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Employee's Personal Email - How Far Can You Go?



More and more employees have access to e-mail and the Internet at work. As a result, employees are increasingly sending (and receiving) personal e-mail, and surfing the Internet for information that is not related to their jobs. For example, according to one study, 1 in 5 men and 1 in 8 women admitted using their work computers to access sexually explicit material online.

This kind of use of e-mail and the Internet is problematic for several reasons: it reduces employee productivity; it can delay internet connections for others with legitimate business use; it can result in infected files being downloaded, which can breach the employer's computer network; it can compromise confidential information if an employee is engaged in outside interests that conflict with their employment; it can tarnish the employer's reputation and good will; and it can result in legal liability (i.e. sexual or racial harassment).

Because of these problems, employers are increasingly considering computer monitoring.

There have been very few (if any) Canadian court cases decided on the issue of whether the monitoring of an employee's personal e-mail is legally permissible.

Canada's Criminal Code has a provision which is designed to protect private communications. The question to be decided is whether the communication is private. A communication is considered private if the parties to the communication have a reasonable expectation of privacy.

In the absence of an employer policy or any discussion between the employer and employee on this issue, reasonable people can disagree on whether private e-mail sent from the workplace has a reasonable expectation of privacy.

To avoid any misunderstanding on this issue, an employer can implement an E-Mail and Internet Policy. At a minimum, this policy should contain the following elements: the purposes for which the company's e-mail and internet may be used, a statement that e-mail and internet files will be monitored, and a clear statement that a breach of the policy will result in discipline up to and including termination. The employer should obtain a signed acknowledgement from each employee which states that the employee has read, understands and agrees to the policy.

Alternatively, an employer can include a term in an offer letter to every new hire, which provides that the employee consents to the monitoring of his/her e-mail and Internet files as a condition of employment.

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