

Does camera surveillance belong in your workplace?

By Holly Culhane, Contributing Columnist



The recent fatal derailment of an Amtrak passenger train leaving Philadelphia has renewed calls to install video and sound cameras in locomotive engines. Eight people died and about 200 people were injured in the crash. The engineer, who sustained head injuries, says he cannot remember what happened.

The train had a black box, which monitors the operation of train equipment. But the only camera on board was focused on the tracks. Federal investigators must piece together why the engineer allowed the train to travel twice the speed limit and failed to brake in time to keep it on the tracks.

For years – usually after horrific crashes – National Transportation Safety Board investigators have demanded inward-facing cameras be installed in locomotive engines to better understand the causes of accidents.

But despite the Federal Transportation Administration’s expressed willingness to require the cameras, the agency has taken no action. Unions representing train workers object, contending the images could be used punitively by railroads. Some argue the cameras would distract train crews.

This spring, when Lufthansa’s German Wings Flight 9525 crashed into the French Alps, there was yet another call for cameras to be installed in airplane cockpits. An apparently suicidal co-pilot, Andreas Lubitz, was at the controls when the plane crashed, killing 144 passengers and six crew members. Sound recordings captured the pilot, who had left the cockpit to use the restroom, banging on the locked cockpit door as Lubitz drilled the airplane into the ground.

For years – usually after horrific crashes – investigators have demanded cameras be installed in airplane cockpits to augment the information provided by black boxes and monitoring devices. And for years, those demands have gone unheeded. Pilot unions and other groups argue the images could be misused by the airlines, investigators and the news media.

Nearly every day a shooting by police in some part of the country becomes a headline grabbing story. Often the incident is captured on film – either from a bystander’s cell phone, a police car dash cam, or a police officer’s body cam.

Once considered to be luxury devices that few police departments could afford, dash cams and body cams are becoming “standard issue.” This has created a hot-and-heavy debate about the public’s right to privacy and their right to monitor the behavior of law enforcement.

The bottom line is that workplace surveillance equipment has become so sophisticated and inexpensive that it is available for use in almost every workplace. The question all company owners and managers must ask, however, is whether it is prudent to monitor workers with surveillance systems.

We advise our human resources clients to move carefully before installing equipment and to work closely with an attorney and human resources professional to ensure systems are operated legally. Consider:

--Have you notified your employees in writing? Many employers use camera surveillance to reduce workplace theft or monitor how employees are performing on the job. Generally that is permissible, but employers are required to notify their employees of surveillance.

--Is surveillance justified? Certainly in public safety situations, such as train locomotives and airplane cockpits, cameras can be justified. But for other businesses, documenting a need will provide a legal defense if the monitoring is challenged in court.

--Is privacy respected? Few would challenge a store owner's use of cameras to monitor customers and workers in his shop. But an employee who works in an office cubicle might be able to successfully argue that he has an expectation of privacy that would preclude camera surveillance. With very few exceptions, monitoring employees in such "private" areas as restrooms or locker rooms is not allowed.

--Are union activities being monitored? The National Labor Relations Act prohibits employers' use of video cameras to monitor employees' union activities and conversations.

--Are state and federal laws being obeyed? Various states define privacy rights differently. Video surveillance that includes sound also may run afoul of federal wiretapping laws. Check with an attorney before installing equipment.

Laws governing the use of video surveillance systems and privacy rights are evolving. Companies and their managers should consider the consequences. Will workplace monitoring erode trust? Will it improve or impair productivity?

It is important to move carefully before implementing any form of monitoring and to make certain that it is necessary, as well as legally-defensible.

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