



March 2022

Disconnecting from Work Policy - Government of Ontario Provides Guidance

By Gillian Howe

On December 2, 2021, the Government of Ontario enacted Bill 27, *Working for Workers Act, 2021*, which, amongst other legislative changes, amended the Ontario *Employment Standards Act, 2000* (the “**ESA**”) to establish a requirement for employers with 25 or more employees in Ontario to prepare a written policy addressing “disconnecting from work”.

The Ministry of Labour, Training and Skills Development (the “**Ministry**”) has now provided some guidance on the scope of the new policy requirements and their practical application in the workplace.

Which Employers are Obligated to Have a Policy?

Any employer that employs 25 or more employees **in Ontario** on January 1 of each calendar year are obligated to have a policy.

To determine the number of employees an employer has on January 1, an employer must count all its employees in Ontario, regardless of how many hours they work, including, for example, casual employees and part-time employees. Therefore, an employer must determine whether it meets the 25-employee threshold by counting its employees, **not** its full-time equivalents.

Further, anyone who meets the definition of an “employee” under the ESA must be included in the count, including, for example, employees on probation, layoff, leaves of absence, defined term or task contracts, and certain trainees.

An employer that has multiple locations, must use the total number of employees it employs across all its locations in Ontario, to determine whether it meets the 25-employee threshold.

Employers using assignment employees of temporary help agencies do **not** include the assignment employees of such temporary help agencies in their count to determine whether they meet the 25-

employee threshold. Instead, assignment employees are considered employees of the temporary help agency and are included in the agency's count to determine whether it meets the 25-employee threshold.

Which Employees Does the Policy Apply to?

The disconnecting from work policy requirements apply to all employees of an employer in Ontario (including, for example, executives, managers, and/or shareholders who are also employees).

However, an employer is not required to have the same policy for all its employees. An employer can prepare one policy that applies to all its employees, or it can prepare different policies for different groups of employees or different employment positions within its organization.

What is the Scope of the Policy Requirements?

It is important to be aware that the disconnecting from work policy requirements do **not** create a *right* for employees to disconnect from work, and do **not** require that a disconnecting from work policy set out a right for employees to not perform work at certain times or engage in work-related communications.

The rights of an employee to not perform work continue to exist under other provisions in the ESA and Ontario Regulation 285/01 (for example, hours of work, eating periods, vacation, public holidays, etc.), subject to the exemptions provided for in the ESA and Ontario Regulation 285/01.

In preparing a disconnecting from work policy, employers should be cautious of and avoid including language in the policy that gives an employee the right not to perform work when such work would otherwise be permitted or required to be performed under the ESA.

What Must Be Included in the Policy?

A policy must: 1) address "disconnecting from work" as defined in the ESA 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"*; 2) set out the date that the policy was prepared; and 3) set out the date of any revisions to the policy.

The Ministry has stated that other than these requirements, the employer determines the content of the policy itself.

A written policy on disconnecting from work may be in the form of its own separate document or it may be included as part of another employment document (for example, employee handbook or employment policies manual).

What May Be Included in the Policy?

The Ministry has provided the following examples of matters a disconnecting from work policy **may** address:

- An employer's expectations regarding reading and responding to work-related communications outside of regular working hours.
- An employer's expectations depending on different situations, such as the time of day of a communication, the subject matter of the communication or who is contacting the employee.
- An employer's requirements for employees regarding setting out-of-office notifications and voicemail messages.

What is the Deadline for Compliance?

Any employers that meet the 25-employee threshold on January 1, 2022, have until June 2, 2022, to prepare and implement a written policy on disconnecting from work.

Beginning in 2023, and each subsequent calendar year, employers that meet the 25-employee threshold on January 1 of the applicable calendar year, must comply with the policy requirements before March 1 of that calendar year.

A copy of an employer's written disconnecting from work policy must be provided to employees within 30 calendar days of being prepared or revised, and if the employee is a new hire, within 30 days of hire.

If you have questions about the disconnecting from work policy requirements and their application to your business, or require assistance in preparing a disconnecting from work policy suitable for your workplace, please contact any member of our Employment & Labour Law Group.

Author

Gillian Howe
Associate

Tel: 416 777 5424
ghowe@torkinmanes.com

The issues raised in this publication are for information purposes only. The comments contained in this document should not be relied upon to replace specific legal advice. Readers should contact professional advisors prior to acting on the basis of material contained herein.