

Right to disconnect

Unlike some neighbouring countries, Luxembourg has not yet adopted a legal framework that regulates the employee's right to disconnect. This right has been recognized only in a decision of the Court of Appeal of 2 May 2019. The new teleworking agreement also refers to it by stating that "Any provision on the right to disconnect applicable to a conventional worker shall apply also to the teleworker."

More recently, on 30 April, the Economic and Social Council (ESC) took a position by issuing an opinion on the right to disconnect.

The ESC proposes to introduce a new article L. 312-9 in the Labour Code in order to set up mechanisms to promote compliance with this principle in companies where employees use digital tools for professional purposes.

A regime ensuring compliance with the right to disconnect outside working hours should therefore be defined, and more particularly:

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

This disconnection regime should be implemented:

- by collective agreement or subordinate agreement; or
- failing that, after information and consultation of the staff delegation or by mutual agreement with it in companies with at least 150 employees; or
- if there is no staff delegation, by unilateral decision of the employer after informing the employees.

It should be noted that these mechanisms will have to be adapted to the particular situation of the company or sector.

Failure to comply with the obligation to implement a disconnection regime would be subject to an administrative fine of €251 to €25,000 imposed by the Director of the Inspectorate of Labour and Mines.



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