

WATCH YOUR CLICK! THERE IS A SPY IN YOUR COMPUTER

Many of you showed great interest in the adventures of Barnabé, our presentation of this distracted employee, using the Internet rather for unspeakable entertainment than for proper work and the related legal issues such behaviour triggers.

You will undoubtedly be thrilled to learn the equally surprising story of a Swiss employee, demonstrating an unexpected effect of social networks' success.

A Swiss insurance worker just lost her job. That might seem fairly common in a context of economic crisis, but not when you consider the circumstances that lead to such dismissal.

This employee was on sick leave having argued that her medical condition did not allow her to face a computer. However, during these sick days, she was stumbled across surfing on Facebook by one of her colleagues, who happily reported it to the employer.

Her employer argued that such behaviour made them lose all trust in this employee and therefore led to the end of her employment.

Could this happen in France?

The French Labour Code provides for specific dismissal grounds which the employer shall comply with to initiate any dismissal procedure.

Thus, a French employee can either be dismissed for economic grounds (redundancy) or personal grounds (fault, repeated lateness, work inadequacies, etc.).

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Ichay & Mullenex Avocats is a French law firm focusing on all legal issues related to the new technologies in France and abroad. They are considered experts in intellectual property and Internet law, e-commerce, online gaming, data protection. Ichay & Mullenex Avocats also assists its clients on all issues related to financing, mergers & acquisitions, restructuring, etc. and advises them on their litigation and arbitration procedures.

According to French case law, the loss of trust can not be considered *per se* as proper ground for dismissal. In a decision dated May 29th 2001, the French Supreme Court stated that “*the loss of trust can never be per se a dismissal ground, even if such loss is based on objective facts. Only these objective facts can, if applicable, constitute a dismissal ground, which shall not be the case of the loss of trust which resulted for the employer.*”

Therefore, if such situation occurred in France, the best ground for dismissal would be the fault committed by the employee, who used deceptive means to unlawfully avoid working.

The employer shall, of course, be able to produce evidence of such fault which would be assessed by the labour jurisdictions in the event the employee challenges the decision of his employer.

Obviously, in this case, thanks to the very detailed logs and luxury of information available on Facebook, such evidence shall be fairly easy to secure.

This amusing story is a very efficient demonstration of the dangers of Internet for our privacy. As discussed in our podcast “Goodwill & Internet” (<http://www.ichay-mullenex.fr/archives.html>), the greatest attention shall be paid to any private content uploaded on the Internet, and especially to privacy settings on social networks, as most of our online activities can be traced by others.