New legislation imposes additional legal obligations for Ontario workplaces

April 14, 2022

Employers in Ontario need to be aware of several new obligations as a result of Bill 88, the *Working for Workers Act, 2022*. They include a written policy on electronic monitoring for certain employers, new measures regarding "information technology consultants" and "business consultants," a new legislative framework for digital platform workers and additional occupational health and safety legislation obligations. Steps can be taken now to proactively plan for the changes that are in force and that will come in force in the near future.

Bill 88 was passed by the Ontario legislature on April 7, 2022 and received royal assent on April 11, 2022. Employers should be up to date with Bill 88 in order to ensure compliance. Here is a summary of the key points from Bill 88.

1. Workplace Electronic Monitoring Policy

Employers with 25 or more employees are required to maintain a written policy with respect to electronic monitoring of employees. This policy must state whether the employer electronically monitors employees and if so, describe 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 must also be in the policy, as such other information as may be prescribed.

This policy must be provided to employees within certain timeframes and must be retained for certain periods of time. The deadline for creating and implanting such a policy is October 11, 2022. For more information about the electronic monitoring policy, including our commentary, see our article on these changes that we published on March 1, 2022, shortly after Bill 88 was originally introduced in the legislature.

2. Changes to *Employment Standards Act, 2000* for IT and Business Consultants

Ontario's employment standards legislation will be amended to provide that such legislation does not apply to certain business and information technology consultants.

Bill 88 defines what constitutes a business consultant and an information technology consultant, as well as the requirements that must be met in order for Ontario's employment standards legislation not to apply to such persons. These amendments will come in force on January 1, 2023.

3. New *Digital Platform Workers' Rights Act*

Bill 88 enacts the *Digital Platform Workers' Rights Act*. The purpose of this new legislation is to establish rights for workers who perform digital platform work including a right to information, recurring pay period and pay day, minimum wage, notice of removal from an operator's digital platform, resolve disputes in Ontario, reprisal, director liability, complaints and enforcement.

Digital platform work is defined to mean the provision of for payment ride share, delivery, courier or other prescribed services by workers who are offered work assignments by an operator through the use of a digital platform.

This new legislation will come into force on a day to be named by the government.

4. *Occupational Health and Safety Act* (OHSA)

Bill 88 also amends the OHSA to require employers to provide naloxone kits and comply with related requirements if the employer becomes aware, or ought reasonably to be aware, that there may be a risk of a worker having an opioid overdose at a workplace where that worker performs work for the employer, or where the prescribed circumstances exist. This change will come into force on a day to be named by the government.

Other changes to the OHSA include that the increase of the limitation period of which a prosecution must be instituted from 1 to 2 years and raising maximum fines to directors and officers under the OHSA from $100,000 to $1.5 million for directors and officers of corporation and to $500,000 for other individuals, and implements a list of aggravating factors to be considered in determining a penalty. Many of those changes will come into force on July 1, 2022, although certain changes regarding service of order and decisions are in force effective April 11, 2022.

5. *Fair Access to Regulated Professions and Compulsory Trades Act, 2006*

Bill 88 also amends the *Fair Access to Regulated Professions and Compulsory Trades Act, 2006* to establish timelines within which regulated professions must respond to applications for registration from domestic labour mobility applicants unless an exemption is granted from the requirement. This amendment is in force effective April 11, 2022.

To plan for the implementation and integration of these changes into your workplace, contact a member of our Labour and Employment Group.

By

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