

The Laws and Penalties for Improper Monitoring

Monitoring of staff is governed by the Data Protection Act 1998, the Regulation of Investigatory Powers Act 2000, the Lawful Business Practice Regulations 2000 and the Human Rights Act 1998. The Copyright, Designs and Patents Act 1988 provides protection from unauthorised use or downloading of publications including electronic publications. The Computer Misuse Act 1990 protects against hacking into computer systems.

make sure that any monitoring is justified and appropriate to a particular problem

manage data protection by complying with the principles of the Data Protection Act 1998

alert the individuals concerned to the processing of data on employees

consider intrusion, expectations of staff privacy at work, suitable notification and the purpose of monitoring

set out rules for business and private use of electronic communications and vehicles owned by your business, the purpose and extent of monitoring, and the consequences of a policy breach

control the scope of audio and video monitoring

strictly target and limit covert monitoring to cases where there is serious risk to the business

You Must Not

use information for any purpose other than that for which it was collected have unnecessary recording of calls and emails

access the content of clearly marked personal emails except in exceptional circumstances

have continuous video or audio monitoring, other than usual CCTV security measures

film or make sound recordings in private places, eg toilets/staff rooms

search an employee, unless their contract of employment provides for this and they consent to it

Penalties for improper monitoring

You could face claims for constructive dismissal if you have breached the implied terms of trust and confidence in your employees' contracts through improper monitoring.

You may have to pay damages to any individual who suffers damage, or damage and distress, because of a breach of data protection law, or to the sender or recipient of a communication you intercepted through monitoring.

You could face claims of unfair dismissal and/or a criminal prosecution if you fail to get consent to search an employee, even if you have a contractual right to search.

Individuals can also ask the Information Commissioner to make an assessment of processing by the employer.

Your staff may be liable for damage caused by downloading inappropriate material from the Internet.

You might be held liable for the actions of your staff if they occurred at work