

BLOGS

Archives; Social Media & Technology; Workplace Policies

Email as performance documentation: risks and rewards

In the course of defending employment discrimination claims, I've had the opportunity to review thousands of emails produced by clients. Most often, were hoping that the emails will provide documentation of performance concerns or otherwise validate the company's legitimate, non-discriminatory reasons for its actions. Many times, we find ourselves in luck and are able to do just that. More often though, we find emails that aren't very helpful. Those types of emails can range from content that makes the supervisors frustration with an employee quite obvious (i.e. forwarding an FMLA request from the employee on to someone else in the company and adding something like Surprise, surprise, guess who needs more time off. Seriously.) to something even more troubling (i.e. emailing HR Do we really need to keep accommodating these leave requests? Cant we just terminate her employment?).

In reviewing these types of emails, I've reached a few conclusions:

- Most employees, including managers, don't have an appreciation for the fact that their emails could very well be evidence in a future (or even existing) lawsuit;
- Most employees, including managers, draft emails which contain content that they would *never* have put in a formal memo or a hard copy of a document; and
- Most managers don't have a good system for organizing performance related emails.

So what should employers be doing to address these problems? Employers need to spend time training their managers on effective use of electronic communication. The same advice that you would give regarding more traditional documentation methods applies to electronic documentation too. For example, when drafting emails that address performance concerns, the manager should provide context, specific examples of the performance issues, and expectations going forward. Often the emails are all you have to document performance issues. Consequently, it is important for managers to realize that these emails need to tell the whole story in a way that a third party will be able to understand.

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Training should also include a discussion of what types of information should or should not be put in an email. The place I observe the most problems in this area is communications among managers or between managers and HR. Managers need to understand that sometimes it is better to just walk down the hall or pick up the phone and have a conversation, rather than put it in an email.

Finally, be sure that managers understand that emails can be recovered even if they've been deleted. That being said, your company should develop a system for organizing performance related emails so that they can be retrieved easily when they are needed. Just today I was talking with a client that didn't have all of the relevant emails because the most recent emails sent from HR to the employee had not been filed electronically. The only documentation that we had were the emails sent from the employee to HR, not HRs responses. Although the client can still retrieve the sent mail, it would be much easier if they developed a system of storing those emails as soon as they send the emails.