

Homeworking & the Right to Disconnect

Expectations for further restrictions in January signals a continued remote/ hybrid form of working and with this comes a focus on the compliance related to home working and the right to disconnect.

It is therefore of no surprise that two member Bills are at committee stage before the Dáil. If passed, these Bills will amend some statutory provisions of the Organisation of Working Time Act 1997, the Terms of Employment (Information) Act 1994 and application of the Safety, Health and Welfare at Work Act, 2005.

Organisation of Working Time (Amendment) (Right to Disconnect) Bill 2020

Section 15 of the Organisation of Working Time Act, 1997 is amended through the provision of:

- the right to disconnect from work related e-mails, texts or calls outside of working hours.
- implementation of a right to disconnect policy establishing hours to disconnect
- the production of a report on the right to disconnect detailing ways to
 - ✓ minimise out of hours contact.
 - ✓ establish a standby allowance.
 - ✓ deliver an overtime payment.
 - ✓ ensure all working time does not exceed 48 hours.

This insertion makes it an offence for an employee to be reprimanded, punished, or subjected to disciplinary action if they disregard a work-related communication sent after workhours, unless already agreed under the terms and conditions of a relevant right to disconnect policy.

Working from Home (Covid-19) Bill 2020

Section 3(1) of the Terms of Employment (Information) Act 1994 is amended through the requirement for employers to set out what their policy is in relation to out-of-hours communication.

Amendments to the Organisation of Working Time Act 1997 sets out the right to switch off:

- between the employee's normal or regular finishing time of work as specified by the employee's contract of employment or by an applicable employment regulation order, registered employment agreement or collective agreement, or
- where no normal or regular finishing time of work is specified, or where additional hours have been worked, between the notified finish time and next starting time.

Application of Safety, Health and Welfare at Work Act 2005 to provide to certain employees working temporarily from home a workstation, and a flat rate payment (free from tax), to meet the additional expenses incurred by the employee in working from home.

The proposed amendments under the Organisation of Working Time (Amendment) (Right to Disconnect) Bill 2020 and Working from Home (Covid-19) Bill 2020 have a commonality of purpose in seeking to give added protections to employees while working from home. While it is unclear how long it may take for the Bills to move through committee stage the government have outlined their intention to bring forward proposals on the 'right to disconnect' in the new year so it is definitely a topic to watch.

In the interim employers must ensure continued compliance with the Organisation of Working Time Act, 1997 in respect of working hours and consider how a policy of this nature would work within their organisations. Without addressing the matter employers could face increased claims on working hours to the Workplace Relations Commission whose most recent report outlines that 30% of claims in 2019 related to hours of work issues and an additional 7% of claims related to terms and conditions of employment.

In their report, the Workplace Relations Commission outlined that specific complaints in relation to hours of work are by far the most prevalent at 6,266 which is over three times the number of complaints received in 2018. With working hours now the highest complaint type it is important that employers in the Community and Voluntary Sector are the driving force of compliance in this area and ensure that sufficient provision is made of the right to disconnect, even within the HR Strategy, to mitigate against those claims and to safeguard the interests of their employees.

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