

SUMMARY OF ERA-NEDA BREAKFAST PROGRAM AT EDS 2010

May 12, 2010

WATCH OUT! AVOIDING THE LEGAL HASSLES OF USING SOCIAL MEDIA

Presentation by Thomas J. Shanahan, ERA Executive Vice President & CEO, and Lorene Murray Shanahan

The main segment of this program involved two experienced attorneys presenting the two sides of the Ontario (CA) vs. Quon case that was argued before the U.S. Supreme Court on April 19, 2010. The primary points of the case are as follows.

- Ontario police Sgt. Jeff Quon, a member of the city's SWAT team, was issued a city-owned pager to enable 24-7 communications because he was "on call" at all times.
- The City of Ontario policy states that employees should expect no privacy when using city-owned "computer equipment, computer peripheral, city networks, the Internet, e-mail, or other city-related computer services."
- Sgt. Quon was told by his lieutenant that he could use the pager for personal communications, including while off duty, and that as long as Sgt. Quon paid for any "overages" generated by his personal text messages, the lieutenant would not "audit" the sergeant's personal texts.
- The Ontario Police Department, in a review of its text messaging costs and needs, authorized "audits" of all texts sent by employees to determine how many messages were job-related vs. personal and whether the personal usage overage costs were being reimbursed by individual employees. In that process, Sgt. Quon's personal text messages were accessed from the service provider and read, and it was discovered that he had sent numerous texts to his wife, mistress and a fellow SWAT team member, all containing references to sexual activity.
- Sgt. Quon was found to have violated city policy in the use of his pager. He and the recipients of his messages then sued the city. They charged violation of their expectation of privacy (based on the verbal assurance of Quon's lieutenant that, as long as Quon paid the overage costs, his texts would not be read).
- In the U.S. District Court, a jury ruled in favor of the city that the police department was only seeking to check out whether the restriction on pager use was working. On appeal, the Ninth Circuit disagreed with the District Court and ruled in favor of Quon. The Ninth Circuit said the city's review of the texting transcripts violated Quon's expectation of privacy since he had been told that his messages would not be audited if he paid any overcharges due.
- The city then appealed the Ninth Circuit decision to the Supreme Court.

An opinion on this case is to come, but it could be months before the Supreme Court rules. The results will be reported by ERA. (In the interim, news reports of the case can be found on-line by searching the case name "Ontario vs. Quon.")

Regardless of the outcome, both Tom and Lorene Shanahan urged attendees at the EDS breakfast (and all companies) to be sure they have policies in place regarding employees' use of company-owned equipment and devices. **The handout provided to attendees is on the next page of this file.** It refers to a sample policy included in the Spring 2010 issue of ERA's magazine, *The Representor*, in an article written by ERA legal counsel Gerald M. Newman. The handout also includes sample wording, provided by the Shanahans, for an addition to all company policies that makes clear that a written policy takes precedence over any verbal or other type of allowance or implied policy revision.

The second part of this program focused specifically on the use of social media, particularly as it relates to businesses or employees using social media for business purposes. It was emphasized that the sample policy language noted above applies to social media.

Tom Shanahan encouraged everyone to engage in "narcisurfing," the practice of conducting regular on-line searches of one's own name (or company name) to determine what is being said on-line. Several other key tips, pertaining to social media privacy settings and communications content, are included in the handout. These all pertain to and stress the importance of maintaining and safeguarding one's on-line reputation.

HANDOUT - ERA-NEDA-EDS BREAKFAST PROGRAM

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RECOMMENDED POLICY LANGUAGE

For a sample usage policy, see Gerry Newman's article, "Creating an appropriate workplace policy for Internet and e-mail usage" in the Spring 2010 issue of ERA's magazine, *The Representor* (on pages 8-9 and 18). This article and the entire Spring issue of *The Representor* are available on-line on ERA's Web site – www.era.org. The sample policy is also available for downloading as a Word document from the ERA Web site **Publications** page. Look under the heading "**Other Guidelines.**"

RECOMMENDED SAMPLE ADDITION TO COMPANY POLICY RE: INTERNET, E-MAIL AND SOCIAL MEDIA:

This policy is intended to and does supersede all other policies whether in writing, oral, express or implied. This policy may not be changed, altered, modified or waived whether in writing, orally, express or implied, except in writing by the Policy Administrator _____.

ONLINE REPUTATION MANAGEMENT

If you are participating in online social networking, proceed with caution. Keep your profiles on every site set to private, and write everything as if it were going to appear on page 1 of the newspaper.

With the increased use of online communities comes an increased need to monitor and manage one's online reputation. Create Google or Yahoo alerts that notify you of any online mention of your name. This practice is referred to by the online culture as "narcisurfing." Looking for yourself on the Internet and knowledge of your online presence are necessary to maintain awareness and control of your online identity.

See Tempusfugit.ca for assistance.

Please consult your local attorney and state laws regarding any change in policies prior to implementation. The information in this presentation and handout is intended to be a sample only and cannot be relied upon as valid in every state and jurisdiction.

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Questions about this program and its content can be directed to Tom Shanahan at ERA. He can be reached by phone at **800-776-7377** or **312-527-3050, ext. 218**, or by e-mail at tshanahan@era.org.