



Monitoring and Personal Data Privacy at Work: Points to Note for Employers of Domestic Helpers

Introduction

The Privacy Commissioner has published the “**Privacy Guidelines: Monitoring and Personal Data Privacy at Work**” for the guidance of employers regarding the application of the provisions of the Personal Data (Privacy) Ordinance (“the Ordinance”) in relation to employee monitoring.

This leaflet seeks to highlight certain essential aspects relevant to employers of domestic helpers. It is issued to promote the protection of data privacy of employees in domestic households in situations where monitoring is undertaken during the course of employment. It sets out certain important points that employers should note with regard to video monitoring of activities of domestic helpers working at home.

Whether Monitoring is *really* necessary

Employee monitoring undertaken without reasonable cause raises privacy concerns and, if not handled carefully, may damage relationship between employers and employees.

The indiscriminate use of video cameras at home to monitor domestic helpers’ activities is by its nature an intrusion upon privacy. Employers must seriously consider whether it is indeed necessary to undertake such monitoring, taking into account the risks to be addressed and the privacy rights of domestic helpers, before deciding to embark upon such an exercise. They should ask themselves pertinent and realistic questions in assessing whether there is in fact such a need for monitoring to be conducted and whether an alternative means is available.

For employers who have, after considering all factors, nevertheless resolved to undertake video monitoring at home, they should consider the

“reasonableness” of the manner in which the monitoring is carried out, the “openness” by which the employee is informed about it and the proper handling of the resultant video records.

For a more detailed discussion on the subject, please refer to the **Privacy Guidelines**.

Reasonableness of the Monitoring Practice

Reasonableness is the criterion for determining the fairness of the way in which personal data are collected in the process of workplace monitoring.

Where circumstances in a domestic environment warrant the use of video monitoring to record the behaviour and activities of domestic helpers at work, employers should conduct the monitoring in an **overt** manner unless there are special circumstances which justify the use of covert means, e.g. the use of hidden ‘pinhole’ cameras. Covert monitoring is highly intrusive of an employee’s privacy and should only be adopted as an exception rather than a norm. In this regard, ensuring the safety and health of young children or elderly persons could amount to such special circumstances. Where special circumstances exist, an employer may, as a last resort, consider monitoring using covert means. For example, the existence of the following situations in a suspected case of abuse may justify consideration to conduct covert monitoring:

- there is reasonable suspicion that a child or elderly person has suffered or is likely to suffer from abuse or neglect, e.g. there are signs of unexplained physical injuries found on the body of the child or elderly person, or where abnormal behaviours are observed in the domestic helper;

- it is highly likely that the suspected abuse occurs at home; and
- there are no realistic alternatives to obtaining evidence of the abusive acts of commission or omission other than by way of covert monitoring.

However, the camera should only target locations where the abusive acts would most likely take place, and operate only at times when the abuse is likely to occur, e.g. when no other adults are at home. In principle, no cameras, whether hidden or not, should capture images showing activities inside a toilet/bathroom or the private area where the domestic helper rests after work.

Once the grounds justifying covert monitoring of a domestic helper cease to exist, e.g. after having confirmed that any injuries were purely accidental or that there is nothing that implicates the domestic helper, the covert monitoring should cease immediately.

The Privacy Commissioner strongly discourages the practice of covert monitoring in view of its highly intrusive nature. In the event of a complaint made to the Privacy Commissioner, employers would be called upon to explain and prove that the initial evidence or suspicion justifies the use of covert monitoring in the circumstances of the case.

Openness of the Monitoring Practice

Openness refers to the principle of transparency applied to workplace monitoring in that employers are required to be open and unequivocal in their statements about, and communication of, monitoring practices to employees. This is essential in promoting mutual trust and understanding between employers and their domestic helpers in order to create a healthy working environment and relationship, which is particularly important in the domestic situation.

Where employers are intent upon undertaking video monitoring, it is important that domestic helpers are informed of the presence of any video monitoring system in the premises where

they work. This is essential in securing the trust and understanding of the employee and should not be omitted except in very exceptional situations such as monitoring for the purpose of collecting evidence of abuse based on reasonable suspicion. The notification may be given either orally or in writing. However, in order to avoid any future disputes, it is recommended that a written notice be given to the domestic helper before implementing monitoring measures. For example, the notice may include a statement such as: “Please note that for the purposes of *[stating the reason, e.g. household safety or security]*, video cameras have been installed in this home. Video records are normally retained for 7 days.” Such notification should not be perceived as alerting the employee but rather as demonstrating the employer’s open and fair attitude towards monitoring activity.

Employers are reminded that the notification does not confer upon them a legal right to adopt employee monitoring nor does it release them from their obligations under the Ordinance in relation to the collection, holding, processing or use of personal data. Notification serves the purpose of communicating to the domestic helper the rationale behind the employer’s decision to implement video monitoring at home. It is the view of the Privacy Commissioner that pursuant to the Ordinance employers should notify their domestic helpers of any monitoring practices either before or during employment.

Use and Retention of Video Records

Employers must ensure that the personal data of domestic helpers collected by means of video monitoring are only used for purposes stated in the notification given to them or a directly related purpose, unless otherwise permitted by law.

It is recommended that in normal circumstances, video records that contain the personal data of domestic helpers be retained for a period of not more than 7 days. However, a longer retention period may be considered if the recorded information is required for evidentiary purposes, e.g. to assist a police investigation of possible unlawful activities.