


## Normative Approach to Workers' Mental Well-Being in the Digital Era


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### Keywords:

labor rights,  
mental well-being,  
digitalization,  
psychosocial risks,  
right to disconnect

**Abstract:** The paper aims to provide theoretical insights and explore the comparative legal practice of approaching mental health and well-being at the workplace by applying legal normative and comparative methods in a digitalized world of work. In this regard, subordination vs autonomy needs to be considered as a starting theoretical point accompanied by an overview of comparative legal approaches that have recently introduced some novel legal mechanisms, such as the right to disconnect to deal better with the exercise of fundamental labor rights. Additionally, introducing a psychosocial risk management model in occupational health and safety could significantly improve workers' mental health and well-being in the digital age. Therefore, the proactive, holistic, and integrated approach to workers' rights and status in the digital environment must be analyzed by exploring the bounding point between organizational management views on the subject and labor law standpoints.

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This paper was written as part of the 2024 Research Programme of the National Institute of Social Sciences with the support of the Ministry of Science, Technological Development and Innovation of the Republic of Serbia.

## 1. Introduction

In the post-pandemic period and with the ongoing digital revolution, mental health became a major public health concern, as well as an issue frequently addressed in recent studies of organizational and human resource management, social psychology, and law. Most studies concern organizational management, pointing to the psychological contract and its impact on job satisfaction and the mental well-being of workers.<sup>1</sup> However, the significance of employment contracts in determining (decent) working conditions in a changed work environment has been poorly addressed by academics. Additionally, the similarities and differences between so-called psychological (work) contracts and (legal-normative) employment contracts have not received much attention from researchers studying labor law and human resources. On the other side, labor law scholars are engaged in the constant debate about the future of Labor law as a legal discipline in the changed world of work, where the precise line between work and private life has been fading away with the development of informational and communicational technologies impacting on workers mental health and well-being in general. Finally, the question of introducing novel, adjusting mechanisms to address these challenges is posed.

After the introduction in the first section of the paper, the theoretical framework of mental well-being at the workplace has been presented from an organizational, i.e. managerial, and legal perspective. The second part deals with the link between psychological and employment contracts by exploring their nature and examining the conceptual possibilities of integrating those two into the mental health management model at the (digital) workplaces. The last section points to contemporary solutions, i.e. emerging

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<sup>1</sup> See: Sabine Pohl, Françoise Bertrand and Roland Pepermans, “Relationship between Psychological Contract Breach and Organizational Affective and Normative Commitment: The Role of Perceived Organizational and Supervisory Support,” *Le travail humain* 83, no. 3 (2020): 269–84; Yasir Mansoor Kundi et al., “Employee Psychological Well-Being and Job Performance: Exploring Mediating and Moderating Mechanisms,” *International Journal of Organizational Analysis* 29, no. 3 (2021): 736–54; Mareike Reimann and Jakob Guzy, “Psychological Contract Breach and Employee Health: The Relevance of Unmet Obligations for Mental and Physical Health,” *Journal of Work and Organizational Psychology* 22 (2017): 1–17; Yannick Griep et al., “How Psychological Contract Breach Affects Long-Term Mental and Physical Health: The Longitudinal Role of Effort–Reward Imbalance,” *Applied Psychology: Health and Well-Being* 13, no. 2 (2021): 263–81.

labor law and employers' (internal) policy mechanisms that could contribute to mental well-being. In this regard, the right-to-disconnect concept introduced in various legal systems and psychosocial risk management systems supported through occupational health and safety regulation have been frequently addressed.

## 2. Mental Well-Being Concept – Organizational and Legal Approach

According to the World Health Organization (WHO) definition, mental health is a state of mental well-being that enables people to cope with the stresses of life, realize their abilities, learn well and work well, and contribute to their community. At any time, a diverse set of individual, family, community, and structural factors may combine to protect or undermine mental health. Although most people are resilient, people who are exposed to adverse circumstances – including poverty, violence, disability, and inequality – are at higher risk of developing a mental health condition.<sup>2</sup> Emergencies such as armed conflicts, natural disasters, and other humanitarian crises exacerbate the risk of mental health conditions. Nearly all people affected by these emergencies will experience psychological distress, with one in five likely to have a mental disorder such as depression, anxiety, post-traumatic stress disorder, bipolar disorder, or schizophrenia. These risks are heightened in older people and marginalized groups.<sup>3</sup>

Based on mental health policy results and service research and evaluation of mental health reform, in 2004, the WHO issued recommendations in several countries on the organization of mental health services entitled *Mental Health Policy and Service Guidance Package*.<sup>4</sup> This document provides practical information to help countries improve the mental health of their citizens. The recommendations aim to help deliver integrated services, address the various needs of people with mental disabilities, and define

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<sup>2</sup> WHO, "Mental Health," 2024, accessed February 22, 2024, [https://www.who.int/health-topics/mental-health#tab=tab\\_1](https://www.who.int/health-topics/mental-health#tab=tab_1).

<sup>3</sup> WHO, "Ensuring a Coordinated and Effective Mental Health Response in Emergencies," accessed January 13, 2024, <https://www.who.int/activities/ensuring-a-coordinated-and-effective-mental-health-response-in-emergencies>.

<sup>4</sup> *Mental Health Policy, Plans and Programmes. Mental Health Policy and Service Guidance Package* (World Health Organization, 2004) accessed January 13, 2024, <https://iris.who.int/bitstream/handle/10665/42948/9241546468.pdf?sequence=1>.

some of the key organizing principles of mental health services.<sup>5</sup> The WHO proposed a multi-level model for the organization of mental health services using a pyramid framework.<sup>6</sup>



Figure 1. Pyramid framework for the organization of mental health services, WHO (Antonio Lora et al., “Information for Mental Health Systems: An Instrument for Policy-Making and System Service Quality,” *Epidemiology and Psychiatric Sciences* 26, no. 4 (2017): 383–94).

Although it is broader in terms of coverage of the persons it refers to, the United Nations Convention on the Rights of Persons with Disabilities (2006)<sup>7</sup> is also relevant for people with mental disabilities and their rights.

<sup>5</sup> Ibid.

<sup>6</sup> Angelo Barbato et al., “Access to Mental Health Care in Europe – Consensus Paper” (EU Compass for Action on Mental Health and Well-being, 2016), 1–38.

<sup>7</sup> UN (2006) Convention on the rights of persons with disabilities, A/RES/61/106, signed 30 March 2007, effective 3 May 2008.

It covers the whole spectrum of rights important for life in the community of persons with disabilities (PWD), including the right to (decent) work. Article 27 prescribes that states parties recognize the right of PWD to work on an equal basis with others. This includes the right to the opportunity to earn a living by working freely chosen or accepted in a labor market and work environment that is open, inclusive, and accessible to PWD. States parties are obliged to safeguard and promote the realization of the right to work, including for those who acquire a disability in the course of employment, by taking appropriate steps.

When it comes to the European system of human rights protection, it includes a large number of instruments (mandatory and non-mandatory acts and mechanisms) that are important for people with mental disabilities: European Convention on Human Rights of the Council of Europe (1953),<sup>8</sup> and the body for supervising its implementation – the European Court of Human Rights; European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (2002);<sup>9</sup> European Social Charter<sup>10</sup> in the area of housing, health, education, employment, social and legal protection, free movement of persons, and non-discrimination; Charter of Fundamental Rights of the European Union (2000);<sup>11</sup> as well as Mental Health Declaration for Europe, Helsinki (2005).<sup>12</sup>

The Mental Health Declaration for Europe (2005) was the cornerstone of developing and reforming European mental health policy. In the Declaration, all European ministers of health confirmed that mental health is a priority area; they recognized the need for evidence-based mental health policies, defined a broad framework of these policies, undertook to develop, implement and strengthen such policies, and proposed twelve

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<sup>8</sup> CE (1953) European Convention on Human Rights (ECHR), Rome, 4 June 1950.

<sup>9</sup> CE (2002) European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, European Treaty Series – No. 126, Text amended according to the provisions of Protocols No. 1 (ETS No. 151) and No. 2 (ETS No. 152) which entered into force on 1 March 2002.

<sup>10</sup> CE (1996) European Social Charter, European Treaty Series – No. 163; ETS163 – European Social Charter (Revised), 3 May 1996.

<sup>11</sup> EU (2000) Charter of Fundamental Rights of the European Union, 2000/C364/01, 7 December 2000.

<sup>12</sup> WHO (2005) Mental Health Declaration for Europe, EUR/04/5047810/6, 14 January 2005, Helsinki.

areas of activity to be implemented by 2010. These areas include promoting the mental well-being of the population as a whole by measures that aim to create awareness and positive change for individuals and families, communities and civil society, educational and working environments, and governments and national agencies; designing recruitment, education, and training programmes to create a sufficient and competent multidisciplinary workforce. One of the responsibilities of the states signatories is to prevent risk factors where they occur, for instance, by supporting the development of working environments conducive to mental health and creating incentives for providing support at work or the earliest return for those who have recovered from mental health problems.

The WHO recently issued the *WHO European Framework for Action on Mental Health 2021–2025*.<sup>13</sup> Among other things, the document emphasizes mental health in the workplace. It includes the recommendation that programmes to promote mental well-being and prevent mental health conditions in the workplace, such as adaptation to new working modalities, management of stress, and prevention of substance abuse, should be developed and their implementation supported.

On June 7, 2023, the Commission adopted the Communication on a comprehensive approach to mental health (2023),<sup>14</sup> which will help Member States and stakeholders take swift action to deal with mental health challenges. It recognizes that mental health is about more than just health and strongly involves areas such as education, digitalization, employment and labor, research, urban development, environment, and climate.

### 3. Psychological vs Employment Contract – Conceptualization Issues

Some labor law scholars argue for the introduction of so-called labor quality law emerging under the influence of the Fourth Industrial Revolution and considering the qualitative aspects of employment relationships such as equal opportunities at the workplace, personal flexibility and autonomy, and

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<sup>13</sup> WHO Regional Office for Europe, “WHO European Framework for Action on Mental Health 2021–2025,” 2022, accessed January 16, 2024, <https://www.who.int/europe/publications/i/item/9789289057813>.

<sup>14</sup> EU (2023) Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a comprehensive approach to mental health, COM(2023) 298 final, 7 June 2023.

health (mental and physical) well-being at work by placing the worker/human in front and at the centre of socio-economic transition and reconceptualization of labor law.<sup>15</sup> Having said that, it is worth mentioning that prevailing views regarding contemporary trends in labor unionization in terms of the impact on workers' rights stress that the core aim of modern labor law is "to satisfy the worker's need for meaningful protection and participation in the workplace, rather than simply to preserve the institutional formats through which those functions have traditionally been performed."<sup>16</sup>

Other academics also highlight the changing labor relations in the digital age as the main triggering mechanism for the foundation model of modern labor law, arguing the functional approach to changed working and management practices, work environment, and consequently employment relationship model in the national context.<sup>17</sup> Modern labor law appears to be developing in a direction that places an individual worker's needs, expectations, and perceptions at the centre of the employment relationship. Consequently, the non-legal, i.e. psychological, elements of that relationship must be analyzed along with the legal ones.

The traditional objective of labor law is regulating labor relations, primarily the relationship between employer and employee<sup>18</sup> based on the employment contract. Historically, both in common law and European-continental legal systems, the conceptualization of the employment contract is highly complex considering its hybrid nature, i.e. civil/contractual and public law elements embedded in the legal (employment) relationship comprising both the individual/business of *laissez-faire* and collective/public interests of the welfare state doctrines.<sup>19</sup> In essence, there is a common idea that cooperation and trust are cornerstones of any employment relationship;

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<sup>15</sup> Marc De Vos, "Work 4.0 and the Future of Labour Law," (July 2018), <https://ssrn.com/abstract=3217834>.

<sup>16</sup> David Doorey, "Reflecting Back on the Future of Labour Law," *University of Toronto Law Journal* 71, no. 2 (spring 2021): 165–206.

<sup>17</sup> Marianne Jenum Hotvedt and Natalie Videbæk Munkholm, "Labour Law in the Future of Work" (Nordic future of work project 2017–2020 Working paper 1, Fafo paper (2019):06).

<sup>18</sup> Today, considering the flexible employment arrangements and non-unified concept of "employee," the term worker is more adequate and will be used in this article.

<sup>19</sup> Simon Deakin, "The Contract of Employment: A Study in Legal Evolution. Working Paper No. 203" (University of Cambridge: ESRC Centre for Business Research, 2001).

thus, in a broad context, the employment contract represents the “social form of cooperation” between two parties where one (worker) is considered as the weaker party and needs special/additional legal protection.<sup>20</sup>

However, societal, economic, technological, and demographic changes undoubtedly call for flexibility in conceptualization and the specific conceptual “openness” to adaptation and evolution of an employment relationship in time. This approach has been supported by legislation practice in most legal systems, in which statutes, i.e., labor acts/codes, rarely explicitly define an employment contract and/or employment relationship, leaving the court to determine by using specific tests and indicators.<sup>21</sup> From a labor law perspective, the main indicators, i.e. elements and characteristics, of an employment relationship are a contract-based relation, voluntary-based work, wage/remuneration, and workers’ subordination to employers’ power. Labor law generally defines an employment contract as a written agreement between employer and worker about terms and conditions of employment, mainly considered an economic exchange between parties but with certain social justice elements and determined legal sanctions in terms of violation.<sup>22</sup>

Thus, the lack of a specific normative definition of employment contract in most jurisdictions, accompanied by vagueness in legal doctrine and inconsistent judicial practices, are all factors that could significantly impact workers’ status and enjoyment of fundamental rights, particularly in a time of profound technological changes. However, apart from that, legal studies on this matter are lacking. In the European domain, there is vagueness in approaching the employment contract in legal doctrine. As has been said, most legislation does not precisely define the employment contract or employment relationship.<sup>23</sup> For instance, the French Labour Code does not

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<sup>20</sup> Jenum Hotvedt and Videbæk Munkholm, “Labour Law.”

<sup>21</sup> Ibid.

<sup>22</sup> John W. Budd and Devasheesh P. Bhave, “The Employment Relationship: Key Elements, Alternative Frames of Reference, and Implications for HRM,” in *The SAGE Handbook of Human Resource Management*, 2nd ed., eds. Adrian Wilkinson et al. (Singapore: SAGE Publications Ltd, 2019), 41–64.

<sup>23</sup> Georges Cavalier and Robert Upex, “The Concept of Employment Contract in European Union Private Law,” *The International and Comparative Law Quarterly* 55, no. 3 (July 2006): 587–608.



provide a universal definition of an employment contract. However, scholars are consistent in their views that the employment contract is a bilateral agreement between employer and employee where the employee agrees to undertake personal work under the supervision of the employer, i.e. putting themselves in a subordinate position and, in return, they are entitled to payment/salary and protection at the workplace.<sup>24</sup> On the other hand, German law (*Bürgerliches Gesetzbuch: BGB, Section 611a*)<sup>25</sup> states that:

By the employment contract, the employee is obliged to perform work in the service of another; such work being tied to instructions and determined by others; and to do so in a relationship of personal dependency (...). In this context, the degree of personal dependency will be determined according to the specific nature of the activity concerned.

The main criteria for the determination are the factual and legal dependence of a person engaged in any form of work, meaning that the principle of subordination is crucial for the qualification.<sup>26</sup>

Although changes in employment and labor caused by the digital revolution questioned subordination as the main characteristic of an employment relationship, the core distinguishing criteria between employment contracts and other civil/commercial contracts is the worker's subordination to the employer's power.<sup>27</sup> Thus, for instance, Spanish, Portuguese, and Italian labor laws specifically highlight the criteria of employee dependence on the employer in terms of obedience to the employer's managerial prerogatives.<sup>28</sup>

However, academics and policymakers have recently advocated the modification of the traditional concept of employment relationship based on the emergence of flexible forms of work arrangements in a digitalized world of work. Non-standard forms of employment (i.e. platform

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<sup>24</sup> Ibid.

<sup>25</sup> Bürgerliches Gesetzbuch: BGB, Section 611a, accessed March 11, 2024, [https://www.gesetze-im-internet.de/bgb/\\_611a.html](https://www.gesetze-im-internet.de/bgb/_611a.html).

<sup>26</sup> Cavalier and Upex, "The Concept of Employment Contract in European Union Private Law"

<sup>27</sup> Judy Fudge, "Fragmenting Work and Fragmenting Organizations: The Contract of Employment and the Scope of Labour Regulation," *Osgoode Hall Law Journal* 44, no. 4 (2006): 609–48.

<sup>28</sup> Felicia Rosioru, "The Changing Concept of Subordination," in *Recent Developments in a Labour Law*, ed. György Kiss (Budapest: Akadémiai Kiadó, 2013), 150–85.

work, economically dependent self-employment) blurred the boundaries between the traditional subordinate employment relationship and independent work, posing the question of reconceptualization of the subordination concept by “broadening the scope of labour-law protection to cover other less visibly subordinate labour relationships.”<sup>29</sup> In the ongoing technological changes where the job tasks could be done under the principle “anytime and anywhere,” the main managerial prerogatives of an employer became quite vague. Hence, the subordination became weaker while the workers’ autonomy prevailed, striving to challenge the very foundation of the traditional employment relationship concept. Given the above, an improved concept/model of evolution and adaptation needs to be introduced by applying an integrated and holistic approach and considering all varieties of (digitalized) societal and employment relationships. In this regard, established ethical and cultural standards in the work environment and the subjective perception of an employee on work duties and rights need to be considered when approaching the modern concept of an employment relationship.

Having said that, in organizational and human resource management, the notion of psychological contract and the consequences of psychological contract breach (PCB) in terms of workers’ status became widely explored, along with the effects of psychological contract breach on workers’ mental health and well-being.<sup>30</sup> In this regard, the interconnectedness between psychological and employment contracts needs to be critically evaluated by exploring the theoretical and conceptual similarities and differences.

The concept of psychological contract dates back to the 1960s and is described mainly in organizational management literature as a relationship between employer and worker that considers the individual beliefs/expectations of parties concerned regarding reciprocal obligations of exchange.<sup>31</sup>

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<sup>29</sup> Sanja Stojković Zlatanović and Ivana Ostojić, “Labour Law Status of Platform Workers – Between Autonomy and Subordination,” in *Regional Law Review*, ed. Mario Reljanović (Belgrade: Institute of Comparative Law, 2021), 269–81.

<sup>30</sup> See: Yueyuan Cheng, “The Effect of Psychological Contract Combined With Stress and Health on Employees’ Management Behavior,” *Frontiers in Psychology* 12, no. 10 (2021): 667302; Reimann and Guzy, “Psychological Contract Breach,” 1–17.

<sup>31</sup> Juan Herrera and Carlos De Las Heras-Rosas, “The Organizational Commitment in the Company and Its Relationship with the Psychological Contract,” *Frontiers in Psychology*

The psychological contract is an unwritten agreement containing both explicit promises and implicit expectations of parties involved in a (legal) employment relationship. Besides the implicit expectations, the subjective perception of the relationship is the key difference between a psychological contract and an employment contract.<sup>32</sup> From an organizational management perspective, the consequences of a PCB are related to trust and loyalty issues, job satisfaction, organization commitments, and an individual worker's mental and physical health and well-being.<sup>33</sup>

It could be noted that the consequences of PCB impact not only the worker's health status but also the business interests and economic goals of an employer, considering the effects on job performance, workers' productivity, and efficiency of a company. Given the above, the employer's best (economic) interest is to build a relationship that goes beyond the contractual obligations of the employment contract, particularly considering the definition of the psychological contract expressed in organizational management literature as a "tacit agreement between a company and workers to maintain the legal relationship between them."<sup>34</sup> Therefore, it could be argued that the psychological contract has been naturally embedded into an employment contract. It also means that the unwritten part of any employment contract that grounds the trust and loyalty between parties and creates mutual expectations of contractual obligation fulfilment as a basis for entering into the employment relationship by concluding the employment contract is actually – a psychological contract.

While most of the conducted studies on organizational management deal with the PCB and its impact on job performance, job satisfaction, and organizational commitment,<sup>35</sup> the empirical studies that analyzed health-related issues of PCB were mainly limited to a particular group of employees, i.e. military and police officers.<sup>36</sup> On the other hand, it is worth mentioning that Reimann & Guzy (2017) investigated the consequences of

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11, no. 609211 (January 2021).

<sup>32</sup> Kate McInnis, "Psychological Contracts in the Workplace: A Mixed Methods Design Project" (PhD diss., Western University, 2012).

<sup>33</sup> Ibid.

<sup>34</sup> Cheng, "The Effect of Psychological Contract."

<sup>35</sup> Herrera and De Las Heras-Rosas, "The Organizational Commitment."

<sup>36</sup> Reimann and Guzy, "Psychological Contract Breach," 1–17.

PCB on workers' mental and physical health engaged in various industrial sectors and found that PCB mostly affects mental health and well-being while having only indirect effects on physical health. Furthermore, evidence from various studies reveals a positive correlation between PCB and mental well-being indicators such as anxiety, depression, and burnout syndrome.<sup>37</sup> Therefore, Reimann & Guzy (2017) argued that PCB should be recognized as a specific psychosocial work stressor.

Having this in mind, we could pose a question of interconnections between PCB as a psychosocial work stressor and psychosocial risks and hazards that have come into the focus of European policymakers in terms of introducing the psychosocial risks management model as a novel mechanism of occupational safety and health law (OSH). Psychosocial hazards at work are defined as factors that negatively influence a worker's mental and physical health and well-being. In contrast, psychosocial risks comprise the interactions between work organization and management practices, on the one hand, and individual, subjective perceptions, expectations, and beliefs regarding worker's status and consequently working conditions, on the other hand, that could impact psychophysical health.<sup>38</sup> In the last decades, the focus of European OSH policymakers and legislators has shifted from the risk assessment model to the risk management model, emphasizing the emerging psychosocial hazards and risks of the digital environment as a main priority.<sup>39</sup> This is another argument that supports integrating the organizational management approach into the labor law framework, meaning the recognition of PCB as an emerging psychosocial risk in a digitalized world of work. Given the above, the psychological contract must also be considered when it comes to modernizing the employment relationship model.

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<sup>37</sup> Griep et al., "How Psychological Contract Breach," 263–81.

<sup>38</sup> Sergio Lavicoli and Christina Di Tecco, "The Management of Psychosocial Risks at Work: State of the Art and Future Perspectives," *La Medicina del Lavoro* 111, no. 5 (2020): 335–50.

<sup>39</sup> Christina Di Tecco, Bernadetta Persechino, and Sergio Lavicoli, "Psychosocial Risks in the Changing World of Work: Moving from the Risk Assessment Culture to the Management of Opportunities," *La Medicina del Lavoro* 114, no. 2 (2023): e2023013. <https://doi.org/10.23749/mdl.v114i2.14362>.

#### 4. Emerging Labor-Law and Policy Mechanisms of Mental Health Protection – A European and Comparative Overview

Mental health protection in terms of labor become a topic that has been given more and more attention at the European Union level, particularly in the post-pandemic period and with the ongoing digital revolution. Although the EU and national policymakers joined forces to address the issues of mental health and well-being deterioration that emerged with the Fourth Industrial Revolution, the legal theory and doctrine still lag far behind in approaching the subject.

In this regard, it is worth mentioning that Bielby (2019)<sup>40</sup> defines mental health vulnerability as a “subjective-evaluative well-being” that arises from a psychological and social perception of an individual and self-resilience expressed in a particular environment that also includes a work environment. By suggesting the implementation of the legal theory of the novel concept of mental vulnerability, the author practically stands for the idea of “proactive vulnerability management” and state responsibility to address the issues of mental health challenges in neoliberal societies.<sup>41</sup> This doctrinal standpoint could be a valuable basis for current policy initiatives at the EU level for broader collaboration between social partners and governments to create a healthier psychosocial safety work climate by approaching the concept of psychosocial risk from workers' individual/subjective perspectives.

When it comes to the EU policy initiatives on mental health protection as part of OSH, the most recent document adopted is the European Commission's Strategic Framework on Health and Safety at Work 2021–2027,<sup>42</sup> which calls for collaboration between social partners and Member States to deal better with emerging changes (digital, green, and demographic transitions) by improving prevention of workplace accidents and illnesses while coping with new health risks and hazards, particularly emphasizing psychosocial risks. A psychosocial hazard that negatively affects mental health

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<sup>40</sup> Phil Bielby, “Not ‘Us’ and ‘Them’: Towards a Normative Legal Theory of Mental Health Vulnerability,” *International Journal of Law in Context* 15, no. 1 (2019): 51–67.

<sup>41</sup> Ibid.

<sup>42</sup> EU (2021) EU Strategic Framework on Health and Safety at Work 2021–2027, DG EMPL – B3, Ref. Ares(2020)608950, 29 October 2020.

and was specifically addressed in this document is work-related stress. On the other hand, emerging psychosocial risks, including permanent connectivity, lack of social interactions, and imbalance between work and private life, are quoted as important to consider in risk assessment and management procedures at the workplace.

A more specific EU policy approach to mental health in the era of digitalization has been made by adoption of the European Parliament resolution of 5 July 2022 on mental health in the digital world of work,<sup>43</sup> emphasizing the necessity to broaden the definition of health and safety at the workplace to include mental health concerns, particularly work-related stress, burnout, depression, and anxiety, as well as harassment, violence, and discrimination. The reference to mental health in the digital transition points to a proactive, preventive, protective and both individual and collective approach to mental health and well-being with a focus on work-related psychosocial risks of constant connectivity, work-life imbalance, social isolation, and AI misuse. Furthermore, gender issues, intergenerational solidarity, and minority protection must be addressed in the national policy and legal documents. The resolution calls for improvements in preventive measures of OSH management at the digital workplaces, prioritizing education and raising awareness of poor mental health through developing psychosocial training programmes and creating local or regional mediation services for emerging psychosocial risks.

To address the emerging psychosocial risks, particularly the constant connectivity, the European Parliament resolution on the right to disconnect<sup>44</sup> has been suggested as a follow-up mechanism. The right to disconnect is defined as a worker's right not to be available to the employer via digital devices after working hours without posing any restrictions or sanctions for the worker.<sup>45</sup> At the EU level, the introduction of the right to disconnect as a special/additional mechanism of enjoyment of the right to rest and leisure, as a fundamental labor right, to protect health and safety takes

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<sup>43</sup> EU (2022) European Parliament resolution of 5 July 2022 on mental health in the digital world of work, 2021/2098(INI), C 47/63, 7 February 2023.

<sup>44</sup> EU (2021) European Parliament resolution of 21 January 2021 with recommendations to the Commission on the right to disconnect, 2019/2181(INL), C 456/161, 10 November 2021.

<sup>45</sup> Marta Urbane, "The Future of the Employee's Right to Disconnect in the European Union and Latvia," *Human Factors, Business Management and Society* 56 (2022): 329–35.

the form of a legislative initiative. However, policymakers and academics have not reached a consensus regarding its legal nature – a novel right or additional policy mechanism for enforcing fundamental labor rights. However, among labor law scholars, the right to disconnect has not been considered a novel right but rather a policy mechanism for enforcing the right to rest and leisure in terms of mental health and well-being protection. Accordingly, the right to disconnect needs to be evaluated in the context of an additional psychosocial risk assessment and management instrument that emerged with workplace digitalization.<sup>46</sup>

On the other hand, psychosocial risks and the OSH management system at the level of the employer have been traditionally regulated by the OSH Framework Directive 89/391/EEC,<sup>47</sup> which determines the employer's obligation to assess all types of risks at the workplace and establish the preventive and protective OSH procedures. These provisions could also be interpreted to include the new, emerging psychosocial risks in a digital environment. However, OSH regulations have substantial national dimensions and specificities.

As a pioneering EU country, France introduced the right to disconnect through the El Khomri law of 2016 for workers in public and private sectors but did not determine the content and scope of the right, leaving it to the social partners to negotiate, nor it did statutorily recognize other types of psychosocial risks in mental health protection except bullying. Nevertheless, Law n°2002–73 of 17 January 2002 sets out the employer's obligation to protect mental health.<sup>48</sup> A certain step forward in France's OSH legislation and approach to mental health at the workplace was the adoption of Law n°2021–1018 of 2 August 2021, aiming to prevent workers' overload by introducing the right to warning and withdrawal.<sup>49</sup> However, emerging psychosocial risks and management instruments are the subject of

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<sup>46</sup> Sanja Stojković Zlatanović and Milena Škobo, "The 'Twilight' of Health, Safety, and Well-being of Workers in the Digital Era – Shaping the Right to Disconnect," *Journal of Work Health and Safety Regulation*, no. 1 (2024), <https://doi.org/10.57523/jaohlev.0a.23-003>.

<sup>47</sup> EU (1989) Council Directive on the introduction of measures to encourage improvements in the safety and health of workers at work, 89/391/EEC, L 183, 29 June 1989, P. 0001–0008.

<sup>48</sup> Jean-Paul Dautel, "Psychosocial Risks in France" (Presentation), accessed January 26, 2024, [https://www.etui.org/sites/default/files/2022-02/P3\\_JP\\_Dautel\\_PSR\\_in\\_France\\_2022\\_0.pdf](https://www.etui.org/sites/default/files/2022-02/P3_JP_Dautel_PSR_in_France_2022_0.pdf).

<sup>49</sup> Ibid.

collective bargaining, such as the above-mentioned right to disconnect, work-life balance, and exercise of the right to expression.

In the context of the digital work environment, introducing so-called cyberbullying as a psychosocial risk could be valuable for workers' (mental) health protection. For example, in some provinces of Canada, labor statutes have been amended to broaden the definition of health and safety to include bullying at work under the definition of "psychological harassment," where the court can impose a "protection order," which involves a restriction of physical contact or even online communication.<sup>50</sup> Referring to "on-line communication" potentially means protection against cyberbullying at the workplace as an emerging psychosocial risk in a digital environment, which represents an example of good practice in this field.

On the other hand, Italy introduced a statutory limited the application of the right to disconnect to remote workers and delegated the power to social partners to determine the scope and content of the right, as France did.<sup>51</sup> Moreover, in terms of psychosocial risk assessment and management, Italy, in Legislative Decree 81/08, approached the issue by implementing the provisions of the OSH Framework Directive 89/391/EEC, setting out the employer's obligation to assess all risks at the workplace, including those related to stress at work.<sup>52</sup> The Italian legislator apparently focused solely on work-related stress, while other psychosocial risks were neglected. Nevertheless, in January 2021, Italy ratified the International Labour Organization Convention No. 190 concerning eliminating violence and harassment in the world of work<sup>53</sup> and included these risks in the assessment and management procedure.

Finally, like France and Italy, Spain has adopted special legislation on the right to disconnect, approaching this right as both a civil privacy right in the Data Protection Act (2018) and a labor right in Law 10/2021 on

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<sup>50</sup> Bettina West et al., "Cyberbullying at Work: In Search of Effective Guidance," *Laws* 3, no. 3 (2014): 598–617.

<sup>51</sup> Dima Luminița and Alex Högback, *Legislating a Right to Disconnect* (București: Friedrich-Ebert-Stiftung, 2020).

<sup>52</sup> Di Tecco, Persechino, and Lavicoli, "Psychosocial Risks in the Changing World of Work."

<sup>53</sup> *Ibid.*



remote work.<sup>54</sup> The legislation regarding different types of emerging psychosocial risks has not been adopted; however, workplace harassment was determined as a serious infringement.<sup>55</sup> In terms of psychosocial risks in a digital environment, it is important to note that Spain set out the obligation for all employers to evaluate the psychosocial risks related to the usage of information and communications technologies by Law 31/1995, of 8 November 1995, while concrete preventive measures in OSH regarding remote work and teleworking have been determined by Law 10/2021 on remote work.<sup>56</sup> Law 10/2021 on remote work obligates employers to assess all risks of teleworking, particularly psychosocial, organizational, and ergonomic, such as light, musculoskeletal pain, or mental and physical fatigue.<sup>57</sup>

Considering the examples of European countries that are pioneering the right to disconnect as a novel mechanism to cope with emerging psychosocial risks and mental health protection in a digital era, one might infer that the legislators continue to be inconsistent and unclear regarding the scope and content of this right by transferring the subject to social partners to negotiate. On the other hand, collective bargaining in this field is deficient, while employers/companies are unaware of mental health deterioration and implications to business interests, such as lower efficiency of workers, absenteeism, and finally, productivity of the company.<sup>58</sup> Therefore, it seems that legal doctrine and theory need to focus on the reconceptualization of traditional labor law institutions by reshaping labor rights in response to a changed world of work and approaching the subject in a multidisciplinary, proactive, holistic, and integrated manner.

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<sup>54</sup> Loïc Lerouge and Francisco Trujillo Pons, “Contribution to the Study on the ‘Right to Disconnect’ from Work. Are France and Spain Examples for Other Countries and EU Law?,” *European Labour Law Journal* 13, no. 2 (2022): 450–65.

<sup>55</sup> Francesko Chirico et al., “Psychosocial Risk Prevention in a Global Occupational Health Perspective. A Descriptive Analysis,” *International Journal of Environmental Research and Public Health* 16, no. 14 (2019): 2470. <https://doi.org/10.3390/ijerph16142470>.

<sup>56</sup> Francisco Trujillo Pons, “The ‘Digital Disconnect’ on the Back of Occupational Health and Safety,” *Journal of Leadership, Accountability and Ethics* 20, no. 4 (2023), <https://doi.org/10.33423/jlae.v2023i20.6521>.

<sup>57</sup> Ibid.

<sup>58</sup> Ibid.

## 5. Conclusions

As highlighted in Deloitte,<sup>59</sup> the focus is more proactive, engaging, and preventative initiatives instead of reactive management procedures regarding mental health-related incidents. It also presupposes a shift from the assessment model in OSH to a management system that includes assessment and management of all types of risks, particularly those labelled as “psychosocial” in a digitalized work environment. The interconnections and dependence between the organizational management approach and labor law in OSH must also be considered in this regard.

Theoretical standpoints and reflections regarding the mental health vulnerability concept as a worker’s subjective perception of work climate that further establishes their expectations of working conditions embedded in the employment relationship presuppose the recognition and integration of psychological contract elements into traditional employment contracts. Furthermore, reshaping the conventional labor right to rest and leisure to a new reality of digitally driven society could require employing novel mechanisms such as the right to disconnect introduced in some EU countries. Nevertheless, stronger collaboration between states and social partners is necessary to implement these changes and raise awareness about the emerging psychosocial risks of constant connectivity, work-life imbalance, and AI misuse on the mental health and well-being of workers.

The human/worker-centred approach allows employers to look at workers’ mental health from an altered perspective, acknowledging that they need to do more to support their mental health and establish a healthier work culture and organizational practice. As mental health issues continue to gain prominence, irrespective of their size and operations, employers can no longer be agnostic to the idea of mental well-being at the (digital) workplaces. They must invest in solving critical challenges, such as investments and raising capabilities, to create a work environment where workers feel safe about their mental health and enjoy a healthy and supportive workspace. Employers should implement a comprehensive, integrated

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<sup>59</sup> Deloitte, “Mental Health and Well-Being in the Workplace,” 2022, accessed February 18, 2024, <https://www2.deloitte.com/content/dam/Deloitte/global/Documents/Life-Sciences-Health-Care/gx-mental-health-2022-report-noexp.pdf>.

strategy that helps workers stay healthy at work, tackles the root causes of work-related mental health problems, and supports those experiencing mental health symptoms.

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