

CALIFORNIA SUPREME COURT ISSUES RULING ON WORKPLACE PRIVACY

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In an opinion that is instructive for both employers and employees alike, the California Supreme Court in *Hernandez v. Hillside*s recently examined the issue of workplace privacy. The Defendants, Hillside Inc. and Hillside Children Center, Inc. (Hillside)s, operated a private non-profit residential facility for neglected and abused children, including victims of sexual abuse. Plaintiffs Abigail Hernandez and Maria-Jose Lopez were employees at Hillside)s who shared an enclosed office and performed clerical work during daytime business hours. A supervisor at Hillside)s learned that late at night, sometime after the Plaintiffs had left the premises, an unknown person was repeatedly using a computer in Plaintiffs' office to access the Internet and view pornographic websites. This use conflicted with company policy and with Hillside)s' goal of providing a safe haven for children.

Concerned that the culprit might be a staff member who worked with the children, Hillside)s set up a hidden camera in Plaintiffs' office. The camera was operable from a remote location and permitted live viewing or video taping of the activities around the targeted workstation. The camera was not actually used during business hours and Plaintiffs' activities in the office were not viewed or recorded by means of the surveillance system. Nevertheless, when Plaintiffs discovered the hidden camera in their office, they filed a lawsuit alleging, among other things, that defendants violated their right to privacy under both common law and the California Constitution. The trial court granted a motion for summary judgment and dismissed the case. The Court of Appeal reversed, finding triable issues on the question of whether Plaintiffs had suffered an intrusion into a protected zone of privacy that was so unjustified and offensive as to constitute a privacy violation.

The Supreme Court ultimately agreed with the trial court and granted the Defendants' motion for summary judgment, holding that the Court of Appeal erred in reinstating the claim. The Supreme Court held that, while a jury could find an intrusion in the right of privacy, there was not a triable issue on whether such intrusion was highly offensive and sufficiently serious to constitute a privacy violation. In reaching the holding, the Court performed a balancing test between the employees' reasonable expectations of privacy

and the legitimacy of the employers' interest invading those privacy rights. While privacy expectations may be significantly diminished in the workplace, providing a private office that can be shut and locked can create a reasonable expectation of privacy. However, the actual surveillance was drastically limited in nature and scope, and Plaintiffs were exempt from its reach. Further, Defendants were also motivated by strong countervailing concerns that supported an intrusion upon reasonable privacy expectations.

The Hillside case underscores the need for employers who wish to engage in workplace surveillance to do so with the utmost caution. Any surveillance of private or semi-private areas should only be undertaken after consulting with legal counsel. Moreover, surveillance should generally only be engaged in after sufficient notice to the affected employees.

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