



**DISCONNECTION POLICIES ARE A GOOD TOOL TO AVOID SANCTIONS AND CLAIMS REGARDING MAXIMUM WORKING TIME AND HEALTH AND SAFETY AT WORK**



## Spain: Employees' right to digital disconnection recognised

**On 7 December 2018 the Organic Law 3/2018 on Personal Data Protection and Guarantee of Digital Rights “Ley Orgánica 3/2018, de 5 de diciembre, de Protección de Datos Personales y Garantía de los Derechos Digitales” (hereinafter, “LOPD”) came into force in Spain.**

Although the LOPD was initially intended to merely implement the EU General Data Protection Regulation (GDPR) in Spain, its scope was suddenly expanded in order to include what has been defined as “digital rights”. The new LOPD grants for the first time a right to digital disconnection for the employees (article 88 of the LOPD), also known as digital detox. It is now compulsory for employers to issue a “digital disconnection policy” that regulates their right to digital rights ensures that this right is effectively guaranteed.

Under LOPD, employees have the right not to be connected or available during rest times and

holidays in order to ensure a proper work-life balance. This means that employers in Spain will have to design a disconnection policy that guarantees the employees' right to digital disconnection in accordance with their position and establishes a culture that respects the right to digital disconnection. As way of example, the disconnection policy can forbid the use of corporate email outside working hours, restrict the access to servers temporarily during certain timeframes, or limit the number of persons that can be copied on an email. Companies that have employee representatives must discuss the content of their digital disconnection policies with them. Also, the new LOPD sets out that future sector collective bargaining agreements shall include specific digital disconnection regulations.

It is important to note that the LOPD does not set forth any specific penalties for breach of this obligation.

However, disconnection policies are a good tool to avoid sanctions and claims regarding maximum working time and health and safety at work, and can be seen as a new opportunity for employers to regulate the uses of

corporate email and corporate devices.

The new regulations (article 87) expressly recognise the employer's right to access the devices with the purpose of monitoring and surveying the employee's fulfillment of the contractual obligations and the adequate use of the devices. The requirement to access the devices is granted if the employer has clearly stated the conditions of use of the devices and offers a minimum standard of privacy. It is important to note that the employee representatives must participate in the process of establishing the conditions of use, which must be duly communicated to each employee.

Finally, the LOPD allows for the use of voice recordings by the employer only in situations in which it is necessary to guarantee the safety of the company's premises, goods or persons.

It is yet to be seen whether the Spanish companies will comply with the new requirement of a digital disconnection policy, but this new regulation is an important step towards creating a culture of data protection in the workplace and improving the employee's work-life balance. ■



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