

Germany

Algorithmic management

Phase	Data processing for employment-related purpose
Native name	Datenverarbeitung für Zwecke des Beschäftigungsverhältnisse
Type	Algorithmic management
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Article

Section 26 - Data processing for employment-related purpose

Description

LAST UPDATE 2023 - THIS CONTENT WILL NOT BE UPDATED

According to the Federal Data Protection Act, the personal data of employees may be processed for employment-related purposes insofar this is necessary for hiring decisions or, after hiring, for carrying out or terminating the employment contract or to exercise rights and obligations of employees' representation laid down by law or by collective agreements or other agreements between the employer and staff council.

Employees' personal data may be processed to detect crimes only if there is a documented reason to believe the data subject has committed a crime while employed, the processing of such data is necessary to investigate the crime and is not outweighed by the data subject's legitimate interest in not processing the data, and in particular the type and extent are not disproportionate to the reason.

If personal data of employees are processed on the basis of consent, then the employee's level of dependence in the employment relationship and the circumstances under which consent was given shall be taken into account in assessing whether such consent was freely given.

Commentary

From the perspective of the German Federation of Trade Unions (DGB), employers are increasingly using digital methods to monitor employees or collect personal data about them.

There is hardly any legal basis for this because of the general provisions in the Federal Data Protection Act. According to the DGB, binding regulations are needed to ensure that personal rights are protected in the workplace. That is why the DGB presented a draft law for an independent employee data protection law in 2022.

From the perspective of the Federal Association of German Employers' Associations (BDA), an independent employee data protection law is neither necessary nor would it make it easier to apply data protection in practice. The General Data Protection Regulation and the redesigned Federal Data Protection Act would rightly stipulate that proven instruments can continue to be used. They should not be unduly burdened by new requirements.

Additional metadata

Cost covered by	None
Involved actors other than national government	Works council
Involvement (others)	None
Thresholds	Affected employees: No, applicable in all circumstances Company size: No, applicable in all circumstances Additional information: No, applicable in all circumstances

Sources

- [Federal Data Protection Act \(BDSG - Bundesdatenschutzgesetz\)](#)~~~~

Citation

Eurofound (2023), Germany: Algorithmic management, Restructuring legislation database, Dublin