

SHOULD YOUR COMPANY GIVE EMPLOYEES THE RIGHT TO DISCONNECT? PROS AND CONS OF DO-NOT-DISTURB POLICIES

Insights
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It's 7:30 PM on a Thursday night and you check your phone after finishing dinner – and you see a business emergency starting to brew. You could use some help from your team tonight to gear up for what is bound to be a crazy morning ahead – but everyone on your team has switched their electronic devices to “do not disturb” mode and is completely unreachable until 8:30 AM tomorrow. Does this sound like a nightmare scenario or a healthy workplace culture with clear boundaries? Welcome to the right-to-disconnect era. Do you know where your organization will land? Here are some considerations to take into account and some tips if you decide to implement a do-not-disturb policy.

From Do-Not-Disturb to Right-to-Disconnect

The “right to disconnect” movement offers concrete protections to employees who wish to unplug from their employers during non-working hours. The key, essentially, is providing the express freedom to employees who wish to ignore work-related calls, emails, texts, or other messages after working hours or when they aren't at their proverbial desk.

It's one thing to tell a worker it's OK for them to unplug after hours – it's another to enshrine a guarantee into your policies and say they can't face negative repercussions from management for unplugging.

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There are no states, cities, or other local jurisdictions that have passed a Right-to-Disconnect law in the United States, but a few have taken a shot:

- **New York City** probably came closest when it proposed a measure before the pandemic that would have prohibited retaliation against those employees who refuse to respond to after-hours employer texts, emails, or messages. It would have also required reinstatement for any employee terminated for their failure to respond. Violations would have allowed employees to recover damages in the form of lost wages, and employers could have faced penalties up to \$2,500 and fines up to \$1,000. However, the measure would have allowed employers to override the DND message in cases of “emergencies” – an exception that would have caused hand-wringing and confusion.
- **California and Washington** lawmakers have also proposed statewide Right-to-Disconnect bills, but they haven’t gotten traction in recent legislative sessions.

Be aware of existing laws, however, that might require you to treat employees differently when it’s after hours, such as the following:

- **Wage and hour laws** will require you to pay hourly, non-exempt workers for the work they do for your organization – and may require you to pay overtime depending on the situation. These obligations could be triggered with a simple after-hours text or message that leads to your employee spending time performing work for your organization.
- **Disability accommodation laws** could require you to shut down communications with certain workers in certain situations because of accommodations you provide to alleviate mental or emotional impairments.
- **Family and medical leave laws** could also block you from reaching out to workers who are on protected leave.
- **Labor laws** – both the National Labor Relations Act (NLRA) and certain international laws – might restrict your ability to discipline workers depending on the reasons they may be unplugging. And in some international jurisdictions, your workers may be covered by collective bargaining agreements solely by virtue of the industry in which you operate, the positions they hold in that jurisdiction, etc.,

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and many of those agreements govern working hours and permissible parameters of off-hours work, among other topics.

- **Off-duty conduct laws** may also come into play. Some state laws may be read broadly enough to prohibit you from disciplining workers for being unable to work after hours if the reason they were unable to work was related to impairment caused by engaging in lawful conduct (such as using recreational cannabis).

Meanwhile, many countries around the globe have laws on the books that are providing inspiration to lawmakers here in the U.S. when it comes to the right to disconnect. For example:

- Since 2017, **France** has required employers with 50 or more employees to give employees the “right to disconnect” outside of normal working hours. The law leaves it up to employers to determine how to apply it.
- Other European countries like **Germany**, **Italy**, and **Belgium** have followed suit by adopting legislation protecting workers’ personal time.
- **Ireland** developed a non-binding “Code of Practice,” which encourages employers to respect the universal right of an employee to disconnect outside of agreed hours.
- **Argentina**, **Chile**, and **Mexico** have also adopted do-not-disturb laws, but they only apply to remote workers.
- Under a proposed bill in **Australia**, employers could be fined for penalizing employees who ignore calls and messages outside of working hours. A similar measure is pending in **Kenya**.

Considerations for Your Organization

Before you decide whether to implement a do-not-disturb policy for your organization, take the following considerations into account:

- First and foremost, account for the **nature of your business**. Law firms may have clients who are arrested after midnight, or medical providers may have the need to perform critical procedures any time of day. The last thing you’ll want is to find a “do not disturb” message when you

reach out to your team to rally together and provide emergency services.

- **Where are your workers located?** As workforces become more dispersed around the country – and around the world – you may have teams that span a range of different regions and time zones. If your team leaders are on the west coast and they work with east coast counterparts, it may be challenging to restrict communications after 2 PM PT. Moreover, if you operate in multiple jurisdictions, make sure to review the laws in each state where your employees work (or coordinate with your legal counsel to do so) to ensure your policies don't inadvertently run afoul of current laws.
- Think about your **client or customer base** and their reasonable expectations of your organization. If it is critical to offer immediate services and responsiveness to these key stakeholders, you may need to offer 24/7 coverage.
- What are your **competitors** doing? Your industry or geographic location may dictate your next step as you work to retain and attract talent – and if your neighbor is offering a perk, you may need to do the same to keep up.
- What do your workers want? Consider soliciting **employee feedback and participation** in the development of any policy to gather their input and concerns. This could be achieved through surveys, focus groups, or town hall meetings. Employee feedback can provide valuable insights into how such a policy will impact their work-life balance, productivity, and overall satisfaction. Incorporating their views can also increase buy-in and adherence to the policy once implemented.
- You may need to take **staffing and labor costs** into account if you want to implement some sort of DND practice but need to provide broad coverage to carry out your company mission. It may require you to increase your workforce size (perhaps through temporary help or alternative staffing models).
- Finally, consider your **workplace culture**. Unless and until a right-to-disconnect law takes effect in the U.S., 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. Your

company may have established a culture where work should be rewarded – and even more so when an employee voluntarily decides to go that extra mile.

How to Implement a Do-Not-Disturb Policy at Your Workplace

You've reviewed all these considerations and have decided to take the leap to create a DND policy at your workplace. So how do you create one? Make sure you consider the following steps:

- **Articulate employee rights clearly.** Outline with specificity what they are allowed to do and how their decision to turn on DND features will (or won't) impact their performance assessments or overall career.
- Make sure your policy expressly outlines **when an employee can and can't** use do-not-disturb features.
- The most basic email and smartphone options come with some form of **do-not-disturb or "no notification" features**. Instruct your employees to make use of them – and your managers to respect them.
- Check whether your **communication platforms** (such as Slack and Teams) will allow employees to select a do-not-disturb option. If so, follow suit on the same instructions.
- Some software platforms take it a step further and communicate to internal senders that any emails received after hours will be **automatically deleted** and will need to be re-sent during working hours. If your systems will allow that, make sure it is implemented and your leaders are aware of the restrictions.
- Plan ahead for **emergency contact procedures** and bake them into your policies – but make sure your "emergency" exceptions aren't so broadly used that they water down your policy to the point of irrelevance.
- Establish **clear mechanisms for monitoring compliance** with the policy and addressing violations. This should include a process for employees to report issues or concerns. Ensure that enforcement is consistent and fair, with defined consequences for non-compliance.
- **Train your managers** to ensure they are aware of the policy and adapt to the changes it may inevitably bring. Be

sure they have the opportunity to ask questions about specific situations.

- **Lead by example.** Make sure your upper-level leaders don't feel they are immune from the policy because of their station within the organization. If they don't feel it is right for them, you may want to rethink whether to adopt such a policy in the first place.

Conclusion

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