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Ontario's Right to Disconnect Law

Overview

On December 2, 2021, *Bill 27: Working for Workers Act, 2021* received royal assent and became law in Ontario.

The law created a new obligation for Ontario employers, that employ 25 or more workers, to implement a written disconnecting from work policy by **June 2, 2022**, and to provide a copy of the written policy to all employees.

Background

In the [Employment Standards Act, 2000](#) (ESA), the term “disconnecting from work” is defined as “not engaging in work-related communications, including emails, telephone calls, video calls, or sending or viewing other messages, to be free from the performance of work.”

The legislation requires employers with more than 25 employees to have a written policy on disconnecting from work.

The policy must include the date it was prepared or the date any changes were made to the policy. Employers are required to keep a record of the policy on disconnecting from work for three years after it is no longer in effect.

Key Considerations

- Only employers that employ 25 or more employees in Ontario on January 1st of any year are subject to the obligation
- When an employer has multiple locations, all employees employed **in Ontario** must be included, and the 25-employees threshold can be met when all employees in different locations in the province are counted
- Two or more employers can be counted as one employer in certain circumstances under the ESA
- All employees who meet the definition of “employee” are to be counted, such as employees on specific task contracts of any length, [some](#) trainees and homeworkers
- If, in January, the employer has fewer than 25 employees in Ontario, then the ESA doesn't require a written policy. This is the case even if the employer's employee count increases throughout the same calendar year

- If the number of employees decreases from 25 at a later point in the calendar year, the employer is still obliged to have a written policy in place
- The copy of the written policy (either a new one or an existing policy that **needed** change) to employees must be provided within **30 calendar days**
- To new employees, a copy of the written policy must be provided within **30 calendar days** from the day they are hired
- The written policy must apply to all employees (including management and executives); this doesn't mean that the employer is required to have the same policy for all employees
- Employers must retain a copy of every written policy on disconnecting from work for three years after the policy is no longer in effect

Concerns

- Disconnecting from work policy can conflict with flexible hours that are of higher importance to people with families and who work from home
- Since employers can determine the content, there is no guarantee that the law would bring identical results for different companies
- In its current form, enforcement of the law is weak, and there are limited enforcement powers if employers ignore their right to disconnect policies

Policy Recommendations

- The legislation itself doesn't provide clear guidance on what must be included. As an employer, you need to be cautious when developing your policies keeping in mind the needs of your business and the well-being of your employees
- The legislation recognizes special rules and exemptions about working hours in the *ESA* for construction and related industries, and employers must put them into consideration when creating their written disconnecting from work policy

Resources

Ontario <https://www.ontario.ca/document/your-guide-employment-standards-act-0/written-policy-disconnecting-from-work>

For more information, contact us at policy@opencircle.ca.