



# Workplace Privacy, Data Management & Security Report

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## Mere Placement of Surveillance Cameras in Restroom Sufficient for Iowa Invasion-of-Privacy Claim

An invasion-of-privacy claim against an insurance agent brought by his former employee should proceed even where a surveillance camera placed by the agent in the workplace's unisex bathroom was faulty, the Iowa Supreme Court has ruled. [Koeppel v. Speirs, No. 08-1927](#).

The district court dismissed the invasion-of-privacy claim on summary judgment because there was no proof that the equipment was operational or that the employer had actually viewed any recordings of the employees. The Court of Appeals reversed the dismissal, and on December 23, 2011, the Iowa Supreme Court affirmed the reversal and remanded the employee's common law privacy claim to the district court.

The issue before the Iowa Supreme Court was whether an actual "viewing" was a necessary element of an invasion-of-privacy claim involving hidden monitoring equipment. Courts in other states have split on the issue. After analyzing decisions from other states and law review articles on privacy law as well as the origin of the term, "peeping Tom," the Iowa Supreme Court held that an actual viewing was not required. Following the reasoning of a 1964 New Hampshire Supreme Court decision, it concluded an intrusion occurs when the defendant performs an act that has the "potential to impair a person's state of mind and comfort associated with the expectation of privacy."

The Iowa Supreme Court said, "[W]e think it is important to keep in mind that the tort [of invasion of privacy] protects against acts that interfere with a person's mental well-being by intentionally exposing the person in an area cloaked with privacy." It determined that "[a]n electronic invasion occurs under the intrusion on solitude or seclusion component of the tort of invasion of privacy when the plaintiff establishes by a preponderance of evidence that the electronic device or equipment used by a defendant could have invaded privacy in some way." Thus, under *Koeppel*, a victim's mental state can be more important to an invasion of privacy claim than what the defendant actually viewed, accessed, or shared. (The employee here also sued for sexual harassment, but that claim was dismissed because an employer with fewer than four employees is not liable for sexual harassment under Iowa law.)

An invasion-of-privacy claim in Iowa, therefore, need not include a showing that the monitoring device was functioning at the time it was discovered or that it was ever used. It is sufficient that the device was capable of functioning.

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