

Update on Ontario's Requirements for a "Disconnecting From Work Policy"

March 14, 2022

Further to our **previous article**, the *Working for the Workers Act, 2021* (the "Act") received Royal Assent on December 3, 2021. The Act amended the *Employment Standards Act, 2000* ("ESA") and requires employers to develop a written "Disconnecting from Work Policy."

The Act provides little information on what the policy requires. To remedy this, the Ontario Government has now provided the following guidance on what it expects to be included in a "Disconnecting from Work Policy":

- **Who is affected?** The new amendments are only applicable to employers who have 25 or more employees. Employers must count the number of employees it has employed as of January 1st, 2022, and reassess annually thereafter.
- **How are employees counted?** Part-time employees, casual employees, probationary employees, and anyone else who meets the definition of "employee" under the ESA would constitute an individual employee who must be included in the count.
- **When does the policy have to be implemented?** Employers have until June 2nd, 2022, to implement and distribute a written policy.
- **What are the distribution requirements?** Copies of the policy must be distributed within 30 days of its preparation, every time it has been changed, and when new employees are hired. Copies may be delivered via a printed copy, an attachment to an email, or a link to an online document.
- **Which employees will the policy apply to?** The written policy must apply to all of the employer's employees in Ontario. This includes management, executives and shareholders if they are employees under the ESA. Please note that this does not mean that the same rules must apply to each category of employee, only that the policy must in one way or another address all of these employees.
- **What must the policy contain?** The ESA has largely left the scope and contents of the policy up to the employer's discretion. Currently, the obligations are simply to implement a written policy on "disconnecting from work" and to include the date the policy was prepared and the date any changes were made to the policy.
- **Are there any recommendations for what should be included?** The Ministry of Labour has suggested that an employer's policy address the expectations for work-related communications outside of work hours. It may be prudent to craft the policy in a way that addresses the related provisions of the ESA such as overtime, public holidays, and the rules in the ESA regarding when work is "deemed" to be performed.

Please note that this bulletin is intended for informational purposes only and does not constitute legal advice or an opinion on any issue. We strongly recommend that you contact your Miller Canfield lawyer with any specific questions you may have so that those questions can be addressed properly with you.