

## Monitoring Employee Emails

From confidential or proprietary information to pornographic or offensive materials, the content of an employee's email can pose significant legal risks for an employer. As a result, many employers have begun monitoring their employees' emails and have developed policies regarding the appropriate use of company computers. A recent decision from the United States Court of Appeals for the Seventh Circuit provides an example of how courts are interpreting laws potentially applicable to employers relying on common technological tools to monitor employee emails.

In *United States v. Szymuszkiewicz*, No. 10-1347 (7th Cir. Sept. 9, 2010), the Seventh Circuit held that an individual violated the federal Wiretap Act by setting up a "rule" to automatically forward his supervisor's emails to his computer. The Court found that the "auto-forwarding" feature constituted an unlawful "interception" of an electronic communication under the Wiretap Act. In construing the meaning of the word "intercept" under the Wiretap Act, the Court rejected a requirement—adopted by several other circuits—that the unlawful electronic interception occur "contemporaneously" with the original transmission, thus excluding liability for the interception of electronically-stored data. Instead, the Seventh Circuit held that there is no timing requirement in the Wiretap Act, and the Act prohibits the interception of electronically-stored information as it is being transmitted.

The Wiretap Act does have two exceptions that may protect employers who intercept communications. First, an employer can obtain consent to the interception. Second, an employer can intercept communications that take place over the employer's equipment provided there is a legitimate business related reason. While these exceptions may protect an employer from liability under the Wiretap Act, they may not protect an employer from claims of invasion of privacy or similar claims related to the employer's actual review of the emails. As a result, employers must still make sure they have in place appropriate computer/email usage policies clearly advising employees of the limits on their expectations of privacy.

To learn more about these issues, as well as other concerns regarding the use of Internet, email, and social networking sites in the workplace, please join us at noon on November 15, 2010, at the Belo Mansion. We will be presenting a paper to the Labor & Employment Section of the Dallas Bar Association entitled "Cyber Issues in Employment Law: How Internet, Email, and Technological Advances are Creating Workplace Headaches." If you are unable to attend the presentation and would like to obtain a copy of the paper, or if you have any questions, please contact:

**Mike Birrer**  
214.855.3113  
mbirrer@ccsb.com

**Angelina LaPenotiere**  
214.855.3095  
alapenotiere@ccsb.com

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