



HR Heads-up

Risk Taken When Using Company Email for Personal Matters

STORM B. LARSON | 02.09.22

Brian Lax contacted the EEOC on April 5, 2016, regarding concerns of employment discrimination related to his mental health treatment. According to Lax, FEMA, which was his employer, had unlawfully placed him on indefinite suspension because he sought hospital treatment for mental illness and missed two days of work. An investigation of his allegations was conducted, and insufficient evidence of discrimination was found.

On July 17, 2019, at 1:16 p.m., an EEO counselor sent Lax an email that contained an attached document. The attached document was password protected and contained: the final agency decision, a “Notice of Appeal Rights,” a privacy statement, and a certificate of service. The Notice of Appeal Rights contained information regarding his right to file a lawsuit 90 days after receiving the decision. The certificate of service stated that Lax was “presumed” to have received the documents on July 17, 2019. One minute later, at 1:17 p.m., Lax received the password to open the attachment in a separate email. However, according to Lax, the document would not open until the next day due to a network glitch on his work-issued phone.

91 days after July 17, 2019, on October 16, 2019, Lax filed a lawsuit alleging violation of the Rehabilitation Act, which has the same procedural requirements as Title VII. The district court dismissed his lawsuit as untimely because it was a day late. The Seventh Circuit Court of Appeals affirmed. In affirming, the Seventh Circuit relied upon a prior decision which held that a plaintiff’s filing period commenced upon receipt of the right-to-sue notice in the mail even though the plaintiff did not open it until months later. Because Lax received the document via email on July 17, 2019, but did not read it until the next day, his filing window began the day he received the email and not when he was able to actually read it.

This decision underscores the risks employees take when using company email accounts for personal matters. It further underscores the importance of informing employees that the use of the employer's system is not confidential and can create problems for employees for which the employer will not be responsible.

Disclaimer: This information is not intended to be legal advice. Rather, it seeks to make recipients aware of certain legal developments that affect human resource issues. Recipients who want legal advice concerning a particular matter should consult with an attorney who is given a full understanding of the relevant facts pertaining to the particular matter.

Author

Storm B. Larson

(608) 286-7207