Are your communications tools being used properly?

Update your policies and make sure employees follow them

B2BExpert

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We are all somewhat familiar with the improper use of electronic communication tools in the workplace. I started practicing law in 1992, during the early days of the Internet and e-mail. In my first job out of law school, I investigated a number of sexual harassment claims and was amazed at the amount of damaging information that was available as a result of the newly developing electronic communications tools in the workplace. In particular, I remember in one case reviewing a six-inch high stack of e-mails between the accused and his accuser, and discovering an e-mail entitled "confession." This e-mail provided all of the elements necessary to establish that sexual harassment had occurred. As the years passed, I assumed that people would have a greater understanding of the potential dangers involved with electronic communications, but sadly that does not seem to be the case.

In my current practice, I frequently run across instances of the improper use of the Internet and e-mails. While usually not as direct or damaging as a full-blown confession, people still do not seem to recognize the potential problems that can be caused by careless e-mail and Internet usage. It also is possible that people have become so accustomed to using the technology that they forget to take the necessary precautions.

As employers, it is important to remind employees of the dangers of improper usage of electronic media. Indeed, even though this technology has been with us for about 20 years, courts still find themselves confronted by new legal issues. As an example, the United States Supreme Court recently has agreed to hear a case involving claims of privacy for sexually explicit text messages sent on a pager network provided by the employer. Part of the factual dispute in this case stems from the fact that the employer's written policy had not been updated to directly address texting or the employer's recently implemented pager system.

In some instances, employers can be subjected to considerable exposure for the misuse of the computer system by their employees. As a best practice, employers should periodically take some time to develop or revisit their Internet use and e-mail policies. A periodic review is helpful to keep up with the rapidly expanding technology, such as the proliferation of social networking sites. An effective policy should be thorough yet concise, and should be regularly distributed to all employees. It also makes sense to have employees periodically sign an acknowledgement that they have read and understood the policy.

The following items should be in any private employer's policy. First, employees should be informed that the company's computer system, including computers, files, software and Internet access, belongs to the company. For this reason, the employer has the right to monitor all electronic communications on the company's system. In addition, the policy should make clear that the employer retains the right to track all usage on the system, includ-

ing reading e-mail correspondence and tracking Internet activity. An effective policy also will remind employees that their use of the company's computers is not confidential and carries with it no legitimate expectation of privacy.

The policy also should clearly prohibit any use of the system that is demeaning or offensive. This includes, among other things, accessing or sending sexually explicit materials or materials which could be construed as discriminatory toward any category of people protected by law or by the company's policies against discrimination and harassment. As part of this section of the policy, employees must be told to avoid Web sites that contain pornographic or other offensive material. As a final element, the policy should warn employees that violations will be taken seriously, and may result in disciplinary action, up to and including termination of employment.

There are other topics that can be included in an effective acceptable use policy, and many sample Internet and e-mail usage policies are available. Please take some time to review this issue with your human resources staff or your employment counsel to make sure that your policy adequately protects your company. Taking this time now will serve you well in the likely inevitable event of future problems of computer misuse at your company.

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