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Public Employer Search is Not Unreasonable Under the Fourth Amendment

City of Ontario v. Quon, No. 08-1332 (June 17, 2010)

By Barry H. Uhrman

In a unanimous decision, the United States Supreme Court recently held that the City of Ontario, California, did not violate the privacy rights of one of its SWAT team officers when it read some of the text messages he sent on City-owned equipment during work hours.

The City of Ontario had provided alphanumeric pagers for employees on its SWAT team and purchased a service contract that allowed a set number of text characters per month. There was no pager policy, but the City had a general computer usage, internet, and email policy that limited employee use to City business. It also reserved the right to monitor and log all network activity including email and internet use, and the City announced that it intended to treat text messages the same as email. An audit revealed that many of the text messages sent and received on the officer's pager during work hours were not work-related and some were sexually explicit.

In light of "[r]apid changes in the dynamics of communication and information transmission," the Court was reluctant to tackle the issue of whether public employees have a reasonable expectation of privacy in text messages sent on employer-owned equipment under the Fourth Amendment and the standard that applies in making that determination. The Court assumed, without deciding, that the officer did have a reasonable expectation of privacy in his text messages and decided the case on narrower grounds - whether the search was reasonable under the Fourth Amendment.

The Court found that the search was motivated by a legitimate work-related purpose and was not excessively intrusive. In making this determination, the Court pointed to several factors, including:

- The City's warrantless search was conducted for a non-investigatory, work-related purpose or for the investigation of work-related misconduct.
- The City limited its review to two months of transcripts (despite many months of overages) and only reviewed messages sent or received while the officer was on duty.
- The City reviewed text messages sent by using employer-provided equipment, not the employee's personal device.

Even if the officer could assume some level of privacy would inhere in his messages, the Court held that it would not have been reasonable for him to conclude that his messages were immune from scrutiny. The officer was informed his messages were subject to auditing. The Court held that as a law enforcement officer, he should have known that his actions were likely to come under legal scrutiny, and that this might entail an analysis of his on-the-job communication. Under the circumstances, a reasonable employee would be aware that "sound management principles might require the audit of messages to determine whether the pager was being appropriately used." ◆

Jones, Skelton and Hochuli's Employment Law Practice Group will continue to keep you apprised of all future developments concerning employment law. Please feel free to contact Barry H. Uhrman [(602) 263-7328, buhrman@jshfirm.com] with any questions you may have regarding these important developments.

About The Author

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Mr. Uhrman joined Jones, Skelton & Hochuli in 2007 and concentrates his practice on employment law, complex litigation and governmental liability. He has successfully defended Title VII, ADA, ADEA and FMLA cases for Fortune 500 clients and public and private sector employers. Mr. Uhrman has extensive experience revising sexual harassment and other employment policies for employee handbooks. In addition, he has authored articles and seminar materials regarding leaves of absence under the ADA and FMLA.

Mr. Uhrman has also represented clients in other areas of employment law, with an emphasis on intellectual property and trade secrets. He has successfully defended multi-million dollar copyright infringement, defamation and trade secrets cases. Mr. Uhrman has also represented private sector employers in cases involving employment law torts, including interference with business advantage, violation of the right of publicity, and tortious interference with contractual relationships.

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