



## "Private Eyes Are Watching You" ... with Google Glass?

Insights

8.27.13

As I started typing about "Google Glass," that 80's song by Hall and Oates began to torment me over and over again ...

*Private Eyes*

*they're watching you*

*they see your every move*

*Private Eyes*

*they're watching you*

*Private Eyes*

*they're watching you watching you watching you watching you*

So let's talk about Google Glass. Google Glass is essentially a phone mounted on glasses in front of one's eyes, with a front facing camera, and heads-up display with facial recognition and eye tracking technology which can show icons or stats hovering above people you recognize. Creepy, but kind of cool. You can also read directions as you walk and take video from one's point of view. Seems like a fascinating next step in technology. We are NOT badmouthing it, but one does need to consider any new product's proper use.

One can already take video of embarrassing moments with phones, but these glasses increase such opportunities. Not surprisingly, many casinos prohibit the glasses, as do some theaters, and other businesses. One can imagine someone using such glasses in a restroom or to photograph confidential documents, or perhaps to be the "ultimate snitch" to trap someone in an illegal act. Google Glass could take "distracted driving" to a new level as a driver works through the many functions.

And then we have the NLRB; are they going to continue to broadly strike down company restrictions on employees taking and posting photos? Surely, even the NLRB will acknowledge the serious potential invasion of privacy issues presented by employees wearing Google Glass?

Businesses may want to prohibit the use of Google Glass by customers and the public in their workplace. A business is not so worried about the NLRB when they prohibit non-employees from wearing Google Glass in their theaters, stores, casinos, etc.

Like texting, employers should prohibit Google Glass or similar interactive systems while employees operate vehicles and equipment.

Because of their distracting effect, employers should be able to prohibit their use while employees are working, as well as common law privacy rights in bathrooms and locker rooms.

The NLRB dislikes general or broad prohibitions, but thought should be given to prohibiting conduct that constitutes invasion of privacy or harassment, such as filming down a co-worker's blouse.

Arguably the best choice is to simply ban the use or possession of such glasses while working. One avoids vague rules based on "content" or what the employee does with the glasses. Our best guess is that the Board will be less concerned with outright prohibitions on use of the glasses, certainly at least within sensitive areas or when performing safety-sensitive tasks. So long as the business case can be made, the prohibition seems reasonable and not designed to somehow chill employees' Section 7 free speech rights. If you read the underlying facts carefully, the recent NLRB Opinion on workplace photography was more problematic because the employer purported to dictate what the employee could do with the photography once taken. Barring photographic devices (or even the taking of photos) in a vacuum might have been far less problematic. Banning these devices at the outset (instead of attempting to impose restrictions on their workplace use) may be the simplest and safest alternative. Employees seem to draw greater Board scrutiny when they try to get "cute" with their policy language, require advance permission, offer vague proscriptions without examples or definitions, etc. That's a long way of saying that the best approach may be to deal with this much like you would weapons in the workplace, adding an explanatory statement at the outset referencing considerations of workplace confidentiality, safety, privacy (using a different term), harassment, etc. As we said, we're not "bad mouthing" the product. In fact, I can see some fascinating business applications. But any new product must be properly used.

However, supposedly some businesses are already banning Google Glass.

An August 7, 2013 article listed "10 Places That Have Banned Google Glass:"

1. Banks and ATM's (protect account information);
2. Sports Arenas and Concerts;
3. Locker and Dressing Rooms;
4. Bathrooms;
5. Automobiles;
6. Hospitals (what about other settings handling private medical information?);
7. Classrooms;
8. Casinos;

9. Bars (although one assumes this rule might cause controversy because 1/2 of the photos on
10. Facebook appear to involve drinking);
11. Movies.

And what about childcare centers and other settings with vulnerable children?

What about any setting involving credit card information? Confidential and trade secret materials? Customer documents? Government material?

After evaluating your workplace, you will then need to integrate any rules about Google Glass with the more sensitive area of rules about cameras and handheld devices and using or posting photos.

### ***Related People***

---



**Howard A. Mavity**  
Partner  
404.240.4204  
Email