



## Legal Alert: Employee Privacy Interests Outweigh Union's Right To Communicate With Represented Employees in California

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Is a California employer required to disclose an employee's home telephone number and address upon request by a union without first advising the employee of the disclosure? According to a recent California Court of Appeal opinion, *County of Los Angeles v. Los Angeles County Employee Relations Committee*,<sup>[1]</sup> an employer may not do so unless it provides the same notice and opt-out procedures provided to putative class members in consumer class actions. The court's decision expressly found that employee privacy rights are guaranteed by the California constitution and outweigh a union's right to communicate with represented employees.

### **Union Claims it Needs Personal Contact Information of Non-Member Employees to Fulfill Its Representation Duties**

Los Angeles County ("County") employees are represented by Service Employees International Union Local 721 ("the Union"). The County employees have the collective right to unionize, but the individual right to refuse to join to union. The bargaining unit was comprised of approximately 15,000 County employees. However, only 11,000 employees were members and 4,000 were non-members. The Union had the home addresses and telephone numbers for less than half of the non-members and wanted the ability to contact all of the non-members.

During contract negotiations, the Union proposed a contract amendment that would enable the Union to obtain the home telephone numbers and addresses of all County employees on an annual basis (including non-members). In support of this amendment, the Union argued that the County was required to provide that information so that the Union could communicate with members about union activities, layoffs and other job-related activities. The union also admitted that it wanted the information so it could recruit non-members to join the union.

The County refused to provide the requested information. It argued that the non-member employees' personal information was not relevant to any collective bargaining issue. Additionally, the County asserted the non-members' right to privacy under the California constitution, which provides, "All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining

safety, happiness and **privacy**." (emphasis added). (Cal. Const., art. I, § 1.)

### **Trial Court Agrees – Orders Employer to Disclose all of its Employees' Personal Contact Information**

The trial court found that the non-member employees had a right to privacy in their personal information because they met the criteria to establish: (1) a legally protected privacy interest in their personal information; (2) a reasonable expectation of privacy that their personal information would not be further disseminated by their employer; and (3) a serious invasion of privacy because the disclosure of the non-members' personal information constituted a "non-trivial" invasion of privacy. However, the trial court concluded that despite the employees' privacy interest, public policy interests favoring collective bargaining outweighed any privacy interest non-member employees have in the nondisclosure of their home telephone numbers and addresses.

### **Court of Appeal Disagrees – Employees' Privacy Rights Require the Employer to Provide Notice and an Opt-Out Procedure Before Disclosure of Personal Information**

The Court of Appeal reversed and held that employee privacy interests outweighed the Union's right to communicate with represented employees. The Court of Appeal acknowledged that under federal and state labor law, home addresses of bargaining unit employees is information that is necessary to the collective bargaining process. However, the court held that the disclosure question in this case is governed by California's constitutional right to privacy and determined that employees who have not disclosed their personal information to the Union are entitled to notice and an opportunity to object before their personal information is disclosed.

The court's decision is based on the California Supreme Court's holding in *Pioneer Electronics (USA) Inc. v. Superior Court*<sup>[2]</sup> that requires notice and an opportunity to object to members of a putative consumer class action before disclosure of their personal information. The court found that union members are entitled to the same procedural safeguards that are provided to members of a consumer class action lawsuit.

In support of its decision, the Court of Appeal recognized that the notice and opt-out procedures used in *Pioneer Electronics* do not deprive the Union of its right to information, but simply recognize that before disclosure, the County must inform non-member employees whose privacy interests are at stake. Moreover, the opt-out notice procedure does not provide an unfair advantage to the County or a disadvantage to the Union but instead recognizes the individual rights of County employees.

The court rejected the Union's argument that it is entitled to the employees' personal information even over objection. The court noted that the support for this argument is based on labor law decisions holding that personal information is presumptively relevant, which "is the wrong test."

### **California Employers' Bottom Line: Keep Your Employees' Contact Information Private**

Although this decision is limited to employers subject to California state law, it emphasizes the degree of protection California law affords its citizens'

personal information. Therefore, it is prudent for all employers to have a policy that ensures employees' home addresses and telephone numbers will remain confidential and will not be disseminated without advanced notice and an opportunity to object to disclosure.

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[1] See *County of Los Angeles v. Los Angeles County Employee Relations Commission*, 2011 Cal. App. Lexis 209 (Cal. Ct. App. Feb. 24, 2011).

[2] See *Pioneer Electronics (USA) Inc. v. Superior Court*, 40 Cal. 4th 360, 371-372 (2007).