

WHAT IS NEW IN FRANCE: RIGHT FOR THE EMPLOYEES TO DISCONNECT?

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Labor, Employment and Workplace Safety Alert

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The Law dated August 8, 2016 n°2016-1088 named "*Loi Travail*" has entered into force from January 1st, 2017 in relation to the "right to disconnect" for employees. Article 55 of the Law on the "right to disconnect" is the result of the long debate in France about the fact that employees are almost always connected with their smartphones and laptop outside of work, in an environment where working time regulation must be complied with. Claims by employees of stress, *burn-out*, poor health and detrimental impacts on personal and family life have been on the increase, exposing employers to liabilities as a consequence of this 24 hour connectedness.

What are the new legal requirements for employers?

The situation will be different depending on the number of employees within the French legal entity.

- Companies with at least 50 employees are required to negotiate with the unions an agreement ("Compulsory Annual Negotiations") providing for the modalities of the right for all employees "to disconnect" in addition to means to control use of the IT equipment. The objective is to comply with compulsory rest time and reduce the intrusion of work into private and family life.

In the absence of a company agreement with unions, the employer must implement a Policy regarding the "right to disconnect". This Policy should be very practical and clear in relation to actions to be undertaken by the employer. This must include training programs to alert employees about "*reasonable*" use of IT equipment outside working hours. The Policy should also provide for means to control compliance with the "right to disconnect", which could include no access to smartphone and emails outside working hours.

- Companies with less than 50 employees, are not legally required to negotiate a company agreement or implement a Policy on the "right to disconnect" for all employees.

Indeed, the Law only provides that for employees under a global remuneration structure (salary) for a certain number of days worked per year (generally 218 days per year), the employer must inform the employee of the modalities of the "right to disconnect". From a practical standpoint, it is recommended that such information be part of the employment contract signed by the employee.

Notwithstanding the fact that a Policy is not legally required, it is highly recommended that such Policy be implemented in a French context where employees are protected by the Law as well as the Labor courts and the employer must ensure the physical and mental health of its employees.

Employers might also want to check whether the National Collective Bargaining Agreement applicable to the company already provides for such "right to disconnect". Employers would then be required to apply the

provisions of the National Collective Bargaining Agreement. This is the case of the Consulting Firms Collective Bargaining Agreement ("*Syntec*").

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