

## Establish a Clear Policy on Conducting Workplace Searches



Searches of lockers or employee possessions are among the most intrusive methods of information gathering. An employer's right to conduct a search must be balanced against the employees' reasonable expectation of privacy in the areas being searched. Having a policy in place that informs employees that the employer reserves the right to search lockers, desks, etc., puts employees on notice that they cannot expect these areas to be private.

The time to consider whether you are in a position to conduct a search in your workplace is not when the desire to conduct a search is triggered by an incident in the workplace, such as a theft or a drug-related occurrence. It is wise to educate yourself and implement appropriate policies on workplace searches before the need to conduct a search arises.

### Consider the following:

- Establish a written policy that limits employees' expectations of privacy in the workplace and informs them that they are subject to search at the employer's discretion. Be specific about the areas and items that are subject to search.
- Communicate the policy to employees. Thoroughly distribute the policy initially through such methods as meetings, postings, e-mail, and inclusion in the company newsletter. Include the policy in the employee handbook and orientation materials for new employees.
- Retain control over workspaces, files, and computer access. Provide locks and keys for employee lockers, desks, and file cabinets. Assign passwords and logon codes for electronic systems. Allowing employees to control access with their own locks and passwords heightens their sense of privacy

**Whether the employees' expectations of privacy are reasonable depends on the representations (or lack thereof) that the employer has made about privacy in the particular workplace.**

Employers have many reasons to monitor and collect information about their employees, including concerns about productivity, safety and security, and substance abuse. Whether the employer's information gathering is reasonable is typically determined by balancing employees' expectations of privacy against the employer's business needs and the intrusiveness of the methods used. Where an employer cannot show a clear business-related reason for using intrusive information gathering methods, the employer risks employee claims for invasion of privacy and intentional infliction of emotional distress, among others.

- Search only when necessary. Unnecessary or improper searches damage morale. Trained employees should conduct searches only in appropriate situations including those involving threatened violence, suspicion of drugs or weapons in the workplace, or incidents of theft. A thorough investigation should be conducted first and a search conducted only if the investigation is not enough to resolve the disciplinary issue. An additional management witness should be present during the search. Inform the employee of your intent to search and request that the employee grant voluntary access to the area to be searched. Allow the employee to be present at the search if he or she is not belligerent or hostile.
- Do not touch or detain employees. Doing so can lead to claims of battery or false imprisonment. If the area to be searched includes an employee's person, be very careful. Request cooperation in turning over any evidence that may be concealed on the person. Suspend the search if the employee refuses to cooperate. In dangerous situations, the police should be contacted.

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A search of an employee's workspace or possessions is a last resort. A thorough investigation will generally provide enough information to resolve disciplinary issues and will make a search unnecessary. Where an employer feels a search is appropriate, it should first review its policy on searches and weigh the benefits and risks of conducting a search under the particular circumstances. Having a policy on workplace searches in place ahead of time is key to the organization's ability to conduct a legal search.

**Employees' knowledge of the policy is key to reducing their expectations of privacy in the designated areas.**

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