

The Cellular Tightrope

Balancing Employee Privacy and Corporate Confidentiality

By KEVIN V. MALTBY

Most, if not all, workers these days have cellular phones, and most employees regard them as one of life's conveniences and a communication staple. Parents are more comfortable knowing that their children can reach them in a couple of seconds if necessary. Adult children of elderly parents are also assured that they are instantly accessible in the event that something happens.

But with this convenient communication technology comes the very real threat of the compromise of corporate security, and employers may be about to embark upon a delicate balancing act between respecting their employees' communication liberties and protecting their sensitive company data.

Technology and the need for instant information is pushing the production of handheld devices such as cell phones, PDAs, and other devices to new levels. It is almost impossible to purchase a cell phone without an MP3 device or camera included. Today's cellular phones have the capability of not only taking pictures, but also recording video. These cameras are often unnoticed, allowing individuals to bring them into various public and private places.

For example, take the execution of Saddam Hussein. Somehow, somehow, someone was able to record that event on a camera phone. Another illustration is a recent recording of testimony in the courtroom of a criminal trial. While the event was open to the public, the judge presiding over trials typically prohibits cameras and recording devices from being used in a courtroom. However, this did not stop one individual from record-

ing a police officer's testimony.

The state of this technology should cause concern for employers. Workers are bringing items such as camera phones into the workplace on a daily basis. An employee could take photos of confidential information or dis-

rights of their employees and their company. This struggle has been litigated over the years on various issues, including employers who want or need medical information about their employees, employers who demonstrate a legitimate business purpose for

workplace altogether or prohibit the use of personal cellular phones during working hours. While this may then prompt employees to use the telephone at their desk, this may be preferable to the threat of release of sensitive company information or legal action against the company for harassment or invasion-of-privacy claims by employees.

If one chooses to adopt a cellular phone use policy, the company should only do so if it is willing to enforce it. Conversely, a policy prohibiting the use of cellular phones and/or camera phones in the workplace may be met with employee backlash.

Ultimately, employers must evaluate their companies' privacy needs against the needs of their employees when determining whether a camera phone or cell phone use policy should be implemented. The bottom line is that employees live in a highly technical world where they have become accustomed to instant communication and accessibility to family.

This is going to be a tough balancing act, but it is increasingly important to address this issue and establish policy for cell and camera phone use at work.

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An employee could take photos of confidential information or discreetly record video of a confidential meeting.

creetly record video of a confidential meeting, and subsequently use that information for his or her benefit.

Situations may also arise where employees are taking videos and photographs of other co-workers without permission. These unauthorized videos or photos could give rise to a harassment or invasion-of-privacy claim. Even worse, once captured, there is no way to stop the image or video from appearing on the Internet.

Employee possession of camera phones in the workplace is an issue that employers must address. They must balance the practical nature and use of the phone against their company's interests in protecting the work environment and confidential information.

You can create a contentious situation by instructing employees not to use their company line for personal use, thereby forcing them to rely on their cell phone to be accessible to family in case of emergency.

Ultimately, employers will face a battle between the privacy

drug testing, employers who want or need an employee's credit report, and various privacy concerns involving technology issues. In these cases, courts look to balance employees' individual privacy rights against an employer's legitimate business objective.

In addressing the delicate balance of privacy relative to camera phone usage within the work environment, it is advisable to create a cellular phone camera policy to be included in an employee handbook. The development of this provision may also relate to other handheld devices.

If one chooses to permit employees to carry camera phones in the workplace, then it is a good idea to develop a policy that prohibits the use of the camera portion of the telephone and the taking of photographs of other employees, work product, or other employment-related matters. Such a policy should carry the threat of termination in order to emphasize the importance of compliance.

In the alternative, employers could prohibit employees from carrying camera phones in the