

HIDDEN CAMERAS AT WORK



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ORIGINALLY PUBLISHED IN THE FALL 2007 EDITION OF THE BAILIWICK NEWSLETTER

As an employer, you may be considering installing hidden surveillance cameras in order to keep an eye on your employees. You may have many legitimate concerns, such as theft prevention and promotion of productivity. After all, you have your business and your property interests to protect. On the other hand, your employees have privacy interests which are protected by legislation. As such, the legality of hidden video surveillance cameras in the workplace involves a balancing of these competing interests.

The British Columbia *Personal Information Protection Act* (the “Act”) recognizes this balancing of interests. Its purpose is to govern the collection, use and disclosure of personal information in a manner that recognizes the privacy rights of individuals as well as the need of organizations to collect, use and disclose this personal information.

Collecting video evidence of employees is considered “employee personal information”. “Employee personal information” is defined in the Act and includes information that is collected, used or disclosed for the purposes of managing or terminating an employment relationship. The act prohibits collection of personal information without the consent of the employee, but there are exceptions. For example, if the personal information is being collected for the purpose of managing or terminating an employment relationship, then it may be collected without the consent of the individual. However, the collection and use of the personal information must be reasonable. This is where the balancing of interests comes into play.

What is reasonable will vary from situation to situation. Different circumstances will call for different actions which would be found to be reasonable. As a general rule, the more invasive the surveillance is on the privacy of the employees, then the greater the justification will likely need to be made for that intrusion. The onus will be upon you, the employer, to establish the reasonableness of the surveillance. For example, there is likely a lower threshold for establishing the reasonableness of a surveillance camera which is not hidden and is focused on the entrance or exit of a business, than there would be on a hidden surveillance camera in the lunch room.

If you are considering installing a hidden surveillance camera, consider whether or not there are any alternatives available to you to deal with your situation. If there are alternatives, which are less invasive to your employees’ privacy, then a decision to use the more invasive method will likely be viewed as unreasonable. If you collect personal information in a manner that is found to be unreasonable under the Act, then that information will likely be inadmissible as evidence in any proceeding. As such, it is a more prudent approach to use the less invasive manner. Further, you could be risking liability for damages, and therefore the decision to implement hidden video surveillance at your business is one that should be given careful consideration.

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