

Client Services Procedure Manual

Procedure: 57.00

Subject: Use of Surveillance/Photographic Evidence in Decision-Making

57.01 Sources of Videotape Evidence

WorkplaceNL Initiated Surveillance

The Investigations Team Lead, in consultation with Legal Counsel, may approve surveillance where there are reasonable grounds, (i.e. credible allegations of misrepresentation or fraud) and surveillance meets clear objectives for managing the claim.

Unsolicited Surveillance or other Evidence

WorkplaceNL may use evidence/information, including video surveillance submitted by a third party where the source has provided permission for its use, where WorkplaceNL's Investigator is satisfied that the investigation was initiated on reasonable grounds and conducted on the same standard as an investigation carried out under the direction of WorkplaceNL (reference Office of the Privacy Commissioner for Canada Guidance Document "*Guidance on Covert Video Surveillance in the Private Sector*").

WorkplaceNL may accept electronic information from Facebook or other social media sites, meeting the standards of reliability and authenticity set out in this procedure.

Unsolicited evidence is first reviewed by WorkplaceNL's Investigator who may decide that a WorkplaceNL initiated investigation is warranted or may refer the evidence to the decision maker for consideration in the decision making process. Unsolicited surveillance or other evidence not meeting these criteria will be returned to the sender or destroyed if provided by an anonymous third party.

WorkplaceNL may accept digital, video or fixed surveillance evidence or photographic evidence meeting the following criteria:

Authenticated

The proposed evidence is accompanied by a signed statement from the author setting out when (date and time) and where the recording was made and confirming that the recording is a true representation of the subject.

Quality and Reliability

The proposed evidence is of adequate quality to confirm the subject and has date and time readings which are accurately displayed on the running video and the author has confirmed in writing that the recording was not altered. Proposed evidence in a digital format which is not compatible with WorkplaceNL's information systems may not be reviewed. WorkplaceNL may request that images of persons who are not relevant to the purpose of the surveillance be deleted or depersonalized from the surveillance evidence.

Legal Requirements

The proposed evidence must be conducted from a public vantage point in circumstances where the subject has no reasonable expectation of privacy, must not contain any audio and must not be obtained in contravention of any laws.

In the case of fixed video surveillance, the proposed evidence must be accompanied by the employer's policy on video surveillance (reference Office of the Privacy Commissioner for Canada Guidance Document "*Guidelines for Overt Surveillance in the Private Sector*"). Where the employer's policy does not include surveillance for the purpose of monitoring workplace accidents/incidents, the fixed video surveillance may be accepted if both parties agree.

57.02 Video Tape Evidence Presentation

Role of Investigator and decision-maker when digital, video or fixed surveillance or photographic evidence is being considered in the decision making process:

The Investigator:

1. provides a report and the surveillance to the decision maker; and
2. attends the meeting with the client at the request of decision maker for purposes of presenting the surveillance evidence.

The decision maker:

1. arranges a meeting date and time with the client;
2. advises the client that he/she may bring a representative with him/her;
3. invites the investigator and other WorkplaceNL representatives as appropriate/necessary (e.g. WorkplaceNL medical or health care consultant, assessment auditor, etc.) to be present at the meeting when the surveillance evidence is presented;
4. conducts the meeting, providing the client with an opportunity to respond/explain the activity or contents of the surveillance evidence and providing an opportunity to follow-up on this information where appropriate following the meeting; and
5. renders a final decision in writing.

The digital, video or fixed surveillance evidence may be reviewed by WorkplaceNL's medical consultant or appropriate health care consultant where there is question or apparent inconsistency regarding fitness for work, level of functional ability, or other relevant medical issues.

57.03 Making a Decision Based on Video Tape Evidence

The decision maker must make the decision regarding ongoing benefits by weighing the evidence, including medical reports, subjective comments of the claimant and other persons and digital, video or fixed surveillance evidence or photographic evidence. WorkplaceNL staff must exercise caution when determining the weight to give information revealed in recordings, recognizing that:

- (a) visual recordings make dramatic impact on the viewer, and

- (b) in general, recordings may be selective, (i.e. information relevant to the issue in dispute, such as when a worker rests or experiences pain, may not be recorded).

Evidence from visual recordings is considered in conjunction with all other evidence. Its relative weight is determined by the other evidence which either conflicts or supports a finding. Benefits are usually not terminated until the worker is aware of the investigation results. Where a worker's benefits have been terminated, reduced or suspended as a result of the weight of surveillance evidence, the decision maker must calculate any resulting overpayment on the file in accordance with Policy EL-04 (B) Overpayments.

57.04 Determining What Becomes Part of File

Once the investigation is complete, the decision maker must determine whether or not the investigation materials become part of the employer or claim file. Evidence gathered through an investigation is not placed on the employer or claim file or any similar permanent WorkplaceNL record unless the investigation produces evidence which is relevant to the issue under review and is used by the decision maker in rendering his/her decision. Where the investigation produces relevant evidence, the full investigation outcome, including witness statements, investigation report, reference to digital, video or fixed surveillance evidence must be placed on the employer/claim file or other similar permanent WorkplaceNL record. In the case of digital, video or fixed surveillance evidence, a reference to the evidence is made on the file with the location of storage noted for access purposes. Upon request, such evidence must be available to be viewed by, and copied to, parties with a right of access (in accordance with Policy GP-01 Information Protection, Access and Disclosure).

In the case of WorkplaceNL initiated investigations where the alleged complaint is found to be unsubstantiated and the investigation does not produce relevant evidence, there should be nothing on the claim/employer file to indicate that an investigation had taken place. Unsubstantiated investigation records are destroyed in accordance with WorkplaceNL's Retention and Destruction Schedule for investigation records.

Reference: *Workplace Health, Safety and Compensation Act, 2022, Sections 18 and 69*
Policies: EN-11 Investigations
GP-01 Information Protection, Access and Disclosure
EL-04B Overpayments

Amendment History

<i>Original Effective Date</i>	2002 11 01
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