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## > Newsflash – 10 July 2007

### Employment, Social Security and Immigration Law

#### Can the employer use private e-mails and private documents of the employee in a court procedure?

This question was submitted to the Labour Court of Liège on January 11, 2007. In order to prove the reasons for a dismissal for serious cause, the employer produced private e-mails of the employee as evidence, as well as personal documents from the employee's hard disk. The employee opposed the use of the aforementioned documents before the Court and held that her privacy had been violated.

First, with regard to the use by the employer of the employee's **private e-mails**, the Court stated that the employer should have followed the provisions laid down in the Collective Bargaining Agreement n° 81 (CBA n° 81) concerning the protection of the employee's private life with regard to the control by the employer of data from electronic communication. It is important to know that this CBA only relates to the control by the employer of transmitted communication data, such as the frequency of use of the professional e-mail address for private purposes, and not of the contents of the communication itself. In this case, the Court held that the control procedure as laid down in CBA n° 81 had not been observed by the employer. The evidence had been obtained unlawfully and could not therefore be used as proof in court.

With regard to the personal documents on the employee's hard disk, the Court decided that as soon as an employee saves **personal documents** on the hard disk of the company computer, he or she accepts the risk that those documents will be read by third persons. The use of such documents in court is therefore allowed. This is however not the case for **personal correspondence** saved on the hard disk, the latter being strictly protected by the principle of confidentiality of correspondence.

The above case illustrates the complexity of the matter of professional communication and the protection of employee privacy. It is important to make sure that companies' internal communications policies fully respect Belgian law; this can prevent an employee dismissed for serious cause from claiming severance pay simply because of procedural mistakes.

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