

BULLETIN ON THE PERSONAL DATA PROTECTION BOARD'S PUBLIC ANNOUNCEMENT ON "THE PRACTICES OF COVID-19 PCR TEST RESULT AND VACCINE INFORMATION"

The Personal Data Protection Authority ("the Authority") had been inundated with opinion requests following the practice of requesting COVID-19 vaccine information and negative test results had been imposed, firstly with the circular of the Ministry of Interior dated 20.08.2021 – which imposed this obligation for participants of collective activities such as concerts, theaters, and public transport – and secondly with the circular of the Ministry of Labor dated 02.09.2021 – which brought the obligation within the scope of protective and preventive measures against health and safety risks that may be encountered in workplaces. Upon many requests for an opinion regarding such obligations, the subject was brought forward to the Personal Data Protection Board ("the Board"). An evaluation regarding such obligations has been published on the Authority's website with the decision dated 28.09.2021 and numbered 2021/980 thereafter.¹

The Board declared that the information gathered within the context of COVID-19 measures regarding the vaccine information and PCR test results shall be deemed special categories of personal data as health data, and require processing according to the conditions stated in Article 6 of the Personal Data Protection Law ("the Law").

On the other hand, the Board also emphasized the importance of processing related health data to protect public health, public security, and public order within the scope of combat against COVID-19.

As a result, the Board has evaluated that since COVID-19 is threatening public order and security, practices of collecting negative PCR test results and COVID-19 vaccine information shall be deemed as a circumstance in which the provisions of the Law shall not be applicable as regulated in Article 28 (ç) of the Law which states, "*ç) Processing of personal data within the scope of preventive, protective and intelligence-related activities by public institutions and organizations which are assigned and authorized for providing national defence, national security, public safety, public order or economic safety.*"

Processing COVID-19 vaccine information and/or PCR test results in the private sector were not mentioned in the Board's evaluation. Thus, we primarily recommend that employers carefully process this kind of data in full compliance with Article 6 (3) of the Law. Although, at the same time, the Board's evaluation also makes it possible to form the opinion that the violation of Article 6 (3) by the employers authorized with the circular of the Ministry of Labor shall not be subject to a penalty, provided that they process the relevant health data to "prevent the spread of the outbreak in the workplace in the name of providing health and safety at work" and as long as they ensure the security of such data.

Regards,

Koyuncuoğlu & Köksal Law Firm

*As the explanations given in our newsletter are prepared pursuant to the legislation in effect in the Republic of Turkey and the disclosures made to the public by the relevant official authorities, in case of uncertainty, we advise you to seek advice and support from us before the final transactions are carried out. Otherwise, our Law Firm cannot be held responsible for the actions to be taken on the basis of the explanations contained herein and the consequences of such actions.

¹ Access: <https://kvkk.gov.tr/Icerik/7055/COVID-19-PCR-TEST-SONUCU-VE-ASI-BILGISI-UYGULAMALARINA-ILISKIN-KAMUOYU-DUYURUSU>