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SOLICITORS

Monitoring Employees in the Workplace

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 at work, 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 (which we will collectively refer to as 'Data Protection Legislation'). 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 this right extends into the workplace. Accordingly, any monitoring by employers must be undertaken in a way that protects this right.

Under Data Protection Legislation the monitoring of employees at work is permitted as long as an employer can show that there is a lawful basis for the processing of the employee's personal data. For example, an employer may seek to justify the monitoring of employees' emails in order to ensure business continuity in the case of absence from work or to ensure compliance with the employer's policies and procedures. Monitoring can take a number of different forms, such as being accessing emails sent or received by an employee on the employer's system, viewing details of internet searches conducted by the employee on the employer's system, using CCTV monitoring in the workplace or fitting trackers to company owned vehicles in order to verify an employee's whereabouts.

Once a lawful basis for the processing has been established the employer must then show that the surveillance is necessary, the means of carrying it out is proportionate and also consider whether a means which does not intrude on an employee's personal life to such an extent.

If an employer is considering monitoring employees' they should first undertake an impact assessment which addresses the above points. The impact assessment should therefore address the reasons for carrying out the monitoring, look at the impact the monitoring will have on employees, as well as reflecting carefully on the means of monitoring and whether a less intrusive means of achieving the same objective may be available. 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 and Internet Usage

A Monitoring Policy should be introduced and provided to all staff before any monitoring takes place. This policy should be readily available to employees on request and ideally kept in the staff handbook. The policy should set out how and when the employer intends to monitor employees' 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 in advance. The Code also provides examples of safeguards that employers can implement in their monitoring policies to ensure that email surveillance impacts employees' personal lives as little as possible. For example, these would be policies discouraging staff from using their work email address for personal matters and/or encouraging them to mark any personal emails as such.

Images

Any images which are captured by CCTV cameras must be processed in accordance with Data Protection Legislation. In particular employers should have reference to the guidance set out in the Information Commissioner's CCTV code when considering implementing this form of monitoring. Employers must consider very carefully whether it is justified for them to be using CCTV surveillance within the workplace, having reference to where the cameras are located and also what purpose the resulting footage may be 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 this will be the exception rather than the rule.

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. Again staff should be told that calls may be monitored and/or recorded and why.

4. Things to Consider

Covert monitoring should only be used in exceptional circumstances. However, employers should be aware that they are still required to let employees know in their privacy notice of the potential of any covert monitoring if it is anticipated that this could be necessary regardless of whether they are carrying it out at the time.

It is important to remember that any personal data obtained through monitoring should be processed in line with the Data Protection Legislation. This means data should be kept securely and only available to people who need to see it. Any data should also only be kept for as long as necessary for the purposes which it was collected and should be accurate.

In general employers should be regularly checking for changes to legislation and updating their monitoring policies and procedures as necessary. Staff members should also be provided with regular training on the employers' expectations for things such as email and internet usage at work. Each time a monitoring policy is updated, employers should ensure that this is re-circulated to staff at the time.



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