

## Member's Quarterly

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### Feature

# Replicants Wanted: Six Implications of AI @ Work

*Science fiction becomes a reality*

Unless you live in 1982 when the original Blade Runner was released, you know the world and the workplace of 2049 is practically already here. From employers in Sweden and in Wisconsin embedding microchips under their employees' fingernails to a nursing home in Erie, Pennsylvania using biometric iris scans on its residents, science fiction is becoming reality. There's much uncertainty about how artificial intelligence (AI) and other 4th generation technology will change our society and our workplaces. But that it will and that employers must be prepared are certain. See for example the International Bar Association's Global Employment Institute (IBA GEI) recent report, "Artificial Intelligence and Robotics and Their Impact on the Workplace".

Governments have historically been ill-equipped to respond quickly to changing technologies with updated laws. Employers won't have that luxury. They must start planning now for the workplace impacts of AI and other developing technologies — many of which raise more questions than answers. Here are six of the workplace areas that will be affected and the implications employers need to think about now.

## Legal Relationships

Technology is redefining the current understanding of the legal relationship of employer and employee. One need look no further than the current class action lawsuits against Uber to see how new technology is disrupting and complicating the status quo distinction between employees and independent contractors: are Uber drivers who use an "App" to register as a driver employees of Uber and entitled to all the benefits of employment (as they argue) or merely "independent contractors" or "App" users (as Uber argues)?

## Privacy & Security

Employers count on employees' use of technology like smart phones and wearable devices (e.g., "smart" watches and even embedded microchips). But failing to update relevant workplace policies can cause problems, particularly vis-à-vis employee privacy and security rights. Consider, for example, the impact of encouraging employees to start social media accounts using their company-provided devices. What if an employee is harassed or "trolled" online? What if that harassment is discriminatory? Is the employer at fault for exposing the employee in this manner? Maybe. In 2016, an arbitrator decided the Toronto Transit Commission had violated its collective agreement and its Workplace Harassment Policy by providing a forum for online comments but failing to take reasonable steps to deter harassing and discriminatory comments directed at its employees.

## iManage

Using technology to perform managerial and supervisory tasks can also be risky. For example, some employers rely on complex algorithms and "big data" to inform hiring and placement decisions, but this could lead to discrimination. It's vitally important to understand the functionality and limits of technology used in the workplace, as the 2015 arbitration BC Government and Service Employees' Union v BC Pavilion Corporation illustrates. The employer relied on motion-sensitive video evidence to justify dismissing an employee for sleeping on the job, but the arbitrator discounted it because the employer didn't adequately articulate the technology behind it, noting, "the challenge ... is that the employer's main witness is a deaf [AI] with limited sight operating on some unknown pixilation algorithm and could not be cross-examined."



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### Replace Retraining

Replacement of human workers in some industries isn't merely plausible—it's highly likely. In the "old days", new workplace technology or robotic aids typically meant employers retrained employees and collective agreement clauses reflected this. Today, new technology is less likely to be "assistive" and more likely to perform some (or all) of a job, making employees redundant. Some employers might soon find themselves requiring the use of robots and other AI (including self-driving vehicles, 3-D printers, or body "augmentations" like Google Glass on factory floors) to remain competitive. How will an employer adapt if its collective agreement contains stringent provisions preventing it from adopting new technologies quickly (or at all), or from laying-off redundant employees?

### Human Rights

AI advancements will, as the IBA GEI report notes, lead to new considerations for employers' accommodation of disabled employees. Once an employer introduces AI into the workplace for some purposes, is it an undue hardship to expect them to provide robotic assistants or other bio-improvements for the purpose of accommodating disabled employees?

### Health & Safety

Employers are, in general, legally obligated to ensure a safe workplace. Introducing new technology often introduces new health and safety risks. Consider for example the risks inherent in using self-driving forklifts on the factory floor: what steps must employers take to ensure such technology is used in compliance with occupational health and safety laws?

While the further introduction and implementation of AI and other 4th generation technology in the workplace are inevitable, employers need not be caught by surprise. By asking the relevant questions now, employers can anticipate and become prepared for the workplace of the future, which is closer than one might think.

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