

Advice on Employees' E-Mail

You may have seen the November 24 *Wall Street Journal* article about a handful of recent court decisions finding that employees have a right to privacy in e-mails transmitted on personal e-mail accounts accessed on company computers. Importantly, under these and similar decisions, the employees would not have had such a right to privacy had their employers maintained a well-drafted technology use policy. Accordingly, it has become more important that employers draft, disseminate and enforce workplace technology use policies to defeat employees' claims that personal e-mails on company computers, including communications with attorneys, are protected by a right to privacy. A well-drafted technology use policy should provide that:

- the company's e-mail system is to be used for business purposes, with only incidental personal use permitted;
- all information contained, sent or received on the company's computer systems (including, where applicable, company-issued mobile devices, text and instant messaging systems, social networks and message boards) is the property of the company;
- the employees have no right to or expectation of privacy with respect to any such information; and
- the company reserves the right to access, review and disclose any such information.

This policy should appear in the company's employee handbook and/or be disseminated separately. Also, employees should sign a form acknowledging that they have received, read and understood the policy and agree to its terms. Further, management should maintain an open dialogue with legal counsel and information technology staff to ensure prompt, proper and efficient enforcement of the policy.

As this recent trend of court decisions has procured increasing protections for employees who use company technology, prudence dictates that technology use policies be reviewed carefully with counsel. Hughes Hubbard's Labor & Employment department has extensive experience, including litigation, with respect to such policies and would be pleased to provide assistance and representation.

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