

## Managing Employees' Expectation of Privacy With an Employee Privacy Policy

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Do employee privacy policies remove employees' ability to control the collection, use and disclosure of their personal information? They do not. This is accomplished with employment agreements. Employee privacy policies inform employees about their privacy rights and of the employer's ability to collect, use and disclose their personal information as they see fit, for business purposes.

### Consent — A Condition of Employment

Employment agreements are essentially consent forms, as employees provide their employers with authorization to collect, use and disclose their personal information for business purposes. One could argue that consent is a condition of employment.

An employment agreement may provide the organization with consent, but an employee privacy policy is necessary to address privacy in the workplace.

### Customer Privacy Policies Provide Notice and Choice

Federal and provincial privacy Acts require organizations to create privacy policies to inform customers and potential customers of their privacy rights. Customer privacy policies document the organization's policies regarding the collection, use and disclosure of the individual's personal information. Individuals are therefore allowed to make an informed choice about whether to consent to the loan of their personal information to the organization. The policy includes opt-out provisions that permit the individual to withdraw consent, thus requiring the organization to cease the use and disclosure of the individual's personal information.

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## Employee Privacy Policies Provide Notice — Without Choice

Employee privacy policies differ from customer privacy policies. Employee privacy policies inform employees about the employer's purposes for the collection, use and disclosure of their personal information, but there is one key difference — there is no choice. In most cases, an employee cannot withdraw consent.

Thus, employee privacy policies inform employees of their privacy rights and of the organization's practices related to the collection, use and disclosure of employee personal information.

### PIPEDA is Not Applicable

Organizations looking for legislative guidance when creating employee privacy policies should look to British Columbia and Alberta's *Personal Information Protection Act* (PIPA). Federal privacy legislation, the *Personal Information Protection and Electronic Documents Act* (PIPEDA), has limited application with respect to employee personal information, as PIPEDA only applies to employees of Federal Works?.

This is good news, as both the B.C. and Alberta PIPA take into consideration the unique privacy requirements employers face with respect to employee personal information. PIPA does not require employers to obtain consent from employees for the collection, use or disclosure of their personal information, as long as the purpose is to establish, manage or terminate an employment relationship. PIPA simply requires organizations to notify the employee as to the purposes for the collection, use and disclosure.

Thus, employee privacy policies serve as notification.

?Federal Works, Undertakings and Business, as defined in PIPEDA and often referred to as federally regulated organizations includes the Banks, Telcos, Airlines, Transportation companies and all organizations in Canada's territories.

### PrivaWorks' Employee Privacy Resource Center

Nymity offers a subscription service that provides the privacy resources required for organizations to maintain compliance with Canadian privacy legislation and to create:

- Employee privacy policies
- Employee privacy training programs
- Surveillance policies
- Records management policies
- Privacy audits
- An HR privacy office

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## Surveillance and Investigations

Some employers expected that federal and provincial privacy Acts would change the manner in which employers monitor employees. This is not the case. As long as an organization follows well-defined privacy requirements, including notifying the employee of the purposes for surveillance, they are compliant with privacy legislation. An employee privacy policy is an effective tool to inform employees.

Investigations are generally a serious privacy concern for employees. Thus an organization should document their policies on investigations in the employee privacy policy. The policy will inform employees that investigations will take place without notification when required to investigate a breach of an agreement, such as employee agreement.

## Training Management on Employee Privacy is a Must

There are many employee privacy considerations for management. For example, management must understand that when employees exercise their right to access their personal information, it will result in any and all documented comments made by management being disclosed to the employee, without sanctions. Also, management must understand that employee personal information located on a desk is a privacy breach, as there are insufficient safeguards to protect the information from an improper disclosure.

These are but two of the privacy challenges for management. A simple and effective method of raising management awareness of employee privacy issues is the creation and implementation of an employee privacy policy.

## Create Employee Privacy Policies Today

If you have employees in British Columbia or Alberta, creating an employee privacy policy is a mandatory legislative requirement. Although Quebec's private sector privacy Act doesn't mandate the creation of an employee privacy policy, it is an established best practice. If your employees are in Ontario, many privacy experts believe

## Privacy Training

Nymity offers privacy training, including:

- Privacy Compliance Training Workshop
- Privacy Impact Assessment Workshop
- Employee Privacy Workshop
- Privacy Breach Prevention Workshop
- Records Management Privacy Workshop
- International Privacy, the US Patriot Act and Outsourcing Workshop

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privacy legislation, similar to PIPA, will be enacted in Ontario in the not-to-distant future.

Regardless of legislation, many organizations are creating employee privacy policies, as there are many corporate advantages in doing so. In fact, the Federal Privacy Commissioner for all organizations recommends implementing an employee privacy program.

## **Policies are for Those Who Complain**

Employee privacy policies are an effective tool to mitigate liability against actions brought by employees relating to privacy.

## **Conclusion**

Employee privacy policies inform employees of their privacy rights and provide notification of the organization's purposes for the collection, use and disclosure of their personal information. All organizations benefit from an employee privacy policy as it helps manage employees' expectation of privacy in the workplace.

## **Next Step**

Understand key employee privacy considerations, including:

- Compliance with Canadian privacy Laws
- Creating employee privacy policies
- Surveillance and investigations
- Records retention and management
- Employee privacy training
- Outsourcing of employee information
- Managing access request
- Legislative "High-water-mark" for Canada's four private sector privacy Acts

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