

# Ask The Lawyer

## COMPUTER POLICIES, PRIVACY AND PROTECTION

by John R. Appler

John R. Appler, Esq. is an associate with Scolaro, Shulman, Cohen, Fetter & Burstein, P.C. in Syracuse, NY, practicing in the areas of corporate, real estate and tax law. You may contact Mr. Appler at (315) 471-8111 or via e-mail at [jappler@scolaro.com](mailto:jappler@scolaro.com)

Computers are a vital part of today's workplace. Internet access and the use of e-mail have become so prevalent that they are regarded as necessities by employers in many diverse businesses and fields. With the changing face of technology in the workplace, employers must make adjustments to their employment policies to help ensure that they protect themselves from liability in connection with their computer systems.

As an employer, you could face serious risks resulting from the misuse of your business computer systems by employees. E-mail has become a common tool for harassment in the workplace. Whether it is an employee circulating an offensive "joke" or making an unwanted advance to a co-worker through an e-mail message, employers have an obvious interest in curtailing this behavior. Further, you could be responsible for any inappropriate or even criminal acts undertaken by your employees through your company's computer system.

To protect against these risks, many businesses have begun monitoring their employees' Internet and e-mail use. Some employers randomly check the e-mails received and sent by employees and the web sites they visited in an attempt to protect against misuse. Various software is also available to assist in monitoring. For example, one program can save the images being viewed on computer screens at various time intervals and transmit the images to a network administrator.

Employers must be aware that monitoring computer usage has its potential problems and risks. There is the negative effect on the morale of your employees. Most people consider their e-mail messages personal and would be offended if they knew that they were being monitored.

Also, you must be careful to avoid any claims of invasion of privacy as a result of their monitoring. Employees have filed suits against employers claiming that they have an expectation of privacy in their personal e-mails and web site viewing, particularly if access to the information is password protected.

Although it will not solve all of the potential problems associated with the use and misuse of computer systems in the workplace, it is essential that every employer enact a well-crafted computer usage policy. A policy should, at a minimum, address each of the following points:

- All information contained in each employee's computer, including e-mails, documents and the names of web sites visited is the property of the employer and the employee has no right to privacy with respect to the same. The policy should also clearly state that the



employer can and will monitor all aspects of the usage of the computer system.

- The employer's computer is for business use only. Employers may be tempted to allow "limited personal use" for e-mails and Internet access. But that invites abuse and makes it difficult to draw the line between permitted personal use and excessive personal use. A stricter policy offers greater protection.
- No employees will download any software onto the network system without the permission of the network administrator. Integrating foreign software onto a computer network could have an adverse impact on the network's performance.
- It should be stressed to employees that they must guard all confidential information sent via e-mail as closely as information sent by more traditional means. Computer users often fall into the trap of treating e-mail messages with less formality than other forms of communication.
- Each employee should sign a copy of the policy to acknowledge that they have read and agreed to all of the provisions. Each employee should also acknowledge that a violation of the policy could result in disciplinary action and even termination of employment.

Technology in the workplace is always evolving. Every prudent employer must keep current on the latest developments and respond accordingly. The implementation of a computer usage policy is the first and most basic step to protect the interests of an employer in this area. □

*These materials have been prepared for educational and informational purposes only and are not intended as legal advice or legal opinions on any matter. Always consult an attorney before taking any action with respect to the subject matter addressed.*

### Small-Biz Snapshot

A cross-section of New Yorkers were asked how they regard Upstate New York as a place to launch or develop a small business:

- 31.2% Presents poor opportunities
- 29.9% Presents poor but improving opportunities
- 26.9% Presents good opportunities
- 12% Not sure



Source: Zogby International