

United States – Data Privacy

Privacy protections for employees in the United States stem from a wide variety of legal provisions, including the United States Constitution (with respect to public employment), state constitutions, federal and state statutes, and the common law.

For example, under federal and some state laws, employers are limited in what types of personal information they may seek from potential employees and employees—i.e. an employer generally may not ask about a person's age, marital status, health or physical conditions, religion, race, national origin or other characteristics protected by applicable law.

Other laws address the protection and processing of personal data in various circumstances. For example, the federal Health Insurance Portability and Accountability Act protects the privacy of individually identifiable health information and requires that certain employers who are "covered entities" under the statute issue various notifications to employees and comply with certain privacy and non-disclosure requirements. The federal Fair Credit in Reporting Act regulates the collection, dissemination and use of "consumer information" (which may extend to information obtained in applicant/employee background checks) by, among other things, requiring employers to obtain written consent before having third parties conduct background checks on employees and applicants, to inform employees and applicants when adverse action is taken against them based on information contained in such background checks and to provide them with a reasonable opportunity to contest the information contained in the background checks. The federal Americans with Disabilities Act and Genetic Information Non-Discrimination Act prohibit employers from obtaining information regarding disabilities, genetic and/or family medical history and/or conducting medical examinations, except in limited circumstances. Several states have passed their own statutes regarding background checks and/or requiring employers to safeguard employee Social Security numbers and similar personal identifying information.

In addition, federal, state and local employment discrimination laws generally prohibit taking employment actions based on, for example, age, race, religion, national origin and other characteristics protected by applicable law, and therefore certain pre- and post-employment inquiries relating to these protected classifications are either prohibited or could lead to potential claims.

Federal and state laws regarding wiretapping and the interception of electronic communications often safeguard an employee's right to privacy in the workplace by requiring certain authorizations before phone calls, emails and other communications may be monitored. Such statutes generally seek to balance the employer's interest in monitoring employee behavior with an employee's expectation of privacy in the workplace—a theme that carries through in other privacy laws and best practices such as, for example, those addressing an employer's right to search an employee or an employee's workplace, or to subject an employee to mandatory drug testing. Increasingly, states are prohibiting employers from requiring potential employees and employees to disclose their passwords to social media websites (e.g., Facebook), but such laws vary by state.

Collection and Processing of Personal Data	
<i>Compliance Alternatives</i>	The U.S. in contrast to the EU uses does not employ comprehensive legislation in the collection and processing of personal data; rather the U.S. relies on a combination of legislation, regulation and self-regulation. Some state and federal laws effectively regulate the collection of personal information by prohibiting employers from seeking such information or placing certain restrictions on seeking such information. Other statutes require certain safeguards, such as encryption, when storing such information. Generally, however, the rules regarding the collection and processing of an employee's personal data will vary by state.
<i>Disclosure/ Registration</i>	None applicable
<i>Other Requirements</i>	None applicable
Transfer of Personal Data	
<i>Compliance Alternatives</i>	As stated above, the U.S. does not employ comprehensive legislation in the transfer of personal data. Certain statutes require employers to take precautions in the transfer of personal data, limit who such data may be transferred to, and require employers to provide notice when the security of employee personal data has been breached. Generally, however, the rules regarding the transfer of an employee's personal data will vary by state.
<i>Other Requirements</i>	None applicable

This summary is intended to reflect local law and practice as at 1 May 2013. Please note, however, that recent amendments and legal interpretations of the local law may not be included in these summaries. In addition, corporate governance, administration, and option plan design facts that are specific to your company may impact how the local laws affect the company's equity based compensation plans. With these matters in mind, companies should not rely on the information provided in this summary when implementing their stock plans.