The Personal is Billable: A Look into the Blurring of Work and Personal Time in the Era of Hybrid Working

Introduction

Separation of work and personal time has become harder to achieve in an ever more digitised era. The coronavirus pandemic threw the challenge of keeping our work and personal lives separate into stark light. With hybrid working arrangements here to stay, the question of how to safeguard personal time has arisen. Calls for a legal 'right to disconnect' are growing, and have even culminated in the introduction of news laws in some jurisdictions. In this article, which focuses on the UK but looks overseas for context, we will explore the blurring of work and personal time, the concept of a right to disconnect and what this may mean for the future of work in the UK.

Blurred lines

Though the blurring of work and personal time emerged prior to the coronavirus pandemic, the pandemic radically altered the way in which most workers carried out their day-to-day tasks. Almost half of the UK workforce worked from home during the UK-wide lockdown, and flexible working was embedded for a new wave of workers across a wide range of sectors.

Flexible working simply means a working arrangement that gives a degree of flexibility on how long, where, when and/or at

what times an employee works, and it encompasses hybrid working and “telecommuting” (i.e. technology supported work that be completed anywhere). There are a number of (potential) benefits, for both employers and workers to hybrid working. These include reduced overheads for employers due to lower office space requirements, increasing the size of the selection pool from which employers can recruit and enhancing the productivity of employees.

On the other hand, the impact of hybrid working is not solely positive and has led to greater consideration of how workers are able to manage their personal life/work life boundaries. We are all weighed down with hardware, apps and platforms which help to facilitate both social and work-based interactions. Due to the pervasiveness of these technologies, it is difficult, if not impossible, for most individuals to clearly separate their personal lives from their work. The fact that digital communications, for work and social reasons, are often made from the same devices further blurs these overlapping lines. The halcyon days where work was work, and home was home, are almost certainly a thing of the past.

The working styles of individuals in this new era, can, broadly, be split into two types of workers: the “segmenters” and the “integrators” **(1)**. “Segmenters” are those who establish clear boundaries between their work and non-work lives. This may be in the shape of physical boundaries, such as a dedicated room that serves as workspace in their home, or a time-based boundary, in which no work is done after a certain point in the day. In contrast, “integrators” are individuals that move between work and non-work more frequently. It is clear that differing degrees of separation may be necessary and/or desirable for workers. The ‘right’ flexible working approach will be determined by considering the individual circumstances of each worker, and the resources of the relevant employer.

The right to disconnect

Several countries have already introduced a legal right to disconnect. In 2017, France made it mandatory for employers with at least 50 workers to negotiate agreements with trade unions that allow employees to disconnect from work technology outside of their normal working hours. If no such union agreement is reached, the employer must establish a right to disconnect policy.

Similarly, in 2021, Portugal introduced a "right to rest", which applies to companies with more than 10 staff members and prohibits these companies from contacting employees outside of their contractual working hours. Similar laws have been enacted in Argentina, Costa Rica, Italy and Peru.

Other countries have taken an approach which, though not legally binding, aims to create a culture where the distinction between work and non-work is more respected. Ireland's Code of Practice on the Right to Disconnect (the **Code of Practice**), introduced in April 2021, is one such measure and focuses on three elements:

1. the right of an employee to not have to regularly perform work outside their normal working hours;
2. the right not to be penalised for exercising the right to disconnect; and
3. the duty to respect another person's right to disconnect.

This is a broad right which goes beyond the right to disconnect from digital devices but extends to all types of work, not only remote working. Though failure to adhere to the Code of Practice is not an offence in of itself, such a failure can be admitted in any proceedings a worker pursues relating to their working hours.

What is the current situation in the UK and what does the future hold?

Under the Working Time Regulations 1998 (**WTR**), employees in Great Britain are not permitted to work more than 48 hours a week, averaged across 17 weeks, unless they opt-out of this limitation. Even where a worker has opted out of the maximum working hours limit, employers must still protect the health, safety and welfare of their employees. An employer must take reasonable steps to this end, including ensuring workers have adequate rest periods.

Although this does not mean that workers have a right to disconnect, a failure to allow a worker to ringfence work-related communications may result in breaches of employment law. In *Alsnih v Al Quds Al-Arabi Publishing & Advertising*, an Employment Tribunal held that a journalist was unfairly dismissed for refusing to install an intrusive work-related app on her personal phone. The Tribunal found the employer's approach meant that the employee would not be able to separate her home and work life. You can read more about this decision here.

With the next General Election set to be held no later than 28 January 2025, but likely sooner, it is worth noting that the Labour Party has promised to double the number of flexible working requests that can be made in a year, as well as making the right to flexible working a "day one" employment right for

all workers. Further, the Labour Party has indicated that it would legislate to introduce a right for workers not to be contacted about work outside of normal working hours.

Conclusion

As a right, rather than an obligation, it would not be *mandatory* to disconnect from work. By enacting laws that give workers a right to disconnect, it enables those who wish to be more flexible in their working hours to do so without fear of being penalised by their employer. The danger is that employees in certain sectors may feel under pressure not to exercise such rights, which would undermine the intention behind any new law. Employers need to create an environment in which employees are not subject to detrimental treatment for seeking to work more flexibly and, in turn, employees will likely need to balance their desires for flexible working arrangements with the needs of the employer.

In the face of what is likely to be increasing employee pressure, employers should evaluate their workplace culture and their ability to meet the flexibility demands of today's workforce. This may include developing new policies which clearly delineate work and personal life. There is no one-size-fits-all approach, but regular, transparent communication will be integral to the successful navigation of an increasingly virtual, and flexible, working world.

BDBF is a leading employment law firm based at Bank in the City of London. If you would like to discuss any issues relating to the content of this article, please contact Anthony Nzegwu (AnthonyNzegwu@bdbf.co.uk) or your usual BDBF contact.

(1) Kreiner, G. E. (2006). ‘Consequences of work–home segmentation or integration: a person–environment fit perspective’, Journal of Organizational Behaviour, 27, pp. 485–507