

WORKPLACE SURVEILLANCE

In some situations, an employer may find it necessary to conduct covert or overt surveillance of employees, particularly where the employer has reason to question an employee's honesty or loyalty.

Employers have a variety of surveillance options, including the use of GPS systems in company vehicles, the monitoring of email and internet use, accessing data in smart phones, video camera surveillance and phone recording. However, an employer's right to access that information (at least in NSW) is limited by workplace surveillance legislation.

The Workplace Surveillance Act (the Act) relates to the employer's use of technology to monitor employees and generally prohibits the surveillance of employees of employees at work except where the employees have been given notice or where the employer has a covert surveillance authority.

WHAT DOES AN EMPLOYER NEED TO DO BEFORE CONDUCTING WORKPLACE SURVEILLANCE?

- Develop a transparent and appropriate policy on workplace surveillance.
- Deliver a written (or emailed) notice to employees 14 days prior to the commencement of the surveillance.
- Ensure that the notice contains:
 - The kind of surveillance to be carried out;
 - How the surveillance will be carried out;
 - When the surveillance will start;
 - Whether the surveillance will be continuous or intermittent; and
 - Whether the surveillance will be for a specified limited period or ongoing.
- Provide employees with appropriate training in relation to the workplace surveillance policy, and ensure employees understand it.

In the event of non-compliance, employers may be exposed to civil penalties under the Act, and may also find it more difficult to use any information obtained as evidence in a court or commission (for example, in the defence of an unfair dismissal).