

DRIVING LICENSE CHECK BY THE EMPLOYER

Information on data protection | October 2024

Introduction

Many companies provide their employees with their own company vehicles or pool cars to enable them to travel to customers or other business appointments. For sales representatives in particular, the use of a company vehicle is sometimes even part of the job description and also serves marketing purposes, among other things. In this context, the question often arises as to the extent to which the employer is obliged to carry out driving license checks and what requirements must be observed in this regard.

There is no general legal obligation to carry out checks. However, if the employer is the owner of the vehicle used, it must ensure that only persons with the appropriate driving license drive the vehicles. If the keeper fails to ensure this, he may be prosecuted under Section 21 (1) No. 2 StVG. It may be sufficient for this if the keeper allows someone to drive their vehicle without having the required driving license or although there is a ban on driving vehicles in accordance with Section 44 StGB or Section 25 StVG. In order to comply with its duty of control and not make itself liable to prosecution, the employer must check whether all employees who use company vehicles have a valid driver's license. A driver's license check is often also necessary for insurance reasons. If, however, an employee uses their private vehicle for business purposes, there is no direct obligation to check.

Requirements for control

As the driving license data is personal and this data is processed by the employer in the course of the check, the data protection regulations of the General Data Protection Regulation (GDPR) and the Federal Data Protection Act (BDSG) must be complied with.

Legal basis

The collection of driving license data for control purposes and their storage or other retention are data processing operations within the meaning of Art. 4 No. 2 GDPR, so that the processing is only lawful if it can be based on a legal basis.

If the company vehicle is to be used exclusively by an employee of the company and their driving license is to be checked in this respect, data processing for the purposes of the employment relationship pursuant to Section 26 (1) (1) BDSG or the performance of the contract within the meaning of Art. 6 (1) (1) (b) GDPR are the main legal basis. In addition, reference can also be made to Art. 6 (1) (1) (f) GDPR in conjunction with Section 21 (1) No. 2 StVG as the

legal basis. In this respect, the legitimate interest can be seen in the fulfillment of the obligations arising from the Road Traffic Act as well as the protection against penalties and any recourse claims of the liability insurance. If members of the employee's household are also permitted to use the vehicle, consent pursuant to Art. 6 (1) (1) (a) GDPR may also be considered as a legal basis. Insofar as a legal regulation expressly prescribes the control of the driving license and the storage of the associated data, data processing could also be considered to fulfill a legal obligation pursuant to Art. 6 (1) (1) (c) GDPR. With regard to the provision of Section 21 (1) No. 2 GDPR, however, it must be taken into account that this does not expressly provide for the processing of data, for example in the sense of permanent storage, and can therefore only be used to a limited extent.

The legal basis on which the driving license check and the associated data processing operations can be based in a specific case must be assessed on a case-by-case basis, taking into account the specific circumstances.

Frequency of checks

The question of whether the driving license may be checked is then followed by the question of the frequency of the checks. If it is already apparent during the application process that the future employee will be using a company vehicle, an initial check is often carried out at this stage. During the application process, however, it is sufficient to ask whether the required driving license is available. However, the driver's license must be presented at the earliest upon employment. Otherwise, the check is usually carried out immediately before the first use of the company vehicle. In contrast, employees who do not use a company or pool vehicle may not be required to provide proof of their driving license as standard.

However, as changes in the form of the withdrawal of a driver's license or a driving ban can occur at any time, a one-off check is not sufficient for the employer to meet its obligations as the owner of a company car. Rather, regular further checks are required. Again, there are no legal requirements regarding the intervals at which these checks should be carried out. In principle, it is conceivable to carry out a check before every journey. With regard to those persons who only use company vehicles rarely or at irregular intervals, this may also be sensible and feasible. For employees who have their own company vehicle and use it daily, however, this is probably impractical.

As standard, one to two checks per year should be reasonable and appropriate. However, if there are special circumstances, such as suspected alcohol or drug consumption, the use of medication with an influence on driving ability or an impending driving ban, it may also be necessary to carry out additional checks. As a further safeguard, it is also advisable to oblige the employee to report the loss of a driving license or a driving ban without being asked.

Documentation of the checks

Driving license checks must be documented in order to be able to prove proper conduct and compliance with the owner's obligation under Section 21 (1) No. 2 StVG. In this context, the question then arises as to how the documentation should be carried out and whether the employer may also make copies of the driving license.

There is no obligation to make a copy of the driver's license. Taking into account the principle of data minimization, making a copy is generally not necessary and therefore not permitted, as it is only necessary to prove that a driving license has been presented, but the data on the driving license is not otherwise required. However, it may be permissible to make a photocopy if the employee agrees to this. With regard to such declarations, however, the strict requirements for consent in the employment relationship must be observed. It is also advisable to simply inspect the driver's license and then document the inspection in writing using a form. Care must be taken to ensure that the original document is presented during the check. Attention should also be paid to any restrictions on the driver's license.

If an electronic system is to be used for monitoring and documentation, such as fleet management software, the same data protection regulations must be observed. If a service provider is used for this purpose, it is also important to ensure that a data processing agreement is concluded.

Duty to inform, data protection and erasure

As with all data processing, the employer must provide the employees affected by the checks with the mandatory information required under Art. 13 GDPR. The information material should also point out in particular that company or pool vehicles cannot be used without a prior driver's license check. Separate information can be dispensed with if the information has already been made available to employees in another context.

In addition, the employer must take appropriate technical and organizational measures to protect the data. In this context, for example, it must be ensured that the data is only accessible to a strictly limited group of people.

If the data from the driving license checks are no longer required, they must be deleted in accordance with Art. 17 GDPR. With regard to deletion, however, it must be taken into account that the employer must also be able to prove that it has complied with its keeper obligations for periods in the past.

If family members are also permitted to use the company vehicle and are affected by data processing in this respect, care must be taken to ensure that they are also properly instructed and that the other data protection regulations are also complied with in relation to their data.

Conclusion

If the employer provides its employees with company or pool vehicles and is the owner of these vehicles, it must ensure that they are only used by persons who have a driving license. As personal data is processed in this context, the data protection regulations must be complied with as part of the controls. This means that data processing requires a legal basis and the other principles of data protection law must also be complied with. The frequency of driving license checks is not specified and must be determined according to the respective circumstances. Documentation of the check using a form or an electronic system should generally suffice. Photocopies, however, should not be made as standard, taking into account the principle of data economy. In addition, care must be taken to ensure that information, protection and deletion obligations are complied with.

Christina Prowald



Kontakt:

BRANDI Rechtsanwälte
Partnerschaft mbB
Adenauerplatz 1
33602 Bielefeld

Christina Prowald
Wissenschaftliche Mitarbeiterin

T +49 521 96535 - 980
F +49 521 96535 - 113
M christina.prowald@brandi.net