



Return-to-Work Privacy Considerations in Europe Key Takeaways

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Key Guidance and Statements by the Supervisory Authority: COVID-19 prevention measures in the employment context

Ireland

- **June 22, 2020:** [Data Protection implications of the Return to Work Safely Protocol](#)

UK

- **March 12, 2020:** [Q&A regarding COVID-19](#)
- **May 11, 2020:** [Q&A regarding COVID-19](#)
- **July 2, 2020:** [Statement on the publication of ICO guidance to businesses collecting personal data for contact tracing](#)
- **July 13, 2020:** [Collecting customer and visitor details for contact tracing](#)

Spain

- **March 12, 2020:** [The AEPD publishes a report on data processing in relation to COVID-19](#)
- **March 12, 2020:** [Report From The State Legal Service on Processing Activities Relating to the Obligation for Controllers from Private Companies and Public Administrations to Report on Workers Suffering from COVID-19](#)
- **March 13, 2020:** [FAQ on COVID-19](#)
- **April 30, 2020:** [Statement from the AEPD regarding temperature screening in shops, workplaces and other establishments](#)
- **June 18, 2020:** [Statement on asking job applicants whether they have COVID-19 antibodies](#)

France

- **March 2020 (updated on May 7, 2020):** [Coronavirus \(COVID-19\): reminders from the CNIL on the collection of personal data by employers](#)
- **June 17, 2020:** [The CNIL calls for vigilance on the use of so-called “smart” cameras and thermal cameras](#)

Belgium

- **March 13, 2020 (updated April 2, 2020):** [COVID-19 and processing of personal data at work](#)
- **June 5, 2020 (updated on June 16, 2020):** [Taking temperature as part of the fight against COVID-19](#)

Germany

- **March 13, 2020:** Datenschutzkonferenz — [Data protection information on the processing of personal data by employers and employees in connection with the Corona pandemic](#)
- **March 2020:** Baden Württemberg — FAQ Corona: [Employee data protection](#)

Italy

- **March 2, 2020:** [Against private initiatives to collect health data](#)
- **March 14, 2020:** [Government's Joint Protocol](#)
- **May 4, 2020:** [FAQ on distance learning, employment related, health research and measures taken by local authorities \(addressing body temperature checks\)](#)
- **May 13, 2020:** [Statement on suitable actions to deal with crisis situations and the need to guarantee health security in the workplace](#)
- **May 14, 2020:** [Statement on the employer testing employees](#)

Employees' obligation to report (suspected) COVID-19 infection

In **Belgium, France and Spain**, employees who come into contact with other employees (and only those) have an obligation to inform their employer if they suspect having been in contact with the virus.

In **Italy**, employers should not engage in the spontaneous collection of data on the symptoms or whereabouts of their employees, unless this is specifically required by law or requested by the competent authorities.

In all relevant jurisdictions, the employers should only collect the minimum information required to prevent the further spread of COVID-19 in the workplace and should not disclose the identity of the employee concerned to other employees.

Return to work forms

In **Belgium** and **France**, the use of return to work forms or tests to assess the health status of employees is prohibited. This is the responsibility of dedicated employment physicians.

In **Spain** and **Ireland** employers may roll out return to work forms asking their employees and visitors if they are experiencing symptoms of COVID-19. Return to work forms should be tailored to collect the minimum amount of information, and not retained once an employee actually returns to work.

In **Germany** and **Italy**, employers may ask employees and visitors whether they show signs of being infected, have been in contact with someone that was infected or have been in a risk area. Employees and visitors should not be asked to disclose additional information on the infected individuals they have been in contact with or about the specific places they have visited.

In **Germany** specifically employers may also not ask employees to disclose whether their health conditions classify them as a risk group. However, employees may provide this information voluntarily in which case the employer may process that data, for example, to implement measures that ensure the safety of that employee.

In **Ireland**, employers are recommended by the health authorities to roll out pre-return to work forms that employees should complete at least three days in advance of returning to work.

In the **UK**, employers should ensure that return to work forms are “reasonable, fair and proportionate”.

Temperature screening and testing

In **Belgium** and **France**, just the taking of a temperature without recording the result, is not covered by the GDPR.

In **Belgium, France** and **Germany**, employers are prohibited from recording the temperature of employees, and it is prohibited to put in place smart cameras that measures temperature. The German authorities, for instance, find that in most cases employers have other less intrusive means to ensure the safety of the workplace. Employers are prohibited from recording the temperature of employees, and it is prohibited to put in place smart cameras that measures temperature.

In **Spain**, employers may ask their occupational health physicians to take the employees' body temperature. Temperature screening cannot be based on consent.

In **Italy**, employers may perform body temperature checks on employees, suppliers, visitors and customers at the entrance of their business premises, provided that the temperature is only measured in real-time, and is not recorded, and that appropriate privacy notices are supplied.

In **Italy**, the testing of employees is largely regulated at regional level. Therefore, employers should be mindful that the specific criteria that must met to order a COVID-19 test vary depending on the Italian region where the workers reside.

In **Ireland**, employers are recommended by the health authorities to conduct temperature testing "in line with public health advice".

In the **UK**, if an employer is implementing symptom checking or testing, the UK Information Commissioner's Office expects it to focus on establishing a legal basis for doing so and to conduct a data protection impact assessment.

Contact tracing

In **Ireland**, employers are recommended by the health authorities to keep contact tracing logs for workers in close contact for extended periods of time. In Ireland, the Data Protection Commissioner cautions that any data held in contact tracing log should not be processed for any other purpose, and only retained for so long as needed to meet this purpose.

The **UK** Information Commissioner's Office identifies the following 5 steps for contact tracing: (i) ask only for what is needed as set out in government guidance, like name, contact details and time of arrival; (ii) be transparent with individuals, which might require the use of a notice prominently displayed, or even just telling people; (iii) carefully storing the data; (iv) using it only for contact tracing; and (v) erasing it in line with government guidance.