

Protection of Employees' Personal Information and Privacy in Taiwan

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I. Introduction

1. New Tools Change the World

Historically, employees have been disadvantaged in the context of employment relations, and their rights of freedom and personality have been relatively restricted. The protection of legal personality and, particularly, privacy has undergone substantial changes in modern society following the development of novel technologies that can be used in the workplace, including monitoring equipment, hidden cameras, and devices for monitoring computer networks or telephones. Consequently, employee rights of personality can be affected by a new crisis.²

Moreover, through activities associated with employment relations, employers can easily acquire private information about employees. Even before an employment contract has been formalised, employers can collect personal information from job applicants. During the hiring process, employers or human resource managers can request personal information from applicants, including their address, health, marital status, age, ability, and educational background.³ Through employment relations activities, employees may be required to perform or undergo various tests, such as personality tests and health examinations, which can be used to acquire private information from employees. Thus, protecting the personal information and privacy of employees is crucial in modern society.

2. Historical Background of Taiwan

Taiwan's laws for protecting personal information and privacy were established relatively later than those of most other countries, undoubtedly as a result of the relatively recent transition to democracy and social freedom that manifested following the lifting of martial law in 1987. Taiwan began developing its legal system for protecting personal information, data, and privacy in 1990s. The promulgation of the Computer-Processed Personal Data Protection Act on August 11, 1995 was a milestone in developing laws for protecting personal information.⁴ Before 1990, Taiwan's Civil Code protected private

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² See Liu, Shih-Hao, Protection of employees' personality in the network society, *Cheng-Chi University Labor Journal*, Vol. 12, 2002, PP. 187.

³ See Zhan, Sheng-Lin, The right of employers to ask the jobseekers, *Formosa Law Review*, Vol. 63, 1992, PP.2-12; Liu, Shih-Hao, Protection of employees' personality in the network society, *Cheng-Chi University Labor Journal*, Vol. 12, 2002, PP. 204.

⁴ Wang, Zhe-Zhien, Subject and Development of Protection for Personality, *Taiwan Law Journal*, Part III,

interests mainly in the form property, but not in the form of legal personality, although Article 18 of the 1929 Civil Code provided declaratory protection of these rights.⁵ The right of privacy was not regulated specifically for legal personality until the Civil Code was amended in 1999 (Article 195). Following the rapid development and diffusion of information technologies, personal information and privacy have become prominent legal concerns in Taiwan. As democracy and the rule of law have progressed, the people of Taiwan have increasingly emphasised the importance of protecting privacy and personal information. Furthermore, several notable legal cases involving the abuse of personal data have emerged, and recent cases have typically involved the fraudulent misuse of personal information. The Computer-Processed Personal Data Protection Act was replaced with the Personal Data Protection Act (PDPA), which was amended in 2010 and promulgated in 2012; moreover, its coverage for protecting privacy is broader and more assertive.⁶

Protecting the personal information of employees has gradually received a greater attention in Taiwan. The courts in Taiwan have heard only a few cases involving the violation of employees' personal information, primarily because the PDPA has been implemented for only one and a half years. In particular, some cases have been crucial in setting a precedence for future judgements.

II. Regulatory Schemes for Protecting Employees' Personal Information and Privacy

Over the past 27 years since martial law was lifted, Taiwan has undergone rapid economic development and considerable development in consolidating democratic constitutionalism. Consequently, social structures and values have emerged based on ethical foundations for promoting human dignity.⁷ The following section details the regulatory schemes protecting legal personality.

1. Taiwan's Constitution

The Constitutional Court of Taiwan declared that the maintenance of personal dignity and protection of personal safety are two fundamental concepts underlying the constitutional protection of the people's freedoms and rights⁸; thus, the protection of legal personality is currently a primary objective of the Taiwanese legal system. Although the right of privacy is not specifically enumerated in the Constitution, it should nonetheless be considered an indispensable and fundamental right and, thus, be protected under Article 22 of the Constitution, which focuses on preserving human dignity, individuality, and moral integrity, as well as preventing the invasion of privacy and maintaining self-control of personal information.⁹ Article 22 of the Constitution, which is called the right of general freedom, states that all civil freedoms and rights that are not detrimental to social order or public welfare are guaranteed under the Constitution.

Privacy (2), *Taiwan Law Journal*, Vol. 97, Aug., 2008, P. 38.

⁵ Shi, Chi-Yang, *The General Principle of Civil Code*, 2012, P. 35.

⁶ Lu, Ding-Wang, *Interpretation and Practice of Personal Data Protection Act- Part I*, *Parliament Monthly*, Nov. 2010, P.20.

⁷ Wang, Zhe-Zhien, *Subject and Development of Protection for Personality, Part I, Personality in Constitution and civil law*, Vol. 80, *Taiwan Law Journal*, Mar. 2006, P. 105.

⁸ *The Interpretation of Justices (Constitutional Court) No. 372*, Feb. 24. 1995.

⁹ *The Interpretation of Justices (Constitutional Court) No. 585*, Dec. 15. 2004.

The protection of personal information in the constitutional rights includes the rights of information privacy and self-determination.¹⁰ These rights, which emphasise the importance of self-control in managing personal information, are designed to guarantee the right for people to decide whether to disclose their personal information, and, if so, to what extent, at what time, in what manner, and to whom it is disclosed. Furthermore, they are designed to guarantee the right to know and control how personal information is used, as well as the right to correct inaccuracies.¹¹

2. International Law

In 1971, Taiwan lost its United Nations member status and withdrew from the International Labour Organisation. However, on April 22, 2009, the Taiwanese government announced the Act to Implement the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights, which was designed as a platform for implementing the International Covenant on Civil and Political Rights as well as the International Covenant on Economic, Social, and Cultural Rights (both of which were adopted by the United Nations in 1966), and to strengthen Taiwan's human rights protection system. Article 17 of the International Covenant on Civil and Political Rights provides a general framework for the right of privacy; specifically, Article 17 states the following:

“1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. 2. Everyone has the right to the protection of the law against such interference or attacks.”

However, the political implications of the act for implementing the two aforementioned international covenants are far greater than its legal scope.

3. Criminal Code

A. Offenses against Reputation

An employer who infringes upon an employee's privacy or misuses an employee's personal data may be guilty of damaging their reputation. Article 310 of Taiwan's Criminal Code states that a person identifying or disseminating a fact that damages the reputation of another person by communicating it to the public is committing slander, and, if found guilty, could be sentenced to minimal imprisonment term of up to one year, short-term imprisonment, or a maximal fine of NT\$500. Moreover, a person who proves the truth of a defamatory fact is exempt from punishment unless the fact concerns the defamed person's private life, and it is of no public concern.¹²

B. Offenses against Privacy

An employer who infringes upon an employee's privacy or misuses an employee's personal data could particularly compliance with prejudice against privacy in the criminal code. For example, an employer who uses concealed cameras to monitor employee

¹⁰ Chiew, Wen-Chung, The Concept's Difference between the information self-determination and information privacy, *The Taiwan Law Review*, Vol. 168, May. 2009, P. 174; Shiao, YI-Hong, The Problems of the Personal Data Protection Act, *Cheng-Gong University Law Review*, Vol. 23, June 2012, PP.146-149.

¹¹ The Interpretation of Justices (Constitutional Court) No. 603, Sep. 25. 2005.

¹² Article 310, Paragraphs 1 and 3, Criminal Code.

behaviour could violate Article 315-1, which states that a person who commits an offense under one of the following circumstances could be sentenced to up to 3 years imprisonment, short-term imprisonment, or a maximal fine of NT\$30,000:

1. Instruments or equipment is used without good reason to observe or eavesdrop on another person's private activities, speeches, conversations, or private body parts.
2. Audio recording devices, photography, visual taping, or electromagnetic means are used without good reason to record another person's private activities, speeches, conversations, or private body parts.

An employer who uses a computer to collect, use, or process an employee's personal data and discloses that information without good reason could violate Article 318-1, which states that a person who, without good reason, discloses the secrets of another person that are known or acquired by using a computer (or related equipment) could be sentenced to imprisonment for up to 2 years, short-term imprisonment, or fined up to NT\$5,000.

4. Civil Code

Taiwan's Civil Code has protected the right of personality for many years. Since the 1929 Nationalist Government (Kuo-Ming-Tang)¹³ formulated Article 18 in mainland China, "When a person's personality is infringed, they can apply to the courts for removing. When a person's personality is in danger of being infringed, a person may apply to the courts for prevention. In the preceding paragraphs, an action for damages for emotional distress may be brought only when it is otherwise provided by the act." This article provides the right of "general personality". Privacy has been considered a "particular personality" in the 1999 amendment of Taiwan's Civil Code. According to Article 195 of the Civil Code, if a person wrongfully violates the privacy of another person, the injured party may claim reasonable monetary compensation, even when the injury is not a purely pecuniary loss.

Because employment contracts are binding agreements between employees and their employers, disputes can be resolved under both tort and contract law in Taiwan. The employer's primary duty in accruing information from an employment contract is the duty of remuneration (i.e., wages or salary). In addition, based on the principle of good faith, the employer has a secondary duty to protect the life, body, health, and personality of employees.^{14,15} Thus, an employer who violates an employee's privacy or misuses their personal data is in breach of this secondary duty; consequently, the employee may be entitled to compensation under the debt of contract,¹⁶ or they may refuse to work without losing their entitlement to receive payment.¹⁷

5. Personal Data Protection Act

Promulgated on August 11, 1995, the Computer-Processed Personal Data Protection Act was the first law in Taiwan specifically designed for protecting personal information. It was replaced by the PDPA in 2012.

¹³ Nationalist Government (Kuo-Ming-Tang) took over Taiwan after the Second War in 1945, and then the laws of Republic of China (ROC) implemented in Taiwan.

¹⁴ Article 423-1 and Article 148 Civil Code.

¹⁵ Liu, Shih-Hao, The main duty and secondary duty of employment relation, in Taiwan Labor Law Association edit., Interpretation of the Labor Standards Law, 2009, PP.38-40.

¹⁶ Article 227-1 and Article 427-1 Civil Code.

¹⁷ Analogy of Article 264 Civil Code and Article 427 Civil Code.

A. Coverage of Protection

a. Personal Data

The PDPA is a general framework that is applicable to both employment and nonemployment relationships. Although it does not specifically address employees, it offers clear and specific protection of their personal data in the context of employment relationships, including their name, date of birth, national identification card number, passport number, characteristics, fingerprints, marital status, family details, education, occupation, medical records, medical history, genetic records, sex life, health examination results, criminal record, contact information, financial conditions, social activities, and other information that could be used to identify them directly or indirectly as a natural person.¹⁸ The PDPA can protect employees from damage resulting from the collection, processing, and use of their personal information by either government or nongovernment agencies.¹⁹ In this context, “government agency” typically refers to a public-service-based employment agency, whereas “nongovernment agency” refers to private enterprises.

b. Special Personal Data

Special personal data refer specifically to personal information such as medical records, medical history, genetic records, sex life, health examination results, and criminal records.²⁰ Article 67 (Paragraph 2) of the Medical Care Act defines personal information relating to “medical records” (1) a medical record produced by a physician in accordance with the Physicians Act, (2) an examination or inspection report, and (3) other records produced by medical personnel during practice. Moreover, the Medical Care Act defines “medical history” as medical records and other examination- or treatment-related information produced by doctors or medical personnel for treating, correcting, or preventing disease, harm, or disability, or for other medically due reasons. Medical history also refers to personal information produced through prescription, medication, operation, or disposition based on examination results.

In addition, according to the Medical Care Act, “genetic records” is defined as the message of a heredity unit (comprising a segment of DNA from a human body) for controlling the specific functions of the human body; “sex life” refers to sexual orientation or sexual habits; “health examination results” refer to any information produced from a medical examination for purposes other than diagnosing or treating a specific disease; and “criminal records” is defined as the records of decisions to defer prosecution or not to prosecute *ex officio*, as well as a final guilty judgement or its enforcement.

c. Normal Personal Data

Normal personal data include a person’s name, date of birth, national identification card number, passport number, characteristics, fingerprints, marital status, family, education, occupation, medical records, contact information, financial conditions, social activities, or other information that can directly or indirectly identify a natural person.

B. Liability for Damage and Compensation

a. Liability Doctrine

An employer may be liable to pay compensation for damages resulting from the

¹⁸ Article 2 Paragraph 2 PDPA.

¹⁹ Chapters 2 and 3 PDPA.

²⁰ Article 6 PDPA.

illegal collection, processing, or use of an employee's personal information, or for other infringements on employee rights that are in violation of the PDPA. However, the type of liability depends on whether an offense is committed by a government or nongovernment agency²¹; specifically, strict liability applies to government agencies, whereas fault applies to nongovernment agencies.²²

b. Compensation Systems

Regarding damages, Taiwan's Civil Law states that compensation coverage should be comprehensive. However, the amount and range of damages payable in cases involving personal information can be difficult to calculate and prove. Therefore, the PDPA adopts both comprehensive and fixed compensation systems.²³ If a victim provides evidence justifying the claimed amount of damages, comprehensive compensation may be applicable. However, in cases in which the victims may not or cannot provide evidence justifying the actual amount of damages, the compensation for each case of damages for each person is NT\$500–NT\$20,000 (approximately US\$16.50–US\$662). When damages are caused to multiple parties by the same cause and fact, the maximal total amount of compensation is NT\$200 million (approximately US\$6.62 million). However, if the involved interest exceeds the amount involved in the preceding sentence, the amount of interest should be set as the limit.²⁴

c. Altruistic Class Action System

Some cases can have involved numerous victims whose personal data have been infringed, although an individual victim might receive only minor compensation; therefore, the PDPA adopts an altruistic class action system.²⁵ For cases caused by the same cause and fact involving multiple infringed parties, a charitable juridical person or entity may file a lawsuit to the court in its name after obtaining a written authorisation of litigation rights from 20 or more parties. Trade unions are a suitable example of charitable juridical entities that can act when employees are victims. Employers who violate the PDPA are liable to pay compensation for any damages, and they may be punished with criminal or administrative penalties.

C. Limitations on the Collection, Processing, and Use of Special Personal Data

Special personal data is sensitive personal information that requires considerable privacy; thus, strict protection measures are necessary. Although these data should not be collected, processed, or used, the following situations are exceptions to these limits:

1. The information is collected, processed, or used in accordance with the law.
2. A government agency must collect, process, or use the information to perform its duties or a nongovernment agency must collect, process, or use the information to fulfil its legal obligations (provided that appropriate security measures are in place).
3. An affected party has disclosed the information by himself or herself, or the information

²¹ Article 28 PDPA.

²² See Ministry of Justice, The Explanation of Draft "Personal Data Protection Act", May 26, 2010, in Ministry of Justice, The Compilation of the Legislation and Reference of "Personal Data Protection Act" Aug. 2013, P.54.

²³ See Lu, Ding-Wang, An Introduction of the Personal Data Protection Act, The Taiwan Law Review, Vol. 183, Aug. 2010, P. 142.

²⁴ Article 28 PDPA.

²⁵ Lu, Ding-Wang, Interpretation and Practice of Personal Data Protection Act- Part II, Parliament Monthly, Dec. 2010, PP.39,40.

has been publicised legally.

4. A government agency or academic research institution employs specific methods to collect, process, or use the information for the purpose of medical treatment, personal hygiene, or for calculating crime prevention statistics or conducting research.

Although the infringement of privacy or misuse of personal data could be offenses against reputation, or offenses against privacy in according to the Criminal Code, the PDPA addresses the shortfall of the Criminal Code by ensuring the protection of personal data and privacy.²⁶ An employer who violates an employee's rights by collecting, processing, or using special personal data without good cause is subject to a maximal sentence of 2 years imprisonment or custody, a maximal fine of NT\$200,000 (approximately US\$6,620), or both. A person who intends to unlawfully profit by committing such a violation can be sentenced for up to 5 years imprisonment and fined up to NT\$1,000,000 (approximately US\$33,100).²⁷

D. Limitations on Collecting, Processing, and Using Normal Personal Data

An employer should not collect or process normal personal data unless it is collected or processed for a specific purpose and should comply with one of the following conditions²⁸:

1. The information is collected, processed, or used in accordance with the law.
2. A contract or quasicontract is binding between the employer and the employee.
3. The employee has disclosed such information or the information has been publicised legally.
4. Collecting or processing normal personal data is necessary for the public interest, specifically relating to statistical information, or for the purpose of academic research conducted by a research institution. However, the information may not lead to the identification of a certain person after the treatment of the provider or the disclosure of the collector.
5. The employee has provided written consent.
6. The public interest is involved.
7. The information is obtained from publicly available resources. However, an exception applies if the information is limited by the employee regarding the processing or use of the information. Furthermore, the interests of the employees should be protected.

A violation committed by collecting or processing employees' normal personal data, or an order or disciplinary action of the limitation on international transmission made by the government authority in charge of a subject industry at the central government level in accordance with Article 21 of the PDPA that might violate the rights of other employees is subject to a maximal sentence or custody of 2 years, a maximal fine of NT\$200,000 (approximately US\$6,620), or both. An employer intending to commit an offense in the aforementioned situation is subject to a maximal sentence of 5 years and a maximal fine NT\$1,000,000 (approximately US\$33,100).²⁹

A violation committed by collecting, processing, or using employees' normal personal data which may not harm other employees' rights without good cause is subject to

²⁶ Lu, Ding-Wang, Interpretation and Practice of Personal Data Protection Act- Part II, Parliament Monthly, Dec. 2010, P.42.

²⁷ Article 41 PDPA.

²⁸ Article 19 PDPA.

²⁹ Article 41 PDPA.

an administrative fine of NT\$50,000–NT\$500,00 (approximately US\$1,655–US\$16,550). Furthermore, if the employer fails to take corrective measures within a specific period, a fine is imposed each time the violation occurs.³⁰

E. Duty to Inform before Collecting, Processing, or Using Personal Data

Regarding the self-determination of personal information, in which an employer collects, processes, or uses an employee's personal information with good cause and in accordance with the PDPA, they must inform the employee of the following items:

1. the employer's name (particularly in situations involving dispatch work),
2. the purpose for collecting, processing, or using the information,
3. the classification of the information being collected,
4. the time, area, target, and manner in which the employer intends to use the information,
5. the rights of the employer in this act and how they are exercised, and
6. the effect that not sharing the information may have on the employee's rights and interests.

However, the following situations may be exceptions for providing notice:

1. The information is collected in accordance with the law;
2. Collecting the information is necessary for the employer to fulfil their legal obligations.
3. Such notice would impair the interests of a third party.
4. An employee should already know the content of the notification.

When an employer violates these duties, the appropriate government authority responsible for the subject industry at the central government level, municipality level (directly under the central government), or county or city government level orders the employer to take corrective measures within a specified time. Employers who fail to comply with such an order are subject to an administrative fine of NT\$20,000–NT\$200,000 (approximately US\$662–US\$6,620) that is imposed each time the employer violates these duties.

6. Employment Services Act

An employer can violate the privacy of employees or job seekers during employment or the recruitment process, respectively. The Employment Service Act protects both job seekers and employees. Article 5 of that act states that employers can neither withhold an identification card, work certificate, or other certified document of any job applicant or employee nor request job applicants or employees to surrender any unrelated personal documents against his or her free will. Items containing personal information include the following³¹:

1. Physiological information: genetic, drug, medical treatment, HIV, or intelligence quotient test results, or fingerprints.
2. Psychological information: psychiatric, loyalty, or polygraph test results.
3. Personal lifestyle information: financial or criminal records, family plans, and background checks.

When requesting job seekers or employees to present the aforementioned information, an employer must respect the personal interests of the people concerned, and no boundary should be crossed beyond the mandatory and specific confinements upon

³⁰ Article 47 PDPA.

³¹ Article 1-1, Enforcement rule of Employment Services Act.

economic demands or public interest protection. In addition, appropriate and decent relations with the intended purposes must be satisfied.

III. Balance between Business Necessity and Employees' privacy

Employers may attempt to obtain personal information from employees and to monitor them for various reasons, many of which would be considered appropriate and reasonable. Taiwan's legal mechanisms for protecting personal data were designed to maintain a reasonable balance between the necessities for conducting business and the protection of employee privacy.

Special personal data are strictly protected by the PDPA. However, these data can be collected, processed, or used if one of four exceptions detailed in Section II-5-C are met. Similarly, normal personal data can be collected, processed, or used if any of the seven exceptions listed in Section II-5-D are met. In the context of employment relationships, the first two exceptions (i.e., when acting in accordance with the law or fulfilling legal obligations) are typical justifications for collecting, processing, and using special personal data and normal personal data. In addition, employment contracts and written employee consent are typical reasons for collecting, processing, and using normal personal data. Finally, criminal records are a type of special personal data; thus, the common rule "clean work, clean people" can be strictly challenged. These concerns are addressed in the following sections.

1. Exception in Accordance with the Law

A. Occupational Safety and Health Act

a. General

For occupational health and safety, employer necessity and employee privacy should be balanced. Article 20 of the Occupational Safety and Health Act states that employers should conduct preemployment physical examinations for labourers at the time employment commences; for currently employed labourers, the following health examinations should be conducted³²:

1. general health examination
2. special health examinations for employees involved in tasks with specific health hazards.
3. health examinations testing for specific conditions in certain professions, as designated by the central competent authority.

Under law, employees are obligated to undergo these health examinations. Based on the results, an employer cannot employ a labourer in a role for which they would be unsuitable. When the results identify an abnormal condition, medical personnel must provide appropriate health guidance for the employee. When the results of a physician's health assessment indicate that an employee is unsuitable for his or her original work, the physician's recommendations are referred to for transferring the employee to another workplace, reassigning them to other duties, shortening their work hours, and adopting appropriate health management measures. Employers are within their rights to know the

³² Article 20 Occupational Safety and Health Act.

results of an employee's health examination; moreover, they require such knowledge to provide adequate occupational health and safety. When necessary, the employer must understand whether the employee is expected to recover to full health, and they require knowledge on any medical treatments affecting employees.

b. Employers' Authority and Attendant Legal Duties

The preceding subsection outlines employee and employer obligations regarding mandatory health examinations. Regarding the results of those examinations, Article 16 of the Protection Rule for Labour Health states that employers must take the following measures:

1. Reassign the employee to a suitable workplace in accordance with the official examination results from a doctor.
2. Health examination results should be given to the employees.
3. The employer must protect employee privacy when handling and reviewing examination records.

Furthermore, employers cannot collect, process, or use special personal data, except when it is necessary for them to fulfil legal obligations, and only when appropriate security measures are taken.³³ Appropriate security measures are technical or organisational measures for preventing personal information from being stolen, modified, damaged, destroyed, or disclosed.³⁴

c. Employers' Right to Refuse Employment and to Transfer or Dismiss Employees

When medical examination or test results indicate that a job seeker is unfit for the job for which they have applied, an employer might not have the capacity to employ them. In such circumstances, employers must comply with certain rules when deciding whether to refuse to hire a job seeker, transfer an employee to another workplace, or terminate an employment contract. First, based on the examination results and a physician's recommendation, an employer may assign a job seeker to another workplace that is suitable for his or her condition. However, if no suitable job is available, then the employer can refuse to hire them. Second, when an employee is unsuitable for continuing their employment because of medical reasons, the employer could transfer them to a more suitable workplace. However, the transference must comply with certain principles.³⁵ Specifically, transfers that fail to comply with the following principles are illegal, except when employee consent is obtained:

1. The transfer should be based on the business's necessities.
2. The transfer must not violate the employment contract.
3. Employers cannot offer less favourable wages and other working conditions at the new workplace.
4. The new role must be appropriate for the skill and the physical fitness of the employee.
5. The employer must provide adequate assistance if the new workplace is too far for the employee to travel to.

³³ Article 6 PDPA.

³⁴ Article 12 Enforcement Rules of the Personal Information Protection Act.

³⁵ 1985.9.5 The administrative explanation of the Ministry of Interior, 1985 Tai-Nei-Zhe No. 328433. The Ministry of Labor was setted in 1987. Before 1987 the authority of central level for labor affairs is the Ministry of Interior.

Finally, when the employer genuinely has no other work opportunity for the employee, the employer can terminate the employment contract (*ultima ratio*), although they must provide severance pay in accordance with Article 11 (Paragraph 5) of Taiwan's Labour Standard Law. Taiwan does not have employment at will, but only employment in justice.

B. Labour Insurance Act and National Health Insurance Act

Taiwan's Labour Insurance Act states that labourers between the ages of 15 and 65 years must be insured as insured persons, with their employers, or the organisations (e.g., craft union) or institutes (e.g., vocational training institution) to which they belong as the insured units.³⁶ Each insured unit is responsible for managing the processes and affairs involved in providing labour insurance for its employees, and preparing a roll list of the employees or members. Thus, an employer, craft union, or vocational training institution may collect, process, and use its employees' personal information. Furthermore, the National Health Insurance Act states that employers must provide health insurance for their employees.³⁷ Furthermore, they must organise and manage their labour-insurance-related affairs. Thus, employers could acquire personal information from their employees through this process.

C. Teacher Law

In Taiwan, the Teacher Law has strict requirements for the hiring of teachers; one of these requirements is related criminal records. When teachers are involved in any of the following situations while tenured, they can be dismissed, suspended, or denied renewal of employment³⁸:

1. A teacher is sentenced to a prison term of one year or more without probation.
2. A teacher is convicted of corruption or malfeasance, or they are issued a warrant of arrest for a case that it is not settled during their term of civil service.
3. A teacher is charged and convicted of a crime under Paragraph 1 (Article 2) of the Sexual Assault Crime Prevention Act.

Furthermore, the Gender Equity Education Act states that a school or competent authority must establish a database of incidents involving sexual assault, harassment, or bullying on campus, and offender profile information should be recorded.³⁹ If an offender transfers to another school for either study or employment purposes, then the former competent authority or school is obligated to notify the new school within one month from the date of knowing of the transfer. Subsequently, the new school must monitor the offender and provide counselling as necessary. The new school must not, without legitimate reason, reveal the offender's name or other personal information that may lead to his or her identification.

Provisions of the Sexual Assault Crime Prevention Act state that, before a school appoints an educator or hires a full-time or part-time staff member, it must review whether potential candidates have a criminal record of sexual assault, or whether they have been dismissed or denied renewal of employment after being investigated by competent authorities or the school's Gender Equity Education Committee. The school must

³⁶ Article 6 Labor Insurance Act.

³⁷ Article 15 National Health Insurance Act.

³⁸ Article 14 Teacher Law.

³⁹ Article 27 Gender Equity Education Act.

determine whether any alleged incidents of sexual assault, harassment, or bullying were perpetrated by the candidate in question.

D. Company Law

To ensure that businesses are ethical, Company Law in Taiwan states that managers must not have a criminal record. When applying for a managerial position, job applicants must provide proof of no criminal conviction. Moreover, any currently appointed manager who is determined to have been convicted for a criminal offence must be discharged. The following conditions render a person ineligible for employment as the manager of a company:

1. Having been adjudicated guilty according to a final judgment of any offence specified in the Statute for the Prevention of Organisational Crimes, and the time elapsed since serving the full sentence term is less than 5 years;
2. Having been imprisoned for a term of more than one year for committing fraud, breach of trust, or misappropriation, and the time elapsed since serving the full sentence term is less than 2 years;
3. Having been adjudicated guilty according to a final judgement for misappropriating public funds during a tenure of public service, and the time elapsed since serving the full sentence term is less than 2 years.

2. Exception for Employers to Fulfil the Legal Obligation

A. Prevention of Communicable Disease

Taiwan's Labour Standards Law states that an employee may terminate an employment contract without providing advance notice to their employer when a coworker contracts a harmful contagious disease and the employee is at risk of contracting that disease. However, if the employer has hospitalised the infected person or the infected person has been discharged, then the employee may not terminate the employment contract without notice. Thus, employers have the right and obligation to know the health status of employees with infectious diseases.⁴⁰

In addition, some jobs have serious implications regarding the health of workers (e.g., cooks and kitchen staff). All local governments in Taiwan have announced health management rules for public eating places.⁴¹ These rules generally require kitchen staff to undergo a health inspection. Typical inspection items involved in a qualified health examination include a chest X-ray, hepatitis test, and serum, skin, and stool samples.⁴² Any person who violates these rules is subject to a fine of NT\$30,000–NT\$3,000,000. In severe circumstances, violators may be ordered to terminate or suspend business operations for a certain period. Furthermore, relevant authorities may revoke all or part of the items registered to a company, business, or factory, and food businesses may have their registration revoked, in which case reregistration is not permitted within one year.⁴³

⁴⁰ Article 14 Labor Standards Law.

⁴¹ According to Article 14 Act of Governing Food Sanitation.

⁴² For example, Taipei public eating places health management rules.

⁴³ Article 47 Act of Governing Food Sanitation.

B. Indigenous Peoples Employment Rights Protection Act and People with Disabilities Rights Protection Act

Indigenous people and people with disabilities are considered disadvantaged in the employment market. Consequently, the Indigenous Peoples Employment Rights Protection Act and People with Disabilities Rights Protection Act contain provisions that specifically address the ratio of employed minorities.

According to the Government Procurement Act, any company that wins a government contract and employs more than 100 staff must hire indigenous people while bound to that contract. Specifically, the minimal number of indigenous employees must account for 1% of the total number of staff members.⁴⁴

Any government department, public school, or public business entity employing at least 34 people is obligated to employ people with disabilities who have the capacity to work. Specifically, the number of employees with disabilities must account for at least 3% of the total number of staff. Any private school, association, or private business entity employing at least 67 staff members must employ people with disabilities who have the capacity to work. Moreover, the number of employees with disabilities must account for at least 1% of the total number of staff members (no less than one person).⁴⁵

The job application forms used by most companies may contain questions about ethnicity and health status. This information assists companies in fulfilling their legal obligation to hire a specific number of indigenous people and people with disabilities.

However, in 2010, the Taipei High Administrative Court judged a case involving an employee with a mental disorder. When applying for the position, this employee indicated that his health status was “good”, and then signed an affidavit stating “I confirm that all of the completed information is true. If any information is false, I agree that the Company may terminate the employment contract.” When the employer became aware of the employee’s condition, the employment relationship was terminated. The Court ruled that, although the employee had a mental disorder, his disability did not interfere with his capacity to work. To ensure equal employment opportunities nationwide, Article 5 of the Employment Services Act⁴⁶ states that employers are prohibited from discriminating against job applicants or employees on the basis of race, class, language, thought, religion, political orientation, place of origin or birth, gender, gender orientation, age, marital status, appearance, facial features, disability, or past membership in any labour union. Thus, that employer could have been charged with discrimination.

The Ministry offered an administrative explanation⁴⁷ that refers to the legality of the questionnaire of application’s formula. The function of a resume or application formula is designed to facilitate the conclusion of an employment contract. Employers or employment agencies that discriminate against job applicants or employees through the fulfilment of an application formula violate Article 5 of the Employment Services Act.

3. Exceptions in the Cases of Employment Contracts or Written Consent Provided by Employees

Employment contracts and written employee consent are other exceptions for an

⁴⁴ Article 12 Indigenous Peoples Employment Rights Protection Act.

⁴⁵ Article 38 of People with Disabilities Rights Protection Act.

⁴⁶ Taipei High Administrative Court, Gian-Zhe, No. 648, 2010.

⁴⁷ The administrative explanation of Ministry of Labor, Lao-Zhe-Ye-Zhe No. 0980013235, May 25, 2009.

employer to collect, process, and use an employee's personal data. However, this exception has limited applicability for normal personal data. The most crucial example involves monitoring employees based on an agreement stipulated in an employment contract; work rules, which are considered a part of the employment contract⁴⁸; and written consent. According to the PDPA, because a person's image or voice can be used to identify them directly or indirectly identify as a natural person, they can be considered types of personal data.⁴⁹

However, the monitoring of employees should be limited. When an employer continually monitors employees, particularly when surveillance cameras are involved, the employer is simultaneously supervising the work of labour and monitoring the behaviour of employees, potentially causing persistent psychological pressure for the employees and violating the employees' right of personality.⁵⁰ In other words, monitoring should be considered in the context of necessity and compliance with the principle of proportionality.

A renowned case heard by Taiwan's Supreme Court involving a manager who was dismissed for monitoring employee telephone calls can explain the necessity and the principle of proportionality to monitor. The manager of a hotel grievance unit abused his position by secretly installing recording equipment in the office telephones. When employees discovered the manager's actions, 523 hotel staff requested the employer to dismiss the manager. The manager argued that the dismissal was illegal and filed a lawsuit. The Supreme Court judged against the manager on the basis that the manager's behaviour was against the necessity and principle of proportionality of monitoring the employees.⁵¹

4. Clean Work, Clean People?

Generally, several jobs require workers who have a clean criminal record. Whether financial work is considered "clean" or "dirty" intellectually or theoretically, it must be executed by people who have no criminal record in Taiwan. In Taiwan's private sector, a record of no prior conviction is necessary for teachers, managers, and financial workers, such as employees of banks, insurance companies, stock market traders, and accounting firms. Employers in this sector typically request job applicants to provide proof of no criminal conviction specifically related to finance.

In Taiwan, rehabilitated criminals typically experience considerable difficulty acquiring employment that offers favourable remuneration. Even relatively low-skilled employment positions (e.g., cleaning) in both cities and counties favour employees with no prior criminal convictions. For example, in Taichung, which is Taiwan's third-largest city, the cleaning staff working at the Environmental Protection Bureau must provide proof of no criminal record when applying for a job. These requirements are general provisions in community-based public services. However, the PDPA is expected to challenge employer requirements such as these, primarily because the PDPA categorises criminal records as a type of special personal data. These sensitive data are under strict protection, as detailed in Section II-5-C; consequently, the requirement of providing proof of no criminal record is

⁴⁸ See Wang, Neng-Jiun, Work Rules, in Taiwan Labor Law Association edit., Interpretation of the Labor Standards Law, 2009, PP.404-409.

⁴⁹ Liu, Ding-Chi, The Definition, Principle of Protection of the Personal Data and it's Exception – the Monitoring, Part 1, Taiwan Jurist, Vol. 115, May 2012, P. 50.

⁵⁰ See Liu, Shih-Hao, Protection of employees' personality in the network society, Cheng-Chi University Labor Journal, Vol. 12, 2002, PP. 199.

⁵¹ The Supreme Court, Civil Judgment of Year 2000, Tai-Shang-Zhe No.2267.

considered illegal if employers cannot justify such a request based on the four exceptions.

IV. Protection of the Privacy of Off-Duty Employees

The activities of off-duty employees must be considered based on the principle of personal privacy alone. Employers have no right to monitor the behaviour of off-duty employees. In 1993, the Supreme Court stated that “employment relations are based on the labour force. The binding relationships between employers and employees are limited by space and time; they do not form a completely binding relationship between the personalities of employers and employees. Therefore, employer conduct should not intrude on the lives of employees while they are off duty. The private behaviour of employees outside of working hours is a part of their private lives. Employers have only the right to judge employee at such times when their behaviour directly relating to business activities could harm the social evaluation of the business’ undertakings.”⁵²

The Supreme Court restated the concept in the aforementioned case involving a married manager who had an affair with a female coworker. Subsequently, he was dismissed on the basis that his actions harmed the social evaluation of the employer’s undertakings. The Supreme Court determined that the affair had no effect on his work or the work of other employees. Furthermore, the work rules applied by his employer did not expressly forbid employees from engaging in affairs with coworkers. Therefore, the Supreme Court ruled against the employer, and the dismissal was judged illegal.

To provide an example for the sake of contrast, pilots may not drink alcohol within a certain period before flying. Another contrasting example involves undertakings with special tendencies, such as political parties or religious undertakings.⁵³ The Kuo-Ming-Tang, the incumbent nationalist party in Taiwan, forbids employees from participating in activities hosted by the opposition, the Democratic Progressive Party, even when employees are off duty.

V. Conclusion

Compared with personal privacy protection laws in other countries, the protection of personal data and privacy has emerged relatively later in Taiwan because of historical reasons. As democracy and law have advanced during the past 27 years, Taiwan has increasingly emphasised human rights, including the protection of personality, privacy, and personal data. The milestone in protecting personal information was the Computer-Processed Personal Data Protection Act, although its coverage of protection was considerably narrow. Until 1990, Taiwan underwent substantial progress in protecting personality and privacy according to the Civil Code as well as the interpretation of the Constitutional Court and Judgements of the Supreme Court and other courts.

The PDPA amendments are the most crucial reforms for protecting personal information and privacy. These reforms were designed based on European Union directives, Germany’s Federal Data Protection Act, Japan’s Personal Information Protection Law, and

⁵² The Supreme Court, Civil Judgment of Year 1993, Tai-Shang-Zhe No.1786.

⁵³ See Liu, Shih-Hao, Protection of employees’ personality in the network society, *Cheng-Chi University Labor Journal*, Vol. 12, 2002, PP. 206.

various laws of the United States.⁵⁴ However, the PDPA has been criticised for being too weak in protecting special personal data⁵⁵ and for the failure of the exception of written consent to reflect reality.⁵⁶ This discussion indicates that the protection of personal data and privacy should be successful. The PDPA does not specifically address employees, although it could offer clear and specific protection for employee data in the context of employment relationships. However, the PDPA has been implemented for only one and a half years; thus, Taiwanese lawmakers can continue referring to the experiences of various advanced countries to improve the implementation of this act.

⁵⁴ Fang Chiang, Zheng-May, Foreign- discipline and Self-discipline structure of Personal Data Protection Law System, *Dong-Wu University Law Review*, Jul. 2009, PP. 166-169.

⁵⁵ See Liu, Gin-Yi, It's not progressive Legislation- The Personal Data Protection Act., *The Taiwan Law Review*, Vol. 183, Aug. 2010, PP. 152,153.

⁵⁶ See Liu, Ding-Chi, The Idea of Written Consent in Personal Data Protection Act, *The Taiwan Law Review*, Vol. 218, Jul. 2013, PP. 151-153.