Pay No Attention To The Blinking Red Light: Employee Monitoring Laws Announced In Ontario



The Ontario Ministry of Labour has released *Bill 88*, the *Working for Workers Act, 2022*. Among other things, this proposed legislation would require employers to adopt disclosure practices related to employee monitoring. Like the recently enacted "right to disconnect" provisions, these changes to the *Employment Standards Act* ("**ESA**") would provide yet another government response to the rise of remote work and its unique dynamics.

The new remote monitoring law would amend Ontario's ESA to require employers with 25 or more employees to adopt a written policy containing information on whether, how, and in what circumstances the employer monitors employee behavior through electronic devices.[1] The intent of the law is to provide transparency for workers about employer practices, and to protect worker privacy.

Employee monitoring technology can take a variety of forms, including computer monitoring systems (e.g., keystroke or cursor tracking, or screen recording), GPS systems in company vehicles, smartphones, or other devices, or even facial recognition technologies run through computer cameras. Employers may wish to monitor employees to assess productivity, oversee compliance with company policies, or protect intellectual property. As has been reported by media, some employers may even deploy facial recognition technologies to assess employees' mood in order to monitor workplace mental health.

While new and potentially more privacy-invasive monitoring technologies emerge, businesses should strive to balance their management priorities with the individual privacy rights of their employees. Notably, the *Working for Workers Act, 2022* provides that an employer's ability to *use* information obtained through electronic monitoring will remain unaffected by its provisions.[2]

The draft legislation indicates that employers will have six months to draft their policies, and the Ministry has stated that it will provide additional guidance on what these policies must contain.[3] Once effected, Ministry of Labour inspectors will enforce the new provisions.

We will continue to monitor these developments.

Footnotes

1 Bill 88, *Working for Workers Act, 2022*, s. 41.1.1.

2 *Ibid*, s.41.1.1 (7)

3 *Ibid*, s.41.1.1 (2)

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

by Ioana Pantis , Robbie Grant and Matti Thurlin (Articling Student)
McMillan LLP