

Topic: The possible impact of the Fourth Industrial Revolution on the employment relationship and the possible impact thereof on new and or adaptive skills

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Definition of concepts

- ▶ Certain concepts used in this presentation are not encountered in everyday legal discourse.
- ▶ As such certain concepts are defined here for the purpose of this presentation to clarify some concepts as used in modern day labour relations
- ▶ **Employment Relationship**, according to ILO; entails the legal notion that refer to the relationship between a person called the employee and the “employer” for whom the employee performs work under certain conditions in return for remuneration (ILO Conference, 95th Session, 2006: Employment Relationship). However, this definition looks only at employment relationship at individual level, employment relationship encompasses collective relations as well. To add this to the above definition, employment relationship also include the relationship between an individual employer or employer representative organisations with collective labour organisations like trade unions, workplace forums and bargaining councils among others in as far as they engage in representative capacity to deal with employee’s conditions of work. However, individual employment relationship forms the basis of collective employment relationship

Definition of concepts

Fourth Industrial Revolution

- ▶ Fourth industrial Revolution (FIR) is the move of individuals between digital spheres and offline reality with the use of connected technology to enable and manage their lives.
- ▶ As such the impact of Fourth Industrial Revolution on employment relationship will be discussed in the context of the above definition of employment relationship which include both individual and collective employment relationship.

Videos on the use of automation at workplaces



Videos on the use of automation at workplaces



Impact of Fourth Industrial Revolution on Individual employment Relationship

- ▶ The most devastating impact of the Fourth Industrial Revolution on employment relationship is the apparent loss of employment due to automation. It must be noted that being employed forms the primary basis of employment relationship.
- ▶ Employees most affected by automation are low skilled employees as shown in the above videos
- ▶ In a country like South Africa where unemployment is very widespread, unemployment in south Africa seats at 29% in 2019. Youth (15 to 25 years) unemployment rate constitute 55% of 29%. Among which 31% is newly graduates from academic institutions. About 71% person of these unemployed people have been looking for a job for over a year (SA statistics 2019).

Loss of jobs in the era of FIR in South Africa

- ▶ The South African Labour Relations Act 66 of 1995, provides for dismissal based on operational requirements s189.
- ▶ The Act defines operational requirements to mean requirements based on economic, technological, structural or similar needs of an employer (s213 of the LRA). Of striking relevance in this definition is dismissal based on operational requirements that specifically flow from technological advancement like automation.
- ▶ The sector hit-hard by loss of jobs due to automation is the banking sector.
- ▶ Standard Bank; one of the biggest banks in South Africa retrenched 1200 employees and closed 90 of its branches, reasons cited for retrenchment is the move towards automated and online banking. If an automated machine can do work that human being did in a specific profession, such profession may suffer redundancy and the LRA provides for a way employers must use to dismiss employees under those circumstances (Business insider 2019)

Loss of jobs in the era of FIR in South Africa

- ▶ Nedbank, cuts 1500 jobs due restructuring and move towards automated banking to increase its competitiveness (ENCA news 28 July 2019)
- ▶ Finance Union SASBO wants the government to act on ongoing retrenchment in banks due to move towards online banking, it argues that banks must take measures like training to reduce number of employees affected by such retrenchments. (SASBO website 2019).
- ▶ Multichoice is cutting 2000 jobs due to move towards online services to be able to compete with rival like Netflix.
- ▶ In comparison, in the 1980s the advent of computers caused loss 3.5 million jobs in the USA, however in their place 19 million jobs were created. So it is undoubtable that these technological advancement and automation may create new kind of jobs (John Vanzyle, 2019)
- ▶ One of the argument advanced by these companies moving towards automation is that it increases productivity and profitability of the companies concerned, which then allows them to compete globally

Possible solutions to loss of jobs

- ▶ The biggest source of government revenue in South Africa is income tax (SA statistics, 2019). One of the effect of loss of jobs in countries like south Africa is that it lowers the income tax revenue for the government. The impact of this are far reaching, it increases vulnerability of citizens not only through increasing unemployment but also through the shrinking funds for social security protection like unemployment grants because in south Africa it is funded by income tax rating from 18 to 45% depending on one's income bracket (SA tax statistics 2019).
- ▶ One of the main solutions suggested for loss of jobs due to automation is the reskilling of the people who are likely to be affected by automation. Whether this is a viable option in south Africa will discussed below on the aspect of impact of FIR to skills development
- ▶ There can be an argument on of move towards welfare state, by the state ensuring that the people who lost jobs and could not find jobs due to automation are given enough social security through unemployment grants. This can be done by taxing robots that displaced people from work using either income tax on each robot or increasing scale of income tax on companies concerned. These are possible arguments one can make, however, generally speaking the funding of the social security towards people affected by automation can feasibly be taxed from the companies that turn towards automation (William Miesel, Technology Analyst, 2019). South Korea one of the most robotized countries have already started to institute robot taxing by reducing tax deductions on companies investing in automation in 2018 (New York Times, 2019)

New forms of work

- ▶ FIR also creates new forms of work like the zero-hour contract, uber drivers, taxify drivers and sweepsoth among others
- ▶ It is estimated that in South Africa FIR will create 4.5 million jobs but in the process 3.3 million jobs will be displaced (Johan Van Zyle etal 2019).
- ▶ However, these projections must take into account the possibility of huge skills gap
- ▶ It may be possible that the 3.3 million people displaced from work due to technological advance of FIR may fail to fit well in the created new jobs. ‘
- ▶ This will have a significant impact in country with high rates of unemployment as discussed above, which is already high

Challenges that comes with new jobs

- ▶ With the advent of FIR, the traditional conception of employment relationship - an indefinite contract with a single employer centred around a fundamental concept of permanent employment, fixed workplace and employer exercising control is eroding.
- ▶ Certain on-demand jobs are conducted through the use of software applications control like uber drivers, taxify and sweepSouth apps. Under these circumstances it is very difficult to establish employment relationship using the traditional employee test.
- ▶ Employment relationship forms the basis of one's eligibility to employment law protection, as such it is a fundamental question to determine if one qualifies as employee, therefore in employment relationship. The question of whether these forms of work qualifies one as an employee has been litigated in various jurisdiction (Van Niekerk & Smit 2018)

Challenges that comes with new jobs

- ▶ These new forms of work exposes the shortfalls of LRA showing that only few classified cluster who qualifies as employees can be protected by labour law
- ▶ Most of these new forms of work like uber drivers, sweepsoth, taxify etc are classified as independent contractors.
- ▶ These new forms of work are not fitting well with either of the classification as independent contractors or employees.
- ▶ The line between independent contractors and employees which was developed to determine who qualifies for labour law protection seems to be very blurred and useless to be used as a criteria for determining employment relations in the era of FIR
- ▶ This shows that these new forms of work of the FIR era, defies the old conception of employment relations

Possible solution to determining employment relationship in the new forms of work under the FIR

- ▶ There are three suggested solution by Weiss possible ways of addressing such challenges
- ▶ (i) through broadening the notion of employee (used in Germany has its limits, if the notion is expanded too far it may lose meaning, it is impossible to include all economically dependent people. In SA the LRA was amended in 2014 to extend protection to informal workers like placed employees, fixed term employees and temporary employees among others but while they were still busy with the amendments some new forms of work very different from what the amendment seeks to address was taking roots, Uber drivers were introduced in 2014, so was SweepSouth in the same year and Taxis in 2016. It seems one extension of labour protection will beget a new form of work wholly different from what the extension is addressing.
- ▶ (ii) through introduction of the intermediary category between self employed and employees, it has been used in England but it only increased complexity
- ▶ (iii) inclusion of self employed up to a certain level of minimum wage level under the protective roof of labour law and social security law. Austria followed this approach of social security inclusion and it seems to be working well.
- ▶ Another possible solution suggested by Prassl is taking an unusual approach in determining employment relationship by defining the employer instead of the employee. If the employer exercises regulated rights and duties of the employer for instance terminating work relationship, then in that context dismissal law must apply despite classification. This approach is followed in Norway and it is working

Collective employment relationship

- ▶ Employment relations goes beyond the individual employee's relationship with the employer, it includes collective employment relations as well
- ▶ As already stated above individual employment relationship is a precondition for collective employment relationship (Furaker)
- ▶ Collective employment relations are meant to protect the interest of employees in as far as their relationship with the employer is concerned, this is done through workers exercising their collective labour rights
- ▶ In south Africa collective labour rights are guaranteed in the constitution s23 and s4 LRA.

Challenges to collective employment relations

- ▶ New forms of work in the FIR, like e-lancers, uber drivers, taxify drivers and sweepSouth among others, are associated with workers who use internet or software apps to conduct their duties.
- ▶ As such these employees seldom meet or know each other to an extent that they can exercise any of their collective rights such as forming trade unions organisations or bargaining forums. There is no link between acting individuals and they work in splendid isolation.
- ▶ The employees, therefore are easily abused by employers, their access to the app may be terminated which may equal dismissal in labour law terminology for termination of services by the employer.
- ▶ If the transition that is experienced is going to displace traditional forms of employment; trade union system of defending workers' rights is going to die a slow death. Trade unions' means of recruitment members at the traditional setting of fixed workplace is failing to recruit people in new forms of work like Uber drivers, taxify or sweepSouth. These types of workers in the FIR era have no workplace to talk about. This means that these employees in new forms of work, without collective organisations to fight for their better working conditions are likely to work under poor conditions

Possible solutions

- ▶ It must be noted that the right to collective labour rights are given to all workers in the ILO convention 87.
- ▶ The European Trade unions from Denmark, Austria, Germany and the US met and made a Frankfurt declaration which held that all platform workers whether working as independent contractor or employee must be included in platform policy negotiations and that platform companies must be transparent on their organisation of work as precondition for collective voice of platform workers.
- ▶ South African trade union federations may follow the suit and join the Southern African Coordination Council (which is one of the biggest trade union federation in in SADC), trade unions may now operate at global level since some of the companies they engage are global companies like Uber.
- ▶ South African trade unions like South African Transport and Allied Workers Union, must take initiative to allow uber drivers or taxify to join them, have an online recruitment process, reach Uber South Africa or Taxify with an initiative to make such recruitment even through an online platform.
- ▶ The other possible alternative is having trade unions broaden their responsibilities as witnessed in the era of fees must fall strike by students, trade unions joined them. This will allow trade unions to recruit people from a wide spectrum

The impact of FIR on new and adaptive skills requirements

- ▶ The move towards IT and automation have higher prospects of creating more jobs in South Africa
- ▶ As already projected, it is said that the FIR will displace 3.5 million jobs by 2030 and replace them with 4 million jobs. This means that of total lost jobs will be replaced with 13% more jobs being created.
- ▶ In South Africa IT and computer science based skills are already a shortfall, to meet the demands of these profession South African government have declared them critical skills so that the key positions in that field may be filled migrant labour if necessary (Government Gazete, 2014)
- ▶ Hence, it seems most of these new forms of work that will come with the FIR will not be suitable for south African labour supply.

Possible solutions

- ▶ The Skills Development Act, s2 states that the purpose of this Act is, amongst others to increase the levels of investment in education and training in the labour market and to improve return in the investment.
- ▶ It is questionable whether the implementation of the Act is successful. The Companies sometimes abscond paying levies that are meant to fund skills development at workplace. This defeats the whole idea of lifelong learning, that is meant to improve the skills and align them to the new kinds of skills required by market. Therefore, there is less training towards equipping employees with necessary skills to avoid high instances of retrenchment.
- ▶ There government must ensure that the companies, employees and trade unions are made to contribute towards life long.
- ▶ The question, whether all employees will be willing to go to necessarily to go training meant to develop skills.

Possible solutions

- ▶ The ILO report on future of work states that lifelong learning is the only way to cope with the challenges posed by digitalisation.
- ▶ A short outlook on empirical research done in Germany in 2016 shows that more than 50% of companies are engaged with the aspect of further training at work to make worker suitable for new skills demands at the labour market
- ▶ Very small part of semi skilled workers participated in the further training, while skilled professionals like academics at least 50% of them participated in the skills development programs yet the impact of FIR job displacement is likely to hit-hard on the unskilled workers.
- ▶ South African may suffer the same fate in trying to improve skills of workers, that unskilled workers may resist the aspect of further education that is meant to help them.

Overall conclusion

- ▶ The challenge posed by the FIR to employment relations first by causing loss of employment to low skilled work
- ▶ This can be solved by proper implementation of the Skills development Act, ensuring that people are always trained at workplace to align their skills with new labour market demand
- ▶ The can also move towards providing unemployment grants to people displaced from work or those who fail to get jobs due to automation by taxing companies that invest in automation
- ▶ The government must also take serious curriculum in both lower and higher education to take a proactive role in ensuring that national education system train people skills that are relevant to the market