

HR body cautions ‘right to disconnect’ code must not adversely affect MNCs

BRIAN SHEEHAN

The body representing HR professionals has warned that the proposal for a code of practice on a ‘right to disconnect’ has already raised concern among the HQ of global companies with a base here. The CIPD also cautions that “the realities of remote working in 2020” were temporary - and “cannot be the driver” of the new code.

CIPD Ireland has filed a comprehensive submission to the Workplace Relations Commission as part of the consultation process in developing a Code of Practice to give employees the ‘Right to Disconnect’.

Director Mary Connaughton said that the issue has come into sharp focus in the past 10 months, “it’s important to remember that the realities of remote working in 2020 are not the future”. She said new code should be “principle based and provide guidance on good practice to both employers and employees”.

Any code needs to keep Ireland “an attractive place to invest”

“Trust and technology are precursors to productive, effective remote working and the Code must empower all sides to find a way forward that works for them”, she said.

The following points are among the main recommendations from CIPD Ireland:

- The Code must define the Right to Disconnect and CIPD recommends it follows European developments as “the right of workers to switch off their digital devices after work without facing negative consequences for not responding to communications from managers, colleagues or clients.”
- The Code of Practice (CoP) must separate the right of employers to communicate and the employee’s right to switch off - this is a critical distinction. Imposing restrictions on the hours during which companies can issue communications risks adversely affecting multinational companies operating here and thereby harming Ireland’s global reputation.
- Employers must not be penalised for issuing communications to workers outside of general working hours, employees must be empowered to not to engage with such communications until their working day.
- While the CoP should recognise the right to disconnect, CIPD Ireland believes employers should not be penalised for giving employees the flexibility and ownership around hours and ways of working.

- The Right to Disconnect is, at its heart, about well-being and should be linked to Health and Safety legislation - such legislation recognises variations across workplaces.
- The CoP must clarify which type of workers it covers - permanent staff members, freelancers, contractors, etc.
- The current Organisation of Working Time Act works against flexible and remote working and must be reviewed and changed. CIPD believes this should be done with the aid of a consultation process.

“BLENDED WORKING”

CIPD says it is the voice of 6,000 HR and L&D professionals in Ireland.. It reports a strong interest among members - and employers - in a “blended working” approach for the future.

The introduction of legislation to provide employees with the right to request remote working is seen as a “positive move”, but CIPD wants to be broadened to cover flexible working, not just remote working.

It says the Government’s recent ‘Making Remote Work’ report acknowledges the benefits of flexible working, which can cover how long, where, and at what times employees work - not just the location of where work gets done. “We believe the government should move to bring in the right to request access to flexible working, not solely remote working, from the first day of employment.”

BOUNDARIES

CIPD says its members are very aware of the “work-life boundary issues” that have emerged during Covid-19. While these need to be addressed and the ‘right to disconnect’ is a useful step, employers shouldn’t be penalised “for giving employees the flexibility and ownership around hours and ways of working”.

The CIPD acknowledges that the growing use of technology and digital working, accelerated during Covid-19, has raised concerns about employee wellbeing. It notes the wider issues about the extent of, and safe use of, this technology that is not related to the employment relationship.

Citing its HR practices 2020 survey, CIPD says this found that the majority of the 500 respondents considered that the positive and negative effects balance each other out (44%), a third believe the negative outweigh the positive effects, with only 21% agreeing the positive effects outweigh the negatives.

It says employers and employees need to continue to develop practices and behaviours that facilitate engagement, work-life balance and productivity. The environment of Covid-19, it says, has highlighted the wellbeing and social isolation of those working from home. Yet to be published CIPD research, it says, will show that the biggest challenge of remote working in 2020 was employee wellbeing and the “always-on culture enabled by technology”, which was a contributor to mental health issues.

But it contends that the extent and nature of remote working in 2020 is not the future, and “should not be the driver of a Code of practice”. The clear evidence at company level from its members and from research (Western Development and NUIG surveys, 2020), is that workplace strategies for the future will be seeking to adopt a more blended approach.

AVOID 'ENTITLEMENT'

"A Right to Disconnect COP (code of practice) must allow for policies at company level to fit within their broader framework on how flexibility will be exercised in the context of the future of work" post-Covid, says CIPD.

It says employers are very conscious of the need to manage employee expectations. There is a need to position developments such as this Code and the proposed 'Right to Request Remote Working', and associated publicity, **"to avoid giving or being seen to give a right or entitlement to remote or flexible working to employees"**. (IRN emphasis)

CIPD says employers will ultimately have to determine how and where work can be done and the extent to which employee expectations can be accommodated.

"WRONG MESSAGE"

CIPD notes that the fundamental of the Right to Disconnect is "already embedded" in the Organisation of Working Time legislation, which limits hours of work and requires employers to record working hours. A review and changes to the Organisation of Working Time Act is required, it says.

"We hear continually from employers how it is operating against flexible and remote working, causing employers not to introduce those practices, and getting in the way of building trust. Trust and technology are two precursors to productive effective remote working, and OWT record-keeping requirements demonstrate mistrust and give the wrong message to employees", according to CIPD.

The Government needs to consult on the changes needed under OWT. For example there could be opt-out mechanisms for employees regarding recording working hours, once pay rates are above a certain threshold. It also needs to research the viability of initiatives such as the UK's OWT opt-out clauses and the approach being adopted in Finland, whereby employees may be less restricted in when and where they work for 50% of their working hours.

It says the approaches currently in use have adopted what has been labelled a 'softer approach' agreed at sector or company level." Examples include: training emphasising the importance of work-life balance; using pop-up messages reminding workers (or clients) that there is no requirement to reply to emails out of hours; and relying on the employee to disconnect, "though there is an acknowledgement of a possible reluctance by employees to do so if it is seen as betraying a lack of ambition, which might harm their career".

AVOID "HARD MEASURES"

CIPD says "hard measures" include shutting down employees' internet connections after a certain time or blocking incoming messages – effectively a 'right to be disconnected' – have not been seen as the solution. While it may be more effective and places the onus on the employer, it would "significantly limit the flexibility of both employers and workers around working time".

Regarding a future EU directive, CIPD says that in a resolution adopted on December 1, 2020, the Employment Committee of the European Parliament said member states had to ensure that workers were able to exercise the right to disconnect effectively, including by means of collective agreements.

Adding that this was vital to protect workers' health, the same Committee called on the European Commission to propose a directive enshrining the right. CIPD says this non-legislative resolution is expected to be voted on in a plenary session in January 2021. "Once endorsed by the parliament, it would be advanced to the commission and member states for implementation as part of future regulatory decisions", it explains.

NOT NEEDED

Regarding the Government's proposal to introduce a Code of Practice on the Right to Disconnect by the WRC, CIPD agrees that "primary legislation is not required on this". It says the Code would provide guidance for employers and employees and be used in a case in the WRC, re-emphasising that a right to disconnect is already embedded in the OWT legislation.

As a wellbeing concern, CIPD says that a Code of Practice should connect to Health and Safety legislation.

It says each company has "to develop, consult and educate around a policy, it has to take account of the commercial environment, for example a multinational with a lot of US contact late in the day, and it has to put responsibilities on both employer and employee".

From consultation with CIPD members, the submission says it is clear that embedding the Right to Disconnect is "about the organisation's culture more than anything, and bringing that alive will be a culture change process". Consultative engagement with employees in the co-creation of policy is a key aspect of embedding the right culture, "along with engaging with the trade union or other appropriate mechanism at enterprise level".

"RIGHT TO SEND"

But CIPD cautions that the Code "has to separate out the right to communicate and the right to switch off". Employees have the right to switch off, and companies are still able to send communications. "This is a critical distinction", it says.

Importantly, CIPD explains that at organisational level, "international organisations will send corporate communications at a time that suits during their working day".

In a message to policy makers, CIPD cautions that this may not be the same as the normal working day in Ireland, warning: "it would significantly damage our global reputation and competitiveness if corporate headquarters had to remove Irish-based employees from such a list".

Moving the discussion back to flexible work, the submission says if employees have the choice to work atypical hours, for example, parents managing childcare in this lockdown, a restriction on when employees can send communications would be stressful and unproductive.

"Removing a key perceived benefit of flexible and remote working – the ability of an employee to move their working hours around to suit their life – would be counterproductive for future, in terms of competitiveness and performance", is how CIPD puts it.

Therefore, it recommends an approach to the Code that focusses on the employee's "right to switch off" and that there is "no expectation that an employee is available until next normal business hours, for example the next day". The Code should address the right to be "informed and educated that this is how the company operates". Also, it should not focus on the rules

around sending emails, though employees should be discouraged from sending emails outside normal hours of work.

It says the proposal for a Code of Practice on the 'Right to Disconnect' has already raised concern among the HQ of global companies with a base here. There is a fear that Ireland "will be closed for business outside the normal working day". This fear, "even if not the reality, can have an impact on our reputation and investment opportunities. There is clear evidence of the effect of the French initiative on this topic", it adds, referencing French policies in this area.

A Code needs to be actioned speedily "to reduce the uncertainty it has already caused" and needs to be flexible in order to allow business units here continue to perform effectively, and to "keep Ireland an attractive place to invest and do business".

At its heart, the Right to Disconnect is about respect, CIPD concludes, "respect for oneself in disconnecting from work and respect for others' work life balance boundaries and not creating unrealistic expectations of response times".

COMMENT

Almost a year into pandemic lockdown, the debate around the 'right to disconnect' and remote working, is set to become a little more fractious.

Remote work, perhaps surprisingly, turned out to be not just popular for many, but was effective and efficient for the most part. Issues such as employer concerns around monitoring and lack of direct access to their staff were eased by the overall outcome, with productivity – in most instances – seemingly unaffected.

But the issue of a 'right to disconnect' was given added impetus by the very fact of remote working from home, as work tended to intrude, inevitably, into personal or family time.

Codifying new pandemic-induced work patterns, and facing the fact that they are here to stay in some fashion, is a serious medium and long-term concern for employee representatives – and for employer organisations, or those representing the HR function, like the CIPD.

There has been a tendency of late to caution against the notion of remote working becoming the norm for many employees; hence, the focus on flexibility and blended options in these CIPD and recent Ibec proposals. Issues such as recruitment, performance appraisal, engagement, creativity and productivity all come into play.

In some cases, especially in social media giants, the scene has been set for a major shift away from traditional office working. In some areas, however, the prospect is viewed with some caution.

There are also non-workplace, business-related issues, to be factored in in many cases: such as rental of office space, ownership of offices and so on.

For Government, the whole issue poses questions around the viability of city centres, local businesses, transport and property values.

For HR professionals, the concerns around remote working are many and varied, as the CIPD submission demonstrates. Setting hard and firm rules may not always be possible. For example,

should a firm that is dependent on specific skills develop a policy that disallows full-time homeworking, say from a distant remote location? How would that work if a few of its scarce specialists insisted on continuing to work from their remote locations? This suggests that the jobs market may dictate some aspects of HR policy in this area, certainly in areas where skills can “walk”.

Many have also discovered the joys of having no commute, to be able to “arrive” in work within minutes. Equally, others, unable to fully focus at home due to the pressures of family life, or who find isolation especially challenging, will welcome getting back to the office - at least for some of the working week.

Ultimately, CIPD’s emphasis on flexibly and blended options will probably suit most people, if not all. Its submission is well thought-out and will help focus some of the general discussion around HR and business needs, and especially with respect to the requirements of Ireland’s crucial MNC sector.