



TECHNOLOGY, THE WORKPLACE AND COVID-19: TRACKING EMPLOYEES TO SAFEGUARD AGAINST SPREAD OF VIRUS

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As businesses reopen, employers are exploring ways to operate while safeguarding against the spread of the coronavirus. In addition to the standard safeguards of masks, cleaning surfaces and limiting the number of employees and customers who can access a facility, businesses are using tracking technology to protect their employees and customers. The technology includes smartphones, GPS, laptops, microchips, microphones and cameras and has traditionally been used to track employee and vehicle movement, employee productivity, limit access to information, encourage safety and prevent theft and violence in the workplace.

Virus Tracking Meets Employee Privacy Rights

The public and workplace initiatives for tracking the COVID virus have presented unprecedented workplace privacy issues. The same technology can be used to track social distancing, mask wearing, sneezing, coughing, hand washing and more. Amazon tries to assure social distancing by having its employees wear bracelets that buzz if a co-worker comes within six feet. Another employer has developed an app that tracks how close employees get to each other by measuring their smartphones' Bluetooth and Wi-Fi signals. This allows the employer to do contact tracing to identify employees who may have been exposed to the virus. GPS technology used to track movement of vehicles can identify people with whom an infected driver comes into contact. Hospitals utilize sensors in identification badges and location hubs in patient rooms to track whether employees clean their hands within 60 seconds of entering a patient's room. Existing security cameras are being used to monitor social distancing and mask

wearing; and, some employers are contemplating integration of artificial intelligence into security cameras to detect sneezing and coughing.

COVID Presents Different Risks in Different Workplaces

Facilities where the virus presents a greater risk of infection and spread justify more invasive monitoring steps. For example, employers need to be more vigilant in health care facilities than in manufacturing plants. As with any other workplace device that infringes upon employee privacy, it is incumbent on employers to: (1) provide full disclosure to their employees about the steps being taken; (2) balance these steps with the public health emergency the virus presents in their workplace; and (3) obtain written (or other verifiable consent) from employees about the steps being taken.

Employee Tracking Via Smartphone. What Could Go Wrong?

While technology is constantly advancing, employers utilizing it must guard against violating the rights of employees under state and federal laws; and, the use of employee smart phones and laptops to track the movements of employees outside of work can be problematic. Up to 70% of the workforce in the United States utilizes personal smartphones or laptops for their employer's business. If an employer utilizes technology in an employee's smart phone or laptop to track their activities outside of business hours, that employer runs the risk of invading the privacy of its employees. For example, many states have laws that prohibit employers from firing employees for activities outside of the workplace.

The tracking of activities outside of work hours can also reveal information such as churches or political events attended, alternative lifestyle bars frequented or meetings at union halls. If an employer fires an employee or takes another adverse employment action against an employee after learning about any of those activities, the employee can sue for religious or sex discrimination under state and federal laws and for violation of rights to engage in organizational activities under the National Labor Relations Act, irrespective of whether the employer is unionized.

An employer can also inadvertently violate the rights of employees by tracking some activities in the workplace. For instance, cameras placed near restrooms, locker rooms and other areas where privacy is expected would violate employees' right of privacy; and, information regarding the health of employees must be kept confidential.

Employers must also consider employee morale in using technology to track their movements and activities. Emails and phone calls have been monitored for years. Now technology has the ability to monitor movements, interaction with other employees and conversations. Some employers are using thermal imaging to track employee temperatures. Thermal imaging also allows employers to determine if an employee is at her desk, how often she moves around and where that movement takes her. Too much technology smacks of intrusion to employees and over time can decrease morale and productivity.

Where Does This Tracking Technology Versus Privacy Dilemma Leave Employers?

Technology presents some useful tools to help American businesses control the spread of COVID. As employers begin to use or consider using technology to reduce the spread of the virus, now is a good time to review those policies to make sure the purpose and method of tracking, the activities monitored and the use of the information obtained is clearly explained to employees. As mentioned above, the key is that employers balance the steps they want to take with the risk the virus presents in their workplace. If an employer does not have a policy on the tracking of employee activities, now is a good time to implement one. If you need any help or guidance with your existing policies, or want to create one, we will be glad to help you.

If you have questions or would like to discuss further, please contact [Jay Wallace](#) or [Tom Case](#).

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Labor and Employment

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