

Tánaiste signs new Code of Practice on the Right to Disconnect: Impact or outcome of Covid-19

April 1, 2021

From today, employees have the right to disconnect under the new Code of Practice signed by An Tánaiste and Minister for Enterprise and Employment, Leo Varadkar. Remote working has become an essential way of working for those in the Community, Charity and Not-for-Profit sector and certainly the impact of the pandemic accelerated the governments intentions towards the right to disconnect. With the launch of this new Code of Practice it is important to examine the Code and look at how it impacts employers and employees.

Firstly, failing to follow the new Code of Practice is not an offence; however, failure to do so is admissible in any proceedings before the Workplace Relations Commission and the Labour Court.

What is the Right to Disconnect?

According to the Code, the Right to Disconnect has three main elements:

- i. The right of employees to not routinely work outside normal working hours,
- ii. The right to not be penalised for refusing to do work or attend to matters relating to work outside of normal working hours,
- iii. Respect another's right to disconnect; do not make or send work calls or emails outside of normal working hours.

In short, it is the right of employees to switch off from work when outside their agreed working hours to help provide a better work/ life balance. This is particularly relevant in a world where remote working has become the norm with the full Government support through its National Strategy for Remote Working.

The Code of Practice provides advice for employers and employees on best practice to support the Right to Disconnect. The Code contains guidance for employers to meet their obligations under current employment legislation; the following is outlined in the Code as the relevant legislations impacted:

The Organisation of Working Time Act, 1997: The Act states that employees should not work more than an average of 48 hours in a week except in very limited circumstances and employers are obliged to record employees' working hours, allowing for breaks and rest time.

The Safety, Health and Welfare at Work Act, 2005: This Act sets out the responsibilities of employers, and employees, in relation to health and safety in the workplace. Employers must take practical steps to prevent "improper conduct or behaviour" that would put employees at risk. It also states that employees have a responsibility to not put their own health and safety at risk, including working excessive hours or put the health and safety of a colleague at risk.

Employment (Miscellaneous Provisions) Act, 2018: The Act states that employees must receive a statement outlining their core working hours within 5 days of commencing employment. Therefore, clearly stating the expected working week for employees.

Terms of Employment (Information) Acts, 1994-2014: Legislation states employees must receive the Terms & Conditions of their employment within 2 months of starting a job, which outlines hours of work and, depending on the sector, that some flexibility maybe required in exceptional circumstances.

Best Practice when developing Right to Disconnect Policy

Firstly, employers need to ensure they are in full compliance with the legislation just outlined and their obligations under each of the Acts.

In order to develop a Right to Disconnect Policy, employers should engage with employees to consider the needs of the organisation and staff. The purpose of the policy should be clearly stated; it is about the Right to Disconnect and not about restricting communication or engaging with employees outside normal working hours for legitimate business reasons. Not all organisations operate a “normal” working day or week and some flexibility may be required as agreed set out in the terms and conditions of employment.

Any policy should reflect if the organisation is part of a global network, working across multiple time zones and allow for communication at different times outside the normal working day, which may of importance to some charities. Where employees have flexible working arrangements in place, clear boundaries must be maintained between work and personal time and this should not be compromised.

If emails or other communications are sent outside of normal working time, then the tone and sense of urgency must be considered and be proportionate so that there is no misinterpretation on the part of the recipient. Emergency communications are only sent in such circumstances and non-urgent communications should be kept within working hours where possible. Training should be given to managers and they should respect an employee’s right to disconnect.

By demonstrating their commitment to the policy, it will show leadership and set the standard within the team and wider organisation, helping foster a better work/ life balance, which will ultimately lead to better employee engagement and bolster the culture of the organisation. Also, managers must be seen to take appropriate action if someone’s right to disconnect is being affected unnecessarily or repeatedly.

Dealing with issues of policy non-compliance

Embedding the Right to Disconnect within the organisation happens right from induction through to training and ongoing communication as well as managers leading by example. But there may be times when employers will have to deal with situations where an employee’s right to disconnect is being negatively impacted.

Best practice suggests that employees try to resolve the issue themselves informally. However, if the employee is uncomfortable doing so, then they should be able to approach their manager or HR department for help and support to resolve the problem through an informal process. If this does not work, it may then require an employee to engage in more formal grievance procedures. If the resolution from that process is unsatisfactory, the employee has the right to

lodge a complaint with the WRC. And, as already mentioned, the WRC will examine if an appropriate Right to Disconnect Policy is in place and if the employer has correctly enforced the policy.

April 1, 2021

Disclaimer – The information in this section is provided for reference purposes only to assist Employers with the government protocols and guidance from relevant statutory bodies and must be read in that context and should not be used for or interpreted as a legal definition of any of the information provided. Some of the information provided is per information published on the websites at www.gov.ie. Professional advice should always be sought before making any such decisions.