

MODERN MANAGEMENT

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Is The Internet Stealing Hours From Your Employee's Work Day? Maybe They Are Addicted

A United Kingdom employer recently terminated a group of workers because of their continued use of eBay during work hours. Shortly after these terminations, the union representing these employees filed grievances claiming that the employer had a duty to be more vigilant in helping the terminated workers beat their addiction to eBay. The union claimed that if the company was truly worried about employees improperly using the internet at work, it had a duty to set up or install the proper firewalls, software and other devices to curb employee use of such sites during work hours. Further, the union alleges that the employer had a duty to do this in order to assist their employees with their addiction to the online auction site.

Although this case is a long-shot for the union representing these employees claiming that they were "addicted" to eBay, it brings to the forefront the issues employers continue to deal with since the placement of computers at the reach of most workers. On average, U.S. employers are losing at least 20 percent of each employee's work week to personal use of the internet and email. Trying to eliminate this waste of work time is becoming increasingly challenging. Originally, employers were able to do this with simple firewalls and programs, as the union suggests. However, as technology advances, so do ways around an employer's implementation of such safeguards. With the advent of websites that have the ability to work around these firewalls and programs, text-messaging on cell phones, and devices such as the iPhone and Treo that allow remote access to the internet, employees remain one step ahead of a vigilant employer's attempts to curb technology-waste time by employees. Implementing policies for internet use, email use, and the use of cell phones while on work time will assist in curbing such behavior by employees—more specifically, it will give the employer the power to discipline employees for blatant violation of the policy and for engaging in personal activities while on work time. Should you want to discuss further the implications of employee personal internet usage, email systems, text-messaging, cyber smearing or other employment technology issues, or should you want to implement policies for curbing this behavior, please contact your Lemle attorney.

Possibility of New Protected Classes For Discrimination Gaining Strength In Congress

On September 5, 2007, a subcommittee hearing was held on House Resolution 2015, also known as the Employment Anti-Discrimination Act ("ENDA"). The bill was introduced back in April, and has sat idle until the recent hearing at which time supporters of the bill vowed that it will be passed by the end of the year. ENDA, if passed in its current state, would prohibit workplace discrimination based on sexual orientation/preference and gender identity. The bill is nothing new, as it has been floundering in Congress for the past 13 years, but, with a Democratic-controlled Congress, action is being taken on getting it passed. Many analysts believe that this latest revival of the bill has the greatest possible chance of passing since its introduction years ago—in fact, the proposed law has 165 co-sponsors, including prominent Republicans.

Passage seems even more likely after the final week of September when the current Iraq War defense spending bill passed with a contentious hate crimes bill attached to it. The hate crimes measure included in the spending bill seeks to add violence against individuals based on sexual orientation, gender, gender identify, and disability to the list of federal hate crimes. Although the White House has vowed to veto such bill, it signifies that Congress is willing to create laws protecting individuals based on sexual orientation/preference and gender identification and that ENDA has legs for passing into law. Both laws deal with the protection of sexual preference and gender identification. However, in recent days, House Democratic leaders are considering removing anti-discrimination protections for transgender persons from ENDA after an internal head count on Wednesday, September 26, 2007 found that the bill would likely be defeated with inclusion of such a provision. It has been rumored that Speaker of the House, Nancy Pelosi, will edit out the transgender provision to keep the bill alive with hopes of having it passed by the new year. Only time will tell whether either the hate crimes bill or ENDA make it onto the "books", but, if Speaker Pelosi and ENDA's supporters are correct, employers may have to deal with additional protected classes under Title VII by next year.

"Good Faith" Is A Must

Courts have begun to impose personal liability on managers, supervisors and human resource managers under federal laws such as the Family and Medical Leave Act and the Fair Labor Standards Act and under such State laws, including discrimination and wage and hour laws, but, "good faith" is still a helpful defense. The Eighth Circuit Court of Appeals recently issued a decision concluding that an employer can illustrate its "good faith efforts" by taking the following steps:

- Consulting with outside counsel to insure adequate investigation of an employee's complaint
- Conducting prompt, thorough and objective investigations, including requesting a recitation of the facts from the employee along with a list of witnesses, questioning those witnesses, and taking prompt remedial action if warranted
- Maintaining effective and up-to-date policies and procedures
- Conducting training for management

Please contact your Lemle attorney if you want to plan a program to reduce your exposure.

Traveling For Business? Remember Your Passport

October 1, 2007 starts the requirement that U.S. citizens traveling by air to Canada, Mexico, the Caribbean or Bermuda must present a passport to enter or depart from the U.S. The temporary authorization previously issued by the Department of Homeland Security allowing U.S. citizens to travel with a passport receipt demonstrating application for a passport plus a government-issued photo identification will no longer be acceptable for air travel. It is anticipated that the Department of Homeland Security will issue final rules regarding a passport requirement for the above countries whether traveling by land, air or sea in the next few months. Continue to monitor *Modern Management* for alerts of these changes should they occur.

FMLA Activity In Congress

On September 25, 2007, the House passed H.R. 976 which would extend the rights of family members of wounded veterans to take up to six months' leave without pay to care for a returning veteran under the Family and Medical Leave Act. This resolution follows one of the six recommendations President Bush made in his Commission on Care for America's Returning Wounded Warriors. The Senate must act on this bill quickly, as funding for the other provisions of the bill, which include a reauthorization for state children's health insurance programs, expires by the end of September. Whether such actions occur, it is likely that this extension of FMLA to permit six months of leave to care for returning wounded service members will resurface.

With a Democratic Congress, and the potential for another Clinton to be in the White House, or at least a Democrat, discussions of increasing protections and rights for employees under FMLA is gaining support. (The current Family and Medical Leave Act was enacted during President Clinton's reign in the White House.) One change that is gaining support in both parties is mandating seven paid days off for workers based on sick or family medical leave. Further gaining favoritism among supporters of reform to FLMA is the reduction of the threshold limits for the Act to apply to employers-- reducing the applicability of the statute from the current standard of employers with 50 or more employees to be lowered to cover employers with 25 or more employees.

Extending the period of available leave for an individual caring for a returning wounded service member to six months is the only FMLA amendment that is actually being acted upon by the current Congress, but, other provisions discussed above may gain support in the future should Congress remain controlled by the Democrats and the White House switches parties in the upcoming presidential election.

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