

Do you need a 'no forwarding' e-mail policy?

Here's a potential electronic communications problem you may not have considered. An employee who forwards e-mail from a company computer and e-mail account to his personal address may end up using those e-mails later in litigation against the company.

That's one reason it makes sense to prohibit employees from forwarding e-mails to their personal e-mail accounts outside the company. Plus, it's all too easy for forwarded e-mails to get out and into general circulation—which could be embarrassing or downright catastrophic, depending on the nature of the forwarded message.

Recent case: Arizant Holdings sued a former employee, Gregory Gust, who had been terminated for poor performance. At the time Gust was fired, the company gave him a severance payment of more than \$70,000. It also allowed him to continue to use the company e-mail system for a few weeks, supposedly in order to let clients know he would no longer be working for the company.

Arizant sued Gust because he allegedly broke a noncompete agreement by forwarding e-mails from his company account to his home account and then on to a competitor.

But the court said that since Arizant didn't have a no-forwarding policy, Gust hadn't broken any promises. (*Arizant v. Gust*, No. 08-CV-1283, DC MN, 2009)

Final notes: You should always have an attorney review any payout to a departing employee. In this case, the payment was in exchange for not suing Arizant, and the settlement didn't mention what would happen if the employee went into competition with the former employer. A line in the agreement forfeiting the payment if he broke the noncompetition agreement might have meant the court could have ordered the employee to return the money.