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The Right to Disconnect in Modern Employment: Protecting the Boundary Between Work and Personal Life in the Digital Era

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Abstract

Digital transformation has changed the way humans work, especially regarding time and space. Smartphones, emails, instant messaging applications, and collaborative work platforms allow employers to contact employees almost anywhere and at any time. The boundary traditionally established by labor law between "working hours" and "rest periods" is therefore increasingly eroded. This article examines the right to disconnect as a new legal institution designed to protect that boundary. The study uses qualitative methods: textual analysis, comparative jurisprudence, historical analysis, synthesis, logic, and descriptive statistics based on secondary data. The article systematizes international scientific literature, compares representative legal models (France, Spain, Belgium, Portugal, Ireland, Ontario, Chile, Australia, and the European Union), and then juxtaposes them with current Vietnamese law. The results show that the right to disconnect has evolved from a bargainable declaration into an enforceable legal obligation backed by sanctions. Meanwhile, Vietnam's Labour Code of 2019 is still designed according to the logic of physical time and lacks legal instruments to regulate out-of-hours digital communications. Guided by the directives of the Documents of the 14th National Congress of the Party on human development, digital transformation, and the building of harmonious, stable, and progressive labor relations, the article proposes a "conditional hybrid" model for Vietnam: codifying general principles in law, combined with collective bargaining and internal labor regulations for contextual implementation.

Keywords: right to disconnect, rest periods, digital transformation, work life boundary, Vietnamese labor law.

Introduction

For more than a century, modern labor law has revolved around a foundational idea: an employee's time does not belong entirely to the employer. From the struggle for the eight-hour workday in the late 19th century to Convention No. 1 of 1919 of the International Labour Organization (ILO) on hours of work in industry, the limitation of working hours has always gone together with the affirmation that outside of paid time, workers have the right to live their own personal lives. Article 24 of the Universal Declaration of Human Rights of 1948 recognizes the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay (United Nations, 1948). Article 7 of the

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International Covenant on Economic, Social and Cultural Rights of 1966, to which Vietnam is a state party, also recognizes this right (United Nations, 1966).

That entire legal architecture rested on an implicit assumption: work takes place in a defined location (factory, office) and within a measurable timeframe. When an employee leaves the workplace, the work is left behind. This assumption has been shaken by the digital technology revolution. Today, the phone in a worker's pocket is a "mobile office" that can open at any time. A text message at ten o'clock at night, a Sunday morning email, or a video call during paid leave is no longer an exception but is gradually becoming an implicit norm in many work environments. Sociologist Judy Wajcman (2015) calls this phenomenon being "pressed for time" in digital capitalism. Hartmut Rosa (2013) describes it as a manifestation of the process of "social acceleration" characteristic of late modernity.

The COVID-19 pandemic significantly accelerated this trend. Eurofound's (2020) survey "Living, working and COVID-19" recorded that about 27% of people working from home reported working during their spare time to meet work demands. Microsoft's Work Trend Index 2022 report showed that, from February 2020, average weekly meeting time for Teams users increased by 252%, after-hours workload increased by 28%, and weekend work increased by 14% (Microsoft, 2022). These figures only reflect data from the ecosystem of a single technology enterprise, yet they suggest a structural trend: working time is overflowing beyond the legal framework designed to contain it.

The law responds with the concept of the "right to disconnect", meaning the right of employees not to engage in, respond to, or monitor work-related communications outside of working hours without suffering adverse consequences. France was the first country to codify this right relatively systematically through Law No. 2016-1088 of August 8, 2016, effective from January 1, 2017. Subsequently, many countries adopted this idea under different forms, and in 2021 the European Parliament passed a resolution recommending that the European Commission draft a dedicated directive on this matter (European Parliament, 2021).

In Vietnam, digital transformation has become a strategic orientation. The National Digital Transformation Program was promulgated under Decision No. 749/QD-TTg dated June 3, 2020, of the Prime Minister. Resolution No. 57-NQ/TW dated December 22, 2024, of the Politburo identifies science, technology, innovation, and digital transformation as paramount breakthroughs. The Documents of the 14th National Congress of the Party continue to affirm digital transformation as a driver of development, while emphasizing placing human beings at the center, as the subject of development (Communist Party of Vietnam, 2026). However, the current labor legal framework, first of all the Labour Code of 2019, still has no direct provisions on out-of-hours digital communication. The gap

between the speed of digitalizing labor life and the lag of legal institutions is the starting point of this research.

The article aims to answer three questions. First, how has the right to disconnect been formed and operated in international legal theory and practice? Second, to what extent does current Vietnamese labor law protect the boundary between work and personal life against the impact of digital technology? Third, under what model should Vietnam adopt the right to disconnect to suit the political orientation, socio-economic conditions, and domestic labor market characteristics?

Literature Review

Organizational psychology and boundary theory approaches

The earliest and richest line of research related to the right to disconnect originates from organizational psychology, especially theories on the boundary between work and family. Ashforth, Kreiner, and Fugate (2000) introduced the concept of "micro role transitions". According to the authors, people build boundaries around each of their social roles, and boundaries can be segmented or integrated to varying degrees. Clark (2000) developed "work/family border theory", viewing employees as daily "border-crossers" between two domains with their own cultures, languages, and expectations. According to Clark, the permeability and flexibility of the boundary determine the level of balance achieved by the individual. These two works are the theoretical foundation for most subsequent studies, but they were born when smartphones were not yet popular. Therefore, they did not account for the ability of digital technology to make boundaries continuously permeable and almost uncontrollable.

Kossek, Ruderman, Braddy, and Hannum (2012) went further down this path by identifying different "boundary management profiles". They showed that not everyone wants to completely separate work from personal life: some actively integrate, while others need strict segmentation. This finding is important for legislative design, as it suggests that a rigid "blanket ban on communication" rule may not suit everyone, but leaving it entirely to individual agreement risks turning the employee's "choice" into forced acceptance.

The research branch on recovery provides more direct evidence of the harms of constant connectivity. Sonnentag and Fritz (2007) constructed a recovery experience scale consisting of four components: psychological detachment from work, relaxation, mastery experiences, and control. Sonnentag (2012) summarized that the ability to achieve "psychological detachment" from work during free time is associated with better mental health, higher life satisfaction, and, paradoxically, higher work engagement the next day. Derks and Bakker (2014) used a daily diary method to study smartphone use for work in the evening. They found high usage levels were associated with work–family conflict and signs of burnout, especially among those with low recovery capacities. Barber and

Santuzzi (2015) proposed the concept of "workplace telepressure", the urge to immediately respond to work messages, and proved that this pressure is linked to poor sleep quality and exhaustion.

Becker, Belkin, Conroy, and Tuskey (2021) made a special contribution to legal debate. Their research showed that the organizational expectation alone regarding monitoring email off-hours, even when the employee does not actually work, causes anxiety and reduces the well-being of both the employee and their partner. This finding indicates that a regulation measuring only actual working time is insufficient to protect workers, because harm arises from the state of "being available" and not just from working behaviors. At a broader level, Tarafdar, Tu, Ragu-Nathan, and Ragu-Nathan (2007) laid the foundation for the concept of "technostress", in which "techno-invasion" is one of the main sources of stress.

The common limitation of this line of research is that it stops at describing psychological impacts and proposing management solutions at the organizational level. It rarely asks what legal mechanisms can convert scientific findings into enforceable rights.

Sociological and communication studies approaches

The second line of research examines constant connectivity as a social and cultural phenomenon. Mazmanian, Orlikowski, and Yates (2013) studied knowledge professionals using mobile email devices and introduced the famous concept of the "autonomy paradox". Mobile devices give workers a sense of greater autonomy over time and location, but the very fact that everyone uses them forms a collective norm of constant availability, causing workers to end up working everywhere, all the time. This finding has great theoretical value: it explains why solutions based on individual choice often fail. If the norm is collective, the solution must also be collective or institutional. Perlow (2012) reached a similar conclusion through an experiment at Boston Consulting Group: the "cycle of responsiveness" can only be broken when the whole team collectively commits to predictable "off-the-grid" time blocks.

Wajcman (2015) refutes technological determinism by arguing that technology does not inherently cause time pressure. According to her, social relations and power dynamics determine how technology is used. Hesselberth (2018) analyzed discourses on "disconnection" and pointed out that the right to disconnect can be both a tool of liberation and a form of reproducing the logic of connectivity: disconnection is presented as a break for workers to "recharge" in order to work more efficiently, rather than an intrinsic right. This is an important critique often overlooked in policy studies.

Felstead and Henseke (2017), using survey data on skills and employment in the United Kingdom, showed that remote working is linked to higher levels of commitment and satisfaction, but also to higher work

intensity and greater difficulty "switching off" from work. Allen, Golden, and Shockley (2015) systematically reviewed telecommuting and noted that the benefits of this model depend heavily on how boundaries are established and maintained.

Comparative jurisprudence and public policy approaches

The third line of research, most direct to the topic, comprises legal and policy studies. The joint report by Eurofound and the International Labour Office (2017) "Working anytime, anywhere: The effects on the world of work" is one of the first large-scale comparative syntheses on telework and ICT-based mobile work (T/ICTM) across 15 countries. The report showed that this type of work tends to extend working hours and blur the boundary between work and personal life, especially for highly mobile workers. Messenger (2019) developed this analysis into a framework of "three generations of telework": from "home office" to "mobile office" and then "virtual office". He argued that the third generation requires new regulatory tools, of which the right to disconnect is an example.

The ILO Global Commission on the Future of Work (2019) recommended expanding workers' "time sovereignty" and noted that countries need to find new ways to apply maximum limits on working hours in the context of digital technology, such as by establishing the right to digital disconnection. The ILO (2022) report "Working time and work-life balance around the world" showed that more than one-third of the global workforce regularly works over 48 hours per week. This report also affirmed that balanced working time policies benefit both workers and enterprises.

At the level of legal scholarship, Secunda (2019) analyzed the right to disconnect from a comparative perspective between French and US law. He argued that the US could adopt some elements of the French model through collective bargaining mechanisms, even though the "employment at will" legal environment creates many obstacles. Lerouge and Trujillo Pons (2022) compared French and Spanish experiences and pointed out that both models share a common weakness: the right is declared but lacks specific sanctions, and implementation relies mainly on firm-level bargaining. Pansu (2018) evaluated the initial impact of French law and argued that the lack of oversight mechanisms limited the law's actual effectiveness.

Eurofound conducted two thematic studies. The 2021 report "Right to disconnect: Exploring company practices" surveyed enterprise practices and recorded diverse solutions, from blocking email servers off-hours, automatic warning messages, to internal rules on "silent time". The 2023 report "Right to disconnect: Implementation and impact at company level" showed that workers at enterprises with disconnection policies reported better work-life balance. However, the report also noted that policies only

work when accompanied by changes in organizational culture and exemplary leadership roles (Eurofound, 2021, 2023).

Context of research in Vietnam

In Vietnam, research on working hours and rest periods has a relatively long tradition in labor law scholarship, mainly through textbooks and commentaries on the Labour Code. These works focus on working hour limits, overtime regimes, weekly rest, public holidays, and annual leave—institutions designed for traditional labor models. Some recent studies have begun to discuss remote work following the COVID-19 pandemic, personal data protection for employees, and labor relations on digital platforms. However, within the scope of the author's review, there is no specialized academic study that systematically researches the right to disconnect as an independent legal institution: defining its legal nature, comparing international models, and proposing a reception model suitable for Vietnam. The issue is mainly mentioned in press articles or as a minor aspect in studies on remote work.

Research gaps

From the above review, four main gaps can be identified. First, there is a discrepancy between organizational psychology findings and legal design. Studies such as Becker et al. (2021) or Barber and Santuzzi (2015) show that harm stems from expectations of availability, while most legal texts still only regulate actual working time. Few works have asked how the law should be designed to handle the harm of the "state of readiness".

Second, existing comparative legal studies (Secunda, 2019; Lerouge & Trujillo Pons, 2022) focus mainly on European and North American countries. Newer models, especially Australia's 2024 model with a right to refuse linked to an "unreasonable" criterion and a specialized dispute resolution mechanism, have not been fully analyzed, particularly from the perspective of developing countries.

Third, international studies pay little attention to labor markets with high rates of informality, unique trade union characteristics, and strongly hierarchical organizational cultures like Vietnam. In these contexts, a model relying primarily on French-style collective bargaining may not operate effectively.

Fourth, in Vietnam, there is a lack of research connecting the right to disconnect with the political-legal orientations of the Party and State regarding human development, digital transformation, and institutional improvement, especially after the 14th Party Congress. This article aims to fill part of those gaps.

Theoretical Framework and Research Methodology

Theoretical framework

The article rests on three theoretical pillars. The first pillar is work–life border theory (Ashforth et al., 2000; Clark, 2000), which helps conceive the

right to disconnect as an institutional tool to control boundary permeability. The second pillar is recovery theory (Sonnentag & Fritz, 2007; Sonnentag, 2012), providing a scientific basis for the argument that rest time must be time genuinely detached from work, including psychologically, not just unpaid time. The third pillar is the theory of power asymmetry in employment relations, a premise of modern labor law. According to this theory, because workers are in a weaker position, their "consent" to out-of-hours communication cannot be considered fully voluntary, and state intervention is required to rebalance it. Combined with the concept of the "autonomy paradox" of Mazmanian et al. (2013), this pillar explains why a solution purely based on individual self-determination is insufficient.

On that basis, the article defines the right to disconnect as follows: the right of employees not to monitor, read, answer, or perform communications and work requested through technological means outside agreed working hours, without suffering any adverse measures, accompanied by the corresponding obligation of the employer to organize work so that this right is guaranteed in practice. This definition emphasizes a two-way relationship: the right of the employee and the duty of the employer.

Research questions

As stated in the Introduction, the article answers three research questions: how the right to disconnect has been formed and operates in the world; to what extent current Vietnamese law protects the work–life boundary; and which reception model is suitable for Vietnam.

Research methodology

The article uses qualitative methods and does not use quantitative methods such as regression, statistical modeling, or primary data processing. Specifically, the study combines six methods below.

Textual analysis was applied to international and national legal texts: the French Labour Code, Organic Law 3/2018 of Spain, Law 83/2021 of Portugal, the Employment Standards Act of Ontario, the Fair Work Act 2009 of Australia as amended in 2024, and the 2021 Resolution of the European Parliament. On the Vietnamese side: the 2013 Constitution, the 2019 Labour Code, the 2015 Law on Occupational Safety and Health, and related documents. This method was also applied to political policy documents: Documents of the 14th Party Congress, Resolution No. 57-NQ/TW, and Resolution No. 66-NQ/TW.

Comparative jurisprudence was used functionally: comparing how legal systems solve the same problem (out-of-hours digital communication) rather than just comparing words. Comparison criteria included: legal form of recognition (statute, code of practice, agreement),

duty-bearer, scope of application by enterprise size, degree of specificity of the right, and enforcement mechanisms.

Historical analysis helped reconstruct the development process from the struggle to limit working hours to the emergence of the right to disconnect. Through this, it can be seen that this right is a logical development of the labor law tradition rather than an alien "invention". This approach inherits Thompson's (1967) classic analysis of time-discipline formation in industrial capitalism.

Descriptive statistics used secondary data from reports by the ILO, WHO, Eurofound, Microsoft, and DataReportal to illustrate the scale and nature of the phenomenon. Figures were quoted verbatim from original sources. The author did not perform inferential calculations or modeling.

Synthesis was used to systematize results from three research streams (organizational psychology, sociology, and legal scholarship) into a unified analytical framework.

Logic, including induction, deduction, analysis, and synthesis, was used to draw conclusions, assess reception feasibility, and construct proposals.

The study has some limitations. Lacking primary data, the article cannot measure the prevalence of out-of-hours communication in Vietnam. This is a research direction that needs to be supplemented by empirical surveys in the future. In addition, the analysis of foreign law relied mainly on official texts and secondary research, so it may not fully reflect court practice in each country.

Research Results

Historical evolution: From working-day limits to the right to disconnect

Historical analysis shows that the right to disconnect is the latest stage in a two-century struggle over the control of time. Thompson (1967) pointed out that the Industrial Revolution replaced the "task-oriented time" of agricultural society with the "clock-time" of the factory. Time became money, and employers bought workers' time. Paradoxically, that very measurement of time allowed workers to fight to limit it. When working time became countable, non-working time could also be identified and protected.

The first stage, from the late 19th century to the first half of the 20th century, was the period of limiting working hours. The slogan "eight hours labor, eight hours recreation, eight hours rest" of the labor movement was institutionalized in ILO Convention No. 1 (1919) on hours of work in industry, and then Convention No. 47 (1935) on the 40-hour work week. The second stage, from the mid-20th century, expanded to the right to paid rest. Article 24 of the Universal Declaration of Human Rights and Article 7 of the ICESCR marked a shift from "protecting labor capacity" to "human rights". The third stage was linked to EU Directive 2003/88/EC on the

organization of working time, which prescribed a minimum rest period of 11 consecutive hours per day and an average limit of 48 hours per week, including overtime. This directive established a clear binary division: any period that is not "working time" is a "rest period".

The fourth stage, from the early 21st century, is the period when this binary division was challenged. Courts became the first to deal with new situations. In France, on February 17, 2004, the Social Chamber of the Court of Cassation (*Cour de cassation, chambre sociale*, n° 01-45.889) ruled that an employee's unreachability on a mobile phone outside working hours is not a fault and cannot be a ground for discipline. This is one of the earliest judicial precedents on the right to disconnect, more than a decade before the concept was codified. At the European level, the CJEU in Case C-55/18 *CCOO v. Deutsche Bank* (May 14, 2019) required member states to oblige employers to set up an objective, reliable, and accessible system to measure daily working time. This ruling has indirect but important significance, because if working time cannot be measured, rest time cannot be protected either.

The fifth stage, from 2016 to the present, is the period of codifying the right to disconnect. This stage can be divided into two waves. The first wave (2016–2019), represented by France, Italy, and Spain, recognized the right in the form of bargaining obligations or general declarations. The second wave (2020 to present), driven by the COVID-19 pandemic, tends to be more specific and attached to stronger sanctions, as seen in Portugal, Chile, Argentina, and especially Australia. From a historical perspective, the right to disconnect does not set out a new principle, but restores an old one (rest time belongs to the worker) under new technological conditions.

Legal models of the right to disconnect around the world

The French model: bargaining obligation. Law No. 2016-1088 of August 8, 2016, on labor, modernizing social dialogue, and safeguarding professional trajectories (commonly known as the El Khomri Law) added a provision to the French Labour Code, now paragraph 7 of Article L2242-17. Accordingly, annual negotiations on professional equality and quality of work life must include methods for employees to fully exercise their right to disconnect, and the setup by the enterprise of regulation mechanisms on the use of digital tools, to ensure respect for rest periods, leave, as well as personal and family life. If no agreement is reached, the employer must issue a charter (*charte*) after consulting the social and economic committee. This obligation applies to enterprises with 50 or more employees. The strength of the French model is respecting organizational diversity, allowing each enterprise to determine suitable solutions. The weakness, as Lerouge and Trujillo Pons (2022) and Pansu (2018) pointed out, is that the law does not define the content of the right, does not provide direct sanctions for out-of-hours communications, and enterprises can fulfill the obligation merely through a formalistic document.

The Spanish model: declared right tied to data protection. Article 88 of Organic Law 3/2018 of December 5, 2018, on personal data protection and guarantee of digital rights recognizes employees' right to digital disconnection to ensure respect for rest periods, leave, and personal and family privacy outside working hours. Employers must formulate internal policies after consulting employee representatives. Law 10/2021 on remote work (Article 18) re-affirms this right for remote workers. A prominent feature of the Spanish model is placing the right to disconnect within the system of "digital rights", linking it to privacy rather than just working time. This approach offers valuable reference for Vietnam in the context of recently completed personal data protection legislation.

The Italian model: right linked to flexible work contracts. Article 19 of Law 81/2017 on "*lavoro agile*" (agile work) requires flexible work agreements to specify necessary technical and organizational measures to ensure employees can disconnect from technological equipment. The scope of this model is narrow because it applies only to a specific form of labor organization.

The Belgian model: gradually expanding mandatory scope. Belgium initially recognized the right to disconnect in the Law of March 26, 2018, as an obligation to consult with the prevention and protection committee at the workplace. The Law of October 3, 2022, subsequently required enterprises with 20 or more employees to have provisions on disconnection, in collective agreements or internal labor regulations. The federal public sector has also been subject to separate regulations since 2022. The Belgian experience shows that codification can occur step-by-step, expanding gradually from procedural duties to substantive obligations.

The Portuguese model: employer duty of non-contact. Law 83/2021 of December 6, 2021, amending the Labour Code, added Article 199-A prescribing the "duty of abstention from contact" (*dever de abstenção de contacto*). Employers have a duty not to contact employees during rest periods, except in cases of force majeure, and violations are classified as serious administrative offenses. The law also prohibits adverse treatment of employees who exercise their right to rest. This is an important theoretical shift: the focus shifts from the "employee's right not to answer" to the "employer's duty not to contact". This design directly addresses the issue identified by Becker et al. (2021), because if employers are not allowed to contact, expectations of availability also lose their basis.

The Irish model: code of practice. Ireland did not enact a separate law, but on the basis of the Workplace Relations Act 2015, the Workplace Relations Commission issued a Code of Practice on the Right to Disconnect effective from April 2021. The code does not directly create an independent legal duty, but can be cited as evidence in labor disputes. The code identifies three specific rights: the right not to routinely perform work outside normal working hours, the right not to be penalized for refusing to handle

work outside hours, and the duty to respect the right to disconnect of others. This "soft law" model is flexible, but its enforceability is low.

The Ontario model (Canada): obligation to have a written policy. The Working for Workers Act, 2021 added an obligation to the Employment Standards Act, 2000 of Ontario for employers with 25 or more employees: they must have a written policy on disconnecting from work. The deadline for the first compliance was June 2, 2022. However, the law does not prescribe the mandatory content of the policy and does not create new working-time rights. Therefore, a policy stating that employees must always be available could technically still be legal. This is a classic example of a "transparency-based" model rather than "substantive protection".

The Latin American model: right linked to remote work regimes. Chile, through Law 21.220 of 2020 on remote work, provides that remote workers have the right to disconnect for at least 12 consecutive hours in every 24-hour period, and employers cannot request responses to communications during that time or on rest days. Argentina, through Law 27.555 of 2020 (Article 5), recognizes the right to digital disconnection and prohibits employers from sending communications outside working hours. Mexico amended its Federal Labour Law in 2021 to recognize the right to disconnect for remote workers. A common feature of these models is defining a specific quantitative threshold (such as 12 hours in Chile). This makes the right easier to enforce, but the scope is limited to remote workers.

The Australian model: conditional right of refusal and specialized dispute resolution. The Australian model represents the newest generation and has the tightest legal structure. The Fair Work Legislation Amendment (Closing Loopholes No. 2) Act 2024 added Section 333M to the Fair Work Act 2009. Accordingly, an employee may refuse to monitor, read, or respond to contact (or attempted contact) from an employer or a work-related third party outside working hours, unless the refusal is unreasonable. The law lists factors to determine unreasonableness: the reason for contact, method of contact, and level of disruption caused; whether the employee is compensated for standby availability; the nature of the role and level of responsibility; and personal circumstances (including caregiving responsibilities). This right took effect on August 26, 2024, for non-small businesses and on August 26, 2025, for small businesses. The Fair Work Commission has jurisdiction to resolve disputes and issue stop orders. Order violations can incur civil penalties. The law also protects workers from adverse actions when exercising this right. The strength of the Australian model lies in balancing flexibility (via the "reasonableness" standard) and enforceability (via specialized dispute resolution). It also acknowledges that legitimate communications exist (emergencies, scheduling updates) that employees cannot refuse.

The European Union level: from resolution to legislative consultation. On January 21, 2021, the European Parliament adopted a Resolution with

recommendations to the Commission on the right to disconnect (2019/2181(INL)), with 472 votes in favor, 126 against, and 83 abstentions. The resolution attached a draft directive proposing that employers must implement measures guaranteeing the right to disconnect, set up objective working-time measurement systems, and protect workers from adverse treatment (European Parliament, 2021). European social partners subsequently attempted to negotiate an agreement on telework and the right to disconnect, but failed to reach an outcome by late 2023. In 2024, the European Commission launched formal consultations with social partners regarding legislative initiatives. This process shows that even in the region with the strongest worker protection tradition, codifying the right to disconnect remains controversial, primarily revolving around state intervention levels and burdens on small businesses.

Overall, these models can be arranged on a continuum of intervention intensity. At the lowest end are "transparency-based" (Ontario) and "soft law" (Ireland) models. Next are "bargaining obligation" models (France, Belgium, Spain). Higher up is the "conditional right of refusal" model (Australia). At the highest end is the "duty of non-contact" model (Portugal, and Chile/Argentina for remote work). The general trend during 2016–2025 has been a gradual shift toward higher intervention levels, moving from procedural to substantive requirements, and from policy declarations to legal sanctions.

Statistical evidence on the impacts of constant connectivity

Secondary data from international organizations show that prolonged working hours and constant connectivity represent significant challenges. A joint study by the World Health Organization (WHO) and the ILO published by Pega et al. (2021) in *Environment International* estimated that in 2016, working 55 hours or more per week led to 745,194 deaths from stroke and ischemic heart disease globally (398,441 from stroke and 346,753 from ischemic heart disease). According to the study, about 488 million people, or 8.9% of the global working population, worked such long hours. The study did not directly measure the impact of digital technology, but established a scientific basis that long working hours constitute a fatal occupational hazard. Digital technology acts as a silent mechanism extending working hours without formal record.

The ILO (2022) reported that over one-third of the global workforce regularly works more than 48 hours a week, while about one-fifth works under 35 hours. This polarization reflects time inequality: some workers lack work, while others are overworked. The joint Eurofound/ILO (2017) report pointed out that workers performing mobile work with ICT tools tend to work longer hours and report higher stress levels than those working solely at employer premises.

Eurofound's (2020) survey early in the pandemic showed about 27% of home-based workers worked during their free time to meet job

demands, significantly higher than non-remote workers. Microsoft's (2022) data on increased after-hours work (28%) and weekend work (14%) since early 2020 aligned with these findings.

In Vietnam, according to DataReportal's *Digital 2024* report, in early 2024 Vietnam had about 78.44 million internet users, equivalent to a penetration rate of 79.1% of the population (Kemp, 2024). Such high internet and smartphone penetration, combined with messaging apps like Zalo being widely used for work communications, creates technical conditions for constant connectivity to spread in work environments. However, there is currently no official national survey measuring the frequency of out-of-hours work communication in Vietnam. This fact itself is a finding: labor statistical agencies only measure "working hours" traditionally, not "standby availability" or "out-of-hours contact". Therefore, a large portion of work time generated through digital technology remains unobserved by policy.

Current Vietnamese legal framework and regulatory gaps

Textual analysis shows that Vietnamese law possesses constitutional and statutory foundations for the right to disconnect, but lacks direct provisions.

At the constitutional level, Article 21(1) of the 2013 Constitution recognizes the inviolable right to personal privacy, personal secrets, and family secrets. Article 35(2) provides that wage earners are guaranteed fair, safe working conditions, pay, and rest regimes. These two provisions serve as a constitutional basis for the right to disconnect, which can be understood as an intersection between the right to rest (Article 35) and the right to personal privacy (Article 21).

At the statutory level, the Labour Code of 2019 (Law No. 45/2019/QH14) has a relatively complete system of rules on working hours and rest periods. Under Article 105(1), normal working hours shall not exceed 8 hours per day and 48 hours per week. Article 105(3) states that the State encourages employers to implement a 40-hour work week. Article 107 defines overtime as time worked outside normal working hours prescribed by law, collective bargaining agreements, or internal labor regulations, executable only with employee consent. Overtime hours must not exceed 50% of normal daily working hours and 40 hours per month. Yearly overtime must not exceed 200 hours, except for certain sectors allowed up to 300 hours. Article 109 regulates rest breaks during shifts, Article 110 prescribes shift-change breaks of at least 12 hours, and Article 111 regulates weekly rest of at least 24 consecutive hours. Article 98(1) requires overtime pay rates of at least 150% on regular days, 200% on weekly rest days, and 300% on public holidays and paid leave days. Decree No. 145/2020/ND-CP provides detailed guidance for these provisions.

Chronologically, Resolution No. 17/2022/UBTVQH15 of the Standing Committee of the National Assembly should be noted. To support post-

pandemic recovery, it temporarily permitted raising monthly overtime caps to up to 60 hours per month and 300 hours per year, applicable from April 1, 2022, to December 31, 2022. This was a reasonable policy decision under special circumstances. Simultaneously, it showed that working time limits in Vietnam are still viewed primarily through production needs rather than fully through health and human rights lenses.

Compared against the theoretical framework, four gaps in Vietnamese law emerge.

The first gap is the absence of a concept for the "state of readiness". The Labour Code of 2019 maintains a binary division between working time and rest periods. Article 112(1) of the Labour Code and Decree 145/2020/ND-CP list certain intervals counted as paid working time, but do not directly address situations where an employee performs no actual physical work but must maintain a state of readiness to answer communications. As Becker et al. (2021) demonstrated, this state itself causes harm. Current law lacks tools to recognize, measure, or compensate for it.

The second gap is the difficulty in identifying implicit overtime. Under Article 107, overtime requires employee consent and must be paid under Article 98. However, when a manager sends a message requesting work processing at 9:00 PM and the employee responds within 15 minutes, this behavior is almost never recognized as overtime. Here, there is neither formal overtime agreement nor time-tracking mechanism, and workers rarely dare demand payment. The result is a large volume of "invisible working time" that is neither compensated nor counted toward overtime caps, neutralizing Article 107 limits in practice.

The third gap is the lack of a dedicated regime for remote work. The Labour Code of 2019 contains no specialized rules on remote work with accompanying duties regarding working hours, equipment, and safety, unlike Law 10/2021 of Spain or Law 21.220 of Chile. As remote and hybrid work have become common post-pandemic in service, IT, and financial sectors, this represents a significant gap.

The fourth gap is the lack of specific anti-retaliation mechanisms. Article 8 of the Labour Code of 2019 lists prohibited acts, such as discrimination and mistreatment. However, there are no specific rules protecting workers from subtle forms of retaliation, such as low performance ratings, withholding important assignments, or exclusion from promotion lists when refusing off-hours communications. These forms are difficult to prove without favorable burden-of-proof rules for workers.

Beyond the Labour Code, the Law on Occupational Safety and Health 2015 (Law No. 84/2015/QH13) focuses primarily on physical, chemical, and biological hazards, not yet fully covering psycho-social risks such as stress from constant connectivity. The Law on Personal Data Protection 2025 (Law No. 91/2025/QH15) and previously Decree No. 13/2023/ND-

CP laid foundations for protecting employee data. This provides a basis to develop digital rights along the lines of the Spanish model but currently lacks integration with working-time regimes.

Political-legal orientations from 14th Party Congress Documents and Party resolutions

Analyzing political policy documents shows a solid framework supporting the codification of the right to disconnect in Vietnam, even if documents do not state the concept directly.

First, the Documents of the 14th National Congress of the Party continue to affirm that human beings are the center, subject, most important resource, and goal of development (Communist Party of Vietnam, 2026). If human beings are the goal of development, digital transformation cannot be accomplished by sacrificing worker health, rest time, and family life. The right to disconnect is a tool to ensure "human-centered" digital transformation in the labor field.

Second, the Documents of the 14th Party Congress consider science, technology, innovation, and digital transformation as the main drivers of the new growth model, inheriting and developing the spirit of Resolution No. 57-NQ/TW. Resolution No. 57-NQ/TW identifies science, technology, innovation, and digital transformation as top breakthroughs and main drivers to rapidly develop modern productive forces and perfect relations of production (Politburo, 2024). According to the theory on the relationship between productive forces and relations of production, when digital technology changes labor methods, labor relations as part of production relations must also be adjusted accordingly. The right to disconnect can be seen as part of "perfecting relations of production" in the digital era.

Third, since the 13th Party Congress, the Party has consistently advocated building harmonious, stable, and progressive labor relations (Communist Party of Vietnam, 2021). This orientation continues in the 14th Party Congress Documents, linked to developing a modern, flexible labor market while ensuring social security. A labor relationship where workers must be available 24/7 without pay or rights of refusal can hardly be considered "harmonious" or "progressive".

Fourth, Resolution No. 66-NQ/TW dated April 30, 2025, of the Politburo on reforming law-making and enforcement to meet national development requirements in the new era mandates that the law must lead the way and open paths, promptly institutionalizing issues emerging from practice, especially in digital transformation. The right to disconnect is precisely such an issue: it arises from digital practice and needs codification before negative consequences become widespread and difficult to remedy.

Thus, analyzing policy documents shows that codifying the right to disconnect does not contradict, but aligns with Party directives. This right does not hinder digital transformation, but ensures that digital transformation proceeds sustainably, humanely, and centered on people.

Discussion

Juridical nature of the right to disconnect: Employee right or employer duty?

A central theoretical question emerging from comparative analysis is whether the right to disconnect should be designed as an employee right (to not answer) or an employer duty (to not contact).

At first glance, these seem like two ways of expressing the same content, but they lead to very different legal consequences. If framed solely as an employee right, as in France, Spain, or Australia, the burden of exercising the right falls on the employee: they must actively refuse. In a relationship with power asymmetry, refusing can carry informal costs, such as losing managerial goodwill or being viewed as uncommitted. The autonomy paradox described by Mazmanian et al. (2013) shows that a right requiring employees to actively act differently from collective norms is difficult to exercise. Conversely, if framed as an employer duty, as in Portugal, the burden shifts to the stronger party, and availability expectations are removed at the root. Yet this model risks rigidity, hindering legitimate communications and constraining workers who prefer boundary integration (Kossek et al., 2012).

The author argues that the right to disconnect should be approached as a two-way right–duty relationship. Employees have the right to refuse, protected from retaliation. Employers have the duty to organize work so that off-hours contact is an exception rather than the rule, bearing the burden to prove legitimacy in disputes. Australia's "reasonableness" criterion, paired with appropriate proof mechanisms, serves as a balanced reference point. This aligns with Vietnamese labor law theory emphasizing worker protection while avoiding absolute bans that hinder legitimate business operations.

It is also necessary to discuss Hesselberth's (2018) critique that the right to disconnect can be "instrumentalized" for productivity. In corporate policies, disconnection is often justified by arguing that rested workers perform better. This argument holds empirically (Sonnentag, 2012), but if it becomes the sole justification, the right loses its intrinsic value: when a company calculates that off-hours contact brings greater benefit, the right might be discarded. Therefore, it is essential to affirm that the foundation of the right to disconnect rests on human rights—including the right to rest and the right to personal privacy under Articles 21 and 35 of the 2013 Constitution—rather than merely an efficient HR management measure.

Limitations of the bargaining model in the Vietnamese context

Comparative analysis shows that many European models, especially France, rely primarily on collective bargaining. This model assumes strong, independent, and capable worker representative organizations, along with a long tradition of social dialogue. Applying this model directly to Vietnam requires caution.

In Vietnam, collective bargaining agreements were refined significantly by the Labour Code of 2019, and enterprise trade unions play an important role representing workers. However, collective bargaining quality in many enterprises, especially SMEs, remains limited: many agreements simply restate statutory provisions without adding more favorable terms. Furthermore, the Labour Code of 2019 allows establishing worker organizations at the enterprise level, an important institutional innovation that remains in implementation. Under such conditions, restricting regulation merely to bargaining obligations as in France risks producing formalistic terms, matching outcomes observed by Pansu (2018) and Lerouge & Trujillo Pons (2022) in France.

Organizational culture is another factor. Workplace environments in Vietnam, especially in the public sector and many enterprises, feature relatively high hierarchy, valuing dedication and responsibility to the collective. In that culture, an employee failing to reply to a superior's message can easily be interpreted as disrespectful. This characteristic increases the urgency of legal protections while increasing implementation challenges. The right to disconnect in Vietnam therefore requires grounding in a clear statutory principle, providing workers an official legal anchor to exercise their right without being judged as lacking responsibility.

Workforce differentiation and scope of application

The right to disconnect does not affect all labor groups equally. At least four groups with different needs and risk levels can be distinguished:

The first group comprises formal knowledge workers in the formal sector: office staff, IT specialists, finance, media, and education professionals. This group experiences constant connectivity most directly and represents the main target of international legal models. In Vietnam, this group is concentrated in major urban centers and expanding rapidly alongside digital transformation.

The second group includes cadres, civil servants, and public employees in the public sector. This is a special category governed by public service legislation, not just the Labour Code. With public sector digitalization, assigning tasks and communicating via messaging groups outside working hours has become widespread. The Belgian experience, applying disconnection rules specifically to the federal public sector since 2022, suggests a need for corresponding rules in public service law, while accounting for positions requiring emergency readiness and shift duty.

The third group consists of platform workers, such as ride-hailing drivers and delivery workers. For this group, the issue is more complex, as "being connected" is a condition for work and income. Traditional disconnection rights are difficult to apply when employment relationships remain undefined. The core issue here involves dispatch algorithms imposing indirect penalties—such as lowering rankings or reducing order

allocations—against workers who log off during peak hours. For this group, disconnection needs addressing through algorithmic transparency and platform worker protections, rather than solely through the Labour Code.

The fourth group comprises informal sector workers, who make up a large portion of Vietnam's labor force. For this group, disconnection rights have limited practical meaning when basic guarantees regarding contracts, wages, and social insurance remain unfulfilled. This serves as a reminder that the right to disconnect is not a panacea; it must be placed within a broader national strategy to formalize the labor market and expand social security, aligning with 14th Party Congress directives on inclusive social safety nets.

Proposed "conditional hybrid" model for Vietnam

Based on the above analyses, the author proposes a "conditional hybrid" model for Vietnam. This model combines advantages from international experiences while adapting to domestic characteristics across four tiers:

The first tier is statutory recognition of principles. When amending the Labour Code, a provision should be added to the chapter on working hours and rest periods recognizing the employee's right not to monitor, read, or answer work communications outside working hours. This must be accompanied by a principle that employers cannot discipline, adversely evaluate, or apply detrimental measures when employees exercise this right. Statutory recognition establishes a necessary legal anchor within hierarchical organizational cultures.

The second tier is defining exceptions based on reasonableness criteria. Referencing the Australian model, the law should specify legitimate off-hours communications, such as emergencies threatening life, health, or property; severe technical breakdowns; or roles with standby agreements receiving standby allowances. The law should list factors assessing reasonableness, including job nature, responsibility levels, standby compensation, and personal circumstances. These exceptions must be interpreted narrowly so as not to invalidate general principles.

The third tier is workplace implementation via internal labor regulations and collective agreements based on enterprise size. Referencing Belgian and Ontario models, employers reaching a certain workforce threshold should be required to include disconnection terms in internal labor regulations: non-communication windows, emergency contact channels, and rules for messaging groups. As the Labour Code of 2019 requires employers with 10 or more employees to have written internal labor regulations, this represents a suitable threshold. Employers must consult enterprise worker representative bodies when drafting rules. Micro-enterprises would apply general Tier 1 principles without mandatory detailed policies, avoiding administrative burdens.

The fourth tier is integration with related legal systems. Psycho-social risks, including stress from constant connectivity, should be added to occupational safety and health legislation. A dedicated remote work regime should be constructed in the Labour Code, with disconnection rights as a core component. Connections should be established with the Law on Personal Data Protection to limit off-hours employee monitoring via devices and software. Corresponding rules must be added to public service law. Regarding sanctions, violations of disconnection rights should be added to administrative penalty decrees in labor, while granting workers rights to initiate individual labor disputes. A notable mechanism to consider is shifting the burden of proof: when a worker proves adverse treatment following an off-hours disconnection refusal, the employer must prove the measure was based on other legitimate reasons.

Beyond legal solutions, findings from Eurofound (2021, 2023) and Perlow (2012) show that disconnection rights become truly effective only alongside organizational culture changes. Leadership behavior plays a decisive role: a "no contact after 7:00 PM" rule remains meaningless if directors continue sending emails at midnight. In Vietnam, exemplary leadership emphasized by the Party can be applied here. Public agencies can lead by enacting rules on off-hours public messaging app usage, creating positive spillover effects into the corporate sector.

Concerns exist that the right to disconnect might reduce competitiveness, especially in sectors serving global clients across time zones, such as software outsourcing or business services. This concern deserves serious consideration but should not be exaggerated. First, the "conditional hybrid" model allows businesses to structure work shifts matching client time zones: disconnection rights protect off-shift hours, without banning non-standard shift schedules. Second, the ILO (2022) and Eurofound (2023) demonstrate that balanced working-time policies yield productivity gains, lower turnover, and enhance talent attraction. Third, health costs from extended work hours, as Pega et al. (2021) highlighted, are real societal costs, even if unrecorded on corporate balance sheets. Long term, protecting labor capacity preserves national competitiveness, aligning with high-quality human resource strategies in the 14th Party Congress Documents.

Dialogue with prior studies and contributions of the article

Compared to previous studies, this article offers several new points. Theoretically, it connects findings on the harms of "availability expectations" (Becker et al., 2021; Barber & Santuzzi, 2015) with legislative design, arguing that the right to disconnect must be built as a two-way right–duty relationship rather than a passive worker right. This point supplements Lerouge & Trujillo Pons' (2022) analysis focused on the lack of sanctions in French and Spanish models. Comparatively, the article incorporates Australia's 2024 model and Latin American models into the

analysis, broadening comparative scope beyond European-centric literature (Secunda, 2019; Eurofound, 2021). Practically, the article identifies four specific regulatory gaps in Vietnamese labor law and proposes a four-tiered model linked to political orientations of the 14th Party Congress, an area previously unexamined systematically in domestic legal scholarship.

At the same time, the article acknowledges that proposals require empirical verification. Future research directions could include surveys measuring the frequency and impact of off-hours contact on Vietnamese workers, case studies of enterprises proactively adopting disconnection policies, and evaluations of Australia's model after several years of implementation.

Conclusion and Recommendations

The research demonstrates that the right to disconnect is not a new "privilege" for workers. It represents the restoration of a foundational principle of modern labor law—that rest time belongs to the worker—under digital conditions erasing boundaries between work and personal life. From a historical perspective, this right is the latest stage in a two-century struggle over time control. From a comparative perspective, global legislation has shifted from declarative, bargaining models (France 2016, Spain 2018) to models with specific content and clear sanctions (Portugal 2021, Australia 2024). From a behavioral science perspective, consistent evidence shows constant connectivity and availability expectations harm health, recovery, and family life.

For Vietnam, the 2013 Constitution provides foundations for disconnection rights through the right to rest (Article 35) and personal privacy (Article 21). The Labour Code of 2019 possesses a relatively complete system on working hours and rest periods, but remains designed around physical time logic, leaving four regulatory gaps: lack of a readiness state concept, difficulty identifying implicit digital overtime, absence of remote work regimes, and lack of specialized anti-retaliation mechanisms. Party directives from the 14th Congress, along with Resolution No. 57-NQ/TW and Resolution No. 66-NQ/TW, provide solid political grounds for codification: placing humans at the center, treating digital transformation as a driver, maintaining progressive labor relations, and using proactive law-making.

Accordingly, the article offers the following recommendations. For legislative bodies, research adding the right to disconnect into future Labour Code revisions using the four-tiered "conditional hybrid" model: statutorily recognizing principles, defining exceptions via reasonableness criteria, contextualizing through internal regulations and collective agreements, and integrating with occupational safety, data protection, and public service laws. A dedicated remote work regime should be constructed simultaneously. For the Government and ministries, administrative penalty

decrees should incorporate disconnection violations, while labor statistics should measure standby readiness and off-hours communications. Public agencies should lead by establishing rules for off-hours official communications. For trade unions, disconnection terms should be added to collective bargaining agendas while raising worker awareness. For enterprises, internal digital communication policies should be established proactively, leveraging managerial role-modeling and treating rest protection as an investment in productivity and sustainability rather than a compliance cost.

Digital transformation will truly be "human-centered" only when technology serves people, rather than transforming humans into perpetually online appurtenances of technological systems. In that light, the right to disconnect is an essential component of a humane digital economy, upholding the principle of placing human beings at the center affirmed by the 14th National Congress of the Party.

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