

Using GPS to monitor staff? Know legal risks and 5 best practices

With the rise in GPS technology, employers have unprecedented access to their employees' whereabouts. However, before an employer begins using GPS to monitor employees, it should consider the related legal ramifications and employee privacy issues.

The benefits

You can use GPS tracking in employer-owned vehicles or on smartphones to streamline travel for delivery or other mobile employees.

You can also use GPS tracking to monitor employees' overtime and compliance with labor laws, ensure employee compliance with safety regulations by confirming that employees are not violating traffic laws, and verify that time records are accurate. Also, if an employee is suspected of wrongdoing, you can use GPS data as part of your internal investigation.

Legal concerns

Employers should first consider any state laws related to GPS tracking, including some laws that prohibit monitoring employees after-hours.

Some states, including Illinois, make it illegal to use a GPS to monitor the location of a vehicle without the vehicle owner's consent. Employers don't violate this law because the employer (the vehicle's owner) consents to the tracking. However, you can't install GPS tracking in employee-owned vehicles without the employee's consent.

Employers should also consider state tort laws—such as invasion of privacy—if they track workers without their knowledge or consent. There is even less clarity in the law when it comes to tracking employees' locations through smartphones.

Best practices

If you do wish to employ GPS tracking to monitor employees—whether to maximize efficiency, ensure compliance or to perform an investigation—consider implementing the following best practices first:

1. Become familiar with any laws applicable to privacy expectations and GPS tracking of vehicles or devices in the states where you plan to track employees.

2. Only use GPS tracking in employer-owned vehicles or devices. The case law and statutes show that, generally, tracking an employee using company-owned property is permissible, especially when the employee is aware of the GPS monitoring. Tracking employees using their personally owned property is still a legal gray area.

3. Monitor employees only to the extent it is justified by a business need. When employees are tracked via GPS, some may feel their privacy has been violated and commence litigation. Therefore, only engage in monitoring employees to the extent that risk is offset by a business need.

4. Make sure you have a written GPS tracking policy. It should outline the business reasons for using GPS tracking, when and how employees should expect to be monitored and how the employer will use and safeguard data collected. If employees will be disciplined for disabling a GPS device without the employer's permission, the policy should explain the consequences. Communicate the policy and ask staff to acknowledge their receipt and understanding of the policy.

5. Be responsible and considerate by monitoring employee activity only during work hours, and only monitoring the employees' location for a specific business purpose in compliance with the written policy. Also, take appropriate steps to ensure any GPS-related data is stored safely and securely.

The bottom line: While there are many legitimate business reasons an employer may wish to monitor employees' locations through GPS technology, companies can undertake a few simple steps to ensure that GPS monitoring activities do not violate applicable laws or employee trust.

Elizabeth Austermuehle is an attorney in the Chicago office of Greensfelder, Hemker & Gale.

GPS to monitor performance: Consider the ADA

In addition to using GPS to track mobile employees, some employers use "wearable" GPS technology inside the workplace to track employees' speed, movements and efficiency. *Example:* Amazon uses wearable GPS to help warehouse workers find the quickest route to products they're seeking.

If you use such GPS data as part of performance evaluations, develop a policy outlining exactly what metrics will be used and apply those criteria uniformly.

One exception: disabled employees who require a reasonable accommodation. Employers must find a way to account for the accommodation when using the data for evaluations.

Also, if your GPS system identifies a decline in an employee's performance, don't assume or suggest a disability. Talk to the employee about the numbers and see what the employee says. The employee may reveal a disability and ask for an accommodation. If the employee does not reveal a disability, then you can only address the performance.