

Someone is watching you

How to maintain corporate integrity while monitoring employees

There are many reasons why companies choose to monitor their employees.

They do so to help protect against theft, ensure safety, promote good customer service, protect company information, and as a deterrent against bad acts in general. Employee monitoring can also be a useful tool in reducing or eliminating workplace harassment. It is important, however, to strike a balance between corporate integrity and employee privacy.

“Employers want to make sure they are not illegally invading their employees’ privacy at the same time they are protecting the smooth functioning of their business,” says Alfredo Sergio, an attorney in the Employment Law and Commercial Litigation groups at Semanoff Ormsby Greenberg & Torchia, LLC.

Balancing monitoring and privacy is attainable when organizations communicate to their employees the purpose of monitoring activities, set privacy expectations and implement reasonable monitoring policies.

Smart Business spoke with Sergio about corporate integrity, the importance of signed documentation and factors to consider when implementing various monitoring tools.

What corporate integrity concerns do employers have relating to email, video or audio monitoring?

Corporate integrity concerns include preserving confidential corporate information, business records and trade information, ensuring employees comply with work rules, and maintaining a workplace free of harassment and discrimination.

Employers need to have a variety of written human resource policies in place, which employees acknowledge, that address email usage and monitoring, the types of video and telephone monitoring that might be used, and should implement those practices and

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policies in compliance with federal, state and local laws.

How should a company address email monitoring and computer use?

Employees should be informed by a policy, which they acknowledge, that the company computer system and emails thereon are the employer’s property and should be used for business purposes only. The policy should make it clear that employees have no privacy rights when it comes to company email usage and that email may be monitored. It is also recommended to inform employees that other policies, such as confidentiality and anti-harassment/non-discrimination/anti-retaliation, extend to the use of email.

Employees should be held responsible for following the policy, and policy language should clearly state that failure to adhere to the rules could result in disciplinary action up to and including termination.

What advice would you give about telephone monitoring?

Employers need to be careful with monitoring employees’ phone calls, even if the calls are on company equipment. There are federal and individual state laws regarding electronic monitoring or wiretapping. Pennsylvania has the Wiretapping and Electronic Surveillance Control Act. In general, employers are not allowed to monitor employees’ telephone conversations

unless all parties to the communication have given prior consent. There are, however, limited circumstances where this is acceptable, such as monitoring personnel of businesses engaged in telephone marketing or telephone customer service, if the business only uses the interceptions for training, quality control, and one party has consented to the interception. This is commonplace for quality control or training purposes.

In the appropriate instances, employees and call participants should be informed that calls may be monitored.

How should video surveillance be handled?

There are various reasons an employer might want to install video cameras. For instance, in a manufacturing environment a camera might be important for safety concerns or complying with procedure, or retailers may need cameras for security and loss prevention. Typically, the recording should not include audio because this would be counter to the wiretapping laws in place. Also, video surveillance cannot be used where employees have reasonable expectations of privacy, such as in restrooms or changing rooms.

There are numerous laws that impact and relate to employee privacy. A judicious implementation of employee monitoring should meet employers’ needs in maintaining their corporate integrity while not running afoul of laws that protect employee privacy. ●