Your Emoji Use Just Formed a Contract

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As confirmed in a very recent *Wall Street Journal* article, the legal impacts and effects of using emojis and emoticons in business and workplace communications and dealings are growing. For attorneys, contract professionals, and business executives and teams discussing, negotiating, and communicating about technology, business, deals, and transactions, the use of emojis (pictographs) and emoticons (punctuation marks, letters, and numbers) should be a concern.

Depending on the circumstances, using an emoji or emoticon to respond to another party's email or message may have the same effect as if precisely crafted words had been used. Unless the author of the email or message is careful, casually sending a , :-), , or ☺ in response to an email putting forth a proposal or offer to do business may be the same as stating, "I agree to your terms." At a minimum, replying to a message with an emoji may convey contractual intent. Bottom line, before using emojis or emoticons in emails and other communications, it is critical to consider how they may be received or interpreted.

The use of emojis clearly is on the rise. In its November 2016 report, Emogi reported that 2.3 trillion messages incorporating an emoji would be sent in 2016 – and the report did not include the use of emojis in emails. In addition, the Unicode Consortium recently announced that 157 new emojis have been added in 2018, bringing the total number of standard emojis to 2,823. As more of the business world adopts technology to communicate, it becomes more important for business leaders, procurement and purchasing professionals,

and others to be mindful of their use of emojis and emoticons in emails, texts, and other message formats. To those businesses and companies that have “careful communications” policies, has your policy been updated to address the use of emojis?

Aside from general contract concerns, the use of emojis has and will increasingly impact parties’ legal rights and obligations. This includes in the areas of labor and employment, promissory estoppel, jury instructions, and criminal cases. According to research by Santa Clara University law professor Eric Goldman, for the set of reported cases that he was able to identify as mentioning “emoji” or “emoticon” over the 2004-2016 period, over 30% of the cases were from 2016, and nearly 50 were from 2015 and 2016.

And, if you needed another reason to be overly cautious when using emojis and emoticons in correspondence and communications, be aware that the true meaning attributed to any particular emoji may be vague, at best, or non-existent, at worst. Moreover, the form and appearance of the emoji you send may not be the same as the form and appearance seen by the recipient. In addition, different cultures, generations, and geographic regions interpret emojis differently. (The most confusing emoji? It’s .)

The reality is that emojis are easy to use and can be fun and communicative. They are, and will continue to be, used in emails, texts, and communications between and among business parties, their advisors, and others. Just be sure to before you .