

Does Canada need a right-to-disconnect law?

The lines between home and work have blurred even more due to the pandemic and lockdowns, writes **John Dujay**, but does it make sense for Canada to legislate a hard stop to the workday?

WITH so many people working from home because of the pandemic — and likely beyond — the lines between personal and professional lives have blurred. When does a workday begin and end?

While the concept of a “right to disconnect” from work emerged well before the pandemic, Canada is now conducting consultations to help inform potential policy solutions that would give federally regulated workers that right, along with improved work-life balance and well-being.

But does it make sense for Canada?

Working from home blurs lines

As the country moves forward post-pandemic, it’s expected that a significant portion of Canadian employees will keep working from home, either full time or via a blended hybrid model, and regula-

tions must address this reality, says Amy Kishek, legal officer at the Public Service Alliance of Canada (PSAC) in Ottawa.

“We use the expression ‘work from home,’ but it’s more like living at work in terms of how it fits into people’s lives. And the blurring of those boundaries has significant impacts on mental health. There’s a rise in burnout among workers in Canada, which seems to be something that’s preventable, but not much has been done to address that directly.”

Quebec did attempt to implement such a law in 2018 with Bill 1097, but it didn’t pass. These days, with many workers confined to their homes because of COVID-19, the issue is that much more acute, says Kishek.

“The priority areas would be to protect the right of workers to refuse and have the protection against reprisal and compensation for that time,” she says. “What’s also needed is that health and safety angle of it, and the pandemic has really highlighted that.”

The big challenge is the power differential between an employer and staff, along with the cultural expectation of employees “to perform and to demonstrate that you’re pliable, available, flexible to an employer,” says Kishek.

“Without real protections laid out, including penalties and fines, an employer can’t... expect the culture to change organically.”

In a unionized workplace, such language has been successfully added during collective bargaining in the past, according to Kishek, but for those without union protection, such a law is needed today.

“There also needs to be that minimum

labour standard because those workers who are underrepresented certainly stand to be exploited even more greatly by that cultural element of it, that expectation and that exploitation of power differential in those dynamics.”

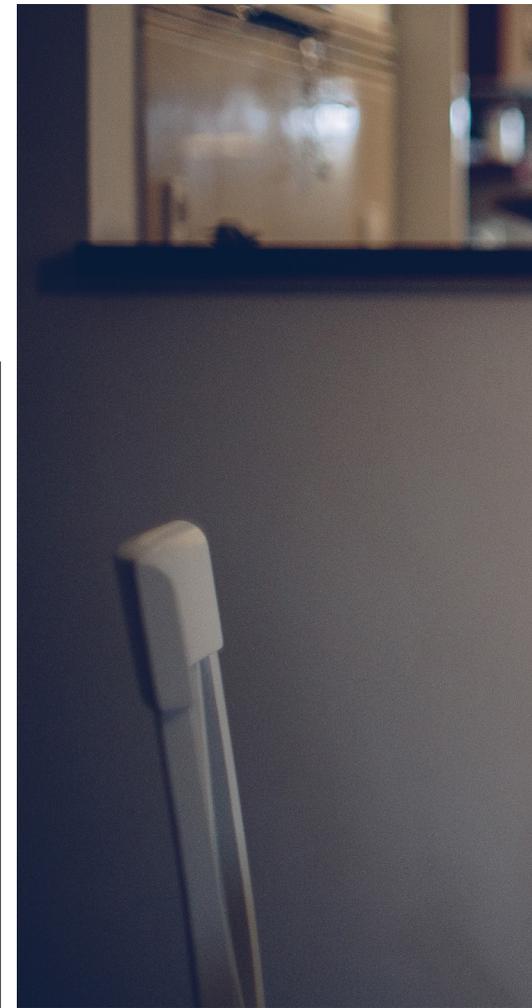
Right to flexibility important to workers

While the goals may seem laudable, right-to-disconnect implementation would be much more difficult in practice, according to one HR expert.

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Amy Kishek, PSAC

“We have to be open to the possibility people are going to be working 7 to 11 because that fits their family, so [when it comes to] the challenge of unplugging, how do you regulate it?” says



Bill Howatt, founder and president of Howatt HR in Ottawa. “You say you’re going to turn off the internet, the emails — is that infringing on people’s rights to create flexibility?”

While some employees are able to walk away from their workday, others may have legitimate reasons to work into the evenings, such as child-care responsibilities or wanting to work longer hours to get ahead in their job, he says.

“Is there some perception that there needs to be a higher level of accountability, like a law, to create a societal norm that people can go to versus a cultural norm [of] ‘eight, eight and eight:’ you sleep eight, you work eight, you live eight? It’s going to be challenging to actually have a real strong point of view — meaning some employees, they don’t know how to unplug or they feel they can’t.”

For some employees, it might make sense to have a conversation instead of bringing in overarching laws, says Howatt. “There are going to be people who may feel almost like it’s a Big Brother thing; they don’t have their autonomy. Is this good for that population who can’t self-advocate, have less competence in their

THE IMPACT OF WORKING LONG HOURS



745,000

People who died from stroke and heart disease associated with long hours in 2016



72%

Percentage of men in this group who were middle-aged or older



35%

Percentage of people with higher risk of stroke after working more than 55 hours per week



17%

Percentage of people with higher risk of heart disease after working more than 55 hours per week

Source: World Health Organization/ILO



job security? It could be a protective factor; for others, it could be an inhibitor.”

Such an idea may gain traction, but it will depend on “how it’s couched,” says Howatt. “I could see some employers might raise a flag; some employers may embrace it.”

The right to disconnect has been done unilaterally by at least one company, says Tanya Sambhi, associate lawyer at Minken Employment Law in Markham, Ont.

“Volkswagen introduced a policy to prevent servers from sending out emails outside of core business hours. They didn’t have to do it — there was no legislation that required them to do this; they just did it on their own, so it’s possible other employers are doing it in Canada, absent any legislation.”

Potential challenges to right to disconnect

It will also be tricky to police and put into place a right to disconnect, says Ronald Minken, founder and managing principal at Minken Employment Lawyers, especially if a call comes in after hours.

“What happens if the employee answers the phone? Upon learning it’s the employer, do they hang up? You

can’t necessarily tell who is calling — it could be no call display or ‘unknown number,’” he says.

“What’s the reason for the call? Is the workplace such where there could be calls of an urgent nature? Will the employer be prohibited from telephoning the employee?”

For some categories of workers, paying for overtime doesn’t apply, and this would also have to be considered for this kind of legislation to work, says Sambhi.

“In the Employment Standards Act [ESA] in Ontario, there’s a provision that says employers must give their employees at least 11 consecutive hours off from performing work in each day. [The right to disconnect] is something similar in the sense that an employee can’t be expected to work 24/7, and they can’t be expected to be online and accessible to their employers 24/7. You need to give them that 11-hour break. But the provision doesn’t apply to everyone — there are certain professions that are exempted from this portion of the ESA: lawyers, architects, engineers, accountants; they’re all exempted.”

Canada’s law might end up mirroring

what happened in France in 2017, when the country passed its version of a right-to-disconnect law, says Sambhi.

“Employees have the right to not work — which includes responding to work communications such as emails — during their rest periods and during their leaves of absence, and so it’s likely we’ll probably implement something similar to that.”

But right now, it would only involve federally regulated employers, she says.

“It could be introduced in Canada, but that doesn’t necessarily mean that provincially regulated employers will have to abide by it.”

Take time away

In the meantime, employers should get ahead of the situation and work on ways to ensure employees get a proper amount of time away from work.

“Remove assumptions around deliverables,” says Howatt, citing as an example a leader who says “I need it now” when they actually don’t need a response right away.

Managers should also insist that employees take time away from work, such as vacation time, says Sambhi.

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Bill Howatt, Howatt HR

“Right now, in lockdown, nobody’s going anywhere, you’re not really allowed to travel, and so employees might feel like, ‘Well, I’m not wasting my vacation time just sitting at home, especially with the stay-at-home order,’” she says.

“But that’s not really the purpose of vacation time; it’s to take time away from work to recover and recuperate, so insisting that an employee takes their vacation time is one great way to ensure that they don’t overwork themselves.” **CHRR**