The Right to Disconnect for Medical Professionals

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Ryan Silk
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Author: Chris Molnar, Kennedys Law

Amendments to the Fair Work Act 2009 (Cth) give most Australian employees the right to refuse unreasonable contact from their employer or third parties outside of their working hours.

Application

For employers with 15 or more employees, these laws came into effect on 26 August 2024 and for employers with less than 15 employees, the laws will operate from 26 August 2025.

These new rights do not apply to independent contractors, sole traders, unpaid volunteers and unpaid trainees or interns through a school, university or other institution.

For some public hospital practitioners outside of Victoria, the Australian Capital Territory and the Northern Territory, the new laws may not apply.

The right to disconnect will apply to private practice employees, including medical practitioners, practice nurses, allied health professionals and administrative staff.

What is reasonable?

If the 'right to disconnect' does apply, the employee's refusal must be 'reasonable'.

Employees who are compensated for after-hours work or contact, for example, doctors who are compensated for on-call or recall work, are unlikely to be able to refuse to read, monitor or respond to emails or other contact during periods of on-call or recall work.

Hospital enterprise agreements in the public sector outline allowances for overtime, on-call and recall work, as well as regulate safe hours of work, flexible working arrangements and individual flexibility arrangements.

In determining whether an employee's refusal is reasonable, the following must be considered:

- the reason for contact
- method of contact and how disruptive it is to the employee
- how much the employee is compensated or paid extra for:
  - being available to perform work during the period they're contacted, or
  - working additional hours outside their hours of work
- the employee's role and level of responsibility
- the employee's personal circumstances, including family or caring responsibilities.

Dispute Resolution and Consequences

Where a dispute arises about an employee's right to disconnect, the parties must first attempt to resolve the dispute by engaging in discussions. If those discussions fail to resolve the dispute, either party may apply to the Fair Work Commission (FWC) to have it resolve the dispute.

The FWC may make any order it considers appropriate, other than an order requiring a monetary payment, if it finds that:

- employee's refusal is unreasonable and that there is a risk they will continue to refuse; or
- the employee's refusal is reasonable and that there is a risk that the employer will take disciplinary action or continue to contact the employee.

The FWC may dismiss any application that it considers is frivolous or vexatious. If an employer believes that the employee has

made a frivolous or vexatious application, the employer can apply for the application to be expedited.

Employees may also make a general protections application to the FWC in circumstances where they feel they have faced adverse action, such as being fired or disciplined, because they have asserted their right to disconnect.

Key Takeaways

For both employees and employers, it is important to understand how the right to disconnect applies in their specific circumstances.

Employees and employers will benefit from engaging in open discussions about each other's expectations regarding contact outside of working hours to avoid a dispute arising.