

Do Employees have any Privacy Rights Regarding E-Mail at Work?

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Computers, e-mail, voice mail, and the Internet all have brought a new age of ease and efficiency to workplace tasks. As workplace and technology continues to develop, employers are more prone to police an employee's use of such technology to prevent abuse.

Many employers have established usage policies wherein they periodically monitor their employees e-mail. Employers monitoring of e-mail has given rise to lawsuits for invasion of privacy, however, courts routinely dismiss such claims when employers inform employees in advance that they have no expectation of privacy when using the company's e-mail system.

Yet, in spite of many legitimate business reasons for monitoring, employers must keep in mind that employees are generally legally entitled to a certain amount of privacy, in the workplace. Currently, the Electronic Communications Privacy Act of 1986 (ECPA) is the only federal statute that has a potential impact on electronic monitoring in the workplace. The Act prohibits the intentional and unauthorized interception and disclosure of oral and wire communications by surreptitious recording or wiretapping.

The Act specifically covers "electronic communication." Indeed, the most common example of this type of communication in today's workplace is electronic mail. A company's purely internal e-mail system is probably not covered under the ECPA. An internal e-mail system is one in which communications by e-mail may be done only with co-workers, as opposed to an e-mail system that allows communications with persons outside the company.

Courts have generally permitted the monitoring of electronic communications so long as it is done in the ordinary course of business. However, the employer must identify a legitimate business reason for any employee monitoring. Moreover, monitoring the content of personal messages is not generally permitted. If the call is personal, the employer generally will have no

legitimate business reason for monitoring the call beyond the extent necessary to guard against unauthorized use or to determine whether the particular call is personal. Once a telephone call is determined to be personal, the monitoring should cease.

The ECPA provides both criminal and civil penalties for violations. If a person files a civil lawsuit and proves a violation, he or she can recover actual damages suffered or statutory damages, which are \$100 per day for each day of violation or \$10,000, whichever is greater.

To obtain additional information about your legal rights and obligations regarding electronic communications in the workplace and other privacy matters, call us.