

Monthly Memo

DOES THE U.S. CONSTITUTION APPLY TO ELECTRONIC TEXT-MESSAGING?

The 4th Amendment of the U. S. Constitution, in part, reads as follows:

The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated

The U. S. Supreme Court on December 14th, 2009, accepted a case which will decide what rights and expectations government employees may have while text messaging with a government issued electronic paging device. Although the case deals with a government employee, the decision will most likely set the standard for private sector employers also.

The case is *City of Ontario v. Quon*. Sgt. Quon is a policeman for the City of Ontario. In 2001, he was given an alphanumeric pager so that he could connect with other police officers and be sent messages by the police department. Sgt. Quon signed an agreement with the City of Ontario that allowed management to monitor e-mail messages sent and received by city employees. The Police Department had an official “no-privacy policy” but did allow for informal and personal use. In a random audit review undertaken by the pager company at the request of the Ontario Police Department, it was discovered that Sgt. Quon had used his texting device for mostly personal matters and many of the messages were sexual in nature. Sgt. Quon filed a law suit.

An initial trial court jury found that the Police Department was entitled to check out the use of its equipment and so there was no liability against the Police department. Sgt. Quon appealed to the 9th Circuit Federal Court. The 9th Circuit found that the City’s review of the e-mail was unreasonable as the employees “had a reasonable expectation of privacy...”.

The U.S. Supreme Court will consider three issues in the appeal before it:

1. Did the police officers have a “reasonable expectation” of privacy of the information sent and received on the government provided pagers;
2. Did the 9th Circuit Court of Appeals create a conflict of interest when it issued a decision that found the Police Department could have undertaken a “less intrusive method” of texting messages; and,
3. Did people who sent e-mail messages to Sgt. Quon on the government issued electronic paging device have a “reasonable expectation” of privacy from the Police Department’s review of information sent?