

Employment Law

Misusing Camera Phones at Work Employers Run the Risk of Liability Absent Written Policy



By Nicole A. Crawford

Ever considered what you would do if a female employee came into your office demanding that you stop a male co-worker from taking pictures under her skirt using his camera phone? Commonly referred to as “upskirting” (with a corresponding term of “downblousing” for photos taken down a woman’s shirt), both individuals and their employers are subject to liability for such actions.

The photos snapped with these cameras can be transmitted instantly to other cell phones, to e-mail accounts, and even posted to the web. If they are posted on a website, the action becomes “cyberbullying.”

Many employers have not implemented policies designed to prevent these occurrences from happening on their premises, which is a mistake. By not having a camera phone policy - or failing to enforce it if one is in place - your company is left wide open to significant liability for sexual harassment and invasion of privacy actions, among others.

Corporate espionage is made easy by camera phones. A disgruntled employee can snap and transmit photos of a product in development, the specifications of new products, or secret ingredients, as well as pictures of your well-designed manufacturing and/or distribution center that keeps you ahead of your competition.

Even for companies that may not worry about trade secrets, confidential information, or sophisticated research and development departments, a policy prohibiting camera phones on company premises is the wisest course of action. Because they are small, easy to use and commonplace, camera phones go unnoticed in places where a normal camera would stand out.

- If you don’t think you should be concerned about camera phones, consider the following:
- In 2003, camera phone sales began outstripping those of stand-alone digital cameras;
- In 2004, 68 million digital cameras were sold worldwide compared to 257 million camera phones;
- At a conference of technology company Qualcomm, it was reported that more than 40 million photos were transmitted via camera phones in the first quarter of 2005; and
- The Gartner Group estimates that by 2006, as many as 80 percent of all cell phones will have photo capabilities.

In Europe, some gyms and swimming pools have banned camera phones from changing rooms. In Japan, Singapore and China, camera phones are banned from schools and government buildings.

In the U.S., two national fitness chains have banned them entirely, as have some YMCAs in the Midwest upon recommendation of their insurer. Oakland County in Michigan has banned camera phones in county courthouses (primarily to protect jurors). The City of Chicago has prohibited their use in public restrooms.

Major companies that have policies prohibiting camera phones include Samsung, the largest maker of camera phones, Intel, DaimlerChrysler, Gillette, and General Motors. In April, Apple Computers banned pictures from its shareholders meeting - and searched bags for cell phones.

Camera Phones Present Many Risks

Camera phones present numerous risks to companies, including the examples below.

1. Under the National Labor Relations Act, a photo of an employee meeting can lead to a charge of employer interference and a chilling effect on union organizing.
2. Intellectual property, trade secrets, and other confidential and proprietary business information can be easily and surreptitiously caught on a camera phone.
3. Customer information, such as credit card information and personnel information, like social security numbers, can be recorded on a camera phone, subjecting you to liability for release of the information and any resulting damages.

4. Any unhappy and creative employee armed with a camera phone can fabricate a realistic looking workplace health and safety violation.
5. If a female employee has her photo taken in an area of the company where she has a reasonable expectation of privacy (locker room, changing room, restroom), she can sue under most states' invasion of privacy laws, and may have a cause of action for harassment under federal, state and local anti-discrimination laws, not to mention the infliction of emotional distress torts. And, if a video cell phone is used and records sound, there is potential liability under federal and state wiretap laws. Notably, under the recently enacted federal "Video Voyeurism Prevention Act" such an act is now criminal on federal property, and several states have enacted their own laws against video voyeurism, including Texas, California, Washington and Virginia.

What Should an Employer Do?

Employers should implement a camera phone policy and follow it consistently. A camera phone policy puts your employees on notice of what is and isn't permissible in the workplace. Consistent enforcement of a policy keeps any employees who may be disciplined for violating the policy from claiming retaliation or discrimination. And it also helps employers' defend against claims of harassment.

Companies should distribute the policy to all new employees, and it should be circulated to all employees at least once a year. Employees also should be required to sign a form acknowledging that they have received and read the policy.

Further, procedures on handling reports of violations should be incorporated into your regular training for managers who are responsible for enforcing the policy. Also, the ban can and should be posted in the most sensitive restricted areas (restrooms, laboratories) of a facility.

Employers have wide latitude on camera phone policies. It may be that you are only concerned with protecting sensitive research processes or technological information. In this case, it is likely that you already forbid traditional cameras in these areas. Simply extend that policy to include camera phones.

Conversely, you may have a large workforce with a number of practical jokers, and you may be more comfortable in banning camera phones in their entirety. Whatever you decide, make it clear that camera phones are not condoned for any sort of horseplay or harassment, and provide employees with specific methods for reporting violations, just as you do with your sexual harassment policy. Be sure to take any reports seriously and investigate promptly.

Points to Consider in Developing Policy

Restrict camera phones from the premises entirely. Employees and visitors are required to obtain written permission from the company before taking or distributing any photographs or videos of any kind on company premises. If you already have security guards, authorize them to collect camera-enabled phones when visitors enter and return them when they exit.

- Designate areas where camera phones are banned. Taking photos or videos is strictly prohibited in restrooms, locker rooms (any area where employees expect privacy) and in laboratories, product areas, manufacturing areas, and areas where credit card or other sensitive personal information is kept.
- State the potential disciplinary action. Employees will be disciplined on a case-by-case basis and appropriate remedies taken, up to and including termination, for violating the policy.
- Include information in your policy about your state's "video voyeurism" law, if there is one. Be sure to include the possible penalties and indicate that you will refer all instances of video voyeurism to the proper authorities.
- Specifically protect your company's information and employees. Transmission of any company information, logos, data, and photos of the premises or of any employees, contractors, subcontractors, or visitors is strictly forbidden.

Last, for companies with money to invest and trade secrets to protect, there is technology in development that will disable the camera function in a cell phone. The devices are installed in certain areas of the workplace (called wireless privacy zones), and in these zones camera phones are disabled from sending issues.

The product, Safe Haven, is offered by Iceberg Systems and has two components. First, a set of transmitters are placed in the area designated to be a wireless privacy zone, and second, a piece of technology is placed in the camera phone itself, allowing the transmitters to communicate with the camera and disable the photo function.

Unfortunately, cell phone makers have been slow to respond to the need for the systems and have not incorporated the second piece of technology into their phones. Until they do, employers are wise and warned to implement and enforce a camera phone policy.

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