

COMMUNICATION 133085

Received from Diane Smithson, Chief Administrative Officer
Addressed to Committee of the Whole
Date September 27, 2022
Topic Electronic Monitoring Policy

SUMMARY

The attached draft Electronic Monitoring Policy was developed in accordance with Bill 88, Working for Workers Act, 2021. The draft policy was subsequently reviewed by Management to ensure that it appropriately reflects the Town's current practices and by the Town's Human Resources Solicitor.

BACKGROUND

On April 11, 2022, the Government of Ontario enacted Bill 88, the Working for Workers Act, 2022, which amended the Ontario Employment Standards Act, 2000 (the "ESA") to introduce a requirement for employers with 25 or more employees in Ontario to put in place a written policy regarding their electronic monitoring practices with respect to employees. The deadline to have the policy in place is October 11, 2022.

COMMENTS

The Government of Ontario amended the Ontario Employment Standards Act, 2000 (ESA) through Bill 88, Working for Workers Act, 2022. All employers with 25 or more employees as of January 1 of a given year are required to have a written policy on the electronic monitoring of employees. Employers are also required to provide a copy of the written policy to all employees.

While the ESA does not define "electronic monitoring," the Your Guide to the Employment Standards Act, (the "*Guide*") states that the term "includes all forms of employee and assignment employee monitoring that is done electronically." Examples include GPS tracking of delivery vehicles, electronic sensors to track the speed at which an employee scans items, or tracking the websites that employees visit during work hours. Electronic monitoring is not limited just to the employer's devices or electronic equipment, or the monitoring that takes place while employees are at the workplace. Monitoring of an employee who is working from home or who does work using their own personal computer, for example, would therefore also be captured by the requirement.

The Government of Ontario has identified the following requirements for employers to be in compliance with the Act.

- Have a written policy in place as of October 11, 2022 addressing the electronic monitoring of employees as defined in the ESA
- Identify the date the policy is in effect and the date of any revisions to the policy
- Provide a copy of the policy to all employees within 30 days of the policy coming into effect or within 30 days of hire for new employees;

- The policy is required to state whether or not the employer electronically monitors employees. If the employer does so, then the policy must include a description of who and in what circumstances the employer may electronically monitor employees. It must also state the purposes for which information obtained through electronic monitoring may be used by the employer.

The Ministry of Labour, Training and Skills Development has provided guidance to employers on complying with the new Act. The provisions of the act do not require an employer to guarantee a right to privacy for its employees and do not prevent an employer from electronically monitoring its employees. They also do not affect or limit an employer's ability to use the information that it obtains through electronic monitoring of its employees.

The draft Electronic Monitoring Policy identifies the Town's current monitoring practices and was reviewed by Management and by the Town's Human Resources Solicitor. The draft policy is now presented for Council's approval.

FINANCIAL IMPLICATIONS

There are no financial implications associated with the attached draft Electronic Monitoring Policy.

STAFF RECOMMENDATION

THAT the Electronic Monitoring Policy prepared in accordance with Bill 88, Working for Workers Act 2022, be approved.