



# SOCIONEWS



LAW

## EMPLOYERS MUST TAKE MEASURES TO ENSURE THEIR EMPLOYEES RIGHT TO DISCONNECT

The right to disconnect is the right whereby an employee does not have to carry out work-related activities or professional communications using digital tools, directly or indirectly, outside working hours <sup>1</sup>.

Indeed, the rest periods to which every employee is entitled is a fundamental principle <sup>2</sup> which every employer must respect.

However, Luxembourg law only regulated this right indirectly by requiring compliance with rules protecting employees in terms of working hours and a general obligation to ensure the health and safety of all employees.

The Act of 28 June 2023 <sup>3</sup> makes it now necessary for companies whose employees use digital tools for professional purposes to put in place mechanisms to ensure that the right to disconnect is respected and implemented in practice from 4 July 2023, following the examples of France,

Belgium, Germany and Spain, which have already established the right to disconnect in their respective national legislations.

A new section 8 is thus introduced into the Book III "*Protection, safety and health of employees*", Title I "*Safety at work*", Chapter II "*Organisation in companies*", of the Labour Code, entitled "Respect for the right to disconnect".

The law also provides for administrative penalties to be imposed by the Director of the Labour and mines inspectorate (ITM).

It should be mentioned that these sanctions will only come into force in 3 years for all employers whose employees use digital tools for professional purposes.

In addition, the right to disconnect has been added to the list of subjects that must be covered by collective bargaining.

1 Rest periods, weekends, evenings, holidays, etc.

2 Article 31 of the Charter of Fundamental Rights of the European Union on fair and just working conditions: "1. Every worker has the right to working conditions which respect his or her health, safety and dignity. 2. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave."

3 Loi du 28 juin 2023 portant modification du Code du travail en vue d'introduire un dispositif relatif au droit à la déconnexion., Mémorial A° 344 du 30 juin 2023 <https://legilux.public.lu/eli/etat/leg/loi/2023/06/28/a344/jo>



## 1. WHAT DOES THE NEW FRAMEWORK AGREEMENT PROVIDE FOR?

### 1.1 Establish a system to ensure compliance with the right to disconnect

When employees use digital tools for professional purposes, a system ensuring compliance with the right to disconnect, outside working hours, adapted to the specific situation of the company or sector in question, must be defined at the company or sector level.

This system must include:

- practical arrangements and technical measures for disconnecting from digital tools;
- awareness-raising and training measures;
- compensation arrangements in the event of exceptional derogations from the right to disconnect.

This specific system is defined by collective labour agreement or subordinate agreement.

In the absence of a collective labour agreement or a subordinate agreement, the specific system is to be defined at company level, in accordance with the responsibilities of the staff delegation, if any, depending on the size of the company:

- In the companies with less than 150 employees, the introduction and modification of this specific system shall be

carried out after information and consultation of the staff delegation.

- In companies employing at least 150 employees, the introduction and modification of this specific system is made by mutual agreement between the employer and the staff delegation.

In all cases, this system must ensure compliance with the legal or collective agreement provisions applicable to working hours.

### 1.2 Under the penalties

If the employer, whose employees use digital tools for professional purposes, does not put in place a system to ensure compliance with the right to disconnect outside working hours, it will be liable to an administrative fine of €251 and €25,000 imposed by the director of the Labour and mines inspectorate, who will fix the amount taking into account the circumstances and seriousness of the breach, as well as the behaviour of the offender after the breach has been observed by a member of the Labour and Mines Inspectorate.

The law provides for these penalties to come into force after a period of 3 years, i.e. from 1<sup>st</sup> July 2026.

## 2. A NEW SUBJECT FOR COLLECTIVE BARGAINING

The legislator has provided for a new point 5 to be added to Article L. 162-12 of the Labour Code, to include "*the system to ensure compliance with the right to disconnect outside working hours*" in the list of subjects which must be covered

by collective bargaining and the results of which must be set out in the provisions of a collective agreement or subordinate agreement