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What are the legal coordinates for GPS use on company vehicles?

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special to dcn

Many employers have turned to Global Positioning System technology (GPS) as a means of confirming company vehicles are being driven safely and employees are where they should be.

Generally speaking, this practice is legal. Nevertheless, its use can be controversial and some employee advocates argue represents a breach of employee privacy rights.

Recent British Columbia decisions highlight this issue in the context of that province's Personal Information Protection Act (PIPA), which regulates the collection, use and disclosure of personal information in the private sector.

In Schindler Elevator Corporation, the British Columbia Information and Privacy Commissioner evaluated whether an employer's installation of GPS and engine monitoring technology violated the privacy rights of mechanic drivers.

The system tracked the location and movement of service vehicles and information relating to engine status and vehicle operation (the GPS System).

The International Union of Elevator Constructors filed a complaint with the Privacy Commissioner alleging the employer's GPS System violated its members' privacy rights.

The employer argued the GPS System: (i) collected 'vehicle information', not 'personal information', and was therefore not subject to PIPA; and (ii) provided legitimate benefits, including improved route planning, enhanced safety, more efficient scheduling of vehicle maintenance, and the reduction of "time theft".

The Privacy Commissioner agreed with the Union that the information collected was "personal".

According to the Commissioner, the information did not need to be "about an identifiable individual in some 'personal' or 'private' way" so long as it could be used to identify a specific driver.

The Privacy Commissioner then considered whether the information was "employee personal information".

This was important to determine because under PIPA, employee personal information could be collected, used and disclosed without employee consent if "solely for the purposes reasonably required to establish, manage or terminate an employment relationship".

On this issue, The Privacy Commissioner agreed with the employer, finding the GPS System was used for "legitimate, reasonable, business purposes".

The Privacy Commissioner then determined whether PIPA had been complied with, and in so doing, answered the following questions:

Q: Is the information collected of a sensitive nature? Is more information collected than is reasonably required for the employer's purposes?

A: The information is not sensitive nor is more collected than necessary for legitimate business purposes.

Q: Is the collection and use of the information likely to be effective in fulfilling the company's objectives?

A: The employer reported a 30 per cent drop in accident costs since implementing the GPS System. This was a good indication the GPS System was effective in promoting safe driving habits. The GPS System was also effective in verifying hours of work.

Q: Are there alternative means to serve the same ends?

A: No. Self-reporting by drivers appeared to be the only alternative to the GPS System and this was not as effective.

Q: Has notice of the purpose of the GPS system been provided to employees?

A: The employees were properly made aware of the operation and purpose of the GPS System.

On this basis, the Privacy Commissioner concluded there had been no breach of the employees' privacy rights under PIPA.

Schindler Elevator Corporation is the leading decision in British Columbia regarding GPS tracking of employees. It has been followed in more recent cases upholding the use of GPS technology in work vehicles and work cellphones.

Unlike in British Columbia, Ontario's privacy regime does not specifically protect employee personal information.

Nevertheless, Schindler Elevator Corporation provides valuable insight as to the best practices available to employers to reduce the risk of having their workplace GPS policies successfully challenged.

When contemplating the implementation of GPS technology, consider the following factors:

Is the information of a sensitive nature or within the normal context of work-day activities?

Is more information collected than is reasonably required for the employer's purposes?

Is the collection, use or disclosure of the information likely to be effective in fulfilling the company's objectives?

Are there reasonable alternatives that ought to be considered?

Is the employer's policy and practice clear and understandable to employees?

Have employees been made aware of the policy and practice?

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