CASE ALERT: CAN EMPLOYERS MONITOR PRIVATE MESSAGES SENT AT WORK?

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Labor, Employment and Workplace Safety Alert

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In *Bărbulescu v Romania*, the European Court of Human Rights (the "**ECHR**") ruled that an employer may access employees' private messages sent using the employer's resources during working hours.

Mr Bărbulescu's employer had a policy that its staff were not allowed to send personal messages whilst at work or to use company IT equipment for personal use. Mr Bărbulescu was asked by his employer to create a Yahoo Messenger account for the purpose of responding to clients. He was later informed that his Yahoo messages had been monitored and that the records showed he had been using the account to send personal messages to his fiancée and brother. Having denied any wrongdoing, Mr Bărbulescu was presented with evidence in the form of a transcript of messages sent by him relating to personal matters and Mr Bărbulescu was dismissed.

Mr Bărbulescu applied to the ECHR arguing that his right to respect for private and family life, the home and correspondence (Article 8 of the European Convention on Human Rights) had been infringed. The ECHR found that there had been no violation, the employer accessed the messaging account in the belief that it contained only client communications, and a balance had been struck between the right to respect for private life and the employer's interests.

WHAT DOES THIS MEAN?

Press coverage of this case has suggested that employers now have the unrestricted right to snoop on employees' personal communications. That is not the case. The ECHR's decision is consistent with UK law which allows an employer to carry out proportionate checks on employees' communications relating to the business for the purpose of verifying compliance with the employer's rules and policies. However, employers are still subject to legal restrictions and guidance from the Information Commissioner's Office which limit the employer's ability to monitor all communications for any reason. This decision does not change that.

WHAT SHOULD WE DO?

A key part of this case for the employer was its clear and unequivocal policy prohibiting the personal use of company equipment. Employers should have policies in place regulating what information employers can access and how. Employers should ensure that all employees are aware of such policies and that equipment used by employees at work can be accessed for the purpose of checking that employees are complying with workplace policies, should the circumstances warrant it.

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