The "Do Not Disturb" Movement: A Right To Disconnect? Or A Disconnection From Reality?

Insights
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In today's business climate, work always seems to be on the mind. But should it be? According to the Bureau of Labor Statistics, the productivity of the average American worker has skyrocketed by an astounding 400% since 1950. And yet, in the furious midst of our all-out race to the top, some of us have found ourselves running head first into the old familiar phrase: "work-life balance."

Armed with this phrase, a recent global trend known as the "Do Not Disturb" movement has seemed to take international, and even local, workforces by storm by offering concrete legal protections to employees who wish to unplug from their employers during non-working hours. But as tech start-ups and industry titans both rush to develop apps and company policies that help foster this movement, we should be careful to ask ourselves whether this right to unplug is actually disconnected from the realities of a globalized workforce. With this question in mind, it's important that we not only understand the history of this movement, but also the pros and cons of potentially adopting such a policy in your own workplace.

"Right-To-Disconnect" Laws And The Unavoidable Standoff With A Globalized Workplace
Contrary to popular belief, the Do-Not-Disturb movement is far from new. Both France and Ireland have had such laws on the books for years, which have restricted employer rights on contacting employees outside of normal working hours. Dovetailing off these protections, other countries have recently thrown their hats in the rings as well, whether through formally enacted "Right-To-Disconnect" laws or proposed legislation, including Italy, the Philippines, India, and Canada.

In almost all cases, the laws and proposals seem to direct their ire towards the inescapability of globalized workforces by attempting to immunize employees who wish to ignore employer calls, emails, or text messages, when away from the proverbial desk; a reasonable request on its face, but one that becomes increasingly more complicated as companies seek to establish diverse teams and clienteles that span a range of different regions, jurisdictions, and time zones.

Strikingly, these laws have seemed to finally make their way to our shores. Earlier this year, a Right-To-Disconnect measure was formally introduced for consideration before the City Council in New York City. The measure would have: (a) prohibited retaliation against those employees who refuse to respond to after-hours employer texts, emails, or messages; (b) required reinstatement for any employee terminated for their failure to respond; and (c) provided damages in the form of lost wages, a $2,500 penalty, and fines up to $1,000.

Curiously though, while these strong penalties present an illusory semblance of worker protection, the measure would also allow employers to except themselves from these penalties if either: (a) the employee's contract waives these rights; or (b) it's an "emergency." Given the ambiguity of "emergencies," however, as well as the ease of placing a new waiver right next to the standard at-will language, such a realistically toothless measure truly seems to beg the question—why bother?

"Do Not Disturb" Apps And The Emerging Support Of Tech Companies And Industry Titans

Even without legal protection, though, the Do-Not-Disturb movement has still seemed to captivate the minds of American tech companies and industry titans. Widespread worker communication platforms, like Slack and Speakap, have already begun to develop software features that allow employees to select a do-not-disturb option when using their platform.

Taking this concept a step further, certain established international companies have even permitted their employees to use software that not only prevents them from receiving after-hours emails, but that also communicates to the sender that any sent email will be automatically deleted! And even when emerging tech platforms are out of reach, primitive email and smart phone options generally come with at least some form of do-not-disturb or "no notification" features—leaving these options open and ready for most employers to implement.

With these emerging technologies in hand, employers have begun to incorporate these features into various aspects of the company policies—ranging from standard availability requirements, to on-call procedures, and even vacation time.

Pitfalls To Avoid In Implementing Your Own Do Not Disturb Policy

As with any emerging technological trend though, there are always bound to be pitfalls—especially when the trend intersects with the modern workplace. Naturally, the Do-Not-Disturb movement is no exception. Accordingly, before you consider deploying some of these newly integrated tech and software platforms and creating your own do-not-disturb policy, it's important to keep a few things in mind.

First, make sure you account for staffing and the nature of your business. If your client is arrested after midnight, or your patient starts bleeding out over the weekend, the last thing they'll want to find is a "do not disturb" message on your voicemail, or a "Your Email Has Been Deleted" message in their inbox. For larger companies, the same could also be said for team leads on the West Coast working with East Coast counterparts in staggered time zones. As a result, it's important to plan ahead for staffing needs, emergency contact procedures, and any added overhead that these might cause.

Second, at least for now, there's nothing stopping you from considering an employee's decision to use or not use do-not-disturb options when making compensation or promotional decisions. In the modern work place, work should be rewarded—and even more so when an employee voluntarily decides to go that extra mile. However, this may not stay the case if your jurisdiction passes a measure akin to the Right-To-Disconnect law proposed in New York City—namely because it would

measure akin to the Right-To-Disconnect law proposed in New York City—namely because it would be unclear if passing another employee over for a promotion due to their use of a do-not-disturb feature could be considered an act of retaliation as it might be in other contexts.

Third, make sure your policy expressly outlines when an employee should and should not use the do-not-disturb feature—especially when you are using the use or non-use of the feature in making promotional decisions. If an employee is using it because they simply want some time to themselves, you're fine. But if an employee is actually using the feature because they're sick, have anxiety, or some related medical issue, your inadvertent consideration of that could expose you to liability for disability discrimination.

Conclusion

Ultimately, though, when it comes to determining which form of do-not-disturb policy (if any) is right for your company, the sky is the limit. Context is important, and what's right for one company may not be right for another. And with New York City's recently proposed introduction of a compelled Right-To-Disconnect law—which aims to implement a slew of penalties and protections related to after-hours communications—you should take care to factor in these potential changes as your company moves forward in crafting, amending, or eliminating its own policy.

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