

WIT AND WISDOM OF WINTHROP

SPOTLIGHT ON: PRIVACY RISKS IN THE HIRING PROCESS

There's never a bad time to evaluate your company's data privacy and security policies, but with the rapid expansion of the remote workforce and remote recruiting, as well as the rapid increase in new laws meant to protect the privacy of employees, contractors, and even job applicants, there are more ways than ever to face legal consequences for non-compliance. Our colleague Lisa Ellingson, Data Privacy & Cybersecurity attorney, shares the top three ways employers can run afoul of privacy laws in the hiring process, and how to avoid them.

MISTAKE #1 – OVERLOOKING PRIVACY LAW CHANGES

An increasing number of new laws give privacy protections to job applicants before they're even hired. While Minnesota law does not yet provide specific privacy protections for job applicants, laws from other states can nevertheless still impact Minnesota employers. For example, the California Consumer Privacy Act (CCPA) and California Privacy Rights Act (CPRA) require all employers with gross annual revenue greater than \$25 million to provide all California job applicants a privacy notice detailing the personal information collected and used. California job applicants also have the right to access, correct, and delete personal information collected by large employers.

Take steps now to:

- > Know your applicants. Even if your business is not based in California, it only takes one California-residing applicant to require compliance.
- > Be ready to comply. Know how your business collects and stores applicant information.
- > Set procedures in place to handle applicant or employee requests for access to, correction of, or deletion of their personal information.

MISTAKE #2 – IGNORING IMPLICATIONS OF NEW TECHNOLOGY

The pandemic accelerated the adoption of new technology – especially for remote work, remote interviewing, remote hiring, and new technologies can help to streamline some processes. But use of technology like facial recognition software, artificial intelligence decisionmaking, and social media can often implicate privacy concerns for job applicants, and companies should carefully consider these before adopting such technologies.

Take steps now to:

- > Give notice and obtain consent before using AI or facial recognition to analyze a job applicant's video interview.
- > Ensure AI tools do not add bias to your decision-making process.
- > Limit social media research to what is publicly available, and watch out for discrimination claims that may arise by relying on information gained from social media.

MISTAKE #3 – UNDERESTIMATING THE THREAT OF DATA INCIDENTS

It is important – and often required by law – to protect the security of job applicant data that you collect during the hiring process. Companies likely already have “reasonable security measures” in place for consumer data, but these measures should also be used for employee and applicant data. In addition, applicant data can be useful in monitoring trends and tracking goals, but be sure to balance the desire to use the data with the risks in maintaining it.

Take steps now to:

- > Only collect the data you need, at the time you need it.
- > Only retain the data you need, for the time you need it.
- > Revisit agreements with any third parties that have access to applicant data to ensure they have appropriate security and privacy measures in place.

ABOUT LISA ELLINGSON



Lisa is an attorney at Winthrop & Weinstine and co-chair of the firm's Data Privacy and Cybersecurity practice group, as well as a member of the firm's Litigation practice.

She advises clients on a wide range of data protection and privacy matters. Lisa is a Certified Information Privacy Professional/United States (CIPP/US) and a Certified Information Privacy Manager (CIPM). She can be contacted at lellingson@winthrop.com.

GET TO KNOW THE EMPLOYMENT LITIGATION TEAM!

Q: WHEN WAS THE LAST TIME YOU DID SOMETHING FOR THE FIRST TIME?



Aimée Dayhoff
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A: I went scuba diving for the first time last summer!



Laura Pfeiffer
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A: I started doing strength training for the first time this year!



Chelsea Ahmann
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A: I recently went cross country skiing for the first time. Turns out it's not my sport!



Olivia Cooper
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A: I went ziplining for the first - and definitely the last - time in January!



Cianna Halloran
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A: I played beach tennis for the first time this January in Brazil!

Put the law to work.