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Client Update

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PRIVACY ISSUES IN THE WORKPLACE: USE OF SOCIAL NETWORKING SITES AND PERSONAL E-MAIL ACCOUNTS

Many employees utilize workplace computers as well as an employer's internet system to access social networking sites such as Facebook, MySpace and Twitter and personal e-mail accounts supported by providers such as Hotmail, Yahoo and Gmail. Though many employers have written policies in place notifying employees that they should not have any expectation of privacy when utilizing an employer's computers, federal law does limit an employer's ability to view an employee's personal electronic accounts even if the employee has accessed the accounts during work time or by using a company computer.

Federal Law Shields Employee Social Networking And Personal E-Mail Accounts

Courts have found that an employee's personal e-mail accounts as well as those portions of an employee's social networking sites designated as private are protected information under the federal Stored Communications Act. Employers violate the SCA by accessing without permission those portions of employees' social networking sites to which employees have limited the access. Employers also violate the SCA if they access an employee's personal e-mail accounts without permission.

Employers' Internet And E-Mail Usage Policies Have Limitations

In a recent United States District Court case, the employer maintained a broad computer use policy stating that employees had no right of personal privacy in any matter stored in or created on the company's system, inclusive of personal e-mail accounts accessed on the company's system, and that computer usage was subject to monitoring without additional notice. The employee had left his password information on the employer's computer. (Depending on how an

employee has accessed the personal e-mail account, the account password may be automatically populated when anyone attempts to log on to the personal e-mail account using the same computer). The employer argued that its internet policy allowed it to access the personal e-mail accounts stored on a third party e-mail provider's server because the employee had left the password information on the employer's computer. The court explained, "if an employee had left a key to his house on the front desk at his workplace one could not reasonably argue that he was giving consent to whoever found the key, to use it to enter his house and rummage through his belongings."

Practical Impact

Employers still have the right to monitor an employee's computer activity. However, monitoring has limitations. A properly drafted and promulgated policy remains an important part of an employer's oversight of its internet and e-mail systems. Those responsible for handling IT issues in the workplace must understand what information an employer may access and what information is protected by federal law. We are available to provide assistance in drafting internet and e-mail usage policies and to answer any questions you may have regarding privacy issues in the workplace.

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