



Many municipalities and schools have increased their use of video surveillance to increase security, but they must ensure they adhere to statutory requirements

Security Surveillance: Managing the Use of CCTV



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Surveillance systems should not be located where users of the facility have a reasonable expectation of privacy

Many schools and municipal leaders are turning to the use of Closed Circuit Television (CCTV) to help increase safety and a sense of security in staff, students, and other users of the facilities. CCTV surveillance is increasing in usage because of technology advances that have driven down costs and increased performance and durability.

The use of a CCTV system, however, brings with it a variety of legal exposures, such as:

- Employees and student expectations of privacy in municipal and school buildings.
- Selection of camera (CCTV) locations.
- Records retention.

Since there is limited expectation of privacy in municipal buildings, cameras don't violate any laws unless they are placed in private spaces, such as staff lounges, rest rooms, locker rooms, or other changing areas. Courts are in general agreement that students in schools and employees at work have fewer privacy rights than when they are on their own time.

Connecticut Gen. Stat. Sec. 31-48d specifically prohibits electronic monitoring of employees without notice (with some exceptions). Under the statute, municipalities and schools must post notices that clearly communicate to all those who enter the building that there is CCTV monitoring in progress. This is a strong defense against any argument about the expectation of privacy. The notice of the system's presence should be placed and posted in:

Expectation of privacy can be managed through the use of appropriate signage and warnings.



- Employee Handbooks.
- Student and Parent Handbooks.
- Web sites.
- Entrances to the buildings.

CCTV has been shown to have a significant inhibitory effect on crime against both property and persons

Once an incident is reported to the town or school, management should preserve the video images, even if there has not been a formal notice of a law suit or claim.

- Parking lots.
- Other public locations (such as a town council chambers).

The signage must be visible and clearly legible so that the average person can reasonably identify the sign and read it. A strong benefit of the presence of such equipment and signage itself is the deterrent effect it has on criminal activity.

Connecticut Statute § 31-48d

Sec. 31-48d. Employers engaged in electronic monitoring required to give prior notice to employees.

(1) "Employer" means any person, firm or corporation, including the state and any political subdivision of the state which has employees;

(2) "Employee" means any person who performs services for an employer in a business of the employer, if the employer has the right to control and direct the person as to (A) the result to be accomplished by the services, and (B) the details and means by which such result is accomplished; and

(3) "Electronic monitoring" means the collection of information on an employer's premises concerning employees' activities or communications by any means other than direct observation, including the use of a computer, telephone, wire, radio, camera, electromagnetic, photoelectronic or photo-optical systems, but not including the collection of information (A) for security purposes in common areas of the employer's premises which are held out for use by the public, or (B) which is prohibited under state or federal law.

(b) (1) Except as provided in subdivision (2) of this subsection, each employer who engages in any type of electronic monitoring shall give prior written notice to all employees who may be affected, informing them of the types of monitoring which may occur. Each employer shall post, in a conspicuous place which is readily available for viewing by its employees, a notice concerning the types of electronic monitoring which the employer may engage in. Such posting shall constitute such prior written notice.

(2) When (A) an employer has reasonable grounds to believe that employees are engaged in conduct which (i) violates the law, (ii) violates the legal rights of the employer or the employer's employees, or (iii) creates a hostile workplace environment, and (B) electronic monitoring may produce evidence of this misconduct, the employer may conduct monitoring without giving prior written notice.

(c) The Labor Commissioner may levy a civil penalty against any person that the commissioner finds to be in violation of subsection (b) of this section, after a hearing conducted in accordance with sections 4-176e to 4-184, inclusive. The maximum civil penalty shall be five hundred dollars for the first offense, one thousand dollars for the second offense and three thousand dollars for the third and each subsequent offense.

Signage is required before CCTV may be used; but the presence of signage helps reduce vandalism and theft by itself

There is a significant exception to the law regarding CCTV:
Audio recording is not permitted unless specific consent is given.

(d) The provisions of this section shall not apply to a criminal investigation. Any information obtained in the course of a criminal investigation through the use of electronic monitoring may be used in a disciplinary proceeding against an employee.

Although the courts have not ruled on the use of surveillance systems, generally the use of cameras (i.e. a “search” within the meaning of the Fourth Amendment) must be reasonable and the cameras should not be located where there is a “reasonable expectation of privacy.” These areas are outlined in CGS Sec. 31-48b(b).

“...In areas designed for the health or personal comfort of the employees or for safeguarding of their possessions, such as rest rooms, locker rooms or lounges...”

Cameras may generally be used in hallways, stairwells, parking lots, cafeterias and school buses.

Connecticut also has a specific state law on electronic surveillance, regarding location of these devices as well; even though it is not well known. In terms of surveillance, Conn. Gen. Stat. Sec. 31-48b limits what an employer can do:

Sec. 31-48b. Use of electronic surveillance devices by employers limited. Prohibition on recording negotiations between employers and employees.

a. For purposes of this section, “employer” means the owner or owners in the case of an unincorporated business, the partners in the case of a partnership, the officers in the case of a corporation or in the case of the state, any town, city or borough, or district, local or regional board of education, or housing authority or district department of health, the chief executive officer thereof.

b. No employer or agent or representative of an employer shall operate any electronic surveillance device or system, including but not limited to the recording of sound or voice or a closed circuit television system, or any combination thereof, for the purpose of recording or monitoring the activities of his employees in areas designed for the health or personal comfort of the employees or for safeguarding of their possessions, such as rest rooms, locker rooms or lounges.

c. Any employer, who violates any provision of subsection (b) of this section shall, for the first offense, be fined five hundred dollars, for the second offense be fined one thousand dollars and for the third and any subsequent offense be imprisoned thirty days.

d. No employer or his agent or representative and no employee or his agent or representative shall intentionally overhear or record a conversation or discussion pertaining to employment contract negotiations between the two parties, by means of any instrument, device or equipment, unless such party has the consent of all parties to such conversation or discussion.

e. Any employer or his agent or representative or any employee or his agent or representative who violates any provision of subsection (d) of this section shall be fined one thousand dollars or imprisoned one year, or both.

For additional information on this topic,
please contact your CIRMA Risk
Management Consultant

Records Retention

Pursuant to CGS § 11-8 and § 11-8a, the Office of the Public Records Administrator [OPRA] is responsible for designing and implementing a records management program for state agencies within the executive department of government as well as for certain quasi-public agencies.

Statutory duties include:

- Overseeing the life cycle of public records in both paper and electronic forms including creation, use, maintenance and disposition.
- Publishing records retention schedules;
- Keeping state government agencies informed about current records management issues and requirements through publication of manuals, policies, standards and guidelines.
- Overseeing the disposition of all public records. By statute, the Public Records Administrator and State Archivist must approve the destruction or transfer of all public records; identifying and preserving state records essential for the continuity of government operations during or immediately following a disaster or emergency situation.

A records retention policy/protocol is the cornerstone of an effective records management program. It is a policy document that defines the organization's legal and compliance record keeping requirements. Municipalities should implement a records retention schedule in order to ensure that its records are kept as long as legally and operationally required and that obsolete records are disposed of in a systematic and controlled manner; including documentation of when and how they are destroyed. The state records retention schedule is intended to ensure that municipalities and school districts adhere to approved record keeping requirements, and that they do so consistently.

A records retention schedule captures all of the types of records created and used by a municipality; such as electronic data, in the course of its business and indicates how long these records are required to be retained.

Legal discovery is no longer about collecting, copying paper documents. For the municipality's protection, a retention schedule needs to be developed and applied in a systematic manner as part of the entity's corporate-wide records management strategy.

Both development and implementation of a retention schedule are important elements in establishing a "good faith" effort and ensuring a sound records management program. Properly preserving images when required to do so by; either by actual or constructive notice, will reduce the complexity associates with not retaining this data.

Resources

Connecticut State Library, Municipal Records Management Program

www.ctstatelibrary.org/public-records-programs/municipal-records-management-program

www.ctstatelibrary.org/publicrecords/records-retention-schedules-municipal-records-management-general-schedules

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