

Right to disconnect – time for employers to take action?

The recently launched [Code of Practice for Employers and Employees on the Right to Disconnect](#) (the Code) contains advice for employers and employees alike on the steps that should be taken to respect employees' "right to disconnect" and dis-engage from work outside normal working hours.

While the Code does not introduce a legal right to disconnect, it does make clear that there is an onus on employers to ensure employees can disconnect and outlines the potential adverse consequences for them if they do not.

In our latest publication we review the key provisions of the Code and provide practical advice on the steps employers should consider taking now to at least comply with the spirit, if not the letter, of the Code.

Why has the Code been introduced?

As we move away from traditional working practices, employers and employees must navigate an increasingly complex and evolving working landscape, which often involves remote and flexible working. While flexibility is often conducive to a greater work-life balance, it can also lend itself to employees spending more time working outside their normal working hours and less time dis-engaging and switching off. As such, employees are seeing the lines between their professional and personal lives becoming increasingly blurred.

The purpose of the Code is to emphasise the importance of disconnecting and dis-engaging from work and to provide practical guidance to employers on how to enable employees to disconnect by emphasising the importance of compliance with existing obligations under four key pieces of employment legislation (the **Relevant Legislation**):

1. The Organisation of Working Time Act, 1997
2. The Safety, Health and Welfare at Work Act, 2005
3. The Employment (Miscellaneous Provisions Act), 2018, and
4. The Terms of Employment (Information) Act, 1994.

It is important to note that failure to adhere to the principles of the Code is not an offence in and of itself, but adherence to the Code may be taken into account if a claim is brought under the Relevant Legislation.

What is the "right to disconnect"?

The Code outlines that the "right to disconnect" means *"an employee's right to be able to disengage from work and refrain from engaging in work-related electronic communications, such as emails, telephone calls or other messages, outside normal working hours."*

According to the Code, there are three key elements to the right to disconnect:

1. a right not to work routinely outside of normal working hours
2. a right not to be penalised for refusing to work outside normal working hours
3. a duty to respect another's right to disconnect

The Code acknowledges that in certain limited circumstances employees may need to work outside their normal working hours, but this should be the exception rather than the rule.

What are employers’ and employees’ obligations under the Code?

The Code places obligations on both employers and employees to ensure compliance with the principles of the Code as follows:

Employers’ obligations	Employees’ obligations
Provide detailed information to employees on working time	Ensure they manage their own working time and take reasonable care to protect their own safety, health and welfare and the health and safety of co-workers
Ensure employees are informed of what their normal working hours are reasonably expected to be	Cooperate fully with any appropriate mechanism utilised by an employer to record working time, including when working remotely
Ensure employees take adequate rest breaks	Be mindful of colleagues right to disconnect
Ensure compliance with existing obligations under health and safety law	Notify their employer if they are not able to avail of a statutory rest break
Not to penalise employees for asserting their rights or obligations under health and safety law	Be conscious of their work pattern and aware of their work-related wellbeing and taking remedial action if necessary

The obligation to ensure compliance with the Code is not just on employers – employees must also take responsibility to ensure that they are disconnecting and disengaging from work as appropriate, and that they are mindful of their colleagues’ right to disconnect. This mutual onus of responsibility is particularly welcome from an employer’s perspective and enables employers to engage with their employees about the steps they need to take if the right to disconnect is to be feasibly respected in the workplace.

What practical steps do employers need to take to ensure compliance with the Code?

There are a number of practical steps that employers can take to ensure compliance with the Code as follows:

Prepare a right to disconnect policy	<ul style="list-style-type: none"> ■ The policy should be fit for purpose and, as such, it is unlikely to be possible to have a one-size-fits-all approach for all organisations. ■ The policy should, among other things: <ul style="list-style-type: none"> » set out employees and employers obligations » state that there is an expectation that employees will disconnect from work emails, messages, etc., outside of their normal working hours and during annual leave » address issues associated with working across global time-zones » allow for occasional legitimate out of hours contact » recognise that some employees may prefer to work in a more flexible manner given their work-life balance needs » recognise that business and operational needs may dictate that there will be situations which clearly require some out-of-hours working by some employees depending on the role concerned » specify that managers play a central role in the successful implementation of the policy » provide guidance for employees on how to raise concerns, informally and formally, in relation to the “right to disconnect.” ■ The effectiveness of the policy should be reviewed annually.
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Review employment contracts	<ul style="list-style-type: none"> Employers are already under an obligation to inform employees of the normal daily and weekly working hours they are reasonably expected to work under the Employment (Miscellaneous Provisions) Act 2018. Employers should review their employment contracts to ensure that employees' working hours are clearly outlined and updates/reminders may need to be issued to ensure employees are clear on their "normal" working hours.
Provide training to managers and staff	<ul style="list-style-type: none"> Training of managers and staff, where appropriate, should specifically address the "right to disconnect". This should cover the fact this is a mutual right where open channels of communication in relation to workload and time management are encouraged, actively managed and any necessary behavioural changes identified.
Review Time Recording Practices	<ul style="list-style-type: none"> The Code has placed further emphasis on employers' existing obligations to keep working time records. Employers should review their current time recording practices to ensure they are compliant with working time legislation in this regard.
Review Email Policy	<ul style="list-style-type: none"> The Code places an emphasis on the <i>"tone and sense of urgency in communications being proportionate"</i>. Employers may wish to consider introducing an email header / footer for out of hours emails which indicates that a response is not expected at that time.

Key takeaways

The principles outlined in the Code are grounded on those already contained in existing legislation and the Code is intended to complement and support those rights. The Code must be read in light of the realities of modern working practices, particularly the fact that many employees now want to work flexibly and not work traditional, rigid working hours. As such, while employers should take action on foot of the Code's introduction, we recommend employers take a considered approach to the steps outlined above, in particular in developing a right to disconnect policy that is fit for purpose for their organisation, culture and working practices. Flexibility and balance on the part of employers and employees is required for a workable "right to disconnect".

Watch this space - right to request remote working

At the same time as launching this Code of Practice, the government also opened a public consultation on the planned introduction of legislation on an employee's right to request remote working. The government's intention is to provide a clear framework around which requesting, approving or refusing remote work can be based. The Department of Enterprise, Trade and Employment is presiding over the public consultation and employers who wish to make a submission may do so [here](#).

For more information on the right to disconnect and the development of an employer action plan please contact [Michael Doyle](#), Partner, [Triona Sugrue](#), Knowledge Lawyer, [Amy Martin](#), Solicitor, or any member of the [ALG Employment Team](#).