

# MURTHA MEANS MORE INFORMATION



## LABOR AND EMPLOYMENT NEWS

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### Electronic Monitoring Traps

With iPhones, tablets, computers and surveillance cameras everywhere, it is hard to imagine a place where you are not being watched. However, employers must remember that Connecticut and Federal law provide rules for when they can electronically monitor their employees at work. Failure to comply with the law can result in stiff fines.

Connecticut law generally allows employers to monitor their employees' activities and communications electronically, whether it be by computer, telephone, camera, or radio. However, before an employer may do so, it must post a written notice in a conspicuous place that is available for viewing by all employees disclosing what types of monitoring may occur. We recommend that such a notice also be placed in an employee handbook. Employers should also put employees on notice that their desks, lockers, bags, etc. at work may be inspected at any time.

The notice requirement does not apply when an employer has reasonable grounds to believe that: (1) an employee is engaged in conduct which violates the law, the legal rights of the employer or other employees, or (2) creates a hostile work environment and that electronic monitoring may provide evidence of this misconduct.

Even with the requisite notice, Connecticut law prohibits any electronic surveillance of activities of employees in areas designated for their health or personal comfort and the safeguarding of their possessions, such as locker rooms, rest rooms or lounges.

Federal law also applies in this area. The Electronic Communications Privacy Act of 1986 ("ECPA") - which includes the "Wiretap Act" and the Stored Communications Act ("SCA") - protects the privacy of electronic communications. These laws prohibit the interception of electronic communications and unauthorized access to stored communications. A violation of these laws is punishable by fines or imprisonment.

These laws do not prohibit an employer's electronic monitoring of its employees if the employer meets certain conditions. For example, an employer may intercept communications if the employee consents to the monitoring, and may access the communications if the employer is the provider of the electronic communications service.

**Action Steps:** All employers should issue an electronic communications policy that notifies employees that their electronic communications are for business use only, may be monitored without prior notice, and that employees should not use the systems for any personal communications which they consider to be private. This notice can be combined with the Connecticut notice. All employers, Connecticut and elsewhere, should make sure their policies comply with federal law.

If you have any questions about the issues addressed here, or any other matters involving Labor and Employment issues, please feel free to contact:

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Employers with union employees should consider whether they have any duty to bargain before installing or operating a surveillance system affecting those employees. Moreover, employers cannot intentionally overhear or record a conversation pertaining to employment contract negotiations unless all parties have consented.

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