



Ontario Government Addresses Gig Workers, Tracking Workers, and Other New Employment Law Changes

April 2022 Employer Alert

In the lead up to the provincial election, the Ontario Government continues to make changes to the employment laws. On April 11, 2022, *Bill 88, Working for Workers Act, 2022*, received royal assent. Further to Bill 88, the Ontario Government will enact, on a day to be proclaimed, the *Digital Platform Workers' Rights Act, 2022* (the "DPWRA"), which will establish various minimum rights, including minimum wage rights, for digital platform workers. The term digital platform workers includes both employees and contractors who provide ride-share, delivery, or courier services through apps.

In addition, further to Bill 88, the Ontario Government has amended the *Employment Standards Act, 2000* (the "ESA") to require employers with over 25 employees to establish an electronic monitoring policy. In addition, Bill 88 has amended the ESA to confirm that business consultants and IT consultants are exempt from coverage, provided certain considerations are met. Finally, further to Bill 88, the Ontario Government will be increasing the fines for convictions under the *Occupational Health and Safety Act* (the "OHS Act") and extending the deadline to commence prosecutions under the OHS Act.

Digital Platform Workers

In order to address so-called gig workers, as opposed to including

Authors

Christine Ashton
905-940-0526
cashton@wvllp.ca

Shalinee Malhotra
905-940-8005
smalhotra@wvllp.ca

Our Employment/Labour Lawyers



Christine Ashton



Daniel Condon



Doug Langley



Shalinee Malhotra

them within the scope of the ESA, the Ontario Government will be enacting the DPWRA. The DPWRA will apply to all workers (i.e. employees and contractors) who provide ride-share, delivery, or courier services through apps. Under the DPWRA, these workers will be entitled to various rights and protections including:

- The right to certain information, including how they may be assigned work, how work performance is assessed, and how and when they will be paid;
- The right to earn at least the ESA minimum wage when on a work assignment. Tips and gratuities may not be included when calculating the worker's minimum wage;
- The right to a recurring pay period and pay day;
- The right to 2 weeks' written notice, if the worker is removed off the app for more than 24 hours;
- The right to resolve, in Ontario, all work-related disputes; and
- The right to be protected from reprisal for exercising their rights.

The DPWRA will come into force on a day to be named by proclamation of the Lieutenant Governor.

Written Policy on Electronic Monitoring of Employees

Bill 88 has amended the ESA to add a new section detailing a requirement to have a written policy on electronic monitoring. Similar to the recently established obligation to have a disconnect policy (which was explained in our [previous emailer](#)), employers who employ 25 or more employees must have a written policy in regards to the electronic monitoring of employees. This policy must address how and in what circumstances an employer monitors employees, and their purpose for collecting information through electronic monitoring. This policy must be in place whether or not employees are monitored. The electronic monitoring of employees can include using IT system logs to monitor log-in and log-off times, using a mobile device app to track drivers, maintain records of internet browser usage on the company laptop, etc.

Employer who currently have 25 or more employees will have until October 11, 2022 to establish the written electronic monitoring policy. In contrast, the disconnect policy must be established by June 2, 2022. For employers who later grow to 25 or more employees, they will have until March 1st in subsequent years to establish an electronic monitoring policy.

Further specifics regarding the electronic monitoring policy may be provided by way of regulation or the Ministry of Labour's Policy and Interpretation Manual.

Business Consultants and IT Consultants

Bill 88 has amended the ESA to provide assurances to businesses retaining the services of a business consultant or an IT consultant, that the consultant is not an employee and is exempt from ESA entitlements. In particular, business and IT consultants will no longer have rights under the ESA if:

1. the consultant is incorporated or a sole proprietorship with a registered business name;
2. the consultant is paid at least \$60 per hour, as confirmed by an agreement; and
3. other requirements that may be established by regulation are met.

Higher Fines and More Time to Prosecute Under the OHSA

Bill 88 will amend the OHSA in regards to the fines that may be imposed. The amendments will increase the maximum fine for directors or officers of corporations from \$100,000 to \$1,500,000. The amendments will also increase the maximum fine for non-directors and non-officers from \$100,000 to \$500,000 for other individuals. Further, under the amended OHSA, there will be a list of aggravating factors to be considered by the Court when determining the appropriate penalty.

In addition, Bill 88 will extend the limitation period for commencing an OHSA prosecution. The amendments will allow the Ministry two years, instead of one year, to commence the

prosecution. The two-year limitation period starts on the later of: 1) the date of the alleged offence; and 2) the day on which an inspector becomes aware of the alleged offence. As such, if a Ministry of Labour inspector does not hear about a workplace accident for five years, then they will have seven years post-accident to commence a prosecution.

The amendments to the OHS Act will come into force on July 1, 2022.

In review of the above, employers and operators should take the time to identify the potential impact to their obligations. For strategic advice regarding addressing the above, including complying with the DPWRA, drafting an electronic monitoring policy, and addressing potential OHS Act prosecutions, **please contact our firm.**

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905.940.8700

information@wvllp.ca

60 Columbia Way, 7th Floor | Markham, Ontario | Canada L3R 0C9

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