

# The Legal Strategist

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TEXAS ESOTERIC FACTS

Roughly three quarters of Americans work at a computer. It is not surprising then, that how employees use the company's networks, email systems, and web resources is of great interest to employers. Employers monitor for many well-established reasons, such as ensuring productivity, preventing theft of trade secrets, minimizing the risk of harassment or discrimination claims, and more. This article considers technological and legal developments regarding employee monitoring.

- Athens, Texas holds a (slightly controversial) claim as the birthplace of the hamburger.
- Earth, Texas in the plains of Llano Estacado, is the only town on the planet that bears the name of "Earth".

The Feature Topic is a cursory review. If you would like more information on this, or any other topic previously covered in my newsletter, which can be viewed on [The Legal Strategist](#) tab of my web site, please contact my office at 713.526.1883.

Scott Barrett

## FEATURE TOPIC: Employee Monitoring

Increasingly sophisticated technologies are used to observe any imaginable use of a workplace computer system. The technologies can record precisely which systems, documents, and files are accessed, modified, and printed; they can observe and record every keystroke made on a keyboard; and they can provide screenshots activated by optical character recognition.

Employee monitoring goes beyond the mere use of computer systems. Millions of Americans use badges to access parking lots, buildings, and special floors and areas of their workplaces. Their movements are also monitored by closed circuit television, or CCTV.

Emerging methods for employee monitoring raise a multitude of privacy concerns. While federal law affords privacy protections to telephonic, email, and internet communications, exceptions generally permit employers to monitor these communications. In Texas, like the U.S. generally, employers are typically free to monitor their employees' internet and email usage. Emerging statutes, both federal and state, are beginning to place more regulation on assorted forms of employee monitoring, but not surprisingly, these laws tend to lag well behind the technological capabilities they seek to regulate.

Employers wishing to take advantage of new, sophisticated monitoring tools do so at a time in which the rules are arguably playing catch-up. Nonetheless, certain best practices can help companies make good use of these tools while minimizing risks:

- Employers should carefully consider whether and how to monitor, especially in cases where the line between work and personal life is blurred (e.g. location monitoring or bring your own device policies). For internet use, employers should consider less intrusive alternatives, such as blocking.
- Employers should provide thorough and detailed notices to employees in advance of monitoring, for all types of monitoring, and they should make the disclosures part of their employee handbooks. Employers should utilize consent and waiver forms, recognizing that some jurisdictions may deem them ineffective.
- Employers should follow strict protocols on the deployment and use of monitoring tools to limit access to appropriate individuals and to ensure that decisions involving collected data are fair and reasonable. Collected data should be securely held and promptly deleted when no longer needed.
- Monitoring policies and procedures should be developed and routinely reviewed with consultation among human resources, information security, and legal professionals, as well as third-party experts. The policies should be harmonized with acceptable use policies for employees and with protocols and processes for information security teams.

\*This information was first published in the *Texas Bar Journal*, February 2020.

If you would like more information on this or any other topic relating to employee monitoring, please contact [Scott Barrett](#) to set up a consultation.