

WORK LIFE BALANCE: NEW OBLIGATIONS TO ENSURE THE EMPLOYEES' RIGHT TO DISCONNECT

A new law entered into force on 4 July 2023 amending the Labour Code to introduce a provision relating to employees' right to disconnect from digital devices used for work outside their working hours (the "Law"). The Law implies new HR obligations for employers.

NEW PROTECTION OF THE RIGHT TO DISCONNECT

The Law aims at improving employees' work life balance by enshrining in the Labour Code the protection of their right to disconnect outside their normal working time from digital devices used for work (smartphones, laptop, etc).

Although the existing statutory provisions already regulate and limit the performance of work outside normal working hours, the Law intends to ensure that employees' right to disconnect is respected by imposing specific obligations on employers.

NEW OBLIGATIONS FOR EMPLOYERS

All companies whose employees use digital devices for work are required to implement specific arrangements, adapted to the specific situation of the company or of the sector, to respect the right of employees to disconnect outside working hours.

These arrangements must ensure that the statutory and contractual rules on working hours are complied with, and cover, where appropriate: the practical and technical measures for disconnection from digital devices, the raising of the employees' awareness and training measures, and the terms for compensation in case of exceptional derogation to the right to disconnect.

The concrete measures to be implemented must be defined in the applicable collective agreement, if any, or at the company's level. Where a staff delegation is in place, employers are required to involve it (in the framework of a co-decision or an information and consultation process, depending on the number of employees).

In practice, examples of arrangements to ensure the employees' right to disconnect could include, depending on the situation of the company, the implementation of policies and charters regulating the use of digital devices for work outside working hours, the organisation of training sessions on the

Key points

- A new law entered into force to ensure that the employees' right to disconnect from digital devices used for work is complied with.
- To reach this purpose, employers are required to implement measures, to be defined considering the specific situation of the company or of the sector, through collective agreement or at the company's level (with the involvement of the staff delegation if any).
- These measures cover, where appropriate, the practical and technical measures for disconnection from digital devices, the raising of the employees' awareness and training measures, and the terms for compensation in case of exceptional derogation to the right to disconnect.
- Failure to implement measures to ensure the employees' right to disconnect imply notably a risk of administrative fine.

importance to disconnect, the use of technology to limit the access of the employees to the IT system outside their working hours, etc.

PENALTIES FOR FAILURE TO COMPLY WITH THE LAW

Employers which fail to implement arrangements to ensure the respect of the employees' right to disconnect may face an administrative fine ranging from EUR 251 to EUR 25,000.

However, to enable employers to have sufficient time to fulfil their obligations under the Law, this penalty will only enter into force three years after the publication of the Law in the Luxembourg official gazette, namely from 1 July 2026.

The other possible consequences in case of failure to ensure the respect of the employee's right to disconnect include employees' claims for salary arrears (if overtime work is performed) or for damages, as well as whistleblowing reports.

IMMEDIATE ACTIONS TO TAKE

Even though the risk of administrative fine is deferred, the specific arrangements to ensure the respect of the employees' right to disconnect from digital devices must be implemented now.

Our team of experts is at your disposal to advise you in this regard or provide you with any other legal assistance you may need.

CONTACTS



Albert Moro
Partner

T +352 48 50 50 1
E albert.moro
@cliffordchance.com



John Ted
Senior Associate

T +352 48 50 50 1
E john.ted
@cliffordchance.com

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

www.cliffordchance.com

Clifford Chance, 10 boulevard G.D. Charlotte,
B.P. 1147, L-1011 Luxembourg, Grand-Duché
de Luxembourg

© Clifford Chance 2023

Abu Dhabi • Amsterdam • Barcelona • Beijing •
Brussels • Bucharest • Casablanca • Delhi •
Dubai • Düsseldorf • Frankfurt • Hong Kong •
Houston • Istanbul • London • Luxembourg •
Madrid • Milan • Munich • Newcastle • New
York • Paris • Perth • Prague • Riyadh • Rome
• São Paulo • Shanghai • Singapore • Sydney
• Tokyo • Warsaw • Washington, D.C.

AS&H Clifford Chance, a joint venture entered
into by Clifford Chance LLP.

Clifford Chance has a best friends relationship
with Redcliffe Partners in Ukraine.