

Office Technology Legal Concerns

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Background



Background

- ▶ Use of company network at work
 - ▶ Surfing the Net
 - ▶ Wifi networks and employee personal devices
- ▶ Bring Your Own Device (“BYOD”) vs. Company-owned devices
- ▶ The Future: Wearable technologies?



Overall Tension

- ▶ Balancing:
 - ▶ Protection of employer data & confidentiality
 - ▶ Rights of employees



Federal Statutes

- ▶ Fair Labor Standards Act
- ▶ National Labor Relations Act
 - ▶ §§ 7, 8 - Unfair Surveillance
- ▶ Stored Communications Act
- ▶ Computer Fraud and Abuse Act

Leading Cases

- ▶ *O'Connor v. Ortega*, 480 U.S. 709 (1987)
 - ▶ Found that a standard of "reasonableness" was sufficient for work-related intrusions by public employers.

- ▶ *City of Ontario v. Quon*, 560 U.S. 746 (2010)
 - ▶ *Even though employees have a reasonable expectation of privacy, the search of employee's text messages is reasonable if motivated by a legitimate work-related purpose and not excessive in scope.*

State Statutes

- ▶ Specific to Employee Monitoring:
 - ▶ Connecticut Gen. Stat. Ann. §31-48d.
 - ▶ Administrative penalties
 - ▶ No private right of action
- ▶ Maine Wiretapping Statute:
 - ▶ Maine Rev. Stat. Ann. Tit. 15, §§ 709, 710.
 - ▶ Interception of wire and oral communications is a crime.
- ▶ New Trend: statutes prohibiting employers for asking for social media passwords of employees -
 - ▶ MD, AK, CO, IL, NV, NM, OR, UT, VT, WA
 - ▶ NOT Maine (yet).

Recommendations

- ▶ Employee policies
- ▶ Acknowledgements by employees
- ▶ Making sure the policies keep pace with the technology

