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## Colorado's Finest Private Pheasant Hunting Preserve

### RMR Weekly E-News

Hello RMR Faithful!

We continue to get rain at the most appropriate times and it is shaping up to be a year to remember as far as the cover crops go and our monumental 25<sup>th</sup> anniversary. Friday night we were blessed with another inch or water and they are calling for it all week. It continues to be an exciting time at your club!

A couple things that I have to get off of my chest today, since they keep popping up and driving me crazy:

- 1-Passengers putting their feet on the dash board. What is up with that? Keep your feet on the floor for crying out loud. When I see that I want to pull them over and slap them!
- 2-Stereos so loud they hurt my body. Why do they feel that I should go deaf with them? I think it is illegal to have the sound so loud it cracks my windshield, but who enforces the noise law? If we see them, why can't we get their license plate number and have the noise police go take their car from them?
- 3-Why do the commercials blast you out of your chair and you can barely hear the dialog on TV?
- 4-People that gripe about the speeding ticket cameras.....don't speed and you will be fine! Same thing with driving through a red light. Stop and count how many people cruise through red lights on your way home or to work tomorrow. No wonder there are so many wrecks in intersections, people don't pay attention.

OK---there are more, but this will have to do!

#### **MAKE PLANS FOR AUGUST 14<sup>th</sup> –RMR's CLUB PICNIC AND BIRTHDAY BASH**

We will be having our club picnic and all members and their families are welcome to come and enjoy free shooting and BBQ from 12 noon until 4pm. Bring your shotguns and shells and lets have some fun! The pistol and rifle range will be open for shooting as well. We need to have reservations so we know how much food to prepare, so call your reservations into the office at 719-635-3257 and Janna will get you on the list.

#### **RMR MEMBER NEWS**

7 ½ weeks after the terrible auto accident, Danny Berry gets to go home on Friday of this week. His progression has been remarkable and it is a true miracle. The two boys that were in the back seat of the truck when it rolled said that the last time they saw the speedometer it was at 98 miles an hour. None of them should be here today, but for the Grace of God. Thanks for your prayers!

The surgeons have been busy on RMR folk this week:

Dan Bowers is recovering from a knee job, that turned out to be much worse than they thought, and he will be on the therapy list for a while.

Mark Rohn has the pleasure of getting two total knee replacements tomorrow and he is in our thoughts and prayers.

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Our prayers and thoughts are with Lyle and Pam King on the death of their daughter. Keep all of these friends in your prayers.

## **PRIVACY AND TECHNOLOGY—FOOD FOR THOUGHT**

(Courtesy of Todd Anderson, CIA Leavitt Insurance)

*Chances are, text messaging, e-mail, and smartphones are some of the types of modern electronic technology that are now staples in your workplace. And the U.S. Supreme Court recently addressed the topic when it ruled on an employee's right to privacy when using a messaging device issued by his employer. In *City of Ontario v. Quon*, the Court held that a public employer didn't violate an employee's constitutional privacy rights by searching his personal (and often sexually explicit) text messages that were sent and received on his employer-issued pager.*

*Although the case involved a public employer, it could easily affect private employment as well. With that in mind, there are several things employers (both private and public) should take away from the case.*

### ***#1: Employees do the darndest things***

Your employees are going to surprise you. They are going to do things that leave you wondering "What were they *thinking?*" In this case, Jeff Quon was the employee who shocked his employer with his actions.

The case began when the city of Ontario, California, issued Ontario Police Department (OPD) SWAT Team members, including Quon, pagers that could send and receive text messages. When the OPD was charged with overage text message fees, it looked at the transcripts of text messages sent during a two-month period by Quon and another employee who had exceeded the text allowance. Much to the department's surprise, it discovered a plethora of messages on Quon's pager that weren't work-related, including some that were sexually explicit. (Adding to the scandal, the individuals who had exchanged text messages with him during the applicable period included his then-wife, his girlfriend (who was another OPD employee), and another SWAT co-worker.)

You need to make sure you're prepared for such unpleasant surprises and have a system in place to take disciplinary action, if necessary. (In Quon's case, the matter was referred to the OPD's internal affairs division, and he was allegedly disciplined.)

### ***#2: Tread carefully - employees may sue***

You always need to be prepared for the possibility of a lawsuit when adverse action is taken against an employee or an employee's electronic communications are examined. After Quon's texts were reviewed, he sued, alleging that the city violated his privacy rights under the Fourth Amendment to the U.S. Constitution. Although the district court ruled that his rights weren't violated, the Ninth Circuit reversed, holding that he had a reasonable expectation of privacy in his text messages and that the OPD's search "was not reasonable in scope."

The Supreme Court disagreed with the Ninth Circuit, unanimously holding that the search was reasonable and permissible because it was motivated by a legitimate work-related purpose and wasn't excessive in scope. Although the case involved a public employer, the Supreme Court related the situation to private employers as well by noting, "For these same reasons - that the employer had a legitimate reason for the search, and that the search was not excessively intrusive in light of that justification - the Court also concludes that the search would be 'regarded as reasonable and normal in the private-employer context.'"

This case illustrates how both private and public employers may face lawsuits if they go too far when monitoring employees' electronic communications. If a search wasn't conducted for a legitimate work-related reason or was excessively intrusive, you may be in trouble. That means you need to tread carefully when conducting searches, and it's a good idea to talk to your attorney before accessing an employee's electronic communications.

### ***#3: The rules regarding electronic monitoring are up in the air***

In its ruling, the Supreme Court made certain to stress that not a lot should be read into this one decision since it was decided on narrow grounds. The Court decided to take a narrow approach to the case because it was wary of a broad holding's impact on employees' expectations of privacy when using employer-provided communication devices. More specifically, the Court noted in its opinion that "a broad holding concerning employees' privacy expectations vis-à-vis employer-provided technological equipment might have implications for future cases that cannot be predicted."

The Court seemed concerned that technology is evolving in such a way that makes it difficult for courts to keep up. Therefore, although it addressed for the first time the issue of employers' monitoring of employees' electronic communications, it didn't establish a new privacy rule for the digital age or provide much more guidance or understanding on the issue. Instead, its decision was closely tied to the specific facts of this particular case.

### ***#4: You must have electronic communications policies***

One thing you should take from this case is the importance of electronic communications policies. Your policies should be very clear and, among other things, should explicitly set out that:

- employees have no expectation of privacy in electronic communications they send or receive on the organization's resources; and
- the organization has the right to monitor or review any communications sent or received on its resources.

Your policies should also be set up to evolve with the rapid pace of technology.

It's crucial that your employees understand the policy. It should be distributed to all employees, and it's a good idea to have them sign either an electronic or hard copy. Additionally, you should routinely train your employees on the policy.

### ***#5: Make sure supervisors enforce your policies***

This case illustrates the need for you to not only have privacy policies but also make sure supervisors are *uniformly* enforcing them. The OPD had a "Computer Usage, Internet and E-Mail Policy" that specified that employees had no expectation of privacy or confidentiality when using computers, e-mail, or the Internet. It had clarified that the policy also applied to pager text messages. In his suit, however, Quon contended that he had an expectation of privacy with the text messages because a supervisor informally told him they would be private if he paid the overage charges himself. This case also reveals the need for your supervisors to understand that they should never make informal arrangements that contradict your specific written communications policies.

### ***Bottom line***

Although technology can be extremely helpful to you, it's always evolving and can be hard to keep up with. However, it's important for you to stay up to date with technology and adjust your workplace policies accordingly.

## **TWO FOR THE ROAD**

A man and his wife walked into a dentist's office.

The man said to the dentist, "Doc, I'm in one heck of a hurry. I have two buddies sitting out in my car waiting for us to go play golf, so forget about the anesthetic, I don't have time for the gums to get numb. I just want you to pull the tooth, and be done with it! We have a 10:00 AM tee time at the best golf course in town and it's 9:30 already... I don't have time to wait for the anesthetic to work!"

The dentist thought to himself, "My goodness, this is surely a very brave man." So the dentist asks him, "Which tooth is it sir?"

The man turned to his wife and said, "Open your mouth Honey, and show him."

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A beginner rider at the stables was trying to saddle a horse. “Excuse me,” said the old hand, “but you are putting that saddle on backwards.” “How do you know,” snapped the student. “You do not know which way I’m going.”

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