

## **The Growing Use of Employee Monitoring Technologies**

By: Rapid Access International, Inc.

April 2019

In recent years, more and more companies have begun to implement some form of employee workplace surveillance with the aim of improving productivity. Some of the tools employed include monitoring of emails, conversations, computer usage, employee movements around the office. The health and fitness of employees is also increasingly monitored with the help of new technologies such as biometrics and wearable technology like Fitbits.

### **The Growth of Employee Monitoring**

According to Brian Kropp, vice-president of research firm Gartner, “[m]ore than half of companies with over \$750m in annual revenue used "non-traditional" monitoring techniques on staff [in 2019]”.<sup>1</sup> Put in context, the growth of this trend is significant. While 30 percent of these companies used such tools in 2015, Mr. Kropp expects that 80 percent will use these sorts of tools next year.<sup>2</sup>

### **The Legal Backdrop**

In the United States, restrictions on workplace monitoring include the Electronic Communications Privacy Act of 1986 (ECPA) (18 U.S.C. Section 2511 et seq.) and common-law protections against invasion of privacy.<sup>3</sup> These protections would seem to prohibit employers from employing many of these new monitoring techniques, but there are a couple of key exceptions. One is the “*business purpose exception*,” which permits employers to monitor oral and electronic communications as long as the company can show a legitimate business purpose for doing so. The second is the *consent exception*, which allows employers to monitor employee communications provided that they have their employees' consent to do so.”<sup>4</sup> The legal interpretations of what kinds of data and activities can be monitored becomes complicated, but suffice it to say that these exceptions have largely opened the door to a wide range of monitoring in the workplace.

### **Companies and Technologies to Meet the Demand**

Companies like Humanyze, a Boston workplace analytics company, have formed to meet the demand. Founded in 2011 out of the MIT Media Lab, Humanyze provides solutions to analyze what they call ‘data exhaust’ “from systems such as email and Skype can be used to uncover informal communication networks.”<sup>5</sup> The company also uses name badges equipped with radio-frequency identification (RFID) devices and microphones. Together, these tools enable companies to check on how much time

---

<sup>1</sup> Belton, Pdraig. "How does it feel to be watched at work all the time?". BBC News Website. Business Section. 12 April 12, 2019. Available at: <https://www.bbc.com/news/business-47879798>. Accessed on April 30, 2019.

<sup>2</sup> *Ibid.*

<sup>3</sup> "Managing Workplace Monitoring and Surveillance: SHRM Website. March 13, 2019. Available at: <https://www.shrm.org/resourcesandtools/tools-and-samples/toolkits/pages/workplaceprivacy.aspx>. Accessed on April 30, 2019.

<sup>4</sup> *Ibid.*

<sup>5</sup> Humanyze Website. Solutions Section. Available at: <https://www.humanyze.com/solutions/>. Accessed on April 30, 2019.

employees spend talking, the volume and tone of their voices, and even if they dominate conversations.<sup>6</sup>

Ben Waber, chief executive of Humanyze, says it gives firms the ability to assess how their staff are performing and interacting, which can be good for the firm but also good for employees themselves.<sup>7</sup> He calls the badges “Fitbit for your career”.<sup>8</sup>

To be sure, there are examples of how this form of monitoring has led to fairly innocuous and beneficial discoveries. Waber explains how one large tech client learned that coders who sat at 12-person lunch tables tended to outperform those who regularly sat at four-person tables. Larger lunch tables were “driving more than a 10% difference in performances”.<sup>9</sup>

The use of RFID technology is taken a step further by a Stockholm co-working space called Epicenter where people can have small RFID-enabled microchips implanted in their hands. More than 4,000 Swedes have adopted the technology, with one company, Biohax International, dominating the market.<sup>10</sup> The chipping firm was started five years ago by Jowan Osterlund, a former professional body piercer.<sup>11</sup>

### Going Forward

The trend here is undeniable. Companies are adopting practices and technologies to monitor employees at an incredible pace. And, the case of RFID chip implants seems to even indicate a strong willingness of employees to participate in some of these practices; largely for the sake of convenience.

But, participation in this trend is not always welcomed by employees. For all the talk of improving productivity, these methods are often perceived as a way to control staff and identify what the data might suggest are poor performers. Without clear communication of the purpose and the usage of this data, companies may risk creating mistrust and anxiety among their employees. That could have the opposite of the intended effect and end up decreasing productivity.

In the early days of social media, many of the pitfalls were overshadowed by the utility of the technologies and the vision for connecting the world in positive ways. As these platforms have grown, the risks have become apparent, and the debates now have turned towards how best to manage or even regulate these platforms. With the growth of workplace monitoring, it seems reasonable to assume that the ECPA and common-law protections against invasion of privacy will be challenged in new ways and a similar debate may emerge.

---

<sup>6</sup> Belton. *op. cit.*

<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid.*

<sup>9</sup> *Ibid.*

<sup>10</sup> Savage, Maddy. “Thousands of Swedes Are Inserting Microchips Under Their Skin.” NPR Website. Technology Section. October 22, 2018. Available at: <https://www.npr.org/2018/10/22/658808705/thousands-of-swedes-are-inserting-microchips-under-their-skin>. Accessed on April 30, 2019.

<sup>11</sup> *Ibid.*