

## Spain

# Employee monitoring and surveillance

<b>Phase</b>	Organic Law 3/2018, of 5 December, on the Protection of Personal Data and the guarantee of digital rights
<b>Native name</b>	Ley Orgánica 3/2018, de 5 de diciembre, de Protección de Datos Personales y garantía de los derechos digitales.
<b>Type</b>	Employee monitoring and surveillance
<b>Added to database</b>	13 October 2023
<b>Access online</b>	<a href="#">Click here to access online</a>

## Article

Organic Law 3/2018, of 5 December, on the Protection of Personal Data and guarantee of digital rights): Article 87. Right to privacy and use of digital devices in the workplace. Article 88. Right to digital disconnection in the workplace. Article 90. Right to privacy in the use of geolocation systems in the workplace. Article 91. Digital rights in collective bargaining.

## Description

LAST UPDATE 2023 - THIS CONTENT WILL NOT BE UPDATED

The new Law (Organic Law 3/2018) repeals the previous Data Protection Law (LOPD 15/1999). Organic Law 3/2018 has a twofold objective:

- to adapt Spanish legislation to the European package of measures on data protection, i.e. the General Data Protection Regulation (GDPR) and Directive (EU) 2016/680.
- guarantee the new digital rights of citizens, under the protection of the provisions of Article 18.4 of the Spanish Constitution.

Thus, the regulation incorporates a broad catalogue of digital rights. Specifically, it recognises and guarantees a new catalogue of digital rights, including the following: (i) the neutrality of the internet; (ii) universal access to the internet; (iii) digital security; (iii) digital education; (iv) the protection of minors on the internet; (v) the rectification or updating of information on the internet; (vi) the right to be forgotten in search engines and social

networks; (vii) the regulation of the right to a digital will.

The law also regulates new labour rights, such as digital disconnection, and privacy against the use of a video surveillance system and geolocation in the workplace. In other words, it reinforces the employee's privacy, and therefore his or her right to digital disconnection and privacy with regard to the use of digital devices, video surveillance and geolocation in the workplace, allowing collective agreements to guarantee greater protection.

Thus, for example, Article 87 states that workers and public employees shall have the right to protection of their privacy in the use of digital devices made available to them by their employer. Likewise, the employer may access the contents derived from the use of digital media provided to workers for the sole purpose of monitoring compliance with work or statutory obligations and ensuring the integrity of such devices.

Meanwhile, Article 88 states that workers and public employees shall have the right to digital disconnection in order to guarantee, outside the legally or conventionally established working time, respect for their rest time, leave and holidays, as well as their personal and family privacy.

Article 91 indicates that collective agreements may establish additional guarantees of rights and freedoms related to the processing of workers' personal data and the safeguarding of digital rights in the workplace.

## Commentary

According to the CCOO trade union, Organic Law 3/2018 seeks to reinforce the right to privacy and information, but its lack of specificity, insufficient regulation and interpretative problems, as well as the reference to collective bargaining, mean that collective bargaining plays a key role in increasing and guaranteeing the privacy and intimacy of workers.

Indeed, in the drafting of the Law, the legislator is aware that there is a wide and varied casuistry, and therefore determines that these labour rights may be modulated according to the nature and purpose of the employment relationship, deriving their specific regulation to collective bargaining, both through collective agreements and agreements between the company and the workers' representatives.

The Spanish Data Protection Agency has drafted a specific document on "Data protection in labour relations" with the participation of both the Ministry of Labour and Social Economy and business organisations (CEOE and CEPYME) and trade unions (CCOO and UGT), with the aim of structuring and summarising the legislation and offering practical (non-binding) guidance.

## Additional metadata

<b>Cost covered by</b>	National government
<b>Involved actors other than national government</b>	National government
<b>Involvement (others)</b>	None
<b>Thresholds</b>	Affected employees: No, applicable in all circumstances Company size: No, applicable in all circumstances Additional information: No, applicable in all circumstances

## Sources

- [Organic Law 3/2018, of 5 December, on the Protection of Personal Data and the guarantee of digital rights](#)~~~~

## Citation

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