

## More Countries Consider Implementing a “Right to Disconnect”

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As we move into 2019, it is worth checking in on the “right to disconnect,” [a French employment right](#) that now has been adopted or proposed in multiple other countries.

### Basis of the Right

We live in a hyper-connected world, and more and more companies now provide laptops and cell phones with the expectation that employees will be reachable at all hours. While some employees appreciate the increased flexibility that comes with these developments, the blurring between work time and free time comes at a price. In what some studies have coined “cognitive overflow syndrome,” answering those late night or weekend emails can seemingly affect one’s health, and an increasing number of employees report fatigue and burnout.

### “El Khomri” Law

In light of these concerns, in August 2016, France adopted the “*El Khomri* law” (named after France’s Minister of Labour at the time), which offered French employees the right to disconnect from work calls and emails during non-working hours. While the *El Khomri* Law provided the right to disconnect, it did not define it, and instead obligated employers to negotiate the specifics concerning the required use of telecommunication tools with employees. If no agreement is reached, the employer may unilaterally implement its own chosen methods for honoring the right to disconnect. The law came into effect in January 2017.

### A Global Push to Disconnect

Since enactment of the *El Khomri* law, more countries have enacted or considered similar legislation. In 2017, Italy enacted a law requiring employers to clarify their employees’ need to be responsive outside of normal working hours. Similarly, Philippines’ legislature has introduced a bill providing a right to disconnect after normal hours. Indeed, Belgium, the Netherlands, Luxembourg, India, Québec, and the federal government of Canada have all proposed or considered adopting such a right. Most recent to jump on the bandwagon was Spain, which in November 2018, adopted its “Data

Protection and Digital Rights Act.” This new act provides, among other things, the right to disconnect during resting periods and holidays.

Most surprisingly, even the New York City legislature has introduced a bill providing employees a right to disconnect from work communications. Despite being the “city that never sleeps,” the proposed law would prohibit employers with over ten employees from requiring their employees to respond to calls or emails outside of normal work hours (except in emergencies). Noncompliant employers could face fines of up to \$250 for requiring employees to answer after-hours emails and even higher fines for punishing employees who refuse to do so.

## First Enforcement Efforts and Companies’ Reactions

The past year also brought the first publicized enforcement of *El Khomri* law. In July 2018, France’s Supreme Court ordered Rentokil Initial, a British pest control company, to pay €60,000 to its former France-based employee who had been required to be constantly accessible in case a work issue arose. The ruling (believed to be the first of its kind since *El Khomri* took effect) demonstrates that French courts may determine that requiring employees to remain digitally connected violates the right to disconnect and requires compensation.

Since the law’s enactment, French companies have taken different approaches to compliance. Some simply encourage employees to not answer emails after work hours. Some allow employees to send emails after hours but hold those emails within their system until the following morning. On the other hand, some have forbidden emails at night all together.

## Additional Considerations

As more and more countries consider adopting the right to disconnect, it seems inevitable that the European Union will eventually consider the same. But questions remain. Can a “one size fits all” approach work for the various industries that people are employed in? Some companies simply must have their employees accessible outside of normal working hours. Additionally, some fear that requiring employees to not answer emails after work will simply force them to remain at work later. Or it might put pressure on employees to finish work by the close of business. Finally, it is unclear how the right to disconnect can be adequately enforced when employers may turn to calling an employee’s personal device, avoiding detection of such communications. As was the case with Rentokil, will enforcement depend on whistleblowers?

For the time being, we recommend that employers: (1) have a policy delineating what is expected from their employees outside of normal working hours; and (2) record any work (including phone calls and emails) that employees perform outside of normal working hours.

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