



Supreme Court Allows Employer Review of Employee's Text Messages

In City of Ontario, California v. Quon, the Supreme Court unanimously upheld a government employer's review of an employee's personal text messages because there was a legitimate work-related reason and the review was "not excessively intrusive."

Background

The City of Ontario, California, issued pagers with texting capability to its police officers, including Sergeant Jeff Quon. The pagers were issued for work purposes, and the City paid for a monthly usage amount, subject to overage charges if the monthly limit was exceeded. The City's computer, internet and email use policy advised users to have no expectation of privacy or confidentiality, and reserved the right to monitor all network activity with or without notice. The City also advised employees in writing that texts would be treated like emails, and would be subject to auditing. Quon acknowledged that he read and understood the policy. The officer in charge of the pagers verbally told Quon and other officers that their use of the pagers would not be audited if they paid for any overage charges.

The City decided to review Quon's pager usage because it repeatedly exceeded the monthly text limit. Although it limited its review to text messages sent or received during work hours, it found that most were personal and some were sexually explicit, and took disciplinary action. Quon sued, claiming that he had a reasonable expectation of privacy and the City's review of his text messages violated the Fourth Amendment's ban on unreasonable searches and seizures.

City of Ontario, California v. Quon

In [*City of Ontario, California v. Quon*](#), a unanimous Supreme Court held that the City did not violate Quon's Fourth Amendment rights by reviewing his text messages. Although the Court assumed that Quon had a reasonable expectation of privacy in his text messages, it found that the search of Quon's text messages was for a legitimate business purpose (i.e., to ensure that employees were not paying for work-related expenses and that the City was not paying for employees' "extensive personal communications") and was appropriately limited in scope.

The Court's decision is based on the legitimacy of the City's actions in the situation outlined – it did not set out broad principles concerning employee privacy rights and workplace searches when electronic technologies are involved. However, the Court noted the value to employers of having clearly communicated electronic

communications policies, monitoring in accordance with those policies, and limiting their monitoring to what is reasonably needed for legitimate business purposes. The Court also suggested that there is a distinction between email sent on an employer's server and messages sent through a third party's system for purposes of an employer's electronic communications policy.

BUCK COMMENT. In [Stengart v. Loving Care Agency](#), the New Jersey Supreme Court recently held that an employee had a reasonable expectation of privacy in emails she exchanged with her attorney using her employer's company laptop but her own password-protected Yahoo account. Although the company had a written electronic communications policy, the court found that it did not sufficiently warn employees that personal emails that were not sent through the company's own email system were covered by the policy.

Conclusion

Increasingly, employees are using both company-provided and personal cell phones, smartphones, and email accounts to conduct their employer's business. As technology evolves, and individuals merge their personal and corporate communication tools, lines between personal and business communications are blurring and privacy issues are growing more complex. Employees have some expectation of privacy, but it is not unlimited and must be balanced against the reasonableness of the employer's actions.

Because employer policies shape reasonable employee expectations, employers should establish clear, written electronic communications and usage policies and update them as technologies develop. These policies should be clearly communicated and consistently enforced. They should also complement an organization's social media policy as social media sites and personal blogs are often accessed using company-issued technology tools.

Buck's consultants would be pleased to discuss the impact of this decision on your communications and other workplace policies.

This FYI is intended to provide general information. It does not offer legal advice or purport to treat all the issues surrounding any one topic.