



**UNI GLOBAL UNION
PROFESSIONALS & MANAGERS**

The Right to Disconnect

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Background

The right to disconnect refers in short to the right of employees to disconnect from their work and to not receive or answer any work-related emails, calls, or messages outside of normal working hours. Technological developments and mobile devices have allowed employees to perform their work anywhere and at any time. While there are also benefits with this flexible approach to work, it risks eroding the barriers between working and leisure time. In many workplaces there is also an implicit or explicit expectation to check emails at home and at night, as well as during weekends and holidays, especially for managers and supervisors. This constant connection and ensuing lack of rest carries important psychosocial risks for employees, including anxiety, depression, and burnout.¹

The right to disconnect is designed to establish boundaries around the use of electronic communication after working hours and to provide employees with the right to not engage in any work-related activities at home. It is often looked upon as an individual right of the employee to not only disconnect but also to not be reprimanded for failing to connect – or rewarded for constantly staying connected. As this report will show, however, any work organization systems that include a right to disconnect must be approached collectively and with a clear obligation on the part of the employer for the right to be effectively safeguarded.

The right to disconnect as a legal right emerged in particular in France, where in 2016 a law was enacted that introduced the right to disconnect as a topic for mandatory negotiation in companies². The law followed a 2001 French Supreme Court ruling that “the employee is under no obligation either to accept working at home or to bring there his files and working tools”³, and a 2004 decision by the same court that an employee cannot be reprimanded for being unreachable outside working hours.⁴

Since then, and following the French initiative, in Spain a right to disconnect was included in the 2018 Data Protection Act, and in Italy a right to disconnect was also addressed in connection with a 2017 law on “smart working”. Other countries have also begun exploring the introduction of a right to disconnect at either the national or state level, including Belgium, Canada, India, the Philippines, and Portugal.

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On the other hand, some countries, most notably Germany, have taken a non-legal approach to the right to disconnect and opted to encourage negotiations between the social partners as a better way to secure workers' disconnection. Indeed, many German multinationals have company agreements that secure the right to disconnect, including Volkswagen, Daimler, and Siemens.

There are multiple ways to implement and enforce a right to disconnect. In some cases, disconnection is encouraged but not monitored by the employer, in others it is monitored through regular status checks and employee questionnaires, and in yet others employers have opted for technical solutions to prevent employees from connecting to work after hours, including shutting down the company email servers at the end of the formal working day.

This report builds upon research by Syndex, the European consultancy firm, carried out in 2019 and commissioned by UNI P&M. The research analyzed laws and collective agreements primarily from Western European countries, where the right to disconnect is the most advanced. The report also includes submissions most notably from FO-COM (France), CC.OO. (Spain), and CFTD Cadres (France).

1- See e.g. William J. Becker, Liuba Belkin, Sarah Tuskey, "Killing me softly: Electronic communications monitoring and employee and spouse well-being", *Academy of Management Proceedings*, 2018 (1)
2- "Law on work, the modernization of social dialogue, and the safeguarding of career paths", aka. The "El Khomri Act", Law 2016-1088 of 8 August 2016. The law entered into force on 1 January 2017
3- Labor Chamber of the Cour de Cassation, 2 October 2001, No. 99-42.727
4- Labor Chamber of the Cour de Cassation, 17 February 2004, No. 01-45.889
5- Ley Orgánica 3/2018, "Protección de Datos Personales y garantía de los derechos digitales", 5 December 2018
6- Law No. 81 of 22 May 2017



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1. DESCRIBE THE WHAT AND THE WHY

When embarking on a process to introduce a right to disconnect in a workplace, it is important to establish a common understanding of what the right to disconnect entails. In short, it has three main elements. The first two, the right of an employee to not perform work outside normal working hours and the right to not suffer any negative consequences for doing so, are normally observed. However, the third element, the duty for others to respect the right to disconnect (e.g. by not sending emails after hours) is easily overlooked but essential in securing the right to disconnect and ensuring that not all responsibility is put on the individual to enforce her right. Finally, it is worth reiterating that the right to disconnect does not imply an automatic obligation to disconnect from work; employees should still be able to use digital tools after hours in exceptional circumstances, as long as such circumstances have been previously defined.

It is similarly important to discuss why a right to disconnect is to be implemented, and what the risks are if this right is not introduced. As previously noted, a constant connection to work and ensuing lack of rest can have important implications for the employees' health and overall performance in the company. Clearly defining the purpose of the right is important for its implementation. Conversely, merely referring to a legal obligation is likely to cause employees to view the right to disconnect as only having a formal purpose without any substantive objective.

2. DETERMINE CAUSES AND NOT ONLY EFFECTS

There would be little need for a right to disconnect if there weren't also underlying organizational issues in the workplace. A primary source of concern is a high workload: employees who are unable to perform their assigned work during the normal working day may need to work additional – and often unpaid – hours outside the office. Employees may also feel the need to be connected to work due to actual or perceived pressure from their manager, for fear of missing out on important conversations and decision-making, or for fear that not answering emails after hours or during weekends and holidays would signal a lack of commitment to the employer and thus negatively affect their career. Conversely, employees may also stay connected if such behavior is rewarded by the employer. A right to disconnect naturally cannot fix all organizational issues, but introducing the right without regard to its context is likely to have only a marginal positive effect, if at all.

3. PERFORM SITUATIONAL ANALYSIS AND SET INDICATORS

Addressing a right to disconnect in the workplace should start with an analysis of the current situation, highlighting the usage habits of all staff. How many emails are being sent after hours? What about calls and other messages? Are there differences between different departments, or between different groups of employees? Is it a permanent feature, seasonal, or linked to certain events such as product launches? Both formal work tools such as emails and phone calls as well as unofficial or private communication methods such as WhatsApp should be analyzed. Based on this initial data, indicators can then be developed for the workplace as a whole and/or for different teams and departments.

4. DEFINE NORMAL WORKING HOURS

Disconnecting is likely to affect different groups of employees differently, and varying solutions may need to be developed and agreed upon for different teams that perform different functions. Particular attention should be given to employees who regularly work with people in different time zones. Negotiations between employees and their trade unions and the employer to define what constitute normal working hours and periods of availability and rest are crucial. Without this organizational sensitivity the employees may not be able to effectively exercise the right, or may even see it as counterproductive and find ways to circumvent regulations.

5. ENSURE GENDER AND EQUAL OPPORTUNITIES PERSPECTIVE

Women traditionally have more responsibility for their families and homes than men, and may not be able to stay connected after the formal working day ends even if they wanted to. This is particularly the case for single mothers, for whom a right to disconnect could have a proportionally larger positive impact than for other employees. However, parents may also need more flexibility with their hours to leave work early but reconnect at night when their kids are at sleep. It is thus important to have a gender and equal opportunities perspective in mind when introducing a right to disconnect to maximize the benefits, to avoid unintended negative consequences, and to promote family co-responsibility.

6. ENGAGE AND COMMUNICATE TO ALL STAFF

A frequently cited statistic in change management is that 70% of all change programs fail. As introducing the right to disconnect in a workplace is likely to involve a culture change at both the individual and the organizational level, the involvement of all staff in developing and implementing new ways of working is important.

The employer should also develop a comprehensive communication strategy to inform employees before a project to introduce a right to disconnect begins and during its development, so that the employees understand the background and rationale for the change. Once the policy has been finalized, more communication is necessary so that employees understand what the policy is and what behavioral changes are necessary.

It is important that the communication is clear and does not introduce ambiguity regarding its purpose or method of implementation. The communication must also reach all levels of the company, from junior staff members to senior managers. Regular reminders of the company policy are also important. Finally, training should be provided to all staff on the correct use of digital tools and the new company policy, including to the human resources department.



7. TRAIN AND SUPPORT MANAGERS IN PARTICULAR

Managers play a crucial role in the successful implementation of any right to disconnect policy, in particular top management. If a manager continues to send emails after the working day is over and expects an immediate response from her team members, then that action is more important in defining employees' behavior than a company code of conduct. On the contrary, when managers receive training on the right to disconnect and the proper use of digital tools, they can ensure that the policy is followed both through setting a good example themselves and through individual conversations with their team members. The human resources department should also be available to provide additional support to the managers whenever needed.

8. ENLIST TECHNICAL SUPPORT

While repressive actions such as shutting down the company email server between certain hours are likely to be counterproductive, there are other technological solutions that can be embedded in a right to disconnect policy to encourage the desired behavior. These can include automatic reminders or warning messages to users seeking to send emails after hours that they are non-compliant with the policy, delays on emails sent at night so that they are only delivered in the morning, or effective out of office messages that also list who is to be contacted in the employee's absence.

9. MONITOR THE POLICY REGULARLY

It is recommended that a follow-up committee is established consisting of both employer and trade union representatives to monitor the application of the right to disconnect policy both via performance indicators and through employee surveys, and to address any issues and adjust the policy as necessary. Employees should also be given reports on the collective and/or individual use of digital tools and adherence to the policy at regular intervals.

10. PROVIDE REMEDIAL ACTIONS

It is likely that not all employees will welcome a right to disconnect and modify their behavior according to the new policy. For these employees, corrective measures such as voluntary electronic monitoring may be proposed. Line managers and/or the human resource department can also summon employees to discuss the reasons preventing them from going offline and to look for possible solutions.

Example text

The following text can be used as an example when negotiating clauses and agreements on the right to disconnect at the national and international level:

While digital tools allow employees the flexibility to work anywhere and at any time, an always-connected work culture carries important psychosocial risks, including anxiety, depression, and burnout.

The employer therefore recognizes that employees have a right to disconnect from work and are under no obligation to answer phone calls, emails, or messages outside normal working hours. They shall not be reprimanded or otherwise subjected to disciplinary action for failing to do so, or rewarded for staying connected.

The employer is under the obligation to enable and protect the right to disconnect, and shall negotiate with the employees and their trade unions to define what constitute normal working hours as well as periods of availability and rest.

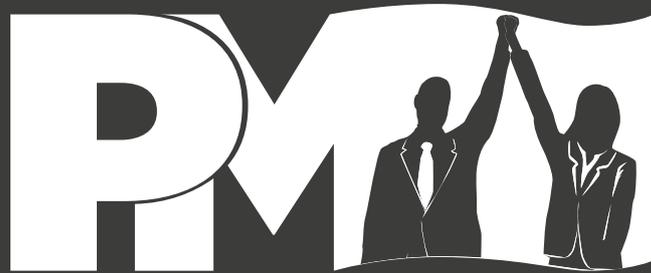
An initial analysis of the current use of digital tools shall be performed for the company as a whole and for its different departments. Indicators shall be established to track the implementation of this policy and to reduce harmful behaviors.

All staff shall be informed and engaged prior to and during the further development of a right to disconnect policy, as well as during the implementation and review stages. All staff shall also receive training on the proper use of digital tools.

Managers play a central role in the successful implementation of this policy, and shall be given additional training and support as needed. Managers also have a duty to respect the right to disconnect of their team members, and shall provide a good example for their team.

Technical solutions shall be reviewed and implemented to remind all staff of the proper use of digital tools and to encourage behavior consistent with the policy.

A committee consisting of employer and trade union representatives shall be established to monitor the implementation of the agreement. They shall meet regularly, but not less than once per year.



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