Aspects of data protection in employment relationships

Introductory remarks: The protection of personal data has become increasingly important in pace with the development of information technology. Several international documents have been adopted to regulate this area. The use of cameras at working places is often associated with the idea of big brother. Cameras allow to record and provide information, which may be very accurate. The purpose of this Questionnaire is to provide an overview on how camera surveillance (video recording) is treated in the legal systems of the participant countries.

1. Are there explicit legal provisions concerning camera surveillance especially at working places? Are there collective agreements defining the circumstances and conditions for the introduction and use of camera surveillance?

In Israel the right to privacy is a constitutional right which is enshrined in the Basic Law: Human Dignity and Liberty(1992). As stated in Sec. 7: "All persons have the right to privacy and to intimacy" and "There shall be no entry into the private premises of a person who has not consented thereto".

In Israel there are no explicit legal provisions concerning camera surveillance at workplaces in particular. The right to privacy on the one hand and ways of violations on the other hand are enshrined in the Privacy Protection Act (1981). As states in sec.1 where one shall not violate another person's privacy without his consent. Infringement of privacy includes among other things, taking photos of a person while in private premises. In the various Judicial interpretations, it was stated that a working place is a private premises even though it is the employer's property.

The abovementioned law sets a number of cases in which the protection is given to the person violating other person's privacy. For instance, when the violation was done in circumstances where the offending was obliged due to legal, moral, social or professional reasons [Article 18 (2) (b)]. And when it was done to protect the personal eligible interest of the offending. [Article 18 (2) (c)].

These sections were used to justify a proportional violation of the employee's privacy by camera surveillance at a workplace.

Another law that might be relevant when camera surveillance recorded the conversations is Wiretapping Act (1979) that prohibits "wiretapping" without the consent of at least one of the participants.

Furthermore, camera surveillance was not regulated in collective agreements despite a recent collective agreement which set rules for using computers at a workplace.

2. Is it obligatory for the employer to define the purpose of the use of camera surveillance? Is this bound to certain purposes (for instance security and safety, the protection of the property of the enterprise, the control of production process, the control of the performance of the worker...). Is it allowed to use camera surveillance for the surveillance of a certain employee...
or certain employees at the workplace? Is camera surveillance allowed in toilets, dressing rooms or staff rooms?

According to the abovementioned Constitutional state as described in answer 1, it is obligatory for the employer to define the target and the purpose of using camera surveillance in order to ensure that infringement of privacy is proportional. In this context, if it is an apparent surveillance within the employee consents, the question will be whether the consent was given free will. (e.g. in a certain case it was stated that a renunciation of privacy by the employee may be considered contrary to public policy and may be Canceled). As for covert surveillance, a defined and legitimate purpose will be required to justify the violation of privacy. The more there is a justification for camera surveillance to protect a personal eligible and defined interest, or legal, moral, social or professional obligation, a protection from civil and criminal penalties for violation of privacy of the employee will be given.

The employer's interests can be diverse and include the interests of monitoring the implementation of tasks by employees, prevention of leakage of commercial secrets and prevention creating a hostile environment. These are interests that may justify violation of the employee's privacy as a proportional violation and of proper purpose to protect a personal eligible interest of the employer.

To sum up this point we can say that according to Israeli Judicial decisions the more the privacy violation is wider, the more privacy considered to be a great value. On the other hand, the more violation is vital and necessary for the protection of fundamental interest or for revealing truth in legal proceedings, a privacy violation will be allowed.

3. To whom are the sequences available.

Likely the sequences and records are available to the employer, but in lack of explicit and specific settlement, question will always arise of what purposes and uses can the employer do with them (such as visual evidence in a case against the employee). Further more, concerning the issue of sequences availability and the time they should be stored, it would be treated in terms of proportionality and balance and if it in an extent no greater than is required.

4. How long are they stored.

See answer 3

5. Is there an obligation to inform employees if camera surveillance is installed? Do the use of camera surveillance require the consent of the employees?

See answers 1 +2

6. Is there an obligation to inform the works council or trade unions about the introduction and the use of camera surveillance? Is there an obligation to have an agreement with the works council or trade unions defining the circumstances and conditions for the introduction and use of camera surveillance.

NO

7. Has the employer (controller, who uses electronic technology to process personal data) the duty to notify the processing to the Data Protection Authority or another authority? Do employers need a permit from the Authority before he can set up the camera? What are the conditions for the Permission for camera surveillance? Has the Data Protection Authority the authority to
impose changes in order to make the processing or the surveillance satisfy the requirements of the law?

NO

8. What are the consequences of a failure to comply with the rules on camera surveillance (for instance punishment; liability to pay damages; works council or trade unions or worker can demand the control measures to be stopped and the prior situation to be restored...)?

According to Privacy Protection Act violation of privacy is a criminal offense on which the given penalty for that is five years and considered to be a cause for a civil case. Court is entitled to adjudge a convicted person or the defendant in a civil proceeding to pay an amount of 50,000 NIS as a compensation without any proof of damage.

In a particular case an employer was obliged to pay to his employee severance pay after she had quit due to installing camera surveillance without unknowingly and without her consent.

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