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3HR Legal Weekly

Employment

Recent Case Law

Monitoring employee communications

In *Barbulescu v. Romania [2016] ECHR*, the European Court of Human Rights (ECHR) held that it is not unlawful for the employer to access employees' communications to check that they have been working, as long as it was reasonable. However, the judgment contained a warning to employers, against "unfettered snooping".



The case concerned a Romanian national, Mr Barbulescu who was employed as an engineer in charge of sales. At his employer's request, he created a Yahoo Messenger account for the purpose of responding to clients' enquiries. His employer started disciplinary proceedings against him when they found that he had been exchanging personal messages with his brother and fiancée about his health and sex life. This was a breach of the Company's internal policies on the use of company equipment for personal use, and as a result on 1 August 2007 his employer terminated his employment contract.

Before the ECHR, Mr Barbulescu argued that his employer's decision to read his personal emails and use this as evidence to terminate his contract had breached his "right to respect for his private life and family life, his home and correspondence" under the European Convention on Human Rights. Mr Barbulescu argued that the Romanian courts should have excluded all evidence of his personal communication when considering if his dismissal was fair, otherwise it infringed his Convention rights to privacy.

The ECHR ruled that the employer's conduct had been reasonable and that the monitoring of the employee's communications had been the only method of establishing if the employer was fair in dismissing Mr Barbulescu. The Court recognised the needs for employers to monitor employees to ensure they are completing professional tasks during working hours. This decision confirms the current legal position, namely that an employer may monitor its employees' communications as long as they have good business reasons for doing so.

However, please note, Part 3 of the Employment Practices Code states employees should be given information if monitoring of emails is to take place. If the company fails to advise employees of this and monitors emails this could potentially be a breach of the Data Protection Act. We therefore advise our clients to check their policies on the use of electronic communication, data protection and ensure they have the right to monitor and access employee usage.

A well drafted internet and email policy is essential to any business. It ensures employees use the internet and email effectively, states what is and what is not allowed and sets out the procedures to minimise risks when accessing and monitoring employee usage. Please contact your usual consultant, if you would like us to review your current policies on the use of internet and email.

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