

When Taking Health Information Is 'Protected Activity'

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Partner [Barbara Hoey](#) co-authored the article “When Taking Health Information is ‘Protected Activity,’” published by *Law360* in its Expert Analysis Section. The article focuses on instances when employees forward employer data or documents to personal email addresses in an attempt to gather evidence to support a claim against an employer. Some courts have sided with the employer, recognizing a company’s legitimate right to safeguard its information and documents, while others have sided with the employee, who is attempting to pursue a discrimination claim, yielding what appear to be diametrically opposed outcomes. The authors examine recent case law surrounding such events when employees were disciplined or terminated for theft, finding that the different outcomes can be attributed to whether the “thief” was participating in an existing lawsuit against the company, to whom the individual was disclosing the documents and for what reason, and whether there were potential privacy violations. They recommend having strong confidentiality and anti-theft policies in place, monitoring IT systems to make sure theft isn’t occurring, having plans in place to promptly investigate a potential theft or breach and knowing the various state and federal laws that may be implicated in such circumstances.