



NATIONAL ASSEMBLY OF QUÉBEC

FIRST SESSION

FORTY-SECOND LEGISLATURE

Bill 492

Right-to-Disconnect Act

Introduction

**Introduced by
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Member for Hochelaga-Maisonneuve**

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EXPLANATORY NOTES

The purpose of this bill is to ensure that employee rest periods are respected by requiring employers to adopt an after-hours disconnection policy.

Under the bill, all employers must establish an after-hours disconnection policy that applies to all of their employees. The bill specifies that, in particular, the policy must determine the weekly periods when employees are entitled to disconnect from all work-related communications and must provide for a protocol for use of communication tools after hours.

For employers with 100 or more employees, the bill provides that the after-hours disconnection policy is to be developed by a committee of which half the members represent the employees.

For employers with fewer than 100 employees, the bill provides that the after-hours disconnection policy is to be developed by the employer and approved by the Commission des normes, de l'équité, de la santé et de la sécurité du travail.

Lastly, the bill contains penal, transitional and final provisions.

Bill 492

RIGHT-TO-DISCONNECT ACT

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

CHAPTER I

PURPOSE

1. The purpose of this Act is to ensure that employee rest periods are respected by requiring employers to adopt an after-hours disconnection policy.

CHAPTER II

AFTER-HOURS DISCONNECTION POLICY

2. In accordance with this Act, employers must establish an after-hours disconnection policy that applies to all of their employees.

In particular, the policy must determine

(1) the weekly periods when employees are entitled to disconnect from all work-related communications; and

(2) the protocol for use of communication tools after hours.

In this Act, “employer” means any person who has work done by an employee and “employee” means a person who works under the control and direction of an employer for remuneration.

3. An after-hours disconnection policy does not change the conditions of employment contained in a collective agreement. However, it may prescribe conditions of employment that are more advantageous than those provided for in the collective agreement.

4. Employers must post all information documents regarding the after-hours disconnection policy in prominent places easily accessible to employees or distribute them to the employees.

5. Employers may contact the Commission des normes, de l'équité, de la santé et de la sécurité du travail (Commission) to obtain authorization to develop separate policies for groups of employees if warranted by disparities in

employee duties. Employers may also ask to be exempted from adopting a policy for some or all of their employees if they can prove that the employees do not use communication tools after hours in the course of their duties.

CHAPTER III

PROVISIONS APPLICABLE TO EMPLOYERS WITH 100 OR MORE EMPLOYEES

6. Employers with 100 or more employees must establish a committee mandated to develop the after-hours disconnection policy. The committee must be composed of at least six persons, at least half of whom represent the employees. The other committee members must represent and be designated by the employer.

Employee representatives must be designated by the certified associations concerned. However, if no certified association represents the employees, they designate their representatives on the committee.

7. The number of an employer's employees is the average number of employees.

Employers who reach the 100-employee threshold will, as of 1 January the following year, be bound by the obligations applicable to employers with that number of employees. Employers remain subject to those obligations despite a reduction in the number of employees.

8. If more than one certified association represents the employees or if no certified association represents certain employees, the committee members representing the employees are designated as follows:

(1) each certified association representing employees designates one member;

(2) employees not represented by a certified association designate one member; and

(3) if the employees represented by a same certified association or the employees not represented by a certified association comprise the majority of the employees, the association or those employees not represented designate the majority of members representing the employees.

9. No later than 31 March each year, the employer assesses communication tool use and application of the after-hours disconnection policy and submits the assessment to the committee members.

After analyzing the assessment, the committee decides whether it will revise the after-hours disconnection policy.

10. In the event of disagreement regarding development or revision of the after-hours disconnection policy, an employer representative or employee representative may ask the Commission to designate a mediator.

The mediator may convene an initial mediation session, and the committee members must attend.

11. The mediator's role is to allow the committee members to share their viewpoints and to promote agreement among them.

The mediator may give his or her opinion on the dispute and make recommendations.

12. After consultation with the committee members, the mediator defines the rules applicable to the mediation and measures likely to facilitate its conduct and determines the meeting schedule.

Committee members must provide the mediator with any information or documents he or she requires to examine the dispute.

The mediator may convene any person to obtain his or her viewpoint.

13. Unless the parties agree otherwise, the mediation may not continue for more than 30 days after the date the mediator is designated.

The mediator may terminate the mediation before 30 days or the time agreed on if he or she considers, in the circumstances, that mediation is not useful or appropriate; in this event, the mediator must notify the committee members to this effect in writing.

14. Nothing said or written in the course of a mediation session is admissible as evidence before a court of justice or before a person or body of the administrative branch exercising adjudicative functions.

15. The mediator cannot be compelled to disclose anything revealed or learned in performing his or her duties or to produce, before a court of justice or a person or body of the administrative branch exercising adjudicative functions, a document prepared or obtained in performing mediation duties.

Despite section 9 of the Act respecting Access to documents held by public bodies and the Protection of personal information (chapter A-2.1), no person has a right of access to the contents of the mediation record.

16. Proceedings may not be brought against the mediator for an act or omission in good faith in the exercise of his or her duties.

17. If the mediation fails, the Commission, after hearing the employer representatives and employee representatives, develops the after-hours disconnection policy that applies to all employees.

CHAPTER IV

PROVISIONS APPLICABLE TO EMPLOYERS WITH FEWER THAN 100 EMPLOYEES

18. After consulting the employees or their representatives, an employer with fewer than 100 employees develops an after-hours disconnection policy and submits it to the Commission for validation and approval.

19. The Commission may ask an employer to modify the after-hours disconnection policy submitted to it.

The Commission issues a substantiated notice to the employer and indicates a deadline for modifying and resubmitting the policy to the Commission for validation.

20. If, in the Commission's opinion, an employer has failed to develop or apply an after-hours disconnection policy or has failed to modify it in accordance with the Commission's notice, the latter may make recommendations to the employer.

21. If an employer fails to comply with a recommendation of the Commission, the latter may apply to the Administrative Labour Tribunal, which may order the employer to develop, modify or apply an after-hours disconnection policy within the time limit it sets.

The policy is filed with the Tribunal, which may make any modifications it considers appropriate.

The provisions of the Act to establish the Administrative Labour Tribunal (chapter T-15.1) pertaining to the Administrative Labour Tribunal, its members, their decisions and the exercise of their jurisdiction apply, with the necessary modifications.

22. On request, the Commission assists in developing the after-hours disconnection policy.

23. Employers must review their after-hours disconnection policy at least every two years and resubmit it to the Commission for approval.

CHAPTER V

PENAL PROVISIONS

24. Employers are guilty of an offence and liable to a fine, if they

(1) contravene section 2 or 23; or

(2) fail to produce the annual assessment referred to in section 9.

The minimum and maximum fines are

(1) not less than \$2,000 and not more than \$20,000 for employers with fewer than 100 employees;

(2) not less than \$5,000 and not more than \$30,000 for employers with between 101 and 499 employees; and

(3) not less than \$10,000 and not more than \$50,000 for employers with 500 or more employees.

The amounts prescribed in the second paragraph are doubled for subsequent offences.

25. The Commission may institute penal proceedings for offences under this Act.

CHAPTER VI

TRANSITIONAL AND FINAL PROVISIONS

26. Employers referred to in section 2 must adopt an after-hours disconnection policy no later than *(insert the date that is one year after the date of assent to this Act)*.

27. The Minister must report to the Government on the implementation of this Act and on the advisability of amending it no later than *(insert the date that is five years after the date of assent to this Act)*.

The Minister tables the report in the National Assembly within 15 days or, if the Assembly is not sitting, within 15 days of resumption.

28. The Commission must ensure that the after-hours disconnection policies are applied. To do so, it may conduct investigations and require reports.

29. The Minister of Labour is responsible for the administration of this Act.

30. This Act comes into force on *(insert the date of assent to this Act)*.

