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# No bonus for employees on notice? Better let them know

*Employer expected executive to know about its policy  
but employee didn't know it was posted on company intranet*

| BY TOM GORSKY |

**MANAGING** communications with employees can present a challenge for employers, especially when a workforce can number in the thousands. Historically, reliance has been placed on individuals communicating workplace policies through meetings and in writing. However, this method of communication can be problematic and prone to error if an individual entrusted with the task fails to deliver. A workplace intranet, therefore, seems like an ideal solution to this problem. Able to reach thousands of employees with the click of a button, a workplace intranet can ensure communication is consistent and timely.

However, as one Ontario employer recently learned, there are perils to relying on technology without the human touch.

Mark Poole was a senior executive of lengthy service with Toronto-based home appliance manufacturer Whirlpool Canada. His employment was terminated on a without-cause basis after he refused a severance proposal made by his direct report.

Poole launched a wrongful dismissal action against Whirlpool. The most important issue was Poole's claim for bonus compensation. Poole claimed he was entitled to a bonus calculated over the entire length of his notice period (found by the motion judge to be 19 months). In response to the claim, Whirlpool pointed to the language of its bonus policy which purported to disqualify an employee — such as Poole — from receiving bonus compensation in respect of bonus payments arising after termination of employment.

The bonus policy, although not incorporated into Poole's employment agree-

ment, was posted on the Whirlpool's intranet, available to all employees. Poole attested in unchallenged evidence he had not agreed to the terms of the bonus policy, and was unaware of the terms or that the policy was posted on the company's intranet.

## Bonuses added to severance

An Ontario Superior Court of Justice judge found in Poole's favour, adding about \$106,000 to his severance compensation. Whirlpool appealed but was unsuccessful.

“The bonus eligibility precondition relied on by (Whirlpool) was not incorporated in (Poole's) 2007 letter of employment; nor was there any evidence that the precondition was otherwise drawn to (Poole's) attention at any time, whether orally, in writing, or by means of the appellants' internal intranet communications system, or that he ever agreed to it,” said the Ontario Court of Appeal.

In short, evidence was required to prove Poole had been notified of the terms of the bonus plan; the mere act of posting it on the company intranet did not satisfy this requirement.

## Lessons learned for employers

A workplace intranet can be an efficient method of communicating company policy, provided humans and technology are integrated into the process. Communication of a workplace policy is not an issue which can be left solely with the company's IT department. Many policies are legal contracts which create substantial potential corporate liability. The manner in which a policy is communicated is a legal issue which can be just as important as what the policy actually says. Best practice suggests:

- When an important policy is posted on a workplace intranet, such as an annual bonus plan, the posting may be accompanied by a distribution email addressed to employees who are intended to be affected by the policy.

- A policy posted on the intranet should be accompanied by a requirement that the employee notify the employer of her agreement.

- There are automated methods available to record an employee's agreement, such as requiring the employee to log on to a password protected area. If such technology is not utilized, the most prudent course is to ensure the employee provides her signature on a printout of the workplace policy.

- There are automated procedures available to keep track of and remind anyone who failed to provide agreement to a workplace policy. Even if such automated tracking is utilized, at some point a human being may be required to secure compliance.

- In any event, review the strategy of communication with legal counsel to ensure it will be enforceable if ever reviewed by a judge.

See *Poole v. Whirlpool Corp.*, 2011 CarswellOnt 14122 (Ont. C.A.).

## REASONABLE NOTICE



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