

EPLI News Update

Privacy in the 21st Century Workplace

Most of us would agree that technology is essential in today's workplace. All of us would agree that technology is, at least to some extent, an issue in every workplace.

And there are many benefits to technology, allowing organizations to enhance the efficiency and effectiveness of their operations. Increasingly, employers are relying on technological means to keep an eye on property and even people.

There is a tension between the obvious benefits of increased surveillance — such as the prevention and detection of violence and other criminal conduct, as well as enhanced productivity — and the equally obvious threats to an employee's right to (and desire for) privacy. The good news is that this tension can be managed.

Certainly, employers have rights to monitor the use of their equipment, systems, and "time" (i.e., working hours, for which they pay employees). However, there is a growing concern — in the workroom and the courtroom — that employers may sometimes go too far or, at the very least, that employees must be given fair warning of the employer's rights.

As a result, managers must understand the practical implications of technology in the workplace, including the important issue of privacy. By now, most organizations have developed policies and procedures regarding the use and abuse of technology, and it is essential that you (1) become very familiar with your organization's policies and procedures, and (2) make sure that your staff is also familiar with them.

Although technological issues are sometimes complicated, there are some very basic principles you can follow:

- Train your employees to follow the organization's policies and procedures regarding technology. This includes both business and personal uses of e-mail, faxes, and the telephone.
- Make sure that your employees understand the significance of their external and internal communications. The source of virtually any communication leaving your organization can be identified by the recipient — or by anyone who happens to see it down the road. Any communication by a member of your organization may be viewed as an official statement of your organization's position.
- In particular, beware the "smoking gun" — an e-mail message that begins as an attempt to be funny or clever and ends up as the basis for a lawsuit. E-mail typically seems so informal (and confidential), but an e-mail message tends to survive far longer than a piece of paper. Even pressing the "delete" key usually does not eliminate all copies of an e-mail message.
- Make sure to follow your "record retention" (and destruction) policies. An electronic document is still a document.
- Make certain that all monitoring and other gathering of information by you and the organization are done lawfully and for an appropriate purpose, such as safety, quality, efficiency, or compliance. Although you obviously need to know everything that you need to know, you do not want to collect any information that you do not need. Such violations of privacy rights can lead to significant liability.

Bottom Line:

The workplace of the future has become the workplace of today. Your challenge is to protect organizational interests regarding the use and abuse of technology. Know and follow your organization's policies and procedures, and be sure that your employees know and follow them, as well.