

Cameras in the Workplace

This fact sheet is intended for the *data subject*, i.e. the individual whose personal data is being used.

THIS FACT SHEET WILL ANSWER THE FOLLOWING QUESTIONS:

Which situations fall outside the scope of the Wbp?

On which grounds is video camera surveillance permitted?

What constitutes a legitimate interest?

Are hidden cameras permitted?

Which role do works councils play?

Should camera surveillance be reported to the Dutch DPA?

Which rights do you have?

What can you do if you would like to know more or have a complaint?

Perhaps your employer is intending to install cameras in his company or institution (hereinafter: organisation). In many cases, this is possible provided your employer complies with a number of conditions. For example, various rules apply for hidden and visible cameras and there is a clear role to be played by works councils. In non-public spaces where people are entitled to their privacy (in changing rooms, for example), camera installation will not be permitted.

Situations to which the privacy law does not apply

The Wet bescherming persoonsgegevens (Wbp) [Dutch Data Protection Act] does not apply to (analogue) video cameras that do not record images, or to webcams that are intended to show images of public spaces, without focusing recognisably on the individuals using them. Incidentally, the situations to which the Wbp does not apply will also have to comply with certain standards. The employer must always show himself to be a 'good employer', by observing the standard of due care to be observed in society.

Grounds for the use of video camera surveillance

The installation of a video camera is permitted where essential for the promotion of your employer's legitimate interest. Your employer must first perform a privacy assessment. This means that your interests and rights must be weighed against your employer's interest. Your employer must be able to substantiate this weighing process with you, the works council and, where necessary, the Dutch Data Protection Authority (Dutch DPA) [College bescherming persoonsgegevens (CBP)] or a court of law.

Legitimate interest

The protection of property is one example of a legitimate interest on the part of your employer. Video surveillance that has been introduced in order to protect employees and customers could also be a legitimate interest. So, the employer will be able to install cameras in a petrol station in order to film you and the customers for a certain part of the day in order to discourage robberies. However, the employer must ensure that you and the petrol station's customers know that camera surveillance is being used. There are various ways of doing this, for example by hanging up notices indicating that video camera surveillance is present in a certain room or area. For security purposes, it is not generally necessary to observe staff on a permanent basis.

The following starting point applies: images should not be retained in excess of 24 hours. This period may be exceeded for good reason only.

Hidden cameras

In principle, your employer is not permitted to use hidden cameras. However, your employer could even have a legitimate interest in the use of this type of camera. This would be the case, for example, where a high level of theft is being experienced within an organisation, a situation that the employer has been unable to resolve despite various efforts on its part. In these circumstances, your employer will be permitted to install a camera on a temporary basis, as a last resort in his attempt to identify the culprit.

However, in this situation, the employer must ensure that all employees and the works council are informed beforehand of the possibility that in general hidden cameras can be used. Alternatively, the employer could, of course, bring in the police.

Works councils and camera surveillance

The Wet op de ondernemingsraden (Wor) [Works Councils Act] states that works councils will have right of approval in respect of a decision to introduce an employee monitoring system or in respect of the decision to introduce a system that could be used to monitor the employees. Agreement can be sought on the possible circumstances in which hidden cameras can be used, on the limited duration of its application and on the safeguards and the applicable procedures. In organisations without a works council or representatives of the staff, employees must at least be notified of the use that can be made of the camera system. These agreements can be laid down in, for example, house regulations.

All camera systems, whether used to 'monitor' or record images, are to be regarded as employee monitoring systems within the meaning of the Wor. The works council's consent is not required when camera's are used incidentally (to combat theft or fraud, for example). Neither is that consent needed when camera surveillance is not being used to monitor employees or in case it can not be used to check the employees. This would be the case where camera surveillance is a security measure used to protect an office building after office hours. However, in practice, it is recommended that any employer wishing to use camera surveillance on an incidental basis discuss this with the works council. For more information, please see the brochure entitled *Privacy: checklist voor de OR* [Privacy: Checklist for the Works Councils]. This checklist provides works councils with a number of guidelines that are useful when seeking to achieve an appropriate level of privacy protection within an organisation.

Notification obligation with the Dutch DPA

If an employer uses digital recording equipment, he is obliged to notify the Dutch DPA of this fact. However, if he installs a camera for the protection of individuals, buildings, goods and production processes, he could be released from this obligation under Article 38 of the *Vrijstellingsbesluit* [Dutch Data Protection (Exemptions) Decree]. Incidentally, should he be exempted from the above obligation, the Wbp will continue to apply to him. For more information, please see the fact sheet entitled *Melden en vrijstellingen* [Notification and Exemptions].

If your employer has failed to inform you of his camera use, the use of cameras will classify as hidden camera surveillance. In this situation, apart from notifying the Dutch DPA of his use of cameras, the employer is also required to request a prior investigation before activating the camera surveillance. For more information, please see the fact sheet entitled *Prior Investigation* [Voorafgaand onderzoek].

Your rights

Pursuant to the Dutch Data Protection Act, you are entitled to information on your personal data and also to access to, supplementation, correction, erasure and blocking of said data. You are also entitled to lodge an objection against certain types of use to which your employer puts your data. For more information, please see the fact sheet entitled *Data Subjects and Their Rights* [Rechten van de betrokkene].

If you have any questions or complaints

Your first course of action must always be to approach your employer with any questions or complaints you may have. Please see the fact sheet entitled *Mediation by the Dutch DPA in Respect of Your Data* [Bemiddeling door het CBP inzake uw gegevens] for information on how to exercise your rights in disputes. If you feel that your personal data have been used unlawfully and your employer fails to respond to your complaint or fails to do so to your satisfaction, please see the fact sheet entitled *Your Complaint and the Dutch DPA* [Uw klacht en het CBP] for information on other steps open to you.

All Dutch DPA's publications on video camera surveillance can be found in the theme file *Cameratoezicht* [Camera Surveillance].