

## The “Digital Disconnect” on the Back of Occupational Health and Safety

**Francisco Trujillo Pons**  
**Universitat Jaume I**

*The importance of digital disconnection in the workplace cannot be overstated, as it plays a crucial role in preserving the physical and mental well-being of employees. In today's hyper-connected world, the constant use of digital devices and online communication has blurred the boundaries between work and personal life. This continuous connectivity can lead to a range of health issues. Physically, excessive screen time and sedentary work can result in eye strain, headaches, and musculoskeletal problems. Additionally, a lack of time for relaxation and exercise can contribute to a host of chronic health conditions. Mentally, the relentless notifications and information overload can lead to burnout, stress, and anxiety. Continuous work-related communication, even after office hours, disrupts personal lives and makes it challenging for individuals to recharge and spend quality time with loved ones. Promoting digital disconnection by setting boundaries, encouraging regular breaks, and respecting off-hours can help employees maintain a healthier work-life balance. Ultimately, these practices enhance physical and mental health, leading to happier and more productive workers. Employers and employees must recognize the significance of this disconnect to create a sustainable and healthy work environment.*

*Keywords: legislation, risk prevention, teleworking, measures, occupational hazards, digital disconnection, hyperconnectivity*

### **WORKPLACE “HYPERCONNECTIVITY” ENHANCED BY COVID-19**

The full implementation of the so-called “Information and Communication Technologies” (hereinafter, ICTs<sup>1</sup>) in society and, by logical extension, in the workplace, is beneficial in many ways. Not in vain, according to various theories, ICTs were created to “free people from tedious, degrading and alienating work and allow them to satisfy their curiosity, learn, enjoy life and devote most of their time to leisure and play” (Dosi and Virgillito, 2019: 8). Notwithstanding the above, on other occasions, ICTs may blur certain labor rights enshrined in national regulations, which must always be guaranteed in their entirety and without exception.

The digitalization established in the current framework of labor relations causes a massive use of technological tools of strict professional use and a “hyperconnectivity” or constant connectivity of the work that calls into question a right of vital importance in the workplace: the right to safety and health. Especially after the current preponderance of teleworking, caused by the presence of COVID-19. The global pandemic, with the confinement regime and the different phases experienced until the “new normal” has forced many workers to provide services “remotely”. At a time when the labor market is experiencing a health crisis, the stress that can arise in the use of ICTs must be the exception rather than the common rule. This constant connectivity leads workers to never disconnect from their work, with the pernicious consequences this can

have on their health: companies are obliged to evaluate the psychosocial risks of the use of ICTs in the workplace, as required by Law 31/1995, of 8 November 1995, on the prevention of occupational hazards (BOE 10 Nov. 1995, hereinafter LPRL).

Indeed, we are facing a new era, the era of “digital interconnectivity” in which a huge volume of data and information are in the so-called “cloud”, which allows interconnected work models in which the boss can use ICT means to contact digitally or remotely with the employee. These work models which, at present, due to the regime of trust and preference given to remote work by the presence of COVID-19, reach their maximum expression with “*Remote Work*” (or remote work) according to which, the work is performed precisely with the use of ICTs with the particularity that the execution of the same is carried out, regularly, outside the premises of the company. This last characteristic leads to differentiate “teleworking” from the remote work regulated in Article 13 of the ET and, more recently, by Law 10/2021, of July 9, on remote work (hereinafter LTD BOE, 10 July 2021), which reiterates the organic law on data protection by regulating the right to digital disconnection (ex. art. 18); the performance of work, which could also be carried out on the employer’s premises, takes place outside these regularly, whereas, in remote work, the work is carried out at the worker’s home or at a place freely chosen by the worker and without supervision by the employer. Consequently, in “remote work”, the company, within its management powers, can control and supervise the worker (for example, using computer programs that record the worker’s movements on the computer)<sup>3</sup>.

## **THE “DIGITAL DISCONNECTION” IN THE WORKPLACE**

The excessive working hours that many workers in Spain are experiencing are protected by the current right to “digital disconnection” in the labor sphere, which has been dealt with in abundance by labor law doctrine (among many other works: Altés, and Yagüe, 2019; Vidal, 2018 and; Biurrun, 2018); a right that has to be dealt with jointly due to its direct relationship with health and safety at work. This digital right came into force in Spain on December 7, 2018, and took shape in Organic Law 3/2018, of December 5, 2018, on the Protection of Personal Data and Guarantee of Digital Rights (BOE Dec. 6, hereinafter LOPDPGDD), which amends, among other legal provisions, the Consolidated Text of the Workers’ Statute Law (ET), by including a new article, 20 bis. The right to “*digital disconnection*” at work has thus been recognized in Spain for just two years, within the framework of the right to privacy in the use of digital devices in the workplace. In this regard, according to Article 88 of the aforementioned Organic Law, the company is obliged to establish an internal policy on the modalities of the exercise of the right to “*digital disconnection*”, after hearing the representatives of the employees. According to the same, the worker outside the legally or conventionally established working time does not have the obligation to respond to calls, corporate e-mails, or text messages. If the exercise of this right is put into practice in the company (in person or remotely), the mental workload and computer fatigue<sup>23</sup> of the worker would not have the necessary levels to have an impact on the health of workers.

Notwithstanding the foregoing, in practice, many companies systematically fail to comply with the right, therefore, a regulatory development<sup>4</sup> of the current legislation that regulates it is urgent, that is: the LOPDPGDD whose content, highlights in this regard its Article 88, dedicated in its three sections to the right to <<*digital disconnection*>> at work as well as, likewise, the aforementioned Article 18 of the recent LTD. Based on this premise, there is undoubtedly a need for a broader regulation of the right to <<*digital disconnection*>> at work; it is a challenge that society sets and that the legislator has to take it as such; an incipient right (it has barely been in existence for two years in the Spanish legal system) that is destined, shortly, to occupy a nuclear position in labor relations.

## **OCCUPATIONAL HEALTH AND SAFETY IN THE CONTEXT OF REMOTE WORK**

Due to its importance for the health of workers who are unable to disconnect, special attention should be paid to the prevention of occupational hazards, seen from the perspective of remote or “off-site” service provision.

In recent years, the globalization of the labor market and the increase in competitiveness have led to greater flexibility in the organization of time and a new way of understanding connectivity. In this sense, traditional forms of organization have become more technological. As stated in the Preventive Technical Note 1122 (NTP 1122) of the National Institute for Safety and Health at Work (INSST), all this is caused due to the <<*daily use of ICTs in the workplace*>> (Santamaría, 2018: 2). These more flexible and technological ways of working are an upward trend in the coming years and a guaranteeing law is needed to protect workers against the excessive use of technological means at work, such as computers, tablets or smartphones, which are included in the ICTs.

As labor law doctrine<sup>5</sup> rightly points out, all of this takes on a much greater dimension when the classic physical units of reference (“analog” workplaces), tend to become virtual. In Spain, it is not surprising that there is evidence of working hours outside the working day from electronic devices, especially in companies in the technology field. Even more so in companies in the technology field. A study shows that in companies in this industry where access to technological devices is easy, most of their employees are aware of using them to work outside their working day<sup>6</sup>.

This industry already works somewhat differently, with more flexible working hours, but working hours rarely fall below 10 hours a day. You can think of companies <<*Google type*>>, flexible schedules, pleasant work environments, all imaginable comforts in the company and, however, few of its employees can reconcile their work and family lives the profile of the employee of this type of company is a young person with little or no family burden that devotes all his time to work.

The introduction of the aforementioned LTD must serve to achieve a more balanced exercise of remote work. If we go to the LTD, Article 16 (dedicated to risk assessment and planning of preventive activity) regulates the business obligation to assess the risks and plan the preventive activity of teleworking and to take into account, above all, the characteristic risks of this type of work, paying special attention to psychosocial, ergonomic and organizational factors. In particular, the distribution of the working day, availability times, and the guarantee of breaks and disconnections during the working day must be taken into account. Likewise, the precept goes on to state:

The risk assessment should only cover the area designated for the provision of services, not extending to other areas of the dwelling or the place chosen for the development of remote work.

In the same sense, it goes on to point out that:

The company must obtain all the information about the risks to which the person working remotely is exposed by employing a methodology that offers confidence in its results, and provide for the most appropriate protection measures in each case.

Moreover, the LPRL applies to all employees (art. 3), and regardless of the place where services are rendered; there are also occupational hazards at home that must be duly considered. Risks such as light, musculoskeletal pain, or mental and physical fatigue must be assessed by employers by their obligation to protect the safety and health of their workers. In this sense, the disciplines of occupational risk prevention that study psychosociology and ergonomics at work are of particular importance.

With the constant “*hyperconnectivity*” of the worker, the risks related to computer fatigue increase, which can have consequences for the worker both physically and mentally<sup>7</sup>. From this perspective, “*technological stress*”<sup>8</sup>, arises, which materializes when the company’s management does not consider technological tools as potential stressors for its workers; as a consequence, episodes of fatigue (physical and mental), headaches, anxiety, and even musculoskeletal disorders are common. Inevitably, digital “*hyperconnectivity*” and occupational health are two issues that go hand in hand<sup>9</sup>; substantial improvements are needed in worker health forecasting, in the sense of excessive susceptibility to an overwhelming work schedule, as well as the lack of social support, which, in short, can lead to episodes of stress and other disorders. To avoid the materialization of these stressors, the company has to adopt preventive measures,

for example, using psychosocial risk assessments (questionnaires<sup>10</sup> or checklists can be used, as stated in the LTD) or giving participation to the workers so that they are the ones who participate in the introduction of the new technologies so that the adaptation is like that and not the other way around (that the workers adapt to the ICTs).

In this sense, a series of measures and practices must be adopted through those responsible for occupational risk prevention, for example, workers, wherever they are, take breaks from their digital devices to get a break from the screen and thus minimize the risk of eye strain. In the same way, give autonomy to the worker so that he/she can set a specific schedule that allows him/her to manage breaks and meal times. With this set schedule, the worker will be able to turn off digital devices (cell phone or computer) and thus exercise with full guarantees their right to “digital disconnection” and, obviously, not suffer the stress and fatigue of having to answer calls and messages outside working hours.

From the point of view of occupational ergonomics, there is a regulation developing the LPRL to be considered: Royal Decree 488/1997, of April 14, 1997, on minimum safety and health provisions relating to work with equipment including display screens (BOE Apr. 23, 1997), which establishes the minimum measures to be adopted for the adequate protection of workers. 1997), which establishes the minimum measures to be adopted for the adequate protection of workers, including those aimed at guaranteeing that the use of equipment including data display screens (PVDs<sup>11</sup>) by workers does not give rise to risks to their health and safety. According to the Royal Decree, the following are excluded from its scope of application: “systems called portable devices provided that they are not used continuously at a workstation” (art. 1.3, section d). However, the worker who assiduously uses a computer or smartphone for strictly professional purposes should be protected by these regulations. So the employer, as guarantor of the safety of his workers, must take the necessary measures to ensure that the use by workers of equipment with display screens does not pose risks to their safety or health or, if this is not possible, that such risks are reduced to a minimum (art. 3). To this end, it must assess the risks to the safety and health of workers, taking into account, in particular, the potential risks to eyesight and physical and mental strain, as well as the possible added or combined effect of these. Undoubtedly, physical and mental problems can arise after the constant connectivity of digital devices. The evaluation to be carried out by the employer will be carried out taking into consideration the characteristics of the job (taking into account the nature of the employment relationship and also without disregarding the position of senior managers) and the demands of the task and among these, especially the following: a) the average time of daily use of the equipment; b) the maximum time of continuous attention to the screen required by the usual task; c) the degree of attention required by the task. In short, by complying with this regulation, and in direct line with the guarantee of the healthy exercise of disconnecting from technology at work, workers will have an evaluation of the digital devices they usually use at work and will not suffer physical or mental wear and tear due to the overload of excessive use.

Likewise, in terms of occupational risk prevention for remote workers, at the public level in the Valencian Community, it is worth mentioning the aforementioned DECREE 82/2016, of July 8, of the Consell, which regulates the provision of services under the “remote working” regime for public employees of the Administration of the Generalitat (DOGV no. 7828 of 14.07.2016) since its article 9 (“Safety and health at work”) determines that it must be verified before the start of the provision that the completion of the questionnaire does not pose a risk to the health of the “*remote worker*”. This does not prevent, as it continues to collect, that the competent body in preventive matters at the level of the Valencian Community, perform a home inspection to verify the conditions alleged in the questionnaire. The conditions of the workplace may also be subject to review and analysis throughout the life of the program, before communication to the person concerned.

All of this has regulatory support in the Spanish legal system by Article 4.2 of Royal Decree 39/1997, of January 17, approving the Prevention Services Regulations (BOE 31/01/1997), which already provides for this situation in the general content of evaluation. Thus:

From this initial assessment, workplaces that may be affected by: a) The choice of work equipment, substances, or chemical preparations, the introduction of new technologies, or changes in the layout of workplaces should be reassessed.

The employee's willingness to comply with the obligation not to connect outside working hours is essential for the right to be technologically disconnected from work to be enforced. They must be aware of the occupational risks they may face if they do not rest and remain connected without interruption. Damages resulting from this lack of <<disengagement>> can be back and neck pain, vision, and hearing problems, and even sleep and cognitive disturbances. In addition, sedentary and isolating behaviors can lead to dependence, addiction, and anxiety: more and more people suffer from nomophobia<sup>12</sup>, an irrational fear of not having their smartphone at hand<sup>13</sup>.

Indeed, during rest periods, such as vacations, before the immersion of ICTs in society, workers did not carry their cell phones or laptops with them, but always had them with them and even by setting up their own home office in the case of teleworking, it is very difficult to disconnect digitally (they may feel incentivized and even forced to work even when they should not). Disconnection is necessary in terms of health: it improves levels of well-being, happiness, and personal satisfaction, as well as depression and anxiety<sup>14</sup>. Some tips for achieving absolute rest outside the working day include: 1) leave the computer running, if it is in the office, or share important documents and files in the cloud or shared folders through a VPN connection; 2) program the email with an automatic response informing that you are not currently working and indicating that you can contact another colleague if needed; and 3) deactivate notifications from work tools. Tips, in short, that can be used not only for workers but also for hierarchical superiors who, as team leaders, have workers under their charge can be as follows.

Consequently, health and safety in teleworking have a direct relationship with the occurrence of psychosocial risks<sup>15</sup>. In this line, the aforementioned NTP 1122 incorporates a non-exhaustive list of psychosocial risk factors due to inappropriate and unplanned use of ICTs related to working time:

- Prolongation of the working day (before or at the end of the working day) and work at unusual hours (night, weekend, etc.) due to permanent connectivity and inappropriate use of ICTs.
- Difficulty reconciling work and family life.
- Increased interruptions in work performance, especially in the use of e-mail.
- Unplanned tasks and multitasking that can extend the workday.
- Performing tasks in “*waiting periods*” or “*downtime*” (between trips and/or travel) that used to be “inactive” (since work could not be performed without being present in the office) and now are worked and can add to the working time of the workday.
- Time asynchronism to interact with other workers located in countries with different time zones, which affects the workday, extending or bringing forward the start of the workday.
- Company culture without a clear policy on the promotion of remote workers, which increases competitiveness and may lead to an increase in working hours using ICTs outside working hours and the work center, in turn causing inappropriate labor practices such as leaves (understood in its meaning of performing work at home, outside working hours, to advance work without reporting this practice to colleagues or superiors)
- Job instability and lack of a clear corporate culture regarding the inappropriate use of ICTs outside working hours, such as leaves (understood as “bringing work up to date” and doing it outside working hours to consolidate the job in the face of the threat of non-renewal or dismissal).
- Corporate culture that does not take into account constant physical mobility for the performance of work (at local, regional, national, or international level in countries with or without different time slots) as working time and/or the extension of the working day that this may entail.

Health, according to the World Health Organization (WHO), is defined as “a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity<sup>16</sup>”, therefore, it is not only physical but also mental, there is a debate about whether the fact that the company maintains digital contact

with the employee and that he has to work outside his working hours hurts his psychosocial health. Not only the fact that he has to work after hours, but also the fact that he has to be available, devoting part of his attention, even if he does not have to work, can contribute to stress and worsen his general health.

It should not be forgotten that thanks to constitutional doctrine, the efficient protection of workers' health, as the central axis of the LPRL, includes protection and protection against psychosocial risks (STCO 62/2007, March 27). Not only the Constitutional Court also highlights the jurisprudence of the ECJ (November 15, 2001, C-49/00), as well as the Supreme Court (STS 101/2016, February 16). Consequently, the evaluation of occupational risks must include possible stress factors which, in our opinion, are obvious from the point of view of digital overload. However, the determination of occupational disease is not so, since according to Royal Decree 1299/2006, of 10 November, which approves the table of occupational diseases in the Social Security system and establishes criteria for their notification and registration (BOE 19 December) today, does not accommodate psychosocial risks. According to its text, only those illnesses caused as a result of work performed as an employee in the activities specified in the aforementioned table and which are caused by the elements or substances indicated therein for each occupational disease are considered occupational diseases. The truth is that this legal framework has to be modified and adjusted to this new digital era; the normalized use of ICTs through which it is very difficult to separate the line of the working relationship from that outside work (family, friends, leisure, etc.) has to be considered in the future as a cause of occupational disease.

Therefore, a worker who has not switched off his digital mind for a long time may suffer from an excessive mental workload, leading to insomnia, irritability, bad mood, lack of motivation, mental exhaustion, lack of energy, and reduced performance. In fact, according to the INSST, when work requires concentration, prolonged attention spans, etc., to which the worker is unable to adapt and from which he cannot recover, we are already talking about a state of prolonged fatigue or chronic fatigue. As the report goes on to detail <sup>17</sup> this type of fatigue, which is no longer recovered by simple rest, has much more serious psycho-social consequences for the worker than normal fatigue, organic, physical, and psychosomatic consequences, such as irritability, depression, lack of energy and will to work, poorer health, headaches, migraines, insomnia, loss of appetite, etc., which will probably not only be felt during or at the end of work but sometimes last and can even be felt when getting out of bed before going to work.

To eradicate this mental workload, it is urgent to design the workplace correctly. Thus, thanks to the preventive obligation of companies (ex. art. 15 LPRL and ex. art. 16 LTD), action must be aimed at designing workplaces away from stressful situations, organizing work times, giving breaks, rest periods, making the workday more flexible, in short, making the working day more flexible, an important step will have been taken to achieve the least possible mental workload for the workers. In these cases, this excessive overload in the digital activity suffered by the worker may be protected in the form of Social Security benefits, but in the form of an accident at work. Thus, according to Royal Legislative Decree 8/2015, of October 30, approving the revised text of the General Social Security Law (hereinafter, LGSS. BOE 31 Oct.) in its Article 156, an accident at work is understood as: "any bodily injury that the worker suffers on the occasion of or as a result of the work he/she performs as an employee". Therefore, by referring to "any injury" it is understood that they can be both physical and psychological injuries, hence the pathologies suffered by the worker due to this situation can be considered as an accident at work. In Article 156.3 the LGSS presumes that such ailment is an accident at work, as long as it occurs during the time and in the workplace ("teleworking", even if it is outside the facilities are for full purposes "the workplace". On the other hand, there is also the possibility that certain illnesses contracted by the worker in the course of his work may be considered an accident at work, provided that it is proven that the illness was caused exclusively by the performance of the work [art. 156.2 e), LGSSJ. If this situation is considered to be an accident at work, there are consequences for the victim or his or her dependents, since apart from the benefits determined by law or regulation, the responsibility for the payment of the surcharge on economic benefits for accidents at work appears; this payment will fall directly on the employer. This employer's liability, which comes into play when the preventive activity fails, is regulated by Article 164. 1 of the LGSS, according to which: all economic benefits resulting from an accident at work will be increased, depending on the seriousness of the fault, by 30 to 50%, when the injury is caused, among other reasons,

by failure to comply with general or specific occupational health and safety measures. This requires the existence of fraudulent or negligent behavior on the part of the employer.

As far as the worker's constant connectivity is concerned, in these cases, the company could be held responsible for the worker's illness. If, for example, he or she demonstrates that outside of working hours, he or she receives telephone calls or e-mails in an indiscriminating manner and is urged to respond to them.

Jurisprudentially, the STSJ Cataluña [(Sala de lo Social, Sección I.<sup>a</sup>), no. 6827/2013 of October 22 (rec. no. 7237/2012)] can serve as an example for these cases. 7237/2012)], which declared that the employer had failed in its obligation to protect the worker's health by tolerating specific and differentiated organizational, functional, managerial, and environmental situations that affected her, giving rise to a serious psychiatric pathology in the worker. This is a very significant example because, digitally in times of COVID-19, workplace harassment can also occur. Not surprisingly, there is a term that defines it as "cyberbullying at work" (network mobbing) and which has been dealt with by the doctrine of labor law<sup>18</sup>. Through which the employee can suffer, for example, using the cell phone via messaging programs. In such cases, disconnection outside working hours is more than necessary, so it is unacceptable - except in cases of force majeure - not only to receive messages with liberal content but also, of course, messages with harassing or vexatious content. If this digital harassment is proven, the employee is entitled to temporary disability benefits in the event of an accident at work involving medical leave. As for compensation for damages, if the accident occurred in whole or in part due to the omission of safety measures, the employee is entitled to compensation for temporary disability, and the worker may claim compensation for an accident at work. If the fault for the accident at work does not lie with the worker, but it can be demonstrated that the employer did not implement all the safety measures required by the LPRL, the worker may claim from the company the compensation to which he is entitled by law. In short, harassment in the workplace, when it generates a policy associated with Social Security benefits, will be considered as an occupational contingency insofar as the main cause has been derived from the performance of the work.

Moreover, one of the most worrying psychosocial consequences, if not the most worrying, is the syndrome known as burnout (also known as "emotional exhaustion" or, more commonly under Anglicism burnout). Even though stress and emotional burnout are currently very common occupational pathologies, the Spanish courts show evident zeal in their pronouncements. It is a circumstance with an important connotation thus, in terms of eventual non-compliance by the employer as an obliged party by the LPRL, the penalty for the non-compliant party could be increased as the psychosocial risk of the worker is involved. This is so, due to the already analyzed surcharge on Social Security benefits which, by article 16419 of the LGSS, means an increase in the amount of all economic benefits deriving from an accident or occupational disease for which the employer is responsible.

Having established the above, burnout emerged in the United States in the mid-1970s as an explanation for people's response to chronic work stress. In the beginning, this term was given only to the consequences of work stress in people who worked providing services to people, such as nurses, doctors, or teaching professionals; but over time it was seen that the symptoms were very similar in people with other types of jobs, so it was considered a general response to work stress. It is currently defined as the response of people to chronic work stress when the coping strategies used for stress fail or are no longer sufficient to cope with the situation the employee is going through.

The symptoms of the syndrome are very diverse, one of the most significant of which is emotional exhaustion. Workers feel that they can no longer give more of themselves; they feel that their energy and emotional resources have been exhausted. Another symptom that appears in people suffering from burnout syndrome is low levels of personal fulfillment at work. Employees feel dissatisfied with their work and with their results; they tend to evaluate themselves negatively and this same negative self-evaluation affects their professional performance. As a last symptom, according to the specialty doctrine, depersonalization stands out, developing negative attitudes and feelings toward the people with whom they work<sup>20</sup>. This burnout syndrome is considered the preliminary step for the consequences of work stress to affect the employee's health on a physical level, such as cardiorespiratory alterations, severe headaches, stomach ulcers, insomnia, or dizziness.

## CONCLUSION

Given what has been analyzed, it can be stated that the new digital right overlaps with an already conquered and established right such as that of legal rest, because there has always been the right to be unavailable outside working time. Although now, due to the constant connectivity of the 21st century, the legislator has had an impact on this issue and has regulated in this respect, more as measures of protection and prevention against computer fatigue. Likewise, there was already a business duty to protect the worker against occupational hazards under the LPRL.

It is logical to think that this incipient labor law in the domestic legal system acquires a special significance in current labor relations because it limits the use of technologies and guarantees everything related to working time (working hours, schedules, holidays, and leaves, as well as vacations). This limitation of use is noteworthy, given that technological tools, which have been established in companies for years, are going to boom unstoppably and will be exponentially enhanced. Undoubtedly, through these virtual work services, the use of technological tools is enhanced, especially with the use of smartphones, which provide constant connectivity both through telephone calls and instant messaging applications, and professional e-mails.

As we have seen, new technologies have completely transformed the way companies work and manage resources. They are key to time optimization and productivity. It is a fact that companies have the Internet in their physical offices and, consequently, that workers use it to search for information, to communicate, or even to learn (online training is very powerful). And not only in the physical offices but also at home, since many companies, apart from providing their workers with portable devices of a professional nature (laptops and desktops), have workers who regularly carry out their activities away from their premises. To be able to download, they connect to their company's ICTs via telematic networks (the use of VPN<sup>21</sup> connections is common). This digital transformation that is taking place in the daily life of companies must not be to the detriment of respect for workers' statutory rest periods. Very shortly, the current right to "digital disconnection" will be relevant precisely because the digital transformation of companies is immense in times of COVID-19, this digital use at work is even more enhanced due to the lack of activity in face-to-face locations.

During the global pandemic, many companies in Spain have become unconcerned about the mental health and well-being of their remote workers. It has been given thus a turn of nut more to the already high labor precariousness of the country. It seems that the mentality of a good part of the employer is fixed on maintaining the lack of confidence in their workers and submitting them to the dictatorship of constant surveillance and control -now also using computer software directed to control every movement of the worker-. Instead of trusting the worker, and giving him autonomy and freedom to manage his own time, he is subjected to an abusive workload to ensure uninterrupted performance. From work presentism, we are moving to "tele presentism" or "digital presentism". Precariousness and control have now been transferred to the daily sphere.

More so when workers who are already physically and mentally exhausted from the stress caused by technology, often for fear of losing their jobs and clinging to their jobs, with the consequence that, in the end, they complete tasks that should not be performed outside their working hours and, obviously, free of charge as they are not counted as overtime and, obviously, to the detriment of their health. This is particularly relevant, especially when in Spain there is a high level of temporary work due to the seasonal nature of sectors with a great deal of weight, such as tourism. In this sense, when faced with the economic needs of part of the population (mortgage, family expenses, etc.), if the vast majority of contracts signed are temporary contracts, the labor claims of workers are sheathed for fear that their contracts will not be renewed. This circumstance is known by many companies and that is why they abuse these types of labor contracts (they do not exceed the limits ex. art. 15.5 ET).

For the worker, time for rest and disconnection is necessary, which, on many occasions, in a society in which there is a tendency towards remote work and work-life balance - even more so now with COVID-19 - gives the impression that all of this is incompatible with the right to digital disconnection. This right is more than necessary in today's technological age; very few workers can disconnect from work once the

workday is over. This causes them to be constantly reminded of pending tasks, thinking about the next day's tasks, etc., which generates constant anxiety and stress. If we add to this the continuous connectivity to e-mails, SMS, instant messages to the cell phone, or calls from the boss after the workday, we never rest from work. Rest must be guaranteed because, otherwise, workers are more likely to suffer psychological and work-related exhaustion.

Indeed, under the LPRL, the company must ensure that workers' rights concerning their health and safety are guaranteed the stress caused by not being "digitally disconnected" is a major psychosocial risk, and companies need to be aware of it and adopt preventive and protective measures.

At the business level, there are applications designed by specialized companies that can help ensure the disengagement of their workers and, incidentally, comply with the applicable regulations. One example is the company FuiFi<sup>22</sup> which, according to its website, has created "the solution for digital disconnection in your company". It works in the form of an app available on web mobile, android app and iPhone app, which, among other features such as the system for recording the working day - adapted to Royal Decree-Law 8/2019 of March 8, 2019 - and vacation management, allows workers to disconnect from their work task. Thus, according to the app, employees can request directly from the mobile application the period in which they will be on vacation, as well as manage any other absence; indicating the start and end date and counting the total number of hours they will be absent. On the other hand, in the event of having to attend to an emergency at work, with the same app they will be able to contact the rest of their colleagues, if necessary. Finally, to guarantee the exercise of the right to digital disconnection, the employee can configure their rest periods so as not to receive notifications from the application during that time.

From this perspective, companies should consider the consequences for the organization if a person suffers such work-related stress over a prolonged period; the role of collective bargaining is still deficient in this regard, so there is an urgent need for greater treatment of the right in collective bargaining agreements to guarantee health and safety in the workplace about the risks inherent in not "unplugging" from digital media at work. The quality of working life and the state of physical and mental health of an organization's workers has repercussions for that organization, such as higher absenteeism, lower productivity, lower product quality, and, ultimately, higher economic expenditure and lower profits.

There is no doubt that a rested worker is a more productive worker and less likely to take sick leave (he/she will avoid being overloaded at work and will avoid suffering from burnout syndrome), so employers should take good note of the above and try to adopt measures in this sense so that the worker, once he/she has finished his/her work, can rest mentally and enjoy his/her family, practice sports, etc. Especially when this is a constitutional mandate: if we go to the Magna Carta, Article 40.2 entrusts the public authorities, as one of the guiding principles of social and economic policy, to ensure the safety and security of the workers and their hygiene at work and guarantee the necessary rest, by limiting the working day, periodic paid vacations, and the promotion of suitable centers.

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## ENDNOTES

1. These are all those tools related to the transmission, processing, and digitized storage of information.
2. See: Pérez de los Cobos y Orihuel, Francisco (2019): “Poderes del empresario y derechos digitales del trabajador”. Trabajo y derecho: nueva revista de actualidad y relaciones laborales, ISSN 2386-8090, No. 59.
3. See López Lourdes (2018): “Hidden surveillance of workers in the company and the recent doctrine of the European Court of Human Rights”. Available at: <https://www.ga-p.com/wp-content/uploads/2018/07/vigilar-ocultamente-a-los-trabajadores-en-la-empresa-y-la-reciente-doctrina-del-tribunal-europeo-de-derechos-humanos.pdf> (Consultation at 22 Oct. 2022).
4. See: Zamora, Santiago (2019): <<Desconexión digital ¿novedad o anécdota?>>, Diario La Ley, ISSN 1989-6913, No. 9363.
5. Among others, extensively: Altés, Juan Antonio and Yagüe, Sergio (2020): <<A vueltas con la desconexión digital: eficacia y garantías de lege lata>>. Labos, Vol. 1, No. 2, pp. 61-87 / doi: <https://doi.org/10.20318/labos.2020.5539> EISSN 2660-7360 - <http://www.uc3m.es/labos>; Molina, Cristóbal (2017): <<Jornada Laboral y Tecnologías de la Infocomunicación: <<desconexión digital>>, garantía al descanso>>. Temas laborales, núm. 138/2017; Todolí, Adrián (2017): <<El derecho a la desconexión digital ya existe. Nos venden humo si no se establecen sanciones claras para quien lo vulnere>>. Available at: <https://adriantodoli.com/2017/03/29/el-derecho-a-la-desconexion-digital-ya-existe-nos-venden-humo-si-no-se-establecen-sanciones-claras-para-quien-lo-incumpla/> (Consultation at 22 Oct. 2022)) y; Trujillo Pons, Francisco (2020): <<La <<desconexión digital>> en el ámbito laboral>. Colección Laboral núm. 264, Tirant lo Blanch, Valencia. 166 páginas. 25 September 2020. ISBN: 978-84-1355-912-4.
6. See: Rodríguez Fernández, María Luz and Pérez del Prado, Daniel (2017). “Digital economy: Its impact on working conditions and employment. Case study on two technology-based companies”. Available at: [http://fdialogosocial.org/public/upload/2/23\\_FdS\\_Economia-digital-impacto-condiciones-trabajo-y-empleo\\_2017\\_final.pdf](http://fdialogosocial.org/public/upload/2/23_FdS_Economia-digital-impacto-condiciones-trabajo-y-empleo_2017_final.pdf) (Consultation at 22 Oct. 2022).
7. On this subject, CCOO Endesa on May 18, 2020, on the occasion of the global pandemic situation, drafted a letter of intent indicating the need to “inform and train workers on hygiene, desk, the correct use of visualization screens, hygienic risks (lighting, thermal comfort conditions, noise, etc.), ergonomic risks (musculoskeletal disorders, other risks such as electromagnetic, visual fatigue, physical fatigue, computer fatigue, and mental fatigue, as well as technological stress and electromagnetic stress. ), as well as technological stress and continuous digital connection”. CCOO Endesa (2020).
8. The concept of technological stress is directly related to the negative psychosocial effects of the use of information and communication technologies.
9. See: Domingo, José and Salvador, Neus (2020): “Hiperconectividad digital y salud laboral”. La Ley Journal, ISSN 1989-6913, No. 9638.
10. The one introduced at the state level by the Government on March 17 and aimed at controlling those workers who, on the occasion of COVID-19, were forced to telework, can serve as a practical example. It collects information on the specific characteristics of the place of residence where the person performs his work with the help of the computer and auxiliary elements (telephone, documents, etc.). It is insufficient because it does not incorporate measures relating to “digital disconnection”. However, it should be seen as a non-exhaustive list and therefore, as an identification of the conditions that, as a minimum, should have the position of “remote work”. Available at: [http://pruebas.croem.es/Web20/CROEMPrevencionRiesgos.nsf/67179F5C2C9B56DEC1258536002ECEE%20B/\\$FILE/cuestionario%20autoevaluaci%C2%B4n%20teletrabajo.pdf](http://pruebas.croem.es/Web20/CROEMPrevencionRiesgos.nsf/67179F5C2C9B56DEC1258536002ECEE%20B/$FILE/cuestionario%20autoevaluaci%C2%B4n%20teletrabajo.pdf) (Consultation at 22 Oct. 2022)]. Also, at the Valencian Community level, established employing DECREE 82/2016, of July 8, of the Consell, which regulates the provision of services in the regime of teleworking for public employees of the Administration of the Generalitat. DOGV no. 7828 of 14.07.2016. Retrieved from: [https://dogv.gva.es/portal/ficha\\_disposicion.jsp?id=4973&sig=005224/2016&L=1&url\\_lista=+](https://dogv.gva.es/portal/ficha_disposicion.jsp?id=4973&sig=005224/2016&L=1&url_lista=+) (Accessed 26-062020), which does determine a question to be answered by the “teleworker”: “Do you unplug electrical appliances when you are not using them?”.
11. According to its art. 2, it is defined as an “alphanumeric or graphic display, regardless of the visual representation method used”. The workstation applies to this regulation is constituted by a computer with a visualization screen provided, if applicable, with a keyboard or data acquisition device, a program for person/machine interconnection, office accessories, and a seat and table or work surface, as well as the immediate work environment. And, the worker, as the one who habitually and during a relevant part of his

- normal work uses a computer with a display screen. As can be seen, this is linked to the right to “digital disconnection” at work.
12. The term nomophobia has been defined as the fear of being without a cell phone. It comes from <<no-mobile-phone-phobia>> i.e.: the extreme dependence on the cell phone.
  13. See: Sánchez Lacuesta, Javier (2020), <<Digital disconnection>>. Available at: <https://www.biomecanicamente.org/news/ibv/item/1809-levante-articulo-abril2020.html> (Consultation at 22 Oct. 2022).
  14. These benefits have been demonstrated in multiple studies, for example, the one conducted by Stanford University and New York University. In their study <<The Welfare Effects of Social Media>> carried out by researchers Hunt Allcott, Luca Braghieri, Sarah Eichmeyer, and Matthew Gentzkow (8 Nov. 2019) it was observed how thousands of users of the social network Facebook who deactivated their accounts for a month, showed evident improvements in their psychosocial health. Retrieved from: <http://web.stanford.edu/~gentzkow/research/facebook.pdf> [Consultation at 22 Oct. 2022].
  15. Alegre, Manuel (2018): The prevention of new psychosocial risks and the right to <<digital disconnection>>. *Gestión práctica de riesgos laborales: Integración y desarrollo de la gestión de la prevención*, ISSN 1698-6881, No. 155; Miñarro Yanini, Margarita (2020). <<El sistema de prevención de riesgos laborales como garantía de efectividad del derecho a la desconexión digital>>, in Rodríguez-Piñeiro Royo, M. and Todolí Signes, A. (eds.) *Vigilancia y control en el Derecho del Trabajo Digital*. Cizur Menor (Navarra): Aranzadi-Thomson Reuters, pp. 577-596; Arrieta, Francisco Javier (2019): Digital disconnection and daily workday registration in Spain as mechanisms to ensure rest, health and well-being of digital telecommuters. *Lan harremanak: Revista de relaciones laborales*, ISSN 1575-7048, No. 42, 2019 (Issue dedicated to: Digitalización, conciliación y trabajo como mercancía/ Digitalizazioa, uztartzea eta lana merkatalgai gisa).
  16. The quotation comes from the Preamble of the WHO Constitution, which was adopted by the International Health Conference, held in New York from June 19 to July 22, 1946, signed on July 22, 1946, by the representatives of 61 States (Official Records of the World Health Organization, No. 2, p. 100), and entered into force on April 7, 1948. The definition has not been modified since 1948.
  17. Consultar: NTP 179: La carga mental del trabajo: definición y evaluación. Available in: [https://www.insst.es/documents/94886/326853/ntp\\_179.pdf](https://www.insst.es/documents/94886/326853/ntp_179.pdf) (Consultation at 22 Oct. 2022] .
  18. Ampliamente : Molina, Cristóbal (2019): «Del acoso moral («mobbing») al ciberacoso en el trabajo («network mobbing») viejas y nuevas formas de violencia laboral como riesgo psicosocial en la reciente doctrina judicial» . *Estudios financieros. Revista de trabajo y seguridad social: Comentarios, casos prácticos : recursos humanos* , ISSN 1138-9532, N.0• 437-438 , 2019, págs. 143-165.
  19. According to which: “All the economic benefits that have their cause in a work accident or professional disease will be increased, according to the seriousness of the fault, from 30 to 50 percent, when the injury is produced by work equipment or in facilities, centers or workplaces that lack the regulatory means of protection, have them inoperative or in bad conditions, or when the general or particular measures of safety and health at work have not been observed, or those of personal adequacy to which work, habitual account of their characteristics and the age, sex and other conditions of the worker. The responsibility of the payment of the surcharge established in the previous paragraph will fall directly on the employer and will not be able to be the object of any insurance, being null of full right any pact or contract that is carried out to cover it, to compensate it or to transmit it. The liability regulated by this article is independent and compatible with those of all kinds, including criminal, which may derive from the infection”.
  20. See Gil-Monte, Pedro (2003).
  21. Acronym for “Virtual Private Network” which stands for virtual private network; used by many companies as a computer networking technology that allows a secure extension of the local area network over a public or uncontrolled network such as the Internet.
  22. See at: <https://fui.fi.com/> (Consultation on 22 Oct. 2022).
  23. Trujillo Pons, F. (2022, July 25). *La fatiga informática en el trabajo*. Bomarzo, Albacete. 570 páginas. ISBN: 978-84-18330-87-2

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