Ontario's Bill 88 Would Establish Electronic Monitoring Policies, Create Rights For Workers On Digital Platforms, And Require Naloxone Kits

On February 28, 2022, the Government of Ontario introduced Bill 88, the *Working for Workers Act, 2022*. Bill 88 would enact the *Digital Platform Workers' Rights Act, 2022*, which would establish rights for workers who offer services through digital platforms. In addition, Bill 88 would amend a number of statutes including the *Employment Standards Act, 2000*.

This article summarizes some of the proposed changes under Bill 88.

Introduction of *Digital Platform Workers' Rights Act, 2022*

If passed, Bill 88 will introduce the *Digital Platform Workers' Rights Act, 2022*. Bill 88 would apply to "digital platform work," which is currently defined as "the provision of for payment ride share, delivery, courier or other prescribed services by workers who are offered work assignments by an operator through the use of a digital platform."

Bill 88 would establish a number of worker rights, including the right to a minimum wage, applicable regardless of whether workers are considered employees. Under the proposed legislation, digital platform operators would not be able to contract out of these provisions and would be required to ensure their workers are informed of:

- the method of calculating pay for digital platform work;
- whether gratuities have been collected, the time of their collection, and the method of collection;
- the pay period and pay date;
- the factors used to determine offers of work assignments and the application of those factors;
- an overview of the consequences of any performance rating system used by the digital platform operator; and
- other prescribed information.

Recordkeeping

Under the proposed legislation, digital platform operators would be required to keep records of each worker who accessed the platform. These records would include, but would not be limited to, the following:

- the worker's name and address;
- the dates the worker received access to the platform for the performance of work; and
- the dates the worker's access to the digital platform were removed or reinstated.

Bill 88 would require that these records be readily available for inspections, and digital platform operators would have to retain these records for three years after the worker no longer has access to the digital platform.

These amendments would take effect on a date to be named by proclamation of the lieutenant governor.

Amendments to the *Employment Standards Act, 2000*

Written Policy on Electronic Monitoring

Bill 88 proposes an amendment to the *Employment Standards Act, 2000,* that would require employers with twenty-five or more employees on January 1, of any year, to establish written policies pertaining to electronic monitoring before March 1, of the respective year. Employers would have to notify employees of:

- whether the employees are being monitored electronically, and in cases of electronic monitoring, the method and circumstances surrounding the monitoring; and
- the date the policy was prepared and the dates of any changes.

Bill 88 would require an employer to provide the policy to workers within thirty days after the policy is prepared, after the policy is changed, or within thirty days after a new person is hired, or after a person is assigned from a temporary help agency.

During the first year that this provision applies, employers will have six months to prepare their policies after the date the *Working for Workers Act, 2022* receives Royal Assent.

Amendments to the *Occupational Health and Safety Act*

Provision and Maintenance of Naloxone Kits

Bill 88 would require employers to provide and maintain a naloxone kit in their workplaces if they "become[] aware, or ought reasonably to be aware, that there may be a risk of a worker having an opioid overdose at a workplace where that worker performs work for the employer, or where the prescribed circumstances exist." Employers would also have to comply with the other requirements of the legislation.

The *Occupational Health and Safety Act* would also be amended to increase the maximum fine for directors or officers of corporations from $100,000 to $1,500,000. The fines for other individuals would increase to $500,000.

The amendment pertaining to naloxone kits would take effect on a day to be named by proclamation of the lieutenant governor.

The amendment pertaining to fines would take effect on the later of July 1, 2022, and

the day the *Working for Workers Act, 2022* received Royal Assent.

Next Steps

Employers may want to stay informed of the amendments applicable to their respective industries, particularly as Bill 88 proceeds through the legislative assembly of Ontario, because the bill may be amended.

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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