

04/07/2023

Introduction of the right to be disconnected in the Labour Code

The Law of 28 June 2023 amending the Labour Code in order to introduce a provision on the right to be disconnected has been published in the Mémorial A n°344 of 30 June 2023.

The Law comes into force on 4 July 2023.

The main points of attention for employers are as follows:

1. Employees concerned by the scheme ensuring the right to be disconnected:

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employees with an employment contract, as well as trainees, apprentices and pupils and students employed during the school holidays; and,

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who use digital tools for professional purposes.

2. Your obligations as an employer: set up a scheme to ensure that employees' right to be disconnected outside working hours is respected.

The scheme must be adapted to the specific characteristics and issues of the company or sector, which remains free to decide on the measures to ensure that the right to be disconnected is respected. It is recommended to set out these schemes in writing (charter, policy, etc.).

What should the specific scheme contain? **The scheme may 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.

The scheme must ensure compliance with the applicable legal or contractual provisions on working time.

At which level should the specific scheme be set up?

- > at the level of the collective bargaining agreement or a subordinate agreement;
- > failing that, at company level, by the employer in compliance with the competences of the staff delegation if there is one, i.e.:
 - > in companies with less than 150 employees at the time of the last elections: the staff delegation must be informed and consulted;
 - > in companies with at least 150 employees at the time of the last elections: the staff delegation has the power of co-decision.

3. Penalties if you do not set up such a scheme: administrative fine of between EUR 251 and EUR 25,000 **pronounced by the Labour Inspectorate (ITM). The exact amount will depend on the circumstances, the seriousness of the breach, the behaviour and the size of the company.**

However, the article relating to penalties will come into force 3 years after the date of publication of the Law, i.e. on 1st July 2026.

EXPERTISE

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