

# Privacy modernization in Canada and its impact on employers

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# Privacy Modernization – Impact on Employers

The **federal privacy law** (PIPEDA) is changing. **Quebec** has introduced dramatic changes to its privacy law. **BC** is reviewing its privacy law. **Ontario** is considering introducing a new privacy law. What does it mean for employers?

# PIPEDA

- **NOW:** Does not apply to private sector employees.
- **AFTER MODERNIZATION:** No change (Why? Constitutional division of powers).

# Quebec (Bill 64)

- **NOW:** The Québec private sector privacy law applies to private sector employee information. Unlike those of other provinces, it does not expressly exclude from its scope information relating to "professional/employment status" – e.g., name, title or business address or phone number.
- **AFTER MODERIZATION:** Exemptions from consent; many more individual rights/enterprise obligations. Significant fines (up to \$25,000,000 or 4% of worldwide turnover for preceding year).
- **IMPACT:**
  - Cross border transfers: Not permitted unless business conducts an assessment of the legal framework in recipient "State" and determines it is equivalent to Quebec's.
  - Exceptions to consent: Business transactions, disclosures necessary for service providers/contracts (with conditions), internal business functions (but not specifically for "establishing, managing or terminating an employment relationship" as in other provinces).
  - Commercial/philanthropic use: Use of employee info for secondary purposes, including philanthropic ones, requires separate opt out consent (and likely requires express opt-in consent in many circumstances).

# Ontario (considering new legislation)

- **NOW:** No provincial privacy law, so PIPEDA steps in...PIPEDA doesn't cover private sector employees = gap.
- **AFTER MODERNIZATION:** A new Ontario privacy law will likely require employers to develop new privacy compliance programs (where they were previously unregulated).
- **IMPACT:**
  - New regulator: The Information and Privacy Commissioner of Ontario will have jurisdiction, in addition to the federal Privacy Commissioner. Organizations may be subject to oversight by multiple privacy commissioners if a new law is enacted.
  - Broader application: Application of a new law to non-commercial activities (e.g., non-profits, charities, trade unions, political parties).
  - New breach reporting: Employee information likely subject to breach reporting.
  - New powers: Added powers for the Ontario Information and Privacy Commissioner, including the power to impose penalties.

# British Columbia (legislation under review) and Alberta

- Alberta and BC each have their own privacy legislation (PIPA) that supplants PIPEDA in the provinces.
- Both treat employees' personal information differently than other personal information
  - **BC:** personal information collected, used or disclosed *solely for the purposes reasonably required to establish, manage or terminate an employment relationship* between the organization and that individual, but *does not include personal information that is not about an individual's employment.*
  - **AB:** personal information *reasonably required for the purposes of (i) establishing, managing or terminating an employment or volunteer-work relationship, or (ii) managing a post-employment or post-volunteer-work relationship*, but *does not include personal information about the individual that is unrelated to that relationship.*
- Employee personal information can be collected, used or disclosed with **notice only**; consent is not required ***if the information is used for the prescribed purposes***

# British Columbia legislative review

- The few submissions to the BC Special Committee for PIPA review that directly address employee personal information are concerned that *PIPA defines employee personal information too broadly* and that *employers are collecting too much information about employees*.
  - The *type* of information collected (e.g., health information)
  - The *source* of the information (e.g., social media, home monitoring, videoconferencing)
- Advocates are seeking legislative changes, but arguably these concerns are already addressed by broader privacy principles already in PIPA.
  - Privacy Commissioner decisions clearly set limits on what employers can collect, use and disclose – PIPA is not a blank cheque for employee personal information.
- **Takeaway:** Employers should consider what information they collect and how they use it; if it is not for a reasonable employment purpose, get consent (or consider its necessity).

# Thank you



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