

Received: 05.09.2025. Accepted: 10.09.2025. Available online: 30.09.2025.

DOI: <https://www.doi.org/10.32523/2791-0954-2025-15-3-8-17>

Occupational Safety in the Context of Kazakhstan's Strategic Course toward Digitalization: International-Law Foundations and Prospects for the Implementation of the Right to Disconnect

Almassuly Arlan

Master of Laws,

Leading Research Fellow at the Institute of Legislation and Legal Information of the Republic of Kazakhstan,

Astana, Kazakhstan

e-mail: almassuly.arlan@gmail.com

ORCID: 0000-0002-0230-2657

Abstract: Considering Kazakhstan's strategic course toward digitalization and its impact on the labour market, this article emphasizes the need to adapt the national occupational safety system to new forms of employment and emerging risks associated with digital transformation. Special attention is devoted to the analysis of the "right to disconnect" as a modern element of occupational safety in the digital era, ensuring a balance between work responsibilities and personal time. The paper examines international approaches and the positions of intergovernmental bodies on this right, revealing its importance for protecting workers' physical and mental health. Consequently, the article substantiates the necessity of incorporating the right to disconnect into the Labour Code of the Republic of Kazakhstan as a mechanism for fulfilling the state's international obligations and preventing new occupational risks linked to digitalization. To assess potential pathways for such legislative inclusion, the experience of France, Portugal, Italy, Luxembourg, and Australia-where the right to disconnect has already been legally recognized-is analyzed.

Keywords: occupational safety, digitalization, right to disconnect, international law, International Labour Organization, labour legislation.

Қазақстан Республикасында цифрландырудың стратегиялық бағыты жағдайында еңбек қауіпсіздігін қамтамасыз ету: халықаралық-құқықтық негіздері мен ажырау құқығын іске асырудың перспективалары

Арлан Алмасұлы

Заң ғылымдарының магистрі,

Қазақстан Республикасы Заңнама және құқықтық ақпарат институтының бас ғылыми қызметкері,

Астана, Қазақстан.

e-mail: almassuly.arlan@gmail.com

ORCID: 0000-0002-0230-2657

Андатпа: Цифрландырудың жаңа стратегиялық бағыты мен оның еңбек нарығына ықпалын ескере отырып, мақалада еңбек қауіпсіздігі жүйесін жаңа еңбек нысандарына және цифрландыру үдерісіне ілеспе тәуекелдерге бейімдеу қажеттілігі айқындалады. Зерттеуде еңбек қауіпсіздігі жүйесінің заманауи элементі ретінде «ажырау құқығын» талдауға ерекше назар аударылады. Бұл құқық еңбек міндеттері мен қызметкердің жеке уақыты арасындағы тепе-теңдікті қамтамасыз етудің маңызды тетігі ретінде сипатталады. Сондай-ақ аталмыш құқық жөніндегі халықаралық көзқарастар мен мемлекетаралық органдардың ұстанымдары зерделеніп, оның қызметкерлердің физикалық және психикалық денсаулығын қамтамасыз етудегі маңыздылығы айқындалады. Нәтижесінде осы құқықты Қазақстан Республикасының Еңбек кодексінде заңнамалық тұрғыда бекітудің қажеттілігі негізделеді. Мұндай шара халықаралық міндеттемелерді іске асыру мен цифрландыру үдерісінен туындайтын жаңа кәсіби тәуекелдердің алдын алу құралы ретінде қарастырылады. Ажырау құқығын заңнамалық тұрғыдан бекітудің ықтимал тәсілдерін айқындау мақсатында Франция, Португалия, Италия, Люксембург және Австралияның тәжірибесі талданды.

Түйін сөздер: еңбек қауіпсіздігі, цифрландыру, ажырау құқығы, халықаралық құқық, Халықаралық еңбек ұйымы, еңбек заңнамасы.

Охрана труда в контексте стратегического курса на цифровизацию в Республике Казахстан: международно-правовые основы и перспективы имплементации права на отключение

Алмасулы Арлан

Магистр юридических наук,

Ведущий научный сотрудник Института законодательства и правовой информации Республики Казахстан,

Астана, Казахстан

e-mail: almassuly.arlan@gmail.com

ORCID: 0000-0002-0230-2657

Аннотация: Учитывая новый стратегический курс на цифровизацию и ее влияние на рынок труда, в статье обозначается необходимость адаптации системы охраны труда к новым формам занятости и возникающим рискам. Особое внимание в настоящем исследовании уделено анализу права на отключение как современного элемента системы охраны труда в эпоху цифровизации, обеспечивающего баланс между трудовыми обязанностями и личным временем работника. Изучаются международные подходы и позиции межгосударственных органов по данному праву, на основе которых выявляется его значимость для обеспечения физического и психического здоровья работников. Как следствие, обосновывается необходимость законодательного закрепления данного права в Трудовом кодексе Республики Казахстан как одного

из механизмов реализации международных обязательств государства и профилактики новых профессиональных рисков, связанных с цифровизацией трудовой деятельности. В целях выработки возможных подходов к законодательному закреплению права на отключение проанализирован зарубежный опыт Франции, Португалии, Италии, Люксембурга и Австралии.

Ключевые слова: охрана труда, цифровизация, право на отключение, международное право, Международная организация труда, трудовое законодательство.

Introduction.

In his most recent Address to the Nation (dated 8 September 2025), the President of the Republic of Kazakhstan emphasized that the rapid development of artificial intelligence and digital technologies has a profound impact on people's worldview and way of life, thereby creating an evident need for the digital transformation of the state. The Head of State underlined that there is no alternative to this process and that any delay in its implementation may entail serious consequences. Based on this premise, the President set a strategic objective - to transform Kazakhstan into a fully digital nation within the next three years.

This strategic course sets before many sectors the task of decisive adaptation to the process of digitalization. The system of occupational safety is no exception, since digitalization directly influences the transformation of the labour market. It is expected, for example, that digitalization will lead to the further spread of informal forms of employment, which include, in particular, teleworkers, self-employed individuals providing services through digital platforms (gig workers, crowdworkers), as well as persons engaged in hybrid formats of work. The likelihood of such trends increasing in the near future-along with broader structural changes in the labour market and occupational safety issues linked to digitalization-is also suggested by the statement of the Prime Minister of the Republic of Kazakhstan that more than three million citizens are expected to be employed by 2030. As the Head of Government noted, "to comprehensively address employment issues, the labour market will undergo transformation, including through the active introduction of digital solutions across various sectors of the economy.

The risks associated with digitalization, which affect all workers in general and particularly those engaged in informal employment, are characterized by a specific range of occupational hazards that differ from traditional industrial dangers. Among these are ergonomic risks-such as prolonged static postures, visual strain, and musculoskeletal disorders-especially prevalent among so-called office employees whose work involves extended periods in front of display screens. In addition, there are digital risks common to all workers, including overwork resulting from the possibility of performing tasks both at the workplace and at home, as well as the need for constant availability driven by digital communication technologies.

Thus, it becomes evident that, in light of the new strategic course and the recognition of digitalization as a major technological and socio-economic challenge,

there is an objective need for a comprehensive understanding of all emerging risks, their proper legal qualification, and the development of corresponding preventive mechanisms.

One of the most pressing issues that has become increasingly significant in the context of digitalization is the implementation of the “right to disconnect” - the guaranteed ability of an employee to refrain from performing work-related tasks or engaging in professional communications outside established working hours without the risk of negative consequences from the employer. Under digitalization, the boundaries between work and personal life have become increasingly blurred, as advanced communication technologies allow - and, in many cases, encourage - employers to expect workers to remain available and to perform tasks after official working hours, particularly in occupations compatible with remote work. This situation often results in excessive working hours and stress caused by the need to stay constantly connected, even during personal time. Therefore, ensuring the right to disconnect becomes an essential element of the modern occupational safety system, and given that current labour legislation does not yet provide for this right, its introduction is more relevant than ever.

Materials and methods.

The study is based on an analysis of the provisions of current labour legislation and international legal instruments, including the International Covenant on Economic, Social and Cultural Rights and the conventions of the International Labour Organization. In addition, official data from the Bureau of National Statistics and the Center for the Development of Labour Resources were used, along with scholarly works and analytical reports of international organizations and foreign researchers.

The methodological framework of the study includes formal legal and comparative legal analysis, allowing for the comparison of national and international approaches as well as the examination of foreign experiences in France, Portugal, Italy, Luxembourg, and Australia.

The research also employed the use of artificial intelligence tools, in particular ChatGPT, for the translation of selected text fragments and grammatical refinement.

Results and Discussion.

The current labour legislation of the Republic of Kazakhstan does not explicitly contain the concept of the “right to disconnect.” Nevertheless, its substance can be partially derived from the provisions regulating normal working hours and the limitation of overtime, as established in the Labour Code of the Republic of Kazakhstan.

According to Article 68 of the Labour Code, the normal duration of working time shall not exceed forty hours per week. Article 71 further provides that the daily duration of work (or work shift) may not exceed eight hours under the standard forty-hour weekly schedule.

Work performed beyond the established schedule is regarded as overtime. According to Article 77 of the Labour Code, overtime refers to work carried out at the initiative of the employer beyond the normal duration of working time. Pursuant to Article 78 of the Labour Code, overtime shall not exceed two hours per day for each employee (or one hour in the case of heavy, hazardous, or dangerous work). The total duration of overtime work is limited to twelve hours per month and one hundred and twenty hours per year. It is also expressly provided that engaging employees in overtime work or work on rest days is permitted only with the written consent of the employee, except in cases expressly provided for in paragraph 2 of Article 77 (Labour Code of the Republic of Kazakhstan, 2015).

Thus, the provisions of the Labour Code of the Republic of Kazakhstan on the duration of working hours and overtime serve as a functional basis pursuing objectives similar to those underlying the “right to disconnect.” However, these provisions do not embody the core of this right: they do not establish an employee’s subjective right to non-involvement in electronic communications outside working hours, nor do they impose on employers an obligation to define clear “digital boundaries” within the organization of work. Moreover, there is no presumption that post-work communications are to be counted as working time or overtime, nor are there any specific mechanisms to protect employees from adverse consequences in the event they refuse to remain available beyond their established schedule. In the context of digitalization, this results in the emergence of legal “grey zones” where actual post-work communication remains invisible to legal regulation and compensation mechanisms.

Meanwhile, it should be noted that in 2021, within the framework of the Law of the Republic of Kazakhstan “On Amendments and Additions to the Labour Code of the Republic of Kazakhstan on Improving the Legal Regulation of Remote Work,” one of the most significant provisions was introduced into labour legislation - a norm largely similar in substance to the “right to disconnect” and based on the same principles discussed above. Specifically, paragraph 3 of clause 5 of Article 138 of the Labour Code stipulates that “The employer (receiving party) shall not require the employee to remain available outside working hours, except in cases provided for by paragraph 2 of Article 77 and Article 86 of this Code.” However, as can be seen, the scope of this provision is limited exclusively to remote workers, which significantly narrows its practical application (Law of the Republic of Kazakhstan, 2021)

Although, according to official data from the Bureau of National Statistics, the number of remote workers in Kazakhstan increased by 18.6% over the past year-making this segment one of the most rapidly growing forms of employment-it should be noted that the total number of employees engaged in remote work currently amounts to only 51.6 thousand people, representing approximately 0.55% of the total employed population (9.3 million).

At the same time, the group of individuals who are in practice exposed to the same risks and challenges as remote workers is significantly broader. This includes specialists whose professional activities are closely linked to digital technologies and

who are capable of performing their job functions beyond the physical workplace. In Kazakhstan, at least 2 million people (21.5% of the employed population) work in sectors where the use of digital devices and online platforms enables them to continue performing work-related tasks outside regular working hours and, in many cases, from home (Bureau of National Statistics of the Republic of Kazakhstan, 2024).

Overall, the total number of workers who continue to perform their professional duties after the end of the official working day, or who combine their primary employment with additional activities through digital platforms, may substantially exceed the official figures. It is difficult to determine the exact number of such individuals due to the very nature of digital employment: a significant part of it takes place outside formal labour relations, is not reflected in employers' reporting, and often assumes a hybrid or informal character, constituting a form of "hidden" employment.

Thus, although the amendments introduced in 2021 address an area conceptually similar to the "right to disconnect," they unfortunately apply to a limited group of subjects - both from a legal standpoint (exclusively remote employees) and in practical terms (whose share constitutes less than 1% of the total employed population). At the same time, the number of workers potentially vulnerable to violations of established working time and rest regimes - that is, those who, at the request of their employer or due to production needs, continue performing job-related tasks beyond regular working hours - is incomparably higher than the official number of employees engaged in remote work.

In view of this, the definition and legislative consolidation of the "right to disconnect" in the Labour Code of the Republic of Kazakhstan appear not only reasonable but also a necessary step. At the same time, the provisions of Article 138 may be regarded as the first successful legislative attempt to shape the corresponding legal institution, which requires further development and an expansion of its scope of application.

For this purpose, it is useful to turn to the practice of foreign countries. In this regard, the example of France is particularly noteworthy. The French concept of the "right to disconnect" represented a pioneering attempt at legal regulation in the field of occupational safety and health, developed in response to the increasing duration of working hours caused by the advancement of digital technologies and the growing prevalence of remote communication. The concept originated in a decision of the Labour Chamber of the French Court of Cassation dated 2 October 2001 (No. 99-42.727), which for the first time addressed the issue of protecting employees from excessive availability.

Subsequently, a key role was played by the report of Bruno Mettling "Digital Transformation and Life at Work" (*La transformation numérique et la vie au travail*, prepared at the request of the Ministry of Labour, Employment, Vocational Training and Social Dialogue, September 2015), which substantiated the need for legislative mechanisms to protect employees' personal time. As a result, amendments were introduced to Article L. 2242-8 of the French Labour Code, granting employees the right to "disconnect" from work outside established working hours, thereby legally

enshrining the balance between professional duties and private life (Article L. 2242-8 of the French Labour Code).

In Luxembourg, the approach to establishing the right to disconnect proved to be more detailed: the Law of 28 June 2023 stipulated that this right must be implemented in workplaces employing more than fifteen workers, thereby institutionalizing it within corporate practice.

In Portugal, Law No. 83/2021 of 6 December 2021 (which entered into force on 1 January 2022) amended the regulation of telework in the Labour Code by explicitly imposing on employers the obligation to refrain from contacting employees outside their normal working hours.

Notably, as a result of such national practices, the European Union took the issue into consideration, and already in 2020 the Committee of the European Parliament, in its report, recommended the adoption of a directive on the right to disconnect, justifying this initiative by the need to counteract the emerging culture of “permanent availability,” which poses a significant threat to workers’ health.

In 2023, the European Law Institute (ELI) introduced the project “Guiding Principles on Implementing Workers’ Right to Disconnect,” which sets out ten principles for the practical implementation of this right. Among them are the protection of employees from adverse consequences when refusing to engage in communication outside working hours, the employer’s obligation to ensure that workers are properly informed about the limits of their availability, and the extension of the right’s scope to include self-employed and other non-standard workers. Shortly thereafter, the European Union adopted the Declaration on Digital Rights and Principles, in which the right to disconnect was explicitly recognized as an essential element of decent working conditions in the digital environment.

At the same time, the development of the right to disconnect as a means of safeguarding workers’ freedom and autonomy is not confined to the continental European legal tradition. A notable example is Australia, where in 2023 Section 333M of the Fair Work Act was amended to include a provision establishing this right and providing concrete mechanisms for its enforcement. Under this provision, “an employee may refuse to monitor, read or respond to contact (or attempted contact) from their employer outside working hours, provided that the refusal is not unreasonable” (Fair Work Act, 2009).

The Australian model is distinguished by several important features that expand the scope of the right to disconnect:

- it applies not only to contact initiated by the employer but also to communications from colleagues and third parties (Section 333M(2));
- it establishes five criteria for determining whether an employee’s refusal to respond is “unreasonable” (Section 333M(3));
- it provides legal protection mechanisms both through the system of “workplace rights” (allowing employees to challenge adverse actions under Section 342 of the Act) and within the broader framework of occupational health and safety legislation.

Thus, the right to disconnect is recognized in various countries, not only within Europe, as a crucial instrument for protecting workers' health and safety from the risks associated with the culture of being "always connected." At the same time, it reinforces individual autonomy by ensuring that employees enjoy the freedom and opportunity to lead a full personal life beyond working hours.

In recent years-particularly since the onset of the COVID-19 pandemic-international organizations, including the International Labour Organization (ILO) and the UN Committee on Economic, Social and Cultural Rights (CESCR), having more clearly observed in practice the diverse aspects of work mediated by digital technologies, have increasingly emphasized the need to adapt national occupational safety systems to the challenges of the digital era, drawing attention to the aforementioned risks.

In this context, the International Labour Organization (ILO) has, in recent years, increasingly incorporated direct references to the "right to disconnect" and to the risks associated with so-called "digital availability" into its guidelines and analytical reports. For instance, in its practical guide "Teleworking during the COVID-19 Pandemic and Beyond" (2020), particular emphasis was placed on the importance of maintaining boundaries between work and personal time, ensuring employees' so-called time sovereignty, and preventing overwork - a phenomenon that becomes especially common in remote work arrangements.

In its subsequent report "Telework and the Right to Disconnect" (2021), the ILO for the first time at the level of an international organization explicitly employed the term "right to disconnect." It is understood as the guaranteed ability of a worker to refrain from responding to work-related messages, calls, or other forms of electronic communication outside established working hours, without the risk of facing any adverse consequences from the employer. In this way, the ILO effectively laid the foundation for the international recognition of this concept as an essential component of occupational safety and health in the digital era.

The development of this concept stems from the foundations laid by the key ILO conventions. Although the term "right to disconnect" is not explicitly enshrined in ILO instruments - which is understandable, given that most of them were adopted long before the digital era - these documents nevertheless contain provisions from which the modern understanding of this right derives.

Foremost among them are Convention No. 1 on Working Hours (1919), which established the fundamental principle of limiting the duration of the working day and working week, and Convention No. 155 on Occupational Safety and Health (1981), which defines health not merely as the absence of disease but as a state of physical and mental well-being (Convention No. 155, 1981).

In turn, a similar provision is reflected in Article 7 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which guarantees every worker the right to just and favourable conditions of work, including reasonable limitation of working hours and the provision of periodic rest. Likewise, Article 12 of the Covenant proclaims the right of everyone to the highest attainable standard of physical and

mental health, which, in the labour context, implies the necessity of organizing work in a manner that prevents the harmful effects of excessive workload and stress factors (International Covenant on Economic, Social and Cultural Rights, 1966).

From this entire body of international obligations, it follows that the state must guarantee workers a genuine opportunity for rest, recovery, and the maintenance of their health. In the digital era-marked by the blurring of boundaries between work and personal life and by constant accessibility through electronic means of communication-these classical guarantees acquire a new dimension and are transformed into the requirement “not to be permanently available,” which essentially constitutes the foundation of the right to disconnect.

Thus, although the term “right to disconnect” was not originally employed in the core universal treaties, the body of Kazakhstan’s international obligations under the ILO and the ICESCR, together with the evolving foreign and regional practice of the European Union, allows one to conclude that this right represents one of the most important modern expressions of guarantees already enshrined in international law - namely, the right to rest, the limitation of working hours, and the protection of workers’ health. In this regard, its institutionalization in national legislation appears not only timely but also a logical response to the global challenges of the digital era.

In this context, the following measure appears feasible:

With regard to Article 1 (“Definitions”), it is proposed to introduce the term right to disconnect, defined as follows:

“The right to disconnect is the guaranteed ability of an employee to refrain from performing work-related tasks and engaging in professional communications outside working hours without the risk of adverse consequences.”

With respect to Article 84 (“Rest time”), a separate provision similar to those adopted in France and Portugal could be introduced, for example:

“An employee has the right to disconnect - that is, the right not to respond to calls, messages, or other electronic communications from the employer, colleagues, or third parties related to the performance of work duties outside established working hours, except in cases provided for by the employment contract or by law.”

References

1. Labour Code of the Republic of Kazakhstan (2015). Available at: <https://adilet.zan.kz/rus/docs/K1500000414> (Accessed: 5 October 2025).
2. Law of the Republic of Kazakhstan “On Amendments and Additions to the Labour Code of the Republic of Kazakhstan on Improving the Legal Regulation of Remote Work” (2021). Available at: <https://adilet.zan.kz/rus/docs/Z2100000061/history> (Accessed: 1 October 2025).
3. Bureau of National Statistics of the Republic of Kazakhstan (2025). Available at: <https://stat.gov.kz/ru/industries/labor-and-income/stat-empty-unempl/publications/335756/> (Accessed: 2 October 2025).

4. Article L. 2242-8 of the French Labour Code (2018). Available at: https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000037389692 (Accessed: 3 October 2025).

5. Fair Work Act (2009). Available at: <https://www.legislation.gov.au/C2009A00028/latest/versions> (Accessed: 5 October 2025).

6. Convention No. 155 on Occupational Safety and Health (1981). Available at: <https://adilet.zan.kz/rus/docs/Z960000007> (Accessed: 5 October 2025).

7. International Covenant on Economic, Social and Cultural Rights (1966). Available at: <https://adilet.zan.kz/rus/docs/Z050000087> (Accessed: 5 October 2025).