

Federal Advisory Committee Offers Insight into Disconnect from Work Policies for Employees

February 16, 2022

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The COVID-19 pandemic has blurred the line between work and home life for many employees. Disconnecting from work has in turn become significantly more difficult. In response, some governments, in Canada and abroad, have legislated a legal “right to disconnect” that seeks to, among other things, allow employees to not attend to work matters outside working hours.

In November 2021, as we discussed [here](#), the Ontario legislature passed the *Working for Workers Act, 2021* (the “**Act**”) which amended, among other employment-related statutes, the *Employment Standards Act, 2000* by requiring employers in Ontario with 25 or more employees as of January 1st of any year to implement, before March 1st of that year, a written policy in place for all employees with respect to disconnecting from work.

The Act defines “disconnecting from work” as “not engaging in work-related communications, including emails, telephone calls, video calls or the sending or reviewing of other messages, so as to be free from the performance of work.” An example of what a policy could include is an expectation about response time for emails and encouraging employees to turn on out-of-office notifications when they are not working. However, beyond a requirement that certain employers must develop a policy regarding disconnecting from work, the Act does not set out the required content of such policies.

In 2019, the federal Minister of Labour developed the Right to Disconnect Advisory Committee (the “**Committee**”) to help inform right to disconnect policies for federally regulated workers. Earlier this month, the Government of Canada published the Committee’s *Final Report of the Right to Disconnect Advisory Committee* (the “**Report**”). Below is a non-exhaustive overview of the Report. The full report can be accessed [here](#).

Overview of the Report

The Committee heard from a range of stakeholders, and discussed an approach to the right to disconnect, with a goal to:

- provide employees with boundaries on the use of workplace communications devices outside of standard working hours;
- provide clarity on what is working time and what is not, including considerations for waiting for an employer to assign work (on-call/standby) and checking communications;
- provide details on the workplace procedure for emergency situations where workplace communication devices may need to be used outside of these hours; and
- outline situations where employees (or groups of employees) are expected to regularly be available through workplace communications devices due to operational requirements.

What is clear from the Report is that there “was a substantial divergence on how the government should proceed” with respect to policies. In particular, there was disagreement about whether the right to disconnect should be legislated. Unions and non-

governmental organizations, for instance, favoured a legislative requirement for workplaces to establish right to disconnect policies. The concern for those in favour of a legislative requirement was that absent legislation, workers would be penalized for disconnecting when exercising their right to rest periods. Furthermore, unions and non-governmental organizations recommended that a statutory right to disconnect should be accompanied by a legislative definition of deemed work on the basis that these two issues are related.

The employers who were consulted, on the other hand, recommended that a legislative or regulatory requirement should not be adopted. Instead, parties should be encouraged to develop policies to ensure proper work-life balance for employees. Employers considered the existing protections in the *Canada Labour Code* to be sufficient, and that workplace parties are capable of addressing any negative impacts of communications technologies within those frameworks, at a workplace level. In particular, employers recommended that any consideration of the right to disconnect should take into account the need for employer flexibility so as to not hamper an employer's ability to conduct business with provincially regulated companies or international firms that may not be subject to the same rules. The employers also recommended that a definition of deemed work should not be introduced since the definition of deemed work is a separate issue that should be addressed through its own consultative process.

Notwithstanding the "substantial divergence," the Committee agreed on the following recommendations:

- employees should be paid for work performed;
- establishing a positive work-life balance is a key goal of both employers and workers;
- there is a need for flexibility for both workers and employers;
- there is a need to protect health and safety, and there are some situations where communication with employees is critical;
- there is a need to recognize existing arrangements, such as collective bargaining relationships;
- absolute limits (such as shutting down email servers or network access) may not be realistic in some situations;
- there is a need to recognize the varied nature of the federal jurisdiction;
- there is a need for clarity in whatever is implemented; and
- there is a need to protect the privacy and security of workers.

It remains to be seen whether the Government of Canada will implement any legislative measures for federally regulated employees as a result of the Report. In a [news release](#), the Government stated that it is "considering all recommendations made by the Committee and intends to bring forward a plan for a right-to-disconnect policy in Canada." It also remains to be seen whether the guidance, if any, the Ontario government provides to employers regarding written policies on disconnecting from work will be based on, or mirror, any of the recommendations arising in the federal employment context.

Takeaway for Employers

As the Report shows, any implementation of policies is challenging given the different interests and unique needs of various stakeholders. Nonetheless, employers should be familiar with the existing requirements under the applicable employment standards legislation that provide employees with time off from work, and should continue to stay on top of any developments to ensure compliance with applicable legislation.

WeirFoulds has developed a flexible and targeted **Employer Compliance Audit Program** to assist employers with their efforts to achieve and maintain compliance with their obligations under the applicable employment laws and regulations including obligations regarding time off work. For more information about the Employer Compliance Audit Program, please contact Daniel Wong, Partner and Chair of WeirFoulds' Employment Law Group.

The information and comments herein are for the general information of the reader and are not intended as advice or opinion to be relied upon in relation to any particular circumstances. For particular application of the law to specific situations, the reader should seek professional advice.

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