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Workplace Surveillance Concerns

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Employers have a number of reasons why they might want to use video cameras in the workplace; e.g., to secure the premises, to deter or prevent theft or malfeasance, to monitor the workplace for efficiency, or to provide security to employees, visitors, or customers.

Employer use of video cameras is sometimes challenged because of invasion of privacy concerns. Public employers also must consider the implications of video surveillance in the workplace with respect to Fourth Amendment constitutional protections against warrantless searches.

In *AdvancePierre Foods, Inc.* (2018), however, the National Labor Relations Board considered an employer's use of video cameras in the workplace related to protected activity under the National Labor Relations Act (NLRA). On July 19, 2018, the Board issued a Decision and Order finding that the employer unlawfully surveilled employees' distribution of union materials in the break room and interrogated those employees in violation of Section 8(a)(1) of the Act.

In general, there are a few typical concerns that employers first must address before installing video cameras in the workplace:

- There should be a valid business reason for installing cameras in the workplace.
- Cameras should not be installed where individuals legitimately have a reasonable expectation of privacy, such as locker rooms, restrooms, changing rooms, lactation rooms, and – in light of the *AdvancePierre Foods* decision – possibly even break rooms.
- Some advanced cameras have audio listening/recording features. To avoid concerns about potential violations of criminal state and federal audio recording and wiretapping laws, it is recommended that these audio features be disabled.
- It is a good practice, and may be required under state law, to provide notice to employees that video cameras will be put into use. It is also recommended that employers establish conspicuous signage where cameras are in use.

If you have specific questions about the use of security cameras in your workplace, or state law restrictions on their use, please do not hesitate to contact an Employers Council attorney for details.