

Russia Practice

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Important changes regarding the processing of personal data

From 1 July 2017 important changes in the liability for violating the requirements on personal data processing will enter into force. Below are the main developments:

Personal data processing policy

Almost every company collects personal data using the Internet (for example, using electronic mail and/or a feedback form on its website). In this case the company is required to adopt a local regulation in the form of a policy on processing personal data, and to publish it on the website combined with information on the implemented requirements on protection of personal data. This policy must describe how the company handles the personal data of any persons which has dealings with the company (including applicants for vacant positions, employees, representatives of counterparties, etc.), and not only visitors and website users. Now, in addition to the issue of instructions on rectifying the violation, the failure to meet this requirement will entail the risk of a fine on the company of up to RUB 30,000 and a fine on the general director of up to RUB 6,000. The regulatory authority for personal data, the Federal Service for Supervision of Communications, Information Technology, and Mass Media (Roskomnadzor), is not required to perform a targeted review to identify the violation. The violation may also be established based on systematic remote monitoring. If Roskomnadzor discovers a violation, it will place the website on its checklist for follow up.

Written consent to processing of personal data

The transfer of employees' personal data to any third party (including other group companies, outsourcing companies, etc.) requires the preliminary written consent of the employees. Moreover, this written consent must meet strict requirements on its content. In particular, the following can be pointed out:

- the consent must indicate the passport details and address of the employee;
- each consent can only indicate one purpose for the processing of personal data. Thus, if necessary several consents shall be obtained;
- if the employer entrusts the processing of personal data to third parties (for example, companies that provide HR and accounting services, travel agencies), the consent must indicate the name and address of the third party. In this regard, a written consent can only indicate one third party, i.e. if necessary several consents shall be obtained.

Now, in addition to the issue of instructions on rectifying the violations, the failure to meet the aforementioned requirements on written consent or violation of the established form will entail the risk of a fine on the company of up to RUB 75,000 and a fine on the general director of up to RUB 20,000. A separate fine may be imposed for each failure to obtain proper consent.

Written consent is required in other cases as well, for example when transferring personal data to certain countries (including the USA, China and other countries) through data entry in information systems whose servers are located in these countries.

Processing of the data of website visitors

The trend over the past few months has been to recognise the information on unregistered website visitors received by companies through online metrics (such as Google Analytics, Yandex Metrics) and used for analysis of the website's audience as personal data as well. This position is very debatable, but it has already found expression in court practice, and in the practice of scheduled audits and public comments of Roskomnadzor. Roskomnadzor is considering the electronic consent of a website visitor and/or a user's agreement placed on the website as grounds for processing these data. The absence of the grounds for processing data established by the law is deemed a violation, and will entail the risk of a fine on the company of up to RUB 50,000 and a fine on the general director of up to RUB 10,000.

Roskomnadzor authorised to impose administrative liability

The authority to impose administrative liability for a violation of the legislation on personal data processing will be transferred from the prosecutor general's office to Roskomnadzor. In practice, for companies this means that administrative liability will be imposed more often, since Roskomnadzor is expected to react more quickly to identified violations.

Be prepared for the tightening of the law

We recommend that you audit your organization's compliance with the requirements of the legislation on personal data processing before July 2017, and if necessary make the appropriate changes to your data processing documents and procedures.



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