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Date:

U.S History
Mr. Sapia

ECONOMICS WEEK #8---PRIVACY AT WORK

Week of Monday June 15 thru Sunday June 21, 2020

An employee's right to privacy in the workplace is an increasingly controversial legal topic, especially in an age of increased reliance on computers and electronic mail to do business. Technology has enabled employers to monitor virtually all workplace communications made by employees using computers -- including use of the Internet and company e-mail. While employees may feel that this monitoring is a violation of their privacy rights, it is usually allowed under the law. Other employee activities (such as private conversations) and certain physical spaces in the workplace (like locked desk drawers) receive more privacy protections, while specific activities like drug use may lead to testing for substance abuse. Below is a discussion of employees' privacy rights in the workplace.

An employee's activities while using an employer's computer system are largely unprotected by personal privacy laws. Emails are considered to be company property if they are sent using the company's computer system. Employers generally have the right to monitor and view employee email, so long as they have a valid business purpose for doing so. Many employers now have email systems that copy all email messages as they pass through the system to check for productivity, illegal use, and other issues. Emails are frequently being used as evidence during trial to prove employee misconduct or wrongdoing.

In addition, employers have the right to track the websites visited by their employees, to block employees from visiting specific Internet sites, or to limit the amount of time an employee may spend on a specific website.

Employers use electronic surveillance practices, including monitoring employee phone conversations and voicemail messages, in order to keep tabs on their employees and their business operations. Generally, employers can monitor telephone calls to and from their locations, but there are legal limits.

The Electronics Communications Privacy Act (ECPA) places some limitations on an employer's right to monitor its employees' telephone usage at work. Under the Act, an employer may not monitor an employee's personal phone calls, even those made from telephones on work premises. An employer may monitor a personal call only if an employee knows the particular call is being monitored and consents to it. The ECPA also provides protection for an employee's voicemail

messages at work. Employers face legal liability if they read, disclose, delete, or prevent access to an employee's voicemail messages.

Wiretapping without a warrant is usually prohibited by federal law, but the courts have allowed telephone monitoring of employees by employers on extension phones. Employers also have other methods of monitoring how much work an employee performs. For example, some businesses use computers to determine how much word-processing or email an employee does per day. Employers are also allowed to read email sent between company employees and to monitor employee use of the Internet. Employers argue that such monitoring is necessary to make sure employees are doing their jobs properly. Others claim that monitoring should be illegal and that it creates a negative work atmosphere.

Employers can also generally regulate how employees dress on the job unless such regulation is a cover-up for some form of illegal discrimination based on race, gender, national origin, or religion. Uniforms, if appropriate to the job, and a neat appearance can be required. This may even include rules regarding length of hair wearing a beard or mustache, and modes of dress. In recent years, as styles have changed, many employers have relaxed such rules.

A number of states have enacted laws that prohibit employers from interfering unreasonably with the privacy of their employees by penalizing them for engaging in lawful activities during non-business hours. For example, under these laws someone who smokes cannot be discriminated against by an employer, unless that person works for an anti-smoking organization. In most states, employers can prohibit smoking on the job but must provide brakes to allow smoking off the premises or in a designated area.

One of the most controversial issues involving privacy in the workplace is that of testing employees for drug use. Recently, more private employers have begun to test the workers for drugs. These private testing programs are generally legal, unless they are conducted in a state with a strong privacy law or privacy protection in the state constitution. Some labor unions have been able to reduce drug testing through collective bargaining. Rulings under the national Labor Relations act have held that companies must comply with union requests to negotiate about drug testing policies.

An employer may be able to require its employees to submit to drug screening. However, a number of states' laws limit the circumstances in which an employer may test for drugs, and the methods they may use to perform such tests. An employer may generally test its employees for drug use if it limits its testing to:

- Workers whose jobs carry a great deal of risk to themselves or others.
- Workers who have completed a drug rehabilitation program or are currently enrolled in such a program.

- Workers who have been involved in a work-related accident where drug use was suspected.
- Workers whom management believe have been using drugs based on physical evidence or behavior (glassy eyes, slurred speech).

Employees have clear and specific rights to privacy in the workplace, but these rights are balanced against their employers' privileges to monitor their business operations. If you're an employee who believes that your employer may have overstepped legal boundaries in connection with your privacy rights, or if you just have questions about your right to privacy in the workplace, talk to a local employment lawyer who can clarify your rights.

Those who work for the federal and some state governments generally have greater privacy rights to those who work for private employers. For example, the federal privacy act of 1974 gives federal government employees the right to be told what is in their personal files, to correct an error in those files, and to limit others access to the files. Some states provide similar protections for state government employees, but only a few states do so for private employees. However, as mentioned earlier, state and federal laws require employers to keep confidential sensitive personal information contained in employee personnel or health records. Most commonly, employers must protect the confidentiality of medical information about the employees.

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ECONOMICS WEEK 8 ANSWER SHEET

Directions: Decide whether the law should protect the employee's rights to privacy in each of the following situations. Explain your answers.

1. Johnny, who works for a cement company, has applied for a new job with a construction firm. The manager of the construction firm calls the cement company's president, who reads the contents of Johnny's personal file over the phone, including many negative comments about his work and personality.
2. Lionel, an African-American salesperson in the store frequent mostly by white people, begins to wear his hair and dreadlocks. His supervisor says Lionel will hurt business if he wears his hair that way and sends him home.
3. Jasper is missing some expensive jewelry from a store. He asks the police to come to the store and searched the handbags of the three saleswomen who work for him.

4. Bob, who owns a painting company, suspects Jerry, one of his painters, of not working very hard when he is not around. Without informing Jerry, he offers \$20 to Sam, another of his painters, to spy on Jerry when he is not present and tell him how hard he works.

5. Two reduced thief in his factory, Jeff installs one-way mirrors that enable supervisors to watch employees.

6. Tommy owns a business and begins monitoring the emails between his employees. He fires Harry after discovering he has sent messages to other employees criticizing Tommy and mentioning that he suspects him of stealing money.