# Ontario Government Continues To Strengthen Workers' Rights: Introduces The Working For Workers Act, 2022



On February 28, 2022, the Government of Ontario introduced Bill 88, *Working for Workers Act*, 2022 ("Bill 88"), which if passed, would introduce new legislation regarding digital platform workers, as well as amending the *Employment Standards Act, 2000* ("*ESA*") and other statutes. Read on to find out the key points in Bill 88 that may affect your business.

### Digital Platform Workers' Rights Act, 2022

If passed, Bill 88 would enact the *Digital Platform Workers' Rights Act*, 2022 (the "Act"), which would govern the rights of digital platform workers, including ride share, courier and delivery workers who are offered work assignments by an operator through the use of a digital platform.

The rights and status of these types of "gig economy" workers is currently the subject of an ongoing class action in Ontario (*Heller v. Uber Technologies Inc.*). The Act appears to outline how the Ontario government proposes the rights of these gig economy workers and their operators should be balanced.

The Act would provide digital platform workers with greater rights and protections, similar but not identical to those enjoyed by employees governed by the *ESA*. Such rights would include, but are not limited to, the right to:

- information;
- a recurring pay period and pay day;
- minimum wage;
- amounts earned by the worker including tips and other gratuities;
- notice of removal from an operator's digital platform;
- utilizing mechanisms to resolve digital platform work-related disputes in Ontario; and
- be free from reprisal.

The Act will also set out various rules, process and requirements regarding record keeping, director liability, complaints and enforcement, collections, and offences and prosecutions.

If Bill 88 passes, operators may need to adjust their business models and/or digital platforms in order to ensure that they comply with the Act, especially the minimum wage provisions.

## Written Policy on Electronic Monitoring

If passed, Bill 88 will create a new Part XI.I of the *ESA,* which will require employers with 25 or more employees as of January 1 of any year to ensure, before March 1 of that year, that they have a written policy in place for all employees with respect to "electronic monitoring of employees."

A written electronic monitoring policy will be required to contain the following information, based on the current language of the Bill:

1. Whether the employer electronically monitors employees and if so,
2. a description of how and in what circumstances the employer may electronically monitor employees, and
3. the purposes for which information obtained through electronic monitoring may be used by the employer.
4. The date the policy was prepared and the date any changes were made to the policy.
5. Such other information as may be prescribed.

While Bill 88 does not currently provide a definition of "electronic monitoring," it would likely include things such as tracking employees using GPS in company vehicles or cellphones, video surveillance and the use of software programs that monitor and record employees activities while at work, such as time entry/management systems.

Nothing in the proposed new Part XI.I would affect or limit an employer's ability to use information obtained through electronic monitoring of its employees. However, employers will still need to ensure that they comply with applicable privacy legislation.

If Bill 88 passes, employers with 25 employees or more as of the January 1 immediately preceding the date of Royal Assent will have six months to implement a written electronic monitoring policy. In addition, employers would be required to retain copies of every written electronic monitoring policy for three years after the policy ceases to be in effect.

*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.*

by Katy Allen and Lucy Williams
Lawson Lundell LLP