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For more information on our services, please contact:

Leslie A. Lajewski, Esq.
(973) 631-6061

llajewski@coughlinduffy.com

or

Steven J. Luckner, Esq.
(973) 631-6065

sluckner@coughlinduffy.com

www.coughlinduffy.com

The Employment Law Lowdown

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E- ALERT

Employees do not have a right to privacy in their workplace computer

In the recent case of *State v. M.A.*, 402 N.J. Super. 353 (App. Div. 2008), an employee was indicted for second and third degree unlawful taking after he was found to have stolen over \$650,000 from his employer. At the trial level, the employee moved to suppress the evidence found on his laptop and desktop arguing that the employer had no authority to consent to a search of both computers because he, the employee, owned the computers. The employee's motion was denied and the employee eventually plead guilty to the criminal charges pending against him.

The employee appealed the trial court's denial of his motion to suppress the computer evidence. The employee argued that he had a reasonable expectation of privacy in the computers because they were kept in his private office and he had created different passwords for his network log-in in order to protect his personal information. In reviewing the matter, the Appellate Court noted several important factors that led to the denial of the employee's appeal. In particular, in assessing whether the employee had a reasonable expectation of privacy to the computers, the court noted that: (1) the computers had been purchased by the employer; (2) the computers were kept on the employer's premises; (3) at the beginning of the employee's employment, the employer had advised him that the computers were Company property; (4) the desktop was connected to the Company network; (5) the laptop contained business software; (6) the employee's supervisor had equal access to the computers; (7) a co-worker had access to the laptop; and (8) the employee's office door was never locked. Based on these facts, the Appellate Court held that the employee did not have an expectation of privacy in his workplace computer, particularly when the computer was used to commit a crime.

Although a criminal matter, this case provides a good checklist of factors that employers should review when seeking to reserve the right to monitor employees' computer use while at work.

For more information about this ruling, contact Leslie A. Lajewski or Steven J. Luckner.

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