



Supreme Court Rules on Texting, Sexting at Work

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Before the U.S. Supreme Court wrapped up its latest term in June, it unanimously held that an employer's search of a worker's text messages was reasonable and did not violate the employee's rights. What does this decision mean for employers, and when does an employer cross the line into an invasion-of-privacy claim?

This decision does not mean that every employer has an unfettered right to electronically eavesdrop on its employees. This case was limited to public employees and constitutional rights. Although private employers hoped that the Supreme Court's decision would define an employee's "reasonable expectation of privacy" so that this standard could be applied in other cases, the court declined to determine that standard because "rapid changes in the dynamics of communication and information transmission are evident not just in the technology itself but in what society accepts as proper behavior... At present, it is uncertain how workplace norms, and the law's treatment of them, will evolve." In other words, whether an employee has a reasonable expectation of privacy will be shaped, in part, by society's evolving perception of privacy in the era of social networking, text messages and blogging. However, there are some commonsense rules employers should follow:

- **Update policies:** Those drafted years ago to cover e-mail and Internet use should be updated to reflect all of the mainstream forms of electronic communications, including text messaging, cell phone use and the use of social networking websites.
- **Audit practices:** Ensure that "informal" policies are not inconsistent with written policies.
- **Tailor searches narrowly:** An employer should exercise caution when conducting a search of an employee's electronic communications.

Prior to conducting the search, be sure there is a legitimate, work-related reason for auditing or searching communications, such as determining whether an employee is using work time appropriately or whether an employee's communications with a co-worker violated the employer's harassment policy. Finally, a search should be limited to only the purpose intended. And the results of a search or audit should be communicated only to those employees who have a legitimate reason to know the content of the communications.

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