



Appropriate Use Policies (for Employee E-Mail and Internet Use)

MMA Legal Services Information Packet

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This packet includes the following attachments:

- ["Internet Policies for Municipalities,"](#) *Maine Townsman* (January 1998)
- ["E-Mail and Retention of Documents Policies,"](#) *Maine Townsman* (February 1998)
- ["Internet and Electronic Mail Policy,"](#) City of Portland, Maine
- ["E-mail/Internet Access Policy and Procedures,"](#) Maine Municipal Association

Important issues and considerations include:

I. Generally

Business and personal use of e-mail and the Internet by employees is a relatively recent concern for employers. Municipal employers may choose to ignore the content of the e-mails an employee is sending or the nature of the web sites an employee is surfing. However, to ensure that work time is being spent productively and in ways that will not subject the employer to liability (such as sexual harassment or racial, ethnic or gender discrimination claims due to inappropriate e-mail messages or downloading of pornography), the municipality may want to establish a policy on the appropriate use of e-mail and the Internet. This policy may stand alone or may be part of a larger personnel policy.

II. Elements of an Appropriate Use Policy for Public Employers

A. Data and Communications Not Private. An appropriate use policy for any employer should explain that while incidental personal use of the Internet may occur at work, all data and messages within the employer's computer system are the property of the employer and that the employee's electronic communications are not private. While it is likely that an employee has no reasonable expectation of privacy in e-mail communications and computer use in the workplace, a policy that clearly states these are not private and may be read by an employer will defeat any such argument an employee might have in this regard. Moreover, because the municipality or other government subdivision is subject to the Freedom of Access (or "Right to Know") Law, the policy should recognize that electronic data and communications at work may be public records open to inspection and copying by the public.

B. Retrieval and Review. An appropriate use policy should state the employer's right to retrieve and review employee e-mail, whether or not for the purposes of investigation.

C. Prohibitions. If the employer wishes to prohibit certain conduct with regard to use of the Internet and e-mail, it should say so explicitly. For example, the policy may prohibit: using the computer system use for personal gain or private business, downloading pornography, using the computer for any illegal purpose, interfering with the use of the computer system and transmitting any obscene, violent or threatening messages.

D. Guidelines. The employer may wish to recommend certain behaviors to employees regarding their use of the computer system. For example, the guidelines might: advise against using vulgar language; encourage protection of privacy and

confidentiality of client communications; discourage personal use that might adversely affect the ability of others to use the computer system for work purposes; and encourage respect for copyrights and license agreements. The guidelines also might recommend employees to contact the information technology staff immediately with any system problems (including viruses) and might recommend security procedures.

E. Statutory Compliance. An appropriate use policy for local governments must comply with the State's public records laws. It should require employees to retain hard copies of e-mails that are of a substantive nature or otherwise are within the scope of documents that must be retained under the Maine State Archives Rules. Those Rules, for example, require a municipality to retain a copy of constituent communications for one year after receipt, so that e-mails from constituents should be printed and stored on file for a year. Violation of these Rules is a Class E crime (up to six months' imprisonment, and a fine). Similarly, under the Freedom of Access (or "Right to Know") Law, electronic data compilations may be public records that may be inspected or copied. Intentional violation of the Law subjects the municipality to a fine of up to \$500.

F. Penalties. The policy should state clearly the penalties for violation of its provisions, or if the policy is part of a larger personnel policy, it should direct the reader to the relevant discipline provisions.

G. Acceptance of Terms. As with personnel policies, a stand-alone appropriate use policy should require the employee to sign a copy of the policy (which will be filed with the municipality) acknowledging that the employee has received and read the policy.

III. Sample Policies

Included with this outline are sample appropriate use policies adopted by the City of Portland (linked above) and by Maine Municipal Association (linked above). These are not models and may not fit every situation, but may be helpful to review as you prepare an appropriate use policy for your municipality.