

## **SUPREME COURT OKS MONITORING SOME EMPLOYEE COMMUNICATIONS**

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Modern technology in the workplace has changed the employment landscape. Employers provide employees with computers, laptops, cell phones and other devices to stay connected at work. Employees often use these devices freely for their personal use.

How private are employee communications in the workplace? The United States Supreme Court provided a partial answer on June 17, 2010 in City of Ontario, California v. Quon. The Court held that the City's review of text messages sent by a City employee on a City-provided electronic device did not violate the Fourth Amendment of the Constitution.

The City gave Quon an alphanumeric pager. City policy prohibited nonwork-related usage and stated that usage might be monitored. When the pagers were distributed, employees were cautioned that the City considered the devices to fall under this policy.

Quon consistently went over his allotted monthly usage. His supervisor told him that, if he paid the overages each month, he would not be monitored. The City then decided to audit pager usage, and discovered that most of Quon's usage during business hours was personal. Quon was disciplined, and he then brought suit, claiming his Fourth Amendment rights were violated. The Court held that even if Quon had a reasonable expectation of privacy, the audit was reasonable, because there was a justifiable basis for the search, and the search method was an expedient way to determine whether the overages were work-related.

Quon involved a public employer and employee rights under the Fourth Amendment. Private employers are not subject to Fourth Amendment restrictions. In Pennsylvania, private employers have broad rights to review employee communications on employer-provided devices. While employers may not intercept e-mails prior to being opened by the recipient, most other communications are fair game, because employees do not have a reasonable expectation of privacy in communications made through employer-provided devices. Many employers also have policies reserving the right to monitor employee communications. Employers may need to monitor to ensure that employees are not engaging in sexual harassment, divulging trade secrets, or wasting work time. Even when employers do not have any policy, Pennsylvania courts generally have allowed them to monitor employer-provided devices, although other states address privacy differently.

Why should you care? If you own a company, you can protect against claims by having and following a policy articulating your position on use and monitoring of electronic devices. Have it reviewed by an attorney to ensure its legality, and revisit it periodically as the law changes. Employees should exercise extreme caution in using employer-provided electronic devices for any purpose other than business.