



Employment update: the Right to Disconnect in Ireland

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In an age where technology blurs the lines between professional and personal life, employees and employers alike are tasked with overcoming the challenges posed by the "always-on" culture.

Failing to understand and implement the Right to Disconnect properly can expose businesses to significant legal and reputational risks. Ireland has taken progressive steps to reflect a growing recognition of the need for a healthy work-life balance to combat these challenges, as outlined by our Employment team below.

Understanding the right to disconnect

The Right to Disconnect allows employees to refrain from engaging in work-related communications, such as emails, calls, and messages, outside of their normal working hours. This right is part of a broader government strategy to promote mental health and to prevent burnout.

Legal framework

In Ireland, there is no explicit statutory right to disconnect laid out under legislation. The Organised Working Time Act 1997 (the 1997 Act) sets out minimum rest periods and daily and weekly break requirements for employees. To comply with the 1997 Act, employers must give their employees a minimum 11 hour rest period at the end of the working day and a weekly rest period of 24 continuous hours. This usually occurs at the weekend.

Aside from the 1997 Act, Ireland has also adopted Codes of Practices to show its dedication to enforcing the Right to Disconnect. These include a Code of Practice for Employers and Employees on the Right to Disconnect 2021, a Code of Practice on the Right to Request Flexible Working, and the Right to Request Remote Working 2024 (the Codes). While not legislatively binding, the codes are implemented on authority derived from Section 20(2) of the Workplace Relations Act 2015

which governs the employment relationship between employers and employees. The codes provide practical guidance for implementing the right to disconnect within the workplace. They apply to all types of employment, whether remote, office-based, or hybrid.

The codes outline certain rights such as:

1. the right of an employee to not have to routinely perform work outside their normal working hours
2. the right to not be penalised for refusing to attend to work matters outside of normal working hours
3. the right of an employee to make flexible or remote working arrangements and the obligation for an employer to consider them
4. the duty to respect another person's right to disconnect (e.g., by not routinely emailing or calling outside normal working hours)

Background to the case law

In 2018, the Labour Court found that an employee had surpassed the statutory maximum working hours by sending and receiving work-related emails outside of normal work hours. The Court notably determined in *Kepak Convenience Foods Unlimited Company v Grainne O' Hara* (DWT1820) that the employer had "permitted" the employee to work excessively by failing to monitor and curtail her working pattern. The employer was found to have violated the Act and an award of €7,500 was granted to the employee.

In *Alina Karabko v TikTok Technology Ltd*, the WRC issued its first decision regarding the right to request flexible and remote working under the Work Life Balance and Miscellaneous Provisions Act 2023 (the 2023 Act). The Complainant submitted a request to work remotely full-time, citing reasons such as lack of suitable accommodation in Dublin, reduction in commute time, and an overall improved quality of life. The Respondent complied with the timelines set out in the 2023 Act and, after consideration, refused the request with reasons provided. The Complainant alleged that her needs were not considered objectively, fairly, or reasonably. The Adjudication Officer identified three distinct duties under the Act:

- First duty: the employer must consider the request considering its needs and the employee's needs
- Second and third duties: the employer must either approve the request or, notify the employee in writing of the refusal within four weeks, with the possibility of extending the consideration period up to eight weeks

The Adjudication Officer found the Respondent complied with these timelines.

Navigating challenges

Despite its benefits, the implementation of the Right to Disconnect poses challenges. For multinational companies, there may be requirements for flexibility in roles with irregular hours and / or global teams. Certain businesses can also face deadlines and a need for employees to be available for urgent communications. It is difficult to balance these high-pressure roles with disconnecting, but there are some steps both employers and employees can take respectively.

For employers

Employers should:

- develop and communicate a right to disconnect company policy
- train management and staff on the importance of respecting employees' downtime
- encourage employees to manage time sensitive tasks within working hours
- use technology solutions to support compliance, such as email footers indicating non-urgency
- schedule emails within work hours

For employees

Employees are encouraged to:

- be mindful of sending communications outside of recipients' working hours
- establish clear boundaries (where reasonably applicable) with clients and colleagues of their own working hours

It is harder for employees to establish boundaries with their employers, so employers are encouraged to show active commitment to flexibility, communication, and mutual respect with their employees. If not, it could be to the detriment of the employer, as seen in the aforementioned *Kepak* case.

Conclusion

The Right to Disconnect in Ireland represents a significant step towards recognising and addressing the challenges of modern work environments.

While there is no explicit statutory right, the 1997 Act, the 2003 Act and the Codes of Practice provide a framework that encourages both employers and employees to respect boundaries between professional and personal time. Key cases such as *Kepak* and the *TikTok* case demonstrate

the potential repercussions for employers who fail to monitor and respect these boundaries.

Overall, Ireland is seeking to set a precedent for promoting employee well-being by fostering a culture that values downtime as much as productivity.

How Ogier can help

For more information on the Right to Disconnect or any measures that may affect your organisation's workforce, please contact a member of our Employment & Corporate Immigration team via their contact details below.

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