National Protective Security Authority

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Brazil: Relevant legislation

There is no specific law regarding employees' privacy or data protection. The subject is ruled by the General Federal Constitution principles:

Federal Constitution

- All persons are equal before the law, without discrimination of any nature, and Brazilians and foreigners residing in the country are ensured with the uninfringeable right to life, freedom, equality, safety and property. This includes:
  - a right to privacy, private life and a person's honour and reputation; and
  - a right to secrecy of correspondence and of telegraphic, data and telephone communications (except by court order as prescribed by law).

Brazilian Civil Code

- People have the civil right to a private life under the Brazilian Civil Code and judges shall adopt the required arrangements to prevent or cease any act opposing this rule.

Brazilian Internet Act

- Rights and duties regarding the use of the internet include:
  - The uninfringeable right of the user's intimacy and private life, as well as the secrecy of their communication through the internet;
  - The protection and non-disclosure of the user's personal data, except through their express consent; and
  - Transparency about the collection, use and protection of the user's data, which cannot be done in breach of legislation and must be expressly agreed by the user.

Principles deduced from case law

- **Policies:** Employers should expressly state in their internal policies or employment agreements any monitoring of employees that will occur. Employers should also state if any IT systems, such as computers or mobile phones, are 'work tools' to be used for business purposes only.
- **Notice:** Employees must be advised of any monitoring of devices so that they are aware that they have no privacy rights whilst using such systems at work.
- **Personal communications:** It is strongly advised that employers do not access employees' personal email accounts at work, since it would likely be considered a violation of privacy. To avoid security breaches of personal emails, it is very common for employers to ban the use of personal email accounts at work.
- **Proportionality:** Employers can take steps to ensure that employees meet their commitment to work (including monitoring). However, employers must do so by always respecting the fundamental rights of workers, including their right to intimacy.
- **Surveillance:** Security cameras are allowed in public areas of the workplace, but the employee must be aware of their presence and the cameras cannot be set in places where they can violate an employee's intimacy or dignity (for example, in bathrooms).

The future

There are already decisions issued by Brazilian labour courts recognising that corporate emails are specifically a 'work tool', even without an internal policy expressing this. As such, those claims for damages resulting from the employer's access to employee's emails are found to be groundless. Notwithstanding this, it would still be advisable to have an internal policy stating this to ground employees' expectations in this matter.

GDPR: Brazil is not currently recognised as providing adequate protection of personal data as defined by the GDPR. This means that additional safeguards may need to be in place in order for organisations to transmit personal data from Brazil to the EU. All Brazilian companies that collect personal data from EU citizens and companies with established operations in the EU should consider whether their operations fall within the scope of the GDPR and, if so, the steps that need to be taken to achieve compliance with its requirements.

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