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Research on Individual Consent in Personal Insurance Law Under Enterprise Compliance

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Abstract: when enterprises achieve compliance development, they need to obtain a large amount of personal information as the basis of their own operation. However, when enterprises obtain personal information, they do not obtain personal consent, or although they obtain personal consent, individuals have a certain understanding of the content and scope of their consent. Therefore, it is necessary to further explore the meaning and classification of personal consent, which is helpful to understand personal consent, so as to introduce the constituent elements of personal consent as the standard for identifying consent, provide enterprises with the standard for obtaining personal information and promote the circulation of personal information.

Keywords: Treatment; Obtain; Compliance

1. Raising questions

Basic case: in the WeChat reading app case, when WeChat app collected and sorted out the plaintiff's WeChat friend relationship data and the plaintiff's reading information, the WeChat reading app did not obtain the plaintiff's consent and the plaintiff did not authorize it. The plaintiff claimed that the two processed by WeChat app belong to the category of personal information, which constituted an infringement on the rights and interests of personal information. After the court found that the court supported the plaintiff's claim and held that the WeChat reading app infringed the plaintiff's personal information rights and interests.

In the WeChat reading case, the WeChat reading app also legally and legally collects and sorts out the user's personal data, and then obtains some user's personal information. It just doesn't tell the user personally or without the user's personal consent and authorization. Therefore, it is necessary to adopt a reasonable and effective identification standard of individual consent to provide a reasonable standard of behavior for enterprises.

2. Connotation of personal consent

Personal consent means that the personal information processor should actively obtain the affirmation, permission or recognition of the corresponding personal information subject when processing personal information. From the legal level, personal consent can be understood as an expression of intention made by the personal information subject, and the expression of intention has certain legal effect. Through the expression of intention, the individual can express the personal information subject's recognition of the behavior of the personal information processor and his own behavior. Different classifications of personal consent help to clarify the true meaning expressed by individuals when they agree, so as to facilitate enterprises to process personal information in compliance. Secondly, exploring the different classifications of personal consent is a foreshadowing for exploring the constituent elements of personal consent.

From the form of consent, it can be divided into express consent, implied consent, separate consent and written consent. Express consent refers to the statement made by the personal information subject in a written and other proactive manner; Tacit consent refers to the authorization made by the personal information subject through negative omission. Tacit consent may cause the personal information dominator to ignore the rules formulated by the personal information processor to a

certain extent. Separate consent and written consent can be understood as special provisions required by the law for personal information processors when processing information, with the purpose of increasing the protection of personal information rights and interests. Individual consent means that when dealing with some special personal information, the personal information processor should separately inform the individual of the processing purpose and behavior involved and obtain personal consent. Separate consent requires the information processor to handle, inform and agree. Written consent means that when dealing with special personal information, the personal information processor should inform the information controller of the purpose and behavior of collecting personal information and obtain the written consent of the information provider. Secondly, from the perspective of consent scenarios, different consent methods correspond to different scenarios. As a personal information processor, we should pay more attention to the consent methods applicable to different scenarios.

3. Practical dilemma of personal consent

In China's current legal provisions, the specific provisions on individual consent have not been further clarified in relevant laws and regulations. Article 13 of the personal information protection law just promulgated also stipulates that personal information processors should obtain personal consent when processing information, which also protects the security of personal information to a certain extent, but the provision is still not clear enough. Therefore, it is necessary to clarify the relevant standards of personal consent. In the practice of social life, there is a big gap in the application of individual consent standard, which will not only violate the original intention of relevant legislation to a certain extent, but also hinder the development of relevant information industry to a certain extent. It can be seen that the importance of individual consent recognition standard is not only related to the personal information security of individuals, but also related to the compliance development of enterprises. Due to the lack of further specific provisions on the consent of the subject of personal information in relevant laws and regulations, to a certain extent, there are cases of wrong understanding of the consent standard in practice. Personal consent is not a mandatory provision in law. The request for consent will be sent to the subject of personal information only when the information processor intends to process personal information. While providing some network information resources for individuals, enterprises also need to obtain certain personal information. However, whether individuals intend to provide personal information will not prevent individuals from obtaining the corresponding use right, but this has gradually become an exemption reason for enterprises to a certain extent. Because the corresponding laws and regulations do not accurately identify the standard of personal consent, this leads to the fact that the principle of personal consent cannot effectively restrict the processing of personal information by information processors, which may become a "legalization" reason for the uncontrolled processing of personal information by information processors.

4. Improvement measures of individual consent under enterprise

compliance

How to judge that the consent made by the personal information subject is true and voluntary, so we need to explore its constituent elements, and it will be reasonable to take these constituent elements as the recognition conditions of the personal information subject's consent to a certain extent. As for the constituent elements of individual consent, we can learn from the provisions of relevant foreign laws. For example, Article 7 of the general data protection regulations stipulated by the EU stipulates some constituent elements of personal consent. The first paragraph stipulates that the consent of the information subject can be established only after the personal information subject is informed of the processing of the information processor. From this article, we can know that the premise of personal information subject's consent is that it should be informed.

4.1 Individuals should know

Individual informed consent is not simply to ask the information subject involved to fill in a paper or electronic informed consent form. First of all, it is more important that relevant laws require relevant information processors to provide sufficient information to each information subject, so as to facilitate individuals to decide whether to allow them to obtain their own personal information. At this time, it corresponds to the disclosure obligation of the enterprise, and whether the enterprise has fully informed will affect the exercise of the right to know of the subject of personal information. Therefore, enterprises should faithfully fulfill the obligation of disclosure and actively provide comprehensive, focused and easy to understand information and relevant requirements for personal information subjects, so that individuals can better exercise their right to know. Secondly, the subject of personal information should also understand and understand the following contents: the way of information collection and the risks involved, the way of information use, the way of information identification, who the information custodian is, and whether the individual can obtain the results of relevant information in the future; At the same time, in order to fully protect the right to know of the subject of personal information, if possible, relevant enterprises should also pay attention to giving the subject of personal information some opportunities to ask questions, so as to deepen their understanding of the problems involved in the relevant information.

4.2 Individuals should have corresponding understanding ability

When the information processor informs the personal information subject of the information to be processed, the personal information subject should have a certain understanding of the information involved and its role, that is, know the meaning represented by this information. Understanding ability can be said to be a kind of processing of the information involved by the human brain, which will lead to some differences in personal understanding ability to a certain extent. Generally speaking, understanding ability refers to being able to identify and recognize the corresponding object and know what it is. On this basis, it has a certain understanding of the essence and internal relationship of things, mainly manifested in being able to understand the corresponding concepts, principles and connotation and know how it is. Therefore, the subject of personal information should not only recognize the surface meaning of the information processed by the information processor, but also understand its deep meaning. More importantly, if the subject of personal information does not understand the information involved, especially when the enterprise signs agreements and other documents, the enterprise has the obligation to explain and explain it, so as to better protect the rights and interests of personal information.

4.3 Scope of personal consent

When the information processor obtains the consent of the personal information subject, the personal information subject cannot carry out all authorization. This is because personal information sometimes involves not only the rights and interests of individuals, but also the rights and interests of others and public interests. When personal information involves the interests of others and public interests, the consent of personal information should not only be the individual of the information subject, but also obtain the consent of others and meet the requirements of relevant laws, regulations and policies. Therefore, when collecting and sorting out personal information, sometimes it is not enough for enterprises to obtain the consent of relevant information subjects alone. In order to prevent relevant potential legal risks, they should pay attention to the parties involved in the information and the requirements of relevant laws and regulations.

Conclusion

With the promulgation of the personal information protection law, the security of personal information has been paid more and more attention by the law. Therefore, the informed consent of the subject of personal information plays an important role in social activities. It is also beneficial to the protection of the rights and interests of personal information and provides a legal premise for enterprises to deal with relevant information. As mentioned in this paper, the constituent elements of individual informed consent can be used as the identification standard of individual consent, so as to clarify the

relevant legal boundaries for enterprises, prevent some legal risks and facilitate the compliance development of enterprises.

References

- [1] Ruan Shenyu. Tort protection of personal information from the perspective of civil code -- focusing on factual uncertainty and its solution [J]. Jurist, 2020 (4): 29-31.
- [2] Cheng Xiao. Sensitive and private information in personal information protection [J]. People's court news, 2020 (5): 1-2.
- [3] Cheng Xiao. On the fair use system of personal information in China's civil code [J]. Chinese and foreign law, 2020 (4): 1003-1006.
- [4] Ding Xiaodong. Reflection and reconstruction of personal information rights [J]. Chinese and foreign law, 2020 (2): 348-351.
- [5] Yao Jia. Informed consent principle or trust authorization principle -- Also on Credit Reconstruction in the credit era [J]. Jinan journal, 2020 (2): 51-53.
- [6] Gao Qinwei. Enterprise privacy policy and government regulation in personal information protection [J]. Law and business research, 2019 (2): 20-23.

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