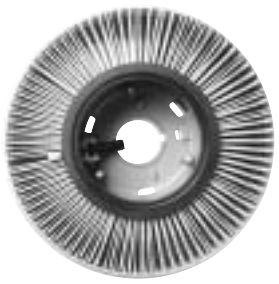
Stop snooping

We have always been under close scrutiny at work – from hawk-eyed supervisors to the company doc. And new technology, from body part scanners to surveillance devices to lab tests, means the boss can now monitor us constantly and secretly for supposed defects or aberrant behaviour, from what we say to what our genes say. But a new workplace privacy code may soon change all that, reports *Hazards* editor Rory O'Neill.



There are simple solutions to workplace safety problems – proper systems, risk assessments, asking the workforce how the job can be made safer. They usually require management to remedy management shortcomings.

Many companies have opted instead for bugging, harassing and monitoring their workers. Drug and alcohol tests are becoming more common. Keystroke rates, web usage and emails are monitored, telephone conversations eavesdropped. Smart cards have introduced the workplace equivalent of electronic tagging. The boss may know you are reading this.

The justifications are varied – increasing productivity, reducing sick leave, weeding out bad habits, stopping theft and fraudulent compensation claims, workplace security, identifying troublemakers – and, frequently, workplace health and safety.

In fact, showing such little respect for the workforce is not usually productive, and can be dangerous and degrading.

Don't bug us

Performance monitoring: Productivity drops when workers are monitored and worker health can be adversely affected. A US study found monitored workers suffered more depression, extreme anxiety, severe fatigue or exhaustion, strain injuries and neck problems than unmonitored workers. And it is not just hi-tech monitoring that's a problem – some employers think policing their workers toilet breaks is perfectly acceptable (*Hazards* 81).

Health screening: Employers should look to fit the job to the worker, but frequently do the opposite, using health checks and psychological testing to winnow out the weak, the injured or the ill and to ensure we all know we should work until we drop (pages 4-5). Once we do, our sick leave or compensation claim could be investigated by private detectives.

Testing workers: Drug and alcohol tests are increasingly popular in UK workplaces but are frequently unreliable, do not assess ability or otherwise to do the job and do not address workplace factors that can cause or exacerbate substance misuse problems. Genetic tests have been shown to be of limited scientific validity and little relevance to work situations (*Hazards* 84).

Stressing autonomy

Workplace privacy is a basic human right – the Human Rights Act says so (*Hazards* 72). But it is a right that is routinely abused at work (*Hazards* 84).

Surveillance and privacy at work, a report from the UK Institute of Employment Rights[1], noted old and new forms of surveillance pose "an alarming threat to the privacy and autonomy of workers" and "can actually damage workers' health."

Research last year confirmed lack of autonomy at work a major cause of work-related stress and strains, heart disease and sickness (*Hazards* 83).

So far the Health and Safety Executive (HSE) has had little to say on workplace privacy. The one substantive HSE action in response to the Data Protection Act 1998 was to introduce a new accident book on privacy grounds, which makes it more difficult for union safety reps to access workplace accident reports (page 26).

Employers meanwhile will go to forensic lengths to monitor their workers' behaviour, employing anything from drugs tests to private detectives.

In 2003 insurance companies employing private detectives were castigated by the lord chief justice Lord Woolf in an appeal court judgment (*Hazards* 82). Insurer Zurich hired a private investigator to impersonate a market researcher, gain access to a work injury compensation claimant's house and secretly video tape her. Lord Woolf said this was "improper and not justified."

Justified or not, the technique is commonplace and similar tactics have been used to monitor workers on long-term sick leave.

Electronic snoopers

Even well-motivated employers use monitoring techniques, but may not be fully aware of the cost in terms of lost motivation, stress and general resentment that may accompany their introduction.

Workers' privacy: Monitoring and surveillance in the workplace, a heavyweight International Labour Office report[2] noted: "The consequences of monitoring and surveillance on the health and welfare of employees are of particular concern."

The research digest concludes: "Not only does electronic monitoring have the 'potential' to adversely influence working conditions which have been shown to cause stress, but it may actually create these adverse working conditions, such as paced work, lack of involvement, reduced task variety and clarity, reduced peer social support, reduced supervisory support, fear of job loss, routinised work activities and lack of control over tasks."

It cites one study by NIOSH, the US government's safety research body, that showed for data entry workers who were struggling to meet performance targets "the use of electronic performance monitoring elicits a pattern of psychological distress and physical discomfort. The group which was monitored had higher self-ratings of mood disturbances (irritation, time urgency, work dissatisfaction and musculoskeletal discomfort))."

In the UK, the display screen equipment regulations allow monitoring of workers' performance, but only where workers have been notified.

Privacy code

It may be the government's Information Commissioner and not the HSE that protects workers from their employers' unhealthy preoccupation with snooping.

In June 2003, TUC welcomed the publication by the Information Commissioner of a *Monitoring at work code of practice*[3] advising employers on the legal limits of snooping on staff.

Brendan Barber, TUC general secretary, said: "The code clears up much of the legal confusion around bosses monitoring employees. It makes clear to staff that they must be told if, how and why their email, phone calls, internet use and other behaviour is being monitored."

In December 2003, Information Commissioner Richard Thomas said the next phase of the consultation on the Employment Practices Data Protection Code – the consultation closes on 27 February – will cover information about workers' health, and could curtail workplace drug and alcohol tests, genetic screening and snooping into personal medical histories[4]. Although the code will be guidance and not regulation, breaches of the code are likely to be cited in employment tribunals.

The draft code says drug and alcohol testing should be limited to workers in jobs that pose particular safety risks. It says it will be deemed "intrusive" to obtain information about workers' health," and adds: "Workers have legitimate expectations that they can keep their personal health information private and that employers will respect this privacy." The code also makes clear that companies must not use genetic testing to make predictions about workers' future general health.

Employers should gather information about staff health only if they can satisfy a "sensitive data condition," most likely for health and safety reasons, to prevent discrimination on the grounds of disability, or if a worker has given consent.

Specific European privacy laws, supported by Europe's unions and opposed by employers, are in the pipeline. The proposed framework on the protection of workers' personal data will cover data about employees, including personal health records, emails and internet use, and issues of consent, drug and genetic testing and monitoring and surveillance. Key concerns are that workplace reps are adequately informed and consulted.

Among the reasons for the legislative move by the European Commission was concern at the increasing use by employers of electronic surveillance and cheaper and easier drug and genetic tests. The EC hopes to publish a draft of the planned EU wide law in 2004 or 2005.

Any time, any place, anywhere

Technology makes it possible to electronically monitor any worker, anywhere.

Smart cards: Used in building security, can also track workers' movements, monitor rest breaks, and hold personnel and occupational health records. Workers issued with smart cards at a Scottish factory found they were clocked off every time they went to the loo (*Hazards* 81).

Biometric data: Fast food giant McDonalds this year introduced hand and thumb scanners into some of its Canadian outlets. Biometric devices – machines that identify fingerprints, hands, eyes or faces – are getting cheaper and attracting interest from major North American firms.

Computers: Software can measure work rate and error rate of keyboard workers, web usage or emails – in fact, any electronic work you do. "Black box" and "works manager" devices can monitor and distribute work to offsite employees, and know what you do and where. Checkout workers and some warehouse staff have their every work action policed by stocktaking software. GPS devices use satellites to track vehicles, from delivery trucks to snow ploughs.

Remote listening: Eavesdropping on telephone calls is commonplace, particularly in call centres and telephone exchanges.

Video surveillance: Cameras are commonplace, including a "toiletcam" in a major UK hospital, and may monitor your every working movement. UK unions have found compensation claims for genuine work-related injuries contested after employers obtained secretly filmed video "evidence".

Bar codes: Scanners are used to monitor workers – postal workers in the UK have been required to scan a bar code at each letter box they empty.

1. Michael Ford. *Surveillance and privacy at work*, IER, 1999.
2. *Workers' privacy. Part II: Monitoring and surveillance in the workplace.* Conditions of Work Digest, Vol.12, No.1, 1993. ILO. ISBN 92-2-108740-9.
3. *Employment Practices Data Protection Code - Monitoring at Work*, Information Commissioner, June 2003.
4. *Draft code – The Employment Practices Data Protection Code: Part 4: Information about workers' health.* Information Commissioner, December 2003. www.informationcommissioner.gov.uk