

NEW YORK STATE ADOPTS PROVISION PROHIBITING VIDEO SURVEILLANCE

The State of New York has adopted a new provision of the Labor Law, Section 203-c, which went into effect on July 7, 2006, prohibiting employers from conducting video surveillance of their "employees" in restrooms, locker rooms, or any other room designated by the employer for employees to change their clothes, unless authorized by court order. The stated purpose of this law is to safeguard employee privacy. Similar laws have been proposed in Congress, but there is currently no federal statute specifically pertaining to video surveillance in the workplace.

Under the new law, both private and public sector employers are prohibited from using any such video recordings for any purpose. This prohibition includes an employer's internal use as well as use as evidence in disciplinary proceedings, administrative hearings, and civil litigation. While there is an argument that this law may be interpreted to only apply to manual labor, it appears that the legislature's intent was to cover all employees. Therefore, it is suggested that employers apply it to all categories of employees.

Section 203-c does make an exception for law enforcement personnel engaged in the conduct of their authorized duties. The statute does not explain the precise intent or scope of this exception.

This new law creates a civil cause of action that allows employees to sue their employers for engaging in prohibited video surveillance. A prevailing plaintiff may receive an award of damages, reasonable attorneys' fees and costs, and injunctive relief. This relief could potentially include a court order demanding that the employer cease and desist from conducting video surveillance in prohibited areas. In addition, a court could order the employer to reinstate the plaintiff to any position lost as a result of evidence provided by video obtained in violation of the law.

The new law does not prohibit audio recording of any employees in restrooms, locker rooms, or other designated changing rooms. However, such audio recording could be a violation of New York State's existing prohibition on eavesdropping, Penal Law Section 250.05, as well as the related federal law, 18 U.S.C. §§ 2510-2522.

It should also be noted that Section 203-c does not give any employer the affirmative right to engage in any form of surveillance outside of the specified privacy zones. Employers should review any applicable employee policies, practices, and agreements to determine whether they may engage in video or audio recording of their employees in other areas. Employers with employees represented by a labor organization may also have an obligation to engage in collective bargaining before instituting any new methods of employee monitoring. Therefore, all employers are strongly encouraged to consult with counsel before implementing any new

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forms of employee surveillance. Employers that are currently engaged in video surveillance prohibited by the new law should cease that practice immediately.

The new law was signed by Governor Pataki on July 7, 2006, after unanimously passing both the Senate and Assembly. It applies to any video recordings of the nature described that were or will be made on or after that date.

If you have any questions or would like more information regarding New York state's provision prohibiting video surveillance discussed in this Alert, or have any other questions about our Labor & Employment practice group, please contact any member* of our Labor & Employment practice group:

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