

Privacy of County Employees

Counties should have a written policy restricting the use of county resources (phone, fax, email, and computer storage) to legitimate county business and discouraging excessive personal use of such equipment. Be aware that adopting a strict county “no privacy” policy won’t completely eliminate an employee’s right to some private use of phones and email. The prize-winning question is, how much private use is too much? *Denver Publishing Company v. Board of County Commissioners, Arapahoe County*, 121 P.3d 190 (Colo. 2005) ruled as a matter of law that the volume of personal emails exceeded the “occasional use” allowed by the county policy.

What This Means For Counties

- 1) Policies can set total limits on some uses of county equipment and internet resources: You can completely restrict any activity that is illegal or violates county standards of conduct related to job performance (like phone harassment).
- 2) You can completely restrict any partisan political activity that violates the state laws against using government resources (or county work time), defined in statutes and case law as anything that appears on the ballot, including referenda. You could allow neutral fact based summaries of the issues on both sides to be issued by the respective elected officials.
- 3) You can restrict personal use (conversing with family or friends) to breaks and lunch periods or real emergencies such as medical calls from school officials.
- 4) You can restrict personal use of county time and county resources that involves collecting money or selling items for any commercial gain to the employee, and for any nonprofit, nonpolitical organization or for any membership group (regardless of purpose), unless your policies are similarly strict for all other nonprofits, community groups, etc. You must restrict all such activities in a similar way as to time, place and method. You can’t allow some types of selling or group memberships drives and disallow others unless you are applying the similar time, place and method restrictions that you have in your policy.
- 5) You can’t restrict off-duty or off-site organizing efforts by employees interested in unions or other unpopular membership groups. You may enforce on an equitable basis, the access any outside group has to personal information under CORA (the Colorado Open Records Act) which specifies several categories of personal data that must be withheld.
- 6) You can’t intrude upon the personal privacy of messages, but you can use the amount or number of those messages to conduct a review of how county resources are being used, subject to the restrictions discussed in privacy case law.

For more information this topic, sample policies or procedures, please call Cynthia Barnes at 303-861-0507, ext. 122, or email cbarnes@ctsi.org.