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22 January 2021

## **CIPD IRELAND SUBMISSION TO THE WRC ON THE RIGHT TO DISCONNECT**

CIPD Ireland welcomes the public consultation on the Right to disconnect and the opportunity to share our members insights on this development in Ireland.

CIPD, the Chartered Institute of Personnel and Development, is the professional body for human resource and learning & development professionals. In Ireland we represent and are the voice of 6,000 HR and L&D professionals and are part of the CIPD international community of over 150,000 professionals.

CIPD Ireland, a registered charity, has a mission is to champion better work and working lives. We engage with HR leaders and practitioners from Irish and multinational organisations as well as academics and policy makers, on dealing with the challenges of the workforce and future workplace.

We carry out annual research on HR, pay and employment practices in Ireland. We promote flexible working practices as a central tool in 'good work' and believe more action is required by Government to progress this. In this proposal we share our expert view on the issues and solutions, and our insights on how the Right to disconnect can be a positive move and minimise the risk to employment in Ireland.

## **Introduction**

In its remote working strategy *Making Remote Work* published on 15 January 2021, the government recognised both the challenges and benefits of remote working, which dramatically accelerated in use during the pandemic. CIPD Ireland can report a strong interest among members and employers in maintaining this through a blended working approach for the future.

The introduction of legislation to provide employees with the right to request remote working is a positive move but CIPD Ireland calls for this to be broadened to cover flexible

working, not just remote working. *Making Remote Work* acknowledges the benefits of flexible working, which can cover how long, where, and at what times employees work, and not just the location of where works get done. We believe the government should move to bring in the right to request access to flexible working, not solely remote working, from the first day of employment.

CIPD Ireland members are very aware of the work-life boundary issues that have emerged during Covid-19. These need to be addressed, and this consultation on a code of practice on the Right to disconnect from work is a useful step. While such a code should recognise the right of employees to disconnect, employers should not be penalised for giving employees the flexibility and ownership around hours and ways of working.

The growing use of technology and digital working, significantly accelerated during Covid-19, has raised concerns about employee wellbeing and managing the boundaries between work and home. The easy access to smart phones, tablets, laptops has changed this landscape and blurred the traditional boundary between work and home, regardless of where the person works. There are wider issues about the extent of and safe use of this technology across the population, which are not related to the employment relationship.

In our [CIPD Ireland HR practices 2020](#) survey, we explored wellbeing at work, particularly the impact of smartphone use on employee wellbeing. The majority of the 500 respondents considered that the positive and negative effects balance each other out (44%), a third believe the negative outweigh the positive effects, and for only 21% did the positive effects outweigh the negative effects. So concerns were emerging.

CIPD Ireland are conscious of the risks as the level of digitalised home working increases. Employers and employees need to continue to develop practices and behaviours that facilitate engagement, work-life balance and productivity. The environment of Covid-19 has highlighted wellbeing and social isolation of those working from home. Our research (preliminary findings from *HR Practices 2021*, yet to be published) found that the biggest challenge of remote working in 2020 was employee wellbeing and the always-on culture enabled by technology was a contributor to mental health issues. However the extent and nature of remote working in 2020 is not the future, and should not be the driver of a Code of practice. The clear evidence at company level from our members and from research at national level (Western Development and NUIG surveys, 2020) is that workplace strategies for the future will be seeking to adopt a more blended approach, with employees, by choice, in the workplace some days and working from home at other times.

A Right to disconnect COP must allow for policies at company level to fit within their broader framework on how flexibility will be exercised in the context of the future of work

post COVID. Employers are very conscious of the need to manage employee expectations around flexibility, future ways of working and access to remote working. There is a need to position developments such as this COP and the proposed Right to Request Remote Working, and associated publicity, to avoid giving or being seen to give a right or entitlement to remote or flexible working to employees. Employers will ultimately have to determine how and where work can be done and the extent to which employee expectations can be accommodated.

This all sets the context which any code of practice has to support and provide guidance.

### **Organisation of Working Time Review**

The fundamental of the Right to disconnect is already embedded in the Organisation of Working Time legislation which limits hours of work and requires employers to record working hours. A review and changes to the Organisation of Working Time Act is required. We hear continually from employers how it is operating against flexible and remote working, causing employers not to introduce those practices, and getting in the way of building trust. Trust and technology are two precursors to productive effective remote working, and OWT record-keeping requirements demonstrate mistrust and give the wrong message to employees.

The Government needs to consult on the changes needed under OWT. For example there could be opt-out mechanisms for employees regarding recording working hours, once pay rates are above a certain threshold. It also needs to research the viability of initiatives such as the UK's OWT opt-out clauses and the approach being adopted in Finland whereby employees may be less restricted in when and where they work for 50% of their working hours.

## **The European experience**

Much attention and publicity was given to France which is considered to be a pioneer in legally recognising this new right, according to [Eurofound](#) analysis. As early as 2013, a national cross-sectoral agreement on quality of life at work encouraged businesses to avoid any intrusion on employees' private lives by defining periods when devices should be switched off. This right was subsequently made law on 8 August 2016 and is now regulated by Article L.2242-17 of the Labour Code. According to this text, the mandatory negotiations about equality between men and women and quality of life at work – which are to be carried out at company level only and therefore not systematically – have to plan, under

specific conditions ‘the terms for the full exercise by the employee of [their] Right to disconnect and the setting up by the company of devices to regulate the use of digital tools, in order to ensure the respect of the rest and leave periods as well as that of personal and family life’.

If employers and unions there do not reach an agreement, the employer must to draw up a charter following consultation with the social and economic committee which ‘defines the procedures for the exercise of the Right to disconnect and further provides for the implementation, for employees and managers, of training and awareness-raising actions to foster a reasonable use of digital tools’.

France’s approach has gone some way to inspire other EU countries. While a few EU countries, have some form of the Right to disconnect included in their law, in some cases it is present in the policy of many large companies. In Italy, the Right to disconnect is dealt with by Article 19 of Law No. 81/2017, which specifies that the written agreement between worker and employer must also regulate the rest periods of the employee and indicate the technical and organisational measures taken by the parties to guarantee the worker’s Right to disconnect from company devices.

Two other countries – Belgium and Spain – currently have a Right to disconnect on the statute book. None prescribe the way this right has to be operationalised and rely on **social dialogue within companies and at sector level to do so**. Overall differences exist between the countries which have addressed this in terms of which workers are covered by the legislation and the existence of a fall-back option should negotiations fail to reach an agreement – the French legislation, for instance, in this event requires the employer to draw up a charter defining the procedures for exercising the right.

In the Netherlands and Portugal, legislative proposals have been made, but the process is stalling. A further eight countries (Finland, Germany, Ireland, Lithuania, Luxembourg, Malta, Slovenia and Sweden) are debating the issue, with discussions being most advanced in Germany and Malta. In some of these countries, the debate has resurfaced with the expansion of teleworking during the pandemic.

So overall the approaches in use have adopted what has been labelled a ‘softer approach’ agreed at sector or company level. Examples include:

- Implementing training emphasising the importance of work–life balance.
- Using pop-up messages reminding workers (or clients) that there is no requirement to reply to emails out of hours.

- Relying on the employee to disconnect, though there is an acknowledgement of a possible reluctance by employees to do so if it is seen as betraying a lack of ambition, which might harm their career.

Hard measures include shutting down employees' internet connections after a certain time or blocking incoming messages – effectively a 'right to be disconnected' have not been seen as the solution. It may be more effective and places the onus on the employer, but it would significantly limit the flexibility of both employers and workers around working time.

More recent developments raise the issue of a future EU directive in this space. In a resolution adopted on December 1st, the Employment Committee of the European Parliament said member states had to ensure that workers were able to exercise the Right to disconnect effectively, including by means of collective agreements. Adding that this was vital to protect workers' health, the committee called on the European Commission to propose a directive enshrining the right. This non-legislative resolution is expected to be voted on in a plenary session in January 2021. Once endorsed by the parliament, it would be advanced to the commission and member states for implementation as part of future regulatory decisions.

## A Code of Practice

Government proposal is to introduce a Code of Practice on the Right to disconnect by the WRC, and we agree that primary legislation is not required on this. The COP would provide guidance for employers and employees and be used in a case in the WRC. The fundamental of the Right to disconnect is already embedded in the Organisation of Working Time legislation which limits hours of work and requires employers to record working hours.

As a wellbeing concern, a Right to disconnect Code of Practice should connect to Health and Safety legislation. Health and Safety legislation recognises the variation across workplaces, the need for policies to adapt to the environment and the responsibility of both employer and employee. CIPD Ireland believes these same principles should apply to the Right to disconnect. Each company has to develop, consult and educate around a policy, it has to take account of the commercial environment, for example a Multinational with a lot of US contact late in the day, and it has to put responsibilities on both employer and employee.

From consultation with CIPD members, it is clear that embedding the Right to disconnect is about the organisation's culture more than anything, and bringing that alive will be a culture change process. It will take time to consult and build the right policy in each workplace, and

to agree on and then align the required behaviours. Consultative engagement with employees in the co-creation of policy is a key aspect of embedding the right culture, along with engaging with the trade union or other appropriate mechanism at enterprise level.

The Code of Practice has to separate out the right to communicate and the right to switch off. Employees have the right to switch off, and companies are still able to send communications. This is a critical distinction. At organisational level, international organisations will send corporate communications at a time that suits during their working day. This may not be the same as the normal working day in Ireland, and it would significantly damage our global reputation and competitiveness if corporate headquarters had to remove Irish-based employees from such a list.

Also flexible and remote working are increasing employee choice about when and where they work, a critical development for our future labour force. If employees have the choice to work atypical hours, for example the many parents managing childcare at this point of lockdown, a restriction on when employees can send communications would be stressful and unproductive. Removing a key perceived benefit of flexible and remote working – the ability of an employee to move their working hours around to suit their life – would be counterproductive for future, in terms of competitiveness and performance.

Therefore we recommend that the approach to the COP instead focusses on the employee's right to switch off and that there is no expectation that an employee is available until next normal business hours, for example the next day. It should address the right to be informed and educated that this is how the company operates. It should not focus on the rules around sending emails, though employees should be discouraged from sending emails outside of their normal hours of work.

The proposal for a COP on the Right to disconnect has already raised concern among the HQ of global companies with a base here. The headlines have already covered it, and there is a fear that Ireland will be closed for business outside the normal working day. This fear, even if not the reality, can have an impact on our reputation and investment opportunities. There is clear evidence of the effect of the French initiative on this topic. The detail and practice of their introduction of the Right to disconnect has in practice been far less severe than the headlines saying that all communications would be cut off for about 18.00 hours.

The consequences of this mean that the COP needs to be actioned speedily to reduce the uncertainty it has already caused and needs to adopt a flexible approach to allow business units here continue to perform effectively, and to keep Ireland an attractive place to invest and do business.

Therefore our recommendation for a COP is:

- Recognise that the Right to disconnect is a wellbeing activity under Health and Safety to support the work-life balance of workers.
- Define the Right to disconnect. In line with European developments, this should be *the right of workers to switch off their digital devices after work without facing negative consequences for not responding to communications from managers, colleagues or clients.*
- Clarify that this is about the employee Right to disconnect not about restrictions and blockages to communication patterns
- Define who is covered by the COP – employees and contractors while formally engaged by the organisation
- Emphasise the empowerment of employees and the responsibility of both employer and employee to implement this. Empowerment gives the right of period to disconnect and switch off without restricting technology or communications
- Adopt a principled based approach which provides guidance to employees and employers outlines on how workplaces can respond
- Call out that the Right to disconnect is about respect – respect for oneself in disconnecting from work and respect for others’ work life balance boundaries and not having unrealistic expectations of response times.
- Recommend a consultation process with employees and trade unions or other bodies to develop a Right to Disconnect policy and to define the behaviours that need to become part of the organisation’s culture
- Build in a need for communication and training sessions to roll out the policy and behaviours. This should cover all employees and contractors on site or engaged with the organisation on an ongoing basis
- Ensure informal paths for employees to discuss concerns are included and use of the grievance process to raise formal complaints
- There will be unique circumstance across different employments that companies will need to address. For example in many multinationals, employees work across different time zones, and often this has operated on an informal basis. This may need to be regularised so employees get greater clarity of their non-working period when they can disconnect.
- Implementation of specific initiatives required to embed the Right to disconnect. The COP should provide guidance on the type of initiatives that can be used. In our experience the menu of interventions could include

- Training emphasising the importance of work–life balance in the organisation and to send a message that employees have a Right to disconnect and do not need to respond out of hours
- Education on the safe use of smartphones, recognising the impact of the use of smartphones on health and wellbeing
- Company guidance on protecting evenings, weekends and holidays from contacts
- Have Divisions and teams localise the principles to work best in their own environment
- Identify roles with atypical hours that need specific consideration and arrangements
- Meetings should be planned for core hours
- Encourage employees to raise concerns with their direct manager and to use the appropriate internal *Speak up* mechanism if needed
- Use of measures such as email footers and pop-up messages to remind workers, and customers, that there is no requirement to reply to emails out of hours and not to expect an answer. For example putting on an Out of Office on when finishing work and adding to their email signature along the lines *“My normal working hours are from X to Y. I will respond to you when I am back in the office”*. The senders’ message is equally important and a flexible approach would be *“I work flexibly so it suits me to send emails now and I do not expect a response until your working time”*.
- Guidance and principals should extend to Bring your own device policies where applicable.
- Recognise that moving away from a connected environment will be a difficult from both a cultural and behavioural perspective and will take time to implement
- Monitor progress, use tools, surveys, etc to assess the level of out of hours contact and employee experience and satisfaction with the policy implementation progress.

For many organisation, leaders and managers, often those most likely to work out of hours will have to demonstrate clear commitment through leadership and role modelling better work-life balance.

At its heart, the Right to disconnect is about respect – respect for oneself in disconnecting from work and respect for others’ work life balance boundaries and not creating unrealistic expectations of response times. CIPD Ireland recommends that a COP provides guidance to

employers and employees on how to establish the culture and behaviours that will support wellbeing and drive the Right to disconnect.