



Virginia Workplace Law

How Much Privacy Do Employees Have?

By: Karen Elliott. *This was posted Wednesday, June 23rd, 2010*

Much has been reported about the unfortunate young Hartford, Connecticut man [whose arm was stuck in a furnace for three days](#). But no one apparently asked why someone from his work didn't call pretty quickly to find out why he was no-call, no-show? In contrast, when [Virginia's tax commissioner](#) failed to show up to work by 11 a.m. one day last week, her co-workers were calling and then drove over to her Richmond, Virginia, house, peering in windows. (Unfortunately, she had in fact, [passed away](#).) Can the employer do that, you might ask?

Most employers get pretty upset when their employees fail to report to work. Yet, many may find it intrusive to check up on their employee to see if they are ok, or just playing hooky.

The tension between employee privacy versus the employer's right to know has been at the forefront of concern recently. Employers (or more accurately, their lawyers), waited anxiously for the [US Supreme Court's recent ruling in the case of City of Ontario Calif. v. Quon](#). At issue was where the Court might draw the line over an employer's right to view an employee's private text messages on the employer-owned phone. Fortunately, for employers, the court ruled that the government had not violated the employee's [Fourth Amendment](#) right to privacy and ruled the search of the phone records reasonable under the facts of that case.

The Quon case involved privacy rights not involved in the private workplace (because the employer was the government, the employee claimed a violation of his Fourth Amendment rights — unreasonable search by the government). Fourth Amendment rights don't extend to the private workplace. Even so, many were concerned that the Court's ruling would be used to limit the private employer's rights to monitor its employees activities on its company-owned technologies.

Thus exists the strange dichotomy between the employer's reluctance to get involved in the employee's private life when he is no-call, no-show — when that "intrusion" might save an arm, or a life, versus the employer's review of private information of the employee's on company-owned technologies. In Quon, the employer was sued for invasion of privacy for trying to ensure the proper use of its company-owned technology. That suit reinforces why employers are reluctant to get involved when it might make a difference between life and death with no-call, no-shows.

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