



## *Monthly Employment Law Bulletin*

### CCTV

#### **WHEN CAN AN EMPLOYER INSTALL CCTV IN THE WORKPLACE**

**Brian Morgan advises that employers should exercise caution before considering installing CCTV in the workplace.**

**Many employers, in an effort to keep a watchful eye over their employees, rush to install CCTV in the workplace without considering the legal implications which can arise. Considerations of installation of CCTV should be approached with both the legal and HR issues in mind.**

#### **Legal Issues**

Prior to the UK Data Protection Act 1998, which came into force in Northern Ireland on the 1 March, 2000 and the ROI Data Protection Act 2003, which came into force in Ireland on the 1 July 2003, there was no statutory regulation on the use of CCTV in the workplace. These Acts place responsibilities on employers to process personal data (data relating to identifiable living individuals) which they hold in a fair and proper way.

There are both civil and criminal penalties for breach of this legislation. The UK Information Commissioner has published a draft code on the use of personal data in the workplace. It is intended to help employers comply with the Act and establish good practice regarding the handling of personal data in the workplace. While this is a UK guide, it is also of assistance in ensuring compliance with the Irish Legislation as both the UK and Irish Data Protection Acts evolved from the same EU Directive.

The code applies to all aspects of monitoring employees in the workplace, including the use of CCTV. While it is not legally enforceable, it contains the Information Commissioner's recommendations on compliance with the legal requirements of the Act. An employer would therefore be strongly advised to follow the code. Under the code, an employer must:

- Ensure that he has a specific purpose for introducing the CCTV before he puts it into operation. This is important, as it will determine whether the monitoring, particularly if it is to be covert, is permissible.
- Decide if and how the CCTV monitoring should be introduced by carrying out a detailed impact assessment. This must take into account that the monitoring must be no more than is necessary and proportionate to achieve the business purpose. Accordingly, monitoring by CCTV in parts of the workplace other than where the employer suspects that a criminal act is being committed will be difficult to justify.
- In most cases staff should be made aware that they are being monitored. They should also know why the CCTV is being introduced. This is not necessary where the monitoring is being introduced to prevent or detect criminal activity, as it may tip off the person being monitored.
- Visitors or customers who are likely to be captured by monitoring should also be made aware that it is in operation and informed of reasons why they are being monitored. However, again, this may not be practicable if it is likely to tip-off the people the employer wants to monitor.
- The employer must also not use personal information collected through CCTV monitoring for purposes other than the prevention or detection of the criminal activity for which monitoring was introduced. The only exception is when the information is such that no reasonable employer could ignore it because, for example, it reveals other criminal activity or gross misconduct. Once the purpose for which the monitoring was introduced has been achieved the monitoring must cease.
- Lastly, all CCTV footage should be securely locked away from prying eyes. The employer has legal duties and responsibilities regarding the collection and use of CCTV footage, including a common law duty of confidentiality. Any footage should only be used for the purposes for which it was intended and not be sold or given to any unauthorised person.

### **HR Issues**

In considering the above legal issues the person dealing with human resources issues must be particularly conscious of the following:

- The assessment should consider a number of factors, such as the benefits of monitoring, any adverse impact it might have on staff and whether the firm can achieve similar benefits by using a less intrusive method.
- The employer should also ensure all discussions regarding the CCTV surveillance, including the impact assessment, are properly documented. If CCTV is to be used, all employees affected need to know why (unless this defeats the object of introducing the CCTV- such as the prevention or detection of criminal activity).
- The employer should also ensure that the CCTV is not used for any other purpose and for no longer than is absolutely necessary.

- The employer must be aware of his duty not to misuse the information collected by CCTV. He should also be instructed not to act on any information collected by it without giving the employee an opportunity to respond.
- The information collected should be destroyed if it is not to be used for the intended purpose, unless other misconduct is revealed.

Breaches of the provisions of the Legislation can lead to complaints by employees to the relevant Information Commissioners in each jurisdiction and can also result in criminal prosecution.

*For a more detailed Article on employers obligations under the Data Protection Acts, visit our website at [www.morganmcmanus.com](http://www.morganmcmanus.com) where you can access an Article dated April 2004 by Brian Morgan on : “Data Protection after “Durant” – employers now breathe a sigh of relief?”.*

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## **HOW TO MANAGE AN EMPLOYEE SUFFERING FROM DEPRESSION**

**Darina Blake, Solicitor, explains the procedure required to be followed by Employers, when an Employee is suffering from depression.**

In the event that the Employee exhibits no obvious sign that he is suffering from depression, then no steps need to be taken by his Employer. However, Court of Appeal guidance suggests that once the indications are plain enough that any reasonable employer should realise that an Employee is suffering from depression, then at that stage the Employer is under a duty to act.

There is little that an Employer can do until it has a better understanding of the Employee’s condition and so the Employer needs to consider the seriousness of the depression. The term “depression” can mean anything from feeling low to a basic mental illness. If the Employee is coping with work then it would be sufficient for the Employer to have a discussion with the Employee.

In the event that the Employee is absent from work or is at work, but not coping with work pressures the Employer needs to take action. Initially it may be sufficient to have a meeting with the Employee to gauge what is wrong, whether the depression is work related and whether any steps can be taken to help. If the Employee has not returned to work or is still failing to perform satisfactorily after a few weeks, the Employer should consider obtaining a psychiatric report with a Consultant Psychiatrist to find out the nature and prognosis of the Employee’s illness. Once the medical opinion has been obtained the Employer should have a meeting with the Employee to discuss his progress and to discuss the implications of the medical report.

The Employer will also want to establish whether the Employee is disabled under the terms of UK Disability Discrimination Act, 1995. In order to claim discrimination under this Act the Employee would need to establish that he has a mental impairment, a recognised illness. In the event that the Employee is deemed to be disabled then the

Employer has a duty to make reasonable adjustments and must not subject him to any less favourable treatment, without justification. An assessment of whether or not the Employee is covered by the Disability Discrimination Act can be made once a psychiatric report in relation to the Employee has been obtained.

Before dismissing any Employee suffering from depression, the Employer needs clear medical evidence that he would be unable to return to work for a considerable period of time and it would also be necessary for the Employer to demonstrate that the lengthy absence was giving rise to serious business difficulties.

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**For an Article on a related subject “Stress in the Workplace” by Brian Morgan Solicitor, visit our website on [www.morganmcmanus.com](http://www.morganmcmanus.com)**

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