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Employers Give Notice! To Limit Employee Privacy Rights In The Workplace

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Employers have the right to protect their assets and reputation and insure that their workers are productive and comply with corporate policies. The law allows employers to monitor and regulate the use of workplace computers because of this legitimate interest. On the other hand, in certain circumstances courts have found that employees have a privacy interest in their social media and other e-communications. So, what's an employer supposed to do?

Employers should be aware that to limit the expectation of privacy at the workplace, they must have strong policies that provide notice to employees of the specific types of communications that are not private. This is because courts determine whether an employee had a reasonable expectation of privacy when deciding whether the employee's privacy interests were violated by an employer. If an employer can point to a written statement making it clear that the employee had no expectation of privacy in a particular type of communication, then the employer is much more likely to prove that the employee had no expectation of privacy therein.

Notice should be provided that the computer communications may be stored and retrieved by the employer. The employer should tailor the notice so it identifies each specific type of computer usage that the employer intends to monitor. For example, the notice should state that the employer is going to monitor employee visits to social networking sites, such as Facebook, from its computers, if the employer wants the ability to do so without infringing on employee privacy. If the employer intends to monitor email from an employee's personal internet-based account, accessed from a work computer, the employer should state so. If that monitoring is expected to include password protected accounts, that must be clear as well.

Employer policies should also make the when and where of employer computer monitoring clear. This becomes particularly tricky when employees work at home from company provided laptops. The employer policy must address the use of such laptops and provide answers to questions such as whether an employee can consider its e-communications after work hours as private.

Takeaway: Employers must be crystal clear in their computer communications monitoring policies.

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