



**SUBJECT: SURVEILLANCE/MONITORING IN THE WORKPLACE**

**BY: Russell D. Mayer, Adv.**

**DATED: January 2018**

---

The purpose of the Protection of Privacy Law, 5741-1981 (the “**Law**”) is to prevent the infringement of another’s privacy without their consent. Cameras are used for various purposes, *among them*, protecting property, preventing and revealing illegal acts, directing traffic, maintaining public order, and even supervising employees. The use of cameras and other surveillance tools can impinge on one’s right to and expectation of privacy. For that reason, the Law distinguishes between the use of those methods in the public realm, where generally there is little or no expectation of privacy, versus in the private domain, where one would likely have an expectation of privacy. In light of this phenomenon, a question arises concerning the infringement of privacy due to the use of surveillance cameras in general, and in the workplace in particular, while weighing the employer’s need or desire for security and monitoring of employees. The use of cameras and surveillance tools in the workplace challenges the Law’s intention to protect the one’s personal space, since they are capable of recording the employees’ every move throughout the workday, and not solely the intended surveillance target. Therefore, the footage is suspected to include sensitive information that might result in the violation of the employee’s right to privacy. The Privacy Protection Authority, in the context of its evaluation and balancing of the various interests, recently published directives of the Database Registrar regarding the use of surveillance in the workplace and in the framework of an employment relationship in order to clarify the Registrar’s stance on this matter.

The **Isaacov** matter<sup>1</sup> stipulated various ground rules regarding the topic of the protection of privacy in the workplace, as to the use of surveillance and information technologies. The ground rules also apply to businesses that are required by the Police to install surveillance cameras as a precondition for receiving a business license:

---

<sup>1</sup> Labor Appeal 90/08 **Tali Isaacov Inbar v. State of Israel - Commissioner for Women's Labor Law, et al.** (Published in Nevo, February 8, 2011) (hereinafter: the “**Isaacov Matter**”).

1. The employee's right to privacy must also be protected in the workplace.
2. The employer is obligated to be transparent in informing employees of the explicit details of any enacted policy regarding the use of surveillance devices and the reasons that justify, in the employer's opinion, the use thereof. The employee must willingly consent to the conditions of the monitoring. It should be clarified that the employee does not have the right to veto the policy, but has the right to be aware of the details of the monitoring, is entitled to state his/her position on the matter and have his/her concerns taken into consideration to the best of the employer's ability, while taking into account the purpose of the surveillance but must actually consent to the monitoring (resignation or termination of employment due to refusal to consent would likely give rise to entitlement to severance pay if the employee is entitled).
3. The employer must act in accordance with the principles of proportionality, reasonability, good faith and decency in the use of surveillance technologies in the workplace, and attempt to find alternative technologies that infringe less on the potential violation of the employees' privacy.
4. The employer's surveillance actions shall be constrained by the principle of legitimacy, which stipulates that the use of information will be restricted to specific purposes that are essential to the workplace and that are consistent with the employer's business plan, or that are derived from legislative provisions or the requirements of an official authority.
5. Excessive use of monitoring technologies, such as security cameras, which impinge upon the employees' right to privacy, may expose the employer to administrative and criminal sanctions. Furthermore, violation of the Law exposes the employer to civil lawsuits and may enable the employee to resign and be entitled to severance pay.

As mentioned above, the employee must consent to the policy that may infringe on his right to privacy. Nonetheless, the case law typically demonstrates that an employee's consent in any matter relating to his employment does not necessarily reflect his sincere agreement, since it is affected by the inherent hierarchy that exists in an employment relationship. Therefore, the employer must thoroughly examine the proportionality of the surveillance activities as well as his compliance with the principle of legitimacy. According to the Law, the employer must update the said policy every few years in order to adapt it to changes in the field and to refresh the employees' awareness of the policy's existence and content.

The employer must ensure that the employee is aware of the security cameras' locations, and may not rely merely on the employee's 'consent in principle' to their location and use. In the event that there is a legal prohibition regarding the installation of surveillance cameras in a certain workplace or location within a workplace, their installation may be considered a criminal offense. Hidden cameras do not comply with the limitations provision as they are considered to excessively infringe on the employee's right to privacy which would, generally, not justify the intention of the surveillance. If, for instance, the employee is unaware that s/he is being filmed, s/he will ostensibly not change his/her conduct to work more efficiently, thereby rendering the surveillance as an ineffective tool for motivating employees.

#### **Prohibition of Camera Use for Other Purposes:**

As noted, the use of recordings for purposes other than those that were previously permitted, unless the use is required by law or an official authority, is prohibited. Use of footage for a different purpose without consent or protection by law, even if it is legitimate in and of itself, constitutes excessive use and is a violation of Sections 2(9), 8(b) and 11 of the Law. Conclusions reached through that use are likely to be disqualified from being used as evidence in court.

#### **The Placement of Cameras:**

The legitimate placement of cameras is affected by an employee's reasonable expectation to privacy. Shared workspaces, although more public than a private office space, are considered within the realm of "personal space" as it relates to the expectation of privacy. However, the placement of cameras in locations such as bathrooms, dressing rooms or other areas that are closed to the general public, would likely constitute a violation of the reasonable expectation of privacy and an intrusion of the employees' "personal space," which the employee is entitled to expect to be free of surveillance. Nevertheless, one may install cameras in specific locations around the workplace that are not traditional working areas, as long as there is a justification for the necessity of cameras in the said locations, as well as in public areas such as corridors or workplace areas that are accessible to clients. Clients need not be notified of the exact location of surveillance tools in public areas at a

workplace that are installed to monitor client activity; nonetheless, employees must be made aware of their location. Since the goal of the surveillance of clients is not directed at the employees, failure to notify them would significantly and disproportionately infringe on their right to privacy.

\* \* \*

*This article is not to be considered as a legal opinion.  
For legal advice, we suggest that you contact legal counsel directly.*

R.D.M

**RUSSELL D. MAYER** is senior partner at the Jerusalem-based law firm of **Livnat, Mayer & Co.** ([www.LMF.co.il](http://www.LMF.co.il)). If you have any comments or questions with respect to this article, please contact Russell at [mayer@LMF.co.il](mailto:mayer@LMF.co.il)

© All rights reserved – 2018 – Russell D. Mayer, Adv.