

Digital and AI Equality Rights

- **Employers harnessing new technologies to create data on employees to drive up production, management and business planning but without balancing workers' rights**
- **Miss match & imbalance with business ahead and Labour behind**

Reform employment and equality laws with AI and data protections

Digital and AI Equality Rights

Digitalisation and AI in the employment cycle:

recruitment, promotion, disciplinary issues,

time keeping monitoring,

surveillance, productivity monitoring,

facial, speech and drone recognition,

contact control, bonuses, pay rewards,

work rights, working from home, teleworking

termination of contracts of employment

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Digital and AI Equality Rights

Identifying and closing the legal gaps

Incremental reform

Avoid red tape arguments

Winning the argument

Smart early wins



Digital and AI Equality Rights

- **Trade Union and Labour Relations (Consolidation) Act 1992**
- **Human Rights Act 1998 - European Convention on Human Rights ("ECHR")**
 - **Employment Rights Act 1996**
 - **Equality Act 2010**
- **Public Sector Equality Duty 2011**
- **GDPR - Data Protection Act 2018**



Digital and AI Equality Rights

Employers should generally conduct an Equality Impact Assessment (EIA) before introducing digital and AI systems that determine the impact on access to work, direct and indirect discrimination, on the terms and conditions of work, employees with protected characteristics, job losses and re-skilling, apprenticeships, changing nature of work and job roles to fit around the introduction of new technology etc.



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Article 35 of GDPR lays out the scope for Data Protection Impact Assessments (DPIAs).

It states that workers' representatives (which includes unions) should be consulted by employers before the introduction of new data processes, including surveillance technology



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Data Protection Impact Assessments (GDPR Article 35): “Where a type of processing in particular using new technologies, and taking into account the nature, scope, context and purposes of the processing, is likely to result in a high risk to the rights and freedoms of natural persons, the controller shall, prior to the processing, carry out an assessment of the impact of the envisaged processing operations on the protection of personal data.”





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The regulations say that DPIA must be undertaken if the processing of personal data could result in what is defined as a 'highrisk' of physical, material or nonmaterial damage to an individual, such as:

- Discrimination
- Identity theft or fraud
- Loss of confidentiality
- Damage to reputation
- Loss of privacy at work
- Negative decisions against individual or groups of workers, such as on performance, capability, promotion or freedom of association.



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A DPIA should: 1. Describe the proposed processing of the data and explain why the processing is taking place. 2. Provide the legal basis for the processing. 3. Give an assessment of how necessary the processing of the data is in relation to the reasons for the processing - employers should only be collecting the minimum amount of data needed. 4. Consult with all relevant stakeholders - including trade union and/or workforce representatives





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5. Identify and assess the risks to the personal data of individuals. 6. Provide mitigation of risks, including safeguards, security measures and mechanisms to ensure the protection of personal data and to demonstrate compliance with the Regulations. 7. Detail recommendations to be signed off by project managers - the outcomes should be incorporated into the project plan.



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Data processing must comply with Article 5

- 1. Data is processed lawfully, fairly and in a transparent manner.**
- 2. Data is collected for a specified, explicit and legitimate purpose.**
- 3. Data is adequate, relevant and limited to what is necessary in relation to the purpose.**
- 4. Data is accurate, and where necessary kept up to date.**

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Data processing must comply with Article 5

5. Data is kept for no longer than is necessary for the purposes for which the data is processed.

6. Data is processed with appropriate security, including protection against unauthorised or unlawful processing



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Unions role in DPIA:

- 1. Place DPIA in collective bargaining agreements**
- 2. Create a union checklist or guidance**
- 3. Ask relevant questions e.g. consent**
- 4. Propose alternative risk mitigations**
- 5. Monitor and review the DPIA with employer for compliance and risks**

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Challenges to securing digital equality rights

1. Two assessments EIAs and DPIAs - be better to have a new umbrella assessment which would also include binding human and ethical rights

2 . Define 'high risk' and 'low risk' and strengthen targeted regulation

3. Precautionary Principle - how do we prevent harmful applications from the beginning

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Challenges to securing digital equality rights

- 4. Business wants to 'self-govern' their use of high-risk data - need a statutory duty that they must consult on AI and Automated Decision -Making (ADM) technology**
- 5. Change employment law so that workers have a statutory right not to suffer any detriment on the grounds of inaccurate data processing.**

The logo for UNISON, featuring the word "UNISON" in a bold, purple, sans-serif font. To the right of the text are three green, wavy lines that sweep upwards and then curve back down, resembling a stylized ribbon or a wave.

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Digital and AI Equality Rights

Challenges to securing digital equality rights

6. Strengthen employment-focused ethical principles in relation to “high risk” applications of AI and ADM - legally binding

7. Strengthening the principle of non-discrimination in all stages of the employment relationship - a new statutory Code of Practice supplying guidance on avoiding discrimination in an age of digitalisation. Example human oversight in ADM mandatory



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Challenges to securing digital equality rights

8. Amend GDPR to state that fully automated discriminatory data processing is always unlawful.

9. Rewrite burden of proof in discrimination claims that challenge “high risk” AI and ADM, so that the business or undertaking using such systems have the full burden of explaining how they have worked and that they are not discriminatory.



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**Challenges to securing digital equality
rights**

10. Strengthen third party liability

11. Remove trade agreements global e-commerce protections of IPRs - trade secrets and patents - in algorithms and source codes



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Digital and AI Equality Rights

Challenges to securing digital equality rights

12. See inside the 'black box'

- **intentional opacity, where the system's workings are concealed to protect intellectual property**
- **illiterate opacity, where a system is only understandable to those who can read and write computer code**
- **intrinsic opacity, where a system's complex decision-making process itself is difficult for any human to understand**



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**Challenges to securing digital equality
rights**

**13. Strengthen GDPR obligations under 3
key articles 21, 6, 22 as it only says that the
data provider must provide an explanation
that is meaningful about the logic involved
but is not obliged to give a complex
disclosure of the full algorithms**



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Digital and AI Equality Rights

Caicampaigning Tool Kit for unions

- 1. Prevent costly work tribunals**
- 2. Set the pace of change**
- 3. Put workers' rights at the heart of new AI laws**
- 4. Promote workers voice and put trade unions on the AI table**



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