

## **Hacked off employees - what potential rights does an employee in Germany have against their employer in the event of their personal data being hacked?**

The EU Data Protection Directive was transposed into national law by passing the Federal Data Protection Act (the "BDSG"). Under the BDSG an employer must take the technical and organisational measures necessary to ensure compliance with the relevant provisions of the BDSG, in particular in relation to ensuring "access control".

Ensuring "access control" includes preventing unauthorised persons from accessing data processing systems and personal data from being read, copied, modified or removed without authorisation. The BDSG expressly requires the employer to use the latest encryption techniques to ensure it has the necessary control over access to its employees' personal data.

Beside the BDSG, there are several other statutory provisions dealing with the safeguarding of personal data. Each case is considered on a case by case basis as to the measures the employer has and should have taken to prevent unauthorised access to an employee's personal data. However, even where a court finds that the measures taken to guard against a cyber attack were insufficient, the employee still needs to demonstrate they have suffered financial loss as a result in order to be awarded damages.

Apart from financial loss, an employer could also be liable for violation of an employee's general right to privacy if it has not protected their personal data sufficiently. However, to date, German courts have been reluctant to award damages for data privacy violations and, generally speaking, this only happens where the violation has had a highly significant impact on the individual.

**The information contained in this update is intended as a general review of the subjects featured and detailed specialist advice should always be taken before taking or refraining from taking any action. If you would like to discuss any of the issues raised in this article, please get in touch with your usual Olswang contact. This article is taken from the Digital Employment blog article 'Hacked off employees...' [here](#).**