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MONITORING EMPLOYEES – INVASION OF PRIVACY

With the labour market in Ireland now becoming increasingly mobile employers are now faced with new challenges concerning employee productivity. Some employers are now moving to tracking systems such as GPS technology which allows them monitor their employee's malfeasance including unauthorised absences, poor use of time and inefficient travel routes. As the use of such systems grows we must ask whether the use of such systems could constitute an invasion of employee privacy and whether the use of such systems could pose a risk for employers.

Employers must exercise extreme caution when considering the use of tracking systems on their vehicles. Whilst many employees have company vehicles for the purposes of carrying out their employment duties, more often than not employees will also have the use of such vehicles outside work hours. The use of vehicle monitoring systems could result in employers discovering information about their employees outside their hours of employment which may be private to that employee thus leaving themselves open to a claim for invasion of privacy. As a result employers should be in a position to show that the monitoring is related to a job function or the employee's fitness to perform the work.

Before installing tracking systems in company vehicles, employers should notify their employees of their intentions and ideally seek their employees' consent before installation of the GPS technology takes place. A failure on the part of an employer to notify its employees of its intentions could result in a claim by an employee for invasion of privacy. There may be times when an employee has a reasonable expectation that his or her whereabouts and activities are private from others including his/her employer. Employers must be careful to ensure that they have not invaded this privacy through the tracking system. Consent is generally an absolute defence to a claim of invasion of privacy.

If an employer proposes to use information gathered from a vehicle tracking device as a basis for disciplinary action against its employees this fact should be clearly communicated to employees in advance. Employers must also be certain that any data obtained via a tracking device is accurate. By basing an employment decision solely on GPS data which turns out to be inaccurate an employer could face a claim for defamation and unfair dismissal.

Furthermore, if an employer uses GPS data when disciplining an employee without having informed their employee of this fact in advance then an employee could make the case that any information received from the GPS tracking system could be deemed to be unfairly obtained. In the context of an unfair dismissal action it is highly likely that any such information would most likely be deemed inadmissible and unfairly obtained and a decision to dismiss an employee based on this information would most likely be deemed to constitute an unfair dismissal.

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