

TIP SHEET | Negotiating for Workers' Data Rights

Once you have explored the step-by-step tool on workers' data rights in the South African context, the next step is to engage management on their data protection practices. This one-page tip sheet outlines key questions to explore before and during your negotiations with management, and other steps workers can take to secure better protections for their data rights.

QUESTIONS TO ASK

Transparency

- Has management provided information to workers about when and how they collect workers' data, and what tools and systems are used?
- If so, does the information give a fair understanding of what information is being collected, and *why*?
- Is there a clear, specifically defined purpose for the data collection?
- If management says that workers have consented to the data collection, is this true? (For example, there a clause in workers' contract?)
- And if so, was there enough information to ensure that the consent was *informed*?
- Is there any evidence of management using tools or systems to collect workers' data that they *haven't* been transparent about?

Tip: Check the legal requirements and exceptions in sections 11, section 12, and section 18 of POPIA.

Data protection impact

- Do the current data collection practices, as you understand them, present any immediate risks of misuse or unfair practices against workers?
- Has management taken any steps to assess the possible impact or harms of the current data collection practices? (Failing which, will they agree to do a data protection impact assessment going forward?)

Tip: POPIA does not provide strong standards for data protection impact assessments: it will be up to you to negotiate stronger protections than the legal minimum.

Third party access

- Does management use any third parties (software, service providers, etc) for its data collection practices, or otherwise share workers' personal information with third parties?
- If so, does this entail sending workers' information to a third party outside of South Africa? And if so, does this meet the requirements in section 72 of POPIA?

Tip: Check section 72 of POPIA for the requirements relating to cross-border data transfers.

OTHER STEPS TO TAKE

1. **Get informed:** If you are struggling to get information about how and why management is collecting workers' data, you can make a formal request for this information by filling out a PAIA 'Form 2', available at infoeregulator.org.za
2. **Do your research:** Use the data-mapping tips at workersdatarights.org and engage other workers to see what you can learn about management's data collection practices through your own research.
3. **Lodge a complaint:** If management is not willing to engage, and/or if you identify data collection practices that are not in line with POPIA, find out whether you have grounds to lodge a complaint with the Information Regulator, the agency tasked with ensuring compliance with POPIA.

Tip: To make a complaint to the Information Regulator, visit infoeregulator.org.za