

Q&A TABLE: DATA PROTECTION QUESTIONS RELATING TO EFFECTS OF THE COVID-19 OUTBREAK¹

Please find more information on *GDPR and COVID-19 – What Companies Need to Know About Data Privacy*, on our [LathamGermany Blog](#).

Question	Short Answer	Detailed Answer	Legal Basis for Data Processing
Data protection-related questions			
Can an employer request information as to whether employees have been visiting high-risk areas?	Yes	Due to their duty of care towards their employees (<i>Fuersorgepflicht</i>), employers are obliged to take the necessary measures to ensure the occupational safety and health of their employees. This includes the employer's duty to protect other employees against infection by a sick person. To this end, an employer may ask holiday returnees whether they have stayed in a high-risk area, as defined by the Robert Koch Institute (RKI). Negative information from the employee is regularly sufficient as a response. If there are further indications, employer may make further inquiries, if necessary.	Art. 6 (1) lit. c) and (3) European Union General Data Protection Regulation (GDPR); Art. 9 (1), (2) lit. b), h) and (4) GDPR; Art. 88 GDPR, Section 26 (3) German Federal Data Protection Act (BDSG); Section 22 (1) No. 1 lit. b) BDSG; Sections 611, 242, 241(2) German Civil Code
Can an employer impose medical checks, e.g., for people who have travelled to a high-risk area?	Yes	Within strict boundaries, employers may impose medical checks. Employers are obligated to take the necessary measures to ensure the occupational safety and health of their employees. This includes an employer's obligation to protect other employees against infection by an infected person. For this purpose, minimally invasive measures, such as temperature-taking, are permissible.	Art. 6 (1) lit. c) and (3), Art. 9 (1), (2) lit. b), h) and (4) GDPR; Art. 88 GDPR, Section 26 (3) BDSG; Section 22 (1) No. 1 lit. b) BDSG
Can an employer require a sick employee to confirm whether the sickness is COVID-19-related?	No	No, the employee does not have a general duty to disclose the nature of an illness. However, doctors must inform local health authorities about COVID-19 cases, and would also share this information with employers if there is a risk to other people.	The legal basis for sharing information with local health authorities depends on the specific (e.g., German federal state) official request from the local police department or health authority. Art. 6(1) lit. c) GDPR

¹ Answers are based on generally applicable rules of law **only**. Specific contractual arrangements have **not** been considered and would need to be reviewed in each individual case.

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Data protection-related questions			
Can an employer request information about whether an employee had contact with an infected person?	Yes	The employer can request information about whether an employee had contact with an infected person within strict boundaries. Due to their duty of care, employers are obligated to take the necessary measures to ensure the occupational safety and health of their employees. This includes the employer's duty to protect other employees against infection by a sick person. For this purpose, it may be permissible under applicable data protection laws to collect respective information about infected persons with whom the employee had contact. The employer may process the necessary data only for the purpose of occupational health precaution.	Art. 6 (1) lit. c) and (3) GDPR; Art. 9 (1), (2) lit. b), h) and (4) GDPR; Art. 88 GDPR; Section 26 (3) BDSG; Section 22 (1) No. 1 lit. b) BDSG
If remote working is agreed, does an employer need to provide necessary equipment?	Yes	Yes, an employer is required to provide the necessary equipment in the event that remote working is agreed. Please note that an employer must ensure adequate IT security.	Art. 32 GDPR
May employers collect private mobile phone numbers or other contact details from their employees in order to be able to warn or request them to stay at home at short notice, in the event of a business closure or similar cases?	Yes	In order to ensure that employees can be warned at short notice and do not appear at work, employers may request and temporarily process private mobile phone numbers or other relevant personal data of their employees. However, according to data protection authorities, employers may only do so with the employee's written and informed consent. There is no obligation for employees to disclose private contact details, but it will regularly be in their own interest. Employers may only collect private contact data for concretely determined and legitimate purposes. In particular, such a permissible purpose may be to reduce employees' risk of infection. After the end of the pandemic at the latest, the employer must delete the collected contact data. It would not be permissible under data protection law for this data to be used "through the back door" at a later date, to establish contact after work, at the weekend, or for other purposes.	Art. 6 (1) lit. a) GDPR; Art. 7 GDPR; Art. 4 No. 11 GDPR; Art. 88 GDPR; Section 26 (2) BDSG

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<p>Are employers allowed to inform employees that a certain employee has fallen ill with the virus, even mentioning an employee by name, in order to release possible contact persons from their duty on this basis?</p>	<p>Only if this is absolutely necessary.</p>	<p>According to data protection authority guidance, knowing that an employee has contracted COVID-19 can lead to a considerable stigmatisation. Employers must therefore avoid mentioning the name of an affected employee, when possible. At the same time, employees who have been in direct contact with an infected person must be warned and are usually released from work to reduce the risk of infection. Such a measure can regularly be carried out on a department or team basis without mentioning a specific name.</p> <p>If, in exceptional cases, this is not sufficient, data protection authorities recommend that employers should contact the health authorities and ask for their decision. If this is also not possible, other employees may also be informed of the suspected infection or illness of a specific employee in order to locate and contain sources of infection.</p>	<p>Art. 6 (1) lit. c) and (3) GDPR; Art. 9 (1), (2) lit. b), h) and (4) GDPR; Art. 88 GDPR; Section 26 (3) BDSG; Section 22 (1) No. 1 lit. b) BDSG</p>
<p>May employers, upon request by health authorities, provide the authorities with data on sick workers, workers staying in high-risk areas, or contact with infected persons?</p>	<p>Yes</p>	<p>Official measures against the COVID-19 pandemic can be issued by the respective local police authority or the responsible public health department. In the event of requests from competent authorities, for example concerning infected employees, it must be assumed that an employer has to transmit information to the authorities in accordance with statutory obligations.</p>	<p>The legal basis for sharing information with local health authorities depends on the specific (e.g., German federal state) official request from the local police department, or health authority. Art. 6(1) lit. c) GDPR</p>
<p>May companies (e.g., trade fair organisers, theatres, etc.) collect, store, or transmit data from customers or visitors to events at the request of health authorities, in the event that it later becomes known that an infected person was at the event?</p>	<p>Yes</p>	<p>In the event that the competent authority has issued an order to store visitor data, organisers may collect and store respective data. Such an order for the storage of visitor data regularly corresponds with an obligation to transmit the data to the competent authority.</p> <p>As long as there is no such official order, organisers may principally only collect and store such data based on voluntary consent of a data subject. Without such an official order, companies may only process such data on an exceptional basis.</p> <p>The disclosure of personal data of infected persons to contact persons may only be allowed if the identity of an infected person is necessary for the precautionary measures.</p>	<p>Art. 6 (1) lit. c), (2) and (3) GDPR, Section 16 (1) and (2) German Infection Protection Act</p>