

The Labor Agreement and the Private Use of a Computer

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likely not stand in court. If the private use of the internet is excessive because it hinders the employee in performing his or her tasks, or - in small companies – hinders other employees to perform their tasks; the use or abuse of the internet access is considered a valid reason to terminate the labor agreement.

It is generally considered acceptable for the employer to be allowed to investigate the use of the internet and email by the employee. Said investigation may involve the content of emails sent and websites accessed. A standard condition is however that the investigation is performed with a specific purpose to establish a clear view on the amount of hours spent on the internet, or the exact amount or content of emails sent by an employee. The investigation should be carried out in such a way that the breach of privacy, and his or her freedom of speech, that are almost automatically at stake, are reasonable enough in regard to the purpose of the investigation and in the best interest of the employer.

The jurisprudence on this subject makes it clear that it's easier to impose sanctions on the employee when an Internet Code of Conduct is in place within the company. Said document should contain detailed information on the use of the internet and emailing during and outside working hours. The document should also explicitly state that the misuse of the internet and emailing is prohibited and will not go unpunished. The sanctions mentioned should include warnings; suspension; or – ultimately – a dismissal; whether immediate, by contract annulment, or by court ruling.

Giving an example of a specific case; (**where?**) an employee in the chemical industry had 106 pornographic files and 27 files related to the administration of a private entrepreneurship on his computer at work. The investigation by the employer made it clear that these files were frequently accessed during working hours. The court ruled that the termination of the labor agreement was justified since the employer worked under an *Internet Code of Conduct* stating that the private use of the company's computer was strictly prohibited and therefore sanctioned. The court also ruled that the shown interest in private undertakings and the pornographic material could lead to a lack of concentration, which in turn could endanger the safety of the company and its employees. Sending anonymous emails, or emails under a fake name with an insulting nature to co-workers and to the board of directors, was judged as a sufficient reason to terminate the labor agreement. Even though only two emails on the company's computer were traced back to the employee involved.

The invention and the continued development of the computer has made our work significantly easier. Nowadays the computer is considered a vital tool in performing one's tasks. As nearly any tool used at the work place; whether a pen, a stapler, a shovel or a car, the computer can be used by the employee for purposes other than performing tasks within the scope of his or her labor agreement. The question whether the employer should allow such 'other use' seems to be an easy one to answer when it regards a misuse of company's property. The distinction between 'other use', misuse, or abuse, has however not always been completely clear, and proves to be largely dependent on the specific circumstances of each separate case. In the event of a clear abuse of company property for private use, one of the sanctions to be taken by the employer could be the termination of the labor agreement.

As one can imagine, a computer provided by the employer to an employee to perform his or her work duties, can easily be misused by a number of ways such as internet access for private surfing, illegal copying of software or documents, private business (administration and correspondence), sending sexual explicit messages or attachments through email, or storage of pornographic material etc. etc. Said misuse can occur during or outside the regular working hours of an employee.

The court (which court) seems to allow private surfing on the internet to a reasonable extent. A dismissal based solely on the fact that the employee makes use of the computer to access the internet for his or her private use before and after working hours, and/or during lunch break will most

In cases where an employee has been in service for a long period of time, the court tends to be more lenient. The termination of a labor agreement of an employee who excessively used the company's computer to access internet chat rooms was denied by the court because the employee had been working at the company for 33 years. Other – less definite – measures against the employee were not explored.

In another case involving an employee who was burning CDs and DVDs on a company's computer, termination of the labor agreement was denied since the employee had been in good service for 23 years, had no commercial gain from his activities, and the fact that his direct supervisor was aware of his activities but did not stop him.