
8. **Data breaches** - under the GDPR employers must notify data breaches to the relevant authority within 72 hours of becoming aware of the breach. This applies to all data breaches except those which are unlikely to cause harm to affected employees or other individuals. Employers will need to implement a data breach procedure and ensure that relevant staff are trained on how to deal with such breaches given the timescales for reporting a breach.
9. **Demonstrating compliance** – employers should be able to demonstrate their compliance with the principles of the GDPR. In practice, this means that employers should ensure that they have appropriate policies and procedures in place and employers must be able to show that the policies and procedures have been implemented.

During February 2018, Taylor Walton's employment team will be running a series of free workshops focusing on the requirements of the GDPR from an employment perspective. In particular, the workshops will consider the practical steps that businesses should be taking now to ensure that they are GDPR ready by May 2018. To book a place at one of the workshops please contact the events team by telephone on 01582 731161 or by email events@taylorwalton.co.uk.

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