



Right to Disconnect Employer Guide



Overview

Effective from 26 August 2024, amendments to the *Fair Work Act 2009* (**FW Act**) will introduce a right to disconnect for employees. This formal workplace right will allow employees to disconnect from work related communications outside their normal working hours.

The amendments also provide provisions for dispute resolution regarding this right through the Fair Work Commission (**FWC**) and granting the FWC with the authority to issue stop orders or address disputes related to the right. Furthermore, all modern awards will be required to include a 'right to disconnect term' by 2 September 2024. This means that specific guidelines will be added to awards to explain how this new right would apply to different industries and occupations. Whilst the legislation and terms of the award will be effective from 26 August 2024, they will not apply to small businesses (15 employees or less) until 26 August 2025.

The Right to Disconnect

The FW Act will prescribe that an employee may refuse to monitor, read or respond to contact, or attempted contact from an employer or third party (i.e. a client), if the contact or attempted contact is outside of the employee's working hours. This right extends to all forms of communication such as emails, phone calls, text messages or any work-related messaging platforms.

The right to disconnect will not apply to circumstances in which an employee's refusal is deemed to be unreasonable. When determining the reasonableness of the refusal, the following factors may be considered:

- a) The reason for the attempted contact;
- b) How the contact or attempted contact is made and the level of disruption the contact or attempted contact causes the employee;
- c) The extent to which the employee is compensated:
 - i. To remain available to perform work during the period in which the contact or attempted contact is made; or
 - ii. For working additional hours outside of the employees' ordinary hours of work;
- d) The employee's personal circumstances (including family or caring responsibilities); and
- e) Whether the contact is required under a law of the Commonwealth, State or Territory.



The right to refuse to monitor, read or respond to contact or attempted contact from an employer or third party is now considered a workplace right, protected by the general protections provisions of the FW Act. Employers are prohibited from taking adverse action against an employee reasonably refusing contact outside of ordinary working hours.

The right to disconnect does not prohibit an employer or client from contacting an employee outside of their working hours. However, an employer can only expect the employee to monitor, read or respond to contact or attempted contact outside of their normal work hours when it is reasonable to do so.

Disputes on the Right to Disconnect

If there is a dispute about the employee's right to disconnect, in the first instance the parties to the dispute must attempt to resolve the dispute at the workplace level by discussions between the parties. If discussions at the workplace level do not resolve the dispute, a party to the dispute may apply for the FWC.

The FWC may make orders to:

- a) Prevent an employee from unreasonably refusing contact with their employer
- b) Prevent an employer from contacting an employee outside of working hours
- c) Prevent an employer from taking disciplinary action against an employee as a result of the employee refusing contact outside of their normal working hours.

What Does This Mean for My Business?

As previously noted, the right to disconnect does not prevent an employer from contacting an employee outside of their work hours. However, employers should carefully evaluate the reasonableness, necessity and urgency of said contact before doing so. If the matter is not urgent and a response is not required until the following day, consider scheduling the communication to be sent the following morning during regular working hours. This eliminates the burden on the employee to respond outside of working hours.

Alternatively you can include a paragraph at the end of your communication stating:

"I'm sending you this email at a time that works best for me, but please feel free to respond when you're back at work tomorrow. I fully respect your right to disconnect and do not expect a reply until you're on the clock again".



What Does This Mean for My Employees?

These amendments are generally targeted at employees paid at award rates, who are expected to be 'on-call' without additional compensation. For salaried employees with seniority, their access to this right may be limited if their salaries account for 'reasonable additional hours'. However, this will depend on the nature of the job and the industry. The right to disconnect may impose limits on these additional hours to ensure that employees have adequate time for work life balance or are compensated or recognised for those hours in some other way such as time-off -in-lieu.

How can I Make My Business Compliant?

1. Communicating Expectations for Reasonable Out-of-Hours Communications

Employees should be informed about what is considered reasonable communication outside of regular working hours. This includes instances such as changes to shift times, updates about work locations, and emergencies that require immediate attention. All such communications should be conducted through a single, agreed-upon channel.

2. Review and Update Policies

Conduct a thorough review of your existing policies regarding after-hours communication, such as email, phone and messaging platforms. Update these policies to specifically address the provisions regarding the right to disconnect, including when employees are expected to be available and when they are not. Clearly define expectations for both employees and managers regarding after-hours communication, emphasising the importance of respecting the employees' right to disconnect. Identify instances that constitute reasonable out of hours communication, such as emergencies, changes to shift times or communication about work locations.

3. Review Employment Contracts

Review employment contracts to ensure are in alignment with the new legislation. Update any clauses related to after-hours communication to reflect the right to disconnect.

4. Review Flexible Working Agreements

For employees with flexible working arrangements, ensure that these agreements are documented in writing. Specify the employee's normal working hours and clearly outline agreed-upon communication hours.



5. Establish an On-Call Process

If after-hours contact is necessary due to the operational needs of the business or industry, establish an on-call process that includes allowances or overtime pay for employees who are required to be contacted outside of their normal working hours. Ensure that this process is documented in a policy and procedures manual to ensure clarity and transparency for all employees.

6. Model Behaviours

Ensure that senior leadership lead by example by modelling the desired behaviours around after-hours communication. This includes reflecting on their own habits regarding emails and phone calls outside of working hours. Additionally, senior leaders should communicate clear expectations regarding after-hours communication to their teams.

7. Communicate to Clients and Customers

Establish and communicate clear guidelines for clients and customers regarding communication expectations outside of regular business hours. This includes specifying when employees are available to respond to inquiries and when they are not. These guidelines should be communicated proactively to clients and customers to manage expectations and minimise after-hours communication.

How People Squared Can Help.

If you find yourself in need of further guidance regarding the right to disconnect or if you're seeking assistance in drafting comprehensive workplace policies, the People Squared team is here to assist you. Our dedicated team is readily available to offer you the support and expertise your business requires to navigate these complex issues.

People are our business, we're ready to listen and help when you're ready to talk.

Get in touch with us at support@peoplesquared.com.au

