

## Luxembourg to implement a right to disconnect

On June 13, 2023, bill n°7890 amending the Labour Code by introducing a provision relating to employees' right to disconnect outside working hours, was adopted by the Chamber of Deputies.

The aim of the reform is to amend the Labour Code by adding a new section entitled "Respect of the right to disconnect" and to explicitly include the right to disconnect in the Luxembourg Labour Code.

As a reminder, until adoption of the bill, the right to disconnect was only regulated indirectly, through employees' protection rules in terms of working hours and through the general obligation to ensure health and safety of all employees.

The reform introduces article L. 312-9 in the Labour Code, imposing to employers, whose employees use digital tools for professional purposes, to define, at the level of the company or of the sector concerned, a system (the "**System**") ensuring the respect of the right to disconnect outside working hours adapted to the specific situation of the company or sector and concerning, where applicable, (i) the practical arrangements and technical measures to disconnecting from digital tools, (ii) awareness-raising and training measures and (iii) compensation arrangements in the event of exceptional derogations to the right to disconnect.

The new article further provides that the System may be defined either through a collective labour agreement ("*convention collective*") or through a contingent agreement ("*accord subordonné*".)

In the absence of such agreements, the System is to be defined at company level, in compliance with the powers of the staff delegation, if any. In this case, the introduction and the modification of the System are carried out after the conclusion of a joint agreement between the employer and the staff delegation in companies with 150 or more employees (article L.414-9 of the Labour Code), or after simple information and consultation of the staff delegation for employers hiring between 15 and 149 employees (L. 414-1 of the Labour Code).

Article L.312-10 further provides that in the event of non-compliance with the abovementioned provisions, the Labour and Mines Inspectorate (ITM) can impose administrative fines ranging from €251 to €25,000.



It can be noted that article 312-9 defines a general scope, giving the possibility to each employer to set up his own System. This could lead to inequalities, particularly for companies, which do not have any staff representation (i.e. companies employing less than 15 employees, which are the majorities in the Luxembourg landscape). Indeed, either it is defined in the collective labour agreement or in a contingent agreement, or discussions will be held with trade unions or with the staff delegations. But for companies which are not subject to the obligation to have a staff delegation, employers remain free to do as they like.

Linari Law Firm is available should you need any assistance regarding labour law and dispute resolution.