

2009

## Fourth Amendment: A Definition

Paul Shelton

*George Fox University*, [pshelton@georgefox.edu](mailto:pshelton@georgefox.edu)

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### Recommended Citation

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clause of the Fourteenth Amendment.<sup>6</sup> While due process has its origins in the Fifth Amendment, the Fourteenth Amendment actually requires the states to ensure due process.

## Conclusion

The Fourteenth Amendment contains multiple foci, as it outlines certain freedoms and restrictions. Specifically, the Fourteenth Amendment was established to protect freedom of individuals after the Civil War. It has been applied, over time, to represent and protect individual freedoms relating to due process, equal protection, and privileges and immunities in the workplace.

*See also* Fifth Amendment; Privacy Rights

## NOTES

1. FindLaw, “Fourteenth Amendment,” <http://caselaw.lp.findlaw.com/data/constitution/amendment14/> (accessed January 15, 2008).
2. Constance E. Bagley, *Managers and the Legal Environment*, 4th ed. (Mason, OH: Thomson South-Western, 2006).
3. Henry Cheeseman, *Business Law: Legal Environment, Online Commerce, Business Ethics, and International Issues*, 6th ed.; Bagley, *Managers and the Legal Environment*.
4. *Ibid.*
5. Findlaw, “Fourteenth Amendment.”
6. *Ibid.*

*Paul M. Shelton*

## FOURTH AMENDMENT

The Fourth Amendment guarantees “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”<sup>1</sup>

The Fourth Amendment is part of the Bill of Rights. It was originally established as a result of colonial Americans being searched and property seized by the British. The Fourth Amendment focuses on reasonable expectations of privacy, searches and seizures, and searches incidental to arrest. It should be noted that searches and seizures relate to government officials, usually peace officers, and are not binding upon other organizations or citizens.

### Reasonable Searches and Seizures, and Expectations of Privacy

The Fourth Amendment only applies to criminal law. Civil law is excluded under this amendment (*Murray v. Hoboken Land*, 1855). Reasonable expectation of privacy relates to “what a reasonable person would expect to be kept private.” This previous phrase is the litmus test for establishing privacy. For example, would it be reasonable for a person to expect privacy sitting in an open park? Would this person’s expectation of privacy be

different if he was sitting within his own home? The courts have ruled that a person sitting in an open park would not “reasonably” have an expectation of privacy, while a person sitting in her own home could “reasonably” expect privacy.

Peace officers can and do engage in warrantless searches. The Fourth Amendment requires peace officers to establish probable cause before the warrantless search. The cause to search must be sufficient legally in order for the officer to believe that a search is necessary. The courts have taken a strong stance against officers who conduct warrantless searches without probable cause. The exclusionary rule was the outcome of this judicial emphasis. This rule states that any evidence obtained from an illegal search cannot be used in a court of law. Law enforcement uses the term “fruit of the poisonous tree.” An officer cannot “eat” (use the evidence) of the poisonous tree (an illegal search).

### **Searches Incidental to Arrest**

Two particular areas of search are legal without probable cause or warrant. These two areas are a “Terry Frisk” and a “search incidental to arrest.” The Terry Frisk was established in *Terry v. Ohio*. The court decided that if a police officer witnesses something “unusual” and it would reasonably lead him to believe that criminal activity is occurring and the person might have a dangerous weapon, the police officer may conduct a pat down. Additionally, a search incidental to arrest can occur without probable cause. If a police officer is affecting an arrest, she can search the detained person prior to the arrest without warrant.<sup>2</sup>

Another warrantless search allowed under the Fourth Amendment is the plain view doctrine. The courts have ruled that an officer who is lawfully present may seize and search any object that is in plain view. For example, if an officer responds to a home and is allowed access, then he is allowed to search and seize anything within plain view. The officer may not open drawers to search, but may look in rooms, on top of furniture, etc.

### **Employers and Computers**

The Fourth Amendment impacts human resource management and organizations, specifically with regard to technology. Within the last 15 years, technology, primarily in the form of computers and other information devices (cell phones, Blackberries, iPhones, etc.), has become ever invasive. The laws as written have been stretched to attempt to work with new and ever changing environments. One such area is related to the Internet and privacy expectations. Most cases in the courts today have ruled that an employee does not have a reasonable expectation of privacy regarding any incriminating evidence stored on a work computer. Additionally, in a recent decision, an employer can consent to a search of an employee’s computer without employee consent.<sup>3</sup>

### **Implications for Managers and HRM Practitioners**

How does the Fourth Amendment affect managers and HRM practitioners? The reasonable person can expect privacy, but can privacy be expected in the workplace? The courts have ruled very leniently with employers. The Fourth Amendment only regulates government officials and does not affect private companies. For example, surveillance of computers, Internet viewing, and phone calls by the employer do not constitute a breach of a Fourth Amendment right. It should be noted that the Fourth Amendment is the controlling principle, and individual state laws also regulate privacy issues. An example of a

state regulation is the California Public Utilities Commission's General Order 107-B, which states that if two parties on a telephone call are in California, they must be notified they are being monitored. However, if the call is between states, the federal regulation Electronic Communications Privacy Act, 18 USC 2510, *et. seq.*, does allow for monitoring the phone calls without notification. This can be important to HRM professionals in the work place.

HRM policies should clearly explain an organization's approach to and employee responsibility for behaviors and actions that occur in the workplace and/or on company time. Employees should be aware that usage of company computers, the Internet, any Intranet, email, or other company owned technology is not private, nor should there be an expectation of privacy. HRM practitioners add value to their organizations by guiding the formulation and dissemination of policies that protect the company, employees, customers, and other stakeholders.

## Conclusion

The Fourth Amendment ensures that our privacy and reasonable expectations of being safe and secure in our homes and possessions is protected. People within the United States can have a reasonable expectation of privacy. With some exceptions, warrants are needed to search and seize property. The "Terry Frisk" and search incidental to arrest are two exceptions.

Within private organizations, however, courts have ruled that employees do not have a reasonable expectation of privacy in their work space, on their work computers, or in work-related e-mails or Internet usage.

*See also* E-mail/Internet Policy; Fifth Amendment; Fourteenth Amendment; Privacy Rights

## NOTES

1. FindLaw, "Fourteenth Amendment," <http://caselaw.lp.findlaw.com/data/constitution/amendment04/> (accessed January 15, 2008).

2. Henry Cheeseman, *Business Law: Legal Environment, Online Commerce, Business Ethics, and International Issues*, 6th ed.; Constance E. Bagley, *Managers and the Legal Environment*, 4th ed. (Mason, OH: Thomson South-Western, 2006).

3. Bagley, *Managers and the Legal Environment*.

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## FREEDOM OF INFORMATION ACT

The Freedom of Information Act (FOIA) was enacted in 1966 (Title 5 U.S. Code, section 552) and generally provides that any person has the right to request access to federal agency records or information. All agencies of the executive branch of the U.S. government are required to disclose documents upon receiving a written request for them.

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