

MONITORING AT WORK:

GUIDANCE FOR SMALL BUSINESSES.

This guidance has been produced to help small businesses comply with the Data Protection Act when monitoring their workers. It is based on Part 3 of the Information Commissioner's 'Employment Practices Data Protection Code'. The Code itself contains, in full, the Information Commissioner's recommendations as to how the legal requirements of the Act can be met. It can be used by those who need additional information. The full Code is available free of charge from our office.

What is the Data Protection Act?

- The Data Protection Act concerns information about living, identifiable people, such as workers.
- It regulates, through the data protection principles, how information about them can be collected, handled and used.
- It also gives them rights such as access to the information and compensation if things go wrong.
- It applies to computerised information and to some manual records, such as personnel files.

How does the Act affect monitoring?

- If you monitor your workers by collecting or using information about them, the Data Protection Act will apply. This might be the case, for example, when you video workers to detect crime, when you check telephone logs to detect excessive private use, when you monitor e-mails or check internet use.
- The Act doesn't generally prevent monitoring, but sets out principles which apply when it is carried out. In short, data protection means that any adverse impact of monitoring on workers must be justified by its benefit to the employer and / or others.
- The Act requires openness. Workers should be aware of the nature, extent and reasons for any monitoring unless, exceptionally, covert monitoring is justified.

If I want to monitor my workers, what do I have to do?

- Consider why you want to carry out the monitoring. This might involve identifying a problem you are trying to solve, for example theft in the workplace.
- Once you are clear about the purpose, satisfy yourself the particular monitoring arrangement is justified by real benefits that will be delivered.
- Remember that:
 1. it will usually be intrusive to monitor your workers
 2. workers have legitimate expectations that they can keep their personal lives private
 3. workers are entitled to a degree of privacy in the work environment.
- Consider whether alternatives or different methods of monitoring would deliver acceptable benefits with less adverse impact on workers. Can you target the monitoring at an area of risk, for example the part of your premises where you think theft is occurring?
- Ensure your workers are aware that they are being monitored and why. You could tell them this using a notice on a notice-board or signage in the areas where monitoring is taking place. If your workers have computers, you could send them an e-mail telling them about the monitoring. Workers' awareness will influence their expectations.
- If monitoring is to be used to enforce your rules and standards make sure workers know clearly what these are.
- Only use information obtained through monitoring for the purpose for which the monitoring was carried out, unless the monitoring leads to the discovery of an activity that no employer could reasonably be expected to ignore, for example breaches of health and safety rules that put other workers at risk.
- Keep the information you obtain through monitoring secure. This might mean only allowing one or two people to have access to it. You should also make sure you don't keep the information for longer than necessary or keep more information than you really need. This might involve deleting it once disciplinary action against a worker is over.

Are there other points to consider for particular types of monitoring?

- Be particularly careful when monitoring communications, such as e-mails, that are clearly personal. Avoid wherever possible opening e-mails, especially those that clearly show they are private or personal. Confine monitoring to the message's address or heading.
- If it is necessary to check the e-mail accounts or voice-mails of workers in their absence, make sure they are aware this will happen.
- Where video or audio monitoring is justified target the monitoring, where possible, at areas of particular risk, and confine the monitoring to areas where expectations of privacy are low.
- Ensure that any use of information held by third parties, such as credit reference or electoral roll information, for monitoring is justified. Take particular care with any information you hold about workers as a result of a non-employment relationship with them, perhaps because they are also your customers.
- If you are justified in obtaining information about a worker's criminal convictions for monitoring, only do so through a 'disclosure' obtained via the Criminal Records Bureau.
- Ensure that if workers are monitored through the use of information held by a credit reference agency, the agency is aware of the use to which the information is to be put. Do not use a facility provided to conduct credit checks on customers to monitor or vet workers.

Can I ever undertake secret monitoring?

- It is rare for the covert monitoring of workers to be justified. Do not carry it out unless it has been authorised at the highest level in your business. You should be satisfied that there are grounds for suspecting criminal or activity or equivalent malpractice, and that notifying individuals about the monitoring would prejudice its prevention or detection.
- Deploy covert monitoring only as part of a specific investigation and cease once the investigation has been completed. Do not use covert monitoring in places such as toilets or private offices unless there is suspicion of serious crime and there is an intention to involve the police.

What rights do my workers have?

- Remember that workers have a legal right of access to information you hold on them, including information you obtain through monitoring. Normally you must give access when a worker requests it, but you can withhold information where providing it to the worker would prejudice the detection of crime.
- Allow workers to make representations about the information you gather through monitoring where it might have an adverse impact on them. It may be that equipment or systems malfunction means that the information obtained through monitoring is inaccurate or misleading. Information obtained from third parties may simply be wrong.

For further information about monitoring in the workplace please visit the Information Commissioner's website at:

www.informationcommissioner.gov.uk

where the full code is available.

Contact us on **01625 545745** or write to us at:

Information Commissioner's Office

Wycliffe House

Water Lane

Wilmslow

Cheshire

SK9 5AF