

## EMPLOYMENT – PRIVACY

### HUMAN RIGHTS ACT 1998

\*Absolute prohibition on art 4: forced/slave labour.

\*Art 6: fair trial – *smith v secretary of state for trade and industry*

\*art 8: privacy

\*art 11: freedom of assembly – *young, james and Webster v uk*

### DATA PROTECTION

\* “[I]n a typical office, computerised data are recorded and processed from the moment an office worker arrives. Arrival at work is recorded on CCTV; use of a swipe card or pass to gain entry [is] recorded; logging onto a PC is recorded. He or she then starts work, perhaps sending and receiving email ... accessing the internet, using a telephone and leaving voicemail messages, all of which are likely to involve recording of data. Recording of data continues unabated until the worker goes home.”  
**Lord (2004).**

\* “The potential for abuse is clear. Information may be collected for purposes which are irrelevant to performance at work; it may include private facts; it may be collected for one purpose but be used for another; it may be inaccurate; and it may be disclosed to third parties without the knowledge or concept of the worker.”  
**Ford (1999)**

\*Definition of “Data” (s.1 DPA 98) - Includes all data held electronically and in manual or paper-based filing system; personal data’ only.

\*The processing of personal data must be “necessary” and “justifiable”.

\*Security for the data – “data controller” (governed by part 3)

\*Applies to all workers (includes employee, workers, applicants, work experience workers, etc).

\*Main Rights (governed by part 2 of the act):  
- Right to access personal data (section 7);  
-Right to know the purposes for which the data is used (section 7);  
-Right to prevent processing which is likely to cause damage or distress (section 10 and 11); and  
-Right not to be subjected to certain categories of data based solely on the automatic processing of data (section 12).

\*Main focus is purpose of such info and who is have access to it and under what conditions. Workers can claim compo in any section is breached.

\*Sch1: Data must be:  
-Processed fairly and lawfully  
-Obtained for a specified and lawful purpose  
-Adequate, relevant and not excessive  
-Accurate and up to date  
-Kept for no longer than necessary  
-Processed in accordance with the individual’s rights  
-Protected from misuse, loss, damage etc  
-Protected from transfer to a country without adequate protections

\*Sensitive Data (section 2 of DPA)  
-Racial / ethnic origin  
-Religious beliefs  
-Political opinions  
-Trade union membership  
-Health  
-Sex life  
-Criminal convictions

\*Sch 3 example: necessary for the administration of justice or statutory duty

\*If you have a complaint then can refer to Information Commissioner, whom has:  
-Duty to enforce the Act  
-Reports to Parliament  
-Code of Practice  
[www.informationcommissioner.gov.uk](http://www.informationcommissioner.gov.uk)

\**Durant v Financial Services Authority (2003)* – re personal data

### MONITORING AND PRIVACY

\* “...almost absolute priority to management prerogative and almost no recognition to workers’ private interest.” (Ford 2002) – no right to privacy at work

\* Until Data Protection Act 1998 and Human Rights Act 1998 there was very little protection of privacy to employees in the work place.

\*Restricted privacy a bit: Regulation of Investigatory Powers Act 2000 AND \* Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000

\*If the monitored activity is recorded: DPA 98

\*DPA and Monitoring  
- No more than necessary  
- Impact assessment required  
- Clear purpose  
- Employees must be aware  
\_has to be reasonable, justified and no more than criminal activity that is suspected.

\*HRA: Article 8: Right to respect for private and family life

\*Halford v UK (1997) –

\*Copland v UK (2007) – even the monitoring of date and length of phone calls, could give rise to a breach of right to privacy. If found information out legitimately was not a bar to finding in favour of C. Furthermore, simply storing the C’s data re her private life was a breach of her rights and it was irrelevant that this information was not used against her in any disciplinary proceedings. The C was not given any warning that her calls may be intercepted and as a result she had a reasonable expectation to privacy.

\*RIPA 2000 and Lawful Business Practice Regulations – in relation to finding of calls to no lawful monitoring of calls in the Halford case. This has resulted in that such monitoring would be allowed in certain cases – typically if the employee has consented or has knowledge. Often incorporated into the contract by express clause.

\*Problem as a result of these pieces of legislation is no requirement of proportionality in relation to balance of rights of workers against employers. Regulations weighted in favour of employers, but still have to take into account right to private life (art 8) and employees do have more protection than they did pre-regulations.

**WHISTLEBLOWERS** - “a conventional view ... of whistleblowers was that they are troublemakers who deserve to be punished for disloyalty.” Lewis (2000)

\*This was certainly the case pre Public Interest and Disclosure Act 1998 (PIDA).

\*Pre 1999:  
-CL disclosure allowed only where there is “any misconduct of such a nature that it ought in the public interest to be disclosed to others”  
*Initial Services v Putterill (1968)*. This was a high test, so most employees that spoke out were going to be subject to dismissal for breach of contract.

\*PIDA inserts new sections into ERA 96 (43A-L) – protection for qualifying disclosures:  
- Criminal offence  
- Failure to comply with legal obligations  
- Miscarriage of justice  
- Danger to health and safety  
- Environmental damage  
- Concealment of any of the above

\*Must be made on good faith and be substantially true. Burden on whistleblower.

\**Street v Derbyshire Unemployed Workers’ Centre (2005)* – employee failed as was not made in good faith – personal vendetta against manager. Arguments that whistleblowers should be protected by anti-discrimination legislation. Good faith requirement should be removed.

Preview from Notesale.co.uk  
Page 1 of 1