

Can Employers be held liable for WORKPLACE INTERNET PORN?

[The answer seems to be YES]

A recent New Jersey Court of Appeals ruling has raised the possibility that an employer may be held liable for failing to properly investigate and prevent an employee from viewing or transmitting child pornography from a workplace computer network.

In *Jane Doe, Individually, and as G/A/L for Jill Doe, a minor, Plaintiff-Appellant v XYZ Corporation, Defendant-Respondent*, the court held that:

“An employer who is on notice that one of its employees is using a work place computer to access pornography, possibly child pornography, has a duty to investigate the employee’s activities and to take prompt and effective action to stop the unauthorized activity, lest it result in harm to innocent third parties.”

The employee in question was arrested on child pornography after law enforcement obtained a warrant to search his workspace. The employee had been secretly taking inappropriate photographs of his stepdaughter and transmitting them on his workplace computer, as well as sending emails to pornographic Web sites, and storing pornographic images—including those of children.

Several times over the years preceding the arrest, the employee’s supervisor learned or had reason to suspect that the employee was accessing adult pornographic Web sites at work and told him to stop. But nothing further was done to investigate or monitor the employee’s actions. There was no evidence that the employer knew about the child porn.

In its ruling, the Court assigned knowledge to the employer about the child porn and ruled the



employer bore a duty to report the employee’s activities to the proper authorities and terminate the employee or take other remedial action. The duty was imposed because the employer had imputed knowledge about the employee’s engaging in activities that imposed the threat of harm to others.

What’s more, the Court may have been further swayed by the employer’s failure to investigate, despite the fact that it had access to software that could track computer usage, as well as a policy in place that permitted monitoring an employee’s computer activities.

Although no Michigan court has yet tackled the issue, recent decisions in the state signal a willingness to hold employers to a higher standard when it comes to protecting third parties from an employee’s criminal acts.

If you believe one of your employees is involved in similar computer activity and would like to discuss how the situation should be handled, please call our office.