

COLLOQUE INAUGURAL SECTION IRLANDE DU NORD
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RIGHT TO PRIVACY

EMPLOYMENT LAW AND RESPECT FOR PRIVACY

What do we mean by that ?

Well, we are talking about the relationship between employers and employees involving the employees' private life at work.

There is no official definition of privacy but the law includes in this notion: home, image, words or voice, pregnancy, health, safety, religion, private and family life.

I think you've got a list of the eight elements that we're going to be covering:

Replace translation of Brice

- Video-surveillance in the workplace, **Privacy and clandestine video surveillance of employee's behaviour and words**
- Private information on work computers, **Computer information and electronic messaging systems at work**
- Employees' place of residence relative to the workplace, **Protecting an employee's right to privacy at home**
- Employees' religion, **Employment law and religion**
- Personal and family life, **Employment law and the right to a private and family life**
- The right to work without harassment, **An employee's right to safety**
- The use of an employee's image such as a photograph, **Employment law and protection of an employee's right to his or her own image**
- Security of tenure in the workplace as a result of private behaviour, **Crimes by employees in their private life and dismissals**

Before we look at these individual subjects, I'd like to spend a couple of minutes looking at the relevant legal texts concerning the principle of privacy.

First of all, in Europe, we have **Article 8 of the Convention of Human Rights** which says as you know :

“Everyone has the right to respect for his private and family life, his home and correspondence. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others »,

Within the French Law, there is

- **Article 9 of the civil code** which states : « Everybody has the right to privacy »

- **Article 12 of the Universal Declaration of Human Rights 1948** « *Nul ne fera l'objet d'immixtions arbitraires dans sa vie privée, sa famille, son domicile ou sa correspondance, ni d'atteinte à son honneur ou sa réputation* ».

Regarding the employment law, The law of the 31st of décembre 1992 : Nobody can constrain the rights of people and their collective or individual freedom except if it's justified by the necessity of their job and if it's proportional with the goal.

Now, let's move on the criminal law which we call "sanctions pénales": This is dealt by **Chapter 6 of the penal code**.

Constraint of private life is provided in articles 226.1 to 226.7

Interference with someone's private correspondence article 226.15

For example: Dishonestly taking someone's letters, words or image, copying them and using them (for example publishing them) The maximum punishment is one year in prison and/or 30 000 £ fine (45 000 €). In reality it's more likely to be and much smaller fine with or without a suspended sentence.

Abuse of privacy relating a person's name and information in computers is provided by articles 226.16 to 226.24 The punishment can be up to five years in prison and/or 300 000 €.

We now move on to the list of the elements we talked about earlier.

1. PRIVACY AND CLANDESTINE VIDEO-SURVEILLANCE OF EMPLOYEES

Surveillance equipment is not illegal in the workplace if the staff is pre-warned but it can not always be used as evidence in the dismissal of an employee. It depends on the nature of the behaviour: if it's personal then the evidence is inadmissible. If it's a professional nature, it's admissible but not if it's a phone bug.

2. COMPUTER INFORMATION AND ELECTRONIC MESSAGING SYSTEMS AT WORK

The general principle is that it is understood that employees use company computers for limited personal use.

Consequently it is an offence for employers to access personal files on a company computer even if the employee was prohibited from using the computer for personal activities.

However the employer can sanction the employee for breaching company regulations.

Where there is personal information on a hard disc which contains company information, the employer may not access the personal part of the disc without the employee being present or invited to be present.

3. PROTECTING AN EMPLOYEES RIGHT TO PRIVACY AT HOME

The right to choose where an employee lives and how he uses his house must not be constrained by the employer except if it's absolutely necessary regarding the legitimate interests of the company and if it's proportional to the job, the professional activity and the goal.

Case example :An employee was asked to move from his office to his home to carry out his work. He refused. He was dismissed. The employer lost the case.

4. EMPLOYMENT LAW AND RELIGION

The law manages the balance between religious freedom and the interests of the employer.

Employees are allowed to wear religious insignia at the workplace; a cross, a star of David, a hand of Fatma.

However they can not refuse the obligatory annual medical check-ups.

An other example of what they can not refuse is the case of a muslim employee of a meat processor who couldn't refuse to touch pork.

Employees have to respect the law and the regulations requiring protective clothing for hygienic or safety reasons.

Where an employee is at variance with a brand image in for example the clothes they wear.

There is the case of a muslim women employed in a fashionable clothes shop who insisted on wearing head to toe muslim clothes. The Court found in favour of the employer because her demanour was at variance with the spirit and atmosphere of the business.

There may have been a different result if the employee worked without being in contact with the general public.

The employer can refuse an employee a holiday for religious purposes if it deliteriously affects the business.

At the first interview for a job, the employee can mention his or her religion and negotiate specific clauses in the contract (construction companies story)

However an employee can not proselytise in the workplace.

5. EMPLOYMENT LAW AND THE RIGHT TO A PRIVATE AND FAMILY LIFE

The principle in general is that there is no interference in a employee's private life by the employer.

Nevertheless for certain situations there is interference where an employee's private behaviour is deleterious to the company. For example a love affair between employees could have a bad effect for the company. The company has to prove the bad effect on the company.

Employees can demand days off for specific events. For example 4 days for a wedding, 2 days for funerals, 3 days for a birth or adoption, 2 years unpaid leave for the mothers or the fathers...

In order to facilitate family life, a lot of companies and public services provide « crèches » for the children, part time employment and flexi time.

6. AN EMPLOYEE'S RIGHT TO SAFETY

The employer is responsible for the safety of the employees in the workplace.

This includes protection, for example, from criminals and moral or sexual harassment.

There is an obligation on the employers to warn the employee if there is inherent danger in the workplace and to compensate them with danger money.

If an employee believes that he is in danger in the workplace, he can leave without sanction.

Where there are more than 50 employees companies, there is a CHST

7. EMPLOYMENT LAW AND PROTECTION OF AN EMPLOYEE'S RIGHT TO HIS OR HER OWN IMAGE

The employer can't insist on using an employee's image.

For example for a photograph, the employer can not use it without the authorisation from the employee and normally he has to pay something if the employee is in a private place.

8. CRIMINAL ACTS BY EMPLOYEES IN THEIR PRIVATE LIFE AND DISMISSALS

The principle is that there is no sanction by the employer against an employee who commits a crime in private life except where it would cause real damage to the company.

For example a solicitor's clerk was convicted of hiding illegal immigrants. The company tried to dismiss him on a ground of a breach the employment contract but the Court rejected the cause. This crime did not reflect badly on the company.

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IN CONCLUSION I WANT TO SAY THAT

MORE AND MORE COMPANIES ARE AWARE OF THE IMPORTANCE OF THE BALANCE BETWEEN PRIVATE LIFE AND WORK LIFE TO THEIR OWN BENEFIT.

IT IMPROVES THE MORALE, MOTIVATION AND THE PRODUCTIVITY OF THE EMPLOYEES

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