

Duty to refrain from contact

On 28 July, the Authority for Working Conditions (ACT) published Technical Note No. 13 on the employer's duty to refrain from contacting employees during their rest periods. The ACT aims to provide guidance on the interpretation of Article 199-A of the Labour Code ("CT"), which establishes this duty of the employer, except in cases of force majeure. At issue is the right of workers to disconnect, which is the counterbalance to this duty of abstention.

a. Refraining from contact

The ACT understands contact to mean any communication or attempt at communication that interrupts the worker's rest period, such as phone calls, visits, emails, *chat* conversations or mere requests for meetings.

It is the employer's responsibility to ensure that the organisation of work respects rest periods. In other words, the employer must take measures to avoid internal and external professional communications outside working hours, which may be included in internal regulations, a code of conduct or regulated in collective agreements.

b. Rest periods

Rest periods are all periods that are not working periods, as determined in Article 199 of the CT. The working period is the period during which the employee is required to perform work (Article 197(1) of the CT) or to be at the employer's disposal. The ACT seeks to clarify these concepts and emphasise that outside working hours, the employee is in their private family sphere.

c. Force majeure

Situations of force majeure may oblige the employer to contact the employee during their rest period. The exceptional nature of these situations means that they must be unavoidable and potentially cause serious destruction or damage to the company. This would be the case in the event of an earthquake, fire, flood or power failure. ACT considers that urgent situations that could have been resolved during working hours do not constitute force majeure.

d. Moral harassment

For ACT, less favourable treatment of an employee for refusing to be contacted during their rest periods is discriminatory (Article 199-A(2) of the Labour Code) and may constitute moral harassment, especially if such treatment is serious and repeated.

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The publication of ACT Technical Note No. 13 gives rise to the following observations:

- ACT does not interpret, nor can it interpret, Article 199-A of the CT in a binding manner, as these are only guidelines that reflect ACT's understanding.
- The ACT wishes to point out that, within the scope of its inspection activities or when called upon to give an opinion on this matter, it will seek to follow the guidelines set out in Technical Note No. 13.
- Although Technical Note No. 13 points to a total absence of contact, the reality of today's working world seems to require that some situations be tolerated, such as the distribution of work during rest periods that does not involve immediate execution by the worker, namely through the sending of emails.
- It is recommended that the employer clarify in advance to the employee how work is organised and how abstention from contact is regulated.
- Finally, situations of moral harassment are complex and difficult to prove. Although Technical Note No. 13 raises the possibility of verification, this is not something that can be considered in such abstract terms.

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