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THE RIGHTS OF EMPLOYEES TO A FAIR PREDISCIPLINARY PROCESS: PART XVII – THE LEGALITY OF ELECTRONIC INTERCEPTION.

This is the final in a series of articles concerning the legality of various internal investigation techniques. In previous articles we have considered the legality of various types of “searches.” In this article we consider the legality of the interception of electronic communications.

Washington State law makes it generally illegal to intercept electronic communications without consent. The law does provide a limited exemption for incoming telephone calls to an emergency service center. Previously, some police departments had recorded their incoming general business lines but this practice would appear to be unlawful under the revised exemptions in RCW 9.73.070.

Using the Federal Electronic Communications Privacy Act (FECPA), employers have argued that they have a right to intercept voicemails and e-mails. This is true under the federal law, that such interception may occur, but such retrieval may still violate a state law that does not appear to contain an explicit exemption

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permitting interception of electronic communications. The federal law does not preempt the more stringent state law considerations. There are no published Washington decisions addressing the propriety of employer invasions of e-mail or voicemail. It is surprising, to say the least that no published cases have been issued given the number of employment lawyers who believe that such an interception of email might be unlawful.

This article is the last in the series concerning investigative tactics but in the next Issue we will shift over to another important area of employee discipline rights – the Loudermill right to a disciplinary hearing.

To learn more about Predisciplinary rights and the other rights of public safety employees visit the Cline and Associates website where you can order our book “THE RIGHTS OF WASHINGTON PUBLIC SAFETY EMPLOYEE: REPRESENTATIVE’S MANUAL.” This book is a 468 page compendium of labor law materials written especially for those involved in union-side representation of Washington public safety labor organizations.

Jim Cline

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