

HR Insights

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Legal Protections and the Right to Privacy

While having conversations, writing emails and going about business at home, the law provides privacy rights which restrict others from breaching one's sense of security. However, when individuals go into a work setting, those rights are not as defined. The law is extremely fuzzy with regard to the employer's need to know versus the employee's right to privacy, which can cause confusion and conflict in the workplace.

Furthermore, laws vary depending on whether an employee works in the public or private sector. Federal, state and local government employees and some contract workers are protected from infringements of privacy on the federal level. In addition, several states have enacted laws protecting employees working in the public sector, but again only from governmental violations. Therefore, it is imperative that both employers and employees understand federal, state and applicable tort laws.

Constitutional Protections

The Fourth Amendment protects citizens against "unreasonable search and seizures" from entities of the federal government. The 14th Amendment affords citizens these rights against state and local governments; however, neither is applicable to those in private entities. Furthermore, neither of these amendments specifically refers to an individual's right to privacy. Despite this, the U.S. Supreme Court has found in several decisions that the Constitution implies a right to privacy in these amendments and there are many state statutes and common laws regarding employees' right to privacy.

Determining Legality

When determining the legality of a potential privacy infringement, the employer's need for conducting a particular type of surveillance will typically be weighed against the employee's expectation of privacy. Generally, the employer's privacy policies, past actions concerning privacy and whether there was a legitimate reason for the search play a role in whether there was a violation of one's privacy rights. In addition, if an employer does one of the following, he or she is typically in violation of the employee's expectation of privacy:

- **Deception**—Requiring an employee to have a medical exam and then testing urine for drugs without the employee's knowledge. After failing the drug test, the employee is fired.
- **Secret monitoring of an intrusive nature**—The employer installs a video surveillance camera above bathroom stalls to detect employee theft.
- **Confidentiality violation**—The employer assures employees that information from a health questionnaire will remain confidential, but then shares it with a third party.
- **Intrusions into employee's personal life**—The employer fires an employee because he or she is a member of an activist group whose mission the company does not



support. Following are some suggestions for employers to handle this issue:

- Have clear policies in your employee handbook relating to privacy, investigations and surveillance, including use of email and company-provided electronic devices.
- Update policies as needed and inform employees of updates.
- Have all employees read and sign the policy and any updates.
- Make sure you have a legitimate work-related purpose for monitoring employees or their communications.
- Know federal, state and local laws regarding privacy and consult legal counsel if you are unsure.