

A right to disconnect soon embedded in the labour legislation

Bill No. 7890 amending the Labour Code in order to introduce a regime relating to the right to disconnect (the "Bill") has been submitted to the Chamber of Deputies on 28 September 2021.

The Bill follows the opinion of the Economic and Social Council of 21 April 2021, which aimed to propose a text that would expressly include the right to disconnect in Luxembourg labour law. Indeed, for the time being, Luxembourg labour law only indirectly regulates the right to disconnect, notably by imposing on employers a general obligation to ensure the safety and health of all employees and compliance with the rules protecting employee in terms of working hours and overtime.

The Bill is largely based on this opinion and proposes to introduce a specific section on the "Respect for the right to disconnect" in the chapter of the Labour Code devoted to the employer's obligations in terms of protection, safety and health of employees.

Subject to the evolution of the Bill in the course of the parliamentary work, the new measures would be the following:

- ❖ Obligation to define a specific regime ensuring respect for the right to disconnect outside working hours when employees use digital tools for professional purposes.

This regime may be defined by means of a collective agreement or a subordinate agreement. Otherwise, it should be defined at the company level.

The mechanisms put in place to ensure respect for the right to disconnect should be adapted to the specificities and issues of each company or sector concerned and cover, where appropriate, the following:

- technical measures for disconnecting digital tools (e.g., blocking of e-mails after a certain hour);
 - awareness-raising and training measures (e.g., guide of good practices); and
 - compensation arrangements in the case of exceptional derogations to the right to disconnect.
- ❖ The introduction and implementation of this specific regime will be carried out after information and consultation of the staff delegation, if any. In a company with at least 150 employees, the agreement of the staff delegation will be required. In the absence of a staff delegation, the employer should inform employees of the scheme put in place.
 - ❖ The modalities of the regime ensuring respect for the right to disconnect outside working hours will be included in the list of subjects on which collective negotiations must deal with and the outcome of which must be recorded in the provisions of a collective agreement or a subordinate agreement. Thus, in companies that are covered by a collective agreement or a subordinate agreement, the employee representatives and trade unions which are parties to the negotiations will be directly involved in the establishment of such a regime.
 - ❖ In the event of non-compliance with these provisions, the Director of the Labour Inspectorate could impose an administrative sanction.

In a nutshell, the Bill therefore set the principle that a right to disconnect exists in favour of employee, as part of the protection measures for safety and health at work. *Carte blanche* is however largely let to each company or sector to adapt this principle to its own operational functioning.