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Stomping Out Incendiary E-mail

Four basic steps to preventing incendiary electronic messages.

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In the struggle to build a workplace environment free from ethnic and sexual slurs, prejudice, and harassment, electronic communications present a growing challenge for human resource professionals.

We have all heard the horrors in major corporations concerning the circulation of racist or harassing e-mails such as "Ebonics 101" or "Reasons why beer is better than women."

For every one of the notorious cases of harassing e-mails publicized by the news media, HR professionals encounter many more daily examples in their own electronic workplace. Supervision of electronic communications to prevent these career-ending and liability-threatening behaviors raises a variety of interesting and subtle issues.

Certainly the workplace has always been a troubling place for employees to act out biases imported from the outside environment. However, the prevalence of e-communications has now simplified the burden of proof for an offended employee; and often e-space at a company has provided a virtual petri dish medium in which these expressions of bias multiply. This basic problem stems from the intersection of several factors. For starters, electronic communications are prepared as if they were oral. What's more, they travel interchangeably between friends outside of a business location and colleagues at the firm. In addition, they are permanent for all practical purposes and are searchable electronically. In fact the typical ethnic comment uses a lexicon of a fairly limited number of words that can be intercepted before sending or retrospectively isolated. Added to this problem are the newer innovations of personal web sites and blogging, where work-related and personal thoughts may intersect.

There are four basic steps to preventing incendiary electronic messages. The first step is to have a strong, clear set of written policies concerning electronic communication content and interpersonal behavior among employees. These policies should be constantly available to the employees. Employees should also be required to review and sign an agreement to comply with the policies upon hiring. Policies should include waiver of any alleged right to privacy in the content of electronic communications conducted through the company's equipment or lines of communication.

The second step is to have a clear record of enforcement concerning policy violations. Not every violation deserves the ultimate sanction of termination, but it is important to be consistent in applying discipline. Similar behaviors should incur similar penalties, regardless of an offender's status in the firm. This can be a particularly sensitive issue, and training should be delivered to all senior executives, making clear that they are not exempt. Family- owned businesses may be particularly susceptible to problems, as the older family members may have grown up in a different work environment and may be especially resistant to change. Consider politely depriving such individuals of access to e-mail; you might find that they don't mind since some actually regard e-mail as an unwelcome innovation. Of course, businesses that have employees represented by unions will have to

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coordinate enforcement with obligations under contracts and labor relations laws. Neither should be a serious impediment to enforcement of standards, but they must be taken into account.

An optional, but recommended third step is to engage in surveillance of electronic communications. There are an increasing number of software and systems providers that offer technological solutions to surveillance. Some of their applications can search attachments as well as the transmitting e-communication, although effective search of a non-text attachment is limited. Where surveillance is being implemented at an international business, it is important as a preliminary step to verify the current status of privacy laws in order to make sure that the pre-surveillance waiver of any right to privacy is effective in foreign jurisdictions. It is also important to recognize, particularly in the early stages of implementation of a surveillance program, that it will be necessary to assign extra legal and HR resources to follow-up on the findings. Anecdotal evidence from surveillance programs suggests that over time as employees realize the firm is serious about surveillance and enforcement, fewer problematic communications are detected and the extra resources can be withdrawn.

In determining whether to implement surveillance, it is important to weigh the improvement it may bring to policy enforcement against the additional exposure it may also bring if follow-up is not effective. One can argue that surveillance creates supervisory knowledge of a hostile workplace environment, which hampers the company's ability to mount a defense based upon lack of notice of the event. On the other hand, given that e-mail is so readily recoverable and searchable, as compared to haphazard non-electronic notes exchanged between employees, in some instances courts may impute knowledge of electronic communications to the firm even in the absence of surveillance.

Be cautious in evaluating any evidence raised through surveillance. The situation may not be as it first appears. For example, forgery or misuse of equipment by another to get back at someone is always possible. You will need readily available technology assistance in handling an investigation to understand and preserve the evidence in case it is contested. Indeed, a major financial institution was embarrassed a few years ago in an alleged sting involving forged e-mail. In this unusual case, a terminated employee claimed he had been solicited by a paid agent of his former firm in a scheme to plant forged racist e-mails that supposedly would buttress his discrimination claim. When the alleged solicitation by an alleged agent of the firm was exposed, a criminal complaint against the employee by the firm was dropped and a large charitable contribution was made by the firm to settle the matter.

Enforcement of a policy to prevent electronic workplace harassment must deal not only with discriminatory writings by a firm's employees, but also comments that come in from third parties such as vendors or customers, even if not passed on within the firm. A business must determine in each instance whether to ignore the writing, or to take some affirmative step to respond to it. It may be against company policy to transact business with other firms that discriminate or create an improper work environment. Firms that do business with government entities or other large organizations may be particularly concerned with this issue, as government and larger organizations seek to enforce standards of conduct through their contractors.

The enforcement steps described above need to be supplemented by a fourth step that most firms already have in place: effective training of employees on issues of diversity and workplace environment. This step should be reviewed to confirm that it adequately handles e-mail issues. Even when sent only between two individuals who share common ethnic background, neither of whom are complaining, an e-mailed ethnic slur can set or reflect an oppressive work environment. As such; the employer can be responsible for the consequences of this environment if sufficient training was not delivered.

Employees must be taught to be as sensitive to electronic content as they would be to a memo and to appreciate that such content is basically permanent and public. They should be instructed that under no circumstances should they forward a troublesome e-mail, except for approved delivery to compliance personnel for investigation. Each act of forwarding creates an additional record and runs the risk of delivery into the wrong hands. Indeed, even for investigatory purposes, it may be preferable to print and deliver the document to the investigator by old-fashioned confidential office mail.

Training on this subject should stress the need to avoid the number one source of offending e-mail: misguided attempts at humor: E-mail is a terrible vehicle for humor of any kind. It is certainly not a place through which to relay jokes intended for home consumption.

A particularly devastating attempt at lightheartedness often seen in corporate e-mail is known as "gallows" humor. This is the tempting practice of making light of the things that are in fact the most intractable problems in a business decision. It is typified by the stresses that led one pharmaceutical employee involved with product liability claims for certain diet drugs produced by her employer to write: "Do I have to look forward to spending my waning years writing checks to fat people worried about a silly lung problem."

While humor has a role in humanizing the atmosphere at a workplace, where relief often is sought as an escape from the tensions of crucial decisions and long hours on the job, efforts at humor are often misguided. Don't bother to try to joke over e-mail, and certainly never try to "one-up" the sender of humor. The search for humor in a corporate problem can foster the locker room environment that can readily deteriorate into ethnic jokes. To be safe, employees must be taught that there is simply no "laughing matter" in a business issue and there should be no effort through e-communications to try to get a laugh.

About the author...

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