

Use Caution When You Login - Someone May Be Watching



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In some ways use of electronic messaging systems has brought us all closer together because it makes communication with friends, family and coworkers so much easier and faster. However, when conducting informal electronic correspondence from our place of employment or publically we need to be careful to discriminate between personal and professional communications and also what sort of information we are putting out there for the world to see.

It is important to note that when sending electronic messages from work, the tools of communication, the computer, the software and the server belongs or is paid for by the employer. If the employer has a policy that email or the use of the internet is strictly for business use, it is important that employees conduct their communications according to that expectation.

Facebook is amassing billions of dollars because of its prolific use. Along with its great success, stories abound regarding employers who have accessed some of their employees' Facebook pages.

Facebook is great but be aware that it may be more "public" than you think.

In some cases employees have been disciplined for documenting inappropriate activities at work and for documenting inappropriate activities while they should be at work. Facebook is great but be aware that it may be more "public" than you think.

Employees should also be aware that their communications conducted on employer-owned equipment may be monitored in certain cases. Every employer maintains a personnel file on every employee. Usually the contents of a personnel file are quite innocuous. They include things like original job postings, certification documents, performance appraisals, etcetera. The file is used to keep a continuous record so that applicable benefits can be provided as the employment relationship matures.

In some instances, the employer's attention to an employee's personnel file takes on a more sinister aspect. If the employment relationship becomes strained and the employer begins to

question the employee's work performance or any other issue that might strain the relationship comes up, an employee should be aware of the types of communications they have put out there into the electronic universe.



A collective agreement provides only so much protection from the misuse of an employee's information. Under a collective agreement an employee has the right to inspect the contents of their personnel file any time they wish. If the employer includes a document on the personnel file that is derogatory of the employee, the employer must make the employee aware of that document or it will not be allowed to use it at a hearing later if disciplinary action is taken. The employee, on being made aware of any derogatory report on their personnel file, has the right to grieve that report if it is not true.

What the collective agreement can't protect employees from is documentation in the ordinary course of business that amounts to an admission. An admission is an acknowledgement by a person that they have committed an act they are accused of. There is an age old principle of civil law that if a person admits that they did something wrong, that admission can be used against them later.

That is where the electronic communications come in. Because electronic communications are so quick and easy, more and more issues are dealt with in this manner. They create a written record of everything that we reduce to email.

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These communications are just like sitting down and writing a letter. They become part of the employee's permanent record with the employer. Even if they are not added to the employee's file, the employer will raise them later at an arbitration hearing as proof for whatever it was the employee is being disciplined.

It is sometimes easy to try to solve any problem, no matter whose fault it may be, by apologizing. There is nothing wrong with apologizing if you are wrong; even if you are right, depending on the circumstances. The government has recognized this and created the *Apology Act* in October of 2008. The Act states "An apology made by or on behalf of a person in connection with any matter is not admissible in a court as evidence of the fault or liability of the person in connection with the matter." An employer will also not be able to raise an apology as proof of guilt in an arbitral hearing.

As communication becomes faster and easier we should all consider carefully what we are putting on our permanent record when we text, post, email or tweet on an employer owned or publically accessible electronic service. It might be a lot simpler just to pick up the phone or arrange a face to face meeting to hash out a difficult (or simple) issue rather than sending an email or text message. Just a word to the wise.

This paper is intended as an introduction to the topic and not as legal advice. If you require specific advice with respect to your situation, you should contact a lawyer.

This series of articles will continue in future editions of the MAHCP News. If there is a topic that you would be interested in, please contact Shelley at 772-0425.