Digital Instructions

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Abstract

Everyone talks about the digitalization of work. For decades, people have been predicting which individual tasks or entire professions could be taken over by machines. The fact that classic employer functions, such as the exercise of the right to issue instructions, are also being delegated to technical systems has so far received insufficient attention.

This dissertation defines digital instructions as employer instructions that are either directly or indirectly based on decisions of an algorithmic system. Digital instructions are a new phenomenon in law. The analysis pursues the question of what requirements the current law imposes on digital instructions, firstly because of the new decision-making technology and secondly because of their character as instructions in the traditional sense.

According to the current state of technology, digital instructions are issued primarily in shift and deployment planning, but also in the shape of small-step individual instructions. The first part of the dissertation contains an overview of concrete cases of application and of other areas of law in which algorithmic decisions have played a role for some time. When employers introduce digital instruction systems, they must inform and involve the works councils. In the case of digitalization projects, the works councils' rights to co-determine and consult on an ad hoc basis are increasingly giving way to a continuous involvement of the works council. The only provision under current law applicable in Germany that deals with automated decisions at its core is Article 22 of the GDPR. The "prohibition of automated individual decision-making", which is examined in the third part of the dissertation, is so vague on the factual and justification level that employers run considerable risks if they use digital instructions in which the system makes the final decision. This raises the question of what requirements must be placed on the transparency of algorithmic instruction decisions. The transparency of decisions made by humans, which is of great benefit especially in personal work relationships, stands in contrast to the increasing opacity of algorithmic decisions ("black box"). The fifth part of the dissertation focuses on the criteria under which digital instructions can be attributed to the employer and how the equity requirement of section 106 sentence 1 Trade, Commerce and Industry Act (Gewerbeordnung) can be implemented technically.

The paper 's innovative core is the newly defined criterion of "responsiveness". It means that it

must be possible for subordinates and works councils to enter into an exchange of opinions regarding the content of the instruction with the issuer of the instruction. The need for responsiveness is only now becoming apparent, since human instructors are by nature responsive. Where technical systems do not (yet) meet this requirement, instructions remain under the reservation of a final decision by a human.