

NLRB GC To Urge Board to Regulate Electronic Worker Monitoring and Management

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On Monday, October 31, National Labor Relations Board General Counsel Jennifer Abruzzo issued [GC Memo 23-02](#), “*Electronic Monitoring and Algorithmic Management of Employees Interfering with the Exercise of Section 7 Rights*.” Specifically, the Memo seeks to address the growing employer use of “a diverse set of technological tools and techniques to remotely manage workforces.” Examples of these technologies include wearable devices, security cameras, GPS tracking devices, keyloggers, and audio recordings.

Abruzzo announced that she plans to “urge the Board, to the greatest extent possible, to apply the Act to protect employees from intrusive or abusive electronic monitoring and automated management practices that would have a tendency to interfere with Section 7 rights.” It is well established under Board law that an employer violates the act if it institutes new monitoring technologies in response to protected activity or if it utilizes technologies already in place for the purpose of discovering protected activity.

GC Memo 23-02 argues that the Board should do more to restrict employer use of electronic worker monitoring and proposes a new framework for analyzing employer use of technology to monitor and manage employees. Under the proposed new scheme, an employer presumptively violates the Act when its surveillance and management practices, viewed as a whole, tend to interfere with or prevent a reasonable employee from engaging in protected activity. Only if an employer can establish that the electronic management practices at issue are narrowly tailored to address a legitimate business need will the Board then attempt to balance the respective interests of the employer and the employee. And, if the employer’s business need is found to outweigh employees’ Section 7 rights, the Board will require the employer to disclose to employees the technologies in use, the reasons for its use, and how it uses the information obtained. This new framework creates a strong presumption that employee electronic monitoring by employers is presumptively unlawful – a marked change from the current law. Employers should stay abreast of developments in the area of electronic worker monitoring and management, as GC Abruzzo has indicated that she is interested in working with other federal agencies to regulate employer use of electronic monitoring and algorithmic management technologies. To date, the GC has signed information sharing and coordinated enforcement agreements with the Federal Trade Commission, Department of Justice, and

Department of Labor.

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