

## Workplace Privacy

Article By:

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In the Privacy Law class I teach at Roger Williams Law School, we are discussing workplace privacy. Students over the years have been surprised that there are so few laws that govern employees' privacy in the work place, and in general believe that workers have an expectation of privacy. The law doesn't really reflect this assumption.

The expectation of employees' privacy has changed over the years. Although laws basically allow employers to monitor employees except in changing rooms or bathrooms, employees are starting to question the methods that employers are using to monitor employees. Of course, all employees pretty much know that their use of an employer's computer system can be, and is, monitored. We regularly educate employees during data privacy and security education sessions that the employer knows when they send any data to their private email account, and are doing a look back for several months when an employee provides notice or is terminated. So don't think it is a secret if you send company data to your private email account—you will get caught!

On the other hand, there are other tricky areas that employers are facing these days—including telemetric monitoring of drivers (ride sharing), location-based services of drivers (package delivery), wearable technology to prevent workplace injuries (work boots, monitors for carpal tunnel syndrome, and construction vests to prevent back injuries), health monitors for wellness programs, and embedded chips or fingerprints for time cards.

Even more tricky is the report this week that a woman in San Diego has sued a San Diego hospital because the hospital was using hidden cameras in its women's health center to video operating rooms in order for the employer to detect who was stealing anesthesia drugs during an investigation.

According to the lawsuit, motion-activated cameras were installed on drug carts in three operating rooms between July 17, 2012, and June 30, 2013. The health center says the cameras were installed for an investigation regarding the theft of anesthesia drugs. The lawsuit alleges that the cameras were recording women in the most vulnerable positions, including during C-Sections, hysterectomies, sterilizations, dilatation and curettage for miscarriages, and other procedures, as well as when women were undressing.

When considering the privacy expectations of employees, companies may wish to also consider the privacy expectations of its customers and vendors. Transparency is an important consideration when balancing the expectation of privacy with employee monitoring, and using minimum monitoring tools

to accomplish your goal. Although it is difficult to be transparent during an investigation, collateral damage and risk are important considerations regarding the methods used to accomplish the goal of the investigation. Employees are asserting expectations that are worth listening to, whether laws apply or not, so when establishing employee monitoring programs, using common sense is worthwhile.

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