

Report to Corporate Services Committee

To: Chair and Members
Corporate Services Committee

From: Jacqueline Davison
Deputy City Manager Enterprise Supports

Subject: Recent Legislative Changes

Date: June 20, 2022

Recommendation

That, on the recommendation of the Deputy City Manager, Enterprise Supports that the following Report be received for information purposes.

Executive Summary

The purpose of this report is to provide an overview of the recent legislative changes made to the *Employment Standards Act, 2000*, the *Occupational Health and Safety Act* and other Acts under Bill 27 and Bill 88.

Linkage to the Corporate Strategic Plan

Council's 2019-2023 Strategic Plan for the City of London (the "City") identifies several strategic areas of focus including "Leading in Public Service" by establishing the City as a leader in public service.

Analysis

1.0 Background Information

1.1 Previous Reports Related to this Matter

No previous reports.

2.0 Discussion and Considerations

This report provides an update related to *Bill 27, Working for Workers Act, 2021* and *Bill 88, Working for Workers Act, 2022*. Those changes relevant to City operations are outlined below. Steps are currently underway by Civic Administration in response to these changes as appropriate. Additional changes outlined in Bill 27 and Bill 88 are noted in Appendix A.

2.1 Changes under Bill 27 to the *Employment Standards Act, 2000* ("ESA")

On December 2, 2021, Bill 27, *Working for Workers Act, 2021*, received Royal Assent and is now law. The main amendments impacting the City is the requirement for certain employers to have a written policy on disconnecting from work. This requirement works with existing ESA rules around working hours, break times and workplace safety.

The legislation required that effective **June 2, 2022**, an employer shall have their first written policy.

In compliance with this requirement, the City prepared a Disconnecting from Work administrative procedure (Appendix B) to circulate to stakeholders prior to June 2, 2022. The City values the health and well-being of our employees. Disconnecting from work helps us achieve a healthy and sustainable work-life balance. We want to create an inclusive

environment encouraging wellness, so employees feel supported, safe, engaged, motivated and respected. The procedure encourages employees to disconnect from work related activities while acknowledging the need for escalation from time to time during unforeseen events.

Distribution and Communication of Procedure

The Disconnecting from Work administrative procedure was communicated and distributed to employees via corporate email or mailing a hard copy document to employees who do not have computer access. Union and Association representatives were notified and provided a copy of the procedure by email before it was distributed to employees.

The procedure is posted and accessible on the City's internal website under Administrative Practices and Procedures as well as the Dearness Home connections site. People Services Employee Relations Advisors are available to assist employees and address any questions.

2.2 Changes under Bill 88 to the *Occupational Health and Safety Act ('OHSA')*

On April 11, 2022, Bill 88, *Working for Workers Act, 2022*, received Royal Assent and is now law.

On **July 1, 2022**, the following amendments to the *OHSA* will come into force:

- The fines for a contravention of the *OHSA* by a person are increased to a maximum of \$500,000. This has increased from the previous maximum of \$100,000.
- A new penalty is created for directors or officers of a corporation who do not take reasonable care to ensure that the corporation complies with the *OHSA* and related orders. On conviction, directors and officers are liable to a fine of not more than \$1,500,000 or to imprisonment for a term of not more than 12 months, or both.
- For determining the appropriate penalty under the *OHSA*, the Bill provides for aggravating factors that must now be considered. For example, it will be considered an aggravating factor if, in committing the offence, the defendant was motivated by a desire to increase revenue or decrease costs, or if the offence resulted in the death, serious injury or illness of one or more workers.
- The limitation period for instituting prosecutions under the *OHSA* is increased to two years (previously it was one year) from the later of the date of the occurrence and the day the inspector becomes aware of the alleged offence.
- The *OHSA* is also amended to require employers who become aware or ought reasonably to be aware that there may be a risk of a worker having an opioid overdose in the workplace to provide a naloxone kit in the workplace. The naloxone kit must be in the charge of a worker who has been trained on recognizing an opioid overdose and how to administer naloxone. This provision comes into force upon proclamation.

Bill 88 creates a higher consequence for non-compliance with the potential for greater penalties when violations of the *OHSA* are found. Further, the increase to the limitation period means a longer period of uncertainty for workplace parties regarding whether charges will be laid, and an even greater period before a possible trial or resolution.

Next Steps

Civic Administration is in the process of updating all training materials to ensure applicable stakeholders are aware of increase in fines and penalties. This will also be communicated to parties in other means including safety talks. Furthermore, in response to changes related to naloxone, Civic Administration is looking to identify positions where we are aware or ought reasonably to be aware that there may be a risk of workers having an opioid overdose,

identifying what training is currently provided to these positions to ensure the necessary requirements are implemented.

Conclusion

Civic Administration has or is currently undertaking the necessary steps in response to these changes as appropriate. As noted above, this includes developing applicable procedures, communications plans, and updating training as appropriate. These steps will ensure the City of London adheres to changes to the *Employment Standards Act, 2000*, the *Occupational Health and Safety Act* and other Acts under Bill 27 and Bill 88.

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Appendix A

Other changes to Acts resulting from Bill 27 include:

Employment Standards Act, 2000:

- Employers are prohibited from entering into employment contracts or other agreements with an employee that are, or that include, a non-compete agreement. Certain exceptions are provided for.
- Licensing requirements for temporary help agencies and recruiters.

Occupational Health and Safety Act:

- The owners of a workplace are to provide access to a washroom to persons making deliveries to or from the workplace. Exceptions are provided for.

Workplace Safety and Insurance Act, 1997:

- Sections 96.1 and subsection 97 (2) are repealed.
- New section 97.1 provides in certain circumstances, the Board is permitted or required to distribute amount in the insurance fund in excess of specified amounts among Schedule 1 employers.
- New section 97.2 provides a determination made by the Board under section 97.1 cannot be reconsidered by, or appealed to, the Board of the Tribunal.
- Related regulation-making authorities are added to section 100.
- Section 159 is amended to provide the Board may enter into an agreement with any person or entity for the purpose of administering Part VII (Employers and their Obligations).

Employment Protection for Foreign Nationals Act, 2009:

- Includes a prohibition against a recruiter or employer, in connection with the recruitment or employment of a foreign national, knowingly using the services of a recruiter who has charged a fee to a foreign national in contravention of subsection 7 (1) of the Act.
- Provides that a recruiter who uses the services of another recruiter in connection with the recruitment or employment of a foreign national, and if the recruiter who uses those services is a corporation, the directors of that recruiter, are jointly and severally liable to repay fees charged to the foreign national by the other recruiter in contravention of subsection 7 (1) of the Act.

Fair Access to Regulated Professions and Compulsory Trades Act, 2006:

- Regulated professions are required to ensure they comply with any regulations respecting English or French language proficiency testing requirements.
- Regulated professions are also prohibited from including Canadian experience requirements as qualifications for registration unless an exemption from the prohibition is granted. Compliance orders may be issued if a regulated profession imposes requirements that are prohibited under the Act.
- A section is added describing some ways in which the Minister may support the access of internationally trained individuals to regulated professions and providing that the Minister may make related grants.
- Various related amendments are made, including to the regulation-making powers.

Ministry of Agriculture, Food and Rural Affairs Act:

- Section 4 of the Act is amended to provide that the Ministry may review matters related to agriculture, food and rural affairs and establish policies and provide recommendations, advice, coordination, and assistance to the Government in matters related to agriculture, food and rural affairs.
- New section 4.1 of the Act authorizes the Minister to collect information, including personal information, for the purposes set out in the section. The section sets out limits with respect to the collection, use and disclosure of personal information. Regulation-making powers are provided for.

Other changes to Acts resulting from Bill 88 include:

- A standalone *Digital Platform Workers' Rights Act, 2022*. This creates rights for workers who accept work through a digital platform, regardless of whether or not they are an employee of the platform.

Employment Standards Act, 2000:

- Effective January 1, 2023, removal of certain business and information technology consultants from the scope of the ESA.
- New requirement for employers with 25 or more employees to have a written policy about electronic monitoring. Policy must inform employee whether and if they are being monitored, the circumstances and purposes for which any information obtained may be used. Employers with over 25 employees have until October 11, 2023, to put the policy in place.
- Expands reservist leave by providing an employee is entitled to leave if they are participating in Canadian Armed Forces military skills training, and reduces the qualifying period for reservist leave to 3 months from 6 months continuous employment.

Fair Access to Regulation Professions and Compulsory Trades Act, 2006:

- Timelines established within which regulated professions must respond to applications for registration from domestic labour mobility applicants unless an exemption is granted. Timelines will come into force on a future date to be determined.

Appendix B Disconnecting from Work Procedure



London
CANADA

Disconnecting from Work

Procedure Name: Disconnecting from Work

Revision History: N/A

Last Review Date: June 2, 2022

Service Area Lead: Director, People Services

1. Procedure Statement

- 1.1 The Corporation of the City of London (“City”) values the health and well-being of our employees. Disconnecting from work helps us achieve a healthy and sustainable work-life balance. We want to create an inclusive environment encouraging your wellness, so you feel supported, safe, engaged, motivated and respected.
- 1.2 This procedure supports you in your ability to disconnect from work outside of your normal hours of work, subject to the exceptions noted in section 4.2 below.
- 1.3 This procedure is subject to and interpreted according to all applicable legislation, including Ontario’s *Employment Standards Act, 2000* (“ESA”), the *Occupational Health and Safety Act* (“OHSA”), the *Human Rights Code* (“Code”), collective agreements, City policies and procedures, and complies with the *Working for Workers Act, 2021* (“WWA”).

2. Definitions

- 2.1 **Disconnecting from work:** Means 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.
- 2.2 **Normal Hours of Work:** Hours of work are set by the City and may vary by Service Area, Division and Section based on operational requirements and the services provided to our community and clients. Your hours of work are defined by practice, an employment contract or by collective agreement terms.

3. Applicability

- 3.1 This procedure applies to all employees of the City.

4. The Procedure

- 4.1 General
 - a) We respect our employees’ needs to disconnect from work outside of normal hours of work.
 - b) We encourage you to review and follow the information contained within this procedure to ensure you take the time to disconnect from work when it is appropriate to do so.
 - c) You will not be penalized or face reprisal for complying with this procedure.

- d) The roles and responsibilities of our people leaders and employees are outlined below.
- e) This procedure is consistent with and does not change employee rights and entitlements under other ESA rules and regulations, including:
 - Hours of Work and Eating Periods
 - Vacation with Pay
 - Public Holiday rules
 - The rules in Ontario Regulation 285/01 that establish when work is “deemed” to be performed.

As an employer, we have an obligation to follow the rules under the ESA unless exemptions or special rules apply.

4.2 Exceptions

- a) Due to the nature of the services we provide, work outside of established normal hours of work may be required from time to time.
- b) Occasionally you may need to be contacted outside your normal hours of work due to:
 - Unforeseen situations
 - An emergency
 - When operational requirements require
 - Helping or filling in on short notice
 - Other unusual incidents as they arise
 - If your position requires work or work-related communications outside of your normal hours of work
- c) Overtime, on-call, or standby according to applicable collective agreements or established procedures.

4.3 Roles and Responsibilities

Senior Leadership Team

- Ensure all employees are encouraged to disconnect from work in accordance with this procedure.
- Show support, lead by example, and respect the needs of others to disconnect.
- Communicate with your Service Areas to review the best ways to disconnect from work.

Managers and Supervisors

- Take necessary steps allowing employees to disconnect from work outside of their normal hours of work subject to the exceptions in section 4.2 above.
- Be open to communication from your employees related to this procedure, listen to their concerns and try to provide resolutions.
- Regularly evaluate expectations, workload, and productivity.
- Provide employees with information regarding exceptions where they may be required to work outside of their normal hours of work.
- Be aware of and clearly communicate the hours of work for your Service Areas and Sections.
- Ensure your employees take allotted breaks.
- Avoid penalizing or taking actions of reprisal against employees who have questions about this procedure or request compliance with it. Reasonable direction and corrective actions are not considered reprisal.

Employees

- Avoid checking communications outside of normal hours of work.
- Communicate with your Manager or Supervisor if you have problems maintaining a work-life balance.
- Be mindful of the needs of others to disconnect.
- Take allotted breaks and vacation time.
- Be aware when you may be required to work as outlined in the Exceptions section 4.2 above.
- Notify your Manager or Supervisor if you feel pressure to respond to issues outside of your normal hours of work.

People Services

- Provide guidance and support in administering this procedure.
- Provide new employees with a copy of this procedure within 30 days of their start date.
- Review and amend this procedure annually or as may be required within the current year.
- Provide all employees with an amended version of this procedure within 30 days of the amendment.
- Retain a copy of this and any revised version of this procedure for three years after it ceases to be in effect.

4.4 Communications, Meetings and Calls

- a) We do not want you to feel obligated to send or respond to messages when you are not working. Work-related communications should be sent and reviewed during normal hours of work, subject to the exceptions in section 4.2 above.
- b) As some employees have different working hours, you may receive work-related communications outside your normal hours of work. Subject to 4.2 above, there is no expectation you will respond until you return to work.
- c) Meetings and calls, both in-person and virtual, should be booked during normal hours of work, subject to the exceptions in section 4.2 above.
- d) For additional tips on handling communications, meetings, and calls, refer to Appendix A: Disconnecting from Work Tips and Appendix B: Technical Tips.

4.5 Mental Health Support

- a) Recognizing disconnecting from work plays an important role in managing mental health, we will assist and support your mental health by:
 - Promoting work-life balance
 - Recognizing mental health is equally important as physical health in ensuring a safe and healthy workplace
 - Minimizing work-related sources of stress as much as possible
 - Providing access to supportive people, resources, and programs (e.g., LifeSpeak, LifeWorks, Wellness Wednesdays)

4.6 Questions and Concerns

- a) Talk to your Manager or Supervisor if you have any questions or concerns about this procedure.

- b) If your question or concern cannot be resolved, you can bring the issue forward to People Services for further discussion.

4.7 Review

- a) This procedure will be reviewed at least annually ensuring it remains current, relevant, and complies with the ESA, OHSA, Code, and the WWA.

4.8 Related Resources

- Use of Technology Administrative Procedure
- *Employment Standards Act, 2000*
- *Occupational Health and Safety Act*
- *Ontario Human Rights Code*
- *Working for Workers Act, 2021*

Appendix A: Disconnecting from Work Tips

Communications/Calls

- Use notifications or out of office replies to indicate a response time for returning messages if you are away or busy.
- If sending an email during off-hours, include wording in your email letting the recipient know a response can wait until their normal hours of work have resumed. For example, "I am sending this email to you during off-hours. I do not expect you to respond to it outside your normal hours of work."
- Place calls, send and check emails during normal hours of work
- If sending an email during off-hours, use the tags box in your drafted email to set a "Do not deliver before" date. This delays the delivery of your message to a date and hour you set, so it can be sent during normal hours of work.

Meetings

- Schedule during normal hours of work whenever possible
- Avoid scheduling during breaks or lunch periods
- Include only those who are needed, who play an active role, or are directly involved operationally
- Be prepared, have an agenda, use the meeting time effectively

Managing Workload

- Complete your work and respond to work-related communications during your normal hours of work.
- Block off time in your calendar to complete tasks or reply to communications
- Change your online status to "busy"
- Prioritize your work in order of importance
- Break work down into manageable pieces
- Aim for one workday without meetings
- Take allotted breaks and schedule them in your calendar

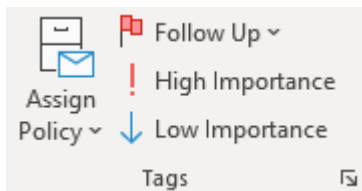
If you have tried the above suggestions and are unable to complete your work or work-related communications during your normal hours of work or have questions, we encourage you to reach out to your Manager, Supervisor or People Services.

Additionally, contacting the Service Desk for technical support on setting up rules, changing your online status, or using other features is helpful. You can also refer to Appendix B: Technical Tips.

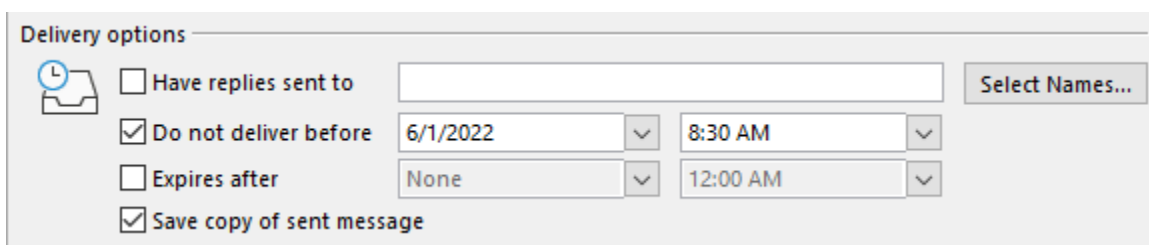
Appendix B: Technical Tips

A. Set a “Do not deliver before” date for email messages

1. While composing an email message, select the **More options** arrow from the **Tags** group in the Ribbon.



2. Under **Delivery options**, select the **Do not deliver before** check box, and then click the delivery date and time you want.

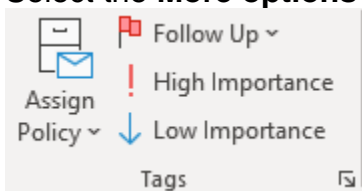


3. Click **Close**.
4. When you are done composing your email message, select **Send**.

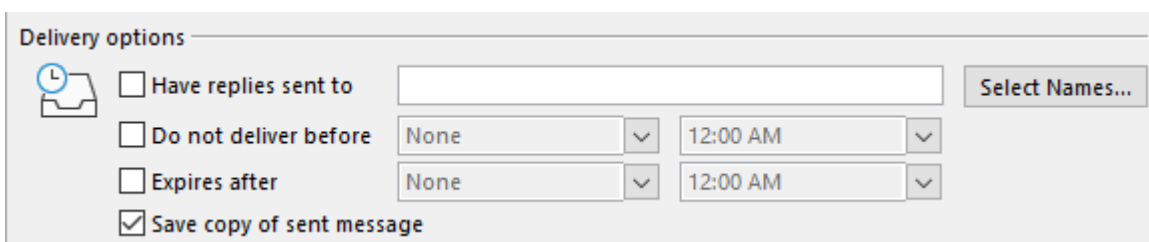
After you click **Send**, the email message remains in the **Outbox** folder until the delivery time.

B. Change a delayed “Do not deliver before” date to send the email message immediately

1. Switch to the **Outbox** folder.
2. Open the delayed message.
3. Select the **More options** arrow for the **Tags** group in the Ribbon.



4. Under **delivery options**, clear the **Do not deliver before** check box.

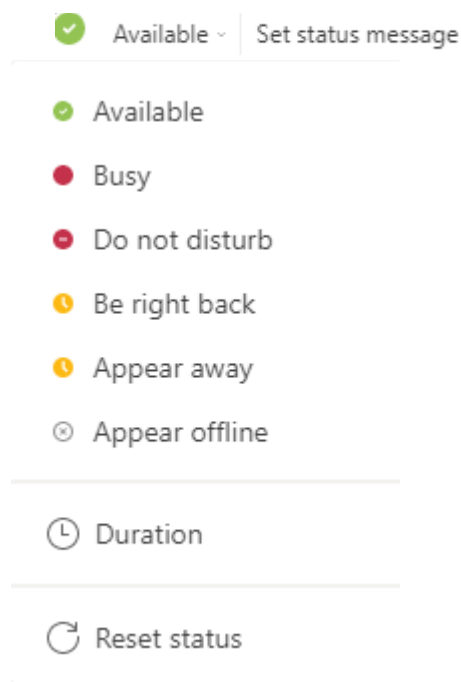


5. Click **Close** and **Send**.

C. Change your status in Teams

Teams automatically sets the status in some cases, (e.g., when you are in a call). To let people know what your status is in Teams, you can update your status yourself. The little dot in your profile tells people if you are available or not.

1. Click on your profile picture in the top right corner of your screen.
2. Click on your status to bring up the status menu.



3. Click on the status you want to use.

You can also update your status by typing, “available, busy, dnd, brb, away, or offline”, directly into the command box at the top of your screen.

4. The following outlines each status you can change:
 - **Available** is when you are active in Teams and do not have anything in your calendar (no meetings or calls, for example). Note that Teams will automatically set your status from “Available” to “Away” when you lock your computer or when it enters idle or sleep mode. On mobile, this will happen when the Teams app is in the background.
 - **Busy** is when you want to focus on something, and you **do want notifications** to pop up. If you are in a meeting or call, Teams will automatically change your status to “In a meeting” or “In a call (Busy)” when not set to “Do not disturb”.
 - **Do not disturb** is when you want to focus or present your screen and **do not want notifications** to pop up.
 - **Be right back** is when you want to say you are temporarily away. It is never set automatically.
 - **Appear away** is when you need to work without responding right away.
 - **Appear offline** is when you want to indicate you are not signed in to Teams, so will not be responding until you are back online. You will still receive notifications if anyone messages you.

D. Delay delivery of all email messages by up to two hours by creating a rule

1. Click **File**.
2. Click **Manage Rules and Alerts**.
3. Click **New Rule**.
4. In the **Step 1: Select a template** box, under **Start from a Blank Rule**, click **Apply rule on messages I send**, and then click **Next**.
5. In the **Step 1: Select condition(s)** list, select the check boxes for any options

you want, and then click **Next**.

If you do not select any check boxes, a confirmation dialog box appears. If you click **Yes**, the rule that you are creating is applied to all messages you send.

6. In the **Step 1: Select action(s)** list, select the **defer delivery by a number of minutes** check box.
7. In the **Step 2: Edit the rule description (click an underlined value)** box, click the underlined phrase **a number of** and enter the number of minutes for which you want the messages to be held before it is sent. Delivery can be delayed up to 120 minutes.
8. Click **OK**, and then click **Next**.
9. Select the check boxes for any exceptions that you want.
10. Click **Next**.
11. In the **Step 1: Specify a name for this rule** box, type a name for the rule.
12. Select the **Turn on this rule** check box.
13. Click **Finish**.

After you click **Send**, each message remains in the **Outbox** folder for the time you specified.