

The Miami Herald

February 3, 2011

BALANCING ACT

Cellphones raise workplace issues

By CINDY KRISCHER GOODMAN

balancegal@gmail.com

Today, with the overwhelming presence of cellphones, this question emerges: If you take a company-issued cellphone or let your employer pay your bill, does he now own you?

As mobile phones become commonplace work tools, the legal and practical boundaries around the devices are becoming a hot issue. Companies are grappling with policies and a growing number of lawsuits by employers and employees are cropping up over concerns ranging from privacy and liability to expectations and etiquette.

Take a company phone and you get IT support and your bill paid. But know that your boss can track you with the GPS, read your text messages, ban you from talking or texting while driving and require you to respond immediately to client calls and e-mails.

“You are giving them a big keyhole to look through,” says William Amlong, a Fort Lauderdale labor attorney who represents employees. He offers this advice: “Don’t have any expectation of privacy.”

Companies are using cell records to terminate workers. Amlong currently represents a roving security officer who was fired because, among other things, when his company looked at his cellphone record, it discovered he was on a personal call most of his on-duty time one day.

Another area of litigation revolves around text messages. A new Supreme Court case involves an employee who sued his employer for reading his text messages, which he sent and received using a company-owned mobile device. A final ruling is expected this summer.

Cases involving texting and driving while on company phones also are cropping up in courts. **Angelo Filippi**, an employment lawyer with **Kelley Kronenberg** in Fort Lauderdale, says issues around mobile devices are an evolving area with few court rulings at this time to determine the law.

Meanwhile, human resources online forums are flush with queries and debates about business cellphone policies. Managers are asking whether to require employees to put cellphone numbers on business cards, whether to encourage employees to carry a business and personal phone and what exactly is a company’s liability if a worker is driving and talking or texting while working. A few companies explicitly forbid multitasking on cellphones while driving.

Some of the most heated workplace discussions involve accessibility and overtime pay. Are workers expected to be “on call” at all hours on their mobile devices and does that expectation increase if the company picks up the tab? A police officer in Chicago says that the city owes him

overtime pay for the time he spent using his BlackBerry for work when he was off duty. The officer, who filed suit in August, seeks overtime pay for himself and all officers who used their BlackBerry devices while off duty.

For salaried workers, "off hours" use is a concern, too. Law firms were among the first businesses to give BlackBerrys to partners more than a decade ago. Now, most legal staff have devices attached to their hips. Firms encourage lawyers to put their mobile numbers on their business cards and respond to clients with urgency.

"Lawyers don't feel they have the authority to push back," says Deborah Epstein Henry, a consultant to the legal profession. The quandary starts the first time a lawyer gets a non-emergency call from a client on the weekend. If he responds, the expectation is that he will do it again next time. She says associates want guidelines but firms are reluctant to give them: "What [firms] really want to say is respond any day, any time. Sleep with your BlackBerry in your bed."

At the same time, personal cellphones are increasingly seen as a disruptive nuisance in the office, the source of interrupted business meetings, and loud and sometimes embarrassing conversations. Most policies limit personal cellphone usage rather than ban it. "You really can't have a zero-tolerance policy. It's more about guidelines around abusing the privilege," Filippi says.

"Both sides have to be pragmatic about what the new age of communications has brought to the table," says Patricia Trainor, managing editor BLR's human resources and employment law publications.

If you expect an employee to carry a company cellphone 24 hours a day, she says, you're breaking down the work/life barrier and intruding into the employee's personal life. You need to accept that his personal life is going to intrude into his work life and he may use the phone to take personal calls during the work day.

Doug Bartel, who works for a Florida health insurer, adopted his own approach. He carries a company-issued BlackBerry and a separate cellphone for personal use. Because his company deals with sensitive health information, it has firewalls on its server and restricts access to some websites.

He says carrying two phones allows him to turn either off as needed, surf the Web for personal use if necessary, and send text messages to his family or friends during the day. "I just wouldn't feel comfortable doing that from my work phone."

Cindy Krischer Goodman is CEO of BalanceGal, a provider of news and advice on how to balance work and life. She can be reached at balancegal@gmail.com, or read her columns and blogs at worklifebalancingact.com.