

## BREAKING NEWS: U.S. Supreme Court Releases *City of Ontario v. Quon* Decision Regarding Monitoring Electronic Communications in the Workplace

This morning, the U.S. Supreme Court issued an opinion regarding the privacy expectations of employees using employer-owned electronic devices and the reasonableness of the searching of electronic communications on those devices.

The City of Ontario, California, provided wireless text-messaging services to its employees. The City did not have a specific policy addressing text messaging but there was a general computer usage, Internet and Email Policy applicable to all City employees. The City's employees were told that the email policy applied to pagers and, therefore, the text messages were not private. However, the immediate supervisor established an informal policy that an employee's messages would not be audited if he or she paid for excess usage charges. After employee Quon exceeded the normal monthly usage amounts, despite the fact that he paid the overages, the City audited his usage and discovered highly personal messages.

The Ninth Circuit had held the supervisor's informal policy created a reasonable expectation of privacy and, therefore, the employer's search was unreasonable and violated the employee's Fourth Amendment rights.

The U.S. Supreme Court reversed, holding that the search of the electronic device's messages was reasonable under the circumstances. The Court did not issue a broad rule regarding an employee's expectation of privacy in electronic communications because "the judiciary risks error by elaborating too fully on the Fourth Amendment implications of emerging technology before its role in society has become clear. . . . 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."

The Court assumed, for the sake of argument, that the employee *had* a reasonable expectation of privacy. But, relying on earlier cases that held a search conducted for a "noninvestigatory, work-related purpos[e]" or for the "investigatio[n] of work-related misconduct," is reasonable if "justified at its inception" and if "the measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of the circumstances giving rise to the search," the Court held the City's search was reasonable because it was motivated by a legitimate work-related purpose and it was not excessive in scope.

This case had the potential to adversely impact the ability of employers to monitor employees' electronic communications. This decision provides employers with the opportunity to review their electronic use policies to determine whether employees are clearly told of their reduced expectation of privacy when using employer-provided electronic devices.

Should you have any questions regarding this decision or how it impacts your workplace, please contact the labor and employment attorneys at Weld, Riley, Prenz & Ricci, S.C.

*This article should not be construed as legal advice and is intended for general informational purposes only. If you have any questions, you should consult your legal counsel.*