

`Guide to the WRC Code of Practice for Employers and Employees on the Right to Disconnect

Introduction

In response to technological advances and changes to the way work is done the WRC has produced a code of practice for employers and employees on the right to disconnect. The code applies to all work types including work from home arrangements, fixed location work or mobile working.

The Right to Disconnect refers to an employee's right to be able to disengage from work and refrain from engaging in work-related electronic communications, such as emails, telephone calls or other messages, outside normal working hours.

Workplaces must put in place policies and procedures to ensure that employees' rights are preserved, that employers and employees adhere to their statutory obligations, that work is carried out safely and that the working relationship between employer and employee is balanced and mutually beneficial.

Legislative Basis

Section 20(2) of the Workplace Relations Act, 2015 provides, at the request of the Minister, for the preparation of draft codes of practice by the WRC for submission to the Minister for Enterprise, Trade and Employment. Codes of Practice are written guidelines, agreed in a consultative process, setting out guidance and best practice for employers and employees with respect to compliance with employment legislation.

While failure to follow a Code prepared under section 20(1)(a) of the Workplace Relations Act, 2015 is not an offence in itself, section 20(9) provides that in any proceedings before a Court, the Labour Court or the WRC, a Code of Practice shall be admissible in evidence and any provision of the Code which appears to the Court, body or officer concerned to be relevant to any question arising in the proceedings shall be taken into account in determining that question

Purpose

The code is designed to:

- Complement and support employers' and employees' rights and obligations under the Organisation of Working Time Act, 1997 (OWTA 1997), the Safety, Health and Welfare at Work Act, 2005 (SHWWA 2005), the Employment (Miscellaneous Provisions) Act 2018 and the Terms of Employment (Information) Act 1994 – 2014.
- Assist employers and employees in navigating an increasingly digital and changed working landscape which often involves remote and flexible working.
- Provide assistance to those employees who feel obligated to routinely work longer hours than those agreed in their terms and conditions of employment.

- Assist employers in developing and implementing procedures and policies to facilitate the Right to Disconnect.
- Provide guidance for the resolution of workplace issues arising from the Right to Disconnect both informally and formally, as appropriate.

Relevant Legislation

- [Organisation of Working Time Act 1997](#) - The Act does not explicitly refer to a 'Right to Disconnect', but states that employers cannot permit employees to work more than a maximum of 48 hours per week on average, except in very limited circumstances. Under this act, employers have a legal responsibility to keep records of employees' hours worked
- [Safety Health and Welfare at work Act 2005](#) – This act includes an obligation to not work hours in excess of the legislation and, like the Organisation of Working Time Act, contains an obligation to cooperate with any appropriate mechanism introduced by an employer for the recording of working time.
- [Employment \(Miscellaneous provisions Act\) 2018](#) - This legislation provides that employees must receive a written statement of their core terms of employment within 5 days of starting employment. One of the core terms must establish what hours of work the employer reasonably expects the employee to work in a normal working day and a normal working week.
- [Terms of Employment \(Information\) Acts 1994 – 2014](#) - This legislation provides that employees must receive a written statement of the remaining terms of employment (a contract) within 2 months of starting employment. This statement must include any terms or conditions relating to hours of work (including overtime) and details of any collective agreements that may affect the employee's terms of employment.

Employer obligations

Under the code of practice certain obligations are placed on employers:

- Providing detailed information to employees on their working time
- Ensuring that employees are informed of what their normal working hours are reasonably expected to be
- Ensuring that employees take rest periods
- Ensuring a safe workplace, including reviewing their risk assessment and, where necessary their safety
- Not penalising an employee for acting in compliance with any relevant provision or performing any duty or exercising any right under section 27 of the Safety Health and Welfare at Work act 2005.

Employee Obligations:

Certain obligations are also placed on employees by the code of practice:

- Ensuring that they manage their own working time.

- Cooperating fully with any appropriate mechanism utilised by an employer to record working time including when working remotely.
- Being mindful of their colleagues', customers'/clients' and all other people's right to disconnect.
- Notifying the employer in writing of any statutory rest period or break to which they are entitled to and were not able to avail of on a particular occasion and the reason for not availing of such rest period or break.
- Being conscious of their work pattern and aware of their work-related wellbeing and taking remedial action if necessary.

Right to disconnect Policy

Employers should ensure that they have a right to disconnect policy in place, regardless of what working arrangements available within the organisation. The Policy should clearly state that it is about supporting the employee's Right to Disconnect, not about restrictions and blockages to communication models while recognising that occasionally legitimate reasons arise when it is necessary to contact staff outside of normal working hours.

Where appropriate, the Policy should recognise that certain businesses and roles within those businesses do not always operate on a standard hours basis but in a manner responsive to customer needs where flexibility is required to meet the needs of the business, and as agreed in the employee's terms of employment.

The Policy communication must reach all levels of the company. The Policy should be equality proofed to avoid unintended negative consequences for any employees.

The policy should emphasise the right to disconnect from work emails, messages etc. outside of normal working hours and while on annual leave. The policy should allow for occasional legitimate contact outside of working hours, and outline the process for these legitimate contacts.

The policy should stress that tone and sense of urgency in written communications should be proportionate, particularly those sent outside of normal working hours, and that emergency communications should only be sent during emergency circumstances – such communications should be the exception, not the norm.

The Policy should specify that managers play a central role in the successful implementation of a Right to Disconnect policy.

Workplace policies on the Right to Disconnect sit fully within the broader objective of ensuring employee wellbeing, health and safety and the Policy should reflect this.

The policy should lay out the process for raising concerns in relation to a breach of the policy. Best practice suggests that employees should attempt to resolve the problem with the person(s) informally in the first instance. In circumstances where an employee feels that it would be too difficult to do this on their own, an alternative approach would be to seek support from, or for an initial approach to be made by their manager, a member of human resources (HR), a trusted colleague or designated person or trade union representative.