

# GDPR and recruiting

PROHIBITED TO PROCESS PERSONAL DATA REVEALING (SPECIAL CATEGORIES OF PERSONAL DATA):

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- Racial or ethnic origin
- Political opinions
- Religious or philosophical beliefs
- Trade union membership
- Genetic data
- Biometric data for the purpose of uniquely identifying a natural person
- Data concerning health
- Data concerning sex life or sexual orientation

It is also not justified to ask about the following data:

- Physical form
- Marital status
- Free time activities, hobbies
- Disability
- Having children and family planning
- Completion of mandatory duty to serve in Defence Forces

INSTEAD ASK/DO

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- What are the reasonable factors that determine the success in performing work tasks?
- Discuss the work tasks and in the process ask the candidate if she/he has or may have difficulties in performing any of the tasks
- Submit sufficient information about the nature of the job and clear selection criteria in the job advertisement

PROCEDURE FOR COLLECTING PERSONAL DATA

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- Person must be informed about collection of data at latest at the time of receiving the data
- Necessary to have a privacy policy and data protection conditions to regulate the mandatory elements of the GDPR
- Introducing the privacy policy and data protection conditions must be recorded

POSSIBLE LEGAL BASIS FOR PROCESSING PERSONAL DATA

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- For the performance of a contract, exc. special categories (e.g. existing employees)
- In order to take steps at the request of the data subject prior to entering into a contract, exc. special categories (e.g. a person so-called cold-approaching with a wish to get hired)
- Legitimate interests (e.g. the employer actively looking for employees with a competition) - the lack of legitimate interest is assumed especially if the questions disproportionately concern the private life of the applicant or are not related to suitability for the offered job
- Consent only in exceptional cases (e.g. to retain the candidate's personal data after the recruitment process)

THE FOLLOWING REQUIREMENTS INTER ALIA APPLY TO COLLECTING AND PROCESSING PERSONAL DATA

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- Purpose limitation – is the data relevant and necessary for making the choice?
- Minimality limitation – is the data necessary to such extent?

*This information sheet has been prepared by Kaisa-Maria Kubpart, attorney at law firm WIDEN, the sheet reflects the regulation and relevant publicly published positions in Estonia as of 02.10.2024, and the sheet will not be kept up-to-date with regard to possible changes after the aforementioned date. This is not considered provision of legal services - to assess the needs of a company or a person and to obtain legal advice in specific circumstances, you can contact the e-mail address [kaisa-maria.kubpart@widen.legal](mailto:kaisa-maria.kubpart@widen.legal).*

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