



The new PRC Personal Information Protection Law – Are global organizations ready for the changes (from an employment perspective)?

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Broad Reach– Capturing Global HR Operations

On 20 August 2021, the Standing Committee of the National People’s Congress passed the new PRC Personal Information Protection Law (**PIPL**), which will come into operation on 1 November 2021.

The PIPL has a territorial reach that is similar to the EU’s General Data Protection Regulation (**GDPR**) in that it applies to both operations in China, as well as to businesses overseas that process the personal information of individuals who are located in China for the purpose of analysing and evaluating the individuals’ activities. As such, the PIPL captures HR departments that process employment information on global scales, such as those that use cloud-based HR solutions to streamline and manage HR operations on a worldwide basis – e.g. HR planning, employee engagement, and people analytics. Even if the scale of operations in China is small (e.g., a small representative office), you could still be captured by the PIPL as a “data controller”.

Some key points from the new PIPL:

- The PIPL covers the entire life cycle of employee data processing – from collection, modification, storage, use, transfer, publication, and deletion of personal information. There are strong similarities between the data protection principles under the PIPL and the GDPR:
 - lawfulness, fairness and transparency
 - purpose limitation
 - data minimization
 - accuracy
 - storage limitation
 - integrity and confidentiality
 - accountability

- The PIPL sets out the conditions for overseas transfer of personal information.
- The Cyberspace Administration of China is tasked with an overall responsibility for enforcing the PIPL, working together with local authorities. The enforcement authorities are conferred wide investigative powers, including requests for information, onsite inspection and seizure of records, contracts, equipment, etc.
- Businesses which violate the PIPL may be subject to penalties, including fines, suspension of business licences and, in extreme cases, the revocation of the violating company's business licence.
- Persons-in-charge of the violating business may also be held personally accountable.

Businesses should understand what is expected from them and start to prepare themselves for the changes, including changes of employment practices affecting different stages of the employment cycle.

Action items to take into consideration

- **Review internal management processes and policies and train frontline staff for regulator visits** – Businesses should put in place enhanced internal management processes to cover data privacy aspects, including: management of staff data based on hierarchical classification, regular review of staff data compliance issue, handling of data access/correction requests or requests for withdrawal of consent made by job applicants, existing or former employees and dispatch workers; deletion of unnecessary employee data. Given the extensive investigative powers which have been conferred on the PRC regulators, it is important for frontline staff (e.g. reception) to know how to respond when there are unannounced visits by PRC regulators.
- **Formulate a data breach/leakage notification mechanisms and a contingency plan** – Businesses should put in place a contingency plan and notification system in response to data breach or leakage incidents.
- **Appoint a contact person** – Businesses should appoint an individual to be the key contact person for handling personal information related matters in a timely manner (e.g., to respond to employees' request for access/correction/deletion of their personal information).
- **Put in place a record keeping system** – Businesses should maintain proper record of processing personal information in special cases (e.g. when involving sensitive employees' personal information).
- **Put in place proper security measures** to protect employee data (e.g. encryption of files

containing employee data, locks for physical files or documents containing employee data).

- **Provide regular employee training** – HR professionals should provide on boarding and ongoing employee training to help employees and international secondees understand the importance of data privacy compliance.
- **Review employee handbook and disciplinary procedures** – Businesses should review their employee handbooks and employment-related company policies (e.g. CCTV policy, disciplinary policy etc.) to ensure compliance with the new law.

Pre-employment

- **review job application forms and background check process** – Businesses should review their job application forms to remove items of personal information which are not essential for job application (e.g. political affiliation, family members' details) and ensure that only essential background information is obtained taking into account the position in question.
- **Avoid collecting sensitive personal information** (defined in the new law e.g. health condition) unless it is related to the inherent job requirements.
- **Handle the personal information of unsuccessful candidates' data** with care.

During employment

- **Cross-border transfer of employee data** – Businesses should ensure that at least one of the conditions for overseas transfer of staff data has been satisfied before transferring staff data overseas (e.g. the conclusion of an overseas data transfer agreement with the recipients in line with the regulators' requirements).

- **Personal information compiled about an employee in the process of disciplinary proceedings, performance appraisal or promotion planning** should only be used for the purposes directly related to the process in question. Such personal information should not be disclosed to any third party unless such party has legitimate reasons to have access to the data.

Post-employment

- **Ensure that employee records are properly handled** in accordance with document retention limits and to erase unnecessary employee data.
- **Handle internal or external announcements relating** to a former employee with care. Any prior practice of staff announcement relating to the reason of staff departure shall be revisited.
- **Provide employee references** only if consent is obtained.

Contact

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