

Client Alert

August 2009

CALIFORNIA SUPREME COURT ALLOWS SECRET VIDEOTAPING OF EMPLOYEES IN THEIR PRIVATE OFFICE

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The California Supreme Court, in *Hernandez v. Hillside, Inc.* (August 3, 2009), ruled that an employer who set up hidden video equipment in a private office shared by two female employees was not liable for invasion of privacy, and summary judgment should be granted in favor of the employer.

Background

Hillside is a shelter for abused children. The plaintiffs are two clerical, female employees who worked in a shared, enclosed office that was private from the public, other employees, and the children.

The director of Hillside discovered that someone was accessing the plaintiffs' computer, after work hours, to view pornography. Some of the children were at the shelter because they had been abused by being forced to participate in pornography, and the facility had a strict policy to ensure that the children would not be again exposed to pornography while at the facility.

Determined to find the culprit, the director installed hidden video equipment in the office, which was aimed at one of the employee's desk and computer. The director set the equipment to record only after hours, when the employees would not be in the office.

Each of the female employees had used their office, particularly when locked, for personal reasons; such as, one employee changed her clothes in the office before leaving to work out; another lifted her shirt to show the other employee her post-pregnancy body.

One day, a red light on a motion detector flashed the time, and the employees discovered a cord that was hot to the touch, which led to a camera on a high shelf hidden between plants. Shocked, the employees reported the discovery to their supervisors. The director was called in, and assured the employees that Hillside had good reason to install the equipment, that Hillside had to maintain secrecy so that the culprit would not be alerted, and that the employees were never taped. The director also immediately showed the employees the tapes, which were without sound, and showed only recordings of empty desks at night. (The culprit was never discovered.)

Analysis

The tort of intrusion has two elements: intrusion of a private space; and intrusion in a highly unreasonable way. The Court held that employees have some expectation of privacy in their office, and that the plaintiffs had, in opposition to summary judgment, made a sufficient showing that the issue of intrusion should go to a jury. The defendant, however, had established by undisputed evidence that its conduct was not highly unreasonable, because the plaintiffs were not the targets of the taping, and in fact were never taped; that there was a reasonable justification for the taping; and that the director immediately showed the tapes to the plaintiffs so that they could be assured they had not been recorded.

Conclusion

In sum, the secret taping was permissible because "[a]ctivation of the surveillance system was narrowly tailored in place, time, and scope, and was prompted by legitimate business concerns."

Any employer thinking of installing recording equipment in the workplace that may surreptitiously record employees, however, should seek the advice of counsel before doing so.