The Law of Employee Data: Privacy, Property, Governance

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**Abstract**

The availability of data related to the employment relationship has ballooned into an unruly mass of personal characteristics, performance metrics, biometric recordings, and creative output. The law governing this collection of information has been awkwardly split between privacy regulations and intellectual property rights, with employees generally losing on both ends. This Article rejects a binary approach that either carves out private spaces ineffectually or renders data into isolated pieces of ownership. Instead, the law should implement a hybrid system that provides workers with continuing input and control without blocking efforts at joint production. In addition, employers should have fiduciary responsibilities in managing employee data, and workers should have collective governance rights over the data’s collection and use.

**Keywords:** employee data, employee privacy, data privacy, intellectual property, big data, algorithmic management

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