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Violations of The Computer Fraud and Abuse Act

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The Computer Fraud and Abuse Act provides businesses with a remedy against employees, former employees or other individuals who compromise a computer system or who destroy data. Recently, the 7th Federal Court of Appeals held that a former employee was liable under the Act and also for breach of contract and loyalty when he left his employer to start his own business in violation of his employment contract. To make matters worse, before he quit, he deleted all the files on his laptop before returning it to his former employer. Not only did he delete all the data he had collected but also the data that would have revealed his improper conduct before he quit. The facts revealed that not only did he hit “delete” but he loaded the laptop with an erasure program which overwrites the files to prevent their recovery. Based on these facts, the former employer sued arguing violation under The Computer Fraud and Abuse Act which provides that whoever knowingly causes the transmission of a program, information, code, or command, and as a result of such conduct, intentionally causes damages without authorization, to a protected computer, violates the Act.

The former employee argued that merely erasing a file from a computer is not a transmission under the Act. However, the court rejected his argument finding that hitting the delete key did transmit a command and that he transmitted the erasure program to the computer by either a download from the internet or inserting a data disk. The court pointed out that Congress was concerned not only with attacks by virus and worm writers which come from outside sources but also attacks by disgruntled individuals who decide to destroy their employer’s data system on the way out or threaten to do so to extort payments. The court held that whoever intentionally accesses a protected computer without authorization or exceeds that authorization and recklessly causes damage violates the Act. As such, the former employee violated the Act when he exceeded his authorized use of the laptop by destroying the files that incriminated him along with other company files that were the property of his former employer. For further information, please visit our web site at www.joettedoran.com.

This article is not intended as legal advice. You should consult with an attorney for individual advice regarding your own situation.

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