



PEO Pointers – Are You Using Chatbots or Pixels on Your Website? Consider Mitigating Measures to Avoid Wiretapping Litigation

Insights

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Some common digital marketing techniques used by PEOs have become the recent target of data security litigation – and you should consider taking mitigating measures if your PEO deploys these strategies to put yourself in a better position. If you collect, use, or harvest data from website visitors through cookies, live chat or chatbot features, third-party pixels (like Meta / Facebook), or keystroke tracking technology, you may want to adjust your practices to reduce the chances of landing in legal hot water. What is the current concern and what can you do to minimize your liability?

Spike in Litigation

We have been monitoring a spike in class action lawsuits alleging violations of wiretapping statutes brought against businesses employing these common business methods. We have also seen invasion of privacy claims based on this conduct. The litigation is trending upwards, fueled by would-be plaintiffs who surf the web looking for websites that might violate best standards or state law – mirroring the same ADA website accessibility litigation trends we have seen in years past.

Since last year, our firm has seen this type of litigation mushroom outside of California in states including Delaware, Florida, Illinois, Massachusetts, Montana, New York, North Carolina, Ohio, Pennsylvania, Texas, Washington, and Wisconsin. In fact, we have tracked over 370 lawsuits filed and counting as of the date of publication.

2 Steps to Consider

There are two steps PEOs can take to reduce the risk of falling victim to this latest litigation trend.

- First, you should consider fully disclosing the use of any tracking technology or any automatic sharing of website visitor data with third parties through cookies or pixels.
- Second, you should consider adding clear consent language and a cookie preference management tool to your website, among other steps.

Even if these actions may not be directly required by applicable law – some states do mandate certain disclosures – not taking them could make your PEO a target. It might just be a matter of time before an opportunistic individual trolling websites looking for businesses to sue stumbles upon

your website. Such mitigation measures are modest in cost compared to the litigation expense and settlement value of the lawsuits on these issues.

Learn More

To learn more about this trend and steps you can take, you can sign up for our firm's [webinar on May 17](#). For more information, reach out to your Fisher Phillips attorney or any member of our [PEO and Staffing Team](#). And make sure to [subscribe to our FP Insights](#) to make sure you don't miss our next edition.

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