



Information and Privacy
Commissioner of Ontario

Commissaire à l'information et à la
protection de la vie privée de l'Ontario

VIA ELECTRONIC MAIL

March 14, 2022

Natalia Kusendova
Chair of the Standing Committee on Social Policy
Legislative Assembly of Ontario
99 Wellesley Street West
Room 1405, Whitney Block
Queen's Park
Toronto, ON M7A 1A2

Dear Chair Kusendova:

RE: Schedule 2 of Bill 88, the *Working for Workers Act, 2022*

I am writing with reference to Schedule 2 of Bill 88, the *Working for Workers Act, 2022*, which relates in part to the electronic monitoring of Ontario workers by their employers.

On March 8, my office wrote to the Clerk of the Standing Committee on Social Policy of the Legislative Assembly (the "Committee") studying Bill 88 to indicate our interest in appearing and making submissions on this matter. As the Committee proceedings have not yet allowed for public input or submissions, and the window for input into the legislative process is fast closing, I am writing you to submit my views on Schedule 2 of Bill 88, and respectfully request that this letter be shared with members of the Committee.

If passed, the bill would amend the *Employment Standards Act* to require that employers with twenty-five (25) or more employees have a written policy on whether and how they monitor workers electronically. The policy would also have to explain the purposes for which an employer may use information that it collects through electronic monitoring. Employees would have a right to be provided with a copy of the policy, and could complain to the Minister of Labour, Training and Skills Development if their employer failed to provide it to them.

We understand the policy intent of Schedule 2 is to protect workers' privacy in a world where the future of work is changing. According to the government's news release announcing Bill 88, requiring employers to be transparent about the ways they monitor employees will help "ensure workers remain in the driver's seat" ([Ontario Requiring Employers to Disclose Electronic Monitoring, February 24, 2022](#)).

The purpose of Schedule 2 is to shine a light on the increasing level of electronic surveillance by employers, particularly since the pandemic has driven many of their employees to work remotely now and for the foreseeable future. By requiring certain employers to have and provide copies of their electronic monitoring policies, Bill 88 is a good first step to help Ontarians better understand their employers' monitoring practices. However, the bill, in its current form, has significant limitations. Employees who complain to the Minister on grounds that they did not receive a copy



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of their employer's electronic monitoring policy, cannot have their complaint investigated. Employees cannot file a complaint about the contents of the policy or their employer's non-compliance with the policy. More significantly, nothing in the bill would restrict an employer's ability to use, for any purpose whatsoever, the information collected through this monitoring, and the bill does not provide workers with any protections from overly-invasive or unreasonable electronic surveillance by their employers.

In the longer term, electronic workplace monitoring should be governed by a more comprehensive Ontario privacy law, similar to the one proposed last year in the government's white paper on [*Modernizing Privacy in Ontario: Empowering Ontarians and Enabling a Digital Ontario*](#), and similar to existing privacy laws in British Columbia, Alberta and Quebec that already extend privacy protection to employees. Such a law should set out the minimum requirements of employer privacy policies as well as their limits, establish a complaint and investigation mechanism for non-compliance with such policies, and allow employees to seek meaningful redress if they are affected by breaches of those policies.

Until then, even if Bill 88 does not yet have strong teeth, it should at least be given better eyes, ears, and voice.

To better support its policy objective of enhancing transparency and protecting workers' privacy, Bill 88 should be amended to require provincially-regulated employers with 25 or more employees to submit a copy of their electronic monitoring policy to my office. Since Bill 88 already requires these employers to have and retain such a policy, the obligation to provide a digital copy to my office would create minimal extra burden. Yet this small incremental measure could significantly enhance organizations' levels of transparency and accountability. Bill 88 should enable the IPC, as an independent Officer of the Legislature, to examine the policies it receives, identify emerging trends, provide education and best practices, and report to the legislature from time to time on matters relating to the state of privacy and electronic monitoring of workers in Ontario.

This proposed amendment would lead to a body of knowledge that could help Ontarians, employers, and lawmakers choose a wise path forward amid new technological possibilities and evolving work arrangements. It could also help inform the development of future regulations under the bill. On this latter point, I note that the new regulation-making authority included in Schedule 2 would allow the Lieutenant Governor in Council to prescribe, among other things, additional requirements for electronic monitoring policies, terms or conditions of employment related to electronic monitoring, and prohibitions related to electronic monitoring.

At the very least, Bill 88 should make it clear that no other provision of law, contract, or condition of employment may prevent employers and employees covered by the law from sharing, discussing, or consulting on the contents of electronic monitoring policies with my office. Moreover, the bill should explicitly provide that my office may use any general information it receives about electronic monitoring policies for the purpose of reporting to the legislature from time to time. Otherwise, a law meant to bring electronic workplace surveillance practices to light could be frustrated by countervailing attempts to keep them secret.

In the spirit of openness and transparency, I am providing a copy of this letter to the Minister of Labour, Training and Skills Development, as well as the Deputy Minister, and will be posting this letter on my office's website.

Thank you for receiving my comments on Bill 88 and I would be pleased to answer any questions Committee members may have.

Sincerely,

A handwritten signature in black ink, appearing to read "Kosseim". The signature is stylized with a large initial "K" and a long horizontal stroke at the end.

Patricia Kosseim
Commissioner

cc: Hon. Monte McNaughton, Minister of Labour, Training and Skills Development
Mr. Greg Meredith, Deputy Minister of Labour, Training and Skills Development
Ms. Vanessa Kattar, Committee Clerk, Standing Committee on Social Policy