

# MEMBER BULLETIN

Form No. MBN061

## Workplace Surveillance – the Do's and Don'ts

These days CCTV, GPS, phone usage and recordings, Email and Computer activity surveillance are commonplace both in the workplace and in public. Sometimes employers look to the information gathered from these devices when conducting an investigation into allegations of employee misconduct or for the safety and protection of employees.

But what can employers do legally? What is reasonable and/or lawful?

Like many Australian laws and regulations, every state is different, and it is important that employers conduct workplace surveillance in accordance with the applicable regulations otherwise an unfair dismissal application may be on the cards.

Only the ACT and New South Wales have specific workplace surveillance laws: The *Workplace Privacy Act 2011* (ACT) provides the regulations that must be observed by employers in the ACT. And like the ACT, New South Wales has very similar laws through the *Workplace Surveillance Act 2005* (NSW).

### Under these laws the employer must:

- Give employees 14 days' notice before commencing surveillance or ensure that the contract of employment includes a provision for workplace surveillance.
- The notice must include:
  - the kind of surveillance to be carried out (camera, computer or tracking);
  - how the surveillance will be carried out;
  - when the surveillance will start;
  - whether the surveillance will be continuous or intermittent;
  - whether the surveillance will be for a specified limited period or ongoing; and
  - (in the ACT) the purpose for which the employer may use and disclose surveillance records of the surveillance;
- Employers must have a policy relating to workplace surveillance and surveillance must be carried out in accordance with this policy;
- Cameras must be clearly visible and there must be signs notifying people they are under camera surveillance; and
- There must be a notice or other thing that puts the employee on notice that they are under GPS tracking surveillance, e.g. in a vehicle.

## **Victoria, Western Australia, South Australia and the Northern Territory**

There is no specific workplace surveillance legislation in Victoria, WA or the NT. Rather, there is general legislation relating to surveillance. Broadly, these states and territories do not permit optical or listening devices, unless it is consented to or unless another exemption applies. For example, if it is reasonably necessary for the protection of any person's lawful interests and the occupier of the premises authorises the installation.

The Victorian legislation specifically prohibits employers from installing optical or listening devices in:

- toilets;
- change rooms; or
- comparable places.

Furthermore, it requires consent to install and use tracking devices. On that basis, you may wish to seek employees consent in their employment agreements.

## **Queensland and Tasmania**

There is no specific surveillance legislation other than general legislation. For example, in Queensland, a person who records another person where a reasonable adult would be expected to be afforded privacy, is guilty of an offence under criminal law. This will depend on circumstances.

### **What Employers should do:**

- Have a provision within the offer of employment that ensures employees understand and consent to workplace surveillance;
- Draft a comprehensive policy which is discussed with employees at on-boarding (induction) and from time to time in tool box meetings and/or training sessions;
- Ensure there is clear and adequate signage in vehicles and elsewhere, where tracking devices (GPS) are installed and used.

Should you need to discuss any state or territory legislation relating to employers and employees contact [ir@asial.com.au](mailto:ir@asial.com.au).

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