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BLOGS

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Unauthorized Videos by Employees at Work: Tips for Prevention

On November 18, 2011, the animal rights group Mercy for Animals released a video that was secretly recorded at several farms owned and operated by Litchfield, Minnesota-based [Sparboe Farms](#), the fifth largest shell egg producer in the United States. The video shows the mistreatment of select hens used in the production of eggs. The video was obtained by ABC News and was used as part of a story for the [ABC News Magazine television show 20/20](#). That story and the surrounding media attention caused a ripple effect in the food industry. Within days of the release of the video, customers of Sparboe Farms including McDonalds, Target, Sams Club, and Lunds & Byerlys announced that they would no longer buy Sparboe-branded eggs. Although Sparboe Farms acknowledges select hens were mistreated, the company denies that these incidents are reflective of its general practices and has terminated the employees involved with the mistreatment of the animals.

An important issue was raised in this case that has largely been ignored by the media: the video was taken without authorization by people associated with an animal rights group who obtained employment with Sparboe Farms for the sole objective to take the video. While the employee mistreatment of animals in the videos is undeniable and inexcusable, the people involved in exposing the problems used tactics that should cause some concern for employers. Sparboe has publically [taken responsibility](#) for the problems and is in the process of a large-scale improvement initiative.

The days of large video cameras held on the shoulder and bulky VHS tapes are long gone. With today's technology, it is remarkably easy to videotape anything, anywhere, and it is difficult to detect those who do this without permission. This poses a long list of legal risks for employers. Unauthorized videos can result in large-scale, negative publicity, (Sparboe is a recent example; remember the [Dominos video incident](#)?) Even if they don't cause a media circus, they can cause legal problems. We regularly advise clients on how to respond to situations involving video technology in the workplace. My own list of examples includes how to handle an employee who posts sexually suggestive videos on social media sites that co-workers are invited to see, email chains between workers sharing and spreading highly inappropriate video content from private sources or the web, and even videos of the proverbial bad boss having a meltdown being floated around the office. Video technology also creates the possibility of your company's trade secrets or confidential business information being secretly recorded by an imposter employee and shared on the web. And let's not forget that users can easily manipulate videos to depict behaviors or people in a manner that is entirely false. Although there are laws that prohibit invasion of privacy, defamation, and even the interference with research or operations at animal facilities like Sparboe, there are remarkably few legal rules in place that govern an employer's right to address or prevent unauthorized videos taken by employees.

So what is an employer supposed to do? For starters, adopt good hiring practices and good technology use policies. Also consistently train about technology use in the workplace and enforce the policies you put in place. Here are some suggestions:



Good Hiring Practices

Reference checks. Take the time to check references. Always request employer references and verify that the past jobs listed on the application are accurate.

Prior addresses. Always request and verify that the prospective employee actually lived at the addresses provided. Background checks done by vendors usually include this verification. Be careful to avoid questions that could give rise to claims of discrimination, but don't overlook the importance of validating the information provided by a job applicant.

Education and skill level. Consider whether the prospective employee seems to be over or under-qualified for the position, based on both education and skill level.

I-9 Compliance. Be sure to follow all rules for completing I-9s to verify identity. One common method of verification is a driver's license, but other forms of ID are also acceptable. Make sure your hiring personnel know and understand these requirements and consistently follow them.

Effective Training and Supervision

If supervisors are properly trained and doing a good job overseeing staff, they will notice unusual behaviors that could indicate employee misconduct, such as unauthorized videotaping.

Unusually detailed questions. Most new employees will have lots of questions and a certain period of learning while on the job. But if the employee asks specific questions about security matters, such as how people can access certain areas of the facility or the specific hours of supervisors in various areas, or operational time schedules for certain events, there may be a different motivation than simply learning the business.

Attendance problems. Sporadic or inconsistent attendance can be a common problem, but if an employee arrives prior to scheduled shifts or leaves after scheduled shifts on a regular basis, management should take notice and enforce the schedule. Not only does this behavior cause potential security issues, it could also raise claims of unpaid overtime under the Fair Labor Standards Act.

Wandering. If the employee is discovered wandering around in areas not necessary for his/her job responsibilities, make sure management is following up and providing appropriate guidance about work hours and work locations.

Adopt a Technology Use Policy

Although there are very few laws regulating the use of video technology in a workplace, employers are free to adopt policies prohibiting the use of certain technology and technical devices, such as video smartphones, in the workplace. The policy should be in writing and distributed to every employee, preferably with a requirement that the employee sign an acknowledgement regarding their understanding of the policy.

Train Employees and Enforce Policies

As Ben Franklin taught us, an ounce of prevention is worth a pound of cure. The best way to avoid problems is to make sure your employees understand the rules and follow them. In today's business world, use of technology policies and codes of conduct are common and expected. Put good policies in place and regularly and consistently provide training, education, and guidance to employees about expected behavior. And don't forget to enforce the rules. If employees are not following the rules, address the situation immediately and with an appropriate response given the offense. Most people learn best by example, so ensuring those who break rules receive timely and adequate discipline will send a strong message to all of those who work around them.