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## **EMPLOYEE PRIVACY RIGHTS**

The California Constitution expressly provides that all persons have a right to privacy. However, the right to privacy is not absolute and some intrusion into a person's privacy will be permitted if there is a legitimate competing interest and the intrusion is reasonably calculated to further that legitimate interest. In the workplace, an employee may effectively waive the right to privacy under certain circumstances. This Newsletter shall discuss some of the situations in which the right of privacy arises in the workplace.

**Eavesdropping on Employee Conversations.** California law prohibits the eavesdropping on or recording of confidential conversations without the consent of all parties. This includes wiretapping, interception of cell phone conversations, or use of an extension telephone. A confidential conversation is one in which a party to that communication has a reasonable expectation that the conversation is not being heard or recorded. Thus, to avoid a claim for invasion of privacy, the company should have a clear policy that telephone calls may be monitored, and telephone calls between an employee and the public should have a prerecorded message that the telephone call may be monitored for quality assurance.

**Inspection of Computers and Email.** In order to prevent a claim that an employee's computer and email is private and may not be viewed by the company, the company should have a clear computer and email policy which provides that (a) company computers and systems are company property, (b) company computers and systems are to be used only for business purposes, (c) the company has the right to inspect company computers at any time and to monitor computer use and information received, stored or transmitted by computer, (d) the employee understands that the company may monitor computer and email usage to be sure that the company's computers are being used for business purposes, (e) the existence of passwords is not an assurance of confidentiality, and (f) the employee understands that the employee does not have any right to privacy in the information on the company's computers or systems.

**Use of Two Way Mirrors.** California law provides that any person who installs or maintains any two-way mirror permitting observation of any restroom, toilet, bathroom, washroom, shower, locker room, fitting room, motel room, or hotel room, is guilty of a misdemeanor.

**Use of Video Surveillance Cameras.** A company that desires to use video surveillance cameras should provide notice of the use of such equipment to employees so that employees do not have any expectation of privacy in the workplace. The company should restrict access to videotapes, and to websites which store images from Internet cameras.

**Searches of Desks and Lockers.** In order not to violate an employee's right of privacy in the contents of the employee's desk or locker, the company should have a clear policy that the contents of the employee's desk and locker are subject to search at all times without notice or consent. The same policy should apply to an employee's tool box, lunch box, briefcase or purse. Without a clear policy permitting a search or the employee's consent, the company will not be able to conduct a search even if it has probable cause to believe that the employee is stealing company property. The policy should provide that an employee who refuses to cooperate in any inspection is subject to disciplinary action, including termination of employment.

*This complimentary newsletter is intended to provide general information. Because of the complexities and constant changes in the law, it is important to seek professional advice before acting on any of the matters covered herein.*

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**Please contact David R. Deutsch, Esq. for further information concerning matters in this Newsletter.**

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