Legal Intelligencer

The Dawn of the Digital Workforce:

Implications for the Legal Industry

Will digital workers be considered in-scope for unionization? This may not be as far-fetched as you might think. Could a business replace or supplement unionized jobs with digital workers and maintain compliance with the union contracts?

By **Rob Drover** | December 23, 2019 at 12:24 PM
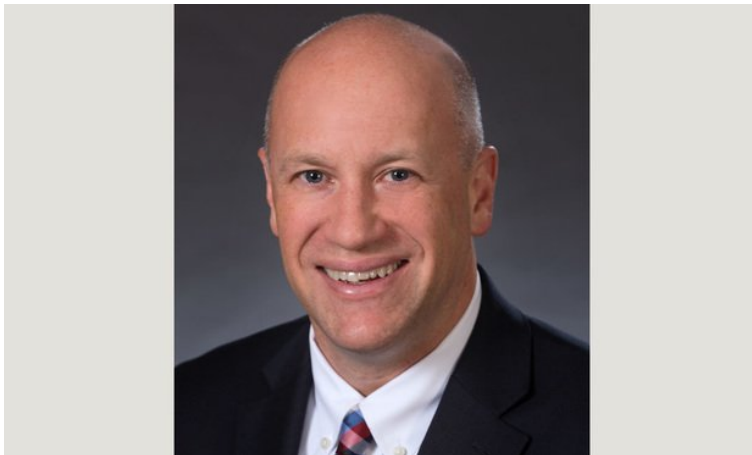
Rob Drover of Marcum.

A large New York-based distribution company recently introduced a workforce of robots into its operational environment. Each robot was assigned a network account, a unique persona, and most interestingly, a human manager.

A financial services company reached out to Marcum's executive search and professional staffing firm (Marcum Search) with a request for temporary data entry resources. What was different about this request was the recruiter's response. After learning more about the opportunity (and the potential for ongoing work), the recruiter recommended the use of "digital workers" or robots to meet the client's need.

Both of these examples may represent the beginning of a fundamental shift in staffing modalities. Use of digital workers has implications for employment contracts, compensation models, and ultimately, the gig economy.

This is the new frontier for human relationship management and employment law. Consider the impact on unionization and collective bargaining agreements. Will digital workers be considered in-scope for unionization? This may not be as far-fetched as you might think. Could a business replace or supplement unionized jobs with digital workers and maintain compliance with the union contracts?

Digital Workers Defined

A digital worker is a software-based robotic resource that executes job functions utilizing the user interface of a computer system(s). The robot clicks, types and navigates the same way a human user would interact with a computer. The technology is most commonly known as Robotic Process Automation (RPA). The robot is equipped with an advanced set of commands or actions allowing it to simulate both user commands and programmatic commands to mimic user-based interactions.

To program the robot, a developer creates a process flow (script or flowchart) of commands that represents the process to be automated. Typical candidates for automation include repetitive and structured tasks; however,

the developer can add variables and conditional branches to adapt to a variety of scenarios.

Legal Implications

Attorneys focusing on employment law, commercial contracts or union labor contracts should begin to understand the implications of digital workers entering the workforce. Existing contracts and agreements will need to be reviewed and tested to ensure they stand up to the advent of digital workers in the workplace environment. As the sophistication of the tools and techniques used in RPA increases, the scope, scale and integration of robotic workers into the workforce will increase in tandem.

An area of early impact may occur within the staffing industry. Placing digital workers into contract opportunities is only a matter of time. New staffing contracts that offer digital workers will likely embed the cost of developing the specific automation into the hourly or daily rate. Vendors offering these "pre-configured" workers will expect compensation for the time invested to prepare or program the robot for work. Placement models may include hourly, fixed price and contingent pricing. These new digital contracts will increase in complexity and will no longer necessarily be only temporary. This will create opportunities for breach of contract, employment discrimination, and a host of other legal issues both in union and nonunion environments.

Consider a former employee with a noncompete agreement. The former employee creates a series of robots performing work of a nature similar to his previous employment. Does the use of these automated personas violate the terms of the noncompete agreement? Can the robotic work be associated to the human designer?

While labor and contract law will certainly evolve as new litigation works through the legal system, it may be advisable for attorneys and their clients begin to consider the implications for existing employment contracts. Consider adding new, or modifying existing, language to recognize and adapt to the growing automation trend.

While there may be limited case law in this area at present, there is a tremendous volume of technical information available related to RPA and artificial intelligence (AI) in general. The RPA industry is growing rapidly and is closely covered by traditional IT analyst firms. Many of the midmarket and all of the large global consultancies have established automation practices.

Automation in the Legal Industry

As you consider the impact of automation for your clients, keep in mind that the legal industry itself is a candidate for automation in certain functional areas. Examples include:

- **Contract Review**

New technologies exist to create a machine learning-based model to read and categorize contracts. Once trained, the model will very quickly dissect a contract into component parts and index appropriately. Robotic automation can then be used to provide comparisons to existing contracts, create a workflow process for further review or highlight missing content.

A companion technique called document classification can sift through thousands of pages of random documents and quickly classify them according to type. This enables you to easily separate bank statements, financial documents, contracts, tax forms or whatever type of document you may receive as part of the discovery process.

- **Billing Automation**

All professional services firms spend considerable time creating and managing client invoices. Often, there are many repetitive first steps required to prepare time sheets and expense logs for formal invoicing. Partners and other highly compensated staff spend nonvalue added time preparing these invoices mechanically rather than performing final review.

Robotic automation may be used to mechanize many of the upfront tasks involved with the billing process and focus the human energy on the last, most critical steps.

In addition to the billing process, many firms are seeing an increase in demand from their clients to send and post invoices to A/P portals and other bill aggregation systems. This puts further pressure on the billing organization to have streamlined methods to deliver these bills to the correct locations in order to ensure prompt payment.

- **Cash Application**

Once invoices have hit the street and payments begin arriving, the task of the accounts receivable function is to properly apply that cash. What starts as a simple matching process is complicated by missing remittance information, wire transfers, short payments and miscellaneous fees.

Clerks responsible for the cash application function often spend considerable time researching each client's open balances and matching these payments. This is a time-consuming yet critical process, as cash flow is important to keep credit lines and other bank financing at a minimum.

- **Accounts Payable**

Processing vendor payments is a repetitive, process-oriented task that is ideally suited for automation. The entire source-to-pay process encompasses many steps including purchase order creation, receiving, document intake and capture (invoice), extraction, data entry, approval and payment. Throughout this chain, RPA can facilitate many of the manual tasks that are repeated multiple times per day.

- **Compliance Management**

There are a variety of forms of compliance that may be candidates for automation, including conflict checks and other forms of repetitive background research involving third-party websites and information sources. RPA can be useful in executing scheduled and on-demand "web scraping," pulling down information from the internet, and preparing it in a structured manner for review.

- **Client On-Boarding**

Every time a new client is engaged, a series of repetitive processes is kicked off to on-board that client. This includes setting up a profile in the matter management system, opening a new case, entering billing terms and so on. RPA is used to streamline that process across multiple systems. This can include automated notifications to responsible parties across the firm.

As we enter a new age of workforce dynamics, the nature and definition of a working role will change and evolve. It is incumbent on members of the legal and consulting professions to adapt to these new paradigms and educate themselves on the implications of AI and automation in the workplace. Through ongoing education and first-hand experience within the operations of their own firms, these professionals will be able to assist their clients to

prepare for the future. Corporate and commercial law will change, whether through the outcome of litigation or simply as a matter of practice within and among government, corporations, unions and employees. An employment contract for a digital worker is probably not far away.

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