

Client Alert

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July 2010

HOW PRIVATE ARE TEXT MESSAGES?

In June, the US Supreme Court ruled that a government employer had the right to review an employee's text messages that were transmitted on an employer-issued pager. The Court said that this could apply to private employers as well. In *City of Ontario v. Quon*, the Supreme Court refused to state that all employees have a right to privacy in their text messages, acknowledging that it was risky to make a such a broad rule. The Court commented, however, that the employee's expectation of privacy is diminished when the employer has an office policy addressing the issue. *Wise Counsel #1*: If you want the right to review your employees' text messages, e-mails, or internet searches, it is wise to have a policy which states that there is no expectation of privacy when using employer-issued cell phones, computers, or PDAs.

The Court in *Quon* based their decision in favor of the employer on whether the search was reasonable. The City was suffering overage charges for their text messages and sought to determine if they needed to increase their plan due to the number of work-related text messages, or whether the overage was due to personal texting. The Court ruled that "[b]ecause the search was motivated by a legitimate work-related purpose, and because it was not excessive in scope, the search was reasonable". Of interest to private employers, the Court went on to state that if the employer has a legitimate reason for the search, and if the search is not excessively intrusive in light of that justification, the search would also be permitted in the *private-employer* context. *Wise Counsel #2*: It is wise to make sure your managers have a legitimate work-related purpose for searching employees' messages and that it is more than mere curiosity.

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ABOUT HBSS

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Whether it's a matter of litigation taking place in the courtroom or negotiations happening in the board room, the attorneys at HBSS will aggressively represent your interests every step of the way.

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