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## NEW YORK EMPLOYERS BEWARE – RECENT LITIGATION IS REMINDER THAT SECURITY CAMERAS IN THE WORKPLACE CAN BE A DOUBLE-EDGED SWORD

By Glenn S. Grindlinger

While security cameras in the workplace can be an employer's best friend, of late they can also be a double-edged sword if not properly managed. In 2006, New York enacted a law that prohibits employers from installing security cameras in restrooms, locker rooms or other areas designated by the employer for employees to change their clothes. After the law was enacted, there were few, if any cases, brought by employees claiming that their employer had violated the statute. However, in the last few months, there has been an uptick in such cases, which have started to generate press.

Under New York Labor Law § 203-c, "no employer may cause a video recording to be made of an employee in a restroom, locker room, or room designated by an employer for employees to change their clothes[.]" N.Y. Lab. L. § 203-c(1). Further, if an employer makes such a video recording in violation of the statute, the recording "may [not] be used by an employer for any purpose." N.Y. Lab. L. § 203-c(2). This means that even if an employee is caught on video stealing, if the video was taken in a restroom, locker room or room designated by the employer for employees to change clothes, the employer cannot rely on the video to terminate the

employee's employment. The only exception is for law enforcement personnel engaged in authorized duties or if the employer first obtains a court order permitting video recording in the aforementioned areas.

If any employer violates New York Labor Law § 203-c, aggrieved employees can file suit and obtain damages, likely for purported emotional distress, attorneys' fees and costs and injunctive relief. N.Y. Lab. L. § 203-c(3). Because claims under New York Labor Law § 203-c are likely to concern more than one employee, claims under this statute are very susceptible to class action treatment. Therefore, if an employee files such a claim, it is likely to be filed as a class action, thereby driving up the attorneys' fees and damages that an employer will have to pay in a judgment or in order to settle the suit.

The legislative history of New York Labor Law § 203-c shows that its intent is "to prohibit employers from video or audiotaping employees while they are in rooms designated by the employer for employees to change their clothes." N.Y. Assem., B. Summ. 2006 AB 10548. Accordingly, in order to avoid Section 203-c suits and to ensure compliance with the law, it is recommended that employers:

- Remove cameras from restrooms.
- Remove cameras from areas that the employer has designated for employees to change their clothes.
- In those nonpublic areas where employees congregate, install signs informing employees that the area is under surveillance and employees should therefore not change clothes in that area and instead should change clothes in the specific area that the employer has designated.

- If an employer has an area with lockers but the employee is expected to change elsewhere (e.g., restroom), signs should be posted informing employees that the locker area is not an area to change clothes but rather should be used only to store employee property.

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