

into the

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Employee Privacy - Traps For The Unwary Executive

How many executives would find it tempting to spend fewer hours chained to their desks and more time away from their offices doing business just as effectively by using the laptop? While flexible working conditions continue to flourish as a potential solution for over-stressed executives, their rights on the latest privacy rules are besetting them with challenges.

If they want to continue fostering high morale in the corporate team, our senior executives can hardly leave what are now considered as mounting privacy issues solely to the HR manager.

The issue of Employee Privacy is a hot topic internationally. The European Parliament has recently moved to legislate for tighter control of how extensively website operators track the activities of on-line visitors and how they use their personal information.

While no such strictures apply in Australia so far, nor specifically on private use of Email and Internet by employees, our legislators are continuing to pose new censorship rulings on vexed questions such as how private sector organizations should collect, use, store and disclose employee records and personal information.

Drug testing in the workplace, gender issues, handing over private records supplied by employees, not to mention that old chestnut, over-use of the telephone, are continuing to emerge as increasing concerns for the executive.

The leading law partnership, Abbott Tout, points out that since the Privacy Act was introduced in December, the Victorian Law Reform Commission is proposing to invite people to make contributions about their experiences. But what rights do employers really have to insist on monitoring the Email inbox and sent items folders for possible private use, even for forays into pornography in cyberspace?

If upwardly mobile managers continue to think of employee surveillance as an arbitrary right in the office, they may need to think again, as the rules introduced late last year come in for closer scrutiny, especially in Victoria, where new rules are expected to influence legislators in other States.

In the Privacy Act introduced late last year, the rules appear to give rights predominantly to individuals. Employers, for instance, cannot record a phone conversation without the knowledge of the parties themselves, and when it comes to video surveillance, any use of cameras must take place in open floor areas and in full public view.

Slater and Gordon cites one example of a legal action against an organization installing covert video equipment in the women's bathroom, unbeknown to its employees.

While it is understood that the Privacy Act has provided a guide to employers, it is under scrutiny by lawyers and academics. New rules on employee records, expected to come into effect in Victoria on July 1, as well as those already in place in the ACT, suggest that even tighter rules may apply to the handling of employee information in the future.

At present, NSW Privacy may be approached by anyone taking issue over employer surveillance, apparently of any description, even when the Privacy Act may preclude any provision for a particular issue.

The existing rules on discrimination may potentially impact on anyone perceived to be highlighting an individual's sexual preference in employee records.

Even if an invasion of privacy is not established within the Privacy Act, it is understood that executives can run foul of prevailing telecommunications rulings, which serve as a guide on what to do about "call line identification."

The same goes for listening devices when it becomes unlawful for employers to record conversations without the knowledge of all of the parties concerned.

Attention to employee privacy in an everyday sense should be a routine precaution for all employers. Whether or not your procedures address all eventualities, traps for the unwary are emerging and many more will follow if our legislators have their way.

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