





Deborah Howden

Partner,
Condo Law Group,
Shibley Righton LLP

There is no New Statutory Right to Disconnect from Work in Condominiums – or in any other Industry in Ontario

On June 2, 2022, the so-called “Right to Disconnect” law came into effect in Ontario. It was introduced as part of the *Working for Workers Act, 2021*, omnibus legislation focused on improving working conditions for workers. The “right to disconnect” provisions were aimed at enhancing work-life balance. The legislation is the first of its kind in Canada. The law is not new internationally; for example, France, Belgium, Spain and Italy have developed right-to-disconnect laws. In Canada, both Quebec and the federal government have looked at implementing disconnecting into law.

But here’s the rub – the legislation does not actually provide a right to

disengage from work-related communications in any workplace environment, including in condominiums.

What is the Right to Disconnect Law?

The *Employment Standards Act, 2000*, section 21.1.1, states that the right to disconnect refers to “not engaging in work-related communications, including emails, telephone calls, video calls or sending or reviewing other messages, to be free from the performance of work.”

As of January 1, 2022, the Ontario law requires employers with 25 or more employees to develop policies that address disconnecting from work outside of regular work hours. Those

policies had to be implemented by June 2, 2022. In addition, any employers with 25 or more employees on January 1 of any subsequent year must have a written policy on disconnecting from work before March 1 of that year. All employees must be provided with a copy of the disconnection policy and any updated versions.

Impact on Ontario Condominiums

We anticipate that the condominium industry will be largely unaffected by the new law. This is true for a variety of reasons, including:

1. A negligible number of condominium corporations,

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if any at all, are required to implement disconnection policies for their employees, as they do not meet the 25-employee threshold.

2. Though larger vendors upon which some condominium corporations rely (for example, some property management companies, security service companies, cleaning companies, and law firms) must have implemented right-to-disconnect policies, the legislation does not actually require any employee to be able to disconnect from work, as indicated above. Rather, it merely requires some employers (i.e. those with 25 employees or more) to have a policy on disconnecting from work. This is a significant difference: on the one hand, a worker would have an explicit right not to respond to communications after the workday ends; on the other hand, the employer merely has to confirm for employees when they must monitor and respond to communications after-hours. The new law, therefore, provides no additional protection to some already overburdened workers.
3. Even if an employer is required to have a disconnection policy, at the time of writing this article, there is no required content to the policy. The new law provides that the written policy must contain the information prescribed by regulation. However, to date, no regulations have been issued. In fact, there is no assurance that such regulations will ever issue.

Disconnection and Condominium Vendors

For practical and operational reasons, some employers cannot implement policies that provide employees with an absolute entitlement to disconnect from work. Quite obviously, the very nature of a residential or commercial condominium sometimes requires work outside of a traditional workday, for example, in a burst pipe situation. And yet, for many employees, the least of which are on-site property managers, constant and intensified work-flow has led to increased stress, burnout and fatigue levels. Some emphasis on individual well-being and

work-life balance is therefore essential to the industry's continued success.

The answer for certain employers is to shift focus away from an absolute "right to disconnect" in favour of a more flexible approach to disconnection principles.

Here are a few suggestions to consider for inclusion in a disconnection policy in that regard:

- Employees are not expected to respond to communications outside of their working hours

unless the communication is time-sensitive.

- Employees are discouraged from sending any communications to colleagues outside of regular working hours unless necessary.
- Employees who are unavailable for work should indicate so in their out-of-office voicemail and email auto-reply messages.

Disconnection policies should establish a supportive, balanced workplace culture of wellness to reinforce the



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importance of the condominium industry's most important asset: its people.

Common Questions

I close with some common questions arising from the disconnection policies.

When counting employees for the 25-employee threshold, do I have to include employees who are on a layoff?

Yes. You must also count part-time employees, employees on fixed-term contracts (no matter how short the length) and those on a leave of absence. Do not count independent contractors (as long as they are correctly classified as such).

Can I revoke the disconnection policy if the number of employees dips below 25 after January of any given calendar year?

No. The employee count must be taken as of January 1 of any calendar year. What happens to the staff complement after that time until the end of the year is irrelevant.

Can I implement a disconnection policy that only applies to non-managerial employees?

No. Section 21.1.2 of the *Employment Standards Act*, 2000 requires that the

policy applies to "all employees." This does not mean that the policy has to be the same for all employees, but the policy must apply to all employees.

Can my policy make exceptions for emergency situations?

Yes. The policy can and should address employer expectations of employees in emergency situations. For example, an employee may be expected to monitor, read and reply to work-related emails that are marked "urgent," particularly if the communication is coming from a board member, supervisor or colleague. ■

Deborah Howden is a Partner in the Condo Law Group at Shibley Righton LLP. Her practice involves all aspects of condominium law issues, with a particular emphasis on human rights and labour and employment matters. Deborah is actively involved in the condominium community and frequently writes about condominium law topics. She teaches condominium law to managers and directors in-house at various conferences and management companies. She can be reached at deborah.howden@shibleyrighton.com or shibleyrighton.com

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