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Keeping Your Eyes On The Road – Are There Limits To UK Employer's Monitoring Of Staff Movements?

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How would you feel about your employer knowing where you are 24 hours a day?

News reaches us of a claim by an employee dismissed in the US for deleting a smartphone app ***Xora*** which her management had required her to install as part of its mobile workforce management systems. Xora bills itself (with callous disregard for the difference between adjective and adverb) as helping mobile staff work "faster and smarter" by installing a GPS function on their phone. That allows the employer to know not just where they are at any given time, but how long they have been there and even how quickly they are driving.

Ms Arias was not allowed either to turn her phone off at nights or weekends or to leave it at home, since that could lead her to miss client calls. She had no objection to the functioning of the app during working hours but deleted it when her boss told her, seemingly not without some note of pride, that it remained both active and actively monitored in the evenings and at weekends. Now she is seeking what sounds to UK ears as a more than slightly ambitious $500,000, her gross income for nearly 6 years.

But leaving the US position aside, would such a dismissal be fair in the UK? Put differently, is it unreasonable to require your employees to allow their whereabouts to be monitored out of hours and at weekends? Especially in circumstances where the employer (allegedly) admits that this is not just a theoretical possibility but is actually happening?

You could say that the employee should not have a problem with it so long as he is not up to anything illicit, and that the employer will rapidly get tired of keeping eyes on his weekend trips to Sainsbury's and the in-laws. However, would it be right for the employer to know if its employee were visiting a competitor or risking reputational damage in well-known red-light districts? The more the employee did not want the employer to know what he was doing, the stronger might become its argument that it should.

But there are legal considerations here too. ***Article 8 of the Human Rights Act*** states that "everyone has the right to respect for his private and family life". Building from that, the Data Protection Act guidance requires that "monitoring must be a proportionate response to the risk the employer faces taking into account the employee's legitimate expectations of privacy" and "personal

data must be relevant, not excessive and not retained for longer than necessary for the purpose for which the monitoring is justified".

There must be an argument that the mere collection, let alone actual monitoring, of movement data for employees who are "off the clock" infringes these principles. The competitor/red-light district argument has some superficial merit, but these are risks for all your employees, not just the mobile staff. Therefore if no steps are taken in relation to those other employees, they cannot be a proportionate measure for your people on the road. A contractual obligation to pick up client calls at weekends is one thing, but an obligation to let your employer know where you are when doing so is something else entirely.

As a result, it is hard to avoid the conclusion that an Employment Tribunal in the UK would see the evening/weekend monitoring as unlawful, any instruction to submit to it as unreasonable, and any dismissal for failure to comply as therefore unfair.

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