

How to track your company car via GPS legally?

Based on the relevant practice of the Hungarian data protection authority, we hereby summarize the most important current data protection knowledge.

In most cases, employers install a GPS tracker in the vehicles they own to monitor the employee.

However, this practice is not considered lawful without an established privacy policy, a balancing test and an associated privacy impact assessment, and we usually find infringing practices in many cases, so we summarize below how a GPS can be used legally, thus avoiding a potential fine.

Based on the practice of the Hungarian data protection authority (DPA), it is primarily important to emphasize that the GPS tracking of employer-owned vehicles always involves the processing of personal data, given that personal data obtained through the use of the GPS system can be linked to the occupants of the vehicle.

Therefore, the handling of personal data related to GPS must be detailed in the privacy policy. During the application of the GPS system, almost without exception, the services of a third party are used by the employer, ie the operator of the GPS system will be a data processor, so it is necessary to conclude a data processing contract in accordance with the requirements of the GDPR.

The employee can only be inspected during working hours and the geographical location of the employees outside working hours cannot be verified. In the case of a motor vehicle with which no material of significant value is transported or where the worker carries out his work at home, the use of GPS is not justified.

This means that the employee must be given the opportunity to switch off the GPS even if the vehicle stays with the employee (for example, if the employee can keep the vehicle outside working hours), and also a pictogram must be put out to the employees in each vehicle stating the fact of tracking by GPS.

The DPA emphasized in an earlier guideline that the legal basis for the use of GPS and thus the processing of personal data will invariably be the legitimate interest of the employer, so it is necessary to compare the fundamental rights of those concerned, ie employees, with the employer's legitimate interest.

Regarding the definition of a legitimate interest, the DPA outlined three options in its guidelines.

The first is the purpose of using a GPS system primarily for a logistical purpose, ie to organize work processes efficiently, given that in the case of several simultaneous couriers, the employer needs to know exactly where the employee is.

Second possibility: in addition to the logistical purpose, the DPA also considered the protection of property to be acceptable, ie the protection of property transported in a vehicle may justify the use of GPS.

Thirdly, personal protection may arise as last resort as legitimate interest, but this purpose can only be justified if the employee has to pass regularly in a demonstrably dangerous area, such as war zones or areas affected by high levels of crime.



Based on all this, it is necessary to define and detail the above logistical, property protection or possibly personal protection purpose and its justification in a balancing test in accordance with the given employer activity.

In addition to the above, it should be emphasized that the legitimate interest defined by the employer must be legitimate. This means that the legitimate interest must be derived from a legal provision, so that, for example, the right to property already establishes the legitimacy of the purpose of the protection of property.

Under Article 35 (4) of the GDPR, data protection authorities are required to draw up a list, which requires data controllers to carry out an impact assessment. The purpose of a data protection impact assessment is to explore the nature, necessity and proportionality of data processing, as well as to assess the risks to the rights and freedoms of data subjects and to identify measures to deal with them.

This list has also been prepared by us, the impact assessment related to the GPS system is required in particular by point 16 of the list, according to which it is mandatory to carry out an impact assessment if the employee's work is monitored through large and systematic processing of personal data.

In this context, the GPS system is defined in the list as an explicit example. The need for an impact assessment is further supported by the fact that GPS alone results in the processing of a large amount of personal data as a result of continuous monitoring, and the use of GPS exhausts the methodological way, since tracking is carried out according to a regular, pre-defined method.

So what to do if a business executive wants to legally operate a GPS system?

First of all, it is necessary to define the purpose, and the legitimate interest that justifies the use of the system (such as logistics or protection of property), and along these legitimate interests it is necessary to prepare a data protection regulation, an impact assessment for the exploration of individual data protection risks and the legitimate interest of the employer.