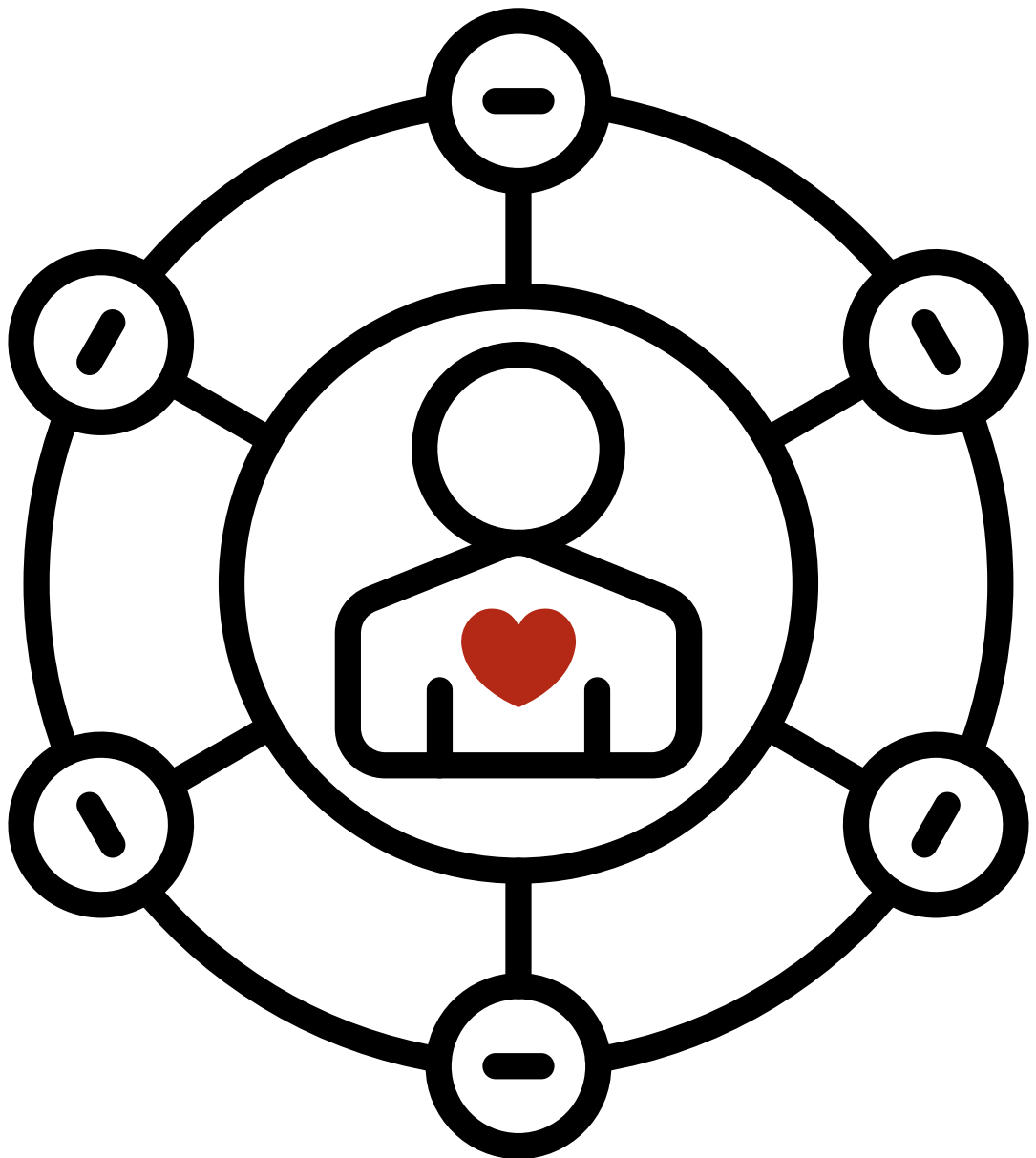


GUIDANCE: Information sharing in health emergencies at work



Information sharing in health emergencies at work

Overview

This guidance is intended to help employers understand how to share information about an employee experiencing a health emergency in a way that complies with the principles of The Data Protection (Bailiwick of Guernsey) Law, 2017 ('The Law').

The Law allows you to share personal information in an urgent or emergency situation, including to help prevent loss of life or serious physical, emotional or mental harm. It is good practice to plan ahead, as this will help you make timely and better-informed decisions. This guidance provides advice on how to think in advance about sharing workers' information in a health emergency.

What is a health emergency?

Any situation where you believe that someone is at risk of serious harm to themselves, or others, because of their mental or physical health. This can include potential loss of life.

For further information and support for you and your workers, you may wish to contact sources of expertise such as a healthcare provider, or Guernsey Mind.

Is mental health information different to health information under data protection law?

No, data protection law does not distinguish between them, and the definition of health information covers physical or mental health information. The same obligations apply to processing information about your workers' mental health as their physical health.

Any health-related information is classed as 'special category data' under the Law, and it requires extra safeguards due to its sensitivities.

Can we share workers' information in a health emergency?

Absolutely. Where there is risk of serious harm to the worker, or to others, you should share **necessary and proportionate** information without delay with relevant and appropriate emergency services or health professionals.

You should focus on sharing information with the right people to protect the person involved or others from serious harm.

You will not get in trouble for sharing **necessary and proportionate** information with relevant and appropriate emergency services or health professionals that can help mitigate the risk of serious harm to the worker or to others.

You could also share necessary and proportionate information with a worker's next of kin or emergency contact.

However, you will not necessarily always know the exact nature of the relationship with the next of kin or emergency contact. Depending on the nature of the health emergency, and the relationship with that next of kin or emergency contact, it might be inappropriate to share all the information you have with them.

You need to use your judgement in each specific situation, **sharing only what is necessary and proportionate to the circumstances**. You may decide that, whilst it may be necessary and proportionate to provide the emergency services with a full account of the situation, it is only appropriate to provide their emergency contact with more limited details.

You should also consider whether your ability to share health information is subject to other legal constraints outside of data protection law. For health information, this may include any duty of confidence that may apply, particularly where workers may expect confidentiality.

How can we plan ahead for information sharing in a health emergency?

In a health emergency, data protection does not act as a barrier to necessary and proportionate information sharing. In an emergency you should focus on sharing information with the right people to protect the person involved – even if you have not planned ahead.

However, planning ahead can help you make timely decisions when you need to. This can include putting in place internal policies and processes for information sharing in such an emergency, which document the approach you intend to take.

When thinking about your likely response to a health emergency, you must identify a lawful basis to share information. You should make a record of these in any internal policies that you put in place.

As part of your transparency obligations, you must let your workers know that you may share their information in a health emergency. You must ensure that your workers are aware of any policy you have for sharing personal information in a health emergency, and that it is available to them. You must provide this information to your existing workers as soon as possible; and to new workers within one month of obtaining their information. With a new worker, you could do this when you ask them to identify an emergency contact.

You should carry out a data protection impact assessment (DPIA) as part of your general processes on the everyday handling of your workers' health information. As part of that process, you should include the sharing of information in a health emergency. However, if you have not carried out a DPIA in advance, this does not stop you sharing information in a health emergency.

You should also take the following steps:

- Develop a policy on sharing personal information in a health emergency. Think about the **types** of information you may need to share, **who** you may need to share it with and **how** you will share it securely.
- Ensure that your workers are aware of the policy and make it available to them.
- Train staff on how to handle personal information in a health emergency. If you have designated people who will respond in such situations, ensure the rest of your staff know who they are and how to contact them. This could be included within broader training and awareness raising you may have in place around health.
- Ensure that workers keep the details of their next of kin and emergency contacts that you have on file up to date through regular review. You could give your workers the opportunity

to identify separate emergency contacts for general emergencies and health emergencies on an emergency contact form.

What lawful basis are most likely to apply?

When thinking about sharing personal information because of a health emergency, you must identify (and document) a lawful basis to share information. Remember, health data is classed as ‘special category data’ and the Law provides specific lawful bases for sharing this kind of information.

The most appropriate lawful basis will vary depending on the situation.

The **lawful bases** that are most likely to apply are:

- **Explicit consent** – you can rely on this basis if you have a valid, specific, written declaration from the worker that confirms they are happy for you to share information in a health emergency.
- **Vital interests** – this may apply where you need to share a worker’s health information to protect either their life or someone else’s. This is limited in scope and generally only applies in matters of life and death. You cannot use this basis if the worker is capable of giving consent.
- **Regulation / enactment** – you may rely on this basis where you’re required by law to share information in these circumstances. Note this does not extend to a contractual obligation. The information sharing must be necessary to comply with the legal obligation and you must do it in a reasonable and proportionate way.
- **Legal obligation relating to employment** – you can rely on this basis¹ for processing special category data within an employment context. The information sharing must be necessary to comply with the legal obligation and you must do it in a reasonable and proportionate way.

There are other lawful bases that might apply, depending on the circumstances – [please refer to this guidance for more information](#).

Need further help?

If you need further clarity on anything, please [contact us](#).

¹ detailed in paragraph 8, Schedule 2 of The Data Protection (General Provisions) (Bailiwick of Guernsey) Regulations, 2018.