

Your Monthly Legal Update – October 2009

Article by: Attorney Dawn Marie Harris

D.M. Harris Law, LLC

205 5<sup>th</sup> Ave. So., Suite 415

La Crosse, WI 54601

(608) 782-4133

[dawn@dmharrislaw.com](mailto:dawn@dmharrislaw.com)

## **DOES PRIVACY EXIST FOR CELL PHONE PHOTOS?**

I thought that this was interesting to note in this day of technology. While the case I am about to reference was in Richmond, Virginia and dealt with a criminal matter, we need to be aware of this as it may very well be applicable to the employment realm. In this case, a woman sued the Culpeper, Virginia police officers for their unauthorized viewing and dissemination of nude cell phone pictures from her phone that was actually confiscated in an arrest by a third party that she had loaned the phone to. The US District Judge found that there was no objectively reasonable expectation of privacy in images stored in this case when the woman loaned her phone without any attempt to protect her photos to a third party. While I do not suggest that any employer or manager should take a cell phone belonging to an employee and share sexually compromising pictures with others, the analysis does evaluate whether the individual lent the phone to another individual and whether she or he password protected their photos. You may think this has no relevance to the workplace, but based on recent experience, I know of a few employers who have dealt with sexual harassment claims stemming from employees sharing inappropriate cell phone photos with co-workers. Why individuals want to take these pictures in the first place knowing the risks is beyond me, but this is happening. You have every right to monitor the sharing of photographs that would violate your workplace policies by cell phone or through any other means.

What to do? You have every right to set policies limiting cell phone usage on the work floor. You also have every right to put employees on notice that if they bring inappropriate cell phone pictures into the workplace and share them with co-workers that the employer will find their actions to be inappropriate and that disciplinary action will result. Remember, cell phones have the ability to take photographs that could be compromising if taken by the wrong individual in the wrong circumstance. Technology has far outpaced our ability to stay a step ahead but we should definitely be on our toes about issues that can crop up.

If you are dealing with a sexual harassment complaint stemming from a situation involving cell phone photos, then you have every right to investigate this concern, the same as if the inappropriate conduct had been verbal, etc. You must deal with these issues and remediate them as they happen.