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NEW LAW CURTAILS VIDEO RECORDING OF EMPLOYEES IN WORKPLACE

On July 5, 2006, former Governor Pataki signed into law a provision which prohibits employers from conducting video surveillance of employees in designated areas of the workplace. The new statute, § 203-c of the New York Labor Law, protects privacy rights of employees. It was enacted in response to recent advances in technology and the increased use of video surveillance to monitor employees.

Who does the law cover?

The new law applies to all employers in New York, public and private.

What does the law prohibit?

Under the new law, employers are prohibited from video recording any employee "in a restroom, locker room, or room designated by an employer for employees to change their clothes." A video recording made in violation of the law may not be used "for any purpose", whether for internal use or as evidence in a proceeding.

Are there exceptions to the new law?

An employer may make a video recording that is authorized by a court order. Further, the new law does not apply to any law enforcement official "engaged in the conduct of his or her authorized

duties", although the Legislature did not provide guidance on the purpose or scope of the exception for law enforcement personnel.

Does the law prohibit all recordings?

The law applies solely to "video" recordings. While it does not prohibit audio recordings, however, other statutes might. For example, New York Penal Law § 250.05 prohibits certain eavesdropping, including "mechanical overhearing of conversations".

What workplace areas are covered?

The law prohibits video recordings in restrooms, locker rooms and other rooms where employees change their clothes. An employer's ability to conduct surveillance in other areas of the workplace may be restricted by additional factors, such as provisions in employee handbooks or an obligation to collectively bargain prior to monitoring employees. While a public employer is apparently not obligated to collectively bargain over the installation of a surveillance system unless employees are required to actively participate in the surveillance process (*See City of Syracuse*, 14 PERB ¶ 4645 [1981]), there may be bargaining obligations over the disciplinary consequences of surveillance and other related concerns.

What are the possible penalties for violations?

The new law creates a private cause of action for violations. An employer found to have violated the statute may be required to pay damages and attorneys' fees. Injunctive relief may also be imposed to prevent further violations.

Practical Pointers:

- Make sure all employees, supervisors and managers are aware of the new law and of any other laws relating to surveillance and privacy rights.
- Employers who provide designated areas for employees to change clothes should expressly prohibit employees from changing in other areas where video surveillance may be utilized.
- Employers seeking to use video surveillance should review their employee policies, collective bargaining agreements, handbooks and practices to determine whether surveillance is allowable in areas outside those covered by the new law.
- Employers using video surveillance should consider posting notices that video cameras are in place, in order to better serve the employer/employee relationship and to provide an added deterrent to undesirable conduct.

MELINDA BURDICK BOWE, ESQ. JOINS FIRM

Hancock & Estabrook, LLP, is pleased to announce that Melinda Burdick Bowe has joined the Firm as a member of the Education & Municipal and Labor & Employment practice groups.

Melinda Burdick Bowe holds a Juris Doctor degree from Syracuse University College of Law (cum laude) and a Bachelor of Science degree from the State University of New York at Brockport (cum laude). In her practice she represents management in public sector collective bargaining, contract management and grievance administration and education and employment law matters.

Prior to joining the Firm, Ms. Burdick Bowe represented over 20 school districts as Director of Labor Relations of the Madison-Oneida Board of Cooperative Education Services (BOCES). She also served as Assistant Director of Personnel for Madison County and as a Legislative Staff Member with the United States House of Representatives. Ms. Burdick Bowe is a member of the New York State Public Employment Labor Relations Association (NYSPERLRA), New York State Association of School Attorneys, National Public Employment Labor Relations Association, Management Advocates for School Labor Affairs and the North American Association of Educational Negotiators. She is a member of the Onondaga County and New York State Bar Associations and is admitted to practice in New York State.

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