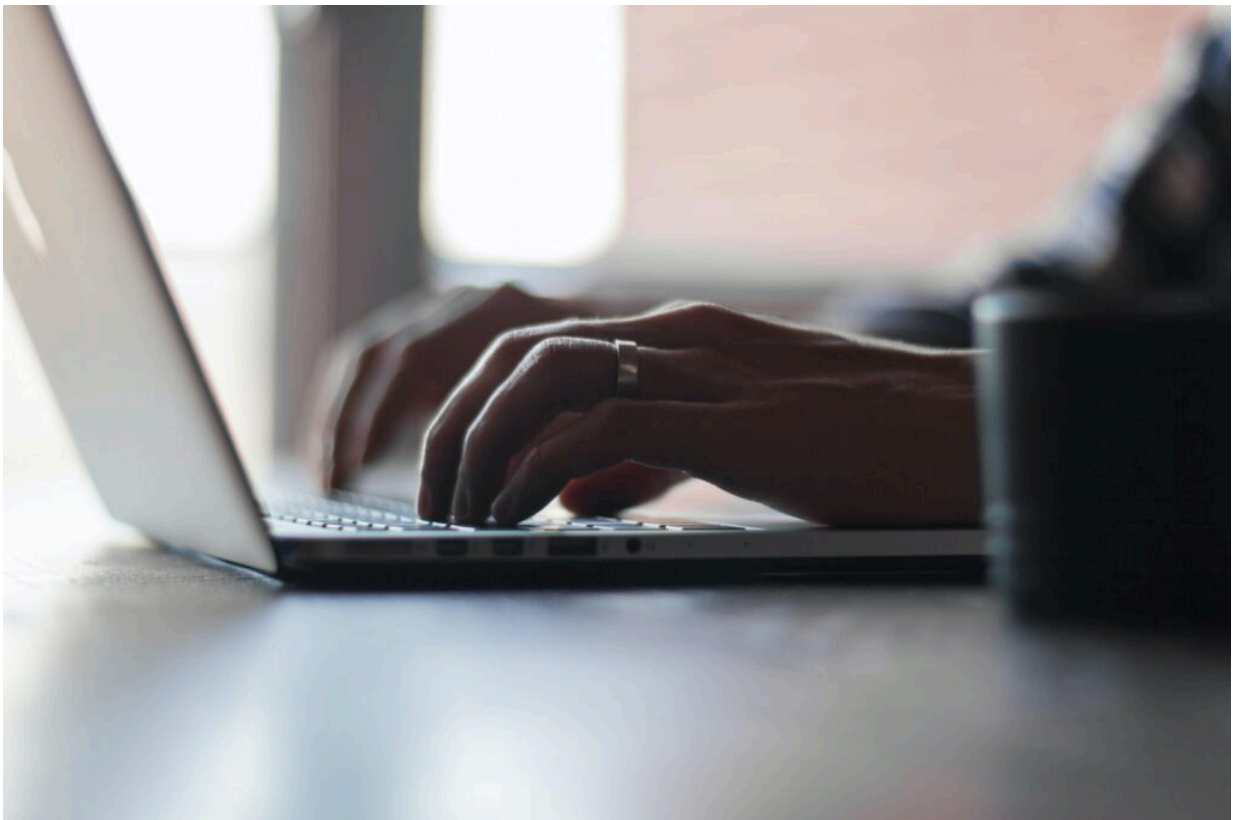


Global Workplace Law & Policy

Working from Home – A Challenge to Workers’ Rights to Privacy, Humanity and Dignity

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The COVID-19 pandemic has globally shifted millions of people from working at their workplace to teleworking from home.[1] Even though the pandemic seems to have subsided and people have returned to the office, the phenomenon of remote work has become an integral part of modern working life.[2] In this essay, I aim to demonstrate how the growing phenomenon of remote work and the accompanying intrusive monitoring trend challenge employees’ basic rights to privacy, humanity and dignity and urge us to reconsider the regulation of these rights in the modern workplace.

Working from home involves intrusive methods of supervision. Some of these methods are comparable to those in the workplace, but in the private sphere of the employee, they seem to be much more offensive because they involve tracking the employee’s and their family members’

most personal surroundings and data. In addition, reality shows that, often, working from home actually involves methods of supervision that are *more* intrusive than those of the workplace. This is because in the workplace, employees can be casually observed by their managers or colleagues since they are all part of the same physical space.^[3] By contrast, when it comes to remote work, employers feel that they must use additional methods to ensure that their workers are actually working from home and not spending their working day on personal activities.^[4] Remote workers' daily activity is hence meaningfully more monitored in comparison to that of office workers.

Today, various US remote workers consequently face pressure to accept home surveillance that includes monitoring by AI-powered cameras in their private homes, along with voice analytics and storage of data collected from the workers and their family members.^[5] Some remote workers are required to install programs that constantly record their keyboard strokes, mouse movements and websites visited, in an attempt to ensure that they genuinely devote all their time to work activities.^[6] Similarly, some tracking programs have been designed to take random screenshots of a worker's computer^[7] or even video record the worker's screen or photograph the worker themselves every 10 minutes^[8] – all to verify that the worker is working in front of the computer during *all* their working time and to deter them from leaving their seat even for a small break to stretch or use the bathroom.

Since the beginning of the COVID-19 pandemic, sales of various surveillance apps whose purpose is to supervise workers' activity from a distance have dramatically increased in the United States.^[9] Furthermore, an increasing number of firms worldwide have admitted that they have begun to use remote tracking technology to track and monitor their employees' productivity from a distance.^[10] This reality has dramatic implications not only for employees' but also for their family members' most basic right to privacy.^[11]

However, with regard to monitoring remote workers, the right to privacy is not the only right that is under a threat; other labour rights are also at stake. The shift to remote work has increased the generation of various sophisticated productivity tracking programs, which have allowed employers to determine the moments in which workers are working and pausing, and to compensate them accordingly. An increasing number of US companies are using extensive monitoring software on their remote workers that not only ensure that these workers are actually working but also strictly count the minutes in which they actively work, thereby allowing employers to pay their remote workers only for the concrete minutes when the system has detected active work.

In this way, according to a special report in the *New York Times* from August 2022, “Architects, academic administrators, doctors, nursing home workers and lawyers described growing electronic surveillance over every minute of their workday. They echoed complaints that employees in many lower-paid positions have voiced for years: that their jobs are relentless, that they don't have control — and in some cases, that they don't even have enough time to use the bathroom. In interviews and in hundreds of written submissions to The Times, white-collar workers described being tracked as “demoralizing,” “humiliating” and “toxic.” Micromanagement is becoming standard, they said.”^[12]

These growing, invasive practices raise questions about the limitations of the current discourse on the right to privacy. Productivity tracking programs urge us to reconsider the broader meaning of

the right to privacy in the modern world as well as the right to be paid for work and the right to be treated as a human being who needs a break and not as a machine. In other words, the growing use of productivity tracking programs demonstrates how employees' right to privacy is intertwined with additional issues of humanity and dignity.

Since privacy appears to be strictly connected to humanity and dignity in the modern workplace, it is important that any suggested solution to this problem restores the humanity of workers and ensures that they will be treated, first and foremost, as human beings and not as machines. For this reason, I suggest that every solution to this problem should include negotiation between employers and their employees' representatives, which can best ensure that employees' voices and needs are considered.[13] The current technological capacity for surveillance that employers have at their disposal favours the professional interests of the employer at the expense of employees' rights to privacy, dignity and humanity. This is another reason why employers should be obligated to negotiate and agree on their monitoring policies for remote work with the employees' representatives.

This obligatory negotiating process can limit the employer's intrusion into the private domain of remote workers who work from home and ensure that employees' right to privacy is respected. It can also compel employers to heed employees' needs and voices to ensure protection of the employees' humanity and dignity. By taking employees into account through negotiations with their representatives on the limitation of their remote surveillance, employers will be "reminded" that there are human beings who are influenced by the managerial decisions. It will consequently force employers to consider not only their economic interests but also their employees' rights to privacy, humanity and dignity when establishing monitoring policies.[14]

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