

## RIGHT TO DISCONNECT

### What is the right to disconnect?

The right to disconnect gives employees a right to refuse to respond to contact (or attempted contact) from:

- their employer; or
- from a third party (such as a client of the employer

**outside the employee's working hours, unless the employee's refusal to do so is unreasonable.**

### What kind of contact is included?

Contact includes monitoring phone, email or other communication services, or responding to calls, texts or emails etc.

It does not prevent an employer, or a third party, from calling, texting or sending an email outside of working hours.

### What is unreasonable?

The employee cannot exercise the right to refuse if the refusal is unreasonable.

Factors that may be taken into account when determining whether engaging in contact outside of regular hours is unreasonable can include:

- the reason for the contact (e.g. the urgency, seriousness and necessity of the contact);
- how the contact is made (e.g. work or personal devices/as a request or a demand);
- the employee's personal circumstances (e.g. any caring responsibilities);
- the level of disruption caused to the employee;
- the nature of the employee's role and the level of their responsibilities; and
- the extent to which the employee will be compensated (i.e. monetary, time off in lieu etc).

### What are 'working hours'?

Working hours is a broad term which can include reasonable additional hours outside the 'ordinary hours of work' and depends on the terms of the employment relationship.

### What breaches the employees' right to disconnect?

Contacting or attempting to contact an employee outside of their working hours will not automatically contravene the *Fair Work Act 2009*. However, employers must not take adverse action, such as demoting or dismissing an employee, as a result of the employee exercising their right by reasonably refusing to respond.

### What if there is disagreement as to whether the contact is reasonable, or the right to disconnect applies?

If an employer and employee cannot resolve the dispute at a workplace level after genuinely attempting to, then either party can refer the dispute to the Fair Work Commission (**FWC**).

The FWC may mediate or arbitrate the dispute. The FWC will have the power to make different kinds of orders, including orders to:

- stop an employee from refusing contact: or
- stop an employer from taking certain actions (e.g. disciplining an employee and/or requiring the employee to make or accept contact).

Failure to comply with an order can result in a penalty of up to \$18,780 for each contravention.

### What should LPA Members do in preparation for the right to disconnect?

Employers should consider doing the following:

- Consider the kind of contact likely to occur with employees outside of working hours and determine what is required and reasonable for their employees.
- For employees who are expected to sometimes be available for work outside regular hours (those in a senior role and/or those who are remunerated in such a way), communicate your expectations explicitly.
- It may be appropriate to update contracts of employment to clarify the expectations and/or any compensation for responding to contact outside of work hours.
- Update policies or include a right to disconnect policy outlining expectations and best practice for communication outside of work hours.

### When does the right to disconnect commence?

The right to disconnect commences:

- **26 August 2024** for employers with 15 or more employees.
- **26 August 2025** for employers with less than 15 employees (small business employers).