

Use of Spyware on Employees' Computers Found Violation of Swiss Law

FEBRUARY 6, 2013

In a recent [decision](#) the Swiss Federal Tribunal found that the installation of spy software on employees' desktop, with the aim of monitoring their use of the Internet during work hours, is illegal. The dispute arose after a government employee was fired. His employer suspected he was using the Internet during work hours for non-work purposes. To confirm, the employer installed spyware on the employee's computer, without notifying the employee. The information collected revealed that over a period of three months the employee spent more than 20% of his work hours on the Internet, and 70% of that time was dedicated to activities unrelated to his professional duties, including online banking, social networks, reading online news and other medias, and watching videos some of which of were pornographic character. Overturning a lower-court decision, the Swiss Supreme Court concluded that the installation of the spyware violated the employee's privacy and Swiss employment law. While Article 26 of the Ordinance 3 to the Federal Labor Act does permit very limited audio, video or electronic monitoring of employees, here the monitoring was found not to fall under an appropriate exception. The Supreme Court acknowledged that employers' concern about the efficiency of their employees and the fight against abusive use of the Internet are legitimate. It found, however, that other less intrusive measures are available to prevent and cease potential abuses, including the preventive blocking of access to certain websites or the analysis of the employees' access to the Internet and email exchanges in compliance with the [guidelines](#) of the Swiss Data Protection Commissioner on the monitoring at the work place. Although this case involved a state entity, the Swiss Supreme Court clarified that the outcome would have been the same had the employer been a entity in the private sector.

Tip: When developing procedures to monitor employees in the workplace, especially if you have international operations, look carefully at local requirements. In Switzerland, at least, installing spyware without notice to an employee constitutes a violation of the law.

This tip has been created for information and planning purposes. They are not intended to be, nor should they be substituted for, legal advice, which turns on specific facts.

2 Min Read

Related Topics

Related Capabilities

This entry has been created for information and planning purposes. It is not intended to be, nor should it be substituted for, legal advice, which turns on specific facts.