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## Are Electronic Communications Under Control in Your Company?

If you provide employees with computers that allow for electronic mail, or E-mail communication, it's smart to develop a written policy so everyone knows the rules. For one thing, you may be assuming that you have the right to see all E-mail messages sent on your equipment, while employees may be assuming they have a degree of privacy. For another thing, you may be assuming that employees are to use your E-mail system only for company purposes, while employees may be assuming they can use it for unlimited personal purposes as well.

You're the sole judge of what to put into your E-mail policy. The important thing is to make the rules clear so that employees can't create legal problems for you by claiming they were taken by surprise.

### Actual Case Study:

**CASE:** After a company announced a significant policy change, an employee sent an electronic message via her company's computer system to a professional association she belonged to. In her message, she criticized the policy and asked for ideas on how to address the situation. When her employer intercepted the message, it placed a written reprimand in her permanent file for using her position and the company's equipment to express personal opinions. The employee protested, arguing that the company had no published policy controlling employee use of the E-mail system.

**Arbitrator:** Remove the letter. The employee used the system to address a work-related subject while mixing her own opinions. She had no idea that she could face discipline for using the system in a "quasi-personal" manner because the company had no rule or policy governing employee use of the system. (104 LA 909, 1995)

More and more companies are monitoring employee E-mail messages. In April of this year, 27% of employers in a survey reported keeping tabs on E-mail—almost double the amount (15%) in 1997. One reason: the Microsoft antitrust trial, in which prosecutors used managers' E-mail messages against the company. Overall, the proportion of companies using electronic surveillance methods to keep track of their employees has increased from 35% in 1997 to 45% in 1999.

Your consultant recently has received several distributor requests regarding sample E-mail and voice mail policies. I have taken the liberty to select excerpts from various sample policies and combine these into a proposed NWSA member policy. Please feel free to use the following as guides for your own company's application.

## Sample Electronic Mail Policy:

The E-mail system, like all other company property, is to be used only for business purposes. Only authorized persons can use E-mail. If you have not been issued an E-mail password, you may not use the E-mail system. Employees may not use unauthorized codes, passwords, or other means to gain access to E-mail belonging to others. All E-mail is subject to review by management. Foul, inappropriate or offensive messages are not to be sent via E-mail. E-mail shall not be used to solicit for outside business ventures, personal parties, social meetings, charities, membership in any organization, political causes, religious causes, or other matters not connected to the company's business.

The company reserves the right to disclose E-mail messages for any reason the company, in its sole discretion, deems appropriate. You are expected to treat all employees with respect when sending E-mail messages. Do not use the E-mail system to tell a supervisor you are going to be absent.

Violation of the E-mail policy can lead to discipline, including discharge.

## Sample Voice Mail Policy:

The voice mail system may be used for business purposes only. Voice mail messages are subject to random monitoring to confirm that the system is used only for business purposes and to determine whether any outsider has gained unauthorized access to the system or whether any violation of company policy has occurred. Accordingly, employees should have no expectation of privacy with respect to voice messages. Employees may not solicit in violation of company policy over the voice mail system.

Employees who violate company policy with respect to the use of the telephone or voice mail system are subject to discipline, up to, and including, discharge.

Employees must not use unauthorized codes, passwords, or other means to gain access to voice mail boxes of others.

For added effect, distributor owners and managers should incorporate E-mail and voice mail policies into their employee handbook. These should also be reviewed periodically at general employee meetings.

## Some final thoughts . . . .

If you decide to monitor your employees' E-mail, voice mail, or computer files, here's where employees' privacy rights stop and employers' rights begin.

- ◆ If you own and operate the equipment, you have the right to make sure it's being used for business purposes only, and to check abuses.
- ◆ If your company intends to monitor communications, be upfront about it—tell employees your policy on use, abuse, and discipline, and that management reserves the right to monitor messages.
- ◆ Under the federal wiretap law, you can monitor only business-related phone conversations, not personal ones. So if it sounds personal, stop listening.

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