

EMPLOYMENT ALERT

3 September 2012

BYOD – BRING YOUR OWN DEVICE POLICY ESSENTIAL

Many employers are warming up to the benefits of allowing employees to use their own electronic devices in the workplace. Information Technology (IT) in the workplace is no longer the preserve of a geeky, bespectacled manager and a team of nerds with a unique dress sense and an affinity for pocket calculators.

Employees currently entering the workplace have grown up in the IT era, have a better understanding of the use and value of IT and have their own preferences in relation to the operating systems, software, applications and devices they wish to use to do their work. This group of employees are part of a force that drives the demand to allow employees to use their own electronic devices in the workplace.

The advent of the Apple iPad arguably acted as a catalyst in the move to Bring Your Own Device (BYOD). Whereas the demand for own devices in the workplace largely came from the younger, tech-savvy generation, executives owning iPads and iPhones has now started placing demands on IT departments to allow them to use their own devices in the workplace. This added pressure where IT departments were reluctant to enter the world of managing various devices using different operating systems in the workplace. While it is obviously easier to manage a workplace where everybody uses the same brand of laptop or desktop with the same operating system, the call for using own devices started drowning concerns raised by IT custodians. The short message to employers seems to be that if you want to attract and retain talented staff, who are often very streetwise in matters of IT, it can be a competitive advantage if you have a user-friendly IT environment in the workplace.

BYOD simply means that employees are permitted to use their own electronic devices in the workplace. Instead of the employer providing the employee with, for instance, a laptop, the employee is permitted to bring their own electronic device to the workplace.

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The employee may then use this device for work purposes. For example, if you want to work on a Macbook, you need not use the company supplied laptop or Windows as an operating system. Should you prefer to use your iPad to a laptop when travelling, BYOD allows you to do so. Employees are permitted to use their preferred devices or operating systems, applications and software programmes.

However, with BYOD being favoured by more and more employers around the globe, the employment law complications of this practice are becoming more apparent as well. What happens when an employee's own device breaks down or is stolen: may the employer dismiss the employee who is now not able to perform his functions due to the lack of his own electronic device? Is the employee entitled to a company supplied device even where the company included a financial consideration in the employee's remuneration package to fund the employee's purchase of her own electronic device? What levels of support should be supplied by the IT department to a user using his own device – may the user demand service of an application that is clearly not work-related, even if it is on his own device?

Employers coming to grips with the demand for BYOD are strongly advised to implement a BYOD policy. This policy should cover areas such as permissible devices, operating systems, applications and software, details of any consideration paid to fund the purchase, income tax implications, insurance of devices, levels of support offered, replacement or upgrade of devices and

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other relevant information that will govern the use of employee devices in the workplace. Employers seeking to manage the complications occasioned by employees being unable to perform their tasks based on own device problems will find it difficult to do so in the absence of a clear policy in this regard.

A BYOD policy should dovetail with the company's IT, Electronic Communications and Social Networking policies. Where the use of technology is not managed proactively, employers may be reduced to the role of perpetual fire fighters trying to crisis manage employment related IT problems.

Johan Botes

We are hosting a seminar on Wednesday, 19 September 2012 in our Sandton office.

Adam Hartley, from DLA Piper UK, will be discussing second generation outsourcing from an international perspective and how other jurisdictions have applied it.

To attend the event, please send an email to jhbevents@dcladh.com

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