



California Employment Law Alert

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July 2009

Employers In California Should Have A Company Policy Monitoring Employee E-mails and Internet Use

The use of e-mail and Internet is now widespread among employees in the workplace. It has been reported that more than three-quarters of major companies in the United States monitor, record, or review employee communications, including, e-mails, Internet, computer data or telephone calls. It is common for employers to give employees access to company e-mail and Internet systems. However, doing so raises concerns about work productivity, employee misconduct, disclosure of confidential business information and potential employer liability for an employee's unlawful conduct.

In California, it is critically important to have a computer and Internet policy if an employer intends to monitor or access employee e-mails and Internet use. Privacy issues arise when an employer monitors or accesses employee e-mails or Internet use. California courts generally permit employers to monitor e-mails and Internet systems where the employee is made aware of the employer's right to monitor and access content on computers at any time. Employees in California may have a reasonable expectation of privacy in the workplace, but the employer should have the right to control use and content on company computers. California courts therefore recognize that an employee's "expectation of privacy" is completely diminished when he or she is told to use a computer only for business and that it will be monitored by the company.

Employers justify the monitoring of employee computer use as necessary to protect confidential business information, monitor inappropriate use, improve productivity, and prevent and remedy workplace harassment. The law in this area is still developing with the growth of technology in the workplace. California courts have not yet weighed in on the impact of certain federal and state laws that prohibit monitoring of e-mail and Internet communications. For example, employers may have less rights to monitor employee e-mails or text messages where the system is administered and maintained by an outside Internet Service Provider (ISP).

To ensure compliance with California law, employers should:

- implement a computer/internet policy,
- monitor for legitimate business reasons,
- inform employees of the company's computer use and monitoring policy through training, employment manuals, and periodic reminders, and
- enforce policies and document violations.

Computer and Internet policies should (at a minimum) contain the following provisions:

- Computers are to be used solely for company business,
- Employees have no privacy rights when using company computers,
- The company has the right to monitor and access employee Internet and e-mail systems and usage, including stored communications,

- Transmission of, or access, to obscene, harassing or discriminatory material or communications is completely prohibited,
- The company will keep records of Internet and e-mail passwords and advises employees that the use of passwords does not ensure confidentiality or privacy,
- Consequences and/or discipline for policy violations, and
- Require employees to sign the policy acknowledging the employer's restrictions and waiving any privacy rights.

A recent appellate case illustrates the importance of computer monitoring policies. An employer terminated an employee for violating the company's computer policies by accessing pornographic websites during work. The employer provided two computers for an employee's use, one for the office and the other to work at home. The employee claimed the websites just "popped up" unintentionally on his computer and sued for wrongful termination. In defending itself, the employer demanded production of the home computer to show repeated access of pornographic websites. The court permitted the employer to inspect and access the company's computers because the employee had signed his employer's computer monitoring policy. The court found there was no reasonable expectation of privacy even if the employee used his company supplied computer for personal matters.

Businesses with questions about monitoring employees' communications or activities on the job should consult with an attorney. Mr. Shalauta specializes in employment litigation and counseling for businesses. Mr. Shalauta can be reached at (510) 835-6716 and ashalauta@burnhambrown.com.