



EMPLOYMENT BLOG

Employee Use of Company E-mail May be Protected from Company View

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Companies have always taken the position that an employee's use of company e-mail is not private, and can be accessed and reviewed by the company at any time. There have been a large number of court cases, which have held that a company that has issued a policy, stating that private use of company e-mail is not confidential, will allow the company to review the content of an employee's personal e-mail communication when sent over company e-mail. This has become particularly helpful to companies when an employee decides to pursue employment litigation against the company. It is surprising how many employees will use company e-mail to communicate with their attorney about a possible claim against the company, even though the employee has been told that use of company e-mail is not protected or confidential.

A recent decision from a federal District Court in Maryland has at least raised a question about a company's right to access the private e-mail communications of an employee, even when using company e-mail. The District Court found that an employee's communication with an attorney was protected from disclosure as a privileged communication, because the company policy was not clear that personal use of company e-mail was either not allowed or not confidential. The company policy indicated that use of company e-mail for private purposes was to be kept to a minimum. The company also did not actively monitor the personal e-mail communication of its employees even though it reserved the right to do so. The Court also noted that the company did not re-issue (or refresh) the company policy about use of company e-mail for private purposes on a regular basis.

The above decision does not overturn Court decisions, but does become a warning for companies about how they handle their company e-mail policy. Companies need to be diligent in issuing and refreshing every employees' understanding of a company policy that use of company e-mail is not protected or private. Companies also should consider some type of regular review of employee private communications over company e-mail systems, in order to show this is a legitimate concern of the company. Companies now have a "heads up" that they need to pay attention to how they identify and implement their policy on use of company e-mails.

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