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Electronic Monitoring: How to Maintain Productivity During the Holiday Shopping Season

When employees shop online on company computers or during work time, it can impact productivity and it may even leave your computer system susceptible to viruses and other cyber attacks. Some employers have addressed this concern through electronic monitoring. In this Tip, you will read some factors to consider before engaging in electronic monitoring.

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The Monday following Thanksgiving Day is known as “Cyber Monday,” one of the biggest online shopping days of the year. On Cyber Monday many retailers provide deep discounts, free shipping, and other incentives to persuade consumers to shop online.

Online shopping during work time may be one of many headaches for HR during the holiday season. Not only can online shopping affect productivity, but it can also leave company computers susceptible to viruses and other cyber attacks. Monitoring employees’ Internet use can be one way to address these concerns. However, it’s important to carefully balance employee privacy with the need to maintain a secure and productive workplace.

The following are considerations for developing policies and procedures governing Internet use and electronic monitoring:

- **Develop an Internet use policy.** Completely restricting personal use of company computers can have a negative impact on employee engagement and productivity; accordingly, some employers choose to allow occasional personal use within reasonable limits. It’s important that your employees understand exactly what restrictions are in place, including which websites are restricted, and if applicable, which times of the day employees can browse the Internet for personal reasons (e.g., during break or meal periods only).
- **Review federal and state laws.** Review federal and state law to determine the circumstances under which electronic monitoring may be permitted. The federal Electronic Communications Privacy Act (ECPA) prohibits the interception and disclosure of email, telephone conversations, and data stored electronically while those communications are being made, are in transit, and when

they are stored on computers. There are, however, notable exceptions. Employers should consult legal counsel before instituting an electronic monitoring policy. Note: Some states require employers to post a notice of workplace monitoring in a conspicuous area of the workplace. Check your state law to ensure compliance.

- **Set privacy expectations.** When presented with privacy cases stemming from electronic monitoring, courts often look at whether employees had a reasonable expectation of privacy. With this in mind, employers should set clear expectations in a formal policy that:
 - » Informs employees that their communications and activities on company equipment will be monitored within the limits of applicable law;
 - » Addresses exactly what will be monitored (e.g., Internet activity, email, etc.);
 - » Communicates that employees should not have an expectation of privacy when using company equipment; and
 - » Indicates that by using company equipment, employees agree to be monitored.
- **Obtain consent.** Obtain employees’ written consent before monitoring computer activity. In general, this can be accomplished by providing employees with a copy of your electronic monitoring policy and requiring a signed acknowledgement.
- **Ensure consistency.** As a best practice, all monitoring should be done in a consistent and nondiscriminatory manner. Once a potential problem is identified, respond promptly and consider how you have handled similar situations in the past.
- **Manage employee concerns.** To help address concerns, assure employees that you respect their privacy and share the business reasons for electronic monitoring (e.g., to help ensure productivity, quality control, security, and customer satisfaction). Employees should be encouraged to raise any questions or concerns about the policy with their supervisor.

Now is a good time to remind your employees of your policy on Internet use and electronic monitoring. Such policies should be drafted carefully and enforced on a consistent basis.

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