The New 'Right to Disconnect' Law

In a significant legislative change, the Australian Parliament passed the 'right to disconnect' law on 12 February 2024, which is set to take effect on 26 August 2024 (or 26 August 2025 for small businesses). This amendment to the Fair Work Act introduces measures designed to enhance work-life balance by regulating out-of-hours contact with employees.

Understanding the 'Right to Disconnect'

The 'right to disconnect' allows an employee to refuse to monitor, read, or respond to contact or attempted contact from their employer (or a third party where the contact or attempted contact relates to their work) outside the employee's working hours, unless such refusal is deemed unreasonable.

This right is recognised as a workplace right under Part 3-1 of the Fair Work Act, safeguarding employees from adverse actions for exercising or intending to exercise this right.

However, the law is not as straightforward as it may seem. The reasonableness of an employee's refusal to engage in out-of-hours contact will be evaluated based on several factors, including:

- the reason for the contact or attempted contact;
- how the contact or attempted contact is made and the level of disruption the contact or attempted contact causes the employee;
- the extent to which the employee is compensated:
    - to remain available to perform work during the period in which the contact or attempted contact is made; or
    - for working additional hours outside of the employee's ordinary hours of work;
- the nature of the employee's role and level of responsibility; and
- the employee's personal circumstances (including family or caring responsibilities).

If the contact is required under a Federal, State or Territory law, then the refusal to monitor, read or respond to the contact or attempted contact from the employer will be unreasonable.

Navigating the Grey Areas

While the law seeks to protect employees' personal time, it recognises that not all out-of-hours contact can be deemed unreasonable. This nuanced approach acknowledges the complexity of modern work arrangements and the need for flexibility in certain situations. For instance, an employee's refusal to monitor, read, or respond to contact may be unreasonable if the employee is notified of the requirement to be available for such contact and compensated (depending on other relevant factors).

This middle ground between reasonable and unreasonable contact is expected to be the subject of disputes. Questions arise about how this law will apply in various scenarios, such as the expectations of clients for out-of-hours contact or the impact of an employee's family responsibilities on their right to disconnect.

Addressing Disputes and Ensuring Compliance

Disputes regarding the 'right to disconnect' are to be initially attempted to be resolved at the workplace level. If unresolved, they may be brought before the Fair Work Commission (**FWC**), which is tasked with addressing such disputes promptly.

The FWC has the authority to issue orders to prevent unreasonable out-of-hours contact by employers or to address employees' unreasonable refusals to engage in such contact. These measures aim to ensure that both employers and employees navigate the new provisions fairly and reasonably.

Preparing for the Change

With the commencement of the 'right to disconnect' provisions on the horizon, employers need to proactively review and, if necessary, adjust their policies and practices regarding out-of-hours communication. This includes reevaluating the necessity of late-night emails or weekend texts and considering the impact on employees' personal lives. Employers are encouraged to engage in open dialogues with their employees to establish mutual understanding and expectations regarding out-of-hours contact.

Guidelines about the operation of the new law will also be provided by the FWC in due course.

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