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Smart Working: remote controls and privacy

Measures to limit Covid-19 infections put Smart Working back at the center of the debate.

After the gradual return to the office occurred from May onwards, with the new Dpcm of October 18, the emergency status has been extended and the **Smart Working** has been extended to 75% of public workers, but can also be adopted in the private sector with targeted agreements.

With the worsening of the epidemiological situation, the measure aims to limit the contacts within the offices, but also to reduce the presence on public transport.

We have already talked about the **effects on health** of Smart Working, the consequences on **information security** and what is the state of the art in Italy and Europe.

However, there is another aspect to be addressed related to the digital transformation and the use of remote work that is a future challenge: the privacy of workers and remote controls (through video calls, bracelets and PCs, to give some examples), controversial issues that may require a trade union agreement to solve application problems arising from Article 4 of the Workers' Statute.
In fact, to date, the simplified method of recourse to agile work (without individual agreement with workers) has been extended until December 31.

Il **Sole 24 Ore** emphasizes that "The months of forced "homework" have made us forget that this provision sets precise stakes for the use of new technologies. The rule prohibits, in fact, the use of any instrument that allows the remote control of workers, making limited exceptions for "work tools" (notion introduced by the Jobs Act and still very controversial) and equipment whose use has been authorized by a trade union agreement or, failing that, by a measure of the Labour Inspectorate. In this restrictive context, many tools normally used by companies to manage work performance risk coming into conflict with the approach of the standard".

The use of technologies for the control of the worker not on site

Kensigton Group data reports 4 cases where it is possible for the company to operate a remote control.

1. Video call

For the use of video calls, which have become a common tool for smart working performance management, a union agreement or authorization is required. Unless it is demonstrated that the medium used is indispensable for the purposes of work performance. However, supervisory bodies have often taken a very restrictive approach to the notion of work tools.
For privacy obligations, if the call is recorded, there must be a privacy policy and a warning informing participants about this circumstance.

2. Chat Whatsapp

To use Whatsapp's chats you do not need a company agreement or authorization: even if it is a potentially invasive tool, there does not seem to be that form of "remote control" able to put in place Article 4 of the Workers' Statute.
From the point of view of privacy, however, it is not advisable to use Whatsapp chat for work purposes, because this involves the communication and dissemination of information that the company would then have difficulty in controlling.

3. GPS glasses and smart bracelets

The use of wearable technologies requires agreement or authorization, unless it is proven that glasses with Gps, smart bracelets, interactive garments or other similar tools are essential to make the work performance (evaluation that should be done on a case-by-case basis).

For the use of these technologies, a privacy policy for workers, an impact assessment and analysis of the possibility of basing processing on legal bases other than consent are required. According to Sole 24 Ore "it would therefore be useful for companies to identify the areas where there is a concrete "risk of control" and manage them according to the path provided by law. It would also be advisable to always proceed with the stipulation of a trade union agreement, or, failing this, with the request for administrative authorization, for all ordinary instruments, just as it would be advisable to identify within these agreements or authorizations which are the "work tools" indispensable to the performance of the service (usable without agreement)".

4. PC presence control

To control the activity of the workers through the use of mechanisms, in the company software, that warn about the presence in front of the PC or the connection to the company network of a worker needs the agreement or the administrative authorization. The use of such practices may conflict with the installation of Article 4, being clear that it generates a "remote control".
In this case, on the privacy front, it will be necessary to evaluate the legitimacy of the treatment, which must not be a form of monitoring. Once this analysis has been carried out, the company will have to provide a privacy policy and carry out an impact assessment.

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