



Texting For Business On Personal Cell Phones

Insights

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In the last few years, many industries and companies have been coming to grips with the problems posed by employees using their personal phones, tablets, or laptops for business uses. The recognition of the need to develop policies for these devices likely started when smart phones other than Blackberrys began to send and receive email.

Employees adopted the smart phones much more quickly than their employers did and began connecting them to work email servers. The increase in speed of home Internet service allowed employees to connect to the office and work as if they were sitting at their desks. As the cloud formed, employees began using third-party servers such as Drop Box to access their work documents. Businesses were hard pressed to keep up with the changing technology.

Businesses large enough to have IT departments first addressed the issue through making sure virus protection was active on outside computers before allowing them to connect. But they soon learned that viruses were only the tip of the iceberg when it came to risks posed by allowing employees to connect their own devices to the company's network. Soon, the theft of trade secrets using Internet-based emails and thumb drives began. Then, hackers started breaking into business customers' information for identity theft. Pretty soon, even the smallest business became aware of the risks of being connected to the outside world through technology.

Given the great privacy concerns, the medical and financial industries began instituting policies to prevent data security breaches. For example, large financial institutions demanded their law firms provide firm-owned cell phones to employees to tighten control over access to private information. Other industries have been quickly adopting heightened security measures to keep their and their customers' information safe.

Like most industries, retailers have adopted technology security policies for employees in the home office and those that need a full computer to do their job. However, unlike many industries, the bulk of retail employees at the store level do not need or have access to computers connected to the Internet, nor do they connect their own devices to the company's computer system. Stores often use closed messaging systems that can only be sent and received on the company's computer system rather than email that can be sent outside the company.

The main piece of technology in a retail store is not normally a personal computer with access to the

Internet, but the cash register that is connected to a closed system. Access to information from a cash register is limited to the few managerial employees and the available information is relatively small. And most retailers prohibit employees from using cell phones while working. In light of this, many would assume the store level is, at least relatively speaking, a technological risk-free zone. Recent experiences are showing this is not the case and the culprit is the cell phone.

A Growing Problem

Texting has become a preferred method of communication in society, with over six billion texts being sent per day in the U.S. alone. Picking up a phone and calling someone has become passé. To use a landline, most people have to look up the number they want to call on their cell phone. Texting is often even quicker than email because employees have their cell phones with them. People simply want to communicate by text rather than by talking, particularly for quick questions. And that's the problem for retailers.

It's likely that the vast majority of store managers have provided their personal cell phone number to all their employees, or at least their subordinate managers. Likewise, employees provide their personal cell phone numbers to managers so they can be reached when the need arises. In the retail world, that need arises often. What results is managers communicating with employees about all manner of information through their personal cell phones.

Here's a scenario illustrating what is perhaps the most common use of the text message at the store level. Paul notifies his manager, Mary, that he cannot come in for a scheduled shift. While not compliant with the store's policy that employees speak in person to a manager when they are going to be absent from work, many store managers accept these messages because it is quicker for them than picking up the office phone and having a conversation with the employee.

Mary then turns around and shoots off a text to three employees not scheduled for that day asking if anyone can cover the suddenly available shift. Two employees respond affirmatively, and Mary then lets one know to come in and work. This was undoubtedly efficient, probably taking no more than a minute to accomplish as opposed to making several phone calls. The store is staffed properly, the manager notates the change on the schedule, and all corporate knows is who worked the hours. No one gives the communication a second thought. Then Peter, the employee who did not get to work the shift, quits and files a lawsuit.

Peter had been fed up with Mary because she has consistently (and legitimately) refused to provide him with additional hours. Mary, of course, has never told Peter that his work is mediocre and that she is giving more hours to those employees she views as more efficient. She has, on the other hand, had long conversations with her assistant manager through texts about the employee's poor attitude, lack of work ethic, and moral turpitude.

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She fired the assistant manager last week for a cash handling violation, and the assistant then shared all the texts with Peter. Peter believes that Mary's dislike and treatment of him is a result of her prejudice against him because of his protected class. What's more, the text messages the assistant manager disclosed contain words and slurs that Mary swears she did not use. She cannot prove this however, because her three-year old dropped the cell phone that she used to send the texts into the toilet – and the texts on her phone were not backed up.

This situation illustrates many of the issues text messages present for retailers. Managers are using text messages for business purposes because it is a fast and easy way to get in touch with someone. This is not all bad for business because it is efficient. But there are numerous downfalls. Texting is casual and managers and employees often intermingle both personal and business in their messages. The right forensic examiner can often recover deleted texts as long as the cell phone that sent or received them is in working condition and put the lie to the manager who denies sending a suggestive comment.

The opposite – not being able to recover the texts – presents many problems as well. For example, assume that a manager has not printed and placed in the personnel file the text an employee sent to notify the manager that the employee was ill. Then, when a different employee is terminated for no-call, no-show, there is no record that other employees who missed time did, in fact, notify the manager of their absence.

Our Advice

Given these possibilities, it's important that retailers develop policies regarding store-level employees' use of their personal cell phones to communicate for business purposes with the store's employees. You need to weigh the value of the efficiency that communicating by text messages provides against the risks it creates. The simplest policy is to prohibit store employees from using cell phones for business purposes. But this may not serve the needs of some businesses who would be reticent to discipline or terminate a good store manager for sending the schedule to employees via text.

If you allow employees to use their personal cell phones for business, you need to determine how that information is to be retained. Should all communications be printed and put into employee files, or should they be downloaded to a computer file? Another issue is who will be allowed to use cell phones? Should only the management team be authorized to communicate among themselves, or should the manager have the ability to send texts to all store employees?

Finally, what are the risks that authorizing managers to have and use their cell phones in the workplace will diminish enforcement of prohibitions of other employees having cell phones while at work? There is no easy one-size-fits-all policy. The only certainty is that store managers and employees are using text messaging as a common means of communication.

For advice about proactively addressing this conduct and developing policies that will protect your company against the risks, give us call.

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