

Loose Lips Sink Ships

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Late last week, a political firestorm brewed over the hacking of various email accounts belonging to politicians and national security officials. It was reported that the hack revealed that Colin Powell, the almost universally well-liked and well-regarded retired general, former chairman of the Joint Chiefs and Secretary of State, had some less than kind things to say about the current crop of presidential candidates. Powell's emails, for example, reportedly used provocative words like "national disgrace" in one instance and "greedy" and "unbridled ambition" in another instance to describe the candidates. All of this is interesting you say, but what does this have to do with employment? Answer: *Everything*. People tend to be chatty on email; even sophisticated statesmen like Colin Powell who outwardly appear more reserved. By contrast, letters are formal affairs that are printed on paper, mailed, and exist in the real world. You can touch a letter with your hands, make copies of it, and put it in a drawer for safekeeping. Emails, on the other hand, are inherently informal. In seconds, they can be typed and sent from a smartphone, forwarded and shared. They seem to exist in a phantom realm of bytes on a computer. Unlike letters, which require paper, envelopes, access to mail and postage, email can be sent from practically anywhere - your office, home, car, an airport, parking lot, a restaurant or wherever there is a cellular connection. Emails quickly can be forwarded to someone else and one can respond instantly, triggering a conversation almost akin to a telephone conversation. Added to that, emails also have an ephemeral quality: they exist in a phantom realm of bytes on a computer. Unless you go to the trouble of printing out an email, it never really sees the light of day. It has no physical presence and - therefore, deceptively appears to have no tangible permanence. Of course, those who have any experience with IT or who have been bruised by electronic discovery know that email's intangible nature is an illusion. Most businesses have massive electronic servers and backups (as does the government). In many ways, there is a better chance of recovering an email sent 10 years ago from a company server than finding a physical letter mailed out at the same time. Not only is there a disturbing permanence to emails, but a cavalier approach to this method of digital communication can dramatically change the outcome of a lawsuit for an employer. Imagine a sexual harassment case against a company based on the alleged misconduct of a manager. The company believes the case is meritless because there is no tangible evidence supporting the employee's allegations. That is, until the company's email account becomes the subject of discovery and reveals inappropriate comments and lewd jokes. Or perhaps, the email search reveals that the accused manager repeatedly made derogatory remarks to his buddy about the employee who now alleges harassment. In short, bad emails can transform an employer's otherwise winnable case into a disaster. Most companies have email policies that

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prohibit discriminatory, harassing or retaliatory behavior. Although that's a good start, it doesn't go far enough.

- First, most of these policies are brought up only during orientation and never mentioned again. After a few months, people forget what they learned in orientation and revert back to gossiping to their hearts content.
- Second, warning employees in a vacuum not to send emails that discriminate, harass or retaliate is meaningless. Most accused harassers are not Snidley Whiplash villains, but real people who get carried away, say mean or stupid things, go too far based on circumstances, and who do not realize the severity of their actions.
- Third, no employer has the time, money or resources to examine every company email to confirm its compliance with company policy. As a result, company leaders (executives, supervisors and managers) not only should be educated about the company's email policy when they first start on the job, but should also receive regular *reminders*. Moreover, policies – and the reminders – should go beyond simply admonishing them not to tell lewd jokes or engage in inappropriate conduct.

A key point to remember is that it is not just the content of the communications, but also the *tone* of the communications that can be problematic. Email traffic should be limited to the job, and above all else, the tone should be professional. Company leaders should be trained to *think* before hitting send. Ask if they are comfortable making the email part of the company's permanent record. Because that's precisely what they are doing. And, on a more human level, if they would not be comfortable having their boss, spouse, child, or parents read the email, maybe they shouldn't send it in the first place. Loose language can be fun, but also can be very embarrassing when it comes to light and worse, can cost a company a ton of money in legal fees and damages. While most HR departments have implemented measures to stop bad behavior, they need to follow through and support company executives when they do. Emails do not easily go away and they can be retrieved (or hacked) fairly easily – and usually at the most inopportune times. Something Colin Powell likely will be thinking about during his next awkward meeting with the Clintons or Trump.