

# Water Cooler Talk: Quiet Quitting Insights From 'Seinfeld'

By **Tracey Diamond and Evan Gibbs** (March 28, 2023)

George Costanza, a character from the classic sitcom "Seinfeld," is the original "quiet quitter," a term used for employees who do the bare minimum at work. Hear from the master himself:

**Elaine:** What do you do all day?

**George:** Not that much.

**Jerry:** I thought that new promotion was supposed to be a lot more work.

**George:** Yeah, when the [Yankees] season starts. Right now, I sit around pretending that I'm busy.

**Jerry:** How do you pull that off?

**George:** I always look annoyed. Yeah, when you look annoyed all the time, people think that you're busy. Think about it.

**Elaine (looking at George):** Yeah, you do.

**Jerry:** Yeah, he looks busy.

**Elaine:** He looks very busy.

**George:** Yeah. I know what I'm doing.

A recent Gallup poll revealed that 50% of the U.S. workforce is "quiet quitting." Whether spurred by burnout, laziness or general unhappiness at work, employees are becoming increasingly disengaged while their employers are struggling to determine the best way to measure productivity.

## Q&A

We spoke with Rebecca Silk, a litigation and compliance attorney at Paradies Lagardere about the "Costanza Effect" and how employers are fighting back.

**Evan Gibbs:** Rebecca, what have you heard about quiet quitting?

**Rebecca Silk:** The original intent was people saying, "I'm not going to risk my physical and emotional health for my job." But that's turned into doing the bare minimum or not working at all while still on the company dime. While employees should not be working 24/7, the other extreme — employees barely working — seems to be the employer's concern.

**Evan:** I've heard clients talk about different tools used to monitor employee productivity.

**Tracey Diamond:** I find the "big brother" aspect of some of these tools to be disturbing. It seems intrusive.



Tracey Diamond



Evan Gibbs

**Rebecca:** Does a company really want to spend time reading keystroke analysis? They've got to figure out their end goal. Is it a general fear of quiet quitting, or is there really a performance and productivity issue? And if employees feel they're being watched, what is that doing to culture?

**Evan:** I read an article about a specialty physician who complained that the practice's productivity software did not accurately capture his work. The doctor said something like, "The software showed we're not productive, but it doesn't capture the time I'm thinking about a problem or reading a medical journal. It forced us to do busy work to drive productivity metrics." I wonder if that level of micromanagement is sustainable for employees and organizations.

**Rebecca:** That reminds me of a story a colleague shared. He was opposing a motion for attorney fees, and the movant mentioned the time he spent thinking about the case in the restroom, which he claimed was where he did his best work. It's obviously an extreme example, but there are so many different places and ways to do work that aren't in front of a computer. How do you account for that?

**Tracey:** Perhaps the technology will catch up to become more encompassing, so it will more accurately measure productivity. But that leaves open a question of privacy. Getting back to George, could the New York Yankees have monitored his office with a camera? Do employees have any expectation of privacy in the workplace?

**Evan:** If there was a camera on George Costanza, I'm afraid of what it would capture! Seriously, though, whether a recording is unlawful depends on state and local law. It might be that it's not admissible in court, or there could be criminal aspects.

**Rebecca:** Employers must have an electronic communications and usage policy that clearly states there's no expectation of privacy. Employees need to read the policy and sign an acknowledgment form.

**Tracey:** Most of the policies I've seen don't deal with video recording. These days, employees are communicating in all sorts of ways on personal devices, and that's not being captured in current policies.

**Evan:** It gets even trickier when employees use personal devices to communicate with coworkers outside official channels. I've had to deal with that in a couple of cases recently, and it's thorny as to what the employer can control and access.

**Rebecca:** I'm always surprised when people are surprised their employers can see when they're shopping online. That's basic tracking. The tech is only getting more sophisticated.

**Tracey:** What if an employee consents to video but forgets to turn it off? The employer is capturing the employee's personal life. I could see that causing lots of issues.

**Rebecca:** It goes back to the question of the end goal. What are employers really worried about? Is it a case of the whole workforce "quiet quitting," or are there a few poor performers? If it is limited to a few performance issues, then manage the performance rather than take on this risk that might be, in my opinion, a little bit hyperbolic based on social media compared to reality.

**Tracey:** That's one moral of the story for employers — think about the end goal and make sure the tools you use capture productivity accurately. And for the George Costanzas out

there — your employer is watching.

## **Conclusion**

While not working at work is unacceptable, it is critical for employers to use productivity tools properly. Companies should ensure that their policies on telecommuting, personal devices, privacy, video, etc., are buttoned up and crystal clear.

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*This article is part of a monthly column that connects popular culture to hot-button labor and employment law issues.*

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