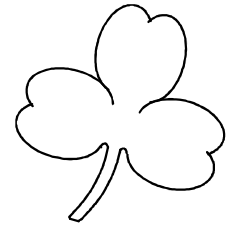




*Happy St. Patrick's Day*

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## *“Tip of the Month”*

### **Digital Privacy**

Many companies nowadays are working with highly confidential company trade secrets. Their employment agreements require employees to keep the secrets and to not disclose them anywhere. These agreements often also have non-compete and invention assignment provisions that are intended to protect the employer's competitive advantage in the marketplace.

If an employer gets wind of possible employee violation of these terms, the employer should investigate. The data in question might be found on the company computer used by the employee. The employer might assume that this data is owned by the company and is fair game for investigation. That could lead to trouble if not addressed properly.

Federal laws protect digital privacy. The Stored Communications Act (SCA) protects against people snooping into email and attachments, texts, instant messages, and other electronic communications on computers, phones, and other devices where the owner has an expectation of privacy. The Electronic Communications Privacy Act (ECPA) protects against intercepting these communications.

Many states including New Hampshire have privacy laws that supplement the federal laws. This could lead an employee to claim that the employer's investigation of the employee's data was an invasion of privacy. This could arise if the employee was able to point to a reasonable expectation of privacy that the employee had not waived.

Companies concerned about confidentiality usually also have employee manuals. The modern manual should include a section addressing the company's electronic use policy. This would put employees on notice:

1. The company's computers, laptops, cell phones, and other electronic communication devices belong to the company and not to the employee, so that the data stored on these devices also belongs to the company.
2. Employees would have no expectation of privacy with respect to the data found on company equipment.
3. The company can have access to the data stored on company electronic equipment as needed.

Even with a policy in place, the company still has to be careful about not going beyond the bounds of the policy. An overzealous pursuit, for example, using personal passwords to get into personal social network accounts, could still lead to an invasion of privacy claim. Step carefully into this changing landscape.

If you need help in determining your digital privacy policy or employee manual, the attorneys at Mesmer & Deleault are ready to help. Please give us a call at (603) 668-1917 or contact us by e-mail at *mailbox @ biz-patlaw.com* to schedule an appointment.

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