

ACTUS WORKPLACE LAWYERS

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Right to disconnect

Operative from 26 August 2024, the Fair Work Act will give employees a 'right to disconnect'.

An employee will have the right to refuse to monitor, read or respond to contact, or attempted contact, from an employer outside of the employee's working hours unless the refusal is unreasonable.

An employee will also have the right to refuse to monitor, read or respond to contact, or attempted contact, from a third party if the contact or attempted contact relates to their work and is outside of the employee's working hours unless the refusal is unreasonable.

The Act includes the following list of matters that a Court or the Fair Work Commission (FWC) must take into account in deciding whether an employee's refusal is unreasonable:

- the reason for the contact or attempted contact;
- how the contact or attempted contact is made and the level of disruption the contact or attempted contact causes the employee;
- the extent to which the employee is compensated:
 - to remain available to perform work during the period in which the contact or attempted contact is made; or
 - for working additional hours outside of the employee's ordinary hours of work;
- the nature of the employee's role and the employee's level of responsibility;
- the employee's personal circumstances (including family or caring responsibilities).

The FWC will have the power to deal with disputes about the right to disconnect including the power to issue orders:

- Preventing an employer from continuing to require an employee to monitor, read or respond to contact or attempted contact.
- Preventing an employee from continuing to unreasonably refuse to monitor, read or respond to contact or attempted contact.

The FWC must issue Guidelines about the right to disconnect. The FWC must also vary all awards by no later than 25 August 2024 to include a right to disconnect term.

Enterprise agreements are able, but not required, to include more favourable rights to disconnect than the rights in the Fair Work Act.

For businesses with less than 15 employees, the right to disconnect is operative 12 months later, i.e. from 26 August 2025.

For advice or assistance with the new right to disconnect, please contact **Justine Smith**, Lawyer of Actus Workplace Lawyers on 0414 947 651 or Email: justine.smith@actuslawyers.com.au.