



By Christina Harris Schwinn

CROSSING THE LINE – JUST SAY NO

Additionally, many companies use a server which is designed to save automatic back-ups of any e-mail sent and received through its computer server.

Why enforce such policies in the workplace? Because the improper use of e-mail by employees, managers and supervisors may cause not merely employee morale problems, but could lead to employer liability and public embarrassment. Employers should be concerned about how employees (including supervisors and managers) are utilizing e-mail and should develop policies regarding appropriate e-mail and Internet usage. The policy should provide that the employer's e-mail system and computer systems are for business use and not personal use and that any and all e-mail sent to or from an employee's computer is the property of and belongs to the employer and is subject to inspection and review. If employees are given personal passwords, it becomes even more important to have a written policy which clearly states that e-mails sent and received through its computer system belong to the employer and that the employer retains the right to monitor use of its computer systems. Further, the policy should provide for corrective or disciplinary action when it is determined that the company policy has been violated.

E-mail is discoverable and plaintiffs' attorneys routinely will request that copies of e-mails sent and received by the employee who is suing (plaintiff) be produced. In a harassment case, the e-mail copies produced

often-times prove to be very damaging to an employer's defense. Whether copies of e-mails will prove to be helpful or harmful in the defense of an employment matter may very well depend upon what type of policies and procedures regarding e-mail were in effect and whether they were enforced. Developing a written policy is only the initial step that an employer should take. Once written, the policy needs to be implemented and employees should be given training on the policy periodically. Employees come and go which means that new employees probably missed sitting in on a training session given last year or never received a copy of the policy.

Employers are well advised to remind their employees to just say no to friends, family and coworkers who send them email while at work that violates established policy.

A note to the reader: This article is intended to provide general information and is not intended to be a substitute for competent legal advice.

Questions regarding the content of this column or past columns may be e-mailed to Christina Harris Schwinn at christinaschwinn@paveselaw.com. To view past columns written by Ms. Schwinn please visit the firm's website at www.paveselaw.com. Ms. Schwinn is an experienced employment law attorney and a partner with the Pavese Law Firm, 1833 Hendry Street, Fort Myers, FL 33901; Telephone: (239) 336-6228; Telecopier: (239) 332-2243.

In April of this year, another news story aired for several days relating to sexually explicit emails being sent and received by employees while at and during working hours. For those of us who live and work in Southwest Florida, this recent story hits close to home.

Today, most employers have established written policies relating to computer usage, Internet usage and email protocols. Do these types of policies work and produce the desired effect? Maybe. The answer depends on whether the policies are actually enforced, observed and respected by employees, managers and supervisors.

E-mail usage in the workplace today is ubiquitous. Being able to send and receive e-mails in a matter of seconds can greatly increase efficiency and productivity when used appropriately. In most cases, a permanent record of the communication is created even though many users still believe that delete means delete – which is not always the case. Generally, a properly trained IT professional will be able to retrieve messages from a computer even though the user has deleted the message from her mailbox.

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