**Experience from some countries on the right to disconnect and proposal for improving the legal framework of Vietnam**

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**Summary:** The trend of disconnecting after work is becoming popular globally, especially in the post-Covid-19 period with undeniable changes in technology on life and working methods in the 21st century. In order to protect workers from the pressure and stress of work, many countries such as France, Ireland, etc. have introduced policies that allow workers to disconnect to help them balance life and work. In Vietnam, in recent years, the State has continuously researched and updated new ILO policies, treaties, etc. on labor to increase effectiveness in ensuring basic rights and benefits for people. labor, in which the rights of workers after working hours is an outstanding content that needs to be clarified. Therefore, this article will focus on researching basic issues about employees' right to disconnect after work and analyze regulations and experiences from previous countries to make assessments and proposals to improve Vietnam's labor law.

*Keywords: disconnection, labor law, employees, work.*

1. **Overview**

The right to disconnect is a new concept that has appeared in the past 20 years, however, it is not given as much attention as expected. Especially in the context of the Covid-19 pandemic, when online working has become an effective and popular measure in many fields and globally because it helps businesses save costs without causing disruption, so that the right to disconnect is more important than ever.

Thanks to the development of technology, the trend of working online has become easier and more popular. However, this is also pushing employees into situations where they must work more, no matter wherever or whenever they are. Many employers take advantage of this approach because it helps them manage work, while still interacting and controlling employees. However, on the workers’ side, they must always be in a state of stress and must "watch out" their electronic devices, because tasks can come at any time. Not only that, even with traditional jobs, the risk of having to work outside the office or at home is always present for workers around the world.

According to Eurofound research, during the Covid-19 pandemic lockdown, the number of people working from home doubled compared to before the lockdown and many workers had to work more than 48 hours/week. On the other hand, more than 30% of workers who work from home think that their working hours are extended most days of the week or several days of the week [[1]](#footnote-1). Experts say the need to disconnect is becoming more and more urgent, as a combination of online and offline work is gradually becoming popular in many businesses and workers do not necessarily have to appearance at workplace every day like before.

In this context, the right to disconnect has become of concern in the world in general and Vietnam in particular. The right to disconnect first appeared in a decision of the Labor Court of the French Court of Justice in 2001 [[2]](#footnote-2). The court concluded that “Employees have no obligation to work from home or to bring home files or work tools.” Since then, France - a country famous for its 35-hour/week working regulations, has pioneered this issue since 2017 by allowing employees the right to ignore work-related communications. after working hours have ended.

Subsequently, the European Union (EU) also defined the right to “disconnect” as “the right of employees to stop working and not participate in work-related electronic communications, such as e-mail or text messages, outside of business hours”. This can be considered the first definition issued by a competent authority in applying a new mechanism to protect workers in the modern working environment. While this right has not yet been institutionalized in the EU, many member states introduced laws to protect employees from being emailed or asked to perform work after hours by employers.

In Vietnam, work pressure also makes many people unable to leave work. This causes a significant impact on mental and physical health. As a career develops, balancing personal life with work can become more difficult for employees, typically with emails, calls, and problems that arise after work. This problem is getting worse as the Covid-19 pandemic spreads and Vietnamese workers are increasingly caught up in the "ambiguity" between work and personal time. Therefore, incorporating the right to disconnect into labor law regulations is becoming more and more necessary in today's modern social context.

**2. Regulations of some countries regarding the right to disconnect after hours**

**2.1. Law on the right to disconnect after hours in France**

The right to disconnect was legalized for the first time in France in 2016, after the French Government passed the new revised Labor Code, also known as the El-Khomri Law. The new amendments to the law focus on enhancing the rights and better protecting the interests and voices of workers, overtime, dismissal, medical examination, etc.[[3]](#footnote-3)

The right to disconnect is regulated in article L2242-17 of the French Labor Code. Accordingly, the law stipulates that collective labor agreements require content on methods for employees to fully exercise their right to disconnect. At the same time, employers are responsible for setting up systems to manage work, ensuring employees have the best time to rest, relax and spend time with family.

In case an agreement cannot be reached, the employer will adopt a “charter” specifically to determine how to exercise the right to disconnect. The charter includes methods for exercising the right to disconnect and training on the appropriate use of digital tools for employees, supervisory staff, and managers.

As mentioned, when there were no regulations, France applied a precedent recognized by the Court in 2001. In the case, the plaintiff working in the insurance sector had to work continuously after getting home, constantly have to listen to calls and handle tasks at the request of the employer [[4]](#footnote-4). Accordingly, the Court found that employees have no obligation to answer calls from customers when they get off work or to store professional documents at home. The judgment points out limits to the interference of work into the private lives of employees. [[5]](#footnote-5)In a similar case, the Court emphasized that if an employee is required to maintain a cell phone with him, even according to the industry's Collective Labor Agreement, the employer will pay the corresponding salary to workers.[[6]](#footnote-6)

**2.2. Legislation on the right to disconnect after hours in Ireland**

In Ireland, the issue of disconnection was initially mentioned in the Organization of Working Time Act 1997. Accordingly, the Act stipulates a minimum rest time for workers of 11 hours per day, with at least 01 hour of rest per week, while the maximum working time is still 48 hours per week. The Act provides a definition of “working time”, which is defined as the time during which the employee is present at the workplace or designated place at the request of the employee[[7]](#footnote-7). Thus, in addition to the time defined above, the remaining time will not be counted as working time and the employer is obliged to ensure this time for the employee.

While the Irish Act does not explicitly mention the right to disconnect, it does provide effective measures to protect workers' rights. Employers are obliged to record each employee's working time in accordance with the law [[8]](#footnote-8). Along with that, employers are only allowed to require employees to work more than 48 hours a week in very limited events. At the same time, similar to France, Ireland stipulates that employers are responsible for providing measures for employees to have time to rest and minimizing work-related stress. This regulation is especially meaningful in the modern working environment, ensuring the employees can have a full private life, not having to continue to maintain a working state after work hours[[9]](#footnote-9), but still have the excitement to continue and maintain sustainable employment.

Regarding this issue, a Labor Court in Ireland has made a similar ruling on employees' working hours. In the case of O'Hara v Kepak Convenience Food, O'Hara was a business development specialist for Kepak. Even though she worked at the company, after work, she still had to spend a lot of time traveling between locations to meet customers. According to the contract, she only had to work 40 hours a week, but in reality, she had to work much more than that, up to 60 hours, sometimes until midnight or on holidays. The legal issue is, (i) whether the plaintiff's overtime was actually recorded as exceeding 48 hours; (ii) and whether the employer is aware of this. Based on the emails provided by the plaintiff, the court determined that she had to send many work emails to the manager during the period of 5:00 p.m. to midnight [[10]](#footnote-10)and received responses from the manager; while the employer failed to provide records of the plaintiff's working hours.

Therefore, the court based on the provisions in the Organization of Working Time Act 1997 that: "Employers are not allowed to work beyond working hours" so it declared that the employer must make compensation on the ground that the defendant had a duty to know that the plaintiff, in an effort to secure employment, had worked more hours than permitted under the Organization of Working Time Act 1997 through records about working time, but there have been no measures to change and protect workers' rights.

**3. Assess the feasibility of applying the right to disconnect in Vietnam and propose to improve the legal framework**

**3.1. Assessing the feasibility of exercising the right to disconnect in Vietnam**

*3.1.1. Policies and legal regulations on ensuring workers' working time*

According to the 2019 Labor Code, there are no direct regulations on the right to disconnect. Accordingly, there are only regulations on normal working hours for normal work of not more than 08 hours in 01 day and not more than 48 hours in 01 week specified in Clause 1, Article 105. It is considered that after normally working hours is after-working hours. In case the employer wants to regulate working hours by day or week, it must notify the employee and the working hours must exceed 10 hours in a day and not exceed 48 hours in a week. At the same time, the Employer must pay overtime wages to the Employee if he intends to require the Employee to work overtime and the Employee has the right to refuse to work outside of normal working hours as agreed upon the Labor Contract.

In addition, this provision also emphasizes that the State encourages employers to implement a 40-hour working week policy [[11]](#footnote-11). The spirit of this Article has been implemented by the State at the forefront by regulating working hours of 40 hours per week for civil servants and public employees. According to Decision No. 188/1999/QD-TTg of the Prime Minister dated September 17, 1999, state agencies are allowed to apply working hours of 40 hours/week with conditions. However, state agencies must ensure completion of the assigned workload, ensuring quantity, quality and efficiency along with ensuring timely resolution of administrative procedures at the request of organizations and individuals. [[12]](#footnote-12).

Vietnam is integrating more and more deeply with the world economy, participating in many international commitments related to labor policy or containing labor contents, such as CPTPP, EVFTA, Convention concerning Annual Holidays with Pay, … These commitments emphasize the responsibility to improve the quality of employees' lives, prevent and gradually eliminate forced labor practices, and ensure benefits for workers. In particular, CPTPP and EVFTA consider this issue very important and have a mechanism to encourage members to apply in the trade areas that the Agreement regulates. Therefore, with the development of technology gradually blurring the boundaries of privacy in the modern working environment, compliance with international commitments on ensuring workers' rights is necessary to help them achieve better work-life balance.

*3.1.2. Practical implementation*

In fact, in Vietnam recently, many employees working at international organizations, non-governmental organizations or some corporations have been using the organization's mailboxes. When the Employee goes on leave, the mailbox will be set to automatically reply and notify the mail sender about this and the mail sender can only wait for a response when the employees return to work. However, many Vietnam agencies and enterprises have not yet completely implemented it this way. Accordingly, the employees in Vietnam still do not have the habit of setting up automatic email responses when scheduled for leave.

On the other hand, although normal working hours are required to be specified in the Labor Contract signed between the Employee and the Employer, and must be clearly stated in the Internal Regulations, many employers are still not aware of the rest time of the employees. According to an ILO survey, Vietnam is in the group of countries with the highest working hours in the world and region [[13]](#footnote-13). Even when employees write leave applications, many agencies and organizations still require them to commit to fully handling their work during the off-work period. Not only employers, but also employees do not fully understand their rights at work, especially with the thought of "workaholic" which is also partly promoting this approach. Not only that, commencing from many precedents, the fear of missing out on work while on leave and losing wages and bonuses also makes employees, even when on leave, have to monitor their work. This practice, even if there is no regulation on the right to disconnect in Vietnamese, is also a violation of working hours according to the Labor Code as well as a violation of the employee's right to rest. If connected to international human rights standards, this violates the rights to privacy and the right to health care of workers.

**3.2. Proposal to improve the legal framework for Vietnam**

First, lawmakers need to consider adding regulations on the right to disconnect to ensure workers' right in Vietnamese law.

Second, it is necessary to promulgate the regulations for employers to monitor and record employees' actual working time. These records also are required to be connected to state agencies for convenient monitoring.

Third, to ensure the implementation of the above regulations, Vietnamese labor law should also consider imposing fines for employers in case of violating this right to disconnect. Violations that can be considered for adding include communications with work content after working; Requesting overtime without the employee's consent; ….

For employees, in the immediate future, employees still have the right to protect their right to disconnect through collective labor agreements or through working with authorities such as the Unions and the Department of Labor - Invalids and Social Affairs. On the other hand, Employees need to read the Labor Contract carefully before signing, discussing, and negotiating with the Employer to understand more about their labor rights as well as clearly understand the regulations in the Labor Contract. The company's labor regulations and regulations in labor law in Vietnam to be able to bring the best labor benefits to yourself.

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