



Leman Solicitors Employment Update

The Right to Disconnect and Remote Working

The COVID-19 pandemic has been the catalyst driving legal development on remote working in Ireland. However, remote working is not a new concept, and as many will recall, the government produced a report in December 2019 discussing the benefits of remote work in Ireland.¹ Since then, the National Remote Work Strategy (the “Strategy”) has confirmed the Government’s commitment to legislate for the right of employees to request remote work by Q3 2021 and to introduce a Code of Practice on the right to disconnect (the “Code”) by Q1 2021.

Indeed, moving the boundaries of the workplace to the home has inevitably triggered the need for employers to consider a range of different issues, including an employee’s right to disconnect from work. These are two extraordinary facets of the “new normal”, which must be considered in tandem.

This is illustrated by a recent Financial Services Union (FSU) Covid-19 survey which considered the challenges for people working from home.² The survey revealed that:

- 44% of employees felt pressure to answer calls and emails outside of working hours;
- 56% of employees had seen an increase in work intensity; and
- 66% of employees reported an increase in work-related stress.

These findings were supported by a separate survey conducted by Fórsa, in response to concerns about encroachment of work into home time, in which 42% of employees confirm they found it harder to disconnect from work phone/emails when working from home.³

What is the “Right to Disconnect”?

The right to disconnect is defined as a worker’s right to be able to disengage with work and refrain from engaging in work-related electronic communications, such as emails or other messages, during non-work hours and holidays.⁴

The Organisation of Working Time Act 1997 (the “1997 Act”) provides employees with various protections regarding rest periods and working hours. This was illustrated in the decision by the Labour Court in *Kepak Convenience Foods Unlimited Company v Gráinne O’Hara*⁵, where an employee was awarded €7,500 compensation for having to regularly work in excess of 48 hours a week, and found that the employer failed to record employees’ working hours.

Since the enactment of the 1997 Act, the rapid growth of technology has resulted in employees being constantly accessible and has made it more difficult for employers to monitor their working hours. In order to protect employees from overwork while avoiding overregulation, the Government has asked the Workplace Relations Commission (the “WRC”) to draw up the Code. The purpose of the Code is to provide guidance for employers on recording and managing employees’ working hours and implementing a right to disconnect policy in consultation with staff.

The Right to Request Remote Working

The Strategy provides that the Government intends to legislate for an employee’s right to request to work remotely. While we await this legislation, it is expected that the legislation will provide employees with the framework for making such a request and guidance for employers on how to deal with such requests.

The Strategy also refers to the Work-Life Balance Directive, which came into force in the EU in August 2019. The Directive sets out legislative requirements aimed at supporting work/life balance for parents and carers. The Directive also includes the right to request flexible working arrangements for carers and working parents of children up to eight years old. As the definition of flexible working is clearly much broader than remote working, it is possible

¹ This Report can be accessed by [clicking here](#)

² FSU, Covid-19 survey, dated from 7 April to 8 May 2020, can be [accessed clicking here](#)

³ Submission by Forsa to the DBEI, dated 7 August 2020, can be accessed by [clicking here](#)

⁴ Eurofound, “Right to Disconnect”, dated 22 October 2019

⁵ ADJ-00008654

that future legislation on remote working in Ireland will also refer to flexible working arrangements under the Directive. However, the parameters of this legislation remain to be seen.

Key Takeaways for Employers

While awaiting the introduction of the Code and legislation on the right to request remote working, to prepare for these changes, employers should take the following steps:

- In view of obligations under the 1997 Act, employers should implement a policy on the right to disconnect to emphasise the importance of switching off after work hours. This could be implemented as a standalone policy, as part of the Company's current employment handbook or under the employer's remote/flexible working policy. This policy would confirm employees working hours, ensure adequate time recording of employees' working hours and the consequences of employees working over the average 48 hour working week.
- For any policy to be effective, employers should ensure that appropriate training is provided to management who are enforcing the policy. This is particularly important where the policy requires a substantial shift in the organisation's culture.
- Employers should consider how remote working would impact their business and certain roles within the business outside of the COVID-19 pandemic. Whilst remote work is an option for many employers, not all roles are compatible with remote working arrangements. It is important that employers are in a position to manage employee expectations when legislation on this matter is implemented.
- Prior to concluding a remote working policy, employers should consult with staff on the proposed remote/flexible working arrangements. This allows employers to obtain buy-in and support from staff when implementing such policies.

Conclusion

Supporting remote working in the long term will require employers to consider the wider ramifications of these changes on the business and working arrangements. This includes ensuring that employees have the right to disconnect, so there is a clear definition between an employee's professional and personal life when working remotely.

In the meantime, employers are advised to monitor the objectives of the Strategy to ensure their organisation will be prepared to meet employee needs and compliance obligations in the future.

Our Employment & Corporate Immigration Team regularly advises employers on how to comply with legal developments. For further information on how your business can prepare for these changes, please contact Bláthnaid Evans or Sheila Spokes, +353 1 639 3000 or visit www.leman.ie.