

## Duty To Investigate Pornography In The Workplace

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Ever glimpsed a fragment of a lewd image while passing your employee's computer screen? Ever notice that he quickly minimizes it and shields the screen? If he is viewing pornography in the workplace, you may be liable for more than you think.

As a New Jersey employer, you should be aware that if you are on notice that one of your employees is using a workplace computer to access pornography, you have a duty to investigate the employee's activities. You also must take prompt and effective action to stop the activity lest innocent third parties be harmed. These innocent third parties include not only other employees in your workplace, but could also include parties outside of it.

In one New Jersey case, an employee was caught viewing pornography on his workplace computer. The first time he was caught, the company had a policy in place that prohibited monitoring or reporting internet activities of employees, and the employee's supervisors were admonished by upper management for reporting the employee's improper activity and disciplining him. However, the employee was told to stop accessing pornography at work. A few years later he was again caught looking at pornography on his work computer. By that time the employer had changed its policy to state that employees had no right to privacy in their internet activity at work. Again, the employee was told not to access pornography on his computer. For a third time, the employee was caught viewing pornography, although this time, he was suspected of viewing pornography involving children and not just adults. Nevertheless, the employee was not terminated or disciplined.

During his employment, the employee married a woman who had a ten year old daughter. He began molesting and taking lewd photographs of his step-daughter. At work, he sent those pictures to pornographic websites. Police soon discovered the employee's criminal behavior and arrested him. The child's mother then instituted a lawsuit against not only her then ex-husband, but the employer as well.

The Court held that the employer was on notice of the employee's activities and had a duty to investigate. The Court noted that the employer gained "actual or implied knowledge" that the employee was viewing child pornography when it reviewed the employee's internet history, which indicated that he was accessing pornographic material involving children and/or underage teenagers. The Court concluded that this knowledge imposed a duty on the employer to report his activities and take steps to stop the illegal activity.

The Court stopped short of ruling that the employer was liable for the molestation of the step-daughter. However, it did rule that the employer could be liable for the harm caused by the employee's sending of pornographic pictures of his step-daughter to be published on websites. The Court advised that in order to find the employer liable, the girl's mother had to show that the child suffered harm because of the internet transmission of her photos.

**TAKEAWAY:** failing to investigate pornography in the workplace could snowball into much greater liability for an employer than may be anticipated.

### **Attorney**

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