

# What does the right to switch off mean for employers?

20 August 2024  Sarah Linden

## Contact outside working hours

Do you contact your staff outside of their contracted working hours?

If you are an employer based in the UK, in many cases the answer might be yes. You might not routinely telephone staff at a weekend or after hours on a weeknight, but can you say the same is true of emails or Teams messages? If you are aware of late night or weekend catch up emails being sent by a colleague, whilst it might have resulted in a few raised eyebrows, can you honestly say this practice has been actively discouraged by your organisation?

The pandemic brought many changes to the workplace, including the widespread adoption of working from home for at least a portion of the working week in many sectors. Amongst the many perceived benefits of working from home, one often-overlooked drawback is the greater blurring of boundaries between work and home life. This can leave some staff feeling unable to disconnect from work which in turn can result in greater levels of work-related stress.

## Government proposals

Hot on the heels of a number of other countries who have introduced laws to protect workers' ability to switch off from work, the [Government](#) is now turning to the business of making its manifesto pledge on this topic a reality.

Whilst the particular details of the proposals have yet to be released, it appears that the [Government](#) is committed to introducing a framework which recognises the importance of the ability to disconnect from work outside contracted work hours. Reportedly the Government is considering creating a new Acas Code of Practice, with the suggestion that employers who fail to follow that new code could face increases in the level of compensation awarded to employees bringing Employment Tribunal claims.

## What might the right look like?

Although details are scant at the moment, rather than prescribing the contact permitted, the Government appear keen to encourage employers to introduce their own right to disconnect policies with their workforce. It seems likely that the Government may require all businesses to have such a policy under new rules.

This approach allows organisations more flexibility to design and mandate the out of hours contact with workers which is acceptable in the circumstances of their particular business. For example, those working in [emergency services](#) may be required to remain available to be contacted out of hours whilst on call or in the event of a serious incident such as the recent riots.

A word of warning though, expect that there will be some perimeters on what amounts to acceptable contact. Any such contact or agreement is likely to be required to be reasonable. For those working in public or other heavily unionised sectors, the content and introduction of a right to disconnect policy is likely to involve, at a minimum, consultation with recognised trade unions for affected workers.

## Should employers be concerned?

Once we have the details of the Government's proposals in full, you should be in a better position to ascertain how your particular organisation will be affected. Employers are encouraged to remember that whilst these proposals are new, employees have always been able to complain to an Employment Tribunal of constructive unfair dismissal where they are subjected to serious unfair treatment in the workplace, including unacceptable and unreasonable working practices. Contacting employees outside working hours could even amount to discrimination in limited circumstances.

In some workplaces the idea that managers will be constrained regarding the times at which they can contact staff might come as a huge culture shock. Work might be required to change organisational culture in those cases to avoid grievances or even Employment Tribunal claims. The chances are you already know if your organisation falls within this category. Employers might wish to include repeatedly contacting staff outside work hours as a disciplinary offence, although clear guidance to managers will hopefully avoid the need to enforce this.

For the majority of employers a right to disconnect may be seen as a natural progression of existing employment protections around health and safety and working time, serving as a useful check and balance. Viewed positively, this shift could represent an opportunity for employers to promote employee wellbeing, encouraging greater recruitment and retention.

## Key contact



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