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OFFICE SPACE: CAREER COUCH; The Risk Is All Yours In Office E-Mail

By **MATT VILLANO**

Q. Your company recently announced a new policy to monitor all outgoing e-mail, including personal correspondence. How concerned should you be?

A. Don't panic, but definitely watch your back. Mary Crane, president of M C & Associates, a training and consulting firm in Denver, said that if employers actively monitored outgoing e-mail traffic, messages about anything other than work might attract unwanted attention.

"The last thing you want to do is make your employer think you're slacking off," Ms. Crane said. "Nothing you're doing on e-mail is worth jeopardizing your career."

Q. Do employers have the right to monitor e-mail?

A. The Sarbanes-Oxley Act of 2002 and other regulations require publicly traded companies to archive all e-mail messages. Employers in the private sector also have complete authority to scrutinize every word, provided that they have established a policy and put it into writing.

Don Ulsch, a lawyer at the law firm Jefferson Wells of Brookfield, Wis., said that although this might seem like an invasion of privacy, it isn't. "The companies own the computer and servers," said Mr. Ulsch, who heads the firm's technology risk management practice in Boston. "Anything you do on this equipment actually is information that belongs to them."

Mr. Ulsch noted that some states might offer protections for employees who work from home and use work computers for personal purposes after business hours.

Q. How common is monitoring of e-mail?

A. While companies in many European countries are not allowed to monitor employee e-mail, a vast number of companies in the United States currently do in some form. A joint study released last year by the American Management Association and ePolicy Institute said that 55 percent of 526 responding companies indicated that they had monitored e-mail in 2005.

Jeannie Mullen, a founder of the Email Experience Council, an e-mail marketing organization in Upper Montclair, N.J., said the extent of the monitoring varied by industry. Many companies monitor only e-mail with attached files, while others may monitor every single message, she said.

The reasons for monitoring e-mail differ. Some companies say they do it to control the information that employees send through the corporate network. Other companies do it to make sure employees stay on task, or as a measure of network security. Other companies monitor e-mail to see how employees are communicating with customers.

Still, logistics make it nearly impossible for companies to police every note. Kevin Kalinich, national managing director for professional risk at Aon Financial Services, an insurance company in Chicago, says that many companies establish these policies because they believe that simply having them reduces the possibility of misuse.

"For many companies, it gets to a point where the threat of monitoring is actually more beneficial than monitoring itself," he said. "If you thought someone was watching, would you forward that silly note to your friends?"

Q. To what degree is personal e-mail acceptable at work?

A. Personal e-mail messages are like personal phone calls -- even the most stringent companies may allow them in moderation. But Cherie Kerr, founder and president of ExecuProv, a consulting company in Santa Ana, Calif., who has helped clients deal with e-mail issues, said that as soon as personal e-mail begins to take more than a few minutes a day, employees may need to reorganize their priorities.

"The secret is to do it sparingly," Ms. Kerr said. "If you have to wonder whether you're writing too many personal e-mails on company time, you probably are."

Whatever kind of e-mail you are writing at work, it is important to consider the content before you hit the send button. Obviously, pornography should be off limits. Employees should also avoid distasteful jokes and sentiments that could be construed as a form of harassment.

Q. Can you be fired for what you write in personal e-mail?

A. Yes. Because companies in most states offer employment at will, they can terminate employees at any time, and may do so if they decide that an employee has misused corporate e-mail.

Soon, one exception to this rule may be messages about organizing labor unions. This winter, the National Labor Relations Board was hearing oral arguments on a new interpretation of the law that would prohibit employers from firing employees for using corporate e-mail to plan union meetings. A decision is expected soon.

Q. Are there any ways to protect personal correspondence from an employer's eyes?

A. Perhaps. E-mail systems like Hotmail, Gmail and Yahoo Mail all operate through a standard Web browser, meaning that employees may be able to send and receive messages free of corporate watchdogs.

Still, depending on the employer, use of even these sites might lead to trouble. Some companies monitor all outgoing Internet traffic for personal use, meaning that they can read messages from these sites as easily as they can read regular e-mail. Other companies restrict the Internet addresses to which employees have access through the company network, banning Web-based e-mail services completely.

David Ries, a partner at the law firm Thorp Reed & Armstrong of Pittsburgh, said that with so many roadblocks, employees might be safest saving personal e-mail for personal time. "The messenger doesn't matter; it's all about the message," he said. "You have plenty of time to send personal e-mails when you get home."

Correction:

March 11, 2007, Sunday The Career Couch column last Sunday, about the risks of office e-mail messages, referred incorrectly to Jefferson Wells, a firm that employs Don Ulsch, a lawyer who said that all information on a company's work computers normally belongs to the company. It is a consulting firm, not a law firm.

