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## “THE OBLIGATION OF DIGITAL RECONNECTION BY THE WORKER AND ITS CLOSE IMBRICATION IN MENTAL HEALTH”

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**Abstract:** Echo of the French legislation that was a pioneer worldwide in the regulation of the right to digital disconnection at work, the right arose in Spain at the end of 2018 in order to guarantee that the worker does not suffer interference in his right to rest through digital devices. Although the right to rest already exists in Spain since before this specific regulation, its emergence has been due to the unstoppable advance of Information and Communication Technologies (ICT) at work. Thus, the effects from safety and health at work are evident due to excessive use of e-mail, mobile phones or instant messages via WhatsApp. Even more so when, as will be analyzed in this paper, labor law is not absolute, so it may be invalidated in urgent and urgently needed situations, justified by the company. Under these circumstances, employees, in their break time, have to digitally reconnect with the company, which entails an extension of the working day and, therefore, greater probabilities of

damages derived from these work benefits may arise. In digital terms, emphasis must be placed on occupational risks of a psychosocial and ergonomic nature.

**Keywords:** Digital disconnection, work, psychosocial, connection, reconnection, devices, health, mental, ICT, WhatsApp, computer, mobile, worker, businessman

## THE RIGHT TO TECHNOLOGICAL DISENGAGEMENT AT WORK: SOME NOTES ON ITS REGULATION

The permanent and unstoppable advances of these technologies at the service of society have provided well-being from all areas (social, work, family, leisure, etc.). In particular, in the organizational field, the benefits are unquestionable from many points of view, among others: in internal and external communication networks, in business training ( *online* modality is very powerful) in accessibility to information, in the creation of new digital jobs, in the breadth of markets and, with it, in globalization, as well as in the improvement and ease of reconciling personal, work and family life.

Due to this easy accessibility, the personal and intimate sphere of the worker can be disrupted by an intrusion of messages or business communications during break times (both daily, weekly and between shifts or intra-shift days), vacations, permits, leave of absence, reduced working hours, etc. days of personal affairs or incapacities. This difficulty for work-life balance due to misuse caused both by a hyper connection of the worker, on some occasions, by the worker's own will and, on others, forced by business communications (currently, with the preponderance of teleworking as a consequence of the COVID-19 pandemic (it is not surprising that messages or phone calls during times of rest) can lead to the materialization of certain

psychosocial risks, such as now computer fatigue<sup>1</sup> or techno-stress<sup>2</sup>. Without disdaining other damages typical of the digital age 2 due to these misuses from the ergonomic point of view, such as musculoskeletal disorders due to the bad posture of the worker. This is how joint pains are common: neck, back, wrist and fingers due to excessive use of digital devices.

Along with the lack of rest due to permanent connectivity, which affects the mental health of the worker<sup>3</sup>, ICTs increase business powers in control and monitoring systems. There are technological devices that allow and favor not only the monitoring and control of workers, but also the measurement of performance. Under these contexts, workers feel constant vigilance as they feel controlled, which hinders the necessary technological disengagement after the workday. In short, the total establishment of professional ICT determines the appearance of many labor conflicts. To resolve these labor discrepancies, a review and modernization of labor regulations is required, with a determining role in collective bargaining with innovative conventional solutions typical of the new labor paradigm. In addition to the position of the legislator and the role of internal policies and collective agreements and company agreements, labor inspectors and the Social Jurisdiction must carry out, respectively, control, monitoring and surveillance of the right to digital disconnection in the work and an interpretation of it in order to clarify —many— reasonable doubts regarding the exercise of the same (labor law in Spain is not regulated, at present, in an exhaustive manner, which raises many questions). Along the

same lines, the Spanish Constitution (EC) is pronounced, which determines that the public powers must ensure the social, economic and legal protection of the family (article 39.1), as well as ensure safety and hygiene at work., guaranteeing the necessary rest, by limiting the working day, and periodic remunerative vacations (article 40.2). And not only this, the constituent, significantly to the interest of the monograph, prescribes that the law must limit “(...) *the use of information technology to guarantee the honor and personal and family privacy of citizens and the full exercise of their rights*” (article 18.4).

Computers, smart mobile phones (*smartphones*), *tablets*, social networks, the company *intranet*, *instant messages*, *the indiscriminate use of emails (e-mails)*, smart watches (*smartwatches*) and other digital distractors They are part of the daily life of many workers. The lack of disconnection means that they always have their work in mind (carrying out pending tasks, managing subsequent weeks, etc.). Consequently, workers currently often find it difficult not to disconnect during breaks, vacations, weekends, etc.<sup>4</sup>

In this context, in Spain, as in other EU countries (such as France, Belgium or Italy) and non-EU countries (such as Peru or Chile) the exercise of the right to disengage technology<sup>5</sup> guarantees the rest of the worker from the framework of his privacy and personal and family reconciliation<sup>6</sup>. Its basic legal framework is very broad due to its multidisciplinary nature. Thus, labor law in Spain finds accommodation, basically, in the following set of regulations:

1. *Read about:* National Institute for Safety and Health at Work (INSST), 2000.

2. *Read about:* Trujillo Pons, F. (2021b).

3. *Read about:* Trujillo Pons, F. (2021a).

4. As stated, ICTs must be beneficial for work, they must never diminish the effectiveness of breaks or the mental integrity of workers. In the direction of the latter, there are studies that analyze the benefits of these tools to improve or minimize the impacts of occupational hazards on the working population. *Read about:* Trujillo, F. and Iglesias, EM, 2017.

5. *Read about:* Rodríguez, ML and Pérez, D., 2017.

6. *Read about:* Trujillo Pons, F. (2020b).

1. Organic Law 3/2018, of December 5, Protection of Personal Data and guarantee of digital rights (BOE December 6, 2018, hereinafter LOPDGDD) as a worker's right in accordance with its articles 88 (digital disconnection), 91 (collective bargaining), thirteenth final provision (article 20 bis ET for workers of private companies) and fourteenth final provision (article 14 j bis for workers of public companies);
2. in Royal Legislative Decree 5/2015, of October 30, which approves the consolidated text of the Law of the Basic Statute of Public Employees (BOE 31 Oct. 2015) with the inclusion of the aforementioned article 14 bis;
3. in Royal Legislative Decree 2/2015, of October 23, which approves the revised text of the Workers' Statute Law (BOE Oct. 24, 2015, hereinafter ET) with the more specific and direct inclusion of a new addition (in the form of an *encore*) in article 20 and, indirectly, in its fifth section (arts. 34 -day, 37 -weekly rest, holidays and permits- and 38 -annual vacations-);
4. More recently, the right has been reflected in Article 18 of Law 10/2021, of July 9, on remote work<sup>7</sup> (BOE, July 10, 2021, LTD), which is practically limited to referring to what has already been established. in the aforementioned article 88 of the LOPDPGDD;
5. in Law 31/1995, of November 8, on occupational risk prevention (BOE Nov. 10, 1995, LPRL) while article 14 establishes the obligation of the employer to protect his workers as guarantor and debtor of the safety and health at work, as well as by extension, in its extensive development regulations (regulations

on prevention services, on data display screens, etc.) as well as in other technical provisions that are very necessary without being binding (the so-called as Technical Prevention Notes prepared by the National Institute for Safety and Health at Work) and;

All this without having conventional provisions and internal policies given that, by express referral of the LOPDGDD and the LTD, collective agreements, company agreements and internal policies at the company level must be the instrument to convey the flexible modalities of the exercise of the right.

Although, in accordance with the LOPDGDD and the ET, the right is extensible to all independent workers who provide services in physical and analog centers (as well as if they work in a private or public sphere), the new LTD emphasizes it in its article 18 to remember that teleworkers also have their right to digitally disconnect from work guaranteed.

*Article Read about:* two basic monographs in depth: 1) Trujillo Pons, F. (2020a) and 2) Trujillo Pons, F. and Toscani Giménez, D. (2020).

This regulation applies to employed work (*for example:* article 1.1 ET) carried out remotely on a regular basis, that is, to that provided under this modality for at least 30% of the day, or the equivalent proportional percentage depending on of the duration of the contract, in a reference period of 3 months. In the remote work agreement signed between the company and the worker, it is essential to establish the schedule (including the percentage between face-to-face and remote work and its distribution) and the availability rules to preserve the right to digital disconnection.

After the approval and publication of the

LOPDGDD and, after the LTD, companies have to adjust to them from various points, one of them being the right to digital disconnection at work. In compliance with articles 88 of the LOPDGDD and 18 of the LTD (a precept intended, as has been stated, for remote workers and which is practically limited to referring to what is already established in article 88), the companies guarantee the rest time and respect for the personal and family privacy of its employees. Thus, obligations are imposed on both public and private companies (regardless of their size and equally for workers who provide services in physical centers or remotely) that are crystallized in the newsroom (allowing the legal representatives of the workers to have voice and be heard in this procedure) of an internal policy or protocol of action on digital disconnection to ensure that outside the legal or conventionally established working time, rest time, permits and vacations are respected for workers, as well as their personal and family privacy. In addition to workers, it is essential that the policy is also addressed to management positions (with responsibilities and workers under their charge) of the company, since they are the ones who sometimes make communications to their work teams. Later on, it will become clear that not all companies have these action protocols or, in other words, there are many workers who do not benefit from these corporate health and wellness plans.

### **FROM DISCONNECTION TO DIGITAL RECONNECTION OF THE WORKER**

In accordance with article 18 of the LTD, the right of the remote worker to disconnect their digital devices outside of their working hours is recognized in accordance with the LOPDGDD and correlatively, the business duty is imposed to guarantee compliance with

said right of the worker who passes by, for “absolutely” limiting the use of digital media during rest periods, and always respecting the duration of the working day agreed in the collective agreements or work contracts without blurring the maximum duration of the ordinary working day work of forty weekly hours of effective work on average in annual calculation ( *ex.* article 34 ET). The same article 18 of the LTD by which it imposes the business duty to guarantee digital disconnection by imposing a limitation (but not a prohibition, as will be seen) of the use of technological means of business and work communication during rest periods, leaves to collective bargaining or company agreement, the establishment of measures to guarantee the safety and health of workers and the right to reconcile with family life. In addition to the same precept, the aforementioned Additional Provision 1 of the LTD (paragraph 2) states that “ *collective agreements or agreements may regulate (...) possible extraordinary circumstances of modulation of the right to digital disconnection* “. As can be seen, the legal instrumentalization of the right to digital disconnection of the teleworker is equated with the worker who habitually provides his services in physical centers and not analogue ones. However, it must be added that the legislator does a disservice to workers by hinting at possible exceptional circumstances that may cause employees outside of their working hours to be aware of calls or messages on their mobile phones or emails.

Here the right is distorted which denotes that it is not an absolute right. With these exceptions that the company could make, the workers would go from the “ *off* ” mode to the “ *on* ” or “digital reconnection” mode.

Having established the above, it can be affirmed, in effect, that labor law is not absolute since it can be invalidated —that is, workers can be contacted even during rest periods—

in exceptional cases and with an urgent need. In these exceptional cases where labor law is invalidated, a digital reconnection is imposed on the worker outside of his working day.

In this sense, the 1st Additional Provision of the aforementioned LTD (section 2) determines that “ *collective agreements or agreements may regulate (...) the possible extraordinary circumstances of modulation of the right to digital disconnection* “. Consequently, the legislator is hinting at the possible exceptional circumstances that may cause employees outside of their working hours to be aware of calls or messages to the mobile phone or email. In collective agreements and internal policies, these reasons, apart from the classic ones due to force majeure, also include any attention that the worker deserves to carry out because they are urgent or because its postponement harms his company. This transfer of the legislator to these collective agreements (collective agreements or agreements) is carried out under the constitutional guarantee of article 37.1 CE. Both some (statutory and extra-statutory collective agreements) and others (sectoral or interprofessional agreements 9 and business or supra-business agreements) and coordinated if they subsist in unison with internal business policies or protocols, they must regulate digital disconnection and provide them with content. For example, they must determine the exceptional circumstances indicated in the LTD. Thus, in view of possible business damage, the parties have to negotiate the way in which the workers can be contacted by means of a call or short message so that said exceptional urgency can be resolved immediately. The internal action protocols, as well as the collective agreements, determine on many occasions this exception of labor law, but it does not stop

6. As an international example of these exceptional situations, the measure adopted in Australia and affecting Victorian police officers can serve. Putting this situation in context, as can be seen from the news (Daily mail, 2021) police chiefs are prohibited from calling officers after hours and on their days off after their complaints (tired of their phones ringing at all hours). According to the latest union negotiations and the agreement reached, off-duty officers can only be contacted by their superior in an emergency or for health surveillance (appointments for medical examinations, calls to check their health, for example). In particular, the agreement clearly states that officers can be contacted for emergencies, including wildfires, pandemics, terrorist attacks, or any similar event. However, officers can no longer be expected to answer calls about correspondence or to schedule work hours.
7. Thanks to article 83 of the ET will be legitimized to negotiate the most representative trade union organizations and business associations (both at the state and regional level). These interprofessional agreements can be both framework agreements and agreements on specific matters. It is more logical to think that the agreements on specific matters according to par. 3 of the same article, can be used to regulate specific aspects regarding the exercise of digital disconnection at work. Through this instrument, the framework of collective bargaining could be unified since the application of these agreements is direct, without the need for further development by a collective agreement that includes its content. Although its content may limit the particular nature of each sector,

it can be used to create common lines of action. In the same way that there is the VI Agreement on the Autonomous Solution of Labor Conflicts (Out of Court System) (denounced by the Resolution of December 10, 2020, of the General Directorate of Labor, BOE December 23, 2020), nothing prevents that in the future, a concrete agreement on digital disconnection at work can be published.

be a generality without further specificity (what types of assumptions are they?). Apart from the fact that they must detail these cases of imperative need, such as by means of examples, they could also sign, if necessary, an agreement setting a time or time frame so that workers know that they must check their digital devices (mobile, computer, etc.).

In these cases, the company, in view of a possible damage that it may suffer, can contact its employees by means of a call or short message so that said exceptional urgency can be resolved immediately. The internal action protocols, as well as the collective agreements, determine on many occasions this exception to labor law, but it is still a generality without further specificity (what types of assumptions are they?). Apart from the fact that they must detail these cases of imperative need, such as by means of examples, they could also sign, if necessary, an agreement setting a time or time frame so that workers know that they must check their digital devices (mobile, computer, etc.).

Does the company have an obligation not to send messages during break times? Or, does it mean a worker's right to ignore or not answer messages or calls outside of his working day? The will of the legislator rather goes in the second direction since companies are not prohibited from sending messages or calls outside of their working time, as is the case of the *Altamira company* where they are given complete freedom to do so. In a way,

it is reasonable to force companies to close their servers outside of their business hours, because they will always need to contact and call workers. The legislator does not oblige then, it promotes good habits, such as those indicated above, sending emails with deferred or delayed systems, scheduling virtual meetings at times that do not violate the sphere of privacy of their workers, or sending email messages adding in a footer or automatic signature in the sense that the message is not urgent (immediate response) and that it can be answered on the first business day. The worker, with the current regulations, has protection and guarantee to exercise his right to disconnect digitally after his working day. But this must not prevent, as has been argued, the absolute prohibition of doing so: it will be the will and personality of each one who, based on the different detailed levels, chooses one or the other. It is not surprising the workers who, in downtime, in plane queues, waiting in hospitals, etc. can move forward and lighten their pending communications. Even on Sundays where he doesn't have the stress of the working week and can't give free rein to his imagination; These days the worker can have more lucidity and creative thinking, so they can send emails (to themselves, or schedule the delivery for another day) to solve work problems that could never be solved during the week due to the accumulation of tasks imagine. This is where the stress management of each worker can go one way or another, although as a recommendation for mental health, the best option is to neglect the computer and mobile phone from the moment the break begins (not only the daily, also weekly, or your own vacations, holidays, permits, leaves of absence or suspensions of the contract due to temporary disabilities) until it ends. Be that as it may, rest is recommended for the worker so that, aware of the appearance of computer

fatigue and techno-stress, they disengage from their digital devices. And it is easy to disappear from the company in these periods of paid absence, there are many tools that are available as has been analyzed (airplane mode, do not disturb mode, etc.).

You must be aware of your right, the regulations protect you and you must not suffer any retaliation or discrimination because the worker is free to disconnect during his break times for his necessary recreation. Undoubtedly, positions like those of *Zurich help*, directly prohibiting the sending of messages outside working hours. Although more intermediate positions are possible, because there will always be workers with 24/7 positions who must be on the lookout at all times for problematic situations (for example, IT) as well as workers who provide services under objectives and with flexible hours. In this sense, if a worker is entrusted with a deadline for an important project for the viability of the company or for its international positioning and it ends on the last day of the week or one day before the vacation period, what can the company legitimately demand the delivery of the project from the worker who is resting given the urgency? Obviously, there are exceptions that must be clearly detailed in internal policies, in collective agreements and in *ad hoc training*. Then, intermediate positions can be taken as advocated by the ITSS, indicating that companies can send these messages as long as they communicate to the workers that an immediate response is not required (both in the messages themselves and through company agreements or protocols). of disconnection implanted internally).

Then, there are many options to avoid incurring irregularities. If the sender (company) when sending the message indicates that it does not expect an immediate response from the recipient (worker) it does not incur an irregularity. Nor if the company

has *software* that allows the sending of emails on a delayed basis or, even, scheduling the messages so that they are received by the recipient at first business hour on the nearest business day. In the same way, the companies that as addenda to the employment contract (they can use digital disconnection agreements that can be accompanied by the signing of the employment contract, see Annexes 3 and 4) particularly inform the workers — or they do so in a more general way through corporate communication— in the sense of the maxim indicated above and in line with the ITSS thesis: email messages received during break periods will only be answered on time labor (unless otherwise agreed or exceptional, urgent and urgently necessary circumstances).

However, labor law is not absolute as there are exceptions to its exercise in case of urgent circumstances or urgent need that require the availability of the worker. It is reasonable as a safeguard for the company. And even also for the will of the worker, that is, the fact that the right is not absolute; each one can make use of the right in the way they consider, according to their stress management, for example. There will be people who will not suffer any computer fatigue for temporarily giving up the exercise of the right, especially during long periods of rest, such as vacations. On the other hand, others, who will exercise it absolutely, except in exceptional cases.

The invalidity of labor law can determine, as will be seen in the following section, the appearance of psychosocial risks due to the lack of disconnection and digital rest. Fortunately, in these exceptional cases, there are important companies, for example, Telefónica, which, far from generalizing these urgent situations, specify them specifically. This way, the measures that guarantee the right to digital disconnection will not apply in cases where circumstances of force majeure occur or that involve serious, imminent or obvious



business or business damage, the temporary urgency of which undoubtedly requires for an immediate response. In these cases, the company that requires a response from the worker, once the working day has finished, will contact the company, preferably by phone, to notify them of the emergency situation that causes said situation. This way, the work time thus required could be classified as overtime, in accordance with the provisions regarding working hours and/or overtime policy in the labor framework of the worker's own company. In other words, the right to digital disconnection will not apply in cases of force majeure or that involve serious, imminent or obvious business damage that urgently requires an immediate response. In these cases, the worker will receive a call outside of his working day reporting the situation; this way, this working time is guaranteed as overtime. Unless agreed, the right would not apply if workers could receive an "availability" supplement, since in these cases, they would have the obligation to attend to as many communications as they are and at the time they are, with the consequent affectation of a basic right and fundamental as is the physical and mental integrity of the person.

## **SAFETY AND HEALTH AT WORK, AN ISSUE LINKED TO THE LACK OF DIGITAL DISCONNECTION OF THE WORKER**

It deserves special attention due to its importance for the health of the worker who is unable to disconnect, to emphasize the prevention of occupational hazards, seen from the perspective of digital disconnection

8. Read about: Alegre Nueno, M., 2018.

11 On this subject, Comisiones Obreras (CCOO) Endesa on May 18, 2020, due to the situation of the global pandemic, drafted a letter of intent indicating the need to "inform and train workers on hygiene, *desktop, correct use of display 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 continued digital connection.*" CCOO Endesa, 2020.

12 The concept of technostress is directly related to the negative psychosocial effects of ICT use. It was first coined by the American psychiatrist Craig Brod in 1984 in his book "Technostress: *The Human Cost of the Computer Revolution*".

and on a psychosocial and ergonomic level. In this regard, the classification of psychosocial risks carried out by the *European Group for Psychosocial Risk Management (PRIMA)* includes working time and the interaction of face-to-face work and teleworking, as risk factors, considering that very long hours or unpredictable events can affect the worker. Therefore, occupational health and safety is directly related to breaches of the right to digital disconnection, especially in the appearance of psychosocial risks <sup>8</sup>.

In accordance with this point, the preventive magnum opus in Spain is legally noteworthy: Law 31/1995, of November 8, on Occupational Risk Prevention (LPRL) which applies to all employees (article 3) and whatever the place where services are provided; from home there are also occupational risks that must be duly considered. Risks such as light, musculoskeletal pain or mental and physical fatigue must be evaluated by employers in accordance with their obligation to protect the safety and health of their workers. In this sense, the disciplines of occupational risk prevention that study psychosociology and work ergonomics are significant.

With the constant connectivity of the worker, the risks related to computer fatigue increase, which can have consequences for the worker both physically and mentally 11. Techno-stress 12 arises from this prism, which materializes when the management of the company does not consider technological tools as potential stressors for its workers; as a consequence of it, episodes of fatigue (physical and mental), headaches, anxiety and even musculoskeletal disorders are common.

There are multiple good business practices that can help avoid this mental exhaustion of workers that can trigger episodes of chronic stress such as *burnout*. To avoid the overload of emails, the movement known as day without *email* (“*no email day*”) arose. A campaign that Paul Lancaster started on November 11, 2011 and that with his manifesto <sup>9</sup>tried to encourage people to stop using email completely for twenty-four hours. The idea arose from his constant struggle to reach “*Inbox Zero*”, that is, to have the inbox without any messages. A very practical measure that, at the organizational level, would be well received by the vast majority of workers who may feel exhausted from work messages. In this same field, the company *LinkedIn* announced a week of vacation for its 15,900 workers with the aim of counteracting exhaustion. A week that began on April 5, 2021 and was called “*RestUp!*”<sup>10</sup>. With this practice, the aim was to give workers time for their well-being. And not only that, it offered its collaborators who may feel isolated the option of participating in daily activities, such as humanitarian volunteering.

Inevitably, digital hyperconnectivity and occupational health are two issues that go together <sup>11</sup>; Substantial improvements are needed in worker health forecasts, in the indicated sense of susceptibility to excess in the face of an overwhelming work schedule, as well as the lack of social support that, in short, can lead to episodes of stress and others disorders. To avoid the materialization of these stressors, the company must adopt preventive

9. *Read about:* Lancaster, 2021.

10. *Read about:* The Financial, 2021.

11. *Read about:* Domingo, J. and Salvador, N., 2020.

16 The one introduced by the Government as of March 17 aimed at controlling those workers who, due to COVID-19, were forced to telework, can be used. As can be seen in Annex 3, it collects information on the specific characteristics of the place of residence where the person carries out their work with the help of the computer and auxiliary elements (telephone, documents, etc.). It is clearly insufficient because it does not incorporate measures related to digital disconnection. However, it must be seen as a non-exhaustive list and, therefore, as an identification of the conditions that, at a minimum, the teleworking position must have.

17. Naval, C., Serrano-Puch, J., Sábada, C. and Arbués, E., 2016.

12. *Read about:* Jackson, M., 2019.

measures, for example, through psychosocial risk assessments (questionnaires 16 or *checklists can be used*) or, by involving the workers so that they are the ones who participate in the introduction of new technologies so that adaptation is like this and not the other way around (that workers adapt to ICT).

Undoubtedly, the introduction of ICT in work environments causes muscular and ophthalmological problems, headaches, mental fatigue (computer fatigue in the terminology used by the LTD [article18.2]) and physical, or anxiety. They also affect the psychological well-being of workers, as a result of the work overload that these new ways of working entail or the adaptation problems that, for some workers, especially older ones, the introduction of new work tools entails and that may exceed your skill or ability.

Going to the specialized doctrine in digital education, there are studies <sup>17</sup> that go beyond the need to disconnect and the improvements it brings to the person. In this sense, they allude to the benefits that it entails for the recovery of attention capacity, since browsing

The Internet demands a particularly intensive form of mental multitasking. How has it *Multitasking* has been shown to impair the ability to think deeply and creatively <sup>12</sup>. Likewise, if the person disconnects with a certain periodicity, the moments of *online connection* would in turn be more enriching, since being tied to the incessant flow of information, paradoxically, reduces productivity and efficiency. Internet as a window to the world of information have had

a record flow in times of confinement. More particularly, regarding the *smartphone*, when according to recent statistics and studies, <sup>13</sup>Spaniards during the pre-COVID era, Spaniards spent 75 hours a week connected, 20 of them on a double screen. Specifically, “*from just over 19 hours a week they used their mobile phones a year ago, they have gone to an average of 22 hours connected to the Internet via smartphone*”.

Furthermore, according to a recent international study carried out by *Cigna International Markets*, in collaboration with *Kantar* entitled “*Cigna COVID-19 Global Impact*”, which analyzes the global impact of the pandemic on the well-being of the population, it is shown that 79% of respondents feel they need to be “*always connected*”, something that has increased in most countries. It has increased by 7% in the UK (to 74%) and by 6% in Singapore (to 78%) and Hong Kong (72%). We also see that the working day has lengthened, since 59% of those surveyed have stated that they work longer compared to 18% who have answered the opposite. In Thailand, the increase reaches 75%, in the United States 65% and in China 64% <sup>14</sup>.

In these cases of digital overload, as abundant bibliography points out <sup>15</sup>, lack of concentration and superficiality can influence work productivity and creativity in the professional environment. This work overload can have various origins. It can appear in companies that do not promulgate the right to digital disconnection and since they cannot contact or assign tasks to their workers outside of their working day, they carry out a poor distribution of tasks and impose an excessive work rate on the worker. These

workers subjected to these pressures and haste can increase unsafe behavior and generate conflictive situations with the hierarchical line of the company that, in the end, can lead to episodes of psychological harassment and verbal aggression (insults, threats, etc.).

Thus, the workload as a psychosocial factor, if it is excessive, becomes a psychosocial risk factor that leads to psychosocial risks such as stress, violence and harassment at work. If technological means get in the way, techno-stress appears here in all its variants: from technophobia to techno-anxiety. The main causes of its appearance are the high labor demands related to ICT, as well as the lack of technological or social resources related to them <sup>16</sup>. Additionally, risk factors such as techno-fatigue and technoaddiction may appear caused by the uncontrollable need to use ICTs that trigger obsessive-compulsive episodes <sup>17</sup>. All these technological risk factors derived from the use of ICT must be taken into account when adopting measures that favor digital disconnection. For this, companies must assess occupational risks in cases of teleworking and in activities that require a continuous connection of workers (24/7), thus complying with articles 88 of the LOPDPGDD, 20 bis of the ET and 18 of the LTD.

As a result of the foregoing, companies must adopt as many preventive measures as necessary in relation to the workload and pace and harassment and harassment in its digital aspect. In this sense, the Labor and Social Security Inspection (ITSS) published on April 14, 2021 Technical Criterion 104/2021 on actions of the labor and social security inspection in psychosocial risks <sup>18</sup>. A Criterion demanded by the social agents for

13. Read about: Segarra, P., 2020.

14. Read about: 20 MINUTES, 2020.

15. Read about: among others Serrano-Puche, J., 2014.

16. Read about: Salanova, 2003.

17. Gil-Monte, PR, 2017, April 7.

18. ITSS, 2021.

a long time and where a business obligation regarding the evaluation of psychosocial risks is emphasized. Although in accordance with the LPRL and the RSP companies are already obliged to evaluate all occupational risks, obviously, including psychosocial ones (article 16 LPRL and article 6.3 RSP) now, with the ITSS document, there is evidence of more clearly the need to anticipate possible situations of stress, anxiety or psychological discomfort that workers may suffer in their work environment. Consequently, companies that do not evaluate them will be penalized by the ITSS.

A Technical Criterion (104/2021) that, at present, is of maximum interest to senior occupational risk prevention technicians in order to protect workers from their mental health, so punished due to the pandemic and connectivity constant suffered in the use of ICT at work. Its existence will help a lot in the task of writing the digital disconnection codes at work. In it, it is ratified that psychosocial risks are also occupational risks and companies are reminded of the obligation to evaluate them and plan measures to solve them in case of detecting problems. This is a document intended for labor inspectors in charge of verifying and monitoring the appearance of these risks, which, it can be said, are ethereal and have difficulties in their treatment. Some guidelines are also given to companies so that they can evaluate them. According to its content, regarding the load and the pace of work, the tasks of the jobs must be designed in such a way that the workers have enough time to carry out their tasks within the ordinary working day so that they do not prolong their work activity with connectivity to your digital devices in times of rest. And, obviously, the tasks must meet the skills and knowledge of the workers. Likewise, the company must distribute the workload equitably and establish breaks and breaks in order to avoid

the risk of computer fatigue. In this field, it must establish limits on the use of ICT for teleworking and permanent connectivity through the internal digital disconnection policy or protocol. The workload assigned to the workers must not entail excessive working hours in order to be able to separate the personal and professional life of the workers. The parties to the employment relationship must cooperate and be aware of the causes and consequences of techno-stress. In this sense, meetings, talks, surveys, questionnaires that allow monitoring and control of jobs and labor practices to detect work overloads are welcome. If the work is excessive because there are productivity peaks, new hires are recommended, that is, ensuring sufficient human resources so that the entire workforce can rest sufficiently and recover from work. The digital education of the company in the use of ICT is essential so that workers know how to manage them and that they do not cause computer fatigue.

Finally, in accordance with the computer stress, the consequences of the irruption of teleworking in the field of labor relations with the empowerment of sending emails and instant messages are beyond doubt. Astride this massive sending of *emails* that cause mental wear and tear because they are very powerful work distractions that can lead the worker to not rest from the Data Visualization Screens (DVD), group work (and groups created in WhatsApp). and the incidence of videoconference meetings (*Teams, Skype, Zoom, Webex, or WhatsApp 25*) have also increased. Although they are methodologies that favor this form of collaborative work, the truth is that the worker has the feeling that he never rests. So much so that videoconference meetings can generate more stress than face-to-face ones. There can be many reasons that can cause worker fatigue when taking part in virtual meetings: greater difficulty

in capturing non-verbal language and the constant evaluation of their own and others' faces on the screen. To avoid this fatigue or reduce its impact, the worker can reduce the size of the application window on the screen, turn off the camera periodically if it is not intervening, and move around the room to try to alleviate the fatigue.

## CONCLUSIONS

This right is more than necessary in the current technological era; very few workers manage to disconnect from their work once the day is over. This causes them to find themselves constantly remembering pending tasks or thinking about the tasks for the next day. If we add to this that ICTs speed up the transmission of information, workers may feel pressure to solve tasks since response times are reduced so that when they must not, they dedicate themselves to solving tasks. Taken together, these circumstances can generate constant anxiety and stress (known as "anticipatory" stress generated by waiting for an *e-mail* outside of working hours). If to this, we add the continuous connectivity to emails, SMS, instant messages to the mobile or calls from the boss after the working day; never rest from work. Rest must be guaranteed because, otherwise, workers are led to greater psychological and labor exhaustion.

Regarding this issue, it is noteworthy the report prepared by the consultancy Affor Psychosocial Prevention according to which during the COVID-19 situation in recent months "42% of the *surveyed population has presented anxiety symptoms during these months, while that 27.3% feel that their health has worsened in recent weeks. Among the main*

*symptoms that manifest frequently or habitually are: nervousness, irritability or tension (86.2%), sleep disturbance (84.7%), headache (68.8%), delay in beginning of tasks (50.6%) or feeling of suffocation without physical effort (42.6%)".*

In short, companies must take a step forward and apply to their abundant teleworkers due to COVID-19 article 18 of the LTD dedicated exclusively to digital disconnection and the consequent business obligation to draft an internal code or policy of disconnection (prior hearing with the legal representation of the workers). The standard regulates maximum work times and minimum rest times, the flexible distribution of work time, training and awareness actions on a reasonable use of technological tools, as well as preventive aspects basically related to physical fatigue and mental health, the use of PVD and the risks of isolation. Highlighting greatly, the solution to possible inconveniences, such as techno-stress, continuous hours, permanent digital connectivity, greater labor isolation and the transfer to the worker of costs of productive activity without any compensation, among others.

25 Since March 4, 2021, the messaging program owned by *Facebook* allows in its desktop version ( *WhatsApp Desktop* ) to make both voice calls and individual video calls. As of the date of this writing, group calls and video calls are not included, but this option is expected to be available soon. One more option to make video calls or virtual meetings at the work level that can lead to the appearance of anti-digital disconnection behaviors in the workplace.

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