



Edited by

Tindara Addabbo · Edoardo Ales

Ylenia Curzi · Tommaso Fabbri

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Performance Appraisal in Modern Employment Relations

An Interdisciplinary
Approach

palgrave
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1

Introduction

Olga Rymkevich

Introduction

Performance appraisal is not a new issue. However the way companies carry out their employees performance evaluation dramatically changed over last decades. The advent of new digital technologies provided much more opportunities and flexibility in this regard. Considering the need to keep pace with rapid technological changes, also performance management systems continue to evolve. It is not a secret that efficient performance appraisal systems represent a source of achieving competitive advantage for business contributing to better human relations at the workplace, major employee satisfaction with work and better productive efficiency. Clearly, one size fits all approach is not a case in relation to performance evaluation as performance appraisal techniques well suited for one company would not necessarily work for another. Undoubtedly

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rethinking performance appraisal strategies and design is a priority for a large number of modern companies which are increasingly moving away from traditional performance evaluation practices towards more individualised and participatory based approach better aligned with particular organisational structure, corporate culture and individual and corporate strategic goals.

The technological transformation generated by digitalisation has brought about far-reaching changes affecting all spheres of life including employee performance evaluation. Along with indefinite and still not fully explored opportunities, they have given rise to a number of risks, some of which are evident whereas others are hidden. This book is the outcome of an ongoing multidisciplinary and interdisciplinary project run by the Marco Biagi Foundation (University of Modena and Reggio Emilia, Italy) seeking to cast light on the new challenges and trends in the world of work arising from digital technologies. It brings together the contributions of experts in labour law, labour economics and human resource management, with a focus on the dynamics of performance evaluation techniques explored from various angles. Along with a general analysis of performance evaluation in the public and private sectors, the study examines such aspects as power, autonomy, discretion and control over work performance, and the new balance of rights and obligations at work, examining the impact of digitalisation on the right to privacy and the right to lie, the discriminatory potential of the new methods of performance evaluation including the role of customer ratings, and the impact on the employment contract. The book proposes an original mix of theoretical and empirical research including case studies and case law from different national contexts such as Italy, the US, Sweden, Spain and Poland along with the case law of the Court of Justice of the European Union.

The book is divided into two thematic parts providing an outline of the topic, with the first part providing useful insights into the main legal, management and economic concepts that are further developed in the subsequent chapters.

The paper by Tommaso Fabbri, Ylenia Curzi and Barbara Pistoresi provides an overview of the main changes that technological transformation has brought about in organisations by studying performance management systems. The aim is to understand the main trends in

organisations, in particular considering whether they are moving away from a system of management based on close surveillance and traditional assessment methods (time spent in the office, working hours and compliance with routine procedures) towards more innovative techniques (such as results, skills and personnel development) in some cases leading to greater employee autonomy and responsibility towards the company. The empirical part of this study is based on a survey of Italian workers and firms in the private sector.

Based on the theoretical and empirical findings, the authors highlight the increasingly important role of non-traditional performance appraisal methods with a focus on newly acquired skills compared to those previously acquired, and the role of mediation as a way to ensure improved employee satisfaction and facilitate innovative work behaviour. Considering the lack of comparative research on this topic the authors seek to fill the gap in the existing literature in this regard.

The paper by Tindara Addabbo proposes a study on the potential gender discriminatory effect of performance appraisal systems. The author provides evidence in support of her argument by means of a comparative multivariate analysis on wages and working conditions by gender, age, level of education, type of contract, firm size, profession and sector in various European countries, taking the Nordic countries as the main reference. The study highlights the lower ratings assigned to women in performance appraisal schemes, contributing to the persistent gender pay gap.

The second part presents an analysis of power in sociological terms with the aim of ascertaining whether and to what extent the introduction of digital technologies is capable of altering the balance of interests of employers and employees, and the impact on the design of performance appraisal systems. In addition, this part addresses the ways in which legal provisions can interfere with the spontaneous power dynamics associated with new technologies, as well as the dynamic aspect of performance appraisal, with regard to particular matters linked to the application of new technologies such as data analytics, the right to lie, and the use of customer ratings.

The paper by Lia Tirabeni proposes a reflection on the pros and cons of ubiquitous technologies while underlining their opportunities and

hidden risks in shaping power relations in the workplace, as well as the implications for worker performance appraisal. The lack of comparative research into new ways of monitoring by means of wearable technologies, including self-tracking by employees. These technologies provide wider opportunities for the monitoring of in-work and out-of-work behaviour of employees, that could be used by employers both to the benefit and the detriment of the employee. In particular, this information could be used for employee deskilling or upskilling, to promote physical and psychological well-being at work through better adaption to specific needs as well as for discriminatory and disciplinary purposes. The mere fact that we witness a clear shift of management control from employees to platforms with big data gives rise to ethical and social justice issues concerning the limits of such control by means of smart monitoring tools, employee privacy protection and employee consent. In conclusion the author argues that to ensure a more balanced relationship and to mitigate potentially negative effects, ubiquitous technologies should entail more participatory performance appraisal systems and a games-based approach should be promoted.

In her paper, Elena Gramano argues that the subordinate employment contract still plays a crucial role in providing organisational and functional flexibility, and the concept of subordination is consistent with the changes arising from digitalisation and new forms of atypical employment relations. In her analysis of recent Italian labour market reforms, she identifies a declining role for legal regulation compared to the collective and individual dimension. In the author's view, collective bargaining offers better opportunities to determine the conditions of the individual employment contract by means of "controlled flexibility" or "negotiated flexibility", laying down reasonable limits on unilateral employer power. In defending the central role of the subordinate employment contract, the author analyses the rights of the parties to unilaterally change the employment duties (*jus variandi*) and modulate individual agreements in terms of internal flexibility as an alternative to the use of atypical contracts or easy dismissal options.

In her paper Leora Eisenstadt outlines the dangers of the use of data and predictive analytics in a legal and ethical perspective. In particular,

she highlights the potential to blur the dividing line between work and non-work to the detriment of the parties in the employment relationship. The author argues that such a blurring of the work/non-work spheres has an impact on the notion of the scope of employment, with the risk for employers of finding themselves exposed to legal liability for the off-duty behaviour of their employees. The author argues that the data collected are frequently used to determine dismissals and promotions, future hiring policies and personal insurance rates, in many cases without the knowledge or consent of the employees. The use of data analytics can take various forms, ranging from the analysis of social media profiles to facial scanning to identify the emotional state of workers in the workplace and predict future plans such as family planning decisions. From this point of view, new technologies can offer far more sophisticated opportunities for employers to constantly monitor their employees compared to increasingly obsolete traditional methods such as monitoring e-mails, phone calls, social media profiles, internet use or medical reports. Such information can arguably be used to improve productivity and employee well-being (as claimed by the developers of the specific programmes and software). However, this does not alter the fact that the use of such technologies is a clear intrusion into the personal life of the employee. Moreover, in the case of a distorted use of such information on the part of the employer, the existing legal framework is still inadequate to deal with the cases of potential discrimination (such as the intention to become pregnant in the future). There is also the issue that employee performance is evaluated not only on the base of work-related behaviour, but also on the basis of off-duty lives based on subjective and by no means transparent criteria. The author concludes by urging a rethinking of the value of life outside of work. If it is still considered to be a value to be defended, then it is important to decide to what extent it should be protected against the rising tide of increasingly innovative and pervasive technologies.

Federico Fusco provides a critical overview of the issue of employee privacy in relation to the enactment of the General Data Protection Regulation (EU Reg. 2016/679) in Italy, Sweden and Spain, along with an analysis of the recent case law of the Court of Justice of the European Union (CJEU). In particular, the author focuses on the issue

of the employer making use of camera surveillance in the workplace, the power to monitor the personal files of the employee on the computer at work, and the possible use as evidence in the courts of information obtained by employers in violation of the GDPR provisions. The author examines national and European court approaches towards the balancing of employer interests for improving competitiveness and the right of the employee to maintain a private “safe zone” free from external interference. By analysing different national legal approaches adopted in the various countries and the role of GDPR, the author comes to the conclusion that opposing interests may be reconciled both with and without special labour law provisions regulating the remote surveillance of employees, on condition that proper preventive measures and sanctions are adopted, with due consideration for the specific characteristics of the national legal and social setting.

In their paper Izabela Florczak and Marcin Wujczyk propose an original analysis of the right to lie of the employee as a countermeasure aimed at self-defence against excessive and unlawful control by the employer and potentially discriminatory practices. In the first part of the paper, the authors provide a general reflection on the concept of privacy and the notion of the right to privacy. The second part is dedicated to a more critical analysis of the right to lie of the employee, and the applicable conditions and limitations, the lawfulness of such practices, the extent and conditions of their admissibility and the role of employee subordination in determining the right to lie. The authors argue that as the weaker party in the employment relationship, the employee is entitled to lie as a defence mechanism, on specific conditions. In any case, even in the case of excessive use or misuse by the employee of such a right, the sanctions imposed by the employer should be mitigated.

Roberto Albano, Ylenia Curzi, and Arianna Radin explore performance appraisal in relation to the professional delivery of public social services, arguing that it is an extremely challenging issue due to the high level of uncertainty and complexity. In particular, they highlight inevitable tensions between the need to improve the autonomy and skills of social workers, and at the same time to secure more rapid and efficient management control over the performance of these workers. The authors claim that these two objectives can be reconciled, and indicate

possible ways to do so by analysing theoretical approaches to the assessment of social services proposed by sociologists and scholars of organisation theory. In addition, they analyse a particular case of the Piedmont Region in Northern Italy linked to the implementation of a social service information system. In the view of the authors this experience is important in terms of the lessons to be learned from its failure. The authors conclude that the efficient functioning of social services in the public sector is fundamental for the success of social policies, and an appraisal is needed characterised by transparency and accountability. In order to ensure its successful implementation, cultural change is needed ensuring an active role for all the stakeholders concerned.

Finally, Rossana Ducato, Miriam Kullmann, and Marco Rocca argue that the use of customer ratings in employment decisions can produce extremely negative effects such as unjustified discrimination. They demonstrate how customer ratings can be based on non-employment related issues such as the race, sex, age and religion of the worker. The authors support their claims by analysing European anti-discrimination legislation as well as data protection law addressing the question of employer liability in the case of a distorted use of customer ratings. Based on recent CJEU rulings, they argue that the lack of an identifiable complainant cannot lead to the conclusion of the absence of discrimination, while customer preference is not a genuine occupational requirement that can justify discrimination. In these cases the CJEU often adopts an approach in which discrimination based on customers rating and algorithms is attributable to the employer. Finally, the authors argue that both US and EU law are still ill-equipped to fight discrimination based on customer ratings, and even the GDPR cannot offer sufficient remedies in such cases. On the basis of these considerations the authors propose alternative pathways to limit the discriminatory potential of customer rating and the use of algorithms.

In the concluding chapter Edoardo Ales examines the performance appraisal within the employment relationship as well as considering whether it is appropriate for enterprises to adopt an achievement-oriented approach distinguishing between a basic understanding of performance as the fulfilment of contractual obligations and a more advanced understanding of this concept as individual or collective

effort that is essential for the successful outcome of the undertaking as a whole. Moreover, in a strictly legal perspective such an approach permits to cast light on the highly controversial concept of underperformance.

The author argues for the essential role of benchmarking in determining the scale of performance appraisal in comparative terms, further illustrating this theoretical framework by examining two different sets of case-law rulings from Italy and Germany.

In conclusion the author argues that the adoption by employers of an efficient achievement-oriented approach could lead to an effective system of incentives and sanctions, increasing the chances of improving work organisation and leading to mutually beneficial outcomes both for employers and employees.

Part I

Setting the Framework



2

Performance Appraisal Criteria and Innovative Work Behaviour: The Mediating Role of Employees' Appraisal Satisfaction

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Introduction

Performance appraisal (hereafter PA) is one of the most important human resource management practices (hereafter HRM). It refers to a process by which the employee's performance assessment is based on clearly stated appraisal criteria. Moreover, PA is intended to improve

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individual performance and align individual objectives and behaviours with the organization's strategic goals (DeNisi and Murphy 2017).

Despite this, PA is at the centre of a lively debate concerning its effectiveness. Since McGregor's (1957, 1972) influential work, who develops a systematic critique of performance appraisal, both academics and practitioners have pointed out the limits of performance appraisal systems. They are too bureaucratic, disjointed from the daily work activities and inherently backward looking. Moreover they fail to clarify to the employees what the management expects from them and to provide effective performance feedback, finally they do not improve workers' performance and their skills, in particular they do not enhance their innovative behaviour (Cappelli and Tavis 2016; Pulakos and O'Leary 2011; Pulakos et al. 2015; Schrage et al. 2019).

For these reasons, some authors suggest to the organizations to eliminate completely performance appraisal as human resource practice (Culbert 2010), while others highlight that even if companies get rid of PA systems, evaluation is still done, but in a more subjective and non-transparent way (Pulakos and O'Leary 2011; Goler et al. 2016).

Thus, the key issue becomes how PA systems and practices should be designed and implemented so as to be effective, accepted and used. Regarding this, Cappelli and Tavis (2016), Schrage et al. (2019) and Schwarzmüller et al. (2018) underline that in today's digital business environments, organizations should adopt approaches to performance appraisal encouraging employees' innovative work behaviours (hereafter IWB). Specifically, they argue that PA systems focused on results, skills and personnel development rather than on such traditional criteria as time spent in offices and factories, working hours and compliance with procedures, prescribed working behaviours and methods could be more effective. However, extant HRM literature has not yet offered any definitive conclusion as to which performance appraisal criteria, among

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individual results, skills or new competences, matter most. More importantly, research has not yet devoted enough attention to two issues of great interest to practitioners and academics alike. The first concerns the understanding of the mediating mechanisms or processes linking PA based on individual results, skills or new competences to employees' IWB. The importance of this issue is suggested by Ulrich (1997) who, in more general terms, emphasizes the need for additional research on *how* HRM practices lead to their desired outcomes. The second critical question is whether and how PA systems combining result and competence-based criteria (*mixed PA systems*) affect IWB.

To fill the above gaps, this study focuses on result and competence-based PA systems as well as on mixed PA ones compared to traditional forms of performance evaluation. Specifically, it analyses how they influence IWB, by hypothesizing that employees' satisfaction towards PA is a key mediating mechanism linking PA criteria and IWB. This study is based on self-reported data about PA criteria, employees' PA satisfaction and the influence of PA on IWB. Data are collected from a sample of Italian employees working in companies operating in several sectors.

This work is part of a wider research programme named "National Observatory on Performance Management", established in 2016 at the Marco Biagi Foundation and conducted in synergy with the interdisciplinary Doctoral School "E4E" (Engineering for Economics/Economics for Engineering) of the University of Modena and Reggio Emilia. The aim of the program is twofold. Firstly, to collect data on a regular (i.e. biennial) basis to provide a comprehensive and updated picture of performance management systems and practices currently in use in Italian companies so as to fill the gap left by existing surveys carried out at the national and European levels¹ which explore this topic only to a very limited extent. Secondly, to produce an interdisciplinary description and analysis of Italian corporate performance management systems and practices as a preferential setting for understanding the digital transformation of organizations and work processes, as well as current trends in the design of organizational structures, jobs and leadership of contemporary organizations—that is, three analytical planes on which the impact of digitalization may be more disrupting.² Performance