

Employer controls on the activity of workers: the new Workers' Statute article 4 and the consent of the worker.

ANDREA SITZIA

Università degli Studi di Padova
andrea.sitzia@unipd.it

Definition of the problem: the role of consent in the Data Protection system

The troubled reform of the Workers' Statute Art. 4 raises a number of relevant questions of interpretation, with a direct bearing on the prospect of the protection of areas of personal privacy in workplaces.

Among these, a primary importance is assumed by the delicate problem of the relationship between the Workers' Statute and the “Data Protection Code” (also known as the “Privacy Code”), which is presented again in the third paragraph of the new Workers' Statute Art. 4, as evidenced by the recent statement of our Data Protection Authority according to which in the matter of “employer controls” “compliance with the principles of the Data Protection Code will be precisely the main defence against a pervasive use of controls at work”.

Between the two □ coexisting □ regulatory frameworks there has always been a clear methodological and value difference, since the first (Workers' Statute) is the bearer of a series of prohibitions that inhibit company behaviours deemed to violate the dignity of the worker, whilst the second (Data Protection Code, as previously Law no. 675/1996) is characterised by a general all-encompassing approach without a specific consideration of work.

It has been stated authoritatively that, with respect to the statutory system in place to safeguard “privacy”, traditional employment law concerns not so much data regarded as object (cornerstone, by contrast, of the legislation on privacy, built around “personal data”) but the “methods of practice of the corresponding psychic function” of acquisition of the data. The Workers' Statute system, more specifically, bases itself on the “dynamic” dimension of the data in relation to its object (the

A. SITZIA, *Employer controls on the activity of workers: the new Workers' Statute article 4 and the consent of the worker*

protection of confidentiality with respect to issues unrelated to the assessment of professional competence referred to in Art. 8), while the legislation on privacy is moving in a more “static” dimension, focused on data considered as a legal good in itself.