

New ICO Guidance on Monitoring

The ICO has published draft guidance on monitoring employees and workers at work. It aims to provide greater protection of data protection rights and once approved, shall replace the current guidance set out in the ICO's Employment Practices Code 2011.

What are the current rules on monitoring?

Monitoring is permitted in order to observe the quality or quantity of employees' job performance, and for reasons relating to safety and security. It appears that monitoring has increased since the COVID-19 pandemic as employers want to ensure that employees' timekeeping and productivity remains satisfactory at home.

In its guidance, the ICO emphasises the importance of employers complying with data protection legislation under UK GDPR.

What does the new guidance say?

The new draft guidance highlights the importance of employers being transparent with their employees about monitoring that they carry out. It notes that employers will likely be found in breach of UK GDPR if they are not.

Employers may choose to set out their methods of monitoring relating to working from home in their hybrid working policy and state the type of monitoring that they will do, for example, recording the times that employees login and logout each working day.

The guidance further presents that employers must also consider:

1. The extent to which monitoring is needed; and
2. Whether the monitoring is both necessary and proportionate.

Protecting employees' private lives

With the increase of employees working from home, the guidance also touches on the need for employers to consider monitoring more carefully. This is because monitoring taking place while an employee is homeworking could infringe on their private lives.

This should especially be considered where work calls or meetings are recorded. Employers may avoid the argument from an employee that their private life is being intruded on by making it clear when a call or meeting is being recorded.

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Conclusion

At this stage it appears that the ICO will build upon their current 2011 guidance regarding the rules that employers should follow when carrying out monitoring. However, there may be a greater focus on lawfully monitoring employees at home and how this can be achieved.

In Peace of Mind, we continue to stay up-to-date with changes in the law and shall update our clients of any developments.