

Camera Phones Are Here . . . Is Your Company Ready?

Also: New 401(k) Option Available

Your company's confidential documents are being copied. Your biggest competitor has learned your trade secrets. Photographs of one of your supervisors disciplining an employee are appearing on a union organizing website. And, to make matters worse, a sexual harassment charge has just been filed against your company.

One common, small electronic device could be behind each of these events: the camera phone. Camera phones provide the opportunity to take a picture of almost anything or anyone at a moment's notice. Some are capable of recording video. They are portable, concealable, and not easily recognizable as a security threat.

The inappropriate use of camera phones has been increasingly in the news. Recently, an ice rink employee was arrested for using his camera phone to photograph a female hockey team in a locker room. In response, state and federal lawmakers are considering restricting the use of camera phones in public places, and some states have already enacted legislation addressing camera phones.

Reducing Your Risk

What steps can employers take to address the use of camera phones in the workplace? Many employers are revising existing policies or creating new ones prohibiting or restricting the use of camera phones from all or part of the workplace. Others are installing jamming devices that disable cameras in certain areas.

When formulating a camera phone policy, employers should first determine the privacy and security concerns to be addressed. Many employers ban camera phones in employer-provided restrooms, showers, locker rooms, changing rooms, or exercise areas. Employers should also consider prohibiting or restricting camera phones around proprietary documents and processes, and in areas of the workplace devoted to research and development. Health care employers will have to take into account the need to protect patient and medical records privacy as well.

Additional Considerations

Once a camera phone policy has been developed, employers should consider:

- How it will interact with other policies, and
- The consequences for employees who violate the camera phone policy.

As in the case of employer-provided computers, PDA's, and e-mail accounts, employers who furnish employees with camera-equipped mobile phones should inform employees that the phones are employer property, and therefore, images taken with the camera are subject to review at any time.

Finally, after the policy has been drafted, employers will want to inform employees (and perhaps vendors, contract workers, and other visitors) of the policy and the business reasons for it. Employers should consider maintaining a written record of how and to whom the camera phone policy is distributed.

A well-formulated camera phone policy can protect your confidential business information and the privacy of employees and visitors. Act now to reduce your risk.

ERISA COMPLIANCE ALERT: AFTER-TAX ROTH 401(k) ACCOUNTS AVAILABLE IN 2006

Beginning January 1, 2006, employers who sponsor 401(k) plans or 403(b) plans will have another optional feature to consider adding to their plans: the Roth 401(k) contribution.

Passed in 2001 with a 2006 delayed effective date, this new type of after-tax contribution provides participants in employer-sponsored, qualified retirement plans with the tax advantages historically available only through a Roth IRA. Like the current Roth IRA, the new Roth 401(k) contributions must be made on an after-tax basis. Then the participant can withdraw the funds—including all earnings of the Roth 401(k) contributions—tax-free at retirement.

The new tax law allows plans to accept contributions that participants designate as after-tax, Roth contributions. Unlike the limitations applicable to Roth IRAs, the Roth 401(k) contributions can be made irrespective of the participant's income. Designated Roth 401(k) contributions, which may be matched by employers on a pre-tax basis, are treated as elective deferrals for purposes of applying the limitations applicable to 401(k) plans. The terms of the plan will dictate when designated Roth contributions are subject to distribution. But, in order for the designated Roth contributions and earnings to be distributed tax-free, the distribution must not occur until five years after the first designated Roth contribution is made.

There are advantages and disadvantages to establishing Roth IRA accounts under an employer's qualified retirement plan.

From a participant's perspective, being able to make designated Roth contributions may be appealing. These contributions would be available to participants whose income levels exceed the Roth IRA limitations (\$110,000 for single individuals and \$160,000 for married individuals) and may be made without incurring account fees charged by Roth IRA service providers. Furthermore, earnings attributable to designated Roth contributions can be distributed tax-free.

Employers, however, will need to weigh the additional administrative responsibilities against the tax advantages available to plan participants when considering whether to implement the Roth feature:

- Designated Roth contributions will have to be maintained in a separate account under the plan, which is credited with the proportionate amount of gains and losses.

- There will be additional responsibilities on plan record-keepers, including tracking after-tax contributions and the associated earnings, as well as determining when five years have elapsed for purposes of determining whether the distribution is tax-free.
- Payroll systems must be able to accommodate the collection of after-tax Roth 401(k) contributions.

Chances are that employees will be looking for this new 401(k) plan feature at the start of the New Year. Employers interested in allowing Roth contributions to be made under their plans should contact their plan administrators, record-keepers, and payroll service providers to coordinate this change. Employers that decide to allow Roth contributions will need to amend their plans, update their summary plan descriptions, and revise their election forms and other communications.

This Employment Law Update is published as a service to our clients and friends. It is intended to be informational and does not constitute legal advice regarding any specific situation.

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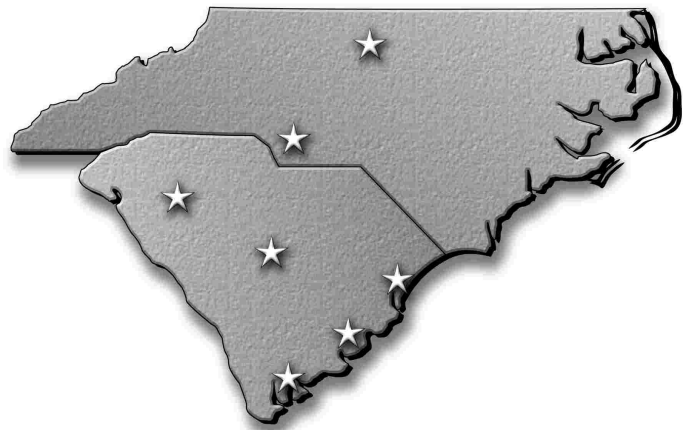
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