



Employer's surveillance of an employee's workplace correspondence

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Generally, employers have the right to monitor work emails sent or received by their employees. In exercising this right they must bear in mind the need to respect the employees' right of privacy at the workplace. Hence, an employer who wishes to engage in surveillance of employees in the work place, should ensure the following:

1 Have a phone, email, and internet usage policy

A comprehensive and well drafted phone, email, and internet usage policy will set out the extent (if any) to which company equipment can be used for personal purposes. Employees should receive a copy of this policy as part of their induction training and it should be readily accessible at all times on the company's website, or employee handbook. The policy document should also be regularly reviewed and updated to take account of developments in technology.

2 Employees should be notified of surveillance

There should be transparency in relation to the monitoring of employee communications by notifying employees prior to the monitoring of their communications. The policy document setting out such communication should clearly set out the extent and purpose of such monitoring. Generally, surveillance should be carried out in the least

intrusive manner possible (e.g. monitoring traffic data rather than content of data).

3 Regularly conduct Privacy Impact Assessment

It remains the position that any right to monitor employees must be carefully balanced against the right to privacy. Hence, the employer should carry out a Privacy Impact Assessment to ensure any monitoring strikes a fair balance between the privacy rights of the employee and the legitimate business interests of the employer.

4 Surveillance should be restricted

Ideally surveillance should only undertaken in limited circumstances, such as to prevent and detect crime which takes into account likely damage to the employer's legitimate interests. During such surveillance employee emails marked personal/private should not be accessed by employers unless an employer has a legitimate reason for doing so.

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

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