

## Employer May be Liable for Searching Employee's Email Account Where There Was No Policy of Email Monitoring

MARCH 2, 2012

In a case out of the Northern District of California, two employees of the City and County of San Francisco Department of Emergency Communications ("DEC") brought suit against their employer for violation of the Stored Communications Act ("SCA") and state privacy law. DEC provided a bank of computers for employees to use to check their personal email and surf the internet. DEC did not have a policy concerning email privacy or stating that employee emails and email use may be monitored. Somehow, emails from one employee's personal email account, including emails to the second plaintiff, were printed and brought to DEC's HR department, based on a concern that the emails contained confidential information that the employee improperly passed on to others. According to the employee, one of her coworkers or supervisors searched her email inbox and folders to find the emails. According to the employer, the emails were already open, and were found when a coworker or supervisor went through the minimized windows on the computer. The district court found a factual dispute as to how the emails had been found, and so allowed the SCA claim to go forward. Additionally, because there was a factual dispute as to how much privacy the plaintiff could have reasonably expected to have in her emails, especially because the employer did not have a policy pertaining to email privacy or monitoring, the privacy law claim was also allowed to continue.

**Tip: Employers should communicate with employees that employees do not have an expectation of privacy in emails sent, stored or received through an employer's email server or using an employer's computer equipment. This could be included in an employee privacy policy, a handbook, or other policy document directed and distributed to employees.**

1 Min Read

### Related Topics

[Workplace Privacy](#)

[Online Privacy](#)

### Related Capabilities

[Privacy & Data Security](#)

*This entry has been created for information and planning purposes. It is not intended to be, nor should it be substituted for, legal advice, which turns on specific facts.*