

**UNREASONABLE EXPECTATIONS OF PRIVACY –
Personal Use of Government Email Systems and the Internet.**
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Many Federal departments and agencies have generally adopted policies that authorize employees some limited personal use of government email systems and/or the Internet. For example, Department of Justice employees generally may use most office equipment, including email and Internet, where the cost to the Government is negligible and the use occurs on an employee’s own time. See 28 C.F.R. § 45.4. Nevertheless, such authorized personal use normally comes with great limitation and risk.

While Department of Justice employees may make personal use of the Internet, they may not send “personal files that could slow the delivery of the Department’s official Internet e-mail,” and must ensure “any personal files [sent] through the Department’s Internet connection are appropriate to the Department of Justice workplace.” <http://www.justice.gov/jmd/ethics/docs/personal.htm>. Further, while Department of Justice employees “may send a short, personal message to another employee . . . personal messages sent to groups of people and messages sent to disseminate information on non-Governmental activities, such as charitable events, religious observances and personal businesses, are prohibited.” <http://www.justice.gov/jmd/ethics/docs/restatement.htm>.

Moreover, even when personal use is authorized, employees typically do not have any right nor expectation of privacy. As expressly set forth in the Department of Homeland Security Management Directive 4600.1:

Employees do not have any right to nor expectation of privacy while using any Government office equipment, including Internet or email services. Furthermore, use of Government office equipment, for whatever purpose, is not secure, private, or anonymous. While using Government office equipment, employee use may be monitored or recorded.

Department of Homeland Security Management Directive 4600.1 (2003) § VI, ¶ D.

In fact, in its June 17, 2010 decision in *City of Ontario, California, et. al. v. Quon et al.*, 560 ___ (2010)(slip opinion) the United States Supreme Court explicitly acknowledged an employer’s right to obtain and review transcripts of an employee’s text messages sent during work hours on an employer owned pager, if conducted for a noninvestigatory, work-related purpose or for the investigation of work-related misconduct.

Even if personal use is authorized, the safest practice is to avoid using any government email system or Internet connection for personal use. Such practice is the best way to ensure that your expectation of privacy remains reasonable. If you have any questions or

concerns regarding your privacy issues, contact Mahoney & Jeffrey, PLLC, at 202-312-7100 or www.MahoneyJeffrey.com.

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