

10 Pitfalls

in EU Employee Privacy Law – What Employers Need to Know



Processing of employee data is unavoidable for employers, but it is also one of the most sensitive areas under the EU GDPR. From recruitment and day-to-day HR administration to monitoring, investigations, and global HR systems, employers face heightened compliance risks due to power imbalance, national labor and employment law overlays, and strict enforcement by data protection authorities. The following outlines ten common pitfalls employers should be aware of when handling employee data.

1 Assuming consent is “safe” in employment relationships

Employee consent is only valid in exceptional circumstances and must be truly voluntary, specific, informed, and revocable without disadvantage. Blanket consent clauses in employment contracts or policies are typically invalid. Withdrawal of consent can leave employers without any legal basis, creating operational and legal exposure.

2 Inadequate transparency towards employees

Employers often underestimate their information obligations under Articles 13 and 14 GDPR. Generic or outdated employee privacy notices fail to meet transparency requirements, especially where data is used for multiple purposes (e.g. HR administration, compliance, IT security, investigations). Lack of transparency significantly increases enforcement and litigation risks.

3 Excessive data collection and retention

Collecting “nice-to-have” employee data or retaining HR records indefinitely violates data minimization and storage limitation principles. Typical risk areas include applicant data, health

information, performance records, and investigation files. Employers must define clear retention periods aligned with labor law, limitation periods, and documentation duties.

4 Unlawful monitoring and surveillance of employees

Employee monitoring (e.g. email scanning, video surveillance, GPS tracking, productivity tools) is subject to strict proportionality and necessity requirements. Employers frequently fail to balance legitimate interests against employees’ fundamental rights, or to involve works councils where required. Illegal monitoring can trigger severe fines and evidence exclusion in labor disputes.

5 Ignoring works council co-determination

In many jurisdictions (notably Germany), employee data processing is closely linked to works council co-determination rights, where works councils are appointed. The implementation of HR IT systems, monitoring or assessment tools without proper works council involvement may be unlawful and unenforceable, even if GDPR requirements are formally met, and may be halted through interim court injunctions.

6 Insufficient control over processors and vendors

Payroll providers, HR software vendors, and cloud services may process employee data on behalf of employers. Missing or defective data processing agreements, weak security assurances, or unclear instructions can lead to direct employer liability for vendor misconduct.

7 International HR data transfers without safeguards

Global HR systems often involve transfers outside the EU/EEA. Employers frequently underestimate transfer requirements, including the need for appropriate transfer mechanisms (particularly the SCCs) and Transfer Impact Assessments. HR data is considered particularly sensitive by regulators, increasing scrutiny.

8 Poor handling of employee data subject rights

Access, erasure, and objection requests by employees are increasingly used as a strategic tool in labor disputes, and employee rights are very broad. Employers often miss deadlines, provide incomplete responses, or disclose third-party data. Lack of internal procedures and coordination between HR, legal, and IT is a recurring compliance gap.

9 Appoint a EU representative or DPO

Non-EU employers with staff in the EU often fail to appoint an EU representative. A respective appointment is mandatory under Article 27 GDPR. This pitfall is particularly relevant for international groups employing EU-based staff without an EU entity. Missing representation can itself constitute a GDPR violation and complicates regulatory communication and enforcement. In some cases, (additionally) a DPO will need to be appointed.

10 (Criminal) background checks without legal justification

Background checks, in particular checks relating to criminal records, are subject to a very high level of scrutiny under the GDPR and national employment laws. Employers often assume that such checks are permissible as part of due diligence or compliance, but this is rarely the case.

In most jurisdictions, employers may only request criminal background information where it is strictly necessary for the specific role (e.g. regulated positions, financial trust functions). Blanket background checks are typically unlawful and can result in regulatory fines, exclusion of evidence in employment disputes, and reputational damage.

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Dr Christian Maron, a leading international labor and employment lawyer at Taylor Wessing Germany, has been advising global companies expanding into the German market for more than fifteen years. Alongside his dedicated team, they help businesses align their global operations with German labor and employment law, providing strategic guidance on HR matters, employment

contracts, terminations, and litigation, while ensuring compliance and risk mitigation. With deep expertise in restructuring, corporate transactions, and works constitution law, Christian and his team support smooth workforce transitions and offer strong legal protection—both in and out of court.

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