

INSTRUCTION

No. 42, dated 22.07.2014

ON “PROCESSING PERSONAL DATA OF EMPLOYMENT APPLICANTS”

Pursuant to Article 30/1/c and Article 31/1/f of the Law No. 9887, dated 10.03.2008 “On personal data protection”, as amended, the Commissioner for Personal Data Protection,

INSTRUCTS:

Article 1

The purpose

The purpose of this instruction is to determine rules on processing of personal data in the course of recruiting period of employees in public and private institutions.

Article 2

Collecting personal data from employment applicants

1. The employer collects personal data from applicants only where the purpose for their use is legitimate.
2. The employer collects personal data from applicants only for as long as necessary and does not exceed the recruitment purpose.
3. When the employer asks applicants to fill in the application form, both electronically and in writing, shall inform applicants on the written declaration of recruitment privacy policies as provided for by the law on personal data protection.

Article 3

Definitions

1. The terms in this instruction have the following meaning:
 - a) “Employer” and “hirer” have the same meaning as stipulated in the Labour Code.
 - b) “Employment agency/agent” implies a public or private institution

Article 4

Announcement of vacancies

1. The employer should meet the requirements of Article 2 of this instruction when he announces vacancies in the notification section requiring the submission of applicants' personal data.
2. When the employer announces a vacancy in the notification section requiring the submission of applicants' personal data, along with the notice, he attaches or publishes also the written declaration of privacy policies on recruitment except if:
 - a) The announcement invites the candidates to fill in the form provided by the employer where the written declaration of privacy policies is included therein.
 - b) The announcement explicitly identifies the contact person from whom the applicants may obtain a copy of the written declaration of privacy policies.
3. When the employer, directly or through the agent, announces a vacancy requiring the submission of applicants' personal data, offer to the latter means for identifying the employer or his agent.
4. The employer does not require the submission of applicants' personal data where there is no vacancy in place, aiming only the labour market analysis.

Article 5

Employment agencies

1. The employer should meet the requirements of Article 2 of this instruction when he assigns another agency for requesting the submission of applicants' personal data and collects personal data from these applicants.
2. When the employer obtains personal data from applicants, directly from individuals requesting an employment opportunity, or either offered by employment agencies from their registered job seekers, he:
 - a) Use the necessary data in order to evaluate whether the individual is qualified for employment; and
 - b) Do not use these data for any other purpose except when the individual has expressly given the consent.
3. When the employer assigns a third party as an authorized agent to act for recruitment purposes, the employer takes all measures to ensure that the third party does not use the data for other purposes, different from the initial processing purpose. The employer enters

into a contract with the third party in accordance with instruction no. 19, dated 03.08.2012 “On regulating the relationship between the controller and the processor in case of delegation of personal data processing and the use of a standard contract form for such cases”, adopted by the Commissioner’s Authority.

Article 6

Internal registrations of employment applicants

1. The employer may reuse personal data of employment applicants, which are collected during the recruitment period, only if the following requirements are met:
 - a) The data may be used only when the applicant has provided a written consent allowing the use of data for other purposes.
 - b) Develop privacy policies for retaining the data for this purpose;
 - c) Determine the data retention deadline;
 - d) Take all measures to guarantee data security and ensure that the data may be accessed only by authorized persons.

Article 7

Processing of Applicants’ data

1. The employer undertakes all organizational and technical measures to ensure that the collected data of employment applicants be kept confidential, processed and stored in a secure manner either in electronic or picture format or hardcopy.
2. The employer takes all organizational and technical measures to ensure that the authorized staff for accessing personal data, have the necessary information on protection of personal data.
3. Unless otherwise provided by law or bylaws, the employer collects additional information on the employment applicant, in order to complement data collected from the initial application aiming to assess potential applicants for the vacancy by ensuring that no additional data will be collected than necessary to accomplish the purpose.

Article 8

Data retention

The data provided in terms of a job application shall be retained for as long as it is anticipated by the legislation in force.

Article 9
Final provisions

1. All public and private controllers in the territory of the Republic of Albania are subject to the implementation of this instruction.
2. Failure to comply with requirements of this instruction, will consist in violation of the law on personal data protection and is sanctioned under article 39 of this law.

This instruction enter into force immediately and is published on the Official Gazette.

FLORA ÇABEJ POGAÇE

COMMISSIONER