

# Employee Privacy Laws: Utah

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*A Q&A guide to employee privacy laws for private employers in Utah. This Q&A addresses employee privacy rights and the consequences for employers that violate these rights. Federal, local, or municipal law may impose additional or different requirements. Answers to questions can be compared across a number of jurisdictions (see [Employee Privacy Laws: State Q&A Tool](#)).*

*States and municipalities continue to issue public health guidance in response to the 2019 novel coronavirus disease (COVID-19) pandemic that may impact employee privacy. For information and ongoing updates, see [COVID-19: Employment Law and Development Tracker: State Laws and Directives](#).*

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## Overview of State Privacy Law

### Personnel Files

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### Employee Electronic Communications

### Searches, Surveillance, and Biometric Information

### Notice to Employees

### Consequences for Violation

### Consent

### Recordkeeping

### Employees' Lawful, Off-Duty Activity

### Invasion of Privacy Claims

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## Overview of State Privacy Law

1. Please list each state law relating to employee privacy (for example, employee right to privacy, access to personnel files, electronic communications, surveillance and monitoring, medical examinations, and lawful off-duty activity laws), EXCEPT state laws on background checks and drug testing. For each, please describe:

- What activity the law protects.

- Which employers are covered.
- Which employees are covered, including any exceptions for interns, independent contractors, minors or others.
- Whether the law protects employees from their co-workers' actions in addition to their supervisor's actions.
- Whether it provides for a private right of action.
- For statutes and regulations, the entity that administers the statute or regulation(s).

## Genetic Testing Privacy Act: Utah Code §§ 26-45-101 to 26-45-106

### Protected Activity

In Utah, an employer cannot, in connection with hiring, promotion, retention, or other employment decisions:

- Access or consider private genetic information.
- Request or require an individual to consent to a release for accessing private genetic information about the individual.
- Request or require an individual or blood relative to submit to a genetic test or procedure.
- Inquire into or consider whether an individual or blood relative has taken, or refused to take, a genetic test or undergone, or refused to undergo, a genetic procedure.

(Utah Code § 26-45-103(1).)

However, an employer may seek an order compelling disclosure of private genetic information held by an individual or a third party in connection with an employment-related:

- Judicial or administrative proceeding in which the individual has placed their health at issue.
- Decision in which the employer has a reasonable basis to believe that the individual's health condition poses a real and unjustifiable safety risk requiring the change or denial of an assignment.

(Utah Code § 26-45-103(2)(a).)

### **Covered Employers**

All Utah employers are covered under the law except:

- Domestic employers who do not employ one or more employees at least 40 hours per week.
- Employers of certain agricultural laborers or domestic servants.

(Utah Code §§ 26-45-103(1) and 34A-2-103(4)-(6).)

### **Covered Employees**

The Genetic Testing Privacy Act does not define covered employees. However, the law appears to cover all Utah employees.

(Utah Code §§ 26-45-103 and 34A-2-103.)

### **Co-Worker Violations**

The law does not address co-worker violations.

### **Private Right of Action**

An aggrieved individual has a private right of action against an entity that has violated their legal rights after June 30, 2003. If the individual prevails, they may:

- Recover damages.
- Be granted equitable relief.

(Utah Code § 26-45-105(1).)

An aggrieved individual also has a private right of action against an insurance company or employer. If the individual prevails, they may recover for each separate violation:

- Actual damages.
- Either:
  - an additional \$100,000 if the violation results from an intentional and willful act; or
  - punitive damages if the violation results from a malicious act.
- Reasonable attorneys' fees.

(Utah Code § 26-45-105(2).)

### **Administration**

The law does not specify an administering entity. However, the [Utah attorney general](#) (UT AG) may bring an action against a party that has or is about to violate the law ([Utah Code § 26-45-106\(1\)](#)).

## **Internet Employment Privacy Act: Utah Code §§ 34-48-101 to 34-48-301**

### **Protected Activity**

In Utah, an employer cannot:

- Request that an employee disclose a password or a username and password that would allow the employer access to the employee's personal internet account.
- Penalize an employee for not disclosing the information.

(Utah Code § 34-48-201.)

### **Covered Employers**

The Internet Employment Privacy Act (IEPA) covers all Utah employers. An employer is defined as a person that has one or more workers or operators employed in the same business, or in or about the same establishment, under a contract of hire. ([Utah Code § 34-48-102\(2\)](#).)

### **Covered Employees**

The IEPA covers all Utah employees.

### **Co-Worker Violations**

The law does not address co-worker violations.

### **Private Right of Action**

An aggrieved individual may bring a civil action against an employer. If the individual prevails, they may recover up to \$500. ([Utah Code § 34-48-301](#).)

## Administration

The law does not specify an administering entity.

## Workers' Compensation Act: Utah Code §§ 34A-2-101 to 34A-2-1005 and Utah Admin. Code r. 612-300-10

### Protected Activity

The Utah Workers' Compensation Act (UWCA), which provides medical and disability benefits for employees who are injured or become ill because of their work, protects employee medical records.

Generally, a medical provider or any other party may disclose the employee's medical records to certain specified persons or entities only after the injured employee's authorization ([Utah Admin. Code r. 612-300-10](#)).

However, a medical provider may disclose medical records without the employee's authorization if the records:

- Are necessary to substantiate a bill submitted for payment or file required [Utah Labor Commission](#) (ULC) forms, but only to certain specified entities.
- Are disclosed to either:
  - another physician for specialized treatment;
  - a new treating physician chosen by the employee; or
  - another physician for a consultation regarding the claimed work-related injury or illness.

([Utah Admin. Code r. 612-300-10\(B\)](#).)

In addition, a medical provider who has treated an injured worker for a work-related injury or illness must disclose information to an injured worker's employer as to when and with what restrictions an injured worker may return to work ([Utah Admin. Code r. 612-300-10\(D\)](#)).

Requests for medical records otherwise not specified in [Utah Admin. Code r. 612-300-10](#) require a signed approval by either:

- The [ULC, Industrial Accidents Division](#).
- An administrative law judge if the claim is being adjudicated.

([Utah Admin. Code r. 612-300-10\(E\)](#).)

An employer may only use medical records obtained under [Utah Admin. Code r. 612-300-10](#):

- To pay or adjudicate workers' compensation claims if the employer is self-insured.
- To assess and facilitate an injured worker's return to work.
- As otherwise authorized by the injured employee.

In addition, an employer obtaining medical records under Rule 612-300-10 must maintain the medical records separately from the employee's personnel file. ([Utah Admin. Code r. 612-300-10\(l\)](#).)

### **Covered Employers**

The UWCA covers all employers in Utah, except:

- Domestic employers who do not employ one or more employees at least 40 hours per week.
- Certain employers of agricultural laborers or domestic servants.

([Utah Code § 34A-2-103\(4\)-\(6\)](#).)

### **Covered Employees**

The UWCA covers all Utah employees, including minors and undocumented immigrants, except:

- Workers whose employment is both:
  - casual; and
  - not in the usual course of the employer's trade, business, or occupation.

([Utah Code § 34A-2-104\(1\)\(b\)\(iii\)](#).)

- Certain categories of employees, including:
  - certain agricultural workers;
  - certain domestic workers;
  - inmate employees;
  - real estate brokers;
  - insurance agents; and

- certain vehicle operators for motor carriers.

(Utah Code §§ 34A-2-104(5) and 34A-2-103(4)-(6).)

### **Co-Worker Violations**

The law does not address co-worker violations.

### **Private Right of Action**

There is no specific private right of action under the UWCA for violating the privacy provisions.

### **Administration**

The [ULC Adjudication Division](#) administers and enforces the law (Utah Code § 34A-2-112).

## **Interception of Communications Act and Access to Electronic Communications: Utah Code §§ 77-23a-1 to 77-23a-16 and 77-23b-1 to 77-23b-9**

### **Protected Activity**

A person may intercept wire, electronic, or oral communication only if either:

- The person is a party to the communication.
- One of the parties to the communication has given prior consent to the interception.

(Utah Code § 77-23a-4(7).)

Utah law prohibits a person who intentionally accesses an electronic communications service facility without the appropriate authorization from obtaining, altering, or preventing authorized access to a wire or electronic communication while it is in an electronic storage system (Utah Code § 77-23b-2(1)).

However, a person or entity may disclose the contents of a communication:

- To an addressee or intended recipient of the communication or an agent of the addressee or intended recipient.
- In compliance with a court order.
- With the lawful consent of either:

- the originator;
  - the addressee; or
  - the communication's intended recipient.
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- To a person employed or authorized or whose facilities are used to forward the communication to its destination.
  - As necessary to provide the service or protect the rights or property of the service provider.
  - To a law enforcement agency if the contents:
    - were inadvertently obtained by the service provider; and
    - appear to pertain to the commission of a criminal offense.

(Utah Code § 77-23b-3(2).)

### **Covered Employers**

The Interception of Communications Act (ICA) covers all Utah employers.

### **Covered Employees**

The ICA covers all Utah employees.

### **Co-Worker Violations**

The law does not address co-worker violations.

### **Private Right of Action**

An aggrieved person whose wire, electronic, or oral communication is intercepted, disclosed, or intentionally used in violation of the law may file a civil action to recover relief from the violating party. If they prevail, the aggrieved party may obtain:

- Preliminary and other equitable or declaratory relief as is appropriate.
- Damages and, if appropriate, punitive damages.
- Reasonable attorneys' fees and court costs.

(Utah Code § 77-23a-11.)

### Administration

The law does not specify an administering entity. However, the UT AG enforces the law. (Utah Code § 77-23a-12.)

## Personnel Files

2. For any law in [Question 1](#) regarding employer maintenance of personnel files, please describe:

- What constitutes a personnel file in your jurisdiction.
- Which records employers must maintain and for how long.
- Any records that must be kept separately.
- Any records that should not be included in an employee's personnel file.
- How records must be maintained (for example, in digital or paper form, or in locked drawers or rooms).
- Any requirements or prohibitions regarding destruction of records.

### Definition of Personnel File

In Utah, a personnel file includes, but is not limited to:

- An applicant's application form.
- Other records having to do with:
  - hiring;
  - promotion;
  - demotion;
  - transfer;

- layoff or termination;
- rates of pay or other terms of compensation; and
- selection for training or apprenticeship.

(Utah Admin. Code r. 606-6-2(C).)

## Required Records and Maintenance Period

An employer must preserve personnel files for six months from the latter of either:

- The date of the making of the record.
- The date of the personnel action involved (for example, if the employee was involuntarily terminated, the employer must keep the records for six months after the termination date).

(Utah Admin. Code r. 606-6-2(C).)

In addition, if an employee files a discrimination complaint against the employer, the employer must keep all personnel records that are relevant to the complaint and the charging party until either:

- The date of the final agency action.
- The end of the appeals process.

(Utah Admin. Code r. 606-6-2(C).)

## Separate Records

Under the Utah Workers' Compensation Law, an employer must maintain the medical records obtained under [Utah Admin. Code r. 612-300-10](#) separately from the employee's personnel file ([Utah Admin. Code r. 612-300-10\(I\)\(3\)](#)).

## Exclusions from Personnel Files

Utah law does not address exclusions from personnel files.

## How to Maintain Records

Utah law does not specify how employers must maintain personnel records.

## Destruction of Records

Utah law does not specify any requirements or prohibitions on destroying personnel records.

3. For any law in [Question 1](#) regarding employee access to personnel files, please describe:

- Who may access the files, such as employees, applicants, and former employees.
- Whether individuals may copy the files or only inspect them.
- When access must be granted (and whether it must be granted within a set period of time).
- Any limitations on access.

None of the laws listed in [Question 1](#) address employee access to personnel files. Employees of private employers in Utah do not have a statutory right to inspect their own personnel records unless the employer and employee agree otherwise. Although outside of the scope of this Q&A, public employees in Utah have a right to access their personnel file ([Utah Code § 67-18-3](#)).

## Medical or Other Test Results

4. For any law in [Question 1](#) that protects employees from medical examinations, including AIDS/HIV tests, or other tests, such as psychological or personality tests, please describe any limitations on access to test results or the protection of records.

## Genetic Testing Privacy Act: Utah Code §§ 26-45-101 to 26-45-106

In Utah, an employer cannot, in connection with a hiring, promotion, retention, or other related decision:

- Access or take into consideration private genetic information about an individual.

- Request or require an individual to consent to a release to access private genetic information about the individual.
- Request or require an individual or the individual's blood relative to submit to a genetic test or procedure.
- Inquire into or consider whether an individual or the individual's blood relative has had or refused a genetic test or procedure.

(Utah Code § 26-45-103(1).)

An employer may only obtain an individual's genetic information in limited circumstances, including for:

- An employment-related proceeding where the individual has placed their health at issue.
- Employment decisions where the employer reasonably believes the employee has a health condition that could pose a real and unjustifiable safety risk.

(Utah Code § 26-45-103(2)(a).)

If the employer obtains an order compelling the disclosure of private genetic information, the order must limit disclosure:

- To the parts of the record containing information essential to fulfill the order's objective.
- To people whose need for the information is the basis of the order.
- As necessary for the individual's protection.

(Utah Code § 26-45-103(2)(b).)

## **Workers' Compensation Act: Utah Code §§ 34A-2-101 to 34A-2-1005 and Utah Admin. Code r. 612-300-10**

### **Protection of Records**

Generally, a medical provider or any other party may disclose the employee's medical records to certain specified persons or entities only after the injured employee's authorization, with limited exceptions (Utah Admin. Code r. 612-300-10; see [Question 1](#)).

A medical provider who has treated an injured worker for a work-related injury or illness must disclose information to an injured worker's employer as to when and under what restrictions an injured worker may return to work (Utah Admin. Code r. 612-300-10(D)).

However, requests for medical records otherwise not specified in [Utah Admin. Code r. 612-300-10](#) require a signed approval by either:

- The [Utah Labor Commission, Industrial Accidents Division](#).
- An administrative law judge if the claim is being adjudicated.

In addition, an employer must maintain medical records obtained under Rule 612-300-10 separately from the employee's personnel file. ([Utah Admin. Code r. 612-300-10\(I\)\(3\)](#).)

## Employee Electronic Communications

5. For any law in [Question 1](#) that governs the monitoring or recording of employees' electronic communications, please describe what monitoring or recording is permitted or prohibited in each of the following media:

- Telephone.
- Internet.
- Email.
- Other.

## Interception of Communications Act and Access to Electronic Communications: Utah Code §§ 77-23a-1 to 77-23a-16 and 77-23b-1 to 77-23b-9

### Telephone Communications

In Utah, a person or entity may intercept a wire, electronic, or oral communication only if either:

- The person or entity is a party to the communication.
- One of the parties to the communication has given prior consent.

([Utah Code § 77-23a-4\(7\)](#).)

Utah law prohibits a person who intentionally accesses an electronic communications service facility without the appropriate authorization from obtaining, altering, or preventing authorized access to a wire or electronic communication while it is in an electronic storage system ([Utah Code § 77-23b-2\(1\)](#)).

### **Internet Usage**

See [Telephone Communications](#).

### **Email Communications**

See [Telephone Communications](#).

### **Other Forms of Communication**

See [Telephone Communications](#).

## **Internet Employment Privacy Act: Utah Code §§ 34-48-101 to 34-48-301**

### **Telephone Communications**

The Internet Employment Privacy Act does not cover telephone communications.

### **Internet Usage**

An employer **may**:

- Request or require an employee to disclose a username or password to gain access to:
  - an electronic communications device that the employer supplies or pays for in whole or in part; or
  - an account or service the employee obtained by virtue of the employee's employment relationship and used for the employer's business purposes.
  
- Discipline or discharge an employee for transferring any of the following to an employee's personal internet account without the employer's authorization:
  - proprietary or confidential information; or
  - financial data.
  
- Investigate or require an employee to cooperate in an investigation if:
  - there is specific information on the employee's personal internet account to ensure compliance with applicable laws, regulatory requirements, or prohibitions against work-related employee misconduct; or

- the employer has specific information about an unauthorized transfer of the employer's proprietary information, confidential information, or financial data to an employee's internet account.
- Restrict or prohibit an employee's access to certain websites while using:
  - an electronic communication device supplied by or paid for in whole or in part by the employer; or
  - an employer's network or resources.
- View, access, or use information about an employee that:
  - can be obtained without the employee's username or password to a personal internet account; or
  - is available in the public domain.

(Utah Code § 34-48-202.)

An employer **cannot**:

- Request that an employee disclose a username or password that allows the employer to access to the employee's personal internet account.
- Penalize an employee for not disclosing a username or password for the employee's personal internet account.

(Utah Code § 34-48-201.)

### **Email Communications**

The law does not address email communications.

### **Other Forms of Communication**

The law does not address other forms of communication.

## **Searches, Surveillance, and Biometric Information**

6. For any law in [Question 1](#) that governs searches and surveillance, please describe:

- Any limits on employer searches (such as searches in common areas or individual offices).
- What kind of surveillance, tracking, or monitoring of workplaces or employees is permitted (such as GPS or video, or surveillance of an employee's computer or phone usage) and whether there are any limitations on the areas that can be monitored or recorded.
- Any limits on the use of biometric information (such as fingerprints, retina, or voiceprint scans used for identification).

## Workplace Searches

None of the laws listed in [Question 1](#) address employer workplace searches.

## Surveillance and Tracking

None of the laws listed in [Question 1](#) address employer surveillance, tracking, and monitoring of workplaces. However, Utah employers are limited in what communications they can monitor (see [Question 5](#)).

## Biometric Information

Utah law has not addressed any limits on an employer's use of biometric information.

## Notice to Employees

7. For each privacy law listed in response to [Question 1](#), what obligations does an employer have to inform its employees of their rights?

None of the laws in [Question 1](#) address a Utah employer's obligations to inform its employees of their rights.

## Consequences for Violation

8. For each privacy law listed in response to [Question 1](#), what are possible consequences for employers that violate the law?

### **Genetic Testing Privacy Act: Utah Code §§ 26-45-101 to 26-45-106**

In Utah, an aggrieved worker may file a civil action against the violating employer. For each violation, the employee may recover:

- Actual damages.
- An additional:
  - \$100,000 if the violation resulted from an intentional and willful act; or
  - punitive damages if the violation resulted from malicious act.
- Reasonable attorneys' fees.

([Utah Code § 26-45-105.](#))

In addition, the [Utah attorney general](#) (UT AG) may bring an action to restrain or enjoin an employer from violating the law. An employer may also be required to pay:

- A civil fine of up to \$25,000 for each violation.
- Reasonable costs of investigation and litigation, including attorney's fees.

([Utah Code § 26-45-106.](#))

### **Internet Employment Privacy Act: Utah Code §§ 34-48-101 to 34-48-301**

An aggrieved employee may recover up to \$500 from an employer ([Utah Code § 34-48-301\(2\)](#)).

### **Workers' Compensation Act: Utah Code §§ 34A-2-101 to 34A-2-1005 and Utah Admin. Code r. 612-300-10**

An employer may be required to pay a civil fine of up to \$500 for violating the law ([Utah Code § 34A-2-206\(4\)\(a\)](#)).

## **Interception of Communications Act and Access to Electronic Communications: Utah Code §§ 77-23a-1 to 77-23a-16 and 77-23b-1 to 77-23b-9**

A court may award a prevailing employee:

- Preliminary and other equitable or declaratory relief.
- Damages and punitive damages.
- Reasonable attorneys' fees and costs.

(Utah Code § 77-23a-11(2).)

An employer may also face a restraining order or prohibition from an action by the UT AG (Utah Code § 77-23a-12).

## **Consent**

9. For each privacy law listed in response to [Question 1](#), is employee consent required? If not, will employee consent protect the employer from liability?

## **Genetic Testing Privacy Act: Utah Code §§ 26-45-101 to 26-45-106**

The law does not address an employer's obligation to obtain employee consent.

## **Internet Employment Privacy Act: Utah Code §§ 34-48-101 to 34-48-301**

The law does not address an employer's obligation to obtain employee consent.

## **Worker's Compensation Act: Utah Code §§ 34A-2-101 to 34A-2-1005 and Utah Admin. Code r. 612-300-10**

The law does not address an employer's obligation to obtain employee consent.

## **Interception of Communications Act and Access to Electronic Communications: Utah Code §§ 77-23a-1 to 77-23a-16 and 77-23b-1 to 77-23b-9**

A person may intercept wire, electronic, or oral communication only if either:

- The person is a party to the communication.
- One of the parties to the communication has given prior consent to the interception.

(Utah Code § 77-23a-4(7).)

A person or entity may disclose the contents of a communication with the lawful consent of either:

- The originator.
- The addressee.
- The communication's intended recipient.

(Utah Code § 77-23b-3(2).)

## Recordkeeping

10. What are the recordkeeping obligations for each privacy law listed in response to [Question 1](#)?

For personnel files generally, Utah employers must keep personnel files for six months from the later of:

- The date of making the record.
- The date of the personnel action involved.

(Utah Admin. Code r. 606-6-2(C).)

Additionally, employers must keep employee personnel records:

- For six months from the termination date if the employee was involuntarily terminated.

- Until the final disposition of an employee's discrimination complaint. In such cases, the employer must keep all personnel records relevant to the complaint and the charging party.

(Utah Admin. Code r. 606-6-2(C).)

### **Genetic Testing Privacy Act: Utah Code §§ 26-45-101 to 26-45-106**

The law does not address recordkeeping obligations.

### **Internet Employment Privacy Act: Utah Code §§ 34-48-101 to 34-48-301**

The law does not address recordkeeping obligations.

### **Workers' Compensation Act: Utah Code §§ 34A-2-101 to 34A-2-1005 and Utah Admin. Code r. 612-300-10**

Any party obtaining medical records under [Utah Admin Code r. 612-300-10](#):

- Cannot disclose the medical records without valid authorization, except as required by law.
- Must maintain the medical records separately from the employee's personnel file.

(Utah Admin. Code r. 612-300-10(I).)

### **Interception of Communications Act and Access to Electronic Communications: Utah Code §§ 77-23a-1 to 77-23a-16 and 77-23b-1 to 77-23b-9**

The law does not address recordkeeping obligations.

## **Employees' Lawful, Off-Duty Activity**

11. To the extent not described in [Question 1](#), please state whether an employee's lawful, off-duty use of or activity in any of the following is protected and describe any limits to the protections:

- Tobacco use or use of other consumable goods.
- Online activities, including posting on social media sites.

- Other activities, including gun ownership or political activities.

## Tobacco or Consumable Goods Use

Utah law does not address whether employers can make employment decisions based on employees' lawful, off-duty use of tobacco or other consumable goods.

## Online Activities

See [Question 1: Internet Employment Privacy Act: Protected Activity](#).

## Protection of Activities in Private Vehicles: Utah Code §§ 34-45-101 to 35-45-107

Employers may not prohibit a person who is legally entitled to possess a firearm from storing a firearm in a motor vehicle in the employer's parking lot. However, the firearm must not be in plain view and must be secured in either:

- The vehicle.
- A locked container attached to the vehicle.

(Utah Code § 34-45-103(1)(a).)

Employers may limit an employee's transport and storage of a firearm in a motor vehicle in the employer's parking lot if any of the following apply:

- The employer provides reasonable alternative parking.
- The employer provides an alternative location where the employee may securely store a firearm before entering the employer's parking lot.
- The employer:
  - is subject to federal law prohibiting firearms on its property;
  - cannot provide alternative parking or storage without posing an undue burden on the employer; and
  - files a statement addressing these issues with the attorney general.

(Utah Code §§ 34-45-103 and 34-45-107(5).)

Employers may not prohibit an employee from possessing any item in a motor vehicle in the employer's parking lot if the effect of the prohibition constitutes a substantial burden on the employee's free exercise of religion (Utah Code § 34-45-103).

## Invasion of Privacy Claims

12. For invasion of privacy claims in your jurisdiction, please describe:

- The elements of an invasion of privacy claim, or factors relevant to the analysis.
- Affirmative or other defenses available to the employer.
- Examples of circumstances in which employees have been found to have a reasonable expectation of privacy in the workplace.

### Claim Elements

The Utah Supreme Court recognizes four privacy torts:

- Misappropriation.
- False light.
- Publication of private facts.
- Intrusion.

(*Cox v. Hatch*, 761 P.2d 556, 563 (Utah 1988); Restatement (Second) of Torts § 652.)

### Misappropriation or Right of Publicity

Misappropriation occurs when a party appropriates the name or likeness of another for their use or benefit (*Cox*, 761 P.2d at 564; Restatement (Second) of Torts § 652C). To state a claim of misappropriation, an employee must show that:

- The employer appropriated the employee's name or likeness.

- The employee's name or likeness has intrinsic value.
- The appropriation was for the employer's use.

(*Cox*, 761 P.2d at 564; Restatement (Second) of Torts § 652C.)

For more information, see [State Q&A, Right of Publicity Laws: Utah](#).

### **False Light**

A false light claim arises when a party gives publicity to a matter concerning another that places the other before the public in a false light. To state a claim, an employee must show that:

- The false light in which the employee was placed would be highly offensive to a reasonable person.
- The employer knew or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the employee would be placed.

(*Russell v. Thomson Newspapers, Inc.*, 842 P.2d 896, 907 (Utah 1992); *Cox*, 761 P.2d at 563; Restatement (Second) of Torts § 652E.)

### **Publication of Private Facts**

The Utah Supreme Court held that to prevail on a claim relating to the publication of private facts, the employee must show that:

- The disclosure must be public and not private.
- The facts disclosed were private, not public.
- The matter made public would be one that would be highly offensive and objectionable to a reasonable person of ordinary sensibilities.
- The matter made public is not a legitimate concern to the public (also referred to as "newsworthiness").

(*Judge v. Saltz Plastic Surgery, PC*, 367 P.3d 1006, 1011-12 (Utah 2016).)

### **Intrusion**

To prevail on an invasion of privacy claim for intrusion, an employee must show that:

- There was a substantial intentional intrusion (physically or otherwise) on the employee's solitude or seclusion.

- The intrusion would be highly offensive to the reasonable person.

(*Stien v. Marriott Ownership Resorts, Inc.*, 944 P.2d 374, 378 (Utah Ct. App. 1997).)

## Employer Defenses

Utah courts have not explicitly specified any defenses to an invasion of privacy claim. However, the Utah Supreme Court has stated that consent could be a defense, but the defense would be necessarily narrow. (*Cox*, 761 P.2d at 561 n.4.)

## Reasonable Expectation of Privacy

Utah courts have not explicitly stated what constitutes a reasonable expectation of privacy in the employment context. However, Utah courts have held that an employee has a reasonable expectation of privacy when the privacy invasion would be offensive to a reasonable person. For example, in *Walston v. United Parcel Service*, the US District Court for the District of Utah, following Utah law, held that an employee had a legitimate intrusion claim against his employer when the employer secretly placed a tape recorder above the employee's workplace, as the intrusion would be highly offensive to a reasonable person (2008 WL 5191710, at \*3 (D. Utah Dec. 10, 2008)).

## Other Employee Privacy Laws

13. Please list and briefly describe any additional employment-related workplace privacy laws not previously addressed.

## Deception Detection Examiners Licensing Act: Utah Code §§ 58-64-101 to 58-64-701 and Utah Admin. Code r. 156-64-502

The Deception Detection Examiners Licensing Act regulates unprofessional conduct by polygraph examiners (Utah Code §§ 58-64-101 to 58-64-701). While the law is directed at polygraph examiners, it indirectly affects employers who use polygraph exams as part of the hiring or employment process.

A polygraph examiner cannot conduct a polygraph examination of fewer than 90 minutes for all types of polygraph examinations, except:

- Pre-employment examinations.
- Concealed information examinations.

(Utah Admin. Code r. 156-64-502(2).)

In addition to the laws stated in [Question 1](#), Utah may have additional laws on background checks and drug testing. For information on state laws on:

- Background checks, see [Background Check Laws: Utah](#).
- Drug testing, see [Drug Testing Laws: Utah](#).