

EMPLOYMENT LAW DEPARTMENT

Monitoring Employees in the Workplace

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1. Are employers allowed to monitor their employees while they are at work?

There are different methods of monitoring employees whilst at work and the rights of both an employer and its employees will depend upon the method of monitoring that is being used, or considered.

While there can be a business benefit in monitoring employees' use of emails and the internet, employers need to bear in mind the Data Protection Act 2018, the General Data Protection Regulation (GDPR) and the Information Commissioners Office Employment Practices Code. The Code in particular sets out good practice recommendations.

2. What rights do employees have that an employer should be aware of, and how can monitoring be introduced if it is not currently in place?

The Employment Practices Code says that workers have a right to a private life and that does extend into the workplace so that, if monitoring needs to take place, an employer should first carry out an impact assessment and consider their reasons for carrying out monitoring, as well as considering carefully the means of monitoring. The employer should also specify in its Privacy Notice issued to all employees what monitoring it is proposing to carry out, and why.

3. What should employees be told about any monitoring that is done, or is going to start?

Emails

A Monitoring Policy should be introduced and communicated to staff in advance, setting out when the employer intends to monitor their email and internet usage and why. It will be important that staff are told how the information will be used and whether the information could be disclosed to anyone else. For example, if an employer was to check the email accounts of workers who are on holiday in order to ensure client queries are dealt with, staff should be made aware of this. The Code also suggests that workers be encouraged to mark any personal emails as such.

Images

Any images which are captured by CCTV cameras must be processed in accordance with the Data Protection Act and GDPR and employers must consider very carefully whether it is justified for them to be using CCTV images, having reference to where the cameras are located and also what purpose they are being used for. Workers should be aware that they are being monitored by CCTV, although there may be very exceptional circumstances where covert monitoring may be used as part of a specific investigation.

Phone Calls

Employers are permitted to monitor and record telephone calls between their employees and customers, providing certain requirements are met, including ensuring that the customer's consent has either been given expressly or can be inferred from the caller continuing with the call after hearing a message that their conversation will be recorded. An employer can monitor and record calls without consent but they need to establish the existence of facts; for example, to keep a record of instructions given by telephone. Again staff should be told that

calls may be monitored and/or recorded and why. Generally, covert monitoring should only be used in exceptional circumstances.

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