

U.S. Supreme Court Upholds Monitoring Employee Messages

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The Supreme Court recently ruled that a search of a police officer's text messages on a police-department issued pager was a legally permissible search under the Fourth Amendment. Private-sector employers were awaiting the decision to provide definitive guidance on the permissible scope of an employer's review of employee electronic communications. However, in *City of Ontario v. Quon*, the Court issued a relatively narrow opinion stating the search of the employee's pager was justified because there was a legitimate work-related rationale. The Court disposed of the case on narrow grounds, since a broad holding "might have implications for future cases that cannot be predicted." The employer's policy reserved the City's right to monitor and log all network activity including e-mail and Internet use, with or without notice. The policy also stated that users had no expectations of privacy or confidentiality when using these resources. The employee signed an acknowledgment that he had no expectation of privacy when using computers or other devices issued by the city, but his supervisor had told officers their personal text messages sent on city pagers would not be audited if they paid when their usage exceeded monthly limits. The Court reasoned that they must proceed with care when considering the whole concept of privacy expectations in communications made on electronic equipment owned by a government employer. The Court went on to state that the judiciary risks error by elaborating too fully on the Fourth Amendment implications of emerging technology before its role in society has become clear. The Court acknowledged that prudence counsels caution before the facts in the instant case are used to establish far-reaching premises that define the existence, and extent, of privacy expectations enjoyed by employees when using employer-provided communication devices. Based on this decision, it is advisable that employers have a detailed policy concerning all forms of electronic communication devices supplied by the employer which clearly explains that employees have limited expectations of privacy in the workplace. For additional employment information, please visit our web site at <http://www.joettedoran.com>

**This article is not intended as legal advice. You should consult with an attorney for individual advice regarding your own situation.*

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