



Regulating the Right to Disconnect: Perspective of Labour Authorities and Experts

Rohana Abdul Rahman^{1*}, Harlida Abdul Wahab²,
Siti Zubaidah Othman³, Nik Ahmad Kamal Nik Mahmud⁴

¹ School of Law, Universiti Utara Malaysia, Sintok, Malaysia

² School of Law, Universiti Utara Malaysia, Sintok, Malaysia

³ School of Business Management, Universiti Utara Malaysia, Sintok, Malaysia

⁴ Faculty of Law, Multimedia University, Bukit Beruang, Malaysia

hana@uum.edu.my

Abstract. ‘Right to Disconnect’ has gained traction globally, advocating for legal protections that allow a worker to be able to disconnect from work and avoid work-related electronic communications during non-work hours. Workers are demanding that employers not contact them after office hours. While employers still need to contact workers in cases of urgency or emergency, the normal approach would be that workers should not be disturbed during their off hours. Is there a need to regulate workers’ right to disconnect? This paper aims to explore the issue of right to disconnect from the perspectives of labour authorities and labour law experts as part of the wider study on right to disconnect in Malaysian private sector employees. The paper analyses interview data of labour law experts and labour authorities in Malaysia and secondary data on the regulation of the right to disconnect. Based on the analysis, the paper highlights contradicting stands of different parties representing the interests of employers and employees on the issue of the right to disconnect and the push for a clear regulatory regime to protect the general occupational safety and health of the workers. The paper recommends a phased and blended approach that combines a statutory framework with flexible internal workplace policies.

Keywords: Right To Disconnect, Employer, Employee, Off Working Hours, Labour Law.

1 Introduction

The rise of digital connectivity and the widespread adoption of remote work have transformed the way people engage with their jobs. While these changes have created new opportunities for flexibility and productivity, they have also blurred the boundaries between professional and personal life. In this contemporary paradigm, work boundaries have become increasingly porous where employees find it nearly impossible to detach from professional obligations when communication is accessible anywhere and anytime. Employees often find themselves tethered to their devices, responding to emails or messages well beyond traditional office hours. This constant accessibility can lead to longer working days, increased stress, and difficulty maintaining a healthy work-life balance. On the other hand, for modern organisations, this shift represents a strategic challenge on how to harness technology without depleting the very workforce that drives it.

In response to these challenges, the concept of the “right to disconnect” has gained prominence. This principle emphasises an employee’s ability to disengage from work-related electronic communications outside of designated working hours without fear of negative consequences from their employer. It recognises that rest, personal time, and mental recovery are essential not only for individual well-being but also for long-term productivity and job satisfaction. By establishing clear boundaries, the right to disconnect seeks to protect workers from the creeping expectation of being “always on.”[1].

The debate around this issue highlights the need for organisations to rethink workplace culture in the digital era. Employers must balance the benefits of digital connectivity with the risks of burnout, ensuring that technology serves as a tool for efficiency rather than a source of constant intrusion. Implementing policies that respect the right to disconnect can foster healthier work environments, improve employee morale, and ultimately contribute to more sustainable business practices.[2] In this way, the conversation is not just about limiting communication but about redefining the future of work in a way that values both productivity and human well-being.

The content of the paper is based on a study on the perception of employers and employees in the private sector industries in Malaysia relating to the concept of right to disconnect. Data sources used are the interview data from the labour authorities and experts in the field, and the secondary data from both international and domestic documents.

For interview data, four experts were chosen based on their experience, knowledge and professional experience in areas such as occupational health and safety, labour law, human resources management, employee well-being, or digital work culture. They consist of representatives from the Malaysian Employers Federation (MEF), the Department of

Labour of Peninsular Malaysia (JTKSM), the Malaysian Trades Union Congress (MTUC) and a senior legal practitioner.

The discussion is divided into the following sections: Introduction, Rationale for regulation, International legal regime, Perspective of labour authorities and experts, Challenges in implementation and Conclusion.

2 Rationale For Regulation

The push for RTD is grounded in the need to safeguard mental health and prevent burnout. In an era where technology has made employees constantly reachable, the ability to step away from work without fear of repercussions is increasingly seen as essential [3]. The right to rest has transcended its status as a mere labour standard to become a critical public health necessity. The erosion of predictable working hours, due to widespread adoption of remote work, has turned personal spaces into permanent offices, often leading to chronic exhaustion. Protecting personal time not only allows individuals to recharge but also ensures that professional responsibilities do not overwhelm other aspects of life, such as family, leisure, and rest [4].

Global organisations such as the World Health Organisation (WHO) and the International Labour Organisation (ILO) have recognised the dangers of overwork and insufficient rest. Their findings link these conditions to serious health consequences, including anxiety, depression, and even cardiovascular disease [5]. By acknowledging these risks, international bodies underscore the importance of creating healthier work environments where rest and recovery are valued as much as productivity. This recognition strengthens the case for systemic changes that protect employees from the harmful effects of constant connectivity.

In the Malaysian context, a survey by JobStreet.com (2021) revealed that 63% of Malaysian workers felt that they were not spending enough time with families due to long hours, with 70% working two to five hours beyond official times daily. Furthermore, 78% of workers always remain contactable by their superiors at all times [6].

3 International Legal Regime

The Malaysian policymakers and labour authorities can draw lessons from various international models that have implemented RTD through different legal mechanisms. Observing these international models is essential for developing local policy that balances business agility with employees' protection.

France was the first country to formally introduce the “right to disconnect” in 2017, setting a precedent for others across Europe. Since then, nations such as Belgium, Italy, Spain, Ireland, Germany, and Portugal have followed suit, embedding this principle into

their labour frameworks. In these countries, employers who fail to respect the right to disconnect may face legal penalties, underscoring the seriousness of protecting employees' personal time. For example, in Spain, companies with more than 50 employees are required to negotiate policies with workers to ensure clear boundaries between work and personal life [7].

Beyond Europe, Australia has recently taken a significant step by incorporating the Right to Disconnect into its Fair Work Act. This legislation will come into effect in August 2024 for larger businesses and August 2025 for smaller ones, giving organisations time to adapt. The law does not ban employers from contacting employees but grants employees the enforceable right to refuse response to unreasonable work-related contact outside of hours, unless exceptional circumstances apply [8]. For instance, an Australian worker could decline late-night emails from their manager without fear of disciplinary action, provided the request was not urgent or safety-related.

Different countries have adopted varied approaches to implementing this right, reflecting their legal and cultural contexts. Some rely on hard legislation, as in France and Australia, while others use softer measures, such as Ireland's code of practice, which guides employers without imposing strict penalties. The United Kingdom, meanwhile, has issued government recommendations and is considering formal legislation. In certain jurisdictions, the right to disconnect is directly tied to occupational health and safety laws, emphasising the importance of rest periods and privacy. For example, Germany links the policy to employee well-being, with some companies like Volkswagen automatically shutting down email servers after hours to prevent overwork. These diverse strategies highlight a global recognition of the need to balance productivity with mental health and personal well-being.

Failure to recognise these boundaries can lead to severe judicial exposure, as illustrated in the Irish landmark case of *Kepak Convenience Foods Unlimited Company v Grainne O'Hara* (2018). The Irish Labour Court found that an employer who permitted an employee to consistently respond to emails between 5.00 pm and midnight (resulting in work hours exceeding the 48-hour statutory maximum) was in breach of the law. The company failed to keep proper records of these 'hidden hours' and thus was unable to defend the claim and was ordered to pay compensation to the employee. This case highlights the importance of record-keeping and awareness of work being done via smartphones outside office hours [9].

4 Perspective Of Labour Authorities And Experts In Malaysia

This section explains a summary of analysis on interview data involving the labour authorities and experts to gauge the feasibility of RTD. The analysis underscores the prevailing view that the implementation of RTD involves navigating a complex ideological conflict between managerial prerogatives and employee autonomy.

4.1 Views of Labour Authorities and Experts

Labour authorities frequently highlight the duty of care that employers owe to their workforce, particularly in relation to health and safety. Predictable working hours are seen as a cornerstone of this responsibility, ensuring that employees are not subjected to excessive demands or constant availability. By reinforcing boundaries between work and personal life, authorities aim to protect workers from the harmful effects of overwork, which can manifest in stress, fatigue, and long-term health issues. This perspective aligns with broader occupational health frameworks that emphasise rest and recovery as essential for sustainable productivity.

Experts widely agree that the right to disconnect can deliver tangible benefits for both employees and organisations. Studies suggest that when workers can disengage outside of working hours, rates of burnout and sick leave decline, while overall well-being and productivity improve. For example, companies in France and Germany that have adopted strict after-hours communication policies report higher employee satisfaction and retention. The logic is straightforward: healthier, more rested employees are more engaged and effective during their working hours, creating a win-win scenario for both sides.

However, critics caution that implementing such rights is not without challenges. Multinational employers with globally dispersed teams may struggle to comply, as time-zone differences often necessitate asynchronous communication. Strict rules could also inadvertently reduce flexibility and autonomy, particularly for employees who prefer non-traditional schedules, such as working parents or freelancers who value evening hours. Moreover, enforceability remains a concern: while laws may exist on paper, monitoring compliance and balancing it with the need for responsiveness in fast-paced industries can be difficult. These tensions highlight the complexity of translating the principle into practice.

To address these issues, experts recommend a blended approach that combines statutory rights with workplace-level policies tailored to specific contexts. Consultation with employees and unions can ensure that policies reflect real-world needs rather than one-size-fits-all mandates. Importantly, best practices go beyond simply banning after-hours contact; they involve cultivating organisational cultures that respect boundaries, encourage trust, and promote open dialogue about workload and expectations.

In this sense, the right to disconnect is as much about cultural change as it is about legal frameworks.

4.2 Expert Consensus on Implementation

Experts generally agree that RTD will eventually become a standard in Malaysia due to the need to align with international labour practices and attract foreign investors. Their consensus includes:

Reasonableness and Exceptions. RTD should not be a total ban on communication. Exceptions must be made for emergencies that could negatively impact the company.

Role-Based Flexibility. A "one-size-fits-all" approach is rejected. Senior management and executive roles may require a "limited" RTD due to their importance to company survival, while lower-level employees should have stronger protections.

Financial Remuneration. If employees are expected to be available or work after hours, they should be compensated with overtime payments or bonuses.

Protection from Reprisal. Experts insist that exercising the right to disconnect must not affect an employee's KPI, appraisal, or career progression.

5 Challenges in Implementation

The implementation of RTD by way of regulatory frameworks in developing countries can face significant structural and cultural barriers that impede their effectiveness. In Malaysia, for instance, there is a prevailing sense of caution regarding the adoption of new regulatory measures, particularly when they require shifts in organisational culture and management practices. Many employers express concerns about their readiness to comply with additional administrative or ethical obligations, especially in sectors where awareness and institutional support remain limited. This cautious approach reflects a broader tension between policy aspiration and institutional capacity, where the drive for modernisation is constrained by the realities of existing workplace norms and administrative practices.

Moreover, the success of any regulatory initiative depends heavily on the presence of clear policy guidelines, accessible complaint mechanisms, and comprehensive awareness among workers. In Malaysia and other developing countries, these components are often underdeveloped or unevenly implemented across industries. Weak enforcement structures and limited outreach efforts hinder workers' ability to understand and exercise their rights, thereby diminishing the intended impact of the RTD regulation.

In the case of multinational corporations (including those operating in Malaysia), these companies need global teams to address practical difficulties relating to their

operations across time zones. Complying with the RTD principle can be challenging while maintaining global collaboration [10].

To successfully integrate RTD, Malaysia may adopt a phased and blended approach, prioritising 'soft law' and institutional auditing over immediate 'hard law' mandates.

5.1 Phase 1: Soft Law, Guidelines, and Contracts

Rather than immediate legislation, RTD should first be incorporated into employment contracts and company-specific charters. GLCs and MNCs should act as pioneers, establishing best practices that the government can then audit for compliance.

5.2 Phase 2: Role-Based Differentiation

Implementation should not be "across the board." The expert consensus is that top management and executives should have minimal RTD because their availability is often critical to company survival. Conversely, general staff (e.g., administrative personnel, cleaners, drivers) should have a more absolute RTD.

5.3 Phase 3: Financial Remuneration

Strategic deterrence should involve linking after-hours contact to overtime payments or bonuses. If an employer *must* breach the disconnect, the time must be compensated, creating a financial incentive to respect boundaries.

6 Conclusion

The Right to Disconnect is not an obstacle to productivity; it is an integral component of sustainable employment. As the digital tether tightens, clear boundaries are required to prevent widespread burnout and long-term public health crises.

For Malaysia, the path forward involves aligning with global best practices, such as the "reasonableness" standards, while remaining sensitive to local cultural dynamics. However, legal frameworks alone are insufficient. The future of work in Malaysia requires a profound cultural change that values rest as a driver of long-term economic sustainability. By fostering a workplace culture that respects personal time, organisations will ultimately secure a more engaged, loyal, and healthy workforce.

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