



Mystery shoppers, dismissal and the GDPR in Belgium

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Many employers in the consumer goods and retail sector call on mystery shoppers to assess the quality of their personnel work and performance. What is the value of the reports drawn up by these mystery shoppers, in particular with regard to the GDPR?

The main purpose: improving customer service. To this end, some employees are tested by a mystery shopper regarding the ways they welcome clients and meet their needs.

If the report delivered by a mystery shopper identifies any shortcomings or failures on the part of the employees, the following questions arise: what measures could be taken against these employees (such as disciplinary measures and dismissal for gross misconduct)? Can these measures be justified based on this report?

The use of mystery shoppers is not specifically regulated in Belgium. However, some Belgian courts were called upon to decide on the value of such reports.

In a recent case, a salesperson was dismissed for gross misconduct after being assessed three times by a mystery shopper over a short period of time. Each time, those assessments resulted in a negative score for the employee with regard to her performance in terms of sales and interactions with customers. After the first assessment, the salesperson received a letter including comments on the assessment and a written warning with a reminder of the "golden rules" to be followed. She also received training. After two more assessments (both negative) and an additional warning, she was dismissed for gross misconduct.

According to Belgian case law, it is only possible to present such reports as evidence of a failure of an employee if the method used is objective (excluding any questions formulated in terms of feelings). Moreover, both the method used and the evidence obtained through these assessments need to comply with the rules on personal data protection and in particular with the GDPR. If the GDPR principles are not adhered to, there is a risk of the employer not being able to use these reports to take measures against its personnel.

Caution should be exercised when using a mystery shopper report that points out an employee's shortcomings to take steps against the employee.

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