

How to Create an Employee Right to Disconnect Policy



Giving employees the right to disconnect will soon be mandatory in Ontario.

Achieving a balance between life and work is getting harder all the time. With labour in short supply, employees are being pressured to work longer hours; and as technology and telecommuting blur the lines between work and home, employees are never truly off duty even outside of their normal work hours. Consequently, a new kind of employment standard law is coming into vogue, one that gives employees the right to be free of all work communications when they're off-duty. While Ontario is the first to adopt "right to disconnect" laws, many jurisdictions are considering passing laws of their own. Even if it's not required, giving employees a right to disconnect could provide a significant boost to recruitment, retention and morale.

The starting point is to adopt a written right to disconnect policy. Here are the 6 things such a [policy](#) should include.

Bill 27: The New Right of Ontario Employees to Disconnect

The groundbreaking new right of employees to disconnect is contained in a larger piece of pro-employee Ontario legislation called the *Working for Workers Act, 2021* (Bill 27) that's working its way through the Assembly. Specifically, Bill 27 requires employers with 25 or more employees to have and provide all employees a written policy "with respect to disconnecting from work." If and when the law passes, the MOL will have to create regulations explaining what information the policy must contain.

1. Clear Definition of "Right to Disconnect"

Disconnect rights are a novel concept and the first thing your policy needs is a clear definition of what it means for an employee to disconnect from work. If you're in Ontario, you should track the definition of "disconnecting from work" contained in Bill 27 as meaning "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" outside of normal working hours. Our template also specifies that employees also have the right to literally disconnect by turning off any company-provided tablets, phones and other handheld devices (Policy, Sec. 3).

The policy should also include language indicating that employees won't be expected to return any work-related calls or communications or meeting invitations received outside of normal working hours (Policy, Sec. 5).

2. Duty of Others to Respect Disconnect Rights

Giving employees the right to disconnect won't work unless the policy also requires others to respect that right by: i. Being aware of employees' normal working hours; and ii. Refraining from seeking to engage or communicate with employees outside those normal working hours. Such obligations should apply not just to the company and managers, (e.g., in ensuring that clients and customers don't call employees during disconnect time) but also the employees' co-workers (Policy, Sec. 4).

3. Enforcement Responsibilities of Managers

The policy should also include mechanisms for enforcing disconnect rights and holding those who don't respect them accountable. In Germany, where all employees have a statutory right to disconnect, some employers like Volkswagen and Porsche have installed software programs that prevent email servers from sending emails to mobile phones during certain hours. Other potential technological solutions may include automatic reminders or warning messages to users seeking to send emails after hours that they're non-compliant with the policy, delays on emails sent at night so that they're only delivered in the morning, or effective out of office messages that also list who should be contacted in the employee's absence. A less technical approach is to rely on employees' managers to play the leading role in enforcement by:

- Directly asking employees if they feel their disconnecting rights are being respected;
- Monitoring the email and phone records of other employees to determine if they're seeking to contact co-workers during disconnect time; and
- Holding employees who don't respect co-workers' disconnect rights accountable

(Policy, Sec. 4.2).

4. Responsibilities of Disconnecting Employees

The policy should also establish ground rules for employees to follow while exercising their disconnect rights, such as programming automatic reply messages. For vacations, family leaves and other absences expected to last a long time, the reply message should provide the start and end date and notify the sender that the employee will return the message when he/she returns. For nights, weekends and other normal absences, the automatic reply message need only list the employee's normal working hours and a promise to reply later (Policy, Sec. 6).

Strategic Pointer: Overriding Business Need to Connect with Disconnected Employees

Some of the European countries that give employees the right to disconnect make exceptions for certain communications of overriding business importance, such as checking an employee's availability to fill in at short notice for a sick colleague, emergencies and other unforeseeable circumstances. The problem is that Bill 27 doesn't provide for any exceptions—although the implementing regulations to come might. So, if you're in Ontario, you can't incorporate these exceptions into your own disconnect policies. However, you can do so if you're subject to another jurisdiction where disconnect policies are best practice rather than

mandatory.

5. Protection Against Retaliation

Employees may be hesitant to exercise or even ask about their disconnect rights if they think it could get them into trouble with their bosses. Accordingly, the policy should include a provision assuring employees that they won't get terminated, disciplined, docked in pay or suffer any other unfavourable employment treatment in retaliation for actually using their disconnect rights. Conversely, employees should also know that they won't be rewarded for remaining in touch during disconnect time in case they feel pressure to engage "voluntarily" (Policy, Sec. 7).

6. Monitoring & Follow-Up

As with any other HR policy, you should monitor the effectiveness of your disconnect policy. Methods you can use to do that include use of performance metrics and employee surveys. Be sure to follow up and take actions to correct any policy problems you identify (Policy, Sec. 8).