Client Alert

TRIPLEOKLAW ADVOCATES

July 2019

PRIVACY AT THE WORKPLACE; A CLOSER LENSE AT THE 'BRING YOUR OWN DEVICE' TREND

Privacy at the workplace arises from the interaction between the employer and employee. It is anchored on Article 31 of the Constitution of Kenya, 2010, which enshrines the right to privacy for every person.

With the advent of technological growth, the workplace has been revolutionized. Employees are increasingly accessing employers' systems using their laptops, mobile phones and tablets to conduct business or work. Consequently, it has become exceedingly rare to find a workplace environment that does not have bring your own device (BYOD) trend.

PRIVACY EXPECTATIONS

Employees' have a legitimate expectation that the employer will guarantee their safety and workplace privacy. Additionally, they expect flexibility to accomplish their tasks as and when they are required. The employer on the other hand expects that the employees will protect

Contacts

For more information please contact:

Catherine Kariuki
Ckariuki@tripleoklaw.com

Janet Othero
jothero@tripleoklaw.com

Joyanne Njau
Jwanjiru@tripleoklaw.com

company assets and systems while helping to safeguard proprietary information. The employer also seeks to avoid litigation arising from BYOD use.

The BYOD trend has introduced the employer with legal and ethical questions concerning privacy and how far an employer can go in accessing information on an employee's personal device. To what extent can an employer track email conversation and monitor internet activities of the employee?

BYOD POLICIES AND THEIR IMPORTANCE

Whereas BYOD has its clear advantages, it exposes the employer's systems and data to risk. The use of a device for personal purpose increases the risk of malware and viruses which exposes confidential work content to security risks. It is also difficult for an employer to manage its content on an employee's personal device.

It is therefore of necessity that an employer has a well elaborated policy that governs the BYOD program in its workplace. The policy is important as it helps the employer safeguard confidentiality of work-related communications, protect intellectual property such as trade secrets as well as maintain its fiduciary responsibility to protect company assets

It is therefore of necessity that an employer has a well elaborated policy that governs the BYOD program in its workplace. The policy is important as it helps the employer safeguard confidentiality of work-related communications, protect intellectual property such as trade secrets as well as maintain its fiduciary responsibility to protect company assets. It should be as practical as possible and consider situations such as geographical deployment of devices e.g. where an employee who is on a work-related trip to Europe, where there is elaborate legislation, breaches data laws through his device while working.

It is also important for the employer to consider how BYOD set-up at the workplace interacts with the existing law as this will inform contents of the said policy and internal procedures governing access and extraction of any information from the said devices. Drafters should consider issues such as admissibility of electronic evidence in accordance with the Evidence Act, offences provided for in the Computer Misuse and Cyber Crimes Act & Kenya Information and Communications Act, local labour laws, international laws such as the

International Labour Organization Hours of Work (Industry) Convention No. 1 of 1919, regional laws and best practices.

CONCLUSION

In conclusion, the drafters must ensure that both the employer and employee's privacy is guaranteed in the workplace and that balancing the employees right to privacy does not hamper the employer's drive to deliver business value.