More Mandatory Policies For Ontario Employers



Electronic Monitoring Policy

On February 24, 2022, the provincial government announced that it intends to introduce new legislation within a few weeks that will require employers to inform their workers if and how they are being monitored electronically.

If the legislation is passed, it will require employers with 25 or more workers to have written electronic monitoring policies in place to protect their employees' privacy. The policies will require employers to be transparent about how they monitor their employees' use of cellular phones and computers. They must also be transparent about how electronic devices are tracked including the use of GPS systems. The policy will need to specify whether the employer does, in fact, electronically monitor its employees, in what circumstances and the manner in which it is done. The purpose of collecting such information must also be disclosed to employees in the policy.

Right to Disconnect Policy

Recently, the Ontario government also implemented the *Working for Workers Act, 2021* ("Bill 27") which received royal assent on December 2, 2021. Bill 27 made several changes to the Ontario *Employment Standards Act, 2000* (the "ESA"). The legislation is intended to help employees disconnect from their work responsibilities after hours to create a better work-life balance.

On February 18, 2022, the Ministry of Labour, Training and Skills Development (the "Ministry") updated its online guide to the ESA (the "Guide") with respect to the policy on disconnecting from work. The Guide is available on the Ministry's website.

Employers with 25 or more employees as of January 1, 2022 must ensure that they have a written policy in place for all employees with respect to disconnecting from work. Employers must have this policy in place by no later than **June 2, 2022.**

Bill 27 defines "disconnecting from work" as not engaging in work-related communications, including emails, telephone calls, video calls or the sending or reviewing of other messages, so as to be free from the performance of work." The Guide states that other types of work-related communications might also fall under the definition.

The right to disconnect policy must include the date the policy was prepared and the date that any changes were made to the policy. The employer must provide a copy of the policy to each employee within 30 days of its preparation or within 30 days after any changes are made to the policy. New employees must be provided with a copy of the policy within 30 days of their start date. Bill 27 does not address the consequences for violating such a policy.

The Guide provides some guidance on certain elements that could be contained in the right to disconnect policy. The policy might set out the employer's expectations, if any, of employees to read or reply to work-related emails or answer work-related phone calls after their shift is over. The Policy may also provide for requirements for employees to turn on out-of-office notifications and/or change their work voicemail messages when they are not scheduled to work to communicate that they will not be responding until the next scheduled workday.

The Guide confirms that the obligation to have the policy does not create a new right for employees to disconnect from work and be free from the obligations to engage in work-related communications. The Guide affirms that employee rights are still regulated through various ESA provisions, such as hours of work, eating periods, vacations with pay, and public holidays. The Guide clarifies that employers can have a different right to disconnect policy for different classes of employees, meaning there can be separate policies (or different sections of the same policy) for office workers, management, salespeople, and executives.

Employers should note it is possible that the government may enact regulations to Bill 27 before the June 2nd deadline of this year, which may affect the substance of right to work policies, including setting out potential exemptions or exceptions.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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