Employee Monitoring in Financial Services Firms

[et_pb_section bb_built="1" background_color="#ffffff" fullwidth="on" custom_padding_last_edited="on|desktop" _builder_version="3.0.99" custom_padding_tablet="50px|0|50px|0" transparent_background="off" padding_mobile="off" custom_padding="|||" next_background_color="#000000" global_module="136"][et_pb_fullwidth_header global_parent="136" title="Employment Law News" _builder_version="3.0.99" background_image="http://davidk423.sg-host.com/wp-content/uploads/2017/09/bdbf_final-stages-1-4-1.jpg" background_layout="dark" title_font="||||||||" subhead_font="||||||||" background_color="rgba(255, 255, 255, 0)" /][/et_pb_section][et_pb_section bb_built="1" admin_label="section" transparent_background="off" allow_player_pause="off" inner_shadow="off" parallax="off" parallax_method="on" padding_mobile="off" make_fullwidth="off" use_custom_width="off" width_unit="off" custom_width_px="1080px" custom_width_percent="80%" make_equal="off" use_custom_gutter="off" fullwidth="off" specialty="off" disabled="off" custom_padding_tablet="50px|0|50px|0" custom_padding_last_edited="on|desktop" prev_background_color="#ffffff" next_background_color="#000000"][et_pb_row admin_label="row" make_fullwidth="off" use_custom_width="off" width_unit="off" custom_width_px="1080px" custom_width_percent="80%" use_custom_gutter="off" gutter_width="3" padding_mobile="off" allow_player_pause="off" parallax="off" parallax_method="on" make_equal="off" column_padding_mobile="on" parallax_1="off" parallax_method_1="on" parallax_2="off" parallax_method_2="on" parallax_3="off" parallax_method_3="on" parallax_4="off"

parallax_method_4=”on” disabled=”off” background_position=”top_left” background_repeat=”repeat” background_size=”initial”][et_pb_column type=”3_4″][et_pb_text background_layout=”light” text_orientation=”left” use_border_color=”off” border_style=”solid” disabled=”off” border_color=”#ffffff” background_position=”top_left” background_repeat=”repeat” background_size=”initial”]

Employee Monitoring in Financial Services Firms

[post_details]

[Social-Share]

The FCA has announced an increase in the number of financial services firms who must record communications made by their employees.

The announcement is part of the FCA’s attempts to align financial firms with Brussels rules, known as Mifid II. In spite of Brexit, the FCA has told firms that they must continue to comply with their obligations that derive from EU law, including Mifid II.

Who is affected by this announcement?

Anyone who works for an investment bank or asset manager, inter-dealer brokers, investment managers, stockbrokers and corporate finance firms that execute orders or carry out transactions for the firm or its clients.

What has changed?

Firms who were not previously subject to the duty to tape

telephone conversations (such as corporate finance firms) are now required to do so.

How could employers monitor their employees?

Financial firms have sophisticated computer programs in place which record telephone lines, check emails for key words and look out for suspicious trading behaviour. It is not uncommon for an employer with an agenda to trawl through an employee's emails or Bloomberg chat records to find something damning. Of increasing prevalence is keystroke technology, which records all of the words typed onto a keyboard during the working day.

Even personal mobile phones are not immune from employer's prying eyes. Employers in the financial services industry have an obligation to make sure that employees are not using their personal communication devices to evade FCA rules or share confidential client information.

What are the implications?

Employees who misuse their employer's electronic communication systems – by disclosing confidential client information, for example, could face disciplinary action, which could include dismissal without notice and significant financial consequences including loss of stock and deferred bonuses arising from being a bad leaver. Additionally, there are the longer-term consequences on an employee's regulatory status. If the monitoring uncovers behaviour which the employer considers is a breach of the conduct rules or stains that individual's fitness and propriety, it will be revealed on a regulatory reference to any new employer and the taint may follow the employee for the next 6 years.

What are employee's rights and employer's obligations?

Even though an employer may have a duty to monitor calls, they still need to approach the matter with caution.

Employers have legal duties to ensure that the way in which they monitor work is for a clear and justified purpose. This requires notification in advance of monitoring, and the information gained should be kept securely and only used for the purpose for which it was carried out.

If an employee is approached by their employer and asked to hand over their personal phone for inspection, the employee needs to think very carefully before doing so. Is there a legitimate reason to search a personal telephone? What is the employer's basis for doing so? Employees have a right to a private life and the employer cannot, without good reason, ride roughshod over that right. The employer should not be acting in any way that would seriously damage or destroy the employee's confidence or trust, unless it has reasonable cause.

The employee must weigh up the risks of not complying with their employer's request. A refusal to do so could count against the employee in a disciplinary hearing. Even if the employer's concerns are baseless or overblown, a refusal to co-operate in the investigation is likely to be sufficient to fuel the suspicion that the employee has done something wrong.

For all financial services employees, this does beg the question whether work communications on a private phone, even in an end-to-end encrypted service like WhatsApp, can ever be private.

Paul McAleavey is a Senior Associate specialising in employment law and misuse of confidential information cases at City employment law firm Brahams Dutt Badrick French LLP.

[/et_pb_text][/et_pb_column][et_pb_column type="1_4"][et_pb_sidebar orientation="right" area="sidebar-1" background_layout="light" disabled="off" show_border="on"] [/et_pb_sidebar][/et_pb_column][/et_pb_row][/et_pb_section]