

Tools for workplace monitoring -  
The all-seeing eye of the boss  
Legal newsletter



# Tools for workplace monitoring - The all-seeing eye of the boss

**Deloitte Legal Szarvas, Erdős and Partners Law Firm, a member of Deloitte Legal's international network, is providing its clients with a monthly newsletter on the most recent changes and newly adopted regulations in economic law and the most notable legal cases.**

**This newsletter discusses the practical aspects of workplace monitoring.** One of the fundamental interests of employers is that employees spend as much of their working hours on actual work as possible. In addition, it is particularly important that employees retain and keep confidential all information related to the business of the employer. Act I of 2012 on the Labour Code (the "Labour Code") provides a wide range of rights to monitor employees and these rights also apply to electronic monitoring systems used at the workplace. However, the monitoring of employees cannot be unlimited since, after a certain level, monitoring could violate the privacy rights and human dignity of the employee. For this reason the Labour Code contains safeguarding provisions.

## **Purpose and scope of monitoring**

Workplace monitoring can only be used for a defined purpose and may only be aimed at monitoring the behaviour of the employee in connection with the employment relationship. Employee monitoring may not mean observing employees. The 'use for a defined purpose' means that the employer must examine in all cases whether the intended goal can be achieved by using another monitoring method or technological solution. The use of the various tools and methods of workplace monitoring may not violate the privacy rights and human dignity of the employee.

## **Is consent required?**

As a general rule, the employee's consent is not required for the use of solutions and measures aimed at monitoring employees. However, the employer must inform the employee in advance about the use of technical means for monitoring purposes. Prior consent by the employee may be required in exceptional cases, such as in the case of monitoring by tracking a device owned by the employee.

## Monitoring communication at the workplace - Who may read work-related emails?

In business, the most valuable asset is the information. Therefore, one of the fundamental interests of an employer is to monitor the communications equipment provided to employees and the messages sent and received using such equipment. The employer should duly inform the employee about the terms of using such equipment and the employer's right to monitor its use before such equipment is provided to the employee. The employee should also be informed about whether he is entitled to use such equipment for private purposes.

### ***Monitoring work-related emails***

The monitoring of internal work-related emails usually does not raise serious concerns related to data protection, provided that employees have been informed appropriately in advance. This is because in such cases the employer's data handling and monitoring right is provided by the Labour Code and the employee's consent is not required.

### ***Monitoring private emails***

However, care must be taken when monitoring emails that employees send to or receive from third parties with whom the employer has no business relationship. This is due to the fact that, when monitoring such emails, the employee may obtain personal information which the employer is not authorised to handle. Such third parties are not aware of the fact that the content of the correspondence may be monitored by someone and, therefore, the employer is not authorised to monitor the content of such correspondence in the absence of the concerned third party's consent. This applies even if the employee is allowed to use his email account for work purposes only.

## Video surveillance

When using video surveillance systems, employers must consider the fact that video cameras may not be installed in areas where work is carried out continuously purely to observe the workplace behaviour of employees, which means that monitoring cannot be aimed at checking the actual "work rate" of employees.

Exemptions from this prohibition include areas used for work in which video surveillance serves security and preventive purposes in order to protect the physical safety of employees or the property stored there due to the dangerous nature of the activities performed there. In the case of dangerous workplaces, it is not only the right, but also the obligation of the employer to take the necessary measures in order to ensure physical safety. This means that it is reasonable to use video surveillance systems along a dangerous production line or in areas involving the use of hazardous materials, but in an office, the protection of physical safety or property does not provide enough reason for the continuous video surveillance of employees as they work.

## GPS tracking

The use of GPS tracking systems or systems that record GSM cell information for workplace monitoring purposes qualifies as extensive monitoring of employees and, therefore, such solutions may only be used in cases where this is required due to the nature of the employees' job position (e.g. couriers or drivers). Such monitoring may only serve purposes related to organising work and these tracking systems may relay information about the employee to the employer during working hours only. The employer may not monitor such personal information outside working hours as both the legal grounds and the appropriate data handling purpose are missing.

## Common mistakes and sanctions

A common mistake by employers is that they do not use the technological solutions that are the most appropriate for monitoring their employees or the approach they adopt is inappropriate. In many cases, employers fail to provide information on monitoring in advance or, if the employees' consent is required for monitoring, then they fail to obtain such consent.

Illegal monitoring by an employer can serve as a ground for employees for a notice to quit with immediate effect, but employees may lay additional claims as well. In doing so, the employees may file a complaint with the National Authority for Data Protection and Freedom of Information (the "Authority", Nemzeti Adatvédelmi és Információszabadság Hatóság (NAIH)) for the infringement of data handling rules regarding the workplace monitoring of employees. In the event that the Authority's inquiry confirms illegal practices in data handling, the employer may be forced to pay a fine ranging from HUF 100 thousand to HUF 10 million depending on the severity of the infringement. If such illegal workplace monitoring results in an infringement of the employees' personal rights or their rights related to data handling, then the employees may claim restitution from the employer in accordance with the rules of civil law. In addition, the employer must recompense the employees for the losses caused by such illegal data handling practices.

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