

Workplace Privacy & Information

Local. National. Legal Services for Employers.



From job applications and background checks to leaves of absence and disability accommodations, workers are constantly being asked to provide personal and potentially sensitive information. Mathews Dinsdale has the expertise to help employers understand their obligations for the collection, storage and use of employee information.

Protecting an employee's personal life and confidential information has been a growing area of concern for employees and employers alike. Employers insist on securing greater access to information in order to help manage their workforce and limit the occurrence of absenteeism. Workers resist these demands due to concerns over privacy and confidentiality.

The extent to which an employee's personal information is regulated depends on a number of factors, including: jurisdiction of regulation (provincial or federal); sector (public or private); and type of information in issue. The presence (or not) of a union in the workplace can also have a material impact on the extent to which the employer can implement, use and rely on various forms of monitoring and surveillance.

At Mathews Dinsdale, we help employers develop and maintain appropriate practices and safeguards to balance these competing interests, while accounting for additional obligations which may be imposed by the applicable privacy legislation.

Background Checks

Criminal background checks are often used as part of the hiring process, and indeed many organizations operating in particularly sensitive industries or working with vulnerable parts of the population are not only expected but may also be contractually obligated to conduct pre-hire and periodic criminal background checks.

Our lawyers can assist with developing and maintaining appropriate practices and policies to ensure that background checks are appropriately obtained, and to ensure that operational decisions which are made as a result of information disclosed in a background check does not run afoul of human rights legislation or other legal or contractual obligations.

Protection of Personal Information

While there is no universal definition, personal employee information is generally considered to include information such as:

- Race
- National or ethnic origin
- Religion
- Age
- Marital status

- Medical, education or employment history
- Banking information
- Biometric information (i.e. fingerprints and DNA)
- Social Insurance Number (SIN)
- Driver's licence number

There are often strict obligations surrounding the collection, use, dissemination and disclosure of certain types of personal information, for which obligations might be imposed by statute or collective agreement, or implied by law.

We regularly assist employers with balancing these competing interests when making operational decisions involving the use of personal information, and help guide employers to minimize the risk of liability where an employee perceives that their personal information was improperly disclosed or considered in the employer's decision-making process.

Protection of Medical Information

Managing the accommodation process safely and effectively begins with ensuring the employer appropriately understands an employee's medically-based limitations and restrictions. Securing detailed medical information is often necessary to facilitate an appropriate search for suitable accommodation in addition to establishing entitlement to job-protected leaves or disability benefits. However, appropriate steps must be taken to ensure the medical information being sought is necessary and appropriate, and that adequate safeguards are in place.

We provide practical and useful advice aimed at ensuring that employer objectives can be met in such a way that ensures that sensitive employee medical information is appropriately obtained, utilized and safeguarded.

Monitoring and Surveillance

When workplaces are overtly monitored for the purpose of safety and security, this is generally non-contentious. However, when monitoring targets a specific employee's productivity or activities, or occurs as part of a surreptitious investigation into potential employee misconduct, additional considerations arise.

Mathews Dinsdale lawyers have extensive experience in guiding employers through what are and are not acceptable forms of workplace monitoring and surveillance, including:

- **Monitoring computers, emails and cellphones** – Terms of use policies should be established to ensure that employees are aware of the extent to which these devices and tools are monitored and to clarify the limits on any reasonable expectation of privacy.
- **Video Surveillance** – Video surveillance is commonly used in parking lots, loading docks and access and egress points to help maintain safety and security in a facility. More controversial use of video surveillance arises when used to monitor particular workstations or employees for the purpose obtaining evidence of employee misconduct.
- **Surreptitious Surveillance** – Where it is suspected that an employee has provided false or misleading information respecting the reasons for an absence or the extent of their medical restrictions and limitations, there is often a desire to conduct or arrange for surreptitious surveillance of an employee's off-site activities.

Our lawyers are well-versed in these issues, and can help guide employers through the ways in which various monitoring and surveillance initiatives can be properly utilized to achieve a safe and productive work environment, permit effective management of employee misconduct, and minimizing the potential for employee abuse of disability benefits and leave protections.

Connect with us

For more information about how we can serve you in Workplace Privacy & Information, please contact your Mathews Dinsdale lawyer or visit our website at mathewsdinsdale.com.

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