**Electronic Monitoring Policy**

***Companion User Guide***

**Policy Requirements**

An employer must adopt a written electronic monitoring policy if, as of January 1 of any year, it employs 25 or more employees. If so, the policy must be in place as of March 1 that year.

This year, employers who had 25 or more employees as of January 1, 2022, must have the policy in place by October 11, 2022, and provide that policy to employees by November 10, 2022.

***Application***

The electronic monitoring policy must apply to all of the employer’s employees in Ontario, and includes management, executives, assignment employees and shareholders if they are employees under the *Employment Standards Act, 2000*.

An employer is not required to have the same policy applicable for all its employees, and may have a single policy that applies to all employees, or its policy can contain different policies (either in a single document or in multiple documents) for different groups of employees.

***Mandatory Content***

The electronic monitoring policy must be in writing and describe:

* Whether or not 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.
* The date the policy was prepared and the date any changes were made to the policy.
* Such other information as may be prescribed. Note that no information other than the requirements described in this guide have been prescribed at this time.

***Disseminating the Policy***

A written copy of the electronic monitoring policy must be provided to each employee within 30 calendar days of:

* The date the policy is first adopted.
* The date any change is made to the policy.
* The date an employee is hired (or within 30 days from the day the employer is required to have the policy in place, if that date is later).

If the employer is a client of a temporary help agency and is required to have an electronic monitoring policy, it must provide a copy to an assignment employee within 24 hours of the start of the assignment (or within 30 days from the date the employer is required to have the policy in place, if that date is later).

***Use of Information and Complaints***

The requirement for an electronic monitoring policy does not affect or limit an employer’s ability to use information obtained through electronic monitoring of employees. In other words, the new policy requirement does not grant rights to employees protecting them from monitoring. Instead, it requires employers to be transparent about monitoring that occurs in the workplace.

Any employee complaints regarding the electronic monitoring policy are limited to whether the policy was properly disseminated. Employees may not submit a complaint regarding the content of the policy or the use of electronic monitoring in the workplace.

***Retention***

Employers are required to retain or arrange for the retention of every written policy on electronic monitoring for three (3) years after the policy ceases to be in effect.

**The Policy**

***Overview***

Assuming the employer conducts electronic monitoring of its employees, we recommend that the opening section briefly introduce the purpose of the policy and define electronic monitoring.

Note that the legislation does not contain a definition of “electronic monitoring”. The draft policy that accompanies this guide contains a broad sample definition of electronic monitoring. The employer may substitute its own definition depending on its business.

***Electronic Monitoring Details***

If the employer conducts any form of electronic monitoring, it should outline its practices in this section. Descriptions of the methods and purposes of monitoring are required elements of the policy.

The employer must describe the type and purpose of any electronic monitoring applied in the workplace. The circumstances and reasons of such monitoring varies widely among workplaces, and the employer should customize its description to accurately reflect its practices.

Examples of “electronic monitoring” include where an employer:

* Uses GPS to track the movement of an employee’s delivery vehicle.
* Tracks the websites that employees visit during working hours.
* Monitors employee emails and online chats through a software program.

Examples of purposes for which information obtained through electronic monitoring might be used include:

* Protecting the integrity of employer information technology systems.
* Tracking employee working time to ensure accurate compensation and/or adherence to working time or attendance policies.
* Improving work efficiency by tracking time spent on specific task types, tracking employee use of specific tools or software, or tracking employee location and travel time.
* Protecting employee health and safety by tracking employee location or keeping a record of employee access to the workplace.
* Ensuring employee adherence to workplace policies, especially those related to use of Information Technology (IT) systems.

The degree of detail used in describing electronic monitoring is at the employer’s discretion, so long as employees understand the circumstances under which they will be monitored. The employer may choose to withhold details for security purposes, such as the specific software or device specifications used for monitoring. Instead, the policy might describe the type of information collected (such as “location”, “log-in times” or “chat logs”).

***Policy Format***

An employer’s written policy on electronic monitoring of employees may be a stand-alone document, or it may be part of another document. The employer can format its electronic monitoring details in any way that conveys the required information. If the employer conducts relatively few forms of monitoring, a simple bulleted list may suffice.

**Administration of the Policy**

The employer should identify the member of management or department responsible for administering this policy and any electronic monitoring conducted by the employer. Any questions or concerns about the policy should be directed to that individual or department.