



Recent Amendments to the Employment Standards Act, 2000 Mean New Obligations for Employers

June 28, 2022

Bill 27, the *Working for Workers Act, 2021*, received Royal Assent on December 2, 2021. Bill 27 included various amendments to the *Employment Standards Act, 2000* (“ESA”), including the obligation to put a written policy on disconnecting from work in place by June 2, 2022.

Additionally, Bill 88, the *Working for Workers Act, 2022*, received Royal Assent on April 11, 2022. The change most notable for municipal employers is the requirement for employers to disclose their electronic monitoring practice with respect to employees. The amendments also exempt certain business and information technology consultants from the ESA, and provide for the availability of reservist leave for employees participating in Canadian Armed Forces military skills training.

The key aspects of the above legislative changes are discussed in more detail below.

Disconnecting from Work Policy

The requirement to put a written disconnecting from work policy in place applies to employers with 25 or more employees. The initial deadline was June 2, 2022 for those employers who had 25 employees as of January 1, 2022. After 2022, the deadline will be before March 1 of each year, for those employers who have 25 or more employees as of January 1 of that year.

“Disconnecting from work” is defined in the legislation 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.” The Ministry of Labour has indicated that other forms of work-related communications not specifically listed may also fall under the definition.

The provisions also do not specify the content of the policy. While policy contents may be outlined by regulation, as of the date of writing, there is no such regulation. Employers should therefore consider factors such as the needs and nature of their business, their workplace culture, and the duties of employees in order to determine the appropriate policy. Employers can have multiple policies, if the requirements differ with respect to different employees. Employers should also consult the [guidance](#) published by the Ontario Ministry of Labour with respect to written disconnecting from work policies.

It is important for employers to understand that the legislative requirements do not create a “right to disconnect,” although the legislation has widely been described in that manner. Since the legislation



does not create a “right to disconnect,” employers should be cautious in their policy wording not to give employees a right not to perform work when the ESA would otherwise permit it.

For more detail on these requirements, and on the potential contents of such a policy, please consult our most recent [Focus Alert](#) on the topic.

Electronic Monitoring Policy

Bill 88 requires employers with 25 or more employees to put in place a written policy for all employees with respect to electronic monitoring of employees. The policy must contain the following information:

1. Whether the employer electronically monitors employees and if so,
 - A description of how and in what circumstances the employer may electronically monitor employees; and
 - The purposes for which information obtained through electronic monitoring may be used by the employer;
2. The date the policy was prepared and the date any changes were made to the policy; and
3. Such other information as may be prescribed.

The requirement does not affect or limit an employer’s ability to use information obtained through electronic monitoring of its employees.

Employers with at least 25 employees as of January 1, 2022 will be required to put a written policy in place by **October 11, 2022**. After 2022, the deadline will be before March 1 in any given year for an employer who has 25 or more employees as of January 1 of that year.

Employers must provide employees with a copy of the policy within 30 days of the deadline for putting the policy in place, or if the policy has changed, within 30 days of changes being made. A new employee must receive a copy of the policy within 30 days of becoming employed. Employers who are clients of a temporary help agency shall provide assignment employees assigned to perform work for the employer with a copy of the policy within 24 hours of the start of assignment, or within 30 days from the day the employer is required to have the policy in place, whichever is later.

What Does This Mean for Municipal Employers?

Employers should ensure that they understand their obligations under the new legislation. Employers who are subject to the new policy requirements should ensure that they have a written disconnecting from work policy in place, and take steps to prepare for the upcoming October 11, 2022 deadline for



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the written electronic monitoring policy.

For more details regarding these recent legislative amendments, please see our previous Focus Alerts on [Bill 27](#) and [Bill 88](#).