



Data protection aspects for entrepreneurs in connection with the COVID - 19 - pandemic

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A question that is increasingly arising for companies in practice, as is shown by repeated queries to us in this connection, is whether the identity of an infected employee in a company may or must be disclosed at the request of employees. This could be required in particular if another employee claims to be immunosuppressed and therefore at increased health risk or to live with someone who is immunosuppressed.

According to Austrian law, an employer, due to its duty of care towards its employees, is basically obliged **to inform the staff about all infections that have occurred in the company**, especially because of the possible danger of infection for other employees. Whether the specific identity of the infected person may or even must be disclosed in order to fulfil the duty of care is examined on a case-by-case basis and must be assessed on the basis of the specific situation. Since an employer does not know in detail with which other employees an affected person has been in direct contact, **all employees of the company must usually be informed about the infection** – and possibly also about the identity of the affected employee.

If an employee approaches the employer and asks for the identity of the employee concerned, for example because he or she lives with someone who has an underlying disease or belongs to a risk group (in connection with COVID-19), the **interests of the employee concerned** (according to data protection law) **and the personal interests** of the **employee** who made the **inquiry** must **always be weighed up against each other**, because the data concerned by the request are **health data of the employee which are specially protected** under the General Data Protection Regulation (DSGVO - Art 9 (2) lit b)¹.

¹ <https://eur-lex.europa.eu/legal-content/DE/TXT/?uri=CELEX%3A32016R0679> last retrieved on 23.03.2020.

However, the Austrian data protection authority announced in a recently published guideline that the **health data of affected employees may be used to the extent necessary to contain the further spread of the virus and to protect other people.**² This includes in particular the collection of data from persons who have been diagnosed as positive (COVID-19) or who are suspected of having contracted the virus through direct contact with an infected person.. According to the data protection authority, the processing of such health data may be carried out on the basis of Art 9 (2) lit b DSGVO. On the basis of this guideline, we therefore believe that, in the context of the COVID-19-pandemic, the employer is in principle entitled to disclose the health data of concerned employees in order to contain the further spread of infection and to protect other employees from infection.

Please do not hesitate to contact us at www.sms.law if you have any further questions.

² <https://www.dsb.gv.at/informationen-zum-coronavirus-covid-19-> last retrieved on 23.03.2020.