TULLY RINCKEY PLLC
YOUR LAWYERS FOR LIFE - 1888LAW4LIFE.COM

Feds Can Doom Their Careers with the Click of a Button

By Mathew B. Tully

With federal agencies desperately looking to cut down on waste, and the presidential campaign heating up, federal employees should be especially mindful of how they use their government computers. Employees may jeopardize their jobs by spending too much time surfing the Internet or sending personal e-mails.

Federal employees accustomed to checking their e-mail or shopping online at their government-issued computer may be deluding themselves if they believe Big Brother is not watching them. Many agencies have their own policies on limited personal use of government office equipment.

Most of these policies contain wording such as “the employee does not have any expectation of privacy while using government-owned office equipment.” So anything employees may read, save, download, send or receive on their government desktop computer, laptop or government-issued smartphone is fair game and can be used against them in administrative, or even criminal, proceedings.

Generally, under such a policy, federal employees are only granted limited authorization to use government office equipment for personal reasons. Such “personal use” must not cost the government much money, cannot reduce the employee’s productivity or get in the way of his or her official duties, and must not be illegal or inappropriate.

However, individual agencies are authorized to impose additional restrictions on an employee’s personal use of government computers, as needed.

The case of Lopez v. Dept. of the Navy, decided by the Merit Systems Protection Board in July of 2011, illustrates just how carefully an agency can and will monitor a federal employee’s use of her office computer and phone. In Lopez, the employee, Debra A. Lopez, an IT specialist, was removed for misusing government office equipment. Specifically, the Navy claimed that over a 14-week period Lopez spent 18.7 hours talking on her office phone about non-government business. Additionally, the agency claimed that during a 15-month period Lopez sent 16 personal e-mails and accessed hundreds of Internet sites unrelated to her duties by way of government-owned computers. Although Lopez was eventually returned to duty due to a procedural error made by the Navy in proposing her removal from service, this case clearly demonstrates that agencies are keeping a close eye on employees’ Internet activity.

Termination is a viable option for agencies in cases of computer misuse. For example, in 2003 the Bonneville Power Administration (BPA), a federal power marketing agency, disciplined 18 employees who sent or received e-mails with sexually explicit or other

inappropriate content.

Two of those employees were ultimately removed from federal service. BPA, which is part of the Energy Department, removed Thomas Von Muller for conduct unbecoming a federal employee, misuse of government resources, failure to follow supervisory instructions and failure to follow written policy and instructions. Von Muller appealed his removal to MSPB, disputing some of the charges, claiming disparate treatment and that an unreasonable penalty had been imposed by the agency. However, in this case, MSPB ruled that due to the seriousness of the charges sustained, the penalty of removal was fully reasonable and appropriate.

Federal employees should also keep in mind that e-mails with crude and sexually explicit content are not the only type that could lead to discipline. Using government time and equipment to send coworkers an electronic message soliciting political contributions violates the Hatch Act and is considered a “cardinal sin” in the federal workplace.

In May of 2011, MSPB upheld the removal of a National Institutes of Health employee based on her soliciting political contributions and inviting other NIH workers to a political fundraiser at her Maryland home. The employee also used her office computer to make a campaign contribution.

The employee committed these Hatch Act violations while at work with her government e-mail account, according to the Office of Special Counsel, which enforces the Hatch Act.

In March of 2011, MSPB similarly upheld the removal of a physician employed by the Department of Veterans Affairs. While on duty at an Arizona VA facility, the doctor e-mailed an invitation for a presidential fundraiser and forwarded an e-mail soliciting political contributions for a state treasury candidate. Both messages were sent to colleagues, according to OSC. Removal actions are common and frequently sustained in cases involving Hatch Act violations.

The lesson to be learned from these cases is that federal employees must not let a capricious click of a button doom their careers. If an employee is under investigation for misusing government office equipment or if his or her employer has proposed disciplinary actions based on such conduct, that employee should contact a federal employment attorney immediately. Depending on the circumstances, the attorney can ensure that the agency does not violate the employee’s due process rights, argue that the employee’s computer usage related to his or her work and prevent the government from taking any e-mails out of context.

Mathew B. Tully is the founding partner of Tully Rinckey PLLC. He concentrates his practice on representing military personnel and federal employees and can be reached at mtully@fedattorney.com

. The information in this column is not intended as legal advice.