

Email Use Policy and Enforcement: Who's Emailing Whom and What Are They Saying?

The Trouble with Email. Email feels confidential, and it is quick and easy. Employees forget that the computer they use every day belongs to you, the employer, and not them, the user. Email is also easy to forward, far from confidential, and easily recovered by a computer forensic expert when things go sour. Why do you care? Because email can become Exhibit A against an employee or you, the company. Email can:

- Show knowledge that a certain thing happened at a certain time. Email date stamps provide a compelling timeline at trial.
- Prove existence of a hostile work environment.
- Undermine an employee's claim of emotional distress as a result of a hostile work environment with proof that they also sent inappropriate emails.
- Demonstrate an employer's knowledge of an employee's sexual orientation, national origin, marital status, possible pregnancy, or other protected characteristic.
- Create an electronic trail proving trade secret theft.

Put a Company Email Policy in Place. What do you do to protect yourself? Your company should have an email policy. Consider addressing the following topics:

- Company email is to be used for company business only.
- Employees do not have a reasonable expectation of privacy in emails sent from or stored on a company computer. The company owns any communication sent by email that is stored on a company computer, and management has the right to access an employee's email on the employee's computer at any time.
- Company confidential information may not be disclosed by email to those outside the company without authorization.
- Sending sexual or other inappropriate jokes by email, or messages that discriminate against employees on account of protected class such as race, national origin, age, gender, or religion is prohibited, and may be considered a violation of the company's sexual harassment or equal employment opportunity ("EEO") policy.

If you already have an email policy limiting personal use and prohibiting inappropriate content, consider whether those policies are enforced. Sure, you have a policy that prohibits employees from forwarding inappropriate sexual jokes to coworkers, but does anyone do anything about it when it happens? Consider whether random checks or monitoring software should be used. Review your email policy, and see if it could be read, in any way, to grant employees a reasonable expectation of privacy in their emails. If so, change it immediately. If not, consider whether now is the time to remind your employees of the public nature of their emails.

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