

Use of GPS Tracking Device on Employee's Car Found Reasonable

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On November 23, 2011, a New York state appeals court found that the Department of Labor (DOL) acted lawfully when the agency's Office of the Inspector General placed a GPS device on an employee's car, even though the device tracked the employee outside of work hours. The employee had a long history of work misconduct, and the DOL believed that the employee was leaving work without permission and falsifying time records. The DOL attempted to have a private investigator follow the employee during work hours, but the employee realized he was being trailed. The DOL then placed a GPS device on the employee's car when it was parked in a lot near his workplace. The GPS device transmitted for a month, and the DOL used this information as evidence for its claim that the employee submitted fraudulent time records. A majority on the state appeals court found that this use of the GPS system was reasonable. Unlike a criminal case, where use of a GPS tracking device would require a warrant supported by probable cause, use of the device by a public employer only required showing that the use was reasonable. The majority found that the use of GPS in this situation was reasonable, as the employee had previously discovered that he was being followed by a private investigator and the data from the GPS was not constantly monitored. Two judges on the court disagreed, however, and said that the GPS was an unconstitutional search and that the scope of the use was unreasonable. The GPS transmitted data outside of work hours, including during the time the employee took a week long vacation with his family. Because a majority of the court found the use of the GPS device was reasonable, the employee could not recover from his employer.

TIP: Employers should carefully consider the laws of their state before electronically monitoring employees, especially if that monitoring may include activities or time outside of the workplace.

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