Workx Advocaten

CAN I, AS AN EMPLOYER, **MONITOR MY EMPLOYEES?**

Employees are entitled to privacy at work too. Monitoring is allowed, but only within the rules of the General Data Protection Regulation (GDPR, in Dutch AVG): with a valid legal basis, a clear purpose and no further than necessary.

01. FOUR FORMS OF MONITORING

EMAIL **AND INTERNET**

✓ YES	Under a policy announced in advance, no further than the purpose requires and with no less intrusive alternative. Private messages are excluded.
ⓘ ONLY IF	Covert monitoring is an exception: where there is a specific suspicion of a criminal offence, one-off and limited, with a DPIA beforehand and the employee informed afterwards.

CAMERAS **IN THE WORKPLACE**

✓ YES	Visible camera surveillance is possible if employees know about it in advance, it goes no further than the purpose requires and a less intrusive means will not do.
ⓘ ONLY IF	Hidden cameras only where there is a specific suspicion of a criminal offence and nothing else works, if it is known in advance that this may happen, and after a DPIA.

RECORDING **CONVERSATIONS**

✓ YES	Recording is possible if it is necessary for a specific purpose, everyone in the conversation knows about it and it goes no further than that purpose requires.
× NO	Covert recording is prohibited in principle. An exception may apply where there is a specific suspicion of a criminal offence.
ⓘ ONLY IF	Using recordings later for something else is only allowed if that new purpose is compatible with the original one (Article 6(4) GDPR).

DRUG **AND ALCOHOL TESTS**

× NO	Testing employees for alcohol, drugs or medication is not allowed in almost all cases: there is no legal basis for it.
ⓘ ONLY IF	Only where specific legislation provides for it, for certain positions in sectors such as shipping, rail and aviation, and then under strict conditions.

CHECKLIST **BEFORE YOU MONITOR**

- ☐ **Legal basis**, usually legitimate interest: a legitimate purpose, monitoring is necessary for it, and the employee's privacy does not outweigh it.
- ☐ **Proportionality**: do not monitor or record more than necessary.
- ☐ **Purpose limitation**: do not use data for a purpose that is incompatible with the original one.
- ☐ **DPIA** (data protection impact assessment), in any event for covert monitoring; sometimes the Dutch Data Protection Authority (AP) must be consulted first.
- ☐ **Policy in advance**: what is monitored, how, and with what consequences. Make it known.
- ☐ **Subsidiarity**: is there really no less intrusive way?
- ☐ **Retention and security**: no longer than necessary, with appropriate security.
- ☐ **Documentation**: you must be able to show that you comply with the rules.

Consent rarely works

Consent only counts if freely given; in an employment relationship that is rarely the case.

Special category data

Data on, for example, health, religion or trade union membership only where a statutory exception applies (Article 9 GDPR).

Other legal bases

Processing may sometimes be based on performance of the employment contract or on a legal obligation.

Based on the rules in force in 2025

This document does not constitute legal advice and is for illustrative purposes only.

NEED MORE TIPS **OR ADVICE?**

We are happy to help. Get in touch with us!