

Test Your OHS IQ: Does Collecting GPS Data from Vehicles Violate Workers' Privacy Rights?





SITUATION

Drivers for a delivery company work from home and travel in employer-owned vehicles to clients for pickups and deliveries, using assigned routes. The employer uses a GPS and engine use data system to collect information from these vehicles, including the date and time of the vehicle's location and movements, start and stop times, extreme braking or acceleration and excessive speed. The employer says its only alternative to this system is relying on drivers to record and report the information and drivers may forget or keep inaccurate records. It uses the data gathered to investigate safety issues such as speeding, plan assigned routes, identify maintenance and repair issues, verify that drivers work their required hours and don't use vehicles for personal use, investigate complaints about drivers and impose discipline. The employer gave drivers notice regarding the information collection and the purposes for its use via its privacy policy. But the drivers claim the system violates their privacy rights.

QUESTION

Does collecting and using GPS and engine data from vehicles violate drivers' privacy rights'

- A. Yes, because the information was personal and couldn't be collected without the drivers' consent.
- B. Yes, because the employer improperly used the information.
- C. No, because the information isn't protected personal information as it's about the vehicle, not the driver.
- D. No, because the employer properly gathered and used 'employee personal information.'

ANSWER

D. An employer may collect employee personal information if it gives notice and reasonably uses the information to manage the employment relationship.

This hypothetical is based on an actual decision of the BC Office of the Information and Privacy Commissioner. In that case, the employer collected GPS and engine use data from employer-owned vehicles its mechanics used to service and repair clients' elevators. The drivers claimed the information collection violated their privacy rights. Federal and provincial privacy laws protect individuals from the use and disclosure of their personal information without their consent, except as otherwise permitted by law. An employer can collect so-called 'employee personal information' if it gives workers notice about the purpose for collecting and using such information. The employer's collection and use of the information must also be reasonable for 'establishing, managing or terminating an employment relationship.'

The Commissioner determined that the data on the vehicles driven by the elevator mechanics was protected employee personal information. However, as in our hypothetical, the employer provided notice regarding the information's collection and use. And its collection and use of the information were tailored to the intended purpose, were likely to be effective, didn't involve sensitive information and didn't harm the mechanics' dignity. Finally, the Commissioner found there were no other suitable alternatives. Similarly, the data collected in the hypothetical isn't sensitive, doesn't harm the drivers' dignity and is used for the reasonable purpose of monitoring and improving safety, maintaining vehicles and managing the employment relationship with drivers.

WHY THE WRONG ANSWERS ARE WRONG

A is wrong because personal information about employees *can* be collected and used without consent if certain conditions are satisfied. Employers should try to get workers to support and consent to the collection and use of personal information. But the employer in this case could still do so without consent because it provided notice and used the information to manage its relationship with its drivers by monitoring safety and ensuring compliance with employment policies.

B is wrong because the employer *didn't* improperly use the personal information. Employers can use employee personal information if the use is reasonable to create, manage or terminate an employment relationship. A use is considered reasonable if it's tailored to the intended purpose, is effective, doesn't use sensitive information and other alternatives don't exist. For example, an employer may be able to use workers' cell phone records to enforce driver distraction rules. Here, the employer used the information to identify safety issues and discipline drivers with regard to hours of work or other violations of its policies. Also, the information wasn't overly sensitive and there were no other suitable alternatives. Therefore, the use was proper.

C is wrong because information about and from a vehicle can qualify as personal information. Personal information is that which personally identifies an individual and is used for a purpose concerning that person. Although much of the data collected in this case does concern the vehicle, it also identifies the individual driver operating the vehicle and reveals his location and movements

at specific times during the day. The employer also uses the information, at least in part, to investigate and impose discipline involving the individual driver. Thus, the information *is* personal information.

SHOW YOUR LAWYER

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