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Employee monitoring: what's acceptable?

Hayfa Mohdzaini and Jonny Gifford highlight what employers should consider before implementing monitoring software

It's impossible to know whether COVID-19 would have led to such a serious pandemic 10 or 20 years ago, but in some respects, we are now undoubtedly better placed to respond. Faced with an equivalent COVID-99, there is no way office workers would have made the slick adjustment to en masse homeworking that we achieved this year. Advances in remote working technology, including cloud-based IT as well as video conferencing, have clearly been huge facilitators.

But a more contentious advance in remote technology is monitoring software. Reports suggest it has become increasingly common during the coronavirus lockdown, renewing debates on acceptable levels of monitoring or surveillance at work. Questions arise from various angles, including what is legal, what's ethical and what's effective people management practice.

New capability for an age-old practice

At a fundamental level, employee monitoring is a question of control, which has long been recognised as one of the 'primary functions of management'. Monitoring can be used both to control employees' outputs (monitoring the achievement of set goals) and employee behaviour (for example, checking that ethical standards are followed).

The practice is as old as the hills – it can originally be traced back to the ancient Chinese. In modern management history, Frederick Taylor's hugely influential notion of scientific management was predicated on workers' need for clear direction and monitoring.

Even monitoring software is not new. Levels of use may have accelerated during COVID-19, but it seems they were already increasing. In February reports emerged of Barclays using what was labelled 'Big-Brother-style spyware' and the CIPD's 2019 survey found that more than 8 out of 10 UK workers believe that workplace monitoring and surveillance will become more common in the future. But the software capability to monitor employees

has increased, and if we do now see long-term growth in remote working, it is an issue that demands attention.

Is monitoring an effective way to manage?

Monitoring may have a long precedent, but that doesn't necessarily make it an effective way to manage people. Indeed, a deliberate loosening of control has been a major area of management theory since early writings on the sociology of work in the 1940s. Arguments in favour of this approach suggest that enriched and empowering jobs fulfil a deep human need for autonomy, supporting employee motivation and commitment, and at a practical level giving workers more scope to innovate and make improvements.

Many have argued that changes in our economy – in particular the move from manual and routine work to knowledge-based work – have led these attitudes and contributions to become increasingly important to organisational performance. What's more, there is evidence that in the context of virtual or remote teams, behaviour control is even more likely to undermine trust than it is in face-to-face teams. As we discuss in our evidence review, this is central to the healthy functioning of virtual teams and a point well worth considering in our current environment.

But management control is not all-or-nothing. There are, of course, many shades between time-and-motion style attempts to control as much as possible and approaches like autonomous working groups and self-set goals.

When contemplating how and what to monitor and control, consider what's a good gauge of performance. Just because software gives you the capability to measure something, it doesn't mean you should. For example, it's hard to imagine many jobs for which a manager can see how well a worker is performing from monitoring the number of keystrokes (unless you are a typist, perhaps). It is often easier to measure inputs accurately, but they can be spurious and misleading. It's far more useful to focus on outputs or deliverables.

Respect for private and family life

Moreover, employers can get into trouble if monitoring breaches an individual's right to respect for their private and family life. In the EU, this right is covered by Article 8 of the European Convention on Human Rights and is explicitly incorporated under the Human Rights Act in the UK (human rights still exist after Brexit!). Under Irish law an individual can only engage human rights protections that have been incorporated in national law but can escalate their complaint to regional or international bodies.

The Bărbulescu v Romania case is an interesting example where the European Court of

Human Rights (ECtHR) held that employer monitoring had breached an employee's right for private and family life. The employer's IT policy prohibited personal use of IT equipment. Employees were reminded of this policy and were told that their work would be monitored. The employer dismissed Bărbulescu for breaching the IT policy and provided a long transcript that included personal communications with his brother and his fiancée.

This case highlights that employers should consider how much monitoring is necessary and decide the least intrusive method, for example, by monitoring the flow of communications instead of the actual content.

Cultural differences in what constitutes acceptable monitoring behaviour

Acceptable behaviour in a culture is shaped through social expectations or more formally through law. It can vary between different employee demographics and jurisdictions. Bărbulescu's case would not have escalated to the ECtHR if it had happened in Germany or Portugal because employers there must stop reading messages once they realise they're private (see points 52 to 54 of [the ECtHR's case judgment](#)).

How to introduce employee monitoring software

If you do introduce employee monitoring software:

1. Explain clearly what you're monitoring and why.
2. Consult with employees to ensure the measures are relevant and necessary. Measures can be about ensuring compliance as well as helping employees become better at their jobs.
3. Be mindful of cultural differences and monitor your system to make sure it does not discriminate against minority groups.

Thinking beyond monitoring, your organisation might want to reconsider whether it can still achieve its pre-pandemic targets, given the current economic climate.

If done correctly, monitoring can mitigate organisational risk and augment your line managers' ability to support employees. However, it is not a replacement for good leadership.

Further resources

[Coronavirus and the workforce: 'workplace' monitoring and surveillance](#)

Developing effective virtual teams

Case law on monitoring and surveillance: Bărbulescu v Romania, Copland v United Kingdom and Halford v United Kingdom

Workplace technology: the employee experience
