SANTA CLAUS

LAW, FOURTH INDUSTRIAL REVOLUTION,
DECOLONISATION AND COVID-19

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Why Santa, Why?

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1. Introduction

Oh, Santa! You have been a very naughty boy this year!

Santa Claus is said to live at the North Pole with his wife where he spends the year making toys with the help of his elves. This is where he receives his letters from children asking for Christmas gifts. On Christmas Eve he loads his sleigh with toys and flies around the world, drawn by eight reindeer. He stops at each child's house, slides down the chimney and leaves gifts for the children, refreshing himself with the milk and cookies left for him by the household's children.

Nevertheless, has the idea of the jolly old fat man that we all grew up with and loved changed?

2. Leading Santa into the 21st Century

When we think of Santa, we often think of the glamorous side of his job, but running the North Pole is hard work! With thousands of elves and another dozen reindeer, Santa has his hands full. With the ever-evolving and changing world, it seems that Santa has become a bit greedy and, dare I say, negligent, in keeping up with the ever-evolving trends.

Take the Fourth Industrial Revolution (4IR) as an example. It is described as an incoming and sweeping pattern of change visible in the distance. It arrives at a pace that affords little time to prepare. While some people are ready to face the challenges and are equipped with the tools to brave the change and take advantage of the opportunities

it presents, it will likely have far-reaching implications and transform where and how work is done. Yet, this exponential progress is only visible to and accessed by some. Its effects vary by country and culture, necessitating different approaches to address issues of automation and digitalization. This unevenness leads to important questions for all areas of our community and, yes, even elves. A sector that is preparing for the future of work while simultaneously acknowledging that its future workforce may not be prepared for 4IR or even know that the revolution is upon us. The elves and the reindeer have no idea that a storm is brewing. Santa Claus decided that this is the year to embrace technology.

3. *Drone technology*

Imagine the immense task of delivering millions of packages to children located all over the world in one night. The time zones and jet winds can help but Santa has no room for error. He has always run a one-sleigh operation, but innovation could help him accelerate deliveries and save energy by adding a drone to his route. Santa decided to approach the best drone racing company to help him with this business. Using a drone would most definitely take the pressure off Rudolph and the other reindeer, as they would no longer have to load the sleigh with toys and fly around the world in one night to deliver all the toys. Santa did not take this decision lightly as there would be some serious consequences in changing the delivery method. Maybe the most important one of all would be the fact that Santa would miss all the milk and cookies left by the thousands of children if he did not personally come down the chimneys and place the gifts under the trees.

4. *Toy manufacturing*

Santa's toy factory in the North Pole might be one of the world's oldest and largest factories. The seamless operation of the factory is key for its ultimate goal, which enables Santa to deliver gifts under the tree. The factory has had its problems with an outdated working

environment, production, and processes for years. The rise of new technologies has provided Santa with the means to fix these issues.

This year's toy manufacturing is on track to become the smoothest operation to date. This is thanks to Santa's new state-of-the-art toy-making centre, which is fully equipped with cutting-edge display processing and control management technologies. Santa is thrilled with his new system. The system is sophisticated enough to handle the multiple competing demands of this large-scale enterprise but is intuitive enough that, in a pinch, even a reindeer could operate it.

Previously, the only way that Santa could oversee the manufacturing was to send one of his designated head elves to visit each facility in person. A lack of enough elf-power, quality control was a hit or miss affair because Santa could not monitor the entire system as required. When there was a problem at the factory, all toy production would cease until the appropriate elves could travel to the site, diagnose, resolve the issue, and give the authorization to resume operations. This would typically lead to serious delays and backlogs, further compounding the logistical nightmare of the Christmas enterprise.

Santa has been on a mission to make his factory smarter and to improve the working conditions for the elves. Using a revolutionary up-to-date system would provide Santa with all the support he needs. No doubt, his toy-making enterprise would thrive for many years to come.

5. Revolutionize the naughty and nice list

Over the past few years, Santa has been looking for ways to provide the same great service to his 525 million customers. After detailed research, Mrs Claus (the astute wife of Santa Claus) chose to collaborate with Great Expectations in assisting with tracking the naughty and nice list.

The days of managing stacks of letters thousands of centimetres deep, are slowly but surely disappearing. The elves are not able to electronically capture the letters as they come in. Each year, more and more of the letters are received electronically and, in years past the

printers in the North Pole had to work overtime to keep up. Now, with updated processes and the right technology, Santa has access to each letter to him within a few hours of its arrival.

Once letters have been ingested into the system, the elves in the mailroom index the letters with information which links the letter to a specific child's case. Each case is made up of a collection of data that has been collected throughout the year by the team of field elves. Living on shelves, they spend their time collecting pictures, notes from school, reports from babysitters and any other information that may help Santa make his ultimate 'naughty or nice' determination.

Santa can get out his tablet and pull up a specific child's case, at any given time. All the information he needs to make an informed decision about their behaviour is gathered in one place. Once he has made his decision, he is prompted with an e-form that allows him to dictate what presents the elves should, or should not, be made for a child.

Santa also researched a fingerprinting system. An application would be downloaded to the parent's phone. With the simple scanning of a finger, the application would connect to the North Pole, access Santa's database and scan to his list. This would lead to either a celebration with cheers or to the whirring sounds of sirens!

The different types of electronic systems available could be very helpful to Santa, but he must make sure that he places someone in charge of the systems whom he completely trusts, perhaps Mrs Claus. The repercussions of an elf accidentally or maliciously deleting or broadcasting the 'naughty or nice list' would be devastating.

This new revolutionized method of working would eliminate the risk of letters falling through the cracks. Recording would be done in record time and allow more important things to take priority. The increase in the world's population and the ever-growing complexity of toys would allow the elves in the workshop to focus on making toys for every child on the 'nice list'.

6. *Dismay at the North Pole*

The elves, in general, were not happy at all. Not only did Santa not discuss any of the above-mentioned changes with them but, they realized that they were being phased out by machines. The elves argued that they are powerful, energy-packed beings with amazing spatial reasoning ability, giving them an instant understanding of Lego and dollhouse structures, which greatly increased productivity. Another argument was that there is nothing inherent in so-called 4IR technologies that will necessarily result in growth, job creation or empowerment of the marginalised. They also argued that it is not that advanced technologies cannot be mobilised for development purposes but that technology, in itself, cannot change or disrupt existing modes of production. It also cannot determine positive or negative outcomes.

They immediately decided to join a union because this was completely unacceptable. Santa is not above the law so why should he be treated any different from any other employer?

7. *Trade Unions*

Trade unions are independent organisations that represent workers to their employers. If you join a trade union, you are joining a group that will negotiate workplace issues, such as salary, hours of work, and other conditions on your behalf and this is exactly what the elves did. They joined a trade union!

The elves were in complete shock after their initial consultation with the union they joined. Elves do matter! It seemed that not only was it unacceptable for Santa to make these decisions without their input, but Santa had also deprived the elves and reindeer of basic employment conditions, personal protective equipment and basic needs to name but a few.

The Basic Conditions of Employment Act 75 of 1997 clearly states the following:

Purpose of this Act

2. The purpose of this Act is to advance economic development and social justice by fulfilling the primary objects of this Act which are—
 - (a) to give effect to and regulate the right to fair labour practices conferred by section 23(1) of the Constitution—
 - (i) by establishing and enforcing basic conditions of employment; and
 - (ii) by regulating the variation of basic conditions of employment;
 - (b) to give effect to obligations incurred by the Republic as a member state of the International Labour Organisation.

Ordinary hours of work

9. (1) Subject to this Chapter an employer may not require or permit an employee to work more than:
 - (a) 45 hours in any week; and
 - (b) nine hours in any day if the employee works for five days or fewer in a week;
 - (c) eight hours in any day if the employee works on more than five days in a week.
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Not only do the elves work more than the above mentioned hours of work, but they also do not receive any leave days, adequate daily and weekly rest periods, sick leave, maternity leave, and many other basic conditions that are clearly outlined in the Basic Conditions of Employment Act.

One elf, in particular, Sugar Plum, felt that Santa had treated her unfairly and unkindly. She had recently given birth to a beautiful little elf named Esmerelda. Instead of taking time off to spend with her new baby, she immediately had to go back to being Santa's secretary, because Santa claims that she makes the best hot chocolate with the perfect balance of marshmallows.

Section 25 of the Basic Conditions of Employment Act states the following regarding maternity leave:

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- (1) An employee is entitled to at least four consecutive months' maternity leave.
 - (2) An employee may commence maternity leave—
 - (a) at any time from four weeks before the expected date of birth, unless otherwise agreed; or
 - (b) on a date from which a medical practitioner or a midwife certifies that it is necessary for the employee's health or that of her unborn child.
 - (3) No employee may work for six weeks after the birth of her child, unless a medical practitioner or midwife certifies that she is fit to do so.
 - (4) An employee who has a miscarriage during the third trimester of pregnancy or bears a stillborn child is entitled to maternity leave for six weeks after the miscarriage or stillbirth whether or not the employee had commenced maternity leave at the time of the miscarriage or stillbirth.
 - (5) An employee must notify an employer in writing unless the employee is unable to do so of the date on which the employee intends to -
 - (a) commence maternity leave; and
 - (b) return to work after maternity leave.
 - (6) Notification in terms of subsection (5) must be given—
 - (a) at least four weeks before the employee intends to commence maternity leave: or
 - (b) if it is not reasonably practicable to do so as soon as is reasonably practicable.
 - (7) The payment of maternity benefits will be determined by the Minister subject to the provisions of the Unemployment Insurance Act.
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If only Sugar Plum had known her basic rights about maternity leave, she could have spent more time with her baby and would not have gone back to work for Santa immediately.

Another great concern for the elves was that Santa did not adhere to the Occupational Health and Safety Act 85 of 1993 (OHS). The OHS Act

aims to provide for the safety and health of persons at work and in connection with the use of plant and machinery. It further provides for the protection of people from hazards arising out of or in connection with the activities from other people at work.

The main objective of the Act could be described as a pro-active attempt by the government to prevent and avoid work-related injuries and illness. The Act governs the health and safety of the diverse industry of South Africa. It regulates and controls health and safety in all organizations, from a normal office environment to more hazardous environments like industrial plants and construction sites.

Legislation requires Santa to do everything 'reasonably practicable' to protect the elves from harm.

Santa needs to look at his work environment, and ask questions, such as:

- Have I identified hazards?
- What could go wrong?
- Have I identified who might be harmed?
- How are the elves affected?
- What could be done about it?

After evaluating these work-related hazards, risks and dangers, Santa should determine the severity of the hazards or risks concerned. This mainly refers to 'seriousness of these hazards' as previously mentioned. During the risk assessment process, the risk will be given a "risk value" to determine the severity of the risk involved, for example, high-, medium- or low-risk level.

The main objective should be to 'remove or mitigate that hazard or risk'. If the hazard or risk cannot be removed, the next option would be to apply appropriate steps or measures to mitigate it. The Merriam-Webster dictionary defines mitigate as "to cause to become less harsh or hostile". Where Santa cannot remove or eliminate a hazard or risk, steps should be taken to lessen it.

Risk cannot just be disregarded; Santa still needs to take reasonable steps to ensure that the workplace is safe and without risk to the health

and safety of the elves. Reasonable steps exercised by Santa could, for example, include the following:

- inform the elves of the decision and measures taken to protect them;
- what type of instruction, training, supervision, personal protective equipment etc. are needed to protect them?
- assess if the reasonable steps are effective to provide a safe and healthy workplace;
- having their workspace, due to their age and strengths;
- personal lighting control must be installed to allow for adjustment at every workspace according to every elf's preference.

Santa has not taken any of these steps!

8. *The Elves are on strike!*

After careful consideration and discussions with their union representative, the elves decided that it was time to have a strike in the toy factory. No longer were they going to be the victims of someone that does not obey the laws of South Africa. He does not regard it important enough to even discuss the contemplated technological changes with them. Not only did they demand to be made part of the decision-making process, but they also demanded more cocoa breaks, leave time, more time to sleep, and some sort of safety plan in case an accident or emergency should arise. They felt that Santa was overworking them and refused to accept his authority as a result of this. They also felt that keeping tabs on their productivity is unfair and unprofessional since he does not contribute to the making of toys at all. The elves also decided that they need medical aid as they work with machinery, that Santa now insists on changing, and even upgrading.

9. *Negotiations on the horizon*

Serious negotiations started between the elves and Santa. Santa explained that technology is always changing and that they all need to

stay informed of the latest changes, including himself. They did not have to settle for the technologies and working conditions of the last century. He also reminded the elves that the years when there was a demand for 2 million wooden train set (where at least 4 elves had died from splinter-related complications) were gone. They needed to stay informed, from traditional toy-making to the most current and up-to-date computer games. Due to modifications and updates of computer games, the elves would need to continue classes to improve their skills.

10. A raging riot

While Santa was in negotiations with the elves, one of his most loyal elves came to tell him that Rudolph the reindeer had started a riot in the stable. He complained that the elves did not take good care of them. They were not trained well, and the feeds were not what they used to be. They also felt that the stable was not clean enough and they were not given water twice a day. Rudolph took charge of the riot and made sure that havoc was all over the stable. Food was thrown all over and the blankets were torn into pieces. Even the food bowls were broken. He made sure that even the youngest reindeer became part of this riot, to understand what they were fighting for. Rudolph explained to Santa that he and his team of reindeer needed to be in top form for the annual flight. He requested an explanation from Santa about the rumours going around that he wanted to replace them with drones. Santa had some explaining to do. Rudolph wanted the negotiations to include that he wanted a rider to ensure that his nose was polished daily, and that red and green Smarties® were made widely available throughout the reindeer compound.

All havoc broke loose between the elves and the reindeer. Santa realized that this would, of course, lead to a major rivalry between the two parties as both felt superior to the other. Since elves are small, they seemed to be jealous of the reindeer that got to see things from an elevated point of view. The North Pole is surrounded by arctic terrain and fairly level. The reindeer, on the other hand, felt important because they deliver the gifts and, without the delivery of gifts, there would be no Christmas.

11. *Decisions, decisions, decisions*

With all the hustle and bustle leading up to Christmas, Santa will need to make fast and furious decisions. There are still a few days of work ahead. He knows that he cannot do this by himself and must find a solution quickly.

He would resolve the issue surrounding annual leave by sending them to an ideal destination for a few days' rest, perhaps Scandinavia after New Year's Day. Although it is very cold, there the elves might like it because of its many eco-lodges. Taking a dip in the geothermal hot springs might just be the relaxing atmosphere they deserve. Threatened with the possibility of industrial action, Santa considered it a price worth paying to ensure no disruption to Christmas.

Santa also believes that the extra time off will be beneficial to the elves' mental health. He has been increasingly concerned about how fatigued his elves became after the Christmas rush was over. Santa also realized that he needs to consider medical aid, as expending a lot of energy might lead to some clumsy scrapes and scratches. He knows that medical aid is very expensive and was wondering if a visit to a medical aid broker would be advisable.

Finally, after what felt like hours upon hours, Santa, the elves, and the reindeer came to a satisfactory conclusion, for now. They settled on all the major elements of their concerns and demands. Santa knows that the matter of the elves and reindeer is certainly not over. There are still many issues that need to be discussed. At least for now, Christmas will continue this year and all the children on Santa's digital list (Yes! Santa slipped through this one!) will receive their gifts. Drone delivery of packages is a fight for another day. For now, Santa is pleased to be putting this year behind him and looking forward to a well-earned rest after Christmas.

This question begs an answer though; is Santa really bound by South African law or does he play by a completely different set of rules?

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