



*Caroline Scherrmann
Partner, Flichy Grangé Avocats
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A reminder to respect the French right to rest

Employers should take stock of the Supreme Court's reassertion of the right to disconnect

The right to disconnect is an essential right in France since it was introduced into the Labor Code on 8 August 2016. This law guarantees all employees who use digital tools the right not to be connected or contacted by their employer outside their working hours so that their rest time can be effective.

The implementation of this right raises many questions in practice. In particular, can the employer invoke operational constraints linked to the company's activity to contact the employee outside working hours, and punish him for not responding?

In a ruling on 9 October 2024, the French Supreme Court (*Cour de cassation*) answered this question in the negative, reaffirming the primacy of the employee's right to disconnect from work over and above the company's operational constraints. Not being reachable on a personal telephone outside working hours is not a fault.

In this case, an employed truck driver was dismissed for serious misconduct after having insulted his line manager on Facebook, and after having received three disciplinary warnings for not answering calls from his employer on his personal cell phone during rest periods. The employee challenged the validity of his dismissal for serious misconduct, as well as that of his three warnings.

With regard to the warnings, the employer reproached the employee for failing to comply with company policy, which required employees to find out in advance the tasks they would be carrying out the next day.

In this case, the employee had not done so on his rest day, so the employer called him several times on his personal cell phone to help organise the next day's work. But he was unable to reach him.

The Court of Appeal refused to cancel the disciplinary warnings on the grounds that the employee had always complied with the company's instructions in the past, and that they were not prohibited by the French national collective bargaining agreement applicable to the road transport sector.

The Supreme Court overturned the Court of Appeal's decision and cancelled the warnings, stating it was not the employee's fault he could not be reached outside working hours on his personal cell phone. The employer could not, therefore, justify a disciplinary sanction on that basis.

The court did, however, uphold the employee's termination over the abusive Facebook messages and other disciplinary actions relating to taking photos while driving.

The decision, which is fully aligned with the existing French case law, is a reminder that the right to rest and disconnect are essential employee rights in France, which employers are bound to respect.

As a result, the employer may not take disciplinary action against an employee who refuses to respond to requests outside working hours, even if the employee has done so in the past, and even if such contacts during rest time are common practice within the sector the company operates.

In this context, employers in France are strongly advised to take the necessary steps to ensure that the right to rest and the right to disconnect are effectively respected, and to adapt their organisation and communication with employees accordingly.

In practice, this notably means that companies with at least 50 employees should enter into negotiations, in principle on an annual basis, with the representative trade unions within the company on the right to disconnect and its implementation modalities.

For all companies, whatever the size of their workforce, this also means raising managers' awareness of good practice in terms of disconnection.

Some companies, for example, encourage their managers not to send emails to their teams outside working hours or, if employees are not subject to specific working hours, outside usual working hours.

In addition, some appropriate IT measures may be found to better inform employees of their colleagues' rest periods, particularly in international groups with locations in different time zones.

The right to disconnect is linked to other issues under French law; in particular that of working time, which is currently the subject of a much litigation given the more flexible probationary regime for employees in this area.

Thus, in the event of a breach of the right to disconnect, the employer could be exposed to claims from the employees, notably asking for the payment of overtime hours or, should the employer's breach be serious and repeated, claiming for a constructive dismissal and asking for the payment of the related damages.