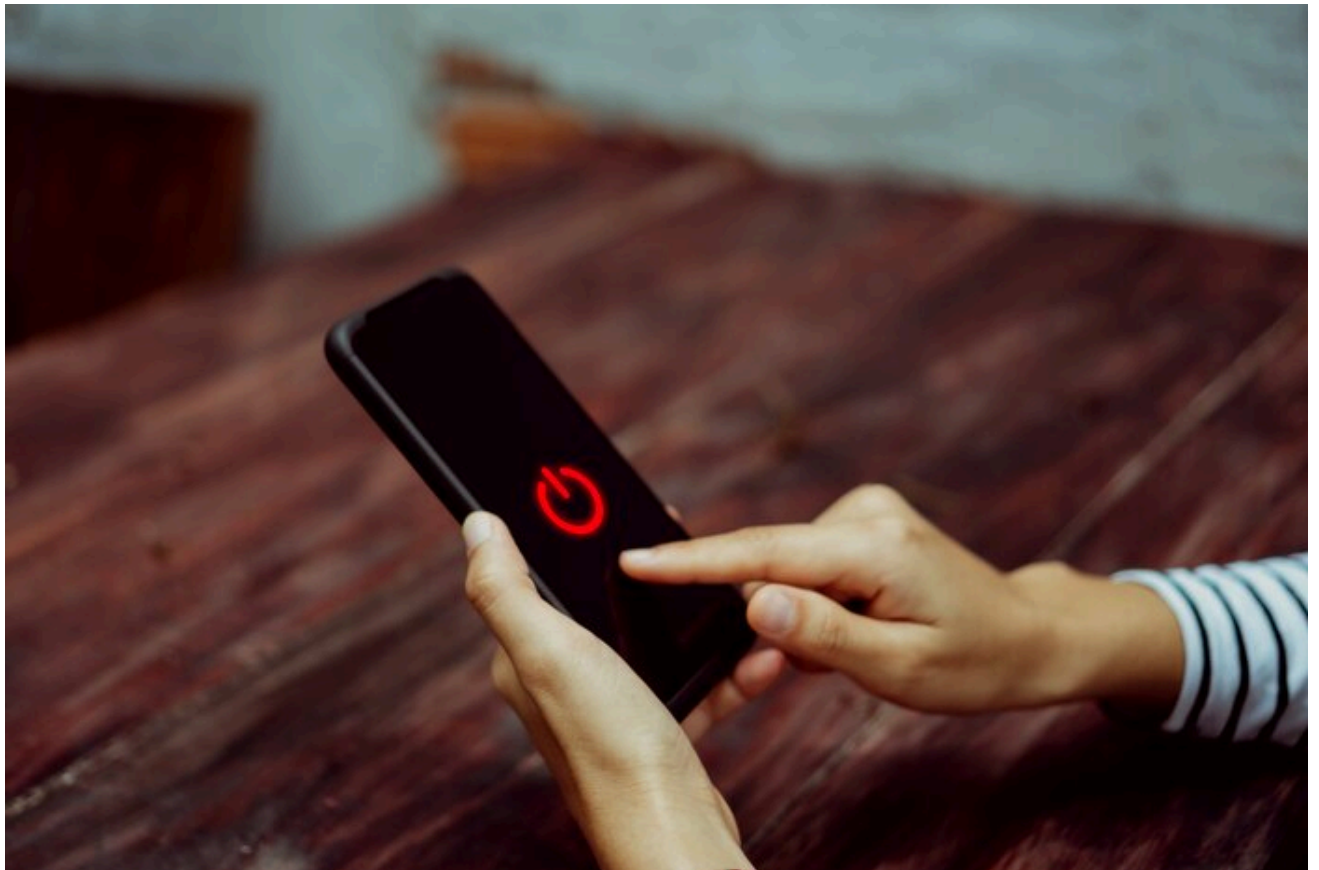


Right To Disconnect Plan May Erode Firms' Long-Hours Culture

By **Marialuisa Taddia**

Law360, London (October 25, 2024, 9:09 PM BST) -- The government's softened plan to grant employees the right to disconnect out of hours could gradually erode the legal sector's entrenched long-hour culture, but it's unlikely to make major changes anytime soon, employment experts predict.



If clients are "switching off," lawyers say, it might allow more space for the legal sector to do the same. (iStock.com/Suwaree Tangbovornpichet)

Although "the right to switch off" **didn't make it into** the Employment Rights Bill published earlier in October, the government said that it will consult on introducing the measure through a statutory code of practice alongside the bill's passage.

That kind of approach, which would, at most, yield a higher payout for employees who take matters to tribunals, is unlikely to stop after-hours emails for lawyers anytime soon. But if there is a broader cultural and market-practice shift around work-life balance across the U.K. over time, there could be a shift for lawyers, too, according to Ben Smith, a senior associate at specialist employment law firm GQ Littler.

"If our clients are 'switching off,' so to speak, that might allow more space for lawyers to do the same," he said.

That decision not to mandate the right in the law, the way France has done with financial penalties for not complying, is something of a reprieve for law firms and other employers, according to James Townsend, co-head of the employment department at Payne Hicks Beach LLP.

"A code of practice would normally set guidelines for employers to follow, and although not legally binding, they are something that can be taken into account by employment tribunals," Townsend noted.

The right to disconnect is both contradictory and essential in a profession where clients are paramount, and lawyers are expected to be constantly available. This need is **underscored by the case** of Vanessa Ford, a transaction partner at Pinsent Masons LLP, whose inquest revealed she often worked 18-hour days during the high-profile sale of a U.K. Premier League club to a U.S. private equity firm.

Current legal protections, including for lawyers, are "limited, and they are not very effective," according to Fox & Partners' Ivor Adair. Although there is a duty of care in employment contracts to protect health and safety, proving a breach is difficult and requires showing foreseeable personal injury, he said.

Legal employers are stuck between a rock and a hard place. Though U.K. rules cap employees to an average of 48 hours of work, many opt out, especially in the legal sector. And the pressure to respond to clients' demands faster than the competition is "immense," especially in a digitally connected world, he noted.

"It's going to be very difficult for law firms to want to lean into that process where they have basically a concern regarding competitiveness and productivity," Adair said.

But, he added, "a balance needs to be struck because otherwise the individual potentially overwork themselves and become unproductive," he added.

As the code will undergo consultation, it remains unclear exactly how it would apply to lawyers.

GQ Littler's Smith anticipates a single set of broad principles for all employers. That would allow companies to adapt these principles to their specific business and sector, similar to the way the Acas Code of Practice on disciplinary and grievance procedures or the recent guidelines on "fire and rehire" tactics work.

If it does work similarly to the Acas code, an unreasonable failure to follow the guidance could entitle an employee to an uplift in compensation in a successful claim, of up to 25%, Adair noted.

"Without that, I don't think the 'right' to switch off is going to lead to much in the way of meaningful change for employers generally, and particularly not in the legal sector, where pressures on long hours and client service are particularly acute," Smith said.

Adair added that what is considered "reasonable" will vary by sector and could lead to legal disputes. For instance, a private equity fund will have different expectations on working hours compared to other sectors.

"Individuals, employers, and even the culture of entire sectors and industries tend to hold opposing views," he said.

Any change will be incremental rather than a quantum leap.

"Simply by having a process where the employer is required to turn their mind to the issue in a structured way and address it, it's probably going to help," Adair said.

It means tackling the risk of burnout, managing the sustained mental load for those in demanding roles with caring responsibilities, and improving the culture of work-life balance.

However, Smith remains somewhat cynical, arguing that this is unlikely to occur in the foreseeable future, especially given the expected minimal implementation of the "right" to disconnect.

James Davies of Lewis Silkin LLP said that the right to disconnect was always "a bit of a misnomer. It's more a right not to work excessively on a regular basis," he said.

"It will make little difference to lawyers, though it is likely to enhance belief that excessively long hours is unacceptable," he said.

France, which was the first country to implement the right to disconnect in January 2017, doesn't offer much insight into what British lawyers might experience, because its statute doesn't apply to the majority of lawyers.

The notion of "working hours" does not exist for most white collar workers who are under a scheme called "forfait jours" where working time is counted in days instead of hours, Davies said.

Moreover, lawyers working in law firms are technically considered to be self-employed in the overwhelming majority of the cases in France, so these obligations do not apply to them most of the time, he further pointed out.

Maya Beauville, a self-employed associate at Littler Mendelson PC in Paris, noted that because self-

employed associates are independent, they already technically have a "right to disconnect."

"In practice," however, "many associates are afraid to turn down work from their partners in order to develop their own clientele," she said.

Beauville said that she has yet to see a prospective client choose a firm based on its right to disconnect policy.

"The pressure from clients tends to be in the opposite direction, as they expect lawyers to respond quickly and be easily accessible," she said.

Still, there are some signs of incipient changes with younger lawyers choosing in-house roles that typically do benefit from the right to disconnect at the same time that a tougher bar exam has left fewer people joining the field, Beauville said.

In response, some law firms in France have already started introducing policies of no weekend or night work, or a shorter working week, although she said that these changes are easier to implement in smaller firms with little M&A or arbitration work.

In the U.K., the right to disconnect could have even less impact, as the government plans to adopt a model similar to those in Ireland or Belgium, rather than the stricter French approach, which includes fines of up to €3,750 (\$4,050) and one year in prison. The right to disconnect was introduced in Ireland in 2021 and in Belgium in 2023.

Davies of Lewis Silkin described both the newer models as "lighter touch" with no specific sanctions for breaches.

The Irish model is based on the same kind of nonbinding code of practice Labour has promised. Because the regime doesn't give employees a specific right to bring a claim, it has had minimal impact on employees' lives in that country.

Even though any changes likely won't take effect in the U.K. before 2026, some U.K. firms like Pinsent Masons are already **trialing** the technology to track staff working hours, while audit giant KPMG is introducing "energy check-ins" in the U.S., following a successful 2023 pilot.

It's still early days, but even despite the limitations, "the direction of travel may be that a right to disconnect is increasingly seen as a fundamental right of the working individual," Adair said.

--Editing by Nicole Bleier.