

I READ YOUR E-MAIL



By

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A good friend worked in IT departments for the last 15 years, including international corporations and smaller companies. Every once in awhile he mentions the same story - someone from the company's executive team or HR will walk into his office and tell him that they have a "special project" that needs to be kept quiet. He says that after years of dealing with it, he simply responds with "Whose e-mails do you want me to download?"

An employer's ability to review e-mail traffic during an investigation for discrimination or harassment is crucial. However, the employer should make sure their employee handbook or other company policies clearly outline the scope of employee privacy rights (or lack thereof) in any information collected by the company's computers before the employer jumps head long into secret review of employee e-mails.

Having a technology use policy neutralizes an employee's expectation that anything they do on the company's computers or other technology will be private. The policy should be explicit that all information that might be collected by the computer is fair game. This might include the amount of time the employee spends on the internet, websites visited by the em-

ployee, instant messages sent and received by the employee, blog posts by the employee and the ever fruitful e-mail account. The policy should also indicate that if the employee logs on to a personal e-mail account, that information might also be accessible by the company and viewed by the company.

The bottom line? Your technology policy should make it absolutely clear that your employees have no right to privacy in any information that makes it way on to or through their company computer.

Some employers have taken a hard line approach to personal computer use and say simply that employees may not use the company's technology (including computers, smart phones, cell phones, etc.) for any personal use. We tend to shy away from implementing this type of black and white policy.

The reality is that for office personnel who sit in front of a computer all day, they are going to do a little web surfing. If an employer creates a no personal use policy but does not constantly monitor its employees' use and, more importantly, consistently discipline for violations of the policy, the policy can become a liability and not an asset in litigation.

Without consistent application of

the "absolutely no personal use" policy, a terminated employee is likely to point to other co-workers who were also using company computers for personal use and ask why he was fired when his co-workers were not. More likely than not, the answer is that the terminated employee engaged in wholly inappropriate use of the computer when his coworkers did not and the terminated employee took very liberal use of the computer for personal use when his co-workers did not. But, that would naturally shift the burden of the discussion back on the employer to show why what the terminated employee did was worse than everyone else.

Although employees should be made aware that their e-mail and other technology use can come under scrutiny, employers should also be mindful that their e-mails also come front and center in employment litigation. Attorneys representing employees regularly request employer hard drives in connection with litigation. As one of my partners is fond of saying, "Today's email is often tomorrow's exhibit."

The smoking gun e-mail often comes not from human resources, but from the supervisor who has had an escalating conflict with a particular employee. After months,

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the supervisor finally cracks and sends the nasty email. Most of the time, the e-mail does not go to human resources. It usually goes to one of the supervisors' buddies in the office. No one in HR even knows the e-mail exists until your lawyers ask you produce all e-mails for certain users in a particular time frame. And then it shows up. These e-mails almost always contain swear words and usually a racial or sexist remark. And as you can imagine, these types of e-mails dramatically impact an employer's position in a lawsuit.

So, with that in mind, continue to communicate with everyone in your office that e-mails will always, always, come back. Even if you double delete.

My friend has since started a computer forensic business. His bumper sticker? I READ YOUR E-MAIL. Brilliant.


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nia indicated that state regulations cost business over \$500 billion annually. Easing the cost of doing business could free up much needed capital and operating expenses that could be used to hire the next employee or expand the workforce.

Other areas of opportunity include easing the tax burdens on business. States across the country are seeing their unemployment insurance trust funds diminish at alarming rates. In order to replenish those funds and stave off defaults, many states are considering raising unemployment insurance taxes. Increasing the tax rates would have the negative effect of increasing the operating costs of business and could further forestall job creation and hiring. Other alternatives worth examination are initiatives that prevent fraud and loss such as better tracking and strict enforcement on eligibility or benefits levels.

Yet another area that would positively impact business would be to stem the rising costs and frequency of litigation and class-action suits. Many meal and rest period violations are purely administrative errors that quite frankly do no rise to the level of employee abuse or neglect. The administrative burden and expense of enforcing whether a meal period lasted its full 30 minutes is a real expense. Preventing employees from willingly sacrificing their lunch period so they can tend to personal matters is just plain silly, especially when the employer and employee agree.

Are these the right approaches to job creation? Maybe yes, maybe no-at the very least they should be considered. The end game is job creation and accelerating our economic recovery. That job must start now. 

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