

Navigating the New Right to Disconnect: A Guide for Employers and Employees

By Uplift Recruitment



Contents

Introduction	3
Understanding the Right to Disconnect	4
Rights and Responsibilities of Employees	6
Factors Influencing Unreasonable Refusal	7
Dispute Resolution Process	8
Navigating Out-of-Hours Contact	9
Managing Employee Performance and Disputes	10
Contracts, Position Descriptions, and Role Expectations	11
Impact on the Recruiting Process	12
Conclusion	13
FAQ	14

DISCLAIMER: THIS CONTENT IS PROVIDED FOR INFORMATIONAL PURPOSES ONLY. IT IS IMPORTANT NOT TO RELY SOLELY ON THE INFORMATION PRESENTED HERE, AS IT IS GENERAL IN NATURE. FOR SPECIFIC ADVICE RELATED TO ANY TOPICS COVERED, IT IS RECOMMENDED TO SEEK FORMAL ADVICE FROM A PROFESSIONAL OR EMPLOYMENT LAWYER.

INTRODUCTION

Right to Disconnect

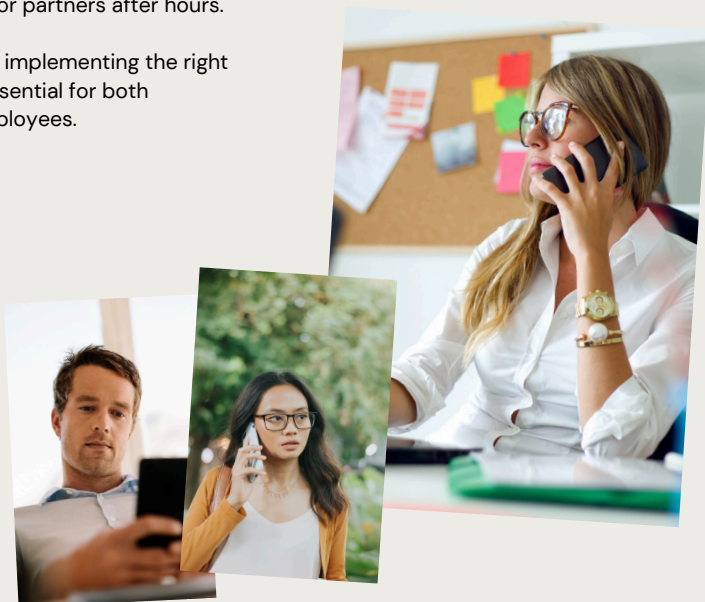
The boundaries between work and personal life have become increasingly blurred in today's digital age. To address this, the new right to disconnect legislation has been introduced in Australia, effective from 26 August 2024 (26 August 2025 for small businesses). This legislation aims to establish clear boundaries around workers' personal time and create safeguards to protect their well-being.

The right to disconnect gives employees the right to refuse to monitor, read, or respond to contact from their employer outside of work hours, unless such refusal is unreasonable. This includes contact with third parties related to work, such as prospects, clients, or partners after hours.

Understanding and implementing the right to disconnect is essential for both employers and employees.

Employers must ensure compliance with the legislation, while employees need to understand their rights and responsibilities. This guide provides a comprehensive overview of the new right to disconnect, its implications, and practical guidance on navigating this new legislative landscape.

By embracing the right to disconnect, employers can create a healthier work environment, leading to greater job satisfaction and productivity. Employees can enjoy a better work-life balance, enhancing their well-being and overall quality of life.



CHAPTER ONE

Understanding the New Right to Disconnect

The new right to disconnect, effective from 26 August 2024 (26 August 2025 for small businesses), introduces a significant change to workplace legislation in Australia. Inserted into section 333M of the Fair Work Act 2009 (Cth), its primary aim is to build boundaries around workers' personal time and create safeguards to protect their well-being.

One of the key provisions of this new right is the inclusion of a 'right to disconnect' terms in all Awards. Enterprise agreements may include more favourable terms for employees, further enhancing their ability to manage work-related communication outside of standard working hours.

Understanding the nuances of this new legislation is crucial for both employers and employees. Employers must ensure compliance with the new right, while employees need to understand their rights and responsibilities under the legislation.



**MEDIUM TO
LARGE
BUSINESS
EMPLOYERS
(> 15)**

**AUG
26
2024**

**SMALL
BUSINESS
EMPLOYERS
(< 15)**

**AUG
26
2025**

Actions Required by Employers to Comply with the Right to Disconnect

1. Update Contracts and Position Descriptions:

- Clearly define working hours, after-hours contact expectations, and role responsibilities.
- Include terms that reflect the right to disconnect.

2. Develop and Communicate Policies:

- Create a right to disconnect policy and communicate it to all employees.
- Ensure employees understand their rights and responsibilities.

3. Train Managers and Staff:

- Provide training on the right to disconnect legislation and respectful communication practices.

4. Implement Technology Solutions:

- Use scheduling tools for emails and messages.
- Set up automatic email replies for after-hours.

5. Establish Clear Communication Channels:

- Create channels for employees to report concerns about after-hours contact.

6. Review Compensation Structures:

- Ensure fair compensation for additional hours worked.
- Include provisions for 'reasonable additional hours' in salary agreements.

7. Develop a Dispute Resolution Process:

- Establish and communicate a process for resolving right to disconnect disputes.
- Inform employees about their right to seek assistance from the Fair Work Commission (FWC).

8. Monitor Compliance:

- Regularly review and adjust policies to ensure ongoing compliance.

9. Seek Professional Advice:

- Consult with legal and HR professionals to ensure compliance with the legislation.

CHAPTER TWO

Rights and Responsibilities of Employees

The new right to disconnect grants employees the ability to refuse to monitor, read, or respond to contact from their employer outside of work hours, unless such refusal is deemed unreasonable. This right extends to refusing contact with third parties if it is related to work, such as candidates or clients calling recruiters after hours.

It is important to note that this right does not prohibit employers from contacting employees outside of work hours. However, employers must consider the reason for the contact, the level of disruption caused, the employee's compensation for additional hours, the employee's role and responsibility, and the employee's personal circumstances when assessing the reasonableness of their refusal.



**DOES NOT PROHIBIT
EMPLOYERS FROM
CONTACTING
EMPLOYEES OUTSIDE OF
WORK HOURS**

CHAPTER THREE

Factors Influencing Unreasonable Refusal

When determining whether an employee's refusal to contact outside of work hours is unreasonable, several factors must be taken into account. These include the reason for the contact or attempted contact, how the contact is made and the level of disruption caused, the

extent to which the employee is compensated for working additional hours or remaining available to perform work, the employee's role and responsibility, and the employee's personal circumstances, such as family responsibilities.

These factors provide a framework for employers to assess the reasonableness of an employee's refusal to engage in work-related communication outside of standard working hours, ensuring that the new right to disconnect is applied fairly and effectively in the workplace.

Several factors must be considered when determining whether an employee's refusal is unreasonable. This includes:

(1) THE REASON FOR THE CONTACT

(2) WHETHER THE EMPLOYEE IS COMPENSATED FOR:

- BEING AVAILABLE IN THE PERIOD WHEN CONTACT IS MADE OR ATTEMPTED, OR
- WORKING ADDITIONAL HOURS OUTSIDE THEIR ORDINARY HOURS OF WORK

(3) THE NATURE OF THE EMPLOYEE'S ROLE AND LEVEL OF RESPONSIBILITY

(4) THE EMPLOYEE'S PERSONAL CIRCUMSTANCES, INCLUDING FAMILY OR CARING RESPONSIBILITIES.

CHAPTER FOUR

Dispute Resolution Process



In the event of a dispute arising from the new right to disconnect, employers and employees should attempt to resolve it at the workplace level. Beyond that, both employees and employers have recourse to the Fair Work Commission (FWC) for resolution.

The FWC has the authority to make orders to stop an employee from unreasonably refusing contact, prevent an employer from taking action, or stop an employer from continuing contact that is deemed unreasonable. This dispute resolution process provides a mechanism for resolving disputes related to the new right to disconnect in a fair and impartial manner.

**YOU SHOULD TRY TO
RESOLVE DISPUTES AT
THE WORKPLACE LEVEL,
BEFORE ELEVATING THE
CONCERN TO FAIR
WORK**

CHAPTER FIVE

Navigating Out-of-Hours Contact

Reasonable out-of-hours contact under the right to disconnect legislation is contact that is necessary and appropriate for the nature of the business and the employee's role. It should be limited to urgent and important matters that cannot reasonably wait until the employee's next scheduled work day.



It's important for employers to consider the nature of the contact, the urgency of the matter, and the impact on the employee's personal time when determining if contact is reasonable. Employers should also ensure that employees are compensated fairly for any additional work-related activities performed outside of standard working hours.

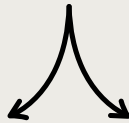
CHAPTER SIX

Managing Employee Performance and Disputes

Managing employee performance and disputes in the context of the new right to disconnect requires a careful and considered approach. Employers must craft warnings and dismissal letters related to unsatisfactory performance with precision to avoid general protection claims.

Be on the lookout for strategic exercises of the right to disconnect, such as an employee refusing to read and respond to work emails outside of working hours, must be addressed proactively to maintain a productive and harmonious work environment.

EMPLOYERS FACED WITH A STRATEGIC EXERCISE OF THIS WORKPLACE RIGHT SHOULD:



NOT BROADLY CIRCULATE THE ISSUE AMONGST MANAGEMENT

SEEK ADVICE EARLY

CHAPTER SEVEN

Contracts, Position Descriptions, and Role Expectations

Contracts, position descriptions, and role expectations play a crucial role in ensuring compliance with the new right to disconnect. Employers should include clear provisions in contracts and position descriptions that set out role requirements, responsibilities, and expectations around working hours.

Consideration should be given to whether salaries expressly encompass 'reasonable additional hours', which can impact the reasonableness of an employee's refusal to engage in work-related communication outside of standard working hours.



**MAKE IT CLEAR THAT A
GIVEN SALARY + ROLE
INCLUDES
"REASONABLE
ADDITIONAL HOURS"**



CHAPTER EIGHT

Impact on Sales and Service Teams

The new right to disconnect significantly impacts sales and customer service teams, especially regarding after-hours contact and communication expectations. Team members must be mindful of reaching out to clients or customers outside of regular working hours and adjust their expectations for response times. Establishing clear communication boundaries and policies for sales and customer service teams is crucial to ensure compliance with the new legislation.



Tips for Sales and Service Teams

- ✓ Schedule follow-up emails and calls during regular working hours to respect after-hours boundaries.
- ✓ Inform customers about the right to disconnect policy and manage their expectations for after-hours support.
- ✓ Establish protocols for urgent customer inquiries outside regular hours, such as having on-call staff or rotating shifts.
- ✓ Ensure employees have uninterrupted personal time to reduce burnout and improve job satisfaction.
- ✓ Provide training on the right to disconnect and how to communicate this policy to customers effectively.
- ✓ Implement tools like chatbots or automated email responses to manage after-hours inquiries and maintain service quality.
- ✓ Periodically gather feedback from both employees and customers to identify any issues or areas for improvement.

UPLIFT RECRUITMENT

Want to learn more?

At Uplift Recruitment, we specialise in sourcing top talent for sales and service roles. Our boutique agency offers personalised services tailored to your needs.

Key highlights:

- **Deep Understanding:** We delve into your business to craft bespoke terms and fees
- **Quality Focus:** Prioritising quality and best practices, we link service level agreements (SLAs) to time and quality.
- **Local Commitment:** Australian-owned, reinvesting locally, and supporting literacy and numeracy programs.
- **Diverse Talent Pool:** Specialist divisions and a strong online presence attract a wide range of candidates.
- **Comprehensive Services:** Offering bulk recruitment, assessment centres, unbundled services, outsourced payroll, and contractor services.
- **Proven Excellence:** Over 200 five-star Google reviews and multiple awards, including SourcR 2023 Awards for Best Agency and Best Recruiter.
- **Relationship Building:** Focused on long-term relationships based on trust and understanding.

Experience an uplifting client and candidate experience with Uplift Recruitment.

**BOOK A CALL WITH ONE OF OUR
RECRUITMENT SPECIALISTS NOW.**

BOOK A CALL



4.9 Average Rating
based on 209 reviews



4.9 Average Rating
based on 257 reviews



sourcR.
Best Recruiter 2023
Customer Service, NSW



sourcR.
Best Agency 2023
Customer Service, NSW



**AGENCY OF
THE YEAR**
CUSTOMER
SERVICE
2023



**RECRUITER OF
THE YEAR**
SALES
2024

FREQUENTLY ASKED QUESTIONS

This section addresses common questions and provides answers related to the new right to disconnect, providing further clarity and guidance for employers and employees alike.

Q: What is the purpose of the new right to disconnect legislation?

A: The aim of the legislation is to establish boundaries around workers' personal time and create safeguards to protect their well-being.

Q: When does the new right to disconnect legislation come into effect?

A: The legislation came into effect on 26 August 2024, with a later start date of 26 August 2025 for small businesses.

Q: What does the right to disconnect entail for employees?

A: Employees have the right to refuse to monitor, read, or respond to contact from their employer outside of work hours, unless such refusal is unreasonable. This includes contact with third parties related to work, such as candidates or clients, after hours.

Q: Can employers still contact employees outside of work hours under the right to disconnect?

A: Yes, employers are not prohibited from contacting employees outside of work hours. However, they must consider the reason for the contact, the level of disruption caused, and the employee's compensation for additional hours, among other factors, when determining the reasonableness of their refusal.

Q: How are disputes related to the right to disconnect resolved?

A: Disputes must first be attempted to be resolved at the workplace level. Both employees and employers can seek the assistance of the Fair Work Commission (FWC) to deal with a dispute. The FWC can make orders to address disputes related to unreasonable refusal of contact.

FREQUENTLY ASKED QUESTIONS

Q: What factors are considered in determining whether an employee's refusal to contact is unreasonable?

A: Factors include the reason for the contact, how the contact is made and the level of disruption caused, the extent to which the employee is compensated for additional hours, the employee's role and responsibility, and the employee's personal circumstances.

Q: How should employers handle strategic exercises of the right to disconnect?

A: Employers should not broadly circulate the issue amongst management and should seek advice early to address strategic exercises of the right to disconnect.

Q: How can employers ensure compliance with the right to disconnect legislation?

A: Employers should review and update contracts and position descriptions to set out role requirements, responsibilities, and expectations around working hours. They should also consider if salaries expressly encompass 'reasonable additional hours' to mitigate unreasonable refusal claims.

Q: How does the right to disconnect legislation affect small businesses?

A: The right to disconnect legislation applies to all businesses, regardless of size. Small businesses, like larger enterprises, must ensure compliance with the legislation to protect the well-being of their employees and maintain a healthy work environment.

Small businesses may face unique challenges in implementing the right to disconnect, particularly in terms of resource allocation and communication practices. However, by establishing clear policies and procedures around after-hours contact and respecting employees' right to disconnect, small businesses can create a positive work culture that promotes work-life balance and productivity.

It is important for small businesses to seek advice from legal and HR professionals to ensure they are compliant with the legislation and are effectively implementing the right to disconnect in their workplace.