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Labor law and the challenges of Artificial Intelligence : 1st part of a trilogy

Digital technology has already changed working methods. With the advent of Artificial Intelligence ("AI"), we are just at the beginning of a unparallel transformation that will affect not only the labor and employment market but also working relationships. What does exactly mean AI's impact on working relationships? When we say working relationships, it implies labor law.

Labor and employment law should be used as a legal tool to steer the obvious changes brought by AI in the workplace. The challenge is thus to identify avenues for adapting our labor and employment legislation in order to anticipate and smooth the transition to the new world.

This article is the first part of a trilogy built around the lifetime of employment contracts: hiring / performance / termination. Apart from its general introduction, this first part is mainly dedicated to issues associated with the end/termination/breach of employment

contracts: Indeed, the prevailing alarmist discourse is that IA will wipe out many jobs. Does our labor and employment legislation, as it currently stands, provide some safeguards against this unavoidable (according to some people) risk?

In an article entitled "[Will AI spell the end of human work?](#)" published in our [April 2018 e-newsletter](#), [Chems Idrissi](#) raised the question of the impact that AI will have on employment and the labor market.

She explained that many studies show that less than 10% of jobs would actually be at risk.

As pointed out by economist Nicolas Bouzou in its book entitled "*On entend l'arbre tomber mais pas la forêt pousser*" (literally "We hear the tree fall, but not the forest grow"), major technological changes disrupt our societies before transforming them and increasing the well-being of everyone. According to him, every single innovation does not pull the economy down but implies in itself the creation of new jobs.

In addition, in its report entitled "*Automation, digitization, and employment*" published on January 12, 2017, the French Employment Orientation Board indicates that 50% of jobs will have their content impacted by the development of digital tools and automation, in particular service industry jobs (drivers, employees in the hotel and restaurant industry, home support workers, lawyers – robot lawyers already exist, etc.).

As such, it is commonly agreed that AI will create new jobs but also transform tasks and trades.

An impact of AI on jobs implies an impact on working relationships...

And this is where it comes to labor and employment - my area of practice - because this is about all the rules that govern the relationships between the employers and the workers, i.e. working relationships.

What is exactly meant by IA's impact on labor law and working relationships? Is it about enforcing labor law for robots? Should robots be granted the right to work 35 hours per week? Will robots be entitled to paid vacation? What about sick leaves for overheating robots?? Not to mention maternity leave for robots...

No... of course no! Labor and employment law cannot govern and regulate the works of robots. However, on the other hand, it should be used as a legal tool to **steer the obvious changes brought about by AI in the workplace. In other words, labor law that governs and regulates working relationships can create a new framework/environment to anticipate and integrate the obvious transformation caused by the introduction of AI in the workplace.**

The question is thus to identify avenues for adapting our labor and employment legislation in order to anticipate and smooth the transition to the new world.

Like any good legal practitioner, I have prepared a three-part paper, each part corresponding to a specific

stage of the employment contract lifetime: Hiring / performance / termination.

Like any good lawyer, I have a spirit of contradiction and I will thus address the employment contract lifetime in the reverse direction, i.e. by starting with the end/breach/termination of the employment contract.

1. End/breach/termination of the employment contract: Help! AI will wipe out jobs. Does our labor and employment legislation, as it currently stands, provide some safeguards against this unavoidable (according to some people) risk?

Those who indulge in alarmism will be satisfied. The first answer to the question “Does our labor and employment legislation provide some safeguards against the risk of job losses?” is NO! Quite the opposite...

1. Technological changes: a ground for dismissal per se

Pursuant to the French Labor Code, technological changes (acquisition of new tools that prompt new working methods, computerization) can justify a dismissal on economic ground!

The elimination or the transformation of employment positions or the amendment to the employment contract does not need to be connected with economic difficulties.

Indeed, Article L. 1233-3 of the French Labor Code stipulates as follows: “

“Shall be considered as a dismissal on economic grounds a dismissal decided by the employer for one or more reasons that are not related to the employee, resulting from the elimination or transformation of an employment position, or a modification, refused by the employee, of an essential component of the employment contract, due, notably, to

2° technological changes”.

As such, healthy companies could be likely to justify downsizing measures merely by making investments in robotics and artificial intelligence.

2. Safeguards provided for by law to limit elimination of employment positions

There are a few safeguards not allowing preventing from employment positions’ elimination justified by technological changes but permitting to limit them...

Obligations of the employer:

- The employer has the obligation - wherever changes are significant and take place quickly - to draw up an adaptation plan for its employees. A dismissal on economic grounds can only be implemented once

all training and adaptation efforts have been deployed.

- A dismissal on economic ground can only be implemented after a search for redeployment opportunities on available positions within the company on the national territory has been conducted. As such, the employer has the obligation to search for any available employment position within the group in France.

TO BE NOTED: Before eliminating an employment position, it is possible to try to impose on the relevant employee a change of position due to economic grounds. The legal scheme already exists: If the employee refuses, the employer may dismiss him/her on economic grounds (technological changes). An employee can therefore be imposed a reduction of his/her working hours or a change in his/her duties as a result of technological changes: He/she may refuse but if he/she does so, his/her dismissal shall be justified.

3. Conclusion and Prospects: Towards an evolution of the rules governing dismissals on economic grounds?

It seems reasonable to assume that, when it comes to assessing whether the dismissal on economic ground due to technical changes is justified, judges of tomorrow will carefully look at the efforts deployed by companies to adapt their employees. This should be particularly true wherever the employment position is axed as a result of the introduction of an AI-related tool. A new *obligation de résultat*^[1] related to the attempt to adapt/retrain an employee to a new employment position before implementing a dismissal on economic grounds could very well be introduced.

More generally, we can already feel that it is necessary to anticipate changes in jobs and skills in each industry to avoid large-scale lay-off plans. Continuing education is a key challenge of the digital revolution.

This brings me to the second part of the trilogy on employment contracts lifetime : the performance stage.

In this second part, I will try to answer three key questions:

- Which tools that already exist are available to companies and employees to ensure the necessary constant adaptation of employees' qualifications?
- What is the anticipated impact that AI will have on work organization?
- What is the anticipated impact that AI will have on working conditions?

To be continued...

^[1] French law makes a distinction between two types of contractual obligation: "*obligation de résultat*" (literally "obligation of result") and "*obligations de moyens*" (literally "obligations of means"). With an *obligation de résultat*, a party must fulfill a specific obligation or arrive at a specific result. With an *obligation de moyens*, the party must simply implement or use, to his/her best efforts, all necessary means in order to

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fulfill a specific obligation or achieve a specific result.

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