

New technologies and the right of the worker to disconnect from work: reality or utopia?

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The increasing use of new technologies in the workplace enhances worker control by the employer beyond the maximum limits of working time. Control is exercised in such a way that many workers are continually "attached" to work.

These abusive practices of the employer, besides preventing the employee from enjoying the rest periods that the law assigns them, cause considerable social damages, either at personal and family level, by aggravating the level of stress to which the worker is exposed in the face of continuous pressure.

The permanent connection of the worker to work is verified, either in situations where the worker provides his activity through teleworking or in other situations in which the employer demands the worker to always be available for off-site work and working time.

This uninterrupted availability may consist of responding to the employer's e-mails, answering the telephone (often employer-owned), or managing incessant business applications on the worker's smartphone.

The question of the use of new technologies in the workplace has been provided for by law, in particular in the Labor Code (Articles 14 et seq.), with a view to guarantee to the worker its privacy and to stop the employer technology to control the worker's activity.

Recently, the question arises as to whether the worker has the right to disconnect when he is beyond his working time.

The theme discussion started very recently. In particular, the discussion was launched after the entry into force of Article 55.^o of the French Labor Law, which granted the worker the right to disconnect, namely the right to not consult work e-mails accounts after working hours.

In Portugal, the issue is discussed above all in the media and, legally speaking, there being no other rules, it will have to be framed in articles 197.^o and following of the Labor Code that govern the duration and organization of working time.

Over time, the issue of working time has been one of the most problematic aspects of the execution of the contract of employment, because it mirrors the antagonistic reality of employers and workers. And, although the maximum limits of working hours are fixed by imperative norms, these have not proved sufficient and adequate to guarantee the worker the right to disconnect, or to leave the workplace when it's not work time.

Employers' abuse of working time has been boosted by the economic crisis we have been experiencing and by the imperative need to ensure the competitiveness and survival of firms – and jobs.

Given the current legal framework, what can Portuguese workers expect? Can they rely on their employers to disconnect without risking penalties or other damage to the employment relationship?

Can this right become a reality, or will it, upholding all economic and legal circumstances, a utopia?

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