Compliance Considerations for GPS Tracking of Employees

As a result of technological advances, employers have more options for monitoring employees. An increasingly prevalent electronic monitoring device used in the workplace is a global positioning system (GPS). Employers are finding such technology helpful for a variety of reasons, including compliance with required rest and meal breaks, aid in the recovery of stolen vehicles, assistance in locating vehicles and employees, in the case of an accident or emergency, and assistance in accurately assessing employee efficiency. However, although GPS monitoring may seem like an effective way to track the movement of company-owned vehicles and employee activities, such surveillance may raise concerns over infringement into employees’ privacy.

Employers should exercise caution prior to installing such devices. Since GPS monitoring is relatively new, there are currently no federal or state statutes expressly prohibiting an employer’s use of a GPS. However, employees in opposition to such monitoring may turn to state privacy statutes, common law tort principles, or even certain state statutes protecting their participation in legal activity conducted outside of working hours.

To prevent violation of any applicable privacy law, employers should ensure that employees know the expectations for privacy in the workplace, and that the employer has a legitimate business reason for monitoring. Employers should find a balance between employees’ privacy rights and the value of using such monitoring as an investigative tool.

An employer can take the following steps to minimize potential exposure associated with implementing a GPS tracking program:

- Adopt policies about the company’s right to monitor employee actions through GPS while using company-owned property. These policies should also contain language notifying employees about the GPS monitoring capabilities of the company-issued property and that they should not have an expectation of privacy while using the same.
- Obtain written authorization from employees to install and use GPS devices for tracking purposes.
- Give employees notice of how the GPS devices will be used, including whether and in what circumstances they would be monitored outside of business hours, the purpose of such monitoring, and the extent to which information obtained from monitoring could be disclosed.
- Limit location tracking to working hours when the pattern of location data should not reveal details of the employee’s private life.
- If the data received from location tracking reveals details of an employee’s personal life, employers should not review it, or should be prepared to show that they have a legitimate business justification for looking at this type of information.
- Limit access to the GPS tracking information to company personnel who have a clear business need to know that information.
- Carefully weigh the risks of GPS monitoring of off-duty activities against the business need for the information and give special attention to statutory limits on using this information to punish off-duty conduct.

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Although it is unpredictable what stance legislators and courts will take in response to the growing use of, and opposition to, GPS monitoring of employees, these steps may be implemented as part of any GPS tracking program to effectively manage the risks. Until this area of law is more established, employers should familiarize themselves with their state privacy statues that may protect employees’ actions and consult with legal counsel before using GPS monitoring.

References

What Does The Supreme Court's "GPS Decision" Mean For Private Employers? By Philip L. Gordon, Workplace Privacy Counsel

Supreme Court Says Warrants Are Required For GPS Monitoring by Police, by Michelle Hackim