

TAKE ACTION NOW REGARDING YOUR EMPLOYEES' PERSONAL EMAIL AND TEXT COMMUNICATIONS ON YOUR PROPERTY

By: Beth Lincow Cole
<http://www.blclegal.com>

Are employers permitted to read employee email and text communications performed at the workplace? What if employees use personal email accounts? What about text messages using personal devices?

A RECENT NJ RULING IMPACTS EMAIL PRIVACY:

A recent New Jersey Supreme Court ruling provides an answer. In short, in New Jersey, absent a clear and specific policy, employers are banned from reading an employee's email exchange if the employee uses a personal email account (example – Yahoo, Gmail, Hotmail) even though the email is stored on a company computer.

In a ruling that focused on an employee's email communication with the employee's attorney, the Court ruled that **the employee had a reasonable expectation of privacy in email communications with the lawyer on emails sent through the employee's private email account (such as Yahoo, Gmail, Hotmail, etc.) utilizing the company computer, even though the emails were stored on a company issued computer.**

We can learn a tremendous amount from this decision to protect employers' ability to access such emails:

- 1) Employers must be clear that personal email, even if password protected or even deleted, is covered by the employer's Computer, Email and Internet Use Communication Policies, and;
- 2) Employer policies should warn employees that contents of personal email accounts are stored on a hard drive and can be forensically retrieved and read by the employer.

Employers must put sound policies in place and they must be specific. It is prudent to review and **periodically update** your current policy.

WHAT ARE THE IMPLICATIONS FOR TEXT MESSAGING?

Text messages can present another issue for employers. Text messages are a bit different from email in that emails are stored on the company computers whereas text messages can only be retrieved when an employer makes a request to the wireless carrier.

Based on another recent Court decision, employers are guided as follows if they want to monitor text messages sent through employer property:

- 1) Employers should have a policy which states that pagers and other mobile devices can only be used for business purposes;

2) If an employer wants to review employees' text messages, the employer should have a reason to suspect a violation of company policy;

3) If employers plan to review text messages, the employer should warn employees that text messages will be reviewed; and

4) Lastly, the company must implement practices consistent with their written policies.

Electronic communication is evolving quickly; we encourage employers to update their policies to reflect recent court rulings and electronic advancements.