



Labour

Disconnecting from Work-Related E- Communications Outside of Work Hours

Issue Paper

This paper is one of a series of papers prepared by the Secretariat to the Expert Panel on Modern Federal Labour Standards as background information to stimulate the Panel's discussions. The papers do not necessarily reflect the views of the Government of Canada.

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DISCONNECTING FROM WORK-RELATED E-COMMUNICATIONS OUTSIDE OF WORK HOURS

ISSUE PAPER

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- In today's world of work, mobile technologies and other factors, such as alternative work arrangements, the 24/7 economy, gig work and organizational cultures have blurred the boundaries between what it means to be "at work" and not "at work". In this context, should limits be set on work-related e-communications outside of work hours in the federally regulated private sector? If so, how should this be done and why?

BACKGROUND

- Traditionally, labour standards set boundaries around work and non-work time. Such rules were seen as necessary to balance competing interests over who controls a worker's time. This included protecting employees from excessive work time demands and safeguarding their need for rest, recovery and opportunities to take care of personal responsibilities. It also included providing employers with sufficient flexibility to meet their operational needs and establishing a more level playing field between employers.
- Labour standards establish rules about when an employee is "at work" by, for example, setting limits around standard and maximum work hours, requiring overtime payments when such hours are exceeded, and prescribing rest times.
- But a consensus has emerged in the literature that, over the last few decades, what it means to be "at work" is changing:
 - Enabled by the proliferation of mobile technologies such as cell and smartphones, tablets, laptop computers, email, instant messaging and communication apps, work is no longer always tied to a physical location such as "the office", or to a specific time, such as "business" or "working" hours.
 - Employees and workers increasingly use the opportunities offered by technology to set up flexible work arrangements so they can create a more satisfactory work-life balance. Being able to stay on top of work-related messages even outside of their agreed-upon hours may also give them a sense of control, accomplishment or status, or can allow them to meet urgent deadlines. For employers, flexible work arrangements can improve employee satisfaction, recruitment and retention, as well as productivity.

- Spurred by globalization and the 24/7 economy, many employers require a flexible workforce that is available around the clock in order to meet demand and remain competitive.
- In some workplaces, being permanently available and connected is simply part of the workplace culture and implicit or explicit expectations drive employees to stay connected to work via email or messaging apps, and send or reply to work-related messages at any time.
- In the gig and online platform economy, staying connected and available is not only necessary to find work, it is crucial to receiving the good reviews that enable a worker to get further work. Any time offline can result in a loss of income.
- As a result of these developments, the boundaries between work and non-work are increasingly blurred. Work is done at home, at coffee-shops, in shared business spaces or at a park while the kids play. Hours are shifted around to suit the needs of employers, clients and/or employees. Many workers spend time sending, checking and replying to emails or other work-related communications on evenings, weekends and sometimes while they are on vacation.
- Such flexibility can have benefits, as people have more opportunities to create their own work-life balance and businesses are able to more effectively meet client demands. At the same time, it can lead to longer working hours, more stress and more work-life conflict.
- In this context, labour organizations, employers, researchers and policy-makers are paying more and more attention to whether there is a need to take measures, such as updating labour standards to explicitly include limitations on work-related e-communications outside of work hours.

WORK-RELATED E-COMMUNICATIONS AND THE *CANADA LABOUR CODE*

- The [Canada Labour Code](#) (the Code) does not currently deal directly with limiting work-related e-communications outside of regular working hours.
- However, the Code does set restrictions around working hours:
 - Section 169 states that the standard hours of work are a maximum of 8 hours per day (which is defined as a 24-hour period) and 40 hours per week (midnight on Saturday until midnight on the following Saturday).
 - Section 171 limits the maximum number of work hours to 48 per week or a fewer total number of hours as prescribed by the regulations or other sections of the Code.

- Section 173 provides that an employee is entitled to at least one full day off per week which, whenever practicable, shall fall on a Sunday.
- Section 174 states that if an employee works more than the standard hours of work, they are entitled to overtime pay at one-and-a-half times their regular wage rate, subject to any regulations made by the Governor in Council.
- There are some exceptions to the hours of work rules:
 - The hours of work rules do not apply to managers, superintendents or those who exercise management functions, as well as certain professionals such as doctors, lawyers, dentists, architects and engineers.
 - The maximum number of hours may be exceeded under certain conditions. This includes: if a permit has been granted by the Minister for exceptional circumstances; for emergency work; under an averaging plan (where hours of work may be averaged over two weeks, for instance, in case of operational necessity); and in the case of a modified work schedule.
 - In certain industries or types of work, regulations allow for different standard hours of work, including for: truck drivers; employees on ships in the East Coast and Great Lakes and the West Coast shipping industry; running trades employees in the railway industry; commission salespersons in the broadcasting industry; and commission-paid salespersons in the banking industry.
 - In some sectors, such as rail, air, maritime and road transportation, rules around maximum working hours are set by Transport Canada.
- Moreover, amendments made to the Code in late 2017 give employees the right to request flexible work arrangements. They also give employees the right to refuse overtime in certain circumstances in order to fulfill family responsibilities without fear of reprisal. These amendments have received Royal Assent and will come into force once necessary regulations have been put in place.
- There is no requirement to pay employees for time being “on-call” under the Code. According to the Labour Program’s Labour Standards [*Interpretations, Policies and Guidelines \(IPGs\)*](#), “stand-by” or “on-call” time is not considered “work” (except in cases where a collective agreement or company policy requires a stand-by premium). This interpretation is reflected in case law:
 - “A person who is available to work if needed, but who is not in fact needed, is not working” (*SRJ Expédite Ltd. v. Paré*, 2009 CLAD No. 284).
 - “I disagree with Mr. Bell’s position that being on call and having a company cell phone and vehicle at your residence necessarily means that you are at

work. [...] Carrying a pager may be an inconvenience and remaining within the pager’s range is undoubtedly so but this does not turn being on standby into work” (*Bell v. LTS Solutions*. 2012 CLAD No. 275) (as cited in Employment and Social Development Canada, 2017).

- However, the [Canada Labour Standards Regulations](#) do require an employer to pay “reporting pay” if an employee is called in *and* reports to work. In this situation, an employee is entitled to a minimum of three hours of regular wages (regardless of whether any work is performed). Reporting pay is required any time an employee is:
 - called back to work after completing regularly scheduled hours;
 - called in outside of regularly scheduled hours (e.g. on days off, vacations and public holidays); or
 - called in to work when there are no regularly scheduled hours and the employee is not on “stand-by” or “on-call”.

SITUATION IN THE FEDERALLY REGULATED PRIVATE SECTOR¹

Statistical data

- The 2015 Federal Jurisdiction Workplace Survey (FJWS) provides some limited insight into the phenomenon of after-hours work-related e-communications in the federally regulated private sector (FRPS). For example, it found that 27% (or nearly 240,000) of FRPS employees had cellphones or smartphones issued by their employer (see Table 1). It also found that 46% of companies issued cellphones or smartphones, with this practice being most common in large companies with 100 or more employees, and in rail transportation and banking (see Table 2).

Table 1: Federally regulated companies issuing cellphones or smartphones to employees by company size, 2015

Firm size	Proportion of companies that issued cellphones or smartphones to employees	Number of employees who were issued cellphones or smartphones (proportion of employees who were issued cellphones by their companies)
All sizes	46%	239,800 (27%)
1–5 employees	40%	6,600 (32%)
6–19 employees	45%	8,000 (27%)
20–99 employees	69%	18,100 (27%)
100 employees and more	83%	207,100 (27%)

Source: Federal Jurisdiction Workplace Survey, 2015

¹ Information about the data sources used in this section can be found in a separate document.

Table 2: Federally regulated companies issuing cellphones or smartphones to employees by industry, 2015

Industry	Proportion of companies that issued cellphones or smartphones to employees	Number of employees who were issued cellphones or smartphones (proportion of employees per sector who were issued cellphones or smartphones)
Air transportation	49%	13,800 (13%)
Rail transportation	80%	32,400 (53%)
Road transportation	45%	32,300 (23%)
Maritime transportation	56%	4,000 (23%)
Postal and pipelines	42%	12,400 (10%)
Banks	71%	102,000 (40%)
Feed, flour, seed and grain	43%	3,500 (20%)
Telecommunications and broadcasting	52%	31,200 (21%)
Other	43%	8,100 (27%)

Source: Federal Jurisdiction Workplace Survey, 2015

- The 2015 FJWS also asked companies that issued cellphones or smartphones to their employees whether they had a policy that limited the use of company-issued devices for work purposes outside of work hours to ensure work-life balance for employees. Only 20% said they did, with mid-sized companies (see Table 3) and companies in the postal and pipeline industries (see Table 4) being most likely to have them.
- In rail transportation and banking, where cellphones or smartphones were most regularly issued, only 32% (rail transportation) and 28% (banks) of companies had such a policy.

Table 3: Federally regulated companies with a policy limiting the use of cellphones or smartphones outside of regular business hours by size, 2015

Firm size	Number of companies that issued cellphones or smartphones to employees	Proportion of companies that issued cellphones or smartphones to employees that have a policy limiting the use of these devices for work purposes outside of regular business hours to ensure the work-life balance of employees
All sizes	8,150	20%
1–5 employees	4,690	13%
6–19 employees	1,540	25%
20–99 employees	1,290	39%
100 employees and more	630	28%

Source: Federal Jurisdiction Workplace Survey, 2015

Table 4: Federally regulated companies with a policy limiting the use of cellphones or smartphones outside of regular business hours by industry, 2015

Industry	Number of companies that issued cellphones or smartphones to employees	Proportion of companies that issued cellphones or smartphones to employees that have a policy limiting the use of these devices for work purposes outside of regular business hours to ensure the work-life balance of employees
Air transportation	480	26%
Rail transportation	20	32%
Road transportation	6,300	19%
Maritime transportation	240	24%
Postal and pipelines	160	45%
Banks	70	28%
Feed, flour, seed and grain	170	25%
Telecommunications and broadcasting	490	30%
Other	230	16%

Source: Federal Jurisdiction Workplace Survey, 2015

- The 2015 FJWS does not provide information about why workers receive mobile devices, nor how often or for how many hours they use them for work purposes outside of work hours. It also does not provide information about workers who use their own devices after-hours for work purposes, nor about how often employers expect employees to be available for work outside of their regular working hours.
- In addition, the 2015 FJWS does not provide information about the characteristics (e.g. demographic groups or occupations) of the workers who are issued communication devices. However, in general, it does show that in the company sizes and industries where communication devices were most commonly issued:
 - women made up 18% of the workforce in companies with 20 to 99 employees and 41% in companies with 100 or more employees; and
 - women made up 19% of the workforce in rail transportation and 60% in the banking industry.
- Other data sources offer some further but still limited insight into other dimensions of the situation in the FRPS. Based on the [Employment Equity Act Annual Report 2017](#), in 2016, in large FRPS companies (100 or more employees) in the sectors where communication devices were most commonly issued and without being able to disaggregate the characteristics of employees (e.g. type of position):

- Indigenous people made up 1.3% of employees in the banking sector and 2.8% in transportation²;
 - people with disabilities made up 4.5% of employees in the banking sector and 2.5% in the transportation sector; and
 - members of visible minorities made up 30.2% of employees in the banking sector and 15.9% in the transportation sector.
- As well, the Labour Force Survey (LFS) provides some general information about the prevalence and amount of unpaid overtime that FRPS workers carry out, though this measure is limited, as it, among other things, does not indicate whether those who reported overtime included time spent on work-related e-communications. Based on the 2017 LFS, some 12% of FRPS employees worked unpaid overtime. Moreover, women (14%) were slightly more likely to do so than men (11%).³ However, men reported an average of just less than 9 hours per week compared to nearly 7 hours for women.

Complaints

- In order to begin to better understand the situation in the FRPS, informal discussions were held with a small group of Labour Program officers (inspectors and early resolution officers) from across the country in August 2018. The officers indicated that the issue of workers always having to be available and having to deal with work demands outside of work hours is one that they have regularly heard about over the past decade while carrying out their duties.
- Officers provided several concrete examples from their recent experiences, including: executive assistants expected to respond to emails while on vacation; dispatchers (for example, in the trucking industry) required by their employer to respond to work demands around the clock; and truckers and pilots expected to carry cellphones in order to take work whenever required. They noted that in the latter situation, there are potential health and safety and public security risks, as the employees might subsequently operate a truck or airplane when they were already fatigued.
- The officers also noted that, in their experience, employers typically defend situations in which there are expectations of employees dealing with work-related demands outside of work hours by saying that they operate in a continuous

² Disaggregated data for rail transportation only was not available.

³ This gender difference is less pronounced in the workforce in Canada overall, as 11% of women and 10% of men reported carrying out unpaid overtime. The larger gender difference in the FRPS may be explained by the fact that 42% of workers who reported unpaid overtime worked in banks, where women form 60% of the workforce. The banking sector has seen a number of class action law suits regarding unpaid overtime, as banks allegedly assigned employees more work than could be completed during regular hours. See [Hasham](#) (2012), [Kiladze](#) (2014) and [Lum](#) (2013).

operations environment where work needs to be performed at all hours and that some roles require permanent availability.

Collective agreements

- A recent Labour Program review of a random representative sample of 231 collective agreements in the FRPS found no provisions directly regulating work-related e-communications outside of work hours.
- Similar to labour standards, collective agreements often include provisions pertaining to a standard number of work hours, overtime and overtime pay. Generally, employees are only entitled to overtime pay if they work overtime at the request of, or with approval of, their employer. Some collective agreements also include call-back pay, stipulating that an employee must be paid at a prescribed rate if they are called back to work after their regular working hours. Being called back to work can mean a physical displacement back to the workplace and/or a requirement to work remotely. Some agreements also stipulate that employees are entitled to a prescribed rate if they are called after hours but do not actually have to work.
- Under one collective agreement in the sample examined, in the telecom sector, an employee who is asked to work overtime has the right to accept or refuse the work.

WHAT THE RESEARCH SAYS

Scope of after-hours work-related e-communications

- Studies suggest that checking in to work after hours is a widespread phenomenon. A [2015 Angus Reid Institute online survey](#) of more than 1,500 Canadian adults found that 41% of those who were working and used technology (email, internet and mobile phones) in their work regularly or daily checked their work email outside of regular office hours, 31% responded to work emails outside of office hours on a regular or daily basis, 28% regularly or daily answered phone calls or text messages outside of office hours, and 31% did actual work outside of office hours either regularly or on a daily basis.
- In the United States, just over one-third of the 3,865 full-time workers who participated in a 2014 Gallup study said that they frequently checked email outside of work hours ([Harter, 2014](#); [Harter et al., 2014](#)). In another Gallup study, three years later, almost 60% of the 812 full- and part-time workers participating indicated that they checked email outside of business hours at least once in a while ([Newport, 2017](#)). Most of the latter workers stated that they did so to see if anything important had come up, or to read incoming emails and respond only to important and urgent issues. Over 20% said that they not only checked email, but also reviewed incoming messages and responded to them the same way they would during normal working hours.

- In the European Union, the 2010 European Working Conditions Survey found that 21% of workers reported they had sometimes worked supplemental hours from home (e.g. checking emails, or answering messages after regular working hours), and 26% had done so often ([Arlinghaus & Nachreiner, 2014](#)).
- A 2013 non-representative survey of 1,084 full-time and part-time employees in the U.S. carried out by the American Psychological Association (APA) found that 53% of respondents checked work messages at least once a day over a weekend, 52% did so before or after work during the week, 54% checked work messages when they were home sick, and 44% said they checked while on vacation ([APA, 2013](#)).
- Research also suggests that the proliferation of mobile technology may be associated with longer working hours. In Canada, the 2015 Angus Reid Institute study found that 40% of those surveyed indicated that technology had increased the amount of time they spend working. Two-thirds of those who participated in the 2014 Gallup study in the U.S. said that the time they spent doing work outside of work-hours had increased because of mobile technology. A recent study by the Center for Creative Leadership in the U.S. that included an online survey with 483 respondents and 21 interviews with professional staff, managers and executives, found that those who used a smartphone were connected to work more hours per day than those who did not: 60% of those who used a smartphone for business worked between 13.5 and 18.5 hours a day, compared to only 29% of those who did not ([Deal, 2015](#)).
- The same study concluded that remaining connected to work via technology outside of regular work hours was at least in part driven by implicit or explicit workplace expectations that because communication devices are available, employees can and should respond to work demands at any time and from any location, especially in 24/7 continuous operational environments or companies that are active world-wide ([Deal, 2015](#)). Moreover, some workers feel it is very important to check their email outside of work hours to have opportunities for advancement and promotion, although less than a third say that if they did not remain connected, their work would actually suffer ([Newport, 2017](#)). Some do it because it makes them feel important ([Harter, 2014](#)).
- Some research suggests that workers remain connected to their work after hours to finish an urgent project or deal with an emergency, ensure they are prepared for the next day and have a sense of peace about their work ([Collins & Cox, 2015](#)). An Australian study found that employees chose to check email out of hours as a workload management strategy ([The Conversation, 2013](#)). In that sense, using a smartphone after hours for work purposes has been associated with a significantly reduced work-overload experience ([The Conversation, 2013](#)).
- Workers also see technology as an opportunity to stay on top of work while at the same time being able to attend to personal responsibilities (e.g. a child's school play, an elderly parent's hospital appointment) ([Deal, 2015](#)). The [2015 Angus Reid](#)

[Institute study](#) found that 49% of respondents felt that technology has provided them more flexibility in the hours they work. Similarly, a 2008 Pew Research Centre study of a nationally representative sample of 2,134 adults in the U.S., including 1,000 self-identified full-time and part-time adult workers, concluded that nearly six in 10 Americans believe that technologies have allowed them more flexibility in their work hours ([Madden & Jones, 2008](#)).

Impacts

- The [2015 Angus Reid Institute study](#) found that 71% of the Canadians surveyed agreed that mobile technology is an overall positive for working people because it allows for more flexibility in hours and remote work, compared to 29% of respondents who felt that “more technology is an overall negative because now people are expected to work and respond to emails in their personal time”. Similarly, in the 2014 Gallup study, 79% of the full-time U.S. workers who responded considered being able to use communication devices to work remotely outside of business hours a strongly or somewhat positive development ([Harter, 2014](#)).
- For employers, there are indications in the literature that technology and the flexibility it provides workers may have positive impacts too. For example, a [2017 joint Eurofund/International Labour Organization \(ILO\) study](#) that summarizes research on telework from around the world found evidence that telework contributes to higher staff retention, improved employee performance (as a result of fewer interruptions) and higher productivity, including because employees worked more (unpaid) hours.
- On the other hand, the literature also indicates that there can be significant negative impacts of engaging in e-communications for work purposes outside of work hours. For example, it has been associated with poorer employee recovery from work and increased work-life interference ([Derks & Bakker, 2014](#); [Fenner & Renn, 2010](#)), higher levels of burnout ([Derks & Bakker, 2014](#); [Barber & Santuzzi, 2014](#)) and more health impairments ([Arlinghaus & Nachreiner 2014](#)). Further, smartphone use for work purposes in the evening may result in longer hours the day the work is done, but has been found to be linked to less productivity the next day as a result of poorer sleep quality (Barnes, Lanaj & Johnson, 2014).
- Moreover, when employees feel that they cannot “switch off”, this interferes with their ability to recover from work. A study by Belkin, Becker and Conroy suggests that it is not the supplemental work itself, but rather the anticipatory stress associated with workplace expectations around after-hours e-communication, that leads to employee burn-out and reduced work-life balance (as cited in [Dimas, 2016](#)).
- Yet, there are indications that some factors can alleviate these negative impacts. For example, when workers are engaged, they may experience less work-life interference or stress from dealing with work communications after hours ([Harter, 2014](#); [Derks et al, 2015](#)). Similarly, workers who are better able to set boundaries,

for instance through effective time management, may experience less work-to-family conflict ([Fenner & Renn, 2010](#)).

Policy responses

- There are significant differences of opinion about whether and how the challenges around the use of e-communications after work hours should be addressed.
- For some, the key issue is the need for caution on the part of employers because existing labour standards related to working hours, rest periods, overtime and overtime pay may apply in situations when employees perform work via electronic means outside their regular work hours ([O'Dell, 2018](#); [Kent Employment Law, 2017](#)). They suggest that, when practical, employers should consider adopting policies to clarify expectations regarding after-hours e-communications, both to avoid labour standards grievances, as well as to promote employee well-being and productivity ([Kent Employment Law, 2017](#)).
- In a similar vein, some argue there is no need for further legislation given that existing labour standards and other laws (such as the right to privacy⁴) already provide adequate protections. Several commentators emphasize that new “blanket” legislation would be unpractical and hard to implement, would be outdated by the time it was in place given the speed at which technology is advancing and could impede the use of flexible work arrangements ([Moulton, 2017](#); [O'Dell, 2018](#)).
- On the other hand, there is research suggesting that existing labour standards may be insufficient to deal with work-related e-communications outside of work hours, especially in the context of the emergence of what has been termed “third time” ([Vallée, 2010](#); [Coiquaud, 2016](#)). In “third time”, employees are not at work, but they may be called in whenever they are needed, which, depending on the nature of their work, may result in having to be available 24/7. Because under labour standards an employee is not considered to be “at work” during the time they have to be available, employees on third time are not entitled to compensation or to statutory periods of rest. For [Vallée \(2010\)](#), this means that while employees on third time have obligations (namely to be available to be called-in), they have no rights, other than possibly being called into work.
- Third time can be especially significant for non-standard workers, such as temporary, casual, or call-in employees, whose contracts are not based on providing a certain number of hours of work, but on their availability to work whenever required ([Vallée, 2010](#)). Research suggests that it is prevalent in the Canadian trucking sector where truckers often spend time waiting or preparing for loads but this is not counted as working time ([Coiquaud, 2016](#)).

⁴ For example, a 2005 Quebec Court of Appeal case found that employees cannot be obliged to work from home, as this violates their right to privacy. See: *Syndicat des professionnelles du Centre jeunesse de Québec (CSN) c. Desnoyers*.2005, SOQUIJ AZ-50296164. See also, Vallée, 2010 p. 29–33.

- Third time may be an especially significant phenomenon for non-standards workers who are not employees, such as independent contractors, freelancers and gig workers. For example, they may have to be available to work on a contract or gig at any time, or may have to take several contracts at the same time, having to engage in a juggling act similar to part-time, casual and call-in employees who need to be permanently available but, unlike them, falling outside the scope of labour standards.
- In this context, some commentators have suggested that traditional labour standards may need to be expanded to protect workers from excessive employer demands on their time, which could include “a right to disconnect” and a corresponding protection against reprisal. Such statutory provisions could create enhanced awareness about the impacts of after-hours work-related e-communications for both employers and employees, and provide employees with support for saying “no” to checking in after hours ([Moulton, 2017](#)).
- In 2015, the French Minister of Labour asked Bruno Mettling, Deputy CEO at the telecom company Orange, to study the digitalization of the economy. Mettling’s mandate included looking at what was called the “right to disconnect”. Mettling concluded that setting clear boundaries between work and life is the key to achieving the benefits of the digital transformation, such as increased flexibility and better quality jobs. To this end, he argued that there should be both a right and a responsibility to disconnect, which should be developed jointly by employers and employees and involve education and awareness-raising efforts to support employees in setting boundaries ([Mettling, 2015](#)).
- Some researchers have recommended non-legislative approaches to enhance those factors that mitigate some of the negative effects of after-hours e-communications, for example nurturing worker engagement ([Harter, 2014](#); [Derks et al., 2015](#)) and improving workers’ time-management skills ([Fenner & Renn, 2010](#)). In addition, [Perlow and Porter, 2009](#) have suggested actively fostering a workplace culture where disconnecting is mandatory and predictable. In an experiment with this approach conducted at a consultancy firm, they found it was associated with enhanced job satisfaction, increased expectations of long-term careers with the company, and improved work-life balance for employees ([Perlow & Porter, 2009](#)).

STAKEHOLDER PERSPECTIVES

- The on-line survey that was part of the [consultations held by the Labour Program on modernizing federal labour standards](#) from May 2017 to March 2018 included several questions related to after-hours work-related e-communications. While the survey was not representative, the results provide some insight into respondents’ views on this issue.

- Ninety-three percent of respondents⁵ stated that employees should have the right to refuse to respond to work-related emails, phone calls or messages outside of working hours. When asked why and given four possible reasons to choose from, respondents selected: checking work-related messages interferes with family and personal time (28%); employees need to rest (25%); thinking about work at home causes stress (24%); and all work should be done during the work day (20%).
- Five percent of respondents said that employees should not have the right to refuse to respond to work-related emails, phone calls or messages, and they selected the following reasons: business does not stop at the end of the work day (27%); employers cannot always predict when work will need to be done (27%); employees should be flexible to work whenever necessary (18%); and supervisors and managers work more hours and sometimes need answers from employees (17%).
- In addition, almost 80% of respondents indicated that employers should have policies in place that limit the use of work-related technology outside of working hours, while 15% said they should not (and 7% preferred not to answer).
- In comments explaining their answers:
 - many respondents who were in favour of some form of a right to refuse to respond to work-related e-communications after hours said that they felt that such work should be compensated;
 - many respondents who did not feel there should a right to refuse to respond to work-related communications after hours emphasized that this is not an issue the government should regulate; how to handle it should be left up to employees, dealt with in an agreement between the employer and the employee, or by company policies; and
 - many respondents on both sides of the argument mentioned that there needs to be flexibility for exceptions, such as in the case of emergencies or essential services.
- In submissions they made during the consultations, unions and worker organizations echoed the majority response in the survey that there should be a right to refuse to respond to work-related communications after-hours. They highlighted the need to ensure that employees get sufficient rest and opportunity to recover, and to protect their ability to stop work from interfering with other responsibilities.
- Employers and employer organizations emphasized that in the context of the changing nature of work, continuous operations in some industries and the need to be able to respond to emergencies, employers increasingly require a flexible

⁵ All percentages reported are based only on the total number of participants who responded to a specific question. “Respondents” therefore means those who responded to the relevant question in the survey and not the total number of survey respondents. Percentages are rounded.

workforce. Because of this, they indicated, any further restrictions on working hours would be unwarranted and, instead, it should be left up to employers and employees to agree on expectations concerning availability.

APPROACHES ELSEWHERE

Provinces and territories

- Currently, no provinces or territories provide a legal right to ignore work emails or other e-communications outside of regular working hours. However, all provincial and territorial labour standards laws stipulate that hours worked in excess of standard hours must be paid at the overtime rate, and provide rules on rest periods and maximum hours. Some jurisdictions (Alberta, Northwest Territories and Nunavut) also impose a limit on the number of hours that an employee can agree to work or be required to work by their employer in a day.
- A [Private Member's Bill](#) was introduced in the Quebec legislature in March 2018 proposing to require provincially regulated employers to put in place after-hours disconnection policies to ensure that employee rest periods are respected. Employers would also have been obliged to reassess their policies every year and face fines of \$1,000 to \$30,000 for non-compliance. The Bill died on the order paper upon adjournment of the legislature in June 2018.

International

- In France, a statutory “right to disconnect”—that is, the right of employees not to check or respond to email or other work-related communications when they are off work—came into force on January 1, 2017, in response to the recommendations made by [Mettling](#) in his report on the digitalization of the economy.⁶ Under the *Code du travail*, companies with more than 50 employees are required to negotiate a policy with their workers that establishes the boundaries around work-related e-communication outside of work hours. If an agreement on such a policy cannot be reached, the company must publish a charter, after consulting employee representatives, that defines the right to disconnect in that company. The policies and charters must aim to protect workers’ non-work time. The *Code du travail* also requires employers to implement training and awareness-raising for employees on the reasonable use of technology.
- In Germany, a self-regulatory model has been adopted where social partners (labour organizations, employers’ associations and government) collaborate to find tailor-made solutions ([Secunda, 2018](#)). Several employers have reached agreements with their works councils on telework, which often include rules about disconnecting from work-related e-communications outside of work hours. For example, the German Labour Ministry itself has concluded an agreement with its works council that bans

⁶ Supplementary information about the French “right to disconnect” is available in a separate document.

communication with staff outside of work hours, except in emergencies, and protects employees from reprisals for not responding to such communications ([Secunda, 2018](#)).

- In New York City, a councilman introduced a [bill](#) in March 2018 that would make it illegal to require employees to check and respond to emails and other electronic communications outside of usual work hours. Any employer with 10 or more employees would be required to have a policy defining “usual work hours” for each class of employees. Paid time off that employees are entitled to, such as vacation, paid personal days and sick days, would be considered outside of usual work hours. The bill also includes a provision to protect employees from reprisals if they claim their right to disconnect. Violation of the right to disconnect could result in a US\$250 fine for an employer.

Employer approaches

- Some employers, many in Germany and France, have developed their own initiatives to limit the use of email and other work-related e-communications outside of working hours. For example, in Germany:
 - Volkswagen has implemented a policy that stops Blackberry servers from sending emails to staff from half an hour after standard hours end until half an hour before they start (for those employees covered by a collective bargaining agreement) as part of an agreement between the company and its works council. In practice, this means emails are only received between 7 a.m. and 6:15 p.m. ([BBC, 2012](#)).
 - Daimler has adopted a policy that allows employees to set their email program to “holiday mode” while they are on leave, which sends an out-of-office reply (redirecting the person emailing to a different staff member) and deletes the incoming emails. The policy covers all employees with a company email account, which is about half of the employees ([Eurofund/ILO, 2017](#)).
 - Under an agreement between BMW and its works council, employees and supervisors are encouraged to agree to hours during which employees can be reached and employees “are allowed to register time spent working outside the employer’s premises as working time, which opens up the possibility of overtime compensation for the time employees spend responding to emails after the end of their normal working day” ([Eurofund/ILO, 2017](#)).
- In France, under the collective agreement covering the telecommunications sector, employment contracts must stipulate the hours during which a teleworker may be contacted ([Eurofund/ ILO, 2017](#)).

- In Canada, employer measures appear to be less common. In one documented case, at the Toronto office of the public relations firm Edelman, there is an “unofficial rule” that promotes not sending work emails between 7 p.m. and 7 a.m. The firm has found that setting appropriate rules (e.g. senior leadership can communicate between themselves after hours), leading by example and “sticking with it” by reminding people of the policy and the rationale underlying it have helped make the initiative successful ([Kimmel, 2018](#)).

ISSUES FOR THE PANEL’S CONSIDERATION

- To what extent is after-hours work-related e-communications (sending, receiving and responding to emails, phone calls, and other messages) an issue in the federally regulated private sector?
- Are there any promising mechanisms available for regulating work-related e-communications after work-hours?
- Should measures—legislative and/or non-legislative—be considered to address work-related e-communications outside of work hours? To what extent does the current legislative framework under the Code (and related jurisprudence) suffice to address this issue? If new or additional measures are required, what should they look like and why?
 - What would be the nature of the impact of the measures on society, the economy and businesses?
 - Which groups would benefit, which groups would be negatively impacted and what could be done to mitigate adverse impacts?

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