



“Right to Disconnect” outside normal business hours

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On 26 August 2024, the Australian Federal Government introduced new laws establishing an employee’s “right to disconnect” from work-related communication outside normal business hours.

In this article, we look at:

- the meaning of right to disconnect;
- who it applies to;
- when it is reasonable to make contact out of normal hours; and
- dealing with disputes about right to disconnect.

Who do the right to disconnect laws apply to?

From August 2024 to 26 August 2025, the laws apply only to employees of non-small businesses (businesses with 15 or more employees). From 26 August 2025, the laws will be introduced for all small businesses as well.

The right to disconnect laws allow employees to choose not to respond to employers or third parties outside normal business hours without the fear of being punished. It does not stop employers from contacting employees, but instead allows employees to make a decision as to whether they seek to engage in work contact during out-of-office hours.

There are a number of factors that will determine whether it is reasonable or not for an employee to refuse contact out of normal business hours. These include, but are not limited to:

- the type of work the employee does – for example, senior management roles may require contact out of normal hours;

- specific content in your employment contract;
- any enterprise agreement or award conditions.

Legislative changes that introduced right to disconnect laws

The *Fair Work Legislation Amendment (Closing Loopholes No. 2) Act 2024 (Cth)* introduced the “right to disconnect” into the *Fair Work Act 2009 (Cth)* (**the Act**).

Section 149F of the Act states:

“A modern award must include a right to disconnect term”

Section 33 333M of the Act states an employee’s right to disconnect as follows:

(1) An employee may refuse to monitor, read or respond to contact, or attempted contact, from an employer outside of the employee's working hours unless the refusal is unreasonable.

The effect of this new law is to provide relief to employees of non-small businesses (and small business employees from 26 August 2025) to not feel pressure to be contacted or respond to any form of contact outside of normal business hours.

What is contact?

“Contact” includes, for example, emails, text messages, phone calls, contact via social media outlets or other messaging services.

Who is a third party?

“Third party” is defined as clients, suppliers, staff or other businesses or members of the public.

What is considered “unreasonable to refuse” under right to disconnect laws?

It will be considered “unreasonable to refuse” if the contact or attempted contact is required by law. For example, employees who are paid an on-call allowance will not be able to rely on the rights to disconnect in relation to contact that occurs during hours they are being paid an allowance to be available for work if required.

If it is not required by law, then the following must be considered when determining whether not responding to contact out of normal working hours is unreasonable:

1. What is the reason for the contact?

2. How was the contact made? (what sort of communication was used – telephone call, email, text message etc.)
3. How disruptive is the contact?
4. Will the employee receive any compensation, monetary or otherwise, for responding to the out-of-hours contact?
5. The employee's role and their level of responsibility.
6. The employee's personal circumstances.

Disputes related to right to disconnect

If a dispute arises between an employee and their employer as to whether an employee's refusal to be contacted out of normal working hours is unreasonable, the employer and employee must take steps to attempt to resolve the dispute in the workplace.

If a dispute cannot be resolved, an application may be made to the Fair Work Commission to resolve the dispute. The Fair Work Commission has the power to make orders such as ordering:

- the employee to stop continuing to unreasonably refuse contact;
- the employer to stop continuing to require the employee to accept contact.

Orders may also be made to prevent employers from taking disciplinary action against employees. In addition to this, if an employer takes adverse action against an employee because they exercised the right to disconnect, the employee may be able to commence proceedings against the employer under [general protection laws](#).

Communicating with your employer about your right to disconnect expectations

It is important to discuss with your employer how to best approach out-of-hours contact and each other's expectations. For example, you may wish to discuss the following:

1. Does the employer have expectations regarding the employee's availability to be contacted outside of regular hours?
2. Whether the employer will be offering compensation when out-of-hours contact is necessary;
3. An employee's most preferred method of contact;
4. Whether any other person needs to be made aware of the out-of-hours arrangements;
5. Whether arrangements need to be reviewed and how often.

Conclusion

The Australian workforce recognises the need for employees to "switch off" and create a positive balance between work and personal life. The new legislation aims to assist employees in navigating out-of-hours contact in the workplace without fear of being punished or reprimanded. While guidelines to help navigate the practicalities of the new law have not yet been set down by the Fair Work Commission, employees and employers are encouraged to talk to each other and work through any minor disputes.

Should you wish to seek legal advice regarding the new “right to disconnect” legislation, you should contact a Gilshenan &Luton employment lawyer who will be able to assist you.

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