

Can You Search Emails of An Employee Accused of Harassment?



Sometimes employee's privacy rights are diminished in the workplace

Although the Supreme Court of Canada continues to grapple with questions of privacy in the workplace, several cases demonstrate that privacy rights, though retained, are diminished at work.

Can You Monitor Employee Email Communications?

Yes and No. The vast majority of employers do not have the ability or right to intercept employee's private email communications when sent from personal devices while in the workplace. Generally, an employee has the right to expect privacy when using personal devices and accounts. Monitoring an employee's workplace email, however, is a different question altogether.

The courts recognize that employers have a right to protect legitimate business interests. Under certain circumstances, an organization has the right to monitor electronic activities at the workplace. On the website of the Privacy Commissioner of Canada, there exist cases in which employers tapped into emails, or searched company owned computers, and found evidence which allowed them to take action against an employee. Other legal cases exist, however, in which employers violated privacy rights by gathering an employee's personal information.

Investigating Workplace Harassment

Consider this situation: An employee complains that a co-worker has been harassing him and sending unwanted email message. If the accused employee has been using company email for these activities, the employer may have solid grounds to retrieve past emails. If an employee broke rules while using his employer's equipment and services, expectation of privacy should be diminished.

What happens if emails are sent from a personal email account, but using a company owned device? Other cases exist in which organizations found inappropriate information or activity conducted on their equipment and were able to use this information to take action. Employers must tread carefully when gathering or monitoring communications. Employers do have the right to search for information and use their findings, but the circumstances must be correct.

Give Fair Warning

The rules and laws are still being written, but one theme emerged from recent findings. It is vitally important that organizations have policies in place that spell out their monitoring and searching activities. Organizations must clearly indicate they have the right to search and monitor employee's activities on company devices. These policies must be communicated to all employees.

Gather Only What You Need: Personal Information Should Be Considered Private

Employers must remember that employees do have well-established rights to privacy. Monitoring and compiling an employee's workplace communications at random, for no reason, and without informing employees, will land you in hot water. Even with policies in place, employees retain many privacy rights.

When searching through an employee's electronic devices, you may find personal information related to medical or health issues, personal plans, religion or culture. You cannot use this information to take action and you should inform the employee if you have had occasion to discover this information. If you store private information, your employee could claim invasion of privacy, constructive dismissal, or more. Whoever is monitoring or searching your employee's communications or devices must understand what can be viewed and what must be avoided.

Before you take any actions to monitor an employee, you should know exactly what you are looking for and what you can do with it if you find it.

Resources

[Monitoring Employees Computer Use V. Privacy](#)

[Does Monitoring Employees Emails Breach an Employees Right To Privacy?](#)

[Survey of Canadians on Privacy-Related Issues](#)

[Monitoring of Employees e-mail was appropriate](#)

[Manager is justified in tapping into employee's e-mail account](#)