

The Right to Disconnect in Ireland: New Code of Practice Published

A new Code of Practice on the Right to Disconnect (the "Code") has been published this week. The Code directs employers in Ireland to assess their working arrangements and patterns and to agree on and publish a Right to Disconnect Policy.

What is the code?

The purpose of the Code is to provide practical guidance for employers and employees to agree working arrangements, appropriate to their business, that maintain clear boundaries between work and leisure.

The three key changes are:

- a) The right of an employee to avoid routinely performing work outside normal working hours;
- b) The right to protection from penalisation for refusing to work outside of normal working hours; and
- c) The duty to respect another person's right to disconnect (e.g., by not routinely emailing or calling outside normal working hours).

When does the code come into force?

It is effective from 1 April, 2021.

Does it create new rights?

No. The Code is not a piece of legislation or a regulation in respect of which penalties or

individual remedies are created by reason of a breach. It is a non-binding Code.

However, like a number of other Irish Codes of Practice, the Code can be relied upon in proceedings in the Workplace Relations Commission, the Labour Court and the Courts as evidence of the appropriate standard of behaviour in relation to its subject matter. In other words, the test as to whether an employer's conduct in relation to a complaint regarding the ability to disconnect is reasonable will be measured against the provisions of the Code, so employers do need to examine the Code and assess how it impacts work allocation and deadlines.

The Code does not impose universally applicable working hours. Existing law on maximum weekly working hours, the statutory rights to rest breaks, daily and weekly breaks are unaffected by the Code. The Code specifically acknowledges the existing legal position which is that both employers and employees have a responsibility to manage work patterns safely and to take responsibility for ensuring that systems of work are safe. The primary responsibility, however, rests with the employer.

The Code also recognises that some businesses do not operate standard working hours and the right to disconnect arrangements can reflect that working model.

So what do employers in Ireland have to do and what are the key takeaways?

It is recommended that all people managers read the Code and, where necessary, are trained on its application to their employer's business.

Employers now need to carefully consider how their Right to Disconnect arrangements will work. This should be done in consultation with employees and the working arrangements should be set out in a written policy.

The assessment of suitable arrangements will need to take into account:

- a) The need to work across time zones;
- b) The tone of communications – i.e., the repeated use of the word "urgent";
- c) Expectations (not instructions) regarding disconnection during annual leave and outside of working hours; and
- d) Expectations regarding response times where businesses operate across different time zones.

It is recommended that employers should consider assigning responsibility for monitoring the implementation of the policy to a management committee or to the HR team.

Additionally, appropriate dispute resolution processes need to be in place and available, and existing grievance and / or other escalation channels should be equipped to resolve Right to Disconnect issues.

Further Information

If you would like further information, please reach out to your usual Maples Group Employment team contact or any of the persons listed below.

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