

Monitoring employee emails in France

In France, there is a strong expectation of privacy in the workplace. French law is rather more protective of employees regarding emails because of the general principle of confidentiality of correspondence. However the *Barbulescu* decision does not represent a significant departure from French law.

Notwithstanding the expectation of privacy, emails sent or received on company IT systems are deemed to be of a professional nature and unless the emails have been identified as “personal” employers can access them without the employee being present. Where emails have been identified as “personal”, employers can only access them with the assistance of a bailiff and if the employee is present or has been duly called.

French courts have already ruled that an employer can use excerpts of discussions from a professional instant messaging network (similar to Lync) to dismiss an employee who was sending messages during working hours in the workplace. These communications were deemed to be of a professional nature - in this particular case, the employee did not identify the conversations as personal.

In practice, France has a cultural tolerance regarding the personal use by employees of company IT systems, however, an employer can take disciplinary action to sanction unreasonable personal use.

The information contained in this update is intended as a general review of the subjects featured and detailed specialist advice should always be taken before taking or refraining from taking any action. If you would like to discuss any of the issues raised in this article, please get in touch with your usual Olswang contact.