



# Reminder to Employers of Incoming June 2 Deadline for Written Policy on Disconnecting from Work

May 25, 2022

As discussed in previous [Focus Alerts](#), Bill 27, the *Working for Workers Act, 2021*, amended the *Employment Standards Act, 2000* (the “ESA”) to require covered employers to put in place a written policy on disconnecting from work.

The initial deadline for employers to have a policy in place is **June 2, 2022**. The requirement applies to employers who employed 25 or more employees as of January 1, 2022. For those employers, the obligation to put a written policy in place applies even if the employee count fell below 25 during the calendar year. After 2022, employers who have 25 or more employees as of January 1 of each year will be required to have a written policy in place before March 1 of that year.

The policy requirement does not apply to the Crown, a Crown agency or an authority, board, commission or corporation whose members are all appointed by the Crown and their employees.

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

It is important to note that the legislation does not create a “right to disconnect,” although these policies have often been described in that manner. Employers should therefore be cautious not to give employees a right not to perform work where the ESA would otherwise permit such work to be done. Creating such a right under the policy could create a greater right or benefit under the ESA that would be enforceable under the ESA.

While the subject matter must be about disconnecting from work, the legislation does not specify the required contents of the policy, and there are currently no regulations that do so. In the Ministry’s [guidance](#) regarding these policies, suggested topics include setting out expectations regarding the employee’s need to review or respond to work-related communications depending on:

- The time of day of the communication;
- The subject matter of the communication; and
- Who is contacting the employee (e.g., a supervisor, a colleague, a client).

The Ministry also suggests that employers can outline requirements about using out-of-office



notifications or voicemail messages indicating when employees will be responding, if they are not scheduled to work.

It is important to note that although the Ministry's guidance may be a helpful resource for employers who are subject to the policy requirement, it does not have the force of law. Employers must first and foremost remain abreast of any specific content requirements that might be imposed through future amendments to the legislation or through the creation of regulations and ensure that their policy complies with them.

Employers are encouraged to consider factors such as the needs of their business, their workplace culture, and an employee's duties in order to craft an appropriate policy. While all employees must be covered by a policy, employers are not required to have an identical policy for all groups of employees. The policy can be standalone, or it can form part of another document, such as a policy manual.

The policy must include the date that it was prepared. Employers are required to provide a copy of the written policy to its employees within 30 calendar days of the policy being prepared.

## **In Our View**

Employers who met the 25-employee threshold as of January 1, 2022 should familiarize themselves with the requirements and ensure that a policy is in place by June 2, 2022. For more detailed information on the policy requirements, please see our previous [Focus Alerts](#).

For more information, or for assistance in preparing a written policy on disconnecting from work, please contact [Kecia Podetz](#) at 613-940-2752, [Pascale Robillard](#) at 613-608-6716, or your regular Emond Harnden lawyer.