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Electronic Monitoring of Employees - Government of Ontario Provides Guidance

By Shreya Patel

*In April 2022, the Government of Ontario enacted Bill 88, Working for Workers Act, 2022, which, amongst other legislative changes, amended the Ontario *Employment Standards Act, 2000* (the “**ESA**”) to establish a requirement for employers to have a written policy on electronic monitoring of employees.*

Employers that meet the 25-employee threshold on January 1, 2022, have until October 11, 2022, to prepare and implement a written policy on electronic monitoring of employees.

The Ministry of Labour, Training and Skills Development (the “**Ministry**”) has now provided some guidance on the scope of the new policy requirements.

- When determining the 25-employee threshold, employers must count all employees in Ontario, regardless of the location or number of hours they work.
- The policy should apply to all employees though different provisions may apply to different employees if desired.
- The policy must include:
 1. A statement on whether an employer engages in electronic monitoring of employees or if an employer does not electronically monitor employees, the policy must specifically state this;
 2. A description of how and in what circumstances an employer may electronically monitor employees;
 3. The purposes for which the information obtained through electronic monitoring may be used by an employer;
 4. The date the policy was prepared; and
 5. The date any changes were made to the policy.

- The requirement to introduce the policy does not establish a right for employees not to be electronically monitored by their employer, nor does it create any new privacy rights for employees.
- The policy does not affect or limit an employer's ability to use information obtained through the electronic monitoring of its employees in any way it sees fit. An employer is required to state in its written policy the purposes for which it may use information obtained through electronic monitoring.
- A copy of the policy must be provided to employees within 30 calendar days of being prepared or revised, and if the employee is a new hire, within 30 days of hire.

The intention behind the policy on electronic monitoring of employees is to require that employers be transparent with their employees on the circumstances in which electronic monitoring may occur. If you have questions about the electronic monitoring of employees policy requirements and their application to your business, please contact any member of our Employment & Labour Law Group.

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