

ELECTRONIC WORKPLACE DANGERS & PITFALLS

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EMAIL

- DISCOVERY IN LITIGATION
- RECORD RETENTION
- DISCRIMINATION, HARASSMENT, ETC.



DISCOVERY IN LITIGATION

- ❑ Dec. 1, 2006 – Federal Courts Amended Rules
- ❑ Solid document retention policy necessary
- ❑ Safe-Harbor Provision
- ❑ Could face fines and/or other penalties



Document Retention Policy

- Name of Custodian for ESI
- List of servers and back-up tapes
- The different ways employees save info
- Implementation of Litigation Hold



DISCRIMINATION, HARASSMENT, ETC.

- ❑ Several million dollar verdicts
- ❑ Make sure to have policies regarding email, Internet and other technologies
- ❑ Policies: Lower expectations of privacy



INTERNET

- ❑ Accessing Inappropriate Material
- ❑ Social Media & Blogs
- ❑ Twitter
- ❑ LinkedIn
- ❑ Copyright Violations



Accessing Inappropriate Material

- ❑ Downside: Wide array of non-employment related sites
- ❑ Pornography as much as \$14 billion dollar industry. (Forbes)
- ❑ Employers must be cognizant of sites their employees are visiting



Social Media and Blogs

- Should you allow employees to blog?
 - Defamation Lawsuits – Cisco & Patent Troll
 - IP / Trade Secret Protection
 - Politics, religion or other hot button issues
 - Sexual harassment



The Workplace Is All A Twitter

- ❑ Should you allow employees on Twitter?
- ❑ Innocent Twitter offended client
- ❑ Major client lost



CONSIDERATIONS FOR SOCIAL MEDIA

- Get advice from legal counsel
- Update employment policies to cover blogs
- Develop corporate blogging policy
- Train employees on benefits and risks



CONSIDERATIONS FOR SOCIAL MEDIA

- Determine whether to allow comments
- Appoint someone in charge of blogs
- Develop monitoring system for blogs
 - RSS feeds



Social Media

- What about personal blogs / Facebook / Twitter?
 - Employee shares photos
 - Expresses strong opinions
 - Comments about other employees



Social Media & Blogs

- Employee Background Searches
 - Facebook
 - MySpace
 - YouTube
 - LinkedIn
 - Twitter
 - Iowa Courts Online



COPYRIGHT VIOLATIONS

- Often overlooked
- May be costly
- Software violations (SIIA)
- Flickr: photo sharing
 - Company sued for privacy violation (not copyright) when photo used commercially



EMPLOYEE PRIVACY RIGHTS

- ❑ Electronic Communications Privacy Act
- ❑ Handbooks: Lowering expectations of privacy
- ❑ Consistency



Electronic Communications Privacy

- Restricts intentional interception of oral, wire and electronic communications



Exceptions: EPCA

- Prior Consent – handbooks (lowering expectation of privacy)
- Business use – (ordinary course)
- System provider exception – protecting property rights in email system



CONSISTENCY IS KEY

- As with all policies, treating employees consistently is a key with employee discipline issues



TELECOMMUTING

- Americans with Disabilities Act (ADA)
- Workers' Compensation



ADA

- Is employer required to allow employee to telecommute as reasonable accommodation?
- Initially, courts ruled no.
- Some subsequent courts have held differently
 - Research may indicate telecommuters are more productive



WORKERS' COMPENSATION

- WC laws applied very broadly
- Exertion of control is important
- “Micro-application of coming-and-going rule”



ONLINE EMPLOYMENT ADS

- Discrimination
- Disparate treatment
- Good idea to still use traditional methods in conjunction with online sources
 - Technology industry probably in better position to defend



THANK YOU

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