



Your Company Email Funnel

Company email is like a funnel. The email quantity generated is large but as each email is filtered through your company's email policy the number of business appropriate email coming out the bottom is small. Surprised? Just like a funnel, a large quantity is poured in the top and what you get out the bottom is only what you want.

This white paper will illustrate potential liability issues and steps to ensure that the emails that come out the bottom of your company email funnel are appropriate business email.

So Where is the Liability?

Harassment

Our first example deals with harassment and contributing to a hostile work environment.

In *Blakey v. Continental Airlines* the plaintiff brought suit against Continental for failure to remedy a hostile work environment. Fellow Continental employees were posting sexually suggestive and derogatory comments about Blakey, the first female airline captain at Continental to fly an Airbus 300 aircraft, on an electronic forum used by company employees.

The court determined that Continental was aware of the electronic communications and was held liable for not acting to remedy the situation.

Disparaging Remarks

Email creates a written record exposing employers to a potential defamation risk.

In *Betts v. United Airlines* the claim was made that disparaging comments were made regarding an employee to other employees via email and that the company should be held liable. The court agreed.

Copyright Infringement

Just as a person would not make photocopies of a book or magazine article and distribute it to others, nor should that happen via email. The act of taking copyrighted material such as a book or magazine and sharing that with others via email essentially robs the publisher of revenue. Email distribution presents a greater problem in that material can be distributed to large numbers and there is a traceable trail. A publisher could potentially have recourse if discovered.

Inappropriate Jokes

Before email employees would stand around the water cooler, “hey did you hear the one about...”. In the digital age the new water cooler is email. Every day inappropriate jokes about sex, race, religion, are distributed via company email. Besides being short lived entertainment the traceability

could come back to haunt the company.

Chevron paid \$2.2 million in damages to a group of women employees that filed suit when a joke entitled “25 reasons beer is better than women” was widely distributed throughout the company via email.

These illustrate some of the more common examples seen in recent case law where a company was held liable in court for the action an employee took using email inappropriately.

Employees do not, in most cases, intend to cause harm to their company but are often unaware of how a seemingly innocent email can have disastrous consequences. The company has responsibility to take steps to ensure all email is business appropriate.

Steps to Take to Reduce Liability

- 1. Written email policy.** Have one. The policy should clearly state what entails the appropriate and inappropriate use of company email. The policy should state the specific consequences if the policy is violated. It should also cover the company’s email monitoring policy and specifically state that emails are not private. The written policy should be given to every employee and it is good practice to have the employee sign that they received the policy. When updates are written be sure to distribute the updates to all employees, asking again, for signature to acknowledge receipt.
- 2. Employees trained on appropriate email content.** This should be part of every company new hire program at a minimum. Retraining annually will keep the awareness in the forefront of every employees mind as they go about their everyday jobs. It should cover the company email policy and include specific examples of seemingly innocent email content that could

be considered inappropriate and harmful.

- 3. Email policy should be consistently enforced.** Prompt action should be taken by the employer when any complaints are registered and if appropriate the disciplinary action spelled out in the email policy should be applied.
- 4. Monitor employee communications.** It makes good business sense for organizations to monitor their email communications. History has shown that companies have been held liable even when management was not aware of the inappropriate email activities. Large organizations utilize email monitoring software that search for patterns, words and user-defined criteria. Smaller organizations may include monitoring as part of the job of a human resource professional.
- 5. Notify employees that email is monitored.** A powerful behavior modification tool is notifying employees whose email has been monitored that on a specific date

their email correspondence was monitored in accordance with the company email policy. This makes the email policy real to every individual in the company. A goal to monitor every employee's email correspondence once each year will send the message that the company is serious about enforcing the email policy.

6. **Disclaimers.** Consider adding a disclaimer to all email signatures that the electronic communication is not intended to constitute offer or acceptance of any agreement to avoid being misconstrued as an electronic signature for contractual purposes. The company legal department should prepare the disclaimer.

The Bottom Line

When all the appropriate steps are taken to reduce email risks there are some unintended benefits. With the non-conforming email disappearing from the company landscape after implementing the steps above, IT departments notice that network traffic is reduced, bandwidth requirements lessen, and server capacity increases. Creating, monitoring, and enforcing an email policy is a smart business practice.