Ontario Introduces Bill 88: Legislation Mandating Electronic Monitoring Policies And Workplace Naloxone Kits And Increasing Fines Under The OHSA

Bottom Line

On February 28, 2022, the Ontario Legislature introduced Bill 88, *Working for Workers Act, 2022*. In addition to the enactment of the *Digital Platform Workers Rights Act, 2022* (which will be analyzed in a separate website update), Bill 88 proposes significant amendments to the *Employment Standards Act, 2000*, S.O. 2000, c. 41 ("ESA"), and the *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1 ("*OHSA*"). If proclaimed in force, Bill 88 will:

- Establish a new *ESA* requirement for employers with 25 or more employees to have a written policy with respect to the electronic monitoring of employees;
- Establish a new *OHSA* requirement for employers to make naloxone kits available in the workplace; and
- Increase the maximum *OHSA* fines for directors or officers of corporations and other individuals.

Proposed Amendments to the Employment Standards Act

Every employer employing 25 or more employees will be required to draft and implement a written policy with respect to the electronic monitoring of its employees. Based on the current language of Bill 88, the electronic monitoring policy must contain the following information:

1. Whether the employer electronically monitors employees and, if so,

    - a description of how and in what circumstances the employer may electronically monitor employees, and
    - the purposes for which information obtained through electronic monitoring may be used by the employer.

2. The date the policy was prepared and the date any changes were made to the policy.

3. Such other information as may be prescribed (no such information has been

prescribed at this time).

The proposed amendments clarify that none of the electronic monitoring policy requirements limit or affect an employer's ability to use information obtained through the electronic monitoring of its employees.

For those employers that employ 25 or more employees when Bill 88 comes into effect, the electronic monitoring policy must be in place within six months of the day that Bill 88 receives Royal Assent. Thereafter, employers who have 25 employees on January 1 of any given year must have an electronic monitoring policy in place by March 1 of that same year.

Proposed Amendments to the *Occupational Health and Safety Act*

Employers will be required to have a naloxone kit ready and available if the employer becomes aware, or ought reasonably to be aware, that there may be a risk of a worker having an opioid overdose in the workplace. In such circumstances, the employer would be required to ensure that the naloxone kit is in the charge of a worker who is trained to recognize an opioid overdose and administer naloxone and who is acquainted with any hazards related to the administration of naloxone.

Naloxone kits are portable pouches containing an opioid antidote that can be administered by injection or through the nose to revive an unresponsive person who has overdosed on opioids. The Government of Ontario distributes free naloxone kits and provides training on how to use them. You can find more information about these Government initiatives at: https://www.ontario.ca/page/where-get-free-naloxone-kit.

Bill 88 would also increase the maximum fine applicable for convictions under the *OHSA*. The maximum fine would increase from $100,000 to $1,500,000 for directors or officers of corporations and to $500,000 for other individuals. A list of aggravating factors to be considered when determining a penalty would also be added to the *OHSA*, and the limitation period for instituting an *OHSA* prosecution would extend from one year to two years.

Check the Box

Employers with 25 or more employees should start drafting an electronic monitoring policy in anticipation of the passage of Bill 88.

In addition, employers who have experienced an opioid overdose in their workplace or who are aware that there is a risk of an overdose should consider obtaining a naloxone kit and ensuring that employees are trained to use it. Employers who operate construction sites, bars, and nightclubs should especially prepare for the proposed mandates in respect of naloxone kits, as the Ontario Government's announcements have identified these businesses as having a higher risk of opioid overdose in the workplace.

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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