INTERNATIONAL LABOUR LAW NETWORK **NEWSLETTER**

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INTERNATIONAL LABOUR LAW NETWORK

Q4 | 2024

Dear Reader,

Since the pandemic, many employers have introduced teleworking 'remote working'. To date many workers continue to carry out their professional activities from home or remotely from their workplace. This situation has resulted in the boundary between work and private life becoming very blurred, which means that workers often find themselves in situations where they feel obliged to answer emails and phone calls outside of their working hours.

Currently, there are no EU laws granting a right to disconnect. UK national regulations do not provide for a formal right to disconnect either.

However, in January 2021, the European Parliament adopted a resolution with recommendations to the Commission on the right to disconnect and in 2024, the Commission has launched a consultation.

Under Article 154(2) of the Treaty on the Functioning of the European Union (TFEU), the Commission must consult with management and labour before proposing new social policy legislation. The feedback collected during this period will now be analyzed to determine if there is a need for further legislative action. Should this be the case, the Commission will initiate a second-stage consultation with social partners to refine the proposed legislative measures.

Top ILLN News

The Right to Disconnect from the Modern Workplace

However, in the meantime, several European countries have already taken initiatives on the right to disconnect. Other countries have not yet taken any initiative.

In this newsletter, we give you an overview of the applicable rules in the member countries in which ILLN is present.

We hope you enjoy reading it.

THE RIGHT TO DISCONNECT FROM THE MODERN WORKPLACE

UNITED KINGDOM

Under the new Labour Government, it is proposed that a new 'right to disconnect' shall be implemented, giving workers the right to disconnect from work outside of working hours. This new right has not, however, been included in the new Employment Rights Bill, but will be dealt with by way of a (non-statutory) Code of Practice. But what does this new right mean, and why might we need this?

What is the right to switch off?

A right to disconnect looks to give workers the right not to have to engage in emails, phone calls, and messaging outside of their contracted working hours.

Why might we need this?

With one of the lasting side-effects of the pandemic being an increase in flexible and remote working practices in many workplaces, this has undoubtedly blurred the lines between work and home life. The Government aims to promote healthier working practices, to encourage a more productive and motivated workforce.

It has been indicated that this right will follow similar models to those already in place in other countries. Taking France and Luxembourg (who has recently adopted this concept) as examples, we look to see how this may be implemented in the UK.

Looking ahead for the UK

The UK Government may take inspiration from France and Luxembourg when implementing the right, using their established frameworks to craft one of their own.

It is, however, recognised that that business needs vary, and employees have different roles; a 'one size fits all' approach cannot be taken in this instance. Notably, the significant effect these policies may have on smaller businesses is a large consideration in determining how such rights should be applied.

Debate surrounding the penalties in the UK seems to suggest that the likely consequences for a breach would be similar to those for failure to follow the Acas guidance on disciplinary and grievance procedures. This would therefore look to uplift a compensation award of another claim, rather than constituting a claim on its own.

UNITED KINGDOM

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THE RIGHT TO DISCONNECT FROM THE MODERN WORKPLACE

FRANCE

Introduced in 2017, the law does not provide a comprehensive set of rules, but rather states that employers and employees should come to an agreement together.

For companies with union delegates, it is mandatory to address this right during annual negotiations and to initiate discussions aimed at forming a collective agreement.

In the instance that there is no collective agreement, employers must set out official guidelines (following the Work Council's opinion and if no employee delegates) which should include terms for exercising the disconnection right and the implementation of training and awareness sessions for employees and supervisors with regard to responsible use of electronic devices.

For smaller companies, without union representation or a Works Council, general guidelines should also be provided for its employees on the right to disconnect. At the very least, the subject should be raised during discussions on working time.

While not acting is not an option to protect employers from the risk of claims arising from working-time, the law is not prescriptive. Implementing the right may look different from company to company, with the company culture heavily influencing this.

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THE RIGHT TO DISCONNECT FROM THE MODERN WORKPLACE

LUXEMBOURG

By a law dated 28 June 2023 (the "Law"), Luxembourg has formally introduced the right to disconnect in its Labour Code, under the sections relating to employer's obligations.

Previously Luxembourg law indirectly regulated the concept of the right by requiring employers to comply with rules aimed at protecting employees, such as rules relating to working hours and health and safety. In 2019, a decision of the Luxembourg Court of Appeal recognized such right to disconnect by declaring a termination 'abusive' for dismissing an employee who did not respond or react to calls and instructions received during his holidays.

Pursuant to the Law, employers with employees who use digital tools for work must establish a system that guarantees the right to disconnect outside of working hours.

This right to disconnect should be implemented by way of a collective bargaining agreement or a subordinate agreement. In the absence of such agreements, the system must be defined at company level within the framework of competencies of the staff delegation, if any. In such cases, the introduction of the right is to be carried out once the staff delegation has been informed and consulted, or by mutual agreement with them in companies with at least 150 employees.

Arrangements must adapt to the particular circumstances, features and issues concerning the company or sector, and must address the following:

- the practical arrangements and technical measures for disconnecting from digital devices;
- awareness-raising and training measures; and
- compensation arrangements in the event of one-off exceptions from the "right to disconnect".

Failure by employers to adhere to the right and implement the system will be liable for an administrative **fine between EUR 251 and EUR 25,000**. Prior to the fine being applied by the Director of the Labour Authority (*Inspection du Travail et des Mines – ITM*), the circumstances, seriousness of the breach and behaviour of the offender should all be considered. Such **sanctions will become applicable as of 4 July 2026**.

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THE RIGHT TO DISCONNECT FROM THE MODERN WORKPLACE

BELGIUM

In Belgium, the right to disconnect is governed by a law of 3 October 2022.

This law provides for a right to disconnect, i.e. the right for workers not to be connected to professional digital tools (mobile phone, smartphone, PC, e-mail, etc.) outside working hours.

The aim is twofold: to ensure that workers' rest and leave periods are respected, and to safeguard their private and family life.

Which employers are concerned?

The law applies to all companies that fall within the scope of the law of 5 December 1968 on collective labour agreements and joint committees (i.e. employers in the private sector). These companies **must ensure a right to disconnect if they employ at least 20 workers.**

A separate legal framework is provided for employers of the public sector.

What formalities need to be completed?

In the companies concerned, the right to disconnect must be the subject of :

- a company collective labour agreement (CLA);
- or, failing that, a provision in the work regulations (« règlement de travail » / « arbeidsreglement »)

The company's CLA or, failing that, its work regulations must provide for (at the very least):

- **the procedures for applying the right to disconnect:** closure of access to the company's computer server during certain hours, mention of the non-imperative nature of an immediate response in the automatic signature of e-mails, etc;
- **instructions for the use of professional digital tools:** refrain from replying to professional e-mails and calls outside working hours, activate an out-of-office message if you are unavailable, etc;
- **the training and awareness-raising** measures put in place to prevent any unreasonable use of these tools and the resulting risks (e.g. burn-out).

These formalities had to be completed by 1 April 2023 at the latest. Employers who have not yet

BELGIUM

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introduced a right to disconnect should therefore do so as soon as possible.

However, the obligation to conclude a company CLA or to amend the work regulations does not apply if a sectoral CLA regulates the three elements described above. To date, CLA's have been concluded in several economic sectors. Employer's should therefore verify if such CLA has been entered into at the level of their sector.

Should employees and their representatives be consulted?

Yes.

In addition to the consultation required when concluding a CLA or amending work regulations, the workers (and their representatives) should also be consulted in advance on certain aspects of disconnection, such as those relating to well-being at work.

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THE RIGHT TO DISCONNECT FROM THE MODERN WORKPLACE

GERMANY

As a rule, **employees in Germany are only obliged to be contactable during the agreed working hours.** The right to disconnect is not explicitly regulated by law. However, statutory health and safety regulations, such as those in the Working Hours Act on maximum working hours, mandatory rest periods and the general ban on working on Sundays and public holidays secure a right to be unavailable outside the agreed working hours. Furthermore, in operational practice, many companies have introduced rules on the right to disconnect. Of course, on-call duty or standby duty place different demands on availability.

If the employer is entitled under the company rules to specify the work for the following day in terms of time and place, the employee has an ancillary obligation under the contractual relationship to take note of the instruction communicated for instance by text message, even if it reaches the employee in his/her free time, the Federal Labour Court recently ruled. The case concerned a paramedic who was assigned to shift work as a stand-in and received a text message the day before informing him that he would be starting work at 6.00 am. According to the court´s ruling, **brief reading of work-related messages (e.g. text messages or emails) is not considered working time** within the meaning of the German Working Hours Act and does not constitute an interruption to rest periods.

GERMANY

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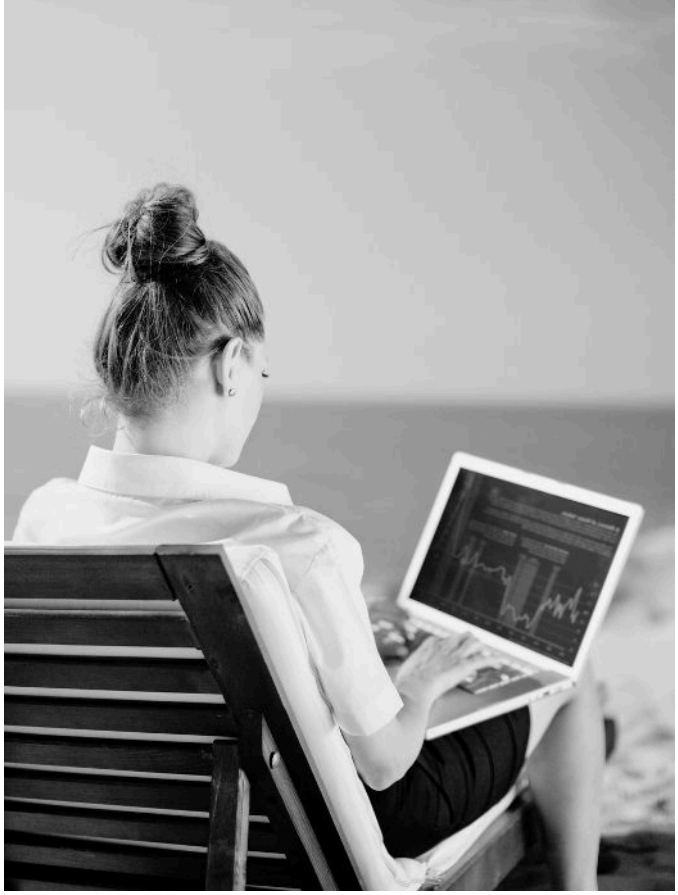
THE RIGHT TO DISCONNECT FROM THE MODERN WORKPLACE



THE NETHERLANDS

The right of employees to be disconnected outside working hours is not legally regulated in the Netherlands. Although an initiative bill on this matter was submitted to the Dutch House of Representatives in 2020, no further action has been taken. Similarly, a call from the trade union FNV for the Dutch government to establish legislation regarding the right to be disconnected does not seem likely to have effect anytime soon.

However, various collective labor agreements do include provisions on employees' right to be disconnected. Additionally, employers can independently agree with their employees that a right to be unreachable exists within the company, for example, by incorporating it into an employee handbook.

Despite several EU countries having legislation that grants employees the right to be disconnected outside working hours, this right does not legally exist in the Netherlands. Furthermore, **it is not expected that such a right will be introduced in the near future.** However, agreements on this matter are made on an individual or collective basis.

THE NETHERLANDS

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THE RIGHT TO DISCONNECT FROM THE MODERN WORKPLACE

ITALY

Italy stands out as one of the first European countries to adopt regulatory measures on hyper-connection, back in 2017.

Pursuant to Section 19 of Law No. 81/2017, the employment agreements between employers and ICT-based mobile employees (which we define as "smart workers") must include a clause, providing for the *"technical and organisational measures necessary to ensure the worker's disconnection from the technological tools of work"*.

While emphasising the relevance of the agreement between the parties, a few years later Italian Law No. 30/2021 introduced a proper *"right to disconnect from technological tools and digital platforms"* for smart workers.

This right to disconnection is particularly sensitive for mobile employees for the simple reason that, pursuant to the same Law No. 81/2017, this category of employees is exempted from working time limits (and, as such, from overtime pay); disconnecting from the employer's technological tools and digital platforms is the way to ensure to limit working time.

The practical problem with the language of Law No. 81/2017 is that **it is difficult for an employer to describe the technical and organisational measures forcing a disconnection,** especially because not all employers have any of them.

Something new may arrive soon, in the Italian legislation on disconnection.

Italian Parliament may soon pass a draft law (No. 1961/2024), providing that all employees and workers, including self-employees, have the right to disconnect for (at least) twelve hours, after the end of their normal working time. Employers and principals found in breach of this right will be fined in a range between EUR 500 and EUR 3,000.

ITALY

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THE RIGHT TO DISCONNECT FROM THE MODERN WORKPLACE

POLAND

The Polish Labor Code does not contain any provisions directly relating to an employee's 'right to disconnect'. However, this right can be derived from general provisions relating to working time, as well as case law from labor courts and the Supreme Court.

According to the Labor Code's definition, working time is any period during which the employee is at the employer's disposal at the workplace or at another location where the employee performs work (Article 128 § 1 of the Labor Code). This means that two conditions must be met for the working time to be valid: first is that the employee must be at the employer's disposal (performing duties, being ready to perform tasks, or waiting for the employer's instructions, in line with the principle of subordination), and second is that the employee must be in a specific location where work is performed on behalf of the employer.

These rules apply to both onsite and remote work. In other words, **it is the employer's responsibility to define the time frames during which employees must be "at disposal", as in principle, employees are not required to be available outside of their working hours or on call** (Article 151(5) of the Labor Code). "Being at disposal" should be clearly defined, as the employer cannot expect an employee to be available 24/7, including on Sundays and holidays.

Employees also have the right to uninterrupted daily rest of at least 11 hours and a weekly rest of at least 35 hours (Articles 132 and 133 of the Labor Code). The concept of the right to disconnect is not only about working time regulations but also about fostering a culture where employees are not constantly available.

Under Polish law, work performed beyond the established working hours or exceeding the daily working time defined by the employee's working schedule constitutes overtime (Article 151 § 1 of the Labor Code).

Overtime work is only allowed in two cases: either in emergency situations involving the need to protect human life or health, safeguard property or the environment, or address a technical failure, or to meet the employer's special needs. The term "special needs" used by the legislator means that the employer may only assign overtime work

POLAND

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in exceptional situations that do not occur under normal working conditions. In this context, engaging an employee in any work-related tasks via digital communication tools constitutes an order to perform overtime work. **Even a few minutes of involvement or, more importantly, regularly disturbing an employee's rest by sending work-related messages, is considered an order to work overtime.**

Generally, employees are not required to answer phone calls or respond to emails outside of working hours or during vacation. An exception is made when an employee is on call, meaning they must remain available to work outside of regular working hours (at a location specified by the employer, including at home). Additionally, the employer has the right to cancel the employee's vacation (Article 167 of the Labor Code).

To sum up, Polish regulations do not contain specific provisions relating to an employee's 'right to disconnect'. However, this does not mean that the Polish Labor Code imposes an obligation for employees to be available 24/7. The regulations clearly state that **an employee must be at the employer's disposal only during working hours,** which are determined by the adopted work schedule and system. Outside of these hours, the employee should only be "active" in specific situations, such as during on-call duty or overtime work.

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THE RIGHT TO DISCONNECT FROM THE MODERN WORKPLACE

SPAIN

There is a specific regulation in place since 2018, when Spain implemented the transposition of the European Directive regarding Data protection.

The regulation is foreseen in just one article but intends to grant a broad application of the digital disconnection as it rules the general right to disconnect for all employees. This right is to be developed and agreed in Sectorial Collective Bargaining Agreements or with the Works Council within each Company.

In any case this law foresees the obligation for all Companies to implement specific digital disconnection policies, in consultation with the Works Council.

These policies need to include **training for all employees (including Managers) on how to gain awareness with digital tools to avoid digital fatigue.** It also states a specific obligation to address digital disconnection with home office employees.

This matter is gaining great importance considering the rise of mental health issues at the workplace and psychological risks associated to the use of digital tools, which Companies have legal obligation to address in their internal occupational hazards plans and assessments.

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THE RIGHT TO DISCONNECT FROM THE MODERN WORKPLACE

SWEDEN

The Right to Disconnect

Sweden does not have specific legislation regulating the right to disconnect, nor is there an indication of upcoming changes in the legislation in this regard. However, **existing labor laws** on working hours, rest periods, and work environments **protect employees from risks associated with constant connectivity during non-work hours.**

Employer Responsibilities

Employers in Sweden have broad discretion over the organization of the work, including remote work and working hours. Employers are also responsible for ensuring a safe work environment, including the social and organizational aspects, such as managing workload, working hours, and recovery opportunities. Risk assessments must be conducted regularly to address both physical and psychosocial risks, including those linked to constant connectivity.

Working Hours Legislation

The Swedish Working Hours Act limits daily, weekly, and annual work hours and mandates daily (11 hours) and weekly (36 hours) uninterrupted rest periods. On-call time is considered working time, while stand-by time (Sw. beredskap) is only considered working time if work is actually performed. In such case, the work will also interrupt the daily rest period. Further, stand-by time cannot be included in the weekly rest period.

Company Policies

While there is no specific law on the right to disconnecting, larger employers increasingly adopt policies addressing work hours, recovery time, and digital communication.

In conclusion, while no explicit "right to disconnect" exists in Sweden, labour laws and company policies provide safeguards against risks related to constant connectivity.

SWEDEN

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THE RIGHT TO DISCONNECT FROM THE MODERN WORKPLACE

SWITZERLAND

In Switzerland, there are various provisions that require employers to ensure the well-being of their employees and to avoid excessive workloads. At the heart of this is the employer's duty to protect the employee's personal rights and to take the necessary measures to ensure the employee's safety, health and integrity.

This employer's duty is mirrored by the employee's duty of care and loyalty. Accordingly, employees are also obliged to work overtime if certain conditions are met (in particular, necessity, urgency, reasonableness). However, there are mandatory protective provisions in **Swiss labour law that must be observed, such as the maximum weekly working hours, daily rest periods and the prohibition of working on Sundays and at night.**

Permanent availability only counts as working time if the employee spends time performing work in the primary interest of the employer and this is either at the employer's request or at least tolerated by the employer. Only then does the time of permanent availability have to be taken into account when calculating the daily rest period and the maximum weekly working time. If, on the other hand, the employee voluntarily offers constant availability, e.g. by carrying a smartphone, but still manages his free time in his own interest, this cannot be qualified as working time and therefore does not violate the statutory rest period.

Thus, the right to disconnect from work outside working hours is not explicitly enshrined in Swiss law, but the regulations already in place allow for a good balance between the employer's interest in having its employees available in cases of urgency/emergency and the employee's interest in being unavailable outside working hours.

However, there is now an initiative before the Swiss parliament calling for a number of changes to the Swiss labour law, including an explicit right to disconnect when teleworking. It will be interesting to see whether this initiative is approved by parliament, as it raises several questions, including whether it is needed at all in addition to the existing law, and what would apply to 'normal' employees without the home office privilege.

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