

FTR Now

Ministry Updates *ESA* Guide on Electronic Monitoring Policies

Date: July 25, 2022

On July 13, 2022, the Ontario Ministry of Labour, Training and Skills Development (Ministry) updated its online guide to the *Employment Standards Act, 2000* (Guide) to include a chapter on [written policy on electronic monitoring of employees](#).

The chapter provides guidance on recent *Employment Standards Act, 2000* (*ESA*) amendments that require employers with 25 or more employees to have a written policy on electronic monitoring of employees. These amendments were included in Bill 88, [Working for Workers Act, 2022](#).*

In this *FTR Now*, we briefly review the new electronic monitoring policy requirements and the highlights from the Guide on these requirements.

ESA Requirements on Written Policy on Electronic Monitoring of Employees

Employers with 25 or more employees as of January 1, 2022 have until October 11, 2022 to have a written policy on electronic monitoring of employees (Policy) in place. Beginning in 2023, employers who meet the 25 or more employee threshold on January 1 of each year must have a Policy in place before March 1 of that year.

The Policy must state whether or not the employer electronically monitors employees. If the employer does, the Policy must include:

- a description of how and in what circumstances the employer may electronically monitor employees
- the purposes for which the information obtained through electronic monitoring may be used by the employer
- the date the Policy was prepared and the date any changes were made to the Policy
- such other information as may be prescribed.

An employer must, within the specified time frames, provide a copy of the Policy to all of its employees and to all assignment employees who are assigned to perform work for that employer.

Additional Information from the Guide

The *ESA* does not define “electronic monitoring.” The Guide clarifies that electronic monitoring includes “all forms of employee and assignment employee monitoring that is done electronically.” It provides the following examples of electronic monitoring:

- use of GPS to track the movement of an employee’s delivery vehicle
- use of an electronic sensor to track how quickly employees scan items at a grocery store checkout
- tracking the websites that employees visit during working hours.

The Guide also states that what is required to be captured in the employer’s Policy is not limited to:

- devices or other electronic equipment issued by the employer
- electronic monitoring that happens while employees are at the workplace.

Therefore, according to the Guide, Policies must capture monitoring of employees' personal devices and any electronic monitoring which takes place in the context of a remote work arrangement.

The requirement to have a Policy applies to all employees and employers covered by the *ESA* except the Crown, a Crown agency or an authority, board, commission or corporation whose members are all appointed by the Crown and their employees.

Among other things, the Guide:

- confirms that the *ESA* requirements “do not establish a right for employees not to be electronically monitored by their employer,” “do not create any new privacy rights for employees,” and “do 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”
- states that the *ESA* does not limit an employer’s use of information obtained through electronic monitoring to the purposes stated in the Policy
- contains examples of how a Policy could capture various forms of electronic monitoring
- clarifies that while the Policy applies to all employees in Ontario who are captured by the *ESA*, including management, executives and shareholders if they are employees under the *ESA*, the employer can have a different Policy (or different sections of the same Policy) for different groups of employees
- sets out which “employees to include in the count” when determining if the 25-employee threshold is met, which includes employees at multiple locations or those of related employers
- confirms that assignment employees of temporary help agencies are employees of the agency and are included in the count to determine if the temporary help agency has met the 25-employee threshold
- clarifies that determining whether an employer has 25 or more employees as of January 1 is a point-in-time assessment
- comments that an employer may wish to seek legal advice about whether its Policy would create any entitlements that an employee could enforce outside of the *ESA*
- clarifies that the Policy may be a stand-alone document or part of a comprehensive workplace policy document
- sets out the requirements to provide the Policy to existing employees or to new hires, as well the retention obligations.

Hicks Morley’s lawyers are uniquely positioned to help craft a Policy with your organization’s workforce and operations in mind. Should your organization require assistance, please contact [your regular Hicks Morley lawyer](#).

*(For more information about Bill 88, please see our *FTR Now* of March 2, 2022, [Ontario Introduces Bill 88, Working for Workers Act, 2022](#), as well as our *FTR Now* of April 12, 2022, [Bill 88, Working for Workers Act, 2022, Passes – Key Dates to Watch For](#).)

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