

You Make the Call: Do OHS Reporting Duties Trump Worker Privacy Rights?



Rule 1: OHS laws require employers to investigate work injuries and provide a copy of the injury report to the union and workplace JHSC

Rule 2: Privacy laws ban employers from disclosing medical information about a worker without the worker's consent

SITUATION

A worker suffers minor injuries while working at a construction site. The construction company investigates but doesn't want to report the accident to the union or JHSC because it contains privacy-protected medical information about the worker and the worker hasn't given his consent to disclosing it.

QUESTION

What should the company do'

1. Withhold the report to protect the worker's privacy
2. Give the union and JHSC the report without the worker's consent
3. Force the worker to consent to giving the report to the union and JHSC
4. Either decision would be okay since the OHS and privacy

laws cancel each other out

ANSWER

1. Give the union and JHSC the report even though the worker hasn't given his consent

RULE OF THUMBOHS reporting obligations trump worker privacy rights. In other words, you don't need consent to disclose a worker's medical information as part of the workplace injury reports you must provide under OHS laws.

EXPLANATION

The disclosure in this case *is* legally required under the OHS laws. So the company is not only allowed but *required* to provide the injury report to the union and JHSC without the worker's consent.

WHY WRONG ANSWERS ARE WRONG

A is wrong because the OHS reporting requirement trumps the worker's right not to have his private medical information disclosed without consent.

C is wrong because consent isn't required and even if it was, "forced consent" is an oxymoron. Consent is only valid when it's given freely and without coercion.

D is wrong because the laws don't cancel each other out. Remember the rule of thumb that consent isn't needed to disclose privacy-protected personal information when the disclosure is required by law.