Are Canadian Employees Concerned About The Right To Disconnect?

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Employment and Social Development Canada released the results of a consultation that was undertaken for the purpose of revising the *Canada Labour Code*

On August 30, 2018, Employment and Social Development Canada released the results of a consultation that was undertaken for the purpose of revising the *Canada Labour Code* (the Code). Part III of the Code enacts labour standards applicable to federally-regulated, private sector employers (*e.g.*, banks, interprovincial transportation companies, telecommunications, airlines and shipping companies). In all, the working conditions of nearly 6 per cent of the Canadian workforce are governed by the Code.

While these potential amendments affect a limited number of employees nationally, journalists have devoted considerable space to this aspect of the proposed reform since those consulted on this subject regard this matter as a very real concern.

In the public consultations dealing with the reform, 93 per cent of respondents stated that employees should have the right to refuse to respond to work-related communications (*i.e.*, emails, telephone calls, text messages), received outside of working hours. 79 per cent of the respondents stated that employers should have policies to limit the use of work-related technology outside of working hours. On the other hand, some respondents raised the fact that the workplace must adapt to new economic realities, that employees who are required to be on call outside of working hours are managers who are paid accordingly, or that operational needs do not necessarily stop at the end of regular working hours.

It will be interesting to see if and how the Parliament of Canada will make the right to disconnect part of the revision of the Code. In so doing, it would not be the first legislator to study these issues and it is likely that some other provinces will follow suit.

A Glance at Québec and Europe

Although much ink was spilled in January 2017 when France adopted provisions requiring employers and employees to set policies on these matters, a number of other legislators have also paid attention to such issues (including Italy, the Philippines and New York City).

In Québec, Québec Solidaire introduced a bill on disconnection in March 2018, which died on paper when the legislature adjourned in June 2018. Although one might have thought that the current revamping of Québec's *Act respecting labour standards* would have afforded an opportunity to discuss these issues, the Minister of Labour, Mrs. Dominique Vien, expressed the view that this was a marginal problem. Québec Solidaire's bill would oblige all Québec employers to adopt a policy on disconnection outside of regular working hours, providing for periods each week during which employees would be entitled to be cut off from job-related communications when not at work. Such a policy would also have to provide for an agreement on the use of communication devices outside of working hours. Employers would be allowed to apply to the CNESST for authorization to develop several separate policies for groups of employees where disparities in their duties justified doing so. For employers with 100 or more employees, such a policy would have to be established following deliberations by committees including representatives of both labour and management. Where employers had less than 100 employees, the employers would be obliged to set a policy, in consultation with the employees, and have it approved by the CNESST, which could request amendments.

Although this draft statute was far from perfect, it did have the benefit of allowing organizations and employees to clarify expectations and lay down guidelines that reflected their own real-life situations, rather than simply enacting an absolute prohibition.

Detractors of such legislation, for their part, contend that existing laws already provide labour standards regulating overtime work, rest periods and layoffs, thus addressing the subjects raised by the right to disconnect.

Some organizations, however, have already adopted the right to disconnect, without making it part of any formal legislation. In particular, a number of German organizations have implemented policies on disconnection. From simple sensitization (do not send any emails outside of business hours, unless they are urgent) to the complete shutdown of servers outside of business hours (!), we have discovered that there is a wide spectrum of such precedent-setting policies in Germany and France. Some of them call for concrete measures to be implemented in order to facilitate a certain form of disconnection where the communications involved are non-urgent (*e.g.*, entrusting one's files to colleagues during vacation periods and posting absence messages referring colleagues to some resource).

Comment

This leads us to the question: is this a marginal problem or a real issue calling for legislation? Although the debate continues, it nevertheless remains that some clarification would be helpful in a world where work-related devices accompany us everywhere, and when a large part of the population admits to checking their smart phones as the first thing they do upon waking up.

By

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