

PHL SC: Limitations on Privacy of Employee's Computer Use Valid

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As another calendar year comes to a close, Philippine companies are best advised to review their computer use policies to ensure that they have clear and reasonable guidelines on the recognition of employee privacy in the workplace. While the Bill of Rights of the 1987 Philippine Constitution could only be used against the State, it is still a good corporate practice to make it known to the rank-and-file that the management has the prerogative to inspect the digital workstations of their employees.

In *Pollo vs. Constantino-David, et al.*,¹ the Philippine Supreme Court held that the search made by the Civil Service Commission (CSC) in office-issued computer of a public employee did not violate Section 2, Article III of the 1987 Constitution² since it passed the two-fold test: (a) the employee cannot have any reasonable expectation of privacy under the circumstances;³ and (b) the inception and scope of the intrusion made by the CSC was reasonable.

Citing the American case of *O'Connor vs. Ortega*,⁴ the Court held that public employees' expectations of privacy in their offices, desks and file cabinets may be reduced by virtue of actual office practices and procedures, and/or by legitimate regulation. In addition, the Court likewise referred to its ruling in *Social Justice Society vs. Dangerous Drugs Board, et al.*⁵ which stated that the employees' privacy interest in an office is to a large extent circumscribed by the company's work policies, the collective bargaining agreement, if any, entered into by management and the bargaining unit, and the inherent right of the employer to maintain discipline and efficiency in the workplace. Their privacy expectation in a regulated office environment is, in fine, reduced; and a degree of impingement upon such privacy has been upheld.

In *Pollo*, the employee, who was under investigation for moonlighting as an advocate for and on behalf of public employees facing complaints before the CSC, failed to prove that he had an actual (subjective) expectation of privacy either in his office or in the government-issued computer which contained his personal files. He did not allege that he had a separate enclosed office which he did not share with anyone, or that his office was always locked and not open to other employees or

¹ G.R. No. 181881, 18 October 2011.

² The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

³ To prove the existence of privacy rights, it must be established that: (a) the person has exhibited an actual (subjective) expectation of privacy; and (b) the expectation is one that society is prepared to recognize as reasonable (objective).

⁴ 480 U.S. 709 (1987).

⁵ G.R. No. 157870, 3 November 2008.

visitors. Neither did he allege that he used a password or adopted any means to prevent other people from accessing his computer files.

Guidelines in the use computers by employees

Furthermore, it was proven that the CSC had a policy regulating the use of office computers which stated, among others:

1. The computers are the property of the CSC and may be used only for legitimate purposes.
2. No expectation of privacy. Users except the Members of the CSC, shall not have an expectation of privacy in anything they create, store, send, or receive on the computers.
3. Waiver of privacy rights. Users expressly waive any right to privacy in anything they create, store, send, or receive on the computer through the internet or any other computer network. Users understand that the CSC may use human or automated means to monitor the use of its computers.
4. Non-exclusivity of computer resources. A computer resource is not a personal property or for the exclusive use of a User to whom a memorandum of receipt has been issued.
5. Passwords do not imply privacy. Use of passwords to gain access to the computer system or to encode particular files or messages does not imply that Users have an expectation of privacy in the material they create or receive on the computer system.

With regard to the second test, the Court held that the search was justified at inception and scope since there was reasonable ground for suspecting that it will turn up evidence that the employee was guilty of work-related misconduct.

Application to private companies

As early as 1991, the Court has ruled that the Bill of Rights cannot be invoked by an individual against a search conducted by a private person or entity. In the case of *People of the Philippines vs. Marti*,⁶ where a private forwarder inspected a postal package which resulted in the discovery and seizure of illegal drugs, the Tribunal held that:

“If the search is made upon the request of law enforcers, a warrant must generally be first secured if it is to pass the test of constitutionality. However, if the search is made at the behest or initiative of the proprietor of a private establishment for its own and private purposes, as in the case at bar, and without the intervention of police authorities, the right against unreasonable search and seizure

⁶ G.R. No. 81561, 18 January 1991.

cannot be invoked for only the act of private individual, not the law enforcers, is involved. In sum, the protection against unreasonable searches and seizures cannot be extended to acts committed by private individuals so as to bring it within the ambit of alleged unlawful intrusion by the government.”

While employees of private companies in the Philippines cannot raise the defense of violation of their Constitutional rights against the government and its agents for evidence obtained by employers, they may have a cause of action for damages against their employers for the obstruction, violation, or impairment of these rights under the chapter on Human Relations of the Philippine Civil Code. Moreover, in labor court cases, it is the employer who has the burden of proving the reasonableness of the management prerogative especially when the Bill of Rights are concerned.⁷ At the very least, prior notice in the form of explicit company guidelines should be provided to ensure that the risk to a constitutional right violation in the workplace is minimized.

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⁷ See *Star Paper Corporation vs. Simbol, et al.*, G.R. No. 164774, 12 April 2006; *Duncan Association of Detailmen-PTGWO vs. Glaxo-Wellcome Philippines, Inc.*, G.R. No. 162994, 17 September 2004; *PT&T vs. NLRC*, G.R. No. 118978, 23 May 1997.