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THE DANGERS OF EMPLOYEE INTERNET USE

By some accounts, a large majority of employees access the Internet on company computers for personal reasons while at work. The obvious adverse effects of this on productivity are only the tip of the iceberg with regard to the potential headaches that such activities can cause for employers. Personal Internet activity by employees can pose security risks to the company's computer network itself, such as by exposing a network to a computer virus.

Less immediate but just as serious is the threat of legal liability of the employer to injured third parties. Some scenarios are not difficult to imagine. An employee uses his computer as a tool for sexually harassing fellow workers by visiting pornographic websites. Or, an employee embroiled in a bitter domestic dispute uses his office computer to communicate threats to his spouse, and the employer fails to take action.

In a recent case, one such nightmare scenario was all too real for an employer that had to defend itself against the alleged victims of an employee who used a workplace computer for conduct that was criminal, not just indicative of poor judgment. This case may be the first reported decision on the matter of an employer's liability to a third party for having failed to take action to stop an employee from using a company computer in a manner that harmed the third party. It most certainly will not be the last such case.

The case involved an employee who used his company's computer at work to visit pornographic sites, including some relating to child pornography. Over a period of time, a supervisor and some co-employees became aware of this activity and complained to management. Eventually, the offending employee was confronted and was told to stop such use of the computer, but, a few months later, he was again discovered to have accessed pornographic sites.

Eventually, the employee was arrested on child pornography charges, including allegations that he had transmitted nude pictures of his 10 year old stepdaughter over his office computer to a child pornography site. The employee's wife, who divorced him, sued the employer for failing to investigate and for failing to report the employee's viewing of child pornography. The case was settled, but not until a precedent was set when the lawsuit survived attempts to have it dismissed before trial.

There are limits to what companies can or should do to prevent improper use of company computers, but it is only prudent to take at least some basic measures. It makes sense to have a written e mail and Internet use policy that clearly informs employees of what, perhaps, they should already know—that the employer has and reserves the right to monitor employees' use of the company's computers and to discipline violators. In addition, there needs to be even handed enforcement of the policy. Even the best

written policy will do little to convince a jury, if it comes to that, that a company has done all it reasonably could have done, if the

evidence is that the policy was toothless or rarely enforced.

NONOWNER CAN BE LIABLE UNDER FHA

Among the kinds of conduct prohibited by the federal Fair Housing Act is the making of any statement with respect to the sale or rental of a dwelling that indicates a preference, limitation, or discrimination based on race, religion, sex, handicap, familial status, or national origin. The most common violators of this law are the actual owners of dwellings or individuals acting as agents for owners. A federal appellate court, however, reinstated a lawsuit brought by the United States against an individual who had spoken neither as an owner nor as an agent for an owner.

The defendant worked as a housing information vendor, compiling information from classifieds and providing assistance to prospective tenants looking for rooms to rent. In the episode that got the attention of the authorities, a deaf man used a relay services operator to call the defendant for assistance. The defendant flatly told the caller that he did not provide assistance to disabled people. When the caller persisted, the defendant responded with profanity and hung up. Similar inquiries from “testers” were met with essentially the same response.

In fact, the jury heard “a virtual tsunami of evidence” that the defendant routinely treated disabled people differently from those not disabled, often using profanity to underscore the point.

The court rejected the reasoning that applying the prohibition on discriminatory statements only to owners or their agents would be in keeping with the purposes of the statute. On the contrary, the statute was meant to protect against the “psychic injury” done by discriminatory statements made in connection with the broader housing market, not just statements that directly affect a housing transaction. The limitation argued for by the defendant is not in the statute itself, which broadly refers to “any” discriminatory statement.

As for a First Amendment argument put forward by the defendant, it may be available for some forms of speech, such as a private individual’s vocal opposition to having children living on his block. The defendant’s speech, however, was commercial in nature, giving it less protection from government regulation.

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*For more information, please contact **Vlad Tinovsky, Esq.** at vtinovsky@tinovsky.com or **215.568.6862**.*

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