



STATUTORY INSTRUMENTS.

S.I. No. 159 of 2021



WORKPLACE RELATIONS ACT 2015 (WORKPLACE RELATIONS
COMMISSION CODE OF PRACTICE ON THE RIGHT TO DISCONNECT)
ORDER 2021

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WHEREAS the Workplace Relations Commission has, under subsection (1)(a) of section 20 of the Workplace Relations Act 2015 (No. 16 of 2015), having received a direction from the Minister under subsection (2) of that section, prepared a draft code of practice around the Right to Disconnect.

AND WHEREAS the Workplace Relations Commission has complied with subsection (4) of that section; and has submitted the draft code of practice to the Minister for Enterprise, Trade and Employment.

NOW THEREFORE, I, Leo Varadkar, Tánaiste and Minister for Enterprise, Trade and Employment (as adapted by Business, Enterprise and Innovation (Alteration of Name of Department and Title of Minister) Order 2020 (S.I. No. 519/2020)); in exercise of the powers conferred on me by subsection (6) of that section; hereby make the following order:

1. This Order may be cited as the Workplace Relations Act 2015 (Workplace Relations Commission Code of Practice on the Right to Disconnect) Order 2021.

2. It is hereby declared that the code of practice set out in the Schedule to this Order shall be an approved code of practice for the purposes of the Workplace Relations Act 2015 (No. 16 of 2015).

SCHEDULE

Workplace Relations Commission Code of Practice Right to Disconnect

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Foreword

On foot of a request from the Tánaiste and Minister for Enterprise, Trade and Employment, the Workplace Relations Commission (WRC) has prepared a Code of Practice to give guidance on best practice to organisations and their employees on the Right to Disconnect.

The world of work has changed profoundly over recent years. Technological advances mean that we are always contactable and accessible. Where, when and how we work continues to change at an accelerating pace. Employers and employees are experiencing both challenges and benefits arising from new ways of working including remote and flexible working arrangements, which encapsulates how long, where, and at what times employees work as well as the location of where work gets done.

To ensure that both employers and employees can take advantage of and maximise the benefit from this changed working environment, workplaces must put in place policies and procedures to ensure that employees' rights are preserved, that employers and employees adhere to their statutory obligations,

that work is carried out safely and that the working relationship between employer and employee is balanced and mutually beneficial.

While different working arrangements may suit different employees within their respective business environments, the right to be able to maintain clear boundaries between work and leisure is universal.

This Code applies to all types of employment, whether you are working remotely, in a fixed location, at home or are mobile.

I would like to acknowledge the input of all who made submissions as part of the consultation process and the work of the representatives of the Irish Business and Employers Confederation (IBEC) and the Irish Congress of Trade Unions (ICTU) who assisted the Commission in bringing this Code to finality.

Liam Kelly

Director General

Workplace Relations Commission

1. Legislative Basis

Section 20(2) of the Workplace Relations Act, 2015 provides, at the request of the Minister, for the preparation of draft codes of practice by the WRC for submission to the Minister for Enterprise, Trade and Employment. Codes of Practice are written guidelines, agreed in a consultative process, setting out guidance and best practice for employers and employees with respect to compliance with employment legislation.

This statutory function fits within the WRC's overall remit of promoting improvement and maintenance of good workplace relations; promoting and encouraging compliance with relevant employment, equality and equal status legislation and Codes of Practice; conducting reviews of, and monitoring developments in, workplace relations generally.

While failure to follow a Code prepared under section 20(1)(a) of the Workplace Relations Act, 2015 is not an offence in itself, section 20(9) provides that in any proceedings before a Court, the Labour Court or the WRC, a Code of Practice shall be admissible in evidence and any provision of the Code which appears to the Court, body or officer concerned to be relevant to any question arising in the proceedings shall be taken into account in determining that question.

In accordance with the provisions of section 20(4) of the Workplace Relations Act, 2015, the WRC carried out a public consultation and received 37 submissions which were fully considered in the development of this Code. In finalising the Code, the WRC engaged with representatives of employers and employees, including IBEC and ICTU.

2. Purpose of the Code of Practice

The purpose of this Code is to provide practical guidance and best practice to employers, employees and their representatives in relation to the Right to Disconnect.

Specifically, the Code is designed to

- Complement and support employers' and employees' rights and obligations under the Organisation of Working Time Act, 1997 (OWTA 1997), the Safety, Health and Welfare at Work Act, 2005 (SHWWA 2005), the Employment (Miscellaneous Provisions) Act 2018 and the Terms of Employment (Information) Act 1994 – 2014.
- Assist employers and employees in navigating an increasingly digital and changed working landscape which often involves remote and flexible working.
- Provide assistance to those employees who feel obligated to routinely work longer hours than those agreed in their terms and conditions of employment.
- Assist employers in developing and implementing procedures and policies to facilitate the Right to Disconnect.
- Provide guidance for the resolution of workplace issues arising from the Right to Disconnect both informally and formally, as appropriate.

3. What is the Right to Disconnect?

The Right to Disconnect refers to an employee's right to be able to disengage from work and refrain from engaging in work-related electronic communications, such as emails, telephone calls or other messages, outside normal working hours.

In brief, the Right to Disconnect has three main elements:

- I. The right of an employee to not routinely perform work outside normal working hours.
- II. The right to not be penalised for refusing to attend to work matters outside of normal working hours.
- III. The duty to respect another person's right to disconnect (e.g., by not routinely emailing or calling outside normal working hours).

4. Relevant Legislation

This Code of Practice provides practical guidance for employers and employees to assist in meeting existing obligations under the following legislation, the purpose of which is, inter alia, to protect employees from working excessive hours.

The Organisation of Working Time Act, 1997

The OWTA 1997 has its genesis in protecting the safety, health and welfare of those at work. The Act does not explicitly refer to a 'Right to Disconnect', but states that employers cannot permit employees to work more than a maximum of 48 hours per week on average, except in very limited circumstances.

As such, employers have a legal responsibility to keep records of employees' hours worked under the OWTA 1997. Employers must ensure that their employees receive specified breaks within the day, as well as their daily and weekly rest. Employees must also receive their statutory entitlement to annual leave and public holiday.

The duty to ensure compliance with the OWTA 1997 rests with the employer and not the employee. Employees have a responsibility to cooperate with any appropriate mechanism introduced by the employer for recording of working time.

The Safety, Health and Welfare at Work Act, 2005

The SHWWA 2005 makes further provision for the safety, health and welfare of persons at work. The Act sets out the responsibilities of employers, the self-employed, employees and various other parties in relation to safety and health at work. The Act also details the role and functions of the Health and Safety Authority, provides for a range of enforcement measures that may be applied and specifies penalties that may be applied for breach of occupational safety and health.

Under section 8(2)(b) of the SHWWA 2005 the employer's duties extend to **'managing and conducting work activities in such a way as to prevent, so far as is reasonably practicable, any improper conduct or behaviour likely to put the safety, health and welfare at work of his or her employees at risk'**.

Employees have an obligation under section 13(1)(a) and 13(1)(e) of the SHWWA 2005 to take reasonable care to protect their safety, health and welfare at work and **'not engage in improper conduct or behaviour that is likely to endanger his or her own safety, health and welfare at work or that of any other person'**.

This includes an obligation to not work hours in excess of the legislation and, like the OTWA 1997, contains an obligation to cooperate with any appropriate mechanism introduced by an employer for the recording of working time.

Employment (Miscellaneous Provisions) Act 2018

This legislation provides that employees must receive a written statement of their core terms of employment within 5 days of starting employment. One of the core terms must establish what hours of work the employer reasonably expects the employee to work in a normal working day and a normal working week.

In this regard, normal working hours are those as agreed in an employee's terms and conditions of employment, as governed by the employee's contract of employment and/or applicable collective agreement and/or any applicable Sectoral Employment or Employment Regulation Order in force.

Terms of Employment (Information) Acts 1994–2014

This legislation provides that employees must receive a written statement of the remaining terms of employment (a contract) within 2 months of starting employment. This statement must include any terms or conditions relating to hours of work (including overtime) and details of any collective agreements that may affect the employee's terms of employment.

5. Employer and Employee Obligations

The creation of a culture in which employees feel they can disconnect from work and work related devices necessitates a joint approach by both employers and employees. While placing the onus of management of working time on the employer is appropriate, individual responsibility on the part of employees is also required in the context of the relevant legislation.

Employer obligations

- Providing detailed information to employees on their working time, in accordance with the Terms of Employment (Information) Act, 1994.
- Ensuring that employees are informed of their normal working hours are reasonably expected to be under the Employment (Miscellaneous Provisions) Act 2018.
- Ensuring that employees take rest periods, in accordance with the OWTA 1997.
- Ensuring a safe workplace, including reviewing their risk assessment and, where necessary their safety statement in line with the SHWWA 2005 and taking account of their obligations under section 8(2)(b) of

the SHWWA 2005 which extends to ‘managing and conducting work activities in such a way as to prevent, so far as is reasonably practicable, any improper conduct or behaviour likely to put the safety, health and welfare at work of his or her employees at risk’.

- Not penalising an employee for acting in compliance with any relevant provision of the Act or performing any duty or exercising any right under Section 27 of SHWWA 2005.

Employee Obligations

- Ensuring that they manage their own working time and S13(1)(a) of the SHWWA places an obligation on an employee, while at work, to take reasonable care to protect their safety, health and welfare and the health and safety of co-workers.
- Cooperating fully with any appropriate mechanism utilised by an employer to record working time including when working remotely.
- Being mindful of their colleagues’, customers’/ clients’ and all other people’s right to disconnect (e.g., by not routinely emailing or calling outside normal working hours).
- Notifying the employer in writing of any statutory rest period or break to which they are entitled and were not able to avail of on a particular occasion and the reason for not availing of such rest period or break.
- Being conscious of their work pattern and aware of their work-related wellbeing and taking remedial action if necessary.

6. Best Practice Guidance on a Right to Disconnect Policy

Employers should engage proactively with employees and/or their trade union or other employees’ representatives as appropriate to develop a Right to Disconnect Policy that takes account of the particular needs of the business and its workforce. The Policy should take account of health and safety legislation, the employee’s terms and conditions of employment as they relate to working time and the statutory obligations on both employers and employees, with particular emphasis on full compliance.

The Policy should clearly state that it is about supporting the employee’s Right to Disconnect, not about restrictions and blockages to communication models while recognising that occasionally legitimate reasons arise when it is necessary to contact staff outside of normal working hours.

Where appropriate, the Policy should recognise that certain businesses and roles within those businesses do not always operate on a standard hours basis but in a manner responsive to customer needs where flexibility is required to meet the needs of the business, and as agreed in the employee’s terms of

employment. In this regard, the Policy should recognise that such flexibility may be beneficial also to employees and a Policy should find the appropriate balance in terms of employer and employee outcomes.

The Policy should communicate to all in a clear and unambiguous manner its purpose and method of implementation. This communication must reach all levels of the company, from the most junior staff members to senior managers whose support of the Policy must be articulated clearly.

The Policy should be equality proofed to avoid unintended negative consequences for any employees. For example, employees with caring responsibilities and some employees with a disability may not be in a position to stay connected outside of the working day or may need more flexibility to reconnect.

Normal Working Hours and the Right to Disconnect

The proliferation of digital communication platforms combined with easily accessible technology means that sending or checking emails or messages outside of normal working hours has become habitual.

A Right to Disconnect Policy should emphasise that there is an expectation that staff disconnect from work emails, messages, etc., outside of their normal working hours and during annual leave.

The Policy should allow for occasional legitimate situations when it is necessary to contact staff outside of normal working hours, including but in no way limited to ascertaining availability for rosters, to fill in at short notice for a sick colleague, where unforeseeable circumstances may arise, where an emergency may arise, and/or where business and operational reasons require contact out of normal working hours.

The Policy should recognise that business and operational needs may dictate that there will be situations which clearly require some out-of-hours working by some employees depending on the service being provided, the employee's role, the needs of customers/clients and the unique requirement of critical services and as agreed in an employee's terms of employment.

Where relevant to the business, a right to disconnect policy should address the issue of working across global time zones. It should recognise that working across different time zones and international travel may result in colleagues connecting at different times outside of normal working hours to complete their objectives. This does not mean that the recipient needs to respond in the same time period. Clear guidance around disconnecting and expectations for responding to digital communications globally should be provided to all employees.

The Policy should recognise that many employees choose and may request to work in a more flexible manner given their work life balance needs, which results in employees proactively requesting to work outside normal working hours. However, even in circumstances where an employee is working flexibly the right to be able to maintain clear boundaries between work and leisure should not be compromised.

Where remote or flexible working is in place, employers should consider if their usual method of monitoring specified working hours is suitable for remote and flexible working. In this context, a time management system to record working and attendance is advisable.

Communications

Tone and sense of urgency in written communications should be proportionate, particularly those sent outside of normal working hours – texts or emails sent outside of normal working hours may be easily misinterpreted by the recipient as to its urgency.

Where appropriate, use of measures such as email footers and pop-up messages to remind employees, and customers, that there is no requirement to reply to emails out of hours and an answer should not be expected e.g., putting an ‘Out of Office’ on when finishing work and adding a footer to an email signature indicating the sender’s normal hours of work.

The sender’s message is equally important, and when not urgent the email should state that an immediate response is not expected, or the sender should utilise the "delay send" options and set it to a specified time on the next closest working day.

The Policy should stress that emergency communications should only be sent during emergency circumstances – such communications should be the exception, not the norm.

Role of the Manager

The Policy should specify that managers play a central role in the successful implementation of a Right to Disconnect policy and where possible, should be given appropriate training and support. Managers should respect the Right to Disconnect of their team members and should demonstrate clear commitment to the Policy through leadership and being active role models in this respect.

Training of managers and staff, where appropriate, should specifically address the ‘Right to Disconnect’, including that this is a mutual right where open channels of communication in relation to workload and time management are encouraged, actively managed and any necessary behavioural changes (of managers/staff) identified. Training and related communications should

reinforce the appropriate behaviours around disconnecting from work outside normal working hours.

Managers must also recognise and take action when an employee's inability or reluctance to disconnect appears to be linked to excessive workload, performance issues, or whether organisational culture is a contributing factor. In such circumstances, managers must ensure that employees have clear goals and deliverables that, other than in exceptional circumstances, stand to be delivered during normal working hours.

Culture and Oversight

Organisational culture and leadership play a key role in tempering customer expectations in respect of receiving responses outside of normal office hours albeit due to business and operational needs, communications are occasionally required outside of employee's normal working hours.

The Right to Disconnect Policy should not only be referenced in an employee's terms and conditions of employment or employment contract as with any other company policy but also should be read in conjunction with the organisation's Dignity at Work, E-communications, Data Protection and Confidentiality Policies. The Policy should be emphasised during any induction process.

Some workplaces may, where possible, wish to establish a monitoring committee to oversee the implementation of the Policy or assign responsibility to a HR staff member. In any event the effectiveness of the Policy should be reviewed annually in accordance with company practice and, where appropriate, in consultation with trade union or other employee representatives as appropriate.

Wellbeing

Workplace policies on the Right to Disconnect sit fully within the broader objective of ensuring employee wellbeing, health and safety and the Policy should reflect this.

7. Raising Concerns

Employees and employers should manage the Right to Disconnect in a manner that is respectful of the other's rights and expectations and in the context of the relevant legislation and good workplace relations generally. They should also be conscious of the fact that due to business and operational needs and depending on a number of factors, including the role of the employee, customer/client needs, nature of the business, global reach of the employer, that circumstances may occasionally arise that necessitate that communications are sent and received outside of employees' normal working hours. When

occasional contact outside normal working hours becomes the norm, this needs to be addressed.

In this regard, situations may arise where an employee may feel that their right to disconnect is not being respected or that their workload is such that they are not able to disconnect at the end of their normal working day. Examples of such situations might include:

- Being contacted regularly outside of normal work hours.
- Being regularly expected to work additional unpaid hours.
- Being expected to regularly work through lunch or other breaks.
- Being penalised for not being available out of normal working hours or favourable treatment for employees who stay connected out of hours.

Most employees who find themselves in this situation will want this level of intrusion to stop.

Best practice suggests that employees should attempt to resolve the problem with the person(s) informally in the first instance. In circumstances where an employee feels that it would be too difficult to do this on their own, an alternative approach would be to seek support from, or for an initial approach to be made by their manager, a member of human resources (HR), a trusted colleague or designated person or trade union representative.

Larger organisations with discrete HR units could consider appointing a designated member of the HR team to be the point of contact to assist in directing resources to resolve any matters raised under the Policy.

If an informal process has not been successful in resolving the issue, then the formal company grievance procedure may be utilised. Where there is a collective agreement the parties should abide by those terms as it relates to raising grievances.

Notwithstanding that a specific contravention of the OWTA 1997 may be referred to the WRC at any point, if the matter is addressed through the grievance procedure in the context of the Right to Disconnect and still remains unresolved on completion, the employee may refer it to the WRC under the appropriate legislation and citing this Code.

8. Sample Right to Disconnect Policy Layout and Template Clauses

Based on the best practice set out above a Right to Disconnect Policy could follow the generic layout below and should be tailored to meet the individual needs of each organisation.

a. Introduction

The introduction should set out the purpose of the Policy with a statement tailored to meet individual workplaces.

b. Wellbeing

Wellbeing may be addressed in other company policies and these can be referenced as appropriate, otherwise the Policy should emphasise that the Right to Disconnect sits within the broader objective of ensuring the safety, health and wellbeing of employees.

c. Obligations on Employers and Employees

The Policy should stress that a joint effort will be required to implement the Policy and remind both employers and employees of their statutory obligations.

a. Employer Obligations...

b. Employee obligations...

d. The Role of Managers

Given that line managers will have close interaction with employees, their role in ensuring that employees are able to disconnect from work should be clearly set out.

e. Working Hours

The Policy should address the issue of working hours given that ‘normal working hours’ may be very different for employees even within the same organisation, i.e., while some may work a more traditional hourly pattern (for example, 9 to 5) and others may work flexibly or have varying working time patterns, the Policy must explicitly state that all have the right to disconnect in line with the Policy.

f. Communications

The workplace’s policy in relation to communications should be set out and should emphasise that employees personal time is respected and that there is a general expectation that employees disconnect from work e-mails and communications outside of normal working hours.

g. Meetings

The Policy should set out the workplace's policy in relation to scheduling and attendance at meetings.

h. Raising Concerns

The Policy should set out the procedure for raising concerns, informally and formally, in relation to the Right to Disconnect.

Template Policy Content

A Right to Disconnect Policy may open by stating the intention and purpose of the Policy and include a positive statement along the following lines.

Introduction

'The health and wellbeing of our employees is of the utmost importance to us and we encourage and support our employees to prioritise their own wellbeing.'

Disconnecting from work is vital for your wellbeing, and to help you achieve a healthy and sustainable work-life balance. The organisation recognises that every employee is entitled to switch off outside of their normal working hours and enjoy their free time away from work without being disturbed, unless there is an emergency or agreement to do so, for example while 'on call'.

This company recognises that, where appropriate, flexible working arrangements can facilitate employees in meeting personal and family commitments and assist in maintaining a positive work life balance.

Equally, as an employer we recognise that flexible working arrangements undertaken by employees can assist in meeting our business needs. Where flexible working arrangements are in place, it can be beneficial for both employees and employers. However, as an employer we are conscious that an 'always on' working environment can bring additional challenges and risks for our employees.

To encourage and support our employees in balancing their working and personal lives whether they work traditional hours in the workplace, work remotely or flexibly we have adopted a 'Right to Disconnect' company policy, which includes best practice guidance around wellbeing, working hours, the use of technology and more.

Template Wellbeing Clauses

Employees working from home are encouraged to schedule post-work leisure activity, in order to create some separation from the end of their workday and the beginning of their personal time.

Staff, including those engaging in flexible working arrangements or remote working are reminded to switch off from work, to monitor their working hours and to take breaks in accordance with the Organisation of Working Time Act 1997 (OWTA 1997), away from work devices. Staff must take reasonable care of their health and safety in accordance with section 13 of the Safety, Health and Welfare at Work Act 2005 (SHWWA 2005).

Template Communications Clauses

Where possible, e-mails should be checked or sent only during normal working hours.

Due to differing/non-standard patterns of work in the organisation, some employees may send communications at times which are inopportune for other employees, e.g., weekends. The sender should give due consideration to the timing of their communication and potential for disturbance, and the recipient should understand that they will not be expected to respond until their working time recommences.

Employees should not feel that they must respond to social communications from colleagues outside of their working hours, and the Policy should state whether or not social media platforms are acceptable means of work-related communication in that particular workplace.

Where a manager sends communications outside agreed working hours, unless business and operational needs dictate that an immediate response is required, a statement will be attached to an out of hours email tempering the expectation of an immediate response.

Managers should speak to a team member if they notice that they are sending emails at odd hours or logging in excessively – this may be a sign that they are finding it difficult to manage their workload or ‘switch-off’.

Template Email Out of Office and Footers

“My normal working hours are from X to Y. I will respond to you when I am back at work.”

“I am currently working flexibly so while it suits me to send this email now I do not expect a response or action outside your own working hours”

Template Meetings Clause

We respect people's time by only inviting them to meetings where they play an active role and have something to contribute. Employees should be mindful of and manage how much virtual communication they have each day.

While meetings are crucial to strengthen connections between individuals and teams, the frequency and timing of meetings should be continuously reviewed to ensure optimum use of time and allow colleagues time to work outside of meetings.

Meetings should be scheduled during normal working hours, avoiding lunchtime where possible.

9. Useful Resources

The Department of Enterprise, Trade and Employment has produced the following guide.

Guidance for Working Remotely includes information and guidance across a range of areas relevant to remote and other flexible working arrangements including:

- Health and Safety
- Employment conditions
- Data Protection
- Equality
- Training
- Additional supports
- Legislation

Workplace Relations Commission

March 2021



GIVEN under my Official Seal,
31 March, 2021.

LEO VARADKAR,
Minister for Enterprise, Trade and Employment.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

The effect of this Order is to declare that the draft code of practice set out in the Schedule to this Order is a code of practice for the purposes of the Workplace Relations Act 2015.

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