



Inappropriate Internet Use at Work? Employers Must Take Action!

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The Internet provides myriad benefits to employers. But a recent case from New Jersey's intermediate court of appeals provides a stark reminder that the Internet also creates new landmines for liability. By now, most employers are aware of the need to prevent inappropriate computer use that can contribute to creating a hostile work environment.

On Dec. 27, 2005, however, the appellate court found that an employer may be liable to third parties when it fails to take appropriate action to stop an employee's misuse of the Internet and email while at work. *Doe v. XYZ Corp.*, N.J. Super., A-2909-04T2 (App. Div. Dec. 27, 2005). The court's holding, predicated on common-law principals that may apply in other states, may have ramifications well beyond New Jersey.

In the *Doe* case, an accountant at an unidentified defendant company, XYZ Corp., allegedly viewed numerous pornographic websites at work, including some displaying child pornography. The employee, while at work, allegedly uploaded nude photographs of his 10-year-old stepdaughter to a child pornography website. Approximately one week later, the police searched the employee's work computer pursuant to a warrant and discovered child pornography materials on it. Although the company terminated the employee after the search, the employee's wife sued the employer, on behalf of herself and the child, alleging that the company's failure to act proximately caused harm to the child. The trial court dismissed the case.

On appeal, the appellate court reversed the trial court's decision. The court held that when an employer knows or has reason to believe that its employee is using its property to view pornography, the employer has a duty to investigate and may be required – at least in the case of child pornography – to undertake measures to prevent the action and report it to police authorities.

Although they are indispensable tools in our modern economy, businesses need to be aware that Internet access and email usage are not without risk. Of course, it is important to maintain a computer-monitoring policy to protect against workplace harassment and the dissemination of confidential information. However, the mere dissemination of a policy is not enough. Employers need to train supervisors and managers to follow the policy and to follow proper channels to report misuse so that the employer can undertake a thorough and effective investigation, leading to appropriate disciplinary action. Finally, because the computer misuse may involve criminal activity, employers may be required to immediately report such activity to the relevant authorities.

Obviously, the plaintiffs in this case were presenting a horrific fact pattern. Indeed, the appellate court began its opinion by stating: "Even the workplace is not free from the scourge of child pornography." Here, however, the company's handling of the situation – at least as explained in the opinion – only exacerbated the bad facts. Various network administrators, employees, supervisors and managers had significant reason to believe that the employee had been visiting pornographic sites. The employer had a policy that allowed it to monitor its employees' Internet and email activity if it suspected that the use was not for business purposes.

Pursuant to the employer's monitoring policy, employees were required to report violations to the personnel department, and those violating the policy were subject to discipline. Despite this knowledge of the website visits and the company's policy to report misuse, however, the only actions taken were requests by the employee's supervisor and two network administrators that the employee refrain from accessing inappropriate websites at work.

The appellate court held that the employer could be liable to the child and her mother. The court observed that the employer had a duty to act (to report illegal activity to the appropriate policing authorities and take "effective internal action," including possible termination from employment) once it knew the employee was visiting pornographic websites. The appellate court held that this duty arose out of the public policy against child pornography and the duty to prevent harm where a relationship exists such as that between employer and employee. Moreover, a jury could find that the employer proximately caused harm to the child.

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