

Data With Destiny

HR departments do not suffer from a lack of data. Companies collect all sorts of information about their employees to support their recruitment, training, mobility, pay and benefit programmes. Being able to use this data in a more creative way to establish patterns and trends, to analyse the specific benefits your workforce would value or to identify areas of risk will help improve business performance and give HR a seat at the top table in terms of strategic initiatives and growth. However, these opportunities are balanced by significant legal and reputational risks. Data privacy really matters to employees; they fear employers using their health and biometrical data as well as their credit rating to make decisions about their employability and also the benefits that may be offered to them; they worry their data is not properly secured; and they worry about who else it may be passed to particularly when the company is part of an international business. For companies operating across borders, transferring data across jurisdictions is vital in a variety of contexts from recruitment through to training and talent development and the management of benefits and remuneration. As the world of work becomes more mobile, data needs to travel with employees from location to location.

In Europe, new rules are being introduced to try and combat the issues that are thrown up by the increasingly innovative ways data is used. While these rules are not expected to come into force until 2017, companies will need to start getting their houses in order to ensure they comply with the stringent new requirements. Employers will need explicit consent from employees to process their data, and this will require more than simply requiring employees to confirm their consent as part of signing their employment contract. Companies will need to set out very clearly how data will be used and for what purpose. Given this will change as rapidly as innovation, this will not be an easy task as it is difficult to conceive today all the ways data may be used in say five years' time. Drafting policies with a layered approach, with further explanation being readily available is one way to try

and combat this, but it also requires a strong commitment to regularly update information and affected employees.

Another potential area of difficulty is balancing data protection obligations against the need to undertake monitoring and investigations without "tipping off" employees. The amount and type of data an employer can obtain about their employees and their conduct is hugely varied and incredibly useful in this context, but under the new Regulations there will be increased restrictions on the ability of an employer to access personal data notwithstanding these legitimate purposes. It will be challenging for employers to balance these obligations with those they owe to regulators and shareholders, not to mention other employees who may be disadvantaged by the conduct of the minority.

Employees will have the right to be forgotten, so will be able to apply to have their personal data deleted. Although the law currently requires data to only be held for as long as it is required for the purpose for which it was collected, very few companies undertake a regular cleanse of the data they have on their files. This will need to be done much more robustly and routinely under the new Regulations as well as upon application. Google has already had some 160,000 requests to remove data about individuals since an ECJ ruling in 2014 requiring it to remove embarrassing or inaccurate or outdated information.

Transferring data to other countries will become harder which will inevitably cause problems for international organisations who have central HR processing or compensation & benefits teams who handle data from all parts of the business on a global basis. And there will be significant sanctions for breaches of the Regulations with possible fines of EUR100m or 5% of annual worldwide turnover, not to mention reputational damage.

All of this, while challenging, creates real opportunities for HR professionals. Documentation and processes will need to be overhauled to ensure employers have a clear picture of what data they hold, where it is being transferred and how and why it is being processed. Employees outside of the EU will not be caught by these new regulations but, as an international employer, you are likely to

want to ensure consistency of treatment across your business wherever possible. Given the lead in time for the Regulations, smart employers are already starting to carry out data protection health-checks on their core HR policies, the way in which consent is obtained, and reviewing how data is being used and whether that is consistent with the purposes previously notified to employees. Those who are getting this right will be better placed to capitalise on the real opportunities created by the increased digitalised workplace.



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