

Legal Notes: July 2014

Big brother is here! Surveillance is already a common aspect of our lives. England has one camera for every 32 residents. Downtown La Crosse is being set up with surveillance cameras. Many gas stations have long had cameras (and some of them may even be turned on!)

What about in the workplace?

Employers have a fairly free hand in monitoring employees in a number of different ways, including using various still and video cameras. A question that arises occasionally is where the employer is using an employee or group of employees for a training video. An employer is able to do so for internal purposes, such as training new employees or employees in another location or country. The employer may be restricted in Wisconsin from using that video for commercial purposes outside of the company, say for an advertisement, without the employee's permission.

The other limit would be in places where the employees expect privacy, such as bathrooms and changing rooms. Many people are surprised to find out there is no federal law regarding general privacy protections but there is a Wisconsin law, albeit rarely enforced. The Wisconsin law does provide protections in places and situations where one may have a reasonable expectation of privacy.

Audio recordings are another form of surveillance, although often conducted by the employee rather than employer. Here the laws differ depending on what state you are in. Wisconsin has long had the one-party consent rule, meaning if one party to the conversation consents to the recording, then the recording is permissible. In some states, and in federal jurisdictions, both parties need to consent to the recording. Use of even legal recording can be tricky as they may not be admissible as evidence in court proceedings.

Surveillance by employers isn't always bad for the employee. I was involved in litigation a few years ago where an employee accused another of sexual harassment. The employer had strict tracking system that we were able to use to disprove the allegation. A recent New York Times article mentioned that the rise of various methods of surveillance actually allowed employers to provide more freedom to employees because it found that it resulted in more productive employees (imagine that!).