

Does the new generation of cellular phones put your firm at risk?

Technological changes have caused the Legislature and the courts to be faced with increasingly complex issues regarding access to information and the protection of personal information. The advent of the new generation of cellular phones—those with digital cameras—raises important issues in this area.

Cameras are not generally allowed in the workplace, unless their use is authorized by management for very specific purposes. As for cellular phones, they are generally tolerated; it is only the time spent on cellular phones for personal matters which is sometimes regulated. However, the new generation of cellular phones allowing users to take photographs raises new questions about their use—a use which may pose a threat to a firm and its staff.

Indeed, with these new cellular phones, it is easy to take unauthorized photographs of persons, files, tools, equipment, workstations, or anything else. Consequently, the use of such phones could result in complaints for breach of privacy, harassment, unfair competition, or breach of trade secrets.

In Québec, every individual is entitled to the protection of his image and his privacy, but these rights may be violated by a photograph taken without the individual's authorization or knowledge.

The Civil Code of Québec as well as the Charter of Human Rights and Freedoms imposes the final responsibility on employers for the acts of their employees among themselves and towards third parties. It is also up to the employer to ensure the respect of an employee's image, dignity and privacy and to ensure that these rights are protected in the work environment.

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In order to prevent situations which might adversely affect the privacy of your employees or contribute to the disclosure of your trade secrets, you should implement a policy governing the use of “photographic” cellular phones throughout the workplace. Such a policy could prohibit the use of these new cellular phones generally or specifically in “at risk” locations (for example, locker rooms or washrooms), or at workstations where confidential information is handled or where confidential processes are used. If a complete prohibition does not seem necessary, the policy could simply limit the situations in which such cellular phones may be used and dictate how they may be used.

Even if your firm (a term used here in its broadest sense) does not need to be protected against “photographic intrusions,” you should at least encourage all your employees to always obtain the prior authorization of any person to be photographed, be it a work colleague, a client, a supplier, or the public at large. An ounce of prevention is worth a pound of cure!