

## **Act on the Protection of Privacy in Working Life** (759/2004)

### **Chapter 1 - General provisions**

#### *Section 1 – Purpose of the act*

The purpose of this Act is to promote the protection of privacy and other basic rights safeguarding the protection of privacy in working life.

#### *Section 2 – Scope of application*

- (1) This Act lays down provisions on the processing of personal data about employees, the performance of tests and examinations on employees and the related requirements, technical surveillance in the workplace, and retrieving and opening employees' electronic mail messages.
- (2) The provisions of this Act concerning employees also apply to civil servants and any persons in a civil service relationship or comparable service relationship subject to public law, and, as appropriate, to job applicants.
- (3) Processing of personal data is also subject to the Personal Data Act (523/1999) and the Act on the Protection of Privacy in Electronic Communications (516/2004), unless otherwise provided in this Act.
- (4) Separate provisions shall be issued on the obligation of employees to undergo a health examination.

### **Chapter 2 - General requirements for processing personal data**

#### *Section 3 - Necessity requirement*

- (1) The employer is only allowed to process personal data directly necessary for the employee's employment relationship which is connected with managing the rights and obligations of the parties to the relationship or with the benefits provided by the employer for the employee or which arises from the special nature of the work concerned.
- (2) No exceptions can be made to the necessity requirement, even with the employee's consent.

#### *Section 4 – General requirements for collecting personal data about employees and the employer's duty to provide information*

- (1) The employer shall collect personal data about the employee primarily from the employee him/herself. In order to collect personal data from elsewhere, the

employer must obtain the consent of the employee. However, this consent is not required when an authority discloses information to the employer to enable the latter to fulfil a statutory duty or when the employer acquires personal credit data or information from the criminal record in order to establish the employee's reliability.

- (2) The employer shall notify the employee in advance that data on the latter is to be collected in order to establish his/her reliability. If information concerning the employee has been collected from a source other than the employee him/herself, the employer must notify the employee of this information before it is used in making decisions concerning the employee. The employer's duty to provide information and the employee's right to check the personal data concerning him/herself are also subject to other relevant provisions of the law.
- (3) The collection of personal data during recruitment and during an employment relationship is governed by the cooperative procedure referred to in the Act on Cooperation within Undertakings (725/1978) and the Act on Cooperation in Government Departments and Agencies (651/1988).

#### Section 5 – *Processing health information*

- (1) The employer has the right to process information concerning the employee's state of health only if the information has been collected from the employee him/herself, or elsewhere with the employee's written consent, and the information needs to be processed in order to pay sick pay or other comparable health-related benefits or to establish whether there is a justifiable reason for absence or if the employee expressly wishes his/her working capacity to be assessed on the basis of information concerning his/her state of health. In addition, the employer has the right to process such information in the specific circumstances, and to the stipulated extent, separately provided elsewhere in the law.
- (2) Information concerning the employee's state of health may only be processed by persons who prepare, make or implement decisions concerning employment relationships on the basis of such information. The employer shall nominate such persons or specify the tasks that involve processing of health-related information. Persons who process such information may not disclose any of it to a third party either during or after an employment relationship.
- (3) A doctor's certificate or statement concerning the employee's working capacity given to the employer by the employee may, however, be supplied to the occupational health service provider for the purpose of carrying out the occupational health care duties laid down in the Occupational Health Care Act (1383/2001), unless the employee has forbidden this.
- (4) The employer must store any information in his possession concerning the employee's state of health separately from any other personal data that he has collected.

## Chapter 3 - **Processing information on drug use**

### Section 6 - *Drug test certificate*

- (1) The employer may only process information on the drug use testing of the employee which is contained in the drug test certificate supplied to the employer by the person concerned. The processing of the information is otherwise subject to the provisions of section 5(2-4).
- (2) A drug test certificate means a certificate issued by a health care professional and laboratory designated by the employer stating that the employee has been tested for the use of a drug referred to in section 2 of the Narcotics Act (1289/1993) and containing a report based on the test stating whether the employee has used drugs for non-medicinal purposes in a manner that has impaired his/her working capacity or functional capacity.
- (3) Drug tests and the certificates of such tests are subject to the provisions of section 19 of the Occupational Health Care Act.

### Section 7 - *Submission of a drug test certificate during recruitment*

- (1) The employer may receive or otherwise process information entered in a drug test certificate, subject to the consent of the applicant selected for the job, only if the applicant is to do the type of work that requires precision, reliability, independent judgement or quick reactions and if performing the work while under the influence of drugs or while addicted to drugs could:
  - 1) endanger the life, health or occupational safety of the employee or other persons;
  - 2) endanger national defence or state security;
  - 3) endanger traffic safety;
  - 4) increase the risk of significant environmental damage;
  - 5) endanger the protection, usability, integrity and quality of information received while working and thus cause harm or damage to public interests protected by confidentiality provisions or endanger the protection of privacy or the rights of data subjects; or
  - 6) endanger business and professional secrecy or cause more than a minor level of financial loss to the employer or a customer of the employer, provided that this could not be prevented by other means.
- (2) The employer also has the right to process information with the job applicant's consent, as referred to in subsection 1, in the event that:
  - 1) the applicant is to carry out tasks in which special trust is required, in which work will be performed elsewhere than in premises supervised by the employer and in which the performance of duties while under the influence of drugs or while addicted to drugs may cause significant financial loss to a customer of the employer or endanger the customer's personal safety;
  - 2) the applicant is to carry out tasks which, on a permanent basis and to a material degree, include raising, teaching, caring for or otherwise looking

- after a minor, or other work involving personal interaction with a minor, and no other person is involved; or
- 3) the applicant is to carry out the type of tasks in which there is independent and uncontrolled access to drugs or a more than minor quantity of medicines that could be used for the purposes of intoxication.
- (3) The provisions of subsections 1 and 2 also apply if the employee's duties change during the employment relationship in such a way that they meet the preconditions referred to above concerning the employer's right to process information entered in a drug test certificate.
- (4) Provisions on the submission of a drug test certificate to the employer as a precondition for appointment to a civil service post are laid down in section 8b of the State Civil Servants Act (750/1994) and, in the case of recruitment to a public sector service relationship, in section 7 of the Act on Civil Servants in Local Government (304/2003). Provisions on comprehensive action programmes on alcohol and drugs are laid down in section 11 of the Occupational Health Care Act.

#### Section 8 – *Submission of a drug test certificate during the employment relationship*

- (1) The employer may require the employee to present a drug test certificate during his/her employment relationship if the employer has justifiable cause to suspect that the employee is under the influence of drugs at work or that the employee has a drug addiction and if testing is essential to establish the employee's working or functional capacity and the employee does the type of work that requires special precision, reliability, independent judgement or quick reactions and in which the performance of duties while under the influence of drugs or while addicted to drugs:
- 1) seriously endangers the life, health or occupational safety of the employee or other persons;
  - 2) seriously endangers national defence or state security;
  - 3) seriously endangers traffic safety;
  - 4) could considerably increase the risk of significant environmental damage;
  - 5) seriously endangers the protection, usability, integrity and quality of information received while working and could thus cause harm or damage to public interests protected by confidentiality provisions or endanger the protection of privacy or the rights of data subjects;
  - 6) endangers business and professional secrecy of financial significance or could cause a significant financial loss to the employer or a customer of the employer, provided that this could not be prevented by other means; or
  - 7) could significantly increase the risk of illegal trading in or spread of substances in the possession of the employer that are referred to in section 2 of the Narcotics Act.
- (2) The employer may impose on the employee a reasonable deadline within which the certificate must be presented. Provisions on comprehensive action programmes on alcohol and drugs are laid down in section 11 of the Occupational Health Care Act.

- (3) The employer also has the right to process information entered in a drug test certificate if, on the basis of a positive drug test result, the employee has pledged to undergo treatment for drug abuse and the processing of information in the certificate is related to monitoring progress with the treatment.

*Section 9 - The employer's duty to provide information about a drug test certificate*

The employer shall notify the job applicant in connection with the application procedure prior to the signing of an employment contract, or the employee prior to a change in the terms of his/her contract, that the nature of the job is such that the employer intends to process the information entered in a drug test certificate in accordance with section 7, or is such that the employer intends to require the employee to present a drug test certificate in accordance with section 8(2).

*Section 10 - Cost of acquiring a certificate*

The employer shall meet the cost of acquiring certificates referred to in this Chapter which are submitted to him.

*Section 11 - Relation to the provisions on health examinations*

The provisions of sections 7 and 8 will not prevent the taking of a drug test as part of the job applicant's or employee's health examination performed by the occupational health care unit under the Occupational Health Care Act, the State Civil Servants Act or the Act on Civil Servants in Local Government. Provisions on information to be entered in the certificate issued following a health examination under the Occupational Health Care Act shall be laid down separately.

*Section 12 - Application of the provisions to professional athletes*

The provisions of this Chapter do not apply to athletes in an employment relationship referred to in Chapter 1, section 1, of the Employment Contracts Act (55/2001).

**Chapter 4 - Requirements concerning the undertaking of tests and examinations**

*Section 13 - Personality and aptitude assessments*

- (1) With the employee's consent, he/she can be tested by means of personality and aptitude assessments to establish his/her capacity to perform the work in question or his/her need for training and other occupational development. The employer shall ensure that the assessment methods used are reliable, the persons conducting the assessment are experts, and the findings of the assessment are free from error. When checking that the findings are error-free, the assessment method used and the nature of the assessment method must be taken into account.

- (2) Upon request, the employer or an assessor designated by the employer shall provide the employee concerned with a written statement on the assessment of the employee's personality or aptitude free of charge. If the employer has received the statement orally, the employee must be informed of its content.

#### Section 14 - *Use of health care services*

- (1) When carrying out employee health examinations and tests and taking samples, health care professionals, properly trained laboratory personnel and health care services must be used as laid down in the health care legislation.
- (2) The provisions of subsection 1 also apply to alcohol and drug tests.

#### Section 15 - *Genetic testing*

The employer is not permitted to require the employee to take part in genetic testing during recruitment or during the employment relationship, and has no right to know whether or not the employee has ever taken part in such testing.

### Chapter 5 - **Camera surveillance in the workplace**

#### Section 16 - *Preconditions for camera surveillance*

- (1) The employer may operate a system of continuous surveillance within his premises based on the use of technical equipment which transmits or records images (*camera surveillance*) for the purpose of ensuring the personal security of employees and other persons on the premises, protecting property or supervising the proper operation of production processes, and for preventing or investigating situations that endanger safety, property or the production process. Camera surveillance may not, however, be used for the surveillance of a particular employee or particular employees in the workplace. Neither may camera surveillance be used in lavatories, changing rooms or other similar places, in other staff facilities or in work rooms designated for the personal use of employees.
- (2) Notwithstanding subsection 1, the employer may, however, direct the camera surveillance at a particular work location in which employees are at work if the surveillance is essential for:
- 1) preventing an apparent threat of violence related to the work of the employee or an apparent harm or danger to the employee's safety or health;
  - 2) preventing or investigating property crimes if an essential part of the employee's work is to handle property of high value or quality, such as money, securities or valuables; or
  - 3) safeguarding the employee's interests and rights, where the camera surveillance is based on the request of the employee who is to be the subject of the surveillance and the matter has been agreed between the employer and the employee.

#### Section 17 - *Transparency when implementing camera surveillance*

- (1) When planning and implementing camera surveillance, the employer shall ensure that:
  - 1) the potential for using other means that interfere less with the privacy of employees is investigated before the introduction of camera surveillance;
  - 2) the privacy of employees is not interfered with more than is necessary for achieving the aim of the measures;
  - 3) the use and other processing of recordings of people obtained through surveillance is planned and performed with due consideration to the provisions of sections 5-7, 10 and 32-34 of the Personal Data Act, irrespective of whether the recordings constitute a personal data file under that Act;
  - 4) recordings are used only for the purpose for which the surveillance was carried out;
  - 5) after the cooperative and consultative procedures referred to in section 21, employees are informed of when the camera surveillance will begin, how it will be implemented, how and in what situations any recordings would be used and, in situations referred to in section 16(2), the locations of the cameras; and
  - 6) prominent notification of the camera surveillance and its method of implementation is displayed in the areas in which the cameras are located.
- (2) Notwithstanding subsection 1(4) and section 21, the employer has the right to use recordings for:
  - 1) substantiating the grounds for termination of an employment relationship;
  - 2) investigating and substantiating harassment or molestation as referred to in the Act on Equality Between Women and Men (609/1986) or harassment and inappropriate behaviour as referred to in the Occupational Safety and Health Act (738/2002), provided that the employer has a justifiable reason to suspect that the employee is guilty of harassment, molestation or inappropriate behaviour; or
  - 3) investigating an occupational accident or some other situation causing a danger or threat referred to in the Occupational Safety and Health Act.
- (3) Recordings shall be destroyed as soon as they are no longer necessary for achieving the purpose of the camera surveillance, and no later than one year after the end of the recording. A recording may, however, be stored after this deadline if it is needed for completing the processing of a matter referred to in subsection 2 that emerged for investigation before the end of the maximum storage period or if the employer needs the recording to substantiate the appropriateness of terminating an employment relationship, or if there is some other special reason for keeping the recording.

## Chapter 6 - **Retrieving and opening electronic mail messages belonging to the employer**

### Section 18 - *The employer's obligations regarding necessary arrangements*

- (1) The employer has the right to retrieve and open electronic mail messages sent to an electronic mail address allocated by him for the use of the employee or electronic mail messages sent by the employee from such an address only if the employer has planned and arranged for the employee the necessary measures to protect electronic mail messages sent in the employee's name or by the employee and, to this end, has specifically ensured that:
- 1) the employee can, with the aid of the electronic mail system's automatic reply function, send notification to a message sender about his/her absence and the length of absence, and information about the person who is to take care of the tasks of the absent employee; or
  - 2) the employee can direct messages to another person approved by the employer for this task or to another employer-approved address of the employee; or
  - 3) the employee can give his/her consent to an arrangement whereby in his/her absence another person of his/her choosing and approved by the employer for the task can receive messages sent to the employee, with the aim of establishing whether the employee has been sent a message that is clearly intended for the employer for the purpose of managing the work and on which it is essential for the employer to have information on account of his operations or the appropriate organization of the work.
- (2) The provisions of sections 19 and 20 constitute further preconditions for the retrieval or opening of the electronic mail messages referred to in subsection 1 above.

Section 19 - *Retrieval of electronic messages belonging to the employer*

- (1) The employer has the right, assisted by the person vested with the authority of information system administrator, to find out on the basis of information concerning the message sender, recipient or title, whether the employee has, in his/her absence, been sent, or has sent or received immediately before the absence, messages belonging to the employer about which it is otherwise essential that the employer has information in order to complete negotiations concerning his operations or to serve customers or safeguard his operations, if:
- 1) the employee manages tasks independently on behalf of the employer and the employer does not operate a system with which the matters attended to by the employee and the processing stages involved are recorded or are otherwise ascertained;
  - 2) it is evident, on account of the employee's tasks and matters pending, that messages belonging to the employer have been sent or received;
  - 3) the employee is temporarily prevented from performing his/her duties, and messages belonging to the employer cannot be obtained for his use despite the fact that the employer has seen to his obligations referred to in section 18; and
  - 4) the employee's consent cannot be obtained within a reasonable time and the investigation of the matter cannot be delayed.



- (2) If the employee has died or if he/she is prevented in a permanent way from performing his/her duties and his/her consent cannot be obtained, the employer has the right, under the conditions laid down in subsection 1(1-2) and on the basis of information on the message sender, recipient or title, to find out if there are messages belonging to him, unless finding out about the matters attended to by the employee and safeguarding of the employer's operations is possible by other means.
- (3) If message retrieval does not lead to opening of the message, a report must be drawn up accordingly, signed by the persons involved and stating why the message was retrieved, the time it was retrieved and who performed the retrieval. The report shall be submitted to the employee without undue delay, unless otherwise provided by subsection 2. The information on the message sender, recipient or title may not be processed more extensively than necessary for the purpose of retrieving the message, and the persons processing the information may not disclose it to a third party during the employment relationship or after its termination.

#### Section 20 - *Opening of electronic messages belonging to the employer*

- (1) If, on the basis of the information on the sender or recipient of an electronic message or the message title, it is apparent that a message sent to the employee or by the employee is clearly one that belongs to the employer and about whose content it is essential that the employer obtains information in order to complete negotiations concerning his operations or to serve customers or safeguard his operations, and the message sender and recipient cannot be contacted for the purpose of establishing the content of the message or for the purpose of sending it to an address indicated by the employer, the employer may, in cases referred to in section 19, open the message with the assistance of the person vested with the authority of information system administrator and in the presence of another person.
- (2) A report about the opening shall be drawn up, signed by the persons involved, stating which message was opened, why it was opened, the time of opening, the persons performing the opening and to whom the information on the content of the opened message was given. The report shall be submitted to the employee without undue delay, unless otherwise provided by section 19(2). The opened message shall be stored, and its content and the information on the sender may not be processed more extensively than is necessary for the purpose of opening the message, nor may the persons processing the information disclose the content of the message to a third party during the employment relationship or after its termination.
- (3) The person employed by the employer or a person acting on the instruction of the former, to whom the employee has directed his/her electronic mail in the manner referred to in section 18(1)(2) or who can, in the manner referred to in section 18(1)(3), and with the employee's consent, receive messages sent in the employee's name, has the right to open a message, complying with the provisions of subsection 2, unless the employee has given his/her consent to another procedure.

## Chapter 7 - **Miscellaneous provisions**

### Section 21 – *Cooperation in organizing technical monitoring and data network use*

- (1) The purpose and introduction of and methods used in camera surveillance, access control and other technical monitoring of employees, and the use of electronic mail and other data networks, are governed by the cooperative procedure referred to in the Act on Cooperation within Undertakings and the Act on Cooperation in Government Departments and Agencies. In undertakings and in organizations subject to public law that are not governed by the legislation on cooperation, the employer must, before making decisions on these matters, reserve the employees or their representatives an opportunity to be consulted.
- (2) After the cooperative or consultative procedures, the employer shall determine the purpose of the technical monitoring of employees and the methods used, and inform employees about the purpose and introduction of and methods used in the monitoring system, and about the use of electronic mail and the data network.

### Section 22 – *Supervision*

Compliance with this Act shall be supervised by the occupational health and safety authorities together with the Data Protection Ombudsman.

### Section 23 – *Display*

The employer shall display this Act for employees to view at the workplace.

### Section 24 - *Penal provisions*

- (1) An employer or his representative who deliberately or out of gross negligence
  - 1) violates the provisions of sections 4(2) or 9 on the duty to provide information;
  - 2) receives or otherwise processes information entered in an job applicant's drug test certificate, contrary to the provisions of section 7;
  - 3) requires the employee to present a drug test certificate or otherwise processes information entered in such a certificate, contrary to the provisions of section 8;
  - 4) subjects the employee to personality or aptitude assessments without his/her consent or fails to confirm the reliability of the assessment methods, the expertise of the assessors or the freedom from error of the data from the assessments, contrary to the provisions of section 13(1);
  - 5) violates the provisions of section 13(2) on provision of a written statement or provision of information on the content of an oral statement;
  - 6) uses other than health care professionals, properly trained laboratory personnel or health care services, contrary to the provisions of section 14;

- 7) requires the employee to take part in genetic testing or acquires information about such testing taken by the employee, contrary to the provisions of section 15;
- 8) introduces camera surveillance, contrary to the provisions of section 16;
- 9) violates the provisions of section 17 on the transparency of camera surveillance;
- 10) retrieves, contrary to the provisions of section 19, or opens, contrary to the provisions of section 20, a message sent to or by the employee;
- 11) violates the provisions of section 21(2) on the duty to determine and inform; or
- 12) violates the provisions of section 23 on the displaying of this Act,

shall be sentenced to a fine for *violating the Act on the Protection of Privacy in Working Life*, unless a more severe penalty is provided elsewhere in the law.

- (2) The penalties for a personal data file offence, computer break-in, illicit viewing, eavesdropping, message interception, violation of a confidentiality obligation, and an offence in public office are laid down in the Penal Code (39/1889).

## Chapter 8 - **Entry into force**

### Section 25 - *Transitional provisions and entry into force*

- (1) This Act enters into force on 1 October 2004.
- (2) If the employer's obligations laid down in sections 4(3) and 21 of this Act are met in the manner laid down in sections 4(3) and 9 of the Act on the Protection of Privacy in Working Life in force at the time of the entry into force of this Act, the obligations will be considered to have been met in accordance with this Act. The employer's obligations laid down in section 17 of this Act shall be met no later than six months after the Act's entry into force.

### Section 26 - *Repealed provisions*

- (1) This Act repeals the Act of 8 June 2001 on the Protection of Privacy in Working Life (477/2001).
- (2) If another act or decree contains a reference to the Act on the Protection of Privacy in Working Life that was in force at the time of the entry into force of this Act, the present Act shall instead apply.