

Electronic Monitoring Policies in Ontario: What are the requirements?



Bill 88, the *Working for Workers Act 2022*, became law in April 2022. While a large portion of the legislation dealt with workplace rights relating to “Digital Platform Workers”, i.e., app-based drivers and delivery people, the legislation also included a mandatory requirement for Ontario employers relating to electronic monitoring.

When is an Electronic Monitoring Policy Mandatory?

An electronic monitoring policy may be mandatory depending on how many employees your business employs at the start of each year:

- If your business is an employer in Ontario that employed 25 or more employees on January 1, 2022, then you must have an electronic monitoring policy in place by October 11, 2022.
- If your business is an employer in Ontario that will employ 25 or more employees by January 1, 2023, then you must have electronic monitoring policy in place by March 1, 2023.
- In any given year going forward, any Ontario business that employs 25 or more employees by any January 1 will need to put in place an electronic monitoring policy by March 1 of the year in question.

Fluctuating Employee Numbers

The requirement for maintaining a policy is calculated each January 1, meaning that an employer with an electronic monitoring policy who had 25 employees in a previous calendar year, but has less than 25 employees on a subsequent January 1 will no longer be required to maintain the electronic monitoring policy.

To Whom Does the Policy Apply?

The requirement applies to all employees of an organization in Ontario, including management, executives, or shareholders provided they are employees of the company. However, employers are not required to have the same content in the policy applicable for all employees, especially if the way in which employees are electronically monitored varies by group.

What is Required in the Electronic Monitoring Policy?

Each electronic monitoring policy must contain several elements described in the legislation. The electronic monitoring policy must include the following:

- A statement whether the employer engages in electronic monitoring.
- A description of how the employer may monitor employees.
- A description of the circumstances in which employees are monitored.
- The purposes for which electronic monitoring is conducted.
- The date of the policy and the date of any changes to the policy.

Examples of Electronic Monitoring

If your company has GPS trackers in vehicles or has access to an employee's email inbox or direct messages on messaging apps, or tracks websites employees visit during work hours, or has electronic surveillance cameras in a stock room to prevent theft, these are all forms of electronic monitoring.

In each example above, the business will need to disclose the fact that monitoring is occurring, how it is done, and the purpose for doing so. In the example of cameras in a stock room, the electronic monitoring policy will need to disclose the fact of the monitoring and the purpose of the monitoring (i.e., deterring theft).

Deadlines

Employers must provide a copy of the written policy within 30 calendar days of the date the electronic monitoring policy is put in place or modified.

New employees must also be provided a policy with 30 calendar days of the date the employee is employed by the company (unless the policy is not yet in place).

The policy may be provided either in printed format or in an email/link on an internal portal or other service, provided that the employee has access to the document and is able to print the document if so desired.

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