

GUIDELINES FOR MONITORING EMPLOYEES AFTER GDPR

As part of GDPR implementation, new provisions have been added to the Polish Labor Code ("Act") which regulate the monitoring of employees.

VIDEO MONITORING PERMITTED PURPOSES AND CONDITIONS

Video monitoring is permissible only when it is necessary to ensure the safety of employees, protect property, supervise production and to keep information confidential, the disclosure of which may expose an employer to an injury. Video monitoring may be used on the premises of the work establishment and in the area around the workplace. Video monitoring is not allowed in lavatories, changing rooms, restroom facilities, breakrooms or common spaces, nor in premises made available to trade union organizations, unless it is necessary to achieve permitted purposes and techniques are used that prevent people from being identified.

Under no circumstances may video monitoring be used either for the purpose of tracking work-time or to assess employee performance. As a result, many employers who in the past monitored their employees for the purpose of recording work hours will be obliged to cease such practices.

Recorded images may be stored by an employer for a period not exceeding 3 months, unless they are being used for evidentiary purposes in a legal proceeding, in which case they can be stored until the completion of the proceeding.

EMAIL CORRESPONDENCE MONITORING AND OTHER TYPES OF SURVEILLANCE

Email correspondence monitoring, as well as of other types of non-video surveillance, are permissible for the purpose of tracking work-time (in contrast to video monitoring) and ensuring proper usage of working tools provided to employees. Such surveillance cannot infringe upon the privacy of correspondence (personal emails cannot be read or shared) or any other personal rights of employees.

Although the storage period is not stipulated by the Act, such records should be kept no longer than is necessary for the purposes for which they are collected.

REQUIREMENTS REGARDING WORK REGULATIONS AND COLLECTIVE AGREEMENTS

Irrespective of the form of monitoring, its objectives, scope and method must be laid out in a collective agreement or in work regulations and provided to an employee in writing before the commencement of work.

In addition, an employer must notify employees of the intention to monitor them no later than 2 weeks before doing so. An employer is also obliged to delineate premises and areas monitored in a visible and legible manner by means of appropriate signage or other form of notice at least a day in advance.

IS AN EMPLOYEE'S CONSENT REQUIRED?

Monitoring is allowed on the basis of the Act, so an employer does not have to obtain an employee's consent to introduce it in the workplace. If an employee does not agree to monitoring, the employee can be dismissed as long as the monitoring is compliant with the Act.

PREVIOUSLY INSTALLED MONITORING

If an employer has previously (before 25 May 2018) installed video or any other monitoring in a workplace, the employer is now obliged to become compliant with the Act. The failure to do so will result in, among other things, the inability to use recordings in employee proceedings or as a basis for decisions related to an employee's performance.

About WOLF THEISS

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