

# Pokémon No!

*Legal Issues Surrounding the Pokémon Go Craze and  
Tips for Employers to Combat the Potential Pitfalls Created by Augmented Reality Games in the Workplace*



By David J. Oberly

## Introduction

Even if you live under a rock on the planet Mars, by now you've heard of the Pokémon Go craze that has swept the globe in recent months, and which recently surpassed Twitter in number of daily users. For those of you that don't play the game, Pokémon Go is a phone and tablet application that is based on the card game and Nintendo games introduced in the 1990s where users "find," "capture," and "train" 151 different digital Pokémon characters that virtually appear at various locations in the real world. Boiled down to its basics, Pokémon Go is akin to a digital scavenger hunt. The game is part of the burgeoning "augmented reality" game sector, which combines real space places such as parks or sidewalks with virtual characters or objects that appear on a digital device such as a smartphone. Seems innocent enough, doesn't it? While Pokémon Go may seem harmless at first glance, in reality these popular games pose a wide array of noteworthy problems for companies of all shapes and sizes. Fortunately, however, a number of measures exist for employers which, if utilized properly, can significantly curtail and minimize the potential pitfalls that are presented by employee use of Pokémon Go and other flavors of augmented reality games.

## Productivity Problems & Social Media/ Electronic Device Policies

Productivity loss is a significant headache that employers are experiencing as a result of workers playing Pokémon Go during work time. In order to guard against these productivity-sapping activities, companies should maintain appropriate written social networking policies that provide guidelines for social networking in the workplace. In addition, all employers should have an electronic device policy that applies to company and personal communication devices and technologies as part of their employee handbooks. Importantly, employers should ensure that their electronic use policies specifically address the risks posed by augmented reality games. The policy should prohibit personal cell

phone, tablet, and computer use during work hours. Furthermore, because one of the biggest trends in connection with Pokémon Go has been for users to share videos of their gaming experiences with the world on social media, "acceptable use" policies should also bar the use of all audio and video recording functions on electronic devices while on company property, which will foreclose any potential problems resulting from employees inadvertently recording sensitive company information while gaming and then subsequently disseminating such information through social media.

Keep in mind, however, that electronic device policies are not "one-size-fits-all" for all employers across the board. Rather, these policies (as well as all other company policies) should be tailored to fit the specific needs of the company, and should be crafted only after factoring in a wide number of considerations, such as the company's core business operations, the specifics of the worksite, and employees' specific job duties and responsibilities. Moreover, some companies may wish to promote policies that do not extend all the way to a complete bar on phone usage; in that case, employers can take a more lenient approach by allowing for phone use during lunch and break time. A rule of caution, however — relaxed, lenient policies may be hard to implement and enforce.

## Cybersecurity Problems & Application Download/Usage Policies

Unfortunately, Pokémon Go's Terms of Use provide the game's developer with significant access to user information and users' entire Google profiles, including email access. The risks associated with such expansive access has provoked the International Association of Information Technology Asset Managers, a major IT association, to call for a ban on the installation of Pokémon Go altogether on company devices. Beyond that, Pokémon Go and other related augmented reality games are notorious for containing malware and similar malicious programs that allow hackers to gain remote access to users' entire devices, the end result of which oftentimes comes in the form of a catastrophic data breach.



Furthermore, because Pokémon Go encourages users to venture wide and far to play the game, an additional risk involves potential data breaches resulting from the use of public Wi-Fi networks, which are commonly infiltrated by hackers who can use the access provided by Wi-Fi to pull personal and sensitive information off unsuspecting users' devices.

As a result, companies who provide phones to their employees should carefully control the downloading of third-party applications, including games, on company devices. The safest recommendation to offer in this area is to prohibit the downloading of all unapproved third-party applications on company phones, tablets, and computers altogether. In addition, employers should also ban the use of company email addresses to register for any non-business-related matter in order to avoid any potential data breaches arising from phishing scams, where hackers will send deceptive emails containing attachments which, if opened, will grant the hacker access to the entire network that is connected to the device. And for those employers who allow employees to use their own personal devices for work, "bring your own device to work" policies should be implemented to allow the company to control what constitutes "acceptable use" of the device and the company's right and ability to access and monitor the device, both of which are essential to permit the employer to properly safeguard and secure sensitive company information contained on the employee's phone. In order to strengthen these policies, employers can also require workers to sign acknowledgment and agreement forms stating that the employee will abide by all company device use policies. Finally, regardless of whether the phone is issued by the employer or purchased by the employee, all devices should be equipped with robust data encryption software for protecting vital company data.

## Workplace Injury Problems & Safety & Driving Policies

Workplace safety is another concern that employers must address in the wake of Pokémon Go and other augmented reality games. As all employers know, any injury that workers can even tangentially

tie to their employment will almost always result in workers' compensation claims and, potentially, civil personal injury lawsuits. Unfortunately, even those claims that lack any genuine merit are nonetheless extremely costly to defend. With respect to Pokémon Go in particular, the Internet is littered with horror stories of users running into busy streets and even leaning out of moving cars to "catch" virtual Pokémon characters. In particular, employers should be especially cautious of the potential perils that Pokémon Go and other augmented reality games present for employees who are required to utilize company vehicles or who are otherwise on the road as part of their work, as "texting and driving" has now turned into "hunting and driving." As a result, employers are well advised to implement stringent distracted driving policies, as well as policies that limit or prohibit the use of cell phones or other electronic devices while in the car and on the clock.

## Proper Policy Application & Enforcement

Workplace policies are only as good as their application and enforcement. Therefore, employers should remind workers on a regular basis of the company policies that pertain to playing Pokémon Go and how those policies impact their use of the game, both while they are on the clock and also while they are away from the work setting. Ideally, employers can utilize this undertaking not only to keep employees mindful of company policy, but also as an opportunity to engage with employees and foster a positive work environment. In this respect, beyond simply reciting the rules that employees must abide by, employers should take the time to explain exactly why those policies have been put in place and how adherence to those rules will further both the business interests of the company, as well as the individual interests of the employee in advancing his or her career.

Furthermore, managers should be trained on how to appropriately address situations involving employees who choose to play games during work hours. Importantly, many times managers are best off simply rerouting workers who are playing games back to their work tasks,

as opposed to enforcing more stringent disciplinary measures. Likewise, employers must ensure that the company's leaders and managers are setting a good example themselves by refraining from playing Pokémon Go or other games at the workplace.

If a company has defined policies in place and workers continue to play Pokémon Go or other games while on the clock, such improper conduct must be addressed immediately and effectively. Game-playing falls under the same category as engaging in any other activity prohibited by the company, such as perusing Facebook while at work, and therefore should be addressed in an identical manner in accordance with the company's disciplinary policies and procedures. Furthermore, all applicable policies must be applied consistently and discipline must be handed out uniformly in order to avoid any potential allegations of discrimination and to otherwise steer clear of employee confusion over what constitutes permissible behavior in the work setting.

## Conclusion

While the full extent of the significant perils resulting from the use of augmented reality games is still yet to be seen, at this point it is clear that this rapidly expanding area of gaming poses a myriad of potential problems for employers. Fortunately, however, the potential risks associated with Pokémon Go and similar games can be effectively minimized through the utilization of a number of proactive measures, most significantly appropriate and comprehensive written company policies that directly address the risks posed by these games. Combined with proper application and enforcement of these policies, employers can put themselves in the best position possible to minimize the complex issues that are almost certain to arise in connection with augmented reality game use in the workplace.

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