

# THE RIGHT TO DISCONNECT



**Autonomy**

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Autonomy is an independent think tank that provides necessary analyses, proposals and solutions with which to confront the changing reality of work today. Our aim is to promote real freedom, equality and human flourishing above all. To find out more about our research and work, visit [autonomy.work](https://autonomy.work)

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**1.**

# **INTRODUCTION**

## Introduction

Unpaid labour time is a growing problem in the United Kingdom. In 2018, over 5 million UK workers put in a total of 2 billion unpaid hours.<sup>1</sup> This is an average of 7.5 hours a week per worker and amounts to £32.7 billion of free labour annually. Much of the data on unpaid labour time concentrates on low paid hourly work and labour market violations. But there is a more subtle problem emerging in our digitally connected world – the expectation to be ‘always on’. Modern workplaces and homes are digital spaces. The fact that we are able to send and receive messages, emails, and online content twenty-four hours a day, seven days a week means that it is increasingly hard to disconnect, enjoy our leisure time and develop a healthy work-life balance.

This has created an epidemic of ‘hidden overtime’, where workers never quite ‘switch off’ and continue to do bits of work throughout the evening and weekend.<sup>2</sup> Being ‘switched back on’ by an employer after the working day has finished differs from standard overtime, whereby a worker is usually required to ‘stay on’. Instead, a call from an employer – and the response it requires – expands the working day fragment by fragment, meaning the worker is never quite ‘off’.

A report by the ILO that synthesized research across 10 EU nations found that this problem particularly impacts those working remotely.<sup>3</sup> In the UK, the study reports that a lack of clear boundaries between the spheres of work and leisure means workers are more likely to take calls, respond to emails and return to work throughout the evening, effectively spreading the working day over a longer period, but outside of the parameters of official overtime.<sup>4</sup> One can reasonably speculate from this that once a worker is ‘switched back on’ they are more likely to do other bits of work unrelated to that mentioned during phone calls and via e-mails.

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1 TUC, 2019. Workers in the UK put in more than £32 billion worth of unpaid overtime last year - TUC analysis. Trades Union Congress. Available at: <https://www.tuc.org.uk/news/workers-uk-put-more-%C2%A332-billion-worth-unpaid-overtime-last-year-tuc-analysis> (accessed 10.3.19).

2 Prospect (2021), ‘Right to Disconnect: a guide for union activists’. Prospect. Available at: <https://prospect.org.uk/news/right-to-disconnect/>

3 ILO (2017), ‘Working anytime, anywhere: the effects on the world of work’. ILO. Available at: [https://www.ilo.org/global/publications/books/WCMS\\_544138/lang--en/index.htm](https://www.ilo.org/global/publications/books/WCMS_544138/lang--en/index.htm).

4 Ibid.

## 2.

# DISCONNECTING DURING COVID

## Disconnecting during Covid

The Covid-19 pandemic has greatly exacerbated this issue. The implementation of lockdown restrictions and social distancing measures has created a situation where an unprecedented number of people are working from home using digital technologies. While many people have lost hours and jobs over the pandemic, the rapid shift from office to home has meant many others are putting in significantly longer hours. By April 2020, a third of all those in employment who had not been furloughed were working more hours than usual.<sup>5</sup>

Another study by the National Bureau for Economic Research estimated that the number of meetings per person had increased by 12.9%.<sup>6</sup> The average length of each meeting was found to have decreased, but overall the working day had consistently been extended by an average of 49 minutes, largely attributed to a greater number of emails being sent after standard business hours.

A survey of 2000 workers by LinkedIn in partnership with the Mental Health Foundation found that a loss of boundaries between work and home life and additional job-based pressures have meant those working from home during the crisis are working on average 28 hours extra a month.<sup>7</sup>

Even before the pandemic, many workers felt they were working too many hours. In the last quarter before Covid-19 and the introduction of social distancing measures, 10.5% of the UK workforce were recorded as being overemployed - where workers are dissatisfied with their current working hours and would be willing to work less hours for less money.<sup>8</sup> Considering the additional hours many workers are putting in over the pandemic, these numbers are now likely much higher.

5 ONS (2020). 'Coronavirus and homeworking in the UK: April 2020.'

Available at: <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/bulletins/coronavirusandhomeworkingintheuk/april2020>

6 DeFilippis, E., Impink, S. M., Singell, M., Polzer, J. T., & Sadun, R. (2020). Collaborating During Coronavirus: The Impact of COVID-19 on the Nature of Work (No. w27612). National Bureau of Economic Research.

7 LinkedIn (2020) 'The mental strain of working from home'. LinkedIn. Available at: <https://www.linkedin.com/feed/news/the-mental-strain-of-wfh-5194634>

8 Autonomy, Compass & Four Day Week Campaign (2020). 'Burnout Britain: Overwork in an Age of Unemployment'. Autonomy, Compass & Four Day Week Campaign. Available at: <https://www.compassonline.org.uk/wp-content/uploads/2020/10/Burnout-Britain-overwork-in-an-age-of-unemployment.pdf>

# 3.

# HEALTH AND PERFORMANCE IMPACTS OF 'ALWAYS ON' CULTURE

## Health and performance impacts of 'always on' culture

This enormous rise in overtime has come with the additional burden of poor mental health. By the end of 2020, the prevalence of mental distress among workers was 49% higher compared to 2017-19, and had increased across all major sectors apart from Agriculture, Forestry and Mining.<sup>9</sup> The LinkedIn study found that more than half of those surveyed felt more anxious since working from home, while a third were having trouble sleeping.<sup>10</sup>

Many studies from before the pandemic demonstrate that 'always on' work culture is a major trigger and accelerator of ill health – both mentally & physically. Research has shown that people who responded to work communications after 9 p.m. had a worse quality of sleep and were less engaged the next day.<sup>11</sup> Research also suggests that the mere expectation of being in contact 24/7 is enough to increase strain for employees and their families.<sup>12</sup>

Across a number of studies, Sabine Sonnentag and her colleagues have studied clerical workers, paramedics, schoolteachers, civil servants, the self-employed and other job categories in order to gauge the importance of the quantity and quality of non-work time.<sup>13</sup> Her findings show that if workers have a chance to mentally 'switch off' from their work, they are generally more productive, engaged on the job and convivial with colleagues. On the other hand, if workers do not have the ability to 'switch off' mentally from their work, they are more likely to experience symptoms of exhaustion.

9 Autonomy, Compass & Four Day Week Campaign (2020). 'Burnout Britain: Overwork in an Age of Unemployment'. Autonomy, Compass & Four Day Week Campaign. Available at: <https://www.compassonline.org.uk/wp-content/uploads/2020/10/Burnout-Britain-overwork-in-an-age-of-unemployment.pdf>

10 LinkedIn (2020) 'The mental strain of working from home'. LinkedIn. Available at: <https://www.linkedin.com/feed/news/the-mental-strain-of-wfh-5194634>

11 Barber, L.K., Jenkins, J.S., (2014). Creating Technological Boundaries to Protect Bedtime: Examining Work-Home Boundary Management, Psychological Detachment and Sleep. *Stress and Health* 30, 259,264.

12 Butts, M.M., Becker, W.J., Boswell, W.R., (2015). Hot buttons and time sinks: the effects of electronic communication during nonwork time on emotions and work-nonwork conflict.(Report) 58, 763-788.

13 Sonnentag, S., (2003) 'Recovery, Work Engagement, and Proactive Behaviour: A New Look at the Interface Between Nonwork and work', *Journal of Applied Psychology*. 88:3, pp. 518-528. Sonnentag, S., et al. (2008), 'Being engaged at work and detached at home: A week-level study on work engagement, psychological detachment, and affect', *Work and Stress*, Vol. 22, No. 3, July- September 2008, pp. 257- 276. London, Routledge.

Sonnentag, S., et al. (2014), 'Making Flow Happen: The Effects of Being Recovered on Work-related Flow Between and Within Days', *Journal of Applied Psychology*, 99: 4.

# 4.

# GENDERED BURNOUT

## Gendered burnout

The ILO's large-scale, post-pandemic analysis of global teleworking found that the vast majority of those who work from home are women.<sup>14</sup> This is because women are far more likely to shoulder the additional burdens of childcare, housework and care for elderly family members.

The upshot is that women are at greater risk of negative health impacts. A study by Autonomy, Compass and the Four Day Week Campaign about overwork during the Covid pandemic, found that at all stages of the crisis, negative mental health impacts have been disproportionately felt by women.<sup>15</sup> The study found that women are 43% more likely to have increased their hours beyond a standard working week than men, and for those with children this was even more clearly associated with mental distress.

An astonishing 86% of women who undertake a standard working week alongside childcare, greater than or equal to the UK average, experienced mental distress during April 2020. New working patterns have placed a greater burden on those carrying out standard caregiving, which again has disproportionately impacted women. Two thirds of workers (65%) whose working week increased beyond a standard 37.5-40 hours and who also engaged in active childcare during April at a rate greater than or equal to the UK average of 80 minutes a day, reported levels of mental distress. By June more than half (51%) of workers keeping up this level of work alongside childcare responsibilities were experiencing mental distress.

<sup>14</sup> ILO (2021), 'Working from home: from invisibility to decent work'. ILO. Available at: [https://www.ilo.org/global/publications/books/WCMS\\_765806/lang-en/index.htm](https://www.ilo.org/global/publications/books/WCMS_765806/lang-en/index.htm)

<sup>15</sup> Autonomy, Compass & Four Day Week Campaign (2020). 'Burnout Britain: Overwork in an Age of Unemployment'. Autonomy, Compass & Four Day Week Campaign. Available at: <https://www.compassonline.org.uk/wp-content/uploads/2020/10/Burnout-Britain-overwork-in-an-age-of-unemployment.pdf>

# 5.

# THE RIGHT TO DISCONNECT

## The Right to Disconnect

Across the globe, countries have started to recognise this as a social problem and have introduced legal measures to protect their citizen's mental health and well-being. This legal protection has been deemed the 'right to disconnect'. This right ensures that all employees feel free to switch off from any work-related electronic communications, including email and messages, outside of normal work hours.

A report by Prospect that considers how such a right might be implemented in the UK recognises that the legislation will mean different things to different workers, businesses and sectors.<sup>16</sup> But the report also emphasises that the spirit of the legislation must allow workers to maintain a healthy boundary from work-based technologies during leisure hours. It recommends that the detail of the legislation must be worked out through a comprehensive consultation with workers. In the first instance, this might involve a 'Right to Disconnect advisory committee', as created by the Canadian government.

The Irish government is also currently considering legislation that would improve work-life balance by allowing workers to not answer emails or messages outside of office hours, and has released a useful guide based on three key principles defining how the legislation should operate:<sup>17</sup>

1. "The right of an employee to not routinely perform work outside normal working hours"
2. "The right not to be penalised for refusing to attend to work matters outside of normal working hours"
3. "The duty to respect another person's Right to Disconnect (e.g., by not routinely emailing or calling outside normal working hours)"

<sup>16</sup> Prospect (2021), 'Right to Disconnect: a guide for union activists'. Prospect. Available at: <https://prospect.org.uk/news/right-to-disconnect/>

<sup>17</sup> Workplace Relations Commission (2021), 'Code of practise for employers and employees on the right to disconnect'. Workplace Relations Commission. Available at: [https://www.workplacereleations.ie/en/what\\_you\\_should\\_know/codes\\_practice/code-of-practice-for-employers-and-employees-on-the-right-to-disconnect.pdf](https://www.workplacereleations.ie/en/what_you_should_know/codes_practice/code-of-practice-for-employers-and-employees-on-the-right-to-disconnect.pdf)

The Prospect report collates the various countries and states in which such legislation is active or under consideration.<sup>18</sup> In Germany, unions worked with business to develop “a minimum intervention in leisure time policy”. In Italy and Spain, legislation has been passed that recognises the workers right to disconnect from digital technologies at the end of the day. Similar legislation has also been enacted in Argentina and is under consideration in Greece, Canada and New York state.

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18 Prospect (2021), ‘Right to Disconnect: a guide for union activists’. Prospect. Available at: <https://prospect.org.uk/news/right-to-disconnect/>

6.

# PRECEDENT: FRANCE

## Precedent: France

In France, the El Khomri Law introduces the right to disconnect through Article 55(1), which amended Article L. 2242-8 of the Labour Code by adding a paragraph (7):

*The procedures for the full exercise by the employee of his right to disconnect and the establishment by the company of mechanisms for regulating the use of digital tools, with a view to ensuring respect for rest periods and leave as well as personal and family life. Failing agreement, the employer shall draw up a charter, after consultation with the works council or, failing that, with the staff delegates. This charter defines these procedures for the exercise of the right to disconnect and furthermore provides for the implementation, for employees and management and management personnel, of training and awareness-raising activities on the reasonable use of digital tools. (Translated from French) <sup>19</sup>*

Rather than a one size fits all approach, charters are worked out on a firm-by-firm basis allowing for flexibility in terms of different employer and employee needs across sectors and companies. This allows firms to set different parameters depending on flexible work schedules, overtime protocols and the timezones of clients and customers. This effectively functions as an opt-in policy, stipulating that negotiations should take place between employers and employees, but with no obligation that an agreement be made between the two parties or for that matter a charter created that workers accept.<sup>20</sup> If no agreement can be made then the right can neither be applied nor enforced.<sup>21</sup>

<sup>19</sup> Legifrance.gouv.fr (2018), 'Article L2242 - Labor Code'. Legifrance.gouv.fr. Available at: [https://www.legifrance.gouv.fr/codes/article\\_lc/LEGIARTI000037389692/](https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000037389692/)

<sup>20</sup> Soulier Avocats (2016), 'Is the right to disconnect about to become an effective right for employees in France' Soulier Avocats. Available at: <https://www.soulier-avocats.com/en/is-the-right-to-disconnect-about-to-become-an-effective-right-for-employees-in-france/>

<sup>21</sup> Ibid.

# 7.

# INDUSTRIES THAT REQUIRE IRREGULAR HOURS

## Industries that require irregular hours

In the UK, a right to disconnect should function as an opt-out legal requirement, with a specific standard that applies to all firms and sectors, meaning that employers who wish to opt-out have to demonstrate good reason why the policy should not be implemented.

This leaves the flexibility some industries arguably require to have workers available at unsociable hours. The financial industry, for instance, requires that flexible work schedules and unique overtime protocols meet the needs of clients in different timezones. The care sector also requires that some workers remain on-call during evenings and weekends.

A Right to Disconnect can and should be dynamic, allowing certain employers to opt-out. But this should be the exception, with the burden of proof falling on employers to demonstrate clearly why they need to contact workers outside of contracted hours.

8.

# ENFORCEMENT

## Enforcement

In principle, such a right could be introduced very quickly and easily. All that would be needed are two amendments to the Employment Rights Act 1996: one creating the new right, and one enabling workers to bring claims in the employment tribunal. Suggested wording is set out in the appendix below.

However, in the current landscape of employment rights in the UK, a right framed in those terms is likely to be fairly hollow and ineffective. The current system of individualised complaints to tribunals does very little to address the power imbalance between workers and employers. When it is left to individual workers to enforce their rights, many workers are wary about the risk of souring the employment relationship or harming their future prospects by asserting their legal rights.

The outcome, therefore, is likely to be similar to existing exemptions from working time rules: while workers are technically entitled to the benefit of working time protections unless they are specifically waived, and they have a right to refuse to waive them, in practice most workers agree to waive them as a matter of course. They are simply in a much weaker bargaining position because of the individualised system of labour rights enforcement, and the total absence of effective governmental oversight.

The UK is very unusual among major economies in its system of individualising enforcement of workers' rights in this way. Unlike most EU countries, it has no formal system of labour inspection (with some small exceptions, such as the Gangmasters Licensing Authority). As such, under current conditions, not only would it be down to individual workers to pursue their claims, but the 'flexibility' provisions set out above could not be monitored at a systemic or sectoral level. Each claim brought by a worker, and each employer's attempt to claim an exemption, would have to be considered individually as each worker takes a case to the tribunal.

This is clearly unsatisfactory, and poses a serious question about whether the right to disconnect is workable under current circumstances. While the creation of a new right would be a step forward, it is doubtful that real progress can be made without a much stronger trade union movement, or an effective system of governmental labour inspection, monitoring and enforcement.

9.

**APPENDIX:  
DRAFT  
LEGISLATION  
FOR A RIGHT TO  
DISCONNECT**

## Appendix: draft legislation for a Right to Disconnect

### 1. Right to disconnect

1. After section 63K of the Employment Rights Act 1996, insert:

#### **“Part 6B Right to disconnect**

#### **63L. Right to disconnect**

(1) For the purposes of this Part, “agreed working hours” means the period of time in respect of which an employer has agreed to remunerate a worker, and which is not holiday time or any other form of paid leave.

(2) An employer shall not require a worker employed by him to monitor or respond to any work-related communications, or to carry out any work, outside of the worker’s agreed working hours.

(3) An employer shall not subject a worker employed by him to any detriment arising in consequence of the worker’s failure or refusal to monitor or respond to any work-related communications, or to carry out any work, outside of the worker’s agreed working hours.

(4) Sub-sections (2) and (3) do not apply where either or both of the exemptions in sub-sections (4)(a) and (4)(b) are met. The exemptions are that-

a. The employer can show that:

- The nature of the industry in which the worker is engaged is such that it would not be feasible for employers to comply with the prohibitions contained in sub-sections (2) and (3); and

- The employer has taken all reasonable steps to minimise any requirement that his workers should monitor or respond to any work-related communications, or carry out any work, outside of the worker's agreed working hours.

b. The employer can show that any breach of subsections (2) or (3) took place during a genuine emergency.”

## 2. Complaints to employment tribunals

(1) After section 63L of the Employment Rights Act 1996, insert:

### “63M. Complaints to employment tribunals

(1) A worker may present a complaint to an employment tribunal that her employer has breached sections 63L(2) and/or section 63L(3).

(2) An employment tribunal shall not consider a complaint under this section unless it is presented— before the end of the period of three months beginning with the date on which the most recent breach is said to have occurred, or within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

(3) Section 207B (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsection (2)(a).

(4) Where an employment tribunal finds a complaint under this section well-founded, the tribunal shall make a declaration to that effect.

(5) Where an employment tribunal finds a complaint under this section well-founded, the tribunal shall order the employer to pay the worker damages in a sum not exceeding an amount equivalent to the worker's pro rata daily wages for each day on which a breach has occurred."

**10.**

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