



National Academy of Arbitrators (NAA)

Cybersecurity and Digital Privacy

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Littler

Presented by



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Lawfully Monitoring Remote Workers

The Rapid Expansion Of Employee Monitoring

- Percentage of employers using tools to monitor their workers has doubled since the beginning of the pandemic to 60% (Gartner Study 2022)
- Employer dollars spent on employee monitoring software jumped by 75% in March 2020 and continued to grow by 40% or more monthly over pre-pandemic levels through July 2022 (Top10 VPN 2023)
- Growth is expected to continue at more than 17% annually through the end of the decade (Adroit Market Research 2022)
- Average annual cost of monitoring software is approximately \$80/employee monitored, but cost can range from \$40/employee to \$150/employee depending on software used (SHRM Study2020)

Why Are Employers Monitoring?

- **85% of leaders surveyed found the shift to hybrid work “challenging to have confidence that employees are being productive”** (Microsoft Study 2022)
- **Top three reasons employers are monitoring** (Digital.com Study 2023)
 - Understanding how employees are spending their time (79%)
 - Confirming employees are working a full day (65%)
 - Ensuring employees aren’t using work equipment for personal use (50%)
- **Of the employers surveyed, 88% had terminated workers as a result of monitoring productivity, with 25% terminating between 1 and 10 workers, and 21% between 51 and 100 employees**
 - Only 12% did not fire anyone! (Digital.com Study 2023)

How Are Employers Monitoring?

- The most popular methods are software that monitors web browsing and application use (76%); captures random screenshots (60%); blocks content and applications (54%)p and logs keystrokes (44%) (Digital.com Study 2023)
- **IDC Global 2022 survey of 816 organizations with 500 employees**
 - Websites visited – 37.9%
 - Logins/logouts – 36.1%
 - Documents/data accessed – 35.1%
 - Active and idle time – 33.1%
 - Key logging – 32.2%
 - **Technology to review email, messaging, voice – 29.8%**
 - Location tracking – 29.7%
 - Screen capture – 26.3%

Laws Regulating Employee Monitoring

➤ Notice Laws

- **CA:** “Personal information” includes: (a) Internet or other electronic network activity information, including browsing and search history; (b) geolocation data; and (c) audio, electronic, visual, thermal, olfactory, or similar information
- **CT:** Written notice of collection of information on an employer’s premises concerning employees’ activities or communications by any means other than direct observation
- **DE/NY:** Notice if employer “monitors or otherwise intercepts” telephone or e-mail communications or Internet usage

➤ Location Tracking

- 6 states require consent to track via GPS app downloaded to a personal device
- 16 states require consent to track a personal vehicle

Laws Regulating Employee Monitoring

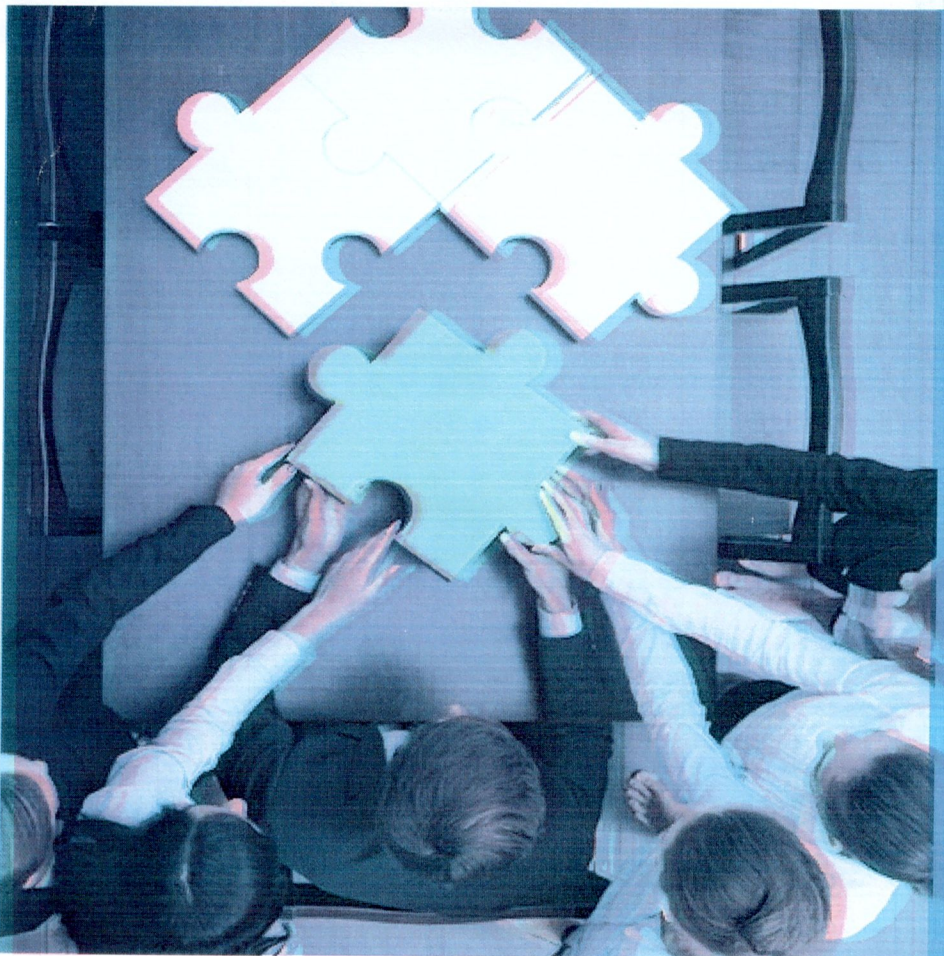
➤ Wiretap Laws

- Federal Wiretap Act prohibits “interception” of “content” of wire, oral or electronic communications without consent of at least one party
- 11 states require consent of all parties to the communication
- Criminal statutes, but many have civil remedies
- FWA: statutory damages of \$10,000 or \$100/day of violation
- Exclusionary rule for fruits of an unlawful interception

➤ Examples Of Real-Time Monitoring

- Telephone monitoring
- Keystroke logging
- Auto-forwarding e-mail
- Video surveillance with audio recording
- Continuous screenshot capture

Key Takeaways: Implementation

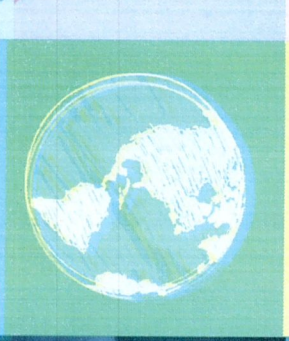
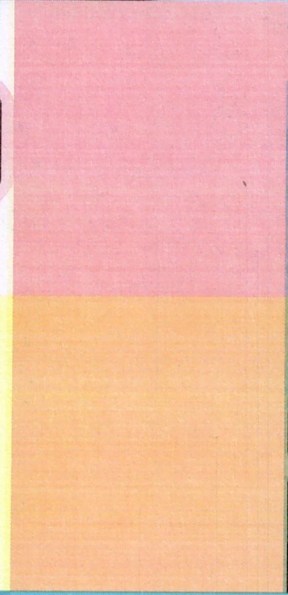
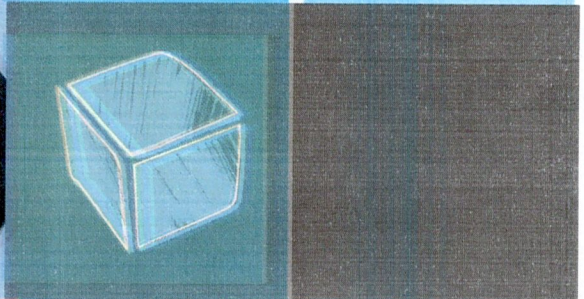


- 1. Understand the monitoring technology**
- 2. Select monitoring technology that meets corporate objectives**
- 3. Minimize collection of data by monitoring tools**
- 4. Ensure that managers actually use fruits of the monitoring**

Key Takeaways: Legal Compliance

1. Use real-time monitoring tools only when truly needed
2. Provide notice to employees even when not legally required
3. Consider obtaining written consent where consent is required
4. Implement a short retention period subject to litigation holds





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Thank You!

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