LABOUR AND EMPLOYMENT RELATIONS ASSOCIATION OF SOUTH AFRICA

Welcome to the festive edition of LERASA's Newsletter for 2021, a publication that includes information highlighting important information relevant to Labour and Employment Relations in South Africa.

DECEMBER 2021

LERASA NEWSLETTER

Message from the President

I would like to take this opportunity to thank our key sponsors who partnered with LERASA to make ILERA Africa possible, ILERA Head office in Geneva, the PSCBC and GPSSBC for your financial contributions, the Scientific Committee and its committed members for the review of submitted abstracts and managing the programme. And importantly to our distinguished speakers, both academics and practitioners who showed an interest in responding to our call for papers and agreeing to present at the Congress.

LERASA is in the midst of planning it's calendar of events for 2022 and I am proud to announce that the association will be hosting several informative seminars next year.

We look forward to LERASA's continued success and we thank you for your valued membership and support throughout the years.

- Mr Frikkie De Bruin, LERASA President

Can artificial intelligence help close gender gaps at work?

By: Sonia Elks

Gender stereotypes continue to hold women back at work, but a handful of tech firms say they have developed artificial intelligence (AI) systems that can help break biases in hiring and promotion to give female candidates a fairer chance.

Employers and the wider economy could stand to gain, too.

"We are at this moment in artificial intelligence, that we either have the ability to hardwire our biases into the future or ... to hardwire equity," said Katica Roy, chief executive of Colorado-based software firm Pipeline Equity.

"A lot of the time that we talk about equity, we talk about it as a social issue or the right thing to do, which it is, but it's actually a massive economic opportunity."

Organisations are increasingly turning to AI to help make hiring decisions, prompting concern among digital rights experts who warn that algorithms can perpetuate biases.

An AI hiring tool developed by Amazon had to be scrapped after it taught itself male candidates were preferable to women.
But women's rights groups and digital experts said well-designed tech aimed at targeting bias can "shine a light" on the hidden factors holding women back.

"Bias is as old as human nature, and traditional hiring practices have been shot through with a number of different biases," said Monideepa Tarafdar, a professor in the Isenberg School of Management at the University of Massachusetts Amherst.

"I think AI can be part of the solution. Definitely. But I do not think it can be the only solution."

Inclusive alternatives

These equality-focused technology firms are using AI to bypass or review decisions such as scanning CVs or deciding pay rises, and offer personalised, data-based advice.

Software developed by Pipeline Equity, a startup founded in 2014, has a number of human resource uses - from checking for biased language in performance reviews to offering advice on hiring and promotions.

Textio also uses AI to analyse companies' corporate statements and job postings to identify whether they are adopting a masculine tone that will alienate women or members of minority groups, and suggesting more inclusive alternatives.

Pymetrics, another leading firm in the space, offers gamified assessments that it says evaluate potential hires more fairly than reading CVs.

Studies have found that businesses led by diverse teams tend to be more profitable, while boosting women's presence and role in the workplace could be worth billions of dollars to national economies.

But Covid-19 has spurred a "shecession" that has seen a disproportionate number of women pushed out of the labour force. The International Labour Organisation found gender gaps have widened and women's employment is set to recover more slowly.

Meanwhile, companies are struggling to fill open positions with record numbers quitting in the United States in what has been dubbed "the great resignation".

"Businesses have so many roles that they're unable to fill, I mean, empty seats can't do your work for you," said Kieran Snyder, chief executive of Textio.

"You need to hire great people if you're going to have any kind of success."

Helping or spying?

But AI will not be a silver bullet in creating fairer workplaces, women's rights advocates and researchers said, warning that the technology could raise as many problems as it solves.

The idea that technology offers some kind of unbiased factual truth or objectivity is an illusion, said Manish Raghavan, a postdoctoral fellow at the Harvard Center for Research on Computation and Society.

"All AI has to learn from data in some way; it has to learn from past decisions," he said.

"That's not to say it's impossible to use technology to mitigate your own implicit biases, I think it just has to be very, very carefully designed. And I honestly just don't think we're at that point yet where we're able to do that."

A lack of transparency about how most commercial algorithms work makes it hard to scrutinise their performance, he added.

Tarafdar, who is leading a research project to analyse how AI can lead to unintentional workplace bias, said effective solutions cannot just pinpoint key hiring decisions but must also look at the wider workplace culture.

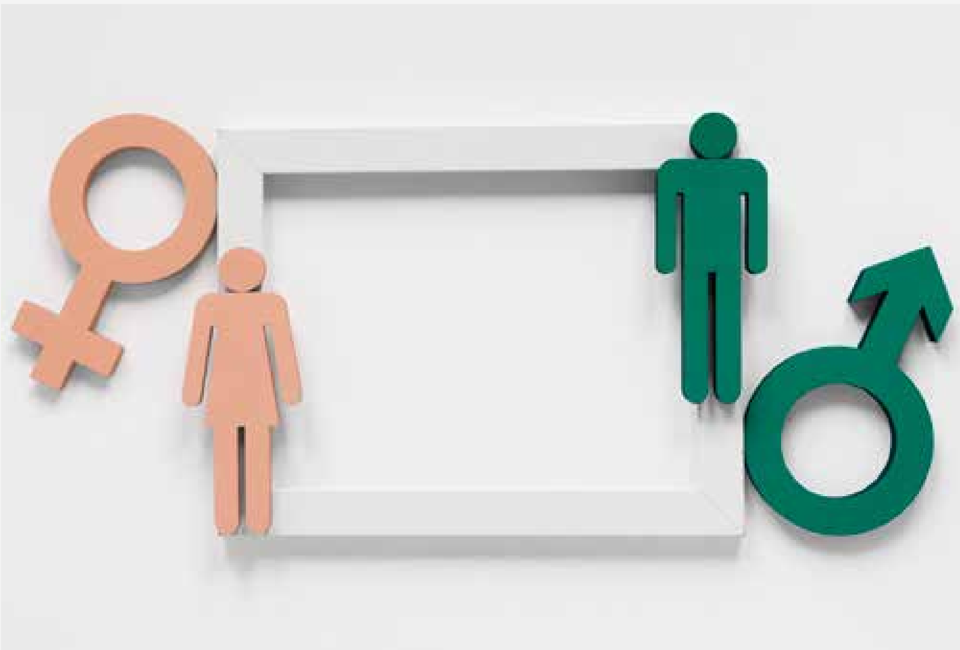
Bosses should also carefully consider how much data they can gather on workers before their actions slip from helping towards surveillance, she added.

The real key to change is opening difficult, honest, conversations about bias that can challenge misconceptions, said Allyson Zimmermann, a director of women's workplace rights organisation Catalyst.

But AI tech can help to upend those preconceptions and open opportunities, she added, citing the case of a young woman who got an interview after being selected using technology that "blinded" recruiters as to her gender and age.

"When she showed up for the interview, they just burst out laughing. And it wasn't, you know, a rude kind of laughing. They were so shocked that she was this young woman," she said.

"It really opened their eyes; they thought they would have a middle-aged man coming in ... She went into the interview, she got the job. She told me it was an extremely positive experience."



"Studies have found that businesses led by diverse teams tend to be more profitable, while boosting women's presence and role in the workplace could be worth billions of dollars to national economies."

Making decent work a reality for domestic workers

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Progress and prospects ten years after the adoption of the Domestic Workers Convention, 2011 (No. 189)

Preface:

The publication of this report, in the midst of a devastating global health pandemic, could not have come at a more critical time for domestic workers.

This crisis has highlighted the vital role that they play in supporting the care needs of households. It has also exposed the precarious position the majority have found themselves in – many being obliged to go to work despite the health risks, others losing their jobs, with no access to income-support measures, putting them and their families at risk of falling into poverty or deeper poverty.

Meanwhile, the households in which they work have struggled with additional care responsibilities, as parents juggle with teleworking and ensuring that their children are educated while at home. Never before has the interdependence of domestic workers and the households they care for been so clear. Neither has the vulnerability of the millions of domestic workers earning a living behind the closed doors of private households been so visible.

This report is also timely since it marks the tenth anniversary of the adoption of the Domestic Workers' Convention, 2011 (No. 189), and its accompanying Recommendation (No. 201), dedicated to the sector in its entirety. Ten years ago, the adoption of these standards was celebrated worldwide by domestic workers' organizations.

These new standards offered a historic opportunity to make decent work a reality for domestic workers worldwide. Their adoption was a recognition that "domestic work is work" and that domestic workers have a right to decent work, like any other workers. Ten years on, this publication takes stock of the progress made since then.

The report assesses how far domestic workers enjoy decent work, both in law and in practice. Importantly, it measures the extent to which countries have extended labour and social security laws to cover domestic workers over the last ten years, as well as the increase in the numbers and proportion of domestic workers who are now protected because of those changes.

While gaps in legal coverage remain, I am encouraged to see that much progress has been achieved. This highlights the role that labour standards play in improving the protection of vulnerable groups. The stories behind these changes in law underscore the often-underestimated role of international labour standards as powerful tools of empowerment, in this case for domestic workers and their organizations.

Although the report clearly shows progress in legal coverage, it also lays bare the large gaps in the implementation of these laws. New estimates show that more than 80 per cent of the world's 75.6 million domestic workers are in informal employment, twice the share of other employees. Their wages and working hours, on average, are far less favourable than those of other workers. Indeed, there remains a long road ahead for many domestic workers in getting access to decent work.

Yet domestic work is a sector that is likely to grow in light of ageing populations and their increasing need for long-term care. Closing these existing gaps is therefore even more of a priority.

Centuries of exclusion cannot be erased in a few years. To help close both legal and implementation gaps, the report provides governments, employers' and workers' organizations, and other stakeholders, with guidance and examples of useful country practices.

In inviting you to read this informative report, I would like to draw your attention to a very important point: Women represent nearly 80 per cent of all domestic workers, almost all of whom are working in the most vulnerable situations. They have made a vital contribution to reducing gender inequality by enabling millions of their female employers to participate in the paid labour market. It is time that domestic workers become not only contributors to, but also beneficiaries of a transformative agenda for gender equality, as called for in the Centenary Declaration for the Future of Work, adopted by the ILO in 2019.

Their situation provides one additional and compelling reason, among many, for the ILO's full commitment to taking concrete actions to make decent work a reality for all domestic workers.

Guy Ryder
Director-General
International Labour Office

"Centuries of exclusion cannot be erased in a few years. To help close both legal and implementation gaps, the report provides governments, employers' and workers' organizations, and other stakeholders, with guidance and examples of useful country practices."

International Labour Organization

Keeping pace with technology in the workplace

Essential for budding professionals

If you don't know the difference between digitisation and digitalisation, or AI and automation, it's time to brush up on your knowledge. The good news, though, is that keeping pace with technological development isn't nearly as complex - or daunting - as it may seem.

These are the beliefs of Kevin Ssemwogerere, who is a Corporate Venturing Lead in the Wholesale Clients Division of one of the largest banks in Africa. Speaking at the South African Institute of Chartered Accountants' (SAICA's) Trainee Summit, Ssemwogerere says he uses his Silicon Valley training to build digital platforms for businesses. In his own words, his job is 'like being an entrepreneur working inside a big corporate, but in the digital environment'.

Ssemwogerere says that the question he is most often asked by people trying to orientate themselves around the digital space is: "Will a robot take my job?" His answer? "The reality is that, as the old adage tells us, the more things change, the more they stay the same. The Fourth Industrial Revolution undeniably introduces an element of uncertainty, but it also presents us with opportunity – and that opportunity can be realised if we continue to reinvent ourselves, so that we are able to remain relevant. The core of what we do may not change, but you need to reevaluate where you fit into this new world. If you're honest with your answer, you'll find your place."

Fortunately, most of us have all the tools, support and resources we need to navigate the digital space – but, says Ssemwogerere, none of these are as important as having the correct mindset. "The role of the accountant is being redefined by the Fourth Industrial Revolution, but this is not the first time this has happened," he observes. In fact, he adds, the role of business is constantly in flux, and with these changes, factors like accountability, transparency and financial management come to the fore. It's critical for the accounting profession to respond with these changes – and, to date, it has done so admirably, as developments such as the evolution of accounting standards proves.

Ssemwogerere believes that these changes are unlikely to stop, or even slow, which means that as a key driver of financial strategy, the profession will face ongoing pressure to keep pace. "Financial strategy ultimately affects many pillars of a business, so we cannot underestimate the importance of financial professionals in the business environment," he says.

Where we're moving

What, exactly, does the requisite mindset entail? Ssemwogerere notes that it is underscored by digital acumen which is, itself, made up of business acumen and digital knowhow. This allows accountants to remain relevant in an increasingly digital world – important, because although there will always be jobs which only an accountant is uniquely qualified to perform, accountants also have to understand that how they do these jobs may necessarily change.

As more and more businesses harness the efficiencies offered by technology as a tool of business transformation, this will become increasingly important – especially since those that don't will lose relevance. That said, there are a plethora of technologies available, and not all of them are applicable or appropriate in every situation.

This is where digital acumen comes in; it's about understanding which technologies should be used to position you to make better decisions for the business and help the business keep growing and serving customers optimally. Obviously, the more you keep up with trends and developments, the better you'll be able to do this. "You don't need to have a thorough understanding of technologies from a technical perspective, but you should be able to identify how it can help you further your particular role within the broader organisational context," Ssemwogerere explains.

Need to know

Since it is vital to understand how technology affects your performance no matter what your position within an organisation, it helps to be clear on some key terms, Ssemwogerere says. These include:

- Digitisation is the migration or recalibration of information onto a digital format. Although frequently used interchangeably with the term 'digitalisation', it is vastly different; the latter refers to digital acumen and your understanding of technology trends so that you can apply them to your role.
- 'Automation' brings to mind building robots. In accounting, this may be applied to robotic process automation, which helps to increase the efficiency of repetitive tasks. For instance, a job such as completing VAT returns could be handed over to a bot, which would not only finish the job more quickly, but would also reduce the margin for human error. It's automation that makes people fear for their jobs but, Ssemwogerere points out, they may actually help humans by removing drudge work and thus allowing them to focus on more complex tasks, such as interpreting information.
- AI: In the accounting space, the most useful application of artificial intelligence lies in the development of predictive models. This may help an organisation predict revenue for the next 20 years, or even forecast how a major unforeseen event (such as Covid) could affect current revenue. AI also encompasses machine learning; the process whereby machines are able to 'learn' to replicate human actions at a more sophisticated level. For example, a machine can be taught to write an in-depth financial report.
- Blockchain: Although typically referring to cryptocurrency, there are broader applications for blockchain. The idea here is to remove the element of mistrust between humans by ensuring that communication takes place between computers rather than people. Here's an example: when you receive an email,

there is no way you can confirm that your email server has verified the sender – you can only trust that it has done so. Blockchain removes the possibility of error here by verifying information at its source. This technology is particularly useful in creating smart contracts. It also has applications in the finance function, where it can be used to protect legal or risk information.

- Cloud computing: A virtual platform which makes it possible to store information or host events without a physical space.
- Data analytics: This is one of the most important emerging concepts; referring to using a combination of all technologies (such as AI and automation) to enable a business to pick out key trends from data. These can be used to make better business decisions.
- Internet of things: This term relates to devices communicating with each other over a virtual network.

Digital acumen in the real world

Just as you can build business acumen, it's possible to develop your digital acumen by reading up on technology trends. Ssemwogerere recommends drawing up a personal development plan which takes into account your daily workplace tasks and responsibilities, and finding out more about the specific technologies you can use to perform these more efficiently. "Over time, your proficiency in this area will increase naturally and you will be able to marry your digital and business acumen seamlessly."

The good news is that since technology is all around us, it takes very little effort to acquire the relevant skills: look up training modules (LinkedIn and YouTube are good resources here) or take a short course.

More good news is that applying your digital acumen helps you add value for clients by assisting them in making sense of the world – but remember that interacting with technology inevitably leads to fatigue, and clients will always appreciate the human touch.

Written by: Lisa Witepski, Issued by: SAICA

"If you don't know the difference between digitisation and digitalisation, or AI and automation, it's time to brush up on your knowledge. The good news, though, is that keeping pace with technological development isn't nearly as complex - or daunting - as it may seem."

The digital ties that bind — South Africans need the right to disconnect and slip the work leash

My father taught me the importance of work-life balance. He said that a day has 24 hours, which may be divided into three equal periods of eight hours — sleep for eight hours, work for eight hours, and play for the remainder. I gladly concede that the concept of eight hours of play is somewhat misleading. Humans have social and familial commitments that quickly consume this time.

Employees have, however, been working longer and harder since the advent of the Covid-19 pandemic and as employers have embraced the technological solutions of the Fourth Industrial Revolution.

Although increased flexibility has been a godsend to many employees throughout the pandemic period, it has also meant that they have had fewer opportunities to disconnect from their work. Many employees now find themselves bound by the so-called "digital leash". Employers frequently contact employees outside of typical working hours. They must work through lunch or other breaks regularly and are penalised for not being available outside usual working hours. Their co-employees receive preferential treatment for staying connected and working after regular working hours.

According to a recent survey, 88% of South African employees work longer hours than ever before, and 32% of employers expect their staff to answer emails outside of typical working hours. The tremendous increase in online meetings has further exacerbated the problem. Some companies now require employees to put on their cameras during these meetings. Even if this is not required, online exchanges make it impossible for employees to focus on other duties while engaging in critical discussions.

There is also a general sense that meetings are scheduled for trivial matters where an email would have sufficed. Employees are therefore left with no choice but to work longer hours to complete essential tasks and to stay up to date with their work. It is predicted that only 25% of business meetings will take place in-person by 2024.

Therefore, reports that levels of stress, anxiety, depression, domestic violence, loneliness and isolation, and musculoskeletal-related medical disorders amongst South African employees are on the rise are not surprising. Employees, particularly women, who are, in many cases, also responsible for domestic and childcare tasks are disproportionately affected by burnout. They sometimes find it challenging to compete with their colleagues who do not have similar commitments, often to the detriment of their careers.

The French Supreme Court ruled in 2001 that employees are not required to bring work home. The same court ruled in 2004 that it was not misconduct if an employer could not reach an employee on a smartphone outside of work hours. In 2016, France also passed the first legislation relating to the right to disconnect.

Several countries and the European Union are following suit and have already adopted or are in the process of adopting legislation to preserve an employee's right not to respond to work-related communications outside of regular business hours and not to be penalised for doing so. They include a wide range of protection, including dismissal protection or protection from being denied promotion if an employee refuses to work outside of working hours allowed for in law.

These laws are intended to safeguard all employees, including those who work remotely and flexibly and preserve these employees' work-life balance.

South African law does not expressly acknowledge the right to disconnect from work. The right to fair labour practices in section 23 of the Constitution would likely be interpreted to extend such a right, but labour legislation adopted to give effect to it also does not expressly extend such a right. It provides only piecemeal protection against the exploitation of employees outside of regular working hours.

First, the Basic Conditions of Employment Act (BCEA) regulates working hours and overtime, but only for employees who earn less than R211,596.30 a year. Chief among these provisions, an employer may not require or permit an employee to work more than 45 hours in any week; and nine hours in any day if the employee works for five days or fewer in a week; or eight hours in any day if the employee works on more than five days in a week.

After that, a limited amount of overtime may be required or permitted. In addition, employers must allow an employee a daily rest period of at least 12 consecutive hours between ending and recommencing work and a weekly rest period of at least 36 straight hours, which, unless otherwise agreed, must include Sunday. The BCEA does allow for mechanisms in which this may be altered.

Again, I should stress that these provisions are only applicable to those earning less than the threshold amount. However, the courts have distilled general principles from these provisions to aid employees who earn less than the threshold amount.

Second, the Labour Relations Act (LRA) provides protection against dismissal and other forms of disciplinary action short of dismissal that is not substantively and procedurally fair. It also protects against any unfair conduct by the employer relating to the promotion, demotion, probation or training of an employee or relating to the provision of benefits to an employee. Although the labour courts have not yet had the opportunity to deal with the matter in the context of the right to disconnect, these remedies may potentially be extended to provide employees with remedies in appropriate circumstances.

Third, employees who suffer occupational detriment due to being expected to work after normal working hours may also potentially bring a claim in terms of the Employment Equity Act (EEA). The EEA prohibits direct as well as indirect discrimination in employment.

Direct discrimination refers to an act of discrimination based on a prohibited ground, such as race, sex, marital status and family responsibility. Indirect discrimination occurs when an employment practice is based on a non-prohibited ground (for example, the expectation to work beyond normal working hours and to answer emails when at home), but the effect is that a category or group of people who are protected under a prohibited ground of discrimination is adversely affected thereby (for example, person's family responsibility).

The right to disconnect is complicated by the increasingly globalised nature of many occupations and businesses. The Fourth Industrial Revolution has boosted the usage of technology that enables greater communication across time zones, making many organisations more efficient. A simple blanket prohibition on communications outside of regular business hours is not a viable answer, especially in South Africa, which is attempting to compete with developed countries.

Employees can however benefit from more guidance as to what may be expected of them and employers from more guidance as to what they may expect from employees.

South Africa would do well to adopt a code of good practice like the Irish Workplace Relations Commission's Code of Practice for Employers and Employees on the Right to Disconnect. The Code requires employers to provide specific information to employees about their working hours; to ensure that employees are aware of what their usual working hours are reasonably expected to be and to ensure that employees take rest breaks.

Employees are required to manage their own working time, to fully cooperate with any appropriate mechanism used by an employer to record working time, including when working remotely; to be mindful of their colleagues', customers', clients', and all other people's right to disconnect (for example, by not routinely emailing or calling outside regular working hours); and to notify the employer in writing of any statutory rest period or break to which they are entitled.

In addition, the Irish Code recommends that employers adopt policies where emails should be sent only during working hours, except for in exceptional circumstances. When employees do send communications at times that may be inopportune for other employees, the sender should consider the timing of their communication and the risk for disruption.

The recipient should realise that they will not be expected to answer until their working time resumes. These emails should indicate if an immediate response is required. In addition, digital meetings should only be scheduled when necessary and only for those employees who play an active role and have something to contribute. The policy should set out the procedure for raising concerns concerning the right to disconnect.

There have also been successes in Australia where unions have successfully negotiated a right for employees to disconnect. Employers are directed to respect leave and rest days and avoid communicating with employees outside of work hours unless in an emergency or to check on their welfare.

South African unions have not addressed the matter with any urgency. However, given that many women, low paid, private sector, un-unionised and relatively powerless workers in smaller workplaces have little chance of negotiating or enforcing a right to disconnect, it is doubtful if collective bargaining would effectively address the problem.

Employers have always had a natural tendency to intrude on their employees' time, and technology has only made this type of unwanted invasion simpler. Legislators must understand that technology is being abused in ways that are harmful to employees.

More than ever, a return to a far more realistic work-life balance is required.

Written by: Marius van Staden

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LERASA, c/o Public Service Bargaining Council Centre, 260 Basden Avenue, Lyttelton, Centurion, Pretoria 0176

P.O. Box 3123, Lyttelton South, 0176

Tel: +27 12 644 8019 Fax: +27 12 664 5834

Email: info@lerasa.org.za Website: www.lerasa.org.za

VISION

To become a vibrant Organisation enhancing Employment Relations through debate and dialogue.

MISSION

- To facilitate an ongoing forum for constructive relationship building
- To deal with themes of relevance to the South African Employment Relations community
- To enhance the understanding, knowledge and practices of Employment Relations at National, Regional and branch levels in South

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260 Basden Avenue, Lyttelton, Centurion 0176

TEL: 012 644 8100

EMAIL: info@lerasa.org.za