

**Testimony of Casey Adams  
New York City Department of Consumer Affairs**

**Before the  
New York City Council Committee on Consumer Affairs and Business Licensing**

**Hearing on  
Right to Disconnect**

**January 17, 2019**

Good morning Chairman Espinal and members of the committee. My name is Casey Adams and I am the Director of City Legislative Affairs for the New York City Department of Consumer Affairs (DCA). I would like to thank the committee for the opportunity to testify today on behalf of DCA Commissioner Lorelei Salas about a right for private employees to disconnect from work communications during off-work hours.

DCA's mission is to protect and enhance the daily economic lives of New Yorkers to create thriving communities. As part of this mission, DCA houses the Office of Labor Policy and Standards (OLPS), which serves as New York City's focal point for labor issues and workers, giving a dedicated voice in local government to the issues facing workers. OLPS enforces key municipal workplace laws, conducts original research, and develops policies that are responsive to an evolving economy and issues affecting New York City workers, particularly communities of color, women, and immigrants.

The internet and other communications technologies have transformed the working world in a few short decades. Today, more than at any other point in history, workers can connect to their work at a moment's notice and respond quickly when they are needed, no matter where they are when the call comes. However, when work is just a click or swipe away, job-related stress travels with it. The pressure to constantly monitor electronic communications outside of work time can be both intense and pervasive. In some industries, these pressures and expectations are deeply ingrained in workplace culture.

DCA appreciates and shares Council's concern about the effects that the advent of "always-on" communications have on the health and well-being of employees who are expected, or even required, to constantly be on alert for work-related communications. According to the New York Times, a 2017 report found that, on average, workers spend an extra eight hours a week sending email after work.<sup>1</sup> In addition, recent research suggests that workers who respond to work communications late at night have lower sleep quality<sup>2</sup> that may impact their quality of life and

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<sup>1</sup> Jonathan Wolfe, *New York Today: The Right to Disconnect*, N.Y. TIMES, Mar. 23, 2018, <https://www.nytimes.com/2018/03/23/nyregion/new-york-today-the-right-to-disconnect.html>.

<sup>2</sup> See Larissa K. Barber & Jade S. Jenkins, *Creating Technological Boundaries to Protect Bedtime: Examining Work-Home Boundary Management, Psychological Detachment and Sleep*, 30 STRESS HEALTH 259 (2014).

productivity at work.<sup>3</sup> Other studies have warned about the health impacts that “infobesity”<sup>4</sup> and “telepressure”<sup>5</sup> associated with always-on communications may have on workers. Government, workers, and employers would benefit from a deeper understanding of the effects that evolving technology and workplace cultures have on worker health, wellbeing, and productivity.

New York City prides itself on being “the city that never sleeps,” but even New Yorkers need a break now and then. That’s why Mayor de Blasio recently announced that New York City will become the first city in the nation to mandate paid personal time for workers. More than 500,000 full and part-time private-sector employees in the city currently have no paid personal time off. The de Blasio administration is committed to making New York City the fairest big city in America, and this proposal would guarantee that approximately 3.4 million New Yorkers who first received the legal right to paid safe and sick leave under Mayor de Blasio will now be able to take paid time off for any other purpose, including vacation, religious observances, bereavement, and time with family.

The push for paid personal time follows the Mayor’s landmark establishment of OLPS, the nation’s largest municipal labor standards office, which enforces NYC’s Paid Safe and Sick Leave law, the Fair Workweek scheduling law that guarantees fast food and retail workers the right to a predictable and stable schedule, and implementation of the groundbreaking Freelance Isn’t Free law, which helps ensure that freelancers are paid on time and in full for the work they’ve completed. Since its inception, OLPS has obtained almost \$10 million in restitution and civil penalties, more than \$7.5 million of which came in the form of restitution for workers.

Mayor de Blasio also announced that DCA’s mission will expand as the agency is renamed the Department of Consumer and Worker Protection (DCWP) with a powerful mandate to defend consumers and workers. As part of this expansion, DCWP will develop a free, uniquely tailored alternative dispute resolution program to help domestic workers and employers resolve issues and provide both parties institutional support and tools for ensuring optimal employment conditions.

We believe that these core worker issues- access to paid personal time, the challenges of unpredictable schedules, realization of core workplace rights and provision of reliable benefits, and ensuring rights are real even in complicated employment relationships, the structure of which poses unique challenges to enforcement - should be New York City’s focus. The initiatives I outlined are designed to help protect low-wage and vulnerable workers, many of whom are immigrants, women, or people of color.

Because of this renewed focus on groundbreaking initiatives to protect low-wage and vulnerable workers and other concerns, DCA does not support legislating a right to disconnect at this time. As I mentioned earlier, DCA believes that all parties would benefit from a greater understanding of the effects always-on communication has on employees. In other countries where similar

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<sup>3</sup> See Russell E. Johnson et al., *Beginning the Workday Yet Already Depleted?: Consequences of Late-Night Smartphone Use and Sleep*, 124 *ORG. BEHAV. HUM. DECISION PROCS.* 11 (2014).

<sup>4</sup> M. Bruno Mettling, *TRANSFORMATION NUMÉRIQUE ET VIE AU TRAVAIL* 31 (2015), <https://www.ladocumentationfrancaise.fr/var/storage/rapports-publics/154000646.pdf>.

<sup>5</sup> See generally Larissa K. Barber & Alecia M. Santuzzi, *Please Respond ASAP: Workplace Telepressure and Employee Recovery*, 20 *J. OCCUPATIONAL HEALTH PSYCHOL.* 172 (2015).

legislation has been considered or adopted, like Germany and France, the proposals followed in-depth, government-commissioned studies into the effects of always-on communications on workers, the array of potential legislative solutions, and the costs and benefits each approach would have for workers and employers. In some cases, further studies may actually motivate employers to adopt changes on their own because of potential benefits to worker productivity. Following the German government's report, several large employers in that country voluntarily created policies restricting off-work communication obligations for their employees.

Countries that have adopted right to disconnect laws have generally recognized that a one-size-fits-all legislative mandate is not the best way to change workplace cultures and help workers log off. In France, which has one of the first and broadest such laws, the law simply requires businesses that employ 50 or more workers to include the right disconnect in mandatory annual negotiations with their workforces. Companies are not required to come to an agreement and cannot be penalized for failing to do so. The French approach recognizes that changing workplace communications norms and rules will be a gradual process that should be responsive to the needs and expertise of workers, unions, and employers.

Other considerations also weigh toward a careful, deliberative, and collaborative approach. DCA has serious concerns about our ability to effectively enforce a law that requires the agency to closely regulate the development and implementation of workplace communications policies by thousands of employers across hundreds of industries. Because the regulation of off-work communications is a new and novel area, a broad law that requires DCA to insert itself into the complex, daily communications between many- our estimates suggest most- of New York's workers and employers could have wide-reaching implications that disrupt existing business models and employment relationships. The emerging nature of this type of regulation means that DCA would not have a robust body of research, experience, and best practices to build upon when implementing. A vague legal requirement for the right to disconnect would be difficult to enforce and could prove confusing and burdensome for workers to understand and employers to implement. Finally, the City would need to understand clearly how a right to disconnect would interact with the complex framework of state and federal laws regulating wages and hours.

DCA welcomes a frank, thorough discussion about the effects of always-on communication on New Yorkers and their jobs. We believe that both workers and employers stand to benefit from a dialogue about communications expectations in light of rapidly evolving technology and new and changing work arrangements. New Yorkers deserve a break and employers should recognize the benefits of a happy, well-rested workforce for both their businesses and the city as a whole.<sup>6</sup> We also believe that New Yorkers are best served by DCA's focus on protecting low-wage and vulnerable workers and that changing workplace communications calls for a detailed process of study and dialogue between workers, unions, employers, government, and experts.

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<sup>6</sup> See John Pencavel, *The Productivity of Working Hours* 25 (Institute for the Study of Labor, Discussion Paper No. 8129, 2014), <http://ftp.iza.org/dp8129.pdf> (finding that "employees at work for a long time may experience fatigue or stress that not only reduces his or her productivity but also increases the probability of errors, accidents, and sickness that impose costs on the employer.").

For the reasons I have outlined, DCA does not support legislating a right to disconnect at this time. Thank you for the opportunity to testify today. I am now happy to answer any questions you may have.