

**THOMPSON
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**PRIVACY & INFORMATION
SECURITY UPDATE****Employer Hit with \$1.8 Million Verdict for Unlawfully Obtaining
Employee's Personal Phone Records: A Cautionary Tale**

A recent jury verdict in Cook County, Illinois sheds further light on the perils of company internal investigations using “pretexting”—obtaining telephone records from telephone service providers under false pretenses—to obtain evidence of employee misconduct.

THE CASE

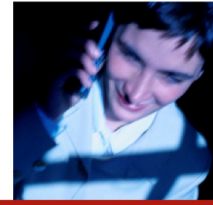
Kathy Lawlor sued her former employer, North American Corp. of Illinois, when she determined that North American had obtained her telephone records without her authorization. North American had hired a private investigator to determine whether Lawlor, a former sales representative for the company, was diverting business from North American. During this investigation, North American's outside counsel provided the investigator with Lawlor's home address, Social Security number, phone numbers and birth date. Armed with this personal data, the investigator obtained Lawlor's records from the phone company by pretending to be Lawlor. North American's vice president of operations then reviewed the lists of numbers for possible connections to establish a claim that Lawlor was stealing business. Lawlor sued North American, and at trial the jury found that the pretexting invaded Lawlor's privacy and awarded her \$1.8 million.

THE STATUTE

Interestingly, Lawlor's claims predated federal and state laws that now explicitly prohibit pretexting. These laws were passed after the 2006 scandal involving Hewlett-Packard's use of pretexting to investigate leaks to journalists. The federal statute, the Telephone Records and Privacy Protection Act of 2006, was signed into law in early 2007 and criminalizes pretexting and certain other actions undertaken to fraudulently acquire telephone records of individuals and businesses. Under this law, it is a federal crime to obtain confidential phone records through false or fraudulent statements or documents, or to access customer accounts via the Internet without the prior authorization of the customer. It is also a crime to sell or attempt to sell or transfer confidential phone records without authorization from the customer, and it is generally unlawful to intentionally purchase or receive confidential phone records without proper authorization. There are certain limited exceptions mainly covering law enforcement and the telephone carriers themselves. Penalties under the federal law include fines and imprisonment for up to 10 years.

CONCLUSION

Because common-law privacy claims can lead to substantial civil liability and federal and state laws impose fines and prison time for pretexting, employers and other parties should carefully



review their arrangements with internal and external investigators to make sure that any investigation conducted will not employ pretexting.

THOMPSON HINE IS AVAILABLE TO ASSIST YOU

Thompson Hine's Privacy and Information Security practice, an interdisciplinary and international group of lawyers with experience in complex national and international issues including privacy, data protection, information security, records retention, employment and labor law, consumer protection, Internet law and intellectual property, can help you develop, implement and benefit from globally compliant data management practices. Our team has assisted numerous companies in developing and implementing global privacy and data protection programs and strengthening their strategic use of competitively critical data.

FOR MORE INFORMATION

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