

# RIGHT TO DISCONNECT



An Employers Guide  
for a Productive  
Culture that  
safeguards Employees  
wellness

IN COLLABORATION WITH:



TransFormWork

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# Background

## Introduction

In view of the prevalence of technology today, there is rarely an email, message, or notification that goes by unnoticed. Flexible scheduling and remote teams necessitate communication at all hours of the day and night. As a result, the traditional boundaries of being on and off the clock as well as the downtime of commuting to and from work, when working remotely have reported to be non-existent and much harder to decipher.

The right to disconnect is defined as a worker's right to be able to disengage from work and refrain from engaging in work-related electronic communications, such as emails or other messages, during non-work hours<sup>1</sup>.

The notion of the right to disconnect emerged due to the digital and connectivity drive in recent years and their impact on work life balance and people's wellness. The increased use of smartphones and other digital devices has translated to the fact that one may feel to be always 'on call'. This perception has become more real in some workplaces, especially since the normalisation of remote working may have contributed to the blurring of lines between when employees consider themselves to be connected or disconnected from work. The expectation that employees will be available at almost any time for online or mobile communication is considered potentially hazardous to an employees' wellness and productivity<sup>2</sup>.

## EU context

To date, there is no European legal framework to define and regulate the right to disconnect. While the Working Time Directive (Directive 2003/88/EC), refers to a number of rights that indirectly relate to similar issues, in particular the minimum daily and weekly rest periods that are required to safeguard employees' wellness and safety, the right to disconnect aims to obtain an improved work-life balance which is an objective that has been at the core of recent European initiatives<sup>3</sup> including the European Pillar of Social Rights (Principles 9 and 10) and specifically the Work Life Balance Directive.

However, none of the abovementioned initiatives made specific reference to the right to disconnect.

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<sup>1</sup> [Right to disconnect | Eurofound \(europa.eu\)](#)

<sup>2</sup> Ibid.

<sup>3</sup> The following are the above mentioned European initiatives:

- European Parliament and the Council: Directive 2003/88/EC of 4 November 2003 concerning certain aspects of the organisation of working time.
- European Commission: The European Pillar of Social Rights in 20 principles
- European Parliament and the Council: Directive (EU) 2019/1158 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU

## Call for an EU Directive

On 21 January 2021, the European Parliament passed a resolution<sup>4</sup> in favour of the right to disconnect, calling on the European Commission to prepare a directive ‘that enables those who work digitally to disconnect outside their working hours’. This directive ‘should also establish minimum requirements for remote working and clarify working conditions, hours and rest periods. MEPs believe that ‘workers’ right to disconnect is vital to protecting their physical and mental health and well-being and to protecting them from psychological risks’. The resolution is accompanied by a legislative proposal that defines disconnecting as ‘not [engaging] in work-related activities or communications by means of digital tools, directly or indirectly, outside working time’.

Employers’ organisation BusinessEurope expressed strong concerns, asserting that it would be better to rely on the European framework agreement on digitalisation that the European social partners concluded in 2020 than to pass one-size-fits-all legislation. On the trade union side, the European Trade Union Confederation has argued that this agreement does not cover the right to disconnect and called on the Commission to consult the European social partners, pursuant to Article 154 of the Treaty on the Functioning of the European Union.

The ball is now in the court of the Commission, which enjoys the right of initiative. In its EU strategic framework on health and safety at work, the Commission explains that it will ‘ensure appropriate follow-up’, without mentioning any particular dates or instruments.

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<sup>4</sup> (2019/2181(INL))

## Malta's Local Context

On 21 July 2021, the Maltese Government announced that civil servants will have the right to disconnect during non-core and beyond contact hours as from October 2021 when its remote working policy comes into force, allowing a transition period of 18 months to train personnel<sup>5</sup>.

However, if employment contracts specify any worker benefits or allowances to cover an irregular schedule of work, then the right to disconnect would not apply. This right, forms part of a new remote working policy for the public service which gives civil servants the possibility to work away from the office. During contact and core hours, employees are expected to remain accessible by phone, e-mail and any other official means of communication.

Meanwhile, The Malta Chamber and the Malta Business Bureau (MBB) issued a Press Release on 5 March 2021<sup>6</sup>, ahead of the government employee initiative, calling on the government not to introduce national legislation on the right to disconnect, adding that jumpstarting such a process at European level was not necessary nor time appropriate in the peak of the COVID-19 pandemic.

The Malta Chamber highlighted that European legislation such as the Working Time Directive transposed into national law, already set out rules on working and rest time, which are adequate, and no further legislation is required. Future legislation, particularly if modelled on the Right to Disconnect initiative in the European Parliament, raises many questions on how this may be implemented without additional administrative burdens on businesses.

MBB stated that, rather than creating legal obligations, it would be better to create a space for dialogue where employers and workers, together with their representatives, found flexible solutions relevant to their workplace.

The Malta Chamber and the MBB meanwhile welcomed comments published in a European Parliament report by MEP Alex Agius Saliba, which referenced the European Social Partners Framework Agreement on Digitalisation, acknowledging that it already includes arrangements for connecting and disconnecting. The agreement will be implemented by social partners within three years. The report therefore notes that a legislative proposal before the end of the implementation period would disregard the role of social partners laid down in the Treaty of the Functioning of the European Union.

In the spirit of the European Parliament resolution, and in view of the proactive stance by the Maltese social partners, The Malta Chamber and MBB call on the government to refrain from introducing national legislation on the right to disconnect, and instead, the government should encourage social partner dialogue to address new challenges and opportunities at the workplace.

In this context The Malta Chamber has taken the initiative to draft these guidelines in order to promote awareness of the right to disconnect and to illustrate the proactive approach that Malta's business community is taking in implementing common sense policies that, whilst safeguarding employees' rights, take into consideration the exigencies and pressures experienced by Maltese businesses.

<sup>5</sup> [Civil servants on track to get right to disconnect before it becomes EU law \(timesofmalta.com\)](https://timesofmalta.com/articles/civil-servants-on-track-to-get-right-to-disconnect-before-it-becomes-eu-law)

<sup>6</sup> [Don't introduce local legislation on right to disconnect - Malta Chamber, MBB \(timesofmalta.com\)](https://timesofmalta.com/articles/don-t-introduce-local-legislation-on-right-to-disconnect-malta-chamber-mbb)

# Guidelines for Employers on the Right to Disconnect

Today's working world requires a shift from a 40-hour working week to a more target / output-oriented approach. Therefore, while acknowledging that more flexibility, would require employees to work outside the standard hours of work to complete tasks, one also requires a balanced approach from employers on their expectations regarding employees' availability for online or mobile communication, which can intrude private life and potentially be hazardous to employees' wellness and productivity<sup>7</sup>.

In this context, The Malta Chamber is proposing the following guidelines for employers to consider in the application of their human resources policies.

1. **Aim:** Employers should set company standards and encourage a company culture that respects the delineation between work and private life. Core business should be addressed during the workday and employees should not be disturbed outside business hours unless in case of a bona fide emergency. From a health and wellness perspective, employees are encouraged to disconnect from work outside business hours, and from excessive use of digital technology. Exemptions to this approach may apply to management positions and those employed within industries that do not conform to typical business hours. For such cases, this should be compensated for in the remuneration package and explicitly referred to in the employment contract.
2. **Employers Policy:** It is recommended that a company policy that encourages and supports employees to balance the working and personal life when one is working standard hours, on company premises, remotely or flexibly, where applicable, is included in the employees' manual.
3. **Hours of Work:** No one should be expected to work more than a productive Standard Work Week, unless the role of the person in question or the particular temporary demands of the employer so require. In the latter case employers are to ensure that adequate rest is given and employers' are encouraged to avoid an 'always on' work culture.
4. **Outside of Regular Business Hours:** Employers are encouraged to enable and support employees to disconnect outside of regular business hours, if this is possible. While some employees have a range of work devices that provide flexibility to work from different locations, the employer should not create an expectation of working outside of regular business hours unless this is fundamental to the nature of the employee's role. While employees may turn off such devices outside of regular business hours, those employees formally required to be on-call or standby should be provided with appropriate allowances or other compensatory measures and particular attention should be given to management, where work outside of regular business hours is inherent with their role.
5. **Extraordinary circumstances:** In the eventuality of an unusual or extraordinary circumstance where contact and support may be required, the willingness of employees to work additional

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<sup>7</sup> Ibid.

hours is to be appreciated and such time would be compensated in accordance with one's employment contract or a dedicated company policy.

6. **Regular Breaks:** It is encouraged for staff to have their breaks that correspond to them throughout the day. Disconnecting for regular brief periods helps overall wellness and supports better productivity and focus during productive working hours.
7. **Meetings:** it is recommended that meetings are avoided during standard break times and scheduled during core hours inviting only participants whose attendance is necessary.
8. **Responsibilities:** Employees should be:
  - A. Conscious of work patterns and avoid distractions by non-work-related activities during regular business hours that may contribute to lower productivity and increase of stress levels, especially as regards deadlines.
  - B. Encouraged to ask management for support to acquire time management skills, if they feel they may benefit from this type of training.
  - C. Submit a regular reports to line supervisor and/or management recording their weekly accomplishments, results, and areas of excessive workloads.
  - D. Aware of work-related wellbeing and take remedial action if necessary.
9. **Employees may expect management to:**
  - A. Respect working time and bar exceptional circumstances, limit contact to during working hours.
  - B. Address aspects of modalities of connecting and disconnecting during training/onboarding of all Staff, including a commitment to keep open channels of communication in relation to workload and time management, so as to identify and make any necessary changes where possible to improve productivity and employees' wellbeing.
  - C. Ensure that employees have clear goals and deliverables, also by undertaking regular reviews of workloads, so that other than in exceptional circumstances, tasks stand to be delivered during Regular Business Hours.
  - D. Ensure all Staff are informed of what their Regular Business Hours are reasonably expected to be.
11. **Procedure:** Due to business and operational needs and depending on your role and the nature of your team, circumstances may occasionally arise that necessitate those communications are sent and received outside of your Regular Business Hours. Internal procedures should be setup so that situations when occasional contact outside of these hours becomes the norm, will be addressed and remedied.
12. **Reporting of Concerns:** if employees feel that their workload is such that they are unable to disconnect at the end of their Regular Business Hours, internal systems are available in which they have the possibility to raise their concerns with their Line Manager / HR Department / CEO, depending on the company policy.

### **13 Some tips you may wish to propose to employees:**

- a. Mark the Start and the End of the Workday to unplug.

- b. Use your calendar tool to disable the possibility of people scheduling a meeting outside your business hours.
- c. Unplug during work hours from distractions and be fully present for meetings and tasks, and avoid multitasking by setting aside focus time allocated to key tasks.
- d. Take up a hobby that will enable you to have a break after working hours and focus on other activities of personal interest.
- e. Practice mindfulness, so as not overly occupy your mind with tasks that can be focused on the next day.
- f. Turn off notifications or sign out from work applications linked to your personal devices that would otherwise keep you connected to work 24/7.

**Note:** The Malta Chamber recognises that company policies can vary depending on company size and/or economic sector. This document is meant to promote policy guidelines that Human Resources and/or legal practitioners of individual companies are invited to draw up and implement according to their own specific operational practices.

It is recommended that employers highlight the responsibilities of employees and expectations of management through official company policies accessible to employees either at a physical or digital location, and through periodic communications by management and/or Human Resources Department.

## Conclusion

The Malta Chamber endorses the above-mentioned guidelines and encourages Maltese businesses to adopt in their company manual and promote in their company culture with the objective of increasing productivity, improve creativity, and workforce retention.