

What Is the Extent of Employer's Right To Control?

A frequently arising question is how far the employer's right to control extends, how he can control his employees lawfully and what conduct reaches behind the lawful boundaries. It is part of public domain that the employers are vested with the right to control their employees by the Labour Code, while the boundaries thereof are not provided for in detail, the expert of Kovács Réti Szegheő Attorneys at Law pointed out. Dr. Arvid Hauck highlighted, the question is whether it is possible to observe employees with cameras, it is possible to control the whereabouts of company cars by location detectors and whether the level of activities of employees on social networking sites may be controlled.

According to the relevant legal rules and the formulated practice, an employer is not entitled to install cameras for the purpose of controlling employees in places of permanent work. In such places however, where the employee's life or physical integrity is directly in danger, the employer may install cameras.

The expert of Kovács Réti Szegheő Attorneys at Law highlighted, a further extremely important rule is no camera may be installed in facilities designated for employees to spend their interim breaks in.

May Be Installed For Property Protection Purposes

Obviously therefore, as a general rule, cameras are not installable for the purpose of observing the execution of work however, there is a possibility to install cameras for the purpose of property protection but solely at places justified by work safety considerations.

Furthermore, it can be stated in general that for whatever reason cameras should be installed, the concerned persons must be informed in a clearly visible way.

Question of GPS

An interesting question is brought up by the satellite monitoring of personal vehicles made available for the employee. Data forwarded by GPS devices installed in vehicles, in absence of statutory authorisation may be managed solely with the consent of the affected person having regard to the fact that data forwarded by such devices are considered personal data, underlined dr. Arvid Hauck.

This means, the employer, if the employee's consent is granted, may handle the location of the vehicle but during the exertion of control, it should be examined whether it brings about such a limitation of rights that is in accordance with the requirements of necessity and proportionality and whether such control complies with the requirement to be purpose-bound. This means, it is not permitted to monitor all employees having varying places of work through GPS or other device, only such employees whose controlling is necessary due to their positions and such restrictions cannot be realised in any other way causing the limitation of rights to be of lesser degree.



According to the earlier standpoint of the data protection commissioner, the voluntary and informed consent of the concerned employee is required in every single case of monitoring by GPS of the personal vehicle granted for his use. The GPS satellite monitoring system may solely forward data lawfully during the working time, while out of working time, the employer may not manage such type of personal data.

E-mailing

The question is frequently brought up as to whether the employer has the right to control the employee's e-mailing. Having regard to the fact that any e-mail and information related to Internet use are deemed personal data and these may not be viewed or monitored without the consent of the concerned employee, emphasised the expert of Kovács Réti Szegheő Attorneys at Law.

However, employers are acting rightfully when they explicitly exclude or limit the use of workplace e-mailing system and Internet for private purposes and call the attention of the employees to the possibility of controlling as in such cases the employer may view the related data.

In such cases however, when the e-mail address may not be linked to the employee but serves the purpose of the general administration of affairs of the company (e.g.: info@, name of company@ types of IP addresses) the employer may access the contents of the mailbox without any limitation whatsoever.

Social Networking Sites

Recently the social networking sites have began to gain ground increasingly and the employers also favour to use these in order to gather information about a candidate or employees, collect data or in certain cases even carry out profiling. Photos and information uploaded on social networking sites are generally deemed personal data just like the assumptions that can be made along such data in connection with the concerned person. Personal data shall solely be managed for a definite purpose, in order to exercise rights or fulfil obligations.

In accordance with the Labour Code, the employer may solely control the employee in respect of its conduct related to his employment, highlighted dr. Arvid Hauck. Controlling of the employee and the tools, methods applied in the course thereof may not entail the infringement of human dignity. The private life of the employee may not be controlled. The act also declares that the employee may not display such conduct even out of his working time which can hazard the employer's economic interests and it may not harm the employer's good reputation either.

The Labour Code does not grant express authorisation to the employer to observe the employees activities carried out on social networking sites and the employer's statutory right to control may not be deemed such statutory authorisation whereby the employee should be able to control the employer without his consent thereto by any means. Having regard to all these, according to the expert of Kovács Réti Szegheő Attorneys at Law, declaring the employer's right to control in itself shall not provide grounds for the monitoring of the activities of employees pursued on social networking sites or collecting data.



Moreover, earlier even the Constitution Court, in its resolution, found it to be in breach of the Constitution to collect and process personal data without definite purpose, for any favoured future use, said dr. Arvid Hauck.

Finally it is worthy of highlighting that the detailed data protection rules do not restrain the employer to terminate an employee's employment with immediate effect in case he should become aware that the employee has committed grave infringements of rights on the social sites (for instance, disclosed his business secret to the public or gravely violated his reputation etc.)