

Massachusetts Court: Employee had no Reasonable Expectation of Privacy in Employer-Provided Gmail Account

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At the developing intersection of employment law and the internet, every decision is important. It is, therefore, worth taking note of a recent decision out of Massachusetts state court, wherein the court found that an employee had no reasonable expectation of privacy in e-mails sent and received using a Gmail account provided and administered by his employer.

In the case, *Falmouth Firefighters Union v. Town of Falmouth*, a firefighter brought suit against the Town of Falmouth after his personal e-mails sent through his Town-administered Gmail (i.e., Google e-mail) account were reviewed during the investigation of another former employee's alleged sexual harassment. The firefighter sued under the Massachusetts Privacy Act, which provides a right against "unreasonable, substantial, or serious interference" with citizens' privacy. He argued that his e-mails were private because the Town had not implemented its e-mail policy and because his e-mails were never stored on the Town's servers. (The Town merely purchased and provided the e-mail domains, while Google handled all other technical aspects of service and storage.) The court rejected the employee's claim and granted summary judgment to the Town. The court found that the employee "did not have a reasonable expectation of privacy in the emails he voluntarily sent over the Town's email system *absent any assurances that such communications were private or confidential*." Thus, the court did not even question whether an e-mail policy existed or what past practice in the Town had been. "Once [he] sent emails containing highly personal and intimate information to a second person," the court held, "any reasonable expectation of privacy was lost."

This Massachusetts case is interesting for employers in all states, because the court essentially ignored the factors that have previously been relied upon as destroying a reasonable expectation of privacy in employee e-mail (e.g., a clear e-mail policy, storage on the employer's servers, past practice). Instead, the court came to a simple conclusion: the employee lost all reasonable expectations of privacy the moment he "voluntarily communicated the alleged personal and intimate comments over the Town's e-mail system." This is a remarkably narrow view of employee's right to privacy in e-mail.

It remains to be seen whether this decision will be appealed and whether other courts outside of Massachusetts will look to it for guidance. For now, however, this case at least suggests that the lines defining employee privacy in e-mail — as well as the factors that are most important in that analysis — continue to be fluid and undefined.

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