

DATA PROTECTION WITH COMPANY BIKE LEASING

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Introduction

Employers are now increasingly offering their employees the option of leasing company bikes. The concept of company bike leasing is that the employer concludes a leasing framework agreement with the company bike provider in which the general leasing conditions are defined. In addition, the two leasing parties conclude individual leasing contracts for the bicycles purchased by the employer, in which the details of the future user, i.e. the employee, must also be specified. At the same time, the employer and employee conclude a leasing agreement for the respective bicycle, in which the terms of use are set out. The contracts are usually provided by the company bike provider. In addition, there are usually insurance contracts concluded by the employer, which in certain cases also require the employee's data to be provided to the insurance company.

As employee data is processed in different ways in the course of implementing the company bike lease and, in particular, is transferred to different locations, the regulations of data protection law must be observed in addition to the tax and labor law requirements. In this respect, the respective processes must comply with the data protection requirements of the General Data Protection Regulation (GDPR) and the German Federal Data Protection Act (BDSG).

Legal basis

As for any other data processing, the principle of prohibition with reservation of permission, which requires the existence of a legal basis, is also applicable to all data processing procedures in connection with company bike leasing, as set out in Art. 6 GDPR. Which legal basis is considered in each case depends on the specific processing activity and the data processed.

The collection of the employee data required for the purpose of carrying out the company bike leasing as well as the further data processing in the course of concluding the transfer contract, which is in the context of the employee's employment contract, can be based on the legal basis of the fulfillment of the contract or the purposes of the employment relationship. The legal basis in this case is probably Art. 6 (1) (1) (b) GDPR, possibly also Art. 88 GDPR in conjunction with Section 26 (1) (1) BDSG. If the employee voluntarily provides additional personal data over and above the data required to process the company bike lease, the legal basis for this is consent in accordance with Art. 6 (1) (1) (a) GDPR and, if applicable, Art. 88 GDPR in conjunction with Section 26 (2) BDSG.

For the transmission of employee data from the employer to the company bike provider required in the course of contract processing, the fulfillment of the contract or the purposes of the employment relationship pursuant to Art. 6 (1) (1) (b) GDPR and, if applicable, Art. 88 GDPR in conjunction with § 26 (1) (1) BDSG as well as the legitimate interest of the company in data processing within the meaning of Art. 6 (1) (1) (f) GDPR are also taken into account. As a rule, there are no protective interests of the employee that outweigh the interests of the company, as the use of the company bike offer is voluntary for employees in any case.

In principle, it can be argued that the processing of employee data by the company bike provider and its processors and vicarious agents can also be based on Art. 6 (1) (1) (b) GDPR or Art. 88 GDPR in conjunction with Section 26 (1) (1) BDSG. However, this interpretation is not entirely unproblematic because the legal basis for the fulfillment of the contract is generally based on an agreement with the person concerned. As a rule, however, there is no direct contractual relationship between the company bike provider and the employee concerned, as handling is to take place via the employer. The data processing by the service provider is carried out to fulfill the contract with the employer. However, this may not be sufficient. As a result, the alternative for the company bike provider would be to refer to its own legitimate interests within the meaning of Art. 6 (1) (1) (f) GDPR and, as part of the balancing of interests, to point out that the interests of the employees concerned that are worthy of protection do not prevail in any case, because in this respect there is an inclusion in the contract between the employer and the employee.

Any transfer of data by the employer to the insurance company is not unproblematic from a data protection perspective. In some cases, however, the employer is obliged to provide certain information. At best, the data required for claiming insurance cover is transmitted to the insurance company by the respective employee themselves. If this is not possible, the legal basis for data processing is Art. 6 (1) (1) (b) GDPR, provided that consent to the transfer of data is contractually required as a condition for the feasibility of the company bike leasing, and Art. 9 (2) (f) GDPR with regard to health data.

It is generally not necessary to conclude a data processing agreement with the company bike provider, as the employer and company bike provider generally act as independent controllers.

Fulfillment of other obligations under data protection law

Taking into account the principle of data minimization, care must be taken in principle to ensure that only such data is passed on to the parties involved as is absolutely necessary for the execution of the respective contractual relationship. This applies in particular to the transmission of health data. If it is possible to transmit the data directly from the employee to the company bike provider and its processors and vicarious agents or the insurance company, this option should be used. With regard to any data transfers by the company bike provider to other parties, it may be advisable to obtain confirmation from the provider that the data protection regulations are complied with by the provider for each data transfer. Although the company is not responsible for data processing by the company bike provider, it may not pass on data to service providers if it is aware that they are not acting in compliance with data protection regulations.

Furthermore, the employees concerned must be comprehensively informed in advance of the data processing in accordance with Art. 13 GDPR about the data processing procedures taking place in the context of company bike leasing. The information materials and the transfer agreement must be designed in accordance with the spe-

cific structure of the leasing concept and the legal basis used in each case. In addition, the process must also be included in the company's register of processing activities.

In order to assert and defend against possible legal claims, the data processed in the course of the company bike offer should be regularly retained by the company for a period of three years after the end of the offer. The data must then be deleted, provided that there are no retention obligations to the contrary.

Conclusion

All data processing procedures in connection with the implementation of company bike leasing require a legal basis. In this respect, the fulfillment of the contract is particularly relevant. Employers should also make sure that they only pass on data to the company bike provider and the insurance company that is actually required to process the offer. This applies above all in the event that the transfer of particularly sensitive data, such as health data in particular, should be necessary. In addition, the general data protection regulations must be observed. In particular, the company must comply with information, documentation and deletion obligations.

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