

## Using Personal Email at Work

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Nearly everyone who has email at work uses it occasionally for personal correspondence. Similarly, many people use their personal email accounts for business communications. Hillary Clinton used a private server for her email while Secretary of State so that she could continue to control her personal email. What are the implications of using your work email for personal correspondence, or your personal email for work correspondence?

### The Company View

From the company’s perspective, every email that is sent or received in the course of the company’s business belongs to the company. Many companies have policies that allow employees to use their company email address for personal business occasionally, as long as the use is not excessive and is not in competition with the company or in violation of other company policies against harassment, etc.

Among the company’s concerns:

- That employees do not spend excessive time on personal, as opposed to company, business;
- That employees are not unduly distracted by personal matters while at work;
- That employees do not send or receive personal emails with language or content inappropriate in the work environment, such as harassing, offensive, or abusive emails or email discussing politics, religion or humor;
- That employees do not send confidential or proprietary information outside the company; and
- That it is unclear whether there is any obligation to protect the privacy of those personal messages.

In addition, to the extent work email and personal email are commingled on the company’s servers and the company’s backup media, such email is within the company’s possession, custody or control, and thus if relevant if within the scope of preservation obligations when litigation or a governmental investigation becomes reasonably likely. So, the existence of personal messages in that collection increases the company’s cost of conducting e-discovery (preservation, search, review, and production) in response to reasonably foreseeable litigation or government investigations.

## Recommendations for the Company

First, the company should have policies that

(a) clearly establish its ownership rights in everything (other than public information) received, created, or sent in the course of the company's business, together with anything stored on or in the company's servers, backup media, or file cabinets;

(b) prohibit the excessive personal use of the company systems, whether that be excessive personal emails or consuming an excessive amount of bandwidth by streaming sports or similar programming;