

Driver Privacy Act of 2015

By [Joseph J. Lazzarotti](#) on December 9, 2015

An increasing number of companies have been installing or otherwise using some of the latest monitoring technologies in vehicles driven by employees – whether those vehicles are owned by the company or the employee – usually for safety and/or logistics management. These technologies include “event data recorders” or EDRs that capture a range of information just prior to or during a crash event. Seeking to address privacy concerns for data collected on EDRs, the **Driver Privacy Act of 2015** (“Act”) was enacted as part of the [Fixing America’s Surface Transportation Act](#) (H.R. 22), signed by President Obama on Friday, December 4, 2015. Companies that have vehicle monitoring programs should review this new law.

To what data does the law apply?

The law applies to any data retained by an EDR installed in a vehicle, and makes clear that the data belongs to the owner of the vehicle or, in the case of a leased vehicle, the lessee of the vehicle in which the event data recorder is installed. It does not matter when the vehicle was made. For purposes of this law, an EDR is defined in [49 CFR section 563.5](#) and generally means a device or function in a vehicle that records the vehicle’s dynamic time-series data during the time period just prior to or during a crash event, but does not include audio and video data. Installed in nearly all new cars, EDRs capture data elements such as speed, braking, use of a seat belt, and other information.

How does the law safeguard privacy?

The Act provides that data recorded or transmitted by an EDR may not be accessed by a person other than the vehicle’s owner or lessee. There are some exceptions:

- as authorized by a court or judicial or administrative authority, subject to the standards for admission into evidence required by that court or other administrative authority;

- if pursuant to written, electronic, or recorded audio consent of the vehicle owner or lessee;***

- to carry out certain investigations or inspections authorized by federal law, subject to limitations on the disclosure of personally identifiable information and the vehicle identification number;

- to determine the need for, or facilitate, emergency medical response in response to a car accident;

- for traffic safety research, so long as the personally identifiable information of the owner or lessee and the vehicle identification number is not disclosed.

Are there state laws that apply here as well?

Yes, [a number of states already have laws](#) addressing privacy concerns related to information collected on EDRs. The exceptions to the collection of this data vary state to state, but many of those laws require the consent of the owner of the vehicle.

What effects will the Act have on employers?

Most monitoring programs apply to employees operating company-owned vehicles. In those cases, the employer owns or leases the vehicle and is consenting intuitively to accessing the data captured by the EDR. Of course, [employers may nonetheless want to inform employees of the monitoring activity](#), and also have special considerations concerning certain groups in their workforce, including those represented by a union and those operating in other countries.

For those employers whose employees use vehicles that the employees own or lease, accessing EDR data will require the employees’ written, electronic, or recorded audio consent. Many employers are already doing this, particularly in states where this has been required for some time. However, the Act mandates this nationwide.