

NB: The Code takes into account a number of recent international initiatives which have implications in relation to individual privacy in the workplace.

The ILO adopted in 1996 a code of practice on the protection of workers' personal data, covering general principles of protection of workers' personal data and specific provisions regarding the collection, security, storage, use and communication of such data. The code, adopted by a Meeting of Experts on Workers' Privacy, is advisory.

The Council of Europe adopted a Recommendation in 1989, R(89)2, on the Protection of Personal Data Used for Employment Purposes.

The right to privacy is established in the European Convention on Human Rights. Recent European Court of Human Rights judgments suggest the Court views telecommunication, either through a telephone or the internet, as protected by this right to privacy since in 2000 The Charter of Fundamental Rights changed the term "correspondence" with the broader term "communications".

The European Directive on data protection (95/46/EC of 24 October 1995) also has relevance, in that electronic monitoring in the workplace can be treated as a form of collecting or processing personal data.

More recently the European Parliament recommendation of 26 March 2009 to the Council on strengthening security and fundamental freedoms on the Internet (2008/2160(INI) <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2009-0194+0+DOC+XML+V0//EN>) is a good step towards more personal data protection on the web.

An extensive report on "Cyber-surveillance at work" by C. Féral-Schuhl can be downloaded on UNI's website: <http://onlinerights.uniglobalunion.org>

More information is available from the UNI website:
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Online rights@work
A UNI P&MS code of practice

About this code

Communication facilities are revolutionising the way in which we keep in touch with others at work - our colleagues, our managers and also our clients and customers. Used appropriately, the exploitation of electronic facilities such as email and the internet improve work efficiency and facilitate new ways of working.

However the use of these technologies in the workplace also raises legal, ethical and managerial issues, which companies and employees' representatives have been attempting to grapple with.

Trade unions are concerned, among other things, at the implications for individual privacy of electronic monitoring of communications. The code also suggests that company filters may not be designed to block employee access to trade union websites.

Employers in their turn have natural concerns that employees may take personal advantage of communication facilities to the detriment of their work –or that companies will be held legally responsible for the content of private emails.

This Code is designed to provide a common sense answer to these sorts of issues, and to establish an internationally recognised yardstick of what constitutes good practice.

- Under the Code, electronic facilities are provided by companies to works councils and trade unions and to their representatives for industrial relations purposes.
- The Code clarifies that employees are able to use electronic facilities in the workplace for non-business use, with the proviso that such use is not detrimental to the proper discharge of their work responsibilities.

- The Code does not permit the clandestine monitoring or electronic surveillance of employees (for example by recording emails sent or websites visited). It does allow for surveillance and monitoring where there is a legal obligation on the employer to do so, where this is authorised by collective agreement, or where there is reasonable grounds to believe a criminal or serious disciplinary offence has been committed.
- In these situations, any use of electronic monitoring records has to be made with the agreement of and involvement of workers' representatives.

This code of conduct is a step on the way towards ensuring the basic rights of employees working in today's and tomorrow's information society.

What do we mean by enterprise communication facilities ?

The term "enterprise communication facilities" covers all communication and information services in the enterprise where the employee is working. It includes e-mail, the internet, company intranets, phone, fax, etc. (This is not a definitive list).

The Code does not distinguish between different kinds of communication facilities. The physical place where the work tasks are carried out is also not relevant; the code shall apply regardless of when and where the communication facilities are used by the employee.

1

Trade Union communication

The works council/trade union and its representatives have the right to access and use the enterprise electronic facilities for works council/trade union purposes, both internally and externally.

This includes the right to send trade union/works council information to all employees using the electronic communication tools available.

Employees have the right to use the enterprise communication facilities to communicate with their trade unions/works council and their representatives.

2

Non-business communication

Employees are permitted to use the enterprise electronic facilities for non-business purposes both internally and externally provided that this is not detrimental to their job responsibilities.

3

Monitoring and surveillance of communication

The employer undertakes that employees' use of the enterprise electronic facilities will not be subject to clandestine surveillance and monitoring.

Employees and their communication will be subject to surveillance and monitoring only if this is permitted by collective or company agreement, if the employer is legally obliged to do so, or if the employer has reasonable reason to believe that an employee has committed a criminal offence or serious disciplinary offence. In these situations, any use of electronic monitoring records has to be made with the agreement of and involvement of workers' representatives. In any case, there must not be permanent surveillance.

4

Conditions for use of communication facilities

The right of employees to use enterprise communication facilities is subject to following conditions:

- Communication must be lawful and not include defamatory or libelous statements,
- Enterprise communication facilities shall not be used as a means of sexually harassing, or spreading offensive comments meant to discriminate.
- The employer can require a disclaimer when employees are communicating internally and externally to the effect that the views expressed are those of the author alone and not those of the enterprise.