

## Philip L. Gordon

Shareholder  
Chair, Privacy and Data Protection Practice Group

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### Practice Areas

Workplace Privacy and Data Security  
Background Checks  
International Employment Law  
Digital Workplace  
Competition and Trade Secret Law

### Overview

Philip L. Gordon has years of experience litigating privacy-based claims and counseling clients on all aspects of workplace privacy and information security. He has provided advice to businesses of all sizes on:

- Surveillance of employees' electronic communications
- The Federal Wiretap Act
- The Federal Stored Communications Act
- Workplace searches
- Location tracking and use of GPS-enabled devices
- Background checks
- The Fair Credit Reporting Act
- Social media and other new technologies affecting the workplace
- The Health Insurance Portability and Accountability Act
- State data protection laws
- Responding to security breaches
- The European Union Data Protection Directive
- Global data protection laws
- Cross-border transfers of human resources data
- Outsourcing
- The Genetic Information Non-Discrimination Act of 2008 (GINA)

Philip also has substantial experience representing employers in disputes involving misappropriation of trade secrets, claims of unfair competition and charges of wrongful termination. In addition, he regularly counsels businesses on compliance with the Americans with Disabilities Act's Accessibility Guidelines and frequently defends businesses against claims of public accommodation discrimination.

The chair of Littler's Privacy and Data Protection Practice Group, Philip writes extensively on workplace privacy issues and has given dozens of presentations on the topic. He is the principal author of Littler's workplace privacy blog, located at [www.workplaceprivacycounsel.com](http://www.workplaceprivacycounsel.com). He taught privacy and data protection law as an adjunct professor at the University of Colorado School of Law in 2004 and 2005. Prior to joining Littler, he was an associate and partner at two other law firms. He served as a judicial clerk on the United States Court of Appeals, 10th Circuit.

### **Professional and Community Affiliations**

- Member, Advisory Board - BNA's Privacy and Security Law Report
- Co-chair, Privacy and Data Protection Practice Group - Ius Laboris
- Member, Advisory Board - University of Colorado School of Law's Silicon Flatirons Institute
- Former member, Editorial Board - International Association of Privacy Professionals
- Former member, Educational Advisory Board - International Association of Privacy Professionals

### **Education**

J.D., New York University School of Law, 1989

B.A., Princeton University, 1984

### **Bar Admissions**

Colorado

### **Publications**

"NLRB Report Challenges Validity of Many Commonly Used Social Media Policies," January 27, 2012

"Managing the Privacy and Security Risks Inherent In Employees' Use of Personal Smartphones and Tablets for Work," *BNA's Privacy & Security Law Report*, May 2011

"Why Corporate Counsel Should Lose Sleep Over The Federal Wiretap Act," *Corporate Counsel*, January 27, 2011

"10 Tips For Avoiding GINA Violations," *Employment Law 360*, November 29, 2010

"New Illinois Law Puts Credit Reports and Credit History Off Limits for Most Employers and Most Positions," August 24, 2010

"What Do Employers with HIPAA-Covered Health Plans Really Need to Know About Recently Proposed Revisions to HIPAA Regulations?," July 20, 2010

"Incipient Legislative Trend Toward Credit Privacy Compels Restraint in the Use of Credit Checks for Employment Purposes," *BNA's Privacy & Security Law Report*, July 2010

"U.S. Supreme Court Ruling Provides Guidance on Monitoring Employee Texts and E-Mails," June 22, 2010

"New Jersey Supreme Court Rules that E-Mails Exchanged Between Employee and Her Attorney Using Company's Computer Remain Privileged," April 1, 2010

"Employers and Health Care Providers Receive New Guidance on HIPAA Security Breach Notification," August 25, 2009

"California Supreme Court Provides Useful Guidance for Employers Engaging in Video Surveillance and Other Workplace Searches," August 10, 2009

"Verdict Against Houston's Restaurant Demonstrates Risks of Accessing Employee's Restricted Social Networking Sites," July 14, 2009

"Employer's Electronic Communications Policy Did Not Allow Company to Review Employee's E-mail Exchange with Her Attorney," July 7, 2009

"The Emerging New Workforce: Employment and Labor Law Solutions for Contract Workers, Temporaries, and Flex-Workers," May 11, 2009

"Recent Fourth Circuit Ruling Demonstrates Risks to Employers of Accessing Employees' Personal E-Mail Accounts," April 22, 2009

"Recent Enforcement Actions and Significant Amendments to the HIPAA Privacy Rule Compel Employers to Revisit Their HIPAA Compliance Efforts," March 2, 2009

"New Massachusetts Regulations Impose Substantial Obligations on Corporate Human Resources Departments to Safeguard Employees' Personal Information," October 22, 2008

"Text Messaging in the Workplace Poses New Challenges for U.S. Employers and Global Businesses with U.S. Operations," *BNA's Privacy & Security Law Report*, October 2008

"Connecticut Becomes Only the Second State to Mandate an Employee Data Protection Policy," June 23, 2008

"Genetic Antidiscrimination Law Creates New Compliance Challenges for Employers," May 22, 2008

"NLRB Rules That Employers May Implement a Corporate E-Mail Policy That Has the Effect of Barring Union-Related Communications," December 28, 2007

"Employers Face New Compliance Challenges As Massachusetts Becomes the 39th State to Enact a Security Breach Notice Law," September 7, 2007

"French Data Protection Authority Fires Warning Shot to U.S. Multinationals: U.S.-Based Employer Fined for Improper Transfers of Employee Data to the U.S.," May 21, 2007

"Who's There? What to Do When the Government Is Knocking on Your Door - An Employer's Guide to Handling Government Visits and Information Requests," April 23, 2007

"E-Discovery: Three Major Challenges For Employers," January 5, 2007

"California's Supreme Court Requires Employers Nationally to Re-Examine Telephone Monitoring Policies and Practice," July 20, 2006

"Rethinking Privacy: 10 Reasons Why Your Business Should Be More Concerned about Workplace Privacy," *BNA's Privacy & Security Law Report*, April 2006

"Workplace Privacy in the Age of Terrorism," *Executive Counsel*, April 2006

"Responding to Security Breaches Under Ohio's and Pennsylvania's New Notice-of-Security-Breach Statutes and Other States' Notice Laws," March 10, 2006

"Prohibiting Porn in Your Workplace Is Not Enough: New Jersey Court of Appeals Imposes New Duties on Employers Who Engage in Electronic Monitoring," February 1, 2006

"DOOCES WILD: How Employers Can Survive the New Technological Poker Game of Employee Blogging," July 1, 2005

"New FTC Regulations On Proper Destruction of "Consumer Information": Steps Employers Need to Take to Comply," May 1, 2005

"Michigan Becomes the First State in the Nation to Open the Door to Potential Employer Liability for Workplace Identity Theft," April 15, 2005

"How to Win the Battle Over Electronic Discovery," April 13, 2005

"HR's Role in HIPAA Security Compliance," March 16, 2005

"Evaluating the Evolving Options for Trans-Atlantic Transfers of Human Resources Data," *BNA Special Publication*, 2005

"HR Outsourcing: Your Firm's Sensitive Data Could Be At Risk," *Denver Business Journal*, July 2004

## **Press**

"Avoid Problems Posed By Medical Records," December 2, 2011

"Genetic Shake-Up: You must make the Genetic Information Nondiscrimination Act part of your company's DNA.," July 1, 2011

"Cos. Must Turn Other Cheek Over Worker Facebook Rants," June 16, 2011

"E-Discovery Results in Second Look at Records Management Policies," March 18, 2011

"Employers Tread a Minefield - Firings for Alleged Social-Media Infractions Sometimes Backfire on Companies," January 31, 2011

"Phil Gordon and Katherine Cooper Franklin Encourage Social Media Policies," June 22, 2009

"Philip Gordon Guides Employers in Preventing Mishaps of Online Networking," March 13, 2009

"Philip Gordon Explains Weakness in Stored Communications Act," July 15, 2008

"Phillip Gordon Advises Employers on Personal Internet Use in the Workplace," December 10, 2007

"Article by Phil Gordon and Marty Walz Rated Most Popular in the U.S.," October 11, 2007

"Phil Gordon Alerts Employers to New Employee Privacy Rights," June 21, 2007

"Phil Gordon Compares Easton Sports v. Warrior Lacrosse case to Watergate," March 13, 2007

"Phil Gordon Notes Privacy Dangers of GPS," December 8, 2006

"Phil Gordon Notes the Impact of Universal Messaging Systems," November 14, 2006

"Phil Gordon Moderates Data Dilemmas Roundtable," November 1, 2006

"Phil Gordon Advises Employers to Gain Consent Before Taping Employee Calls," October 1, 2006

"Blogging and the Workplace: What You Should Be Doing About Your Employees' Wanderings Through the "Blogosphere", " August 1, 2006

"Phil Gordon Advises Employers to Use Caution with Government's Customer Info Requests," June 28, 2006

"Phil Gordon Advises Employers on Proper Handling of Security Breaches," May 4, 2006

"Re-Thinking Privacy: 10 Reasons Why Your Business Should Be More Concerned About Workplace Privacy," April 1, 2006

"Phil Gordon Explains How Employers are Affected by a Recent Ruling Giving Them Cause to Investigate Further Into Employee Internet and E-mail Usage When an Employee is Suspected of Looking Up Pornography," January 9, 2006

"Incidence of Workplace Identity Theft Signals Need for Proactive Measures," December 15, 2003

### **Events & Speaking Engagements**

"The Truth About the Workplace of the Future: Debunking the Myths Surrounding Flexible Work," July 15, 2011

"What Employers Need to Know About the Genetic Information Nondiscrimination Act," January 14, 2011

"New ADA Accessibility Regulations and Design Standards," December 8, 2010

"Who Says Social Networking Is Just for Kids?," *Indianapolis, IN*, March 17, 2010

"On the Cutting Edge of Workplace Privacy," *Pittsburgh, PA*, March 12, 2010

"On The Cutting Edge of Workplace Privacy," *Houston, TX*, February 5, 2010

"On the Cutting Edge of Workplace Privacy," *Dallas, TX*, February 4, 2010

"Meeting the Compliance Challenges of a Reinvigorated HIPAA and the Genetic Information Non-Discrimination Act of 2009," *Denver, CO*, October 8, 2009

"Getting Past the EFCA Hype and Getting Down to Business," July 24, 2009

"Meeting the Compliance Challenges of a Reinvigorated HIPAA and the Genetic Information Non-Discrimination Act of 2009," July 24, 2009

"Sex Offenders, Terrorists and Video Resumes: How Far Can You Go to Get Information on Prospective and Current Employees?," *Denver, CO*, May 12, 2009

"Employers' Obligations Under Massachusetts' New Data Security Law," *Burlington, MA*, October 4, 2007

"Philip Gordon Speaks at "Human Resources" Panel at International Association of Privacy Professionals (IAPP) Privacy Academy," *Henderson, NV*, October 28, 2005

"Privacy Professional Boot Camp" Workshop at International Association of Privacy Professionals (IAPP) Annual Meeting," *Henderson, NV*, October 26, 2005

## **Blog Posts**

"NLRB Report Challenges Validity of Many Commonly Used Social Media Policies," *Workplace Privacy Counsel*, January 27, 2012

"What Does The Supreme Court's "GPS Decision" Mean For Private Employers?," *Workplace Privacy Counsel*, January 24, 2012

"Is It Legal for an Employer to Secretly Track an Employee's Personal Vehicle 24/7 for One Month? Perhaps!," *Workplace Privacy Counsel*, January 20, 2012

"NLRB Opens Useful Escape Hatch for Employers Responding to Obnoxious Social Media Conduct," *Workplace Privacy Counsel*, October 3, 2011

"When Can Employers Lawfully Fire an Employee for an Offensive Facebook Post? Ask the NLRB," *Workplace Privacy Counsel*, August 1, 2011

"Two Recent Decisions Illuminate for Employers the Broad Contours of ADA Confidentiality vs. the Narrow Boundaries of HIPAA Privacy," *Workplace Privacy Counsel*, July 22, 2011

"Social Checks Come of Age: What Does It Mean for Employers?," *Workplace Privacy Counsel*, July 11, 2011

"Location, Location, Location: Recent Developments in "GeoPrivacy" and the Impact on the Use of GPS in the U.S. Workplace," *Workplace Privacy Counsel*, July 5, 2011

"Employer Challenges to Developing and Enforcing Social Media/Web 2.0 Policies," *Workplace Privacy Counsel*, June 10, 2011

"New Maryland Statute Further Complicates Patchwork of "Credit Privacy" Laws," *Workplace Privacy Counsel*, May 12, 2011

"The Latest from the NLRB on Social Media," *Workplace Privacy Counsel*, May 2, 2011

"Managing Employees' Use of Personal SmartPhones and Tablets for Work," *Workplace Privacy Counsel*, April 26, 2011

"HHS' One-Two HIPAA Penalty Punch Sends a Message to Employers and Providers," *Workplace Privacy Counsel*, March 8, 2011

"Is it Really Illegal to Require an Applicant or Employee to Disclose her Password to a "Friends-Only" Facebook Page?," *Workplace Privacy Counsel*, March 8, 2011

"Lessons Galore from Eye-Popping \$4.3 Million HIPAA Penalty," *Workplace Privacy Counsel*, February 24, 2011

"Settlement in NLRB's AMR/Facebook Case Contains Message for Employers About Social Media Policies," *Workplace Privacy Counsel*, February 8, 2011

"Why Corporate Counsel Should Lose Sleep Over the Federal Wiretap Act," *Workplace Privacy Counsel*, January 27, 2011

"Supreme Court Permits Background Checks of NASA Government Contractors," *Workplace Privacy Counsel*, January 21, 2011

"Eleventh Circuit Ruling Strengthens Employers' Hand Against Employees who Abuse Access to Information Systems," *Workplace Privacy Counsel*, January 18, 2011

"What Does the "Year of the Tablet" (or of the iPad) Mean for Employers?," *Workplace Privacy Counsel*, January 13, 2011

"After Starbucks Laptop Is Stolen, Alleged Victims of Identity Theft Win Pyrrhic Victory," *Workplace Privacy Counsel*, January 4, 2011

"10 Tips For Avoiding GINA Violations," *Workplace Privacy Counsel*, November 29, 2010

"Case To Watch: NLRB Challenges Employer's Termination of Employee Based on Violation of Social Media Policy," *Labor Relations Counsel*, November 4, 2010

"EEOC Meeting Keeps Spotlight on Employers' Use of Credit History," *Workplace Privacy Counsel*, November 1, 2010

"New California Law Illustrates Challenges of Background Check Compliance for Employers," *Workplace Privacy Counsel*, October 18, 2010

"UPDATE: U.S. Supreme Court's Decision in NASA Case Could Have Significant Implications for Private Employers," *Workplace Privacy Counsel*, October 6, 2010

"What's Left of Employee Consent as Grounds for Data Processing After Recent European Court of Justice Decision on Attorney-Client Privilege?," *Workplace Privacy Counsel*, October 4, 2010

"Commonplace IT Functions Raise the Risk of Federal Wiretap Act Liability Under Recent Seventh Circuit Decision," *Workplace Privacy Counsel*, September 20, 2010

"As Germany Considers Restrictions on Use of Social Media for Recruiting, Multi-National Employers Need to Start Thinking About Social Media Policy 2.0," *Workplace Privacy Counsel*, September 10, 2010

"Multi-State Employers Must Revise Job Applications to Address New Massachusetts Background Check Law," *Workplace Privacy Counsel*, August 27, 2010

"D.C. Circuit Decision Ratchets Up the Risk for Employers Who Use Location Tracking," *Workplace Privacy Counsel*, August 19, 2010

"Illinois Continues State Law Trend Towards Restrictions on the Use of Credit History in Employment Decisions," *Workplace Privacy Counsel*, August 19, 2010

"Agency States Interim Final Rule for Breach Notification Effective Until Further Notice," *Workplace Privacy Counsel*, August 9, 2010

"Agency's Withdrawal of HIPAA Security Breach Notification Regulations Creates Uncertainty for Employers and Health Care Providers," *Workplace Privacy Counsel*, August 4, 2010

"Enhanced HIPAA Penalties Raise Stakes for Employers and Health Care Providers Responding to a Security Breach," *Workplace Privacy Counsel*, July 30, 2010

"Ninth Circuit Provides Some Relief for Employers and Executives Anonymously Trashed on the Web," *Workplace Privacy Counsel*, July 23, 2010

"Recently Proposed Revisions to HIPAA Regulations: What Employers Really Need to Know," *Healthcare Employment Counsel*, July 21, 2010

"Quon Decision Provides Useful Guidance for Private Employers While Skirting Broad Pronouncements on Employee Privacy Rights," *Workplace Privacy Counsel*, June 17, 2010

"Jail Time for Physician's HIPAA Violation Highlights Need to Redouble Compliance Efforts," *Workplace Privacy Counsel*, June 8, 2010

"Rep. Boucher's Privacy Bill Would Impose Substantial Burdens on Virtually All Employers," *Workplace Privacy Counsel*, May 20, 2010

"School District's Woes from Using Webcams to Track School-Issued Laptops Should Be an Eye-Opener for Employers," *Workplace Privacy Counsel*, April 27, 2010

"Oral Argument in the Quon Text Messaging Case Suggests the U.S. Supreme Court Will Avoid a Broad Pronouncement Concerning Employee Privacy Rights," *Workplace Privacy Counsel*, April 19, 2010

"Don't Forget to Provide Your Employees with the HIPAA-Mandated, Triennial Reminder," *Workplace Privacy Counsel*, April 13, 2010

"New Oregon Law Restricting Use Of Credits Checks For Employment Purposes May Signal National Trend," *Workplace Privacy Counsel*, April 5, 2010

"Employers Should Act Promptly in Response to NJ High Court's Recognition of Employee's Right to Privacy in Lawyer-Client Emails Stored on Company Computers," *Workplace Privacy Counsel*, April 1, 2010

"What Does the Criminal Conviction for Privacy Law Violations of Three Google Executives in Italy Mean for Multi-National Employers in the U.S.?", *Workplace Privacy Counsel*, March 9, 2010

"Massachusetts Regulators Provide Significant Insight Into Enforcement of Stringent Information Security Regulations That Are Effective as of Today (March 1, 2010)," *Workplace Privacy Counsel*, March 1, 2010

"New Background Check Mobile Web Application May Jeopardize FCRA Compliance Obligations," *Workplace Privacy Counsel*, January 27, 2010

"Federal Courts' Disagreement Over E-Mail Privacy Highlights Employers' Need to Revisit E-Mail Policies," *Workplace Privacy Counsel*, December 21, 2009

"Firestorm Over Change in Facebook's Privacy Settings Has Important Implications for Employers," *Workplace Privacy Counsel*, December 16, 2009