

HR Bulletin

August 18, 2014

Employee Privacy Rights

Just how much privacy do they have?

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Did you know that our state's constitution affords all of us, including your employees, numerous privacy rights? This right to privacy comes into play in many employment areas such as monitoring, recordings, personal smart phones, drug and alcohol testing, off-work activity, social media, medical examinations, health information and even how you file employee records.

Take employees' smart phones as an example. A recent Supreme Court ruling, *California v. Riley*, sent an indirect warning to private as well as public employers about searching an employee's personal smart phone even if being used for company business. Exceptions to searching personal smart phones include a "strong legitimate business reason" or a search warrant. This recent case ruling highlighted the court's view of the large amount of information stored on a smart phone (versus a purse, backpack or wallet) that reveals very personal, private information about an individual such as likes and dislikes through installed apps, calls, emails, texts, photos, videos, internet history, music and more.

Drug and alcohol testing is another area where an expectation of privacy exists. The privacy expectation is typically lower for applicants than employees. For example, many employers enforce blanket policies, such as drug testing all employees involved in an accident while at work regardless of circumstances. Court rulings reject this position and require employers to conduct individualized assessments to determine reasonable suspicion before drug or alcohol testing in many cases. If you plan to drug test, first develop a solid policy and consistently implement. Clearly communicate your policy in respective job announcements, the employment application, your employee handbook and other appropriate procedure manuals. Providing thorough communication to employees will lower their expectation of privacy.

How your employees spend their time off-the-clock (e.g. social affiliations, religious activities, family, friendships) is their business. While it's true that how they conduct themselves outside of work could reflect negatively on your business, employees have the right to engage in any lawful off-duty conduct.

Sierra HR Partners is available to answer any questions and assist in developing sound policies and practices that protect your business while respecting privacy rights.

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Did You Know...?

Sierra HR Partners provides legal compliance and best practice audits in the following areas:

- Employee Classifications & Compensation
- Timekeeping
- Personnel Records
- Job Descriptions & Performance Evaluations
- Safety, Tools and Equipment
- Leaves of Absence
- Recruitment, Hiring and Onboarding
- Discipline and Terminations
- Employment Eligibility and Form I-9

Events Calendar

Legal Beagle “Complexities of Overtime Exemptions – August 28th

9 – 10:30 a.m.

Email receptionist@flcz.net to register!

Sierra HR Partners Team

Sierra HR Partner's team of certified professionals are here to support you in the areas of legal compliance, training, recruitment, handbooks, audits, policy development, job descriptions, performance evaluations, compensation, terminations, and related employment areas.

Reminder that as a HR Business Partner you are entitled to:

- ❖ Unlimited phone consultation by certified HR consultants
- ❖ Free monthly seminars for designated representative
- ❖ HR bulletins covering breaking employment news and employment best practices
- ❖ Discounted rates on projects

Contact us at (559) 431-8090 or toll free 1-844-431-HR4U (4748).

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