

WORKPLACE

LEGAL UPDATE

JULY 2005

Workplace surveillance changes for NSW

Workplace Surveillance Act 2005 passed on 22 June 2005 and expected to enter into force in late July 2005. Employers need to ensure they have compliant internet and email policies!

Key message

NSW's new Workplace Surveillance Act will have an impact on employers, particularly in relation to email and internet surveillance and policies.

The New South Wales Parliament passed the Workplace Surveillance Act on 22 June 2005. Our advice from the Attorney-General's Department is that the Act will enter into effect by the end of this month. Email and internet policies need to comply with the Act to be binding on employees.

The Act provides a legislative framework regulating how an employer may conduct workplace surveillance.

The Act:

- » prohibits surveillance at work unless employees have been given written notice or the surveillance is carried out under a covert surveillance authority issued by a magistrate
- » restricts and regulates the blocking by an employer of emails and internet access of employees at work
- » restricts the use and disclosure of covert surveillance records.

The Act applies to:

- » camera surveillance
- » computer surveillance (including input, output or other use of a computer)
- » tracking surveillance (the location or movement of an employee).

Important issues to note:

- » employers will be prohibited from any surveillance in a change room, toilet or shower facility

- » surveillance used in the workplace will not be able to be used after hours
- » emails will only be able to be blocked where this is done in accordance with an established email and Internet access policy, a policy cannot block emails merely because they deal with workplace issues
- » covert surveillance may be allowable where it is necessary for security reasons, ie cameras in an area handling cash payments.

The Act provides for a review to be conducted in five years from its commencement into the operation of the Act.

What you need to do?

All existing workplace policies dealing with internet and email use need to be reviewed to ensure compliance with the Act.

Employers need to ensure clear and unambiguous notice is given to employees if it is intended to monitor email and internet use.

These policies need to be communicated to all employees and implemented throughout the workplace.

Danny Klepac | Senior Associate

New Workplace Relations team for Sydney

Middletons has strengthened its Sydney workforce with the addition of a Workplace Relations team headed by new partner Damian Sloan and senior lawyer Kristine Thomas. The new team expands Middletons' existing Sydney-based Workplace Relations team – senior associate Danny Klepac and lawyer Emily Baker – adding further to its growing reputation in the area. Damian is an Accredited Specialist in Employment and Industrial Law and will, along with the rest of the national Workplace Relations team, broadly focus on employment law, industrial relations, occupational health & safety and anti-discrimination law.



Damian Sloan

Damian is formerly a Workplace Relations partner and head of practice at both Ebsworth & Ebsworth and Holding Redlich. An Accredited Specialist in Employment and Industrial Law, he boasts experience in the manufacturing, retail, energy & resources, insurance, transport and financial services industries.

Danny Klepac

Danny has extensive experience in all aspects of industrial relations and employment law particularly in the manufacturing, health, telecommunications, financial and resources sectors.

Kristine Thomas

Kristine has extensive experience across a broad range of employment and industrial relations matters in the public and private sector. She is a member of the Industrial Relations Society of New South Wales and is completing her Masters of Dispute Resolution at the University of Technology, Sydney.

Emily Baker

Emily has provided legal advice in a number of areas including termination of employment, occupational health and safety, employment contracts, discrimination and harassment, privacy issues and employment policies and procedures. Emily holds an honours degree in law.

Further Info

Damian Sloan
Partner
T: (02) 9513 2464
F: (02) 9513 2399
damian.sloan@middletons.com.au