

Hidden Camera and Surveillance Laws in the Workplace

By Kate McKinney

Are you thinking about installing hidden cameras or spycams in your place of business? Many employers consider video and other surveillance key to keeping an honest and productive workplace. It keeps employees on the straight and narrow – no fingers in the till, no time clock funny business, no drinking or drugging on breaks. Many business owners and managers also record or review phone calls and emails from the office. But employers must be careful not to go too far in their surveillance or they will risk being sued by an employee for an invasion of privacy under federal or state law. This article is an overview of the laws applicable to workplace surveillance – you should always talk to your own attorney to determine exactly what the law is in your state.

Video Surveillance

There are several variables when considering video surveillance in your place of business. Your choices include visible traditional and dome surveillance cameras or hidden cameras, with or without audio. Each of the variables has potential legal implications.

Visible surveillance cameras (not hidden in any way) are generally not illegal if they are in a non-private place. If the camera records sound as well as video, you must comply with federal and state wiretapping and eavesdropping laws. You will need consent of one or all parties to any recorded conversation, depending on your jurisdiction. See the [Audio Recording Laws](#) article on this site for more information about the necessary consent to an audio recording.

Hidden cameras (often called spycams) are a slightly different story. Video recording (without sound) is usually okay – even if the camera is hidden – unless the person(s) being recorded has a reasonable expectation of privacy, the taping is done for some illegal purpose or there was trespass to record the video. Courts across the country are finding with more and more frequency that no reasonable expectation of privacy exists with non-covert video surveillance or even with hidden surveillance if the physical space examined is a public space. Note that, if an employer uses union employees, the employer may be required to notify the union of its intention to use hidden cameras, but probably doesn't have to disclose where the cameras will be installed.

There is a federal law which makes it a crime to secretly capture photo or video images of people in places and situations in which they have an expectation of privacy. Most states have followed suit. These laws are often referred to as “video voyeurism” statutes.

Video Voyeurism Laws

As you can see here at A-1 Hidden Camera, surveillance technology has advanced so much over recent years that excellent cameras can be completely hidden from view in a

number of different ways. These spycams are a great tool for many employers but can also be used inappropriately.

The federal government and most states have recently passed “video voyeurism” laws. These laws make it a crime to secretly record or distribute images of people in places where they have a reasonable expectation of privacy, such as bathrooms, dressing rooms, locker rooms, hotel rooms and tanning salons.

The federal law prohibits anyone from recording images of an individual’s “private areas” without consent when that individual has a reasonable expectation of privacy. Every state in the U.S. now has some legal prohibition of video voyeurism or invasion of privacy, except Iowa and Washington D.C. About half of these statutes actually make this kind of video recording a felony. Many have an even harsher punishment for distributing such videos.

You will need to check your home state’s particular laws as the courts from state to state may have differing opinions as to what types of places are expected to be private – bathroom and changing rooms may be “no-brainers” but some states’ courts have even decided that employee break rooms or lunch rooms are “private” for purposes of video surveillance.

Other Surveillance in the Workplace

The monitoring of electronic communications such as telephone calls, voicemail, email and IMs is covered by the federal wiretapping and eavesdropping statute – the Electronic Communications Privacy Act. The ECPA does include several business use exceptions to allow employers to perform necessary investigations, protect trade secrets and keep an eye on inventory and receipts. Under the federal law, the monitoring of things such as email and phone calls is allowed if either the sender or recipient consents or if it is done in the regular course of business. Employers can monitor only equipment which they own and do not have the right to monitor email hosted by a third party (like web-based email programs).

Best Practices

Whether they have a right to privacy at work or not, many employees find surveillance of any sort offensive. It is good practice for employees to be provided with written notification of the existence or possibility of any monitoring in the workplace – video, audio or otherwise. Notices can be made a part of a written, distributed policy or a section in the employee handbook. Employees can even be asked to sign a consent to or acknowledgement of the monitoring. If you are cautious, ethical and respectful of your employees and of the law, video and other surveillance in the workplace can be a wonderful tool to keep your business running smoothly and profitably.