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Good Company

Inappropriate Use of Company Computers: A New Alert for Employers

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It is no secret: creating and enforcing an electronic systems policy whereby employee use of company computers is supervised and regulated is a good business practice. That said, a recent New Jersey case suggests that the proper enforcement of such a policy is also the employer's duty. In fact, failure to do so may result in the employer being liable for the bad acts of their employees.

DOE v. XYZ CORPORATION

In *Doe v. XYZ Corporation*, a mother brought a negligence action against her husband's employer, on behalf of her 10-year old daughter. The mother sought to hold the employer liable for damages caused by her husband's use of his workplace computer to send nude photographs of the girl to pornographic websites. The employer was aware that the employee lived with a minor stepchild, although it did not know that he was uploading and transmitting inappropriate pictures of that child. The employer was aware, however, that the employee improperly used his company computer to view pornographic websites. In response, the employer asked the employee to stop visiting inappropriate websites. Nevertheless, the employee continued to do so, and despite additional complaints filed by other workers, no further action was taken against the employee.

Eventually, the employee was arrested for possession of child pornography, based in part on photographs of the child found in the employer's dumpster. The child's mother sued the employer, claiming that it was responsible for the harm suffered by her child because it knew or should have known that the employee used his company computer to transmit child pornography, but it failed to report such crimes. The mother alleged that the employer had a duty to report the employee to the proper authorities upon discovering the crimes he committed on company property.

A NEW STANDARD OF CARE?

The New Jersey court held that the mother's claim was valid. The court reasoned that the employer was aware that the employee used a company computer to access pornographic websites and should have investigated his activities to determine if they constituted illegal acts, such as viewing child pornography. In so deciding, the court made the following conclusions:

- Merely warning the employee to stop using his work computer for improper activities was an inadequate response to the employer's discovery that he was accessing pornography at the office;

- Upon being put on notice of the employee's improper behavior, the employer had a duty to: investigate his activities; take prompt action to stop any unauthorized acts; and report it to the proper authorities;
- No privacy interest of the employee stood in the way of the employer's duty to investigate and take action.

The court fell short of imposing liability on the employer, and instead remanded the case to the trial court to determine whether the employer's breach of duty was the proximate cause of the harm to the child. If the lower court answers that question in the affirmative, the employer will be liable for any provable damages.

MESSAGE TO EMPLOYERS

Doe v. XYZ Corporation only represents the opinion of one court, but the decision should nevertheless serve as a warning to employers nationwide: when an employer is aware, or should be aware, that an employee is using company equipment (eg. Computers, cell phones, pagers, etc.) for improper purposes, that employer has the duty to investigate such activity and respond appropriately. If an employer discovers any illegality, it must promptly take all reasonable efforts to halt such activity and, as appropriate, report it to the appropriate authorities.

WHAT EMPLOYERS SHOULD DO

In addition, employers should be equipped to handle such a situation if it does arise. Specifically, employers should update their electronic systems policy to reflect the duties set forth in the *Doe* case. Employers should also establish monitoring procedures to the extent allowed by state and federal law and properly discipline those that violate company policy. Finally, employers should promptly report all illegal activities to the appropriate authorities.

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