



e2r Alert!

UPDATE: Guidelines for Ontario's Electronic Monitoring Policy

In a previous e2r™ Alert, *Spy Games or Legitimate Employee Monitoring*, we discussed legislation that would require certain employers in Ontario to advise employees of their electronic monitoring practices. Since then, the *Employment Standards Act, 2000* ("ESA") has been updated to include further details on the requirement for a written policy regarding the electronic monitoring of employees. Here's what we know now:

Legislative Requirements

Workplaces with 25 or more employees in Ontario are required to create and implement a written electronic monitoring policy ("Policy") by October 11, 2022.

Although "electronic monitoring" is not defined in the ESA, the Ontario Ministry of Labour has noted that it includes all forms of employee monitoring done electronically. As such, there is a broad scope of activity considered to be electronic monitoring. Examples include when an employer:

- uses GPS to track the movement of an employee's vehicle;
- uses productivity software to track how efficiently employees perform tasks;
- flags inappropriate websites that employees visit during working hours;
- views active and inactive time on the computer an employee is working on;
- monitors inter-office chat functions between employees;
- uses video surveillance cameras in the workplace;
- and so on.

Notably, the ESA requirements do not:

- establish a right for employees not to be electronically monitored by their employer;
- create any new privacy rights for employees; or

- affect or limit an employer's ability to use information obtained through the electronic monitoring of its employees in any way it sees fit.

Policy Contents

The Policy must state whether or not the employer electronically monitors employees. If the employer does monitor employees, the Policy must include:

1. a description of how the employer may electronically monitor employees;
2. a description of the circumstances in which the employer may electronically monitor employees;
3. the purposes for which information obtained through electronic monitoring may be used by the employer; and
4. the date the Policy was prepared and the date any changes were made to the Policy.

Record Keeping and Distribution

Employers must provide a copy of the Policy to employees within 30 days after the Policy is prepared or changed, and to new hires within 30 days after hire.

An employer may provide the Policy to employees as:

- a printed copy;
- an attachment to an email if the employee can print a copy; or
- a link to the document online if the employee has a reasonable opportunity to access the document and a printer.

Employers are required to retain a copy of every written Policy for three years after the Policy is no longer in effect.

Takeaway

Given the implementation deadline of October 11, 2022, employers with 25 or more employees in Ontario should start preparing their Policy as soon as possible. First, employers should assess what, if any, electronic monitoring occurs (recognizing the broad scope of activity considered to be electronic monitoring). Then, employers should consider the purpose and circumstances for the monitoring.

If you currently have 25 or more employees in Ontario and would like to have a policy drafted, please reach out to ClientCare (clientcare@e2rsolutions.com) to schedule a call to discuss further. Kindly note you may be required to toggle up to have the policy drafted depending on your current level of service.