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New Jersey Supreme Court Decision in Stengart Gives Employers Strong Reason to Review Corporate Technology Policies

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The New Jersey Supreme Court's much-awaited March 30, 2010 decision in Stengart v. Loving Care Agency, Inc. provides guidance to all New Jersey employers issuing electronic communications policies. On [April 22, 2009](#) and [July 27, 2009](#), we wrote about Stengart, a case that is providing necessary guidance on the use of technology in the workplace. The New Jersey Supreme Court's decision affirmed the Appellate Division and held that Stengart "could reasonably expect that email communications with her lawyer to her personal account would remain private, and that sending and receiving them via a company laptop did not eliminate the attorney/client privilege that protected them." The Court thus found that Loving Care Agency and its attorneys violated Stengart's privacy rights by reviewing emails sent between Stengart and her attorneys even though the emails were composed on a company computer.

In following the Appellate Division, the Stengart Court ruled that Stengart had a reasonable expectation of privacy in her emails. First, the Court noted that Loving Care's electronic communications policy, as contained in its administrative and office staff employee handbook, was ambiguous. While the policy indicated that emails sent on company equipment could not be considered private or personal to any individual employee, it then acknowledged that "occasional personal use of email is permitted." Keeping the policy's ambiguity in mind, the Court also considered whether Stengart had a subjectively reasonable expectation of privacy in her communications with her attorney. The Court found that she did, noting

that Stengart took steps to protect the privacy of her emails by using a personal, password-protected email account and by not leaving her password on her company's computer. Finally, in assessing Stengart's privacy expectations, the Court confirmed the important public policy concerns protecting her communications and underlying the attorney-client privilege.

New Jersey employers should heed the message of Stengart by immediately reviewing their electronic communications policies to ensure that such policies clearly communicate the employer's rules and expectations.

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