

Employers should have the best interest of their staff members. Whether a staff member is dealing with family changes or medical hardships, employers have an ethical and legal responsibility to aid employees during their time away under specific circumstances, due to the Family and Medical Leave Act (FMLA); however, Courts have repeatedly affirmed employers' right to investigate the perceived misuse or abuse by employees of leave under FMLA.

If an employee has faked impairment or incapacitation by a medical condition, using FMLA for unethical reasons creates a hardship for the remainder of the company. To prevent this issue, physical and electronic surveillance allows employers to oversee their staff members and elucidate any unethical behavior, but it should always be done lawfully.



## ELECTRONIC SURVEILLANCE

- Articulate a legitimate business interest and work with legal counsel to develop an appropriate policy.
- Limit video surveillance to unobtrusive areas, including common spaces and lobbies. Avoid recording an employee in a bathroom, dressing room, or outside of public view.
- Use visible cameras only.
- Make sure to follow all federal and state wiretap and recording laws.
- Avoid the use of video surveillance in connection with union activities.
- Do not select employees for video surveillance in a manner that might be considered discriminatory under federal or state discrimination laws.
- Do not select employees for video surveillance in retaliation for exercising rights under any law.



## PHYSICAL SURVEILLANCE

- Articulate a legitimate business interest for initiating an investigation.
- Conduct an investigation when any type of fraudulent use of leave is suspected, not just the fraudulent use of FMLA leave. This makes employers less vulnerable to an FMLA discrimination claim.
- Do not make assumptions about the employee's ability to work. Engaging in certain activities physical activities does not always translate to good health.
- Adopt policies that will provide the basis for termination. While terminating an employee, it is beneficial to point out a specific policy the employee violated.



If you're an employer with probable reason to believe an employee has used FMLA benefits unethically or an insurer working a case involving exaggerated injury, professional surveillance measures may help confirm the claimant's ability. Fortaris Capital Advisors has experienced investigators with the proper licensing and training to obtain the necessary evidence for transparency.