EMPLOYMENT LAW
CASE STUDY
INSTRUCTOR'S MANUAL

SHRM®
SOCIETY FOR HUMAN RESOURCE MANAGEMENT

After the Merger: D-Bart Industries

Scenario A: Risk Management and Employee Privacy

By Myrna L. Gusdorf, MBA, SPHR

PROJECT TEAM

Author:	Myrna L. Gusdorf, MBA, SPHR
SHRM project contributor:	Bill Schaefer, SPHR, CEBS
External contributor:	Sharon H. Leonard
Copy editing:	Katya Scanlan, copy editor
Design:	Blair Wright, senior graphic designer

© 2011 Society for Human Resource Management. Myrna L. Gusdorf, MBA, SPHR

Note to HR faculty and instructors: SHRM cases and modules are intended for use in HR classrooms at universities. Teaching notes are included with each. *While our current intent is to make the materials available without charge, we reserve the right to impose charges should we deem it necessary to support the program.* However, currently, these resources are available free of charge to all. Please duplicate only the number of copies needed, one for each student in the class.

For more information, please contact:
SHRM Academic Initiatives
1800 Duke Street, Alexandria, VA 22314, USA
Phone: (800) 283-7476 Fax: (703) 535-6432
Web: www.shrm.org/education/hreducation

11-0059 A

Case Abstract

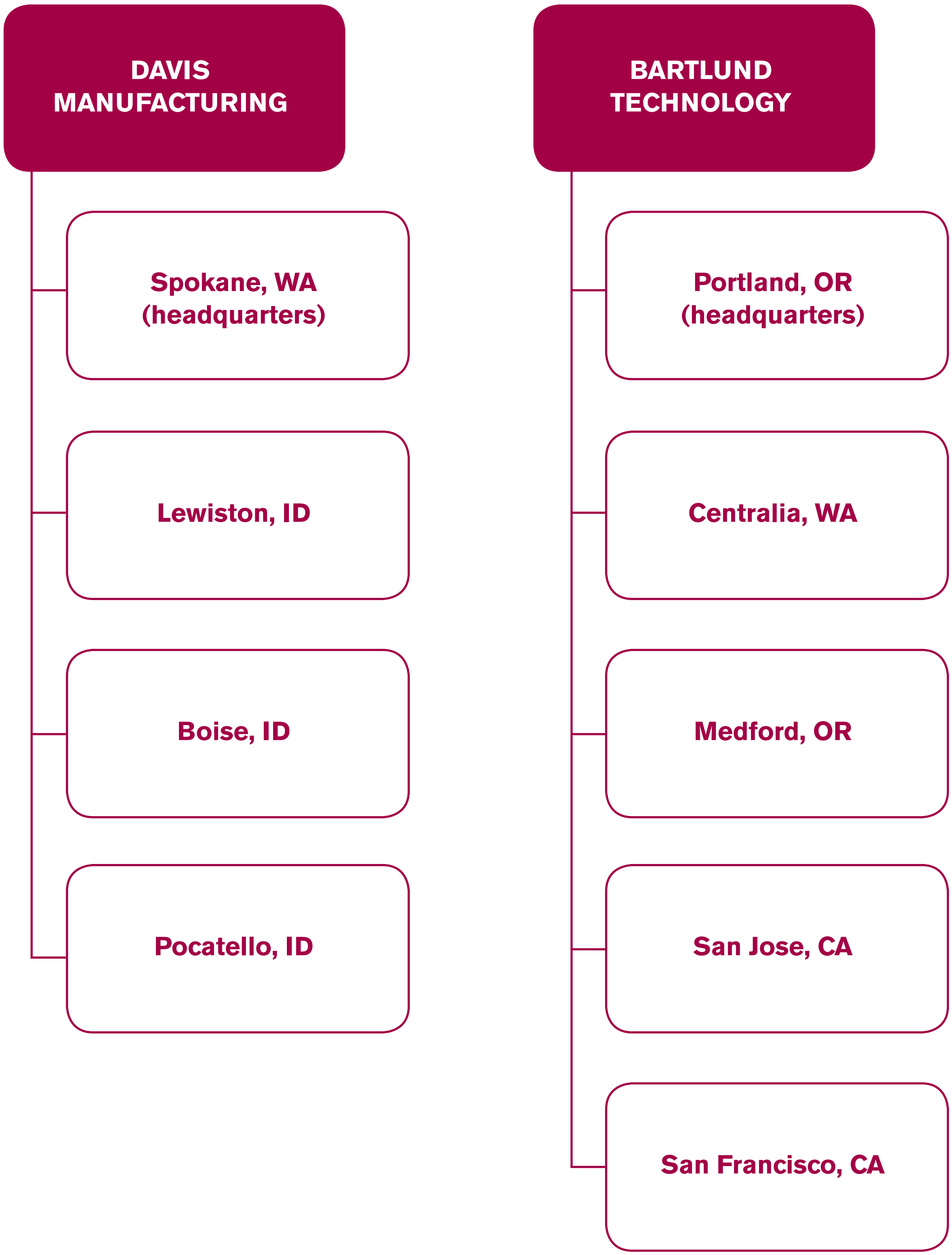
This case involves a fictitious company, D-Bart Industries, formed by the merger of Davis Manufacturing and Bartlund Technologies, two former rivals in the fabrication of precision parts used in medical equipment and airline manufacturing. It is appropriate for undergraduate or graduate students majoring in human resource or business management. Six scenarios comprise the entire case study; however, this document contains only Scenario A: Risk Management and Employee Privacy. The major themes covered in each scenario are:

- Scenario A: Risk management and employee privacy.
- Scenario B: Union decertification, unfair labor practices and maintaining a union-free organization.
- Scenario C: Family medical leave, employee rights, temporary labor and increasing employee productivity.
- Scenario D: Compensable time under the FLSA and preventing off-the-clock work.
- Scenario E: Differentiating between an unpaid intern and an employee.
- Scenario F: Downsizing and performance appraisal.

Teaching note:
In order to create a student workbook, please make one copy of pages 2 through 7 for each student.

© 2011 Society for Human Resource Management. Myrna L. Gusdorf, MBA, SPHR

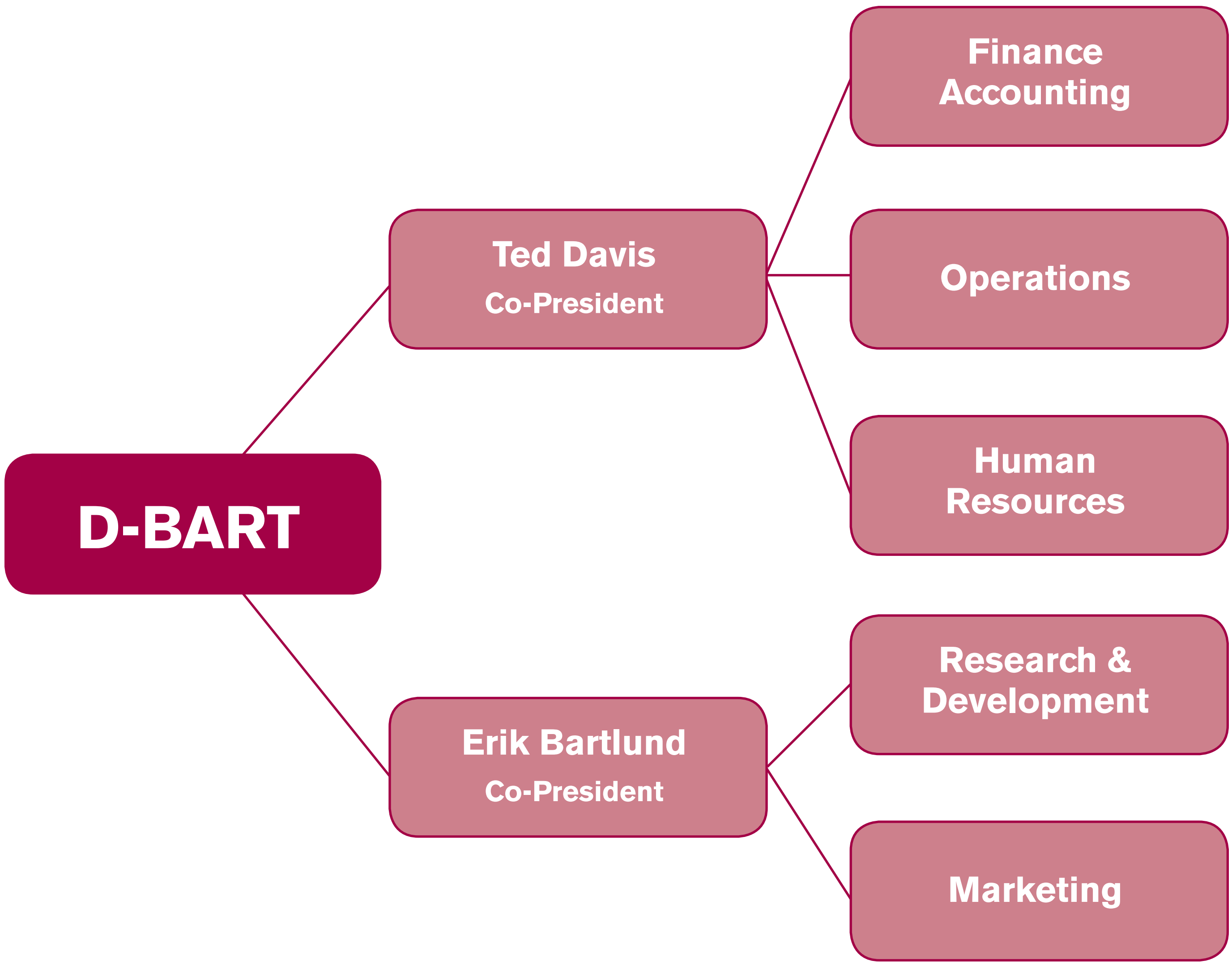
The Organization Before the Merger



 © 2011 Society for Human Resource Management. Myrna L. Gusdorf, MBA, SPHR

After the Merger: D-Bart Industries

The New Organizational Structure and Management Staff



Director of Human Resources Wendy Wright	Centralia, WA Mary Haggerty, Division Manager
Lewiston, ID Kendal James, Division Manager	Medford, OR Ray Houser, Division Manager
Boise, ID Lois Franklin, Division Manager	San Jose, CA Karen Howell, Division Manager
Pocatello, ID Rick Stephens, Division Manager	San Francisco, CA Brad Smith, Division Manager

© 2011 Society for Human Resource Management. Myrna L. Gusdorf, MBA, SPHR

After the Merger: D-Bart Industries

THE ORGANIZATION

This case involves the recent merger of Davis Manufacturing and Bartlund Technology. Before the merger, the organizations were fierce competitors in the manufacturing of precision parts used in building medical equipment and airplanes. When the economy slowed in 2008 and 2009, it became apparent that the two organizations would have a stronger market presence if they joined forces. The merger was approved in late 2009, and on March 1, 2010, the two former rivals became D-Bart Industries.

This was a true merger of equals, not an acquisition of a smaller company by a larger company, and although Davis and Bartlund had very different corporate cultures, the new leadership team embraced a philosophy of collaboration. There was no power structure being imposed by one company over the other and no assumption that one set of employees had priority over the others. New structures were forming to play on the strengths of each organization. As things changed, nothing was guaranteed and employees were nervous about what was to come.

Because the original organizations were led by very different personalities, it would take some time before a comfort level was established. Bartlund's founder, Erik Bartlund, was an idea man with seemingly boundless energy. He claimed to sleep little, and in the early years of the company, he kept a notepad on his nightstand so he could jot down ideas as they bubbled forth in insomniac sprees of creativity. His notebook was now an electronic tablet, but his ideas were no less frequent, if sometimes a little bizarre. He was always more interested in product design and innovation than in the nuts and bolts of running his company.

As one would expect, Bartlund Technology developed into a creative workplace where risk taking and working outside the box was the norm. Employees had authority to make decisions and the autonomy to structure their work. The dress was casual, and there were lunch-hour games of competitive volleyball in the grass next to the parking lot. Employees brought their dogs to work, and a water bowl and dog biscuit jar were standard in the break room along with coffee and pastry. That was fine with Erik. As long as employees got the job done, produced a quality product, and Bartlund was considered the most innovative in the industry, he was satisfied.

Although Davis had a very different corporate culture from Bartlund, it, too, was highly respected in the industry for its quality products. The CEO, Ted Davis, was a retired Marine who took over the company when his father, the founder, retired. Davis ran a tight ship. True to his military background, he believed in having a procedure and policy in place for every eventuality. He had a top-down management style and liked to maintain personal control over decision-making, a characteristic some employees found oppressive.

 © 2011 Society for Human Resource Management. Myrna L. Gusdorf, MBA, SPHR

It was understood by all that nothing happened at the organization that Davis didn't know about and personally approve.

When Davis production and shipping employees voted to unionize in 2003, Ted was not particularly happy, but he did little to oppose the process, saying that it was their right to do so. This accepting attitude has served Davis well; union/management relations have always been excellent, with a level of respect and cooperation not always found in union environments. The union contracts from Davis were honored by D-Bart with the intent that employees previously represented by unions would continue to be represented by their bargaining units. Bartlund employees have never been unionized.

Both organizations were located in the West. Bartlund had five facilities: Portland and Medford, Ore.; San Jose and San Francisco, Calif.; and Centralia, Wash., Bartlund's headquarters in Portland was the company's newest facility. Davis had its headquarters in Spokane, Wash., and three facilities in Idaho: Lewiston, Boise and Pocatello.

Although there had been no official announcement from D-Bart, it was expected that the merger would necessitate scaling back some facilities, with employees transferred to other locations or laid off. At the same time, other facilities could add new employees. It was rumored that the Centralia and Pocatello facilities would be shuttered and put up for sale. Employees at the Centralia and Pocatello plants were understandably nervous.

Davis and Bartlund worked cooperatively to select a new management team for D-Bart. Davis and Bartlund were appointed co-presidents, with Davis assigned to the day-to-day operations and Bartlund managing the products. Davis had recently relocated to the Portland headquarters, where he was responsible for operations and production, finance and HR. Bartlund managed research and development, product innovation and marketing. He remained in the San Francisco office. Wendy Wright, director of human resources for Davis, was appointed the new HR director for D-Bart, and she also relocated to the Portland headquarters. Although many positions were still vacant, it was expected that the rest of the employees would be a mix of workers from both companies, with no clear power structure that favored one group over the other.

Scenario A: Big Brother: How Far Is Too Far With Surveillance Cameras?

Location: D-Bart Industries, formerly Bartlund Technology, Medford, Ore.

Players: Ted Davis, co-president, operations
Raymond Houser, division manager
Wendy Wright, director of human resources, Portland, Ore.
Bill Thompson, sales representative, A&M Security
Jason Parker, production employee

Ted Davis was concerned about shoddy recordkeeping in some of the former Bartlund facilities, the Medford division in particular. There was no consistency in inventories of supplies or equipment. Under the leadership of Medford Division Manager Raymond Houser, a new inventory system was implemented, but things didn't seem to get any better. Supplies still disappeared, and some equipment was unaccounted for. Davis started to believe it was not a recordkeeping problem at all, but more likely employee theft. He authorized the installation of video surveillance in the facility.

The security system was ordered and installed by A&M Security. The original plans called for the interior of the building to be video monitored, with the exception of the restrooms. The cameras ran a continuous-loop video that retained information for 14 days. With approval from HR Director Wendy Wright, a memo was sent to all employees notifying them that video monitoring would be installed in the interior of the facility.

A few days before the scheduled installation, Houser received a phone call from Bill Thompson, the sales representative from A&M Security. "Hey, Ray," he said. "My crew will be out there Tuesday of next week to install your security system. I wanted to let you know that I've got a couple of exterior cameras that were surplus for another job we just finished. We could tie these in with the system you ordered, and I can make you a heck of a deal on them with no charge for instillation since my crew is already scheduled at your facility. Are you interested?"

Houser thought the price was just too good to pass up and that a little extra security couldn't hurt. He authorized the additional work, and A&M installed two exterior cameras to monitor the fenced area where the company vans were parked at night.

It's been two months since the monitoring system was installed, and as expected, there has been some grumbling from employees about "big brother" on the premises. Some employees have complained that working for D-Bart just isn't the same as working for the old Bartlund Tech. But overall, management was satisfied with the system, and Houser was convinced that inventory shrinkage had decreased.

Earlier this month, Houser stopped by the office on a Saturday afternoon and noticed that one of the D-Bart vans was missing from the fenced parking area. He thought it seemed

 © 2011 Society for Human Resource Management. Myrna L. Gusdorf, MBA, SPHR

strange; the exterior gate was locked just as it should have been. There was no sign of forced entry, and it didn't appear to be a robbery. But the van was definitely gone. With no forced entry, Houser suspected employee mischief.

The following Monday, Houser arrived at work early so he could review the security video before employees clocked in. When he arrived, the exterior gate was locked, just as it should have been, but the missing van had been returned. It was inside the fence, parked in its usual place. Nothing seemed amiss, and with all gates and doors locked, everything was properly secured.

Houser closed the door to his office and rewound the security tape from the exterior camera to review the video starting from the close of work on Friday. The tape showed that all the vans were parked where they belonged and the gate closed and locked at the end of the day. There was nothing unusual on the tape Friday night, but the Saturday morning tape showed a car with two passengers drive up to the locked gate. A man got out of the car, and the other drove away. The man pulled keys from his pocket, unlocked the gate and pushed it open. He walked across the parking lot, unlocked one of the vans, got in the van and drove it out of the lot, where he stopped just long enough to close and relock the gate before driving away. The man had a baseball cap pulled low over his face, so Houser wasn't sure who he was.

He continued watching the video. Nothing happened during the rest of the weekend until early Monday morning, several hours before start time. The tape showed the van driving up to the gate entrance, where the same man got out, unlocked the gate and returned the van to its regular parking space. He locked the van and carefully relocked the gate on his way out, where he was picked up by the same car that dropped him off on Saturday morning. This time, the man did not wear a cap, and he walked directly in front of the camera. Houser shook his head. It was Jason Parker, a long-time production employee.

Houser was furious. He waited in his office until all the employees had clocked in and were at their work stations. He walked over to Parker and asked him to come into his office. Parker followed him back to the office, where Houser shut the door and told Parker that he was fired. Houser escorted Parker out of the building a few minutes later.

It has been two weeks since Parker's termination. This morning at D-Bart's headquarters in Portland, Ore., HR Director Wendy Wright was served with a notice that a lawsuit had been filed by Parker against D-Bart Industries. Parker's lawsuit claimed wrongful discharge and violation of privacy rights.

Questions

1. Does Parker have a valid case? Why or why not?

2. Identify an appropriate procedure for employee monitoring. What should an employer do to balance the need for security with the rights of employees?

© 2011 Society for Human Resource Management. Myrna L. Gusdorf, MBA, SPHR

Debriefing for Scenario A

BIG BROTHER: HOW FAR IS TOO FAR WITH SURVEILLANCE CAMERAS?

1. **Does Parker have a valid case? Why or why not?**

Employers are concerned with workplace security whether it be an issue of employee theft, drug abuse or workplace violence. Ensuring employee safety and protecting the employer from risk are equally high priorities. In an effort to protect the workplace and ensure the safety of employees, employers often use video monitoring systems. When a monitoring system is installed, the employer must strike a balance between protecting the organization from risk and protecting employees' right to privacy.

When an employer decides to install a video monitoring system, it must then decide whether to tell employees they are being monitored. While some may believe not telling employees will enable the employer to "catch" wrongdoing, others suggest that the mere existence of video monitoring will act as a deterrent to wrongdoing. From a legal perspective, informing employees of the surveillance is the smartest tactic, and in some cases, it is mandated by state law. Letting employees know that they will be monitored removes the employees' "reasonable expectation of privacy"—the element that often forms the basis for invasion of privacy lawsuits arising under common law (Nelson & Tyson, 2010).

D-Bart did inform employees that a video monitoring system would be installed, but only monitoring of the inside of the building was mentioned. There was no notice to employees that video cameras would be installed to monitor the exterior parking area.

Does this give Jason Parker a valid case for invasion of privacy? Maybe. Parker "borrowed" the company van after working hours. His lawyer may argue that without knowledge of the exterior cameras, he had a reasonable expectation that his actions would be unseen and, therefore, private. Though tort law varies from state to state, most jurisdictions recognize that an individual's privacy may be invaded under the tort of unreasonable intrusion of seclusion. "To succeed in a claim of intrusion of seclusion, the plaintiff would have to successfully argue that (a) there was an intrusion; (b) that such intrusion was intentional; (c) that the plaintiff had an objectively reasonable expectation of privacy into the matter intruded upon; and (d) that the intrusion was highly offensive to a reasonable person" (The National Workrights Institute).

Parker's unauthorized use of the company van violated company policy and may have been grounds for termination, but did the video surveillance intrude on his seclusion and violate his expectation of privacy? That's a question a jury would have to decide. Jason's lawyer should remind him that making such a claim in an employer-employee relationship is difficult. Courts rarely find for employees when the employer can demonstrate a legitimate business reason for engaging in the intrusion that outweighs the employee's privacy interests (The National Workrights Institute).

 © 2011 Society for Human Resource Management. Myrna L. Gusdorf, MBA, SPHR

Under criminal law, many would argue that Jason's unauthorized use of the van was nothing less than theft, and it would be hard to disagree with such a claim. D-Bart could file a police report and proceed with prosecuting Jason. The van was returned unharmed, however, and there was no actual loss of the vehicle, so it is unlikely D-Bart would pursue a criminal prosecution. Organizations generally use termination to deal with undesirable employees, and most are reluctant to prosecute unless the criminal behavior is excessive or extreme.

2. **Identify an appropriate procedure for employee monitoring. What should an employer do to balance the need for security with the rights of employees?**

Employers cannot always prevent a disgruntled employee from suing, but steps can be taken to protect the employer and diminish the risk of liability:

1. Establish clear policies concerning employee monitoring.
2. Ensure monitoring policies adhere to state regulations.
3. Communicate monitoring policies in writing to employees.
4. Require written acknowledgement from employees that they have received and understand the monitoring policy. An employee signature acknowledging receipt of the employer's monitoring policy clearly indicates there can be no "expectation of privacy" by the employee.

References and Additional Reading

Business and Legal Reports. (2009, April 9). Employee has right to expect privacy in personal space at work. Retrieved September 28, 2010, from www.shrm.org/KLegalIssues/StateandLocalResources/Pages/EmployeeHasRight.aspx.

Clifford H. N., & Tyson L. (2010, October). HR undercover. *HR Magazine*.

Deschenaux, J. (2010, May 25). Legal protections for employees' workplace privacy rights arise from many sources. Retrieved October 11, 2010, from www.shrm.org/LegalIssues/StateandLocalResources/Pages/WorkplacePrivacySources.aspx.

Leonard, D., & France, A. (2003, May-June). Balancing business interests with employee privacy rights. *SHRM Legal Report*. Retrieved September 28, 2010, from www.shrm.org/Publications/LegalReport/Pages/CMS_005109.aspx.

Obdyke, L. (2003, January-February). Investigating security breaches, workplace theft and employee fraud. *SHRM Legal Report*. Retrieved September 28, 2010, from www.shrm.org/Publications/LegalReport/Pages/CMS_003965.aspx.

SHRM. (2008, October 1). Monitoring: Video: Can we use video surveillance to monitor employees? Retrieved September 26, 2010, from www.shrm.org/TemplatesTools/hrqa/Pages/Canweusevideosurveillancetomonitoremployees.aspx.

The National Workrights Institute. (n.d.). Electronic monitoring in the workplace: Common law & federal statutory protection. Retrieved January 5, 2011, from www.workrights.org/issue_electronic/em_common_law.html#conclusion.

 © 2011 Society for Human Resource Management. Myrna L. Gusdorf, MBA, SPHR

SHRM members can download this case study and many others free of charge at
www.shrm.org/education/hreducation/pages/cases.aspx.
If you are not a SHRM member and would like to become one, please visit www.shrm.org/join.

SHRM®
SOCIETY FOR HUMAN RESOURCE MANAGEMENT

1800 Duke Street
Alexandria, VA 22314-3499