

# The Legal Protection of the Right to Disconnect of Workers in China under Digital Era

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## Abstract

The widespread use of Digital technology in the workplace has broken the traditional boundaries of work time and space, causing work to be unreasonably extended into rest time, blurring the boundaries between workers' lives and work, thereby eroding workers' right to rest. In view of this, scholars in various countries have begun to pay attention to the new problems faced by workers' right to rest in the digital era, and the European Union and its member states have initially explored the construction of the 'right to disconnect' legal system to safeguard the legitimate rights and interests of workers. China's Digital technology development is among the world's top, and domestic scholars have also paid attention to the necessity and feasibility of constructing the right to disconnect in China. This paper will study the current situation of the legal protection of workers' right to rest in the digital era in China from four aspects: social background, legislation, administration, and social partners (i.e. labor unions), explore the feasibility of establishing the right to disconnect system in China, and put forward recommendations in the areas of legislation, administration, and social partners, so as to push forward the development of digital human rights and improve the governance of modern society.

## Keywords

Right to disconnect; China; Right to rest; Digital technology.

## 1. Introduction

In the current international community, due to rapid economic and technological development, many enterprises have begun to use new technologies and tools to improve productivity, such as smart phones and computers, etc., and this new mode of employment has blurred the boundaries between working time and rest time, so that the traditional way of guaranteeing the right to rest can no longer ensure that workers get sufficient and effective rest time. For this reason, the European Union has proposed a new type of digital human right called the 'right to disconnect', which is defined by Eurofound as the right of workers to be free from work during non-working hours and to avoid engaging in work-related electronic communications (e.g., emails or other messages) [1]. China, without exception, has been deeply affected by Digital technology, and it is not uncommon for workers to have to deal with a large number of tasks even after they have left the company, but the relevant laws and policies have failed to change in response to the new problems and circumstances. Therefore, it is of great significance to build a system to protect the right to disconnect of workers in the digital era to promote the development of digital human rights, improve China's legal system, and promote the convergence with international labor standards.

## 2. Background

China is a large country with a large workforce, and the employment structure continues to be optimized, with the tertiary industry, i.e., the service industry, becoming the main channel for absorbing employed persons. The Ministry of Human Resources and Social Security of the People's Republic of China released the 2022 Statistical Bulletin on the Development of Human Resources and Social Security [2], in which the tertiary industry accounted for 47.1 percent of the country's employed people in 2022, becoming the main force driving economic growth. Meanwhile, Digital technology is accelerating its development, integrating and penetrating into other industries, and giving rise to new modes and new business forms such as e-commerce. According to the "Introduction of China's E-commerce Development in 2023 by the Head of E-commerce Department of the Ministry of Commerce" released by the Ministry of Commerce of the People's Republic of China [3], the annual online retail sales in 2023 amounted to 15.42 trillion yuan, becoming the world's largest online retail market for 11 consecutive years.

Network communication technology is pivotal, especially the widespread popularity of WeChat, as of December 31, 2023 WeChat's monthly active accounts have reached 1.343 billion [4]. Today, WeChat is widely used in the workplace, with WeChat clocking in and out, online work transactions commonplace, and even specialized corporate WeChat sections. However, China's existing legal system does not provide for the 'right to disconnect', and it is not uncommon for workers to be dismissed or disciplined for failing to respond to their supervisors' work instructions in a timely manner during off-duty hours. In the case of labor dispute between Beijing Longruisen Petrochemical Co., Ltd. and Luo Jingwei ((2022)Jing 0114 Min Chu No.14395) , the plaintiff Luo did not see the message sent by Manager Guan in time for the mobile phone silence, and was reprimanded by Manager Guan and forced him to write the guarantee, and then notified him to terminate the labor relationship with him. In addition, on April 6, 2023, Southern Weekly launched a poll on microblogging on "whether to reply to the leader's message after work" [5], in which 21,000 votes were cast to indicate that "I don't want to reply, but I don't dare not to do so", which accounted for 40% of the total number of votes. Workers' right to rest has been seriously eroded, but they are often in a state of "not daring to speak out".

In response to the new problems and situations facing workers in the new era, the General Office of the Ministry of Human Resources and Social Security issued a notice on November 8, 2023, entitled "Guidelines on the Protection of the Rights and Interests of Workers in New Employment Patterns with Respect to Rest and Labor Remuneration," "Guidelines on the Publication of Labor Rules for Workers in New Employment Patterns," and "Guidelines on the Protection of the Rights and Interests of Workers in New Employment Patterns," [6] which explicitly points out that "enterprises shall formulate and improve rest measures for workers in new employment patterns, scientifically determine the workload and labor intensity of workers, ensure that workers are given the necessary rest time, prevent overwork, and safeguard workers' health." However, the above provisions are rather broad and merely lay out a framework, leaving the management authority to individual enterprises, and do not specify the subject of regulation or review the effectiveness of the implementation of the relevant management system of the enterprises. As for the supervision and review of the effectiveness of the implementation of the relevant management system by the enterprises, there is no indication of the supervisory body and review criteria, and no detailed explanation, which does not substantively address the issue of workers' right to rest and lacks a certain degree of practicability.

Nowadays, China's economy continues to develop, and the process of digitization ranks among the world's top, with the rapid development of new employment modes relying on platforms such as live e-commerce and community e-commerce, and more complex and diversified

employment situations and modes of employment; however, the relevant laws and policies have not been adjusted and improved accordingly, and there are still gaps in the path to the legal protection of the right of workers to disconnect, and the existing laws are unable to provide the corresponding protection for the ever-developing digital human rights. Therefore, safeguarding workers' right to disconnect has become an essential task.

### **3. Legislative Protection of the Right to Disconnect**

#### **3.1. Theoretical Foundations of the Right to Disconnect**

At present, the right to disconnect has not been explicitly adopted into the Chinese legal system, but the nature of it has been the subject of considerable debate among Chinese academics. Some scholars have argued that the right to disconnect should be interpreted in an expanded manner on the basis of the right of private life and peace, so as to carry out legislative protection. Other scholars believe that the right to disconnect of laborers was created in the special background of the digital era, and therefore should belong to the right of personal refusal in the digital era. However, this paper argues that although the 'right to disconnect' originates from the development and popularization of Digital technology, it is essentially a new manifestation of the violation of workers' right to rest in the digital era. Therefore, the nature of the right to disconnect should be an extension of the concept of workers' right to rest, which has emerged in response to the invisible erosion brought about by the popularization of Digital technology. The legislative safeguards for the 'right to disconnect' of Chinese workers should be subordinate to the system of safeguards for workers' rest and vacation systems.

#### **3.2. Current Status of Legislative Protection**

Although China has not yet explicitly incorporated the right to disconnect into its existing system of legal guarantees for workers, it has established a system of legal protection for workers' rest time, with the Constitution as the cornerstone. The Constitution, as the fundamental law of China, makes principled provisions for the protection of workers' rights. Article 43 of the Constitution of the People's Republic of China provides: "Workers in the People's Republic of China have the right to rest. The State develops facilities for workers' rest and recuperation, and regulates working hours and the vacation system for workers." This provision provides a constitutional basis for the guarantee of workers' rest and recuperation, and for the rational arrangement of working hours and the vacation system in the refinement of relevant legislation in the labor field. With the constitutional basis for workers' right to rest established, the Labor Law of the People's Republic of China devotes a special chapter to regulating workers' working hours, rest and vacation system. Among them, with regard to Article 38, which states that "Employers shall ensure that workers have at least one day of rest per week", some scholars believe that "one day" should be strictly interpreted to mean that employers shall ensure that workers have a complete and uninterrupted rest period of 24 hours per week. The Labor Law and the Provisions of the State Council on the Working Hours of Employees stipulate an eight-hour working day, and the current Labor Contract Law has also stipulated the normal working hours and maximum weekly working hours of workers. The rational design of the legislation on the system of rest and vacation for workers is to enable workers to have sufficient time for rest, recuperation and self-development, and to realize the spirit of the Constitution, which guarantees the basic human rights, such as the right to rest, the right to life and health, and the right to development of life and survival.

#### **3.3. Proposals for Improving Legislative Protection of the Right to Disconnect of Workers**

Appropriate additions and changes can be made to existing laws and regulations to emphasize the impact of digital communication equipment, a new information dissemination tool, on the

working hours, rest and vacation of workers, in order to protect their right to rest after work and to keep pace with the development of the digital age. For example, a provision on the specific concept of the right to disconnect could be added to Chapter 4 of the Labor Law of the People's Republic of China to explain the meaning of the basic right to disconnect and provide a legal basis for workers to request the right to disconnect. It is also possible to provide in the legislation that workers can discuss issues related to working hours with their employers through the mode of collective bargaining, so as to make up for the fact that workers are always in a disadvantaged position in the labor-management relationship through the power of the collective. At the same time, it should stipulate the corresponding obligations of employers with regard to the right to disconnect, emphasize that employers may not unreasonably extend the working hours of workers because of the use of computerized offices, and clarify the penalties as well as the subjects of supervision and review, in order to regulate the employment practices of employers.

## **4. Administrative Protection of the Right to Disconnect**

### **4.1. Current Status of Administrative Protection**

The protection of the rights and interests of workers in China is reflected at the administrative level mainly in the exercise of the functions of the human resources and social security departments and their subdepartments. With regard to the compliance of employers with labor laws and regulations, the Labor Law of the People's Republic of China clearly stipulates that people's governments at all levels above the county level have the right to supervise, inspect, stop, and order corrections, and at the same time explicitly empowers supervisors and inspectors of labor administrative departments to enter employers for the purpose of reviewing the necessary information and inspecting workplaces. In order to further realize the spirit of the Labor Law, which embodies the spirit of the labor administration departments to help protect the rights and interests of workers, the Labor Security Supervision Regulations have been formulated and issued to further refine and implement the responsibilities of the labor security supervision departments to implement the requirements of various aspects. The Labor Security Supervision Department carries out its function of safeguarding the legitimate rights and interests of workers in a manner that combines active protection with passive relief. This combination is reflected in the relevant provisions of the Regulations on Labor Security Supervision, which stipulate that labor security supervisory authorities have the right to inspect, in accordance with the law, the compliance of employers with labor security laws, regulations and rules, and to rectify, investigate and deal with violations of the law, as well as the right to receive and process reports and complaints of violations of the law. On the basis of the above mentioned functions, the Labor Security Supervision Departments have included in the scope of their functions "compliance by employers with the regulations on working hours, rest and vacation". Violations by employers of the right to rest and vacation to which workers are normally entitled can be safeguarded either through proactive inspections by the Labor Security Inspection Department, or by workers who report violations of their right to rest and vacation to the Labor Security Inspection Department for the purpose of defending their rights on their own.

### **4.2. Proposals for Improving Administrative Protection of the Right to Disconnect of Workers**

Analyzing the current situation, China's administrative enforcement of the system of rest and vacation for workers is based on the law, and has a systematic as well as an institutional basis. This means that the administrative support for the implementation of the right to disconnect after it has been incorporated into the law is based on a coordinated safeguard mechanism at the administrative level. At the ex ante institutional design stage, the employer's rest and

vacation system can be reviewed for the record, and the relevant competent authority can be designated to review the employer's internal bylaws, so as to avoid the employer's overuse of workers beforehand; At the stage of monitoring during the process, labor inspection authorities should be allowed to use digital data transmission technology to access data on communications between employers and workers in order to verify that workers are not being subjected to unlimited extensions of their working hours while working remotely; At the stage of penalties and remedies, it should be clarified that the administrative law enforcement agencies that can penalize employers who employ workers in violation of the law or violate their right to disconnect may impose fines or other penalties, depending on the seriousness of the violation of the provisions on the protection of the right to disconnect by the employer.

## **5. Social Forces Support for Safeguarding the Right to Disconnect**

### **5.1. The Role of Trade Unions**

Since the concept of the 'right to disconnect' is not directly provided for in Chinese laws and regulations, trade unions and other social partners play a role only in safeguarding workers' right to rest. The Trade Union Law of the People's Republic of China states that the basic duties of trade unions are to safeguard the legal rights and interests of workers and to serve them with all their heart and soul, and establishes their rights and obligations in the protection of workers' rights and interests. Article 3 clearly states that trade unions should adapt to the development and changes in labor relations and employment patterns, and safeguard the rights of workers to participate in and organize trade unions in accordance with the law; It also provided in Article 23 that, in the case of employers arbitrarily prolonging working hours, trade unions should intervene on behalf of the workers with the employers and require them to take measures to correct the situation; if the employers refuse to correct the situation, the trade unions may request the local people's government to make a decision in accordance with the law.

### **5.2. New Policy Support and New Explorations**

In February 2024, the Supreme People's Procuratorate and the All-China Federation of Trade Unions (ACFTU) recently jointly issued the Circular on Collaborating to Promote the Application of the "Yi Han Liang Shu" System to Safeguard the Rights and Interests of Workers (hereinafter referred to as the "Circular"), which points out that the system applies to all aspects of the employer's working hours, the implementation of the rest and vacation system, and other aspects involving the rights and interests of workers. It also provides that if there are labor disputes involving workers in new employment patterns and the employers do not cooperate with them, trade unions at or above the county level can transfer the relevant clues and materials to the procuratorial organs, which will then initiate the legal supervision procedures in accordance with the law. This offers guidance to trade unions on how to fully perform their duties and roles in the new forms of employment.

In recent years, trade unions in all provinces and cities have made new explorations and attempts to deal with the new problems and situations faced by workers in employment. In Guiyang, Guizhou Province, the Guanshanhu District Federation of Trade Unions, with the aim of adhering to and developing the 'Feng Qiao Experience' in the new era, has set up an "Employee Rights Protection Service Station" in conjunction with the District Human Resources, Social Security Bureau and other departments, bringing in a team of public interest lawyers, a people's mediation organization, a court mediation platform, and legal aid services to comprehensively protect the legitimate rights and interests of workers [7]. At the 2024 National People's Congress, Lv Guoquan, director of the General Office of the National Federation of Trade Unions and a member of the National Committee of the Chinese People's

Political Consultative Conference (CPPCC), submitted a Proposal on Guaranteeing the Right of Workers to Take Offline Rests, suggesting that the right to take offline rests should be introduced at the level of the legislation of the labor law, and that the cost of stealth overtime work violations by enterprises should be increased; the proposal was filed on March 10, which indicates that the right to disconnect of workers has already gained importance at the national level.

### **5.3. Proposals for Improving Social Forces Support of the Right to Disconnect of Workers**

From the innovative cases released by the All-China Federation of Trade Unions (ACFTU), at present, many employers in China have established trade unions within their units, and which at all levels have formulated relevant trade union systems, but most of them are formal, remaining in principle in the written provisions, and it is difficult to give full play to the role of trade unions in safeguarding the rights and interests of workers in the face of the complexity of the situation of labor-management disputes in practice. This paper holds that the role of trade unions in collective consultation can be fully played, and the right to disconnect can be included in the scope where enterprise employee representatives can conclude a collective contract with employers. At the same time, a harmonious coordination and protection mechanism should be established to give full play to the guiding and supporting role of trade unions. For example, trade unions can formulate negotiation and bargaining guidelines on "information and communication technology" and "work-family balance" to support workers in their negotiations; they should also emphasize the supervisory role of trade unions. According to the Trade Union Law of the People's Republic of China, trade union organizations have the right to supervise and make recommendations on employers' actions that harm the legitimate rights and interests of workers. Therefore, the trade union can make comments on the employer's non-compliance with the offline obligation to request correction. Trade unions should be actively involved in the process of safeguarding the right to disconnect of workers, effectively transforming the role of 'talking on paper' into practical results.

## **6. Conclusion**

While China's economy continues to develop steadily and its digitization process is one of the world's most advanced, the European Union and its member States have already conducted some research on the right to disconnect, but there are still gaps in China's legal protection, and existing laws are unable to solve new problems. Therefore, with the rapid development of digital information and communication technologies, one of the most important issues in protecting the legitimate rights and interests of workers in the digital era is how to awaken workers' awareness of the right to disconnect, avoid the inhumane use of digital tools, and ensure that workers enjoy a continuous and complete rest period as required by law. Based on the legal framework for the protection of workers' rights and interests in China, the protection of workers' rest and vacation systems in China still remains in the traditional working hours system under the traditional work mode. Faced with the urgent need to protect workers' right to rest from the instantaneous intrusion of work news outside of working hours, China may put the right to disconnect on the legislative agenda, and improve the existing legal protection system for workers' rest and vacation to protect the legitimate rights and interests of workers in the digital era. At the same time as introducing the right to disconnect into legislation, China should set up corresponding support for the protection of the right to disconnect, on the basis of the existing legal framework of labor administration and the legal system of trade unions, so that workers are able to obtain the full rest and free time at their disposal that they should be entitled to in today's world of perpetual online culture, thus guaranteeing the full and free development of workers in keeping with the times.

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