

# Insight

## IN-DEPTH DISCUSSION

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### **Pokémon Go Back to Work!**

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Pokémon Go has taken the United States and the rest of the world by storm, with an estimated 75 million downloads in the first three weeks since its release.<sup>1</sup> For the uninitiated, Pokémon Go is an augmented reality game where users try to capture, train, and battle digitally animated creatures (Pokémon) on their mobile devices. Because users of the game often look at their phones, iPads, or other mobile devices while moving, there have been well-publicized incidents of injury and death, as well as complaints of trespassing.<sup>2</sup> One of the less-discussed impacts of the game, however, is the effect on the workplace and how employers can respond.

#### **Policies Limiting Play At Work**

In response to one Forbes survey, 32% of respondents indicated they played Pokémon Go for more than one hour at work per day.<sup>3</sup> When employees dedicate such a large amount of time to a game, productivity is impacted. Employers seeking to maintain productivity need to review – and possibly supplement – their social media policies to ensure that they prohibit or limit playing games at work.

Of course, there is no one-size-fits-all policy for all workplaces. The policy that works best will depend on a number of factors, including the culture of the worksite and job duties of the employees in question. The easiest policy to enforce is a complete ban on playing Pokémon Go and other games in the workplace. However, if companies are averse to such a ban, they can explore more relaxed policies that allow employees to play during

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1 Darrell Etherington, *Pokémon Go Estimated at over 75m Downloads Worldwide*, TechCrunch (July 25, 2016), available at <https://techcrunch.com/2016/07/25/pokemon-go-75m-downloads/>.

2 See, e.g., Joseph Stepansky, *Pokémon Go Players Trespass in Staten Island's 176-year-old Moravian Cemetery*, Daily News (July 15, 2016), available at <http://www.nydailynews.com/new-york/pokemon-players-trespass-staten-island-moravian-cemetery-article-1.2713415>.

3 Curtis Silver, "Pokémon Go" Outside and Play!, Forbes (July 9, 2016), available at <http://www.forbes.com/sites/curtissilver/2016/07/09/pokemon-go-outside-and-play/#3ce4880d4f0e>.

breaks. Finally, some employers may decide to fully embrace the fad and allow employees to play for set amounts of time outside of normal lunch and coffee breaks. Employers should keep in mind, however, that enforcement of permissive policies can be difficult and must be enforced consistently for all employees.

## Workplace Injury and Safety Considerations

Any policy allowing Pokémon Go play at the worksite should address the physical movement and activity associated with finding and capturing Pokémon. In addition to being distracting, employees wandering through the workplace while staring at their devices may cause injury to themselves or others. This can also be viewed as unprofessional if an employee is playing the game offsite at a client's or other worksite. Any injury can result in workers' compensation insurance or possible tort claims. Although an OSHA citation and penalty following an employee injury seems remote, it is not entirely out of the realm of possibility for workplaces with hazardous processes.

## Property Access

One of the most frequent critiques of Pokémon Go is that it has led to an uptick in trespassing on private property. Although some companies may encourage such visits (e.g., retailers and restaurants), for others—like chemical plants and the construction industry— it can present a safety risk to both trespassers and employees. In these situations, companies have to decide whether the influx of trespassers (or potential customers) is something that may negatively impact their business. If so, then there are steps the company can take to reduce the likelihood of players visiting their worksites. The first step is to request removal of any “Pokéstop” or “Gym” on the premises through the game manufacturer's website.<sup>4</sup> The second step is to review site security and notifications to the public about trespassing. Finally, employers should revisit their contractor and visitor policies to determine whether this issue should be directly addressed with other companies whose employees may be onsite.

## Policies Prohibiting Download on Company Devices

In order for individuals to play Pokémon Go, they must sign up through their Google account or create a Pokémon Trainer Club account. For companies that issue devices to employees or that utilize Google Apps for Business – email or cloud document storage – permitting Pokémon Go to access the applications or device may present security risks, including the possibility of data breaches. Pokémon Go has generated criticism for allowing access to users' entire Google profiles (including email access).<sup>5</sup> Although Pokémon Go has revised its user agreements to limit the program's access to users' Google IDs and email addresses, the concerns persist and have led the International Association of IT Asset Managers (“IAITAM”) to call for companies “to ban the installation and use of Pokémon Go” on corporate devices.<sup>6</sup> Even employers that permit unfettered use of Pokémon Go in the workplace should consider updating their policies to prevent downloading unapproved third-party applications (such as Pokémon Go) on corporate devices and ensure that they address whether company email accounts may be used for games. Employers with “bring your own device” (“BYOD”) programs should consider whether to extend that policy to participating personal mobile devices.

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4 Pokéstop and Gym removal may be requested at: <https://support.pokemongo.nianticlabs.com/hc/en-us/articles/221968408-Reporting-Pok%C3%A9Stop-or-Gym-Issues>.

5 Thomas Fox-Brewster, *iPhone Users: Pokemon Go Can Spy on Your Entire Google Account*, Forbes (July 11, 2016), available at <http://www.forbes.com/sites/thomasbrewster/2016/07/11/pokemon-go-google-privacy-disaster/#af381573bc3d>.

6 IAITAM, *“Too Many Questions & Too Many Risks” to Allow Gaming App to Be Used in Business-Related Device*, (July 18, 2016), available at <http://iaitam.org/iaitam-press-release-iaitam-pokemon-go-devices-linked-sensitive-business-data/>.

**Pokémon Gone Soon?**

The Pokémon Go craze shows no signs of abating; indeed, the current release is just the first iteration of the game, with options for interacting with other users promised for the future. And this might be just the beginning of augmented gaming on mobile devices. That being the case, the above steps can help employers deal with all these future employment and workplace issues in the reality of now.