Right to Disconnect – Information Sheet

The [Fair Work Legislation Amendment (Closing Loopholes No. 2) Act 2024](#) introduced new rules and protections giving employees the protected "right to disconnect".

This legislation takes effect from 26th August 2024 for large employers and 26th February 2025 for small employers (<15 employees).

What is the Right to Disconnect?

Employees have a workplace right to refuse to monitor, read or respond to an employer (or a third party – such as a client or contractor) outside their working hours, unless the refusal is unreasonable.

The type of contact and who initiates it is not limited – so any contact from a manager, supervisor or colleague could be ignored if the contact is unreasonable.

What it isn't:

The Right to Disconnect is not a 'carte blanche' right for an employee to refuse any contact at all outside of their working hours. The key word in the legislation is 'reasonable' and its derivatives i.e. the employee cannot 'unreasonably' refuse 'reasonable' contact.

There are a multitude of reasonable grounds for employers and employees to have contact outside of work hours. For example, an employee notifying their Manager they are sick before their shift starts; contacting a casual to ask if they are available to pick up a shift, texting an employee to let them know which work site they are to start at tomorrow, etc.

It also does not prevent positive connectivity through things like outside of work social events or quick calls to check if an employee is feeling better after they have been unwell.

Good employers, with the right intentions, get the balance right. They *connect* with their people, they do not *constrain* them with unrealistic expectations to be constantly available or 'connected' to work devices or channels. Ultimately, helping employees to disconnect when they are away from work is part of assisting them to have work-life balance. By setting reasonable expectations and encouraging and enabling employees to switch off away from work, we are supporting a healthy workforce.

Determining Whether Contact is 'Reasonable'

The legislation specifies matters that may be considered in determining whether the refusal is unreasonable as including (but not limited to):

- The reason for the contact
- How the contact is made, and the level of disruption caused
- The extent to which the employee is compensated
    - to remain available to perform work during the period in which the contact or attempted contact is made; or
    - for working additional hours outside of the employee's ordinary hours of work
- The nature of the employee's role and their level of responsibility
- The employee's personal circumstances, including family and carer's responsibilities

What is the Protection?

This is a workplace right, therefore employers cannot take adverse action against an employee because they have reasonably refused to monitor, read or respond to contact. For example, it is unlawful (and penalties will apply) if an employer decides not to promote, or to reduce the shifts of, an employee who has exercised this right.

If there is a dispute about whether the contact is unreasonable, the employer and an employee must attempt to resolve the dispute through discussions, failing which they can apply to the Fair Work Commission (FWC) for orders.

Practical Implementation

Document what reasonable expectations are:

- Reflect expectations in Contracts of Employment. Where out-of-hours contact is required, provide for this in the employment contract. Include some detail about why and how that may occur (without limiting the type of contact). Where there is a significant or regular requirement for contact out of hours, there may be a need to allocate a component of the employee's remuneration to this to show that the employee is being compensated for the requirement.
- Review the employee's remuneration to ensure that the employee is reasonably compensated to remain available to perform work during the period in which the contact or attempted contact is made; or for working additional hours outside of the employee's ordinary hours of work.
- Reflect expectations in position descriptions so there is clarity on what may be expected based on the level and responsibilities of the position.
- Review company policies. Consider policies relating to travel, working from home, notifying management of absences, and hours of work and overtime to ensure they meet the right balance of effective communication and reasonable expectations while enabling employees to disconnect.
- Be clear on what constitutes 'work' outside of ordinary hours and ensure that your time recording system is able to capture this so that there is a record of time worked.

Set up internal processes for dealing with concerns:

- Provide appropriate internal channels for employees to raise concerns or grievances relating to their ability to disconnect. This can be added in to an existing Grievance, Dispute and Conflict Handling related policy.
- Train Managers in having the right conversation with employees about expectations (when we may need to contact them/have them contact us) as well as empowering them to disconnect.

Review business practices:

- Consider any working from home arrangements, where disconnecting can be more difficult. Initiate conversations with employees who are working from home about how they may disconnect from work.
- Consider practices that may be preventing employees from genuinely disconnecting such as:
  - Work mobile phones that are 'always on'.

- Teams/Slack/other informal channels of communication for work that may 'ping' on a device even when an employee is away from work. If an employee has this set up on their personal mobile, explore how to set up 'out of office' settings to prevent notifications.
- Email access and settings. If employees can access their work emails through a personal device, again explore setting up 'out of office' or blackout periods to prevent notifications.

Dealing with the realities of the modern business world:

- It is not uncommon for employees within the same business to work different hours. For example, different shifts, or employees with flexible work arrangements who work an earlier or later time than others. It is also not unusual to have interaction with overseas parties in different time zones whether they be an international arm of the company or offshore employees/providers.
- All of these things mean that it is impractical to entirely <u>stop</u> any contact between employees during certain times. An employee who works their normal hours at 8pm may send emails to their colleagues at that time, even if those colleagues are not working at the same time. The concept of 'working hours' is more fluid now than ever before.
- In this environment, setting the right expectations is crucial. Educating employees on how to be as respectful about work times as possible is important; as is being clear if, even though an email is sent at a time that an employee is away from work, they are not expected to look at it and respond to it until they are working.

Educate Supervisors and Managers:

- Set expectations with managers and supervisors and undertake training if needed.
  - Empower your managers by educating them on both the employee's and the manager's rights.
  - Provide them with support options – if they are unsure whether they can contact an employee and who do they ask.
  - Managers play a key role in supporting employees to disconnect and should be educated and encouraged to consider factors such as:
    - Leading by example, disconnecting from work after work.
    - Setting reasonable work priorities and targets that are achievable within an employee's nominal working hours.
    - Respecting employees time by scheduling Team Meetings when all team members are available to work, and only inviting them to meetings where it is relevant.
    - Adequately supporting leave e.g. arranging reasonable time for a handover and a point of contact when an employee is planning to take leave, so the employee can disconnect from work during approved leave.
    - Offering support and wellbeing check-ins to employees who may find it challenging to disconnect from work.