



‘Glass Employees’ vs. Gig Workers: Are there any Differences?

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Employee Monitoring in Germany





Basics

Decision of the Federal Constitutional Court of
15.12.1983 - right to **'informational self-
determination'**, Art. 2 (1) and Art. 1 (1) GG



Balance Between Employees' and Employer's Interests

- The labour courts review the compliance of employee monitoring with the **principle of proportionality** in three steps: any form of surveillance of employees by the employer shall be appropriate, necessary and proportionate to the intended purpose.
- Labour courts seek to find a **balance** between the employees' right to privacy and informational self-determination and the employer's property and managerial rights.



Works Council Co-Determination Rights

- The introduction and the use of technical devices designed to monitor the behaviour or performance of employees is subject to works council co-determination according to § 87 (1) No 6 of the Works Constitution Act (BetrVG);
- Facebook decision of the German Federal Labour Court of 13 December 2016 (1 ABR 7/15);



Case-Law

- Decision of the Federal Labour Court of 25 April 2017 (Workload Statistics), 1 ABR 46/15
- Decision of the Federal Labour Court of 29 June 2017 (Covert Surveillance of an Employee by a Private Investigator), 2 AZR 597/16
- Decision of the Federal Labour Court of 27 July 2017 (Keylogging), 2 AZR 681/16



Employee Monitoring in Russia





Basics

- **The right to respect for private life is enshrined in the Constitution (Art. 24), but not in labour legislation**

Collection, keeping, use and dissemination of information about the private life of a person shall not be allowed without his or her consent. Everyone shall have the right to privacy of correspondence, of telephone conversations, postal, telegraph and other messages.

- **The right of employees to protection of their dignity in the framework of their labour activities (Art. 2 LC)**
- **The right to full information on their personal data and processing of these data (Art. 89 LC)**



Trade Unions Rights

- Employers, employees and their representatives must work out jointly the measures for protection of employee personal data (Art. 89 (10) LC),
However, there is no special mechanism for the realisation of this provision
- A general norm concerning the right of trade unions to exercise trade union control over compliance with labour legislation in the Trade Unions Act (Art. 19)



Case Law - Video Recording

In the courts' opinion, the employers' use of video recording does not violate the employees' constitutional rights to privacy, as it is carried out for purposes related to the employees' labour activity, and not in order to elucidate the circumstances of his or her private life or his or her personal and family secrets.



Thank you for your attention!

Questions?

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