

Code of Practice on Human Resource Management

Compliance Guide for Employers and HRM Practitioners

Introduction

What does the Code of Practice cover?

- The Code of Practice on Human Resource Management ("the Code") came into effect on 1st April 2001. It provides employers and HRM practitioners with a practical guide to the application of the provisions of the Personal Data (Privacy) Ordinance ("the PD(P)O") to employment-related personal data privacy.
- The Code draws on the Data Protection Principles ("DPPs") that appear in Schedule 1 of the PD(P)O and applies them to the management of personal data in three important areas: recruitment, current employment, and former employees' matters. The Code also illustrates good personal data practices applied to HRM activities.

What happens if the Code is not complied with?

- Non-compliance with the Code will give rise to a presumption against the employer, or any third party contracted to act on the employer's behalf, in any proceedings involving an alleged breach of the PD(P)O. These proceedings could be before the Administrative Appeal Board, a magistrate or a court.
- Non-compliance with the Code would also weigh against the party concerned in any case under investigation by the Privacy Commissioner for Personal Data.

Key Features of the Code

Recruitment

- An employer should not solicit personal data from job applicants, e.g. their personal resumes, in a recruitment advertisement that provides no identification of either the employer or the employment agency acting on its behalf.
- If an employer finds it necessary to conceal its identity in recruitment advertisements, it may provide job applicants, upon request, with application forms that bear the employer's identity. Alternatively, it may use a recruitment agency, which should be identified in the advertisement, to receive the personal data solicited from job applicants.
- Recruitment advertisements that directly ask job applicants to provide their personal data should include a statement, as an integral part of the advertisement, informing applicants about the purposes for which their personal data are to be used, e.g. "Personal data collected will be used for recruitment purposes only". Alternatively, a statement to the following effect may be included

- *"Personal data provided by job applicants will be used strictly in accordance with the employer's personal data policies, a copy of which will be provided immediately upon request."* In this case, contact information of the employer should be stated in the advertisement.

- Personal data collected from job applicants should be adequate but not excessive, and they should be relevant to the purpose of identifying suitable candidates for the job.
- An employer should not collect a copy of the identity card of a job applicant during the recruitment process unless and until the individual has accepted an offer of employment.
- Information may be compiled about a job applicant, e.g. by means of security vetting or integrity checking, to supplement other data collected at the time of the original application. Such supplementary information should be collected for the purpose of assessing the suitability of potential candidates for the job, and the data collected should be relevant to the nature of the job.
- Personal data concerning the health condition of a selected candidate may be collected by means of a pre-employment medical examination if the data directly relate to the inherent requirements of the job, and employment is conditional upon the fulfillment of the medical examination. However, such data should only be collected after the employer has made a conditional offer of employment to the selected candidate.
- Personal data of unsuccessful applicants may be retained for a period of up to two years from the date of rejecting applicants and should then be destroyed. The data may be retained for a longer period if there is a subsisting reason that obliges the employer to do so, or applicants have given their consent for the data to be retained beyond two years.

Current Employment

- On appointment, an employer may collect additional personal data from an employee and his family members for the purpose of employment, or to fulfil lawful requirements that regulate the affairs of the employer.
- Before personal data are collected from an employee, an employer should provide the employee with a Personal Information Collection Statement ("PICS") pertaining to employment. The PICS should inform the employee about the purposes for which the data are to be used, the classes of persons to whom these data may be transferred and the rights of the employee to request access to, and to request correction of, the employment-related data.
- Information compiled about an employee in the process of disciplinary proceedings, performance appraisal or promotion planning should only be used for purposes directly related to the process concerned. The information should not be disclosed to a third party unless such party has legitimate reasons for gaining access to those data.
- An employer should not disclose employment-related data of employees to a third party without first obtaining the employees' consent unless the disclosure is for purposes directly related to the employment, or such disclosure is required by law or by statutory authorities.
- When employment-related data are transferred or disclosed to a third party, an employer should avoid disclosure of data in excess of that necessary for the purpose of use by the third party.
- An employer who engages a third party organisation to handle its employment-related functions should implement appropriate measures to ensure that the third party protects the employment-related data against unauthorised or accidental access or disclosure.

Former Employees' Matters

- Personal data of a former employee may be retained for a period of up to seven years from the date the former employee ceases employment. The data may be retained for a longer period if

there is a subsisting reason that obliges the employer to do so, or the data are necessary for the employer to fulfill contractual or legal obligations.

- An employer should take all practicable steps, at the earliest opportunity upon the departure of an employee, to ensure that only relevant information of the former employee is retained to satisfy its retention requirements.
- In any public announcement notice regarding a former employee having left employment, the employer should take care not to disclose the identity card number of the employee concerned in the notice.
- An employer should not provide a reference concerning a former employee to a third party without first obtaining the employee's consent for this unless the employer is satisfied that the third party requesting the reference has obtained the prior consent of the employee concerned.

Personal Information Collection Statements Illustrative Examples

Recruitment - The Alpha Corporation* has a vacancy for a secretary. It advertises the vacancy by means of a vacancy notice in which it indicates the job specification and qualification requirements for the post. In the vacancy notice, the company provides a contact so that interested applicants may request a job application form.

Compliance measures - To comply with the notification requirements** of the PD(P)O, the company has prepared a Personal Information Collection Statement ("PICS") pertaining to recruitment (Annex A). The PICS is printed as part of the job application form. Upon request, the company sends the form to the applicant who, after completing the information required on the form, returns it to the company together with the necessary supporting documents.

Employment - The Alpha Corporation has successfully recruited a secretary. The company offers overtime allowance and medical benefits as part of the conditions of employment.

Compliance measures - To comply with the notification requirements of the PD(P)O, the company has prepared a Personal Information Collection Statement ("PICS") pertaining to employment (Annex B). The PICS is included as part of the company's policy handbook for employees, which all employees are required to read.

* *This is a fictional organisation.*

** *Data Protection Principle 1(3)*

Annex A

The Alpha Corporation Personal Information Collection Statement pertaining to Recruitment

The personal data collected in this application form will be used by the Alpha Corporation to assess your suitability to assume the job duties of the position for which you have applied and to determine preliminary remuneration, bonus payment, and benefits package to be discussed with you subject to selection for the position.

Personal data marked with (*) on the application form are regarded as mandatory for selection purposes. Failure to provide these data may influence the processing and outcome of your application.

It is our policy to retain the personal data of unsuccessful applicants for future recruitment purposes for a period of two years. When there are vacancies in our subsidiary or associate companies during that period, we may transfer your application to them for consideration of employment.

Under the Personal Data (Privacy) Ordinance, you have a right to request access to, and to request correction of, your personal data in relation to your application. If you wish to exercise these rights, please complete our "Personal Data Access Form" and forward it to our Data Protection Officer in the Human Resources Department.

***Note:** Personal Information Collection Statements are invariably influenced by the nature of the employer's business and the purposes for which personal data were originally collected. This illustrative example is offered as a model that employers may wish to give consideration to when drafting their own PICS for recruitment purposes.*

Annex B

The Alpha Corporation Personal Information Collection Statement pertaining to Employment

Throughout the course of your employment with the Alpha Corporation, we may collect personal data from you in relation to your employment for various human resource management purposes. These purposes include, but are not limited to: provision of benefits, compensation and payroll; facilitating performance appraisals, promotion and career development activities; making tax returns; and the review of employment decisions.

The personal data that we have collected may be transferred to our subsidiary and associate companies; our insurers and bankers; medical practitioners providing medical cover for employees; administrators or managers of our provident fund scheme; and other companies engaged in contractual activities on our behalf; for the above mentioned purposes for which the personal data are to be used.

It is our policy to retain certain personal data of employees when they cease to be employed by us. Such data are required for any residual employment-related activities in relation to a former employee including, but not limited to: the provision of job references; processing applications for re-employment matters relating to retirement benefits and allowing us to fulfill contractual or statutory obligations.

Under the Personal Data (Privacy) Ordinance, you have a right to request access to, and to request correction of, your personal data in relation to your employment. If you wish to exercise these rights, please complete our "Personal Data Access Form" and forward it to our Data Protection Officer in the Human Resources Department.

Note: Personal Information Collection Statements are invariably influenced by the nature of the employer's business and the purposes for which personal data were originally collected. This illustrative example is offered as a model that employers may wish to give consideration to when drafting their own PICS for employment purposes.

This booklet is issued only for general guidance and should not be relied upon when determining whether or not an act or practice complies with the Code of Practice on Human Resource Management. For a complete statement of the requirements of the Code, reference should be made to the Code itself.

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