

June 28, 2010

Supreme Court Rules for Employer in Text Messaging Case

The U.S. Supreme Court has issued a ruling in [City of Ontario v. Quon](#), 2010 U.S. LEXIS 4972 (2010), a case that highlights the intersection of technology and workplace privacy. While the Court declined to make any significant rulings regarding employee privacy in electronic communications, the decision does contain important guidance for employers on the need to have clear and comprehensive electronic communications policies.

The police department of the City of Ontario, California, provided its officers with pagers that had texting capability. The department had a computer policy stating that the department could monitor employees' electronic activity, including emails and Internet activity. The policy was focused on communications that went through the department's server, and did not reference pagers or text messages. However, when the pagers were issued, the department informed officers that the policy would be applied to text messages, which were transmitted over a service provider's server.

When Sergeant Jeff Quon and other officers exceeded their monthly text character limits, resulting in the department being charged higher fees by the service provider, the department decided to audit the officers' texts by reviewing a small sample. Since officers were required to pay for overages, the department wanted to determine whether the overages were for work-related texts – which the officers should not be required to pay for – or personal texts. The audit revealed that many of Quon's texts were not work-related, and some were sexually explicit, and he was disciplined. Quon sued, contending that his Fourth Amendment privacy rights were violated by the search of his text messages.

The Supreme Court ruled that the City did not violate Quon's Fourth Amendment rights. The Court sidestepped the issue of whether Quon had a reasonable expectation of privacy in his use of the employer-provided pager, on the grounds that forms of technology and communication are quickly evolving and it is uncertain how workplace norms and the law's treatment of them will evolve. The Court went on to rule that even if Quon did have an expectation of privacy, the search was not unreasonable, given the City's legitimate basis for conducting the text message review and the limited scope of the review.

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Even though the Court decided the case on narrow grounds, the opinion provides useful guidance on drafting electronic communications policies. First, the court emphasized the importance of having a well-crafted policy: “[E]mployer policies concerning communications will of course shape the reasonable expectations of their employees, especially to the extent that such policies are clearly communicated.” Second, the case highlights that policies should cover usage of employer-owned equipment, as well as communications that are made using, or that interface with, employer-provided equipment and systems, such as email, voicemail, text messages, cell phones, and other technology.

We’ll have a full discussion of this new decision in Miller Law Group’s upcoming webinar, *Workplace Agreements, Handbooks and Notices: Dos, Don’ts and Practical Drafting Tips*. To register, go to <https://www2.gotomeeting.com/register/984635250>.

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