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Right to disconnect laws could shift



New laws giving workers the right to disconnect after hours has caused confusion among Australia's workforce, but experts say in time it could lead to a shift in workplace culture

New laws giving workers the right to disconnect after hours has caused confusion among Australia's workforce, with one expert warning employment contracts would exclude the laws applying to 70 per cent of employees.

Workers at non-small businesses of 15 people or more can now refuse to monitor, read or respond to contact outside their working hours.

But Taurus Legal Management commercial litigation specialist Alex Martin said the new rights given to employees only apply if the refusal was reasonable, which in itself is causing confusion.

"What does that mean? That is the million dollar question, and it is a real difficult thing because it is uncertain in law," Mr Martin said.

Factors considered in the test for reasonableness included the purpose of the contact, the nature of the employee's role in the business and their personal circumstances.

"That is things like caring for kids, or someone with a disability or sickness," Mr Martin said.

“Another relevant factor was whether they would be receiving any additional pay or compensation for that time.

“It really doesn’t answer any questions at all if you are a high paid employee who gets paid for additional hours and you have high level responsibilities, then it would probably be reasonable for you to take contact after hours.

“Whereas if you are a lower-level employee then not so much, or if you had responsibilities to pick kids up after school then not so much,” Mr Martin said.

“It sounds very much like a political thing, it sounds like a good idea and workers like the idea but in practice it won’t change much.”



Commercial litigation specialist Alex Martin said the new right to disconnect laws would likely be actioned if a worker faced disciplinary action if they did not respond to an employer after hours. Picture: Supplied

Mr Martin said the new laws would likely be put into action in cases where a person faced disciplinary action because they did not respond to an email or call after hours.

“That disciplinary action would be unlawful, and if they were dismissed then it would be an unfair dismissal,” he said.

“I can certainly understand if you were a factory worker and you finished a shift then you should not be harassed, but it might be reasonable to ring and say ‘can you do this shift.’

“It will all be based on the circumstances, which does not really add a lot of clarity.

“It is tough for employees because they are not sure what their rights are, and it is tough for employers because they will question whether they can ring their employees.

“If you have a good relationship with your employer then you would hope those things could be worked out between sensible people. If you have to resort to these rights then you probably don’t have a good relationship anyway.”



News laws introduced this week will give Australian workers the right to disconnect after hours, unless the refusal to answer calls or respond to messages is unreasonable.

The Fair Work Commission (FWC) will be tasked with determining whether a refusal to respond to contact after hours was reasonable or not.

The FWC will have the power to make an order or deal with a dispute it considers appropriate to resolve and impose fines on employers who disobey orders.

Orders could include stopping employees from refusing contact or stopping employers from adversely requiring workers to respond to work related contact.

Employers who contravene orders could be fined up to \$18,780 for individuals or \$93,900 for corporations.

Fair Work Ombudsman Anna Booth said employers and employees needed to talk to each other about after-hours contact and set expectations suited to their specific workplace and the employee’s role.

“We encourage workplace participants to educate themselves on the right to disconnect and take a commonsense approach to applying it within their workplace,” Ms Booth said.



Maurice Blackburn employment issues lawyer Jessica Heron said employment contract clauses would likely prevent about 70 per cent of the workforce from accessing the right to disconnect laws.

Maurice Blackburn employment issues lawyer Jessica Heron said her first piece of advice to people would be to check their employment contract.

“If your employment contract has a clause that says your employer can direct you to work reasonable additional hours, which is effectively overtime, then the employer might have an argument that it is unreasonable for you to refuse any contact out of hours because you have that clause in your contract,” Mr Heron said.

“My sense is that will prevent about 70 per cent of the workforce from accessing these laws.

“It is a big flaw ... it is not a win.”

Ms Heron said the second issue was there were no guidelines about what's reasonable contact and what's not.

She said the relevant factors the FWC put out around family responsibility would make it unreasonable for an employer to expect a person to respond during that period.



Maurice Blackburn employment issues lawyer Jessica Heron said the new right to disconnect laws weren't a direct entitlement to workers but more of a cultural shift in Australian workplaces.

“We have to use a commonsense approach, because all the Act says is family responsibilities, it is pretty broad,” she said

“Another factor was income and if you were a project manager on \$300k plus then good luck saying it was unreasonable contact.

“It is super vague, I am actually more curious to know who this law is going to help, I could list off far more people that it won't unfortunately.

“It looks good on paper, and it might create a culture where employers are a bit frightened to contact employees or they think twice before they do it for some things.

“As a lawyer I don't see this as a direct entitlement to the worker I see it as a cultural shift.”

Ms Heron said other countries with similar laws ranked better than Australia on the OECD Better Life Index, which measures work life balance.

“Australia ranks very poorly on that right now, so perhaps in five years' time we will look back on that index and say wow, it worked,” Ms Heron said.



Former UNSW professor Emmanuel Josserand said research shows maintaining healthy boundaries between your work and personal life was crucial for managing stress.

Professor Emmanuel Josserand, formerly the UNSW Business School director, said a recent Safe Work Australia report showed there had been a significant rise in work-related mental health problems, especially among women – leading to more time loss and compensation for injuries and illness.

“Research suggests that maintaining healthy boundaries between work and personal life is crucial for managing stress,” Prof Josserand said.

“Out-of-hours contact can disrupt much-needed rest and recovery time, potentially exacerbating existing stress.”

Professor Josserand said Australia was joining many countries worldwide that had adopted similar laws.

“France, for instance, was a frontrunner, making it mandatory for companies with more than 50 employees to establish parameters for after-hours communication in 2016,” he said.

“A court ruling there even ordered a company to compensate an employee who was required to constantly keep their work phone on.”

Prof Josserand said the right to disconnect could be crucial in promoting employee wellbeing and creating a more sustainable work environment.

“This new legislation represents a significant shift in the Australian work culture and workplace rights,” he said.

“With the growing adoption of flexible and remote working arrangements, it’s essential for both employers and employees to establish healthy boundaries and expectations around communication outside of standard working hours.”

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