

Work, Non-Work Boundaries and the Right to Disconnect

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Work-life conflict involves the competing demands of work and nonwork activities that often trigger feelings of stress and anxiety that can endanger individuals' professional and personal lives. As a result, organizations and nations have been encouraged to create more employee-friendly job arrangements in terms of where, when, and how individuals work. Providing employees greater choice and flexible work boundaries, however, often turns into work without boundaries creating problematic consequences for both firms and workers. This "always on" culture has been made possible by several factors most importantly by enhanced communication technology involving connectivity and immediacy that enable employees to communicate anytime and from anywhere. While organizations are addressing this imbalance and attempting to mitigate the often-negative effects of such professional-personal conflict, politicians have initiated legislation that attempts to switch off the 24-7-365 availability mindset by considering and sometimes adopting "right to disconnect laws."

INTRODUCTION

"Employees physically leave the office, but they do not leave their work. They remain attached by a kind of electronic leash—like a dog. The texts, the messages, the emails—they colonize the life of the individual to the point where he or she eventually breaks down." —Benoit Hamon of the French National Assembly (2016)

The typical professional and technical employee until late in the 1900s came to their office and worked Monday through Friday and did their job in blocks of eight- or nine-hours. Both the workplace and the work hours were unambiguously identified. Nowadays, there is increasingly an independence of work from place and jobs are being done not only at home but also in transit and on vacation in many organizations. The workplace is no longer contained within the four walls but wherever individuals take their smartphone, pager, laptop, or smartwatch, and where they can continue to work beyond the traditional workday. The idea that employees must operate within a traditional model of fixed 9 to 5 working hours and physical offices has become obsolete.

This has occurred as firms attempt to satisfy employee appeals for greater choice and flexibility and customer demands for immediate service. This has created a "double-edged sword" (Marcum, Cameron, & Versweyeld, 2018, p. 75) when it comes to work-life balance. While providing for more flexibility, the use of digital communication devices means that employees are increasingly incapable of escaping

work (Challenger, Gray, & Christmas, Inc., 2017). Employers electronically contact their employees through text message, chat, or email, “after work” (after work depends on when the employer expects an employee to be available but does not refer to any specific time period) to attend to some task, duty, project, or assignment. For example, in a survey of 150 managers Challenger et al. (2017) found 82.9 percent of supervisors said they would reach out to their employees after hours, with 28.6 percent of those respondents expecting a response within a few hours. Most of the contact after hours is digital, with nearly 80 percent of managers stating they would use email or text message. Forty-two percent would call their subordinates, while nearly 25 percent would use social media or chat software to contact their employees. In fact, the *mere expectation* of availability increases strain for workers and their families—even when personnel do not engage in *actual work* during nonwork time (Becker, Belkin, & Tuskey, 2018). According to Becker (2018), “Such expectations—whether real or imagined—cause more problems, including burnout and work-life balance problems, than the actual time it takes to read and respond to after hours’ emails.”

Amazon has become the prototype for a work culture which encourages endless work. Employees of the firm are regularly encouraged to “toil long and late” and the company boasts of its unreasonably high standards and claims that creating a high intensity work environment is what has brought them so much success (Kantor & Streitfield, 2105). Such a work culture appears to be validated by former Amazon employee, Nichole Gracely (2104), who authored “Being homeless is better than working for Amazon.”

Such workplace dynamics, however, can cause problems for employees and employers, and this has led increased concerns about the safety and health of employees who work too many hours. Studies consistently show that tired, stressed-out employees get injured, sick, and miss work at high rates (Belkin, Becker, & Conroy, 2016) and employers notice a lack of productivity from overworked employees because additional work at some point does not equal better work (Secunda, 2018). Exposure to constant workplace needs, or even the anticipation of such demands is detrimental to employee health (Semmer, 2007). These employees also experience high levels of professional and personal life conflict.

DISCUSSION

Work-Family Conflict

Work-family conflict variously known as work-life (im)balance, work interference with family, work-life fit, work-life integration, work-life interface, and work-to-family spillover is “a form of inter-role conflict in which the role pressures from the work and family domains are mutually incompatible in some respect” (Greenhaus & Beutell, 1985, p. 77). Such terms suggest that fulfilling work demands of employees’ current role interfere with their personal life (and vice versa) making it difficult to satisfy expectations for both domains. Moreover, this work-life (im)balance seems to be particularly important to college students (Lowe & Gayle, 2007), and millennials (individuals born between 1982 and 2004; Strauss & Howe, 1991), the group that companies indicate they are focused on attracting and retaining, and who are most dissatisfied and frustrated about work-family (im)balance (Fondas. 2015; Kirby & Krone, 2002; Marcum et al., 2018).

The issue of work-life balance has received extensive publicity during the past two decades as the number of women with children and the number of people caring for aging relatives have both increased in the workforce. This demographic change has, in turn, increased the demand for organizations to adopt work-life balance programs, such as on-site daycare centers, elder care programs, employee assistance programs, paternity leave, telecommuting, and flex time (Burke, 2006). Employers’ responses to this increasing conflict, however, have varied widely and some employers have adopted work-life balance programs and many others have not.

In response to this lack of commitment to work-family balance, politicians, urged by their constituents, are increasingly calling for firms to provide employees the “right to disconnect.” We address this issue by first noting factors that cloud the lines between work and home, then discuss negatives associated with such blurring. Next, we briefly review steps various organizations are doing to address this issue, then examine what politicians in some countries are considering and, in some cases,

doing, to address this topic in terms of right to disconnect laws. Finally, we present concerns about right to disconnect laws and conclude with a summary.

Factors Obscuring Work and Home Life Boundaries

Difficulties in balancing work and home demands are commonplace in modern societies and may be one of the greatest challenges individuals face in contemporary society (Halpern, 2004; Kossek & Lambert, 2005). Several factors have contributed to the blurring of lines between employees' work life and personal life (e.g., Castells, 2007; Mazmanian, Orlikowski, & Yates, 2013). First, the creation of global organizations causes their world to never sleep. At any time and on any day workers from many multinational firms are working and the need to consult with or communicate with coworkers or customers 10- or 15-time zones away which means that many employees of such firms are "on-call" 24 hours a day.

Second, organizations in some countries are asking employees to put in longer hours. For instance, in the United States 85.8 percent of males and 66.5 percent of females work more than 40 hours per week (Miller, 2018). Van Giezen, (2013) reported that 77% of U.S. workers get paid vacation, yet only 51% of paid vacation days are used and 61% of those who do take vacation are working while on vacation. Moreover, trends such as road rage, workplace shootings, the rising number of children in day care, and increasing demands for after-school activities to occupy children whose parents are too busy or still at work also suggest that people are working long hours (Barnett, 2006; Schabner, 2018). Japan and South Korea, countries having a reputation for brutal work hours, expect their employees to put in long hours at their jobs. Also, according to United Nations' Organisation for Economic Co-operation and Development (OCED), Mexicans work the most hours out of any country every year—2,246 on average (McCarthy, 2018).

Third, demographic changes resulting in the number of women with children and the number of people caring for aging relatives have both increased in the workforce (Wang, & Verma, 2012). Furthermore, fewer families have only a single working adult. Today's married employee is typically part of a dual-career couple, often with children at home. In 1960, only 20 percent of mothers worked. Today, 70 percent of American children live in households where all adults are employed. This makes it increasingly difficult for married employees to find the time to fulfill commitments, to home, spouse, children, parents, and friends (United States Department of Labor, Bureau of Labor Statistics, 2017). These factors are not only leading to erasing the distinctions between an individual's job and home but are also causing problems for employees and organizations as discussed in greater detail below.

Fourth, an ideal employee schema (Acker, 1990; Albiston, 2010; Williams, 2000)—which portrays a worker as serious, committed, promotable, and willing to work full-time (and longer), all-year, on a schedule determined by the employer, with no significant breaks in employment, and available for work outside the factory or office (Blair-Loy, 2003; Moen & Roehling, 2005; Williams, 2000)—produces more fluid work-family boundaries (Chesley, Moen, & Shore, 2003; Galinsky, Kim, & Bond, 2001). For many employees who want to impress their supervisors and rise in the corporate ranks, being connected at all hours is an implicit expectation (Burns, 2016). Their connectivity is hence self-created.

Fifth, and perhaps most importantly, work-family difficulties have been impacted by enhanced communication technology involving connectivity and immediacy such as emails, smartphones (portable tools that combine a mobile phone with a collection of software applications, which were traditionally accessed via computers; Wei, 2008), social networking websites, video conferencing, the Internet, instant messaging, virtual teams, and cloud-based applications that can be accessed anytime, from anywhere. This technology, especially the mobile phone which is typically always with its user and is rarely separated from its owner, and is in use, or ready for use, all the time (Derks, van Duin, Tims, & Bakker, 2015), has enabled employees to stay connected to their job in increasingly global and geographically dispersed operations (Kossek & Lautsch, 2008; Kreiner, Hollensbe, & Sheep, 2009), has created a 24-7-365 economy where workers are expected to be "always on" (Deal, 2015; Sadeghniaat-Haghighi & Yazdi, 2015). Moreover, the universal expectation that everyone be available by smartphone or laptop to respond to any minor query immediately has contributed to this "on call 24/7" culture that puts people on a

permanent state of reactive alert sometimes resulting in individuals “*Sleeping with Your [Their] Smartphone*” (Perlow, 2012).

A final factor contributing to the permeability of the boundaries between work and leisure is that technology advancements and the dramatic increase in the use of technology during the last several years may have an addictive character (Sultan, 2014; Vaghefi, Lapointe, & Boudreau-Pinsonneault, 2017), especially smartphones (De-Sola Gutiérrez, Rodríguez de Fonseca, & Rubio, 2016), that can create difficulties for users (Chóliz, 2010). Some have argued that smartphones are addictive by design. Tristan Harris, a former product philosopher at Google, calls smartphones the “Slot Machine in Your Pocket” (2016).

Like substance addiction, excessive and compulsive use of technology has been shown to be linked with risky behaviors such as ignoring important professional and personal life duties. Also, recent neurobiological findings have revealed that there are similar neural mechanisms associated with substance and technology-related types of addictions (Turel, He, Xue, Xiao, & Bechara, 2014) and removing connections can result in anxiety and other negative effect consistent with an addict going through withdrawal. Indeed, a high level of importance on remaining connected to their organizations can induce behaviors that demonstrate a virtual obsession with constantly checking for new work-affiliated communications (Marulanda-Carter & Jackson, 2012; Turel, Serenko, & Bontis, 2011). For example, a study conducted by Matusik and Mickel (2011) found that several employees felt such a strong urge to remain connected that they readily admitted to reading their work-related emails while in the bathroom, and Jackson, Dawson, and Wilson (2003) found that 70% of the employees opened applications to read messages within six seconds, and 85% within two minutes of receipt. It appears that some individuals do not know when to “turn off” work.

These factors contribute to permeable boundaries between an employee’s job and their personal time. This situation triggers problematic scenarios discussed below.

Negative Effects for Individuals and Organizations of Work-Home Conflict

Although the insidious impact of an “always on” organizational culture is often masked as a benefit—increased convenience or higher autonomy and control over work-life boundaries—the reality seems to be that flexible work-life boundaries often compromise employees’ and their family’s well-being. The above factors increase the risk of an imbalance between work and family life (Higgins & Duxbury, 2005) and is one of the major causes of work-home interference (Higgins & Duxbury, 1992) in such a way that participation in the work role conflicts with participation in the home role (Greenhaus & Beutell, 1985; Van Hooff, Geurts, Kompier, & Taris, 2007).

A round-the-clock or nonstop service environment has produced a condition where more and more people are feeling the impact of technologies’ demands on their time and energy (Wickwire, Geiger-Brown, Scharf, & Drake, 2017), where the separation between work and nonwork domains is obscured (Derks et al., 2015), and where the boundaries between work and family life become permeable (e.g., Green, 2002; Jarvenpaa & Lang, 2005). This can lead to work-life conflict characterized by tension associated with incompatible expectations and challenges from both work and home domains (Kreiner et al., 2009).

An imbalance of the “work” and “lifestyle” spheres can lead to negative outcomes for individuals, which include a poorer quality of life and decreased life satisfaction (Allen, Herst, Bruck, & Sutton, 2000; Greenhaus, Collins, & Shaw, 2003; Kofodimos 1993), psychological strain, depression, anxiety, and alcohol abuse (Allen et al., 2000). Work-life conflicts are also associated with related increased stress in marriage, in child-parent relationship difficulties, and in child development problems (Gornick & Meyers 2003). The work-life conflict is also important for employers, as it can have negative repercussions for the well-being and performance of employees in their work place (Alpert & Culbertson 1987; Burke 1988; Frone, Russell, & Barnes, 1996; Googins 1991). Furthermore, a work-life imbalance can lead to a lack of the time necessary to meet obligations at home and at work, which can in turn lead to stress and anxiety at home that then affects performance at work (Greenhaus & Beutell 1985; Kopelman, Greenhaus, & Connolly, 1983). Finally, when the demands of work hamper the pursuit of other life interests, it is likely

to create tensions and strains among employees. Work interferes with family life and vice versa (Aldous, 1969; Crouter, 1984; Piotrkowski, 1979). Emotional stress is a major contributing factor to the six leading causes of death in the United States: cancer, coronary heart disease, accidental injuries, respiratory disorders, cirrhosis of the liver and suicide (Mohd, 2008). Moreover, there are few things that stress individuals out on a consistent basis like work does, especially when it takes away from all the other things that life offers.

The “always-on” work culture also creates numerous problems for organizations stemming primarily from the fact that it denies workers a sense of individual efficacy and autonomy by putting them on a permanent state of reactive alert. It drains morale and initiative, and scatters employees’ mental resources, making it difficult for them to take ownership of projects and prioritize their efforts. Additionally, research on working long hours is associated with productivity decreases for firms (Golden, 2012). For example, Nishiyama and Fujikawa (2017) noted that Japan’s legendary long work hours has not helped their economy much. Japan barely grew for most of the past quarter-century, and the average worker is only two-thirds as productive as the average American, a gap that has stayed persistently wide. From another perspective, consider also Germany’s relatively short work hours. German employees count on four weeks of vacation a year and enjoy some of the shortest work weeks known to Europe. In the manufacturing sector, it is standard to work only 35 hours each week. Despite fewer work hours German productivity is the industrial powerhouse of Europe and a leading manufacturer of goods for export to developing Asian nations (Sarva, 2017). Perhaps less is more.

Organizations Respond to Work-Life Conflict

A main conclusion of two decades of research in the work-life conflict area is that most employees have a problem balancing work and family demands. In response, people are expressing the need for an improved sense of work-family fit and it has become central to maintaining a diverse and inclusive workplace. Employees are increasingly recognizing that work is squeezing out personal lives, and they are not pleased about it. For example, recent studies suggest that workers want jobs that give them flexibility often understood as involving employees’ control over the timing of their work, the number of hours they work, and the location of their work (Kelly, Moen, & Tranby, 2011; Schieman, Milkie, & Glavin, 2009) in their work schedules so they can better manage work-life interference. In addition, the next generation of employees is likely to show similar concerns.

Organizations are responding by helping their employees maintain a healthy professional-personal balance and have crafted policies and practices to address the changing needs and demands of employees and help them achieve better work-life balance (Donovan, 2016). Such interventions are typically defined as family-friendly policies or work-life benefits and programs (WLBP) that make it easier for individuals to manage the often-clashing worlds of work and family lives (Osterman, 1995). WLBP, also known as human resource initiatives, can be organized into three major categories, policies, benefits and services (Barall & Bhargava, 2011). Policies cover the formal and informal ways by which employees’ work and leave schedules are handled, including part-time work, and parental/family leave. Benefits address different forms of compensation that protect against loss of earnings, payment of medical expenses and sponsored vacation. Services include on-site or near-site childcare centers, medical facilities and counseling. WLBP also include government mandated statutory policies such as maternity leave and benefits as well as discretionary firm policies and benefits such as flextime, telecommuting and employee assistance programs such as stress management programs (Ingram & Simons, 1995; Osterman, 1995; Perry-Smith & Blum, 2000; Zedeck & Mosier, 1990).

Some organizations are finding human resource advantages to relaxing normative expectations concerning working over-time. For example, in Germany, employers are taking steps to cut their employees’ technological “leashes.” At the behest of labor council-enforced decisions to put a ban on the work-related use of communicative devices after working hours at both Volkswagen and BMW, Öchsner (2016) observed that somewhere in early 2012 (Volkswagen) and 2014 (BMW) onward, all mail that reaches these company’s server after office hours is put on hold or deleted, and company phones go off-service from the end of day, until the beginning of the next. Likewise, workers at Daimler can set their

email software to automatically delete incoming emails while they are on vacation (already forbidden under German law), a move that has affected around 100,000 employees. When an email is sent, the program, which is called “Mail on Holiday,” issues a reply to the sender that the person is out of the office and that the email will be deleted, while also offering the contact information of another employee for pressing matters (BBC News, 2014).

In America, accounting and consulting firm Deloitte and Touche significantly improved its 33% turnover rate for women when it revised its implicit requirement that members work 80-hour work weeks (Babcock & Laschever, 2003). Similarly, Perlow (2012) recounts an intervention with Boston Consulting Group, an elite professional services firm, where people are “always on” if the client calls because the client pays large sums of money for its services. She attempted in a very small way to switch off the always-on culture by giving each worker one night per week off the grid after 6 p.m. It also took regular reviews and reminders to convince workers to truly take that little bit of time off. But once they changed this small part of the company culture, the employees and the organization noticed significant ripple effects in the form of smarter collaborative approaches to solving all kinds of problems that everyone had formerly ignored. Workers felt more energized and engaged, and retention rates increased significantly. And at Philadelphia-based healthcare management consulting firm, Vynamic, the company encourages a healthy public and private lives by prohibiting emails after 10 p.m. and on weekends (Kress, 2016).

Although employers often define work-family integration as a parenting or dependent care issue, over time, many firms are broadening the policies and practices to support employees’ participation in many life roles and even personal developments. There is a growing recognition of the need to support not only those with visible family needs and responsibilities (e.g., working mothers having child care responsibilities), but all employees at many life stages who may experience work-life stresses regardless of their family status. Earlier, adoption of WLBP has largely been viewed as practical response to the increasing proportion of women employees in the workforce, employees with caring responsibilities, and the problems such as absenteeism, turnover associated with that (Lambert, 2000). However, in recent years, embracing such programs and policies are being considered as a part of high commitment work systems (Osterman, 1995) required for ensuring high levels of employee commitment and innovation. WLBP are increasingly being considered as strategic, innovative, crucial, and progressive (Lambert, 2000; Perry-Smith & Blum, 2000; Tenbrunsel, Brett, Maoz, Stroh, & Reilly, 1995).

Such corporate self-regulatory approaches to controlling work hours because of advancements in digital communication technology allows employees to engage in discussions with the relevant partners to develop unique rules that are tailored to the needs of each party. It also encourages employers to develop regulations that serve their industrial needs. Such regulation by employers may be better than passing rigid legislation, which pushes lawmakers to balance between legislating regulations which are simplistic to apply with clarity and leave or developing comprehensive rules which apply in every conceivable situation but risk becoming too difficult to apply or enforce.

The risk, however, with self-regulation is that employers will create rules which seem to favor employees on the surface, but in fact fail to provide substantive protections (Legace, 2007). The incentive for employers to develop such surface-level regulation is high, because they reap the benefits of increased public relations and recruitment of better employee. Moreover, nothing requires employers to engage in corporate self-regulation. While there are a few prominent examples of employers who have been proactive as indicated above, there has not been a significant shift in after hour communication with employees on a large-scale and most companies do not have after hours’ communications policies and are not even contemplating implementing one (Challenger et al., 2017). Therefore, governments at various levels are acting.

Governments Respond to Work-Life Conflict

While some organizations and firms have introduced policies and practices that attempt to provide a more balanced approach to work and nonwork activities, politicians and governments around the world have begun exploring, and in some cases passing, statutes and regulations allowing employees the

freedom to not have to engage with job activities outside of official work hours. Indeed, some say that the right to disconnect from work and primarily not to engage in work-related electronic communications such as emails or messages during non-work hours is a human right (Singh, 2018) and consistent with the definition of a human right by The Equality and Human Rights Commission: “basic rights and freedoms that belong to every person in the world...” (The Equality and Human Rights Commission, 2018). Giving employees the right to disconnect legislatively seems to be a part of new a movement.

Such laws help to establish concrete boundaries between work expectations and family needs by setting up off-hour electronic communication windows or schedules when employees are available to respond. These laws often require employers to adopt an after hours’ cessation policy and claim that workers should have the ability to disengage from work and not participate in work-related communication and information technologies and other digital tools during non-work hours (Schofield, 2016; Staufenberg, 2016). Right to disconnect regulations seem to be gaining popularity in numerous countries since France implemented such a rule in 2017. A short review after work electronic communication practices in several countries is now offered.

France. France has been the most proactive country in establishing legal frameworks protecting a worker’s right to disconnect. In 2001 the idea was considered when the French Supreme Court ruled that employees are under no obligation to bring work home, and as technology progressed the Court continued to update its ruling. In 2004 the Supreme Court held that it was not misconduct if an employee was not reachable on a smartphone outside of work hours (Labor Chamber of the Cour de Cassation, 2004).

The right to disconnect was implemented January 1, 2017 with France establishing what is known as the pioneering El Khomri Law, after French Labor Secretary Myriam El Khomri (Code du Travail, 2016). According to these provisions, which only concern companies employing more than fifty employees, an annual negotiation meeting must be held between the employer and the employees’ representatives to discuss:

Modalities by which employees exercise their rights to disconnect, and the setting up of company regulations on digital devices and tools, will be completed with a view to ensuring respect for rest, personal life, and family leave periods. In the absence of agreement, the employer shall draw up a charter, after advice from the enterprise committee, or alternatively, from the staff delegates. The charter will define the modalities by which employees may exercise the right to disconnect and provide for the implementation of training and awareness tools for the benefit of employees, management, and management personnel (Code Du Travail Art.55).

In the absence of such agreement between the staff representatives and the employer, the latter should draw up a charter defining the “modalities for the exercise of the right to disconnect.” This charter also specifies governing rules to ensure “a reasonable use of digital tools.” The intention of the French legislation is to give to both employers and employees’ representatives some flexibility, considering the disparities that may affect employees using digital tools. It was borne of the idea that it is beneficial for people not to work all the time, and that workers have the right to draw the line when their employer’s demands intrude on evenings at home or time with friends and family (Alissa, 2017).

This law is reasonably vague and does not restrict after hours work communication, but rather obliges organizations to negotiate these terms clearly with prospective employees. While the new law imposes an obligation for large companies to negotiate there is no obligation to reach an agreement, therefore if no agreement is reached between company and employees the right cannot be applied and enforced. Likewise, there are no fines for companies who flout the new rules. Nevertheless, the French subsidiary of British pest control and hygiene giant Rentokil Initial has been ordered to pay a former employee €60,000 because it failed to respect his “right to disconnect” from his phone and computer outside office hours (Samuel, 2018). The ruling is believed to be the first of its kind. In its decision dated July 12, 2018, France’s Court de Cassation, its Supreme Court, found it unfair that the former South West regional director of the company in France, to have to permanently leave his telephone on and to respond to

requests from his subordinates or customers in case of any problems while not at work. Rentokil did not consider the employee to be officially on call and so did not compensate him for this work. But the court ruled that the employee was indeed on call because his contact details were listed explicitly as someone to be contacted in an emergency and that he should be paid for his time. Overall, the French *droit à la déconnexion* regulation is now legally enshrined and appears to be laying the groundwork for other countries to consider (Secunda, 2018), including America.

USA. Often, European ideas do make their way into the United States, so the right to disconnect could become an issue in the United States. Consistent with this perspective, a recent bill drafted by New York City councilpersons has been introduced. It is the country's first local regulation proposing to make it illegal for employers to require employees be email contactable outside of normal work hours (Espinal, Ampry-Samuel, Ayala, Maisel, & Constantinides, 2018). The legislation is much more restrictive than its European counterpart, essentially making it a flat rule that employees cannot be forced into electronic communication contact outside of paid work hours.

There are some exemptions in the bill, like one for small employers (less than 10) and another for emergencies. But, generally, it forbids employers from taking adverse employment actions against workers who do not reply to work-related texts and emails outside of their normal workday. Moreover, employers will be required to adopt a written policy regarding the use by employees of electronic devices for work-related purposes during non-work hours. The bill proposes a number of penalties for employers who fail to comply with its provisions, including: (i) a \$50 fine for each employee who does not receive proper notice of their right to disconnect; (ii) a \$250 fine for each instance of requiring an employee to check electronic communications after work hours; and (iii) fines ranging between \$500 and \$2,500 for retaliating against employees for asserting their rights under the bill (Kirby, 2018). The regulation has yet to be passed but is still under consideration by the city council.

Canada. The federal government, as part of an eventual new labor code is now exploring a law that gives workers a "right to disconnect": in other words, doing uncompensated work while commuting or at home (Montgomery, 2018). The federal government recently completed a ten-month consultation of working conditions in Canada (Employment and Social Development Canada, 2018) and one of the issues surfaced was how many people are obliged, or feel obliged to work additional hours electronically, through phones or computers. Interestingly, 93% of respondents stated that employees should have the right to refuse to respond to work-related communication outside of working hours. The right to disconnect was part of a year-long consultation process involving issues of work-life balance, along with other subjects such as minimum-wage guidelines, and a variety of issues regarding precarious work such as contract flipping. The Canadian law being considered would primarily affect federal employees in such industries as transport, banking, and telecommunications although in time it could extend to provincial workers and then possibly the private sector.

The federal Liberals are pushing for a closer examination of the issue and currently there is a split between labor and employers over whether further consideration of such a measure should be advanced (Press, 2018). Quebec Solidaire's Gabriel Nadeau-Dubois also tabled a private member's bill (otherwise known as the "Right-to-Disconnect Act") in the Quebec national assembly in March 2018 that aims to "ensure that employee rest periods are respected by requiring employers to adopt an after-hour's disconnection policy." The proposal calls for fines between \$1,000 to \$30,000 for companies that refuse to draft a proper policy or reassess it annually to ensure it remains up to date and effective. Should it pass in the future, Québec would become the first Canadian province to enact legislation largely inspired by the French law. The bill also includes penalties, such as fines, for employers who fail to comply (O'Dell, 2018). And some say that a Canadian right to disconnect regulation could come in a 2019 labor code update at the federal level (Huffington Post Canada, 2018).

Italy. Italy in 2017 incorporated a similar France's right to disconnect law which also requires contractual clarity over an employee's responsibility to communicate outside of general work hours. This "smart working" legislation was designed to protect self-employed workers and autonomous and flexible work arrangement employees (Figueora, 2017). Smart-working is work characterized using technological tools which allow work to be performed partly within, and partly outside, the company premises, without

a fixed location, subject only to the sole restriction of a maximum number of daily and weekly working hours. Smart-workers have a right to disconnect from their technological equipment at the end of their working day. The technical and organizational measures to ensure the right of disconnect must be set out in the agreement (signed between the employer and the worker) defining the terms on which the smart-working must be performed (Piper, 2017). The bill has yet to be acted upon.

Philippines. Labor Secretary Silvestre Bello III noted in 2017 that “the ‘right to disconnect,’ or letting employees disregard work-related communications after office hours without disciplinary action is, technically, a voluntary engagement between employers and their employees.... Answering or ignoring texts, emails from employers after working hours is a voluntary engagement of an employee, and they are not obliged to respond or not. The right to disconnect is a choice of an employee” (De Vega, 2017). Quezon City Representative Winston Castelo authored House Bill 4721, which aims to amend the Labor Code of the Philippines. The bill obliges employers “to establish the hours when employees are not supposed to send or answer work-related e-mails, texts, or calls,” and the conditions and exemptions in line with it, subject to rules provided by the Department of Labor and Employment (De Vega, 2017).

Belgium. In December 2017, the Federal Minister of Work issued a proposal to oblige companies to make agreements with their employees on how they should manage emails that are received after working hours or during the weekend (Perquy, 2018). The proposal is merely an obligation to have an agreement between the employer and its employees. The agreements should respect that there are certain hours or time blocks in which employees should not be disturbed during their leisure time. The proposal has been discussed and adopted in the federal parliament in April 2018. It is yet to be seen how it will be implemented in practice. Interestingly, the company Lidl is already setting an example in Belgium by ensuring that emails being sent after 6 p.m., will only be received in the employees’ mailboxes at 7:00 a.m. the next morning, ensuring that employees do not check their inbox after work.

Luxembourg. In this nation the employee of a company of at least fifteen workers may discuss with the personnel representative in charge of safety and health and mention his or her concern about after hours work communication. In smaller companies, the employee could remind his/her employer about the firm’s obligation to ensure the safety and health of employees in all aspects related to work to try to find a solution. So far, no Luxembourg jurisdiction has addressed this issue, but a Luxembourg trade union recently sent a letter to the Minister of Labor to implement a concrete “right to disconnect” in the Luxembourg Labor Code (Martin-avocats, 2018).

The Netherlands. In the Netherlands, the Dutch Labor Party wanted to add the right to disconnect into Dutch law. However, they are not part of the new coalition government, formed after elections in 2017. The party wants to give employees the right to be “unreachable” after a long day of work, for them to have quality time with their family and friends. Their plan was to compel employers with more than 50 workers to reach an agreement with trade unions and work councils about the right to disconnect. It would be very similar to the French model. It is not clear what, if anything, will be adopted in the future (Perquy, 2018).

South Korea. Over the last decade South Korea has increasingly addressed work-life balance (BBC, 2016). In 2010 officials at the South Korean Ministry of Health introduced a monthly Family Day, where the office lights were switched off at 7 p.m. to encourage staff to either spend more time with their families or procreate, in a bid to tackle the country’s low birth rate. Additionally, organizations were encouraged to stop asking their staff to put in writing why their workers wanted to take annual leave. The Seoul Metropolitan Government has announced an ordinance recommending its supervisors not to give orders to subordinates via mobile messenger apps after work hours (Kim, 2017).

In 2016 hyper-wired South Korea (more than 80 per cent of South Koreans have smartphones—one of the highest percentages in the world) considered legislation that would restrict employers from contacting workers at home (CTV News, 2016). Cyberstress from round-the-clock orders from supervisors has become a growing social issue in South Korea, a country plagued by a mix of its notorious workaholic culture and advanced digital technology. The bill seeks to ban firms from sending employees work-related messages by telephone, text, social media or via mobile messaging apps after

official working hours. Currently, the bill has been tabled but advocates are hopeful that it will be revisited soon.

Ireland. Although there is nothing on the Irish parliament's agenda similar to a right to disconnect law, Connolly (2017) sees the Irish Organisation of Working Time Act of 1997 (the "Act"; Organisation of Working Time Act, 1997) as providing a similar duty requiring employers to ensure workers take time away from the office and to ensure employees are afforded sufficient time for rest and relaxation. During these periods' employees should not be required to work, answer emails or participate on business-related calls. Interestingly, a business executive employed at a subsidiary of meat producer Kepak Convenience Foods Unlimited Company was awarded €7,500 by the Labour Court in 2018 after she successfully argued she was required to deal with out-of-hours work emails, some of which were after midnight and in excess of the 48 hours a week set out in the Act (McCulloch, 2018). In support of her complaint, the executive submitted copies of emails that she sent to, and/or received from, her employers both before normal start time and after normal finish time on numerous occasions over the course of her employment. The Act, it seems is being used to address current technology and incorporate language more in line with other nation's right to disconnect regulations.

Other governments. Other nations, while not actively pursuing right to disconnect legislation, have expressed concern with work-life balance issues and may consider employee right to disconnect options in the future. Consider the following:

Germany. Responding to the need for greater work-life balance, in 2013 the German labor ministry banned its managers from responding to emails after hours (absent an emergency). This policy was implemented to prevent job burnout and protect the mental health of employees (News 18, 2014). The guidelines state that ministry staff should not be penalized for switching off their mobiles or failing to pick up messages out of hours. Conscious of the risks for private life and professional burn-out, the national works councils were willing to agree with their employees on rules for the right to disconnect. In 2014 German Labor Minister Andrea Nahles called for an "anti-stress regulation" compelling companies to reduce stress in the workplace. It would also ban employers from contacting employees after hours, just as it is already forbidden to contact employees on vacation under German law (Nelson, 2014). Despite such initiatives, there is no regulation on the right to disconnect and Chancellor Angela Merkel has opposed such a law and appears to support a model in which German businesses are self-regulating and leading the way regarding enforced work-life regulation.

Japan. Japan's work culture is so intense, people in the 1970s invented a word, *karoshi*, that translates to "death by overwork," and involves employees committing suicide or suffering from heart failure and stroke because of long work hours (McCurry, 2017). Government statistics show that legal cases filed over *karoshi* soared to 1,456 in a 12-month period that ended in March 2015. In comparison, a total of 1,576 cases were filed between 2004 and 2008. Because of such findings the government has more recently attempted to address this issue. Legislation went into effect in November 2014 that requires the national government to carry out measures to prevent suicides and deaths from overwork, although the rules are hampered by a lack of penalties for companies that fail to comply (Ryall, 2015). More recently, Tokyo's governor has ordered municipal employees to finish work by 8 p.m. and anyone still at their desks will be subjected to "strict monitoring" by overtime prevention teams. The move follows the suicide in December 2015 of a 25-year-old woman who worked 105 overtime hours over the course of a month. The employee was working at Dentsu, Japan's biggest advertising agency, which has since barred workers from logging more than 65 hours of overtime a month (down from 70). These incidents suggest that Japan may be predisposed to introduce right to disconnect regulations.

Spain. The Spanish government is considering moving the country's clocks back by one hour to bring Spain's working day, which can typically run from 9 a.m. until 8 p.m., into line with the rest of Europe. Few Spaniards now enjoy a siesta—which once characterized the long working day—as many live too far away from where they work to go home in the afternoon. Last month, Spain's employment minister Fátima Báñez announced a push to let Spaniards knock off at 6 p.m., rather than 8 p.m. "We want our workdays to finish at six o'clock and to achieve this we will work towards striking a deal with

representatives from both companies and trade unions,” she told parliament (Jones, 2016). Like Japan, Spain seems ripe for implementing statutes addressing after hours’ legislation.

Overall, these examples clearly show that the world views the new “electronic leash” advanced by technological communication developments as a cultural pandemic. Finding a solution to the “always connected culture” will be critical for the health and happiness of employees. Additionally, there are significant organizational benefits that also could result from workers being able to disconnect. Hall (2017) noted that over the last decade, what has evolved in many countries is a culture of “busy.” Busy often entails doing what can be easily tackled—the small things rather than thinking long term, strategizing, planning, and responding to truly important issues involving creativity. This is important since creativity research tells us that big ideas need incubation, time during which they can evolve (Ritter & Dijksterhuis, 2014). So, while disconnecting may be good for employees—it may likewise provide some remarkable benefits in terms of inventiveness and ingenuity to firms as well. Moreover, well rested and satisfied employees are also productive employees who may be more motivated and willing to invest greater effort to advance their firm’s long-term interests.

Concerns about Legislating the Culture of Connectivity

Almost daily news reports indicate that today people in many nations are working longer hours, inseparably connected to their mobile devices, stressed, burned out, overworked, and experiencing increased levels of work-family conflict. Thus, there appears to be an increased awareness of the dangers of workplace technology. But the simplicity of some of these solutions—such as the absolute bans on after hours’ email—do not do justice to the complexity of the problem. Where to strike the balance between work and life is an intensely personal decision that varies from one worker to the next. For some, technology can be a “leash.” For others, it can be an important source of flexibility. Requiring all workers to “disconnect” in the same way could harm those who thrive the most in the digital workplace. For many, the option to work after hours has created much-needed flexibility *during* working hours. Recent research summarized by the Eurofound and the International Labour Office (2017) found that those who often work after hours are more likely to feel comfortable taking time off during the regular workday to handle personal or family matters. Also, it should be noted that there are times when disconnecting from work can cause stress, anxiety, and worry over unfinished business and the fear of missing out (FOMO). FOMO is “a pervasive apprehension that others might be having rewarding experiences from which one is absent ... and is characterized by a desire to stay continually connected with what others are doing” (Przybylski, Murayama, DeHaan, & Gladwell, 2013, p. 1841). Against this background, measures that require workers to “disconnect” can be overly restrictive if they assume—as many of them do—a fixed work schedule. The risk is that, in attempting to abandon a 24/7/365 work culture, employers and employees will end up back in a rigid 9-to-5 structure (Usui, 2017).

The need to strike a balance between a modern technological world of immediate access and quick replies is being met with global concern because of the need to reduce employee stress, improve employee mental health, and create a better professional-personal balance. Research suggests that constantly working increases stress and has led companies, such as Google, to hire Mindfulness Officers to help employees unwind and clear their minds. Consequently, workers no longer having to sleep with their smartphone is probably a good thing (Perlow, 2012) and this has generated international interest in legislation directed toward limiting after hours’ connectivity.

Some organizations, however, believe that *legislating* the right to disconnect may go too far (Stam, 2018). For many customer-driven businesses banning workers from accessing their inboxes or communicating with clients out of hours is not practical or realistic. Generally, firms are not fond of having additional governmental regulations that limit their autonomy while labor organizations are more inclined to support such initiatives. And so various governmental levels should anticipate disagreement and discord between these two constituencies when after hours’ connectivity statutes are considered. Much of this clash will involve determining which workers are covered by such lawmaking. Some employees are legitimately required to be on call; for example, senior executives, key maintenance and IT

workers, medical staff, and first responders. It makes little sense for such staff to be included in laws prohibiting communication after hours.

Should a right to disconnect law be implemented then organizations will have to develop policies in compliance with such a statute and supervisors and managers will have to be trained in its application. Particularly important in a thorough understanding of what constitutes working off the clock (UpCounsel, n. d.). Moreover, to avoid off the clock litigation firms may want to track the actual work of employees to ensure they comply with the work-time rules. There are many time tracking software programs and all emails and phone calls are time and date stamped. For example, Delve Analytics from Office 365 is a data analytics program that can track time spent writing and answering emails, including after hours work completed (Redmond, 2016). An audit of work productivity will indicate to the employer which employees are working after normal hours and provides information for supervisors to clarify for employees after hours work rules found in the firm's employee policy manual.

It is also important to note that when a new right or requirement is established, an agency must enforce it and a court must interpret it. This will undoubtedly lead to increased litigation. Questions about what a work day is especially for remote employees will have to be addressed. Complaints challenging each employer's definition of "emergency" will happen with greater frequency. Other legal concerns involve overtime payments to employees and issues related to on-call compensation (when an employee is not actually performing job duties but must be available to work if called upon). Even the idea of employees will have to be addressed and organizations may seek not to hire employees but to hire contract workers (individuals retained by a company for a predetermined time, for a predetermined price and for which a company is not responsible for providing a variety of traditional employer benefits) who many not be covered by such regulations. All this adds up to significant costs to implement and monitor right to disconnect legislation in organizations. In their efforts to strengthen the boundaries between work and life, regulators and employers should be careful not to over-determine those boundaries, and instead leave workers with the flexibility to strike that balance on their own. More than the right to disconnect, what workers need is the right to decide for themselves.

CONCLUSION

Technological advances over the past several years including laptops, smartphones, and widely-available wi-fi, have made it easier for people to get work done remotely. And while many appreciate the flexibility and increased productivity that these advancements provide, some lament that the ability to work anywhere, anytime has morphed into an expectation to work everywhere, all the time. Whether at home or in transit, employers are asking or requiring workers to complete assignments, tasks, and projects outside of working hours. This rapidly developing trend has tethered staff to their jobs well after the work day has ended and has resulted in a collapsing boundary between employees' work and personal life.

This circumstance is having a profound detrimental impact on employee privacy and autonomy, employee morale, safety and health, productivity, compensation, rest and leisure, and work-family conflict. To address this difficulty in escaping from work beyond certain hours, to restore the division between work life and personal life, and to recognize the right to disconnect from a constantly connected and networked work culture organizations through private adoption, and governments through legislative initiatives, are investigating how to deal with this phenomenon. Often, enforced work-life balance regulations, like the right to disconnect, are positioned as a human right and part of a larger movement addressing toxic workplace cultures and growing demands for better integration of work and family lives. Moreover, recent work by Unger, Niessen, Sonnentag, and Neff (2014) on time allocation between work and home domains stresses the importance of being allowed to freely allocate time to private life during evening hours. They advocate that employees should not have to feel guilty when they spent less time to work to meet family and relationship demands, because there will be also days that they allocate more time to work.

There appear to be two paradigms for addressing problems associated with enhanced communication technology involving connectivity and immediacy. One approach, which Secunda (2018) refers to as the

“French Legislative Model,” (p. 25) attempts to regulate after hours’ electronic communication between employer and employee through statutes and lawmaking. This approach has, by far, gained the most publicity. The second method, what Secunda (2018) refers to as the “German Self-Regularity Model,” (p. 26) involves voluntary self-determination in which private firms adopt policies that fit their individual or industrial needs. This tactic comes from the belief that any government action is a legislative overstep. These employers seek to balance the interests of their employees with their own industrial needs in a manner more appropriate than what legislative enactments alone could formulate through independent workplace regulation. Regardless of which option is followed, many believe that something must be done to address this problematic issue.

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