

## **New Jersey Supreme Court to Address the Boundaries of Employer Monitoring of Employee E-mail**

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This term, the New Jersey Supreme Court will wrestle with the issue of whether or not e-mail communications between an employee and her attorney, sent on her company-issued laptop, but via her password-protected Yahoo e-mail account, are protected by the attorney-client privilege.

The case, Stengart v. Loving Care Agency, Inc. will also give New Jersey's highest court the opportunity, should it so desire, to define the parameters and conditions upon which New Jersey employers can monitor and review all employee e-mail and internet usage. It is anticipated that oral argument will be heard late this year, or early 2010.

So, what can be drawn from the decision, in its current form?

- Having an electronic communications policy is critical to an employer's ability to monitor its employees' e-mail and internet usage
- The policy needs to be written in plain English, with technical terms of art, such as "media systems" and "internet files", defined
- Employers should clearly define, in their electronic communication policies, what their legitimate interests are in monitoring their networks, such as preventing waste of company resources, and protecting confidential information
- It is probably not a good idea to affirmatively state in such policies that personal use of electronic systems is permitted
- If feasible, employers may want to consider blocking employee access to their personal e-mail accounts via company computer systems, to ensure that any personal e-mails, including attorney-client privileged e-mails, are sent from the employee's work e-mail account, where employees arguably have less privacy rights
- Employers need to procure signed employee acknowledgments regarding employees' receipt of electronic communication policies
- Employers need to ensure that their employees sign-off on having received revisions to their employee handbooks
- Revised handbooks and/or revisions to handbooks should be dated so it is clear when the revisions were implemented
- Finally, employers should consider providing training to employees regarding their electronic communication policies