

Test Your OHS IQ: Can You Videotape the Workplace for Safety Reasons?



SITUATION

The roof of a grocery store has a leak. As a result, a puddle forms on the floor in one of the aisles. A shopper slips in the puddle and injures her leg. So she sues the store. In preparing her lawsuit, the shopper learns that the store has several video surveillance cameras and uses them to tape activity in the store. In fact, the store has a tape of the shopper's fall. The shopper claims that taping her without her knowledge or consent violated her privacy rights. The store argues that it needs the cameras to comply with its duty under the OHS laws to protect workers from hazards, including violence.

QUESTION

Did the store's videotaping of customers violate privacy law'

- A. Yes, because it didn't notify customers that they were being taped.
- B. Yes, because videotaping anyone without their express consent is illegal.
- C. No, because the taping was required to ensure compliance with the OHS laws.
- D. No, because it didn't collect customers' personal information.

ANSWER

A. The store violated customers' privacy by not warning them that they were being taped on the premises.

EXPLANATION

This situation, which is loosely based on an actual case from the Office of the Privacy Commissioner of Canada, illustrates how safety and security measures can conflict with privacy rights. The Commissioner explained that the store had the right to use video surveillance cameras. But as a retail organization, the *Personal Information Protection and Electronic Documents Act* (PIPEDA) required it to give patrons clear and sufficient notice about the collection of their personal information via video camera. And that notice should be clear and

posted at the entrance so customers can exercise their right to withhold consent by not entering the premises.

In this case, the store's signage was inadequate. So taping customers was done without their knowledge or consent. But it resolved the issue by agreeing to post decals on the storefront in combination with a visible, live monitor screen with a camera hanging down beside it to alert shoppers to the surveillance.

WHY WRONG ANSWERS ARE WRONG

B is wrong because the store didn't need to get customers' express consent to videotaping for it to be legal. If the store had adequately warned shoppers that they were going to be taped before they entered, they would be deemed to have consented to video surveillance when they walked into the premises. And they could withhold their consent by refusing to go inside. But because the store didn't provide sufficient notice of its use of cameras, shoppers didn't get a choice

C is wrong for several reasons. First, the store does have a duty under the OHS laws to protect workers from various hazards, including workplace violence. But although use of video cameras is one way to fulfill that duty, it's not required by OHS law. Second, the store must still respect the privacy rights of both workers and visitors when videotaping the workplace for safety and security reasons. For example, the use of video cameras in restrooms or employee locker rooms wouldn't be permitted, even if it was arguably to protect workers.

D is wrong because videotaping customers *does* collect their personal information. PIPEDA defines 'personal information' as information about an identifiable individual. The videotape of the shopper collected information about her specifically, such as the items she purchased.

SHOW YOUR LAWYER

PIPEDA Case Summary No. 2011-003, Office of the Privacy Commissioner of Canada, March 25, 2011