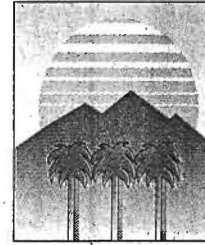


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Employee privacy issues abound in the workplace

For the past two decades, workplace technology has improved by leaps and bounds. Where a typewriter was once considered essential equipment, a computer now sits.

While a primary secretarial duty was to scrawl out phone messages for the boss, an automated voice-mail system records callers' messages. When at one time "special delivery" mail and telegrams were used for the quick distribution of critical information, we now have fax machines, e-mail, video-conferencing and the Internet.

With these new advances in technology come a host of concerns for employees and employers alike.

What rights to privacy do employees have when receiving e-mail and voice mail messages on their employer's computer system? When does the employer have the right to examine, log or otherwise capture e-mail and voice mail communications for any given employee?

The short answer is that these questions are still to be answered in our courts. However, a few decisions have been handed down in privacy-related circumstances.

According to a published

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CORPORATE PERSPECTIVE

paper distributed by Mitchell, Silberberg and Knupp, a Los Angeles law firm, two court decisions held that an "employer's monitoring of employee e-mail messages did not violate the employee's right to privacy. In both cases, the court held that the employee did not have a reasonable expectation of privacy regarding e-mail . . . because of the employer's action to reduce any such expectation or because the employee's own conduct contradicted any expectation of privacy."

Mitchell, Silberberg and Knupp offer a few suggestions employers may want to consider as the information age continues to progress.

First, what indications may give the employee a reasonable expectation of priva-

cy? Is the voice mail system used only by the employee from an exclusive extension? Does the voice mail offer an option for callers to leave a "confidential" or "private message?"

When an employer deems some sort of research will occur, how extreme is the employer's need for information? Is there a legitimate business purpose for the search?

The Federal Electronic Communications Privacy Act of 1986 governs the interception and retrieval of stored information. The ECPA allows an employer to access voice and e-mail messages of employees that are contained on the employer's own system or where one party to a communication consents to its interception.

California law doesn't address the question of access to voice and e-mail messages; however, the state does prohibit wiretapping, eavesdropping and recording of electronic communications without consent of all parties.

What can employers do to protect their interests? It might help to implement a policy that informs employees that voice and e-mail systems

may be periodically monitored. Dispel the notion that such communications are "confidential or private."

Ask the employees to sign a consent agreement allowing the employer to engage in such monitoring. Consider barring the system for personal use or for non-business calls. Use of the system for such purposes may give the inherent impression that the employee can expect a certain degree of privacy.

According to Mitchell, Silberberg and Knupp, "the potential for invasion of employee privacy is greater if the employee is permitted to and actually does store confidential and personal information in the electronic information system." Keep in mind, however, that such restrictions may be difficult for employees to comply with and as difficult for the employer to enforce.

To avoid reducing employee morale, simply let it be known that the purpose of the voice or e-mail system is to conduct the business of the company and that such communications may be monitored. Employees may voluntarily avoid personal use of the system.

To alert outside callers that their messages may not be private, ensure the system voice mail greeting contains a disclaimer such as "messages are subject to monitoring and deletion and are not private or confidential."

Training manuals often instruct employees to leave greetings that imply a caller can leave a confidential or private message. Remove such phrases from training materials and let employees know callers' messages can be subject to system monitoring at any time. To say they can leave a confidential message would be misleading.

Finally, establish monitoring procedures. When and if the need should ever arise to retrieve information from an e-mail or voice mail system, the steps to take will be clearly outlined and defined. In any case, employers should cover their tracks and be cautious. The law is still being defined in this area.

Employer monitoring should be carefully designed to achieve a justifiable business purpose.

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