Personality Rights, Equality and Non-Discrimination, Prohibition of Harassment, Occupational Safety and Health Services Organization

As for the Right of Personality, do video surveillance authorizations issued before 25 May 2019 remain valid?

Yes, in everything that does not contradict the RGPD. Data controllers must comply with the conditions set out in the authorisations for processing personal data by means of video-surveillance.

I want to add the number of cameras that are referred to in the CNPD authorization. How do I do that?

It is no longer necessary to make any notification or communication to the CNPD. If you place cameras in places not covered by the authorization, it will be outdated (expired). In any case, you must be careful not to capture images in areas that are not allowed. According to the RGPD, the controller must analyse in advance whether the processing of personal data, arising from the use of a video surveillance system, complies with the requirements of the RGPD and other national legislation that may be applicable.

What legislation regulates the personality rights?

Articles 14 to 22 of the CT and Article 70 of the Civil Code.

What are personality rights?

Personality rights are those that protect citizens against any illicit offense to their physical person or morals.

What are the personality rights provided for in the Labour Code?

The Labour Code recognises freedom of expression and opinion, physical and moral integrity, privacy, protection of personal data, protection of biometric data, confidentiality of messages and access to information, as well as limiting the employer's requirement for tests and medical examinations or the use of means of remote surveillance.

Can the employee express his/her opinion in the company?

The employee can give his/her opinion and express his/her thoughts in the company, with respect for the personality rights of the employer and other employees and the normal functioning of the company.

What does the privacy of private life consist of?

It is the duty that both employers and workers must not obtain or disclose information about each other's family, affective, sexual, health status or political or religious beliefs.

Can the employer require information about the private life or health status of a job applicant or worker?

In principle, he/she cannot. Only in exceptional cases, when such information is absolutely necessary for the professional activity and the appropriate justification is provided in writing. The person providing any such information is entitled to know how it was recorded and for what purpose. The employer may process this information only after notification to the National Data Protection Commission (CNPD), accompanied by an opinion from the Workers' Commission, and only to the extent that it is necessary, appropriate and proportionate to the objectives to be achieved. This data must be destroyed when the employee is transferred to another place of work, or upon termination of the contract. If someone suspects that the employer is using files or data in computer support in violation of the law, he or she may request the intervention of the CNPD, which works with the Parliament (Law 67/98, of 26 October).

Can the employer require the job applicant or employee to undergo tests or medical examinations?

In principle, he/she cannot. Only in exceptional cases, when such tests or examinations are absolutely necessary for the professional activity and the due justification is presented in writing.

Under no circumstances may the employer require pregnancy tests or examinations. The doctor responsible for the tests or examinations can only inform the employer if the worker is or is not fit to perform the activity.

Can the employer use video cameras?

The employer may not use camcorders to monitor the professional performance of the employee. However, he/she may use cameras for the protection and security of persons and goods, if this is justified by the special nature of the company's activity. In this case, he/she has to inform the employee of the existence of the devices and the purpose for which they are intended. With the new European data protection regulation, it is no longer necessary to ask the CNPD for permission to have a video surveillance system. Thus, you no longer have to fill in any form or pay a fee, nor do you have to communicate anything to the CNPD. However, in order to install a video-surveillance system you must meet several legal requirements, which may include, in addition to the RGPD, Law 34/2013 of 16 May, which regulates private security activity or the Labour Code, depending on what is applicable to your specific situation. It is also expected that the national law implementing the RGPD may bring some specific conditions applicable to video surveillance systems. Personal data collected by these means of surveillance may only be kept for the time necessary for the purposes for which they are intended and must be destroyed when the worker is transferred to another place of work, or upon termination of the employment contract.

How should the employer inform his employees of the existence of means of remote surveillance?

The employer must display the following on the workplace: "This location is under closed circuit television surveillance" or "This location is under closed circuit television surveillance, recording of picture and sound", followed by an identifying symbol. Data subjects have the

right to be informed about the use of video surveillance systems. The information notice must comply with Article 31, paragraph 5 of Law 34/2013 of 16 May

Can the employer access the e-mail that the employee receives?

In the case of personal messages or non-professional information, the employee has the right to his/her reservation and confidentiality. However, the employer can establish rules for the use of the e-mail in the company.

What happens if the employer violates some of these duties related to the workers' personality?

If there is a violation of personality rights, the employer incurs administrative offences and the respective fines will apply.

Equality and non-discrimination

What is discrimination in the workplace or in access to employment?

The worker or job seeker has the right to equal opportunities and equal treatment with regard to employment:

Access to employment;

To training;

Promotion or career; and

to working conditions, and may not be privileged, benefited, prejudiced, deprived of any right or exempted from any duty by reason of, in particular:

Of ancestry;

Age;

Gender;

Sexual orientation;

Marital status;

Family situation;

Economic situation;

Education;

Origin or social status;

Genetic heritage;

Reduced working capacity;

Physical handicap; chronic illness;

Nationality;

Ethnicity or race;

Country of origin;

Language;

Religion;

Political or ideological beliefs and trade union membership.

Who is to prove that you have been discriminated against?

If I have been discriminated against, I only have to indicate which employee(s) I consider to be discriminated against and why.

It is up to the employer to prove that the difference in treatment is not based on any discriminatory factor.

Can there be differences in the employer's treatment of employees?

Yes, if such differences of treatment are not based on discriminatory criteria and/or harassment practices.

Can there be differences in the value of retribution between men and women?

No. The criteria for differences in pay must be common to both men and women. Pay differences do not constitute discrimination when they are based on objective criteria, common to both men and women, namely based on merit, productivity, attendance or seniority.

What can the employer do to prevent and combat harassment in the workplace?

See the "Information Guide to Preventing and Combating Harassment in the Workplace

http://www.cite.gov.pt/pt/destaques/complementosDestqs/guia_informativo.pdf

Prohibition of harassment

What is harassment?

It is a process, not an isolated phenomenon or fact, however serious it may be (it may even be a crime if it is an isolated act but it is not a situation of harassment), always assuming a more or less chained set of acts and conducts, which occur repeatedly.

It aims at achieving the dignity of the person and the deterioration of his moral and physical integrity, which may eventually lead to a decrease in his/her ability to resist something he/she does not want, leading him/her to give in.

There may be a tentative of taking advantage of the weakness or fragility of the target person or of his/her hierarchically inferior professional position, or of the precariousness of his/her employment relationship and of the need to maintain it in order to ensure subsistence; there may be the aggressor's intention to get rid of the person targeted by his/her harassment.

What is a Code of Good Conduct for preventing and combating harassment at work?

It is a document in which the employer expresses the company's policy regarding the prevention of psychosocial risks and in particular harassment, expressly prohibiting its practice in the company.

The document should ideally be drawn up with the participation of workers and their representative structures (where these exist within the company).

This document should also clarify the concept of harassment, be disseminated to the workers and highlight its structure of means and channels for reporting situations of harassment, linked to confidentiality, involving occupational safety and health services.

For more information you can consult the "Informative Guide: Prevention and Combating Harassment in the Workplace: A Support Instrument for Self-Regulation".

Is it mandatory to have a Code for preventing and combating harassment at work?

From 01/10/2017, employers having seven or more employees are obliged to draw up and publish internally their Code of Good Conduct for preventing and combating harassment at work.

Can an employee who is the victim of harassment in the workplace resign?

Yes. The exposure to harassment when reported to the ACT is grounds for termination of the employment contract.

Once the practice of harassment is known, how should the employer proceed?

Once a harassment situation is known, the employer is obliged to institute disciplinary proceedings against the perpetrator, at the risk of incurring a serious offence.

The employer is responsible for making good any damage arising from occupational diseases resulting from the practice of harassment.

Do whistle-blowers and witnesses have any protection against employer reprisals?

Yes, the whistle-blower and his/her witnesses are afforded special protection against possible reprisals by prohibiting the employer from initiating disciplinary proceedings (until the judicial decision has become final), unless they act with the intention of harming the whistle-blower.

Abusive dismissal or abusive disciplinary sanction is presumed when it is applied in disciplinary proceedings up to the limit of one year after the denunciation of such practice to ACT.

What is moral harassment (mobbing)?

Moral harassment is unwanted behaviour, practiced with some degree of repetition, with the purpose or effect of affecting the dignity of the person or creating an intimidating, hostile, degrading, humiliating or destabilizing environment, which may consist of verbal attacks with offensive or humiliating content, and physical, or more subtle acts. It may include physical and/or psychological violence, aiming to reduce the person's self-esteem and, ultimately, their disengagement from the workplace.

It's moral harassment, for example:

Ridiculing, directly or indirectly, a physical or psychological characteristic of co-workers or subordinates;

Make recurring threats of dismissal;

Systematically set goals and objectives that are impossible to achieve or establish unfeasible deadlines;

Not systematically assigning any functions to the employee - lack of effective occupation;

Appropriate systematically ideas, proposals, projects and work of colleagues or subordinates without identifying the author of them;

Despise, ignore or humiliate colleagues or workers, forcing their isolation from other colleagues and hierarchical superiors;

Systematically spreading rumours and malicious comments or repeated criticism about colleagues, subordinates or hierarchical superiors;

Systematically giving confusing and inaccurate work instructions to the target person when not doing so to other colleagues;

Systematically asking for urgent work without obvious need;

Systematically criticise in public colleagues, subordinates or other hierarchical superiors;

Systematically imply that the worker or co-worker has mental or family problems;

Transfer the worker from a sector with the clear intention of promoting his/her isolation;

Mark the number of times and count the time he/she takes in the bathroom;

Make frequent jokes with offensive content concerning sex, race, sexual or religious choice, physical disabilities, health problems etc., of other colleagues or subordinates;

Comment systematically on the personal life of others;

Systematically create objective situations of stress, to provoke in the addressee of the conduct his/her lack of control.

What is sexual harassment?

Sexual harassment is unwanted behaviour, practiced with some degree of repetition, with the purpose or effect of affecting the dignity of the person or creating an intimidating, hostile, degrading, humiliating or destabilizing environment, and which may be verbal or physical in nature, have a sexual character (invitations with a sexual content, sending messages with a sexual content, attempting embarrassing physical contact, blackmail to obtain employment or work progress in exchange for sexual favours, obscene gestures, etc.).

It is sexual harassment, for example:

Systematically repeating suggestive remarks, jokes or comments about one's sexual appearance or condition;

Repeatedly sending unwanted, sexually-orientated cartoons, drawings, photographs or images from the Internet;

Making phone calls, sending unwanted sexually oriented letters, sms or emails;

Promote intentional and unsolicited physical contact, or excessive or cause unnecessary physical approaches;

Sending persistent invitations to participate in social or play programmes, when the person concerned has made it clear that the invitation is unwanted;

Making invitations and requests for sexual favours associated with a promise of employment or improvement in working conditions, job or career stability; this relationship may be expressed and direct or implied.

Conduct that does not constitute moral harassment:

The occasional labour dispute;

Legitimate decisions arising from the work organization, as long as they comply with the employment contract;

Occasional aggressions, whether physical or verbal (which may constitute a crime, do not translate, because they do not have a repetitive character, situations of harassment);

The legitimate exercise of hierarchical and disciplinary power (e.g. performance evaluation, initiation of disciplinary proceedings, etc.);

The pressure exerted by the exercise of positions of high responsibility.

Conduct that does not constitute sexual harassment:

Romantic approximation between colleagues or involving hierarchical superiors, freely reciprocal or that is not unwanted and repelled;

Occasional compliments.

Who can practice harassment in the workplace?

Everyone who has access to the workplace:

Suppliers;

Customers;

Direct and indirect hierarchical superiors;

Co-workers;

Service providers.

Is harassment prohibited?

The Labour Code prohibits harassment and punishes it with a very serious offence.

It is a disciplinary offence for any employee to harass you, regardless of his or her job.

The person who is harassed morally and/or sexually is entitled to compensation for property and non- property damages.

Organization for Security and Health Services at Workplace (SST)

What legislation applies to the organisation of SST services?

Law No. 102/2009, of 10 September, as amended by Law No. 42/2012, of 28 August, and Law No. 3/2014, of 28 January, without prejudice to the consultation of complementary legislation.

Under what condition can a ST Technician exercise the activity of safety at work in a company?

The ST technician cannot exercise his profession in an isolated way, that is, he will always have to have a contractual link, either with a company that has organized internal SST services, or with a company that provides external SST services, or with companies that adopt the common service modality.

External services may also be provided by an individual with the appropriate legal qualifications, however, they are subject to authorization by ACT (no. 1 of art. 84 of Law no. 102/2009, of 10 September), and to the requirements provided for in art. 85 of the above-mentioned law.

Where can the list of entities authorized to provide External Services for Security at Workplace be consulted?

The list can be consulted here.

Can external service providers carry out their activities while awaiting the analysis of their process?

No. According to art. 84, no. 1 of Law no. 102/2009, of 10 September, entities that intend to provide external services are subject to authorization, which is the responsibility of the body for the promotion of safety and health at work of the Ministry responsible for the labour area, in the case of exercising activities in the field of safety, as stated in paragraph a) of no. 3 of art. 84 of the above mentioned law.

What is the minimum workload that a provider of External Services for Security at Workplace must contract with client companies?

The legislation does not establish the number of minimum hours to be affected. However, taking into account paragraph a) of no. 1 of art. 85 - which establishes the relation 2 technicians/1 doctor - the proportion rule indicates a quantitative criterion, which presupposes the need to affect safety at work twice the hours necessary for health at work. Likewise, according to article 101, no. 3 of Law no. 102/2009, of 10 September, "the competent body for the promotion of safety and health at work of the ministry responsible for the labour area may determine a longer duration of the activity of the safety services in establishment where, regardless of the number of workers, the nature or seriousness of the occupational risks, as well as the accident indicators, a more effective action is justified".

Under what circumstances should workers be consulted on SST?

This consultation should be carried out once a year, covering the content of all paragraphs of Article 18(1) of Law No. 102/2009, of 10 September, as amended by Law No. 42/2012, of 28 August, and Law No. 3/2014, of 28 January, the employer's obligation to take the appropriate measures to develop the activities set out in that article being the assumption.

What aspects should be considered in a risk assessment?

The employer should consider the following aspects:

- The level, nature and duration of exposure, including exposure to intermittent vibration or repeated shocks;

- The exposure limit values and exposure action values indicated in art. 3 (Decree-Law no. 46/2006 of 24 February);

- The possible effects on the safety and health of workers particularly exposed to risks;

- The indirect effects on workers' safety resulting from interactions between mechanical vibration and the workplace or other equipment;

- Information provided by the manufacturers of work equipment in accordance with specific legislation on the design, manufacture and marketing of such equipment;

- The existence of replacement equipment designed to reduce the levels of exposure to mechanical vibration;

- The extension of exposure to transmitted vibrations during periods of work longer than the maximum limit of the normal daily work period;

- Specific working conditions, namely work carried out at low temperatures; adequate information resulting from health surveillance, as well as published information, if any, on the effects of vibrations on health (art. 5, no. 1 of Decree-Law no. 46/2006 of 24 February).

What training should designate workers or employers' representatives have?

They should have training validated by the ACT for this purpose.

http://www.act.gov.pt/(pt-PT)/SST Promoters/TrainersSST/Pages/default.aspx

Does a company with 50 employees, which has internal work safety services, need a Senior Work Safety Technician or can it have a Work Safety Technician providing the services?

The Law 102/2009, of 10 September (art. 101 no. 2), amended by Law 3/2014 of 28 January, is unclear as to the type of technician to be assigned to companies with up to 50 workers. However, according to article 2 of Law no. 42/2012, of 28 August, it is up to the ST's senior technician to organize, develop, coordinate and control the activities of prevention and protection against occupational risks, while the ST's senior technician is solely responsible for developing such activities. Therefore, the ST technician cannot ensure all the occupational safety activities provided for in art. 73-B of Law no. 3/2012, of 28 January, and the services must be provided by a ST (senior technician).

Can internal services be provided by self-employed workers?

Technicians must have a link with the company where they provide their services, being an integral part of it.

Who is responsible for the violation of Article 73b of Law No. 102/2009 of 10 September, as amended and republished by Law No. 3/2014, of 28 January?

If the type of service organization adopted is the external service, the misdemeanour responsibility falls on the external service of occupational safety and health, which violates the duties in question, and the employer.

Is the delivery of Model 1360 still mandatory?

No. Paragraph 7 of Article 74 of Law No. 102/2009, of 10 September, was repealed by Law No. 3/2014 of 28 January, which came into force on 27 March 2014.

According to the changes, it is no longer mandatory to notify the ACT as to the modality adopted for OS&H services, as well as any change to it within 30 days after the verification of the facts, and these data should be inserted in the Single Report.

Given the provisions of art. 73b m): it is the objective of the SST Service "to design and develop the training programme for the promotion of safety and health at work", can an SST service provider, not being certified for the development of professional training, develop this training for the purposes of the Labour Code?

Yes, because it is considered that the employer, when awarding the service of the providing company, integrates the objectives foreseen in art. 73-B, so the service is developed on behalf of the employer.

Should the employer keep records and archives of documents?

Yes. The employer must keep the documentation relating to the performance of the activities of the health and safety service (art. 73-B) at the disposal of entities with inspection powers for 5 years.

When activities that may involve risks to the genetic heritage are involved, the employer must also organize data records and keep up-to-date archives (art. 46, no. 2).The employer shall also keep up-to-date records (art. 46) on: the results of the risk assessment, the criteria and procedures used, the list of exposed workers and, if possible, with an indication of the nature of the agent and the degree of exposure of each worker, the results of the health surveillance of each worker with reference to his or her job or function (these shall be included in the individual medical record of each worker, placed under the responsibility of the occupational physician), the register of accidents or incidents and also the identification of the physician responsible for the health surveillance .

These records must be kept for at least 40 years after the worker's exposure.

If the company ceases its activity (employer), it must send these records and files to the competent body of the Ministry responsible for the labour area, with the exception of the medical records (art. 46 of Law no. 102/2009, of 10 September, amended and republished by Law no. 3/2014 of 28 January), which must be sent to the service with competence for the recognition of occupational diseases in the area of social security (DPRP - Department of Protection against Occupational Risks of the Social Security Institute), which are responsible for their confidentiality (art. 109 of the above mentioned law).

Is the self-employed worker equal to employer in the organisation of SST services? What about the organisation of workers' training?

Yes, as long as he has workers in his charge.

Which entity should I contact for questions regarding the election of workers' representatives?

The Directorate-General for Employment and Labour Relations (DGERT) of the former MTSS should be contacted.

Who is responsible for and how the work is carried out under safe, hygienic and health conditions?

The employer is always obliged to ensure that the worker is provided with work in conditions of safety and health, and must organise the Occupational Safety and Health (SST) services in accordance with the legal modalities provided.

What are the general obligations of the employer in this regard?

The employer must ensure that the worker is safe and healthy in all aspects of his work, taking into account the general principles of prevention:

http://www.act.gov.pt/(pt-PT)/CentreInformacao/PrincipiosGeneralPrevencao/Paginas/default.aspx

What are workers' obligations with regard to safety and health at work?

Workers have obligations (art. 17 of Law No. 102/2009 of 10 September), which do not exclude the general obligations of the employer.

The worker may not be harmed in the event of removal from his or her workplace or from a dangerous area resulting in serious and imminent danger, or for having adopted measures for his or her own safety or the safety of others.

Workers have obligations (art. 17 of Law 102/2009, of 10 September), which do not exclude the general obligations of the employer. The worker may not be harmed in the event of removal from his workplace or from a dangerous area resulting in serious and imminent danger, or for having adopted measures for his own safety or the safety of others.

In organising SST services, the employer may adopt one of the following modalities:

- Internal service;

- External service;

- Joint service;

- Modality of the designated employer/employee.

Does an employer with only one employee have to organise SST services?

Yes. Whenever an employer has employees in charge, regardless of their number, they must organise SST services.

Does a company with only managing partner(s) have to organize SST services?

No. Only employers, i.e. economic agents with employees, are obliged to organise SST services.

Can safety and hygiene activities be performed directly by the employer and/or workers?

Yes. In a company, establishment or group of establishments up to 50 km away from the largest that employs up to 9 workers and whose activity is not high risk, occupational safety activities may be carried out directly by the employer or designated worker, provided that they have adequate training, remain habitually in the establishment and have the necessary means.

Is it necessary for the employer or the designated worker to be authorized to perform safety activities at work?

Yes, authorization must be requested from ACT.

It constitutes a very serious infraction to carry out these activities without authorization or with the authorization expired.

What are the activities performed by the employer and/or the designated worker?

The activities exercised by the employer and/or the designated worker are those contemplated in art. 73b of Law 102/2009, of 10 September, as amended by Law 3/2014 of 28 January.

Are there forbidden activities, processes and working conditions for minors?

Yes. They are forbidden to minors, the work processes and conditions provided for in art. 61 to 67 of Law No. 102/2009 of 10 September, which involve exposure to some physical, biological and chemical agents.

Likewise, this same law (articles 68 to 72) conditions some activities, processes and working conditions to the minor as long as the employer observes some conditions. Thus, it should assess the nature, degree and duration of the minor's exposure to activities or conditioned work, in addition to the provisions of paragraphs a) and b) of no. 1 of art. 72 of the Labour Code.

Can healthcare promotion and surveillance be ensured by NHS health units in the case of workers from micro-enterprises that do not engage in high risk activities? Does this recourse to the NHS presuppose the existence of an occupational doctor or can it be considered a health authority such as the Health Officer?

For information on occupational health, consult the Directorate General for Health (DGS)

Can a worker refuse medical exams?

No. Under paragraph d), no. 1, art. 17 of Law No. 102/2009, of 10 September, one of the obligations of the worker is to attend the consultations and examinations determined by the occupational physician.

Who is required to undergo medical examinations under Law No. 102/2009, of 10 September?

All workers of a company.

Which SST service provider can I hire?

According to art. 114, the competent SST bodies keep an updated list of the issued authorisations, advertised on their electronic pages. To access it click here.

If the employer uses an unauthorised external service provider, what are the legal consequences?

The provision of private external SST services requires authorisation. It is a very serious offence for an employer to perform the activity as an unauthorised external service provider, and the employer who contracts unauthorised service is jointly and severally liable for the payment of the fine.

What are the main activities that external service providers should perform?

Companies providing external services must establish a plan of activities that includes the necessary measures to prevent occupational risks and promote the safety and health of workers (Article 73b of Law No. 102/2009, of 10 September, as amended and republished by Law No. 3/2014 of 28 January).

Does the submission of the application allow the immediate start of the provision of external SST services?

No, as expressed in art. 84 of Law no. 102/2009, of 10 September.

Are self-employed workers required to demonstrate that they are covered by occupational injury insurance in order to carry out occupational safety and hygiene activities?

It must be demonstrated by applicants for renewal of CAP, who exercise their professional activity as self-employed workers, that they are covered by occupational accident insurance.

What are light jobs?

Light work is considered work consisting of simple and defined tasks that do not require physical or mental effort that could put at risk the child's physical integrity, health and physical, mental and moral development.

Helpful Link: http://www.act.gov.pt