

# The Right to Disconnect

## How the French Law Impacts Businesses

By Julien Haure and Marine Hamon



Since January 2017, companies in France have been under the legal obligation to comply with the “right to disconnect,” according to which employees are entitled to remain unavailable outside their working time. This new obligation has caused a great stir overseas. Mainstream media relayed to the public that French employees had the right to disconnect as of 6 p.m. daily. Presented that way, it is true that the right to switch off devices could seem very disconnected from business reality.

Still, with the overwhelming presence of communication technologies, electronic devices and social media in our daily lives, along with the growing use of telecommuting, it has become difficult to draw a clear line between work and private life. The new law was meant to enhance protection of a work-life balance.

The concept of disconnecting from professional electronic devices

is anything but new. Many collective bargaining agreements — notably in the IT sector — included provisions on the right to disconnect long before the 2017 law. Nevertheless, passing a law on that topic showed a clear will to further protect employees’ health.

This being said, multi-national companies have a wide range of options to comply with their obligation under this law and still keep business flowing. This article lists some practical tips and examples of measures that have already been taken in various sectors.

### EMPLOYERS’ OBLIGATIONS

Pursuant to Article L. 2242-8 of the French Labor Code, employers must negotiate each year with trade union representatives on various topics including “the modalities of the employee’s right to disconnect and the implementation in the company of regulatory tools for the use of electronic devices, to ensure the

protection of resting times and private and family life.”

If the parties cannot reach an agreement, Article L. 2242-8 also provides for the possibility of the employer implementing a charter of best practices, or a code of conduct, upon consultation with the social and economic committee of the union.

In companies with less than 50 employees, or without trade union representatives, the employer can draft a unilateral document to ensure the compliance and protection of the right to disconnect, potentially following a consultation with the social and economic committee, if any.

The law also provides for specific measures for employees hired under a “forfait jours” (a flat rate agreement to work a specific number of days per year) working time arrangement. With or without trade unions, in companies where some employees are hired under

forfait jours, the company or branch-wide collective bargaining agreement allowing for such arrangement must provide for these employees to use their right to disconnect, irrespective of the headcount of the company.

Some collective bargaining agreements, such as SYNTEC (a federation of professional unions) for the IT sector, already include provisions on such a right. If that is not the case, the employer is invited to fill the gap by outlining modalities to exercise the right to disconnect in any document that can be brought by any means to the attention of employees.

The right to disconnect can be understood as the psychological aspect of the employee’s right to rest at least 35 hours in a row each week (11 hours + 24 hours). If the employee remains available through phone or email, he or she cannot be considered as effectively resting, all the more since many employees working under a forfait jours are also telecommuting.

### IMPACT IN PRACTICE

Some companies operating globally and on different time zones may fear the negative impacts the right to disconnect could have on their business.

In fact, the right to disconnect does not dramatically change the way employees work. Employers were required before, and still are required, to protect the health and safety of their employees, notably by ensuring that their workload is reasonable and that their work-life balance is protected.

The new law gives great leeway to trade unions and companies to choose the type of measures they want to implement. No penalties are incurred by the employer who fails to comply with the above-mentioned provisions, but employees who challenge their working arrangement in a company where specific measures on the right to disconnect have not been implemented could rightfully use it to justify a “burnout” situation and related claims for damages.

While burnout is not recognized in France as an occupational disease (yet), it nevertheless poses a significant hazard to employees’ health, justifying corrective and preventive actions from the

employer. In any case, failure to prevent burnout situations can justify claims of damages, as it falls within the scope of employers’ strict duty to ensure safety.

### PRACTICAL TIPS

The right to disconnect can be tailored to match the employee’s activities and schedules. For instance, an employee who works solely with Asia could be allowed to disconnect earlier at night and connect earlier in the morning to be in line with the local time zone.

Here is a list of steps companies could take to comply with the right to disconnect:

1. Check whether the national collective bargaining agreement applicable within the company, or any other company-wide collective agreement, provides for measures on the right to disconnect.
2. Conduct an audit of practices on the use of professional devices by employees in the company.
3. Implement tools to enforce the right to disconnect.
4. Provide training to managers. They are the ones assigning work and reaching out to employees.

Here are some examples of measures in various sectors of the economy:

- **At a leading temporary agency**, the right to disconnect must also be observed during lunch breaks. Employees are invited to refrain from consulting their emails during meetings or performance reviews. When a manager sends an email to an absent employee (due to sick leave or paid time off), the email is only deemed read once the employee is back at work.
- **In the banking sector**, many collective agreements have been entered into with union representatives, according to which employees are under no obligation to respond to emails outside their working hours. In this respect, a specific disclaimer can be included in their electronic signatures.
- **In the insurance sector**, some com-

panies simply invite employees to ponder the right moment to send an email or call a fellow employee. Rather than posing strict limitations on the use of telecommunications, companies merely remind their employees that they should not use their personal devices to check their professional emails or work outside their working hours.

- **In some tech companies**, employees who connect to their professional email address or to the intranet receive an automatic email to inform them that they are about to enter a “resting time period.”

In retrospect, the right to disconnect caused more fear than harm. It does not require much from employers, and has little impact on the way French employees work. Rather than pushing companies to disconnect all devices as of 6 p.m. every day, it encourages companies to enhance and promote a different type of management and work organization that should be of benefit to all. ■



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