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California Supreme Court Rules In *Hernandez* That Employees Had No Invasion of Privacy Claim Where Secret Video Surveillance Was Justified

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The California Supreme Court has unanimously held that an employer did not invade the privacy of employees when it secretly set up video surveillance in the employees' offices.

In *Hernandez v. Hillside Inc.*, S147552 (August 3, 2009), two female employees of a residential treatment center for children sued their employer for invasion of privacy, after discovering that the facility had set up a hidden camera in the women's private office to investigate its suspicions that someone on its night staff was using one of the computers to view pornography. The employees, who worked during the day, argued that the hidden camera surveillance was an invasion of privacy, even though the camera never actually taped either woman since it was turned on only when the facility's night staff was working.

In its decision, the Supreme Court found that because the camera was set up in a private office and the employer had not given employees notice of any procedures on monitoring and surveillance, the employees had a reasonable expectation of privacy. Thus, the Court found that an "intrusion" had occurred. However, the Court held that the two employees had no invasion of privacy claim because the "intrusion" at issue was not sufficiently "serious" or "offensive" to constitute a tort. The Court considered factors such as the degree of the intrusion, the workplace setting, and the employer's justification for setting up the hidden camera.

Notably, the Court said that the surveillance, which was intended to catch someone who was downloading pornography late at night, was not "highly offensive" and did not amount to an "egregious violation of prevailing social norms." The Court concluded that the intrusion was justified and

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thus, the employees had no claim for invasion of privacy. The Court also noted that the employer was not required to prove that there was no “less intrusive alternative” to conduct its investigations in order to prevail and have an employee’s invasion of privacy claim dismissed.

While the *Hernandez* decision provides precedent for courts to dismiss certain invasion of privacy claims made by employees, the Court made it clear that Monday’s decision was not intended to encourage employers to conduct secret surveillance of their workers. Employers should continue to be aware that employees have a reasonable expectation of privacy in certain areas of the workplace and a violation of that expectation may give rise to a legal claim. Notice to employees regarding employer procedures on monitoring or surveillance in the workplace continues to be the best way to defeat invasion of privacy claims in most cases, as such notice can often destroy the employee’s reasonable expectation of privacy.

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