

The right to disconnect in Canada's post-pandemic context



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☰ Executive Summary

The COVID-19 pandemic has changed the nature of work, leading to more connectivity and a blurring of boundaries between work and non-work. These changes have had an impact on the well-being of workers and in response employers, employees and decision makers in Canada are navigating how to develop and implement Right to Disconnect policies.

This research identified legal, operational and policy considerations when implementing a Right to Disconnect policy by examining how Canadian provinces and other countries have approached the issue. Discussion on the right of workers to disconnect from work in Canada gained momentum following development of Right to Disconnect legislation in the European Union (EU), which should inform key operational considerations for policymakers in Canada.

Even though there is no one-size-fits-all approach, the continued prevalence and desire among workers to continue working from home, at least part of the time, means there is a need for Right to Disconnect policies in Canada. Policymakers can use this research and insights as a roadmap for effective implementation.

KEY INSIGHTS

1

According to the Ministry of Employment and Social Development Canada, 93% of respondents believe employees should have the right to refuse to respond to work-related communications outside of working hours.

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Effective Right to Disconnect policies require organizations to consider their unique needs and the legal, policy and operational impacts for successful implementation..

3

Right to Disconnect policies should define what sectors are eligible, what and who is exempt, and what non-work hours are.

▶ The Issue

Working from home as a result of the pandemic led to increased connectivity and a blurring of the lines between work and non-work life for many employees. Increasing global collaboration, limited ability to travel for vacations during the pandemic, and increasing expectations from employers to be responsive around the clock, led one French policymaker to describe the situation as “an electronic leash” for workers where they physically leave the office, but remain attached. The impacts are felt more acutely among certain types of workers – specifically women who already perform more unpaid labour at home, and who have been especially challenged by increasing expectations to be available outside of regular work hours.

This has had a profound impact on the well-being of workers across industries, with many citing increased stress on themselves and their families, and an acknowledgement that overworked employees are more likely to sustain injury, become sick and miss work.



As a result of these negative impacts, many workers began to call for a right to disconnect – meant to allow individuals to disconnect from work and not engage in work-related communication during non-work hours to help improve quality of work, as well as quality of life. Given the global scale of the issue, the World Health Organization called on governments and employers to better protect workers' health through Right to Disconnect policies. Many support the right to disconnect as it is believed to be crucial in establishing a healthy work-life balance, helping support the physical and mental well-being of employees, and has the potential to reduce the risk of employee burnout by encouraging them to disconnect fully, rest and recover, leading to overall increases in productivity.

The concept of a Right to Disconnect policy was first implemented in France in 2017, where the government passed a law to protect workers' right to ignore messages outside of working hours. Following suit, other European countries such as Spain, Ireland and Italy enacted similar laws.

In Canada, before the pandemic, there was some public support for the right to disconnect and policymakers had been considering options to support workers disconnecting and improving work-life balance, however the proposed legislative changes failed, with opposition to mandated restrictions. The pandemic brought the issue to the foreground again. Given that working from home is likely to remain a feature of work for many in future, Canadian policymakers need to learn from the experiences of other jurisdictions to guide how to best move forward.

What We Investigated

This research project conducted a literature review, jurisdictional scan and analysis of survey data from a variety of Canadian and international sources exploring the key legal, policy and operational considerations to implement a Right to Disconnect policy in a Canadian post-pandemic context.

The project focused on understanding the perspectives and core barriers to implementing the Right to Disconnect policy for three key stakeholder groups: employees, employers and policymakers.

The project examined policy considerations by identifying factors that led to the need to develop a Right to Disconnect policy and approaches used in Canada and abroad. These included:

- Legal considerations to understand how to define key concepts such as which employees have the right to disconnect, for example only remote workers?
- The impacts on the autonomy of workers and employers; for example, can employees consent to connect and when would employees be required to connect?
- Operational implications, including how the policies would be implemented and enforced, and how they may impact current policies and employment standards.

What We're Learning

The Canadian response. While laws in the EU prompted discussion in Canada about the right to disconnect, before the pandemic there was limited movement in Canada to formally create policies or laws. The impact of COVID-19 made this issue more pressing with the government recognizing the importance of work-life balance and re-convening its Right to Disconnect Advisory Committee to guide progress. Ontario became the first province to enact a Right to Disconnect law in Canada, which requires provincially regulated employers in Ontario to have a written “disconnecting from work” policy. The Right to Disconnect Advisory Committee made recommendations in February 2022. The federal government said it planned to present a proposal that would apply to federally regulated workplaces.

Global approaches. There are two main approaches for enacting Right to Disconnect laws and policies based on models in the EU:

- A government-mandated approach, often referred to as the French Legislative Model, that regulates electronic communications after hours through laws
- A voluntary self-regulated approach, often referred to as the German Self-Regulatory Model, where companies adopt policies that best suit their workers

Different countries including Spain, Italy and Ireland have borrowed principles from both approaches in implementing their own Right to Disconnect laws and policies. Key operational learnings such as how to best enforce policies can be leveraged by Canadian policymakers.

Designing and implementing Right to Disconnect policies is complex. In both models, employers require support to identify which employees policies apply to and the impact it may have on other workplace policies. Government-mandated approaches raise enforcement challenges, especially across different geographic regions, and in how each organization should interpret legislation as the right to disconnect has been applied differently to organizations across sectors, size and employment type. Clearly articulating what sectors are eligible, defining non-work hours and who may be exempt, is critical to effectively implementing any policies or legislation on the right to disconnect.

★ Why It Matters

This project makes a strong case for the need to have Right to Disconnect policies in Canada to better support the well-being of workers and maintain a healthy work-life balance in the recovery from COVID-19. Groups that care about employee well-being, and who advocate for better employment standards, should consider whether Right to Disconnect is relevant to their mandates.

The results of this project are also a resource for decision-makers within federal and provincial ministries of labour – providing evidence and experiences to inform Right to Disconnect policy development and implementation.

The project is also a resource to individual employers, especially in Ontario, who have been tasked with developing their own Right to Disconnect policies and want to make informed decisions.

The legal, policy and operational considerations and questions outlined in the research provide decision-makers with a framework to ensure the possible impacts on employees and employers factor into decision-making.

► **What's Next**

This project is part of Future Skills Centre's Quality of Work series, which explores different aspects of quality of work and current challenges in the labour market, including skills and labour shortages across sectors. Part of a comprehensive strategy to improve quality of work will entail ensuring workers in vulnerable employment situations have access to similar rights and benefits as other workers. This includes employment insurance or the right to disconnect and access to upskilling and reskilling initiatives so that people can access better employment opportunities in other occupations and sectors.

The Quality of Work series explores current practice related to compensation and benefits, employment security, work environment, professional growth and social environment for workers, employers and policymakers. FSC is working with funded partners to generate insights across the projects.

...necessarily reflect those of the Government of Canada.