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For e-mail safety, set out some use rules and do a little snooping

For e-mail safety, the rule is simple: write every message "with the same care and discipline used in writing a client letter or a memo to the file."

What's inappropriate for a firm letter is inappropriate for a firm e-mail. If it's bad form to use firm stationery to tell someone about fantasy baseball, why should the same thing be good form sent over the firm's e-mail address?

E-mail may not be a prime instigator of legal action, but it can strengthen a client's or employee's position, cautions attorney **ERIC M. ROSENBERG,** president of LitigationProofing, a Mamaroneck, NY, firm that provides training in electronic communications, attorney client privilege, and document retention.

To protect the firm, Rosenberg recommends a policy outlining the basics of e-mail use and its restrictions. And to enforce the provisions, he says, the firm needs to add a little training plus a little snooping about.

NO USING THIS MAILBOX

Start off with a provision banning personal use of the firm's e-mail address. Tell employees to use their home e-mail addresses for nonbusiness correspondence.

Few companies make that distinction, Rosenberg says. But he views any personal correspondence over it as a mistake, "because it invites informality and lack of discipline in the writing" —with the firm's address attached.

Along with the ban, make it a rule that when a personal message comes in on the firm address, the response must be only to ask the sender to use the receiver's home e-mail address instead.

And to keep everyone aware of that, he says, set up an auto signature that gives the employee's name, the firm name, and a distinction: "business e-mail: *(address);* personal e-mail: *(address).*"

That notation makes it clear that the firm draws a distinction between the two and expects people to keep their personal correspondence out of the office. Along with that, he says, limit any personal e-mail that does come through the firm's address "to situations where there is an emergency need." That means restricting it to the types of personal messages employees would ordinarily get from telephone calls such as arranging child care or taking care of personal matters.

NO PRIVACY

The next provision of the policy should be a notice that the firm has the right of surveillance, or that it owns the communication equipment and can access everything sent over it.

In the United States, employers are free to read private messages without telling their employees, Rosenberg says. However, other countries require notification ahead of time, so firms that have international offices need to send out that notice.

Besides the legal protection, it's another way of telling people "you have to write carefully, because we're watching."

NO PORN, NO CHAINS, NO BETS

There also needs to be a provision prohibiting e-mail use for improper activities such as pornography, chain letters, and gambling — including sports pools.

While it rarely happens that people transmit direct pornography at work, Rosenberg says, it's surprising how often people send e-mails that sidle into the realms of porn and obscenity. And few people think of gambling and chain letters as inappropriate.

Once again, tell people that the firm's e-mail is

another version of its letterhead and that what's inppropriate for the stationery is equally inappropriate for the e-mail.

NO WHOLESALE COPYING

Another policy provision is one few offices think of —a statement prohibiting copyright violations.

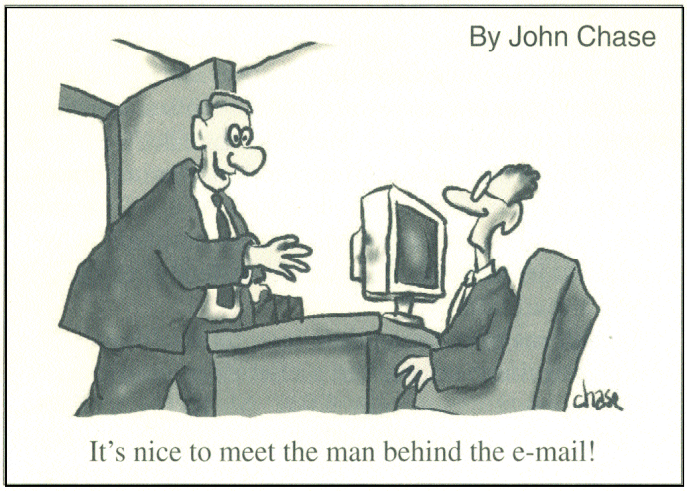
It's easy to send electronic attachments of entire published items. Yet copying and distributing copyrighted items is no different over e-mail than it is on paper. There has to be permission from the copyright owner.

AND NO OFFENSIVE VERBIAGE

Finally, put in a statement that no one can use e-mail to offend, intimidate, or harass.

That's mostly for protection against employment discrimination, Rosenberg says. But offensive e-mails "can get into some far-fetched situations." People have even been known to "carry on vendettas in emails."

Make the firm's antiharassment and antidiscrimination policies part of the e-mail policy. Electronic violations carry the same weight as in-person violations.



It's nice to meet the man behind the e-mail!

MAKE SURE EVERYBODY UNDERSTANDS

Go over the policy so people have no question about what is and isn't appropriate use of the system and why, Rosenberg says.

One of the main things to emphasize is that e-mail is for all intents and purposes permanent, because even when it's deleted, "there are just too many ways in which forensic experts can recover it." Emphasize too that damage from e-mail is nothing more than "a self-inflicted wound." Whatever is said is now in writing, and that makes it hard to defend. He gives the example of two partners discussing conflicts of interest over e-mail where one partner writes "this is contrary to my client's business." The firm could end up having to defend that statement.

Give examples of the types of messages that are not permitted, and point out that it's "sheer stupidity" to send a comment such as "do I have to spend my life writing checks to stupid people?" when that comment may later turn up printed out and ready to cause trouble.

SNOOP AROUND NOW AND THEN

Then put the no-expectation-of-privacy rule into practice and monitor the e-mails to make sure the policy isn't being violated, Rosenberg says.

The firm can monitor as often as it likes and should do so regularly as well as whenever there is suspicion of a violation.

Make sure everybody knows the monitoring goes on. And when violations are found, respond with "real consequences, including termination." Otherwise, people won't take the policy seriously.

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