



NINE TO FIVE

My new boss wants me to check emails after hours. Can I legally stop working at 5 p.m.?

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SPECIAL TO THE GLOBE AND MAIL

PUBLISHED NOVEMBER 21, 2023

I started a new job recently and my manager expects me to check emails after hours in case anything urgent comes up in the evening because some of our team is located in another time zone. My contract indicates that my work hours are from 9 a.m. to 5 p.m. Should I be paid to be on-call if I'm expected to keep an eye on my inbox after 5 p.m.? Or, am I legally allowed to stop working at 5 p.m. if this is what my contract says?

THE FIRST ANSWER

Alia Besharat, lawyer, Ogletree Deakins International LLP, Toronto

If your employer wants you to be available for work beyond what is stipulated in your employment agreement, the best route of action would be to first speak with your employer directly to clarify exactly what the expectations are with regards to 'checking emails after hours.' Depending on what the response is, you may want to confirm how the organization tracks the extra time above and beyond your working hours and you will want to confirm whether there is an applicable overtime policy. If you are in Ontario, and should the working hours amount to anything more than 44 hours in a week, you would be entitled to overtime pay at the rate of time and a half your regular pay. This overtime rule applies to both hourly and salaried employees subject to any exemptions.

Another consideration depending on the specific type of work you do is regarding on-call employees. In Ontario, as of Jan. 1, 2019, the Employment Standards Act was amended such that if an employee is required to be available for work after hours, or is required to work but ends up working less than three hours, they have the right to receive wages for a minimum of three hours if that working time falls short of that duration. So if you are expected to work after 5 p.m., this rule may be applicable to you.

That said, if the contract is unclear, the first thing you should do is speak with your employer so that there is no confusion about the expectations for both you and your employer.

THE SECOND ANSWER

Stephanie Barron, employment and human rights lawyer, Purnell Employment Law, Calgary

Amid the growing prevalence of remote work and the increasing adoption of hybrid office setups, striking a balance between work and personal life has become a challenging endeavour, emphasizing the importance of the “right to disconnect” from work. The “right to disconnect” is the idea that employees should not be required to perform work-related duties outside of their contractual hours of work.

Currently in Canada, Ontario is the only province with “right to disconnect” legislation, which requires certain employers to have a written policy on disconnecting from work. These policies are meant to address employer’s expectations on how and when employees engage and disengage from work, such as reading or replying to work-related emails or calls outside of employees’ hours of work.

If your employer does not have a disconnecting from work policy, most provincial legislation already imposes limits on employees engaging in work-related communications outside of their regular working hours, except for exempt employees such as supervisors, managers and certain professionals.

Provincial employment standards legislation defines working time and sets guidelines to ensure employees are paid for all working time, as defined. Responding to work-related emails that are not properly treated as working time may result in a statutory breach of your rights if you do not receive wages for your time worked, your time is not counted toward overtime thresholds or you do not receive overtime pay, or you are expected to participate in communications during statutory holidays or your vacation time. It is best to consult a lawyer about your specific situation.

<https://www.theglobeandmail.com/business/careers/career-advice/article-my-new-boss-wants-me-to-check-emails-after-hours-can-i-legally-stop/>

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