

# The right to disconnect in Europe and some suggestions for Vietnam

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## ABSTRACT

The digital revolution creates huge changes to social life, including the labor sector and the nature of labor relations. It has also ameliorated social relationships and affected social life in the future. Its positive sides are to increase labor productivity, work efficiency, reduce input costs, and to create many connection methods between employers and employees. However, its disadvantage has led employees to deal with working at any time, disturbing their lives as well as the emergence of an "always-on working culture". It also blurs the boundary between working life and personal life. Employees are responsible for ongoing communication, resulting in compounded tiredness and a loss of efficiency. In addition, the negative impact of the digital revolution in the labor sector is the abuse of communication technology that infringes on the rights of workers, which prompted the introduction of the right to disconnect. The advent of the right to disconnect as a response to the overuse of communication technology in the workplace, or always-on working culture. Currently, many countries have brought in the right to disconnect, the right to disconnect was first regulated by the European Union and its member states. In this article, the authors are going to analyze the following main issues: (1) The right to disconnect and the nature of the right to disconnect; (2) Regulations of the European Union and some European countries on the right to disconnect; (3) Regulations of Vietnamese law on working hours; (4) The authors come to the conclusion that "the right to disconnect" must be included in Vietnam labor legislation and recommend some initiatives to ensure the rights of employees in Vietnam under the negative impact of the digital revolution.

**Key words:** Right to Disconnect, European Union, Labor Law, Vietnam

## INTRODUCTION

Working time and rest time are two of the components that employees care about when participating in an industrial connection in order to sustain the specific object of this relationship, which is labor power. Employees can only achieve productivity, work efficiency, and work-life balance in this manner. Technology devices, on the other hand, can help employees stay connected to work from anywhere and at any time. As a result, calls and messages from the employers "mutilate" the employee's rest time. Since the 1990s, there have been debates about the negative aspects and dangers of digital technology, including the use of technology in employer-employee communication. On the current, the first thread disconnects to the right<sup>1</sup>.

At the national level, the RTD first appeared in the French Court of Cassation (Cour de cassation) ruling in 2001, in which it showed that "employees are not obliged to work from home"<sup>2</sup>; In 2004, the French Court of Cassation<sup>3</sup> continued to mention the RTD by the ruling, in which it displayed that "The inability to communicate with employees by mobile phone after

work is not the fault of the employee"<sup>a</sup>. The content of the RTD has been highlighted in the two judgements described above, despite the fact that they do not directly refer to it. The RTD was formally added to the Code du travail (Labor Code) in 2016 (Law No. 2016-1088 - also known as the El Khomri Law). Companies with at least 50 employees are covered under this rule. The RTD was first mentioned at the international level in 2004. On April 1, 2004, consulting firms and technology companies (referred to as the Sytec industry) reached an agreement. The collective bargaining agreement stipulates the employer's obligation to implement a system to monitor employees' rest time, to conduct collective bargaining with employees during working hours... a provision that stands out is that employees have the RTD, with a "disconnection obligation" in place to ensure that this right is exercised<sup>4</sup>. The European Parliament most recently adopted a Resolution on the RTD directly augmenting EU labor regulation and considered it fundamental freedom (Draft No. A9-0246/2020) on December

<sup>a</sup>The court determined that an employee's failure to answer his work phone outside of his regular working hours was not a valid reason for his dismissal.

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4, 2020<sup>5</sup>.

As a result, when it comes to the risks of the digital era, RTD has been debated since its inception. It was also indicated in the judgements of several countries' judicial bodies until it was mentioned on a global basis in 2004. In 2016, the French Labor Code designated this right as the RTD, with the EU regulatory framework following suit in 2020 and 2021.

There have been suggestions for the RTD to address this issue, not least in light of the significant increase in teleworking during the COVID-19 pandemic<sup>6</sup>. This article analyzes the European Union's draft on RTD, European countries' law on RTD and the facts surrounding its influence on employees' health, well-being, and work-life balance. Subsequently, the author makes recommendations to amend Vietnam's labor law in order to contribute to the development of a healthy, peaceful, and stable working environment as well as labor relations.

This article is based solely on a critical review and analysis of secondary literature on RTD such as Eurofound (2021), Becker WJ (2018), Judicaël Fouquet (2014), R, Yu (2019), Nishiyama, K., & Johnson, J. (1997), etc.

## METHODS

Qualitative research method is used to clarify the research issues, analyze information from previous studies on the right to disconnect. At the same time, authors examine the legal regulations of some European countries on the right to disconnect and evaluate the legal rules of Vietnam to make recommendations.

## KEY FINDINGS

The RTD is a human right of employees in the digital age and is widely recognized in European countries. Currently, Vietnam's labour law does not provide for the RTD; in the context of rapid economic and social development, this right should be promulgated to ensure the rights of employees.

## DISCUSSION

### The Right to Disconnect and regulations in some European countries.

#### *The necessity to specify the right to disconnect.*

In the digital age, the RTD was created as a legal safeguard for employees. This right can be described in several ways:

The downside of economic prosperity is the emergence of some unpleasant work cultures, as well as

forms of digital connection that bond employees to their jobs. Due to economic progress in Asian countries following World War II, there was a need to boost labor productivity. This, combined with the qualities of the Southeast Asian people's character such as industriousness and hard work, has resulted in the "Karoshi" phenomenon (died due to overwork). In 1969, a male employee working in the shipping department of Japan's leading magazine died at work for the first time<sup>7</sup>. Keydzo Obeti, the Japanese Prime Minister, died of "Karoshi" after working 12 hours a day for 20 months. The Japanese Ministry of Labor has been compiling information on the likelihood of death due to overwork since 1987. Many countries have developed a negative work culture as a result of technological advancements, including the "996" culture<sup>8</sup>. The designation "996" denotes that the employee will work from 9 a.m. to 9 p.m., six days a week. This means they will work 72 hours per week and will not be compensated for overtime<sup>9</sup>. There have been suggestions of 996 working cultures in Vietnam, with business owners claiming that "their company's lights do not turn off until 9pm", "there are always employees lingering to work till 9pm", and even considering this to be the company's working culture<sup>10</sup>. Furthermore, the advancement of digital technology offers employees more flexible working tools, but it also forces them to work; employees can be requested to complete any task. At any time and in any place. For fear of missing out on crucial information (FOMO effect), they are driven to communicate with co-workers via email, a practice that results in an "always-on" attitude among modern employees<sup>11</sup>.

A healthy job is one whose labor demand is suitable in relation to the employees' skills and capacities, as measured by their ability to control the work and the support they receive. Because health is defined as a state of complete physical, mental, and social well-being rather than the absence of disease or infirmity<sup>12</sup>, a healthy working environment is one in which conditions promote physical and mental health while avoiding negative effects on employees' physical and mental health. Employees can now work from anywhere and at any time thanks to technological advancements and mobile devices. Its advantages include obviously a flexible approach to work, but it blurs the border between job and personal life, leaving little time for social interactions. As a result, businesses can send emails, messages, or make work-related phone calls to employees at any time, whether they are at home, at night, on weekends, or during vacations. Constant connectivity, coupled with a lack of

relaxation, can result in physiological and psychological issues such as anxiety, depression, and burnout<sup>13</sup>. Employees, in fact, sign a contract to work for a set length of time, and they are not obligated to deal with work received outside of working hours (unless otherwise agreed). However, they still spend a lot of time after work reacting to messages, emails, and phone calls to deal with business, which gives them the appearance of being untethered but actually ties them up emotionally. Become someone who enjoys working rather than someone who works to live<sup>14</sup>. Technology, digital devices, and electronic communication have further entangled people in work, making them slaves to it. They are constantly ready because they are afraid that if they do not react to work emails and phone calls, they will be regarded poorly on their work attitude and capacity, which results in bad consequences in the future. When emails and phone calls come in, it means they are ready to work. This is also one of the main reasons why the RTD must be specified.

In addition, an employee signs a labor contract for a certain period of time, and he/she is under no obligation to deal with the work sent after working hours (unless otherwise agreed). Nevertheless, they always spend a lot of time replying to messages, emails, work-related calls after work. Although they look free, they are actually mentally bound, turning them into a person who “live to work rather than work to live”<sup>15</sup>. The development of technology, digital devices and electronic communication has further tied them to work, turning them into slaves of work. With the fear that if they do not respond to emails and phone calls, they will be judged badly on their attitudes and working capacity, thereby adversely risking their future. Hence, they are always in a state of willingness to work when there are emails or phone calls.

### **Nature and scope of the right to disconnect.**

The RTD is understood as the employee’s right not to participate in work-related electronic communication such as emails, messages, phone calls ... after work<sup>16</sup>. Or simply, it is also known as the right to refuse jobs assigned through digital connections and digital devices outside of working hours<sup>17</sup>; this is a legal guarantee for employees, as technological life leads to a continuous “connection” to work. The RTD also ensures that employees are able to be proactive in deciding on the allocation of their time to balance life and work. The RTD refers to an employee’s ability to opt out of work-related electronic communications such as emails, text messages, phone calls, and

so on after working hours<sup>18</sup>. Or, to put it another way, it is the right to decline duties assigned via digital connections and gadgets outside of working hours<sup>19</sup>. Furthermore, the EU defines the RTD as “the right for workers to switch off their digital tools including means of communication for work purposes outside their working time without facing consequences for not replying to e-mails, phone calls or text messages”<sup>20</sup>. When the advancement of electronic life leads to a constant “connection” with work, this can be interpreted as a legal guarantee for employees. Employees who have the RTD are also more proactive in selecting how to distribute their time in order to balance work and life.

The nature of the RTD, whether it is a civil or a human right, is still a source of debate. If the RTD is a citizen’s right, it is considered to be the result of an agreement between the state and citizens in society, citizenship is established in the Constitution in the fields of politics, civil, economic, social, and cultural basis is the basis for the exercise of other specific rights of citizens and is the main basis for determining the legal status of citizens<sup>21</sup>. Where the RTD is included as part of a human right, it is defined as “*global legal safeguards that protect individuals and groups from acts or omissions that jeopardize human dignity, rights, or fundamental freedoms*”<sup>22</sup>. Characteristics fundamental “Inherent,” “non-transferable,” and “pervasive” are all terms used to describe human rights. Human rights are understood to be: human beings are born with these rights simply because they are human; human rights are non-transferable because they cannot leave the person; and, finally, the universality of human rights means that everyone, regardless of nationality, social status, gender, or race, has the right to have those rights<sup>23</sup>. Because the RTD arose along with the emergence and development of the Internet, digital gadgets, and electronic communication, it is easy to mistake it for a right that requires state acknowledgment, or believe that it is not an inherent human right. Article 24 of the 1948 Universal Declaration of Human Rights, on the other hand, states that “*Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay*”. It can be observed that balancing work and personal life by scheduling reasonable rest and leisure time is a human right value. According to the author, in the digital age, the RTD is a natural extension of the right to rest and recreation, and it should be recognized as a progressive human rights value.

As previously stated, the RTD is a component of the progressive human rights ideal of rest and recreation. The RTD is a human right value that attaches

to all natural individuals due to its "inherent," "non-transferable," and "universal" nature<sup>23</sup>. However, because the RTD arose with the rise of the digital era, it can only be used in a digital setting or as part of the right to work with digital devices. As a result, researchers and countries with laws governing this right have concluded that the RTD applies to all employees who utilize digital tools in the workplace, including atypical employees, as well as the entire field of information technology. This entitlement extends to both private and public sector employees<sup>24</sup>.

### **Regulations of European countries about the right to disconnect.**

In a lengthy history of academic study, there have been numerous points of view on RTD; nonetheless, RTD is mostly creations of the twentieth-first century, particularly the last 20 years. In France, the RTD first appeared in the French Court of Cassation (Cour de cassation) ruling in 2001, in which it showed that "*employees are not obliged to work from home*"<sup>2</sup>; In 2004, the French Court of Cassation<sup>3</sup> continued to mention the RTD by the ruling, in which it displayed that "*The inability to communicate with employees by mobile phone after work is not the fault of the employee*"<sup>b</sup>. Through the two rulings above, it can be seen that in spite of without directly mentioning the RTD, it has raised the inner implication of this Right. On August 8, 2016, France adopted the Code du travail (Labor Code) to modify the RTD (Article L2242-17). This right refers to the obligation of employers to refrain from interfering with their employees' personal and family lives through phone calls and emails<sup>25</sup>. Employees who have the RTD are not required to take calls or read emails related to work during their time off. The Code does not specify how the RTD will be implemented, leaving it up to employees and employers to figure out what works best for them and their line of work. Actually, article L2242-17 only requires employers and employees to meet once a year to discuss the boundaries between their work and personal life. The RTD, on the other hand, is treated seriously, as seen by the 2018 judgment by the Cour de cassation, which held that an employee is entitled to receive overtime pay if he or she is required to be available for work-related phone calls outside of normal working hours<sup>26c</sup>.

<sup>b</sup>The court determined that an employee's failure to answer his work phone outside of his regular working hours was not a valid reason for his dismissal.

<sup>c</sup>The former south-west regional director of the company in France had to leave his phone on all the time and answer to requests from his subordinates or clients in case of any problems while not at

In Italy, the RTD was modified to the legal system through Senate Act No. 2233-B (passed on May 10, 2017). This Act was designed for the agreement between the employee and the employer on the disconnection and flexible work (*Lavoro agile*). Article 19(1) of this Act governs the implementation of work-related agreements, which include the RTD<sup>27</sup>. According to the regulations, employees and employers will agree on the performance of work overtime through digital connection, within the maximum limit permitted by law and trade union agreement. The law also provides that employers must prioritize the requests of mothers with young children or parents of children with disabilities in agreements related to the RTD. This Right will be enforced through an individual or collective agreement. The individual and collective agreement determine the form of work enforcement and regulations on the time of rest, as well as technical measures and surveillance methods, ensuring the enforcement of RTD of employees<sup>28</sup>.

On 1<sup>st</sup> April 2021, the Code of Practice on the RTD of Ireland, whose The RTD is defined for the first time in an Irish context, came into effect. The RTD, according to the Code, refers to an employee's RTD from work and the fact that they can refrain from engaging in corporation electronic contacts outside of normal working hours, such as emails, phone calls, or other messages. According to the Code, there are three major parts to the RTD: i) the right of an employee to not routinely perform work outside normal working hours; ii) the right to not be penalised for refusing to attend to work matters outside of normal working hours; and iii) the duty to respect another person's RTD (e.g., by not routinely emailing or calling outside normal working hours). It should be noted that the Code of Practice is not binding but the Code is now admissible as evidence in court, the Labour Court, or the Workplace Relations Commission - WRC proceedings. The Code of Practice, on the other hand, provides employers and employees with practical assistance to help them satisfy their obligations under existing legislation, which is designed to protect employees from working excessive hours, among other things. This is especially important because the Code recommends that if informal attempts to settle employee complaints about the RTD fail, the company's formal grievance procedure will be used. If a formal grievance procedure fails to resolve a complaint about

work, according to a judgement issued by France's Court of Cassation on July 12, 2018. Rentokil did not consider the employee to be legitimately on standby, thus he was not paid for his time. The court, however, determined that he was on standby because he was specifically identified as someone to contact in an emergency and that he should be compensated for his time.



the RTD, an employer may be forced to defend a claim at the WRC, either under the legislation listed above or under any other employment law.

According to the Code, a company's policy should recognize, where appropriate, that certain businesses and roles do not always operate on a standard hours basis, but rather in a manner responsive to customer needs where flexibility is required to meet the business's needs, and as agreed in the employee's terms of employment. Regarding the current issue of emails being sent and received outside of working hours, the Code specifies that the Policy should emphasize that employees are expected to disengage from business emails, messages, and other communications outside of normal working hours and during annual leave. It should also provide legitimate reasons to contact employees outside of normal working hours, such as confirming availability for rosters, filling in for a sick colleague on short notice, force majeure, an emergency, and/or business and operational reasons. Employers will appreciate the Code's statement that business and operational needs may dictate that there will be situations that clearly require some out-of-hours work by some employees, which depends on the service being provided, the employee's role, the needs of customers/clients, the unique requirement of critical services, and as agreed in an employee's tertiary contract. The Code also recognizes that, where applicable to the business, the Policy should address the issue of working across global time zones, acknowledging that working across time zones and international travel may require colleagues to connect at times other than normal working hours to complete their objectives. Given their work-life balance needs, many employees desire and may request to work in a more flexible way, a practice results in individuals proactively requesting to work outside of conventional working hours. However, even when an employee works flexibly, the right to preserve clear boundaries between work and pleasure should not be jeopardized, according to the Code. Finally, as the Code suggests, it will be critical for employers to ensure that the Policy is 'equality proofed' to avoid unintended negative consequences and to ensure that no employees are discriminated against directly or indirectly on any of the protected grounds under the Employment Equality Acts 1998-2015<sup>29</sup>.

On 21<sup>st</sup> January 2021, the European Parliament passed the Resolution on the RTD to directly modify the joint statement<sup>30</sup>. This Resolution needs to be adopted by European Council before being enforced. The draft on RTD, which included 14 Articles, defined

RTD as the "right not to participate in work-related activities or communications by digital means directly or indirectly outside of working time"<sup>31</sup>. To implement it, Member States must ensure that employers establish an objective, reliable, and accessible system for measuring the amount of time each employee works each day while respecting employees' right to privacy and the protection of their personal data. Employees will have the option of requesting and receiving a record of their working hours. At the same time, the European Union also developed measures to implement the RTD (building a measurement and supervisory tool from independent trade unions, a psychological risk assessment tool for employees...) [31, Article 4]. In addition, Article 5 provide the guarantee measures for employees to avoid disadvantages from the enforcement of the RTD by setting mandatory general norms for member states regarding the guarantee for employees, that they are not fired or discriminated when they refuse the connection after working hours, and the employees have the right to initiate a lawsuit in the above case; the following laws provide for the right to repair, obligation to provide information and sanctions against violating enterprises, the evaluation report to consider information related to the RTD... [31, Article 6, 7, 8, 9, And 10].

In general, EU regulations and the European Parliament's Draft define RTD and the measures to protect workers when their RTD is implemented, such as including RTD in domestic legislation; empowering employee representative organizations to monitor the implementation of RTDs by employers through collective bargaining agreements, ensuring workers are not discriminated against or fired; and ensuring workers are not discriminated against or fired. A lot of countries' laws also allow for exceptions to RTD, such as force majeure, an emergency, and/or business and operational reasons, among other things.

### **Suggestions for Vietnamese labor law Provisions of Vietnamese law on working and rest time**

According to the Labor Code 2019, working and rest time are specifically classified for 02 groups of employees: working and rest time for employees working under normal conditions and working hours<sup>32</sup>, for employees working under toxic and hazardous conditions<sup>33</sup>. In general, Vietnam's labor rules have imposed stringent restrictions on working hours [32, Article 107] and rest periods<sup>d</sup>. Nonetheless, based on the

<sup>d</sup>Clause 1 of Article 137, Clauses 1 and 2 of Article 146, and Clause 1 of Article 160 of Labour Code 2019: - Pregnancy from the 7th

foregoing analysis, Vietnam does not have the RTD as defined by national law.

As a result of the rapid expansion of the internet and the ability to operate through digital devices<sup>34</sup>, “continuous connection” appears to be unavoidable. Despite the rest time provisions, Viet Nam still has the world’s highest weekly working hours<sup>35</sup>, as well as the assignment of additional tasks for employees to work at home via email, text, and phone calls. Because they (additional tasks) are not covered by the labor contract, it is impossible to keep track of without a legal foundation, monitoring methods, and technology controls, that is the reason for the need to take steps to regulate the right to disconnect in Vietnam.

### **Some suggestions for Vietnamese law.**

Firstly, in the context of the rapid development of the internet and the increase of demand for remote work (especially in the context of the outbreak of the Covid\_19), at the same time to ensure human rights values in accordance with Vietnam’s legal traditions, we need to make the RTD reality in the provisions of the law in Vietnam; on the basis of legal research of the countries, the RTD can be added directly to the Labor Code or the provisions of the relevant laws. In addition, the “self-regulation in text” models of some countries are also legislative experience with a high reference value. For example, only in the event of an accident or a threatened accident, or with 24 hours’ notice, can an employer contact an employee to work outside of normal business hours. According to the new rule, company practices “should allow for occasional justifiable situations” when it is necessary to contact employees outside of usual business hours. The scenarios listed are not strictly confined to emergency situations.

Secondly, The Ministry of Labour, Employment, and Economic Inclusion’s annual assessment of collective bargaining (Bilan annuel de la négociation collective 2019) offered some facts concerning sectoral and company-level agreements in France in 2019. According to the statistics, 5 percent of company-level agreements signed in 2019 deal with working conditions, 38% deal with the RTD, and 39% deal with telework difficulties. Companies with fewer than 50 employees negotiated over 30% of agreements that in-

month or the 6th month if working in upland and remote areas, borders, islands; - A person who is raising a child under 12 months old, unless as agreed by an employee; - Those under 15 years old; those age between 15 and under 18 are only allowed to work overtime with some jobs based on the list issued by the Ministry of Labor, Invalids and Social Affairs; - People with mild disabilities with working capacity decreased by 51% or more, severe disabilities or particularly severe disabilities, unless agreed by the employees.

cluded the ability to disconnect. Prior to the introduction of Organic Law 3/2018 on data protection in Spain, six collective agreements recognized the RTD. Therefore, the inclusion of provisions on disconnection in collective bargaining agreement at sectoral and company levels are extremely necessary. In truth, the implementation of the RTD is not only the responsibility of the legislative or the executive. It necessitates a large amount of participation. Implementing oversight through a third organization (employee representative organization) plays a significant role, and it is also required to develop effective deterrent measures and improve employer knowledge about respecting employees’ right to rest.

Thirdly, we need to create a digital monitoring mechanism to monitor after-hours interaction with employees, such as a monitoring company’s servers, and both employers’ and employees’ email. Furthermore, at the end of the last working day, the company’s server locking functions can be used and shut in the presence of the employee’s representative organization, and can only be reactivated the following week... As a result, restrictions are required: (i) Incorporating RTD restrictions into labor laws; (ii) Making contact with staff only during business hours (unless in an emergency); (iii) It is illegal to fire, discriminate against, or reprimand employees for failing to respond to messages or emails or for failing to turn off their phones after hours; (iv) Regulations on the computation of working hours occurring outside of normal business hours by phone or email, as well as adequate remuneration for such occurrences.

Fourth, as employees’ reliance on the internet grows, the development of “disconnection skills” is critical<sup>36</sup>. Even if employees have the RTD, they can choose to ignore it if they are significantly reliant on the internet. This necessitates the development of “disconnection skills” and “digital detoxification” ideas.

Fifth, building a measurement and supervisory tool from a representative organization of employees. For the first time, the 2019 Labor Code includes an employee protection mechanism in the form of an enterprise internal employee organization. Together with the Trade Union, the internal employee organization in an enterprise will contribute to the supervision of: (i) labor contracts (which contain provisions on overtime, work from home, unexpected occurrences, and so on); (ii) emails and messages sent by employers to employees outside of working hours; and (iii) the dismissal of an employee for not completing the assigned tasks.

## CONCLUSION

People should be concerned about their alienation from their work environment once they leave the office. Employees require time to rest, regenerate energy, and spend for themselves and their families when an 8-hour workday is through. This is a relatively new issue in Vietnam, and there are no explicit labor laws in place to address it. It will be vital and inevitable to have clear road maps for the future development of rules on the RTD because this is not only a Human Rights issue, but also the solution to the problem of balanced work in the digital era in general.

## LIST OF ABBREVIATIONS

RTD: Right to Disconnect

FOMO: Fear of Missing out

## COMPETING INTERESTS

The authors hereby declare that there is no conflict of interest in the publication of the article.

## AUTHORS' CONTRIBUTION

The authors are jointly responsible for the content of the whole article. In which, Nguyen Duy Dung is mainly responsible for the content of the whole article in brainstorming and designing research, collecting and analyzing literature, compiling manuscripts, and reviewing content. Nguyen Hai Yen is responsible for the content of finding references; draft revision; conclusion; Tran Nguyen Quang Ha is responsible for the content of translation; The Right to Disconnect and regulations of some EU countries; Suggestions for Vietnamese labor law.

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