

Privacy: Video & Audio Recording in the Workplace

WHAT IS THE ISSUE?

Employees have a reasonable expectation of privacy in the workplace.

Many employers monitor the activities of their employees with surveillance systems, such as video cameras. While some forms of surveillance in the workplace may be reasonable, others may violate employee privacy rights.

WHICH LAW APPLIES?

Privacy law for BC private sector organizations in BC, such as businesses and non-profits, are governed by the [Personal Information Protection Act \("PIPA"\)](#). Federal works, undertakings, and businesses, such as airlines, banks and telecommunications companies, are governed under the [Personal Information Protection and Electronic Documents Act \("PIPEDA"\)](#)

First Nations Band Councils: if you are an employee of a First Nations Band Council, the collection, use, or disclosure of your personal information is governed under PIPEDA.

Privacy law for BC public sector organizations, such as provincial government ministries and municipal police forces, in BC are governed by the [Freedom of Information and Protection of Privacy Act \("FOIPPA"\)](#). Federal public sector organizations, such as federal government ministries and the RCMP, are governed under the [Privacy Act](#).

WHAT ARE THE PRINCIPLES?

Privacy law governs the collection, use, and disclosure of personal information by balancing two principles:

- A person's right to control access to and use of their personal information AND
- An organization's need to collect, use, or disclose a person's personal information for legitimate and reasonable purposes.

"Personal information" means information about an identifiable individual, including:

- Name, home address, or home phone
- Information about a person's height or weight

- Information about a person's race, religion, sex, sexual orientation, age, etc.
- Medical information
- Fingerprints, blood type, and other biometrics

Personal information does not include a person's contact information at a place of business.

"Reasonable" for the purposes of collection, use, and disclosure means what a reasonable person would **consider appropriate** in the circumstances.

What is considered **"appropriate"** in the circumstances will depend on:

- The amount and sensitivity of the personal information collected or used by the organization
- Whether the organization attempted a less intrusive method of collecting or using the personal information
- Whether the organization's chosen method meets its stated goal for collecting or using the personal information, such as employee safety or security

DID I CONSENT TO GIVE MY INFORMATION?

Meaningful consent is an essential element of privacy law for private sector organizations in Canada. In general, organizations are required to obtain a person's **meaningful consent** to collect, use, or disclose their personal information.

"Meaningful consent" means that a person understands the nature, purpose, and consequences of what they are consenting to. To obtain meaningful consent, organizations must make information about the collection, use, and disclosure of personal information available to the employee, including:

- What personal information is being collected
- What is the purpose for collecting, using, or disclosing the personal information
- With what other parties will the personal information be shared

Note that employers may collect, use, or disclose personal information for the purposes of establishing, managing, or terminating the employment relationship.

LAW ON VIDEO RECORDING

Video surveillance collects “personal information” by capturing identifiable information about a person. Employers should only use video surveillance as a last resort after attempting less privacy-intrusive alternatives to achieve its intended purpose, such as improving safety and security.

If video surveillance is used in the workplace, employers should do the following:

- Limit the scope of the surveillance by positioning cameras away from areas where employees have a heightened expectation of privacy, such as washrooms and change rooms
- Limit the amount of the surveillance by turning cameras on only at times where it is necessary to achieve the intended purpose. For example, if the intended purpose is to prevent after hours break ins, cameras should be turned on only after business hours.

Employers who use video surveillance should have policies and procedures that detail the following:

- What is the purpose of the surveillance
- When will the video surveillance be recording
- How will the recordings be used
- How will the recordings be secured
- How long will the recordings be kept

LAW ON AUDIO RECORDING

Audio surveillance may intercept private communications of employees in the workplace. While employers may use video surveillance in certain circumstances, privacy law does not permit employers to use audio surveillance. If a video surveillance system comes equipped with a microphone, the microphone should be disabled.

WHAT CAN I DO ABOUT IT?

If you believe your employer has breached your privacy rights, you can take the following steps:

1. Request your employer’s privacy policy. If you are in a unionized workplace, also consult your collective agreement.
2. Attempt to resolve your concerns directly with your employer. Keep records of your correspondences with your employer.
3. If you are unable to resolve your concerns, you can file a formal complaint with the provincial or federal privacy commissioner.

For complaints under PIPA or FOIPPA, you can file a complaint with the [Office of the Information and Privacy Commissioner for BC](#). You can call the OIPC at (250) 387-5629.

For complaints under PIPEDA or Privacy Act, you can file a complaint with the [Office of the Privacy Commissioner of Canada](#). You can call the OPC at 1-800-282-1376.

If your complaint is accepted, a file will be opened and you will be sent a notice with a file number. In processing your complaint, the Commissioner may do one of the following:

- **Mediation:** An investigator will attempt to settle the complaint between you and your employer. No finding will be issued.
- **Investigation:** An investigator will conduct an investigation into the complaint, which will include gathering statements and evidence. A report will be issued with a finding of whether or not your employer breached the applicable privacy legislation.

The Commissioner cannot impose fines or awards for damages against your employer. The Commissioner can issue a directive for your employer to comply with the applicable privacy legislation.