

New French Law Limits Work Email Outside of Business Hours

By John L. Sander

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A new French law establishes employees' "right to disconnect" beginning January 3, 2017. The new law is an amendment included within a broader labor reform bill, the El Khomri Labor Law (after Labor Minister Myriam El Khomri). An employer with more than 50 employees must set specific hours when employees should and should not send emails under the new law.

The law itself does not dictate when email use is permitted. Rather, it requires the employer and employee to negotiate terms and establish a clear policy for email usage after business hours. If an agreement is not reached, the employer must publish a charter stipulating employee rights and responsibilities outside the office. The legislation intends to ensure that employees are both paid fairly and are allowed to maintain a proper work-life balance.

A number of studies have concluded that lack of a proper work-life balance has a negative impact both on employee health and business productivity. A 2015 French Ministry of Labor Report found that the widespread use of mobile technology has made it difficult for workers to develop a healthy work-life balance, resulting in a myriad of health conditions associated with exhaustion. Similarly, in the United States, the Harvard T.H. Chan School of Public Health survey, *The Workplace and Health Executive Summary*, reported that 44 percent of working adults stated their job affects their overall health. Significantly, the Summary also noted that work-related stress costs U.S. companies \$30 billion a year in lost workdays.

Although widely supported, the French law raises many questions regarding impact and implementation in the modern business world. How will the law affect French companies with business presence outside of France and global companies operating inside of France? How will the law affect on-call employees, such as IT departments, dealing with emergencies around-the-clock? How will the law affect overall workplace productivity? For now, this all remains to be seen.

France is the first country to enact a law limiting all general post-work email use. In 2014, German Employment Minister Andrea Nahles proposed a similar German "anti-stress" legislation banning work email outside of business hours. However, the proposed German legislation was not passed. Nonetheless, Germany has remained proactive in increasing employee work-life balance through limitation of work emails.

It is illegal in Germany for an employer to contact employees during certain holidays. In addition, the German Labor Ministry department limits its own work communications outside of business hours to "exceptional cases." Several German companies, including Volkswagen, BMW, Deutsche Telekom, and Daimler, also have implemented internal limitations on work communications outside of business hours. Daimler, for example, installed software on its system that *automatically deletes* emails sent after a certain hour.

To a lesser extent, Brazil has also acknowledged a concern over work-life balance as a result of around-the-clock emailing through legislation enacted in 2012 establishing that post-work email communication qualifies as *overtime*.

The new French law requires employers to develop a post-work email policy, but does not expressly state set hours when work email should be shut down. This may require employers to negotiate terms with labor unions, potentially resulting in such solutions as disabling various forms of email after a certain hour.

The new French law *does not* include sanctions for covered employers who fail to comply. Nonetheless, failure to comply may support additional damages in the increasingly popular employee-compensation lawsuits that identify work-related stress as the source of a physical or emotional disability.

Employers should regularly review their policies and practices with employment counsel to ensure they address specific organizational needs effectively and comply with applicable law.

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