

The Right to Disconnect

A guide for SME's

As heard on...



Employees will have the right to refuse contact outside their working hours unless that refusal is unreasonable. Contact will include all forms of communication and requests including emails, phone calls, text messaging or messaging services like WhatsApp, Teams, Slack etc)

This means an employee in non-work time can refuse to monitor, read or respond to contact from an employer or a third party, eg a supplier or a client – provided their refusal is not deemed unreasonable.

The important word is that an employee can't unreasonably refuse. And as with most employment legislation there are lots of depends... eg an emergency doctor would unlikely be able to refuse out-of-hours contact, but a receptionist in a 9-5 workplace getting a phone call from the ops manager at 9 pm probably could.

There are a few reasons why this will be important legislation to get right.

- It's about to be added to Awards. Once it is in the Award systems there are penalties for breaching the Award
- The dispute process will run through Fair Work – which could result in criminal penalties
- Your staff need to get their intel from you and have it specific for your business (not generic social media advice) – you need to ensure staff understand the intricacies of your industry, your clients, your benefit, their role, their salary and benefits and other staff members in your business.

Unreasonable refusal is not defined in the legislation The loose definition used is what a reasonable person would consider OK having regard for all the information.

This includes:

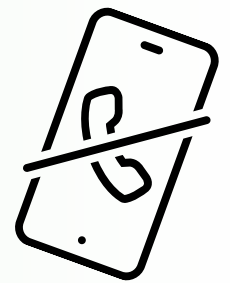
- The reason for the contact
- Whether the employee is compensated for being available (eg they are on call or being paid overtime)
- The nature of the employee's role and level of responsibility
- The employee's personal circumstances, including family or caring responsibilities.











Start thinking now about the types of things that come up in your workplace that might impact your staff outside their normal work hours. Make a list. Determine reasonableness levels and work through how you may need to resolve or account for them.

It is also a great opportunity to identify the potential problem staff. ie the ones who will refuse anything past 5pm OR the managers that can't help themselves and will contact staff all night.

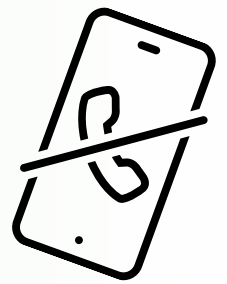
Refer to our handy checklist of questions to consider overleaf

The Right to Disconnect: A Considerations Checklist



-  Do you have an underpinning Award – check this for any new clauses that might have some specific reasonableness definitions
-  What are your normal business hours – what is the likelihood of a need to contact staff outside of these normal hours
-  Do you have busy periods – what is the impact of out of hours contact during these times?
-  What will be the contact arrangements with clients or staff who are in a different time zone (whether permanently working in a place on a different time zone or travelling interstate or internationally)?
-  What are you considering for staff who have caring or family responsibilities and choose to work outside traditional work hours (ie. leave early on Tuesdays to take their son/daughter to footy training, and then log in after dinner and work to make up the time and end up sending emails to staff)?
-  Do managers have less of a right to disconnect based on their role – how is this determined?
-  Will it differ between departments?
-  Setting expectations around contact will be important. Some staff will happily ignore an email from the Partners, others will be frightened that they will get the sack if they don't respond... this may not even be a real possibility (I would suggest not), but their personality or culture or the way they have been brought up or how they were treated in a previous role/firm may impact this.
-  Consider using Outlook's "delay send" function for all emails sent after a certain time – practice using this now.
-  What are the culture messages from the firm around the contact. What are some of the scenarios that have come up or might come up. Eg...Staff can ignore an email sent after hours, but if I call you it's because it is really important OR If a staff member has said don't call them, but it's an emergency – is that OK?

The Right to Disconnect: *A Considerations Checklist*



What is in your induction processes regarding this?



What messaging should go out to staff? Should it be a draft policy for their input?



What are the behaviours the managers are concerned about and what do they think will happen after the legislation is implemented?



What is the complaints process? You want to ensure there is a mechanism for staff to raise a concern PRIOR to going directly to FairWork and putting in a "Stop Order".



How do your employment contracts account for this? Contracts state that the employee is employed for a 38 hour week + reasonable overtime (and staff are compensated for this). Does the wording in your contract need to be altered?



Remember this might change over time, what used to be OK for a team member may be different pre-post kids and might change again as the kids grow up. There might be other issues with staff who have aging parents. Or staff that are now doing external study etc.