

Danish Supreme Court Upholds Legality of Employer Email Search

APRIL 13, 2015

A recent Danish Supreme Court ruling upheld a company's right to access employee email where the company had previously reserved the right. *Roche Innovation Crt. Copenhagen A/S v. A*, Den. Sup. Ct. No. 189/2013, released on February 4, 2015, involved a former employee who claimed that she had been wrongfully terminated. The employee was initially placed on a temporary leave after the company experienced financial difficulties that resulted in cutbacks.

During the employee's leave, the employee's partner submitted a patent application for products related to products in development at the company. The company subsequently searched the employee's email to determine whether the employee had leaked sensitive information to her partner. To conduct its search of the employee's corporate email account, the company used targeted keywords and found what it determined were emails with sensitive information. It fired the employee as a result.

In response to her objections, the Maritime and Commercial Court concluded that she had been unlawfully discharged. That court's conclusion was that the emails did not contain trade secrets. In response to her allegations that the email search was unlawful under Section 263 of the Danish Criminal Code (which addresses the privacy of communications) and Denmark's Data Protection Act, that court found the search was not unlawful. The employee appealed. The Danish Supreme Court agreed with the lower court that the search was lawful. The employment contract gave the employer the right to access employee emails saved on the company server with reasonable grounds related to company operations. The employee had not marked any of her emails as private. Thus, the search did not violate the employment agreement.

Tip: This case is a reminder that in many jurisdictions, including Denmark, searches of employees' corporate emails may be acceptable if suitable rights are carved out in employment contracts. In addition to having the right provisions in employment contracts, companies should work closely with counsel to ensure that the searches themselves are appropriate and not in violation of the law or the employment contract.

1 Min Read

Related Locations

Chicago

Related Topics

Workplace Privacy

Europe Privacy

Related Capabilities

Privacy & Data Security

Related Regions

Europe

This entry has been created for information and planning purposes. It is not intended to be, nor should it be substituted for, legal advice, which turns on specific facts.