

Right to disconnect

Since January 1, 2017 French workers have the right to disconnect outside of work hours.

Companies with more than 50 employees will be obligated to set up time periods when staff is not to send or respond to emails. Employers have to negotiate an agreement with their trade unions. If an agreement cannot be reached, the employer must unilaterally publish a charter that would make explicit the rights of employee's out-of-hours. The charter is then submitted to the works council or the staff delegated for their opinion. Prior negotiation with unions is a prerequisite and cannot be bypassed.

For the moment, it is not clear how this obligation should, in practice be implemented. Practical measures could include:

- Reminding employees that they are forbidden to work during their holidays, sick leaves and minimum rest periods
- Encouraging employees to use digital communication tools in a reasonable manner (e.g. no sending of emails to subordinates in the evenings or at week-ends)
- Training of managers on employees' right to disconnect
- Asking employees not to reply to emails sent outside of office hours or stating that nobody can be punished for not answering an email outside of working hours
- blocking out-of-hours emails

Each company has to review and adopt what it thinks will work best. Some companies may choose to take more drastic measures like preventing employees from accessing their inboxes remotely during holidays or shutting down the servers during the night, etc. They could also sanction managers who keep sending instructions to staff that require an out-of-hours response.

This right goes hand in hand with the management of stress at work and the employer's obligation relating to the safety at work. Employers need to make sure their employees are placed in a situation where the daily rest time (11 hours) is respected. In litigation on overtime, the employer will be expected to show its good faith attempts and management of disconnection and rest time.

Lack of negotiation or implementation of this unilateral charter are not sanctioned but will probably give rise to litigation (overtime, stress, work related accidents due to fatigue etc.)