

LLB EMPLOYMENT LAW COURSEWORK

Critically evaluate the law on privacy in the workplace. As part of your evaluation you need to consider the statutory and common law protection of workplace communication, and data about employees. Is the current law an unnecessary burden on employers?

Privacy in the workplace is an emerging legal issue, especially with the continuing reliance on the internet, email and other technologies, which are integral parts of a typical employees daily routine. Alongside the growing dependency of businesses on the use of these technologies, a number of employee-related problems arise, such as productivity and profit being affected due to employees sending and receiving personal emails or surfing the internet; harassment and discrimination; disclosure of confidential information; unintentional formation of contracts and breaches of contract; copyright infringement, hacking and spread of viruses; and employee negligence. 'Article 8 may give rise to claims by employees that employers are infringing their rights to respect for private life, for example by acquiring and storing information about them, by intercepting their communications, by monitoring their use of the internet, by subjecting them to be closed circuit television, drug testing, grooming and dress regulations, or by attempting to prohibit personal relationships between work colleagues.'¹ Owing to the significant potential for legal action, employers are increasingly monitoring use and implementing a comprehensive policy. This essay will analyse the extent the right of information privacy is applicable to the workplace. We will consider the implications of the Data Protection Act 1998 (DPA 1998), the Human Rights Act 1998, and the Regulation of Investigatory Powers Act 2000 (RIPA 2000), which poses a direct challenge to management prerogative,² as well as the protection, or lack thereof, to whistle-blowers, which appears to be weighed in favour of employers.

The original opinion was that expressed by Ford (2002) 'that there is no right to privacy at work, with an almost absolute priority to management prerogative and almost no recognition to workers' private interest'³. Some argued that privacy was not appropriate in a workplace setting, as when an individual is at work they are simply not on private time.⁴ However, the argument that individuals can have no expectation of privacy at work is not sustainable, due to the longer and flexible hours many employees undertake who may simply have no choice but to carry out their private business during working hours.⁵ The realities of the workplace require some compromise of values such as privacy and autonomy, in order that the employer can plan and control work effectively.⁶

¹ Robert Upex, Richard Benny and Stephen Hardy, *Employment Law* (Oxford University Press, Oxford 2009) 50.

² Oliver H, 'Email and Internet Monitoring in the Workplace: Information Privacy and Contracting-Out', (2002) ILJ 31, 321.

³ BPP Employment law lecture (2012), *Privacy in the Workplace*. Available from <http://www.bpp.com/vle> [Accessed 27/5/2012]

⁴ Oliver, 'Email and Internet Monitoring in the Workplace: Information Privacy and Contracting-Out' (n 2) 325.

⁵ Oliver, 'Email and Internet Monitoring in the Workplace: Information Privacy and Contracting-Out' (n 2) 326.

⁶ Bilsen B, 'Search and Surveillance in the Workplace: An Arbitrator's Perspective', (1992) Labour Arbitration Yearbook, Butterworths, 154.