

**Act on the use of health data etc.
on the labour market**

Act No. 286 of 24 April 1996

**Ministry of Labour
Denmark**

Act on the use of health data, etc. on the labour market

Part I

Purpose and scope of the Act

1. - (1) The purpose of the Act is to ensure that health data are not used wrongfully to limit the possibilities of employees for obtaining or maintaining employment. This shall apply irrespective of whether the data relate to genetic tests, ordinary examinations or come from any other sources.

(2) The Act shall apply to the use of health data on the labour market. However, the Act shall not apply to the extent that rules on the use of health data have been laid down by special legislation or by provisions issued on the basis of such legislation.

(3) In this Act requests for and collection of health data shall also be taken to mean the carrying out of examinations to the extent that these are required in order to obtain the health data concerned.

Part II.

Collection of data

2. - (1) In connection with recruitment or during the duration of an employment relationship an employer shall only be entitled to request health data to be provided for the purpose of ascertaining whether the employee is suffering from or has suffered from a disease or has or has had symptoms of a disease if the disease will be of significant importance for the employee's capacity for work in the job function concerned, cf., however, sections 3 to 6.

(2) However, the employer may only request information, cf. subsection (1), of which the employee is not himself informed, if the conditions in connection with the work concerned specifically justify that such data should be provided.

(3) When requesting data under subsections (1) and (2) the employer shall inform the employee of the diseases or symptoms of diseases on which he seeks information.

(4) An employer shall not - in connection with recruitment or during the duration of an employment relationship - request, collect, receive or make use of health data for the purpose of ascertaining the employee's risk of developing or contracting diseases, cf., however, section 3.

(5) The provisions laid down in subsections (1) to (4) shall also apply to consultants and other persons acting on behalf of the employer.

3. - (1) An employer may offer that health data are collected for the purposes mentioned in section 2 (1) and (4) if working environment conditions make it reasonable and appropriate to do so for considerations of the employee himself or other employees.

(2) Collection of data under subsection (1) shall be instrumental in the prevention of work-conditioned diseases or improvements in the working environment conditions. The rules and guidelines laid down in the working environment legislation on examination methods and use of experts shall be correspondingly applicable.

(3) The employer shall notify the local working environment service before such examinations are carried out. The notification shall include detailed information on the examination, including its extent, method, etc. and on the persons assisting in and in charge of the examination. The examination may not take place until 4 weeks after the working environment service has received the notification.

(4) When a health examination takes place the employer shall -

- (1) give the person who carries out the examination any necessary information to be used in this connection,
- (2) pay the costs in connection with the examination, and
- (3) ensure that the examination can take place without any loss of income for the employee and, if possible, during normal working hours.

(5) The Director of the National Working Environment Service may decide that an examination should not be carried out or should be suspended if it does not satisfy the requirements laid down in subsection (2).

(6) An appeal may be brought against the decisions of the Director in accordance with the same rules as those applying to decisions under the Working Environment Act. However, an appeal shall not have suspensive effect in relation to the decision.

4. - (1) The Minister of Labour may - after having obtained the opinion of the Council mentioned in section 8 - permit that an employer arranges for data to be provided on whether the employee is suffering from a disease, has symptoms of a disease or may be infectious, to the extent that this is necessary in the interest of

- (1) the safety and health of consumers or other persons,
- (2) the external environment, or
- (3) other community interests.

(2) It is a condition for requesting health data that the interests concerned outweigh the interests of the employee and that it is not possible for the enterprise to take these interests into consideration in any other way.

(3) Health examinations shall be carried out by using the least radical method which will serve the purpose.

(4) Section 3 (4) shall be correspondingly applicable.

5. - (1) An employer may arrange for provision of data on whether the employee is suffering from a disease, has symptoms of a disease or may be infectious when this is considered necessary for considerations of the operation of the enterprise, cf., however, subsection (2).

(2) It is a condition that the employer or the organisation of the employer concludes an agreement about this with the opposite employee organisation(s), cf., however, subsection

(3). The agreement shall be sent to the Minister of Labour for the purpose of information.

(3) In those cases where no agreement can be concluded according to subsection (2), the Minister of Labour may - after having obtained the opinion of the Council mentioned in section 8 - give permission to a request for provision of health data.

(4) Section 3 (4) and section 4(2) and (3) shall be correspondingly applicable.

Part III.

The employer's duty of disclosure

6. Before the recruitment the employee shall of his own will or if questioned by the employer inform the employer whether he is cognizant of suffering from a disease or has

symptoms of a disease which would be of significant importance for the employee's capacity for work in the job function concerned.

7. If the employer should - on the basis of the data obtained by virtue of section 4 and section 5 - take special measures in connection with the work or make other dispositions, the employee shall ensure that the employer is informed hereof.

Part IV.

The Council of Experts

8. - (1) The Minister of Labour shall set up a Council which shall submit opinions at the request of the Minister of Labour or on its own initiative in cases which are sent to the Minister in accordance with section 4 (1) and section 5 (2) and (3).

(2) The Minister of Labour shall appoint the chairperson of the Council. In addition to the chairperson, the Council shall be composed of 16 members to be appointed by the Minister of Labour at the recommendation of the following authorities and organisations:

- 1 representative of the Ministry of Labour,
- 1 representative of the Working Environment Institute,
- 1 representative of the Ethical Council,
- 1 representative of the Directorate of the Working Environment Service,
- 1 representative of the Ministry of Business and Industry,
- 1 representative of the Association of General Practitioners,
- 1 representative of the Ministry of Justice,
- 1 representative of the National Board of Health,
- 1 representative of the Central Organisation of Professional Associations,
- 1 representative of the Federation of Salaried Employees' and Public Servants' Organisations,
- 1 representative of the Main Organisation of Managers,
- 1 representative of Federation of Danish Trade Unions,
- 1 representative of the Danish Employers' Confederation,
- 1 representative of the Ministry of Finance, the National Organisations of Municipal Authorities and the National Organisation of County Authorities, jointly,
- 1 representative of the Association of Employers in the Finance Sector,
- 1 representative of the Association of Employers in Agriculture.

(2) The members shall be appointed for a term of 3 years at a time. They may be re-appointed.

(4) The Council shall lay down its own rules of procedure.

Part V.

Informed consent

9. - (1) Before an examination is carried out for the purposes mentioned in section 2 (1) and (4), cf. section 3, the person who carries out the examination shall ensure that the employee has been informed in writing and orally about:

- (1) the purpose and nature of the examination,
- (2) the examination method,
- (3) any risks in connection with the examination,
- (4) any consequences which the results of examination may have for the employee,
- (5) the nature of the information which may result from the examination, including the degree of the risk of future disease, etc.,
- (6) the conditions for passing on data, cf. sections 7 and 11,
- (7) follow-up to the examination, including notification of the employer,
- (8) how the results of the examination will be stored,
- (9) where warranted by the nature of the examination, also the possibility that the result of the examination may have an impact upon the expectations to life and self-opinion of the person examined.

(2) Before the examination is carried out, the employer shall ensure that the employee is informed about any possible consequences which a refusal to undergo the examination may have for the employee.

(3) The examination may only be carried out, if the employee has given his consent in writing. The employee shall be given a time limit of at least 2 working days for giving his consent after having been informed as mentioned in subsection (1).

(4) If an employee expresses a wish for restrictions in the data concerning the evaluation of the consequences which the results of the examination may have for the employee or if the examination will have an impact on the expectations of life and the self-opinion of the person examined, the person who informs the employee about the results and interpretation of the examination under section 10 (4) shall respect such a wish.

Part VI.*Experts*

10. - (1) A request for the carrying out of an examination under sections 2, 4 and 5 shall be made by the employee and at the employees own choice either to the general practitioner normally used by the employee concerned or to a similar expert in the occupational health service to which the enterprise may be attached.

(2) The person who receives the request shall involve the necessary and sufficiently qualified medical or other expertise, including occupational hygiene, clinical-chemical, genetic or biochemical expertise, both in connection with the actual examination as well as the interpretation of the clinical consequences of the examination.

(3) Any person who - on the basis of an examination -issues a certificate concerning an employee's state of health and risk of developing or contracting diseases shall at the same time give an evaluation which illustrates the degree of uncertainty in connection with the interpretation of such examinations.

(4) Certificates concerning the results of an examination shall be passed on to the employee of the person who received the request under subsection (1), cf., however, section 9 (4).

Part VII.*Professional secrecy, etc.*

11. - (1) Physicians, clinics, laboratories, public authorities, etc. are not allowed to pass on health data covered by this Act to other persons than the person to whom the data relate, cf., however, section 2.

(2) However, passing on of the data mentioned in subsection (1) may take place to the extent that this is necessary in order to serve the purpose. It is further a condition that the passing on of data -

- (1) follows from another Act or provisions issued on the basis of such acts,
- (2) takes place for the research purposes with the consent of the person concerned, or
- (3) is necessary to avoid risks of the type mentioned in section 4 (1).

(3) The employer may not request or receive and use a power of authority to obtain health data.

Part VIII.

Sanctions

12. Persons whose rights have been violated by infringements of the provisions laid down in sections 2 and 9 may be awarded compensation.

13. Any person who acts in violation of section 2, section 3 (3) or sections 9 to 11 will be liable to a fine, unless a more severe sanction applies under other legislation.

14. If the violation has been committed by a company, an association, an independent institution, a fund or a similar body the fine may be imposed upon the legal person as such. If the violation has been committed by the state, a municipal authority or a municipal association, the fine may be imposed upon the state, the municipal authority or the municipal association as such.

Part IX.

Commencement

15. The Act shall not extend to the Faroe Island and Greenland.

16. The Act shall come into operation on 1 July 1996.

Given at Christiansborg Castle, 24 April 1996

Under our royal hand and seal

MARGRETHE R.

/Jytte Andersen