



Right to disconnect

A guide for union activists

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October 2020

Technology and data are transforming work. The growing use of electronic communications, monitoring technology and data analytics is also transforming the data relationship between workers and employers. Covid has seen an acceleration of the transition to new technologies and data-driven processes. These issues have intensified during lockdown.

Technology was already blurring the line between work and our personal lives. The always-on culture of checking emails and taking calls away from work has been widespread in many companies and industries for some time. Increased remote and home working can mean a welcome increase in flexibility for many workers, but for some it can make drawing the line between work and home even more complicated.

The “right to disconnect” is about defining how technology affects us and ensuring a fair work-life balance. It builds on our values of ensuring that flexibility works for workers as well as employers. In some countries they have legislated to encourage this approach, in other places unions have negotiated for better working conditions.

Prospect will work with members to press for negotiations to tackle the always-on culture and to ensure mutual flexibility around remote working. Technology is key to successful home-working and helping organisations to respond to issues such as Covid. However, this needs to be based on a shared conversation between employers and unions where they work together to ensure a good work-life balance whatever the circumstances.

The guide looks at different approaches to the “right to disconnect” and how we can ensure unions are involved in safeguarding workers’ well-being and rights as new technology changes how we work.

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What are the issues

Covid has changed how we work and are managed. Increased levels of remote working could become the new normal for many workers.

But the always-on, always connected trend had already started before the pandemic. Key developments were the widespread take up of laptops and mobile devices that make it easier to communicate and work away from normal workplaces. Newer technologies, such as online collaboration tools and video conference calling platforms such as Zoom, have accelerated the trend.

Always-on working cultures, and inexpertly managed home-working, can raise a range of issues for workers:

- Hidden overtime
- Work intensity
- Mental health and well-being issues
- Injuries to muscles, joints and bones, known as musculoskeletal disorders
- Equality impacts and discrimination against women and people with disabilities
- Growth in monitoring and surveillance technology
- Remote and digital bullying
- Suitability of home-working environment for some people

Always-on working culture can in turn also cause issues for employers, with quality and productivity potentially at risk alongside the cost to organisations of people unable to work because they are burned out.

While a right to disconnect is not the only solution, it can help frame a conversation between unions and employers around appropriate boundaries and curbs to the always-on culture.

What is a right to disconnect?

The right to disconnect refers to the right of employees to disconnect from their work and to not receive or answer any work-related emails, calls, or messages outside of their normal working hours.

“Normal” working hours may be different for different roles and different workers – for example, those with caring responsibilities, most often women, or some staff with disabilities, may benefit from being able to work outside typical “office” hours, while being unavailable for calls or emails at other times of the day. For some workers breaks within the working day will be particularly important. The “right to disconnect” should about expectations being fair and boundaries being respected.

For example, this may include:

- an explicit statement that employees are not expected to read or respond to emails or other communications outside their normal working hours, and must not be put at a disadvantage for not doing so
- a strict rule that managers may not contact employees outside their normal working hours or stipulated “on call” periods, barring exceptional situations or issues that cannot be addressed at the next working period
- configuring communication systems and/or devices so that emails or other messages cannot be sent or received outside employees’ normal working hours, and are instead parked on servers or even automatically deleted

- rules setting when work-related conference calls or online meetings can normally be held – so that time saved on commuting isn't automatically converted into a longer working day at home
- setting up automatic reminders in email systems or work calendars that keep people aware of what fair and reasonable expectations of availability or responsiveness would be

It is clear that there is no one-size-fits-all solution – different ways of working may work for different workers, in different roles, in different businesses, at different times. Even where rules or guidelines are set, leaders will need to establish a culture that sees them being respected.

The important point is that employers need to be having constructive and inclusive conversations with employees and their representatives. This can make sure that increased flexibility and connectivity that communications technology can bring does not tip into expectations or working practices that can be unfair, unhealthy, or discriminatory.

Causes for concern

Statistics suggest that work-related technology, and the implicit expectations that have accompanied it, are increasing employees' effective working time, setting back equal opportunities, and may be taking a serious toll on our health.

After hours and weekend working is endemic in many industries and occupations. In 2019, UK employees contributed £35 billion of unpaid overtime every year, with over 5 million staff putting in an average of 7.6 hours – roughly equivalent to an additional working day - every week.¹

Electronic communications are playing an increasingly important role in facilitating these ways of working. According to the Chartered Institute of Personnel and Development (CIPD), 15% of us constantly monitor work emails outside work hours; another 25% check them at least five times a day.

Trends towards Bring Your Own Device, where workers often use the same device for both and personal use can also make it difficult for workers not to see work communications outside of working hours.

The impact of this culture is felt unequally: if you're a parent or carer, for example, or you have a disability, you might find it a lot harder to respond to emails out of hours, or more stressful when that is the expectation.

A recent review of research into barriers to women's progression in the workplace pointed to "organisational norms of overwork and boundless availability" as a key factor. Expectations of constant availability, especially when consciously or unconsciously taken "as a proxy for commitment and merit", can severely disadvantage workers with caring responsibilities, the majority of which continue to fall on women.² Suitably adjusted working hours are also often a critical enabler for disabled people.³ Staff with neurodiverse conditions may have more of a propensity to overwork when expectations and boundaries are unclear.

For many workers it makes it harder to achieve a healthy work-life balance. A third of employees agree that remote access to their workplace means that they can't switch off in

¹ <https://www.tuc.org.uk/news/workers-uk-put-more-ps35-billion-worth-unpaid-overtime-last-year-tuc-analysis>

² <https://www.gov.uk/government/publications/gender-equality-at-work-research-on-the-barriers-to-womens-progression>

³ https://www.tuc.org.uk/sites/default/files/DHIWtoolkitEng_1.pdf
https://www.equalityhumanrights.com/sites/default/files/research_report_77_opening_up_work.pdf

their personal time; almost a fifth say it makes them feel as though they are under surveillance, making them anxious and impacting their sleep.⁴

Previous medical research has indicated that blurred boundaries around “work-relevant ICT use while at home” can have a negative impact on people’s ability to “psychologically disengage from work” and the quantity, quality and consistency of sleep.⁵ Analysis of the European Working Conditions Survey found that those regularly working from home using electronic communications technology were more likely to report sleeping problems.⁶

This must be cause for serious concern at a time when data from the Health and Safety Executive, the government agency responsible for workplace health, show that work-related stress, depression and anxiety has been rising in recent years – resulting in the loss of 12.8 million working days last year.⁷

The picture is complicated, however. CIPD also reports that 30% of employees see remote access to the workplace as empowering; 41% say it helps them manage their workload; 51% say it enables them to work flexibly. This is why Prospect believes that responding to this issue shouldn’t be a matter of blanket rules imposed by government from the top-down, but finding solutions through constructive dialogue between employers, employees, and their representatives.

The impact of Covid-19

The impact of Covid-19 and associated public health restrictions have made these discussions more urgent.

Research has suggested that the long-term effect of Covid-19 will be to increase the proportion of people who work exclusively from home from 9% to 22%, and the proportion who work from home “on a regular basis” from 18% to 37%.⁸

Working from home, if managed well and fairly, can be beneficial for many workers, particularly in terms of improved flexibility, which can be good for equalities and for reducing work-related stress. But for some there are clearly also risks if it makes work-life balance harder to manage.

Previous international research has found that those who regularly work from home are twice as likely to work more than 48 hours a week and six times more likely to work during their free time.⁹ Much of this may be a reflection of particular roles or responsibilities, but for some it may also reflect the additional challenges of maintaining boundaries and routines when home becomes a place of work.

In the UK, the number of people doing at least some work from home rose to almost half at the height of the pandemic. This had divergent impacts on working time, many said it they were working fewer hours than usual, but 30% said they were working more.¹⁰

⁴ <https://www.cipd.co.uk/about/media/press/270417-remote-work-issues>

⁵ <https://pubmed.ncbi.nlm.nih.gov/24123651/>

⁶ https://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef1658en.pdf

⁷ <https://www.hse.gov.uk/statistics/overall/hssh1819.pdf>

⁸ <https://www.cipd.co.uk/about/media/press/home-working-increases>

⁹ <https://www.euronews.com/2020/06/01/covid-19-lockdowns-have-shown-all-workers-need-a-new-right-to-disconnect-from-work-at-home>

¹⁰

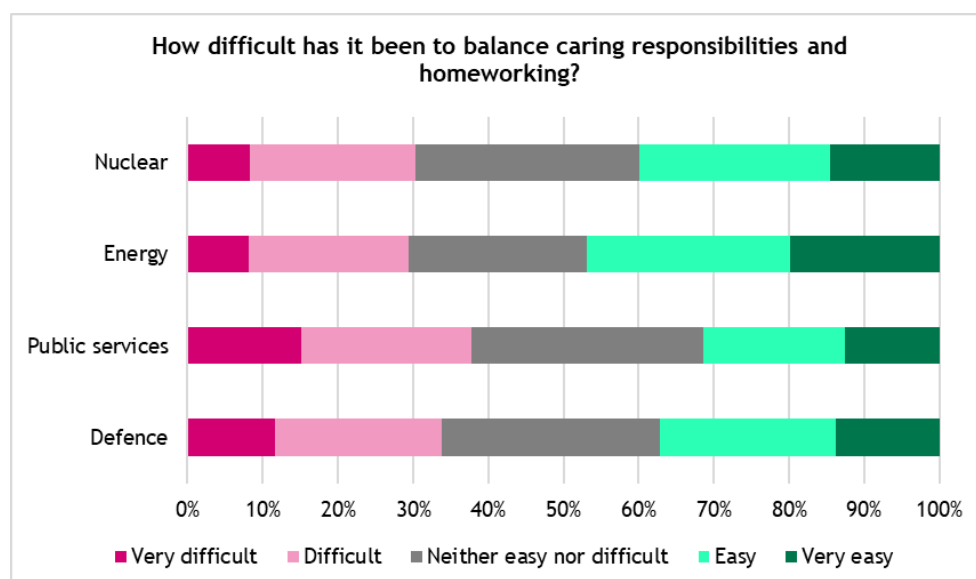
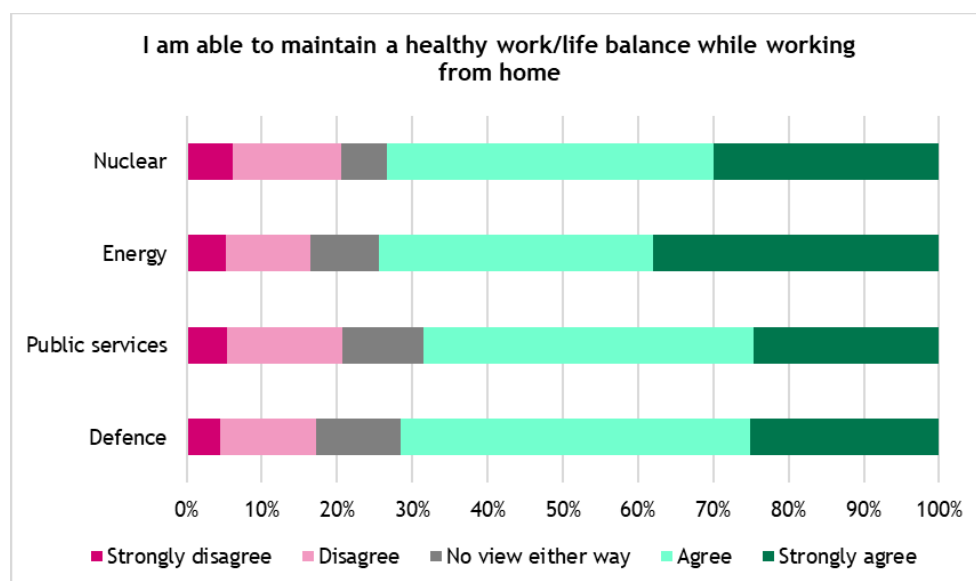
<https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/bulletins/coronavirusandhomeworkingintheuk/april2020>

International research conducted in July 2020 found that, on average remote working under lockdown had increased the time between first and last email of the day by 8.2%, or 48.5 minutes.¹¹

A survey on the challenges of home working during Covid-19 conducted by Irish Financial Services Union found a majority of respondents reporting increases in work intensity and stress, and 44% saying they felt pressure to answer calls and emails outside of working hours.¹²

Prospect surveyed members across a number of sectors in summer 2020 about their experience of homeworking during lockdown. Most responses were positive, but it was clear there had been challenges for some people:

- 15-20 per cent of respondents across nuclear, energy, public services and defence sectors report problems maintaining a healthy work/life balance while working from home
- 30 per cent of respondents (for whom the question was applicable) were finding it “difficult” or “very difficult” to balance caring responsibilities with homeworking



¹¹ <https://www.nber.org/papers/w27612.pdf>

¹² <https://fsucovidadvice.org/survey-results-show-significant-challenges-of-home-working/>

There is also growing concern about how technological solutions for “keeping in touch” can blur into monitoring or surveillance that infringes workers’ privacy and could lead to serious injustices.¹³ Prospect surveyed over 7,500 workers and found that 48% were not confident they knew what data their employer collected about them and 34% were not confident that this data would be used in an appropriate way. Prospect has also produced a guide for using data protection rules to check how employers are gathering, storing or using data on their employees.¹⁴

What can be done

Already in organised workplaces, trade union reps can and do play an important role in checking and challenging always-on cultures and practices in their negotiations, awareness-raising and day-to-day interventions.

It is the union’s job to ensure employers and employees are aware of the rights and responsibilities embedded in existing working time legislation; health and safety laws and guidance; contractual terms and conditions around working hours, on-call allowances, or time off in lieu; and good practice around management, equal opportunities and employee well-being.

The right to disconnect is an important aspect of this. It refers, in short, to the right of employees to disconnect from their work and to not receive or answer any work-related emails, calls, or messages outside their normal working hours. It may already be implicit in some workplaces, but in recent years trade unions, employers and governments around the world have felt it necessary to make it the focus of more explicit conversations and commitments:

- Germany’s Ministry of Employment worked with unions to develop a “minimum intervention in leisure time” policy,¹⁵ while leading employers such as Volkswagen and Daimler have implemented restrictions on electronic communications outside working time¹⁶
- France’s El Khomri law – often also called the ‘right to disconnect’ - doesn’t stipulate when employees can or can’t look at their phone, but rather requires companies with more than 50 employees to negotiate protocols with staff. This has already resulted in pay-outs from employers to workers whose right to disconnect had not been respected.¹⁷ Trade unions affiliated to UNI Global have negotiated a collective agreement covering Orange in France that included a right to disconnect.
- The Italian Senate has passed legislation which includes requirements for written agreements identifying rest periods and arrangements to enable workers’ disconnection from technological equipment.¹⁸
- Spain’s Data Protection and Digital Rights Act provides that employees shall be entitled to disconnect any digital devices outside working time to ensure respect for resting periods,

¹³ <https://www.theguardian.com/world/2020/sep/27/shirking-from-home-staff-feel-the-heat-as-bosses-ramp-up-remote-surveillance>

¹⁴ Reference DPIA guide

¹⁵ <http://www.spiegel.de/international/germany/no-contact-for-german-labor-ministry-employees-after-work-new-guidelines-a-919463.html>

¹⁶ <https://www.odgersberndtson.com/en-gb/insights/work-unplugged>

¹⁷ <https://www.telegraph.co.uk/news/2018/08/01/british-firm-ordered-pay-60000-french-court-breaching-employees/>

¹⁸ <http://www.senato.it/japp/bgt/showdoc/17/DDLMESS/0/1022243/index.html>

holidays, and personal and family privacy.¹⁹ The unions CCOO and UGT have also negotiated an agreement with Telefonica – as well as with other employers, including in the banking sector – that covers the right as well.

- In Greece draft legislation on remote working would require employers to respect the private lives of remote workers, and also ban the use of cameras that some employers have adopted to check when employees are working.²⁰
- Argentina recently passed a law which aims to provide a “right to rest and disconnection [from work] outside of working hours”.
- In Ireland existing working time legislation has been successfully used to challenge the expectation that employees are available outside working hours.²¹ The Irish government has also launched a consultation on the issue, at the urging of the Irish Financial Services Union.²²
- The New York City legislature has debated a bill that would make it illegal for private employers with 10 or more employees to require workers to check and respond to electronic communications during non-work hours.²³

Some action is being taken at international levels. UNI has already secured the right to disconnect in global agreements with Telefonica and Orange. Some expect a new European directive to follow.²⁴ EU Jobs Commissioner Nicolas Schmidt recently described constant availability with no ability to sign off a “horror vision of the digital age”.²⁵

¹⁹ <https://www.shrm.org/resourcesandtools/legal-and-compliance/employment-law/pages/global-spain-new-rights-for-digital-times.aspx#:~:text=A%20new%20Spanish%20data%20protection,process%20recordings%20obtained%20from%20cameras.>

²⁰

https://www.thenationalherald.com/greece_economy/arthro/greek_labor_ministry_preparing_legislation_for_remote_online_working-584620/

²¹ <https://www.irishtimes.com/business/economy/executive-awarded-7-500-for-having-to-deal-with-late-night-emails-1.3584537>

²² <https://dbei.gov.ie/en/Consultations/Public-Consultation-on-Guidance-for-Remote-Working.html>

²³ <https://www.nbcnews.com/news/us-news/right-disconnect-new-york-city-council-explores-protecting-hours-n963071>

²⁴ <https://www.lexology.com/library/detail.aspx?g=b17bb834-2033-444b-b88e-eb3f862ac9fe>

²⁵ <https://brusselsreporter.com/featured/2020/eu-jobs-commissioner-workers-must-have-right-to-disconnect/>

What Prospect wants to happen

Prospect is committed to tackling work-related stress, ensuring equal opportunities, and winning for every worker a fair deal and improved quality of working life.

Many of the issues highlighted in this publication are already being raised and tackled in the work our reps and negotiators do with members and employers throughout the country. For example, we have long published guidance on work-related stress, highlighting how frameworks like the HSE's Management Standards can be used to tackle mental health risks – such as excessive workloads or long hours – at source. But we believe that, as in other countries, this is an issue we need to raise awareness of and push up people's agendas at this time.

Prospect has already run a pioneering Work Time/Your Time campaign, focussed particularly on supporting members in the IT and telecoms sector. While the campaign may now be dated by its reference to Blackberries, its message was ahead of its time: mobile phones and remote email help you work smarter, but make sure you're in control, not the technology. The results of the campaign included new stress risk assessment tools, better time off in lieu (TOIL) provisions, and increased take-up of flexible working.

Now we want to see the right to disconnect explicitly recognised and rolled out as good practice by every UK employer.

This will mean different things for different businesses, industries and groups of workers. But the right of employees to be able to maintain fair and healthy boundaries between their work and the rest of their lives without detriment or disadvantage should be universal.

We would like to see Government legislate – not to impose a top-down, one-size-fits-all set of rules, but to require all employers to consult with employees and employee representatives on this issue with the aim of agreeing a set of rules that works for them.

In the meantime we will seek to bring about change by including the right to disconnect in our collective bargaining with employers and supporting both branches and individual members who want to push for action in their workplace. A right to disconnect could be a productive topic for constructive workplace discussions by branches.

Why employers should care

- Employers have a legal duty to ensure, as far as is reasonably practical, that work does not put employees' health at risk. Good practice guidance from the Health and Safety Executive highlights demands placed on workers by their workload, work patterns and work environment are recognised as a key factor to consider in seeking to tackle work-related stress.²⁶
- Employers have a duty under equality law to ensure that policies and practices around working hours, flexible working and time off do not result in direct or indirect discrimination,²⁷ and large employers are now required to publish annual reports on their gender pay gap. In addition to this, public sector employers have a duty under the Equality Act to carry out equality analysis on all decisions, policies and practices to ensure they do not have unequal impacts. Evidence suggests that generalised expectations of long-hours working plays a key role in blocking women's progression and locking in gender inequality.²⁸ Recent case law has also established that long hours working cultures can constitute discrimination against disabled workers.²⁹
- All the evidence shows that productivity is enhanced by employee health and wellbeing, diversity and equal opportunities, and workers' perceptions of fairness and experiences of involvement. The most successful businesses and organisations will be those that work with employees and their representatives to find and agree solutions to the risks posed by new technology and ways of working.³⁰

²⁶ <https://www.hse.gov.uk/pubns/indg430.pdf>

²⁷ https://www.equalityhumanrights.com/sites/default/files/what_equality_law_means_for_you_as_an_employer_-_flexible_working.pdf

²⁸ <https://www.gov.uk/government/publications/gender-equality-at-work-research-on-the-barriers-to-womens-progression>; <https://hbr.org/2020/03/whats-really-holding-women-back>

²⁹ <https://www.peoplemanagement.co.uk/experts/legal/long-hours-culture-discrimination>; <https://www.lexology.com/library/detail.aspx?q=95ff8412-126b-41fd-bc9f-8636ea5a4e7a>

³⁰ See for example <http://www.oecd.org/employment/negotiating-our-way-up-1fd2da34-en.htm>; <https://www.ipa-involve.com/news/involvement-and-productivity>

The Irish Financial Services Union has drawn up a template policy for branches to seek agreement with employers on. The preamble reads as follows:

As an employer, we do not expect staff, normally, to work more than their contractual working hours. If you find you are, you should talk to your line manager or your union representative. If you do receive a work email, or any other form of communication outside of working hours, there is no expectation that you read it or respond until you are working.

Other than contact related to on-call, or where expressly agreed with the staff member, (the Bank management) as your employer undertake not to contact you outside of your agreed working hours for work related matters.

Employer: _____ Trade Union: _____

Though the legal and industrial relations environment is in some respects different from the UK's, this illustrates the kind of issues that unions could seek to address with employers, and the commitments they could look to secure.

Prospect wants to support branches and members to raise the profile of this issue and learn from their experiences of dealing with it.

- If you would like further advice or support on raising these issues with your employer or seeking to engage members or non-members around the issue.
- If “always on” culture is a particular problem in your workplace, or for some groups of workers.
- If there are good practices and effective rules that your employer has implemented or accepted that we can learn from or promote more widely.

Checklist: Ways to approach the issue

The Professionals and Managers section of UNI Global Union have produced a useful guide to best practice around the right to disconnect,³¹ upon which the following checklist is based.

Be clear about what the right to disconnect means, and why it matters	Discussions should start from agreed common ground about what kind of change is needed and what the desired outcomes are.
Look at causes as well as symptoms	If out-of-hours work and communication is widespread, employers should want to know why – for example it may be the result of workload issues, managers' attitudes and signals, employees' fear of losing status or influence, or a mismatch between normal working hours and the needs of the business.
Map the problem	As far as possible discussions and decisions should be based on accurate data about what kind of out-of-hours communication or work is taking place, when it is happening, who it is involving.
Define normal working hours	This may need to be different for different workers and may need to allow variation in exceptional times or circumstances. But this has to be the starting point for clarifying rights and expectations outside "normal" hours.
Keep an equalities perspective	Those with caring responsibilities, and some staff with disabilities, may struggle most to respond or work at particular, but may also need the flexibility to reconnect or catch up at other times. It is essential to ensure that all workers get the maximum benefit, but not unintended negative consequences, of a right to disconnect.
Communicate and engage with all staff	As with any change programme, clear communication and inclusive engagement will be critical to its legitimacy, take-up, and success.
Train and support managers	Managers will be critical to the successful implementation of any right to disconnect policy. They need to be equipped to play their part, as well as helped to manage any challenges it may pose to them.
Enlist technical support	Even if completely closing down email out of hours is judged too inflexible, there are a range of interventions that could help embed a right to disconnect, from delaying the delivery of messages sent out of hours, to setting up automatic out-of-hours replies.
Monitor the policy regularly	Arrangements should be agreed to monitor and review the impact of the policy, from gathering anonymous data on email usage to surveying managers and staff.
Address barriers to implementation	Where the policy is not being observed, this needs to be identified and the causes understood – for example, whether it is an issue of personal misunderstanding or resistance or the result of unresolved workload pressures.

³¹ <http://www.thefutureworldofwork.org/media/35639/right-to-disconnect-en.pdf>