

E-mail Alert

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Confidentiality

The comment is often made that the Internet is *not* secure and that information which is confidential should not be sent over the Internet unless it is encrypted. Although this may be true, it is difficult to see how this form of communication can be any less secure than communication by facsimile.

For a facsimile transmission to end up in the hands of the wrong person, only one number needs to be wrong. At least with E-mail addresses there is less chance of sending a message to the wrong person as the address is normally comprised of words rather than just numbers. If a mistake is made in an E-mail address it is more likely that it won't go anywhere. Nevertheless, it is still worthwhile including in E-mail messages a statement similar to that contained on facsimiles, advising that it is intended for the named recipient and if it is received by someone who is not the named recipient then it is not to be disseminated, distributed or copied and the sender should be notified immediately.

Viruses

Another problem with using the Internet is that viruses may be introduced into a company's computer system where it is receiving E-mail messages which are sent over the Internet. Proper virus checking procedures are essential for attached documents.

Delivery of E-mails

Sending E-mails over the Internet may be an unreliable form of communication as it is not possible to confirm whether an E-mail message has been successfully received. The sender may not know the message was not received and the addressee may not know the message had been sent. One way of dealing with this problem is to confirm E-mail messages by sending a fax or telephoning the recipient, however, this really defeats the purpose of E-mails being used as an expedient and convenient form of communication.

Legal Risk Management

From a legal perspective, one of the main problems with the use of E-mail on the Internet is that it is often viewed as a less formal means of communication and as a result, employees are not as careful about the statements made in E-mail messages as they are about those made in written correspondence.

The fact that E-mail messages may be a more casual means of communication does not mean that the legal effect of the statements contained in E-mail messages is any different to that contained in written communications.

This was recently found out by a company in the United Kingdom (Norwich Union) which was required to pay to another company (Western Provident) \$450,000 in damages as a result of employees of Norwich Union sending E-mail messages advising that Western Provident was having financial difficulties.

Where employees are sending E-mail messages under an employer's domain name, the employer will be liable for the contents of such messages.

There are several ways to deal with this situation. The most prudent is to warn off employees from sending "casual" E-mails and insist on the same rules of quality assurance as apply to written correspondence. To verify compliance, the IT department may have to become cybercops and do some random E-mail analysis. Another way of attempting to deal with this situation is to advise employees that they must not claim to represent an employer unless such representation has been authorised by an appropriate person within the organisation. It is probably also worthwhile for employers to require employees to include in an E-mail message the statement:

"Statements contained in this message may not reflect the opinion or policies of my employer."

However, that cannot be considered a complete answer to whether the company will be liable for the content of the message. In determining whether a company is liable for the contents of its employee's E-mail messages a Court will take into account other factors such as the position in the company held by the person sending the E-mail message and the actual contents of the message itself.

Conclusion

The use of E-mail on the Internet creates numerous risks for employers. In order to decrease such risks it is important for employers to have rules and guidelines set out in the company's policies and procedures manual relating to use of the E-mail on the Internet including such things as:

- the type of information which can and cannot be included in E-mail messages;
- whether approval is required for sending E-mail messages on the Internet; and
- the circumstances, if any, in which representations about the company may be made.

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