



## Employee Surveillance Protocol

*Monitoring e-mail, Internet, and transportation use is legal, but employers must be diligent in informing staff up front.*

**E**VER WONDER WHAT EMPLOYEES are really doing when they're online? Afraid that staff may be pocketing prescription drugs? Concerned that staff are looking at private resident files?

With the growing sophistication of business operations, employees are increasingly given access to valuable and sensitive employer resources of all kinds. Employers who aren't paying attention to their resources could be at high risk for misuse by their employees.

Think of all the data on computers. More than 70 percent of computer crimes are not the result of hackers—they're inside jobs.

A savvy employee may be able to easily bypass a security system and grab many types of information.

What about Internet usage? Ever wonder what employees are really doing behind their monitors? Thirty percent of all employee Internet activity at work is not business related, and 60 percent of all online retail purchases happen during normal business hours, according to a consumer online behavior survey by International Data Corp.

What are long term care facilities to do? Increasingly, they are turning to powerful surveillance tools.

If a facility provides transportation services, such as driving clients to doctors' appointments, operators may want to consider using telematics.

Telematics is a software suite employing global positioning system (GPS) technology and more than 200 on-board sensors to track vehicle speed, oil pressure, how often the vehicle is put in reverse, what doors are opened

and when, the time the vehicle spends in idle, and how often the seatbelt is worn.

Software packages abound that track employee use of computer resources. Software can encrypt computer files,

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document every time the data are accessed, and record how they are used.

Internet spy software can track employee Internet use and even alert the employer to questionable activities. In other words, it is fair to ask an employee how 15 visits to eBay are "work related."

### Surveillance Trends

According to the "2007 Electronic Monitoring & Surveillance Survey," conducted by the American Management Association and The ePolicy Institute, 66 percent of respondents monitor Internet usage, and 65 percent use software to block certain Web sites, such as pornographic material, social networking, and sports sites.

Nearly 45 percent monitor employees' e-mail, while 40 percent hire people to manually read it. Another 45 percent monitor phone calls, and nearly half use video surveillance cameras to watch for theft, violence, and sabotage.

Legal and security risks are driving more employers to monitor employees. "Concern over litigation and the role electronic evidence plays in lawsuits and regulatory investigations have spurred more employers to monitor online activity," says Nancy Flynn, executive director of the ePolicy Institute.

"Data security and employee productivity concerns also motivate employers to monitor Web and e-mail use and content."

### State Laws Vary

Beyond minimizing legal and security risks, the use of tracking devices in vehicles and cell phones offers concrete savings to employers. And honest employees can benefit from the use of GPS devices by increasing their efficiency and decreasing their down time.

Beyond monitoring employees for misconduct, GPS devices can offer a solid return on the bottom line.

For example, with a GPS device, drivers can receive very specific directions to a location, saving time and gas. Such devices also come in handy when traffic conditions or road closings require drivers to use alternate routes to reach their destinations.

In some instances, employers can monitor employees without their consent. In many jurisdictions, the law still

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lags behind the technology, and there are some legal gray areas when it comes to monitoring employees.

In several states, though, there is no gray area—employee surveillance is illegal without employee consent. Currently, two states, Connecticut and Delaware, require employee notification if an employer is utilizing electronic surveillance. Connecticut, California, Rhode Island, and New York have laws on the books regarding an employer's use of video surveillance.

Generally, federal law allows employers to monitor work-related use of telephone, e-mail, and other communication devices.

### The Union Angle

Unions have also begun to raise the issue of GPS and other types of employee monitoring in contract negotiations. The issue is new in most

jurisdictions, and, as a result, the law is not uniform. Several federal courts have held that employer surveillance of union employees is a mandatory subject of bargaining. Employers need to check the law in their jurisdictions to determine if they are required to bargain on surveillance programs or not.

Almost all jurisdictions, at a minimum, require an employer to notify the union if a covert surveillance program is going to be undertaken. However, the employer is not required to disclose the location of the surveillance equipment. In any event, every jurisdiction prevents employers from using surveillance to infringe on employees' labor rights.

Using surveillance to observe union meetings or to intimidate unionized workers will constitute a violation of federal law and result in heavy fines for an employer.

Even if the law allows employers to use surveillance methods without employees' knowledge, it's always wise to alert and educate employees about the fact that they may be monitored. The deterrent effect can help—employees will be less apt to take unauthorized breaks, leave work early, visit inappropriate Web sites, or otherwise engage in unacceptable behavior if they know such behavior could be, or in fact is, being tracked. Surveillance technology also carries a sense of "big brother is watching," and it can lead to ill will among employees, which may eventually take the form of legal claims.

By creating reasonable policies and educating staff about them, employers can gain employee trust while realizing the benefits of monitoring technology.

Employers should develop specific and explicit policies on employee monitoring, whether it involves e-mail, cell

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phone use, or GPS tracking. The policy should remind employees that company vehicles, computers, and any company-issued communication devices belong to the employer and are to be used for work-related purposes.

Companies should also make it clear that they reserve the right to track employees to the extent legally permitted.

It may also be wise to spell out what is acceptable personal use of company equipment and draw a clear line regarding what is excessive or inappropriate. It is generally not realistic, and may be legally unenforceable, to prohibit all personal use of phones, the Internet, and the like during work hours.

Even if employees may not legally be entitled to a reasonable expectation of privacy while driving company vehicles on company business, strict, inflexible policies are likely to have an alienating effect.

Once a company has developed a policy, educating employees about the policy and the reasons for surveillance technology is the next step. If employees understand why monitoring devices are being used, they are more likely to accept them.

Education on the topic should be ongoing, according to the American Management Association (AMA).

"Most employees receive policies regarding use of office business tools and privacy issues on the first day of employment, but too often they don't read them," said Manny Avramidis, senior vice president of global human resources for AMA. "Employers need to do more than hand over a written policy. They should educate employees on company expectations and offer training on an annual basis."

Companies should also consider having employees sign a consent form

when they are first hired or when a monitoring program takes effect. This protects companies in case an employee threatens legal action over invasion of privacy or some other matter related to monitoring.

Employee monitoring will definitely become even more common as technology improves and costs for surveillance continue to decrease. Facilities should certainly consider the potential advantages they could reap from surveillance technology in company computers and GPS systems in cars, service trucks, and cell phones. At the same time, employers should bear in mind that the law is evolving, and it makes sense to research what is legal in each state. ■

### For More Information

■ Contact Alaniz at [ralaniz@alaniz-schraeder.com](mailto:ralaniz@alaniz-schraeder.com).

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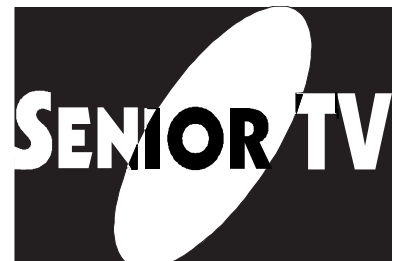
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