



# NSFW: You can't afford

## EMPLOYERS NEED POLICIES TO PROTECT WORKERS - AND THEMSELVES

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In March, at a small Blue Ash tech company, an employee walked into the president's office with a look that somehow managed to merge disgust, anger, confusion and exasperation.

She told her boss that a worker in a neighboring cubicle had spent most of the morning on his computer looking at photo after photo from the latest *Sports Illustrated*. You know, the one filled with women wearing swimsuits no one could actually swim in.

She was offended for two reasons. First, because the women on the screen were "basically nude," which made her uncomfortable. And second, because her co-worker didn't see why it was inappropriate and told her so. She asked the president what he was going to do about it.

"It seemed like an easy fix - those pictures aren't appropriate at work," said the president, who asked not to be named for this story. "But the more I thought about it, the more confused I got. Where was

the line? What's OK to look at? And who decides? Me?"

For all of the freedom the Internet provides to workers in helping them do their jobs, it also created "NSFW." Not Safe For Work.

It's not uncommon for employees to be fired for looking at pornography at work. But pornography isn't the only thing employers can consider NSFW. With just about every employee on social media, employers don't want that activity reflecting poorly on the company.

For instance, late last year, Justine Sacco, communications director for InterActive Corp. - the company that owns websites like Match.com, and Vimeo - tweeted from an airport, "Going to Africa. Hope I don't get AIDS. Just kidding. I'm white!" She was fired after that tweet went viral.

NSFW is the scarlet letter of the Internet and a tag that causes HR people to either panic or roll their eyes.

Just what is NSFW? Nudity? Gambling? Racism? Insensitivity? Definitions are as amorphous as the Internet itself. But it's an issue companies should not -

cannot - ignore, experts say.

"It would be almost impossible to list every category of things that should be prohibited," said Michael Glassman, chairman of Dinsmore & Shohl's employee law practice group.

"I've never really seen a policy that has a laundry list of sites that you can't go to. It's somewhat infinite."

### 'Significant liability'

Glassman and other experts agreed on this: It's critical for employers to have a policy. Something in writing that lets workers know what is and isn't appropriate to show up on workplace computers.

So why is it even important for companies to have policies telling employees what's inappropriate on the web?

Stephen Richey, lead attorney with Thompson Hine's labor and law group, said there are two reasons.

"From a legal point of view it can certainly expose the employer to significant liability," he said.

The other?

"It's simply a waste of time," Richey

said. "People spend a substantial amount of time at work doing things that have nothing to do with work."

Richey said having employees view sexual images at work on a computer is akin to hanging photos of centerfolds in their office or cubicle - it creates an uncomfortable work environment for some employees that a court could interpret as hostile. It's why companies have policies against things like sexual harassment.

"When email became wildly used, the whole concept of policies with respect to harassment went right out the window," he said. "Somehow people thought an email was private and you can delete it, so people didn't understand that it was a permanent record."

That's how the NSFW tag was born. When firms got wise and started implementing policies prohibiting employees from looking at things that could be offensive to fellow workers - even on their own "private" email - people started flagging email subjects with NSFW to warn one another not to open it at work.

So what goes into a good policy?

First, disillusion any employees of the notion that they have any privacy.

"You don't have a right as an employee of a private employer to an expectation of privacy when using company servers," Taft Stettinius & Hollister Partner Justin Flamm said. Flamm works in the firm's Labor and Employment Group.

"Some employers don't communicate that clearly. The employees don't expect

*"The fact that you see something tagged as NSFW and you go ahead and click on it, that says something in and of itself."*

JUSTIN FLAMM, Taft, Stettinius & Hollister

