Data Privacy in Mexico within Employment Relations

Today, data protection in the labor environment has a meaningful effect in activities regarding the appropriate management of the employer-employee relationship, insomuch as the existence of the human right to the protection of personal data sets certain limitations to the processing carried out by the employer. There can be certain activities that are not justified under the labor relationship and as a consequence that are not recommended to put in practice. Nevertheless, the business needs demand for specific processing activities in which right to the protection of personal data must be balanced with the purposes pursued by the employer, for example the surveillance and monitoring activities that can mine the right to the protection of personal data of employees.

In this regard, Mexico has a specific Law that regulates data protection in the labor context, the Law on Protection of Personal Data Held by Private Parties and further applicable provisions that establish the legal ground for the processing of personal data within employment relations. Furthermore in January 2017 has been enacted the General Law on Protection of Personal data Held by Regulated Entities, which provides specific rules for the processing of personal data by public entities. Here is crucial to distinguish between two mains stages in which the processing of the employees personal data occurs: the recruitment process and the hiring process in the labor environment.

Nymity: What is the history and background of data protection in Mexico in impacting employment relations?

Professional: In Mexico the impact of data protection in employment relations comes visible in two main stages of the employer-employee relationship: the recruitment process and the hiring process.

The process of recruitment has changed in Mexico from the issuance of the applicable regulations, now employers have had to consider modifying certain practices which, although they were considered acceptable, today, they do not ensure an adequate protection of personal data and are proved to be excessive according to the proportionality principle. Currently, companies continue to change their recruitment activities to guarantee the compliance of the Data Protection Regulations, for instead, the following activities that have been changed by companies can be mentioned:

1) Limitation of psychometric tests to candidates;
This example clearly shows how the data protection Mexican legal framework has changed the processes that come into practice by companies in Mexico and how today it is required to balance the business purposes with the right to the protection of personal data.

The protection of personal data of employees is a complex issue, because here it is required to distinguish between the cases where consent might not be required under the labor relationship and those where consent exception does not apply. There are many processing activities of personal data that are necessary for the fulfillment of the labor relationship and do not require consent, as an instance we can mention the following: id badges issuance, management of physical access facilities, information systems access management, security reviews, insurances acquisition, social security programs management, medical care, issuance of corporate cards, among others. Nevertheless, the employment relationship does not exempt the employer from the obligation to obtain a new consent when new processing activities arise after the labor relationship.

On the other hand, there are certain activities that are intrusive with the employee right to the protection of personal data and can carry adverse effects to him, such as conducting polygraph tests, the request of criminal records and conducting drug tests. These practices are not recommended and should be avoided.

Once the employment relationship has been formalized, an issue that is relevant is the access granted to employees to personal databases, as there may be security breaches that jeopardize personal information

Nymity: What are the data collection and processing requirements in the employment context?

Professional: The collection and processing of personal data always must be made according to the principles of legality, consent, notice, quality, purpose, fidelity, proportionality and accountability. Also will be mandatory to maintain confidentiality and guarantee the security of the personal data. The above-mentioned principles and duties are applicable even when a third party carries out the processing.

Nymity: Are there information collection restrictions of employee information?

Professional: Yes, the Law establishes that processing of personal data will be done as necessary, appropriate and relevant with relation to the purposes set out in the privacy notice. In particular, for sensitive personal data, the employer must make reasonable efforts to limit the processing period thereof to the minimum required.

Nymity: How is the access and correction of information treated within employment relations?

Professional: The employees may at any time make a request to the employer for access, rectification, cancellation or objection in relation to the personal data concerning him. The Company must designate a personal data person or
department who will process requests from employees and inform through the privacy notice the means for exercising such rights.

Nymity: Is employee monitoring and surveillance allowed?

Professional: Yes, monitoring and surveillance are allowed when necessary, adequate, and relevant for the labor relationship fulfillment and as long as they are carried out in the labor context. Furthermore, it will be required to previously inform the employee of such circumstance.

Nymity: Are data transfers allowed by the employer?

Professional: Yes, according to Mexican Regulations, national and international transfers are allowed. Any transfer of personal data, whether national or international, is subject to the consent of the employee, the employee must be informed of the transfer by a privacy notice and the transfer be limited to the purposes that justify it. In certain cases, domestic or international transfers of data may be carried out without the consent of the employee, for example where the transfer is necessary by virtue of a labor contract, where the transfer is pursuant to a Law, where the transfer is made to holding companies, subsidiaries or affiliates under common control of the data controller, and where the transfer is necessary or legally required to safeguard public interest or for the administration of justice.

Nymity: What are the security and breach notification standards applicable for data controllers/employers?

Professional: The standard for breach notification is established in the article 65 from the Regulations of the Law on Protection of Personal Data Held by Private Parties. The article 65 provides that the data controllers/employers must inform at least the following: The nature of the breach; The personal data compromised; Recommendations to the employee concerning measures that the latter can adopt to protect his interests; Corrective actions implemented immediately, and The means by which he may obtain more information in this regard. However, according to specific sectors there can be additional requirements to comply with.

Nymity: How long should the employer retain the personal data of former employees?

Professional: According to the Federal Labor Law the employer must retain the personal data of former employees until one year after the labor relationship is terminated.

Nymity: What are the main concerns of data controllers/employers under the current legislation?

Professional: Under the current legislation there are uncountable concerns for the employers carrying out the processing of personal data, most of them rely on the security of personal data and the breach prevention. Nonetheless, the most concerned companies are worried about is the initiation of a verification procedure before the Data Protection Authority.

Nymity: Are there any proposed amendments in the current set of rules?

Professional: No, there are not. The General Law on Protection of Personal Data in possession of compelled bodies has just been published on January 26th and it requires several legislative measures, so Authority is expected to be focused on the Public Sector in relation with legislative changes.
Nymity: What are five key recommendations for effective employee’s data protection compliance in organizations in Mexico?

Professional: 1) Prepare an inventory of personal data and processing systems; 2) Develop a privacy notice for candidates and another one for employees; 3) Set data protection clauses in contracts with third parties that process personal data; 4) Determine the duties and obligations of those who process personal data and 5) Establish the security measures applicable to personal data and identify those implemented effectively.