

EMPLOYER Labour Market News

CALGARY AND AREA



Privacy in the workplace

Finding a balance

IF YOU'RE WORRIED about productivity in the office, a program can track every keystroke your employees make, and a simple database can store it all.

But when it comes to monitoring and collecting information about your workforce, technology can be a siren's song. The solutions that seemed so simple at first can drive you straight onto legal rocks, and drive a wedge between you and your staff.

In Alberta, there are limits to what information employers can collect about employees, what you can store and who you can send the information to. The boundaries are outlined in PIPA, the Personal Information Protection Act, but don't expect hard and fast answers after reading the legislation.

PIPA won't say, "you can do ABC, but not XYZ." This legislation requires employers to think a little about what they do and why they do it. It lays out a framework for making decisions about what information you can collect, retain and distribute. Complicated? Not really.



"It is good common-sense legislation, when it is applied with common sense," says Kristine Robidoux, a lawyer specializing in privacy issues with the Canadian law firm Gowlings.

At the heart of the legislation is a *reasonable* balance between the needs of employers, and the privacy concerns of the employee.

"Reasonableness really is the underpinning of what the legislation says," says Jill Clayton, director, Personal Information Protection Act, for the [Office of the Information and Privacy Commissioner of Alberta](#).

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Feature Story



The rules

Since 2004 PIPA has drawn the boundaries for how organizations deal not only with their employees but with customers, and business partners.

Under PIPA organizations can:

Collect personal information only for reasonable purposes, and only the amount and type reasonably needed to carry out the purposes for collecting it.

For example: the local video store doesn't need to know a customer's social insurance number, or driver's licence number to track down late videos. It's not a reasonable demand on customers. A phone number would do that job.

Take it in steps

How does PIPA draw the line?

More importantly, how does an organization with limited resources draw the line, particularly when *reasonable* starts getting grey very quickly? The video store may not need your driver's licence, but what about a car rental business?

To test your organization's information collection Clayton suggests splitting the problem into three smaller parts:

1. First consider whether or not there is a business need that needs to be addressed.
2. Second, ask if the information collected will solve that problem.
3. Third, consider if there are less intrusive ways of accomplishing the same end.

On page 5, this three-stage approach is used to assess a common privacy question in the

workplace, monitoring employees.

But of all these questions, perhaps the most important is the first one—why?

It is critical to think about why your organization needs the information. Is it for security? How vital is security for your organization? Are you worried about theft? Or are you concerned your employees aren't being as productive as they should? Perhaps you are worried about the illegal use of company assets? Once you know why you need the information, everything else becomes a whole lot easier because you have a target. You know what you need, and now the question is how to get there (see the examples below for some of the fundamental reasons why employers monitor employees, and why not).

Why monitor employees?

Companies have valid reasons to collect information on employees. They aren't doing it just to snoop. But employers must think through their reasoning to get an idea of what would be acceptable to collect.

Productivity measures. Net-surfing, personal use of office email, and dialing up 900 numbers burn time and energy. Employers have the right to limit them.

Security concerns. Protecting proprietary corporate information is a real concern in the age of instant communication of vast amounts of information.

Legal compliance. In regulated industries, recording telemarketing activities gives the company and the consumer some degree of legal protection. Also, electronic recording and storage may be considered part of a company's due diligence in keeping adequate records and files.

Legal liability. Employees who are unwittingly exposed to offensive graphic material on colleagues' computer screens can create a hostile workplace and even lead to legal problems.

Performance reviews. Customer service and consumer relations personnel are frequently taped as they field calls, and tapes are reviewed with supervisors to evaluate and improve job performance.

The trouble with monitoring

The limits to monitoring aren't just legal. There are also practical problems.

Morale. One of the major problems with monitoring is it can really annoy employees—particularly if you don't tell them it's happening. Abuse of privacy destroys morale, and the workforce's faith in management. It may also hurt your best employees who may be doing a few personal tasks at work, but are also working at home on their own time.

Control. Another problem is the information itself. How do you control it? Information tends to rattle around the organization aimlessly, and can easily be misused. In fact, one of the most common privacy complaints in the workplace is the sudden appearance of uncontrolled medical information. Employees tend to be seriously disturbed when they find out the entire office knows their medical condition over the water cooler. And the privacy commissioner won't like it either if it comes up as a complaint.

Legality. Following PIPA is the law. At the same time, it's a law that's built around what is reasonable for the employee and the employer. Implementing it should not wrench apart organizations. It should establish common-sense boundaries that answer employee concerns, while dealing with employer needs.



Match the tools to the target

Once an organization knows where it's going, it can tailor its information collection and use to what is reasonably needed to get the job done, and nothing more.

Because when it comes to efficiency, PIPA is very clear. Organizations cannot fulfill their information needs by asking for everything and anything, then throw megabytes of data at the problem in the hope it goes away.

Getting back to the video store as an example, the store has a genuine need to track down late videos. To do that it needs information about its customers—personal information. But in light of PIPA, the video store must use discretion. It must tailor the information to what it needs without tracking sensitive information, or information above and beyond what is needed to get the job done. Telephone numbers, and addresses are a good start, but a date of birth, for example, exceeds what PIPA allows.

How to collect and use information

Just what information an organization can collect depends on its needs. But when it comes to how an organization collects information, the rules are clear.

Notification. Your clients, business customers, and employees need to be aware of what information is being collected and why. Define your purposes for collecting personal information as clearly and narrowly as possible so the individual can understand how the organization will use or disclose the information.

For employee-employer relationships this one is critical. “You have to have a policy,” says Robidoux. “It’s hard for an organization to argue they have a

Is it Reasonable?

The word *reasonable* appears no fewer than 72 times in PIPA. “The whole concept of reasonableness is what you have to keep coming back to time and again,” says Robidoux. So it’s a good idea to know just what it means.

The reasonable person test is an objective legal test. Reasonable judgment is not what you or I may think is reasonable. It is the judgment of an objective third party. An organization needs to be able to demonstrate that it considered the circumstances around handling personal information and made a decision on what is reasonable in the circumstances.

clear need to collect information when they haven't even turned their minds to a policy.”

Consent. The general rule is that organizations need to get consent to:

- collect personal information
- collect personal information from someone other than the individual the information is about
- use personal information
- disclose personal information.

Usually consent is obtained at the time the personal information is collected.

There are some important exceptions to this rule, but more on that later.

Contact person. Every organization is required to designate someone to be responsible for privacy compliance. This person is often called the privacy officer.

Accuracy. Organizations retaining personal information must make a reasonable effort to make sure the information is accurate.

Appropriate use. When an organization collects information, it should use the information for the original purpose. If for example, the car rental company tracked its sales efforts using the driver's licence numbers of customers, that would be inappropriate.

Security. Any information collected must be stored securely, and

access limited to the people who need the information.

Retrievable. You must give individuals access to their own information and respond openly, completely and accurately. A written request with a maximum response time of 45 days is the norm.

For many of these requirements there are exceptions, and most of them are pretty logical. If there's an emergency for example, it's perfectly fine to hand over personal information that would help.

The best way to read the fine print is by going straight to the source at pipa.alberta.ca. Here, you can read the act itself, and the website includes some very helpful explanations and advise.

Employees—a special case with special rules

PIPA generally requires organizations obtain consent to collect, use or disclose personal information. However, there are exceptions to this requirement, and a common one is for employees.

Organization can collect, use and disclose information needed to manage employees without consent, as long as they follow some rules: the collection, use and/or disclosure must be reasonable for the organization's purposes, the information must consist only of information related to the employment relationship, and employees must receive reasonable



notice in advance that the information will be collected, used and/or disclosed and the purposes for doing so.

“PIPA is very cognizant of the fact that employers necessarily require the personal information of employees to run their business,” explains Robidoux. “The legislation makes a special case for information that the organization reasonably requires to establish, manage or terminate the employer-employee relationship.”

Employers need to have a social insurance number to remit income tax. They need telephone numbers for emergencies, and bank account numbers for direct deposit. “For example, it’s not reasonable to have a company the size of Encana cut separate cheques for two people who don’t want to reveal their bank accounts,” says Robidoux.

Personal information that’s needed to manage an employee is called ‘personal employee information.’ PIPA defines personal employee information as:

personal information about an individual who is an employee or a prospective employee, that is reasonably required by an organization for the purposes of establishing, managing or terminating an employment relationship.

Once again, there is no list that will tell employers what is and is not personal employee information. Common sense is the guide, and this will usually steer you in the right direction—even in tough cases.

For 99 per cent of jobs, religion is a frivolous bit of trivia, and it shouldn’t be collected. But what about a priest? In that case the employer has every right to know. And the employer has every right to ask the question and expect to get an answer. In general, the employer or

prospective employer even has the right to find out this type of information from third parties.

While personal employee information is special and can be collected and distributed without consent, remember, the other rules still apply. In general, employees must still be told what information is being collected and why.

Common problems

For employees health is a sensitive issue. And many of the complaints received by the Office of the Information and Privacy Commissioner of Alberta (OIPC) centre around health issues.

“The most common complaints we have are about employers collecting too much medical information,” says Clayton. “Employers may need to know someone is away sick, but they don’t necessarily need to know the diagnosis.”

A second big problem is releasing health information. “We have a lot of complaints about discussion in the office,” says Clayton. “Complainants say personal information about their diagnosis was released.”

Far down the list of problems handled by OIPC are cases involving employee monitoring, questions about references and releasing information about firings. “We get calls,” says Clayton. “But if you put all those together, you’d probably not have as many as we have about medical information.”

Enforcement

PIPA is enforced through the OIPC. The office takes complaints directly from the public and employees. And the commissioner has the power to investigate and authorize mediation and negotiation to resolve disputes.

“There are also fines for offences under the legislation,” says Clayton. “Up to \$100,000 for organizations. But we haven’t seen any

prosecutions under the legislation. The important goal isn’t to impose a fine. It is to try and bring the organization into compliance. In many cases we work with the organization to find solutions, and talk to them about the need to train staff, and develop policies. More than 90 per cent of complaints are solved through that kind of informal process.”

When mediation fails, however, the OIPC has harsher options. “If the informal process doesn’t succeed then there’s inquiry,” says Clayton, “which is a much more formal process where the commissioner issues a public order.”

Help

OIPC is not only the regulatory body, it is also the place to go for help. If employers have any questions, give us a call,” says Clayton. “If we have the resources or know of resources, we’ll direct them to what they need to know. And if it’s a concern we’ve already addressed, we’ll direct the employer to the case, and our one-page synopsis. If you have any question or concerns give us a call.”

Privacy resources

PIPA

PIPA’s website at pipa.alberta.ca offers a wealth of information for employers. The legislation itself is explained, plus there are easy to follow guides for implementing PIPA in your workplace and templates for privacy policies and forms that will fill the needs for most small businesses.

OIPC

The OIPC website at oipc.ab.ca is another important source of information about the act, and how it’s enforced. But perhaps the most interesting part is the ‘Orders’ page. Here, you can read about actual cases, and see how PIPA works in the real world. You can also phone OIPC’s Calgary office if you have any questions at 403-297-2728.



Three steps to assessing employee monitoring

AN EMERGING ISSUE in privacy is employee monitoring. It also happens to be a good test case for how to think about privacy issues.

With new technology, monitoring is becoming increasingly common, and affordable. Employers can easily pick up some \$100 cameras and record the movements of an entire office. The files can then be thrown into a simple database, each one available at the click of the mouse.

It all looks good up front, but be careful. Too much information can cause employers problems.

“Just because you can do it doesn’t mean you should do it,” says Jill Clayton, director, Personal Information Protection Act, for the [Office of the Information and Privacy Commissioner of Alberta](#). “There’s a tendency to collect information simply because it is possible.”

Employers can use three questions to test whether employee monitoring is right for their workplace.

Question 1: Is there a clear need that must be addressed by the organization through the collection of this information?

Answer: “If a company owns property and needs to ensure those assets are protected then that would be reasonable grounds to collect information,” says Robidoux a lawyer specializing in privacy issues with the Canadian law firm Gowlings. “You have computers that are open to viral attack, and employees who download videos from sites such as Youtube could put your systems at risk. Employees who download pornography put your company at a different sort of risk. So is there a clear need that has to be addressed? Yes. If there’s a history of that kind of thing occurring then you have a clear need.”



Before you decide to monitor your employees, think it through by asking yourself three simple questions.

Question 2: Is the collection of this information likely to be effective in addressing that need?

Answer: Once an employer has isolated the problem they can start thinking about solutions. In the case above, Robidoux says monitoring email, keystrokes or Internet use will definitely identify individuals who are possibly putting the organization’s computers at risk. “So once again the answer is ‘yes’ to question two,” she says.

Question 3: Are there less intrusive, or more effective means to achieve results?

Answer: While the answers for questions one and two were fairly simple, question three is tricky.

“At the very least, an employer needs to have a policy where they explicitly say what is acceptable and what isn’t,” says Robidoux. “They have to notify and explain the policy to their employees.”

But then it gets complicated. How do you implement email or Internet

monitoring in the least interfering way possible?

“There’s the rub. Having someone monitoring email 24/7 is probably an extreme solution. Recording keystrokes is also an extremely invasive option that would be difficult to justify,” says Robidoux.

A less intrusive measure might be to track Internet traffic and store the information for use only after a problem comes up. That way you’ve demonstrated that you’ve carried out the collection of information reasonably. Another option is to automatically block emails or websites containing certain words.

Importantly, none of these measures mean an employer can dodge the requirement to notify employees— Even when monitoring is automatic, employees should be told up front about the restriction and what happens to the information about their Internet use. But for employers, these types of solutions can do the same job as recording keystrokes, without calling in Big Brother.

Think, then Act

Cenera solves the privacy equation

CENERA'S PRIVACY POLICY lands with an audible thud on the table as company privacy consultant Rick Klumpenhouwer explains his company's response to the introduction of the Personal Information Protection Act (PIPA) in 2004.

Many companies put together their privacy policy by essentially copying sections from the PIPA website. There is nothing wrong with that, but Cenera's case was more complicated. "It took me one and a half months to put together," says Klumpenhouwer.

"A small company can go overboard on privacy," says Klumpenhouwer. "Take the generic privacy policy. Think about the principles a bit, and that's fine." (See resources page 4.)

The trouble with Cenera was the complexity of its business. The company works with career transitions, and the information held and used by the organization was like a spider web: Cenera has to deal with information from the company laying off staff, then there's information from the job hunter seeking a new career, and finally the company looking for new staff has its own needs. Each user requires different sets of information for different reasons. Data that may be important for one, may be totally inappropriate for another. "Sometimes we get calls from the original company asking how their ex-employee is doing. Are they happy? But at that stage it's none of their business," says Klumpenhouwer. "We can't reveal that information. They're not an employee anymore."

To sort out who gets what, when and how, Klumpenhouwer started with basics.

What do we do and why we do it

When Klumpenhouwer began thinking about privacy at Cenera he started with questions, not answers. He went directly to his fellow workers, saw first hand what they were collecting, and asked *why* do we need this?

"Most of my work was analyzing our procedures," says Klumpenhouwer. "I had to figure out who was doing what and why. I had to analyze each process. If there's one thing about privacy legislation, it's that it forces you to be very clear about what you are doing and why you are collecting the information."

With a clear picture of company operations and what the needs were, the next step was relatively easy. "The



Rick Klumpenhouwer not only wrote his company's privacy policy, as a privacy consultant he helps other companies solve privacy issues.

purpose was the key," says Klumpenhouwer. "It determined what we collect, and what we use it for."

For some, the process was disturbing. "It can get somewhat uncomfortable," says Klumpenhouwer. "Some people want to collect as much as they can. They feel they need it...just in case." As Cenera's privacy officer, Klumpenhouwer's job was to rein in that instinct, a process which paid off with some surprising benefits.

"There were side benefits in our business process," says Klumpenhouwer. "There was a realization that people don't manage their information well, we don't know where this stuff is, we don't have enough control or security over it."

For Cenera, and Klumpenhouwer, developing a policy was far more complex than for most companies, but getting it on paper was just the first step. It also had to be implemented. "Just writing the privacy policy isn't a silver bullet," says Klumpenhouwer. "You actually have to do something, even when the changes go outside your comfort zone, like they were here."

For Klumpenhouwer, the effort has paid off in an unexpected way. "It's counter-intuitive, but privacy is about openness. Being open about the rules builds trust, and that's really what privacy is about."



FOUR WORKSHOPS FOR A BETTER WORKPLACE

RETAINING EMPLOYEES IS important to all Calgary employers, even in the current economic conditions. Alberta Employment and Immigration is offering workshops in the Calgary region focusing on four key areas for employers: employee work-life balance, employee retention, employee recruitment and employee development. More information on these workshops is listed below. To view these online and **register**, visit employment.alberta.ca/calgary-employers, and search “employer workshops.”

Beyond pay and benefits: Employee retention strategies

“These workshops are just great,” says Heather Thomas, the resource team leader with civil engineering firm Development Urban Systems Ltd. “We discuss things that people are just starting to scratch the surface of. Even for me, who has been in the industry for many years, I still get great little gold tidbits when I go to these workshops.”

The resource team leader attended two of the Alberta Employment and Immigration’s employer workshops, one focusing on employee development and another on employee retention.

“The instructor was fantastic,” remembers Thomas, a workshop participant. “You can tell she’s in human resources and has been dealing with people for a very long time, so she brought quite a bit of insight to small business owners who haven’t had to deal with a human resources component very often in their business. It was really good ground work for people who don’t have that experience to be able to feel comfortable in these kinds of situations.”

Learning from her peers

For Thomas, the best part of the workshops is speaking with other participants.

“You get lots of ideas and you can swap recipes for what worked and what hasn’t,” she says. “You get almost as much from the participants as you do from the instructor.”

And some of the suggestions will become part of how Thomas works. “I heard some really good suggestions at the employee retention workshop, just little extra things we can do that doesn’t fall under payroll and benefits,” Thomas says.

“We do quite a bit here already in the form of recognition and things like that, but it’s always neat to hear other people’s ideas and spin on things and what kind of additional benefits you can provide that are going to hit all of the generations that are currently in the workforce.”



Resource team leader Heather Thomas says she always learns new things when she attends Alberta Employment & Immigration’s employer workshops.

For example, at one workshop another participant offered simple yet effective ways to recognize the efforts of his employees.

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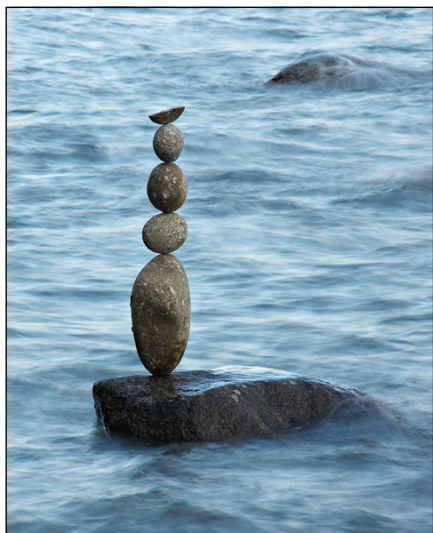
“He owns a landscaping company, so the majority of his employees fall into the Generation Y category—they’re 25 years of age or younger. As a small business owner he can’t really afford to pay his employees high wages, so instead he gets them gift certificates to things they would be interested in. So if they did a really good job, or

they got lots of compliments from a customer, he would give them a \$25 gift certificate to Best Buy, or something that would be a little more appealing to that age group.”

Thomas adds retention is important even in today’s uncertain economic times, and doesn’t have to cost the employer a lot of cash to better retain their workers.

“Doing little things like gift certificates don’t cost a lot, but they mean a lot to employees. You may not be able to afford a big Christmas party this year because you’re trying to keep an eye on the bottom line but there’s other little things that you can do throughout the year, like take them out for a nice lunch or give them a travel coupon, things like that. Something that they at least feel rewarded for.”

More workshops to help your business



Balance



Recruitment



Skill development

Beyond Pay and Benefits is just one of four workshops designed to help HR professionals and employers better manage their workforce.

Better Balance, Better Business: Employee work-life balance strategies

Enhance your understanding of employee work-life balance and how making it a priority will benefit your business and your employees. Consider new options, learn about relevant resources, start a plan to enhance your reputation as an employer who cares about your employees' work-life balance.

Finders Keepers: Employee recruitment strategies

Learn about recruitment strategies used by Alberta

employers. Review the recruitment planning process; explore how to customize your approach to engage frequently overlooked talent sources; increase your profile as an “employer of choice.”

Skills by Design: Employee development strategies

Discover the benefits of establishing comprehensive training and development programs to build employee skills. Learn about the broad range of learning opportunities for your employees. Analyze your needs and develop objectives and strategies for creating a more skilled workforce.

For times, dates and registration:

employment.alberta.ca/calgary-employers

Red Shed

Making the most of connections

THE SHED WASN'T red. It was blue and white. But Kimberly Delve saw the potential the moment she bought her new home.

"The realtor said it was a tear down, but I loved it," says Delve. "I knew it would be a great place to work." That was the start of Red Shed Graphic Design. And the touch of home seems to work for Delve's new business.

"I never thought the business would grow this fast," says Delve. "I've surprised myself." In just over a year Delve has gone from something she thought would make enough to get by on, to the point where she's looking for help.

Starting your own business is a leap of faith for many, and Delve decided to jump. "I wanted to be more in charge of what I did with my time and with my living, and I finally got to the point where I wasn't afraid." However, Delve needed practical help. She found it through Community Futures Centre West which provides a self-employment program funded by the Alberta government in Cochrane.

"It was the common sense issues," says Delve. "How do I go about my bookkeeping? How do I go about creating my own strategic plan? Things that you thought of but never took the deliberate time to sit down and do." Perhaps more importantly, the program was a place to meet fellow travellers.

"The program was a huge catalyst for me. We had the chance to learn together," says Delve. "Over coffee breaks we would quickly solve problems together, and come up with ideas, and realize you're not the only one out there. It helps. I certainly kept in contact with a few of the people that went through the program."

Now that Delve has more work than she can handle, the issues have changed. "The biggest question now is how do I manage growth. It's like a racing train now, plowing into me." But her approach to the problem is an echo of how she first learned the ins and outs of running a business—Delve reaches out.

"I've always had a good relationship with Medicine Hat College since I graduated," explains Delve. "And I've started looking at student co-op programs where I can choose a student to work with me," says Delve. "If it works well I can continue to hire them until they graduate and ultimately keep them," says Delve.



BIG ideas from small business

Delve took the plunge and started her own business. And with help from friends and colleagues, it has been a success.

For an employer who has the energy to build a new talent up from the ground up, there are some big bonuses. "I like the idea of working with the college because I have the chance to learn as well," says Delve. "There's a fresh take from students—they're not just making coffee." Co-op programs also slash some of the problems employers face attracting and selecting new staff.

"It's peace of mind. They've been screened for areas of interest, and their levels of abilities so I know going in what they would be capable of taking on," says Delve.

Reaching out to friends, teachers and colleagues was how Delve started her business, and as she looks to expand her business it's how she plans to continue. "It's an opportunity for me and for them."

Need to learn more? Take online courses about employment standards!

Learning more about employment standards can be as easy as a click of the mouse!

The Alberta Government's Employment and Immigration department offers [eLearning programs](#).

These stand-alone, interactive, web-based awareness programs are designed to provide Alberta employees and employers with an opportunity to learn more about minimum employment standards in the workplace.

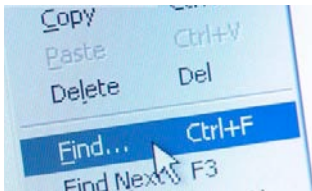
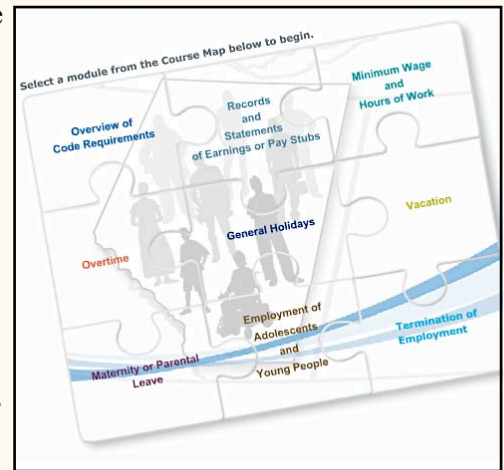
The following online courses are now available:

Dispute Resolution

Provides basic information and options to help address disputes in the workplace relating to payment of earnings, leaves, etc.

Basics of Employment Standards

This eLearning program will help you gain a basic understanding of the main topics of Employment Standards legislation.



Whether it is for workplace support or general knowledge, there are many places employers can turn for information.

Health and Safety

Work Safe Alberta

An organization committed to preventing work-related injuries.

employment.alberta.ca/whs-wsa

Canadian Safety Council—Occupational Safety and Health

Provides information on how to encourage safety in the workplace and deal with mishaps.

safety-council.org/info/OSH/OSH.html

Canadian Centre for Occupational Health and Safety (CCOHS)

Gives direction to employers regarding what to do if employees suffer from substance abuse problems.

ccohs.ca/oshanswers/psychosocial/substance.html

General Links

Calgary Chamber of Commerce

An organization for business in Calgary to network and learn business practices. calgarychamber.com

Where to find us

This publication and other labour market information products can be found at employment.alberta.ca/calgary.

We welcome your feedback! Send comments or suggestions to ei.webmaster@gov.ab.ca.

Building and Educating Tomorrow's Workforce

Alberta government's 10-year labour force strategy. employment.alberta.ca/betw

Calgary Economic Development

Connects businesses to information and networks in the Calgary region and promotes the city.

calgaryeconomicdevelopment.com

Economic development in Alberta

Provides support and assistance to Alberta business and also compiles information on the Alberta economy.

alberta-canada.com

Employee Relations

Alberta Employment and Immigration Mediation Services

Helps resolve disputes in the workplace through collective bargaining agreements.

employment.alberta.ca/mediationservices

Human Resources

Canadian Council of Human Resources Associations (CCHRA)

The human resources body combining efforts of 10 provincial and specialist human resources associations.

cchra-ccarh.ca

Alberta Employment Standards

Information on everything from minimum wage to maternity and parental leave.

employment.alberta.ca/employmentstandards

Alberta Labour Relations Board

Employment standards information for trade unions, labour law and more. alrb.gov.ab.ca/index.html