

# Client Alert

© 2010 Hall Booth Smith &amp; Slover, P.C.

July 2010

## HOW PRIVATE ARE TEXT MESSAGES?

In June, the US Supreme Court ruled that a government employer had the right to review an employee's text messages that were transmitted on an employer-issued pager. The Court said that this could apply to private employers as well. In *City of Ontario v. Quon*, the Supreme Court refused to state that all employees have a right to privacy in their text messages, acknowledging that it was risky to make a such a broad rule. The Court commented, however, that the employee's expectation of privacy is diminished when the employer has an office policy addressing the issue. *Wise Counsel #1*: If you want the right to review your employees' text messages, e-mails, or internet searches, it is wise to have a policy which states that there is no expectation of privacy when using employer-issued cell phones, computers, or PDAs.

The Court in *Quon* based their decision in favor of the employer on whether the search was reasonable. The City was suffering overage charges for their text messages and sought to determine if they needed to increase their plan due to the number of work-related text messages, or whether the overage was due to personal texting. The Court ruled that "[b]ecause the search was motivated by a legitimate work-related purpose, and because it was not excessive in scope, the search was reasonable". Of interest to private employers, the Court went on to state that if the employer has a legitimate reason for the search, and if the search is not excessively intrusive in light of that justification, the search would also be permitted in the *private-employer* context. *Wise Counsel #2*: It is wise to make sure your managers have a legitimate work-related purpose for searching employees' messages and that it is more than mere curiosity.

*HBSS publications are intended to inform clients and other interested parties about legal matters of current interest and is not intended as legal advice.*

## ABOUT HBSS

Hall Booth Smith & Slover is a full-service and diverse law firm with eight regional offices in Georgia, Tennessee and South Carolina. The firm's practice areas are focused and diverse, and include complex civil defense litigation, employment, mass torts, medical malpractice, healthcare, regulatory and governmental matters, and international law.

Whether it's a matter of litigation taking place in the courtroom or negotiations happening in the board room, the attorneys at HBSS will aggressively represent your interests every step of the way.

For more than twenty years, HBSS has been living up to its promise: "Serving to Achieve Excellence." This promise is alive in everything we do from strategically recruiting nationally recognized attorneys and top law students, to being among Atlanta Magazine's "Best Places to Work."



**RICHARD SHEINIS**

P: 404.954.6954  
F: 678.539.1507  
RSHEINIS@HBSS.NET

Richard Sheinis has been litigating in various courts for over twenty-six (26) years. He has been the first chair for approximately 175 jury trials. He represents business organizations in discrimination and other employment matters. Richard is licensed in Georgia, Tennessee and North Carolina.



**HEATHER SAUM**

P: 404.954.6966  
F: 678.539.1613  
HSAUM@HBSS.NET

Heather Saum is a Senior Associate with over 11 years of litigation experience. She represents employers in claims involving Title VII, FLSA, FMLA, ADEA, and ADA. She has an interest in litigation prevention through on-site training and investigation, however when litigation is necessary, her experience handling discrimination and harassment cases enables her to provide a valuable service to our clients from investigation through trial. Heather is licensed in Georgia and Mississippi.



**NICHOLE HAIR**

P: 404.954.6952  
F: 404.954.5020  
NHAIR@HBSS.NET

Nichole Hair brings experience representing public and private employers in harassment and discrimination claims involving Title VII, FLSA, FMLA, ADEA, and ADA. She provides both litigation expertise and experience in litigation prevention through on-site investigation, discrimination, and harassment training for managers and employees. She is licensed in Georgia and is an active member of the Georgia Association of Women Lawyers.