

PRIVACY IN THE WORK PLACE TAKES ANOTHER HIT



The California Supreme Court, in HERNANDEZ V. HILLSIDES INC. (09 C.D.O.S. 9763) has significantly limited the rights to privacy that employees can reasonably expect in California. They do have some rights to privacy...but those rights have limits. It does not prevent employers from conducting hidden surveillance in the employee's office if there is "legitimate business concerns." What does that mean? Read on...

THE FACTS:

The Director of a Children's Center in Pasadena, a facility that houses abused children, installed hidden video equipment in an office shared by two administrative assistants, Maria Lopez and Abigail Hernandez. This was done in an unsuccessful attempt to catch someone who had been viewing pornography on Lopez's computer in the very early AM, long before anyone was at work. The Director was deeply concerned because many of the children at the center had been the victims of emotional, physical, and sexual abuse. Despite the cameras, no one was ever apprehended.

In October, 2002, Hernandez and Lopez discovered the hidden video equipment. They were both extremely upset. Neither Hernandez nor Lopez were suspects and the camera was activated only after work hours. Indeed, neither Hernandez nor Lopez were ever recorded on the camera since they were not there after normal work hours.



They still sued for invasion of privacy, claiming emotional distress.

THE CASE:

The Superior Court granted summary judgment to the center, throwing the case out of court. But the Court of Appeal reversed in 2006, holding that even placing of the surveillance equipment in the women's office without their knowledge invaded their privacy.

The California Supreme Court stepped in in 2009 and made the following ruling.

The court stated that while it could understand the two women's "dismay" at the placement of the hidden cameras, that the placement of the equipment was not egregious and the employer had a valid reason for doing what he did. "Activation of the surveillance system was narrowly tailored in place, time and scope and was prompted by legitimate business concerns," the Court wrote. "Plaintiffs were not at risk of being monitored or recorded during regular work hours and were never actually caught on camera or video tape." The Court did stress it was not seeking to "encourage" such surveillance measures.

The Court went on to state, "While plaintiffs' privacy interests in a shared office at work were far from absolute, they had a reasonable expectation under widely held social norms that their employer would not install video equipment capable of monitoring and recording their activities—personal and work related—behind closed doors without their knowledge or consent."

Thus there is a balancing test: the amount of intrusion and expectation of privacy versus the legitimate business concerns of the employer and the reasonableness of his actions.

Critically important, the reasonableness of the actions are to be decided by the Court as a matter of law, not by the trier of fact. One of the attorneys who filed an amicus brief for the court stated, "What is significant, though, is that it was a summary judgment decision. All seven justices agreed that the legitimacy of an alleged intrusion can be resolved as a matter of law without a trial."

The attorney for the women was upset. He stated that the Court "... has given employers a virtual green light to spy on employees via hidden camera for almost any reason, as long as little to no evidence of the intrusion is made available to the employee." He had argued at oral arguments that the center' executive director could have taken steps that were less intrusive.

The ruling rejected such options as advising the women about the surveillance or adopting stricter computer use regulations that had been suggested by the women's counsel. "Such steps might have stopped the improper use of Lopez's computer. However, they would not have helped defendants identify the employee who performed such activity and who posed a risk of liability and harm in the workplace."

THOUGHTS:

The courts are now allowed to consider and rule on the reasonableness as a matter of law of invasion of privacy of employee's work locale for valid business reasons. The norms of the

community, the validity of the causes for the invasion, and the usefulness of less invasive techniques will be considered but unlike holdings of earlier cases, such invasion is now permitted for the right reasons and in the right way. That's the law.

The facts of the above case were compelling, of course, and the actual invasion, while perhaps upsetting to the employees, of minimal effect on their lives. Undoubtedly some employers will take the invasion too far sooner or later and stricter limits will be placed on their surveillance.

Until then, the employee would be well advised to realize that the work place...is a public place. E mails, desktop computers, office provided telephones, etc. are all subject to control and inspection by the employers and just because you close the door to your office does not mean you have created a private realm.

The place for privacy is increasingly becoming within your home. With cameras on most street corners and in most public buildings, with use of credit card and internet being monitored closely by public and private sources, the very concept of privacy is under severe stress in the modern urban world.

Adjust your expectations.

