

Employee Monitoring In BPO/SSC Sector

The monitoring of BPO/SSC sector employees at the workplace raises a number of doubts due to the lack of comprehensive legal regulation in Poland.

On the one hand, the use of some forms of employee monitoring is inevitable; on the other hand, employers usually have fears – often justified – that such supervision may be unlawful. In fact, inappropriate supervision of employees may lead to the infringement of such personal rights of the employees as dignity, privacy, confidentiality of correspondence or image. An employer violating such rights must be prepared to assume e.g. liability for damages.

As a rule monitoring also leads to the collection of personal data of the employees – and sometimes also other people – which, in turn, necessitates adherence to personal data protection laws, including the application of proper systems securing the collected data and sometimes registration of the datasets.

Due to specific Polish requirements, direct application of the international policies developed on the corporate headquarters level is not normally sufficient. How to avoid legal risks, then? Monitoring should comply with several conditions. First of all, the employees must be fully informed of the forms and scope of monitoring – covert monitoring is forbidden as a rule. Monitoring should also be justified and the measures taken should be adequate to the intended purpose of supervision. Finally, monitoring may not take forms contrary to the law or so called principles of community life.

Employee monitoring may take various forms depending on the purpose it is to serve. Below, we describe some of them used in the BPO/SSC sector.

Monitoring Business E-mails

The purpose of this form of monitoring may be not only to control the performance of BPO/SSC employees but also to ensure the employer access to the employees' correspondence in the event of their absence from work/termination of employment/emergencies. The monitoring of e-mails is currently widely perceived as acceptable, but it may potentially cause a risk of violating the employees' right to privacy and confidentiality of



Magdalena Walenczak, attorney-at-law

correspondence. The use of transparent and unambiguous rules, communicated to the employees, mitigates such risks. First of all, the internal labour regulations should specify the principles of use of company e-mail boxes and stipulate the possibility of monitoring and intercepting messages sent from/to the e-mail box within the employer's domain.

An employer who has implemented relevant regulations in that respect is not, however, relieved of the obligation to respect the employee's personal rights. In particular, if the monitoring of business e-mails results in gaining access to the employee's private correspondence, the employer has no right to read its content; sometimes even the subject of an e-mail suggest that the message is private and should not be opened.

Monitoring Visited Websites and the Content of Hard Disks

This type of monitoring may serve to control the use of working time by centre employees and secure the employer against employees' attempts to store on hard disks content or software that might pose a threat to the employer's interests.

Similarly to the type of monitoring presented earlier, this kind of supervision may violate the employee's right to privacy. Therefore, such matters should be clearly regulated by the internal policies on the use of the employer's IT resources. The majority of centres issue Web privacy policies setting out detailed rules in that respect.

This type of supervision, in particular including visited websites, becomes more complicated if the employees are entitled to use the employer's computer equipment for private use. Then the risk of violating the employees' right to privacy is quite significant, unless it is



Marek Maciej Wiewiórski, attorney-at-law

agreed that such 'private' use will be limited only to some specified purposes e.g. learning.

Supervising and Recording Employees' Business Phone Calls

In call centres, the monitoring (and recording) of the employees' business phone calls is commonly used to check performance or for training and complaint investigation purposes. More and more often, however, calls are recorded also in other BPO/SSC organisations.

This type of monitoring may potentially violate the employees' right to privacy or dignity. Therefore, employees should be warned that their business calls may be listened to or recorded.

Employees' dignity could be violated e.g. by using the recordings of incorrectly held conver-

continued on **page 32**

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Employee Monitoring In BPO/SSC Sector

continued from **page 31**

sations for employee training purposes. During such training, the employer should avoid disclosing the identity of the employees who have made mistakes or otherwise improperly performed their work.

A particular risk, however, arises from the participation of the employee's interlocutor from outside the centre in the monitoring process. Personal rights of such an interlocutor must also be protected – it is unacceptable to record a phone call without the recorded person being aware of that fact. Therefore, people calling a call centre should hear a message notifying them that their conversation may be recorded. The use of such a message is, however, difficult, and sometimes impossible, in the case of outbound calls or calls of employees other than those working in the

call centre. In the latter case an issue of employer access to private calls may also arise.

Video Recording

The acceptability of installing cameras for permanent use at the workplace is debatable. In the case of BPO/SSC sector providing a legally justified purpose of permanent employee monitoring may be difficult; it is much easier for production plants where it can be justified by occupational health and safety, risk of theft of the employer's assets, the need to improve the production process, etc. In our view, however, in the case of BPO/SSC organisations occasional monitoring may be justified, e.g. if a crime is suspected or in other exceptional circumstances.

Video recording may violate the right to privacy or image protection. Therefore, above all, it should be open – the employees must know where the cameras are located. Only in exceptional circumstances, e.g. to find a perpetrator

of a crime, may the employer temporarily install a hidden camera. However, great caution must be exercised in such a case.

It should be remembered that video recording should absolutely not take place in rooms where the employee has the right to expect privacy, such as toilets, kitchens, canteen.

Managers of BPO/SSC organisations should not be afraid to monitor employees at the workplace as long as they follow the rules presented above, introduce relevant internal regulations and take measures required by personal data protection laws. Our experience shows, however, that employee monitoring often leads to ambiguous situations that require individual approach respecting the law and the interests of both parties – the employer and the employee. As these are usually divergent interests, conflicts may arise and it is best to prepare for them in advance – by drawing up relevant documents and developing policies adapted to specific Polish legal requirements. ■