

Can employers read your email?



BUSINESS NEWS | 16 Feb | EMILY GADBERRY

The relationship between employers and employees is multifaceted and constantly changing. Nowadays, both sides of the relationship are having to take on new responsibilities and issues. With this evolving workplace landscape comes a big potential pitfall to avoid: namely, the issue of employee privacy. For example, can employers read your email?

American privacy laws are unique; unlike other countries, businesses here have the legal right to monitor most employee communications without serious restrictions.

However, this does not give employers free reign. If employers aren't careful, what may be a well-intentioned act of monitoring can turn into a serious infringement of privacy, with legal repercussions.



Leon Silver, co-managing partner of the Phoenix office of Gordon & Rees.

“Once you start gathering data and monitoring workplace communications [through email, telephone, or other means], then you take on a whole bunch of other obligations and responsibilities and exposure,” says Leon Silver, co-managing partner at the Phoenix offices of Gordon & Rees.

There must be a genuine business reason for monitoring an employees' communications, Silver says.

Make sure to confirm with yourself that monitoring your employees will be worth the effort and will help your business and its goals before engaging in employee monitoring.

Whatever route you decide to take with regards to monitoring employees, let employees know that you'll be doing so. This doesn't require a weeklong seminar or elaborate presentation; in fact, it could be as simple as including it in the employee handbook.

Include this information in the employee handbooks that they have to sign after reading, Silver says. This way, employees will be on notice that their communications are being monitored, he adds.

There is a fine line between personal communications and workplace communications. When employees are working on a workplace computer, on workplace email during work hours, then they are obligated to be working, Silver says.

If an employee is using the company computer and time shopping online, then they could be subject to disciplinary action, he says. This is different from an employee who is receiving messages on their personal device. In this case, they do have a privacy right as to what's happening on their personal device, he adds.

However, that doesn't mean that employees have free rein of their personal devices at work. There can be legitimate business reasons to prohibit use of personal devices, including the protection of trade secrets. Just qualify and quantify these reasons, to yourselves and your employees, to prevent potential backlash.

Privacy on social media

Employee usage of social media outside of work on a personal device is generally a place of complete privacy.

"If someone is using social media on their home computer, and an employer starts fishing around just to see what they're doing there, the employer may have a very hard time taking action against the person for what they see. Employers have to understand the risks and potential liabilities of just going and looking for things," Silver says.

However, this doesn't mean that social media is entirely off the table. Silver also states that if an employee states something "virulently bad, racist [on social media]... and it gets back to the employer, that's different".

So, employees should remember to behave with decorum, and if needed, avoid friending the boss on Facebook. Becoming friends with the boss on Facebook gives them automatic consent to see and act on what you post, Silver says.

Shaping the policy

While it can be tempting to think of workplace monitoring as just a productivity gauge, there are many more benefits to it than that. In fact, it can help both sides of the working relationship.

"If you work in the technology industry, for example, that relies on a lot of trade secrets and patent information, you may have an employee who is innocently revealing information," Silver says.

This may not be happening intentionally, or with malice, but bad email practices such as using autofill on an address line, can lead to issues, Silver says.

Monitoring employees may be vital for industries that rely on the secrecy of business information, Silver explains. Data breaches tend to happen in these careless situations, he notes.

When you take the time to understand the rationale behind any monitoring practices in your workplace, you'll likely be surprised to find that your goals and your employee's goals are one and the same. This, more than anything else, can prevent employer-employee conflict and help each party's goals become fully realized.

With workplace monitoring, there will never be a "one-size-fits-all" approach. One employer might have a vital need to monitor various aspects of employee communications; another employer might seek other options, or act on a case-by-case basis. As long as both employers and employees are clear with each other, respecting both individual privacy and the needs of the entire company, many problems will be avoided.

"A better informed staff is a happier staff," Silver says.