

Electronic Monitoring of Employees Policy- What Employers Need to Know

July 15, 2022

Effective **October 11, 2022**, many employers in Ontario are required to have a written policy on the electronic monitoring of employees. On July 13, 2022, the Ministry of Labour, Immigration, Training and Skills Development released its [chapter material](#) on this new requirement. This briefing note addresses **frequently asked questions**.

For advice or assistance preparing an electronic monitoring of employees policy for your workplace, please contact your Sherrard Kuzz LLP lawyer or, if you are not yet a Sherrard Kuzz LLP client, our firm at info@sherrardkuzz.com. We'll respond promptly.

When must an employer have a policy in place?

Every provincially regulated employer in Ontario with 25 or more employees as of January 1, 2022, is required to have an electronic monitoring of employees policy in place by October 11, 2022. In each subsequent year, an employer with 25 or more employees as of January 1 is required to have the policy in place as of March 1 of that year.

For example, if an employer had 15 employees as of January 1, 2022, but has 30 employees as of September 1, 2022, it is **not required** to have a policy as of October 11, 2022. However, if the employee count remains above 25 as of January 1, 2023, it **is required** to have a policy in place as of March 1, 2023.

Conversely, if an employer had 30 employees on January 1, 2022, but only 15 employees as of September 1, 2022, it is **required** to have a policy as of October 11, 2022. However, if the employee count remains below 25 as of January 1, 2023, it **is not required** to have a policy in place as of March 1, 2023.

The policy must include both the date it was prepared and the date(s) of any amendment.

Who is included in the 25-employee count?

Any employee who meets the definition of “employee” under the Ontario *Employment Standards Act, 2000* (“ESA”) must be included in the employee count. This includes (but is not limited to) a part-time employee, casual employee, homemaker, probationary employee, fixed term employee, employee on layoff or a leave of absence, and any officer of the corporation who performs work or supplies services for wages.

An employer is only required to count Ontario-based employees but must count employees on a province-wide basis. For example, if an employer has three Ontario branches that each employ 10

employees as of January 1, the employer has 30 employees in the province and must have a policy in place by October 11, 2022. Similarly, if two or more employers are considered “related employers” under the ESA, their collective employees must be included in the count.

What is considered “Electronic Monitoring”?

The term “electronic monitoring” is not defined in the ESA and the chapter material provides a non-exhaustive definition. It states electronic monitoring “*includes all forms of employee and assignment employee monitoring that is done electronically*”. Examples provided include:

- GPS used to track an employee’s delivery vehicle.
- Electronic scanner used to track how quickly a retail employee scans items.
- Software program that tracks websites visited by an employee during working hours.
- Software program that monitors employee email and online chats.

Does an employer need to have the same policy for all employee groups?

No. An employer may have a different policy for different groups of employees (e.g., if GPS is used to track drivers, there may be a separate policy for drivers). Further, an employer may choose to cover all employee groups under a single document (with separate sections) or separate documents.

Does an employer need to advise assignment employees if they are monitored?

Yes. However, an assignment employee need not be included in the employee count (they are employees of the temporary help agency).

Does an employer need a policy if it does not electronically monitor employees?

Yes. However, the policy can be brief and simply state the employer does not electronically monitor its employees.

What must an employer include in the policy if it does electronically monitor employees?

The policy must describe:

- (1) the means through which the employer engages in electronic monitoring (*e.g.*, GPS on a delivery vehicle, a software program installed on a work computer or smartphone, *etc.*).
- (2) the circumstances in which the employer may monitor its employees (*e.g.*, during travel, during all or part of working hours, *etc.*).
- (3) the purpose for which the information collected may be used (*e.g.*, to evaluate performance, to confirm location, *etc.*).

Does an employer need to provide the policy to its employees?

Yes. The policy must be in writing. However, it can be provided as a printed copy, an attachment to an email if the employee can print a copy, or through an online link if the employee has a reasonable opportunity to access the document and a printer (and the knowledge how to use them).

An employer must provide a copy of the policy to any existing employee within 30 calendar days of the policy being implemented or changed. A new employee must receive a copy of the policy within 30 calendar days of the **later** of (1) the date the policy is to be in place, or (2) the first day of employment.

An assignment employee is also entitled to a copy of the policy, by the **later** of (1) 24 hours from the start of the assignment, or (2) 30 calendar days from the date the policy is in place.

How long must an employer keep the policy?

The policy must be kept for three years after it is no longer in effect. This means a version that is updated must be retained for three years following the date it is replaced.

To learn more, contact your Sherrard Kuzz lawyer or info@sherrardkuzz.com.

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