

Cyber-Security

I have often heard about the necessity of cyber-security measures in companies even in normal times. If the Company leaves cyber-security measures and the implementation of teleworking to an individual employee, are there any problems under the Companies Act of Japan?

The obligation to implement appropriate cyber-security measures is considered to be included within the Directors' obligation to establish an internal control system. (For more details, please refer to Q3, etc. of "Q&A Handbook on Cybersecurity-related Laws and Regulations" (March 2020) by the National Center of Incident Readiness and Strategy for Cybersecurity (NISC), which Masami Akutsu was involved in preparing (https://www.nisc.go.jp/security-site/files/law_handbook.pdf) (Japanese))

Cyber-Security and Teleworking

What cyber-security measures should we take with respect to teleworking?

As with other risk management systems, the establishment and management of a specific system for implementing cyber-security measures are determined in a specific and individualized manner according to the size and type of a company. As explained below, a number of reference materials are available.

For example, the "Telework Security Guidelines Version 4" by the Ministry of Internal Affairs and Communications (https://www.soumu.go.jp/main_content/000545372.pdf) (Japanese) (April 2018)) proposes measures for each of 6 types of teleworking patterns from the following 3 perspectives: (a) whether electronic data is stored in teleworker's terminals; (b) relationship with terminals used in office; and (c) whether cloud services are used. The purpose of these guidelines is to set forth appropriate measures by requesting, upon the establishment of certain rules, employees, such as teleworkers and system administrators, to act in accordance with such rules supplemented by technical measures. These guidelines

also introduce specific points relating to security measures for teleworking.

On April 14, NISC also released "Security Points to Remember for Teleworking" (<https://www.nisc.go.jp/active/general/pdf/telework20200414.pdf> (Japanese)). A useful reference for general operators is provided in the "For Teleworkers" document (<https://www.nisc.go.jp/security-site/telework/index.html> (Japanese)).

Furthermore, please see "Guidelines for Information Security Measures for SMEs (Version 3)" by the IPA (Information-technology Promotion Agency) (<https://www.ipa.go.jp/security/keihatsu/sme/guideline/index.html> (Japanese) (December 2019)) has an Appendix entitled "5 Minute Information Security Self-Diagnosis" which helps you to diagnose your company's overall level of cyber-security preparedness. The IPA also provides "Security Cautions for Teleworking" (<https://www.ipa.go.jp/security/announce/telework.html> (Japanese)).

Please also see the "Implementation Procedures for Teleworking for Information System Personnel" published in the "Information Site regarding Teleworking" by the Ministry of Internal Affairs and Communications (https://www.soumu.go.jp/main_sosiki/joho_tsin/telework/furusato-telework/guidebook/pdf/teleworkintroduction.pdf) (Japanese) (March 2016)), which introduces examples of security measures for teleworking implemented by small, medium, and large enterprises.

For the introduction of teleworking, subsidies will also be provided (please see the Ministry of Economy, Trade and Industry's website for a summary of telework activities at <https://www.meti.go.jp/press/2019/03/20200312003/20200312003-1.pdf> (Japanese)).

It is also important to take measures to prevent the disclosure or unintended leakage of confidential information received from other companies, such as company information assets and those of business partners, by implementing appropriate security measures for teleworking.

Disclosure of Employee Movements to Third Parties

One of our Company's employees was infected with the Novel Coronavirus, and the Company was requested by a third party who had visited the building where the employee worked to disclose his or her specific movements. What should we do?

You should respond based upon the stated reasons of the third party for wanting to know such information. For example, if the third party wants to know the possibility of contact with an infected person, it would be sufficient to respond only regarding the possible date and time when the third party's visit to the employee's workplace and the employee's movements overlapped, and to explain that you took appropriate measures based on the instructions of public health authorities. The fact that the employee has tested positive for the Novel Coronavirus is considered part of the employee's personal medical history and is thus sensitive personal information. Therefore, even if his/her name or affiliation is not disclosed, you should be careful so that the employee is not identified through the disclosure of his/her movements. Unnecessary disclosure of personal movements to third parties may constitute an invasion of the privacy of employees. However, from the perspective of public health, such as preventing secondary infections, disclosure should be allowed to the extent deemed necessary.

[Reference]

"Handling of Personal Data for Preventing the Spread of Novel-Coronavirus (COVID-19)" by the Personal Information Protection Commission

https://www.ppc.go.jp/en/legal/Covid-19_en/

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