Adapting Liability in the Era of Automated Decision-Making: A South African Labour Law Perspective

Authors : Aisha Adam

Abstract : This study critically examines the transformative impact of automated decision-making (ADM) and artificial intelligence (AI) systems on South African labour law. As AI technologies increasingly infiltrate workplaces, existing liability frameworks face challenges in addressing the unique complexities presented by these innovations. This article explores the necessity of redefining liability to accommodate the nuanced landscape of ADM and AI within South African labour law. It emphasises the importance of ensuring responsible deployment and safeguarding the rights of workers amid evolving technological dynamics. This research investigates the central concern of fairness, bias, and discrimination in ADM and AI decision-making. Focusing on algorithmic bias and discriminatory outcomes, the paper advocates for the integration of mechanisms within the South African legal framework, particularly under the Promotion of Equality and Prevention of Unfair Discrimination Act (PEPUDA) and the Employment Equity Act (EEA). The study scrutinises the shifting dynamics of the employment relationship, calling for clear guidelines on the responsibilities and liabilities of employers, employees, and technology providers. Furthermore, the article analyses legal and policy responses to ADM and AI within South African labour law, exploring potential amendments to legislation, guidelines, and codes of practice. It assesses the role of regulatory bodies, specifically the Commission for Conciliation, Mediation, and Arbitration (CCMA), in overseeing and enforcing responsible practices in the workplace. Lastly, the research evaluates the impact of ADM and AI on human and social rights in the South African context. Emphasising the protection of constitutional rights, including fair labour practices, privacy, and equality, the study proposes remedies and safeguards. It advocates for a multidisciplinary approach involving legal, technological, and ethical considerations to redefine liability in South African labour law effectively. The article contends that a shift from accountability to responsibility is crucial for promoting fairness, antidiscrimination, and the protection of human and social rights in the age of automated decision-making. It calls for collaborative efforts among stakeholders to shape responsible practices and redefine liability in this evolving technological landscape.

Keywords : automated decision-making, artificial intelligence, labour law, vicarious liability

Conference Title : ICLEL 2024 : International Conference on Labor and Employment Law
Conference Location : London, United Kingdom
Conference Dates : November 25-26, 2024