



## Employers Must Call the Cops on Employees Who Go to Illegal Websites

BY RITA RISSER, ATTORNEY AT LAW

**A** recent New Jersey case alerts managers to their responsibility to prevent crimes on company property. Though the case applies only to companies doing business in New Jersey, courts in other states are likely to follow its lead.

The case was brought by a woman who had a 10 year old daughter. The woman had recently married a man who was employed by "XYZ Company." About six months after the wedding, the woman realized the man had been taking inappropriate photos of her daughter and posting them on the web. She discovered he had been posting from his computer at work.

The woman sued the company for allowing the man to use his computer at work for illegal purposes, without reporting him to the authorities. Many people at XYZ Company knew he was visiting inappropriate sites, including the man's supervisor, his manager, and the managers of Information Services and Human Resources. Nonetheless, he had received only two verbal warnings to stop.



The court held the company had a duty to call the cops. Because the company failed in its duty, the court allowed the woman to go forward with a claim for damages against the company.

### *What this means to you:*

If you know of illegal web surfing by employees, it is your duty to report it to management, and ultimately to the police. Companies that have web-monitoring software have a duty to use it. Companies that don't monitor web use, but that nonetheless become aware of illegal behavior, also have a duty to report it.

*Doe v. XYZ Company, N.J. Appellate decision (2006).*

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### Ask the Lawyers

- *Can I require employees to exercise and not eat meat?*
- *Does Sarbanes-Oxley require background checks?*
- *Can employee be asked to provide names of spouse and children?*
- *Can employees be fired for not working Christmas day?*
- *Can employer take away our holidays?*
- *Can consensual sex lead to a harassment claim?*
- *Is it invasion of privacy to check employee's reason for non-attendance?*
- *Is it okay for HR Director to also be a line supervisor?*
- *Employee made racist remark – is it okay to let co-worker handle it?*

**Get the answers to these and other questions at [www.FairMeasures.com/ask/default.asp](http://www.FairMeasures.com/ask/default.asp)**

## **Bloggers – Stay Out of Jail**

Are you a blogger? Could you get jailed, sued – or fired – for what you put in your blog? Of course! Find out your legal rights and responsibilities, and use our step-by-step Checklist in our Bloggers Legal System, [www.fairmeasures.com/products/checklists/ebp.asp](http://www.fairmeasures.com/products/checklists/ebp.asp)

## **Privacy Training**

*The limits of employee rights to privacy at work are covered in our training program, Managing within the Law, Part II. Go to [FairMeasures.com](http://FairMeasures.com) for more information.*

## **Good News?**

*The EEOC announced that, for the third year in a row, the number of discrimination and harassment complaints filed has decreased. This may indicate that in fact there is less discrimination and harassment, or it may indicate people have been discouraged from filing claims.*

## **Got SOX?**

*Every manager needs to know something about Sarbanes-Oxley and other business ethics laws. Check out our training program, Managing Ethically. [www.fairmeasures.com/training](http://www.fairmeasures.com/training)*

## **Three Easy Ways to Stay Out of Court**

Looking back over the major cases that managers and companies lost in 2005, three themes emerged.

A common thread was the failure of the Human Resources Department to stop clearly illegal behavior. For example, a 17 year old girl who worked for a pizza place was repeatedly, violently sexually assaulted by her co-workers, and HR simply gave the men verbal warnings. A disabled employee was repeatedly harassed by her co-worker, and HR took no action.

In other cases, employees and managers with excellent track records were summarily fired in retaliation for whistle-blowing. These, too, were in large organizations with extensive HR Departments, which were unable to stop the retaliation.

We also reported the good news – where HR did everything right and won the lawsuit.

*So the first easy way to prevent lawsuits* is to Empower HR and top management to vigorously enforce the law.

*The second easy way to prevent lawsuits* is to Stop Office Affairs.

In 2005 we saw cases brought by women forced to have affairs with the boss, and by women who didn't get promoted because other women were sleeping with the boss. No surprise there. But we also had a case of a boss who slept with numerous women. He filed a claim of sexual harassment against the women, saying they harassed him after he stopped the

affairs. The women denied the affairs, and there was no other evidence, so the company fired him for filing a false complaint. He sued for illegal retaliation, and won.

These cases also prove that it's not an invasion of privacy to try to stop office affairs, because these affairs are anything but private! *The third easy way to prevent lawsuits* is to Be Proactive. One case required supervisors to report their own manager's harassment to Human Resources or top management. And of course, California managers remember the push to get them all trained in harassment prevention at the end of the year. The most significant case was a Court of Appeals decision upholding a jury verdict of almost \$1 million. This case was allowed to stand by the U.S. Supreme Court, and significantly expands the federal law to protect transsexuals against discrimination.

*Empower HR, Stop Office Affairs, and Be Proactive* – three easy ways to prevent employee lawsuits and create good places to work. And Fair Measures can help, through our training programs and HR consulting.



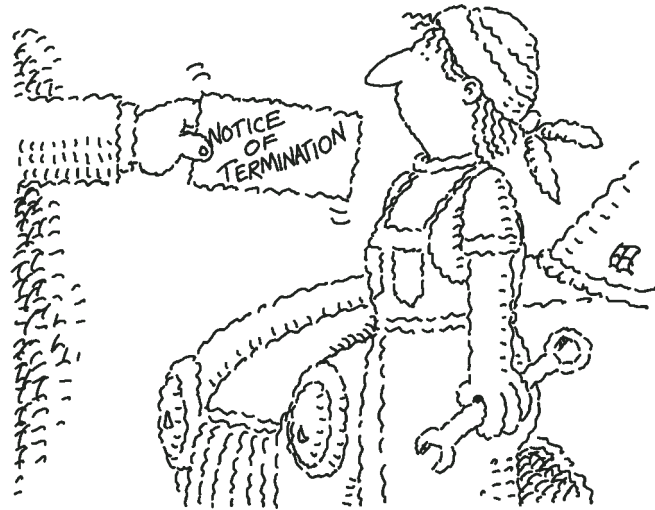
## New Case Holds Terminations Must be Handled Consistently

**O**n January 23, 2006, Ford Motor Company announced it intends to shut 14 plants and lay off 30,000 employees. The next day, Daimler Chrysler announced it was cutting 6,000 office jobs. These followed GM's November announcement of its plan to lay off 30,000 employees. Inevitably, other layoffs will be triggered in companies that sell to and buy from the former "big three" companies.

A recent case reminds any company going through layoff – or just terminating one employee – of the importance of treating employees with respect throughout the process.

The case involved a state agency that was ending a particular program. All the employees in the program were laid off – 5 African-American women, and 1 Caucasian man.

The women were called into the supervisor's office and informed they were being laid off effective immediately. They were told to collect their belongings and leave within thirty minutes. In full view of their coworkers, supervisors monitored them as they packed their things. The monitoring was such that coworkers thought they were being observed to prevent stealing. Their belongings were inspected as they packed, including their lunch bags. They did not have an opportunity to say goodbye to their co-workers, some of whom cried and asked if they were being arrested. One of the laid off employees asked if she could



contact her clients to tell them she would not make her appointments that day. Finally, after several requests, the supervisor permitted her to take the telephone numbers of some of her clients home to contact them later.

These layoff procedures stand in stark contrast to the treatment the white male received upon his termination. He was given a month's advance notice of his layoff. He was allowed to come to the office at his convenience to receive his termination notice. After being told that a particular employee whom he knew from another job was to give him his notice, he requested that it be a different employee, and his request was granted. He was not monitored as he cleaned out his desk and he was permitted to walk around the building freely to say goodbye to his coworkers.

The Court of Appeals held that the manner in which the layoff was conducted was discriminatory, and the women won.

*What this means to you:* Terminations are emotional situations in the best of times. Managers must conduct them professionally and with respect. ***The number one rule to prevent claims of discrimination – Be Consistent!***

*Fair Measures specializes in training executives, managers, human resources professionals and individual contributors in practices that prevent costly employee lawsuits, and create respectful workplaces for all employees. Since 1982, we have trained over 50,000 managers and employees at over 250 of the most respected corporations in America.*



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