

Right to Disconnect in the Digital Age: Its Legitimacy, Normative Construction, and Institutional Limitations

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Abstract: The proliferation of digital communication technologies and online collaboration platforms has normalized remote work and digital labor, yet it has also blurred the boundary between work and private life, giving rise to phenomena such as "invisible overtime." The existing labor law system lacks a systematic response to digital forms of labor. As an extension of the right to rest in the digital era, the right to disconnect holds significant institutional value. This article demonstrates the legitimacy of the right to disconnect from three dimensions: labor subordination, capital logic, and the dilemmas of current legal regulation. It then attempts to construct a dual-track normative system based on labor standards law and labor contract law. On this foundation, the article analyzes the scope of application, subject categories, and implementation mechanisms of the right to disconnect in practice, and finally explores its institutional limitations under realistic conditions such as the imbalance of bargaining power between labor and capital and the incompleteness of consultation mechanisms. The establishment of the right to disconnect is not a wholesale negation of employment management, but a necessary path to rebalance labor-capital relations and safeguard workers' personal dignity and right to rest under conditions of digital labor.

Keywords: Right to Disconnect; Digital Labor; Invisible Overtime; Right to Rest; Labor Subordination

1. Introduction

In the digital age, the popularization of mobile internet, instant messaging tools, and cloud collaboration platforms (such as DingTalk, Tencent Meeting, and WeChat work groups) has gradually fostered a remote work model that relies on online platforms to process work tasks.

The evolution of such work models stems from the continuous breakthroughs in digital communication technology and gained full promotion during the COVID-19 pandemic, making remote work a common modality. The COVID-19 pandemic, which accelerated remote and hybrid work, has highlighted how easily working hours can expand beyond contractual limits and how urgently employees need clear, enforceable rest periods. However, although digital labor has already become widespread in practice, China's current labor laws and regulations have yet to make specific provisions for such labor forms; institutions such as the right to disconnect remain legislative blanks.

Digital technology has deeply integrated daily life with work scenarios, giving birth to a new labor form: "digital labor." The digitization of the labor process means that the development, design, collection, and processing of production materials can all be realized through digital tools. Compared with traditional labor, digital labor is characterized by flexible workplaces, fragmented working hours, and covert labor management. Workers often need to respond to employers or clients at any time, and the boundary between work and rest is becoming increasingly blurred. Particularly against the backdrop of the popularization of instant messaging tools, work instructions, demands for message replies, and online meeting arrangements outside of working hours substantially extend workers' hidden working hours, yet these cannot be captured by traditional work-time accounting systems. This not only increases the physical and mental burden on workers but also poses challenges to the current labor law system, which is premised on fixed workplaces and fixed working hours.

In this context, Article 10 of the EU's *Right to Disconnect Directive Proposal* clearly states: "The right to disconnect is the right of workers to refrain from engaging in work-related activities or communications via telephone,

email, or other digital tools outside their working hours. The right to disconnect should entitle workers to switch off work-related tools and not to respond to employers' requests outside working hours without facing adverse consequences such as dismissal or other retaliatory measures. Conversely, employers should not require workers to work outside their working hours." This definition clearly reveals the core content of the right to disconnect: first, the worker's "right to disconnect," that is, the freedom to turn off digital communication tools outside working hours; second, the employer's "duty of non-interference," that is, the obligation not to force or indirectly require workers to handle work matters during statutory rest periods. Since France pioneered the introduction of the right to disconnect in 2017, countries such as Italy, Spain, and Belgium have successively established similar systems through legislation or collective agreements, while the EU-level directive proposal seeks to unify the basic standards of member states. These legislative practices demonstrate that the right to disconnect has become an important direction for labor law reform in the digital age.

The right to disconnect is closely related to the right to rest. From a legal theory perspective, the right to disconnect derives from the right to rest and represents an extension of the right to rest in the digital age. The traditional right to rest mainly guarantees workers continuous and uninterrupted rest between workdays, on weekends, and on statutory holidays; its regulatory object is mostly the cessation of physical work. In digital labor scenarios, the realization of the right to rest requires not only that workers stop physical labor but also that they disengage from continuous digital communication and information processing. The right to disconnect is the specific institutional arrangement proposed to achieve this goal. At the same time, the right to disconnect possesses multiple attributes: it concerns workers' dignity and the right to rest, bearing the attribute of a fundamental right; in its exercise, it embodies a combination of liberty rights and claim rights, meaning workers may autonomously choose to disconnect or request employers to cooperate in exercising this right; it is also a combination of individual and collective rights, enforceable either individually or through trade unions and collective consultation mechanisms; in its establishment and operation, it bears

characteristics of both "hard law" and "soft law" rights, capable of being endowed with mandatory force through national legislation or realized through soft-law means such as corporate regulations and industry self-discipline conventions. In summary, the popularization of digital labor forms poses structural challenges to the traditional labor law system. As a concrete extension of the right to rest in the digital age, the right to disconnect has urgent legislative necessity. China should draw on the legislative experience of the EU and its member states, combine these with the actual characteristics of domestic labor relations, and explore clarifying the legal status, exercise conditions, and remedies of the right to disconnect through legislation or departmental regulations, so as to respond to workers' reasonable expectations of work-life balance in the digital age.

2. The Legitimacy of the Right to Disconnect

2.1 Analysis from the Perspective of Labor Subordination

Labor subordination is the core criterion for determining the existence of a labor relation, and its content mainly includes personal subordination (the worker's obedience to the employer's command and management) and economic subordination (the worker's reliance on wages provided by the employer for subsistence). Under traditional industrial employment models, subordination is mainly manifested in workers being strictly constrained by the employer regarding working hours, workplaces, and work methods. The widespread use of digital technology has rendered the labor process platform-based, fragmented, and remote; whether this weakens or strengthens subordination requires careful analysis.

On the one hand, the digitization of the labor process has indeed brought flexibility to work methods and elasticity to working hours. Workers can obtain more autonomously disposable time through remote work and free arrangement of task progress, thereby alleviating the conflict between work and life to a certain extent. However, this autonomy is often merely apparent. On the other hand, the popularization of work group chats, instant messaging tools, and online collaboration platforms enables the employer's management tentacles to break through the limits of physical workplaces and extend into workers' private living spaces. Work

instructions can be issued at any time outside working hours, forcing workers to maintain an "online standby" state; their response speed and degree of cooperation even become assessment indicators. This mechanism of "digital on-call availability" effectively hollows out autonomous control over working hours and workplaces, plunging workers into a predicament of "always online, nowhere to escape."

More importantly, the digitization of the labor process significantly strengthens the employer's command and surveillance powers. In traditional employment, employer supervision of workers often relied on on-site observation and attendance records, limited by management costs and practical conditions. In the digital age, employers can conduct refined, round-the-clock monitoring of workers' behavior through technical means such as positioning software, screenshots, keystroke logging, and task timestamps. Workers' duty of obedience is no longer limited to expressly stipulated working hours but extends to any moment they are required to respond. This technology-empowered management strengthening further unbalances the inherently unequal positions of the two parties: the employer's management capacity grows exponentially, while workers lose the privacy of their personal behavior due to digital surveillance, with their autonomous space compressed to the limit.

2.2 Analysis Under the Logic of Capital's Profit-Seeking

The nature of capital's pursuit of surplus value has never changed since the industrial age; only the technical means of achieving this purpose have changed. Under the traditional factory system, a worker's departure from the workplace meant the end of labor time, and it was difficult for employers to force them to continue working during non-working hours. However, the instant connectivity of digital communication tools has completely dissolved the physical barrier between workplaces and private spaces. Capital exploits this technical convenience to extend its control into workers' rest time, commute time, and even vacation time, thereby obtaining additional surplus value without paying overtime.

Specifically, through work group chats, remote collaboration platforms, and other means, employers can continue assigning tasks,

demanding feedback, and organizing discussions after work. These activities often appear under the guise of "temporary communication," "urgent matters," or "team collaboration," ostensibly not formal overtime but actually occupying time that should be spent resting. More insidiously, some employers normalize invisible overtime: postponing off-duty times, canceling lunch breaks, organizing online meetings on weekends, and setting unreasonable instant response deadlines. If workers do not reply promptly, they may face performance deductions or adverse career consequences. This "soft coercion" keeps workers in a constant state of psychological standby, forming what is known as "mental overtime."

Analyzing from the perspective of Marx's surplus value theory, invisible overtime is essentially a digital upgrade of absolute surplus value production. In the industrial age, extending working hours was constrained by physical conditions such as factory lighting and machine operation; in the digital age, workers need only a mobile phone or computer to continue working, and the marginal cost of extending working hours is almost zero. Capital thereby obtains unprecedented profit-seeking space. According to relevant domestic survey data, over 60% of remote workers have handled work messages after work, with nearly 30% indicating that the duration of non-working time occupied exceeds one hour per day. This labor, not counted as overtime, constitutes surplus value possessed by employers without compensation.

More seriously, the alienation of this labor form directly erodes workers' personal dignity and basic living rights. One manifestation of the excessive alienation of labor relations is the instrumentalization of workers, whose physical health, family life, and social interactions are all subordinated to the needs of capital appreciation. Over time, overwork phenomena occur frequently, threatening workers' right to rest, right to health, and even right to life. Therefore, from the perspectives of protecting workers' basic rights, preventing the alienation of labor relations, and implementing the "tilted protection" principle of labor law, endowing the right to disconnect possesses full legitimacy. The right to disconnect is not only a rights response to the technological age but also a necessary legal constraint on the profit-seeking nature of capital.

2.3 Analysis from the Perspective of Current Legal Regulation

China's current labor law regulation of overtime duration mainly relies on the institutional framework established by Articles 41 to 44 of the *Labor Law of the People's Republic of China*. This framework is based on fixed workplaces, standard working-hour systems, and attendance records, indirectly controlling overtime duration by requiring employers to pay overtime wages higher than normal wages, thereby increasing the cost of extending working hours. This system operated effectively in the industrial age but reveals serious regulatory failure when confronted with invisible overtime in the digital age.

First, the legal definition of "overtime" still takes "employer-arranged extension of working hours" as the core element, and proof usually relies on attendance records or actual labor within the workplace. Invisible overtime in the digital age is characterized by fragmentation, temporariness, and informality: workers may receive a 15-minute task in a work group chat outside working hours or reply to a few work inquiries. These piecemeal labors are difficult to record in traditional attendance systems, allowing employers to easily circumvent the obligation to pay overtime wages. More alarmingly, some employers consciously shift offline overtime to online, using "work from home" and "flexible work" as pretexts while actually extending working hours, no longer being subject to statutory overtime limits, and thereby obtaining improper employment benefits.

Second, the evidentiary dilemma further exacerbates workers' disadvantaged position. According to Article 6 of the *Labor Dispute Mediation and Arbitration Law*, parties bear the burden of proof for their own claims. In invisible overtime disputes, workers need to prove that they indeed performed employer-arranged labor during non-working hours. However, digital evidence of online labor is often controlled by employers (such as server logs and backend chat records); screenshots or screen recordings made by workers themselves are easily challenged regarding authenticity; more importantly, fragmented labor is difficult to form a complete chain of evidence, and workers often lose cases due to inability to produce evidence. Empirical studies show that in labor dispute cases involving online overtime, workers' win rates are far lower than in offline overtime cases.

Facing this institutional failure, legislation should promote a paradigm transformation of working-hour rules: shifting from the traditional "attendance management" model to a flexible model emphasizing both "results response and work response." Specifically, legislation can draw on the legislative experience of countries such as France and Spain regarding the right to disconnect, clarifying that workers have the right not to reply to work messages outside working hours; simultaneously, in allocating the burden of proof, considering employers' technical control advantages over digital labor data, employers should bear the burden of proof for "not arranging invisible overtime." Furthermore, mandatory digital working-hour recording obligations could be introduced, requiring employers to preserve workers' online working hours and response records for law enforcement inspections and dispute resolution.

Synthesizing the above three perspectives, the "de-scenarization" of workplaces and the instantaneity of digital communication jointly make it difficult for workers to effectively isolate work from life, significantly weakening their ability to obtain overtime evidence, and increasing the difficulty of labor law enforcement and occupational safety and health protection. The hidden extension of working hours and the normalization of invisible overtime not only erode workers' normal living space but also constitute real threats to the right to rest, the right to health, and the right to remuneration. As a new labor right adapted to the digital age, the legitimacy of the right to disconnect stems from correcting the excessive expansion of labor subordination, from the necessary constraint on capital's profit-seeking nature, and from the systematic failure of current legal regulation in addressing invisible overtime. Therefore, explicitly establishing the right to disconnect in China's labor law, accompanied by corresponding burden-of-proof rules and working-hour recording systems, is an urgent task for improving the worker rights protection system in the digital age.

3. Normative Construction for the Realization of the Right to Disconnect

3.1 Dual Rights Attributes: The Unity of the Right to Rest and the Right to Remuneration

The right to disconnect is an expansive interpretation of the right to rest in the digital

age, aimed at opposing the invasion of digital capital power into workers' daily lives, demarcating the temporal boundary between work and rest, and protecting the fundamental right to rest and personal dignity. At the same time, the right to disconnect effectively curbs the breeding of invisible overtime through the protection of the right to remuneration. The labor rejected by the right to disconnect is usually work tasks issued after work; because such tasks fall outside regular working hours, they are often excluded from compensation, causing workers to expend rest time without receiving corresponding benefits. Therefore, the right to disconnect, by clarifying the boundary between production and life and based on the principle of consultation, endows workers with the right to bargain over such additional labor.

3.2 Dual Normative Paths: The Coordination of Labor Standards Law and Labor Contract Law

The realization of the right to disconnect should mainly rely on the working-hours system, separating the "determination of working hours" from "wage payment," and entrusting them respectively to labor standards law and labor contract law. Given that labor law possesses dual attributes of contract law and mandatory law, the construction of the right to disconnect should also unfold under these dual dimensions, accommodating both voluntary consultation under labor contract law and mandatory protection under labor standards law. In online communications that do not reach conventional work intensity but exhibit high frequency, workers are actually performing labor. Although the intensity of such online labor is lower than daily work and the physical and mental consumption is relatively weak, frequent intrusions still encroach upon workers' normal rest time. Therefore, workers should receive remuneration based on the consideration of their labor to achieve a balance of interests between the two parties. Specifically, the right to disconnect in the sense of labor standards law is mandatory, legally enforcing workers' rest rights and physical and mental health; simultaneously, through labor contract law, online overtime outside working hours is incorporated into the normal overtime system framework to prevent the formation of hidden overtime. Employers and workers may, based on individual circumstances, consult to determine specific

offline periods, online labor provision periods, and corresponding remuneration, thereby alleviating the dual dilemmas in hidden overtime where rest time cannot be guaranteed and labor goes uncompensated.

Changes to working hours involve labor provision obligations and labor remuneration obligations and must be agreed upon by both parties; employers may not unilaterally exercise their directive power to require workers to extend working hours. Invisible overtime is not a free exchange between the two parties based on consideration but a substantive violation of the labor contract under the strong-weak relationship of labor subordination. Formally, the two parties sign a labor contract based on equal status, showing reciprocity in mutual consideration; but due to the substantive imbalance of power between labor and capital, the legitimacy of the labor contract is already tilted. In this sense, recognizing the right to disconnect means recognizing that changes to the labor contract must be based on the genuine consensus of both parties, rather than the employer's hidden domination of the worker. Thus, the right to disconnect is not only a protection of individual workers' rights but also a reaffirmation of the tilted protection principle of labor law.

3.3 Employers' Obligations and Exceptions

To ensure the implementation of the right to disconnect, any disadvantageous treatment of workers for exercising the right to disconnect, such as pay cuts, dismissal, or exclusion from promotion opportunities, should be prohibited. In this sense, although the right to disconnect is formally exercised autonomously by workers, who actively cut digital connections according to their own will, under the reality of imbalanced labor-capital power and a saturated labor market, employers may preferentially select more compliant workers, and workers often dare not actively assert their rights in order to seek job stability, causing labor protection systems such as the right to disconnect to be easily circumvented and exacerbating the exploitation of workers. In view of this, labor law should mandatorily stipulate that employers bear offline obligations during specific periods, that is, actively disconnecting digital connections with workers, by setting the following positive obligations for employers: timely shutting down digital tools and monitoring systems used for work, establishing objective and reliable

working-time recording systems, conducting occupational health and safety assessments including psychological risk assessments, and enhancing workers' rights awareness through specialized training. At the same time, circumstances allowing derogation from workers' right to disconnect should be strictly limited, with exceptions strictly confined to necessary reasons such as force majeure and emergencies, to effectively guarantee the true realization of the right to disconnect. From a manager's perspective, they have a positive obligation to create a safe environment where workers are comfortable disconnecting from non-urgent work communications, as well as a negative obligation to refrain from contacting employees unless there is an urgent situation that clearly constitutes an emergency. Managers need to understand the importance of maintaining this boundary between work time and rest, which not only has implications for individual employee health and well-being but is also linked to the economic performance of the firm.

4. Limitations of the Right to Disconnect and Institutional Tensions

The right to disconnect also faces a series of limitations in practice. First, the supply-demand situation of the labor market directly affects the actual accessibility of the right to disconnect. In an employment pattern where supply exceeds demand, workers may be forced to abandon the right to disconnect in order to obtain or maintain a job position; to compete for promotion opportunities, workers may also sacrifice their own labor rights by voluntarily extending online time and ceding rest rights, rendering the right to disconnect nominal. Company culture can intensify the use of this permanent contact in a more competitive and individualistic working environment. Second, the expansion of the right to disconnect may intensify labor-capital tensions and pose challenges to employers' employment management and the flexibility of production and operations. The duties of loyalty and diligence that workers owe to employers and other good-faith obligations have an inherent tension with the freedom from domination guaranteed by the right to disconnect; the rigid protection established by the right to disconnect may also conflict with the flexible arrangements pursued by flexible working-hour systems. These tensions objectively impose certain restrictions on employers' command and

disciplinary powers. However, it should be clarified that such restrictions are only intended to prevent unreasonable command powers from excessively intruding into workers' private lives; employers' reasonable and lawful command and disciplinary actions based on business management will not be improperly constrained thereby. Third, individual workers' bargaining power is relatively weak, making it difficult to engage in fair and equal bargaining with employers. When the two parties agree through individual labor contracts on specific offline periods, online labor provision periods, and corresponding remuneration, due to the significant disparity in bargaining power between the two parties and the relatively slow development of China's collective consultation system, stipulations regarding offline periods in labor contracts often fail to obtain effective guarantees, easily reducing consultation to a mere formality and unable to truly safeguard workers' offline rights.

5. Conclusion

The right to disconnect is an important supplement to the basic rights system of labor law in the digital age. Its legitimacy stems from correcting the imbalance of labor subordination, restraining capital's excessive profit-seeking, and filling the blanks of current legal regulation. Through the dual-track advancement of mandatory protection under labor standards law and the consultation mechanism under labor contract law, the right to disconnect is expected to achieve dual protection of workers' right to rest and right to remuneration at the normative level. However, structural imbalances in the labor market and the imperfection of consultation mechanisms constrain the actual effectiveness of the right to disconnect. Future legislation should clarify the boundaries of rights while strengthening collective consultation, optimizing the allocation of the burden of proof, and enhancing labor inspection, so as to promote the substantive balance of labor-capital relations under conditions of digital labor.

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