Safety vs. Privacy Quiz

SITUATION

WeeCU, a BC gas company, wants employees who drive company vehicles to provide the company access to their personal driving records so it can assign each employee a risk rating and identify who needs more safe driver training. The records contain personal information protected by privacy law, the company acknowledges; but it claims the policy is necessary for safety reasons even though there's no history of employees getting into traffic accidents while driving company vehicles. The union claims the policy is an invasion of employees' privacy.

QUESTION

What do you think the arbitrator did?

A. Struck down the policy because it unreasonably invades employee privacy.
B. Struck down the policy because the company doesn't have a vehicle accident problem.
C. Upheld the policy because safety concerns automatically outweigh employee privacy.
D. Upheld the policy because there's no less intrusive way to improve driver safety.

ANSWER

A. The arbitrator ruled that the policy was invalid because it was too invasive of employee privacy.

EXPLANATION

This scenario, which is based on an actual BC case, illustrates the not-uncommon situation where a safety policy conflicts with employee privacy rights. While commending it being safety conscious, the arbitrator said it was the company's. to prove that the policy was reasonable and there weren't any less intrusive alternatives. The company failed on both accounts, said the arbitrator, because the policy was too broad and more intrusive of privacy than was necessary. *Spectra Energy v. Canadian Pipeline Employees' Association*, [2011] CanLII 52175 (BC LA), Aug. 12, 2011

WHY WRONG ANSWERS ARE WRONG

B is wrong because not having a history of accidents isn't enough to disprove that the policy is necessary for safety. Thus, in a 2011 case, a New Brunswick court ruled that an employer could do random alcohol testing of employees in safety-sensitive positions even if there was no actual track record of accidents. (That case is now on appeal to the Canadian Supreme Court.)

C is wrong because safety doesn't *automatically* outweigh privacy. And even if they did, the company would still have to show that making employees provide access to personal driving records was the least privacy invasive way to meet the safety purpose.

D is wrong because there *are* less intrusive ways to prevent employees from having accidents in company vehicles, e.g., providing additional or specialized training to *all* employees who drive on the job or even redacting identifying information from the driving records and ensuring that no employee would be identified unless and until they were assigned a high risk factor based on the data.