

How Texting Can Get You into Trouble at Work

April 1, 2010 at 9:00 pm by: [HR Insight](#)

Has texting grown up enough to become a corporate communications tool? Are your employees using their company-provided phone, PDA, or smartphone to send text messages? HR professionals, IT leaders, and other executives are pondering the above questions at the moment.

Text messaging is becoming more mainstream. Workers who came to maturity in the age of texting are bringing their texting habit to the workplace. In addition, parents are getting into the texting habit to communicate (or try to communicate) with their children. This habit is continued with mature workers texting on the job as well.

Texting Is Really Private? Well Not Really

Many employees are under the misconception that texting is really a more private method of communication. They think that text messages, in contrast to e-mails, are untraceable and are not archived. A recent *National Law Journal* article described the situation:

Texting may seem to users as ephemeral — and hard to trace — as a phone conversation. But the messages leave behind an electronic record, and for lawyers, those records are increasingly being used to bolster a variety of claims, particularly in the workplace. For employers, that means a growing source of liability as business-related texting continues to proliferate.

In reality, texts are definitely traceable. Additionally, there continues to be new software available to assist companies in managing their employees' text messages. Canadian software company GWAVA has created a software application, Retain, that permits companies to easily archive SMS text messages from thousands of employee users. The absence of an archiving system had forced employers to rethink communication strategies. According to a GWAVA executive, "a high percentage of organizations have told us that they have disabled text message functionalities in spite of real business needs for the technology because they don't have an archiving and retrieval solution in place."

The level of adoption of text messaging has made the concept of disconnecting text messaging system functionality without creating an employee insurrection unlikely at this stage. Therefore, employers are best served by working to advise their workers about the dangers of texting.

Dangerous Caveats

Employers and employees only need to read the popular press to see cautionary tales of texting getting people into trouble. A soccer coach at Central Michigan University was engaged in a "he said, she said" story of sexual harassment. Two of his players complained of improper behavior, and the coach maintained his innocence. The text messages discovered between the coach and the players, according to the players' attorney, significantly affected the case.

"[The coach's] words came back to haunt him," commented the attorney going on to say that text messages in general "have really been a gold mine in terms of finding evidence to support and corroborate claims of sexual harassment in the workplace. . . . You look at the texts and you can

see who is telling the truth.” The case settled with a \$450,000 payment, and the coach subsequently resigned.

“Textual Harassment”

The term “textual harassment” emerged from high-school bullying and other personal stalking using texts. The term has migrated into the workplace, and legal publications, HR managers, and lawyers now recognize the term and the conduct. In a high-profile case in the United Kingdom in 2009, a bank executive received significant compensation after it was determined that she was fired for not reciprocating alleged advances transmitted primarily via text messages. In addition to frequent requests to accompany her boss to join him at horse-riding events, the cinema, restaurants, and classical music concerts, the labor tribunal was particularly concerned with a text that communicated, “I was watching a movie yesterday with Kate Winslet. It is funny — you remind me of her.”

Employment lawsuits increasingly start as the result of text messages, or the messages are appearing later as evidence of harassing or discriminatory content. Unfortunately, as discussed above, employees think that texts are harmless and cannot be traced. They frequently let their guard down. New York attorney Patrick Boyd commented that text messaging is the “most revealing of the true thoughts — the unrestrained thoughts — of the harasser. . . . They bang it out real quick, late at night, after a couple glasses of wine. They don’t think twice about it. And they make big mistakes.”

Texting and Driving

Fourteen states and the District of Columbia have laws prohibiting driver texting in place or scheduled to become effective in 2009. Now, Congress is contemplating getting into the act and making it unlawful all over the country. Senator Charles Schumer (D-NY) submitted a bill at the end of July 2009 that would force states to ban texting while driving or risk losing federal transportation dollars.

Similar to leverage used by Congress to influence speed limits and DUI standards, the new legislation would set deadlines for the U.S. Department of Transportation to devise minimum penalties for states to implement. If states do not enact new laws, under the proposed legislation, they will lose 25 percent of their transportation funding. The bill comes on the heels of a recently released Virginia Tech Transportation Institute study that concluded drivers who text are more than 20 times more likely to crash than those driving while not using a phone. Of course that only underscores the need to regulate employee use of texting devices — especially while on the move. This is a concern when employees are texting and driving under a variety of circumstances, including:

- driving a company vehicle or their own vehicle on company business;
- texting a company-related matter; and
- using a company-provided electronic device.

What to Do?

Employers can no longer pretend that texting is only for high school kids or can be handled under e-mail protocols. HR managers need to clearly communicate that text messages, whether

sent using a firm device or employees' own personal equipment, are traceable and archived somewhere. They should also consider provisions for analyzing text messages on a periodic basis. That will eliminate the surprise that comes when disgruntled employees forward copies of text messages along with allegations of inappropriate conduct.