



## E-MAIL USE WITHIN THE WORKPLACE

### 1. Introduction

The internet and the use of e-mail have transformed the ways in which businesses and organizations operate. While electronic communication has brought many benefits, it has, however, also brought commercial and legal risks for employers. Many employment cases have demonstrated that it is common for employers to be held vicariously liable for their employee's actions in the course of their employment.

### 2. Practical risks

During the course of their employment and day to day duties, employees may send emails, which may contain indecent images or confidential information to an unintended recipient and their employer may be held liable for the significant damages these may cause. Some examples of inappropriate use of e-mails are as follows:-

- 2.1 Forwarding a trail of emails which contain confidential or sensitive information to a recipient rather than forwarding just one or more intended emails;
- 2.2 Sending confidential information to the wrong recipient by relying on the auto complete function, which suggests to the sender addresses of recipients previously used;
- 2.3 Sending indecent images to a recipient;
- 2.4 Forwarding hoaxed emails;
- 2.5 Forwarding emails which contain viruses.

### 3. Legal risks

- 3.1 Discrimination claims: these are high risk claims since they do not carry a cap for the damages/compensation an employee can be awarded by the Employment Tribunal. An Employer is under a duty to provide employees with a safe working environment, free of discrimination or sexual harassment. Employees have made successful claims by alleging that they have been subjected to sexist behaviour, sent indecent images or emails of a sexual nature at work;
- 3.2 Breach of Confidentiality/Data Protection: it is often the case that employees send sensitive or highly confidential information to the wrong recipient. The information may contain personal data in breach of the Data Protection Act.
- 3.3 Entering into Contracts: employees may sometimes respond to emails or accept terms and conditions to have access to information or sites. These can be contractually binding if they contain elements creating contractual relationships. These can often be detrimental terms to the employer and not easy to set aside.

#### **4. Employer's Practice Guide**

- 4.1 The Employment Practices Code published by the Information Commissioner is a guide, which assists employers by suggesting ways of monitoring employees' use of email. Here are some of those suggestions:
- a) Putting in place an Acceptable Use policy ("AUP"). This policy should clearly set out the restrictions in relation to the use of emails at work and the exclusion of privacy of emails in relation to work correspondence. This AUP would provide the employer the freedom to access employees' emails for monitoring purposes. The AUP would also include points to bear in mind when using email correspondence in relation to the risks involved. Employers are encouraged to include the consequences in cases of an employee's breach of the AUP ie: employer taking disciplinary action against the employee;
  - b) Guidance about saving emails in an organised manner, or putting in place a separate retention policy would assist in instances when problems arise and emails are relied on as evidence, employees often delete emails and important information is destroyed.
  - c) Installing IT programs: some businesses may benefit from installing filters which block data such as images, and texts of an obscene or offensive nature. Emails from unrecognised senders or information of sensitive nature can be protected from being sent out from an organization/business;
- 4.2 Employers can have recourse to provisions in the Human Rights Act or legislation such as the Data Protection Act and the Investigatory Powers Act. Employers can check the extent of their powers to monitor and intercept employee's emails and the requirements which must be met in order to lawfully do so.

#### **How to avoid the e-mail usage headache?**

Any employer who makes electronic communication available to employees, should have an e-mail policy which explains the Company's rules for e-mail use

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