

Employer's Access of Employee's Cell Phone Did Not Violate the Stored Communications Act

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The Fifth Circuit held that an employee's cell phone was not covered under the Stored Communications Act and therefore her employer did not violate the Act when it accessed the cell phone without her permission. The employer, a city police department, terminated the employee after it discovered images and text messages on her cell phone that violated police rules. The court found that the Act, which protects electronic data, only covers information stored by an electronic communication service provider, and does not reach information stored on a cell phone. The Fifth Circuit noted that this interpretation was consistent with other courts, who had previously held that the Act applied to service providers such as phone companies and Internet or email providers, but did not apply to an individual's computer, laptop or mobile device.

TIP: Although information on a cell phone may not be covered under the Stored Communications Act, employers should consult with counsel before attempting to access employees' technological devices and should consider implementing clear guidelines as to acceptable device and social media activity for employees.

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