

'A robot took my job...'

by Iain Hopkins

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In mid-2017, global insurer Aviva announced it was offering to retrain employees for another role in the company in the event that their jobs needed to be automated. Aviva extended the offer to some 16,000 of its employees in Britain. It was considered a world-first, as other employers have introduced automation without consultation to displaced employees.

With one report by McKinsey indicating that the equivalent of 1.2 billion full-time positions globally – accounting for US\$14.6trn in wages – could be automated by adapting current technology, automation poses unheralded challenges to HR professionals.

Kristy Peacock-Smith, a partner at international law firm Bird & Bird, said that the rise of robotics and automation raises a fundamental issue.

“Whose interests should be protected in such a case: the operational requirements of a business or an employee and their job?” she said.

On the latter, Peacock-Smith, cited an example.

Acme Pty Limited employs 50 staff members in its food processing plant to sort heads of lettuce. Two of the employees are team leaders who manage 24 workers each. The main KPI of the team leaders is to train the employees on the tasks required in the plant. However, a robotics firm has recently designed robots with sensors to measure the density of items such as heads of lettuce. Acme decides to acquire two such robots and subsequently makes the 48 workers redundant. The two remaining team leaders now train and manage the robots to assess the heads of lettuce and to reject a lettuce if non-compliant with company standards. Once the robot has memorized the task, it can autonomously perform the task without human assistance, leaving the team leaders free to perform other more sophisticated tasks.

“Undoubtedly the automation has both taken away and created jobs,” said Peacock-Smith. “However, the question for HR professionals remains – are the 48 workers who lost their jobs entitled to redundancy benefits?”

While there are variations in each jurisdiction globally, Peacock-Smith said the long-standing principle of redundancy in jurisdictions such as Australia is that a role is redundant if an employer no longer requires the job to be performed by anyone because of changes in operational requirements. An example of a change to an enterprise's operational requirements might occur where a 'machine' becomes available to do the job performed by the employee.

So the question then becomes – is a robot a machine? “Robots can be autonomous or semi-autonomous,” said Peacock-Smith. “By mimicking a life-like appearance or automating movements, a robot may convey a sense of intelligence or thought of its own. However, the short answer to this question is yes, a robot is a machine; it’s simply a machine that is capable of carrying out a complex series of actions automatically.”

Peacock-Smith added that robots are of course not classified as employees – indeed they currently have no “legal personality” at all. She said this means that until lawmakers give robots some form of legal personality, an employer who makes an employee redundant in order to introduce a robot into the workforce would still have to say that they no longer require the job to be performed 'by anyone'.

“Therefore, based upon these simple legal principles, a redundancy situation may still arise even if the employer still requires the employee's activities to be undertaken by a robot,” she said. “This means that an employee whose job is replaced by a robot is still entitled to receive severance pay as a result of the redundancy of their role.”

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