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The impact of new technologies in balancing private and family life with working time

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1. The work-life balance is a fundamental issue for all the workers and it is linked to many others, such as quality of work, female participation in the labour market, gender equality and active ageing.

A wise work-life balance policy may foster gender equality and may have beneficial effects on women's employment ⁽¹⁾, since it provides some of the necessary conditions to guarantee a greater gender equality in the labour market e, more generally, in the society.

According to data provided by Eurofound, 4 out of 5 workers report a good balance between working time and non-working time ⁽²⁾. Nevertheless, these data are referred only to working-people and do not include those who left their job because of family and non-working reasons.

Reconciling working and personal life embraces many measures concerning different aspects of workers' life. It can not certainly be limited to equality policy and it does not concern only women. Work-life balance provisions should equally apply to men and women and should be considered as factors which influence the quality of life and as a condition for a decent work, which responds to new challenges of the modern society.

¹ Cfr. *Gender equality and work life balance, Pillar of Social Rights*, Comissão Europeia, in <http://ec.europa.eu/social/main.jsp?catId=1226&langId=en>.

² Cfr. *Sixth European Working Conditions Survey 2015*, e *Foundation Focus*, n. 19, 2016, p. 2.

2. Among the new challenges of contemporary society a key role is played by the introduction in the workplaces of new digital and computer technologies, which may change working-time arrangement and, at the same time, guarantee more flexibility in working-time.

On the one hand, this phenomenon can lead to a better management of working-time; nevertheless, on the other hand, it can determine an increase in working hours, since digital technologies and working-time flexibility are associate with a different evaluation of workers' performance no more in reference to the working time, but on the basis of the results. It may result in an increase of the working time. Indeed, working hours' flexibility does not always ascribe more freedom to the workers, but, as it is often the case, it can lead to an increase in working time, which encroach on private and family life.

Technologies offer the possibility to "anytime-anyplace" jobs, but it can not result in a demand of working "always-everywhere". The working times allowed by new technologies risks to result in new sweating practices: even though digital technologies provide easier way to shape working time patterns, actually it challenges the fundamental right of workers to have a day of rest. The distinction between working and non-working time becomes less and less visible and the border line between personal and professional life is more and more confused.

In order to avoid these criticisms, it was theorized the "right to disconnect", which is the last frontiers of right to privacy in the 21st century.

The "ghost of ubiquity" is appearing, since workers are requested to be connected always and everywhere ⁽³⁾.

At the moment, the tendency is to request a broader participation of workers in the life of the enterprise. It leads to actual difficulties in distinguishing working time and personal and family life ⁽⁴⁾.

In France, the right to disconnect was expressly provided by the recent labour law reform, also as a consequence of its provision in many collective agreements. According to article L-2242-8 *Code du Travail*, in companies with more than 50 employees, the right to disconnect has to be regulated on the occasion of the annual compulsory negotiations. Starting from 1 January 2017, within the compulsory negotiations about professional equity and quality of life, it has to be considered also the right to disconnect and remote control on

³ Cfr. A. SUPIOT, *Travail, droit et technique*, in *DS*, n. 1, 2002, p. 21.

⁴ Cfr. A. SUPIOT, *Au-delà de l'emploi*, Flammarion, 2016, pp. XXVII-XXIX.

workers made through electronic devices, in order to guarantee to all the workers the right to rest, to family life and to privacy.

The real matter is how to guarantee the effectiveness of this right.

In order to guarantee this aim, social partners through social dialogue can paly an important role. It can be regarded as an essential instrument to reach a virtuous compromise about working time flexibility linked to a “life-phase approach” concerning the interest of the involved parties (5).

It is essential an alternation between work connection and disconnection. It is a matter of wisely managing working time patterns and connection/disconnection times (6). In this regard, it is positively considered the agreement signed on 27 September 2016 by the company *Orange* and the trade unions. According to this agreement, the workers can not check their private email during the working time and during the meetings, in order to improve the productivity.

It is interesting also the regulation introduced in the company *Solvay* in February 2016. It states expressly that it is essential to “use correctly the email to increase the efficiency and to guarantee the respect of working and non-working time for all the workers”; for this purpose, the workers have to set priorities, fixing times in which it is possible to answer messages and times in which workers have to disconnect in order to work efficiently.

It seems to be a possible way forward to reach a compromise between flexible working hours and the private life of workers.

3. Another problematic aspect regards the introduction of information and communications technology (ITC) in workplaces.

Labour law is one of the legal system’s sectors which, by its nature, is more under the technological innovation’s influence. The factory system has been going through a process of continuous modernization and efficiency improvement of production techniques, to the extent that using of new technologies in workplaces can be considered an immanent feature of this

⁵ Cfr. T. COELHO MOREIRA, *Algumas questões sobre trabalho 4.0*, in *XX Congresso Nacional de Direito do Trabalho – Memórias*, coord. A. MOREIRA e T. COELHO MOREIRA, Almedina, Coimbra, 2017.

⁶ Così K. KUSHLEV - E.W. DUNN, *Checking email less frequently reduces stress*, in *Computers in Human Behaviour*, November 2014, p. 220. Cfr. also K. REINKE – T. CHAMORRO-PREMUZIC, *When email use gets out of control: Understanding the relationship between personality and email overload and their impact on burnout and work engagement*, in *Computers in Human Behaviour*, May 2014, p. 502.

branch of law and that new technologies influence its development. Since Adam Smith theorized the idea of labour organization, resorting to the pin factory example, the industrialization history is strictly linked to transformations and changes of methods of work organisation (7).

After the agricultural, the industrial and the information revolution, in relation to which a key role was played by computer introduction, nowadays it is taking place a real digital revolution, determined by Internet and cloud computing and by new digital ways to work. As consequence of the digital revolution, it has appeared a new type of work, called digital work within the collaborative economy and/or work on digital platform, and a new type of employee who works in a non-material workplace, without a specific place or time (8).

The technologies on which the digital revolution is based on, ICT applied to robotics, sensor technologies, cloud, big data, make it possible to elaborate and combine together a large amount of data.

The potentiality of such new technologies is the basis of a new revolution concerning intelligent production systems and new way of working, called “sharing economy” or “collaborative economy”. Such new economies involve promises of a new great development, but also many challenges which require a protective intervention involving governments, enterprises, workers and individuals.

It is not only a structural change, but also and above all a functional change, in the sense that the way of providing work is profoundly changing. It implies a new labour law conception, not only because of a substantial change of its protective capacity, but also because it involves a profound change of its scope and of the extent of its protection area; it also implies a profound reflexion about labour law rules at national, European and international level. In this sense, we can talk about a new labour law dimension.

Work is a key factor in this transformation and in the digital revolution.

We are used to talk about “work 4.0” and about the heterogeneous phenomenon of the sharing economy. In particular, the latter includes crowdwork, work on digital platform and work on-demand via apps. The great change of work does not involve only industry 4.0. Obviously, it does not exist a homogeneous and monolithic concept relating to this type of work, since

⁷ Cfr. F. CARINCI, *Rivoluzione tecnologica e Diritto del Lavoro: il rapporto individuale*, in *DLRI*, n. 25, 1986, p. 203.

⁸ JEAN-EMMANUEL RAY, *Qualité de vie et travail de demain*, in *DS*, n. 2, 2015, p. 148

methods and ways of working may change on the basis of the service required by the customer and in relation to the complexity and the quality of the work.

In January 2016, the World Economic Forum ⁽⁹⁾ stated that about 5 millions jobs will be replaced by robots and artificial intelligence and that in the next 5 years robotization will be the key for human progress all around the world.

Inevitably, it leads to a loss of jobs, which will be especially concentrated in highly labour intensive work areas and will hit differently men and women, heightening gender inequalities and female unemployment, since many new activities are based on the use of ICT, an area in which men still have a prevailing role. Therefore, the fourth industrial revolution will have a different impact on female and male employment.

As a matter of principle, without any support measure women will be in a worst situation compared to men. While the enterprises will earn about 1,4 million, it is estimated that there will be a loss of about 4,4, millions of jobs in general and a loss of about 3 millions of female jobs ⁽¹⁰⁾.

If any active policy for women will not be taken, in the future women will miss best career opportunities, risking to get worse the already marker gender inequality.

In the light of that, it is essential to adopt a holistic approach to cope with this situation and to encourage a greater female participation in the labour market, through real integration policy.

Work 4.0 is an opportunity without precedent to reach the same participation of women in the labour market through focusing the attention on the gender equality issue within the digital labour market.

⁹ Cfr. WORLD ECONOMIC FORUM, *The Future of Jobs*, 2016

¹⁰ WORLD ECONOMIC FORUM, *op. cit.*, p. 39.