



# HRXaminer

*Examining practical HR issues business owners  
and managers encounter every day*

## Check Your Tech Policies

June 2010

### Putting Your Policies Into Action

There are so many reminders this Supreme Court case brings forth. Here are some of my thoughts and questions for you:

- ▶ When was the last time you, your HR consultant and/or your employment law attorney audited and updated your employee handbook to make sure you have everything you need to protect your organization? If it's been more than 1-2 years, you're way

### Snooping Ruling

I always include in the computer policy of my clients' handbooks an "Our Right to Access Information" statement that employees should not assume privacy of any of the work they've created on company computers or on any of the communication that occurs on company equipment, including computers, phones, Internet or other information systems.

This month, the Supreme Court ruled on exactly this topic in a case between an employee and the City of Ontario, CA. Quon, a City employee, was apparently disciplined for sending personal and sexual text messages during work hours on a telephone paid for by the City. Quon claimed that the City's review of his text messages was a violation of his Fourth Amendment rights and sued all the way up to the Supreme Court.



overdue!

- ▶ When was the last time your organization trained your managers on the organization's expectations regarding implementing and enforcing policies? Considering this example of the problems a well-meaning manager created, what would your managers do or say in this situation?
- ▶ Considering how quickly technology is changing, read your computer, phone and company equipment policies to see whether you are protecting the organization at the level needed.
- ▶ If you have a policy allowing you to access all computer and telephone use, have you ever implemented this right? If so, did you document your actions, who conducted the research, what you discovered, and how you handled any concerns with the employee?
- ▶ I've received many calls from employers regarding employees inappropriately accessing Internet sites. We also are aware that some of our employees overuse our

In a Gray Plant Mooty article, author Megan L. Anderson, stated that "The US Supreme Court...unanimously [upheld] a government employer's search of employee text messages sent on employer-owned equipment as valid under the Fourth Amendment of the U.S. Constitution." She also wrote that the Supreme Court provided "a helpful reminder on the importance of a well-drafted, clearly communicated electronic communications policy, stating that such policies shape the reasonable expectations of employees when clearly communicated."

The City had a solid written policy stating their right to search/access the employee's text messages, yet the lawsuits continued.

City of Ontario employees were required to reimburse the City for any personal usage of the City phones assigned to them that exceeded the fees normally paid. Quon's personal use of the phone messaging services exceeded the customary limit, so the City decided to audit some of his (and others') text messages to see how much of the messaging was personal vs. business-related. That's when they discovered the personal use during work hours and the sexual nature of the communications.

Of course, these cases are never simple. To compound the issue, Anderson's article explains that, "a management-level police official had told Quon that his texts would not be audited if he paid the City for any charges incurred due to Quon exceeding the City's monthly limit on text characters." So the written policy was potentially compromised because a manager had misinformed the employee on how the policy was to be implemented.

Nonetheless, the Court ruled in the employer's favor.

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computers for non-offensive personal purposes during the workday (shopping, reading/writing personal emails, playing games, general surfing).

The real question is what are you and other managers in your organization doing about it?

Does everyone know who to contact to resolve these situations? Are managers acting independently and handling, mishandling or ignoring these situations? Is ignoring some of these inappropriate behaviors putting you at risk for harassment charges?

While I can certainly assist you with any of the above concerns, I encourage you to check your handbook, your policies, your practices and your managers' understanding of their role regarding the increasingly sensitive area of technology in the workplace.

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# Lessons for Employers

So what does this mean for us? Even though this ruling related to the public sector, it translates to the actions of all employers. Anderson continues by stating: "Both public and private employers might minimize legal risks through the following steps:

- Employers should develop and clearly communicate to employees a well-written policy that covers all forms of electronic communications and emerging technology. This policy should clearly state that employees do not have a reasonable expectation of privacy in, and that the employer may monitor and review, any electronic communications, even if personal, that are sent, received, accessed, or stored on equipment or other items owned by, provided by, or paid for by the employer.
- Management should be trained to follow the official electronic communications policy and not to make statements or engage in practices inconsistent with that policy.
- In addition to communicating its electronic communications policy, employers should train employees on the policy and the employer's expectations on appropriate usage of workplace technology.
- Employers should have legitimate business reasons for searching electronic communications of employees and should narrowly tailor such searches to the employer's objectives and the unique circumstances at hand."

Here's a link to the complete article: <http://www.gpmlaw.com/resources/newsletter>

**If I can help update you update your technology/communications policy or any other policies for you, give me a call!**

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## About Arlene Vernon

Arlene has provided HR consulting and management training services to over 300 organizations since starting HRx, Inc. in 1992.

If you're seeking a hands-on, practical HRxpert to assist your organization with employee relations, policy development, strategic HR activities or fun/doable management training, call on Arlene – Your HRxpert.

If you're planning a conference, seminar or special event, Arlene specializes in keynotes, seminars and workshops to meet your talent management needs. And if you're seeking a more lively entertaining activity, Arlene's custom songs and musical-inspirational keynote may be perfect for your organization!

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