PUBLICATION

A Matter of Time: The Growing Recognition of an Employee's "Right to Disconnect"

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While the recent implementation of the General Data Protection Regulation (GDPR) has understandably dominated the conversation of European legislation's influence on U.S. policy, a pending bill in New York City is noteworthy as well, as it may indicate that "right to disconnect" laws are similarly spreading across the Atlantic.

On March 22, 2018, a bill was introduced by the City Council of New York City which would make it unlawful for private employers with ten or more employees to require their employees to check and respond to email or other electronic communications during non-work hours. Violation of this proposed legislation would be punishable by a fine of at least $250 per occurrence.

Mr. Rafael Espinal Jr., the author and lead sponsor of the bill, explicitly modeled his proposed legislation after "right to disconnect" laws in Europe. While this proposed legislation represents the first time a similar bill has been introduced in the U.S., a trend towards recognizing such a right has been developing, beginning in France in 2001.

In 2001, the Labor Division of the *Cour de Cassation* (France's equivalent to the Supreme Court of the United States) authored an opinion that employees could not be obligated to work while at home outside of work hours. In a 2004 opinion,[1] the Court affirmed that decision and stated explicitly that it could not be considered misconduct for an employee to be unreachable on a cell phone outside working hours.

The French government subsequently passed a law which became effective on January 1, 2017, establishing the "right to disconnect" but leaving the specific way to respect this right up to each company. In May 2017, Italy enacted a similar law, and the Philippines introduced a similar bill, though it now appears to have stalled in its House of Representatives.

While it is not yet clear whether the New York City Council will enact this proposed legislation, the ease of communication created by cell phones and the increasing commonality of the use of messaging programs for work purposes has led to, according to one 2017 study, workers spending an average of eight hours per week answering work emails while at home, often without compensation.

Some U.S. companies have already implemented "email free" nights once or more per week, while others have implemented "no emails after 10 p.m." policies. It is clear that the desire to legislate in this area comes from a growing recognition that being constantly available leads to increased stress and reduced job satisfaction.

Regardless of the eventual fate of this proposed bill in New York City, it behooves every employer to monitor "right to disconnect" laws or policies implemented by competitors, as this is a rapidly developing trend whose entry into the U.S., either through private adoption of policy or through legislation, seems inevitable.

[1] Labor Chamber of the Cour de Cassation, February 17, 2004 n° 01-45.889.