

The 3 P's of Video Security: Privacy, Premises & Preservation

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There are many legal concerns that face a restaurant that is considering implementing a video surveillance security system. The article below addresses some of those concerns and suggests a number of best practices that a restaurant should undertake when implementing a system.

The benefits of a video surveillance system to a restaurant are clear. Such a system provides: quality assurance; evidence of employee wrongdoing; increased security; and overall risk reduction. However, the use of video surveillance also gives rise to legal concerns about privacy, the possibility of increased premises liability exposure, and how to preserve the video properly in order to be able to have it admitted into court should the need arise.

Privacy Concerns

The use of a restaurant video surveillance system implicates only minimal legal issues regarding the privacy of employees and patrons. All of the states in which Burger King does business have some legal protections of a person's privacy. However, most of those protections only extend to places in which a person would have a reasonable expectation of privacy. Because employees and patrons most likely have no reasonable expectation of privacy in the public areas of a restaurant, outside of the restrooms, the use of video surveillance should not give rise to a valid claim for invasion of privacy. Also, because the video will not be conveyed to the public in any manner, the use of a surveillance system would not give rise to a claim by an employee or patron that their image was misappropriated, or that they were portrayed in a false light or in an embarrassing manner.

Premises Liability Concerns

In certain instances, the use of a video surveillance system may actually increase a restaurant's premises liability exposure. In some states where Burger King does business, a restaurant that operates in a high crime location may already have a duty to take certain security measures, such as using a video surveillance system. Thus, implementing a video surveillance system may simply be ensuring that the restaurant is complying with this duty.

In locations where this heightened duty of security does not exist, implementing a video surveillance system may actually increase a restaurant's premises liability exposure, because it may be construed that the restaurant voluntarily assumed a duty to provide security for its employees and patrons. If a system is implemented, a restaurant could be held liable if it fails to adequately maintain the cameras in a reasonable manner. A difficulty arises, however, because it is unclear under the law of most states what exactly constitutes a "reasonable manner."

Preservation of Evidence Concerns

The use of video surveillance evidence in a court requires that it be preserved properly by the

restaurant. A video tape cannot be introduced into court unless a party can establish a proper foundation for having it admitted into evidence. The primary way that a party can establish proper foundation is by providing the court with a chain of custody that the video went through prior to arriving in court. Even courts in states that do not adhere to the strict rule that every link in the chain must be shown, still view it as the best possible method for establishing proper foundation for admission into evidence.

Also, if video surveillance is being used, once a restaurant is put on notice of an employee or patron complaint of misconduct or of the occurrence of a crime, the restaurant has a legal duty to preserve the video evidence. This is true whether the video tends to prove or disprove the alleged misconduct or crime.

Best Practices for Implementing a System

1. Develop a restaurant policy for the use, monitoring, and preservation of the video generated by the surveillance system.
2. Post a sign in employee work areas that indicates video surveillance cameras are being used throughout the restaurant and that the cameras will be used to monitor employee and patron activity in places outside of the restrooms.
3. Revise employee handbooks to clearly inform employees of the restaurant's policy on video surveillance and obtain their consent to the receipt of this policy.
4. Devise and provide restaurant managers with a surveillance system checklist with basic instructions for use of the system, maintenance of the cameras, and written notice that they are expected to keep the cameras operational.
5. Formulate protocol to establish a chain of custody for the video, so as not to take any risk that it may not be admissible in court.