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Wendy Lane represents employers in litigation - including class actions - involving claims of harassment, discrimination, wrongful discharge, and wage and hour violations. Wendy also specializes in actions to prevent employees and competing companies from misappropriating her clients' trade secrets and confidential information, drafts employment handbooks and policies and regularly advises on

Supreme Court Unanimously Rejects Privacy Claim for Employees Who Text at Work

by Wendy E. Lane

The Supreme Court yesterday unanimously upheld a police department's search of an officer's personal, sometimes sexually explicit, messages on a government-owned pager, saying the search did not violate his constitutional right of privacy.

As reported in [The Laboring Oar on June 2008](#), authored by Olivia Goodkin, in the case of *Quon v. Arch Wireless Operating Company*, the Ninth Circuit Court of Appeals examined whether the Ontario Police Department had violated an employee's right to privacy when its supervisors viewed the contents of his text messages that were transmitted using Department pagers.

At that time, the court held, among other things, that the Ontario Police Department's written and oral policies which put employees on notice that the Department would be monitoring their email, computer and text messages were overridden when a supervisor told the employees that he would monitor their text messages only if the employees failed to pay for overages on the Department's text-message provider's plan. Because the employee at issue had paid all overages resulting from his use of pager text messages, the court determined that the employee had a reasonable expectation of privacy in his text messages, and that the employer's subsequent monitoring of his text messages was unreasonable in scope.

employment issues.

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Supreme Court Reversal

In yesterday's decision, the Supreme Court reversed that ruling. The justices declined to directly rule on the issue of whether or not the employee had a reasonable expectation of privacy. Instead, the Court assumed, for the sake of argument, that the employee did have a reasonable expectation of privacy and found that the government search of the employee's text messages was reasonable because (1) "the search was motivated by a legitimate work-related purpose" and (2) the search "was not excessive in scope."

Given that the case involved a government employer and did not directly address the question of whether the employee had a reasonable expectation of privacy, private employers are left grappling more than ever with the question of how far they can go in monitoring employee electronic communications. However, employers may take some guidance from the Court's suggestions that a search, whether by a private or government employer, would generally be "regarded as reasonable and normal in the private-employer context" where "the employer [has] a legitimate reason for a search" and "the search [is] not excessively intrusive in light of that justification."

Rutter Hobbs & Davidoff specializes in crafting written policies regarding the monitoring of employee electronic communications (whether personal or professional) as well as employee use of social media such as Facebook, Twitter and blogs.

For additional information, please feel free to contact Wendy at (310) 286-1700 or wlane@rutterhobbs.com.

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