

The NLRB's New Target: Electronic Surveillance in the Workplace

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Many employers use video cameras to prevent theft, have a record of workplace incidents, and for general security purposes. Although seemingly reasonable, such electronic surveillance in the workplace has drawn increased scrutiny from regulators, especially the National Labor Relations Board ("NLRB").

On October 31, 2022, NLRB General Counsel Jennifer Abruzzo issued [Memorandum 23-02](#) regarding employers' electronic surveillance and automated management practices in the workplace. The memo indicates plans to urge the NLRB to protect employees using the [National Labor Relations Act](#) ("NLRA"). "Intrusive or abusive" technologies, include, but are not limited to:

- security cameras
- GPS tracking devices
- keyloggers
- audio recording devices

Abruzzo believes such technologies and practices have a tendency to interfere with employees' NLRA Section 7 rights, which generally protect union and non-union workers' ability to engage in concerted organizing activities.

The NLRB has made decisions on employer's use of electronic surveillance in the workplace. The following cases have been found as a violation of Section 7 of the NLRA:

- [Stern Produce Company, Inc.](#): While there are legitimate business reasons for using camera systems to prevent or investigate accidents, an employer's use of cameras facing the inside of the cab and the driver had created an unlawful impression of surveillance under the NLRA.
- [Cemex Construction Materials Pacific, LLC](#): Employer created an impression of surveillance among its plant foremen/batchmen by lingering for an unusually long time at the entrance of the plant and waving to drivers entering and exiting the plant while organizers standing near the same gate were displaying a poster and answering questions about comparative wages and benefits.

Employers should be aware of the NLRB's recent focus on electronic surveillance in the workplace before adopting any such practice to ensure they do not violate the NLRA.

Takeaway: If you are an employer that currently uses, or are considering to use, electronic surveillance in the workplace and need additional guidance on whether such technologies or practices would be lawful, contact [Nicholas Rollo](#) or any member of the [Wilentz Employment Law Team](#).

Attorney

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Practice

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