

THE RIGHT TO **DISCONNECT** COMES TO ONTARIO

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With the accelerated growth of digital and mobile technologies, some employers may expect their employees to stay connected outside of working hours. Or some workers may feel they cannot ignore after-hours messages.

To ensure labour laws keep pace with technological advancements, the Ontario government passed **Bill 27, Working for Workers Act, 2021**, on December 2, 2021, which includes an obligation for employers with 25 or more staff members to have a written policy for disconnecting from work in place by June 2, 2022. Ontario is the first province to legislate a “Right to Disconnect” in Canada.

As employers in Ontario prepare to meet the policy deadline, many questions remain to be answered: What should the policy include? To whom will it apply? How will it be enforced? To provide some initial guidance, let’s consider what France’s experience has been with similar legislation.

The Right to Disconnect in France

In 1996, France enacted the right to disconnect to protect employees from being penalized for not checking and answering emails, phone calls and texts after hours (evenings, weekends, vacations, etc.), as French policymakers considered it a health and safety concern. (See section L2242-17 of France's *Code du travail*.)

The right to disconnect applies to all employees, specifically executives and management staff, itinerant or non-sedentary employees, as well as teleworking employees. It is primarily designed to protect knowledge workers who, unlike a mechanic or plumber for instance, may have very little separation of their home and workplace, and are more likely to have a smartphone that they can consult every day and at any time.

The French law does not specify what procedures employers must implement, and there is no standard or minimum requirement. This means that it is up to each organization (employees and employers) to determine the arrangements that best suit their needs and business operations. There is, however, the obligation for employers to enter into collective bargaining with unions to try to agree on processes governing off-hours connection.

To comply, some organizations prohibit their staff from responding to communications after a certain time of day, while others set up IT systems that block the transmission of emails outside working hours. However, such solutions may be problematic for companies with small workforces, that hire night-time staff or that operate in different time zones.

More Countries Recognize This Right

Other jurisdictions are following in France's footsteps. Several other countries in the European Union passed legislation providing a framework for the right to disconnect (Belgium, Italy and Spain), while others have adopted specific measures as part of a telework law (Czech Republic, Lithuania and Poland). Portugal introduced legislation that employers have the duty to refrain from contacting workers during their rest period, except

in situations of force majeure, and Ireland brought in a code of practice on the right to disconnect for all workers, where complaints can be brought to a workplace dispute board. In Germany, while there is no legal right, several multinationals have policies in place.

The right to disconnect may soon become the norm in Europe. In January 2021, the European Parliament passed a resolution in favour of the right, calling on the European Commission to draw up a directive on the issue.



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No One-Size-Fits-All Policy

Whether the right to disconnect is established in a code of conduct or enforced by law, there are certain practical challenges that employers must face. A one-size-fits-all policy, especially with measures such as blocking access to email accounts after working hours, may be detrimental, as it does not take into consideration the flexibility that some employees may want or need. It may also prevent organizations from building a more diverse workforce, as they may not be able to meet the needs and expectations of different groups. In addition, blanket rules would not take into account the unique circumstances of each organization, such as the types of workers, business activities and office locations.

While we wait for specific guidance from the government, employers with 25 or more employees in Ontario may wish to start considering what a “Disconnect from Work” policy will look like for their organization. This would also be good practice for employers in other Canadian jurisdictions if this trend catches on like it has in Europe. ■