

Just In Time Smart Management Tips

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The following provides the supplemental information for this article mentioned in the July 2001 ELI Report.

Inappropriate e-mail messages and electronic postings create significant risks to employers. Plaintiffs' lawyers are increasingly using e-mail to prove their cases of unfair employment practices. Following are some recent examples:

- In *Meloff v. New York Life Insurance Co.* a federal appeals court ruled the jury had appropriately awarded \$1.25 million to an employee claiming defamation when management sent an e-mail to multiple people falsely stating she had "defrauded" the company.
- In *Blakey v. Continental Airlines* the New Jersey Supreme Court ruled that derogatory messages about an employee's performance, abilities, and a previously filed claim of harassment, which were posted on a Continental Airlines' e-bulletin board could be considered workplace harassment. They stated that if a company is aware of inappropriate activity on its e-bulletin board, they have a responsibility to address it and prevent a hostile work environment.
- In *Mercado v. Midwest Computer, Inc.* a federal jury in Illinois awarded \$454,000 to a worker who claimed she was sexually harassed in person, and by e-mail, and subjected to retaliation.
- In *Copley v. Bax Global Inc.* a white manager was awarded \$470,000 after claiming his termination was motivated by race discrimination. As evidence, he used an e-mail, circulated the day after he was fired, which stated that his termination and the appointment of a Hispanic replacement would "inspire confidence in the Latin American agents".

On the other hand, evidence that an employer took their duty to act to avoid harassment and discrimination seriously, can help avoid liability:

- In *Logan v. Caterpillar Inc.* a former male employee filed a gender discrimination suit that was dismissed after the Seventh Circuit Court of Appeals determined he was discharged, in part, for abusing the company's e-mail system by using it to harass other employees. In this case, the company succeeded because it demonstrated consistent use of discipline for employees who abused their e-mail system.

- In *Weiss v. Ren Laboratories of Florida, Inc.* a federal court rejected a born-again Christian employee's claim of religious discrimination after being fired for engaging in behavior that contributed to a religiously hostile work environment. In addition to demonstrating that a policy prohibiting harassment was in place, the company also demonstrated that efforts to enforce the policy had been made. The company's evidence included an e-mail message sent by Human Resources instructing the employee's manager to meet with the employee to try to stop the harassing behavior.

Employers can safeguard themselves with an effective e-communication policy. To minimize risk of liability and damages, such a policy should include the following elements:

- Prohibit any inappropriate, hostile, or discriminatory e-communication based on race, sex, color, religion, national origin, disability, age, veteran status, pregnancy, and any other factor covered by state or local law or company policy. Clarify that inappropriate e-mail will be treated in the same way as other forms of inappropriate verbal and written communication.
- Communicate, in writing that privacy should not be expected when using company equipment for e-communication and that this may be monitored. Be sure your policy complies with any state law regarding privacy, as legislation in this area is becoming increasingly common.
- Remind employees that e-communication can sometimes fail. If they seek a response but receive none, it may mean that the e-mail was never delivered. Also, because some people receive numerous e-mails in one day, the recipient may have forgotten to respond. Encourage the employee to resend the e-mail, call, or meet in person.
- Most companies with e-communication policies allow limited personal e-mail use. In this case, inform employees that some personal use of company property to send e-communication is acceptable. The danger of prohibiting all personal e-mails is that such a policy may be difficult to consistently enforce.
- Let everyone know that emails should not be used for all kinds of communication. Discipline, performance management, and disputes should not be handled via email communication.
- If you have employees who work from home or travel with laptops, tell them which parts of your e-communications policy applies to them.

Stephen Paskoff, President of Employment Learning Innovations, addressed issues surrounding this topic at the SHRM 2001 Conference on June 25th and 26th in San Francisco. For copies of the handouts click http://www.eliinc.com/Paskoff_SHRM_2001.pdf.