

Bill 27 Update: Disconnecting from Work Policy Requirements

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On December 2, 2021, the Ontario provincial government enacted Bill 27, which amends Ontario's *Employment Standards Act, 2000* (ESA) to require employers with 25 or more employees as of January 1, 2022, to have a written policy on disconnecting from work by June 2, 2022. (Previously discussed here.)

With the deadline approaching, employers have struggled to determine what exactly their disconnecting from work policy should say as Bill 27 does not stipulate any requirements for the content of the policy. Bill 27 only requires employers to have such a policy and to provide a copy of the policy to each of its employees within 30 days of preparing it or, if an existing policy is changed, within 30 days of such change. Employers must also provide the policy to each new hire within 30 days of their start date.

To assist employers in developing their disconnecting from work policies, the Ministry of Labour (MOL) recently released a helpful guide, which provides some clarity on the MOL's views respecting the policy's content.

Notably, the MOL confirms that the policy must apply to all employees in Ontario, but that the employer determines the content of the policy. The policy simply needs to be about disconnecting from work. Employers are not required to provide employees with any new right to disconnect from work. To that end, the guide states:

The term “disconnecting from work” is defined in the ESA to mean not engaging in work-related communications, including emails, telephone calls, video calls or sending or reviewing other messages, to be free from the performance of work.

However, the ESA does not require an employer to create a new right for employees to disconnect from work and be free from the obligation to engage in work-related communications in its policies. Employee rights under the ESA to not perform work are established through other ESA rules.

The “other ESA rules” include the provisions in the ESA respecting hours of work, eating periods, vacation, public holidays, and the rules in Ontario Regulation 285/01 that establish when work is “deemed” to be performed.

Other notable key takeaways from the guide include:

- In determining whether the 25-employee threshold has been met, employers must count all employees, including full-time, part-time, and fixed-term employees as well as employees on leave or layoff (but not workers assigned by a temporary help agency).
- Employers with multiple locations in Ontario must count all Ontario employees to determine whether the 25-employee threshold has been met.
- Employers with less than 25 employees on January 1 are not required to implement a disconnecting from work policy that calendar year, even if the number of employees increases to 25 or more employees later in that same calendar year. However, employers with 25 or more employees on January 1 are required to implement a disconnecting from work policy that calendar year, and cannot rescind the policy that calendar year, even if the number of employees decreases below 25 employees later in that same calendar year.
- The disconnecting from work policy can be a standalone document or it may be included within a broader employee handbook.
- An employer can have different “disconnecting from work” standards for different levels of employees, positions, departments, locations, etc.
- Employees can be provided with a hard copy of the policy or a digital copy (communicated, for example, by way of email attachment or company intranet). Employers that provide employees with a digital copy must ensure their employees have a reasonable opportunity to access the document and a printer (and know how to use the computer and printer).

It is important to remember that the guide does not have the force of law. However, guides published by the MOL are persuasive and are often followed by enforcement officers when they interpret the ESA.

If you have any questions about how to implement your organization’s “Disconnecting from Work” policy, do not hesitate to contact any member of our Employment & Labour Group.

This publication is a general summary of the law. It does not replace legal advice tailored to your specific circumstances.