

Diversity Monitoring Survey Checklist - Americas



1. In your jurisdiction, is an employer permitted to request data for the purposes of monitoring diversity?

2. In what form is it permitted to capture the data?

3. What data is permitted to be captured?

4. How should the data be stored and accessed?

5. Are there time limits on retention of data?

6. Are there any other specific rules which apply? eg relating to intra-group cross-border transfers of such data

7. Any other comments

Argentina

Zang, Bergel & Vines

No

N/A

N/A

Storage

N/A

N/A

N/A

N/A

Access to underlying data

N/A

Bolivia

C.R & F. Rojas

No

N/A

N/A

Storage

N/A

N/A

The collection of data for diversity monitoring is not common practice in Bolivia, it may provide grounds to discrimination liability.

N/A

Access to underlying data

N/A

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Brazil

Lobo de Rizzo Advogados

Yes – applicants and employees

- By individual's name
- Anonymised
- Pseudonymised
- Survey conducted by a third party, employer would see only aggregated data

- Gender
- Sexual orientation
- Ethnic origin
- Religion
- Disability
- Age
- Socioeconomic status
- Social mobility
- Familial/Parental status

Storage
Must be stored separately from other data.

- Access to underlying data*
- Only designated employees
 - Third party engaged to collect and process data

Yes. Up to the end of the purpose of the personal data.

A case-by-case analysis may be necessary due to the provisions under the Brazilian General Data Protection Law, which provides for requirements to collect and process sensitive personal data, such as the individuals' authorization depending on the type of data requested.

Yes, diversity surveys conducted by employers became common in Brazil because of several organizations conducting DE&I programs. These surveys are considered important for employers to justify affirmative actions, for instance, concerning hiring opportunities for unrepresented groups, in case one alleges discrimination against members of represented groups in a specific organization.

British Virgin Islands

Mourant

Yes – applicants and employees

- By individual's name

- Gender
- Sexual orientation
- Ethnic origin
- Disability
- Age

Storage
No restrictions on where data are stored.

- Access to underlying data*
- Only designated employees

Yes. Retention policy is 6 months for job applications and unsuccessful CVs and 10 years following termination of employment for everything else.

No restrictions. Data may be transferred outside of EEA but organisations must make sure there is safeguarding in place when the data is transferred and that they let the employees know about this data.

N/A

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Cayman Islands

Mourant

Yes – applicants and employees

•By individual's name

•Gender
•Sexual orientation
•Ethnic origin
•Disability
•Age

Storage

No restrictions on where data are stored.

Access to underlying data

•Only designated employees

Yes. Retention policy is 6 months for job applications and unsuccessful CVs and 10 years following termination of employment for everything else.

No restrictions. Data may be transferred outside of EEA but organisations must make sure there is safeguarding in place when the data is transferred and that they let the employees know about this data.

N/A

Chile

Urenda, Rencoret, Orrego & Dörr

Yes – applicants and employees

•By individual's name
•Anonymised
•Pseudonymised
•Survey conducted by a third party, employer would see only aggregated data

•Gender
•Sexual orientation
•Ethnic origin
•Religion
•Disability
•Age
•Social mobility
•Familial/Parental status

Storage

Must be stored separately from other data.

Access to underlying data

•Only employer or only designated employees of HR department

No. A person may request the elimination of the data if it is outdated, or its storage no longer has legal grounds.

None.

Diversity surveys are rare in Chile. Diversity monitoring may entail accusations of discrimination, which is quite serious, and the storage of sensitive data implies an important reserve responsibility, which is why it is not always advisable to carry out such a process unless it is extremely necessary, or the company can ensure the control of all associated risks.

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Colombia

Parra Rodríguez Abogados

Yes – applicants and employees

•By individual's name

- Gender
- Ethnic origin
- Religion
- Age
- Socioeconomic status
- Social mobility
- Familial/Parental status

Storage

No restrictions on where data are stored.

Access to underlying data

- Only designated employees
- The persons authorized in the authorization for the processing of personal data

No

Yes, if a data transfer takes place, there must be a data transfer agreement between the companies. In addition, the data processing authorisation must mention this issue.

Surveys are common. The authority may impose sanctions for non-compliance with the rules on the processing of personal data.

Costa Rica

Lexincorp

Yes – applicants and employees

•Anonymised

- Gender
- Disability
- Age
- Social mobility
- Familial/Parental status

Storage

Must be stored separately from other data.

Access to underlying data

- Only designated employees

Yes, two years

There must be an express authorization, and its due assignment to share data with other companies, whether or not they are related.

This information is considered sensitive and its unrestricted collection is prohibited.

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Mexico

Gonzalez Calvillo

Yes – applicants and employees

•By individual's name

- Gender
- Sexual orientation
- Ethnic origin
- Religion
- Disability
- Age
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- Social mobility
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Storage

Must be stored separately from other data.

Access to underlying data

- Only designated employees

Yes. Per the employer's retention policy, which has to comply with specific period and quality requirements set forth in law.

The employer needs to ensure that various conditions are met, including that: (i) the data cannot be used to discriminate, promote, hire or fire employees/ applicants; and (ii) the data's processing purposes are justified per the terms of Mexican data protection laws.

Some companies carry out these type of surveys, but many prefer not to due to the complexity of their implementation.

Disclaimer:

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