

Email Alert – Court Opinion – Implications for Employee Handbooks

New Court Opinion Confirms the Importance of Having Current Employee Handbooks Detailing Company Ownership of Computers and Eliminating Any Expectations of Privacy

A new decision from the California Court of Appeal found that emails sent between an employee and her attorney were not confidential because the emails were sent from a company computer and the employee was informed, through an employee handbook, that emails were not private and could be monitored.

In *Holmes v. Petrovich Development Co., Inc.*, 2011 WL 117230 (Jan. 13, 2011), a former employee brought a lawsuit against her boss and her former employer for harassment, retaliation, wrongful termination, violation of the right to privacy, and intentional infliction of emotional distress. The defendants obtained a series of emails the employee had sent to her attorney about the dispute from her company computer. The employee argued that the emails were privileged and confidential communications with her attorney that could not be used by the defense in court. The trial court disagreed, allowing the emails to be shown to the jury at trial. Defendants prevailed at trial, and plaintiff appealed the trial court's decision to allow the emails.

The California Court of Appeal concluded that the emails sent by Holmes to her attorney did not constitute "confidential communications between client and lawyer" and thus properly admitted as evidence in court. The reasons provided were 1) Holmes used a computer of defendant company to send the emails even though she had been told of the company's policies that its computers were to be used only for company business, 2) plaintiff had been warned that the company would monitor its computers, and 3) plaintiff had been advised that employees using the computers had no right of privacy with respect to any message or information provided while using the computers.

Advice for Employers

This case reinforces the importance of having a current employee handbook with clear policies regarding company property and electronic communications, in which a company retains the right to all of its emails as stated above in the appellate decision. Consequently, employers should review their handbooks to ensure they contain such language.

If you have any questions, please do not hesitate to let me know.

Sincerely,

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