THE INTERNET AT WORK:
AN EMPLOYMENT LAW DANGER ZONE

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Internet and e-mail access at work have unquestionably created new and difficult challenges for managers and employers. Consider the following workplace examples:

- A company provides Internet access at home to certain employees. After a few months the company notices a sharp increase in the amount of time a particular employee is spending on the Internet. They look into it and discover that the majority of the websites visited were pornographic. The company confronted the employee. She went home and told her family about it, only to discover that her 14 year old had been surfing X-rated websites instead of doing homework. The embarrassed employee apologized profusely and repaid the company for the access time.

- An administrative assistant chose a new screen saver. Her choice – a half-clad firefighter.

- An IT administrator was puzzled by slowdowns and problems with capacity on the company system. He thought maybe employees were spending too long on the Internet but he was wrong. The problem was e-mail messages. Employees were sending jokes, pictures and videos by e-mail, all of which were clogging the system. In fact, somewhere between 30-40% of the e-mail messages were personal.

- An employee set up his own (non-competing) business. He decided to use the company's internal and external e-mail system to promote his business.

- Employees are spending more and more time on social networking sites like Facebook and Myspace. They claim it helps them do their jobs more effectively.

These scenarios typify some of the problems that are cropping up as a result of Internet and e-mail access at work. This article reviews these problems and some possible solutions.

Sexual Harassment

Employers have an obligation to provide and maintain a workplace free of harassment. This means preventing harassment from occurring in addition to responding immediately to any complaints received.

A poisoned work environment can be considered sexual harassment. This is an environment in which a person feels harassed or discriminated against by virtue of general workplace behaviour or the overall environment.

If your employees download "cyber porn" , e-mail sexually explicit jokes or use inappropriate screen savers, the work environment can become poisoned. Offended employees can legitimately complain that they have been harassed.

Managers and supervisors can be named in that complaint if they failed to prevent or respond to the situation.

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Personal Internet Use on Company Time

Many people do not have Internet access at home and rely on their employers as a means of gaining access. As a result, they spend their working hours surfing, chatting, shopping, socializing or exchanging e-mail messages on matters that have little to do with their jobs (one of the greatest uses of the Internet at work is searching for a new job!).

Employees who abuse their Internet and e-mail privileges are stealing from their employer because they steal time and resources.

Turning a blind eye to occasional personal use is acceptable and can even improve employee morale. However, other employees may resent the amount of time a co-worker wastes on the Internet if it is excessive. Try to balance those competing interests.

Copyright Infringement

The creators and authors of software and other published works generally own the copyright in their materials.

If one of your staff members copies and distributes these items without permission, he or she has violated the applicable copyrights. Because employers are vicariously liable for the actions of their employees, your organization could face an expensive lawsuit for copyright infringement.

It's easy to see how it can happen. An employee researches something on the Internet, does some cutting and pasting into a report and soon he or she has violated copyright laws.

Educating employees about these issues is often all you need to prevent problems. Many employees don't know enough about copyright laws.

Viruses

We all know how insidious viruses are and yet employees frequently fail to run the required virus scans. They may also let viruses into your system through e-mail attachments. Attachments containing things like executable files or video files are susceptible to viruses. These types of files are often also personal which makes the sting of the virus seem that much worse.

Remind employees that they need to check for viruses and that they should only open work-related e-mail attachments and only if they know what they are and they are from a reliable source.

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Confidential Information

Confidential or sensitive organizational information may find its way into the wrong hands if it can be easily transmitted through the Internet. This can include information about your clients or customers or even trade secrets.

Tell employees that transmitting confidential information is not acceptable by any means.

Defamation

Employees may defame other individuals or organizations in e-mail messages, bulletin boards or on chat lines.

In a recent BC case, a college lab technician was terminated for distributing a lengthy e-mail to his co-workers alleging that he was the victim of "management supported harassment". He claimed that there was gross incompetence and favouritism in his department. He also alleged that several instructors were diverting money to their personal businesses, "causing the corruption of a publicly funded institution".

The arbitrator ruled that the employee breached his duty of loyalty to the College and upheld the termination. The arbitrator also discussed the nature of e-mail messages and how their inherent lack of confidentiality can increase the damages suffered by the recipients of defamation.

Remind employees that e-mail messages are no more confidential than post cards and to be careful what they say about other individuals or organizations. Advise them not to identify or appear to represent your organization when they state their personal opinion on matters.

Preventing Problems

Your best defence in managing Internet and e-mail use at work is to "educate and regulate".

Inform your staff in memos and at meetings about the problems associated with e-mail and Internet use. Let them know about the consequences of their actions both for themselves and for your organization.

Many organizations have found it necessary to monitor e-mail and Internet use or at least reserve the right to do so. Knowing that their Internet use may be reviewed and their e-mail messages read may make employees think twice about their actions. However, it can also make them feel like "big brother is watching" and that their privacy is being violated. It's a balancing act. Be reasonable and do only what you need to do to protect your organization from liability.

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If you do need to monitor e-mail, consider using software that scans e-mail messages for "hot" words (usually sexually explicit ones). If the message contains any of these words the message is re-routed to a system administrator to review.

Alternatively, you may want to simply do random audits to ensure appropriate e-mail use. As long as you let your staff know that you may be doing this, they can have no expectation of privacy and you are entitled to monitor their useage.

Another essential defence strategy is to have an effective policy. This policy should:

- outline how much time, if any, you are willing to allow employees to spend on personal matters
- advise employees that they may not visit pornographic or other inappropriate websites
- tell employees that you will conduct random checks of the websites they visit
- prohibit employees from distributing confidential material without your authorization
- ensure they obtain proper consent before downloading and distributing copyrighted information; and
- encourage employees to use virus checking software and to only open e-mail attachments that are work related and from reliable sources.

It is stating the obvious to say that e-mail and Internet use is sending us into uncharted territory but with proper planning and education, we can make the experience a positive one.

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About Bernardi Human Resource Law

At Bernardi Human Resource Law we know that today's response to your workplace challenges can become tomorrow's precedent. We think ahead and help you make the best decisions to meet your needs both now and in the future.

Balancing your legal obligations and business objectives can be hard. We act as your trusted advisors; not simply as lawyers but as an integral part of your management team. Through our practical advice, workshops and articles, we arm you with the knowledge and tools to address rapidly changing human resource issues.

Above all, we're on your side. We work with you to prevent costly problems and when litigation is necessary, we act as strong advocates to protect your interests.

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About Lauren Bernardi

Lauren is a lawyer and human resource advisor with the Mississauga firm of Bernardi Human Resource Law. Lauren's advisory, training and educational services help managers direct their human resources in a strategically sound and legally appropriate manner. She is an accomplished and entertaining speaker on management and human resource issues.

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