

WE'VE GOT OUR EYES ON YOU: MONITORING DEVICES IN VEHICLES

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While employers with a fixed worksite can observe and interact directly with their employees to promote safety and reduce risk, employers with workers who operate motor vehicles as part of their job have fewer options.

Highway accidents remain the leading cause of work-related deaths, and also carry tremendous personal, social, and economic costs. The good news is that new technologies in on-board safety monitoring systems are being developed and implemented in both commercial fleets and private vehicles to offer the potential to further improve safety. These technologies allow you to collect safety-specific information related to your drivers' on-the-road behavior and performance.

Why Monitor?

There are numerous reasons for employers, particularly fleet operators, to consider installing driver performance monitoring devices. Such devices could result in the promotion and encouragement of safer driving practices, which benefit both you and your drivers. Additionally, data from these devices could be used as teaching tools to reduce the likelihood of future accidents.

Similarly, in case of an accident, data from a monitoring device could be used to establish how the accident occurred and confirm that the driver was not at fault.

Service Focus

Privacy and Cyber

Workplace Safety

Finally, these devices could decrease unauthorized vehicle usage and unscheduled stops, vehicle theft, and unsafe driving habits.

Make Sure To Stay Legal

These devices and accessories are governed by federal regulations. The Federal Motor Carrier Safety Administration permits them if they do not decrease the safety of the motor vehicles on which they are used, and if they are equipped in accordance with specific requirements set out in the regulations. For example, the law states that devices must be mounted six inches below the top of the windshield, outside of the area swept by the windshield wiper blades, and outside the driver's sight lines to the road, highway signs, and signals.

A majority of states have also enacted laws that govern the use of such devices and accessories. Generally, most states do not permit any device (for surveillance or otherwise) if they obstruct or reduce the driver's view, unless a specific exemption applies. This is important for employers to note because, unlike the older cameras attached at the top of the windshield, the driver performance monitoring devices placed at the bottom of the windshield require an exemption.

Other states include additional requirements. In California, for example, a video recording device is only permitted in a vehicle if it can monitor driver performance to improve safety, and has the capability of recording "audio, video and G-Force levels continuously in a digital loop." The device must automatically save the video when triggered by an unusual motion or crash, and cannot store more than 30 seconds of video, audio, and other data before or after the "triggering event." The device must be outside of the airbag deployment zone and in a seven-inch square in the lower right corner of the windshield, or in a five-inch square in the lower left corner of the windshield.

Because regulations and exemptions vary from state to state, you should consult with an attorney regarding

state-specific regulations and exemptions prior to installing them.

Other Considerations

You should be mindful that the federal government and most state governments have privacy and wiretapping laws that restrict or prevent recording an individual's voice and/or image without prior consent. You should consult with counsel before proceeding, and consider establishing a written policy to notify your employees of the existence of cameras so as to not violate privacy rights.

You may also have an affirmative duty to preserve all recordings and reports for a certain length of time after a "triggering event." Because a video recording captured by the camera, and any report associated therewith, could be considered discoverable information in litigation and may have to be produced to the complaining party, failure to preserve may result in litigation sanctions.

You should also establish a retention policy and follow it. Remember that a complaining party potentially could request all preserved recordings and use the evidence to argue that you have a history of employing bad drivers. You could also be holding on to evidence that shows a specific driver has a history of accidents or unsafe driving practices, or that you knew or should have known that the driver exhibited risky behavior.

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