



Committee of the Whole

Meeting Date: September 27, 2022

Submitted by: Jessica P. Ngai, Director of Human Resources

Subject: ELECTRONIC MONITORING POLICY – HR POLICY 1.17

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”). Bill 88 established a requirement for employers with 25 or more employees in Ontario to prepare a written “electronic monitoring” policy.

Employers with 25 or more employees as of January 1, 2022 have until October 11, 2022 to have a written policy in place with respect to “electronic monitoring” of employees. The requirement for a written policy on “electronic monitoring” applies to all employees and employers covered by the ESA except the Crown, a Crown agency or an authority, board, commission or corporation whose members are all appointed by the Crown and their employees.

ANALYSIS:

The County values trust, discretion, and transparency and believes employees deserve to know when and how their work is being monitored. The proposed policy has been established in compliance with Bill 88 to advise employees on County practices relating to electronic monitoring of employees.

The ESA does not define “electronic monitoring”; however, the proposed policy refers to electronic monitoring as to the practice of collecting user activity data on company-owned computers, networks, and other IT infrastructure. This data includes, but is not limited to, facility access card monitoring, electronic employee time tracking, video surveillance, web browsing history, files downloaded, data input, network traffic, logons to corporate systems, interactions with data, peripheral (printer, mouse, keyboard, external drive) device usage, and information about the employee’s computer.

Bill 88 sets out that the written policy must state whether or not the employer electronically monitors employees, and if the employer does, the policy must include:

- a description of how and in what circumstances the employer may electronically monitor employees;
- the purposes for which the 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.

It is important to note that the requirement under the ESA does not establish a right for employees not to be electronically monitored by their employer nor does it create any new privacy rights for employees.

Bill 88 also amends the ESA to include a requirement that employers must provide a copy of the written policy to its employees within thirty (30) calendar days of:

- the policy being prepared;
- the policy being changed (if an existing policy is changed); and
- new employees being hired.

Employees are limited on filing complaints with respect to the employer's written policy on electronic monitoring. Employees can only file a complaint to the Ministry of Labour, Training and Skills Development, where there is an alleged contravention of the County's obligation to provide a copy of the written policy to its employees within the required timeframe as set out in the ESA.

The County is required to retain a copy of every written policy on electronic monitoring for three (3) years after the policy was no longer in effect.

FINANCIAL IMPLICATIONS:

There are no financial impacts resulting from this proposed policy.

RECOMMENDATION:

THAT the Electronic Monitoring Policy, HR Policy 1.17, be approved, and that the Corporate Administrative Policy and Procedure Manual be updated.

Attachment:

1. Proposed Electronic Monitoring Policy (HR Policy 1.17)