

Canada Considers Granting Right to Disconnect

By Leah Shepherd

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The Canadian government is considering a policy to give workers the legal right to disconnect from work. Under this new policy, employees wouldn't be expected to respond to phone calls, e-mails and texts from bosses or colleagues during nonwork hours.

In October 2020, the Right to Disconnect Advisory Committee, consisting of representatives from employers and unions, began holding a series of meetings to develop recommendations to the government. In March, Canada's Minister of Labor Filomena Tassi invited Canadians to share their views on the right to disconnect.

The goal is to support employees' well-being.

"Advances in technology have created a situation where an employee can be reached at all hours of the day or night, even if they are technically not to be working," said John D.R. Craig, an attorney with Mathews Dinsdale in Toronto.

The stress of being unable to detach from work could contribute to mental and physical illness among employees, which could be costly and problematic for employers and the government in the long term.

"There is more work to be done to ensure that standards keep up with the rapid pace of change driven by digital communications technology," Tassi said in a press release. "It is important for me to hear the views of employers, unions and the public on the challenges they are facing, so that we can make informed decisions on how to make sure that both workers and employers are treated fairly in this new world of work."

Some employers think a new right to disconnect is unnecessary. "They would prefer that existing working time rules and limits be enforced," Craig said. "On the other hand, support for the right to disconnect is based in significant part on the view that existing working time rules and limits are insufficient to address the challenges of new technology."

"Employers that do not operate on a traditional 9-to-5 schedule have raised valid questions about how the right to disconnect would apply to them in practice," said Lisa Goodfellow, an attorney with Miller Thomson in Toronto. "An important consideration among employers is the need for flexibility in light of individual workplace conditions."

Who Would Be Covered

If it's implemented in Canada, the right-to-disconnect policy would apply only to federally regulated employers, such as:

- Airlines.
- Airports.
- Banks.
- Postal service.
- Radio and television broadcasters.
- Railways.
- Federal agencies.

It would not apply to most employers in the private sector, which are typically regulated by the provinces. Provincial regulation applies to important areas like agriculture, education, forestry, health care, hospitality, manufacturing, mining and retail.

However, in the future, "it is possible that provinces may eventually follow suit with their own right-to-disconnect legislation," Goodfellow noted.

Next Steps

After the federal government receives input and recommendations from the advisory committee and the public, it will decide whether to propose federal legislation granting the right to disconnect.

"It is very early in the process," explained Deidre Khayamian, a lawyer with Spring Law in Toronto. "The government is still at the consultation stage. Once a bill is introduced into Parliament, it has to move through the legislative process before it becomes law."

"The legislative process in Canada is lengthy and unpredictable, particularly since it seems likely that there will be a federal election in 2021," Craig said. "Next steps are hard to predict."

If a law is passed, it's unclear what the penalties would be for noncompliance.

"Noncompliance by employers might be met with monetary penalties," Goodfellow said. An alternative means of addressing noncompliance might be to mandate that employees who are expected to respond to e-mails outside of work hours are entitled to some form of payment for being on call.

"It may look something like the right to refuse overtime under the Canadian Labor Code, but that is just a guess," Khayamian said.

Craig predicted, "I would not expect significant penalties to be imposed except in rare and severe cases of abuse."

In 2017, France adopted a right to disconnect, which applies to employers with more than 50 employees. Spain, Italy and the Philippines have similar laws.

"In France, one criticism of the right to disconnect there is the lack of regulatory teeth to the law," Khayamian noted. "European Union lawmakers are also exploring a right to disconnect for workers, motivated especially by the shift to working from home due to the pandemic."

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