



California Bill Would Punish Employers for Contacting Employees Outside of Work Hours: How the “Right to Disconnect” Could Impact Your Business

Insights

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California is considering broad legislation that would grant nearly all employees the right to disconnect from their employers during nonworking hours. If passed, the bill would be the first of its kind in the United States – though many countries around the globe already have “right to disconnect” laws in place. In a time when employees prioritize work-life balance but technology allows their employers to access them almost 24/7, the right to unplug from the workplace seems simple enough. But the bill could have a huge impact on California employers and raises complex issues that are at odds with the way many businesses operate. We’ll give you everything you need to know about the bill and what you may want to consider doing next.

What Would California’s Proposed Bill (AB 2751) Require?

Public and private employers of any size would be required to implement a workplace policy that gives employees the right to ignore most employer communications outside of their assigned hours of work. Limited exceptions would permit employers to contact employees during nonworking hours if it involves:

- an **emergency** (defined as an unexpected event that disrupts or shuts down operations, causes physical or environmental damage, or threatens a customer, employee, or the public); or
- a **scheduling change** impacting the next 24 hours.

The bill does not distinguish between non-exempt and salaried exempt employees – so it appears to apply to both. But it does not apply to employees covered by a collective bargaining agreement.

Employees would have the right to file a complaint with the Labor Commissioner if their employer engages in a “pattern of violations.” If an employee successfully shows three or more documented instances of communications outside of working hours, the employer may incur a fine of “not less than \$100.”

How Would the Bill Impact California Employers?

California already has various laws that place limitations on when and how employers communicate

with their *non-exempt* employees outside of regular working hours. For example, existing laws define what constitutes hours worked and require employers to provide daily and weekly overtime pay, pay for standby or on-call time, and pay for reporting time in certain situations such as when employees report to work but are sent home early because business is slow.

AB 2751 not only fails to take existing labor laws into account but also poses unique challenges for employers because it would apply to both non-exempt *and exempt salaried* employees. The bill also poses challenges to businesses and industries that do not conduct their work only within traditional business hours. Those employers may need to consider whether some of their employees will have 24-hour “working hours” for purposes of the right to disconnect.

What Steps Should You Consider Taking Next?

While you do not need to take any concrete steps for compliance yet, this may be a good opportunity for you to take a deeper look at how and when you are communicating with your employees. You may want to discuss ways you could establish a healthy workplace culture with clear boundaries without falling behind on the needs of your business or clients. And – regardless of whether AB 2751 is enacted – you may want to consider adopting a “right to disconnect” policy.

We previously covered the [pros and cons of joining the do-not-disturb movement](#). Before deciding whether to implement this kind of policy, you should consider the nature of your business, where your workers are located, the expectations of your client or customer base, employee feedback, what your competitors are doing, and staffing and labor costs.

What to Consider When Implementing a “Right to Disconnect” Policy

If you decide to adopt a right to disconnect policy – or if California’s proposed bill becomes law and requires you to do so – here’s a few key points to consider:

- A “right to disconnect” policy would need to clearly state that employees have the right to ignore communications from the employer during their “nonworking hours” and **clearly define nonworking hours**.
- The policy would also need to **outline any exceptions** when the employer may communicate with the employee outside of their nonworking hours (which, under the current language of the bill, is permitted only in the event of emergencies or urgent scheduling needs).
- You would also need to **train your managers and supervisors** to avoid reaching out to employees outside of nonworking hours – even via a quick text message or email – unless one of the limited exceptions applies.

Conclusion

We will continue to monitor this bill and provide the most up-to-date information directly to your inbox, so make sure you are subscribed to [Fisher Phillips’ Insight System](#). If you have questions,

contact your Fisher Phillips attorney, the authors of this Insight, any attorney in [our California offices](#), or any attorney in our [Privacy and Cyber Group](#) or on our [Government Relations Team](#).

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