

Global Workplace Law & Policy

Wellbeing at work: a labour law strategy for the green transition

Frank Hendrickx (Institute for Labour Law – KU Leuven (Belgium)) · Saturday, March 18th, 2023



On 16-17 March 2023, the [Twentieth International Conference](#) in Commemoration of Professor Marco Biagi took place in Modena, Italy, at the Marco Biagi Foundation, University of Modena and Reggio Emilia. The title of this conference was: *The Green Transition and the Quality of Work: Linkages, Implications, and Perspectives*.

From health and safety to wellbeing

I had the pleasure to be the discussant of the panel on “The Safety Obligation of the Company over the Internal and External Environment”, chaired by professor Edoardo Ales (University of Naples Parthenope, Italy). The issue of safety and health at work, often also referred to as OSH (‘occupational safety and health’) presents itself as a promising labour law theme with extreme

relevance for the climate change debate and green transition strategies. Hereafter follow some reflections and discussions shared during the panel.

In general, the whole conference, but also the panel and its papers, show how we might change a traditional view of health and safety at work. In labour law, 'OSH' (as the ILO refers to it) has often been perceived as a rather technical, specific, not easily accessible topic of labour law, requiring specific expertise and specialization. However, nowadays, it becomes one of the crucial areas of labour law which connect with climate change and the green transition. In addition to this, as the three papers of this panel show (see below), one may wonder whether 'OSH' is still a valid term, since 'occupational' health and safety is moving towards environmental' or 'ecological' safety. It may even be more proper and future-proof to use the concept of 'wellbeing' instead of 'health and safety', as a more holistic approach to this subject is required.

Adapting work to the worker

The first paper of the panel was presented by Milena Rouxinol (Portuguese Catholic University, Católica Research Centre for the Future of Law, Portugal) and entitled: The Role of Employers towards Employees Suffering from Cancer: Adjusting Work Conditions and Adopting Environmental Good Practices – Two Birds One Stone. Her discussion let us reflect about the role of work incapacity law and the evolving importance of anti-discrimination provisions related to disability. Cancer is an interesting departure point for the debate, as it shows to be a broad issue with a wide diversity in the way how an illness and treatment may be evolving, how it impacts, both short term or long term, on health and an individual's personal life. The discussion shows that it is important, in this respect, to remind that work incapacity law is already for a long time present in labour law systems, often extensively regulated. It concerns a basic field in 'health and safety' law, or more modern, in 'wellbeing' law, where one of the ground principles is that 'work should be adapted to the person', taking into account, among other things, personal (health and safety) risks, seen individual and organizational capacity.

The point in Milena's paper is that we have to make better understandings and use of anti-discrimination law when addressing work incapacity. Indeed, 'disability' is a protected ground in EU anti-discrimination law (EU Directive 2000/78). Interestingly, the EU and its member states are also bound by the UN Convention on the Rights of Persons with Disabilities (2006). The CJEU's case law has referred to it to broaden the scope of protection provided under EU disability discrimination law. Drawing inspiration from the American with Disability's Act in the U.S., the paper aims to make the legal concept of disability more robust, and to encompass the notion of reasonable accommodation.

Reasonable accommodation is, of course, strongly connected to 'adapting work to the person', as is also underlying wellbeing at work, as mentioned above. Furthermore, reasonable accommodation can be seen broadly. In this respect, Milena suggests telework as being a form of reasonable accommodation in case of work incapacity. This also makes us reflect about the assumptions of telework, which often are seen as voluntarily agreed ways of working. However, during covid-19 we have seen that there were few alternatives, and what followed were 'imposed' ways of working. So the voluntary character of telework, in a context of wellbeing at work, may need to be more nuanced. More nuance would be something to make telework better fit into an approach of adapting work to the worker and her/his individual situation.

Adapting work to the planet

The second paper of this panel brings us to further questioning some concepts and approaches towards health and safety law. The paper was presented by Maria Giovannone (Roma Tre University, Italy) and entitled *The Employer's Preventive and Protective Obligation in the New Work Environment and in the Wake of the Reform of Article 41 of the Italian Constitution: Regulatory Prospects for Industrial Relations and Collective Bargaining*. The paper brings us to the question of the employer's responsibility over the external environment. Also this question requires us to rethink basic concepts of health and safety, and of wellbeing, as it now will be about 'adapting work to the planet'. One of the questions is how current positive law can be re-read in light of environmental and green-transition goals. The employer's responsibility is subject to discussion. If this responsibility also covers the 'external' environment, then 'prevention' principles of health and safety law have to be rethought. A way could perhaps be to bring the notion of 'mitigation' more to the fore. It may also refer to the impact of economic or organizational activity, not only on the internal environment (the workplace or locations which are more under direct control of the employer), but also on the external environment (the planet at large).

An obvious question related to this, is whether existing legal pathways are to be followed, or whether we need new or creative enforcement strategies. Liability, civil or criminal, are traditional 'hard' ways to address responsibility. There are also legal conditions to apply them (such as causality, or legality in criminal sanctioning). Another approach may be to refer to what is underlying the EU's initiative related to the [EU's initiative related to the 'Global Value Chain'](#), which requires to not only assume responsibility over the work and production processes, but also potentially to follow up on responsibility beyond that.

Maria also pointed at the importance of collective bargaining. There should, indeed, be a collective and democratic manner to deal with responsibility over the green transition. It is a collective interest and the transition must be fair and legitimate. The role of the social partners and industrial relations should thus not be overlooked.

Risk prevention and the internal and external environment

The third paper was presented by Federica Nizzoli (University of Modena and Reggio Emilia – Marco Biagi Foundation, Italy), and entitled *Occupational Health and Safety System in the Green Transition Era: the Need for a Integrated Policy of Risk Prevention Protecting the External and Internal Environment*. Her entry point of the debate is also interesting: it is the notion of 'risk'. She also shows the relevance of the link between internal and external health and safety at work. This link is longstanding. Just think about medical screening of workers with a job which also impacts public health and safety. The question related to risk is whether we limit responsibility to those who have a more direct part in the creation of the risk (which may be linked to causality), or whether societies require the assumption of responsibility for risks (such as climate change) that are more indirect or go beyond individual control (and which may be more linked to impact).

In light of this discussion on assuming responsibility over the external environment, Federica also invited us to reflect on the concept of the 'workplace'. This thinking-exercise is also underlying our 'Global Workplace Law & Policy' blog. It is clear that the workplace is not linked anymore to the classical confines of space and time. A workplace can be anywhere, anytime, including a private home, it may be material or immaterial, including even our human brain (which may be a 'workplace' that is to be protected through work-related stress regulation, techno-stress measures, or the 'right to disconnect'). Therefore, the workplace should not be dependent on the distinction

between what is ‘internal’ and what is ‘external’.

Impacting legal pathways

As mentioned above, the three papers have better connection with a modern notion like ‘wellbeing’ instead of ‘health and safety’. They also show that we are looking at a growing interdisciplinary field, called labour law. Climate change and the green transition need a combination of narratives, approaches and a re-reading of positive law, taking into account different legal pathways and a stronger integration or mutual influence of disciplines. It is clear from this panel that labour law is an important component to address the current and future challenges of climate change.

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