

Personal Information Protection and Electronic Documents Act

This ominous-sounding piece of federal legislation (PIPEDA for short) came into effect on January, 2001. Over the past year, much has been said and written about the impact and the scope of this new law. The purpose of this brief article is to separate fact from fiction, and to clarify some of the misconceptions that have arisen.

To begin with, it is important to remember that PIPEDA is very significant in terms of those who collect and share individuals' personal information in the course of their ongoing commercial business activity. Its requirements are considerably less daunting for employers who must use and share their employees' personal information in order to properly manage pension, savings, and other employee benefits programs.

This article is not intended to be a full summary of PIPEDA, but merely a synopsis of the components that are most relevant to you as an employer and plan sponsor.

What is the key impact on employers?

The legislation requires you to get consent from employees before you collect their personal information and/or share it with third parties. Whether or not you are going to share their personal information with another organization, you must disclose the reason why you need their personal information.

What is Personal Information?

To keep things simple, you probably want to consider that everything other than name, title, and business address is Personal Information as defined by PIPEDA.

Who is affected?

The law has different effective dates for different organizations.

Organizations, for the purpose of this legislation, include corporations, associations, partnerships, persons, and trade unions. Charitable organizations and other not-for-profit bodies are included in this definition.

- January 1, 2001 - Federally-regulated private-sector organizations became subject to the law at the beginning of last year.

In addition, all transmissions of personal information across provincial or international boundaries **for consideration** are covered as of this date. This inclusion does NOT apply to the information shared between you, Morneau Sobeco, fund managers, and/or insurance companies in the course of managing the pension and other employee benefits programs that you sponsor.

- January 1, 2004 - All other private-sector organizations, even those normally falling under provincial regulation, will be subject to the Act.

Are there exemptions?

- A. For the first category of organizations above, personal health information was excluded until January 1, 2002.
- B. Federal institutions (government departments and Crown Corporations) are excluded. They are subject to the Privacy Act, a different piece of legislation that has been in force for several years.
- C. Provincial and territorial governments are exempt.
- D. Organizations conducting business solely within a province that has substantially similar legislation are exempt. At present, only Quebec falls into this category. British Columbia and Alberta are considering similar legislation, but nothing has been tabled and there are no target implementation dates. Ontario's draft legislation was made available in early February of 2002. It has an intended effective date of 2004.

What should employers be doing right now?

Here is a high-level "To Do" list. It does not replace the guidance of your Morneau Sobeco consultant and the expert advice of your own legal counsel.

- Be sure that you are not collecting extraneous personal information from your employees. Go through all the forms that new or existing employees must fill out (during orientation, for pension and benefits plan enrolment, etc), and identify why you are requesting each piece of personal information. Document those reasons.
- Be sure that you obtain the appropriate consent prior to collecting employees' personal information. The easiest place to do this is on the form or website where the information is being collected. We can assist you with wording, if you wish.
- If you need to share information with third parties (like Morneau Sobeco) in order to manage your pension or benefits programs, be sure to disclose this to employees at the point where you are obtaining consent for collection of the information. As noted above, your Morneau Sobeco consultant can provide you with suggested consent/disclosure wording.
- Formally appoint a Privacy Officer, as required by the legislation, to oversee your compliance efforts and to handle any complaints that might arise.
- Take the obvious precautions to safeguard the confidentiality of your employees' personal information:
 - Keep the personal information that you maintain in your own offices (on paper or in electronic format) in a secure environment with appropriately restricted access. Don't leave next year's salary proposal out on your desk when you go out for lunch!
 - Shred what is no longer needed prior to discarding it.
 - When communicating with a third party provider (like Morneau Sobeco or an insurance company), address your correspondence to a specific individual. That way, only the person who **needs** the personal information will **see** the personal information.
 - Do not fax personal information unless you are confident that the receiving fax machine is secure.
 - Make it a habit to encrypt all email attachments that contain personal information. Better yet, make arrangements with your service providers for even more secure methods of data transmission.
 - Encourage a culture in which the protection of everyone's personal information is important.
 - Talk to your Morneau Sobeco advisor about the details of when and how PIPEDA will affect you.
 - Seek the expert advice of your own legal counsel to assist you with compliance in areas outside the sphere of human resources and employee benefits.

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