



## Right to disconnect

The amendments will introduce an employee right to disconnect into the *Fair Work Act 2009* which makes clear that employees are not required to monitor, read, or respond to employer or work-related contact out of hours, unless refusing to do so is unreasonable.

### What has changed?

The *Fair Work Legislation Amendment (Closing Loopholes No. 2) Act 2024* introduces a high-level right to disconnect for all national system employees into Part 2-9 of the *Fair Work Act 2009* (the Act).

Employees will now have a right to not respond to contact from their employer outside of their working hours, unless doing so is unreasonable.

The right to disconnect will inform how employers and employees interact outside of working hours. The right **does not** prohibit employers from contacting their employees, nor does it prevent employees from contacting one another, including across time zones. Rather, the employee will be able to refuse to monitor, read or respond to contact, or attempted contact outside of working hours, when they are not expected to be working or paid to be working, so long as doing so is not unreasonable.

There are factors to help determine whether an employee's refusal to monitor, read or respond to contact is unreasonable. These non-exhaustive factors include:

- the reason for the contact or attempted contact
- the method of contact and level of disruption it causes the employee
- whether the employee is being compensated to remain available or perform additional work outside ordinary hours
- the nature of the employee's role and the employee's level of responsibility, and
- the employee's personal circumstances (including family or caring responsibilities).

Other factors can be considered, like patterns of behaviour.

Employees' right to refuse employer or work-related contact (or attempted contact) out of hours will be a workplace right, so the general protections in the Act will apply.

### **Modern awards will also include industry specific right to disconnect terms**

The Fair Work Commission (the Commission) is required to vary all modern awards to include right to disconnect terms. This will give businesses and employees the opportunity to engage in the Commission's consultation process to ensure the new terms reflect the realities of the occupation and industry.

### **The Fair Work Commission will be able to deal with disputes promptly, including by issuing stop orders**

Parties will have to try to resolve a dispute between them at the workplace level. If they cannot, an employer or employee (or a person or industrial association representing them) will be able to apply to the Commission to resolve the dispute.

The Commission will be able to make an order, or deal with the dispute as it considers appropriate, to resolve the dispute (other than ordering the payment of a pecuniary amount). This includes dispute resolution by mediation, conciliation, making a recommendation, or expressing an opinion. If both parties agree, the Commission may arbitrate the dispute.

The Commission will be able to make orders to stop employees from unreasonably refusing contact; or to stop employers adversely treating an employee or requiring them to continue to accept work-related contact (when an employee's refusal is not unreasonable).

A person may be subject to civil penalties for contravening a Commission order in relation to the right to disconnect.

## **What do these changes mean?**

The employee right to disconnect will encourage employers and employees to talk about contact out of hours and set expectations that suit the workplace and the particular role. The right is about making sure employees know when they can switch off and what they have to do when they are not working (and not being paid).

There are no obligations that limit employers or others from contacting or attempting to contact employees – just protections for employees who reasonably switch off. Nothing prevents employees working in different time zones contacting each other during their respective work hours.

The Commission will issue guidelines and the Fair Work Ombudsman will provide tailored support, which will support businesses (particularly small businesses) to understand the changes.

## **When will these changes come into effect?**

The right to disconnect will apply to national system employees and employers, other than those in small business employers, from 26 August 2024. Modern awards will include a right to disconnect term from this date.

For small business employers and employees, this measure will not commence until 26 August 2025, providing additional time for these employers and employees to make arrangements that suit their workplace.

For more information on the Closing Loopholes legislation, visit: <https://www.dewr.gov.au/workplace-relations>.