CCTV – how can employers use CCTV to monitor employees?

The Data Protection Commissioner recently published his annual report. As identified by the Data Protection Commissioner, there is an increasing trend for employers to seek to record employees and use the recordings at a later stage. Employers often assume such recordings can always be used, but employers should be aware that this is not always the case.

BACKGROUND

The Data Protection Commissioner has reported receiving a number of queries in relation to the installation of CCTV cameras in crèches. These queries followed the broadcast of an RTÉ Primetime episode, ‘A Breach of Trust’, which sparked concerns in relation to the standard of care provided at a number of childcare facilities. For employers, using CCTV cameras to monitor the performance of employees may be tempting, but is it lawful?

DISCIPLINARY PROCEDURES BASED ON CCTV FOOTAGE

The use of CCTV cameras is becoming increasingly widespread. An employer may believe he/she is entitled to immediately dismiss an employee who is caught red-handed on CCTV footage. In recent years, a series of cases have shown that it may be the employer who is left red-faced when the former employee brings a claim for unfair dismissal further down the line. For this reason, it is important for employers to understand the law in relation to CCTV surveillance of employees.

An employer who wishes to use CCTV footage in disciplinary proceedings should take care to act reasonably, comply with data protection legislation and follow fair procedures.

Firstly, an employer must be able to show that the use of CCTV cameras was proportionate. Generally speaking, it will be easier to justify the use of CCTV cameras for security purposes i.e. prevention of theft and tougher to justify the use of CCTV cameras for the purposes of monitoring employees. The Data Protection Commissioner has stressed that CCTV cameras should not replace on the ground supervision of staff.

Secondly, the employer must inform employees of the CCTV cameras and their specific purposes. A clear written policy is advisable. CCTV footage should not be used for any purposes other than those indicated to employees. Covert surveillance is generally unlawful and cannot be relied on in disciplinary proceedings. This was clearly demonstrated by a 2010 case against Dunnes Stores in which Patricia Heffernan, a former employee, was successful in her claim for unfair dismissal. Dunnes Stores had used covert surveillance to record her applying points to her own Value Club card from purchases made by customers. The EAT held that the use of the CCTV footage could not be used in the disciplinary context as the employees was unaware of the recording.

Furthermore, any person whose image is recorded has a right to request a copy of CCTV footage in which they feature. Images of other persons in the CCTV footage must be edited out, unless they give their consent to release the copy. CCTV footage must be stored in a
secure location and measures should be taken to protect against unauthorised access. The Data Protection Commissioner issued a decision in 2013 that Spar had violated data protection legislation after CCTV footage of an employee falling was accessed, copied and circulated by another employee.

Finally, an employer must always follow fair procedures in disciplinary proceedings. This is important as employees have a constitutional right to fair procedures. In cases involving CCTV footage, the employer should avoid drawing conclusions from the CCTV footage alone. The employee must always be given the opportunity to review the CCTV footage and comment on it prior to dismissal. As always, an employer must also make sure to follow its own handbook on investigation and disciplinary procedures.

3 ESSENTIAL TIPS

In conclusion, the 3 essential tips for employers who may wish to use CCTV cameras are:

1. Ensure location and purposes of CCTV cameras are reasonable;
2. Inform staff of purposes and keep prominent notices displayed; and
3. Avoid rash dismissals by always following fair procedures.

For further information, please contact your usual Eversheds contact or:

Julie Galbraith
Associate
Employment Law Unit
Telephone: +353 1 6644398
Email: JulieGalbraith@eversheds.ie

This briefing is correct as at 22 May 2014

Disclaimer

This information is for guidance purposes only. It does not constitute legal or professional advice. Professional or legal advice should be obtained before taking or refraining from any action as a result of the contents of this publication. No liability is accepted by Eversheds for any action taken in reliance on the information contained herein. Any and all information is subject to change. Eversheds is not responsible for the contents of any other website or third party material which can be accessed through this website.

Eversheds is an Irish partnership and a member firm of the Eversheds International network of firms affiliated with Eversheds International Limited, an English company limited by guarantee. Member firms of Eversheds International are independent firms and members of Eversheds International Limited, but have no authority to obligate or bind Eversheds International Limited or one another vis-à-vis third parties. Neither Eversheds International Limited nor any of its member firms have any liability for each other’s acts or omissions.