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TÍTULO: Protección de datos personales de empleados.

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RESUMEN: El Capítulo 14 del Código del Trabajo de la Federación de Rusia está dedicado a la protección de datos personales. En particular, el artículo 88 "Transferencia de datos personales de los empleados" contiene disposiciones sobre la transferencia de datos personales de los empleados a otros (terceros). Eso es lo que causa los mayores problemas entre los trabajadores de recursos humanos (o aquellos que realizan la administración de recursos humanos en la organización). Esto se debe al hecho de que ahora hay una variedad de informes, tanto dentro de la organización como a organizaciones de terceros.

PALABRAS CLAVES: Aprendizaje, estudiante, sistemas sostenibles, diseños.

TITLE: Protection of employees' personal data

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ABSTRACT: Chapter 14 in the Labor Code of the Russian Federation is devoted to the protection of personal data. In particular, article 88 “Transfer of employee personal data” contains provisions on the transfer of employee personal data to other (third) parties. It is it that causes the greatest problems among HR workers (or those who conduct HR administration in the organization). This is due to the fact that now there is a variety of reports, both within the organization and to third-party organizations.

KEY WORDS: Personal data protection, employee, human rights, law.

INTRODUCTION.

The protection of personal data of workers is widely represented in the legislation of the Russian Federation, in particular in the Labor Code of the Russian Federation.

Chapter 14 in the Labor Code of the Russian Federation is devoted to the protection of personal data. In particular, article 88 “Transfer of employee personal data” contains provisions on the transfer of employee personal data to other (third) parties. It is it that causes the greatest problems among HR workers (or those who conduct HR administration in the organization). This is due to the fact that now there are a variety of reports, both within the organization and to third-party organizations (for example, the Pension Fund, the tax service, etc.).

The transfer of personal data within the organization should be regulated by internal local regulations, as well as orders. This provision is most often not observed in organizations (as a rule, this applies to organizations with a small number of employees); for example, the secretary will simultaneously introduce personnel records management.

In the provisions on the protection of personal data, in the relevant orders, the secretary is indicated as a person who can collect and process personal data of employees (both all or part of the employee’s data). When a secretary goes on vacation or during his period of incapacity for work (or any other

absence from his workplace), the work is assigned to another employee, even if an order has been drawn up to entrust him with the duties of a secretary, then there is a clause on the responsibility to protect personal data of employees or however, permission to access this information is not indicated either in the order or in additional orders, or in other local regulatory data. Otherwise, this is a violation of Russian law, including labor.

DEVELOPMENT.

Discussion and results.

Any local regulatory acts of the organization and other documentation related to the personal data of employees should be compiled in accordance with the legislation of the Russian Federation on the protection of personal data.

If violations are found, the employer must eliminate them. Regardless of which documents the violation was identified. Profiles, information posted on the organization's website, etc., everything should be compiled in accordance with the protection of personal data of employees and not contradict the law. An example is the decision of the Ninth Arbitration Court of Appeal dated 05.17.2011 N 09AP-8176/2011 in the case N A40-129864 / 10-21-809, where the employer revealed violations in the application form for employment, screenshots in the personnel department database to be eliminated (Kurennoy et al., 2017; Novikova et al., 2018)

Each staff member has a personal computer with access to the Internet, and in this case, if he sends the personal data of employees through his electronic mail box or from the worker to his mailing address, then who will be responsible for the further dissemination of information? An online service or the employee who sent the information? There is a Decision of the Constitutional Court of the Russian Federation of 10.26.2017 N 25-P, from which it can be concluded that the employee is responsible for disseminating information, including a violation of the fact that he used personal mail to transfer personal data of employees.

Difficulties may arise in the issue of transferring information to third parties. In those applications from the employee for permission to use personal data, which can be found as a template for use, most often such third-party organizations as the Russian Pension Fund, the Federal Tax Service, the bank (with which there is cooperation on the salary project) are reflected. Also, in some examples, there is a wording and other organizations provided for by federal laws. Here you can give an example, like military commissariats or municipal authorities. In all other cases, it is mandatory to have written permission from the employee to transfer his personal data to someone.

A difficult situation arises when the employer needs to submit documents to the court that contain the personal data of the employee.

The FAS Resolution of the Moscow District dated April 29, 2010 No. KA-A40 / 4062-10 in the case No. A40-159104 / 09-93-1333 states that labor contracts (contracts) contain the personal data of the employee, and therefore provide it to someone or without written permission, the employer does not have the right, including the joint-stock company is not obliged to provide it to other shareholders.

The Seventeenth Arbitration Court of Appeal came to the same decision in a decision of March 28, 2008 No. 17АР-1694/2008-ГК in case No. А71-9325 / 2007. The fact that labor contracts cannot be submitted to third parties without the consent of employees, because this is contrary to Art. 88 of the Labor Code of the Russian Federation.

With the development of the tendency for citizens to move to another country, the problem arises of transferring the employee if necessary (or at the request of an organization from another country) and with the written consent of (dismissed or about to leave). Is it possible to follow the wording of the “third party” in this case ? or whether there will be restrictions in this case ?

There is a press release No. 117/15 dated 10/06/2015 of the Court of the European Union in case No. C-362/14. This press release identifies the position that personal data may be transferred to a third country, but provided that the country can provide an adequate level of protection for personal data (McConnell, 1997; Kotler et al, 2000; Hamidi et al., 2008).

It can be noted, that in recent years, the protection of personal data of employees has become more serious and attentive. So, for example, if an application for awarding workers to the administration (or a committee, etc.) was previously submitted, then applications for consent to the processing of personal data of employees were not requested, neither from the employer, nor from the side that makes the award (Hair et al., 2010).

Over the past two years, the position has changed a lot. Now, without fail, a statement of consent to the processing of personal data signed by the employee is also attached to the award application. And personnel workers (and employees who, in one way or another, are associated with working with personal data, for example, accounting, IT-workers, etc.) are increasingly found that any transfer of personal data must be agreed with the employee (Gazizov et al., 2018; Bang et al., 2018). So, even with internal local regulations regarding the transfer within the organization (for example, if the local regulatory act states that certain information should be transferred by the personnel employee to the shop manager), then the employee should be familiarized with this document and other documents that regulate protection and transfer of personal data (Galindo et al., 2014).

If the employee is not familiarized with such documents, the employer (organization) may be fined according to the Code of Administrative Offenses of the Russian Federation; an example is the ruling of the Ninth Arbitration Court of Appeal dated August 15, 2006 No. 09AP-6572/2006-AK in the case No. A40-17389 / 06-146-165 stating that this violation of labor law entails administrative responsibility under the Code of Administrative Offenses of the Russian Federation.

At the same time, it is worth noting that recently such personal data have appeared at the employer as an employee's photo, fingerprints, etc., this is due to the use of access control system in enterprises. Thus, personal data is not only information that has a written format, but also any information presented in any form, including digital, and with the development of technologies, new forms of personal data are possible that can be stored, requested or handle the employer.

With regard to biometric data, the question arises whether they should somehow be separately indicated or spelled out, or if they are fully included in the concept of personal data, including for transfer to third parties (De Propris, 2019).

So, in India there is an Aadhaar system. Aadhaar is a 12-digit unique identification number that can be obtained by residents of India based on their biometric and demographic data (Borman et al., 1992; Bernal et al., 2019).

The Supreme Court of India ruled in civil case No. 494 of 2012, stating that this system does not contradict the constitution, but biometric and demographic data should not be transferred to third parties (for example, banks). Since this is not necessary. It is worth noting that the case was considered for 5 years. So, the first appeal to the court was in the year 2012, and the court decision was made in 2017, but to this day, the debate on this issue does not stop.

CONCLUSIONS.

Thus, the protection of personal data of an employee in organizations (and especially with a small number of employees) is still not formed in accordance with the legislation of the Russian Federation. And the problem of transferring to third parties also remains relevant, therefore, for each movement, it is necessary to take a written consent from the employee until the mechanism is adjusted or registered in local regulatory acts.

In Art. 86 of the Labor Code of the Russian Federation defines an exhaustive list of requirements for working with personal data of an employee that the employer and his representatives are required to comply with in order to ensure the rights and freedoms of man and citizen, but as a rule, disputes arise during the processing and storage of personal data of employees. In this case, employees are forced to go to court for the protection of personal data.

The courts, when making decisions in such cases, are guided by the fact that a surname, name and patronymic are sufficient for identifying a person when hiring, provided that the person presents an identity document.

Employees and their representatives must be refamiliarized by signature with employer registers that establish the procedure for processing personal data of employees, as well as their rights and responsibilities in this area. However, even with a large number of employees, large organizations operating in the market for many years do not fulfill simple requirements to comply with the basic rules.

Analysis of judicial practice shows that re employers often reviolate the requirements of the Law on the processing of personal data.

The most common punishment for violating the rules for the processing and storage of personal data in the Russian Federation is bringing the court to administrative responsibility of legal entities (employers).

Thus, we can conclude that judicial practice on processing and storage of personal data is the most common category of labor disputes, basically, in courts, they consider violations of the rules of processing and storage of personal data by various organizations.

Most disputes could be avoided if employers complied with the requirements of federal legislation on the processing and storage of personal data.

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