

Employers' Routine Collection, Use and Disclosure of Employee Information

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"How does one perform a 'contributory role in society' by working, while at the same time maintaining one's 'physical and moral autonomy'? In other words, are the fundamental values of work and privacy reconcilable?"

Sandra M. Anderson, "Alberta's Privacy Regime and its Impact on the Workplace" (2006), 43(3) Alta. L. Rev. 647 at 648

The PIPA legislation in Alberta and B.C. recognizes that the nature of the employment relationship is not exclusively consensual but requires a balancing of the interests of employers and employees:

- **Where information is *personal employee information* (information about an employee or potential employee that is reasonably required by an organization that is collected, used or disclosed solely for the purposes of establishing, managing or terminating the employment relationship), employers do not need employee consent to collect, use, and disclose it.**
- In order to rely on the sections relating to personal employee information in PIPA, an employer must ensure that the purposes for collection, use and disclosure are reasonable, and must provide employees with prior notification of these purposes.

An employer may also be able to show that employees have otherwise consented to the collection, use or disclosure of their information, or that other exceptions to the requirement for consent apply. For instance, consent will not be required if the information is collected, used or disclosed for an investigation or legal proceeding (including the investigation of a breach of the employment contract) or if authorized by law (such as WCB or OH&S accident reporting).

Examples of routine collection, use or disclosure of employee information that may fall within the definition of personal employee information include the following:

- collecting, using and disclosing resumés;
- providing employment references;
- making birthday or birth announcements;
- collecting, using and disclosing employee photographs for identification purposes;
- releasing performance statistics or information regarding workplace achievements; and
- collecting, using and disclosing accommodation or return to work information.

In many ways, the applicable principles are the same whether the nature of the collection, use or disclosure is routine (such as the provision of employment references) or is more extraordinary (for instance, the use of workplace video surveillance or biometric scanning). Perhaps the most important distinction between routine and more extraordinary matters lies in the ease by which an employer could show that the collection, use or disclosure was reasonably required for the purposes of establishing, managing or terminating the employment relationship.

Even when the collection, use or disclosure of employee information is done on a routine basis, employers should not forget the basic requirements of compliance with privacy principles. In order to comply with PIPA, employers must ensure the following:

- **that they collect, use and disclose the least amount of information necessary** (for instance, my co-workers do not need to know the year I was born to wish me a happy birthday);
- **that the audience should be limited to those with the need to know** (for instance, my co-workers may not need to know the specific reason that I will be away from the office);
- **that the purposes are understood and limited to those that are reasonable or permitted** (for instance, an employer collecting my resumé to determine eligibility for employment should not use this information to market a service or product to me);
- **that employees are notified of the purposes where required** (for instance, while it may be necessary to obtain limited information from me regarding my return to work program, the employer must provide proper prior notification of the purposes of collection, use and disclosure); and
- **that it may nevertheless be advisable to obtain explicit employee consent** (for instance, while it may be permissible in some circumstances to release my sales statistics to co-workers, it may be advisable to obtain my prior consent by way of a written policy acknowledged by all affected employees).