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Pre-shift medical examinations for employees driving vehicles who are not employed as official drivers – mandatory or voluntary?



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At the end of 2018, amendments were introduced to Federal Law No. 196-FZ dated 10 December 1995 "On Road Traffic Safety" (the Road Traffic Safety Law). The key amendment is that previously the general requirements on road traffic safety imposed on legal entities and individual entrepreneurs (Article 20 of the Road Traffic Safety Law) only applied to legal entities that engage in activities related to the operation of vehicles, i.e. transport and logistics companies, etc.

Now, the general requirements on road traffic safety apply to any legal entities and individual entrepreneurs that operate vehicles. In other words, any company that owns or rents a car must comply with these requirements.

Among the general requirements, Article 20 of the Road Traffic Safety Law stipulates the need to organise conduct of compulsory medical examinations. The most controversial medical examination, which often confuses companies, is the pre-trip (pre-shift) medical examination. Some people hold that even if a company employee is given a corporate car as a benefit or to travel from client to client, the employee is required to take a pre-trip medical examination each time he/she needs to drive the car.

However, the Road Traffic Safety Law (Article 23) indicates that mandatory pre-shift medical examinations must be conducted during the entire period that an individual has been employed as the driver of a vehicle. This is understood to mean that the requirement to pass pre-shift medical examinations does not apply to such employee categories as sales and medical representatives, service engineers, etc. The indicated position is confirmed by existing prevailing judicial practice and the position of the labour inspectorate¹.

At the same time, however, taking into account the previous position of the Russian Supreme Court², we recommend applying, *inter alia*, the following set of measures to employees, who are not official drivers of the company, which will make it possible to mitigate the risk that they might be required to undergo pre-trip medical examinations, including:

- Make sure that there are no references in job descriptions to such qualification requirements as the existence of a driving licence and the length of experience as a driver, and also remove official duties similar to the functions of a driver (this includes an obligation to drive, in contrast to the right to drive) from employment contracts and job descriptions of the employee in question.
- If the company prepares route sheets for work-related trips made by the aforementioned category of employees, prepare internal pro forma of such documents that do not define the employees as drivers.
- Make sure that these categories of employees do not transport other colleagues or clients.

It is also worth noting here that in accordance with Article 312.3 of the Russian Labour Code, employers do not have to arrange medical examinations for its remote employees. |

¹ See, for example, Ruling No. 310-KG15-8439 of the Supreme Court of the Russian Federation dated 6 October 2015 on case No. A35-7124/2014; the Appellate Ruling of Moscow City Court dated 18 September 2018 on case No. 33a-6141/2018.

² Judgment No. 18-AD16-173 of the Supreme Court of the Russian Federation dated 19 December 2016.