



Basic tips where an employer is constrained to monitor employees at work

By Geoffrey E. Odongo



Monitoring employees consists of acts such as taking videos of your workers to detect crime, checking telephone logs to detect excessive private use or monitoring emails; or checking internet use.

Data laws apply where you monitor your workers by collecting or using information about them, with legislation requiring that an employer is open with the employee who should be aware of the nature, extent and reasons for any monitoring unless there is a justification to hide the monitoring. Where such monitoring has adverse effects on workers this must be justified by benefits to others or the employers that supersedes the adverse effect to the worker.

Moreover, secret monitoring of workers should not be engaged in save for instances where the employer is satisfied that there are grounds for suspecting criminal activity and that telling people about the monitoring would make it difficult to detect or prevent such wrongdoing. If used, such monitoring should be limited to a specific investigation and must be stopped once the investigation is completed.

Some tips that will assist the employer in monitoring their employees without falling foul of the law include:

- 1.** Exercise caution in monitoring personal or private communications such as emails. Avoid opening such emails instead only monitor message addresses or headings only.
- 2.** When checking email accounts or voicemails of employees in their absence, you must notify them that this will be done.
- 3.** When it is justifiable to use audio or video monitoring, target monitoring at areas of possible risk and where the employees would not expect much privacy.
- 4.** Where you use information that is held by third parties for monitoring, for example credit reference agency, make sure it is justifiable and that the agency is aware of what you intend to use the information for.
- 5.** Do not use secret monitoring in places such as in toilets or private offices unless you suspect serious crime and intend to involve the police.

At AIP Advocates, we have lawyers who will guide you on legal matters arising from employment law while ensuring your interests are protected.

Do reach out to us on the contacts below for assistance:

Nairobi Office: +254 722 367 647

Mombasa Office: +254 708 158 832

Kisumu Office: +254 776 401 133