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Update

Employment Law

🌐 COVID-19

Portuguese Data Privacy Authority issues guideline for remote work controls

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Following several queries that have been sent to the **CNPD** related with the control of the labour activity and working time and some intrusive behaviour made public, the **CNPD** issued in 17 of April, a recent **Guidance on teleworking remote monitoring**. In summary:

Monitoring of the labour activity:

- Notwithstanding the provisions of article 170 of the Labour Code (“Workers Privacy in Teleworking”), the general rule prohibiting the use of remote surveillance means to control the professional performance of the worker applies (article 20 of the Labour Code), as they imply an unnecessary restriction of the worker's private life, which violates the principles of proportionality and minimization of the processing of personal data;
- Technological solutions for remote control of the worker's performance are not allowed, for assuming the collection of personal data in a manifestly excessive way, through a control beyond what is legitimately acceptable in the employer's premises. For example, software to track working time, log the webpages visited, the location of the terminal and devices used, as well as those that enable the capture of the desktop image, log the access to applications, control documents and log the time spent on tasks. Likewise is not permitted the imposition of a webcam turned on permanently, nor, as a rule, the recording of conference calls between the employer and the worker;
- In spite of the above, the employer retains the powers of management and discipline and may set objectives, create reporting obligations or schedule meetings via teleconference.

Records of working time:

- It is permitted to register working times using specific technological tools for the teleworking regime, which must be in accordance with the principles that safeguard the right to privacy



and as long as the collection is limited to what is necessary for the pursuit of the purpose of registration;

- If it is not possible to use such tools, the employer may seek solutions that allow controlling working hours, as well as demonstrating that the maximum times allowed by law have not been exceeded. Therefore, the employer can establish the obligation to send an e-mail, text message or use another format, such as by telephone.