

# Employment Law Monitor

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## Supreme Court Holds That Employer May Lawfully Search Public Employee's Private Text Messages

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In City of Ontario v. Quon, decided on June 17, 2010, the United States Supreme Court held, for the first time, that the City of Ontario's review of a police officer's text messages was reasonable and, therefore, did not violate the Fourth Amendment. In Quon, Jeff Quon repeatedly exceeded the character limit on his work-issued pager. The City therefore audited his text messages, and uncovered hundreds of personal messages, some of which were sexual in nature. Although the Court declined to address whether Quon had a reasonable expectation of privacy in his text messages, the Court held that, even if he did, a public employer may reasonably search an employee's property at work where the search is non-investigatory, work-related or incident to an investigation of work-related misconduct, without violating the Fourth Amendment.

Here, the Court found that the search was reasonable and "justified at its inception," as the City's review stemmed from an investigation as to whether the character limit was sufficient to meet the City's needs. In addition, the City's review of Quon's text messages was reasonable as an "efficient and expedient way to determine whether Quon's overages were the result of work-related messaging or personal use." Finally, the Court found that the review was not "excessively intrusive" because the City only reviewed two (2) months of messages, although more were available.

As with cases arising in the private sector and impacting issues of technology in the workplace, Quon also provides several instructive

lessons for employers. First, employers must be reminded that it is crucial to develop and distribute comprehensive workplace communications policies, which make clear that employees' communications through technology are not private. In addition, employers are well advised to only review such employee communications where there is a legitimate, work-related reason to do so.

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