



# Right to disconnect

A negotiating guide  
for branches

May 2021

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## A negotiating guide for branches

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### Introduction

Prospect's campaign for a "Right to Disconnect" is raising awareness and stimulating debate around the potential impact of new communications technologies on fairness, equalities, and health and wellbeing at work. The increase in remote and "hybrid" working patterns in the wake of the Covid-19 pandemic has increased the importance of these issues for many workers.

This briefing is intended to give branches ideas and tools for using this issue to build profile, membership and influence in their workplace.

### The issue

The development and take up of electronic communications technologies – from email and mobile phones to the latest platforms for online meetings and collaboration – have made it easier for many workers to do their jobs away from the workplace.

The COVID-19 pandemic resulted in a dramatic increase in the number of workers doing their jobs wholly, or partially, from home, and it is increasingly clear that for many this shift will be permanent. This is likely to be even more pronounced in many professional areas.

For many the ability to do their jobs away from the workplace is positive and popular, enabling greater flexibility, convenience, and autonomy in their working lives.

But there is also mounting evidence that remote working technology can sometimes make it harder to maintain boundaries and balance between work time and home time, and risk creating an "always-on" culture in which people feel they are expected to be in touch and available to managers and colleagues outside normal working hours. This can also affect those who aren't usually working remotely but do have portable technology that keeps them in touch with work.

This raises important issues for a trade union, including:

- **increased workload and unpaid overtime** – evidence suggests that workers with remote access and communications technologies often end up working longer hours – and that this has been a trend for many during the pandemic
- **equal opportunities and diversity** – implicit expectations of round-the-clock or seven-day availability can particularly disadvantage workers with caring responsibilities (most usually women) or some health conditions
- **health and wellbeing** – research has shown that the communication technology that enables home-working can sometimes make it harder for workers to "switch off" from work, resulting in increased stress and negatively impacting on sleep quality

The "Right to Disconnect" is about managing the downside risks of electronic communications and remote access technologies and ensuring that any increase in remote or home-working works for everybody.

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## The Right to Disconnect

The Right to Disconnect means ensuring workers can switch off from their jobs outside normal working hours and exceptional circumstances. According to a useful guide produced by the Irish government, it can be seen as including three key principles:

1. “The right of an employee to not routinely perform work outside normal working hours”
2. “The right not to be penalised for refusing to attend to work matters outside of normal working hours”
3. “The duty to respect another person’s Right to Disconnect (e.g., by not routinely emailing or calling outside normal working hours”<sup>1</sup>

This doesn’t mean imposing a single model or set of rules, but about employers working with employees and their representatives to agree a solution that works for them. The right approach might depend on the individual, the role, and the nature of the business or organisation.

Elements might include:

- an explicit statement that employees are not expected to read or respond to emails or other communications outside their normal working hours, and must not be put at a disadvantage for not doing so
- a strict rule that managers may not contact employees outside their normal working hours or stipulated “on call” periods, barring exceptional situations or issues that cannot be addressed at the next working period
- configuring communication systems so that emails or other messages cannot be sent or received outside employees’ normal working hours, and are instead parked on servers or even automatically deleted

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<sup>1</sup> [https://www.workplacerelations.ie/en/what\\_you\\_should\\_know/codes\\_practice/code-of-practice-for-employers-and-employees-on-the-right-to-disconnect.pdf](https://www.workplacerelations.ie/en/what_you_should_know/codes_practice/code-of-practice-for-employers-and-employees-on-the-right-to-disconnect.pdf)

- rules setting when work-related conference calls or online meetings can normally be held – so that time saved on commuting isn't automatically converted into a longer working day at home
- setting up automatic reminders in email systems or work calendars that keep people aware of what fair and reasonable expectations of availability or responsiveness would be

Prospect is campaigning for Government to introduce legislation that would require employers to engage with workers and their representatives to agree an approach to protecting their Right to Disconnect.<sup>2</sup> This is already happening in countries including Ireland, Canada and France.

But progress can already be made by trade union branches that have recognition or are seeking to build influence in a workplace. The rest of this guide is intended to offer ideas and tools for doing so.

## What branches can do

Polling commissioned by Prospect demonstrates that a significant number of workers have issues with “switching off” when working remotely – and that a clear majority support the principle of a Right to Disconnect.

Branches could supplement this finding by conducting their own survey of members and potential members in their workplace. Questions might include:

- do you feel under pressure to be in touch or available outside normal working hours, when using electronic communications technology to work remotely or from home?
- do you sometimes find yourselves working additional hours or longer days when using electronic communications technology to work remotely or from home?
- do you sometimes find it hard to juggle work with caring responsibilities, or your own health needs, when using electronic communications technology to work remotely or from home?
- do you sometimes find it difficult to “switch off” mentally, relax or get a good night's sleep when using electronic communications technology to work remotely or from home?
- do you think all workers should have a “Right to Disconnect” from work outside normal working hours?

This on its own could help raise the profile of the union and show members and potential members that it is keen to understand the challenges they face.

You might even want to get workers involved in their own work-time monitoring study – Prospect was involved with trialling easily downloadable software that can enable workers to build evidence of their own working hours, including “out of hours” emailing or remote working,<sup>3</sup> now available at <https://weclock.it/>

If a survey shows that these are issues for some workers – or you are already confident this is the case – then it should be raised with the employer, informally or through existing bargaining channels. If this is an issue that matters to your members or potential members, then it should be an issue that matters to the employer.

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<sup>2</sup> <https://www.theguardian.com/society/2021/apr/13/ministers-urged-to-give-uk-home-workers-a-right-to-disconnect>

<sup>3</sup> <http://www.thefutureworldofwork.org/stories/uni-global/spotlight-beta-test-ii/>

## Why employers should care

### *Health and wellbeing*

- Employers have a legal duty to ensure, as far as is reasonably practical, that work does not put employees' health at risk.
- Good practice guidance from the Health and Safety Executive highlights demands placed on workers by their workload, work patterns and work environment are recognised as a key factor to consider in seeking to tackle work-related stress.<sup>4</sup>
- HSE regulations state that employers should consult staff (or, where recognised, union safety reps) on the health and safety consequences of any new technologies they are introducing – which could include software or platforms used to enable remote working or monitoring of remote workers.<sup>5</sup>
- One employment lawyer has warned “Irrespective of when the UK might enact legislation that safeguards employees from the excessive demands of work and constantly being on call, every employer should remember that they already have the responsibility to act immediately in order to protect the health and wellbeing of their employees.”<sup>6</sup>

### *Equalities and diversity*

- Employers have a duty under equality law to ensure that policies and practices around working hours, flexible working and time off do not result in direct or indirect discrimination,<sup>7</sup> and large employers are now required to publish annual reports on their gender pay gap. In addition to this, public sector employers have a duty under the Equality Act to carry out equality analysis on all decisions, policies and practices to ensure they do not have unequal impacts.
- Evidence suggests that generalised expectations of long-hours working plays a key role in blocking women's progression and locking in gender inequality.<sup>8</sup>
- Recent case law has also established that long hours working cultures can constitute discrimination against disabled workers.<sup>9</sup>

### *Morale and productivity*

- All the evidence shows that productivity is enhanced by employee health and wellbeing, diversity and equal opportunities, and workers' perceptions of fairness and experiences of involvement. The most successful businesses and organisations will be those that work with employees and their representatives to find and agree solutions to the risks posed by new technology and ways of working.<sup>10</sup>
- Work by the Chartered Institute for Personnel Development on the lessons of the pandemic has highlighted the value of “establishing boundaries and routines” to “improve

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<sup>4</sup> <https://www.hse.gov.uk/pubns/indg430.pdf>

<sup>5</sup> <https://www.hse.gov.uk/pUbns/priced/l146.pdf>

<sup>6</sup> <https://www.thehrdirector.com/features/law/right-disconnect-uk-employees/>

<sup>7</sup> [https://www.equalityhumanrights.com/sites/default/files/what\\_equality\\_law\\_means\\_for\\_you\\_as\\_an\\_employer\\_-\\_flexible\\_working.pdf](https://www.equalityhumanrights.com/sites/default/files/what_equality_law_means_for_you_as_an_employer_-_flexible_working.pdf)

<sup>8</sup> <https://www.gov.uk/government/publications/gender-equality-at-work-research-on-the-barriers-to-womens-progression>; <https://hbr.org/2020/03/whats-really-holding-women-back>

<sup>9</sup> <https://www.peoplemanagement.co.uk/experts/legal/long-hours-culture-discrimination>; <https://www.lexology.com/library/detail.aspx?q=95ff8412-126b-41fd-bc9f-8636ea5a4e7a>

<sup>10</sup> See for example <http://www.oecd.org/employment/negotiating-our-way-up-1fd2da34-en.htm>; <https://www.ipa-involve.com/news/involvement-and-productivity>

wellbeing and prevent overwork”.<sup>11</sup> They have called on businesses to discuss with managers and staff ways of checking the development of an “always-on” culture.<sup>12</sup>

- Employment lawyers have stated “it is sensible for all employers to now start thinking about introducing a Right to Disconnect, even before this becomes law. They should consider consulting with their staff, and gathering information to see if this could help them get a better work life balance.”<sup>13</sup> Another said “I would certainly encourage employers to engage positively with a potential ‘Right to Disconnect’ policy in their respective workplaces... A motivated, refreshed workforce will likely result in higher productivity during working hours”.<sup>14</sup>

#### *Recommended reading for employers*

The following are articles and papers your employer could be pointed to:

- Brown, L. ‘Union calls for workers’ right to “switch off” in upcoming employment bill’, *People Management*, 14 April 2021, at <https://www.peoplemanagement.co.uk/news/union-calls-for-workers-to-have-the-right-to-switch-off-in-upcoming-employment-bill>
- Brook, C. ‘Can a long-hours culture lead to discrimination?’, *People Management*, 6 June 2018; at <https://www.peoplemanagement.co.uk/experts/legal/long-hours-culture-discrimination>
- Ellis Whittam HR INFO, ‘Do employees have a Right to Disconnect?’, at <https://elliswhittam.com/blog/employees-right-disconnect/>
- Equality and Human Rights Commission, *What equality law means for you as an employer: working hours, flexible working and time off*, April 2014; at [https://www.equalityhumanrights.com/sites/default/files/what\\_equality\\_law\\_means\\_for\\_you\\_as\\_an\\_employer\\_-\\_flexible\\_working.pdf](https://www.equalityhumanrights.com/sites/default/files/what_equality_law_means_for_you_as_an_employer_-_flexible_working.pdf)
- Health and Safety Executive, *Consulting workers on health and safety: Safety Representatives and Safety Committees Regulations 1977 (as amended) and Health and Safety (Consultation with Employees) Regulations 1996 (as amended)*, 2014; <https://www.hse.gov.uk/pubns/priced/l146.pdf>
- Health and Safety Commission, *How to tackle work-related stress: A guide for employers on making the Management Standards work*, October 2009; at <https://www.hse.gov.uk/pubns/indg430.pdf>
- Kerr, C. ‘Should my business implement the “Right to Disconnect” policy?’, *Primas Law*, 14 April 2021; at <https://www.primaslaw.co.uk/news/should-my-business-implement-the-right-to-disconnect-policy/>

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<sup>11</sup> [https://www.cipd.co.uk/Images/flexible-working-lessons-from-pandemic-report\\_tcm18-92644.pdf](https://www.cipd.co.uk/Images/flexible-working-lessons-from-pandemic-report_tcm18-92644.pdf)

<sup>12</sup> <https://www.peoplemanagement.co.uk/news/union-calls-for-workers-to-have-the-right-to-switch-off-in-upcoming-employment-bill>

<sup>13</sup> <https://inews.co.uk/opinion/a-legal-right-to-disconnect-would-protect-workers-being-bombarded-with-calls-and-emails-at-home-956056>

<sup>14</sup> <https://www.primaslaw.co.uk/news/should-my-business-implement-the-right-to-disconnect-policy/>. See also <https://elliswhittam.com/blog/employees-right-disconnect/>

## Agreeing a way forward

There are a number of issues worth keeping in mind when negotiating to secure a Right to Disconnect. The Professionals and Managers section of UNI Global Union have produced a useful guide to best practice,<sup>15</sup> upon which the following checklist is based.

<b>Be clear about what the Right to Disconnect means, and why it matters</b>	Discussions should start from agreed common ground about what kind of change is needed and what the desired outcomes are.
<b>Look at causes as well as symptoms</b>	If out-of-hours work and communication is widespread, employers should want to know why – for example it may be the result of workload issues, managers’ attitudes and signals, employees’ fear of losing status or influence, or a mismatch between normal working hours and the needs of the business.
<b>Map the problem</b>	As far as possible discussions and decisions should be based on accurate data about what kind of out-of-hours communication or work is taking place, when it is happening, who it is involving.
<b>Define normal working hours</b>	This may need to be different for different workers and may need to allow variation in exceptional times or circumstances. But this has to be the starting point for clarifying rights and expectations outside “normal” hours.
<b>Keep an equalities perspective</b>	Those with caring responsibilities, and some staff with disabilities, may struggle most to respond or work at particular, but may also need the flexibility to reconnect or catch up at other times. It is essential to ensure that all workers get the maximum benefit, but not unintended negative consequences, of a Right to Disconnect.
<b>Communicate and engage with all staff</b>	As with any change programme, clear communication and inclusive engagement will be critical to its legitimacy, take-up, and success.
<b>Train and support managers</b>	Managers will be critical to the successful implementation of any Right to Disconnect policy. They need to be equipped to play their part, as well as helped to manage any challenges it may pose to them.
<b>Enlist technical support</b>	Even if completely closing down email out of hours is judged too inflexible, there are a range of interventions that could help embed a Right to Disconnect, from delaying the delivery of messages sent out of hours, to setting up automatic out-of-hours replies.
<b>Monitor the policy regularly</b>	Arrangements should be agreed to monitor and review the impact of the policy, from gathering anonymous data on email usage to surveying managers and staff.
<b>Address barriers to implementation</b>	Where the policy is not being observed, this needs to be identified and the causes understood – for example, whether it is an issue of personal misunderstanding or resistance or the result of unresolved workload pressures.

<sup>15</sup> <http://www.thefutureworldofwork.org/media/35639/right-to-disconnect-en.pdf>





## “Right to Disconnect” clause negotiated for police staff in Victoria, Australia

The Police Association Victoria bargained successfully for the inclusion of a new clause protecting members’ right to “switch off” outside normal work hours in its workplace agreement as part of its annual negotiations in 2020.

The case is an instructive one because police services often need to be able to respond to emergency situations which may involve contacting people out of hours. However a key principle of the new approach is to establish clear boundaries between such situations and things that can wait till an employee’s next normal shift. Members had found that the ubiquity of electronic communications had resulted in the boundaries becoming blurred:

*“When I joined Victoria Police we didn’t have a culture that meant you rang people 24/7. We didn’t have [mobile] phones back then, we didn’t have the intrusive technology that we have today. We know we can do this... We need to put the brakes on some of the things our members do outside of their working hours, so we can keep them at their best and we can keep them helping the community for a long and productive career.”<sup>16</sup>*

The clause directs managers to “respect” employees’ “leave and rest days” and “avoid contacting [them] outside work hours unless it’s an emergency or genuine welfare matter”. As the TPAV explains:

*“Examples of an emergency include recalling a member for a bushfire, pandemic, terrorist attack or similar event. Calling a member to ask about a piece of corro [correspondence] is almost certainly not an emergency. In fact, this is one of the complaints that promoted us to negotiate the Right to Disconnect. Calling someone on a rest day today to change their shift on Saturday when they are in tomorrow is also not an emergency”...*

Checking on an employee’s welfare also needs to be regulated appropriately:

*“Calling someone involved in a critical incident the next day to see how they are travelling is clearly okay. Calling someone on sick leave for two days and saying, ‘How are you, and, by the way, where is that brief?’ is not.”<sup>17</sup>*

The Association is clear that the necessary culture change will take time and persistence to embed, but reports suggest that the explicit commitment and principles enshrined in the workplace agreement is already taking an effect.

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<sup>16</sup> <https://www.abc.net.au/news/2021-04-06/right-to-disconnect-gives-workers-their-lives-back/100040424>

<sup>17</sup> <https://tpav.org.au/news/journals/2020-journals/august-2020-journal/eba19-right-to-disconnect>

## Right to disconnect agreement between Telefonica and unions – 2018

**Telefonica and its unions became one of the first companies to agree a Right To Disconnect statement in 2018. The policy is underpinned by a commitment to “promote awareness and training actions aimed at all of the Group’s employees in order to inform about the risks, challenges, and good practices related to the use of digital tools”. Here are extracts from the agreement:**

At Telefónica, we understand that technology should improve the lives of people. Therefore, we believe it is essential that our workers can disconnect when necessary and create healthy habits in this regard. We are committed to deliver all the necessary tools to develop their own sense of digital well-being.

Without an adequate delimitation between work time and rest time, the phenomenon of flexibility in the provision of work can lead to confusion in the professional and personal life, with important consequences for the quality of life of workers because of technological overexposure.

Telefónica is committed to promote measures to enhance respect for workers' rest time once the working day has ended, recognizing the right to digital disconnection as a fundamental element to achieve a better working time arrangement in order to respect the privacy, family life and, ultimately, the quality of life and health of workers.

***Telefonica policy statement – November 2018.***<sup>18</sup>

## Next steps

Prospect wants to support branches and members to raise the profile of this issue and learn from their experiences of dealing with it.

So, we hope you will find this guide useful, and we also want to hear from you:

- if you would like further advice or support on raising these issues with your employer or seeking to engage members or non-members around the issue
- if “always on” culture is a particular problem in your workplace, or for some groups of workers
- if there are good practices and effective rules that your employer has implemented or accepted that we can learn from or promote more widely

*For more information or assistance on the **Right to Disconnect** please contact your organiser or Andrew Pakes on [andrew.pakes@prospect.org.uk](mailto:andrew.pakes@prospect.org.uk)*

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<sup>18</sup> <https://www.telefonica.com/en/web/press-office/-/telefonica-recognises-the-right-of-its-employees-to-digitially-disconnect#:~:text=Telef%C3%B3nica's%20management%20signed%20today,its%20employees%20to%20digitially%20disconnect.&text=In%20the%20document%2C%20the%20company,the%20Use%20of%20their%20devices>