

Original Paper

The Dispute and Countermeasure of Workers' Off-line Right in the Digital Age

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Abstract

In the age of digital advancement, society has shifted to a data-centric and interconnected paradigm. This transformation has not only altered lifestyles but also impacted labor dynamics significantly. As digital tools bring convenience, they also pose challenges such as blurred work-life boundaries and prolonged working hours. This article delves into the debate surrounding offline rights of workers in the digital era and proposes effective solutions. Employing a mixed-method approach, it elucidates the essence of these rights and argues for their legal recognition. The focus is on devising a comprehensive framework that balances legal clarity, market dynamics, and worker protection. By offering innovative policy recommendations, this research addresses the pressing need to safeguard workers' offline rights. It not only provides theoretical insights but also practical guidance to promote work-life balance and sustainable digital economy development. Upholding these rights signifies a commitment to modern labor values and social equity in today's digital age.

Keywords

digital age, Disconnection right, Right construction, Institutional exploration

1. Introduction

In today's wave of digitization, traditional work modes have been restructured, and workers' lives are no longer confined to the physical boundaries of factories or offices. However, this transformation comes at a cost. With the development of internet technology, work has transcended the limits of time and space, mobile communication software has become the preferred means of work communication and connection, gradually encroaching on workers' rest time and space, blurring the boundaries between responsibilities and rest. This study aims to explore the controversy and strategies surrounding offline rights of workers in the digital age, in order to provide theoretical support and practical

guidance for safeguarding workers' legitimate rights and promoting work-life balance.

Exploring the significance of workers' offline rights is not only a reflection of emerging rights in the field of labor law but also a supplement and challenge to existing legal frameworks. In current legislation on working hours, labor safety, and health, there are deficiencies in defining and protecting workers' non-working time, which are crucial for workers. Therefore, by studying workers' offline rights, a basis can be provided for the improvement of legal norms, promoting deeper societal attention to labor rights.

From a macro perspective, safeguarding workers' offline rights is an investment in the overall welfare of society. A society that allows individuals time for self-renewal, family life, and social participation is one that is more dynamic, innovative, and cohesive. Therefore, the purpose of this study is not only to address individual-level issues of workers but also to propel the entire society towards a more fair, healthy, and sustainable direction.

Therefore, this study aims to provide practical and feasible recommendations through an in-depth analysis of workers' offline rights in the digital age, to safeguard the health and happiness of workers, and inject new vitality into business and societal development. This is not only a contribution to academic research in the field of labor law but also a positive response to real social issues, carrying significant theoretical value and practical significance.

2. Problem Statement

In the torrent of the digital age, the working patterns of laborers are undergoing unprecedented changes. Accompanied by the development of instant communication technology, the convenience of communication has broken the physical space and time limitations of traditional workplaces, making remote work a new trend. On March 2, 2023, the China Internet Network Information Center (CNNIC) released the 51st "Statistical Report on the Development of the Internet in China," showing that as of December 2022, the number of internet users in China reached 1.067 billion, with an internet penetration rate of 75.6%. In 2022, China's online office market developed rapidly, attracting more internet users. As of December 2022, the number of online office users in China had reached 540 million, an increase of 70.78 million compared to December 2021, accounting for 50.6% of the total number of internet users. (Note 1) However, the "double-edged sword" of the internet in the digital age brings both the convenience of work and new challenges to laborers. The development of communication technology further blurs the boundaries between work time and rest time, with work continuously infiltrating life. The phenomenon of "invisible overtime" is spreading, and issues like "5,000-yuan salary, 46 work groups" are not uncommon, sparking widespread public discussion about the right of laborers to disconnect. In response to the current calls and expectations of laborers, this year's Two Sessions saw several representatives, including Lu Guoquan, a member of the National Committee of the Chinese People's Political Consultative Conference and Director of the General Office of the All-China Federation of Trade Unions, calling for "guaranteeing the right of laborers to

disconnect" and "accelerating the legislation of the right to disconnect."

The lack of the right to disconnect for laborers is not accidental. In a digital work environment, constant messages in work groups, standby status during holidays, and 24-hour online requirements constitute an invisible erosion of laborers' rest and vacation rights. This erosion not only affects the physical and mental health of laborers but also disrupts the balance between work and life. Therefore, advocating for the right to disconnect is not only a respect for individual rights but also a long-term consideration for sustainable social development. In the international perspective, France was the first European country to legally establish the "right to disconnect" for laborers. The concept of the "right to disconnect" originated from a 2001 ruling by the French Supreme Court's Labor Division, which stated that "employees are not obliged to accept work at home, nor are they required to bring materials and tools necessary for work home." Since 2016, EU member states have been preparing relevant legislative work on the "right to disconnect," and in January 2021, the European Parliament proposed the "Right to Disconnect Directive Proposal," after which the EU and other member states have gradually incorporated the "right to disconnect" into labor legislation or related policies. (Note 2) Countries like Germany and Ireland implement the "right to disconnect" through flexible measures, fully leveraging the role of industry associations. Through collective bargaining, industry associations promote guidelines for the "right to disconnect" that are in line with the nature of the industry. In contrast, although China's labor law stipulates the right to rest, these provisions often seem inadequate in today's digital age judicial practice. At the same time, academic research on the protection of the right to disconnect is sparse and lacks systematic review. Therefore, clarifying and solving this issue has become an urgent legal and practical proposition.

3. Theoretical Discussion on the Right to Disconnect for Laborers in the Digital Age

3.1 Concept Definition and Theoretical Foundation of the Right to Disconnect

The concept of the right to disconnect aims to combat the invasion of boundaryless work and maintain the balance between individual rest and life. It is not simply an extension of the right to rest but a supplement and improvement to the existing rights system and a legal response to the new labor relations in the digital age.

The core of the right to disconnect lies in setting boundaries between work and life, ensuring that laborers are not disturbed by work during non-working hours and enjoy genuine rest and freedom. It transcends the traditional working hours system because, even during non-working hours, the existence of digital tools may keep laborers in a standby state. This invisible labor is not fully covered by existing laws, leading to the invisible exploitation of laborers' rights. The theoretical foundation of the right to disconnect lies in the comprehensive development of individuals. It emphasizes the subjectivity of laborers, respects their autonomy in the digital age, and is a legal expression of the balance between work and life.

Europe currently leads in the legislation of the right to disconnect for laborers. The term "right to

disconnect" is translated from the English "Right to Disconnect." According to the legislative suggestions in the EU's "Right to Disconnect Directive Proposal" (Article 10), "the right to disconnect means that workers have the right not to engage in work-related activities or communication through digital tools such as phone calls, emails, or other messages outside of working hours. The right to disconnect should allow workers to turn off work-related tools and not respond to employers' demands outside of working hours without adverse consequences, such as dismissal or other retaliatory measures. Conversely, employers should not require workers to work outside of working hours." (Note 3) In summary, the right to disconnect for laborers mainly includes the following elements: first, the right to "disconnect" during non-working hours; second, "disconnection," meaning that laborers can turn off digital communication devices or not respond to employers' work instructions; and third, laborers should not be put at a disadvantage for exercising this right.

3.2 Theoretical Analysis of Offline Rights of Workers in the Digital Age

The right of workers to be offline is not simply an extension of the right to rest, but a new form of rights reflecting the issues brought about by the blurred boundaries between work and life in the digital age.

3.2.1 Distinction between the Right of Workers to be Offline and the Right of Workers to Rest

Currently, Article 3 of the Labor Law in our country confirms the right to rest as a fundamental right of workers and establishes a specific legal system to ensure the realization of this basic principle through special provisions in Chapter Four. By strictly controlling overtime and extended working hours through legal provisions, the realization of the right of workers to rest is ensured, covering various forms of rest enjoyed by workers, aiming to improve the physical and mental health and work efficiency of workers through rest. Although the law has provisions regarding the right of workers to rest, it has not been able to fully address the pressure of overtime work brought about by digital technology. Firstly, when faced with the employer extending working hours, infringing on the right to rest, workers have the right to refuse unreasonable arrangements by the employer. However, the issue of whether workers have the right to refuse work instructions issued by the employer during non-working hours is not fully covered under the "right to rest" in the Labor Law. Furthermore, workers maintaining an online status after work hours cannot necessarily be considered as engaging in relevant work, making it difficult to be further recognized as extended working hours or direct infringement on the right of workers to rest. In response to this, the proposal of the right to be offline focuses on protecting the freedom of workers during non-working hours through legal means, effectively addressing the deficiencies in the coverage of the right to rest, surpassing the traditional understanding of labor rights, and responding to the demand for the legalization of emerging rights.

3.1.2 Distinction between the Right of Workers to be Offline and the Right to Privacy

Article 1032 of the Personality Rights section of the Civil Code stipulates privacy for natural persons as private life tranquility and intimate spaces, activities, and information not willing to be known by others, primarily focusing on protecting the personal information of workers from unauthorized

collection, use, or disclosure. This includes but is not limited to personal information inside and outside the workplace, such as identity information, health status, and family life. The right of workers to be offline refers to the right of workers to not be disturbed by work-related requirements of the employer during non-working hours and to enjoy personal rest and private time. While the right to privacy is an important component of the Personality Rights section of the Civil Code, emphasizing a deeper level of humanistic care for the spiritual nature and pursuits of individuals, affirming the values of human-centeredness. With the development of communication technology, the blurred boundaries between personal and work life have resulted in a gradual reduction in the scope of privacy rights in the labor field. The extent to which employers' legitimate interests and measures taken affect the personal space of workers has become a core issue in the protection of workplace privacy, intensifying the conflict between employers' "right to manage employment" and individuals' "right to privacy." The proposal of the right to be offline in the digital age is a better restriction on the employer's right to manage employment, better adapting to the protection of the personal life tranquility of workers in the labor field, emphasizing the freedom and independence of workers outside of work.

Through the above analysis, we can conclude that the right to be offline is not only a supplement to the rights of workers but also an inevitable trend in the adjustment of labor relations in the digital age. Its theoretical expansion and analysis provide a new perspective for us to understand and address the issues in current work patterns and offer a theoretical basis for future legislation and practices.

4. Constructing the Right to Disconnect for Workers in the Digital Age

4.1 Justification for the Necessity and Rationality of Constructing the Right to Disconnect

In 2022, the "Remote Work Population Real-Feeling Survey Report 2022" released by 51Job indicated that 65.8% of respondents reported that their daily working hours were "extended to different degrees" under remote working conditions; more than 40% of respondents had to report their work twice or more daily during remote working periods; 40.1% and 45.0% of respondents respectively believed that remote work increased work pressure and reduced work efficiency. (Note 4) Therefore, establishing and safeguarding the right to offline rest for workers is a necessary measure in the digital age, as well as an essential aspect of improving workers' quality of life and promoting harmonious labor relations.

With the widespread adoption of information-based office practices and the rapid development of network technology, traditional working hour systems can no longer meet the needs of modern society. The establishment of the right to disconnect is a supplement and improvement to the existing legal system, better adapting to the practical needs of the digital age. (Note 5) Constant work-related messages not only increase the burden of useless information and pressure on workers but also pose a threat to their physical and mental health. Prolonged exposure to electronic devices can increase the risk of vision deterioration, decreased sleep quality, and damage to the lumbar and cervical spine, and can also lead to psychological tension and mental fatigue from continuous use of electronic products. From this perspective, the right to disconnect is of great significance in protecting the basic

occupational health and safety of workers. Furthermore, the construction of the right to disconnect can better maintain the balance between workers' professional and personal lives. The proposal of the right to disconnect aims to ensure that workers can "cut off" from their work state, better alleviating the continuous compression of their personal space, reducing the impact of work on personal life, and further improving personal life quality. Studies have shown that the flexibility and control of working hours have a moderating effect on the relationship between satisfaction and work-family balance. (Note 6) This means that when workers have more control, even extended working hours will not negatively affect their satisfaction with work-family balance. Clarifying the boundaries between work and non-work hours, as the original intention of proposing the right to disconnect, allows workers to better grasp this proactive control, maintaining the stability of their personal lives.

As an emerging right, the right to disconnect is an important measure to adapt to the rapidly changing digital age. This legal supplementation demonstrates its adaptability and flexibility within the legal system. It is not only a necessary adjustment to labor relations in the digital age but also a reasonable guarantee of workers' rights. By clearly defining the boundaries of rights through legal means, we hope to protect the physical and mental health of every worker while respecting labor efficiency, achieving a true harmony between work and life.

4.2 Adaptive Review of Judicial Practice in Offline Rights

In discussing the construction of offline rights for workers in the digital age, an adaptive review of judicial practice is crucial. Generally, the infringement of offline rights typically arises in labor disputes over overtime pay. Among the top ten cases of 2023 promoted by the Supreme People's Court to advance the rule of law in the new era, there is the "Li Mou vs. Company Labor Dispute Case," hailed as the "First Case of Offline Rights Dispute." This case is the first in the nation to explicitly address the issue of "invisible overtime" in the judgment document. The trial court broke through the traditional requirements for fixed workplaces and quantifiable work hours in overtime cases, demonstrating recognition and respect for workers and effectively protecting their legitimate rights and interests. (Note 7) However, from this case, we can also see that the protection of offline interests is urgent.

4.2.1 Difficulty in Burden of Proof

In recognizing the facts of overtime, according to the Supreme People's Court's "Interpretation (III) on Several Issues Concerning the Application of Law in the Trial of Labor Dispute Cases," the worker claiming overtime pay bears the burden of proof. If the worker has evidence proving that the employer holds evidence of the existence of overtime work and the employer does not provide the relevant evidence, the employer will bear adverse consequences. (Note 8) However, in practice, providing related clock-in records alone is not sufficient to prove the fact of overtime work. Besides, it is necessary to prove that the worker indeed provided corresponding labor. Due to the subordinate nature of labor relations and the limited ability of workers to provide evidence, they cannot effectively prove their claims. When workers' offline interests are violated, they usually use communication software as a work medium, making it even more challenging to recognize substantial labor. Additionally, it is rare

for units to clearly notify workers of overtime arrangements in practice. Even if there is a need for overtime, it is merely a work arrangement without specifying the working hours, let alone having "evidence proving that the employer holds evidence of managing overtime" and expecting a reversal of the burden of proof.

3.2.2 Difficulty in Standards for Calculating Overtime Pay

From a legal perspective, China has regulations on the base and standards for calculating overtime pay, but in practice, there are many inconsistencies and ambiguities. The regulations on the base for calculating overtime pay are flawed, with inconsistent descriptions in laws, regulations, and rules, making it difficult to operate in actual work. (Note 9) In the digital age, for workers working offline, the work done during informal working hours often lacks formal records or recognition, making it even more challenging to calculate overtime pay. Traditional methods for calculating overtime pay cannot accurately reflect the actual working hours of workers, causing significant difficulties for judicial personnel. Therefore, Chen Yifang, the head of the Civil Division I of the Supreme Court, mentioned the need to clarify the standards for recognizing "invisible overtime" and protect workers' "offline rest rights." (Note 10) This further emphasizes the recognition of offline rights legislation and the protection of workers' rights.

5. Institutional Design of Workers' Offline Rights in the Digital Age

5.1 Learning from Foreign Experiences in Workers' Offline Rights

In the process of discussing the protection of workers' offline rights in the digital age, foreign experiences provide us with valuable insights. In Europe, for example, Germany's labor law strictly regulates working hours and rest periods, prohibiting employers from disturbing employees during non-working hours, which greatly protects workers' offline rights. France has introduced the "Right to Disconnect" law, forcing companies to allow employees to avoid work emails after hours, thus maintaining a balance between work and life. These legislative practices reveal a core concept: offline rights are not only a resistance to excessive labor but also a respect for personal life space.

In contrast, although the United States does not have nationwide regulations, some states and companies have begun to take measures, such as establishing "no email days" or setting specific shutdown times for electronic communications to encourage employees to relax during non-working hours. These examples show that the implementation of offline rights does not necessarily require comprehensive legislative reform but can be gradually promoted through corporate policies and social cultural shifts.

Drawing from these experiences, China should focus on the combination of legal and corporate cultural practices when constructing a workers' offline rights system. On the one hand, it can consider explicitly defining the legal status of offline rights in labor laws and setting clear boundaries, such as prohibiting work communication through electronic devices during non-working hours. On the other hand, it should encourage companies to formulate internal policies and cultivate a corporate culture that

respects employees' rest time.

The protection of offline rights requires not only rigid legal constraints but also flexible guidance from corporate culture. In the context of the digital age, constructing a workers' offline rights system that adapts to China's national conditions is both a respect for workers' rights and a necessary measure to promote social harmony and development.

5.2 Pathways for Ensuring Offline Rights of Chinese Workers

When discussing the protection of workers' offline rights, we must recognize that this is a profound reflection on the vital interests of workers in the digital age. We should consider the introduction of offline rights and focus on the actual situation of workers and how to implement this right through legal provisions to avoid adverse treatment due to exercising offline rights.

5.2.1 Reasonable Allocation of the Burden of Proof

According to the existing legal framework and judicial practice, the allocation of the burden of proof in labor dispute cases should follow the principles of seeking truth from facts, fairness and justice, litigation economy, and protection of the weak. (Note 11) In the face of the information age, where it is difficult to retain evidence of information intrusion during non-working hours, and issues such as workers' inability to provide substantial evidence of labor and working hours during non-working hours, judicial personnel handling disputes related to workers' offline rights should fully consider the disadvantages of workers compared to employers in terms of information access, resource allocation, etc., to give certain inclinations in the allocation of the burden of proof. In practice, judges (arbitrators) should reasonably allocate the burden of proof based on the actual situation of the case, considering the litigation status and evidence-gathering capabilities of both parties. This includes encouraging both parties to actively provide evidence and allowing judges (arbitrators) to adjust the allocation of the burden of proof according to the specific situation of the case to achieve substantial fairness. (Note 12)

5.2.2 The Role of Collective Agreements and Labor Contracts

Encourage and support enterprises and employees to reach collective agreements or explicitly stipulate relevant terms in labor contracts on offline rights. This not only helps clarify the rights and obligations of both parties but also increases the flexibility and adaptability of system implementation.

5.2.3 Supervision and Enforcement Mechanisms

To ensure the protection of workers' offline rights, we should strengthen supervision and enforcement efforts. This includes establishing effective complaint and dispute resolution mechanisms to ensure workers can promptly obtain legal protection when their rights are violated. Additionally, employers need to be educated and trained to enhance their awareness and responsibility towards respecting workers' offline rights. Establishing effective supervision and enforcement mechanisms, including setting up dedicated regulatory bodies to investigate and punish violations of offline rights, is also essential. Moreover, public awareness should be raised to enhance society's understanding of the importance of offline rights.

The implementation of these measures aims to create a working environment that respects workers'

rights while meeting the demands of the digital age. The realization of offline rights is not only related to individual well-being but also a necessary requirement for social progress and sustainable development. In this process, the government, enterprises, trade unions, and workers themselves need to assume corresponding responsibilities to jointly promote the transition of workers' offline rights from concept to practice.

6. Conclusion and Recommendations

6.1 Summary of Research Findings

In this study, we explored the issue of workers' offline rights in the digital age, revealing the challenges this emerging right poses in addressing the culture of overwork. Although existing laws provide for workers' right to rest, these rights face challenges in actual implementation within a digital work environment.

We argue that offline rights are not merely an extension of existing rights but a new demand for work-life balance. The urgency of ensuring offline rest rights is emphasized, as it is a matter of maintaining workers' rights and advocating for a balance between work and life. The proposal of offline rights aims to clearly define the boundaries between working and non-working hours to prevent work from encroaching on personal life.

Drawing on the legislative experiences of other countries regarding offline rights, we emphasize the need to shape a good corporate culture while introducing offline rights into legislation. Considering the actual situation of workers, the protection of offline rights needs to be refined, such as judicial personnel reasonably allocating the burden of proof based on the actual circumstances of cases and clearly defining supervision and enforcement mechanisms for offline rights.

In summary, the theoretical justification and practical exploration of offline rights are key steps in addressing labor issues in the digital age. Future research should further focus on refining the implementation mechanisms of offline rights within the legal framework and how to change the "always online" work culture through policy intervention and social consensus. This effort concerns not only the basic rights of workers but also the sustainable development of society and the health of the labor force. (Note 13)

6.2 Limitations and Future Prospects of the Research

When discussing the issue of workers' offline rights, we must not overlook the limitations of the research and future prospects. Although the literature has revealed new challenges to workers' rights in the digital age and the importance of offline rights in balancing work and life, existing analyses still have their shortcomings.

To address these limitations, future research and policy-making should focus on the following points: first, update the legal framework to clarify the legal status of offline rights and set clear boundaries for working hours; second, promote corporate cultural changes to advocate for a healthy work-life balance and reduce interference during non-working hours; third, establish effective supervision and relief

mechanisms to ensure workers can exercise offline rights and effectively sanction behaviors that infringe on these rights.

In this process, academia, legislators, trade unions, and enterprises need to work together to create a working environment in the digital age that both stimulates innovation and ensures physical and mental health for workers.

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