

If Not Now Then Soon: Federal Updates Coming On The Right To Disconnect, Paid Medical Leave, And Bereavement Leave



The federal government recently published its Final Report on the Right to Disconnect. While federal legislation regarding the right to disconnect is yet to be tabled, the government has engaged with federally regulated employers on how best to implement a mandate on this issue.

Additionally, Bill C-3, *An Act to Amend the Criminal Code and the Canada Labour Code* (“Bill C-3”), received Royal Assent on December 17, 2021. We previously [summarized Bill C-3 when it was at third reading](#). Bill C-3 provides for new paid medical leave and bereavement leave entitlements.

We have provided a brief summary of these federal updates, along with next steps for federally regulated employers as they relate to the Final Report on the Right to Disconnect and Bill C-3.

Report on the Right to Disconnect

Background

With the increase in employees working from home over the past two years and the blurring of boundaries between work and home life, governments are turning their attention to employee work life balance and the importance of disconnecting from work. Ontario’s [Bill 27: Working for Workers Act 2021](#), which we have [written about](#) in this blog, was the first of this kind of legislation in Canada and requires provincially regulated employers in Ontario with 25 or more employees to have a written policy on the right to disconnect by June 2, 2022.

The federal government is now following suit with its recent publication, the [Final Report on the Right to Disconnect Advisory Committee](#) (the “Report”). We have provided key takeaways and recommendations from the Report below, along with an outline of next steps for federally regulated employers.

Final Report

The Right to Disconnect Advisory Committee (the “Committee”) undertook consultations with federally regulated employers, unions, and other non-government organizations

throughout 2021 and issued the Report in February 2022. The Report includes a series of recommendations to the federal Minister of Labour from the different employer perspectives on the Committee. The Report notes a number of points of commonality among the Committee members, including that:

- employees should be paid for work performed;
- establishing a positive work-life balance is a key goal of both employers and employees;
- there is a need for flexibility for both employees 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 employees.

Areas where the unique perspectives of the Committee members diverged included with respect to the extent to which the federal government should intervene in addressing the issue of disconnecting from work. While unions and other non-government organizations recommended a robust legislative requirement that employers implement a right to disconnect policy, employer groups expressed the view that the federal government should not do so as the *Canada Labour Code* (“CLC”) already has ample provisions related to hours of work (we pause to note that the latter approach has been followed in Ontario). Employer groups also emphasized the need for the federal government to recognize that every workplace is different and expressed the view that a one-size fits all approach is not practical.

Next Steps

The federal government is considering the recommendations made by the Committee. While there is currently no legal obligation on federal employers to introduce a right to disconnect policy, the Report indicates that it is likely that formal guidance will be coming soon. In the meantime, similar to the exercise we recommended for Ontario prior to Bill 27 coming into effect, federal employers should consider what a disconnecting from work policy could look like for their workplace taking into account, for example, the nature of work arrangements (e.g., in-person, remote, hybrid), the composition of the workforce (e.g., hourly or salaried/professional etc.), and the nature of their business.

Amendments to the Canada Labour Code (Coming Soon)

Background

The federal government’s Bill C-3 received Royal Assent on December 17, 2021. However, the legislation has not yet come into force, meaning that it is not yet effective. The federal government is currently engaging in consultation with federally regulated employers with respect to the implementation of paid sick leave, and we will keep readers posted with any updates in this regard. We [previously reported on Bill C-3](#) in December 2021, before the legislation passed.

Bill C-3 provides for paid medical leave and bereavement leave, as described below.

Medical Leave

Bill C-3 amends the CLC to provide for 10 days of paid medical leave for federally regulated employees. The actual number of days that an employee is entitled to will depend on the length of their continuous employment:

- after 30 days of continuous employment with an employer, employees are entitled to a minimum of 3 days of paid medical leave;
- after 60 days of continuous employment, at the beginning of each month, the employee will earn 1 day of paid medical leave, up to a maximum of 10 days per year; and
- in each subsequent calendar year, at the beginning of each month, the employee will earn 1 day of paid medical leave, up to a maximum of 10 days per year.

Employers may require an employee to provide a certificate issued by a healthcare practitioner certifying that the employee was incapable of working for the period of their medical leave of absence where the employee has been absent for at least 5 consecutive days.

Bereavement Leave

The bereavement provisions of the CLC were amended earlier in 2021 to extend bereavement leave by 5 unpaid days, totalling 10 days of bereavement leave with the first 3 days being paid, provided that the employee has 3 continuous months of employment with the employer. These amendments came into force on September 29, 2021.

Bill C-3 further amends the bereavement leave provisions of the CLC by providing for a leave of up to 8 weeks if an employee has experienced the death or still birth of their child or their spouse or common-law partner's child. This leave may be taken during the period that begins on the day of the death or stillbirth and ends 12 weeks after a funeral, memorial, or burial, whichever is later.

Key Takeaways for Employers

While Bill C-3 has received royal assent, the amendments to the CLC are not effective until a date to be determined by order of the Governor in Council. At this time, we do not know when Bill C-3 will become effective however we will update readers as soon as more information is available as to its progress.

Once Bill C-3 is effective, federal employers will be required to provide employees with up to 10 days of annual paid medical leave, in addition to the 3 days of annual paid personal leave and 2 days of annual unpaid personal leave already provided for in the CLC. Federal employers should be prepared for these changes by working with payroll and unions, if any, to make any required adjustments to their payroll practices and (potentially) collective agreements. Employers should also consider reviewing their employment agreements templates and workplace policies to ensure that they are consistent with the new legislation once it becomes effective.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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