

U.S. COMPANY'S MANDATORY VIDEO SURVEILLANCE VIOLATED DUTCH REMOTE WORKERS' FUNDAMENTAL RIGHT TO A PRIVATE LIFE

Insights
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A U.S.-based employer faced legal consequences after it terminated a remote employee in the Netherlands who refused to keep his camera on for the whole nine-hour workday. The Dutch Court held that the dismissal of the employee was illegal, in part, because the employer violated the employee's right to a "private life." This case highlights how employers run risks when they oversee the productivity of remote employees and the use of technology in doing so. While employers seek to manage the virtual workplace, they may come into conflict with their employees' desires to maintain privacy – especially in this complex and evolving area of employment.

Chetu Terminates Employee After Employee Refuses Video Surveillance

Chetu, Inc. is an American company that produces, publishes, and provides support for software, employing approximately 2,600 employees worldwide. Chetu hired the plaintiff in this case, an unnamed employee, as a telemarketer to work remotely from the Netherlands in 2019.

In August 2022, Chetu sent the employee an email informing him that he needed to participate in a virtual Corrective Action webinar and that he would need to keep his camera on for the entire nine-hour day. Following this instruction, the employee responded by email that he did not feel comfortable "being monitored for 9 hours a day by a camera" because it was an invasion of his privacy. He further stated that Chetu could already monitor his activity as he had to share his screen.

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Chetu, however, stood by the belief that this monitoring was the same as if the employee was observed in the office. When the employee responded with similar objections the next day, Chetu sent him an email stating:

“Hi [unnamed employee],

Your employment is hereby terminated.

Reason: Refusal to work; insubordination.”

The employee then brought suit in a Netherlands subdistrict court alleging that his immediate dismissal was not legally valid. Chetu didn’t appear in the case — quite the opposite, it dissolved its Dutch branch within a week of the employee’s termination.

Court Holds that Employee Was Illegally Dismissed

Under Dutch law, an employer may fire an employee with immediate effect and without severance pay, but three requirements must be met: (1) the employer must have an urgent reason, (2) give the employee notice immediately, and (3) provide the employee with a sufficient explanation (Article 7:677 paragraph 1 DCC).

The court held that Chetu had not legally dismissed the employee for several reasons:

1. **Insufficient Notice.** First, the court found that Chetu had not given the employee any explanation of the “nature and seriousness” of his actions and thus did not give him proper notification of the reason for his dismissal.
2. **No Refusal to Work.** The court also determined that despite Chetu’s assertion that the employee had refused to work, the employee had not communicated a refusal to work solely through his emails in response to the video surveillance request. Therefore, the “alleged refusal to work” did not demonstrate an urgent reason required for dismissal.
3. **Violation of Privacy Rights.** Most notably, the court found the dismissal illegal because Chetu’s request for the employee to keep his camera on violated his right to a “private life” and therefore was not reasonable request with which the employee could have complied.

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The court pointed to a European Court of Human Rights (ECHR) ruling that stated that “strict conditions are attached to observing employees.” The ECHR reasoned this was because “video surveillance of an employee in the workplace, be it covert or not, must be considered as a considerable intrusion into the employee’s private life, and hence [the court] considers that it constitutes an interference within the meaning of Article 8 [Convention for the Protection of Human Rights and Fundamental Freedoms]. Any interference can only be justified under Article 8 § 2 if it is in accordance with the law, pursues one or more of the legitimate aims to which that provision refers and is necessary in a democratic society in order to achieve any such aim.”

The court considered Chetu’s requirement for surveillance in light of the fundamental right to a private life within Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. Although in the EU fundamental rights generally only effect the relationship between the state and its citizens, an individual can invoke a fundamental right in “private-law employment” where the state does not offer adequate protection. The court found that that this was the case here as the Netherlands did not have protection for the “mere observation of the employee.”

Based on this analysis, the court concluded that Chetu’s requirement that employees keep their camera on all day was an unjustifiable violation of the fundamental right to a private life. The court ordered Chetu to pay the employee approximately €75,000, including damages for unpaid compensation, wrongful termination, worker transition assistance, additional compensation, and unpaid vacation days.

What Should You Do?

As remote work has become more prevalent over the past few years, so has the use of technology as a tool for employers to observe their employees’ productivity. However, this case demonstrates how different jurisdictions’ rules on technological and other types of surveillance can vary, and how an employer’s right to supervise its employees can conflict with employees’ privacy rights.

Employers with remote workers located in other states – or outside the United States – should specifically consider whether their workplace surveillance practices are in line

with the laws of the jurisdiction(s) where the remote employees are located. In general, employers that implement such technology should consider the extent to which the monitoring is necessary for legitimate business purposes, whether employees are entitled to any advance notice, and whether there are any other less invasive ways to monitor productivity.

Conclusion

If your organization does business or employs individuals in multiple jurisdictions, please contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in our [International Practice Group](#) or [Privacy and Cyber Practice Group](#) to learn more about the implications of this decision. We will monitor these developments and provide updates as warranted, so make sure that you are subscribed to [Fisher Phillips' Insights](#) to get the most up-to-date information directly to your inbox.