

In general, drug testing is more widely permitted during the hiring process. A prospective employer can test applicants as long as they've been told the test is part of the screening process, they've been offered the job, and all applicants for the same position are required to be tested.

**Psychological testing.** Some employers use psychological or personality tests to help determine if a job candidate is a good fit with the company, or to get an idea of an applicant's moral code. Test questions must be job related (not about, for example, religion or sexual orientation) and not discriminatory. Some state laws limit these tests.

**Polygraph testing.** Federal law prohibits most private employers from requiring a lie detector test, except in certain industries or if the employer reasonably suspects a worker of theft or embezzlement. Many states ban worker polygraph testing.

**Medical testing.** Generally, an employer can require a medical exam to ensure you are physically able to do the job, but only if the exam is required for all employees entering the same position, and only after you've been offered the job. (The employment offer can be made contingent upon your passing the medical exam.)

An employer can require a current employee to submit to a medical exam if the employee has shown he or she is physically or mentally unfit to perform essential job duties, or if there's a concern for workplace health or safety.

Federal law prohibits medical testing to screen out applicants with HIV or AIDS.

An employer cannot request your medical records. However, if you have an illness or injury that requires a work-related accommodation (longer breaks or a special desk, for example), you may need to provide documentation from your doctor. The Americans with Disabilities Act (ADA) requires employee medical information to be kept separate from other personnel files, accessible only to supervisors, emergency medical personnel and govern-

ment ADA compliance inspectors.

## Dos and Don'ts

These tips will help you protect your privacy and, possibly, your job.

- **Do** learn your employer's privacy policies.
- **Do** assume you are being monitored.
- **Do** limit your personal email messages and phone calls at work.
- **Don't** assume that marking an email message as "private" makes it so.
- **Don't** assume that deleting an email or voicemail message erases it completely. In most cases, deleted messages are still accessible on the company's "back-up."
- **Do** use your own cell phone or a non-business phone for personal calls.
- **Do** personal web-surfing at home.
- **Don't** save documents to your computer hard drive that you wouldn't want your employer to read.
- **Don't** post anything on your personal blog or a social networking site (Facebook and MySpace, for example) that you wouldn't want current or future employers to see. Even though some laws prohibit retaliation against a worker for lawful conduct off the job, an employee may suffer consequences that are difficult or impossible to prove as being retaliatory.
- **Do** use a pseudonym, not your real name, if you post anything online that could be considered controversial or reflect poorly on your employer.
- **Do** remind your employer that you wish to keep your medical information confidential.
- **Do** request your free annual credit reports and, if available, background screening report, to check for inaccurate information before it becomes a problem.

## Assistance and Information

**U.S. Department of Labor.** This government agency administers federal employment laws. [www.dol.gov](http://www.dol.gov)

**State Departments of Labor.** Contact your state department of labor to learn more about laws specific to your state. Find your agency:

[www.dol.gov/esa/contacts/state\\_of.htm](http://www.dol.gov/esa/contacts/state_of.htm)

**Privacy Rights Clearinghouse.** The PRC offers information on a wide range of consumer protection topics, including background checks, medical records and other privacy issues. [www.privacyrights.org](http://www.privacyrights.org)

**Federal Trade Commission.** Provides information about your rights under the Fair Credit Reporting Act (FCRA). [www.ftc.gov](http://www.ftc.gov) (click on the Consumer Protection tab); 877-382-4357 (877-FTC-HELP)

**Annual Credit Report.com.** You can order a free credit report from Equifax, Experian and TransUnion once every 12 months. [www.annualcreditreport.com](http://www.annualcreditreport.com); 877-322-8228

**ChoicePoint.** One of hundreds of companies that do employment background screening. You can order a free report annually. [www.choicepoint.com](http://www.choicepoint.com); 866-312-8075

**Workplace Fairness.** This non-profit organization provides information and assistance to workers nationwide and advocates for employee rights. [www.workplacefairness.org](http://www.workplacefairness.org)

**National Workrights Institute.** The Institute's goal is to improve the legal protection of human rights in the workplace. They welcome first-hand accounts of workplace injustice. [www.workrights.org](http://www.workrights.org)

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# Privacy Information

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A project of Consumer Action

## Workplace Privacy

*Your rights on the job*

# PRIVATE

## Most of us are used to a certain level of privacy in our personal lives. Can you expect the same level of privacy in your role as an employee?

### Probably not.

Technology makes it possible for an employer to monitor most employee activities while on the job. When an employer wants to check into a worker's past, consumer data consolidators provide credit and background screening reports. And widespread testing requirements check workers for everything from drug use to physical abilities.

To protect your personal privacy and your job, you should know when and how employers can monitor and gather information about you. While not every employer engages in widespread monitoring, it's important to know your privacy rights as an employee.

## Workplace Monitoring

The majority of employers monitor at least some of their employees' activities. They justify the practice as a way to evaluate performance, guard company information, and protect themselves against lawsuits.

How an employer monitors its employees depends on many factors, including the size and resources of the company and the duties of the particular employee. For example, an employer might monitor computer activity for a data entry clerk and physical location for a security guard.

Here are some of the things many employers routinely monitor:

- **Email.** Your employer has the right to read any message that goes through the company's email system, including instant messages (IM). Some employers also monitor email sent through web-based email services (Gmail and Hotmail, for example) when the account is accessed from a company computer.

- **Telephone calls.** Federal law allows employers to monitor business-related calls. (Some states require employers to notify

callers that they are being monitored.) Employers also can monitor messages that go through the company's voicemail system. And they can track what numbers you call and how much time you spend on the phone.

- **Computer use.** Your employer might be able to monitor the number of keystrokes you make at your workstation (this might be done to evaluate productivity), how much time you spend away from your computer, and which websites you visit. Your employer has the right to access documents on the hard drive of your work computer.

- **Location.** For on-site tracking, your employer could require you to wear a badge with a radiofrequency identification (RFID) chip in it. GPS (global positioning system) tracking systems in company vehicles can monitor vehicle location, the number of stops, and the length of each stop. Surveillance cameras are often installed on company property for security, loss prevention and employee monitoring.

### ***There are some instances when an employer does not have the right to monitor employees:***

- An employer cannot monitor a personal call unless you know the call is being monitored and have given your consent. If, however, you make a personal call from a business phone that you were told not to use for personal calls, you put yourself at risk of being monitored.

- Voicemail and text messages on a cell phone the company pays for are most likely off limits because they are stored by the phone company, not by a storage system owned or directly paid for by the employer.

- An employer can't monitor you if a union contract forbids it. And it's illegal for an employer to monitor union activities inside or outside the workplace, or to monitor employees when they gather to discuss work conditions, even if they are not unionized.

- Generally, an employer can't use surveillance cameras where employees have a reasonable expectation of privacy, such as in

bathrooms or locker rooms.

- While workplace searches are not illegal, an employer must have a specific, legitimate reason to search an employee or an employee's belongings.

Government employees have additional protections under the U.S. Constitution. State laws vary. When state and federal law differ, employers are supposed to apply the law that is most worker-friendly.

Many employers notify employees that monitoring or searching will, or could, take place, even though federal law does not require it. Companies are generally expected to honor their own internal policies. For example, if your employer says that email marked as personal will not be monitored, it shouldn't be. Still, your safest bet is to assume you could be monitored or searched even if your employer has said or implied you won't be. Also, assume that you have no protections if your employer is investigating you for some type of wrongdoing.

## Checks and Tests

In addition to monitoring your activity on the job, some employers look into your past before hiring you. They might require you to submit to tests before or during your employment, and the results of these tests could influence whether you are hired or promoted, or even if you are allowed to keep your job.

Checks and tests during the hiring process are most likely legal if they genuinely help an employer screen for qualifications and predict an applicant's ability to do the job. If you are already employed, your employer must have a valid job-related reason to test you.

These are some of the most common types of checks and tests:

- **Credit check.** Many employers check a worker's credit report, reasoning that someone who pays his or her bills responsibly is likely to be a responsible worker, too. A credit check also allows an employer to verify information provided on your application, such as current and previous addresses and employers. The

Fair Credit Reporting Act (FCRA) requires an employer to get your signed permission before accessing your credit report.

If you are denied a job or promotion because of information in your credit report, the employer must provide a copy of the report and information about your right to dispute the information. Federal law prohibits employers from discriminating against applicants because they have filed for bankruptcy. (If you have filed for bankruptcy in the past seven to 10 years, it's probably included in your credit reports.)

- **Background check.** State laws vary regarding what information can be included in a background check, but depending on where you live it can range from marital status (prohibited in 21 states) and criminal records to driving records and interviews with friends, neighbors, and associates.

The FCRA requires that an employer get your signed permission before accessing your "background screening report." The law also requires the employer to notify you promptly if information in the report could result in an "adverse action," such as being denied a job or promotion, or being reassigned or fired. In such a case, the employer must provide a copy of the report and information about your right to dispute the information.

Because federal law does not require employers to disclose the name of their screening company upfront (though some states, including California, do), the Privacy Rights Clearinghouse (PRC) strongly suggests you ask for the name of the screening agency at the time the employer notifies you that a background check will be conducted. Then request your annual free disclosure from that agency promptly since some screening agencies do not maintain files.

- **Drug and alcohol testing.** Drug testing laws vary widely among states, with some allowing the tests for any occupation and others banning them except in cases where the employer has a reasonable suspicion an employee is impaired.