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## Can ur employees' txt msgs b monitored? Supreme Court Says Yes

Employers may monitor text messages sent by employees on employer-issued devices, according to a recent Supreme Court ruling. However, in spite of this decision, questions concerning the expectations of privacy in the workplace remain unanswered.

### Background

Sergeant Jeff Quon and other members of the City of Ontario's SWAT team were issued pagers for use on the job with a limit on the number of messages per month that could be sent. Officers were notified that text messages "would fall under the City's policy as public information and [would be] eligible for auditing." Quon and other team members exceeded their allotted number of texts, but claimed that, despite the City's stated policy, a supervisor had verbally informed them that their messages would not be audited. After examining Quon's messages, Chief Lloyd Scharf and an investigator determined that the majority of the text messages were of a personal nature and many were sexually explicit.

### United States Supreme Court Ruling

Quon, and others with whom he exchanged messages, sued the City and its mobile device service provider. The case eventually wound its way to the United States Supreme Court, which reversed a lower court ruling in *City of Ontario v. Quon* and held that a public employer's monitoring of an employee's personal text messages on an employer-issued device was not a violation of the Fourth Amendment of the U.S. Constitution.

What the Court did *not* do, however, was address the larger issue of employees' expectation of privacy in electronic communications sent and received on devices owned by their employer. Instead, the Court focused solely on the reasonableness of the employer's search.

### Implications for Employers

The Court cautioned against a broader decision due to the rapid changes in the dynamics of communication and information technology. Although such a limited decision by the Court fails to provide much clarity on the already complex issue, there are several practices employers should consider implementing to minimize the risks of legal liability:

- Establish a well-written social media and electronic communications policy. Clearly communicate the policy and its impact on the reasonable expectations of employees.
- Communicate employees' reduced expectation of privacy in the company's established policy.
- Conduct routine management training in order to ensure consistency between management's day-to-day practices and the established policy.
- During monitoring and auditing, (1) identify a legitimate business reason for searching employees' electronic communications; and (2) structure the content review in order to minimize the scope of the employees' intrusion.

Employers need to be conscious of the rapidly evolving area of electronic communications and consult with counsel regularly regarding any new developments. For any questions regarding how the impact of this decision may affect your workplace, please contact [Richard Frey](#), a Labor & Employment Partner, or [Christin Kim](#), a Labor & Employment Associate, in Venable's Los Angeles office.

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