
EMPLOYMENT

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PROTECTION OF PERSONAL INFORMATION - PROCESSING LIMITATIONS

The Protection of Personal Information Act, No 4 of 2013 (POPI) was assented to by the President on 26 November 2013. The Act remains inoperative at this stage until such time as the President determines a commencement date.

POPI provides eight conditions for the lawful processing of personal information. One such condition, Condition 2, deals specifically with the limitations on processing.

Limitations on processing

The first limitation imposed by POPI is that information must be processed lawfully and in a reasonable manner that does not infringe the privacy of a data subject. 'Reasonable manner', amongst other terms, is undefined in POPI and as such, it will be the duty of the Courts to determine the meaning of the phrase. With regard to the purpose for which personal information is processed, such information may only be processed if it is adequate, relevant and not excessive.

Personal information may only be processed if:

- the data subject (or competent person, where the data subject is a child) consents to the processing;
- processing is necessary to carry out actions for the conclusion or performance of a contract to which the data subject is party;
- processing complies with an obligation imposed by law on the responsible party;
- processing protects a legitimate interest of the data subject;



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- processing is necessary for the proper performance of a public law duty by a public body; or
- processing is necessary for pursuing the legitimate interests of the responsible party or of a third party to whom the information is supplied.

Where consent is required, the employer bears the burden of proof to establish that consent was, in fact, provided by the data subject or a competent person.

A data subject or competent person may withdraw consent at any time.

A data subject may at any time object to the processing of personal information where there is not sufficient justification, unless legislation allows or makes provision for the processing. In this regard, an employer may not process personal information where a data subject has objected to processing.

Conclusion

As far as limitations are concerned, consent or justification is required for processing personal information and that such information is adequate, relevant and not excessive.

Where such consent or justification is absent, a data subject or competent person may object to processing of their personal information by an employer, unless legislation allows for the processing. As a result of these limitations, employers should consider conducting an internal audit of the procedures used in processing personal information to ensure compliance with POPI.

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