

LEGALities

FROM MIKE FARHI

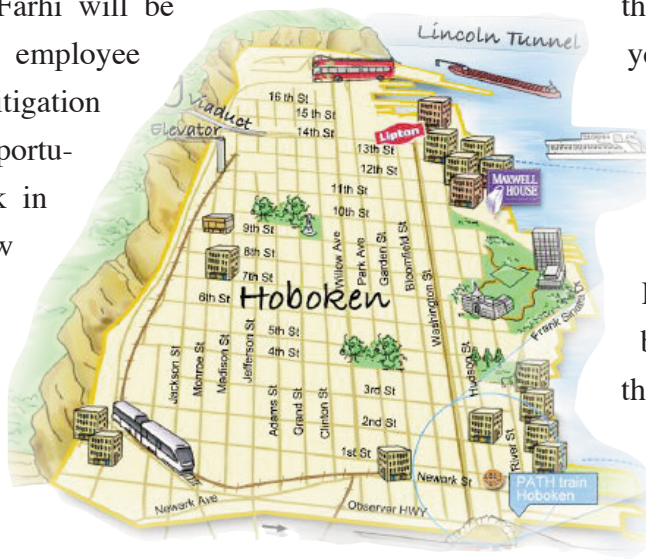
A NEWSLETTER FOR CLIENTS, LAWYERS, EMPLOYEES AND EMPLOYERS

Spring 2010

On the Waterfront?

Not Exactly, But Mike Farhi & Partners are Hired by Hoboken

Three partners from Kates Nussman have been hired by the City of Hoboken to serve as attorneys to meet specific needs. Mike Farhi will be defending the City against employee lawsuits and handling other litigation for the City. “It’s a great opportunity,” Mike says. “I’m back in the public sector after a few years’ absence.” Beyond helping Hoboken, I’ll be getting additional perspective from management’s side, which will help me better serve my other clients.”



all operation of the City of Hoboken’s Legal Department. He essentially serves as the attorney for the Mayor and Council and his years of experience as former town attorney for Teaneck and Fair Lawn and Zoning and Planning Board attorney for Closter, Alpine and Englewood Cliffs was noted by Mayor Dawn Zimmer at the time of his hiring.

In addition, partner Joel Ellis has been hired to defend real estate tax appeals in Hoboken. With

Senior firm partner Michael Kates is serving as Corporation Counsel and is responsible for the over-

between 3,000 and 4,000 appeals anticipated in 2010-2011, Joel’s years of experience in bringing tax appeals on behalf of individual and business property owners will be of great benefit. It is a primary area of his practice at Kates Nussman.

All three partners have AV ratings from Martindale-Hubbell, a national and international peer review service for the legal community. It means that their peers, other attorneys, rank them at the highest level of professional excellence.

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New Jersey's Top Court Makes Major Decision on Company Email Policies



Late last month, the New Jersey Supreme Court made a decision that will force employers across the state to change their policies on electronic communications. The Court said that an employee's e-mail communications with her lawyer about a possible lawsuit against her employer were privileged, even though they were sent during work hours from her work computer. In addition, the employer's policies warned the employee that she had no right to privacy in sending private e-mails.

The messages were sent through the employee's password-protected personal Yahoo e-mail account, not the company's e-mail system. After she resigned from the job, the employer was able to create a copy of all of the e-mails, which included those to and from her lawyer.

While she claimed that those messages were attorney-client privilege, the company said that its policy was valid. It was allowed to "review, intercept, access and disclose" all matters on the company's system and that "e-mails are not considered private or personal to any individual employee."

But the Court said that attorney-client privilege "trumped" the employer's rights. Just as important, though, was the guidance offered about company policies to put workers on notice that they have no right to privacy in their e-mails, except with a lawyer.

- The policy must specifically tell employees that they have no right of privacy in communications sent or received by personal web-based e-mail accounts on company equipment.
- If the employer has software that allows it to record or view its workers' activities, or if the employer is otherwise able to monitor activities, the policy must specifically inform them of that fact.
- The policy must say exactly what equipment is covered and, if it applies, refer to company-provided laptops, BlackBerrys and any other equipment that can be used outside of the office.
- If a policy allows occasional personal e-mails (for medical or other important reasons), they should not be considered to be personal or private.

Employees who work with computers would be well-served to keep their private communications while at work, whether by e-mail, phone or other means, to a minimum.

The employee in the case discussed above "pushed the envelope" and it took the highest court in the state to say she was right. For employers, establishing an electronic communication policy for the 21st century is essential to maintain a focused and efficient workforce.

Speaking of Emails...

Last December, Mike Farhi successfully defended a Saddle Brook teacher who was accused by 6 other teachers of violating New Jersey's Wiretapping and Computer Offenses laws. The other teachers claimed that Mike's client "hacked" into their e-mail accounts and distributed their private e-mails to other teachers at a union meeting. The e-mails had insulting comments about Mike's client and about other teachers in the school system.

Those e-mails were actually group discussions, accessed by one of the other teachers in the computer lab of a school where she taught and left open for viewing on the screen. That computer room was accessible to every teacher and student in the school, over 300 in all and Mike's client accidentally discovered them and read what they said about him. Upset by what he saw, he printed them out and gave them to other teachers at a union meeting.

The group of teachers claimed that they wanted to "send a message" and did so by filing the lawsuit. They also claimed that they were "shunned by their colleagues" and otherwise embarrassed.

After a 1 1/2 week trial, the jury agreed that Mike's client had "tacit authorization" under the law to access the computer which e-mail thread was left open. They also decided that the group that sued suffered no damages as a result of his actions.

The Good, The Bad and The Ugly: Performance Evaluations

In many companies, a performance evaluation is something that a manager has to do. Depending on the workplace, it's treated as anything from an important tool to an annoying "fill-in-the blanks" exercise.

How a boss - and those he or she supervises - deal with evaluations can make the difference between whether an employee lawsuit is brought and whether discipline including termination is justified and will survive a challenge. It will also affect the day-to-day operations of the workplace. The following are some ideas that can benefit both employers and employees in protecting themselves in the evaluation process:

1. Read the form. This sounds simple enough, but evaluation forms are often "checklists" that offer scaled or multiple choice questions and answers. And many executives just "rubber stamp" what a lower-level supervisor has written. A "meets standards" answer is generally considered to be favorable, but is sometimes checked automatically to avoid giving offense. But an employer who terminates someone in a protected category (age, gender, race, national origin, nationality, disability, etc.) may have a problem later in claiming that his or her performance was deficient, after years of "meets standards" reviews. Time should be taken to add comments, where appropriate, to explain what was checked-off and why. An employee presented with an evaluation should also be careful and not automatically "approve" it. His/her own comments should be added, whether they question the supervisor's grades or remind the employer of accomplishments and commendations on good work.

2. Avoid personal comments. Both criticism and praise, disagreement or reminders, should not be personal. A supervisor should focus on

performance-based issues, like sales and attendance. The terms "bad attitude," "tired" or "should retire" are not helpful. Likewise for an employee, written personal attacks on supervisors should be avoided. There are many comments that can be offensive based upon a person's race, national origin, age or sexual orientation, so that words should be "neutral" as possible.

3. Don't reward poor performance/keep a file. Many employers give raises to underperforming employees. That sends the message that a worker is doing just fine. And it gives that worker important evidence to challenge a later firing for poor performance. A smaller raise, a deferred one, or none at all should be considered. Employees should get copies of their evaluations and keep them in an organized file, together with letters of commendation and other positive information.

4. Evaluations should be an ongoing process. Unlike Christmas and birthdays, evaluations should not be a "once a year" event. Both employees and their supervisors should be communicating all of the time about performance issues, good or bad. A worker should be counseled about attendance problems when they happen - and the conversation should be documented in writing. And when he or she is praised for a job well done, especially in writing, a record should be kept for later use.

5. Meet to discuss. A face-to-face meeting to discuss the evaluation is helpful to minimizing anger and resentment and avoiding miscommunications. Both supervisor and employee should avoid argument, but instead be open to the other's point of view. Communication about expectations for improvement - on both sides - is good for morale, which leads to better performance and enhanced job security in these difficult times.

What is "Business Litigation"?

Simply put, business litigation results from disputes between businesses, or between a business and a former employee, or between a business and a consumer. Business relationships are based on contracts, whether written or verbal. When one side disagrees with the other, problems arise. Whether the dispute is about a contract for service, sales, or employment, a court may have to decide if they two sides can't reach a settlement. More difficult to resolve are situations involving commercial defamation, trade secret infringement, breach of fiduciary duty, fraud or consumer fraud and other conduct or claims that affects the success of a business or the rights of a consumer.

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- * General & Business Litigation
- * Employment & Discrimination Law
- * Business and Corporate Law
- * Complex Litigation and Appeals
- * Probate Estate Administration and Tax Planning
- * Commercial and Residential Real Estate
- * Real Estate Tax Appeals
- * Municipal Law and Land Use
- * Condominium Associations and Co-op Corporations
- * Alternate Dispute Resolution
- * Professional Licensing
- * Municipal Court & Traffic Violations

Mike Farhi Recommends...

The practice of law has become more and more specialized. A lawyer who is a “master of all trades” is now a thing of the past, much like 8-track tapes and black & white TV. For that reason, Mike Farhi has been working with a group of specialists in areas of law that he does not handle. Those areas include **Automobile Accident Claims, Bankruptcy, Complex Divorce Cases, Criminal Defense, Federal Workers Compensation, Immigration, New Jersey Workers Compensation Claims and Social Security Claims**. If you, a family member, friend, neighbor or co-worker needs a lawyer in one of those areas, call or e-mail Mike for a referral.

Michael Farhi, Esq.

For a FREE Phone Consultation, call 201.488.7211 or e mail mfarhi@nklaw.com

- Employment & Discrimination Law • General & Business Litigation

To learn more about Kates, Nussman, Rapone, Ellis, & Farhi visit the website at
<http://www.nashelkates.com>

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