

# How to ensure employees' well-being in the digital age? Discussing (new) working time policies as health and safety measures<sup>1</sup>

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## Abstract

Technology and flexible work arrangements have potentially positive effects on employees' well-being, by favouring autonomy, work-life balance, reduced role conflicts and stress. Nevertheless, they can also trigger new psychosocial risks derived from intensification of work, overlap between work and life, constant connectivity, and permanent availability. In this context, this paper carries out a legal analysis of working time policies recently recognized at a European level to determine their opportunity and potential to contribute to employees' well-being in the digital age. In this sense, the paper analyses working time policies recently recognized by the European Court of Justice or by member states and their potential impact on workers' well-being. The aim of the paper is to determine whether the current legal regulation of such working time policies can potentially contribute to employees' well-being by limiting the negative effects of technology and flexibility, while simultaneously allowing the positive ones. The key results of the paper are that there is opportunity and potential for working time policies to contribute to employees' well-being in the digital age, as they act as health and safety measures by ensuring that maximum working times, minimum rest periods and adequate work-life balances are respected. The Covid-19 pandemic has unleashed an enormous potential for flexible work, and teleworking is likely to become more common post-crisis, given the generally positive experiences of workers and employers. In this context, working time policies have the capacity and potential to act as health and safety measures and contribute to employees' well-being.

## Keywords

technology; well-being; flexible work arrangements; health and safety; right to disconnect; registry of working time

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## ¿Cómo garantizar el bienestar de los empleados en la era digital? Discutiendo (nuevas) políticas de jornada laboral como medidas de salud y seguridad

### Resumen

La tecnología y los acuerdos de trabajo flexibles tienen efectos potencialmente positivos en el bienestar de los empleados, al favorecer la autonomía, el equilibrio entre la vida laboral y personal, la reducción de los conflictos de roles y el estrés. Sin embargo, también pueden desencadenar nuevos riesgos psicosociales derivados de la intensificación del trabajo, la superposición entre trabajo y vida, la conectividad constante y la disponibilidad permanente. En este contexto, el documento lleva a cabo un análisis jurídico de las políticas de jornada laboral recientemente reconocidas a nivel europeo para determinar su oportunidad y potencial para contribuir al bienestar de los empleados en la era digital. En este sentido, el documento analiza las políticas de jornada laboral recientemente reconocidas por el Tribunal de Justicia de la Unión Europea o por los Estados miembros y su impacto potencial en el bienestar de los trabajadores. El objetivo del documento es determinar si la regulación legal actual de tales políticas de jornada laboral puede contribuir potencialmente al bienestar de los empleados al limitar los efectos negativos de la tecnología y la flexibilidad y, al mismo tiempo, permitir los positivos. Las principales conclusiones del documento son que existe la oportunidad y el potencial de que las políticas de jornada laboral contribuyan al bienestar de los empleados en la era digital, ya que actúan como medidas de salud y seguridad al garantizar el respeto del tiempo de trabajo máximo, los periodos mínimos de descanso y el equilibrio adecuado entre vida laboral y personal. La pandemia de la COVID-19 ha desatado un enorme potencial para el trabajo flexible, y es probable que el teletrabajo se vuelva más común después de la crisis, dada la experiencia generalmente positiva de los trabajadores y empleadores. En este contexto, las políticas de jornada laboral tienen la capacidad y el potencial de actuar como medidas de salud y seguridad y contribuir al bienestar de los empleados.

### Palabras clave

tecnología; bienestar; modalidades de trabajo flexibles; salud y seguridad; derecho a desconectar; registro de jornada laboral

## Introduction

The modernization of labour relations by technology has introduced more flexibility to the work process, as it allows for the dislocation of work from the company, by enabling employees to work practically “anytime, anywhere” (Messenger, 2017). The widespread use in labour relations of laptops, tablets, internet-connected smartphones and cloud computing systems, allows employees to telework or work from home,<sup>2</sup> have flexible schedules, and even to continue working outside their contracted hours.

Flexible work arrangements, defined as an organization of working time which allows working hours to be scheduled flexibly, varying from day to day or week to week (ILO, 2019b),<sup>3</sup> allow employees to determine when they work, where they work and through which communication medium they work, which allows for high levels of flexibility.

The research report *Working conditions in a global perspective* (Eurofound and ILO, 2019) concludes that some degree of flexibility on working time is frequent among 43% of workers in EU countries. Specifically, 11% can choose between different schedules, 27% have flexible working hours or flexitime and 6% determine their schedule entirely. However, 15% report changes to their working hours on the day or the day before and 15% work more than 48 hours per week. Furthermore, 22% of employees work during their free time, increasing to up to 60% for teleworkers, up to 40% of women, and 48% of men in mobile technologically intensive jobs (Eurofound, 2020d).

Telework or home-based work has also increased in recent years, although prior to the COVID-19 pandemic it was still a relatively rare form of work. According to data from 2017 (Eurostat, 2018), only 5% of workers in the European Union worked exclusively from home and 9.6% worked from home sometimes. This was considered a surprisingly low percentage, given that 57% of workers worked with in-

formation and communication technologies to a medium or high degree (Eurostat, 2015). Furthermore, there were interesting sex and age differences, with home-based telework being more common among women and workers aged between 50-64 years (Eurostat, 2018).

The COVID-19 pandemic has significantly changed the way people work, intensifying the use of information and communication technologies and flexible work arrangements, including telework or home-based work. In this sense, according to the report *Living, working and COVID-19* produced by Eurofound (2020a), the use of digital tools for work purposes has increased substantially and 37% of workers in the European Union worked exclusively from home during Spring 2020, with nearly half working from home at least part of the time, which constitutes a significant increase compared to data prior to the pandemic.

Telework or home-based work offers workers unprecedented autonomy and flexibility in determining where and when to work (Eurofound, 2020c). However, 27% of employees working from home responded that they had to work during their free time in order to meet work demands and 22% with children under 12 reported struggling with concentrating on work, especially women who noted more work-family conflicts due to the “double burden” (Eurofound, 2020a). Furthermore, as analysed by Delfino and Van der Kolt (2021), the shift to telework due to the COVID-19 outbreak led some employers to modify their management control practices with more online meetings or the use of technology to monitor employees. Workers reacted to such changes with “voluntary visibilizing practices” to guarantee they were being noticed (Hafermalz, 2020). Furthermore, according to the 2020 ILO study *Managing work-related psychosocial risks during the COVID-19 pandemic*, psychosocial risks of isolation and blurred boundaries between work and personal time increased for people working from home during the early months of the pandemic, as well as other issues such as domestic violence, fear of losing the job, pay cuts, job insecurity, and so on.

2. The terms remote work, telework and home-based work refer to work that is partially or fully done off company premises. However, while remote work is the broader concept, telework is the subcategory that refers to work carried out remotely with the use of electronic devices, and home-based work refers to work carried out within the worker's home (European Commission, 2020).
3. Working time arrangements, or WTA, refers to the organization and scheduling of working time during a specified reference day, week, month, or longer period, which can include different forms of arrangements, such as fixed working hours, part-time work, shift work, night work, flexible work or flexitime (ILO, 2019b). In this context, telework or home-based work have been identified as a specific form of flexible work (Stavrou, 2005; Stavrou and Kilaniotis, 2010).

As analysed in the following section, technology and flexible work arrangements have potentially both positive and negative effects on employees' well-being. In this sense, the paper analyses working time policies recently recognized by the European Court of Justice or by member states and their potential impact on workers' well-being. The aim of the paper is to determine whether the current legal regulation of such working time policies can potentially contribute to employees' well-being by limiting the negative effects of technology and flexibility while simultaneously allowing the positive ones.

The key results of the paper are that there is opportunity and potential for working time policies to contribute to employees' well-being in the digital age, as they act as health and safety measures by ensuring that maximum working times, minimum rest periods and adequate work-life balances are respected. The COVID-19 pandemic has "*unleashed the huge unexploited potential for flexible working*" (Eurofound, 2020b) and telework is likely to become more common post-crisis, given the generally positive experiences of workers and employers (Eurofound, 2020a). In this context, working time policies have the capacity and potential to act as health and safety measures and contribute to employees' well-being.

## 1. Technology, flexibility, and employees' well-being: a review of the literature

Flexible work arrangements, including telework, produce positive effects on employees' well-being, increasing job satisfaction work-life balance, reducing role conflicts and stress (Gajendran and Harrison, 2007; ter Hoeven and van Zoonen, 2015; among others). Work-life balance can improve with flexible work arrangements, as more autonomy and control over working time allows employees to better coordinate work and family responsibilities (Eurofound and ILO, 2017), which, in its turn, reduces work-family conflicts and stress (Nadeem and Metcalf, 2007; Almer and Kaplan, 2002).

Positive effects on work-life balance have also been identified when specifically analysing telework (Gajendran and Harrison, 2007). The positive impact of telework on work-life balance is shown in the fact that women are

more likely to undertake regular home-based telework, which reflects the traditional gender roles regarding caring responsibilities that persist (Eurofound 2020d). Furthermore, employees who carry out regular home-based telework - both women and men - report a better work-life balance than those who always work on company premises or with occasional telework (Eurofound and ILO, 2017).

Nevertheless, the positive effects of flexible work arrangements on employees' well-being are not conclusive, as other studies suggest that they can be contingent on the nature of the flexible work arrangement or employees' perceptions (de Menezes and Kelliher, 2011), on senior management valuing work-life balance (Wood and de Menezes, 2007; 593), or on whether flexibility implies working time that is in addition to regular working hours (Messenger, 2019). Sparks *et al.* (2001) suggest that flexibility on working time reduces stress only when employees have effective control over their working time and when the prevailing organization culture neither prevents nor discourages the full utilization of flexible schemes.

Furthermore, other studies identify potentially negative effects of technology and flexibility on employees' well-being (de Menezes and Kelliher, 2011), paradoxically due to a potential increase of stress and work-family conflict.

Firstly, the widespread and intensive use of information and communications technologies in the workplace is a potential new source of stress (Dias Pochinho and Costa García, 2008). Technostress emerges as a new form of stress, defined as the inability to face new technologies in a psychologically healthy way: the product of a combination of anxiety, information overload, role conflict and organizational factors (Alfaro de Prado, 2008). Furthermore, the use of information and communication technology can generate additional stress due to constant interruptions, irregular work and unpredictable work developments (Golden, 2001; Jarvenpaa and Lang, 2005; Thomas *et al.*, 2006). In words used by Chesley (2014), "*technology use is fragmenting daily experiences in ways that are potentially stressful*".

Secondly, employee perception of the need to reciprocate instantaneous exchange of information with work intensification and constant connectivity and availability can increase stress and deteriorate employees' well-being (Towers *et al.*, 2006; LEONARDI *et al.*, 2010; Chesley, 2014;

Arrieta Idiákez, 2021). In this sense, research shows that employees in flexible work arrangements using digital devices are more likely to work more hours, work more during their free time, have more unpredictable hours and less rest periods and, as a result, more likely have a poor work-life balance (Eurofound 2020d).

Thirdly, technology and flexible work arrangements can also increase work-family conflicts and, in turn, stress. The use of wireless electronic devices and cloud computing systems creates a "virtual office" (Messenger and Gschwind, 2016) that allows work to be performed from anywhere -including employees' homes- and, as a result, working time can potentially overlap with personal and family time. Differentiating between working time and personal time becomes more difficult (Gajendran and Harrison, 2007), and flexible work arrangements that allow integration between work and life - although not necessarily nor inevitably - can backfire, since they can compromise the integrity of work or home (Ashford *et al.*, 2000) and generate the - true or false - perception of not fully complying with either work or family and personal obligations.

Stress can present with different symptoms, including fatigue, exhaustion, burnout, sleep disorder, headache, muscle tensions, memory loss, lack of motivation, depression, or even heart attacks (Alfaro de Prado Sagrera, 2008). The World Health Organization and the International Labor Organization have estimated that excessively long working days have caused 745,000 deaths due to strokes and heart disease (Pega *et al.*, 2021).

The negative impact of flexibility on work-life balance varies among genders and parental status. Women are more likely to have regular home-based telework, noting higher satisfaction with their work-life balance, while men prevail in highly mobile arrangements with a poorer work-life balance (Eurofound and ILO, 2017), although SONG and GAO (2020) identify that the effect of home-based telework on well-being also depends on whether or not employees have children.

The existence of simultaneous positive and negative impacts of technology and flexible work arrangements on employees' well-being has been identified as a paradox by the literature: the "telecommuting paradox" described by Gajendran and Harrison (2007) and Kelliher and Anderson

(2008); the "connectivity paradox" identified by Leonardi *et al.* (2010) and Fonner and Roloff (2012); or the "autonomy paradox" referred by Mazmanian *et al.* (2013) and Putman *et al.* (2014).

The challenge is to find an adequate balance between the positive and negative effects derived from technology and flexibility. In this context, the paper aims to analyse, from a legal perspective, recently recognized working time policies at European level to determine their ability and potential to limit the negative effects of technology and flexibility, while, at the same time, favouring the positive ones of autonomy and work-life balance.

## 2. Working time policies as health and safety measures

The EU regulation regarding health and safety measures can be found, essentially, in the Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of employees at work. Other regulations must be taken into consideration, such as the European Framework Agreement on telework signed ETUC, UNICE/UEAPME and CEEP on July 16th, 2002 or the European Framework Agreement on work-related stress concluded between ETUC, UNICE, UEAPME and CEEP on October 8th, 2004.

Article 6(1) of the Directive 89/391/EEC establishes that "the employer shall take the measures necessary for the safety and health protection of workers, including prevention of occupational risks and provision of information and training, as well as provision of the necessary organization and means". This obligation entails protecting employees' health and safety from physical and psychosocial risks by carrying out a risk evaluation and adopting a health and safety plan, including measures to eliminate or reduce risks in the workplace.

Employers' health and safety duty includes the obligation to adopt measures related to all types of risks, including physical and psychosocial risks. Both physical and psychosocial health and safety measures contribute to employees' well-being, as it includes "all aspects from working life, from quality and safety of the physical environment, to how

workers feel about their work, their work environment, the climate at work and work organization" (ILO, 2009).

Focusing on the scope of the article, the employer's health and safety duty includes the obligation to adopt measures to address the psychosocial risks derived from new technologies and flexible work arrangements. Working time policies act as health and safety measures and, in the context of digitalization, are essential to guaranteeing employees' well-being as technology and flexibility can lead to work intensification, overlap between work and life, constant connectivity, and permanent availability (Eurofound (2020a, 2020d) and the European Commission (2020)).

In this sense, the Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organization of working time has a health and safety dimension. As declared by the European Court of Justice, the aim of the Directive is to guarantee employees' health and safety by ensuring minimum daily and weekly rest periods and maximum duration of the working week (judgements of 5 October 2004, case Pfeiffer and others (C-397/01 to C-403/01) and 25 November 2010, case Fuß (C-429/09)). In essence, the aim of the Directive is to improve employees' living and working conditions (judgment of 10 September 2015, case Federación de Servicios Privados del sindicato Comisiones Obreras, (C 266/14)).

In this context, control over working time has become a compulsory health and safety measure and an employers' obligation, as declared by the European Court of Justice in the judgement of the Grand Chamber of 14 May 2019 in the case of CCOO vs. Deutsche Bank, S.A.E. (C-55/18).

Control over working time has been a traditional and recurrent concern of Labour Law. In 1919, the ILO adopted its first convention on hours of work, according to which, as a general rule, "working hours of persons employed in any public or private industrial undertaking or in any branch thereof... shall not exceed eight in the day and forty-eight in the week" (article 2). However, one hundred years later in its Centenary Declaration, the ILO calls upon all members to work on the basis of tripartism and social dialogue, with the support of the ILO, to further develop its human-centred approach to the future of work by, among other things, strengthening the institutions of work to ensure maximum limits on working time (ILO, 2019a).

The following section analyses, from a legal perspective, working time policies recently recognized by the European Court of Justice or by member states and their ability to potentially contribute to employees' well-being by limiting the negative effects of technology and flexibility while simultaneously allowing for the positive ones. Specifically, this section analyses working time registry systems, limitation on "on-call" and "stand-by" time and the right to digitally disconnect as adequate policies for guaranteeing maximum working hours, minimum rest periods and adequate work-life balance.

### 2.1. Working time registry: old form of control of working time incompatible with modern times?

Working time registry systems are a working time policy recently recognized as an employers' obligation by the European Court of Justice as a means to guarantee employees' well-being, by fulfilling maximum working time and minimum rest periods.

Under Articles 3 and 5 of Directive 2003/88, member states have the obligation to take the necessary measures to ensure that employees are entitled to the regulated minimum daily rest period. Member States must ensure that these minimum rest periods are observed and prevent excess on the maximum weekly working time established in article 6(b) of the Directive, to ensure the full effectiveness of Directive 2003/88.

However, according to the ECJ's judgement of 14 May 2019, the absence of an instrument that enables the objective and reliable determination of the number of hours worked each day and each week does not guarantee this effectiveness, "since it deprives both employers and workers of the possibility of verifying whether those rights are complied with and is therefore liable to compromise the objective of that directive, which is to ensure better protection of the safety and health of workers".

For this reason, the ECJ declared that Member States must require employers to adopt systems to register each employee's daily working time. Nevertheless, the specific arrangements for implementing such a registry system will be determined by the Member States, which can consider the characteristics of each sector, activity, or undertakings.

Practically coinciding with this judgement, the Spanish legal system modified its working time regulation to introduce, in article 34.9 of the Worker's Statute, the employer's obligation to adopt a registry system that records employees' daily working time (regarding this regulation, see previous work Ginès i Fabrellas and Peña Moncho, 2020). Through collective bargaining or, in the absence of agreement, consultation with workers' representatives, companies are obliged to register each employee's beginning and end of the workday, regardless of any flexible work arrangements that might exist. Companies must keep these logs for a period of four years, and they must remain available for employees, their legal representatives, and the Labour Inspection if requested.

The specific registry system will depend, however, on the characteristics of the company, the service provided or the place of work. In this sense, control over working time can be carried out with traditional systems of clocking in and out, using electronic cards or biometric systems, or through electronic means, such as Apps, access through the company's intranet or cloud computing system, geolocation systems or monitorization of e-mail activity or internet navigation. However, the use of digital means to control employees' working time must guarantee their right to privacy and protection of personal data (Todolí Signes, 2021), including the data minimization principle of the General Data Protection Regulation (Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016).

As anachronous with modern times as this measure might seem, working time registry systems have the potential to reduce the negative effects of technology and flexibility identified by the literature in the previous section (Eurofound, 2020d). By logging the beginning and end of each working day, employees have information regarding their working hours, which can contribute to reducing the perception of having to work longer hours, intensify work or be constantly connected and available. Furthermore, by providing information regarding the number of hours worked each day, week, or month, working time registries can limit work-family conflicts and contribute to reducing the overlap of work with family and personal life, by allowing employees to better identify the lines between work and personal time.

Working time registry systems also have the potential not to offset the positive effects of technology and flexibility, as they are not incompatible with flexibility, with employees' autonomy in determining their working time nor with a work organization based on objectives. Indeed, the obligation to register working time only implies the registration of daily working hours, whatever these are and by whoever is determined. Employees subject to flexible work arrangements and with autonomy to determine their working hours can continue to benefit from such flexibility and autonomy, as the registry only requires logging the beginning and end of each working day, not substituting flexibility for rigid schedules (Ginès i Fabrellas and Peña Moncho, 2020). Furthermore, and related with the next section, working time registry systems are not incompatible either with "on-call" or "stand-by" time (García Quiñones, 2015).

Finally, it is important to mention that working time registry system is an especially relevant health and safety measure for telework, especially for intense telework, defined as telework that affects more than 70% of the employees working time for at least a year (Ginès i Fabrellas *et al.*, 2021). Indeed, the registration of working time, as well as the right to digitally disconnect discussed below, are essential health and safety measures to address the characteristic organizational and psychosocial risks of telework (Mella Méndez, 2021). In this sense, a call must be made to collective bargaining to regulate specific measures to guarantee workers' health and safety in telework (Goerlich Peset, 2021) - the Collective agreement of the banking sector 2019-2023 with a dedicated section for health and safety in telework is considered good practice. The Spanish regulation on telework recently adopted by Law 10/2021 offers an unexplored domain for collective bargaining to regulate specific health and safety measures for telework, including access to employees' homes, specific measures for intense telework or measures to prevent and address cyberbullying (de Stefano *et al.*, 2020; Ginès i Fabrellas *et al.*, 2021).

## 2.2. Limitations on "on-call" or "stand-by" time and implications for employees with flexible work arrangements

Limitations on "on-call" or "stand-by" time are another working time policy that, although an existing and traditional working time dilemma, have been recently reviewed by the

European Court of Justice to adequately guarantee employees' maximum working time and minimum rest periods.

Common in the health sector, "on-call" or "stand-by" time can be regulated in other sectors and activities (García Quiñones, 2015), as long as effective working time respects the maximum working hours and minimum rest periods.

Paradoxically, the establishment of an "on-call" or "stand-by" time in activities or companies with flexible work arrangements, long working hours and/or frequent unexpected work requests can be a potentially effective measure of control over working time. The limitation over "on-call" or "stand-by" time limits the overlap of work over personal time and avoids excessive invasion. The establishment of a specific and express "on-call" or "stand-by" time can potentially eliminate or reduce employee perception and expectation of having to be constantly available and connected, allows for a much clearer distinction between work and life and prevents unscheduled and excessive extensions of working time into personal time.

Furthermore, the European Court of Justice has recently reviewed the limits of "on-call" and "stand-by" time to better guarantee employees' maximum working hours and minimum rest periods. The European Court of Justice's position is that "on-call" time must be considered working time as employees are required to be present on company premises (judgment of 3 October 2000, case *Simap* (C-303/98), 5 October 2004, case *Pfeiffer* (C-397/01 to C-403/01) and 1 December 2005, case *Dellas* (C-14/04), even when employees have access to a rest area (judgement of 9 September 2003, case *Jaeger* (C-151/02). When employees are on "stand-by", that is, are merely available and not required to be physically present, only the time actually dedicated to the provision of services will be regarded as working time. That is, the time during which employees are available but not effectively working is considered a rest period, since they can manage their time and pursue their own interests with few constraints.

However, in the judgment of 21 February 2018, case *Matzak* (C-518/15), the European Court of Justice reviewed its doctrine and concluded that "stand-by" time where an employee had to remain at home and respond to calls from the employer within 8 minutes must be regarded as working time since it "significantly restricting the opportunities for other activities". In cases where employees'

movements are significantly restricted, "stand-by" time must be considered working time (Beltran de Heredia Ruiz, 2018).

The revision of the European Court of Justice's doctrine is, in my opinion, more adequate in terms of guaranteeing employees' rest periods, as "on-call" or "stand-by" time that requires immediate attention heavily restricts employees' movements and affects workers' options for work-life balance, hence not fulfilling the intrinsic characteristics of rest periods.

### 2.3. The right to digitally disconnect

Finally, another working time policy recently recognized in different member states that can contribute to employee's well-being is the right to digitally disconnect, which can be defined as the right to switch off from electronic and digital devices outside working time.

Articles 3 to 5 of the Directive 2003/88 recognize employees' right not to exceed maximum duration of working time, which included the right to not provide services during rest periods and hence the right to ignore phone calls, messages, or e-mails during these periods.

Nevertheless, the right to digital disconnection cannot be conflated with the right to effective rest periods. While the latter is defined as employees' right to minimum daily, weekly, and annual rest periods, the former implies the right to disconnect from electronic and digital devices during rest periods to block any type of communication from the employer or coworkers. The right to digital disconnection is, hence, an instrumental right to guarantee the effectiveness of rest periods.

The right to digitally disconnect has been introduced in recent years in some European legal systems, which is the case of France in section 7 of article L. 2242-8 of the Labour Code (Auvergnon, 2015, Loïc, 2016), Italy in article 19 Law n. 81/2017 (Dagnino, 2020) and Spain in article 88 of the Organic Law 3/2018, December 5th, on Personal Data Protection and Digital Rights, article 20 bis of the Workers' Statute and, more recently, article 18 of Law 10/2021, July 9, on telework (Ginès i Fabrellas *et al.*, 2021, pp. 176-179).

At EU level, the European Parliament has recently proposed the regulation of the right to digitally disconnect.

The Resolution of the European Parliament of 21 January 2021 (2019/2181(INL)) includes recommendations to the Commission on the employee's right to disconnect from digital tools, including information and communication technology, for work purposes. According to this resolution, the right to disconnect "is vital to protecting their [workers] physical and mental health and well-being and to protecting them from psychological risks". Furthermore, it is also included in the European Social Partners Framework Agreement on Digitalisation (June 2020).

Addressing some of the concerns voiced regarding the right to digitally disconnect in the sense that it was already recognized under the right to rest (Vallecillo Gámez, 2017; Molina Navarrete, 2017), in my opinion, it is a mistake to conceive the right to digitally disconnect merely as an employees' right. The right to digitally disconnect requires focusing, not only on the receiving end of the communication, but mainly on the sending end. That is, it must be conceived as an employers' obligation to adopt the necessary measures to avoid communications outside working hours. The effectiveness of the right to digitally disconnect requires just not recognizing employees' right to switch off their electronic devices outside office hours - something already guaranteed under the right to minimum rest periods - but also the employer's obligation to adopt measures to guarantee absence of contact during rest periods (as concluded in previous work Ginès i Fabrellas and Peña Moncho, 2020, as well as by other authors specifically analysing this issue Gutiérrez Colominas, 2020).<sup>4</sup>

The right to digitally disconnect appears as a necessary policy to guarantee not only respect of the right to rest in an environment where the line between work and life is increasingly blurred, but also to prevent new psychosocial risks derived from the intensive use of information and communication technology in the workplace (see also Trujillo Pons, 2021). In this sense, Gschwind and Vargas (2019) identify the "right to be disconnected" as an attempt to limit the negative effects of teleworking by assuring adequate rest periods and addressing work-life conflict and well-being issues.

In the context of the potential increase in telework and flexible work arrangements post-pandemic, both Eurofound (2020a, 2020d) and the European Commission (2020) have advocated in favour of the right to digitally disconnect as a working time policy measure to better define the line between work and life, reduce work-related stress and other psychosocial risks and, essentially, contribute to employee's well-being.

Nevertheless, as mentioned above, for the right to digitally disconnect to be effective and adequate in counterbalancing the negative effects of technology and flexible work arrangements, it must be conceived as an employers' health and safety obligation. The specific regulation of the right to digitally disconnect - adopted in the collective bargaining agreement or by the employer - must adopt measures that focus on the sending end of the communication, prohibiting communications outside office hours or establishing an automatic warning system or even a blocking system on communications sent after hours. In this sense, it is interesting to highlight the Collective agreement of banks and financial institutions 2020-2023 in the Spanish legal system, which includes a list of good practices regarding the right to digitally disconnect focusing on the sending end of the communication.

## Final remarks

Technology and flexible work arrangements produce simultaneous positive and negative impacts on employees' well-being. While technology and flexibility improve well-being by favouring a more adequate work-life balance, reducing role conflicts and stress, they also produce stress, and work-family conflict due to intensification of work, overlap between work and life, constant connectivity, and permanent availability.

In the digital age, achieving an adequate balance between technology and flexibility is essential to guarantee employee's well-being. And in this context, aligned with other health and safety measures, working time policies become essential in the digital age, as they can free employees

4. In fact, the regulation of the right to disconnect included in article 18.1 of Law 10/2021, July 9, on telework includes an improvement by expressly referring to the employer's obligation aspect of the right to digitally disconnect (as concluded in previous work Ginès i Fabrellas *et al.*, 2021, 177).

from the perception or expectation of having to compensate flexibility by working longer hours, intensifying work, being constantly connected and available.

The legal analysis of working time policies, recently recognized at a European level, reveals that they have the potential to contribute to employees' well-being by limiting the negative effects of technology and flexibility. Working time policies such as working time registry systems, limitations on "on-call" or "stand-by" time and the right to digitally disconnect act as health and safety measures by ensuring that maximum working times, minimum rest periods and adequate work-life balances are respected. At the same time, they allow for the positive effects of technology and flexibility as they are not incompatible with flexible work arrangements nor autonomy and sovereignty in managing working time. Indeed, the legal configuration of working time policies analysed in this paper have the capacity to limit the negative effects of technology and flexibility on

employees' well-being identified by the literature, while allowing for the positive ones.

Nevertheless, to do so, they must be adequately conceived and regulated. In this sense, working time registry systems, limitations on "on-call" or "stand-by" time and the right to digitally disconnect must be conceived as merely instrumental rights that aim to guarantee the right to minimum rests periods and maximum working time. If working time registry systems are wrongly identified with rigid and fixed schedules, they will not limit the negative effects of technology and flexibility on employees' well-being and, furthermore, will exclude the positive ones altogether. Similarly, the right to digitally disconnect, despite its common name, cannot be conceived as purely an employee right, but rather as an employers' health and safety obligation, requiring employers to focus on the sending end of the communications.

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