

What are the pros and cons of prohibiting workplace photography?

Q. We recently saw a news report that an AOL employee was fired for taking a photograph during a meeting. Now we're wondering: Should we include anything in our employee handbook prohibiting the taking of photographs or videos at work?

A. Possibly, although you should consider some legal risks. Increasingly, many companies have language in their technology and social media policies either prohibiting or limiting an employee's right to take photographs or videos or to record conversations at work.

While the use of smartphones by employees has many advantages, one of the disadvantages is that it is much easier for employees to surreptitiously take photos or videos or capture conversations. Some of the reasons to potentially limit the right to take photos or videos at work or record conversations include promoting others' privacy rights and protecting confidential and trade secret information.

In addition, medical providers and other employers serving vulnerable populations (such as the elderly or disabled individuals) are prohibited under HIPAA and other privacy laws from publishing information that would make patients or clients identifiable.

In deciding what approach you want to take, you'll want to explore whether any unique laws apply to your industry.

Another risk to consider is a recent advice memo from the National Labor Relations Board (NLRB) general counsel. It takes the position that a prohibition on photographs or videos in the workplace runs afoul of employees' Section 7 labor law rights. Section 7 of the federal National Labor Relations Act applies to nonmanagement employees in both unionized and nonunionized settings, and gives such employees the right to engage in "concerted" activity for their mutual aid and protection.

The NLRB's position does not, however, account for some of the competing legal reasons an employer might feel it needs to prohibit recording and photographs at work.

Depending on an employer's business, the consequence of failing to have a policy to adequately protect information may be worse than maintaining a policy that could be deemed contrary to the NLRB's position. The correct answer for your workplace likely depends on your industry, the client population that you serve, whether your workplace is likely to be the target of any scrutiny by the NLRB and your level of risk tolerance.