Corporate

January 2017

RIGHT TO DISCONNECT: WHAT IMPACT ON COMPANIES?

On 1 January 2017, the employment law dated 8 August 2016[1] related "to work, to the modernisation of the labour relations and the securing of professional life" entered into force. This new regulation requires companies employing more than 50 employees to start negotiations with the employees' representative bodies in order to define the rights of employees to disconnect, to 'forget' about their smart phones and other equivalent devices out of working hours. What are the concrete consequences for employers?

France recently implemented a law giving workers a right to disconnect from email, messaging and calls after working hours. When promoting this law in front of the Parliament, the Ministry of Labour indicated that an intervention from the Government was becoming necessary for "preserving" the health and well being of the workers, arguing that emails arriving at night, on weekends and during holidays can create stress and disrupt family life.

The right to disconnect has been introduced by article 55. This obliges companies employing more than 50 employees to start negotiations with the employees' representative bodies in order to reach an agreement aimed at protecting the personal and family life of employees outside normal working hours. The right to disconnect is now included in the package of annual negotiation between the employer and the employees' representative bodies on professional equality between women and men and on the quality of work life[2].

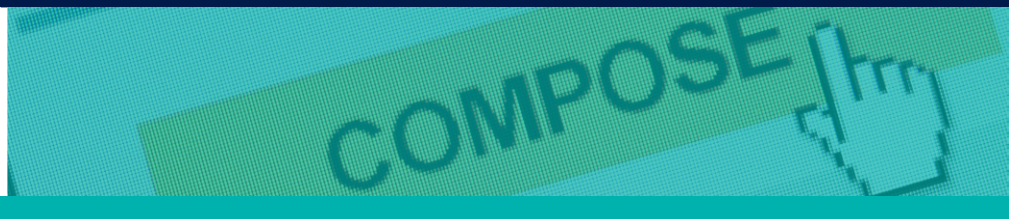
A negotiation has to be launched between the employer and the employees' representative bodies about the terms of the implementation of this right to disconnect. However, it is worth mentioning that the employer has no duty to actually reach such agreement.

If an agreement cannot be reached, the company shall publish an internal charter or equivalent internal rules, after seeking the opinion of the employees' representative bodies. In this case, the employer will be the only decision maker.

This charter shall define the terms of the exercise of the right to disconnect. The charter can also put in place some training or equivalent in order to raise awareness, among employees and managerial and supervisory staff, of the reasonable use of digital tools outside normal working hours.

Again, it is worth mentioning that there is no specific sanction if the company does not establish such

1 n°2016-1088
2 Article L. 2248-2 Labour Code.



a charter. At the least, the absence of consultation of the employees' representative bodies can be seen as an offense of obstructionism as per the provisions of the Labour Code.

If the charter defines duties and sanctions in case of failure to comply with these obligations, it can be considered as an indirect modification of the company rules and regulations. In order to ensure the efficacy of the charter, companies shall guarantee this right to disconnect through binding and efficient measures aimed at preserving the health and well being of employees.

In terms of benchmarking, some measures have already be taken by various companies, such as:

- Renault limits email connections and the use of the professional cell phone in the evening and weekends.
- At Thalès an agreement signed in 2014, gives the right to workers who work remotely to disconnect during the closing time of the company for which they work.
- Volkswagen prevents its email servers from delivering messages to employees in Germany when they are off-shift or on vacation.
- Daimler and BMW, Allianz France, Orange, BNP Paribas and Atos have restrictions on employees' use of email outside normal working hours.

HFW perspective

While there is no specific sanction for companies which fail to reach such agreement, companies should nevertheless initiate negotiations with employees' representative bodies. Thus, in a situation where an employee sues its employer and invokes arguments related to pressure, stress and psychosocial risks, the judge could consider that an employer who did not start negotiations about the right to disconnect somehow created a stressful working environment. In a situation where the employer did start such negotiations or even put in place a charter, the judge will take into consideration the overall steps taken by the company to prevent such risks and whether there is a clear cut between the professional life and the private life of employees.

For more information, please contact the author of this briefing:

Franck Bernauer
Partner, Paris
T: +33 (0)1 44 94 31 11
E: franck.bernauer@hfw.com

HFW has over 450 lawyers working in offices across Australia, Asia, the Middle East, Europe and the Americas. For further information about corporate issues in other jurisdictions, please contact:

Nick Hutton
Partner, London
T: +44 (0)20 7264 8254
E: nick.hutton@hfw.com

Pierre Frühling
Partner, Brussels
T: +32 (0) 2643 3406
E: pierre.fruhling@hfw.com

Michael Buisset
Partner, Geneva
T: +41 (0)22 322 4801
E: michael.buisset@hfw.com

Jasel Chauhan
Partner, Piraeus
T: +30 210 429 3978
E: jasel.chauhan@hfw.com

Ziad El-Khoury
Partner, Beirut
T: +961 3 030 390
E: ziad.elkhoury@hfw.com

Wissam Hachem
Partner, Riyadh
T: +966 11 276 7372
E: wissam.hachem@hfw.com

Rula Dajani Abuljebain
Partner, Dubai/Kuwait
T: +971 4 423 0502/
+965 9733 7400
E: rula.dajaniabuljebain@hfw.com

Brian Gordon
Partner, Singapore
T: +65 6411 5333
E: brian.gordon@hfw.com

Henry Fung
Partner, Hong Kong/Shanghai
T: +852 3983 7777/
+86 21 2080 1000
E: henry.fung@hfw.com

Hazel Brewer
Partner, Perth
T: +61 (0)8 9422 4702
E: hazel.brewer@hfw.com

Aaron Jordan
Partner, Melbourne
T: +61 (0)3 8601 4535
E: aaron.jordan@hfw.com

Stephen Thompson
Partner, Sydney
T: +61 (0)2 9320 4646
E: stephen.thompson@hfw.com

Gerard Kimmitt
Partner, Houston
T: (713) 706 1943
E: gerard.kimmitt@hfw.com

Jeremy Shebson
Partner, São Paulo
T: +55 11 3179 2900
E: jeremy.shebson@hfw.com

Lawyers for international commerce

hfw.com

Houston São Paulo London Paris Brussels Geneva Piraeus Beirut Riyadh Kuwait Dubai Singapore Hong Kong Shanghai Perth Melbourne Sydney