

## MDM&C Update

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### ***WORK AT HOME – PRIVACY ISSUES***

Employers dealing with the coronavirus are having large numbers of employees working from home. While that permits work to be done, it also raises some new issues for employers.

First, Connecticut law requires employers to notify employees if the employer monitors the employee electronically. Therefore, if the employer is tracking the employee's work or the employee's activities on-line, the employer must provide a notice to the employee. Some employers are using tracking software for their employees working remotely. Employees should be notified of any tracking that is being used.

Second, Connecticut has recognized a right of privacy and that right exists in the workplace. The right of privacy is not a single tort, but rather four distinct torts tied together by a name: (1) intrusion into seclusion; (2) appropriation; (3) public disclosure of private facts; and (4) false light. Intrusion into seclusion is when a person intrudes into the private affairs of another. The intrusion can be by mechanical or electronic means. The standard is reasonable. Does a person have a reasonable expectation of privacy in the information?

Therefore, if the employer states what it will access while the employee is working remotely, the employee will not have a reasonable expectation of privacy in that information. But the scope of what the employer can have access to, is not unlimited.

In *Hellanbrand v. National Waste Associates*, an employer brought a wrongful termination action against her employer. The employer, a limited liability corporation, had undergone an ownership change with one of the members forcing out other members. The employer suspected that the employee was in contact with the former members and demanded to see her personal phone to view her call history. She refused and was terminated. The court held that the employer's insistence on seeing her personal phone records was a breach of her right of privacy and that breach could constitute the basis of wrongful termination claim.

Employers permitting employees to work remotely must exercise caution in tracking those employees and take steps to ensure that the employer only accesses information for which the employee does not have a reasonable expectation of privacy.

If you have any questions about this or any other employment issue, please feel free to contact **Bernard E. Jacques** at [bjacques@mdmc-law.com](mailto:bjacques@mdmc-law.com).

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