

# Ontario Employers Now Required to Have Written Electronic Monitoring Policies

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Under the *Working for Workers' Act*, every covered Ontario employer with twenty-five or more employees is now required to have a written electronic monitoring policy that complies with Part XI.1 of the *Employment Standards Act, 2000*.

The electronic monitoring rules do not limit how an employer may engage in electronic monitoring of Ontario-based employees; however, they require an employer to indicate the following in its written policy:

1. whether the employer engages in electronic monitoring;
2. if so, what form(s) of electronic monitoring the employer engages in and what circumstances it monitors employees; and
3. what potential use(s) the employer will make of the information that is gathered through electronic monitoring.

Part XI.1 of the *Employment Standards Act, 2000* does not define what “electronic monitoring” means. However, the Ontario Ministry of Labour, Immigration, Training and Skills Development’s [guidance](#) indicates that the policy should list “all forms of employee and assignment employee monitoring that is done electronically” and gives the examples of GPS tracking, electronic sensors, and tracking of websites/network traffic. The policy must cover monitoring conducted through electronic devices or equipment issued to employees as well as monitoring that occurs in the workplace (which could include home work spaces—e.g., monitoring employees who are accessing company networks from home computers or devices). Employers that do not engage in electronic monitoring must still have policies that expressly state that they do not engage in such activities.

Although an employer’s policy must indicate the purposes for which an employer may use the information gathered through electronic monitoring, the employer is not restricted to the uses of information listed in its policy. Nor does the Ministry of Labour, Immigration, Training and Skills Development have the ability to investigate complaints about whether the employer has complied with its policy on electronic monitoring. Employees may not file complaints with the ministry as to the

actual monitoring practices of their employers; complaints are limited to whether a policy was provided in compliance with Part XI.1.

An employer must provide employees with a copy of the policy as of October 11, 2022. In subsequent years, employees must be provided with a copy of the policy by March 1 of that year. The policy must note the effective date and the date of any updates. The law also requires an employer to keep a copy of the policy for three years from the date it ceases to be in effect.

As this is the first year that electronic monitoring policies are required by Ontario law, employers may want to be vigilant with respect to how employees react to the policy, as well as any updated guidance that may be provided by the Ministry of Labour, Immigration, Training and Skills Development.

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