

# Privacy legislation: Protection of personal data

We have noticed that many of our customers have questions about privacy and the processing of personal data. We have therefore included the most relevant information on this subject. In three articles, we will discuss the most frequently asked questions with regard to privacy and, in particular, the copy of proof of identity, employee sickness, security of personal data, mandatory data-breach notification and retention periods. In this document we will discuss the Personal Data Protection Act and identity documents.

## **What is personal data?**

Personal data is information that can be used to identify a person. Examples include name and address details, e-mail addresses, passport photos, fingerprints and IP addresses. Also data that qualify a person, such as someone's IQ, are personal data.

## **Special personal data**

These are sensitive data, even to the extent that their processing may seriously affect a person's privacy. Such data may therefore only be processed under very strict conditions. Examples of special personal data are data that say something about someone's health, race, religion, criminal record or sexual preference. Also membership of a trade union and the citizen service number (Dutch: BSN) are special personal data. Special personal data can, for example, be requested when screening personnel and when requesting criminal data.

## **What does the Personal Data Protection Act (Dutch: Wbp) mean?**

The Wbp was drawn up to protect personal data. This Act contains rules for the processing of personal data, with the focus on the automated processing of personal data, for example with the aid of a computer. This law does not apply to deceased persons. Information about these persons may be published without permission or weighing up interests, as long as the privacy of living persons is not at stake. A number of organisations are authorised to view and use personal data, such as these (semi) governmental organisations: municipalities, UWV (employee insurance agency), tax authorities, pension funds, SVB (a state-pension agency), educational institutions and hospitals.

## **What if you do not comply with the law?**

The Dutch Personal Data Authority (Autoriteit Persoonsgegevens or AP) has been appointed to supervise the processing of personal data. If the AP concludes that a person, organisation or government has violated the law, it can impose fines. Penalties currently amount to a maximum of 1 million euros and, in the case of companies, to a maximum of 2 percent of the worldwide turnover.

## **What are the chances of violation?**

A violation is quickly made. For example, if a receptionist makes a printout of an employee's sick report, showing all personal data including the BSN number, the organisation may be imposed a penalty.

## **Certificates of identity**

An identity document, such as a passport or identity card, contains (special) personal data. There are strict rules for the collection and use of personal data. This entails privacy risks. For instance, there is a risk of identity fraud if organisations often copy or scan identity documents. What is an organisation allowed or not allowed to do (ask SRS personnel or yourself) with regard to identity documents?

## **Temporary workers**

### **Can SRS Personeel provide me with a copy of an identity document?**

That depends on the nationality of the temporary worker.

If your hired temporary employee is a foreign national outside the EEA and Switzerland, you will receive a copy of the flexi-worker's identity document. This is prescribed by the Foreign Nationals Employment Act (Wet arbeid vreemdelingen - Section 15).

Copies of identity documents of temporary employees with a nationality other than above may not be provided due to statutory obligations.

### **I always used to receive a copy of the identity document.**

The Tax Authorities previously advised you to keep a copy of the identity papers of these employees in your administration. This was for the purpose of the application of the so-called sequential liability and hirer liability.

However, making copies of the proof of identity is not necessary for this application.

Therefore, you as a hirer or contractor are not allowed to make a copy or scan of the identity document. And we are not allowed to provide a copy (exception: foreigner outside the EEA and Switzerland).

### **Can I make a copy of the identity papers of temporary workers myself?**

You are not allowed to make a copy of the ID of temporary employees. However, you are obliged to check the original proof of identity before the temporary worker starts work.

You check the validity of the document and you check whether the person who will be working for you is actually the person on the ID card. We inform our temporary workers of the requirement to carry proof of identity.

### **Will the verification of the identity document by me suffice?**

No, the Tax Authorities require you to record the following personal data of your temporary employees after the identity document is checked. These data must not be accessible to unauthorised persons:

- Name, address and residence details
- Date of birth
- BSN (citizen service number)
- Nationality
- Type, number and period of validity of the identity document
- Specification of hours worked
- Possible presence of a residence or work permit or VAR (independent contractor status statement);
- Name, address and residence details of the temporary employment agency.

SRS personnel supports its clients in this by supplying this information through the agency confirmation. As an organisation, you are not allowed to adopt any data from a self-employed person or freelancer nor to make a copy of their ID.

## **Employer's own employees**

### **Can I make a copy of my own employees' ID?**

Yes, you may. As an employer, you are legally obliged to include a copy or scan of the identity papers of your personnel in your payroll records. Just as we are obliged to do so for our temporary employees. (This obligation is stated in article 28 of the Dutch Wage Tax Act).

In this way, you can prove at a later stage that your employees have properly identified themselves and that they were/are in the Netherlands legally. You are also obliged to have the copies available during inspections by, for example, SZW (Ministry of social affairs and employment).