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"Belongs To The Company" Means Exactly That

In *Holmes v. Petrovich Development Company*, plaintiff Gina Holmes sued her former employer for sexual harassment, retaliation, wrongful termination, violation of the right to privacy, and intentional infliction of emotional distress. Using her Company computer, Holmes had sent emails to her attorney in which she discussed her employment situation and how she felt she was being treated on account of her pregnancy. The Company later located those emails. At trial, over Holmes' objections, the defendants were allowed to use those emails as evidence to show Holmes did not suffer severe emotional distress, was only frustrated and annoyed, and filed the action at the urging of her attorney.

The California Court of Appeal ruled that emails the plaintiffs sent to her attorney on the Company's computer system regarding possible legal action against the defendants were not protected by the attorney-client privilege. The Court came to this conclusion because Holmes used the Company's computer system to send the emails even though (1) she had been told of the Company's policy that its computers were to be used only for Company business and that employees were prohibited from using them to send or receive personal email, (2) she had been warned that the Company would monitor its computers for compliance with this Company policy and thus might "inspect all files and messages . . . at any time," and (3) she had been explicitly advised that employees using Company computers to create or maintain personal information or messages "have no right of privacy with respect to that information or message."

According to the Court, the emails Holmes sent to her attorney on the Company computer were akin to consulting her attorney in her employer's conference room, in a loud voice, with the door open, so that any reasonable person would expect that their discussion of her complaints about her employer would be overheard. By using the Company's computer to communicate with her lawyer, knowing the communications violated Company computer policy and could be discovered by her employer due to Company monitoring of email usage, the plaintiff did not communicate "in confidence by means which, so far as the client is aware, discloses the information to no third persons . . ." – which is a key component for any communication to be considered privileged and confidential between any attorney and the client.

Holmes argued that she believed her personal email would be private because she utilized a private password to use the Company computer, and she deleted the emails after they were sent. The Court rejected the argument, stating that her belief was unreasonable because she was warned that the Company would monitor email to ensure employees were complying with office policy not to use Company computers for personal matters, and she was told that she had no expectation of privacy in any messages she sent via the Company computer.

This case illustrates that there are many advantages from having a well-drafted Company computer policy. This case is also a reminder to employees who work at companies with similar computer policies that they should use their home computers for personal matters, especially sensitive communications that the employee intends to remain private and confidential.

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