

COMPUTER-USE POLICIES



E-mail messages can be cute and funny but, sometimes they involve racist, sexist, or pornographic jokes and images. A recent decision of the Alberta Court of Appeal in *Poliquin v. Devon Canada Corporation* illustrates the importance of adopting and consistently enforcing computer-use policies in the workplace.

In the Devon case, its computer-use policy allowed employees limited personal use of work computers. The policy specified that the system should not be used to send “pornographic, obscene, inappropriate, or other objectionable messages.”

Monitoring to determine compliance, Devon determined that one employee had violated its computer-use policy on multiple occasions by forwarding pornographic, derogatory, or racist e-mails. The employee was a valued, long term supervisory employee who had previously received positive performance reviews. Notwithstanding, Devon dismissed the employee.

The employee filed a wrongful dismissal claim which Devon sought to dismiss. The judge refused to dismiss the case so Devon filed an appeal.

The Alberta Court of Appeal found that Devon had cause to terminate. The court indicated that the workplace is not the same as an employee’s home and that an employee has no reasonable expectation of privacy with respect to workplace computers.



The court acknowledged an employer’s right to set ethical, professional, and operational standards in the workplace. The court also noted that an employer’s failure to enforce its own policies could have adverse consequences outside the workplace. For example, if an employee misuses an employer’s communications system to access, receive, and transmit inappropriate materials, an employer’s reputation could be compromised if the e-mails are viewed as coming from the employer.

Developing computer-use policies:

- Employers should implement a clear and comprehensive policy indicating which uses are permitted and which are prohibited—and specifically indicate that data on the employer’s computers and networks will not be private.
- Employees should receive and acknowledge receipt of the policy.
- The policy should be revisited from time to time and updated as circumstances change.
- Employers should send periodic reminders and should regularly monitor systems to ensure compliance.

Given the negative impact that can result if an employer does not have a computer-use policy, or has a poorly drafted and inconsistently enforced policy, employers would be well advised to carefully consider whether they are doing enough with respect to computer use by employees.

Labour + Employment
David M. McNevin 519.790.7476

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