



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

The Privacy Commissioner for Personal Data (“the 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 particularly relevant to employers of domestic helpers, with a view to promoting the protection of data privacy of the helpers in domestic households where monitoring is undertaken during the course of employment. It sets out certain important points that an employer should note with regard to video monitoring of activities of his domestic helper working at home.

Whether Monitoring is Really Necessary

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

The indiscriminate use of video cameras at home to monitor a domestic helper’s activities is by its nature an intrusion upon privacy. An employer 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 the domestic helper, before embarking upon such an exercise. He should ask himself pertinent and realistic questions in assessing the need for the monitoring and whether an alternative means is available.

For an employer who has, after considering all factors, nevertheless resolved to undertake video monitoring at home, he should consider the “reasonableness” of the manner in which the monitoring is carried out, the “openness” by which his domestic helper 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 above-mentioned **Privacy Guidelines**¹.

Reasonableness of the Monitoring Practice

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

¹ Please refer to the guidelines at www.pcpd.org.hk/english/data_privacy_law/code_of_practices/files/monguide_e.pdf

Where circumstances warrant the use of video monitoring to record the behaviour and activities of domestic helpers in a domestic environment, an employer 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 a domestic helper’s privacy and should only be used 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. The existence of the following situations in a suspected case of abuse may justify 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 a 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 Commissioner strongly discourages the practice of covert monitoring in view of its highly intrusive nature. In the event of a complaint made to the 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 which shall be applied to workplace monitoring. An employer is required to be open and unequivocal in his communication of the monitoring practices with his domestic helper. This is essential in promoting mutual trust and understanding between the employer and his domestic helper and creating a healthy working environment and relationship, which are particularly important in a domestic situation.

Where an employer intends to undertake video monitoring, it is important that his domestic helper is informed of the presence of any video monitoring system in the premises where she works. This is essential in securing the trust and understanding of the domestic helper and should not be omitted except in very exceptional situations, e.g. the monitoring is 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, a written notice is recommended to be given to the domestic helper before implementing the monitoring measures. 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

seven days.” Such notification should not be perceived as alerting the domestic helper but demonstrating the employer’s open and fair attitude towards monitoring activity.

An employer is reminded that the notification does not confer upon him a legal right to use employee monitoring nor does it release him from his obligations under the Ordinance in relation to the collection, holding, processing or use of personal data. Notification serves the purpose of communicating to a domestic helper the rationale behind her employer’s decision to implement video monitoring at home. It is the view of the Commissioner that pursuant to the Ordinance, an employer should notify his domestic helper of any monitoring practices prior to her being monitored for the first time.

Use and Retention of Video Records

An employer must ensure that the personal data of his domestic helper collected by means of video monitoring is only used for purposes stated in the notification given to her 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 a domestic helper be retained for a period of not more than seven days. However, a longer retention period may be considered if the recorded information is required as evidence, e.g. to assist a police investigation of possible unlawful activities.



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First published in December 2004

October 2015 (First Revision)