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Employment & Employee Benefits

Accessing personal emails in the workplace

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Privacy at Work – Bărbulescu v Romania

The recent judgment of the European Court of Human Rights (ECtHR) in the case of *Bărbulescu v Romania* (61496/08 [2016] ECHR 61) has generated much media coverage on the right to privacy**,** giving the misleading impression that the Court had given a green light to snoop on employees' personal emails.

Article 8 (1) of the ECHR provides a right for everyone to respect for private and family life, home and correspondence. This case relates specifically to whether an employer was entitled to access emails sent to an employee's personal email account.

The ECtHR noted from previous cases that an employee, in absence of a warning, is entitled to a reasonable expectation of privacy in relation to telephone calls, emails and internet usage in the workplace. This decision does not overrule these previous findings and it is important to note that the ruling does not override existing Irish legislation, namely the Data Protection Acts 1988 and 2003.

Personal Email at Work

- The employee, Mr Bărbulescu was an engineer for a heating company.
- At his employer's request he set up a Yahoo Messenger account to deal with client enquires.
- The employer had an internal rule in which all personal use of the employer's IT systems was forbidden.

The employer informed Mr Bărbulescu that it had monitored the use of his Yahoo Messenger account over the course of a week and considered that he had used it for personal purposes in contravention of their rules. The employee had used the personal email account to communicate with his brother and fiancée and it contained intimate personal information.

The employer invited the employee to a disciplinary hearing, alleging he had breached their policy in which they produced a 45-page transcript of his Messenger communications. In response to their allegations, the employee claimed in writing that his use had been professional only.

The employer dismissed Mr Bărbulescu for unauthorised personal use of the internet. The employee brought an action in the Romanian courts to challenge this dismissal and was unsuccessful. Subsequently, Mr Bărbulescu brought a claim against the Romanian government under Article 8 to the ECtHR.

Decision of ECtHR

The ECtHR held that his Article 8 rights had been invoked but the Court did not find it unreasonable that an employer would want to verify that employees were completing their professional tasks during working hours.

The Court also noted that the employer had accessed Mr Bărbulescu's email account in the belief that it contained client-related communications.

The ECtHR found

- that the employer's monitoring was limited in scope and proportionate
- that the Romanian courts had struck a fair balance between the employee's right to respect for his private life and correspondence under Article 8 and the interests of his employer.

The Court therefore found that there was no violation of Article 8 and dismissed Mr. Bărbulescu's case.

Effects of decision

The Data Protection Commissioner has published a Guidance Note on the 'Monitoring of Staff' which states:

- An employer should have in place a comprehensive workplace policy regarding the private use of the internet in the workplace.

- Organisations have a legitimate interest to protect their business, reputation, resources and equipment and, to achieve this, they may wish to monitor staff's use of the internet.

- Processing of personal data, including use or storage of information about workers, the monitoring of their email or internet access, or their surveillance by video camera, is protected under data protection laws.

Employers should tread carefully and seek advice before they attempt to access private emails of employees. In turn, employees should ensure that they follow work policies and heed warnings from their employer in relation to using IT systems for personal use.

For further information on this topic please contact Laura Feely, Solicitor, Employment & Employee Benefits Group, E lfeely@efc.ie