

# Protection of Employees' Personal Information under Workplace Surveillance

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## Abstract

By analyzing the civil litigation cases involving workplace video surveillance in China, it is founded that the courts have taken a more lenient altitude to the action of workplace video surveillance, and paid less attention to the personal information rights of employees that may be damaged by this action, resulting a low efficacy of litigation relief. In addition, based on management rights, the “implied consent” rules and excessive surveillance of employers violate the rules of personal information handling. The special protection of employees' personal information can help maintain the dignity of employees, enhance the interests of the employer, and re-correct employees' unfavorable positions in the labor relationships. To solve these issues and improve protection of employees' personal information, this paper proposes two suggestions based on the critical reference to the experience and judgments in overseas similar cases. Specifically, to clarify the principle of handling workplace information, an information processing rule is proposed, which takes the principle of proportionality as the core. Additionally, the public interest litigation should be considered as a way to improve the remedy of employees' rights, and thereby improve the effectiveness of protection of employees' personal information.

## Keywords

Personal Information, Workplace Surveillance, Principle of Proportionality, Public Interest Litigation

## 1. Introduction

With the development of artificial intelligence, big data and the Internet of Things, technologies such as video surveillance, storage and processing are constantly being iterated and upgraded (Zou & Zhang, 2022). Workplace surveil-

lance is the behavior of employers to collect employees or their behaviors in a targeted manner through cameras, computers, tracking and other means during working hours and in the workplace (*Workplace Surveillance Act, 2005*). The degree of information collection and processing of current workplace surveillance is significantly greater than that of the past workplace surveillance, resulting in an increasingly transparent workplace (*Bueckert, 2009*). Generally, workplace surveillance is regarded as a mean of the management and control rights of employers, which can help improve work efficiency, optimize work processes, and reduce workplace risks (*Shao et al., 2019*). However, in practice, the employers often abuse the workplace video surveillance in the name of, for example, conducting business and internal investigations. This could cause a derogation of employees' legitimate rights and interests, and threaten their personal information security (*Ciocchetti, 2011*). The promulgation of the Personal Information Protection Law of the People's Republic of China (PRC) in 2022 has introduced a personal information protection system and improved protection for the subject of personal information (*Wang, 2021*).

However, the Personal Information Protection Law may be unable to provide a comprehensive protection for employees' personal information, since it ignores the special protection of employees' personal information. Specifically, the subordinate status of employees and the management right of employers, as well as the increased inequality between labor and capital, make the security of employees' personal information more vulnerable to damage by the employers. Therefore, special protection is required, in addition to the general principles of personal information protection, to balance the legitimate interests of employers and the security of the employees' personal information. This paper aims to develop a path to provide practicable and efficacious protection for employees' personal information. To be specific, this paper first analyzes the plight of employees in workplace surveilling and the necessity of protecting their personal information. Secondly, by exploring and analyzing the logic of foreign court judgments, several insights are summarized which are benefited for improving the protection of workers' personal information in China. Based on the analyzing results, two suggestions are proposed to improve Chinese employees' personal information protection system.

## 2. The Value of Protecting Employees' Personal Information

In theory, the value relationship is the corresponding relationship between the needs of the value subject and the satisfaction of the value object (*Zhang, 2017*). The value of law is the desirable and beautiful things that the law can protect and promote in the process of functioning, such as justice, security, freedom, equality, human rights, order, efficiency, and dignity (*Zhu, 2015*). In the workplace, the difference between subjects and conflicts between labor and capital inevitably produce competing interests.

## 2.1. Protecting the Personal Dignity of Employees

From the perspective of employees, protecting the employees' personal information is to protect their personal dignity. Wang (2013) pointed out that personal information is directly related to human dignity. As the subject of personal information, employees' personal rights and interests should not be infringed by other organizations or individuals, which is the manifestation of personal dignity (Wang, 2013). Regulating workplace surveillance is beneficial to reduce discomfort of employees and protect their personal dignity and integrity (Karanja, 2009). Levin (2009) studied EU legislation, member states legislation and their case law, labor court rulings, and found that human dignity, as a right that employees are entitled to enjoy, has been confirmed in these legislation or case law. Hence, the protection of personal information is essentially a protection of dignity. In the past, it is believed that reducing labor intensity, shortening labor hours, and providing a safe working environment are sufficient to protect employees, but as time goes by, employees' demands for protecting their dignity are also growing. As Marx mentioned, labor is the fundamental way to achieve human liberation and freedom, and the dignity of laborers is a necessary condition to achieve happiness and freedom (Li, 2022). For a long time, China labor legislation has paid more attention to the protection of material rights rather than spiritual rights, and thus employers often abused management rights and even disciplinary rights during the existence of labor relations, which may cause damage to employees' personal dignity. Some European countries attach great importance to the protection of employees' dignity and promulgate legislation or agreements. For example, in Belgium, a national collective agreement governing the use of video surveillance cameras in the workplace emphasizes that video surveillance in the workplace must respect the dignity of employees. It confirms that the security of employees' personal information is an important part of employees' dignity (Levin, 2009). Employers shall provide an equal, fair, safe and free working environment, consciously protect employees' personal information security and fully respect employees' personal dignity. By learning from the practices of EU member states, China can balance the complex relationship among the interests of employers, employees' dignity, and personal information protection legislation, and thus can establish a security protection mechanism for employees' personal information.

## 2.2. Increasing Employees' Enthusiasm for Work

From employers' perspective, protecting employees' personal information is conducive to stimulating enthusiasm for their work, thereby increasing their working efficiency. Efficiency value is also one of the basic values of law, and its basic meaning is to realize the maximization of value. Posner applied the idea of efficiency in economics to legal analysis, and pointed out that the purpose of legal activities and systems is to make efficient use of resources and increase wealth of society as much as possible (Li, 2011). The employers' improper workplace

surveillance could result employees to be cautious and anxious in working, and make employees under long-term mental pressure, which is detrimental to innovation and profits increasing. At the same time, due to the need to survive, employees rarely take remedial measures when their personal information rights are damaged. However, employees may feel dissatisfied and bring it into work, which could decrease their enthusiasm for work and lose their trust in employers, resulting a lower working efficiency. This is an unfavorable situation for both employees and employers. On the contrary, protecting employees' personal information and creating a free working environment are conducive to increasing employees' sense of belonging to their work and helping to ease the stressful labor capital relationships. The enthusiasm of employees can be positively exploited, which can increase the efficiency of resources utilization and the revenue of employers. This is consistent with the realistic requirements of balancing the interests of both employers and employees when dealing with employees' personal information.

### **2.3. Correcting the Disadvantaged Position of Employees in Labor Relations**

From the perspective of social relations, the protection on employees' personal information is beneficial to correcting the disadvantaged position of employees in labor relations, which reflects the equal value of the law, and helps to build a harmonious and stable labor relation. The inseparability of laborer and labor force determines the subordinate attribute of employees. Specifically, the employees have a subordinate position to the employers both personally and economically, leading to the disadvantaged positions of employees in labor relations. In the context of workplace video surveillance, the vulnerability of employees is mainly due to the information asymmetry between employers and employees, and the mismatch between employers' rights and duties. Specifically, the employees transfer part of their personal information interests under the restriction of the employers' management right, which reflects the contractual spirit of the labor contract. However, it is difficult for most employers to follow the principles of lawfulness, legitimacy, necessity, and good faith when they process employees' personal information. In addition, compared to the general information subjects, it is difficult for employees to express their demands, such as the right to know, choose, and delete. Because of the desire to retain the labor relationship and receive labor compensation, few employees choose to use legal remedies, when they face infringements on personal information interests such as excessive surveillance. Therefore, it is important to carry out special protection for employees to correct their disadvantaged position in labor relations, and make the labor legislation play a better role (Xie, 2021).

## **3. Problems in Protecting Employees' Personal Information**

In this section, we first analyze the current status of employees' personal infor-

mation protection in China, and then analyze weaknesses of the protection system. Specifically, two representative cases closely related to employees' personal information are retrieved from China Judgement Online<sup>1</sup>.

### 3.1. Insufficient Judicial Remedies

From the existing verdict in China, it can be found that restricted by the management right of employers and the subordinate characteristic of employees in labor relations, the winning rate of employees is low, and thus their personal information rights and interests may be difficult to be protected effectively. For example, in the case of Xiong v. a Wuhan Trading Co., Ltd., the court held that the purpose of the workplace surveillance is to supervise the work area and to avoid damage to the products, which is based on management needs and is necessary. Similarly, in the case of Zhang v. a Wuxi Co., Ltd., the court held that the act of photo taking in the locker room was the exercise of the management right of the employer, and there was no infringement from the results. In addition, when employees safeguard their legitimate rights, there are problems such as low efficiency of individual litigation, high litigation costs, and mismatched interests, which lead to lack of enthusiasm for rights protection. In order to alleviate the pressure of individual lawsuits, Personal Information Protection Law of PRC provides a new path for protecting personal information i.e., “public interest litigation” system. Personal Information Protection Law is an innovative judicial remedy, but when applied to the field of labor disputes may cause some issues, such as unclear cause of action and the improper subject of action right. These issues are not conducive to achieving the precise protection of personal information in the field of employment as required in Notice on Implementing the Personal Information Protection Law and Promoting the Procuratorial Work of Public Interest Litigation on Personal Information Protection issued by the Supreme People's Procuratorate.

### 3.2. Violation of Personal Information Processing Rules

- *Implied Consent vs. Informed Consent rules.* The legal basis of “informed consent” is the right to self-determination of personal information in German law and the right to information privacy in American law (Han, 2021). It means that when processing personal information, the information subject must be fully informed and consent to. “Informed consent” is regarded as a core principle in personal information protection legislation of various countries. The promulgation of the Personal Information Protection Law of PRC has also established a personal information processing rule with “informed consent” as the core, which not only guarantees the free decision of information subjects about their personal information, but also provides information processors with guidelines and legal reasons for processing personal information (Ding, 2021; Pang, 2021). However, the application of “informed con-

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<sup>1</sup><https://wenshu.court.gov.cn/>.

sent” may become a mere formality because of the option from the information subject may be limited, especially in the field of employment. Specifically, on the one hand, employers ignore the implementation of the notification procedures, and use surveillance devices to collect information as comprehensive as possible on the grounds that they have the management right. It is hard for employees know the scope, time, information processing, and storage methods or other related information of the surveillance, so the application of “informed consent” is limited. On the other hand, under the unequal state of “strong employers and weak employees”, employees may be forced to choose to consent with the aim to maintain their jobs and salary (Levin et al., 2006). Therefore, the consent of employees, in essence, can hardly reflect employees’ free will. The “informed consent” rule is difficult to play a practical role when employers process employees’ personal information.

- *Overcollection VS purpose restriction rules.* The duration of workplace surveillance is clearly defined in legislation and case law in many countries, particularly in cases where work and living places are mixed or telecommuting occurs. In reality, however, workplace surveillance devices are often operating around the clock, which may lead to excessive collection of employees’ personal information. Generally, excessive collection is the behavior of the employer to collect a large amount of personal information beyond the limit of the purpose of information collection. The excessive collection of employers is currently mainly manifested in the diversification of information collection methods and the expansion of the scope. Although Chinese legislation provides principle provisions on excessive information collection, it lacks operational standards of practice. Since the lacking practicable standards, employers often escape their duty that protecting the legitimate rights and interests of employees. In essence, employers violate the principle of purpose limitation, lawfulness, legitimacy and necessity in the Personal Information Protection Law of PRC, which is also an infringement on employees’ dignity and freedom.

Since employees are subject to the management rights of employers and their subordination in labor relations, they may face many difficulties in protecting their personal information. However, their rights and interests will not be disappeared (Tian, 2021). As stated in the Working document on the surveillance of electronic communications in the workplace published by the ARTICLE 29 - Data Protection Working Party, “Workers do not abandon their right to privacy and data protection every morning at the doors of the workplace” (Article 29 Working Party, 2002).

#### 4. Experience of Adjudication of Foreign Cases

This section provides a review of legislative principles and judicial judgements of Germany, US, and Canada, and then summarizes the good experience among them.

#### **4.1. Germany: Application of the Principle of Proportionality**

In the judgment rendered by the Federal Court of Germany on June 29, 2004, the court held that the arbitration committee's decision about introducing video surveillance was invalid, and the employer had violated the employees' rights without sufficient reasons (Schiemann, 2014). In this case, the employer had received numerous complaints about lost mail, and therefore an arbitration committee was convened to vote on a video surveillance system with the aim to investigate and prevent the matter. The works Council claimed that video surveillance is unreasonable and unnecessary, and it violated the principle of proportionality. The case has been tried by the Labor Court Berlin, the State Labor Court Berlin and The Federal Labor Court. The court's final ruling on the case is that the video surveillance is illegal, and its judgment logic is as follows. Firstly, there is insufficient evidence to justify the purpose of video surveillance, even if the employer's purpose is to protect self-interest, and the video surveillance is limited to targeting attackers rather than innocent employees. Secondly, video surveillance can help identify perpetrators in theft incidents, so it is appropriate to use video surveillance to protect the interests of employer. Thirdly, the necessity of video surveillance could not be assessed, since the lack of details of incidents against employers' interests. Fourthly, the employer cannot prove the risk of theft in surveillance locations, but the intensity, duration, scope, and technical limitations of video surveillance even exceeds the limits of state agencies for preventing serious crimes. Therefore, the judge ruled that the introduction of video surveillance was a serious violation of employees' personal rights, such as the right of information self-determination. The German Labor Court analyzed the following elements in turn to judge whether the video surveillance is legal, including purpose, method, means and interests. In fact, it is proved that the German labor courts applied the principle of proportionality to the judgment of workplace video surveillance cases.

#### **4.2. US: Application of Reasonable Expectation of Privacy**

In *Thompson v. Johnson County Community College*, a video surveillance camera that without audio recording function was installed by the employer in the security personnel locker area. Employees' complaint contains three counts. In Count I, the employee claimed that defendant conducted video surveillance in the workplace violated Title I of the Electronic Communications Privacy Act. In Count II, video surveillance infringed his Fourth Amendment rights to object unreasonable searches. In Count III, employee asserted a privacy tort under state law, alleging that employer intruded upon his seclusion. Regarding Count I, the court held that the surveillance equipment installed by the defendant was silent, it was analogous to pen registers and did not prevent the plaintiff from communicating. Therefore, it does not fall within the scope of protection of Article 1 of the Electronic Communications Privacy Act. Regarding Count II, the court held that it should first determine whether the plaintiff has a reasonable expectation

of privacy for the storage room. In fact, the storage room is open to all employees and the lockers are unlocked, which indicates that anyone could access to this area. Therefore, the plaintiff lacked a reasonable expectation of privacy in the storage room area and cannot claim the right to prohibit a reasonable search. Regarding Count III, the Court has no jurisdiction on this issue and therefore dismissed this count.

### **4.3. Canada: Establishing Standards for the Four-Factor Test Method**

In *Eastmond v. Canadian National Railway*, without informing employees, the employer installed six cameras in the maintenance yard to identify vandalism on the company's grounds. The employees, who believe the surveillance is an affront to human dignity, and complained to the Office of the Privacy Commissioner of Canada about the issue. The Privacy Commissioner established a four-prong test to determine whether the surveillance was reasonable, the court recognized the test in judgment, but showed the opposite result. The trial is analyzed specifically as follows. 1) Does the video surveillance fulfill employer needs. The Commissioner found that the employer's concerns may be possible, but failed to demonstrate that there was a real and specific problem. The court held that the employer had a specific need to prevent theft or damage which in the future. 2) The effectiveness of video surveillance in meeting demand. The Commissioner held that a warning would serve the same purpose if only to deter employees. The Court held that a warning without surveilling devices would not be a very effective deterrent for employees. 3) The proportionality of the loss of employees' privacy to the gained managerial benefit. The Commissioner held that low-resolution cameras can still identify individuals during the day, so it will cause psychological pressure on employees. The Court held that the surveilling devices were locked and that no one would review the records in the absence of accidents, so there was little harm to the employees' interests. 4) The possibility of other alternatives. The Commissioner found that the employer did not carry out an assessment before installed the surveillance devices, and that there may be some appropriate way, such as the use of fencing, which is less harmful to the interests of the employees. The Court held that other approaches, such as constructing fences or adding securities, would be costly and cannot achieve the same purpose. Ultimately, the Privacy Commissioner held that workplace surveillance was illegal, but the Court held it was legal.

### **4.4. Lessons Learning from Above Experience**

The following conclusions can be drawn from the analysis of the judgement logic of similar cases in the United States, Germany and Canada. German courts have strict restrictions on the implementation of workplace surveillance, which means that only surveillance that fully complies with the principle of proportionality is legal, otherwise it constitutes an infringement of employees' personal

information rights. Courts in the United States and Canada have relatively easy rules on workplace surveillance. In the United States, personal information security is protected in the form of privacy right. The court judges whether an employee can claim privacy protection based on the existence of “reasonable expectation of privacy”, and the specific judgment criteria are workplace environment, general social views and rational people’s views (Determann & Sprague, 2011). The trial result of the Canadian courts was similar to the United States, but the process of its trial showed marked differences. There is a tendency to integrate the principle of proportionality with reasonable expectation of privacy, and then the standard of the four-prong test is determined, which not only considers employees’ reasonable expectation of privacy in the workplace, but also takes into account the economic interests of employers. Based on the status quo of Chinese legislation and practice, it is practical and feasible to use the principle of proportionality to regulate employers’ information processing behavior. In terms of legislation, some scholars have pointed out that although the civil law does not specify the principle of proportionality in the legal provisions, provisions such as self-defense and emergency hedging all reflect the essence of the principle of proportionality “prohibition of excess” (Zheng, 2017). In terms of judicial practice, there are also many courts that apply the proportionality principle when trying civil cases.

## **5. Suggestions for Improving Chinese Employees’ Personal Information Protection**

### **5.1. Taking Principle of Proportionality as the Core of Workplace Information Processing**

The principle of proportionality originated from Prussian administrative law. Its direct purpose is to restrain the public power of the state, and its indirect purpose is to protect citizens’ rights from excessive interference of the public power of the state (Jiang, 2021). Before promulgating specific regulations on employees’ personal information protection, it is necessary to apply the principle of proportionality as the basic principle for protecting employees’ personal information and restricting employers’ behavior of processing information. The purpose of this measure is to regulate the unreasonable behavior of employers when surveilling employees, and show a tilted protection for employees.

- *Principle of Purpose limitation.* The proportionality principle takes the legitimacy of the purpose as the first object of review, and requires that workplace surveillance should have a legitimate purpose. That is to say, the purpose of workplace surveillance should be limited, such as perform labor contracts or conduct human resource management. The Belgian experience in dealing with workplace surveillance is worth learning. Employers must negotiate with employees equally before installing surveillance devices, and limit the purpose as follows, protecting employee health and safety, protecting property of the employer, and monitoring machinery (Levin, 2009).

- *Principle of appropriateness.* The principle of appropriateness requires that the means should contribute to the achievement of the purpose. Specifically, the workplace surveillance implemented by employers must be conducive to the achievement of their managerial purpose. In fact, the essence of principle of suitability is purpose-oriented, and it does not require that the managerial purpose can be fully achieved. Additionally, it can account for that, in the judgments of various jurisdictions, the courts generally recognize that the employers install surveillance devices to prevent the occurrence of theft cases is appropriate.
- *Principle of necessity.* The principle of necessity requires the employer to choose method that the least damaging to the rights and interests of employees among all surveilling methods, which can achieve the same managerial purpose. This coincides with the “minimum necessary principle” proposed by the UK Privacy Commission and the “data minimization” principle of the General Data Protection Regulation (GDPR). In *Barbulescu v Romania*, the judge held that workplace surveillance is admissible only if there are good reasons to suspect that the employees violate the policy and the surveillance is targeted. Unrestricted surveillance is clearly an excessive collection of employees’ personal information. Therefore, workplace surveillance would go through a review before conducting, to determine that there are no other less damaging methods. In addition, the employer should use the least intrusive surveilling technology or means, such as limiting the time and scope of surveilling, using surveillance equipment produced by trusted companies, and adopting silent surveilling equipment. It is to ensure that the conduct performed for the legitimate purpose is necessary.
- *Principle of proportionality of interests.* The development of surveillance technology has intensified the conflict of interests between employers and employees. In specific cases, the judgment of interest proportionality is a difficulty in dispute resolution due to the lack of specific judgment methods. Using the standard constitution and judgment method of the principle of proportionality is beneficial to constrain the judge’s discretion and provide clear expectations for all parties. Therefore, employers should consider whether their own benefits are proportional to the employees’ losses before implementing surveillance. In order to measure the interests of both parties, we can learn from the practice in the “Guidelines on the Processing of Personal Data through Video Devices” from the European Union, that is, the employer as an information processor must evaluate the employees’ interests damaged by workplace surveillance. Specific evaluation elements include: 1) the type and scope of information to be collected; 2) the number of information subjects, their actual interests and alternative means; and 3) the extent of damage to employees’ personal information interests.
- *Openness and transparency.* From the history of personal information protection, the principle of openness and transparency is a basic principle recog-

nized by countries and organizations all over the world, and according to this principle, the information subjects have the right to know and decide (Wang, 2021). The principle of openness and transparency in workplace surveillance has the following requirements for employer. First, the employer needs to issue a workplace surveillance notice in advance in written or electronic form, inform the relevant information about personal information processing truthfully, and give employees enough time to raise objections. The notice must specify the contents as follows, video surveillance type, storage mode and duration, information processing person and contact information. Second, employer should set up conspicuous prompt signs when surveillance devices are activated to remind employees that their personal information may be collected. Third, when the employees' personal information stored by the employer is improperly leaked, the employer needs to inform the employees to know the accident as soon as necessary. Unless the leaked information is properly handled or will not harm the interests of the employee.

## 5.2. Improving the Public Interest Litigation

The judicial practice of various countries shows that civil litigation is one of the most important ways to protect the rights of employees, and many of them are classified as labor disputes. However, as illustrated above, the efficacy of litigation relief in protecting employees' personal information is being limited by factors such as employees' subordination. Given the troubles for employees to protect their personal information, developing a well-working public interest litigation system could be a good way to facilitate employees' personal information protection remedies. Its purpose is to remedy employees after the interests of personal information are damaged.

- *Clarifying the cause of lawsuit.* According to Article 70 of the Personal Information Protection Law of PRC, one of the conditions for filing a personal information public interest litigation is that personal information is illegally processed. Similar to the general illegal information processing act, employers' illegal information processing act can be divided into three stages i.e., before, during, and after the workplace surveillance. Before surveillance, the grounds for prosecution include: 1) The employers do not have the explicit consent of employees when processing information that are not necessary for human resource management. 2) The employers fail to truthfully inform the employees about the information processing in surveillance mode, such as the storage method and processing rules. 3) The employers fail to carry out the impact assessment of personal information protection under the circumstances prescribed by law. During surveillance, the grounds for prosecution include: a) The employers exceed their management right and excessively collects employees' personal information. b) The employers commit discrimination acts against employees based on the surveillance records. c) The employers fail to take necessary measures to protect the security of em-

employees' personal information. d) Employees cannot truly exercise their right to know, to choose, correct, delete or other legal rights. After surveillance, the grounds for prosecution include: 1) The employers process employees' personal information beyond the legitimate purpose and time limitation. 2) When a threat to the security of employees' personal information occurs or may occur, the employers fail to take remedial measures in time (Zhang & Lai, 2021).

- *Adding trade unions as eligible subjects of public interest litigation.* The latest Trade Union Law of PRC has specified four cases that the trade union may bring a lawsuit before a People's Court. To be specific, the four cases are that the employer violates the collective contract, infringes on the rights and interests of his employees, infringes on legal rights and interests of the trade union, occupies the trade union funds and refuses to return. If the trade union held that the employer violates the legitimate rights and interests of the employee, it can support and assist the employee to sue. In the judicial practice of many countries, the trade union often acts as the labor side and its representative. In France, a representative trade union organization has the rights and obligations to sue and be sued, and it can help or represent employees in litigation activities with their consent (Tian, 2019). In Germany, the trade union has traditionally been Incapacitated association, but under the new German Code of Civil Procedure, article 50 (2), it can also file lawsuits. The reasons for adding trade unions as the eligible subjects of the public interest litigation system for protecting employees' personal information are as follows. Firstly, the trade union as an organization established by employees voluntarily, its basic responsibility is to improve employee's working conditions and safeguard their legitimate rights and interests. Article 21 (3) of the Trade Union Law of PRC also makes it clear that trade unions support and help employees safeguard their legal rights and interests. Secondly, as a professional organization, the trade union has legal knowledge and experience in resolving disputes. Adding it as the subject of the lawsuit can improve the exercise of litigation right, reduce the cost in safeguarding the interests and save judicial resources. Therefore, in the process of improving the public interest litigation system of employees' personal information, the trade union can be added as the eligible subject of litigation practice. Trade unions as plaintiffs or agents to participate could play an effective role in public interest litigation, meanwhile, fulfill its obligation to protect the legitimate rights and interests of employees.

To sum up, in the legislative aspect, by refining workplace information processing rules and clarifying the information processing principles (i.e., the principles of purpose limitation, appropriateness, necessity, proportionality of interests, openness and transparency), the unreasonable workplace surveillance by employers can be regulated. And thus, the goals of protecting the employees' personal information rights and balancing the interests of labor and capital can be

achieved. In the judicial aspect, by improving the public interest litigation system, we can reverse the unfavorable situation in litigation cases of employees, mobilize their enthusiasm for rights protection, and make up for the shortage of litigation relief. The cooperation of legislation and judicial activities can strengthen the protection of employees' personal information and reflect the inclined protection of the law for the employees.

## 6. Conclusion

With the updating and iteration of surveillance technology from simulation to digitalization and then to intelligence, the scope and intensity of surveillance in workplace are expanded and enhanced continuously. The ubiquitous workplace surveillance has brought great challenges and threats to the security of employees' personal information. The management rights of employers, the subordination of employees and the rational use of personal information have created many obstacles for employees to safeguard their legitimate interests of personal information. Employees are a huge group in society. Protecting their personal information is conducive to the embodiment of the legal value of personal dignity, efficiency, and equality. From the current legislation and judicial status, however, it can be seen that the current legal protection for general information subjects cannot play the same role in the field of labor, and thus can hardly meet the needs of building harmonious and stable labor relations. Therefore, establishing the core position of the principle of proportionality in protection of employees' personal information is conducive to preventing employers from infringing on employees' personal information rights and interests by workplace surveillance. Moreover, employees often lack the enthusiasm for protecting their personal information because of the imbalance of interests and difficulty of providing evidence. To solve this issue, trade unions can be added as qualified subjects of employees' public interest litigation, which help to improve employees' awareness of rights protection and thus strengthening the special protection of their personal information rights and interests. In addition, the protection of workers' personal information can be strengthened by setting up special laws in the field of labor law and personal information protection law, promulgating the Labor Standards Law, and establishing a minimum compensation system.

## Conflicts of Interest

The author declares no conflicts of interest regarding the publication of this paper.

## References

- Article 29 Working Party (2002). *Working Party Working Document on Surveillance and Monitoring of Electronic Communications in the Workplace*. [https://ec.europa.eu/justice/article-29/documentation/opinion-recommendation/files/2002/wp55\\_en.pdf](https://ec.europa.eu/justice/article-29/documentation/opinion-recommendation/files/2002/wp55_en.pdf)
- Bueckert, M. R. (2009). Electronic Employee Monitoring: Potential Reform Options. *Ma-*

- nitoba Law Journal*, 6, 99-116.
- Ciocchetti, C. A. (2011). The Eavesdropping Employer: A Twenty-First Century Framework for Employee Monitoring. *American Business Law Journal*, 48, 285-369. <https://doi.org/10.1111/j.1744-1714.2011.01116.x>
- Determann, L., & Sprague, R. (2011). Intrusive Monitoring: Employee Privacy Expectations Are Reasonable in Europe, Destroyed in the United States. *Berkeley Technology Law Journal*, 26, 979-1036.
- Ding, X. (2021). *Personal Information Protection: Principle and Practice*. Law Press.
- Han, X. (2021). The Dilemma and Solution of Informed-Consent Rule in Personal Information Protection—On the Relevant Provisions of the Personal Information Protection Law. *Business and Economic Law Review*, No. 1, 50.
- Jiang, H. (2021). Paradigm Shifts in the Application of the Proportionality Principle. *Social Sciences in China*, No. 4, 107.
- Karanja, S. K. (2009). Privacy and Protection of Marginalized Social Groups. *Studies in Ethics, Law, and Technology*, 2, 21-22. <https://doi.org/10.2202/1941-6008.1063>
- Levin, A. (2009). Dignity in The Workplace: An Enquiry into the Conceptual Foundation of Workplace Privacy Protection Worldwide. *ALSB Journal of Employment and Labor Law*, 11, 63-103.
- Levin, A., Foster, M., Nicholson, M. J., & Hernandez, T. (2006). *Under the Radar? The Employer Perspective on Workplace Privacy*. Centre for Study of Commercial Activities Research Report.
- Li, P. (2022). Dignity, Happiness and Freedom: The Value Orientation of the Labor View of the Communist Party of China in the New Era. *Journal of Northwest University (Philosophy and Social Sciences Edition)*, 52, 37-46.
- Li, S. (2011). Economic Logic Hidden in Law-Economic Analysis of Law and Its Theoretical Expression. *Academics*, No. 8, 71.
- Pang, X. Z. (2021). Civil Law Protection of Personal Information in the Era of Big Data. *Open Access Library Journal*, 8, 1-12. <https://doi.org/10.4236/oalib.1108016>
- Schiemann, A. (2014). BGH, Beschlussvom29. 1. 2014-1 StR 654/13. *Juristische Rundschau*, No. 7, 299-306. <https://doi.org/10.1515/juru-2014-0048>
- Shao, Q., Zhao, S., Liu, N., & Feng, K. (2019). Research on the Labor Market Cooperation Alliance under the Background of AI. *Operations Research and Management Science*, 28, 175-181.
- Tian, S. L. (2019). *Foreign Labour Law*. Peking University Press.
- Tian, Y. (2021). Private Legal Approaches to the Protection of Employee Genetic Information. *Studies in Law and Business*, 38, 54.
- Wang, L. (2013). The Value and Realization of Personal Dignity in Personality Right Law. *Tsinghua University Law Journal*, 7, 16.
- Wang, L. (2021). Highlights and Innovation of Personal Information Protection Law. *Journal of Chongqing University of Posts and Telecommunications (Social Science Edition)*, 33, 1-13.
- Workplace Surveillance Act (2005). *No47-NSW Legislation*. <https://legislation.nsw.gov.au/view/html/inforce/current/act-2005-047>
- Xie, Z. (2021). Protection of Employees' Personal Information: Value, Principle and Path. *Journal of Comparative Law*, No. 3, 29.
- Zhang, W. (2017). Jurisprudence: The Central Theme and the Common Concern of Jurisprudence. *Tsinghua University Law Journal*, 11, 21.

- Zhang, X., & Lai, C. (2021). Comprehension and Application of the Public Interest Litigation System for the Protection of Personal Information. *Journal of National Prosecutors College*, 29, 55-59.
- Zheng, X. (2017). The Principle of Proportionality in the Modern Civil Law System. *Science of Law*, 35, 103.
- Zhu, J. (2015). *Jurisprudence*. China Renmin University Press.
- Zou, C., & Zhang, F. (2022). Algorithm Interpretation Right—The First Step to Algorithmic Governance. *Beijing Law Review*, 13, 227-246.  
<https://doi.org/10.4236/blr.2022.132015>