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Global Positioning Systems: Big Brother or Good Business?

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Global Positioning Systems (“GPS”) technology has an exciting and legitimate place in many Canadian workplaces. The technology is becoming increasingly common in the way businesses serve their clients. For example, GPS can allow a business to more efficiently dispatch company vehicles, track the location of vehicles and notify customers if a vehicle is going to be late. The technology is also a useful training tool. In many ways, the possibilities are limitless. However, it is within these possible uses of the technology that potential problems arise.

According to the Office of the Privacy Commissioner of Canada (“OPC”), “employers need to carefully consider the privacy rights of their workers before installing [GPS] into their vehicle fleets.... This is an important issue for employers and employees across Canada. We’re seeing more and more organizations installing GPS in their cars and trucks and it’s unclear whether they are adequately addressing privacy issues.”

In a recent case investigated by the OPC, several workers complained that their employer, a telecommunications company, was using GPS to collect information about the employees’ whereabouts – specifically their daily movements while on the job. As a federally regulated

employer, the telecommunications company was subject to the provisions of the *Personal Information Protection and Electronic Documents Act* (otherwise known as PIPEDA).

The employer was using GPS in its installation, repair, and construction vehicles to locate, dispatch and route employees to job sites. However, some workers worried that GPS was also being used to monitor work performance, and that information gathered from this technology would be used to justify disciplinary action.

The OPC investigated the employees’ complaint, and ultimately accepted many of the employer’s reasons for using GPS, including better service for customers, and more efficient location of missing vehicles. However, the OPC expressed concern about the use of GPS as an employee surveillance tool. Specifically, the OPC was concerned that it would impinge on the individual privacy of a worker if an employer routinely evaluated worker performance based on assumptions drawn from GPS information.

Assessing whether the purpose of the GPS was reasonable, the OPC reiterated that “*managing workplace privacy is a balancing act. On the one hand, employers have the right to know what workers are up to on company time. On the other, employees have a right to privacy.*” That said, the OPC considered the following factors:

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1. Is the measure demonstrably necessary to meet a specific need?
2. Is it likely to be effective in meeting that need?
3. Is the loss of privacy proportional to the benefit gained?
4. Is there a less privacy-invasive way of achieving the same end?

The OPC concluded that while the GPS did collect personal information, the purpose and intent was to improve the dispatch, safety and asset management process.

The OPC was also satisfied that the employees had given implied consent to the collection of this information. The employees had been given notice that their employer would use GPS for employee management and further that it would implement training to ensure appropriate use of the technology by management. The employees, knowing this, were deemed to have consented to what otherwise might be considered unauthorized collection or use of their personal information.

Practical Considerations

Using GPS technology in the workplace may be attractive but before it is implemented an employer should consider the following:

- Does any legislation restrict or modify the use of GPS technology?
- For what reason will the GPS technology be used?
- How will the GPS technology be used?
- How will the GPS technology affect employee morale?
- Have the employees been informed of its pending implementation?
- Have the employees been given an opportunity to ask questions regarding its pending implementation?
- Who, within the workplace, will have access to the information generated by the GPS?
- What training will be given to those individuals?
- By what protocol will the information generated by the GPS be stored and destroyed?

Unionized Employers

Unionized employers will have additional considerations. The approach used by the OPC in assessing the legitimacy of GPS surveillance is similar to the analysis that has developed in arbitrations regarding workplace surveillance in general. As such, a unionized employer must ensure that any form of surveillance complies not only with collective agreement obligations but also the most recent case law regarding the implementation of surveillance. In particular, if the GPS technology will manage employees, it is good practice to develop a written policy which will outline:

- How will the employees be monitored?
- What types of behaviour will be the subject of investigation (e.g. speeding, complaints from the public, concerns raised within the workplace, and productivity problems)?
- How will employees be notified of performance issues?
- The process of warning and progressive monitoring.

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