

So your employer is monitoring you. What you should know

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FULL TEXT

LOS ANGELES —

For many office employees, the work-from-home era has come with new level of freedom and flexibility. Their bosses, however, may see things differently.

The rise in remote work has led to an increase in companies using electronic monitoring software. Billed as a way to maintain productivity outside the office, these programs offer employers a range of features, including keystroke logging, screenshots of workers' computers and, in some cases, access to webcams.

While employers often need access to workers' company-owned computers and phones for security and IT purposes, so-called "bossware" has raised concerns about workers' electronic privacy rights.

Is your company secretly monitoring your work at home? Since COVID, the practice has surged

Spurred by the pandemic, companies are installing employee-tracking software to monitor productivity. Many haven't told their workers.

Here's what you need to know about your rights as an employee, and how the legal landscape is changing.

How do I know if my company is monitoring me?

"Unfortunately, the honest answer is there's no easy way for employees to find out if their employer is monitoring them," said Matt Scherer, senior policy counsel for worker privacy at the nonprofit Center for Democracy and Technology.

"The general rule is that while you're on the clock in the workplace, the employer has pretty broad discretion to establish workplace rules and regulations," said Scherer, whose organization supports oversight of government surveillance and limits on the digital collection of personal information.

In many cases, there are very few legal protections for workers, especially when they are using company property. Employers do need to inform employees that they retain the right to monitor their behavior, but these notices can be vague. There's no requirement for employers to tell workers specifically what monitoring programs they're using or what sort of information they are gathering.

"They can install an app that tracks your every keystroke on a company laptop, or they can install an app that sends them your location continuously on a company-owned cellphone," said Scherer. "There's no law that says they have to tell you that they're doing that."

Software programs run the gamut in degree of invasiveness and data collected. Most can be cloaked in secrecy. Check your employee handbook and any documents you signed when hired for a notice that your company has reserved the right to monitor you, or that you shouldn't expect a right to privacy on company devices.

In some cases, the monitoring software will be visible, but many software companies also offer invisible versions. Bennett Cyphers and Karen Gullo, of the civil liberties and digital privacy advocacy group Electronic Frontier Foundation, found that many companies offer software that's "designed to be as difficult to detect and remove as possible."

Do I have a right to privacy on my personal devices?

Technically, an employer can't monitor you on a personal device without your knowledge.

"As a practical matter, the employer is going to have to go through you in order to install any monitoring software," Scherer said. "But here's the catch: even then, there's no law that prevents an employer from saying 'You have to install this monitoring app on your phone, or else you're fired.'"

"You don't have the substantive right to tell an employer no and then be protected from retaliation," he said.

How can I protect my privacy?

Make it a point to keep your work computer for work and your personal computer for personal matters. This might sound obvious, but often people might leave the laptop at work if they are going in a couple of days, or are more comfortable with the personal machine. In other cases, people only have access to a work machine and fail to maintain the divide and fail to maintain the divide, or don't have a personal computer of their own.

The key thing is to assume that everything you do on company property is not private. That includes your company computer and phone, but also the company Slack, Zoom, email and other programs you access through your company.

Are employee workplace privacy laws changing?

Yes, but slowly.

The California Consumer Protection Act requires businesses to disclose what information they're collecting on consumers, how they collect it and how they will use it. Employers have been exempt from making those disclosures to employees, but that exemption will expire in 2023.

While the California law would be the gold standard on worker privacy protections if those provisions take effect, both worker advocates and employers will likely lobby for changes in 2022. On the other side of the country, the Massachusetts Information Privacy Act has very specific worker privacy protections, and would be the strongest bill in the country if passed, Scherer said.

More broadly, privacy and workers' rights advocates are pushing for federal and state legislation that would require employers to disclose when electronic monitoring is being used. Annette Bernhardt, Lisa Kresge, and Reem Suleiman of the UC Berkeley Labor Center argue that companies should be required to reveal "which activities will be monitored, the method of monitoring, the data that will be gathered, the times and places where the monitoring will occur, and the purpose for monitoring and why it is necessary."

Employers, they maintain, should also be required to document just how this monitoring will affect decisions that impact workers such as pay, performance evaluations and job assignments.

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