

California and Illinois Courts Rule Employees Have No Expectation of Privacy in Personal Email and Electronic Communications on Company Computers

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When faced with company manuals providing that employees have “no right of privacy” in personal communications created on company computers, courts in California and Illinois in the past month sided with employers. Rejecting the employee’s claim of privilege in *Holmes v. Petrovich Development Company, LLC, et al*, 2011 WL 117230 (Cal. Ct. of App. Jan. 13, 2011), the court pointedly stated that “emails sent via company computer...were akin to consulting her lawyer in her employer’s confer-

Despite being aware of the policy, the plaintiff sent several emails about her case, and forwarded several emails from her boss and president of the company, to her attorney. Later, the plaintiff claimed that the email communications were privileged from disclosure as attorney-client communications under California Evidence Code section 952. The trial court rejected this argument, and found that the attorney-client privilege had been waived, and permitted them to be used in the defendant’s motion for summary

*The employee manual in Holmes provided that:
“Email may be best regarded as a postcard rather than as a sealed letter...”*

ence room, in a loud voice, with the door open...” Similarly, in *Shefts v. Petrakis*, 2010 WL 5125739 (D.C. Ill. Dec. 8, 2010), the court held that the president of a telecommunications company “did not have a reasonable expectation of privacy in his communications” after the company’s employee manual went into effect.

In *Holmes*, the defendant’s employee handbook warned that:

Employees who use the Company’s Technology Resources to create or maintain personal information or messages have no right of privacy with respect to that information or messages....Email is not private communication, because others may be able to read or access the message. Email may be best regarded as a postcard rather than as a sealed letter...

judgment. The defendant argued that the emails showed that the plaintiff had not suffered severe emotional distress, and “was only frustrated and annoyed, and filed the action at the urging of her attorney.” The appellate court noted that the plaintiff had not used her home computer, but instead used her work computer,

after being expressly advised this was a means that was not private and was accessible by Petrovich, the very person about whom Holmes contacted her lawyer and whom Holmes sued. This is akin to consulting her lawyer in one of defendants’ conference rooms, in a loud voice, with the door open,

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yet unreasonably expecting that the conversation overheard by Petrovich would be privileged.

The *Holmes* court rejected the plaintiff's reliance on *Stengart v. Loving Care Agency, Inc.*, 201 N.J. 300, 990 A.2d 650, 659 (N.J. 2010) distinguishing it on the basis that personal use "was not clearly covered by the company's policy and the emails contained a standard hallmark warning the communications were personal, confidential, attorney-client communications." (See "*Court Rejects Employer's Claimed Right to 'Rummage Through' Employee's Private Emails Sent to Her Attorney via Company Laptop*" October 2009 issue of *qubit*).

In *Shefts v. Petrakis*, 2010 WL 5125739 (D.C. Ill. Dec. 8, 2010), the plaintiff, the president and owner

systems) and their content, as well as any and all use of the Internet and of computer equipment used to create, view or access email and Internet content.

In denying the plaintiff's motion for summary judgment, the court stated that because the plaintiff was aware of the terms of the employee manual, and knew that one of the defendants had been appointed "security liaison" for the company, the plaintiff did not have a "reasonable expectation of privacy in his communications...."

With these decisions in *Holmes* and *Shefts*, the courts of California and Illinois join Idaho and New York in ruling that an employee does not have a reasonable expectation of privacy in email communica-

"According to the Holmes court, the employee's use of company email was 'akin to consulting her lawyer in one of defendants' conference rooms, in a loud voice, with the door open, yet unreasonably expecting that the conversation overheard by Petrovich would be privileged.'"

of a telecommunications company, Access2Go, sued another officer and owner of the company for their alleged violations of the Electronic Communications Privacy Act (ECPA), the Stored Communications Act (SCA) and the Computer Fraud and Abuse Act (CFAA) because they intercepted his emails and text messages. They began monitoring all of his electronic communications for the purpose of determining whether he was "sexually harassing Access2Go employees and violating his fiduciary duties." Access2Go's employee manual provided that:

The Company owns the rights to all data and files in any computer, network or other information system used by the Company. The Company also reserves the right to monitor all electronic mail messages (including personal/private/instant messaging

tions sent from an office computer where the company expressly prohibits personal use and advises employees that all electronic communications will be monitored and are accessible by the company. See, e.g. *Alamar Ranch, LLC v. County of Boise*, 2009 WL 3669741 (D. Idaho Nov. 2, 2009) (Nov. 2009 *qubit*) and, *Scott v. Beth Israel Medical Center, Inc.*, 2007 WL 305451 (N.Y. Sup. Ct. 2007) (Dec. 2007 *qubit*).

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