



**UNIMORE**  
UNIVERSITÀ DEGLI STUDI DI  
MODENA E REGGIO EMILIA



Cycle of seminars organised as part of the PhD Course in Labour, Development and Innovation, Unimore - Marco Biagi Foundation

Visiting professor call

Marco Biagi Department of Economics

## **Marta Otto**

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Nowadays, more than ever before, the work of individuals is reliant upon knowledge, technology and communication rather than material production per se. An integral companion to this new dynamic are new styles of management of work relationships, which visibly transcend the limits of the traditional instruments of employer supervision. This rather unprecedented 'access' to employees' undeniably adds a new dimension to the fundamental problem of reasonable accommodation of apparently contradictory interests, namely employers' powers of command (control, supervision) and employees' rights (the right to privacy and personal data protection, freedom of expression, freedom from discrimination, and the right to work, to name but a few).

The series of seminars will revolve around examining the potential human rights impact of the most common nowadays instruments of human resources management such as dataveillance, workforce analytics, performance management systems (nota bene present in different milieus of contemporary world of work) in order to invite discussion on the adequacy of the current regulatory framework in Europe and its future desirable contours, also in light of the numerous ethical and regulatory dilemmas induced by the visibly accelerated by Covid-19 digital reconfiguration at work.

The seminars are construed upon a combination of lectures and Socratic method- i.e. the relevant introduction to the specific topic will be followed by a dialectic dialogue in class which shall be moderated according to short (1/2 page) reaction paragraphs written before the seminar by students on the basis of suggested reading materials.

The cycle of seminars will be taught in English.

## **SEMINAR 1**

October 04, 2022 (Tuesday) 9-13:00 – Room 32, Marco Biagi Foundation

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### **The foundations of privacy and data protection in employment in Europe**

The seminar provides an introduction to increasingly complex body of privacy and data protection law in labour and employment relations. It aims to explore basic human rights principles, instruments and institutions, as well as the ways in which the allegations of privacy and data protection rights violations in employment (including dataveillance in the workplace) are dealt with in the European courts (ECtHR, CJEU). In order to comprehend the European exceptionalism in the area of employees' privacy and data protection rights, but also to capture the gravity of the initial choices and certain path dependency in the



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European legal system, the seminar will be construed upon a rudimentary examination of 1. the historical trajectory of the extant European privacy framework; 2. the jurisprudence, and the discourse on privacy and data protection rights in employment that has surfaced in the privacy legal landscape in Europe and which, since the early decisions rendered in the 1990s, have crystallized into what is now often referred to as 'the European model'. The knowledge of the conceptual and normative parameters of this 'multicentric model', shall enable more in-depth discussion about the need and modes of its further particularisation with regard to employment context- a context where (as will be also discussed more in detail during the seminar) encroachments upon privacy are not only potentially more frequent, but most importantly, qualitatively different from those taking place in other areas of modern society.

### **Suggested readings:**

- Marta Otto, 'The Right to privacy in employment. In search of European Model of Protection', *European Labour Law Journal* Nr 4/2015;
- Frank Hendrickx, 'Privacy 4.0 at Work: Regulating Employment, Technology, and Automation', 2020, *Comparative Labor Law and Policy Journals* v. 41/1;
- Matthew Finkin, 'Menschenbild: The Conception of the Employee as a Person in Western Law', 23 *Comparative Labor Law and Policy Journals*, 577, 580–86 (2002); this seminar is to present the process of performing a literature review using NVivo. After clarifying the research objective, and selected key papers for our study, the following will be explained:

## **SEMINAR 2**

October 10, 2022 (Monday) 9-12:00 – Room 32, Marco Biagi Foundation

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### **People Analytics in the Age of Big Data: An Agenda for Labour Law Regulation?**

The ever-evolving Information Society—within which information became “the world’s most valuable resource,” along with the generally accessible information and communication technologies—resulted in the acquisition and processing of various types of data in the contemporary world of work on an unprecedented scale. The widespread availability of vast amounts of increasingly complex data (Big Data) makes “the use of predictive data mining to establish recurrent patterns or ‘profiles’” an essential part of not only contemporary business strategy, but also organization and management structures. Notably, this new dynamic is visible in both public and private employment sectors, where it becomes important for different aspects and peculiarities, such as recruitment, staff organization and management, both direct and indirect supervision of the employees, surveillance of Internet access, and e-mail communication, as well as the optimization of employees’ employability.

The seminar will be devoted to mapping out some of the main human rights’ concerns and practical challenges for the deployment of algorithms/AI in the employment context in order to invite a nuanced and critical examination of the need of refinement and particularization of the basic assumptions underlying the current regulatory framework in the EU- in particular, the General Data Protection Regulation (Regulation (EU) 2016/679), which as the first legal act of general applicability within the EU, introduces legal definition of profiling and provides for the general standards and safeguards directed at mitigating some of the



human rights risks associated with it.

**Suggested readings:**

- Jeremias Adams-Prassl, 'What if Your Boss was an Algorithm? Economic Incentives, Legal Challenges, and the Rise of Artificial Intelligence at Work', 2020 Comparative Labor Law and Policy Journals v. 41/1
- Marta Otto, "'Workforce Analytics" v Fundamental Rights Protection in the EU in the Age of Big Data', 2019, Comparative Labor Law and Policy Journals v. 40/3;
- Pauline T. Kim, Data-driven Discrimination at Work, 58 WM. & MARY L. REV. 857 (2017)

## **SEMINAR 3**

October 17, 2022 (Monday) 9-12:00 – Room 32, Marco Biagi Foundation

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### **Innovation and (Pseudo) Managerial Legitimations: The Equivocal Paths of Operational Autonomy in EU Academia**

Autonomy has always been both a value of the academic world, and a means to improve the efficiency and quality of teaching and research. Yet, the changing institutional, social, economic, cultural and legal environment of the European higher education increasingly forces academic institutions to redefine their organisational culture from more collegiate to more managerial i.e. centred around carefully planned institutional strategies. One such strategy is the development of performance management system (PMS), based upon a number of functions and processes introduced in order to achieve predetermined organisational objectives through employee's work performance.

The observable shift towards mechanisms of motivation and verification, is transforming European academic culture of trust into one of control. Although such an approach is supposed to contribute to increasing the effectiveness (research output) and public accountability of the university management, the replacement of medieval togas and birettas by quantitative parameterisation, points, tables, rankings as well as the 'performance'/'excellence' rhetoric seem to be counterintuitive to the specific ethos of an academic ecosystem based on the operational autonomy of academic workforce, i.e. a self-defining work mechanism expressed within the context of autonomy and academic freedom.

The seminar will revolve around searching for answers to the following question: to what extent the new tendency at the European Universities is capable of transforming employee values, attitudes and behaviour thus leading to an eventual change in the overall organisational culture of the academic institutions in Europe, and the operational autonomy paradigm produced in its midst. What could be the regulatory responses to such tendencies under labour law?

**Suggested readings:**

- Kai Ren, Jun Li, 'Academic Freedom and University Autonomy: A Higher Education



- Policy Perspective', Higher Education Policy, 26(4), 507–522;
- Jogchum Vrieland, Paul Lemmens, Stephan Parmentier, 'Academic Freedom as a fundamental right', LERU Working Group on Human Rights, Advice Paper no.6 2010
- Federico Cosenz, Carmine Bianchi, 'Designing Performance Management Systems in Academic Institutions: a Dynamic Performance Management View', Paper presented at the 2013 ASPA Conference, New Orleans, March 15 – 19, 2013

## **SEMINAR 3**

October 20, 2022 (Thursday) 9-12:00 – Room 32, Marco Biagi Foundation

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### **The Polish labour law resilience to digital reconfiguration. Lessons from the coronavirus pandemic**

The coronavirus outbreak has undoubtedly affected people all over the world, forcing rapid experimentation in the realm of work on a massive scale. The digital new order, a dystopic vision of the future in which technology plays a gigantic role and is to be the main means of solving the problems caused by the crisis is taking shape before our eyes also in Poland. Within just a few weeks of the Covid-19 outbreak, lockdown brought about both unforeseen opportunities for scaling up alternative approaches to working life, as well as various types of risks, all of which placed new demands on policymakers. Simultaneously, the ad hoc regulatory responses, which were supposed to minimize the impact of the COVID-19 pandemic on the labour market, highlighted many problems already existing before, such as high rate of precarious employment, lack of social dialogue, organisational culture or adequate regulations concerning digital workplace/workforce.

Paradoxically this rather pristine/disconnected regulatory landscape in Poland, may serve as a perfect 'laboratory' for brewing up the experimental components of sustainable/inclusive regulatory infrastructure that, in theory at least, will be capable of keeping pace with the accelerated digital revolution and the accompanying human rights threats; all of which will be subject of an in-depth discussion during the seminar.

#### **Suggested reading:**

- Izabela Florczak, 'COVID - 19 and Labour Law: Poland', 2020, Italian Labour Law e - Journal Special Issue 1, Vol. 13 (2020);
- Tammy Katsabian, 'The Telework Virus: How the COVID-19 Pandemic Has Affected Telework and Exposed Its Implications for Privacy and Equality'; Available at SSRN: <https://ssrn.com/abstract=3684702> or <http://dx.doi.org/10.2139/ssrn.3684702> .
- Guy Mundlak, Judy Fudge, 'The Future of Work and the Covid-19 Crisis', FUTURES OF WORK (June 5,2020), [https://futuresofwork.co.uk/2020/06/05/the-future-of-work-and-the-covid-19-crisis/?fbclid=IwAR2ypCKDzmr9rvqvfQc0Rnm\\_4pYk53ixVAUKoh4LWPE1e2gCMeq5xuGVS1c](https://futuresofwork.co.uk/2020/06/05/the-future-of-work-and-the-covid-19-crisis/?fbclid=IwAR2ypCKDzmr9rvqvfQc0Rnm_4pYk53ixVAUKoh4LWPE1e2gCMeq5xuGVS1c) ;

#### **Coordinator of the cycle of seminars**

Iacopo Senatori, Assistant Professor of Labour Law, University of Modena and Reggio Emilia, "Marco Biagi" Department of Economics