

LABOUR AND SOCIAL JUSTICE

TECHNOLOGY AND DIGITAL TRANSFORMATION: A CHALLENGE FOR TRADE UNIONS

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Sin
Digital



SinDigital is a project designed to provide tools to strengthen trade union organizations as they face the “future of work”.



For this report, a total of 27 organizations (5 federations and 22 trade unions) were surveyed. All together, these organizations represent approximately 1.3 million workers across different sectors. The survey focused on two dimensions:
How technological processes, in particular digitization, affect employment, labour and conditions at the workplace.
How digitization impacts trade union organizations with regard to their relationship with their members, shop stewards and trade union leaders, and to their member information management and storage systems and any associated security measures.

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LABOUR AND SOCIAL JUSTICE

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The outbreak of the COVID-19 pandemic motivated us to carry out a series of research and dissemination activities relating to transformations in the world of work. These included research studies and national and international publications, the “#Conectadxs” newsletter, a podcast (“Do androids dream about electrical workers?”) and courses on innovation and its impact on workers, labour market sectors and trade union organizations. Throughout 2021, more than 200 trade union organizations within the country, in countries across the region, in the United States and in Europe took part in this initiative launched by FES Argentina.

Thus, over the course of the past year, FES consolidated what today has become the basis for a programme on the future of work called “SinDigital”. This publication is one of the outputs of this experience, known as the “Innovation Observatory”, which contains the results of two surveys conducted among 27 trade union organizations that together represent 1.3 million workers in Argentina.

Their inputs and contributions have paved the way for us to collectively examine the most efficient strategies to understand the impact of ongoing transformations and act accordingly, strengthening trade unions’ capacity in light of the new risks that may arise.

We wish to thank the following organizations and their representatives for collaborating with us in this new trade union challenge:

Asociación Argentina de Trabajadores de las Comunicaciones
Asociación Bancaria
Asociación de Empleados Fiscales e Ingresos Públicos
Asociación de Trabajadores de la Industria Lechera de la República Argentina
Asociación de Trabajadores de la Sanidad Argentina – Buenos Aires
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Asociación del Personal de la Universidad de Buenos Aires
Federación Argentina de Trabajadores Cerveceros y Afines
Federación Argentina de Trabajadores de Luz y Fuerza
Federación de Obreros, Especialistas y Empleados de los Servicios y la Industria de las
Telecomunicaciones de la República Argentina
Federación de Trabajadores de Edificios de Renta y Propiedad Horizontal
Federación de Trabajadores del Tabaco de la República Argentina
Sindicato Argentino de Locutores y Comunicadores
Sindicato de Empleados de Comercio de Mar del Plata y Zona Atlántica
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Sindicato de Mecánicos y Afines del Transporte Automotor de la República Argentina
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Unión del Personal Civil de las Fuerzas Armadas
Unión Informática
Unión Obrera de la Construcción de la República Argentina
Unión Obrera Metalúrgica - Seccional La Matanza
Unión Obrera Salinera Argentina
Unión Trabajadores de Entidades Deportivas y Civiles

1

INTRODUCTION

The current organizational and technological dynamics have given rise to new dimensions and problems that have brought about, and will continue to bring about, changes to the present reality of the world of work as well as to collective subjectivities, identities and solidarities. These changes have had an impact on employment, labour, and industrial, political and social relations by introducing new issues and dilemmas with implications for both trade union and political representation and personnel management in public and private organizations.

Data mining, big data, artificial intelligence (AI) and algorithmic management are influencing and will influence labour relations in particular and social relations as a whole in new ways. In the field of industrial relations, algorithmic management has enabled new forms of control. The increase in teleworking, remote work, platform-based work, automation and robotics, among others, has led to new forms of work in offices, in factories and at home, producing new inequalities, broadening existing gaps and deepening representation crises.

There are now new labour entities, new forms of employment, increased subcontracting and outsourcing, all situations that challenge the notion of the right to work as we know it and the idea of Social Security and Protection. Against this background, we believe that innovations cannot be limited to products or companies; they should also extend to institutions while requiring new regulatory and protection standards.

The pandemic has accelerated many of these transformations, from telework to changes in communication strategies used by the members of organizations, whether in the production of goods and services, in the field of education or in trade unions.

In summary, as María Luz Vega from the ILO¹ has put it, “Time, space, place and environment at the workplace become new, broader concepts with different meanings from those they had not too many years ago”.

1.1 DIGITIZATION AND THE RIGHT TO INFORMATION

Trade union organizations are a key piece in the Argentine system of industrial relations. They have a strong tradition and considerable influence in political matters and political negotiations, and they are “social” partners in health or tourism —through the health services they own— and in collective bargaining.

The trade union movement has undergone severe weakening processes as a result of globalization, particularly during the last stage of financial globalization —as this somehow impacts the real economy— as well as due to the significant changes experienced by labour markets around the globe. The Argentine labour movement has been powerfully hit by these processes as well as by neoliberal policies that have undermined workers’ rights.

¹ Vega, María Luz, “Digital revolution, work and rights. The big challenge for the future of work”, *IUSLabor* 2/2019, pp. 155-171.

This has been compounded by the emergence and advance of new technologies and digitalization processes that transform both working and social spaces, leaving the trade union movement at a special crossroads. The dynamics, mode and pace with which these new technologies are introduced are not homogenous, neither among countries, nor among sectors, which means that any activity linked to digitalization processes—characterized either as Industry 4.0 or as a new technological stage— must be analyzed within its specific context.

The COVID-19 outbreak in 2020 produced and/or accelerated numerous changes, including the implementation of telework and digital communication systems at the workplace and in social environments, and cleared the way for an accelerated migration to new technologies. Digitalization challenges trade unions in two dimensions: on the one hand, within the world of work and companies, and, on the other, within trade unions themselves in terms of their information management, security and privacy systems.

This context characterized by new technologies, a complex combination of all of them and the advance of digitization, in addition to the pandemic, makes us wonder which trade union strategies are most effective to address these multiple challenges.

This process, which was initially conceived in Germany, is generically known as “Industry 4.0” and has become widely disseminated and incorporated by companies and countries to different degrees, transforming various dimensions of the world of work. The current matrix of industrial relations is quite different from that we have known over the past hundred years: new forms of work, new points of service, use of electronic devices and data- and privacy-related issues. This topic has been discussed at length, in particular with regard to the company’s duty to protect and limit the use of its workers’ data, but there is another aspect that becomes highly important, and that is digital control, in other words, IT-based surveillance of workers with or without their knowing it.

The so-called “fourth industrial revolution” is marked by the use of digital technology and cyber-physical systems. According to Klaus Schwab², “the Fourth Industrial Revolution is not defined by a group of emerging technologies per se but by the transition to new systems built on the infrastructure of the (previous) digital revolution [...]. There are three reasons why today’s transformations represent not merely a prolongation of the Third Industrial Revolution but rather the arrival of a Fourth and distinct one: velocity, scope and systems impact. The speed of current breakthroughs has no historical precedent [...] and is disrupting almost every industry in every country”.

While new technologies represent an extremely fast and continuous process with high technological integration, they are also bringing about far-reaching changes in companies. At present, major corporations are focusing on data collection, processing and control, creating user dependence and using and/or selling data for their own benefit. We are living in the age of “surveillance capitalism”, a term coined by sociologist Shoshana Zuboff, where technology is a source of power since the traces and data we leave on the Internet enable others to shape, design and automate our behaviours³. At the start of the pandemic, while the global product fell in most countries, the five largest technology companies boosted their growth⁴. Today, 18 months later and in a partial return to normal life, the digitization curves of the Argentine economy are not slowing down.

² Schwab, Klaus, La cuarta revolución industrial [The Fourth Industrial Revolution], Editorial Debate, 2016.

³ Zuboff, Shoshana, La era del capitalismo de vigilancia [The Age of Surveillance Capitalism], Paidós, Mexico, 2020.

⁴ Companies like Google, Apple, Facebook, Amazon and Microsoft created a universe of their own, and thanks to the pandemic, they were able to increase their adoption and turnover as a result of the exponential growth of the use of digital platforms. “The latest income reports of GAFAM (Google, Apple, Facebook, Amazon and Microsoft) clearly show that the fate of these companies is no longer tied to the fate of the rest of the global economy as a result of the use of data, AI-based task automation, huge readily available financial resources and the growing abuses of their dominant position, which are at the centre of political power scrutiny”, Magnani, Esteban, “El mundo se desploma y las tecnocorporaciones vuelan” [The World is Collapsing but Tech Corporations are Flying High], Página/12, 8/8/2021, <https://www.pagina12.com.ar/359515-el-mundo-se-desploma-y-las-tecnocorporaciones-vuelan>

Against this international backdrop, a new significant concept has emerged: privacy-related fundamental rights, with a strong focus on the right to data protection and data protection regulations. The establishment of a worker's "right to a digital environment", applicable both in and outside the workplace, would require, as a *sine qua non* condition, a growing level of harmonization among regulatory bodies dealing with labour and data protection matters⁵. As Jesús Baz Rodríguez has written, "Just like the ambivalent Right to Work should seek to metabolize the logic of digitized business models or robotics into its regulation schemes, privacy rights, which in the case of data protection are covered by a blanket pan-European regulatory framework, should serve, in our view, as a limit to the unconditional digital maximization of the culture of ongoing productivity. Along these lines, the European General Data Protection Regulation (GDPR) has been introduced, in fact, to proclaim quite clearly for the first time the full enforcement of data protection legislation in the field of industrial relations (Article 88 and Recital 155), thus turning—in our opinion—into the best domestic constitutional doctrine proclaiming the full validity of fundamental citizenship rights in a company".

Susana Rodríguez Scanciano⁶ refers to new data protection legislation in Spain (including Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016, and Organic Law 3/2018 of 5 December), which provides for a set of convenient precautionary measures to safeguard the privacy of workers, extending its principles (transparency, purpose proportionality or relevance) and guarantees (access, opposition, rectification or cancellation) to industrial relations. At the same time, this new legislation sets strict limits to the company's oversight power in an attempt to safeguard the so-called "digital rights", namely: wage-earners' privacy both when using IT systems and when monitored through video-surveillance cameras and sound recording systems or company-installed geo tracking systems, as well as the right to disconnect during rest periods.

Furthermore, she points out that "the application of information technology to personnel management may result in a metamorphosis of the work activity, which being highly schematized and fungible, may become considerably personalized and rigidly controllable and controlled, jeopardizing some of the most vulnerable aspects of an individual's human personality, dignity and privacy". On the one hand, there is "IT-based tracking" and, on the other, "video-surveillance". As a result of the former and the growing use of IT-based media, today it is possible to create worker "profiles", while the latter represents one of the most fundamental—maybe even "more appealing"—changes in industrial relations derived from the introduction of new technologies (as confirmed by our research).

Nevertheless, addressing the right to privacy in industrial relations is not an exclusive responsibility of the company; trade unions must also take on responsibility for the security of their workers and members' information. Which sensitive data should be recorded? Which security measures should be adopted? Which regulations are applicable?

5 Baz Rodríguez, Jesús (dir.), *Los nuevos derechos digitales de los trabajadores en España. Vigilancia tecnificada, teletrabajo, inteligencia artificial, Big Data*, cap. 1: "Los derechos digitales de la ciudadanía laboral en la era postpandémica: coordenadas institucionales y perspectivas de futuro (¿inmediato?)" [New digital rights for workers in Spain. Technology-based surveillance, telework, artificial intelligence, big data, Chap. 1: "Digital rights of working citizens in the post-pandemic era: institutional coordinates and (near?) future prospects"], pp. 19-41.

6 Rodríguez Escanciano, Susana, "El derecho a la protección de los datos personales de los trabajadores: nuevas perspectivas" [Workers' right to personal data protection: new prospects], Editorial Bomarzo, Albacete, 2009, summary by Aristeo García González in *Revista Latinoamericana de Derecho Social*, N° 13, July-December, 2011, pp. 173-179.

2

THE SINDIGITAL OBSERVATORY

In this context, the Friedrich Ebert Foundation convened several interdisciplinary teams to work collaboratively and created SinDigital, a project designed to provide tools to strengthen trade union organizations to be ready for the “future of work” or the “different futures for different types of work”. As part of this project, it was deemed important to outline the current state of affairs in trade unions regarding the use of digital technologies from two perspectives:

- First, how technological processes, in particular digitization, impact employment, labour and working conditions, and similarly, how these have been affected by the pandemic.
- Second, how digitization affects the life of trade unions with regard to their relationship with their members, shop stewards and leaders as well as in relation to the way they store and manage member information and the security measures they put in place, taking into account the applicable regulations on the right to personal data confidentiality.

To this end, between June and September 2021, trade union leaders from organizations across various sectors were surveyed in order to find out their organizations’ views on these topics. Two questionnaires containing complementary information were designed around the above-mentioned topics: “New Technologies, Labour and Trade Unions”, and “Digital Technologies in Trade Union Management”.

The online questionnaires were either self-administered or administered by SinDigital team members during face-to-face interviews or remote videocalls.

The findings of this exploratory and descriptive research study presented herein provide an up-to-date picture of the level of digitization in some trade unions and sectors and serve as valuable inputs to reflect on and plan training activities to support trade unions in dealing with these challenges and getting ready for the “different futures of work”. At the same time, they help understand how digitization has penetrated trade union organizations, changing both their communication channels and the way of handling and preserving their own information.

2.1 ABOUT THE TRADE UNION ORGANIZATIONS SURVEYED

Twenty-seven (27) trade union organizations were surveyed (5 federations and 22 trade unions)⁷, which represent approximately 1.3 million workers across different sectors: commerce; construction; mining and quarrying; food production, brewing and malting, dairy production, car manufacturing, iron and steel and tobacco production; health care; audiovisual services; financial and tax services; public services, including post, power distribution, tele-

⁷ The “New Technologies, Labour and Trade Unions” survey was completed by 27 trade union organizations, whereas the “Digital Technologies in Trade Union Management” survey was completed by 15 organizations, one of which only filled in the latter.

communications and passenger transport; other community, social and personal services, such as services for rental and apartment buildings, sports, software and IT services, among others. The analysis was conducted on the basis of an intended sample size.

Table 1

Trade union organizations surveyed by economic sector

Economic sector	Trade unions
Total	27
Manufacturing industry	7
Health care and public services	6
Commerce and financial and tax services	3
Audiovisual services	3
Other community, social and personal services	3
Construction and mining and quarrying	2
Others	3

For the most part, these are nationwide organizations (82%), and to a lesser extent, there are some organizations with regional and provincial reach representing workers from the private sector (58%), the public sector (15%) or both sectors (27%). They have high membership rates: 65% of them have membership rates in excess of 70% of the sector's workforce, while 15% of them have membership rates between 40 and 69%.

The unit of analysis in both surveys is the trade union organization, and the questionnaires were completed by 38 representatives and workers of these organizations⁸. The total number of respondents exceeds the number of trade unions surveyed (27). This is because, on the one hand, there were more than one leader present in some interviews and, on the other, there were trade union organizations in which the surveys were completed by different individuals based on their profiles.

It was requested that the "New Technologies, Labour and Trade Unions" survey should be filled in by trade union leaders with comprehensive knowledge of the general employment situation in the sector, the type of technological change, its impact on employment and productivity levels, and the situation of the sector during the pandemic. Thus, 32% of respondents completing this survey were general secretaries, 55% were secretaries or deputy secretaries, assistant secretaries and area directors, and the remaining 13% were shop stewards and advisors, among others.

In contrast, the "Digital Technologies in Trade Union Management" survey could be filled in by individuals working in the field of information technology (IT) or with a background on IT systems management, digital data management and use of information and communication technologies (ICT) in trade union management. The survey was filled in by 13% IT development managers, 44% secretaries, deputy secretaries and assistant secretaries, 6% general secretaries, and 38% members with different positions and roles.

⁸ One "New Technologies, Labour and Trade Unions" questionnaire and one "Digital Technologies in Trade Union Management" questionnaire were completed per trade union organization at the most.

About 87% of respondents were males, with an average age of 53. When the demographics of the respondents of the “New Technologies, Labour and Trade Unions” survey were analyzed separately, the proportion of men was greater (90%) and the age was higher (55 on average) than in the “Digital Technologies in Trade Union Management” survey, where women’s participation rose to 19% and the average age dropped to 48.

3

TRADE UNIONS, NEW TECHNOLOGIES, LABOUR AND EMPLOYMENT

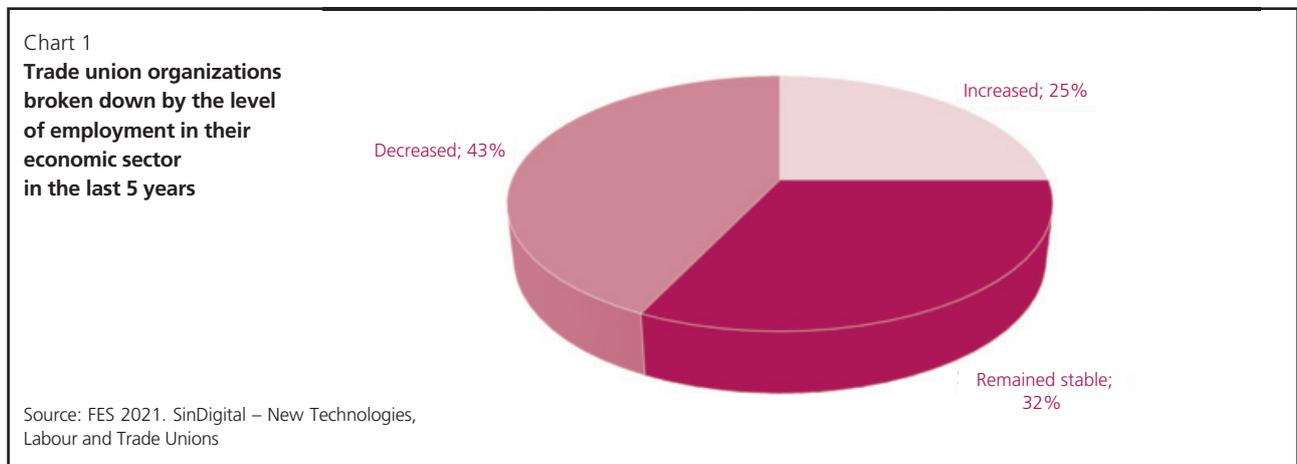
The “New Technologies, Labour and Trade Unions” questionnaire inquired about the overall employment situation over the last five years in the economic sector where the surveyed trade union organizations operated in and, in particular, about technological innovations in the various economic sectors and their potential impact, both on changing levels of employment and productivity, qualifications, and monitoring and surveillance of workers. It also addressed issues related to the pandemic and the use of technologies.

3.1 EMPLOYMENT AND TECHNOLOGY IN RECENT YEARS

Regarding the overall employment situation, 68% of the leaders interviewed said that there have been changes in the level of employment in the economic sector they cover, especially with a downward trend (43%).

All the economic sectors analyzed have seen decreasing employment levels in at least one subsector. Manufacturing operations associated with iron and steel production, tobacco production, dairy products and certain job positions in the automotive industry were particularly affected. The same trend was observed in construction as well as in mining and quarrying, some commercial areas and financial and tax services, audiovisual services linked to shows and entertainment, and some public services and community, social and personal services. At any rate, these dynamics should be followed-up in the coming months, once the effects of the pandemic have subsided.

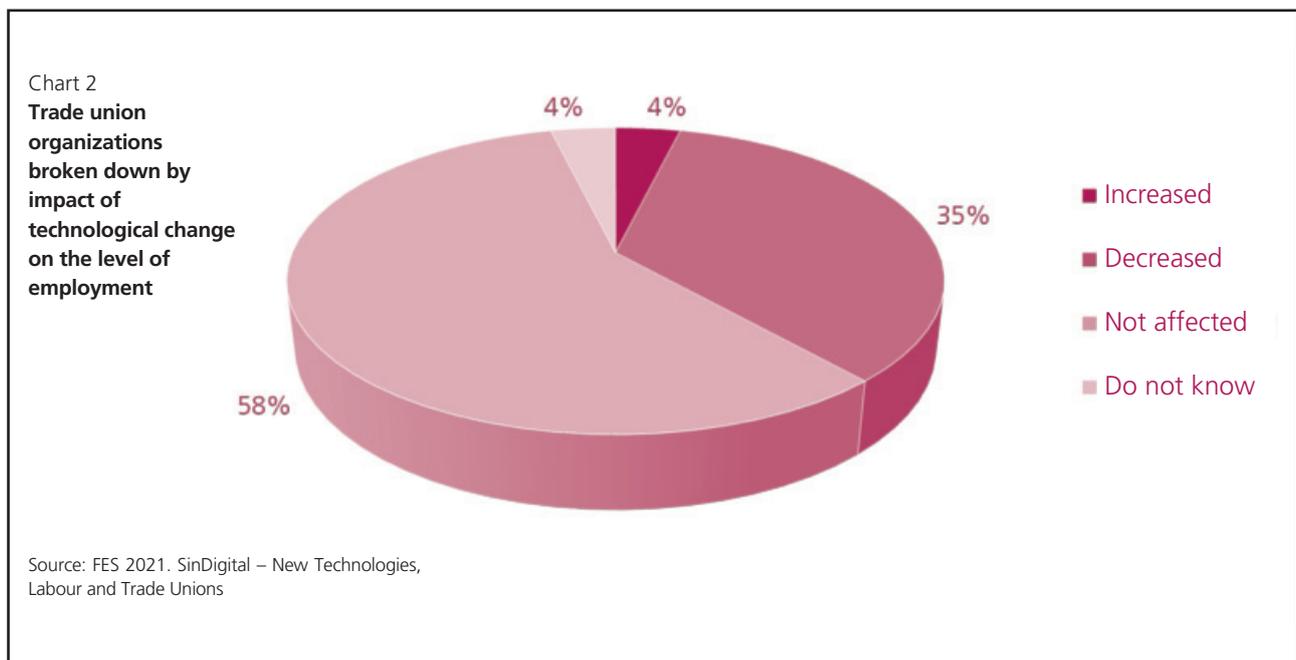
In contrast, an upward trend in employment has been observed only in some sectors, such as the automotive industry—in certain job positions—, in the brewing industry and in some public services such as communications and electrical power, as well as in janitorial services.



In line with the information provided by the trade union organizations surveyed, the net decrease in private sector employment in the period running from late 2015 to 2019 can be largely attributed to the drop in industrial employment (72% of the total). In turn, during the first few months of the pandemic there was a setback across the board in several economic sectors, such as construction, hotels and restaurants, commerce and industry, to mention a few.⁹

Overall, the level of employment has been decreasing significantly. Nonetheless, in the survey, when asked about the factors that could have influenced this process over the last five years, **most leaders (58%) said that employment levels were not affected by technology, whereas 35% associated its fall with technological advances.**

The most affected activities include most industrial sectors such as iron and steel manufacturing, several sectors linked to food, dairy and tobacco production; health care; telecommunications, and mining and quarrying. One trade union leader summarized the situation as follows: “All technological breakthroughs derived from the pandemic have accelerated the introduction of technology into our sectors, have impacted jobs and have paved the way for outsourcing and decentralization, that is, they have deregulated the activity and created resistance to job classification, leading to the emergence of a parallel market that favours casualization and offers less favourable wages and working conditions”.



In the sectors where changes to the employment dynamics were reported, respondents were also asked whether they could think of any other factors that could have had an influence: market conditions, the pandemic, and outsourcing or subcontracting. Both the increase and the decrease of employment levels were largely attributed to **market conditions and the pandemic**, mainly in large trade union organizations.

⁹ “Análisis de la dinámica laboral y empresarial (2015-2020): evolución de los principales indicadores durante la gestión de Cambiemos y los meses de impacto de la pandemia del covid 19” [Analyzing the labour and business dynamics (2015-2020): evolution of key indicators during the Cambiemos administration and in the first few months of the COVID-19 pandemic], CEPA. 26/7/2020, <https://centrocepa.com.ar/informes/265-analisis-de-la-dinamica-laboral-y-empresarial-2015-2020-evolucion-de-los-principales-indicadores-durante-la-gestion-de-cambiemos-y-los-meses-de-impacto-de-la-pandemia-del-covid-19>

Table 2
Factors that affect employment levels

Factor	The level of employment in the sector...		This factor did not affect the level of employment
	increased	decreased	
Market conditions	21%	32%	47%
COVID-19 pandemic	21%	32%	47%
Outsourcing/Subcontracting	11%	21%	68%

Market conditions: Some of the sectors where the level of employment decreased include areas of the manufacturing industry, such as iron and steel production; certain job positions and tasks in the automotive industry; certain areas of public services, such as telecommunications, and sectors linked to commercial activities, construction, and mining and quarrying. In contrast, the sectors that have been positively affected include IT services and building services, as well as activities associated with public services, as is the case of energy operations, since in both areas workers were considered as “essential workers”.

COVID-19 Pandemic: The pandemic is an event that cannot be ignored when analyzing the labour market in 2021. The national government issued, among other measures, Executive Order 329/2020 with the aim of protecting jobs by banning “unfair dismissals or termination of employment on grounds of lack or reduction of work and force majeure”.¹⁰ Trade unions mentioned the pandemic as an important factor causing a drop in the level of employment in iron and steel manufacturing, commerce, banking-related sectors, construction, some sectors of community, social and personal services, and those connected with audiovisual services such as shows and entertainment. In contrast, other “essential services” sectors saw an increase in employment as a result of the pandemic, namely: communications, public utilities, and community, social and personal services.

Outsourcing/Subcontracting: Although according to the trade union organizations surveyed outsourcing and/or subcontracting were the factors that influenced employment levels the least in the last five years, they are core dimensions of the problems affecting the world of work in general and in Latin America in particular.¹¹ Nevertheless, outsourcing and/or subcontracting contributed to an increase in the level of employment in the IT services sector.

3.2 TECHNOLOGICAL INNOVATIONS AND PRODUCTIVITY

Regarding productivity, 63% of the trade union leaders interviewed indicated that in the last five years there has been an increase in productivity as a result of technological innovations. This was observed in iron and steel production, the automotive industry, food and dairy production, brewing and malting.

¹⁰ Executive order 329/2020, Public Emergency, dated 31/3/2020, <http://servicios.infoleg.gob.ar/infolegInternet/anexos/335000-339999/335976/norma.htm>

¹¹ Trabajo y Derechos Humanos [Labour and Human Rights]. A publication by the Labour and Human Rights Observatory of the School of Social Sciences /University of Buenos Aires, August 2021, Year 6, issue 9.

The same was observed in public services such as communications and telecommunications, electrical power, and transport, as well as in some parts of commerce, financial and tax services, and community, social and personal services, as well as in construction, tobacco production and certain sectors of the national civil service and education. This has been confirmed mostly by medium- and large-sized organizations.

Thus, there has been an increase in productivity and, as official statistics indicate, a drop in the purchasing power of wages due to rising inflation, not to mention that they should be associated with better income distribution. We know it is difficult to improve living conditions in society and ensure a fairer distribution of income without productive growth. For this to happen, it is essential to have adequate labour institutions as well as workers and their representatives in a leading role in collective bargaining processes to achieve better working conditions, health care benefits and wages in line with the rising levels of productivity in companies.¹²

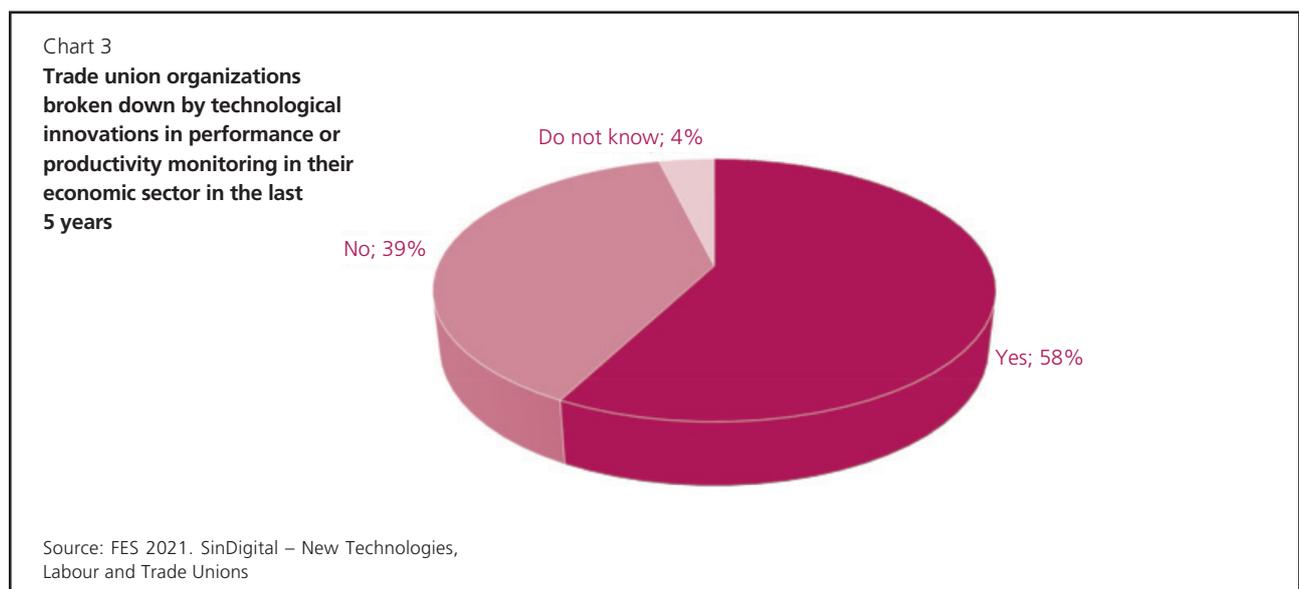
3.3 INTRODUCING DIGITAL TECHNOLOGIES INTO THE WORKPLACE

In order to examine the impact of new technologies and processes in the world of work we need to consider multiple dimensions, namely: the characteristics of the jobs, tasks and activities performed by workers; skills and qualifications; compensation levels, and the work organization formats that enable or hinder workers' personal and professional development.¹³

STRATEGIES APPLIED BY COMPANIES

New technologies were introduced and applied in the workplace not only to improve processes and products, but also to **monitor workers' performance and productivity**.

The leaders of 58% of the trade union organizations surveyed stated that new monitoring methods were introduced as a result of technological innovations, for instance: surveillance cameras, GPS, fingerprint and biometric data access, automated performance metrics, various tracking and surveillance software programs, integrated management systems, service time quantification, number of people served, quality surveys for awarding bonuses, etc.



12 Novick, Marta, Ana Catalano and Mariel Payo Esper, Trabajo y empleo, Argentina > futura [Work and Employment, the future Argentina], Foro Universitario del Futuro report, available at https://www.argentina.gob.ar/sites/default/files/trabajo_y_empleo.pdf

13 Roiter, Sonia, Cambio tecnológico y empleo: Aportes conceptuales y evidencia frente a la dinámica en curso [Technological Change and Employment: Conceptual Contributions and Evidence in light of the Ongoing Dynamics], CIECTI, Working Paper N° 15.1, 2019, available at http://www.ciecti.org.ar/wp-content/uploads/2019/01/DT15.1_v2.pdf

A greater trend towards performance and productivity tracking was reported by large trade union organizations. They indicated that they try “to prevent the installation of cameras at the workplace that may affect workers’ privacy” and “fight against spyware”, for instance. Trade unions are facing increasing challenges with the use of surveillance and tracking tools, as they may lead to potential violations of workers’ rights, rights they need to defend and regulate, such as:

- Biometrics (physical traits, voice, fingerprints) are sensitive data whose capture through digital devices may lend itself to intrusive monitoring, especially given the way they are obtained and used.
- The level of risk of infringement of the right to privacy requires legal restrictions to the use of information technology to warrant workers’ honour and personal and family privacy, as well as the full enjoyment of their fundamental rights, which are unwaiverable and must also be respected at work.
- This, in turn, implies ensuring the proper recording and storage of personal data as well as the duty of employers to inform workers of any control measures implemented to preserve the security of the company’s staff and assets.
- The information captured by surveillance and tracking tools cannot be used to hinder the enjoyment of trade union rights or for the purpose of discrimination.
- The consent given by workers will by no means suffice to alter these unwaiverable fundamental rights.
- In the case of telework, an individual’s image in places or moments of their private life or outside them will be considered an illegitimate invasion of their privacy.

Companies have the exclusive power to introduce and use technologies to organize their methods of production and work. However, technological innovations bring about some other advantages, such as maximizing good and service production costs and turnaround times, not only through production technology but also through surveillance technology¹⁴, which means that the time required to complete a task is based on defined parameters while breaks and social interactions at work are eliminated in the interest of productivity and in clear detriment of workers’ psychosocial health.

In this connection, Law 27,555 (which sets the legal framework for telework) states: “Monitoring systems used to protect the employer’s assets and information shall be implemented with trade union participation to safeguard the privacy of individuals working remotely and the privacy of their home”.¹⁵

This new form of involvement of trade unions implies a huge technical and political effort and requires trade union organizations to be equipped with the necessary tools to guarantee such rights.

SKILLS

Promoting continuing education or “lifelong learning” as well as recognizing workers’ knowledge and experiences are key factors for improving products and productive processes¹⁶. The changes in technical and professional knowledge and skills and the changes in the personal and work life of human beings do not happen at the same speed or in the same way. There are people who believe that high-skilled jobs are less likely to be

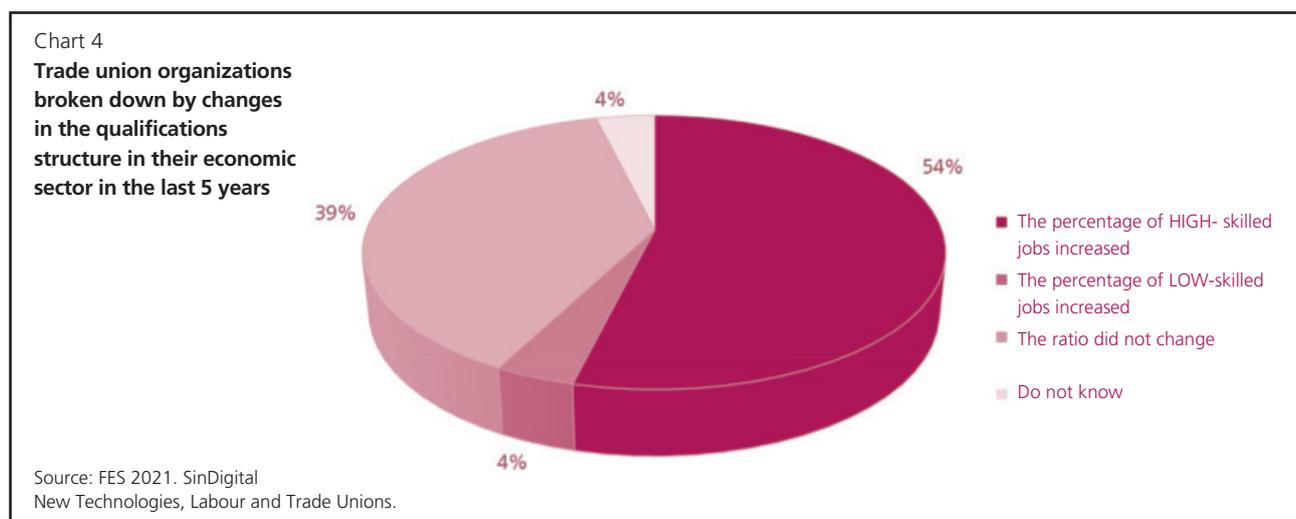
¹⁴ Zuboff, S., *La era del capitalismo de vigilancia* [The Age of Surveillance Capitalism], cit.

¹⁵ Art. 15, Law 27,555: passed on 30/7/2020; published in BO14/8/2020, <https://www.boletinoficial.gob.ar/detalleAviso/primera/233626/20200814>

¹⁶ Novicket al., cit.

automated than medium- or low-skilled jobs, as they are associated with less routine tasks and higher cognitive requirements. One hypothesis holds that the middle segment will eventually disappear and wage earners will become polarized.

Fifty-four percent (54%) of the trade union leaders said that the **percentage of high-skilled jobs increased**. Such was the case in 40% of the sectors included in the survey, such as tobacco extraction, storage and production; the automotive industry, food production, brewing and malting; public services associated with electrical power and telecommunications; commerce and some areas of financial and tax services; the audiovisual sector including film-making, animation and advertising; several community, social and personal services, such as janitorial services in buildings; non-profit and sports activities, and IT services; mining and quarrying, and some sectors of the national civil service and education.



When describing the increase in the level of required skills as a result of innovation, some trade union leaders mentioned the possibility of monetizing the change process: “Our organization is not afraid of technological change; it sees it as an opportunity to raise the level of qualifications and, therefore, raise working conditions. We are focusing on how to monetize technological change so that it will have a positive impact on workers’ wages and standards”; “technology has been useful to professionally train workers and these new skills have an impact on wages through collective bargaining”.

The skills currently sought after include digital skills; cognitive, interpersonal and socio-emotional skills, comprehension, transforming information into knowledge, conflict resolution and creativity development, to mention a few.

Jobs will entail systematically increasing complex tasks—even if they are still the same jobs—and will undergo constant technological changes. This implies that workers will need to acquire a new range of skills, abilities and competencies. Therefore, vocational training and continuing education become crucial to reach the required skill levels.

These demands urge us to devise diverse training and education strategies. The State needs to play an active role and work alongside institutions, civil society organizations and social partners to coordinate comprehensive continuing education policies.

TELEWORK

During the pandemic, employers implemented the home office modality in many of the sectors included in the survey, with the exception of construction, apartment buildings, mining and quarrying, transport and several industrial sectors such as tobacco extraction, storage and production, brewing and food production.

Due to the health emergency, with the support, effort and collaboration of trade union organizations, the home office modality was adopted in many workplaces within a “good faith” framework. Although trade unions admit that this work modality has come to stay and poses some challenges for industrial relations, they consider it necessary to include it in collective bargaining negotiations and ensure the protection of fundamental rights.

Trade unions with members in the public sector and IT services are among the organizations that had over 75% of their membership working under this modality. In contrast, less than 25% of workers worked remotely in the field of audiovisual communication and production, shows and entertainment, health care and industrial activities such as dairy production and iron and steel manufacturing.

It is important to note that in 90% of the cases there were no gender-based differences in the implementation of this modality. To a larger extent, the trade union leaders surveyed agree that working remotely is not so advisable except for health reasons. They say that distance is a negative factor for trade union life, since it causes workers to distance themselves from the organization and not get involved in conflict resolution. Moreover, it also forces organizations to make a greater effort to keep a roster of members and keep a fluent communication with them.

Some organizations admit that home office became an ally during the pandemic to avoid furloughs and wage reductions. Distance working was applied to certain activities and jobs that could afford it, but was not always complemented by the supply of the required IT equipment to workers. Connectivity issues at home were a hindrance often overcome only by the unequivocal will of workers to fulfil their duties in an isolated environment.^{17and18}

In this context, a large proportion of trade union organizations say that the ideal format would be a mixed or hybrid modality, which should contemplate the ability of those hired to do telework to return to the office, regulation of the right to digitally disconnect to avoid abusive working hours, and the provision of all the necessary office supplies and expense reimbursement. Likewise, they admit that monitoring and surveillance through digital devices may affect the rights of workers, so trade union organizations need to have technical advisors that can give advice on these complex issues, such as how to perform oversight of tracking software used by companies to ensure they will not infringe teleworkers’ right to privacy.¹⁹

These are topics for trade union action. There is also the need for trade union organizations to come up with new forms of distance communication with offsite workers that should be quite different from those used with workers based in traditional corporate premises.

17 Law 27,555 mentioned above was passed at the peak of the pandemic to regulate this working modality that had only been used in previous years by a tiny sector. It called upon trade union organizations to negotiate clauses on the so-called “new digital rights” based on the needs of each sector or business.

18 Most of the surveyed trade union organizations agree that this working modality has negative consequences for workers, since it renders the workplace invisible and keeps it far away from the physical location of the company’s staff. It also adds some other difficulties, such as an inadequate physical space in some households and the overlapping of (work and family) responsibilities, potentially longer working hours due to the need to be connected at all times, isolation potentially conducive to psychosocial disorders, and even an impact on wages, as is the case of sales representatives who lose their sales commission when selling online or when companies apply deduction for time not devoted to work due to home connectivity problems.

19 Estrella, María Josefina (coord.), Vanesa Núñez and Santiago Parrilla, “Los desafíos del teletrabajo” [The Challenges of Telework”] FES, June 2021, <http://library.fes.de/pdf-files/bueros/argentiniien/18110.pdf>

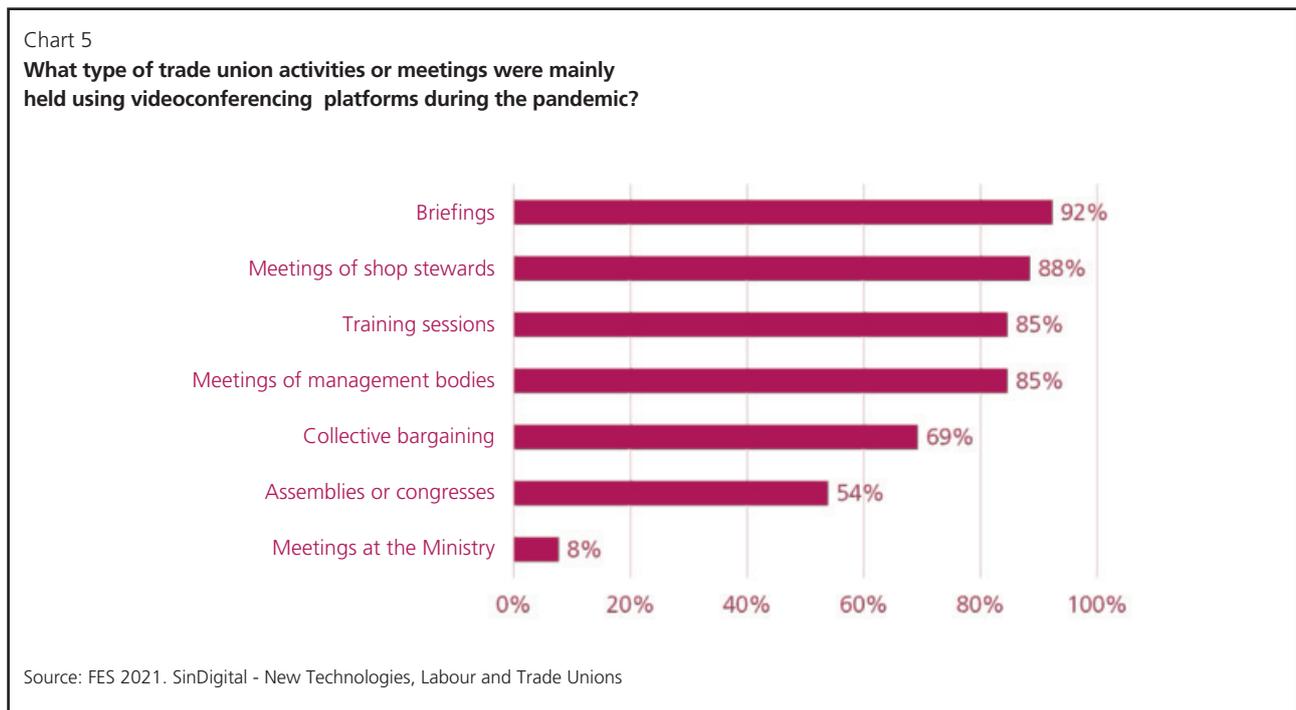
Trade union organizations will be facing much uncertainty in the near future with the application of this form of remote work. There is a regulatory framework that lays out the basic principles for its implementation. At the same time, specific issues that should be regulated separately according to the work organization needs in each sector are being deferred to collective bargaining now. The outcomes will depend on the social partners and their bargaining skills.

3.4 TRADE UNION STRATEGY: USING DIGITAL TECHNOLOGIES

Digital communications have become a key tool for trade unions’ internal communications. The trade union communication strategy has also been affected by the changes in the world of industrial relations. This situation has been exacerbated by the pandemic.

Trade unions reflect the new realities in their work organization and the survey results clearly confirm that. Videoconferencing has been used by all the organizations surveyed. This technology enabled them to carry on with their institutional discussions during the period of health-related restrictions. It was actively used for all manner of trade union meetings, communication with branches in the interior of the country, training, etc. Furthermore, it was used for collective bargaining.

Meanwhile, the Ministry of Labour, Employment and Social Security of Argentina used this kind of platform to convene its meetings and provide information on the requirements that virtual institutional meetings and assemblies should meet in order to be considered legal. In other words, it legitimated these initiatives.



Evaluating the Use of this Technology

Overall, the trade union organizations surveyed positively evaluated this experience as cohesive and useful. As a trade union leader put it, “it enabled us to keep in touch with leaders and the workers we represent at a time of confinement and confusion; we were with them in such difficult times”. They all agree that although these tools cannot replace the value of being there in person, they were useful to overcome the distancing imposed with the pandemic and enabled them to be in contact with shop stewards and keep their organizations up and running.

Trade union leaders are aware that there are new ways of communicating and they need to adapt to them, since they will continue to be used after the pandemic given their convenience, especially for information exchange and training.

Additionally, these technologies make it possible to overcome distances and convene urgent meetings with trade union leaders from other parts of the country without incurring travel and accommodation expenses, thus favouring nationwide participation. “It is useful because our colleagues from other parts of the country do not need to travel; this tool speeds up things and saves costs. In this context, technology makes management easier”, they say. As one of them said, “we used it to engage with our branches in the interior of the country and even create a women’s movement, and the virtual exchanges enabled us to meet everyone in the movement. We delivered several training sessions supported by the Ministry of Gender using this virtual technology”.

Trade union organizations have accepted and used virtual platforms for practical reasons. However, they highlight that in prospective terms, meeting in person is the basis of the trade union movement, as distance is a negative factor that causes workers to disconnect from their organizations and avoid getting involved in conflicts: trade union leaders must strive even harder to retain their membership.

The trade union leaders surveyed reflected on the consequences of digitization for their own structures, accepting that ICTs speed up organizing and enable them to take collective action in a context where the use of technological tools is the rule, where the intelligent use of members data may strengthen solidarity-based actions. Nevertheless, they know they need to adapt and that these new technologies improve management, although they also warn that they should be seen as a supplement to enhance communication and their operations, but they do not perceive them as a substitute for face-to-face communication, since they cannot be used to socialize, to make eye contact and use body language. Moreover, confidentiality can be lost and, sometimes, the flow of the meetings may be disrupted due to communication and/or connectivity issues. One of the interviewees summarized it as follows: “Virtual meetings helped us stay in touch with our shop stewards and colleagues, but face-to-face contact and meetings are still very important”.

By way of conclusion from the comments made by the trade union leaders, the use of digital technologies in trade unions has been viewed as a highly enriching experience from an organizational standpoint as it enabled them to do away with prejudice and overcome barriers to improve internal and external communication with the workers they represent.

3.5 A FEW COMMENTS AND THOUGHTS

Quite often, the trade union leaders interviewed highlighted the need to maintain a tripartite social dialogue; that is, among **trade union organizations, employers and the government**. Likewise, they raised the need to work jointly and create a virtuous cycle of science, technology and production, with job preservation in mind.

Although there are some conflicting views —though increasingly less— among those who highlight the advantages or disadvantages of introducing new technologies into the world of work, there is agreement on the need for regulation, new standards and laws, on the need to train workers so that they acquire new skills, and on the need for retraining for sustainable employment.

Although technology introduction seems to happen across the board, logically its formats and scope must be examined in depth as part of a multicausal analysis due to its heterogeneity, considering the specific context of each economic sector and the various tasks carried out by workers.

Among those who believe that innovations are advantageous, some are of the view that “we need to leverage what we were left from the pandemic. We need to master the use of these technologies because they allowed us to communicate with one another during confinement”.

Others perceive it as a circumstance that needs to be capitalized on in the interest of workers. “We see it as an opportunity to increase the level of qualifications and, therefore, improve working conditions. We are focusing on **how to monetize technological change so that it may have a positive impact** on workers’ wages and standards, managing the transition in their job positions”. New technologies can be used by trade union organizations for their internal operation and communications. “We need to consider using technology with all its applications and developments for the internal affairs of trade unions; as a labour movement, we need to step up to the challenge of embracing digitization and handling technological tools in order to take a quantum leap in the use of new technologies, both for the purpose of communication and for the organization’s proper operation”.

In contrast, respondents who highlight the disadvantages of new technology introduction cite **unemployment, outsourcing, informal work and impairment of working conditions** as its main downside. In this regard, trade union leaders raised their concern for job preservation in the present context, as the pandemic accelerated the introduction of technology in almost all activities, in some cases affecting jobs, favouring casualization and outsourcing, and deregulating the activity, thus hindering an adequate classification of workers, which leads to further informality and undermining of wages and working conditions.

At the same time, however, they mentioned the loss of face-to-face interactions and the potential elimination of jobs. “The advance of technology reduces in-person leadership and affects relations between employers and workers, raises concerns about technology-driven unemployment and the need to retrain workers so that they can stay in their jobs”.

4

INFORMATION MANAGEMENT IN TRADE UNIONS

This chapter will provide an overview of how workers' personal data is collected and managed within trade unions, from both a legal and technical standpoint. Data was gathered through digital surveys and a specific field study across trade unions based on their dual role: inside the trade union, **in terms of efficient processing of data within the organization**, and outside the trade union, **in terms of their active role in exercising their power as controllers of employers**.

The "Digital Technologies in Trade Union Management" survey gathered information on data processing practices and IT security. The results were subsumed and cross-checked with the current applicable legislation in order to have an accurate picture of data management in trade unions. It is essential for trade union organizations to be aware of, understand and incorporate such legislation into their medium- and long-term workplans so that they can negotiate the best protection for workers. Understanding the importance of this multilateral transformation and moving ahead as fast as possible is critical to ensuring that these technological and digital breakthroughs will be used to promote workers' rights.

At present, every organization and/or workplace activity, knowingly or inadvertently, is being transformed by multiple technological and digital developments that affect all aspects of their daily life. As discussed in the previous chapter, the transformation is already under way, and it is not enough just to warn trade unions that they cannot be indifferent to it.

Thus, the transformation that trade unions must undergo poses a dual challenge: on the one hand, they are called to engage in **(re)training** —or at least integrate digitization— into the actions and struggles of workers' representatives; and on the other hand, they are called to **rethink their methods, practices and internal needs when managing personal data** in light of digital developments.

In this dynamic and innovative context (both technically and normatively), undoubtedly the role of trade unions is twofold. Today, the regulatory juxtaposition that protects personal data forces workers' representatives to fulfil a double role: on the one hand, **as controllers of the collection and processing of workers' personal data by employers**, and, on the other, as **providers of the highest possible level of protection and security of the personal data that the organization has** for the performance of its functions.

Insofar as this heterogeneous multisectoral view is incorporated, trade union organizations will be able to draft advocacy and workplans consistent with their social purpose and their current needs.

Although the Employment Contracts Act, the ILO Conventions and Collective Bargaining Agreements continue to serve as the fundamental basis for defining various industrial relations, today it is important to include new administrative and regulatory instruments: the Personal Data Protection Act, resolutions of the Access to Public Information Agency, and the Telework Contract Legal Framework.

Along the same lines, taking into account all the instruments mentioned above, it would be beneficial for trade union organizations to develop internal management policies that guarantee that workers' personal data (both within and outside the trade union) will be managed in due form and within regulatory limits.

These policies are essential to prevent the use of workers' personal data in unfair commercial practices, abusive monitoring and surveillance systems or activities where data protection is neither justified nor guaranteed. In order to fully address this challenge, it is essential to understand the current regulatory juxtaposition and, from there, address workers' personal data management.

Working in parallel with all the relevant legal instruments should be the guiding principle for both processing personal data of trade union members and monitoring how employers handle the information of the workers in their payroll, whether unionized or non-unionized.

Addressing this challenge means, in addition, embracing the necessary technological transformations and including them in the trade union agenda in order to organize, schematize and, above all, train workers—both within and outside their unions—in these technical and regulatory issues. To this end, they need to play an active role, a role which today becomes both innovative and necessary.

In light of the vertiginous pace of technology development and the unfortunate, but real, stigma of casualization, it is difficult to envisage a trade union organization that may survive in the future in its fundamental role of protecting workers' rights without coming on board this new digital and regulatory reality in its daily activities.

That is why the next section will attempt to offer an update on this matter from this perspective as well as an approach to this new reality, its instruments and suggestions for proper implementation based on the data gathered in the above-mentioned survey (Digital Technologies in Trade Union Management).

4.1 GROWING TECHNOLOGY PENETRATION IN ARGENTINE TRADE UNION ORGANIZATIONS

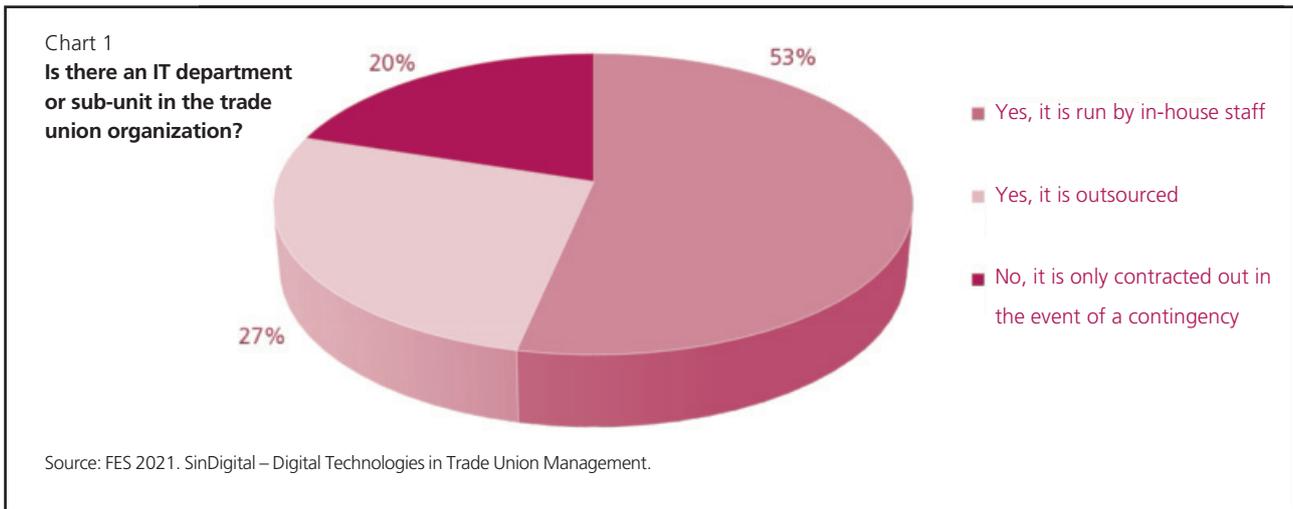
To delve into this new reality, the survey was designed as pluralistic as possible, so that the surveyed data would be heterogeneous and thus provide a more comprehensive view.

The survey was completed by 15 trade union organizations—87% were trade unions and 13% were federations—representing almost 800,000 workers. Of the total, 80% had national representation and 20% had local representation, covering workers from the public sector, the private sector, and both sectors. In turn, they operated in different economic sectors: the manufacturing industry (40%), health care (7%), public services (13%), construction (7%), and others.

It is essential to highlight the cross-cutting nature of this analysis, regardless of the type or size of organization under study. Just like our legislation, the focus of this study is so ubiquitous, that it surpasses the various difficulties that may arise in putting into practice the concepts described herein.

In order to reach a full understanding and leverage the use of this information, readers should also take into account the qualitative rather than the quantitative nature of the prerogative of being an individual holder of rights, as all citizens are, not just workers, regardless of the size of the trade union organization they belong to, their unionization rate or whether they are unionized or not.

• Main results

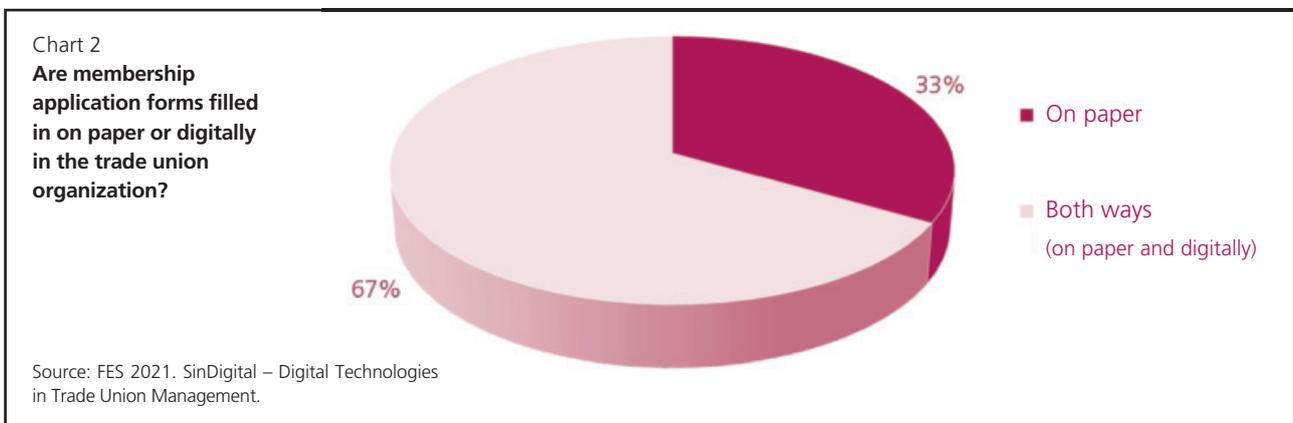


In order to understand what degree of technology penetration there is in the world of unions, it is necessary to find out what place digital development has within the organization. Based on the information gathered, the answer would be the following:

Fifty-three (53) percent of the trade unions surveyed have an IT department or a sub-unit managed by in-house staff. Initially, that figure is higher than expected, so the next question would be whether the percentage of workers involved in this task is significant in relation to the total membership base.

Moreover, it is worth considering the skills of the people involved in these tasks: level of complexity of the activities they carry out, effective management, level of support provided by the union for this task (budget, training, security), etc. In other words, it is important to know whether the department serves a practical use or has a merely formal presence.

Along the same lines, the survey focused on trade union organizations that outsource the services provided by the IT department (27%). It is useful to know which tasks are outsourced and how much monitoring the trade union organization does.

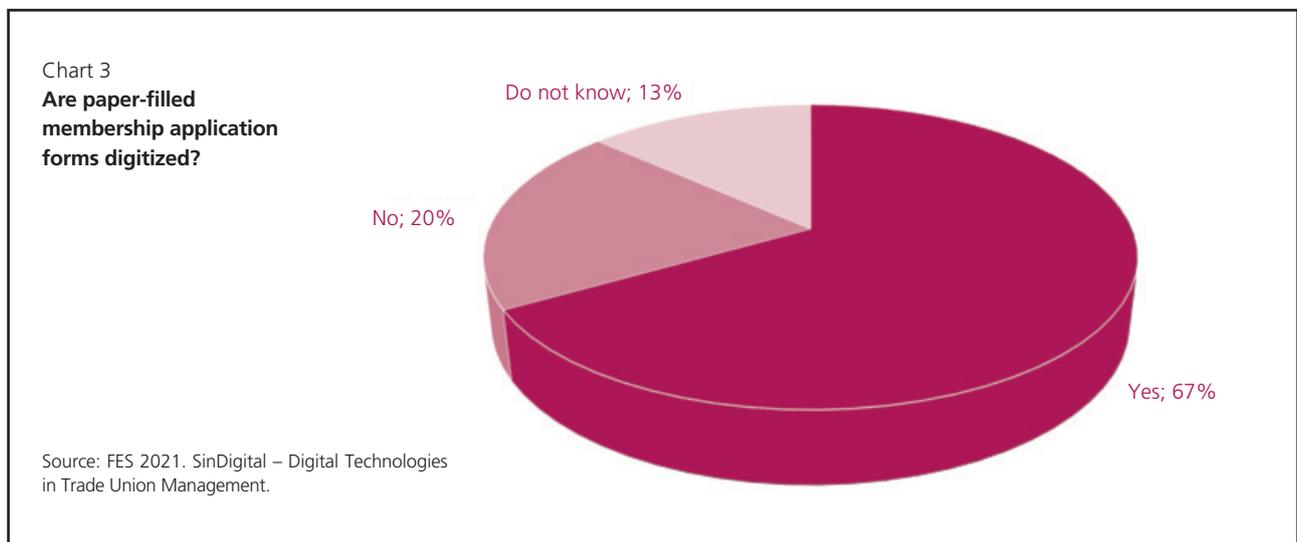


The question raised in Chart 2 aimed at finding out the level of digitization of member personal data from the moment they join the union. These are the reasons for this question:

- First, membership data belongs to the sensitive data category; therefore, by law, it must be protected.
- Second, by knowing the level of data digitization it is possible to know, and therefore plan, the scope for data processing in the interest of the organization.
- Third, by knowing the level of data digitization, the trade union organization can rely on more accurate information to draft a plan to optimize and guarantee the protection and security of sensitive data.

Based on the responses, 67% of trade union organizations fill in their membership application forms both on paper and digitally. The remaining 33% do it just on paper.

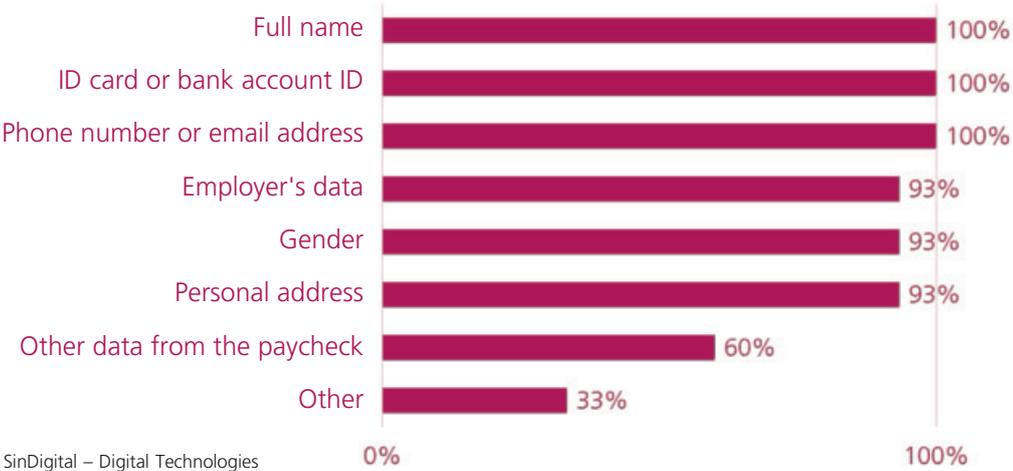
As indicated in Chart 3, 67% of the forms completed on paper in all trade union organizations are converted to a digital format afterwards.



The question in Chart 4 is qualitative. It is intended to assess the importance of stored data. The goal was to know which worker data was stored, for instance, wage information provided by employers or workers' address, and based on those indicators, weigh their use and processing and any related security practices.

Chart 4

What personal data does the trade union organization store/keep in a digital format (in an IT system)?

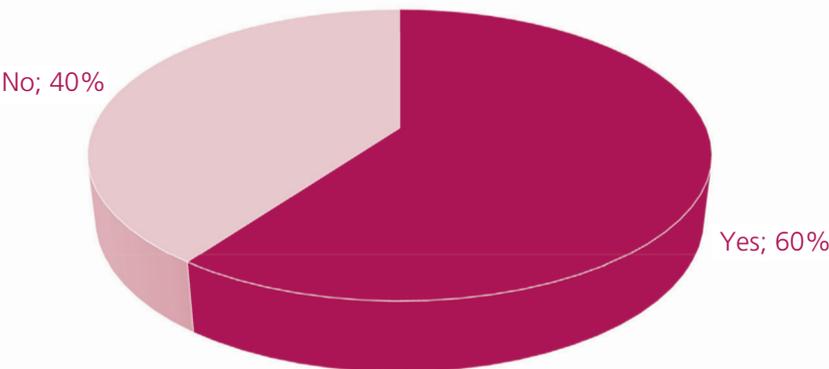


Source: FES 2021. SinDigital – Digital Technologies in Trade Union Management.

Given that under the Personal Data Protection Act membership data is considered sensitive data, there is an obligation to use and protect such data appropriately. Using such data for other purposes than those it was gathered for would constitute not only misuse but also a risk. It is not enough for the Personal Data Protection Act to provide for special protection of this data if such provisions are not complied with in unions' daily activities. The law can provide us with a potential legal instrument, but it could end up being enforced once harm to workers' rights has already been caused, and this is what needs to be avoided.

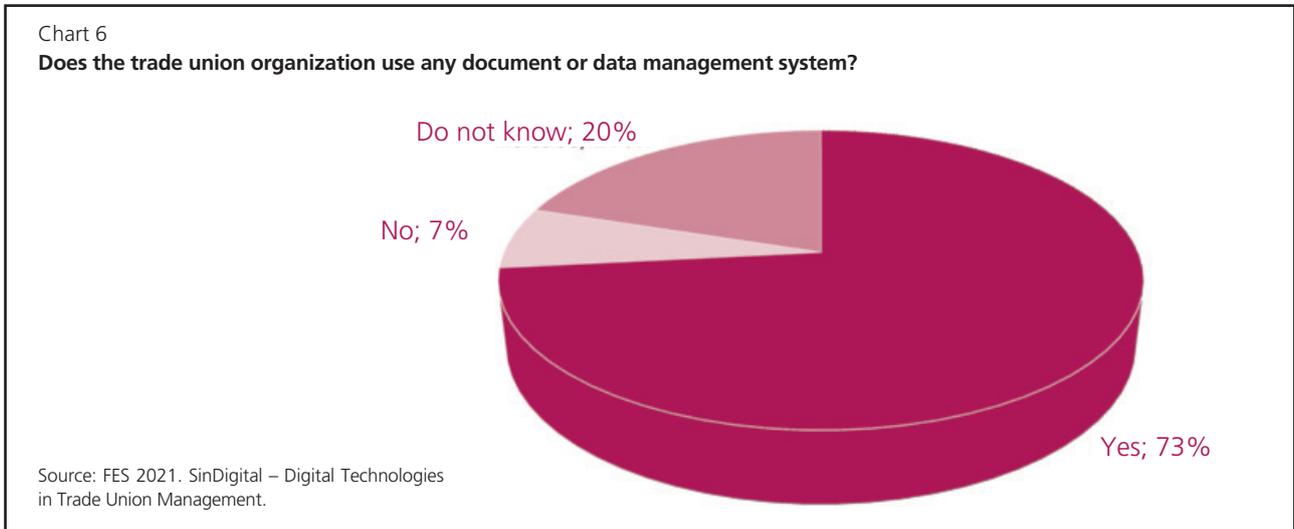
Chart 5

Does the trade union organization receive personal information on its members or other people from other organizations?



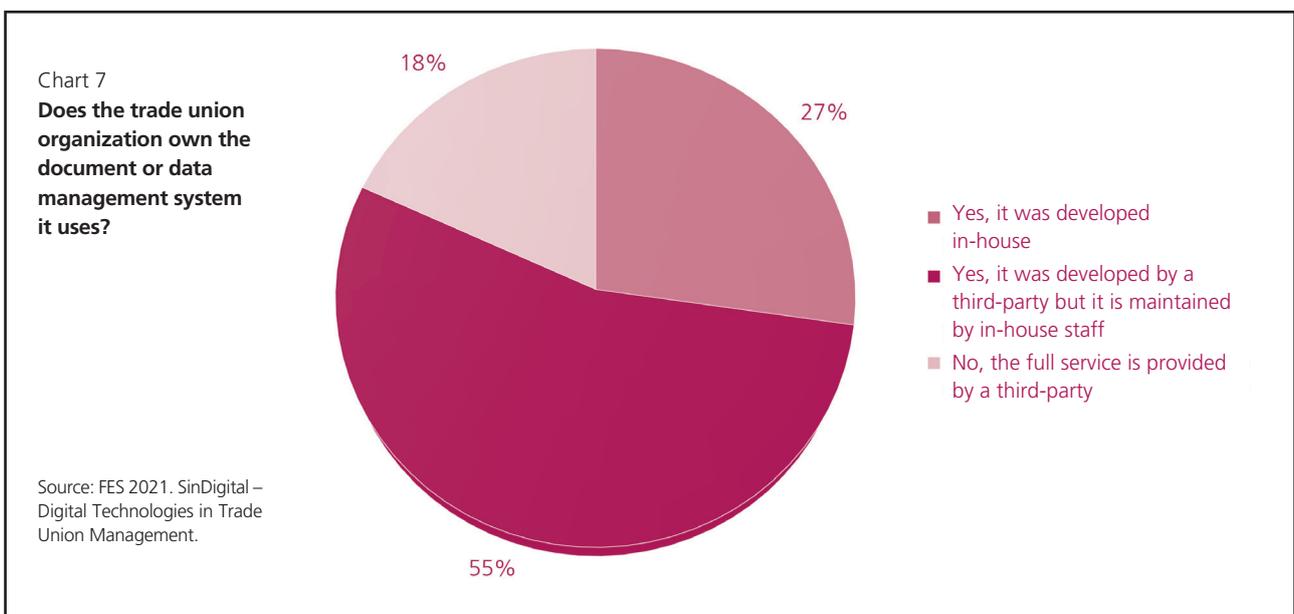
Source: FES 2021. SinDigital – Digital Technologies in Trade Union Management.

Out of all the trade union organizations surveyed, 73% of them use some type of document or data management system. It is still unknown whether they process and use such data effectively for relevant policy-making and organizational management purposes



Charts 6 and 7 show that more than half of that 73% using management systems have commissioned a third party to build the system, which is then maintained by union staff.

Around 27% of trade union organizations have developed their own in-house management system, while 18% have hired an external provider. Therefore, it can be stated that, at present, trade union organizations handle their IT systems and processes using a variety of approaches and technical media.



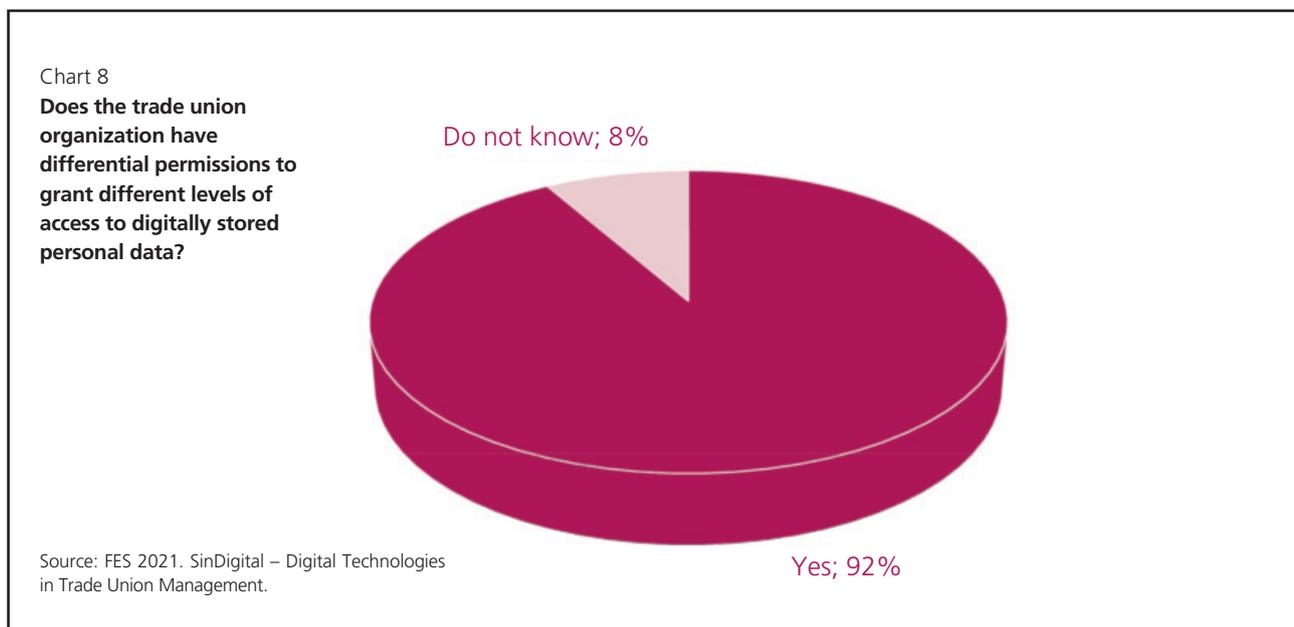
Regardless of the heterogeneity that may exist in terms of digital solutions and strategies available to address this situation, the responses gathered indicate that these matters are addressed differently by trade union organizations.

Only 18% totally delegate the development of a data management solution to a third-party provider who provides the full service; 55% have trained maintenance personnel and 27% use a solution fully developed in-house.

The evolution of this metric makes it possible to establish a trade union “in-house technological command” index. This indicator is at a reasonable level, since 83% of the trade unions surveyed are somewhat involved with their digital platform and, therefore, with the protection of personal membership data.

Differentiated credentials warrant data access granularity

It cannot be denied that collecting personal membership data, even that classified as sensitive data, is inherent to the operation of the trade union organization. In turn, however, this circumstance creates certain responsibilities for the organization, particularly the duty of providing security in accordance with the provisions contained in the set of data protection laws, which will be described next. As indicated in Chart 8, most trade union organizations are aware of this issue.



That is why there should be no discretionality regarding **who** can access the data, **why** it should be accessed; whether it is possible to guarantee **individualization** of those who access the data and why.

Workers’ personal data and, consequently, their privacy, are protected not only when there are secure and properly maintained IT systems in place but also when access to such data is restricted and done only when it is justified, based on the trade union’s specific management and processing needs for strictly necessary tasks.

Let us say, for instance, that any trade union organization may experience a digital intrusion situation: an attacker impersonates (that is, takes somebody else’s identity) a legitimate user and can thus access all the data available to that user in that organization. The same can happen in companies and governmental agencies.

Security requirements can be cumbersome: long passwords, two-factor authentication, VPN, to mention a few of the typical mitigation measures that highly exposed users can apply.

However, data access separation also allows for more granularity on the mechanisms: workers who are most exposed should have more validation measures. Thus, granular access control guarantees data usability in a secure manner.

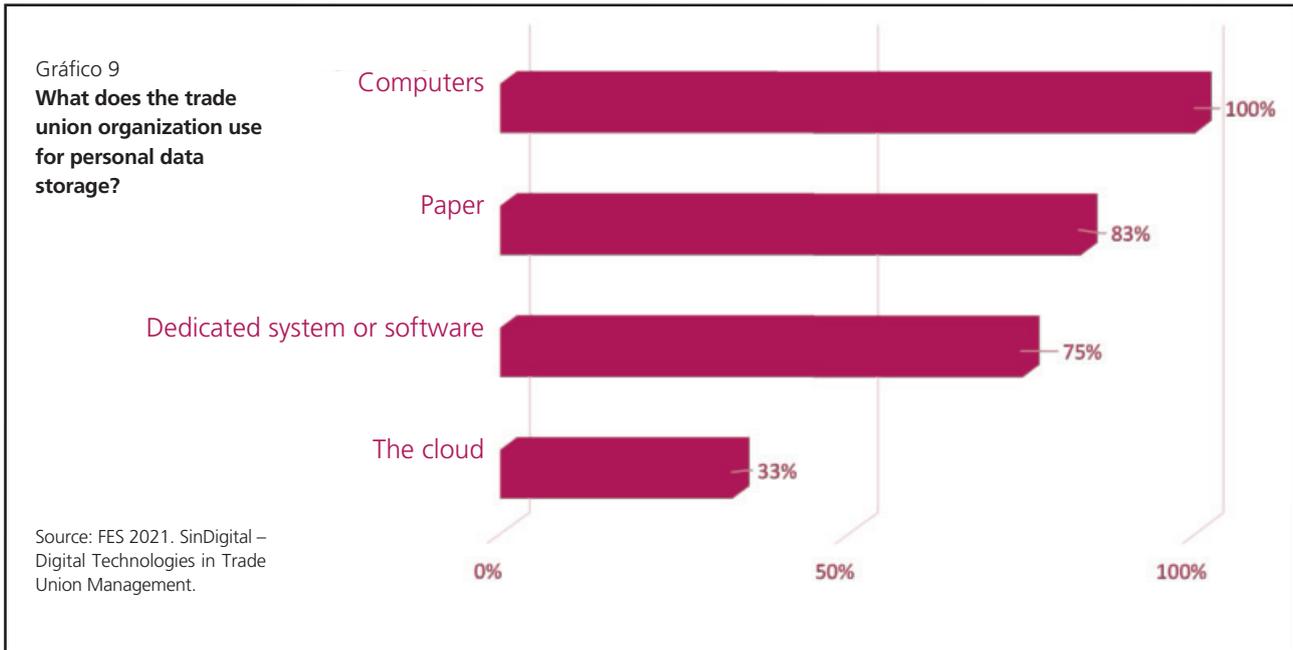
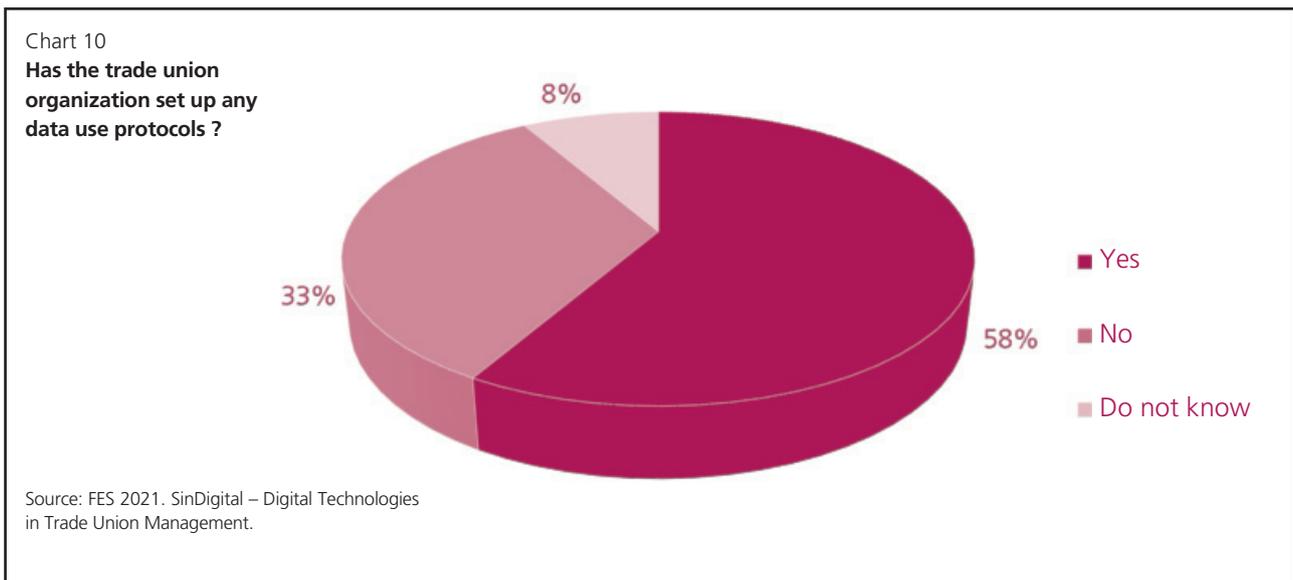


Chart 9 clearly shows that trade union organizations store workers’ personal data in computers or different IT systems. Each response option clearly generated a trade union responsibility. In the case of proprietary computers or IT systems under their stewardship, they have the duty of keeping them up to date and with the relevant security features, with individualized data access agents.

Trade union organizations that opted for full outsourcing, presumably, store such information in some kind of “cloud”. In such a case, it would be prudent/advisable to be aware of the provider’s security features for storing, accessing and backing up such data in the event of attacks or database leaks, as well as of its concrete storage and custody locations.



According to Chart 10, 58% of the trade union organizations surveyed have protocols in place for using stored data, 38% do not have any and 8% do not know.

Although it is encouraging to know that more than half of the trade union organizations understand that they need an adequate protocol to use the data they store, the scope of the survey did not enable us to confirm whether these protocols, which are presumably well intended, are sufficient, consistent with the volume of stored data and efficient to deal with sensitive data. At present, this result is good, though it is not sufficient for dealing with the complexity added to industrial relations by digitization.

As for the rest, it is important for trade union organizations to deliver training and invest in technology and promotion to ensure personal data protection in their dual role as employers' controllers and security providers for the data stored by them.

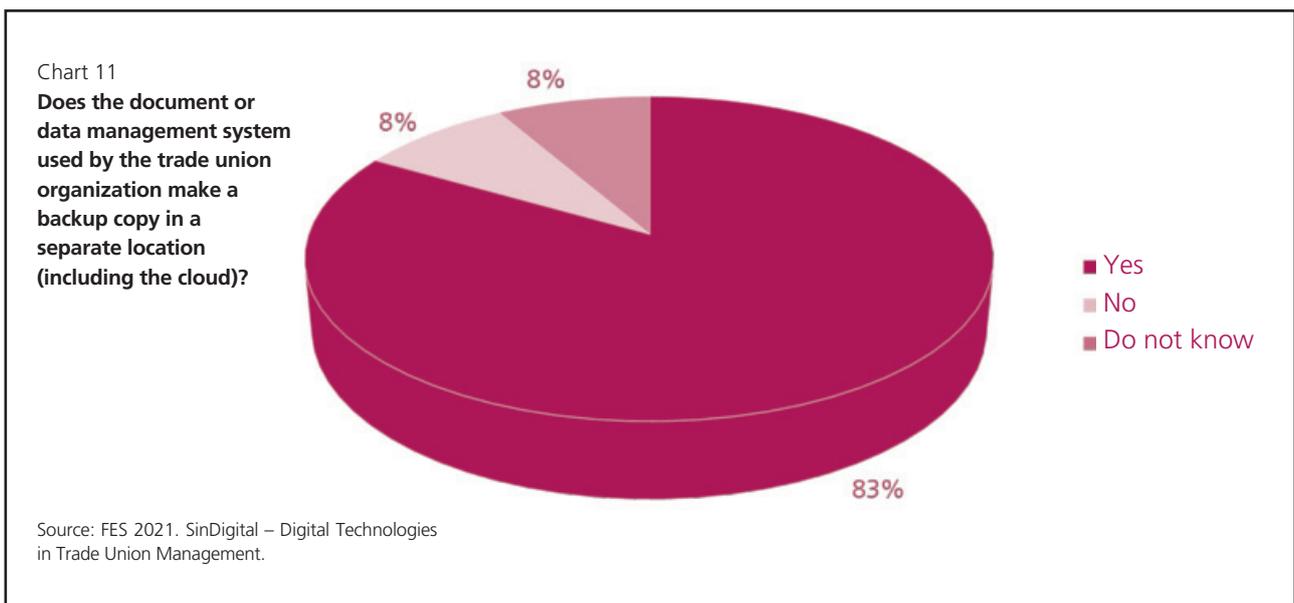


Chart 11 shows that almost all the trade union organizations make backup copies of the data they store. The backup policy ensures that they will be able to recover in the event of a logical (software) or physical incident. That is why it is important to store/keep this data in different locations.

From a technological point of view, there are different ways of running these backup copies. Based on the survey characteristics, there is no specification regarding the way these copies should be created, which means that organizations will use the most common—and troublesome—method: the cloud.

The option of third-party distributed computing, better known as “the cloud”, is appealing due to its ease of use, entry price and flexibility. However, the risk on the Internet is always higher; the level of control in the cloud will never be the same as over a physical drive. These storage clouds are also potential targets for vulnerabilities, server failures and concrete attacks.

Last but not least, this method effectively puts data in the hands of third parties. The doubt still exists whether when using this data trade union organizations know where the information will be stored, how it will be used, whether it will be used for a different purpose, which security measures are in place, how long the data will be retained after service agreement termination, etc. Depending on the type of cryptography used (none initially), this may be an infringement to both the Personal Data Protection Act and basic constitutional rights. That is why it is advisable for trade union organizations to make a backup copy on a physical drive in addition to the copy stored in the cloud in order to keep the data safe.

4.2 OVERVIEW OF CURRENT IT MANAGEMENT AND PREVENTION CAPABILITIES

By looking at the charts prepared on the basis of the information gathered, it can be stated that 71% of workers' personal data collected at the time of affiliation to the union is digitized. Half of this data is processed by a dedicated IT department, and 50% of the trade union organizations surveyed have an IT Security officer. Of all the organizations that receive workers' personal data, 61% of them do not currently have a sufficiently secure protocol in place.

These percentages depict a reality that compels us to focus on the following aspects: trade union organizations, just like religious and political associations, may have filing systems, databanks or records with information that may directly or indirectly reveal sensitive data of their members, as provided for by article 7 of Law 25,326 on Personal Data Protection. Thus, it would be prudent for them to entrust specific people with the responsibility of protecting such databases and to have adequate security protocols in place.

The outbreak of COVID-19 forced governments to implement social isolation measures, leading to an unprecedented increase in home office work. Under those circumstances, most labour, public and private organizations had to rely on the digital tools they had available. Those that had little or no digital infrastructure in place felt compelled to secure the availability of these resources urgently and, consequently, most of them had no other option but to resort to the hegemonic platforms: Google, Microsoft and Zoom, among others.

Although the surveys show a clear trend towards digital storage of workers' personal data as all the respondents use computer-based documents to store personal information, only 47.6% of the respondents admit that there is no specific reference to any consent given in their membership application form as required by law²⁰.

If these issues are being strongly emphasized it is because we consider them crucial. Security protocols are not only useful for the internal operation of the trade union organization but also for its control outside its own premises. Having a protocol in place that includes making backup copies contributes to keeping the information secure.

Indeed, how to define access policies, criticality levels and, therefore, minimum authentication and encryption requirements will depend on a formal mapping of data criticality.

In this regard, 76.2% of the trade unions surveyed have an IT department or sub-unit run by own or subcontracted personnel. However, 50% have said that they *do not have a person designated as IT security officer*. The lack of such a role —of utmost importance in the new regulatory environment— undermines the operation of the trade union organization, both internally and externally. Requirements need to be fulfilled both inside and outside the organization, keeping an eye on the employer's actions to protect workers and considering any operational implications that could eventually lead to, among other things, the leak and/or loss of necessary information for basic and routine trade union activities. Outside the organization, given that this is sensitive information according to the applicable legislation and case law, these potential leaks and/or losses can also unintentionally cause harm to the people they represent.

As to backup copies, 75% of respondents have said that they make separate backup copies and use third-party storage media. The "cloud" storage service implies that a company or organization makes its technological resources available to various clients, among which trade union organizations are often included. In this regard, it is important to note that in these cases, the technological infrastructure is not under the ownership of the trade union organization.

20 To fulfill the affiliation process, workers have to fill in a membership application form with personal data as required by the trade union's constitution. The form usually includes an express authorization to the employer to withhold the union dues. Affiliations are recorded in books signed by the Ministry of Labour, Employment and Social Security, and must comply with the Ministry's requirements.

With this analysis, we try to encourage trade union organizations not only to be aware of the current regulations but also to gain deeper insight into their requirements, consequences and, above all, the broad possibilities for gradually implementing these practices so that they can keep up to date with digital and regulatory developments.

Although the technical teams are quite small, they seem to be able to successfully meet both the security and development demands. With a view to improving the digital trade union reality, it would be interesting for the dedicated department within the trade union organization to study and incorporate granular access permissions, deployed cryptographic credentials —both for offline data (in a drive) and online data (in the database), and the scope and warranty of these various permissions in different layers: logical (i.e., management software or database) or cryptographic (i.e. there are people with special keys who have exclusive access to data).

Moreover, it would be interesting to put trade union infrastructure to a test, by running test scenarios simulating data disaster situations (measuring quality, completeness and recovery times) and security incidents (measuring detection and response times in different attack scenarios).

4.3 CURRENT NATIONAL LEGISLATION AND CASE LAW ON PERSONAL DATA AND DIGITAL RIGHTS

In our country, every work relationship is primarily governed by the Employment Contracts Act and relevant collective bargaining agreements, which deal with protections based on constitutional guarantees.

As mentioned above, these are not the only rules and regulations governing labour relations today, particularly on digital matters. In this section, we will outline these rules and regulations and examine the resulting rights and responsibilities for trade union organizations.

4.3.1 DOMESTIC LAWS

Employment Contracts Act (ECA)²¹

The current ECA establishes a series of principles, powers and limits applicable to labour relations. A group of articles grants employers the power to organize and run the company and sets limits on those powers to manage this asymmetric power relationship between employers and workers. These powers include the employer's right to use personal data required to execute a given employment contract, although some limits apply.

- **Article 17:** it forbids any type of discrimination against workers on the grounds of trade union activity.
- **Article 70:** it establishes that monitoring systems intended to protect the employer's property must safeguard workers' dignity. This article, originally contained in Act 20,744 passed in 1976, is more than forty years old and obviously does not refer to our current digital reality, but it is useful to note that the limits to the controls than an employer can have over its workers have always existed. Along the same lines, article 71 obliges the employer to keep workers informed of these controls and their scope.

We will later see how the recent Telework Act and its regulatory decree apply this limit in a similar fashion to teleworkers.

- **Title II, chapter VIII, unnumbered articles (3 - 5 following art. 89):** they impose the obligation on the employer to train workers to deal with advances in the way of doing tasks and with new technologies. Trade unions have the right to be informed about this training as necessary or request it if it is not provided. This is reflected in the recent legislation.

²¹ The current text may be found at <https://www.argentina.gob.ar/normativa/nacional/ley-20744-25552/actualizacion>

Note: given the time elapsed since the drafting of the ECA, note that article 59 refers to digital printing and makes no reference to any other procedure.

Personal Data Protection Act (PDPA)²²

Although this law is not exclusive to labour relations, the rights and obligations arising from it also apply to the parties to an employment contract. Indeed, these are added to other rights and obligations specific to this kind of relationships in order to provide higher protection to workers.

- **Article 2:** this article contains the definitions for the terms used in the law. *Personal data* means information of any kind referred to certain or ascertainable persons; *sensitive data* is personal data revealing, among other things, trade union membership.
- **Article 3:** when making reference to databases, including those created by employers, this article determines that they will be lawful provided they are duly registered (with the Access to Public Information Agency – National Database Registry).
- **Article 5:** consent is perhaps one of the essential aspects when creating a lawful database. To that end, whoever collects the data must have the express, free and informed consent from the data subject.

Although this article, in paragraph 2 d), removes the consent requirement for data required to execute a contractual relationship, this exemption is limited to that instance. The trade union organization receives data for the contractual process of trade union membership. Any other piece of data that is not necessary for the development or compliance with this relationship, or that is not treated exclusively for those purposes, must be obtained with the express, free and informed consent from the data subject.

- **Article 7:** when referring to sensitive data in particular, the law states that nobody can be compelled to provide it; those who provided sensitive data may withdraw their consent; its collection and processing can only be done as authorized by law and data subjects must remain anonymous. Creating files with this sensitive data is forbidden.

Paragraph 3 states that this prohibition shall not apply, among others, to labour, political and religious organizations; their power to keep sensitive data files implies a responsibility to use such data and safeguard it against third parties.

The constitutional right to privacy should also be observed, in the understanding that it is pivotal to this collection of rules that protect the personal data of workers as such. They are precisely the constitutional guarantees that protect us in every dimension of our civic life, including both our work life and our personal life.

Besides the above-mentioned laws and regulations, there are many others that establish rules about personal data and its processing: the file or database manager should apply the necessary technical and organizational measures to ensure security and confidentiality; those that are involved in data processing should comply with the duty of professional secrecy; the files must be registered as required by law, with the data required by the PDPA about the individuals having access to them; the international transfer of personal data should be conducted only when the same appropriate levels of protection are ensured, etc.

²² Law 25,326 on Personal Data Protection, passed on 10/4/2000; partially signed into law on 10/30/2000; available at <http://servicios.infoleg.gob.ar/infolegInternet/anexos/60000-64999/64790/norma.htm>

Telework Act

Law 27,555, which came into force on 1 April 2021, regulates the telework modality in our country. Its articles have been incorporated into Chapter VI of the Employment Contracts Act.

With reference to the topic under analysis here, article 4 states that any platform and/or software used by teleworkers shall only be used during working hours. The goal here is to prevent the violation of workers' privacy and to protect their right to digitally disconnect.

In order to protect workers' right to privacy and ensure proper rest periods, article 5 provides that teleworkers shall not receive communications by any means –not even technological means— outside working hours.

The employer must provide the necessary technical equipment and assume their cost and compensate any personal expenses incurred by the teleworker.

The law also mentions, in line with the ILO Code of Practice²³, that teleworkers have the same collective rights and the same union representation applicable to the activity in which they provide services.

One of the most relevant aspects of this law for our purposes is contained in article 15, which establishes that the monitoring systems used to protect the workers' assets and information shall not violate the worker's privacy or the privacy of their home and there shall be union participation in order to safeguard compliance. Articles 17 and 18 follow the same line.

Regulatory decree: it is important to note that this law's regulatory decree, in articles 15 and 18, assigns an active and fundamental role to trade union organizations. When establishing monitoring and surveillance systems on the property granted by the employer to the teleworker, the decree allows the trade union organization to play a role as controller of the worker's right to privacy, by conducting joint audits –legal and technical— on these systems before they are implemented, thus ensuring process and data confidentiality.

4.3.2 MAIN INTERNATIONAL MODELS

Code of Practice on the Protection of Workers' Personal Data - ILO24

Since 1997, this Code of Practice has been providing guidance for a healthy collection and processing of workers' personal data for a potential or actual employment contract in the private or public sector.

We will briefly mention some of the most relevant recommendations: the term "processing" includes any form of use of a worker's personal data; the term "worker" includes applicants as well as current and former workers.

The Code also clearly states that the data subject to processing by employers shall only be that related to the employment relationship. Several of the recommendations have already been mentioned when discussing our legislation. Therefore, we will only mention those that are critical: the code of practice states that data in computer or automated systems shall never be used to monitor the workers' behaviour.

²³ Code of practice on the Protection of Workers' Personal Data – ILO. Available at <https://clea.edu.mx/biblioteca/files/original/baf1d6fb74f868801af5c2f74a021c68.pdf>

²⁴ Available at <https://clea.edu.mx/biblioteca/files/original/baf1d6fb74f868801af5c2f74a021c68.pdf>

It also states that the data collected through electronic surveillance methods shall never be the only way to assess workers' performance; workers shall be informed of the surveillance methods before their implementation and these methods shall be in conformity with the legislation in force.

Employers collecting personal data should provide workers with the proper guarantee as to the security of its collection, processing and access.

Consent: we have already made reference to this aspect, but the code of practice sheds more light on this concept. When requesting workers' personal data –beyond the data required for the employment contract— the employer shall: obtain workers' consent; explain the scope of the consent in a clear language; ensure that workers have understood the concept; inform workers that they may refuse to give this consent without any explanation and that they may revoke this consent at any time without any explanation.

Furthermore, it makes reference to workers' representatives, stating that they should also be informed and consulted on the data collected and the monitoring and electronic surveillance systems that workers are subject to.

We recommend reading this code of practice²⁵ for its valuable content and straightforward vocabulary. Although this document is not binding in Argentina, the ILO documents are observed by our country and they have been occasionally used as a reference for our current legislation or as case law on this matter.

4.3.3 NATIONAL CASE LAW

The guidelines in the current legislation have been followed in the decisions made by the National Labour Court of Appeals, thus ensuring the legal protection of workers' data, both in the public and private sectors. This is specifically true in the "Pavolotzki"²⁶ case, where, based on the articles on the Employment Contracts Act and the Personal Data Protection Act, the court has ordered a private company to remove a monitoring and surveillance system used on workers (sales representatives), for considering that it violated their privacy, it did not produce specific improvements in the work activity itself and it exceeded the organization and management powers granted by the Employment Contracts Act without any justification. **Furthermore, and thus the importance of consistent rules and regulations, the decision is also based on the ILO Code of Practice for the Protection of Workers' Personal Data.**

Along the same lines, in the "UTE"²⁷ case the Court ordered the Government of the City of Buenos Aires to ensure that the information system used for teacher registration would not request information pertaining to their privacy as a condition for access. The court founded its decision mainly on articles 141, 148 and 150 of the Civil Code and article 2 of the Personal Data Protection Act. The court considered that the City Government was violating the fundamental rights of the teachers in the city jurisdiction since, by conditioning their registration in that manner, the government had access to personal and private data and information beyond the limits of the law. This would have violated the workers' privacy against constitutional guarantees.

²⁵ Available at https://www.ilo.org/wcmsp5/groups/public/—ed_protect/—protrav/—safework/documents/normativeinstrument/wcms_112625.pdf

²⁶ Case before the National Labour Court of Appeals, Courtroom IX, 10/7/2015, "Pavolotzki, Claudio y otros V. Fischer Argentina SA", available at <https://jurisprudencia.mpd.gov.ar/Jurisprudencia/Pavolotzki%20Claudio%20y%20otros%20c.%20Fischer%20Argentina%20SA.pdf>

²⁷ Case before the Administrative Court of the City of Buenos Aires, Courtroom N° 6, Secr. 12, 9/8/2016, "López, Eduardo Marcelo (UTE) v. Gobierno de la Ciudad de Buenos Aires s/amparo", available at <https://cpdp.defensoria.org.ar/wp-content/uploads/sites/4/2017/10/Amparo-UTE-Gallardo-9-Agosto-2016.pdf>

Against this backdrop, trade unions are left to play a leading role in the protection of workers' privacy, and it should make us ponder on the specific obligations the law imposes on trade unions in terms of the protection of the data collected by employers.

Likewise, in the ruling on the "Instituto PATRIA" case of Division L of the Civil Court of Appeals²⁸—filed by the Instituto PATRIA following the demand of the Inspection Board of Legal Entities (IGJ) to submit their roster of members to avoid the application of the corresponding penalties—, the plaintiff founded its lack of submission of the membership roster on two main grounds: first, the fact that the book contained sensitive data that revealed the political affiliation of members, and second, that the institution did not have the members' consent to share those data. The Court of Appeals reversed the IGJ's decision and thus released Instituto PATRIA from the obligation of submitting the roster. The decision was mainly based on the Personal Data Protection Act and its regulation, as well as on the National Constitution.

The court explained its decision by stating that the rule prohibits the collection of sensitive data and establishes as a general principle that nobody can be forced to provide such data. This type of information might only be provided with the express consent of the data subject and where there is a legitimate interest between the parties. Failure to meet these conditions, that is, the lack of consent and legitimate interest, makes both parties – the party sharing the information and the party receiving it— severally liable.

The court also mentioned that the Institute has a clear political affiliation, so it would reveal the members' ideology and thus violate constitutional rights and the rights enshrined in international treaties.

4.4 WHERE SHOULD WE START? IT AND DATA PROTECTION SYSTEMS WITHIN TRADE UNION ORGANIZATIONS

Firstly, trade union organizations need to be aware of the critical importance for them to embrace and swiftly implement digital technologies for their own activities. Secondly, once digitization is actually incorporated into trade union activities, they need to support it through **technological innovation and training**. Thirdly, they need to be aware of the relevant legislation governing workers' personal data, its scope and application. Finally, they should implement such legislation rigorously and promptly.

As far as internal management of workers' personal data—including sensitive data—is concerned, it seems timely to make a few recommendations to offer some guidance in this regard:

- Include the explicit or informed consent request form when collecting workers' data at the beginning of the affiliation process if the information requested should exceed that required for such procedure.
- Allocate human and financial resources so that duly trained trade union representatives can be entrusted with the responsibility of looking after the databases.
- Be legally and technically acquainted with the terms and conditions of any third-party agreement for database technical support.
- Identify, within each trade union organization, the representatives that will have access to this information and set clear limits to its use and processing.

²⁸ Case before the Civil Court of Appeals, Courtroom I, 24/5/2018, "Instituto Patria Pensamiento Acción y Trabajo para la Inclusión Americana Asociación Civil v. I.G.J.", available at <https://cpdp.defensoria.org.ar/wp-content/uploads/sites/4/2017/10/Fallo-Instituto-Patria.pdf>

- Create security protocols.
- And most importantly, train trade union organizations and their representatives so that they can claim all these valid rights in collective bargaining negotiations to request and agree on the appropriate terms to protect workers' personal data.

Trade union organizations are faced with **the challenge of dealing with the introduction of new technologies used for production and monitoring and surveillance purposes. Such introduction causes an ongoing dynamic transformation** both in the workplace and within trade union organizations. This raises the need for **changes within organizations and their structures** to guarantee their functioning and, therefore, their existence in a digital world undergoing constant technological and organizational recycling.

Consequently, it is important to ponder on the **potential advantages and limitations** of the policies adopted by trade unions. In light of the new technologies, trade union organizations need to embrace these changes by taking **preventive and strategic action** in relation to these transformations and new requirements for organizations.

Some of the strategies used to embrace technological change show that trade unions are also going through a transformation to fight for new rights in this new digital space, although this approach is not yet widespread. Indeed, technology as a means to integrate devices has an impact on work organization as well as on monitoring and surveillance.

The pandemic made it possible for trade union organizations to understand that technological and legal innovations bring about changes that may also be managed, or even led, by the labour movement.

Moreover, the pandemic brought social partners closer together to jointly face these unprecedented challenges. That same synergy could be achieved with regard to technological change through collective bargaining, which is the creative and solidarity-based setting where decent work can be defended in light of an economy that is constantly posing new challenges.

This marks a turning point in trade union policy design. Such transformations are far from limiting their effects to the reshaping and rethinking of workspaces; the new surveillance and monitoring methods also raise the need to rethink the strategies and designs of our trade union organizations. And that is because, regardless of the foreseeable consequences of these changes for the various trade union organizations, the particular characteristics of this technological process call for, necessarily, leadership discussion and reflection in order to identify the different political meanings among multiple available strategies.

Otherwise we would run the risk of silencing urgent discussions, in the name of efficiency and the unavoidable, about the role of trade unions in the remainder of the 21st century. Along these lines, enhancing the discussion on the implicit potential advantages and limitations in technology management policies implemented by trade unions becomes a *sine qua non* condition to guide actions. Only in that way would it be possible to provide organizations with the ability to define strategic and preventive actions aimed at achieving an adequate digital transformation of their processes while safeguarding the IT assets involved in such management models.

Against this background, several trade union organizations realized they needed to address new challenges such as registering new members through digital methods, holding general meetings virtually or even carrying out industrial actions digitally. These experiences illustrate the fundamental relevance of having technology management policies in place within trade union organizations.

Furthermore, this new reality has led trade union partners to become more engaged with the existing problems and challenges in the workplace, that is, the problems and risks associated with the technification of certain processes that may jeopardize the privacy and control of those involved in such processes.

The trade union movement is on the alert, examining new forms of working with digital support technologies, such as the gig economy, telework, smart work and the problems derived from digitization in terms of control, privacy and new occupational risks, which should be regulated.

The acceleration of technology innovation and its impact on the workplace do not happen at par with policy-making, which usually takes place once inappropriate behaviours have already occurred, affecting workers' privacy. The constantly changing working environment and conditions require a reformulation of traditional trade union strategies.

As far as new regulations are concerned, it should not be forgotten that all of them make up the framework within which workers' personal data should be managed and processed with the ultimate goal of ensuring the fulfilment of their fundamental rights —as provided for in article 14 *bis* of the National Constitution— and with the proper protection of their privacy, as guaranteed by article 19.

To comply with this fair set of rights, which seek to ensure that individuals have their rights protected both as citizens and as workers, employers and trade union organizations should undertake an active role in this regard. To that end, **what matters the most is to remember that today it is not enough to comply with the ECA and the relevant collective agreements. Protecting the rights of workers requires a greater commitment: that of complying with this set of rules at the same time.**

Such a situation, which will probably become clearer and broader in the near future, would force trade union partners, both during collective bargaining as well as in their internal operations, to promote and build an organization that should be more in line not only with the digital reality but also with the existing legal and technical grounds. Data security departments will need to be created or strengthened and access-control lists (ACLs) should be implemented along with data backup policies. Trade unions need to stand up to the challenge if they are to provide comprehensive and updated rights protection to the individuals they represent, both in their capacity as workers and as members.

5

A FEW FINAL THOUGHTS ABOUT THE IMPACT OF DIGITIZATION ON TRADE UNION ORGANIZATIONS

- I. Trade union organizations are faced with **the challenge of dealing with the introduction of new technologies used for production and monitoring and surveillance purposes. Such introduction causes an ongoing dynamic transformation** both in the workplace and within trade union organizations. This raises the need for **changes within organizations and their structures** to guarantee their functioning in a digital world undergoing constant technological and organizational recycling. As one trade union leader said, “The new technologies and communication tools are already here; we are now challenged to work for a just transition and to become better workers; our priorities should always be: occupational health and safety, job preservation, wage and working conditions and continuing training”.
- II. Consequently, it is important to ponder on the **potential advantages and limitations** of the policies adopted by trade unions. In light of the advance of new technologies and digitization, trade union organizations need to embrace these changes by taking **preventive and strategic action** in relation to these transformations and new requirements for organizations.
- III. Some of the strategies used to embrace technological change show that trade unions are also going through a transformation to fight for new rights in this new digital space, although this approach is not yet widespread. The pandemic made it possible for trade union organizations to understand that technological and legal innovations bring about changes that may also be managed, or even led, by the labour movement.
- IV. Moreover, the pandemic brought social partners (companies and trade unions) closer together to jointly face these unprecedented challenges. That same synergy could be achieved with regard to technological change through collective bargaining, which is the creative and solidarity-based setting where decent work can be defended in light of an economy that is constantly posing new challenges.
- V. The trade union movement is on the alert, examining new forms of working with digital support technologies, such as the gig economy, telework, smart work and the problems derived from digitization in terms of control, privacy and new occupational risks, which should be regulated. As any other global phenomenon, it requires governments to pay attention and enforce regulations to set basic, unwaiverable principles. Then, the social partners in each economy sector will need to adapt them through collective bargaining to “build” labour wins in their digital dimension.
- VI. **As far as new legislation is concerned, it must be taken into** account that the ECA, the PDPA, resolution DNPDP 10/2015 issued by the National Personal Data Protection Bureau and, since 30 July 2020, the Telework Act make up the regulatory framework within which workers’ personal data should be managed and processed with the ultimate goal of ensuring the fulfilment of workers’ fundamental rights as provided for in article 14 *bis* of the National Constitution as well as protecting their privacy, as guaranteed by article 19.

VII. To comply with this fair set of rights, under which every individual should feel protected both as a citizen and as a worker, employers and trade union organizations need to play an active role in this context.

In summary, Argentine trade union organizations are facing tough challenges in addition to the classical and traditional ones relating to defending jobs and wages. They need to adapt to the new technological changes and their speed of implementation while accepting new production and capital accumulation models.

Only a trade union strategy centred around change and innovation will underpin a strong labour movement capable of negotiating firmly and properly integrating into a changing world with the sole aim of continuing to play its primary role, that is, protecting workers' rights.

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TECHNOLOGY AND DIGITAL TRANSFORMATION: A CHALLENGE FOR TRADE UNIONS



The outbreak of the COVID-19 pandemic motivated us to carry out a series of research and dissemination activities relating to transformations in the world of work. These included research studies and national and international publications, the “#Conectadx” newsletter, a podcast (“Do androids dream about electrical workers?”) and courses on innovation and its impact on workers, labour market sectors and trade union organizations.



Throughout 2021, more than 200 trade union organizations within the country, in countries across the region, in the United States and in Europe took part in this initiative launched by FES Argentina. Thus, over the course of the past year, FES consolidated what today has become the basis for a programme on the future of work called “SinDigital”. This publication is one of the outputs of this experience, known as the “Innovation Ob-



servatory”, which contains the results of two surveys conducted among 27 trade union organizations that together represent 1.3 million workers in Argentina. Their inputs and contributions have paved the way for us to collectively examine the most efficient strategies to understand the impact of ongoing transformations and act accordingly, strengthening trade unions’ capacity in light of the new risks that may arise.

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