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劳动与雇佣

监控员工邮箱合法吗？

Employee Email Monitoring is Legal in China?

经常有客户会向我们提出咨询，如果公司监控员工的公司邮箱，这种做法在中国是否合法？

We are frequently asked by the clients that if the company has the right to monitor the employee's corporate email account, and will it be legal in China?

雇主对雇员在工作时间内行为的监控，包括对公司邮箱的使用、QQ、MSN 等即时通讯工具使用的监控，在世界范围内都成为了有争议的话题。这其中涉及雇主对雇员的监管权和雇员的个人隐私权之间的利益平衡。

The monitoring of employee's behavior during the working time by the employer, including the monitoring of corporate email account, QQ, MSN etc, has become a controversial topic worldwide, which relates to the balance of the interest between the employer's right of supervision over the employees and the personal privacy the employee enjoys.

雇主的观点：

The Employer's Opinion:

- 员工所使用的公司邮箱系公司财产的一部分，公司有权对属于公司财产一部分的公司邮箱予以监管；
The corporate email account is part of the company asset. So the company shall have the right to supervise the use of the corporate email account;
- 通过监管员工对公司邮箱的使用，及时发现和制止员工泄露企业商业秘密（包括客户资料、财务信息、企业决策信息等）的行为；
Through monitoring the use of corporate email account, the employer is able to find and prevent the employee from disclosing company confidential information(such as client's data, financial data, company resolution etc);
- 通过监管员工对公司邮箱的使用，发现和调查员工可能发生的徇私舞弊行为；

Through monitoring the use of corporate email account, the employer is able to investigate the malpractice engaged by the employee;

- 防止员工使用企业邮箱从事与工作无关的事项，可以促进员工工作效率的提高。

The monitoring can prevent the employee from engaging in non work-related matters so that the working efficiency can be improved.

雇员的观点：

The Employee's Opinion:

对于雇员来说，雇主监控雇员邮箱最大的争议点在于涉嫌侵犯员工的通讯自由权和隐私权，特别是雇主在未事先告知雇员的情况下监控雇员邮箱的情况。

For employee, the big concern is the email monitoring infringes the right of freedom in communication and the employee's privacy, in particular the monitoring is conducted without prior notice.

2013 年，广东省佛山市中级人民法院审结了一起有关雇主利用监控雇员邮箱获得的邮件，以雇员存在违反公司规章制度的行为为由单方解除了劳动合同，雇员不服提起劳动仲裁，并历经劳动仲裁、一审和二审法院判决的案件。在此案中，雇员提出的抗辩意见之一即为雇主未经雇员同意，私自检查雇员的电子邮件的行为侵犯了雇员的通讯自由权和隐私权。

In 2013, the Foshan Intermediary Court in Guangdong heard a case relating to a labor dispute where the employer terminated the labor contract with the employee due to violation of company regulation. The ground in relation to violation of regulation is from the employee's emails monitored by the employer. The employee filed the labor arbitration and then the case went through the arbitration, the first court instance and the second instance. In this case, one of the defenses raised by the employee is that the employer monitored the employee's email without his consent and such behavior has infringed the employee's right of freedom in communication and privacy.

其中，一审法院和二审法院针对雇员的抗辩意见有不同的观点：

In this case, the court opinion by in the first instance and the second instance varies:

一审法院支持雇员所提出的抗辩意见。一审法院判决书认为，公民享有通讯自由的权利，未经法定程序不得被随意剥夺，公司本身没有执法或司法权限，在未告知雇员的前提下，私自检查雇员的电子邮件侵犯了雇员的权利，而据此取得的证据也不能作为认定对雇员不利事实的依据。

The court in the first instance supported the defense raised by the employee. In the court judgment, the court concludes that people shall have the right of freedom in communication. Without legal procedure, such right shall not be deprived. The employer is not granted with any judicial power so any monitoring to the employee's email without notice shall have infringed the employee's right. Accordingly, the evidence obtained shall not be used as ground not in favor of the employee.

针对一审判决，公司提起了上诉，在针对一审法院认定的上述理由时，公司强调了公司有权对员工使用的公司邮箱进行检查的权利。二审法院在终审判决中，不再就公司检查雇员邮箱的行为作出非法的定性，而是将注意力放到了对公司检查邮箱所获得的邮件内容的审查，从而作出员工是否存在违反公司规章制度行为的认定。

Following the court judgment, the employer filed the appeal immediately and argued that it shall have the right to monitor the staff's corporate email account. In the final court judgment, the court did not recognize the illegality towards the employer's monitoring of staff's email but focused on the examination of the emails obtained by the employer and then determine if any malpractice behavior exists.

就此，我们认为法院在此问题上态度的转变表明在使用公司邮箱的问题上，雇员以雇主侵犯通信自由权和隐私权的抗辩实际并未能获得司法支持。

Therefore, we conclude that the change of the court opinion has indicated that the defense of infringement of the right of freedom in communication and privacy by the employee has actually not been supported by the court.

然而，这并不表明任何雇主对雇员工作邮箱的检查在今后的司法实践中不会存在任何的潜在风险。根据我们的经验，我们认为雇主可采取以下措施确保此等行为的合法性和安全性：

However, this does not mean that the employer will not run any risk in future's practice of email monitoring. According to our experience, we suggest the following measures shall be taken by the employer to make sure the legality and safety of such behavior:

1. 如公司有意检查和监控员工的企业邮箱，其有必要在公司规章制度或者员工手册中就邮箱的使用做出专门的规定。一般情况下，该等有关公司邮箱的使用的规定需要至少涵盖以下要点：

If the email monitoring is necessary for the employer, the company regulation or staff handbook shall be made in respect to the use of corporate email account. Generally speaking, such regulation shall at least cover the points below:

- 强调公司邮箱属于公司财产的一部分；
It shall be emphasized that corporate email account belonging to asset of the company
- 强调公司邮箱仅能用于工作目的，未经许可不得用于私人通讯用途，不得发送或接收包含个人隐私等非工作有关的信息；
It shall be clarified that the corporate emails account will only be used for work purpose and not for personal communication. Any personal and privacy information shall not be sent or received through corporate email account;
- 公司保留根据需要对公司邮箱进行检查的权利。
The company reserves its right to monitor the corporate emails.

2. 任何公司检查获得的邮件内容，如存在员工的违纪行为，我们建议公司需要根据掌握的线索再行深入调查，争取获得其他相关的证据来支持公司可能作出的违纪处理决定；

If any malpractice is found through the email monitoring, we suggest the company investigate further and collect additional relevant evidences to support the decision made by the company;

3. 尽可能避免出现仅依据检查获得的邮件内容即作出针对员工的违纪处理决定。

It shall be avoided that the company makes any disciplinary decision only based on the emails obtained through monitoring.

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