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Your liability for your employees' defamatory e-mails

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A federal judge in Norfolk recently permitted an employee to proceed on defamation claims against her employer. The case arose out of defamatory statements made by a coworker and sent via intracompany e- mail to other employees. The judge's decision highlights the potential liability you may face when employees send e-mails to coworkers.

Sepmoree's lawsuit

Melanie J. Sepmoree worked as a nurse at Bio-Medical Applications of Virginia, Inc., d/b/a Fresenius Medical Care Dominion. She filed a defamation suit in Norfolk federal court against Fresenius claiming that e-mails sent out by one of her coworkers falsely implied that she didn't care about her patients' welfare.

Fresenius asked the court to dismiss the case, arguing that Sepmoree hadn't properly set forth the necessary elements of a defamation claim. Fresenius contended that she hadn't provided evidence sufficient to impose liability on the company for any false statements because the e-mails were disseminated only within the company. Sepmoree claimed that her legal position was supported by what is known as the intracorporate immunity doctrine.

Intracorporate immunity doctrine

There are many types of legal claims that cannot be based on actions that occur between employees or between employees and their employer because Virginia law—and the law of many other jurisdictions—recognizes the intracorporate immunity doctrine. That doctrine, in essence, views a company and its employees as one and the same and generally prohibits legal claims between coworkers or between employees and their employer.

For example, employees generally cannot conspire among themselves or with the company, nor can employees interfere with their company's contracts or business expectancies. Claims for conspiracy—as well as for intentional interference with a contract and intentional interference with business expectancy—require interference by a third party. Thus, employees and their employer generally cannot conspire because the intracorporate immunity doctrine views them as one entity, and one entity cannot conspire with itself.

Doctrine not applicable to defamation

Relying on this doctrine, Fresenius argued to the federal court that it couldn't be held liable for the defamatory e-mails because one essential element of a defamation claim is that the false statement be "published" to a third party. Fresenius contended that since the defamatory e-mails were sent only to other coworkers, who are legally deemed to be one with each other and the company, Sepmoree's claim didn't meet the publication requirement, and her claim therefore failed. However, the court denied Fresenius' motion and allowed Sepmoree's claim to go forward.

The judge found that the intracorporate immunity doctrine did not apply in this case because Virginia doesn't recognize the doctrine in the context of defamation claims. Instead, Virginia holds that intracompany e-mails are "published" for purposes of defamation claims. Thus, even though the e-mails were distributed only on the company's

intranet, they were "published" for purposes of Sepmoree's defamation claim. Consequently, Fresenius' motion to dismiss was denied. *Sepmoree v. Bio-Medical Applications of Virginia, Inc.*, No. 2:2014cv00141 (E.D. Va., 2014).

Bottom line

You should be aware that you are generally liable for the conduct of your employees. If an employee makes false charges against coworkers through your corporate e-mail, you may be facing a lawsuit. Accordingly, if you learn that one of your employees is making false and defamatory statements in e-mails sent to others, you should take prompt remedial action.

You also may want to consider monitoring your employees' e-mail traffic under a well-defined e-mail policy. The court's decision in this case is a good reminder to consult with your employment counsel to ensure that your corporate e-mail policies are properly drafted. Before taking any disciplinary action against an employee for violating your corporate e- mail policy, it's always wise to consult with counsel to make sure you have covered all your bases.

For more information on this topic, check out the following articles from past issues of Virginia Employment Law Letter: "Internet monitoring: Why keep an eye on surfing and e-mailing in the office?" on pg. 1 of the May 2007 issue; "E-mail correspondence: training your employees is essential to protective e-policies" on pg. 4 of the May 2007 issue; "Who owns . . . your employees' e-mails?" on pg. 5 of the May 2007 issue; "Employee communications in the digital age" on pg. 4 of the June 2007 issue; "Your employee's got mail—can you access personal e-mail accounts?" on pg. 1 of the June 2009 issue; and "Tracking your employees" on pg. 1 of the April 2010 issue.

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