

North Carolina Law Life

I Know What You Did Last Night: Employer GPS Monitoring

By: Donna Ray Berkelhammer. Monday, February 20th, 2012

The US **Supreme Court** ruled last month that a warrant is required for police to track a suspect with a **GPS** device, or the search violates the Fourth Amendment's protection from unreasonable searches. Many employees use devices (cell phones, **smart phones**, tablets and laptop computers) that incorporate **GPS location monitoring**. In light of **US v. Jones**, the question is: do employees now have additional protections from employer monitoring?

Image via Wikipedia



The Jones case occurred in the criminal law context, and does not apply directly to the private employer/employee context. Lawyers will, however, be reading the tea leaves for clues regarding how the Supreme Court might decide a private employer/employee tracking issue. Public employers, such as schools and local government agencies, are bound by the 4th Amendment constitutional parameters against unlawful searches and seizures in the employment setting.

Private employers already must heed federal and state laws directed to specific monitoring activities. Federal law governs monitoring of certain aspects of email activity (such as through the **Electronic Communications Privacy Act** and **Stored Communications Act**). States are increasingly passing laws

restricting employer monitoring of employee location, visual surveillance, computer/internet monitoring, telephone monitoring and even microchip implantation.

For all of these monitoring situations a common thread is making sure the employer tells the employee up front they are subject to monitoring.

With GPS devices, as with all employee monitoring, (absent a state specific law), the best practice is to have a policy, clearly communicate it to employees, have the employee sign that they are aware of the policy, and administer it evenly.

If you have further questions, contact an **employment law attorney**.

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