



Matt Gingell™

Making sense of employment law

Private emails and messages: A guide for HR professionals

EMPLOYEE RIGHT TO PRIVACY

The European Convention on Human Rights, which is incorporated into UK law, states that everyone has the right to respect for their private and family life, their home and their correspondence. There should be a balance between the general interest of the community and the individual's fundamental freedoms. Although only public bodies must expressly comply with this right, it is relevant to all employers (including the private sector) as courts and tribunals must interpret, as far as possible, all legislation consistently with the right.

In most instances, therefore, emails and messages received and sent through private accounts outside work would be considered private, and employers would have no justification in scrutinising them. But there could be exceptions.

MISCONDUCT/DAMAGE TO REPUTATION

Employers can dismiss fairly for misconduct and the misconduct may be inside or outside work. Damage to reputation could also provide a valid reason.

For conduct outside work, a key question would be whether the actions affect or could affect the employee's work in some way or whether there is or could be reputational damage to the employer. Sending emails or posting messages outside work could fall within scope.

There have been a number of cases where employees have posted inappropriate messages on Facebook that could have damaged the reputation of the employer, and have led to fair dismissals.

MONITORING

Another question is whether employers have the legal right to snoop on employees and monitor emails and messages at work.

Data protection law requires employers to provide detailed information to their employees about their monitoring activities. Employers should also have legitimate grounds for the monitoring and avoid unjustified intrusions into employees' private lives. The monitoring of email content from private accounts, for example, would be seen as one of the most intrusive forms of monitoring – and could be very difficult to justify.

In a recent case the European Court of Human Rights (ECHR) had to determine whether an employer acted lawfully by accessing an employee's private messages on a business Yahoo Messenger account, where the employer's rules banned use of the company's IT systems for private purposes.

The ECHR held that the right to privacy was engaged, but that it was reasonable and proportional to check that the employee was completing professional tasks during working hours. The ECHR was particularly swayed in this particular case because the account had been accessed on the assumption that the messages related to professional activities.

This guide is intended for guidance only and should not be relied upon for specific advice.
The law is also subject to frequent change. © Matt Gingell 2017

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