Employee Privacy Rights

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A reader recently asked me, “How do employees protect their rights from snooping employers? Does placing a confidentiality paragraph at the bottom of your email protect you from unauthorized people reading your email if you actually catch them out? Does an employer need to advise their employees that their email maybe randomly accessed and viewed?”

Before going further, you must understand that I am not a lawyer and this is not legal advice. For legal advice, consult an attorney with expertise in the areas of law involved.

In brief, my understanding of employee privacy of communications is as follows:

1) Prima facie, before any other considerations, all professional writings created in fulfilling your professional obligations as an employee are copyright by default by your employer; in some cases, this claim of intellectual property rights over your creations may even extend to materials produced outside of normal working hours IF you have signed a contract abdicating your claims to such rights.

2) All written, verbal and pictorial communications created using your employer's resources and during normal working hours are the property of your employer. By default, employees have absolutely no privacy rights over electronic documents created on their employer's computers or over e-mail and other documents received on or sent from their employer's e-mail system. Thus if you receive personal mail on your employer's e-mail system, you have potentially forfeited your privacy rights over such communications.

3) Employer claims for total access to employee communications are subject to modification. In particular, courts have ruled that employee privacy may result from "a reasonable expectation of privacy." Such expectation is affected by

a) Explicit policies defining the degree or lack of privacy protection for employee communications.

Organizations lacking explicit policies affirming the employer's rights to access employee communications are in a poorer position to assert that claimed right. Conversely, when policies are explicit in removing employee privacy expectations, employees have a weaker claim to a reasonable expectation of privacy.

b) Implementation of privacy policies.

Even if an organization does have policies, the degree to which they are enforced may affect how seriously a court will judge their seriousness. For example, an employer that makes employees sign a renewal of their understanding that they have no privacy rights may have a much better defense against an employee's claim of breach of privacy than an employer that mentions the policy once at the initial contract signing and never thereafter.
c) Custom and culture.

There have been court cases dealing with the privacy rights of employees over their personal phone conversations. Few employers will ban such calls outright, and if policies make no mention of privacy issues, employees may easily develop an expectation of privacy about such personal use. The great danger is that such expectations may gradually extend to such uses of employer resources as Web access and e-mail. Nonetheless, there are no restrictions on employers' rights to warn their employees that all communications may be monitored.

In summary, as I understand it, there are no inherent rights to privacy in the workplace in the United States. It is the obligation of the employer to make it clearly and frequently known to all employees just what the policies are about use of employer equipment and it is the obligation of the employees to understand and follow the privacy guidelines if they intend to continue as employees.

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For more about privacy rights in the USA, see

Electronic Privacy Information Center http://www.epic.org

Chapter 52 of the CSH4*


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