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Impact of Remote and Hybrid Working Arrangements on Sexual Harassment and Discrimination including Impact on Workplace Policies and Investigations

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Impact of Remote and Hybrid Working Arrangements on Sexual Harassment and Discrimination including impact on Workplace Policies and Investigations

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REMOTE WORK AND #METOO

Hybrid and Remote Work Presents Unique Challenges

Organizations are being confronted with unique challenges associated with remote and hybrid working arrangements including the impact of differing types of harassment on their employees. While Pre-Covid 19 sexual harassment might occur with physical touches or in person sexual comments in the workplace with telework there are often no bystanders to intervene or witness improper behavior only the discovery trail of evidence from computers, tablets or phones.

The type of inappropriate acts that may be considered sexual harassment are most likely not properly understood by companies such that new examples should be addressed in workplace policies and trainings.

Legal standards for sexual harassment including initiatives at the state, federal and international level will be addressed as well as recommended training and policy considerations and internal investigations when a complaint is received in this new remote work environment.

Power Dynamics and Thinking about Sexual Harassment

#MeToo became a movement to inform people globally “how widespread sexual harassment, assault, and other misconduct really are. As ... more survivors came forward, they learned they were not alone. [P]eople who never had cause to think about sexual harassment before suddenly saw how much it had affected their coworkers, children, parents, and friends.” This helped change how many people “think not just about sexual misconduct but also about gender and power.” Anna North, *7 positive changes that have come from the #MeToo movement*, VOX (Oct. 4, 2019), <https://www.vox.com/identities/2019/10/4/20852639/me-too-movement-sexual-harassment-law-2019>. Now, with the global pandemic shifting working to remote or hybrid arrangements there needs to be informed thinking for trainings and other workplace rules that takes the new paradigm into account.

COVID-19 Crisis and Changed Circumstances

With COVID-19 and the closure of offices, employees in various industries were hopeful that there would be fewer instances where they would be required to discipline employees for improper conduct. While many employees hoped that they would not have to endure improper sexual behavior by managers or co-workers, studies have shown this was not the case.

Changed circumstances have not prevented improper conduct – in fact, in terms of sexual harassment there has been a different type of difficulty in that companies now have to combat behavior in the virtual workspace where different rules may apply depending on the jurisdiction where the employee sits remotely. Differing standards at the local, state and federal level make it even more challenging to investigate and address complaints of misconduct.

Has Post-Pandemic Work Changes worsened Sexual Harassment?

Studies have found that remote work may have even worsened issues with on-line harassment: Rights of Women, a UK-based charity, found that “sexual harassment of women *worsened* during the pandemic, with nearly half of it occurring remotely.” See HR Daily Advisor, *Remote Sexual Harassment: Its Happening Are You Ready?* (July 16, 2021)

The “sudden decline in face-to-face contact didn’t mean that workplace sexual harassment just disappeared. Unsurprisingly, cases of online sexual harassment have increased since the start of the pandemic. When [persons surveyed] were asked if they have experienced any unwelcome behavior over video calls, text messages, email, or any other online platform since the start of the pandemic...29% of those surveyed said yes.”

Even more surprising – “men reported experiencing online sexual harassment much more frequently than women. Of the 600 men surveyed, 40% responded yes, compared to only 17% of women responded yes.” Athena Marousis, Talent LMS <https://www.talentlms.com/employee-harassment-training> (2021 Survey)

SEXUAL HARRASSMENT STANDARDS

What is Sexual Harassment

Harassment is a form of discrimination that consists of words, signs, jokes, pranks, intimidation, physical actions or violence that is directed at an employee due to any protected characteristic *including sex*. Acts such as these that are of a sexual nature, or regarding an individual's sex, can constitute sexual harassment under standards at the local state, and federal level. A victim of harassment does not have to be the person harassed but could be anyone affected by the offensive conduct. Additionally sexual harassment can occur in a variety of different circumstances, regardless of the sex or position of the offending harasser.

With remote and hybrid work arrangements the form of harassing behavior has changed making it, in some instances, more difficult for employers, supervisors and human resource professionals to address.

Federal Legal Standards for Hostile Work Environment

Federal law authorizes plaintiffs to bring sexual harassment actions against employers under Title VII of the Civil Rights Act of 1964. *See Meritor Savings Bank, FSB v. Vinson*, 477 U.S. 57, 67 (1986).

A violation of federal law and Title VII occurs when Courts consider the actions taken by the harasser must be “*severe or pervasive*” enough to alter the conditions of a victim’s work employment and create an abusive working environment. *See, e.g., Harris v. Forklift Sys.*, 510 U.S. 17, 21 (1993); *Schiano v. Quality Payroll Sys., Inc.*, 445 F.3d 597, 605 (2d Cir. 2006).

Courts have held that for actionable harassment to exist, a reasonable person must be able to find the work environment hostile or abusive, and the victim must perceive it to be so. *Harris*, 510 U.S. at 21. An analysis of the totality of the circumstances is considered to determine whether there has been a violation of Title VII.

Evolving State Legal Standards

With respect to hostile work environment sexual harassment legal standards at the state level, despite several initiatives in other states, New York is the only state that has passed legislation to *lower the severe or pervasive standard*. California legislation has also encouraged courts to apply a more lenient standard.

The severe and pervasive standard which remains at the federal level is recognized as a significant legal hurdle such that the workplace harassment must establish that the conduct at issue was “severe or pervasive” to bring about a legal claim.

‘Pervasive’ conduct typically means that the inappropriate conduct happens repeatedly, such as a fellow co-worker makes comments multiple times despite a person asking them not to. For conduct to be severe, even a single act can be considered severe if it was sufficiently traumatic. For example, if a supervisor sexually assaults an employee.

State Action to Lower the Severe or Pervasive Standard

The New York State Human Rights Law was amended to allow a member of any protected class to state a claim for discrimination if they can show that they were subjected to “inferior terms, conditions or privileges of employment because of the individual’s membership” in a protected class, “regardless of whether such harassment would be considered severe or pervasive under precedent applied to harassment claims.” The lowered standard went into effect on October 11, 2019. *See* § 291(h) – *the new law does not apply retroactively*.

New York City has had a similarly less stringent standard even prior to the changes to the NY State Human Rights Law. Plaintiff properly alleged under the NYC Human Rights Law that she was "less well" than her male colleagues where manager “repeatedly initiated unwanted sexual advances and romantic contacts.” *Ibrahim v. Fid. Brokerage Servs. LLC*, 2020 U.S. Dist. LEXIS 4264, *13 (S.D.N.Y. 2020).

California – Standard Hostile Work Environment

In California effective January 1, 2019, California Government Code Section 12923 “declare[d]” the California legislature’s “intent” on how courts should review harassment claims under California’s Fair Employment and Housing Act (“FEHA”). While the legislation is not binding on courts it provides statutory guidance to encourage courts to apply more lenient standards when reviewing harassment claims under FEHA. The lower the standard is such that harassment creates a hostile, offensive, oppressive, or intimidating work environment and deprives victims of their statutory right to work in a place free of discrimination when the harassing conduct sufficiently “offends, humiliates, distresses, or intrudes upon its victim, so as to disrupt the victim’s emotional tranquility in the workplace, affect the victim’s ability to perform the job as usual, or otherwise interferes with and undermines the victim’s personal sense of well-being.” CAL. GOV’T CODE § 12923(b) (C.A. 2018).

Other States are Working to Change the Severe or Pervasive Standard

Vermont’s Human Rights Commission recommended state legislatures reduce the severe or pervasive standard, as it is “a nearly insurmountable barrier.” Vermont Human Rights Commission, *Annual Report FY-2019* (V.T. 2019).

In 2019, Minnesota’s House of Representatives passed a bill that would have reduced the “severe or pervasive” standard but the bill did not move further. Min. H.F. 10 Rev. 19-1694, 91 Leg., Reg. Sess. (M.N. 2019). The Minnesota Supreme Court also declined to abandon the requirement that harassing conduct be “severe or pervasive” to be actionable under the Minnesota Human Rights Act. The Court held however that “the standard must evolve to reflect changes in societal attitudes towards what is acceptable behavior in the workplace.” *Kenneth v. Homeward Bound, Inc.*, 944 N.W.2d 222 (Minn. 2020).

In 2021, Colorado introduced a bill to allow anything that “undermines a person’s sense of well-being” as the replacement to the “severe or pervasive” standard. Col. Leg., Reg. Sess. (C.O. 2019) and renewed the effort again in 2022 without success.

Individual Liability for Sexual Harassment

In New York, the Human Rights Law § 296(6), forbids "any person to aid, abet, incite, compel, or coerce" the commission of an unlawful discriminatory employment practice -- commonly referred to as the "aiding and abetting" clause. *Steadman v. Sinclair*, 636 N.Y.S.2d 325 (1st Dep't 1996). A supervisor needs to "actually participated in the conduct giving rise to the discrimination claim." *Dewitt v. Lieberman*, No. 97 Civ. 4651 (SAS), 1999 WL 13236, at *12 (S.D.N.Y., Jan. 13, 1999).

"A supervisor," "is an employer for purposes of establishing liability under the NYSHRL if that supervisor actually participates in the conduct giving rise to the discrimination." *Feingold v. New York*, 366 F.3d 138, 157 (2d Cir. 2004).

The Second Circuit has held, however, that "a co-worker who actually participates in the conduct giving rise to a discrimination claim [can] be held liable under the NYSHRL [or NYCHRL] even though that co-worker lacked the authority to either hire or fire the plaintiff." *Id.*

Quid Pro Quo Sexual Harassment

Quid pro quo sexual harassment "refers to situations in which 'submission to or rejection of [unwelcome sexual] conduct by an individual is used as the basis for employment decisions affecting such individual.'" *Friederick v. Passfeed, Inc.*, 2022 U.S. Dist. LEXIS 60743, *17-18 (citations omitted)

To establish *quid pro quo* harassment under Title VII, "it is enough to show that the supervisor used the employee's acceptance or rejection of his advances as the basis for a decision affecting the compensation, terms, conditions or privileges of the employee's job." *Id.*

Requesting a sexual favor – the “this for that” type of harassment can occur remotely or in person but may be more difficult to recognize virtually. In person requests for sexual favors direct or indirect are easy to spot in the office but sending a subordinate a photo of a private part or participating in sexual text exchanges where a supervisor expects a sexual favor in exchange for a better work arrangement or assignment or better pay should be recognized and prevented in the remote workplace.

Congressional Accountability Act

Enacted in 2018, the law (Pub. L. No. 1150397) reformed the Congressional Accountability Act of 1995 by “significantly improving the process by which congressional employees report allegations of sexual harassment, holding lawmakers financially liable for harassment settlements, and increasing transparency around any settlements that lawmakers pay out for possible allegations.”

The law has:

- Eliminated the “cooling off” period previously requiring victims to undergo counseling and mediation before filing a lawsuit or administrative complaint.
- Required lawmakers to be personally liable in settlements for harassment and retaliation (prior, lawmakers could use taxpayer money to cover their settlements).

Congressional Accountability Act (Cont.)

The law has also added protections for interns and fellows previously not included in the 1995 legislation; and required an annual report detailing any settlements in either house related to harassment or retaliation.”

Li Zhou, Congress’s recently passed sexual harassment bill explained,
VOX (Dec. 20, 2018),

<https://www.vox.com/2018/12/20/18138377/congress-sexual-harassment-bill>

International Convention on Violence and Sexual Harassment at Work

The 2019 International Labour Organization (“ILO”) Convention on Violence and Harassment at Work:

Prohibits workplace violence;

Promotes taking preventive measures;

Requires employers to have workplace policies on violence; and

Obligates governments to provide access to remedies through complaint mechanisms, victim services, and to provide measures to protect victims and whistleblowers from retaliation.

Kenneth Roth, Two Years After #MeToo Erupts, A New Treaty Anchors Workplace Shifts, HUM. RIGHTS WATCH (2020),

<https://www.hrw.org/world-report/2020/country-chapters/global-1#>

International Convention on Violence and Sexual Harassment at Work (Cont.)

Today, **22** countries (not including the U.S.) have ratified it.

Ratifications of C190 – Violence and Harassment Convention, 2019 (No. 190), INT’L LAB. ORG.

https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:3999810

Sexual Harassment and Reporting Issues

There are various reasons why sexual harassment victims remain silent. Below are common reasons why an overwhelming amount of sexual harassment cases go unreported:

Retaliation – demotion, salary cut, exclusion from good projects.

Bystander effect - social phenomenon where witnesses are less likely to help a victim when others are present, is further compounded when a harasser holds a position of power and bystanders stay quiet out of same fear of losing their jobs or other types of retaliation.

Stefanie K. Johnson, et al., *Why We Fail to Report Sexual Harassment*, HARVARD BUS. REV. (Oct. 4, 2016), <https://hbr.org/2016/10/why-we-fail-to-report-sexual-harassment>

Establishing a, “if you see something, say something” type of culture among employees will certainly help establish a level of accountability. Athena Marousis, Talent LMS <https://www.talentlms.com/employe-harassment-training> (2021 Survey)

Retaliation

Protected activity includes actions taken by employees who oppose discrimination and harassment, or retaliation. Title VII; *Crawford v. Metropolitan Government of Nashville and Davidson Cty.*, 555 U.S. 271 (2009), EEOC-C.V.G.-2016-1. The law protects not only employees who complain directly of harassment or discrimination, but also employees who participate in an internal investigation by the company of the complaint as a witness. 42 U.S.C. § 2000e-3(a); Title VII; EEOC-C.V.G.-2016-1.

- Retaliation can be any such negative action taken by the employer against the employee, that could have the effect of discouraging a reasonable worker from making a complaint about harassment or discrimination. *Burlington, N. & S. F. R. Co. v. White*, 548 U.S. 53 (2006); *Rochon v. Gonzales*, 438 F. 3d 1211 1219 (2006).
- The negative action need not be job-related or occur in the workplace, and may occur after the end of employment, such as an unwarranted negative reference. *Burlington, N. & S. F. R. Co. v. White*, 548 U.S. 53 (2006).

More on Retaliation

With remote or hybrid work arrangements employees have reported feeling more isolated and are even more reluctant to report sexual harassment as a result of fear regarding what will happen with respect to retaliatory acts by their employer if they report misconduct.

- Retaliation includes actions taken to alter an employee's terms and conditions of employment (such as a demotion or sudden work schedule or location change). *Burlington, N. & S. F. R. Co. v. White*, 548 U.S. 53 (2006).
 - Individuals should expect to be free from such negative actions by supervisors, managers or the employer if motivated by protected activity to complaint about sexual harassment. If workers are isolated and fearful of being terminated, demoted or being required to come into the office, they may stay quiet despite being subjected to improper conduct.

POLICY AND TRAINING CONSIDERATIONS IN REMOTE ERA

Training Considerations

In 2016, the EEOC Select Task Force on the Study of Harassment concluded that there was no evidence showing that the previous 30 years of corporate training had any effect on preventing harassment on the job. Employers need to take a new approach. “It’s effective to take a holistic approach that starts with getting the buy-in of senior leaders. ‘For [training] to matter, employees have to feel their leaders are being authentic . . . They have to believe that leaders mean what they say when they claim to want to stop harassment.’” Christina Folz, *No Evidence That Training Prevents Harassment, Finds EEOC Task Force*, SHRM (June 19, 2016), <https://www.shrm.org/hr-today/news/hr-news/pages/eec-harassment-task-force.aspx>

- ❑ More “results-oriented training” with “fresh content” and “new instructional methods”
- ❑ Focus on “behaviors and communication that can create the perception of harassment and bullying” rather than on how to avoid liabilities
- ❑ Make the training suited to your business’ culture
- ❑ Encourage participants’ engagement with interactive components and real-life scenarios
- ❑ Have more frequent trainings to mitigate that “one and done” feeling common with annual trainings – this will give the indication that these are serious issues and employees are not just checking off a box every year. It also “normalizes” the conversation around these issues, making employees more comfortable to report
- ❑ Include bystander intervention training – most trainings only focus on when a person is the target of harassment
- ❑ Have training be in-person, at least some segment of it

Treating the #MeToo Movement as an Opportunity to Create Better Workplaces, SHRM (June 25, 2019), <https://www.shrm.org/resourcesandtools/legal-and-compliance/employment-law/pages/metoo-movement-opportunity-to-create-better-workplaces.aspx>

9 Ways to Improve Your Sexual Harassment Training, KNOWLEDGECITY (Dec. 10, 2020), <https://www.knowledgecity.com/blog/9-ways-to-improve-your-sexual-harassment-training/>

Trainings Can Help

Training can, however, have “an overwhelmingly positive effect.” Especially when done effectively.

“When it comes to educating employees on the fundamentals of workplace harassment and how incidents should be reported.” The majority of persons in a study “reported that their training made them feel more aware of how to report incidents, what their company’s policy is, what constitutes sexual harassment, and better educated about the Equal Employment Opportunity Commission.”

Athena Marousis, Talent LMS <https://www.talentlms.com/employe-harassment-training> (2021 Survey)

New Considerations

“30 percent of employees said they'd experienced unwelcome behavior via text messages, e-mail, video calls and other online platforms since the beginning of the pandemic. Some of that online harassment was targeted toward their gender identity expression.”

“Two methods gaining currency [for sexual harassment training] are use of virtual reality (VR) simulations to help employees build empathy and video-based storytelling that allows trainees to practice intervening in challenging workplace scenarios.”

<https://www.shrm.org/resourcesandtools/hr-topics/technology/pages/is-your-sexual-harassment-training-behind-the-times.aspx>

Policies and Training Considerations Remote Work

Company policies for sexual harassment should be updated due to the changed work environment with Covid-19 and remote work.

As an example - New York State's Model Sexual Harassment Policy from 2018, is required to be updated every four years and both the initial NY Model Sexual Harassment Policy and four years later the update requested input from the public to make sure that the model policy is strong and addresses current issues in the workplace. *See* <https://www.ny.gov/content/sexual-harassment-prevention-policies>.

Even if not required – companies in each state should reflect on examples of sexual harassment to be included in policies that reflect issues that arise in the new virtual workplace as well as assurance that employees will not be retaliated against for reporting instances of on-line harassment.

Examples of Sexually Inappropriate Behavior in the Virtual Workplace

Companies should educate employees about potentially problematic behavior during trainings including specific examples such as:

Inappropriate artwork or posters of a sexual nature displayed in the background of a Zoom – perhaps having a uniform workspace “virtual background” to eliminate issues.

Address appropriate attire during a video call including not being undressed or partially undressed. Reference the sending of sexually explicit instant messages or email communications with sexual jokes, photographs, or websites.

Employees working from home are often in a more casual office setting and are sometimes behaving in a less formal manner. Companies should emphasize professionalism by their workers when conducting work virtually.

Impact Felt Widely Among Workers that should be Protected

With Covid-19 harassment such as “yelling at coworkers, uncomfortable or repeated questions about identity or appearance, dismissive attitudes, teasing put-downs, repeated requests for dates...or quid pro quo requests for sex” has increased with respect to more vulnerable groups in protected categories. Yang Hong, et al. *Remote work since Covid-19 is exacerbating harm, What companies need to know and do*, (March 2021)

Research on Increased Sexual Harassment for Certain Groups of Employees

Research has found that “LGBTQ+ women and trans employees often feel isolated from one another in the workplace, creating a more negative workplace experience...” and further found “that LGBTQ+ women face increased rates of sexual harassment and discrimination based on gender and orientation.” Dianna Ellsworth, *et al.*, McKinsey & Company, *How the LGBTQ+ Community Fares in the Workplace* (June 23, 2020)

Recommendation:

Groups marginalized in the workplace, such as the LGBTQ+ community must be part of the development of effective workplace trainings as they may in fact be more likely to face harassment in the workplace, such that specific examples in company trainings and policies that account for the specific challenges faced in this community and that not only address awareness and prevention but also are gender-inclusive.

INTERNAL INVESTIGATION CONSIDERATIONS

Sexual Harassment – Internal Investigations

Considerations/Steps when there is an employee who files sexual harassment complaint:

Question the accuser and the accused.

Identify other evidence – including other witnesses and documentary evidence.

- Interviews of witnesses including other workers, supervisors and managers – including bystanders who observed the conduct or other workers who the accuser discussed the harassment with and the demeanor of accuser pre and post harassment, and other potential witnesses with whom the accuser discussed the incident/s.
- Identify and review evidence of other informal or formal complaints against the accused by other employees who were sexually harassed by the same person.
- Investigate the incidents alleged in the complaint and the surrounding work environment including knowledge of supervisors and managers regarding the incidents.
- Ask questions of the accuser and the accused, witnesses to the incident and the surrounding environment, and emails, messages, electronic data exchanges, phone records, etc.

Investigations – Remote Work Era

Considerations:

There may be no witnesses to misconduct as many times co-workers are not present on a Zoom or Teams call to overhear an inappropriate comment or to witness an inappropriate gesture.

There are different laws that may apply as well as different standards state to state depending upon where an employee may be situated, for example on a Zoom or a Teams call.

Scope of inquiry in internal investigation is many times focused on work environment and behavior observed by witnesses in person rather than remotely.

Witnesses may record interviews on virtual platforms despite requesting that they do not do so.

Challenges with Remote Work and Navigation of an Investigations

Relevant information to the internal investigation may not be exclusively on the business network.

- There may be issues with information related to the sexual harassment matter being investigated in a personal email account or home computer.
- With Zoom, Teams, Instant Messaging platforms, as well as use of an employee's own device, such as an iPhone used for both work and for personal matters, there is a greater volume of sources to identify, check and collect.

Notification of Monitoring and Remote Work

Posting or Notification when VPNing is helpful:

- A notification that the computer an employee about to use is company owned and is intended to be used for official company business and the company reserves the right to monitor all activity on all company provided equipment and services. Further, include a notification that use of the company provided information systems and networks in violation of company guidelines will result in disciplinary action, up to and including termination.

State action -New York's new Digital Workplace Monitoring Law which went into effect in May 2022 which requires employers, regardless of size, to provide written notice, upon hiring, to new employees if the company currently monitors or plans to monitor or intercept the employees' telephone or email communications or internet usage. For existing employees subject to electronic monitoring, the company is required to post a notice in a "conspicuous place which is readily available for viewing."

Notification of Monitoring and Remote Work (Cont.)

New Digital Monitoring laws reflect a movement in favor transparency in businesses in connection with monitoring workers and collecting data as it relates to employee monitoring and collection of data related to their communications.

- Electronic Monitoring of data usage, notification to employees that data is being monitored, and required VPNing and company-monitored remote desktops, aids in having central source for data collection but it does not cover all relevant sources.
- An ancillary benefit if that an employee should be aware that violation of sexual harassment policies remotely can lead to discipline – with a formal notice perhaps there will be further prevention.

Recommendations – Data Collection

With respect to data collection – “[f]ocusing on oversight and enforcement promotes better data management and storage” and “makes it easier to identify relevant data sources and documents in the event of an internal investigation.”

It “is a good idea to establish an internal investigation framework and factor in how remote work affects the process.”

Some considerations include:

- Deciphering who makes up the investigatory team (which may differ from the legal team).
- Proper documentation of things like data collection or custodian interviews to ensure defensible methods.
- When to utilize the services of an E-discovery vendor.
- Whether offsite devices can be accessed virtually or need to be physically shipped.
- How to obtain hard copy documents located remotely.
- Secure ways to conduct virtual interviews.”

Tackling Internal Investigations in the Era of Remote Work - 4 Best Practices (ccbjournal.com) Allison Dunham
April 2022

Tools to Consider – E-Discovery

Legal Holds:

With the migration from email, “preserving collaboration data” is “paramount.”

“narrow the scope of the data that must be preserved -- iron legal hold processes, notifications and reminder workflows.”

“promptly notify teams that “certain information must be retained” which “can both reduce the possibility of spoliation, ensure that all relevant data types are preserved and minimize the costs associated with over-preserving data.”

Data Governance and Efficiency:

“Create meaningful retention schedules and acceptable use policies to help balance the risks of using collaboration platforms with their benefits. Companies need to document their processes and communicate these processes to all employees to ensure consistency in how this data is handled and organized.”

“Preserve data in-place rather than relocate the data to a separate storage location, and target collections to only gather the data needed, when it’s needed. Taking this approach to collection is both more secure, prevents data loss due to migration and allows the company to narrow the scope of the data actually needed for collection”

<https://trustarray.com/remote-work-brings-new-e-discovery-challenges/> (September 29, 2022)

Motions to Compel

Documents “in the responding party’s possession, custody, or control” are required to be produced Federal Rule of Civil Procedure 34.

- Concerns regarding work-related information sent via a personal email or messaging account on a bring your own personal device – the communications or the phone or tablet—can be considered deemed to be discoverable under Rule 34.
- Courts focus on the extent to which personal device used for work purposes.
- **BYOD Policy:**
 - Companies should have “a formal policy regarding the use and management of those devices, which includes an employee’s duty to preserve mobile device data when litigation hits. Organizations need a clear BYOD policy that emphasizes the rights of the organization and the responsibilities of the employees using BYOD devices for company use, including those associated with preservation and collection of mobile device data.” Doug Austin, <https://ipro.com/resources/articles/recent-case-law-illustrates-the-importance-of-addressing-byod/> (July 1, 2020)
 - Recent case litigation example.



Questions?

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