Evaluation of consent rules and requirements in relation to our systems and work processes

Consent is understood as any voluntary, specific, informed and unambiguous indication of intent whereby the data subject, by declaration or clear confirmation, agrees that personal data relating to the person concerned may be subject to processing.

The greater part of the data processing that HR performs may be done without express consent.

HR has a legal basis for processing to fulfil the employment contract, see Article 6(1)(b) and processing is necessary for us to comply with our legal obligations as employers, see Article 6(1)(c).

Alternatively, Article 6 (1)(e) can be applied to the processing.

There are situations where Aarhus University is obliged to request express consent for data processing. They include the following instances:

- Obtaining criminal records and statements of no previous convictions in respect of children
- Applicants’ personality tests
- Employees’ personality tests
- Obtaining and disclosure of references in connection with recruitment
- Disclosure of sensitive data to union representative and/or union organisation authorised to negotiate

The legal basis for processing the above-mentioned data following consent is General Data Protection Regulation Article 7(1)

The publication of employee portrait photographs on the website, in emails and on office doors requires their consent. It is currently unclear how consent may be validly granted in the future. Until the legal position has been clarified we recommend requesting employees to upload a picture themselves. This may be a picture of the employee’s name if they do not wish their photo to be published.

Special information on consent in individual situations:

- Criminal records: Consent is deemed to have been granted if the applicant obtains and submits the criminal record as a jobseeker. Criminal records may be obtained following a specific case assessment.
- Statement of no previous convictions in respect of children: The university is obliged to obtain statements of no previous convictions in respect of children for employees whose work will involve direct contact with children under 15 years of age. The university will send the CPR number (civil registration number) of the employee for whom we require a statement of no previous convictions in respect of children to the police. The police will request the employee’s consent via e-Boks...
the consent can be granted using NemID via the police website. The police then send the statement to the university in its role of employer. As obtaining statements of no previous convictions in respect of children is compulsory under law, it will be filed.

- Personality tests in connection with recruitment may only be processed following express consent. The test results of an identifiable natural person obtained in connection with recruitment must be deleted/shredded or anonymised immediately after the applicant has received a rejection. If you want to store the test results of employees, who have been hired, after the employee has started his/her position, a separate express consent is required with an indication of the purpose of the continued storage. If the employee does not consent to continued storage, the test must be deleted/shredded or anonymised.

- Personality tests of existing employees may only be processed with the employee’s express consent to the specific indicated purpose. Employees are not obliged to consent to this and refusal of consent may not lead to sanctions or repercussions related to employment law.

- The procurement of references may occur in connection with recruitment and requires express, informed consent from the applicant for the position. The university may demand procurement of references as a condition of employment. Consent may be granted by email, for example, and it should be clearly stated which data the applicant is consenting to process, for example, via a standard template which the hiring manager attaches to the email to the applicant requesting consent. Non-specific consent to obtain references may not be used to obtain sensitive personal data. If the university requires data of a sensitive nature, express, specific consent must be obtained for the procurement of this type of data.

- Disclosure of data as reference: When managers at Aarhus University are asked to provide information on an employee in connection with an application for employment with another employer, the AU manager must ensure that the employee has consented to the AU manager providing information. As a rule, the employee will have informed the current manager that he/she may be contacted regarding references. In this case, the manager will draft a dated memo stating that the employee has given consent and which information/data it has been consented to disclose. The memo must be filed in the personnel folder. If the employee has not notified the AU manager of a request for references, the manager may not say anything until after the manager has contacted the employee and ensured their consent to the release of the reference. General data may be disclosed to a potential employer under general consent, while sensitive data may only be disclosed with express, specific consent.

- The university does not disclose sensitive data to union representatives and/or union organisations authorised to negotiate. The employee is expected to disclose any sensitive information to the union representative/union organisation authorised to negotiate, if this is necessary.