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Original Article

The Transfer of Skills in Light of Labor Law Requirements

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Abstract : *Labor law (LL) is fundamentally focused on certain requirements, including employee competence. As this competence is, in principle, part of the employee's assets, it should be transferable. However, LL standards largely constitute a barrier to this ambition. Our article explores the ins and outs of this situation in the context of Benin and Togo and revolves around the main question of whether the requirements of labor law are conducive to the transfer of interpersonal skills (TIS). It seeks to determine the importance given to TIS in LL in light of the relevant requirements, while highlighting the obstacles posed by LL to TIS and the need for a paradigm shift.*

Keywords: *Skill Transfer, Labor Law Requirements, Workforce Development, Employment Regulations, Employee Training And Development, Legal Compliance In Skills Training, Workplace Rights And Obligations.*

I. INTRODUCTION

Increasing demands in terms of work quality and the difficulties encountered by operational management in meeting these demands in the face of market constraints have gradually raised new questions regarding the skills required in production processes. One of these issues is the transfer of interpersonal skills within a company. Although it is a subject that has received little attention and occupies only a small part of the field of scientific research, skills transfer is nevertheless a central issue for companies faced with the dynamics of change in the workplace and the need to adapt.

Indeed, skills constitute the intangible assets of any organization, and their transfer is central to the sustainability, efficiency, and competitiveness of companies. The transfer of skills makes it possible to preserve knowledge, particularly knowledge that is not highly formalized or that comes solely from experience. It also makes it possible to optimize working time, embrace the organization's culture, enhance human capital, and strengthen cohesion. However, the weak culture of knowledge sharing and transfer within companies, coupled with an unfavorable legal framework in terms of labor law, does not seem to allow this noble ambition to be achieved.

As things stand, it is clear that labor codes in both Benin and Togo place greater emphasis on degrees, seniority, grades, qualifications, and professional experience. None of these elements is clearly conducive to promoting skills, nor do they define the terms and conditions for their transfer. Hence, the opportunity to reflect on the transfer of interpersonal skills in relation to the rules governing labor law.

This contextual review paves the way for a conceptual clarification. In the context of this reflection, the concept of skills should not be understood in its general sense as a set of powers and duties assigned and imposed on an agent to enable them to perform their function, let alone as an ability to act in a certain field. Nor should the concept be viewed in its jurisdictional sense as referring to all cases that a court has jurisdiction to hear. Indeed, Guy Le Boterf, through his numerous publications, clarifies the concept of competence. For the author, competence is "the ability to act by combining and mobilizing a set of appropriate personal resources (knowledge, know-how, behavior) and resources from one's environment to manage a set of professional situations in order to achieve results that meet certain performance criteria for a recipient". The author's logic is shared by Philippe Zarifian, who sees three dimensions in the concept of competencies.

According to the International Labor Organization (ILO), competency covers knowledge, professional skills, and know-how that are mastered and put into practice in a specific professional context. It is this definition that will be the focus of our attention in this study. Skills are therefore knowledge combined with individual experience and personal added value: know-how, judgment, interpersonal skills, the ability to assess and interpret results, etc. Skills are, therefore, dynamic in nature, and some skills may become obsolete, while new skills need to be created and developed.

The general issue of skills includes useful skills developed within institutions that are not sufficiently documented to be shared and which risk disappearing when those who possess them leave. They can be tacit or explicit, and the type of skills determines the complexity of the transfer operation. Tacit skills are much more difficult to pass on than explicit skills, given the importance of transferring them through experience, because *we can* know more than *we can tell*.

According to some studies, skills transfer could contribute up to 35% to improving project results. It is therefore an essential process in the professional environment, consisting of ensuring the transfer of skills and know-how between employees in order to effectively protect organizations against any risk of losing this valuable capital.

Labor law is the branch of social law consisting of all the rules applicable to subordinate labor relations. This means that it covers the legal rules in force in professional relationships between an employer and their employee bound by an employment contract. Self-employed workers and freelance service providers are therefore excluded.

Discussing the transfer of interpersonal skills in the context of labor law requirements means analyzing this process between employees who work for the same employer and are each bound to the latter by an employment contract, regardless of its nature.

Due to its importance, the issue of skills transfer has been addressed in various spheres, notably by the International Labor Office and in the Moroccan context. However, in some countries, such as Benin and Togo, the issue has never been the subject of debate or major concern within legal doctrine, even though the transfer of skills addresses several issues, particularly demographic, economic, and intergenerational collaboration.

Upon analysis, a number of questions arise. Can an employee recruited on the same basis as another under an employment contract transfer their skills to their colleague? If so, are they legally obliged to do so? Can the employment contract, which links the worker and the employer, serve as a legal instrument for the successful transfer of interpersonal skills? Is the regulatory framework governing labor relations conducive to the transfer of interpersonal skills within companies?

In short, are labor law requirements conducive to the transfer of interpersonal skills within companies? This reflection is of particular interest in that it raises questions about the relationship between labor law and the issue of interpersonal skills transfer in the context of human resources management faced with changes in the workplace. It therefore invites us to become aware of the obstacles posed by labor law requirements and the need for a paradigm shift. This will require legislative and contractual action within the framework of the employment contract to facilitate the transfer of skills between employees.

Two points will be highlighted in this short presentation. Firstly, it should be noted that labor law constitutes a real obstacle to the transfer of interpersonal skills (I). Having noted this obvious fact, it is important to remember that the process of skills transfer is a highly desirable prospect in labor law (II).

Labor law, an obstacle to the transfer of interpersonal skills traditionally designed as a tool to protect workers' interests, modern labor law, which has not lost sight of this historical purpose, now plays a key role in promoting personal fulfillment and, more broadly, regulating social relations both within and outside the workplace. One of the key elements of its functioning, the employment contract, due to its dynamics (A) and occasional precariousness (B), does not allow for a smooth transfer of skills between employees. It is, in fact, a stumbling block.

A) Obstacles Related to the Dynamics of the Employment Contract

The employment contract is characterized by a dynamic linked to its legal framework and the relationships that exist between employees within a company. These two aspects are not conducive to the transfer of skills. With regard to the legal framework, it should be noted that labor law standards in general, and specifically those governing employment contracts, do not provide for the transfer of interpersonal skills. This makes the process difficult to apply, as there is no obligation on employees to do so.

At the international level, ILO standards, such as conventions and recommendations, do not contain any provisions in this regard. This reflects a clear indifference to a subject that has been overlooked, yet is very much in vogue in companies and is even the subject of research, since it largely concerns human resources management through the legal instruments of labor law. And yet, the specialized UN body recognizes that at a time when technologies, markets, and the organization of work are undergoing profound changes, when youth unemployment is reaching alarming levels, and when migration continues to grow, the issue of skills transferability is of the utmost importance for the economic and social development of these member states.

Historically, human resources development has mainly referred to vocational guidance and training, which are included in ILO standards on training, in particular Convention No. 142 and Recommendation No. 195. Recently, new standards have been adopted in the field of capacity development, such as Recommendation No. 208 of 2023 on quality apprenticeships. In its February 2024 report, the ILO noted that human resources planning and development are not included in Convention No. 150[23]. The same report notes that on numerous occasions, the ILO has highlighted the link between employment and human resources planning and development. However, no legal measures relating to the transfer of interpersonal skills have been taken. This regulatory gap at the international level naturally has an impact on the internal legal systems of States.

At the national level, legislation, whether it be constitutional law or ordinary law, internal regulations or case law, not to mention other aspects such as collective agreements, customs, internal regulations, and unilateral commitments by employers , does not enshrine the transfer of interpersonal skills.

In Togo, the 2021 Labor Code is silent on the transfer of interpersonal skills. This legislative gap is evident insofar as the code only refers to the transfer of skills in the context of the transfer of foreign expertise to national workers.

Indeed, Article 52, paragraph 2, states that: "*the State shall ensure the development and transfer of skills and know-how to national workers*" . This implies that the transfer of skills enshrined by the legislator is only carried out vertically, and not horizontally between workers. In other words, the legislator does not enshrine the need for a transfer of skills between national workers or those belonging to the same company and subject to the same employer, but only between foreign workers with certain skills and with an employer other than that of national workers, who are the beneficiaries of the transfer of skills.

As for the interprofessional collective agreement , which is a hybrid legal document, it also maintains a deafening silence on the transfer of interpersonal skills within companies. Indeed, the collective agreement does not mention the issue of interpersonal skills transfer in any of its provisions. However, given that it was traditionally designed to be a remedy for inequality between the parties to the contract , it should have been able to provide for situations that promote worker performance, such as the transfer of interpersonal skills.

With regard to relations between employees in the workplace, it is important to note that these are not necessarily governed by a legal relationship, i.e., the employment relationship, but fundamentally by a social relationship. Employees are constantly competing with each other. The existence of a competitive relationship between employees within a company is a situation imposed on them through legal instruments established by labor law. The rules of company law have a different configuration from social law. Indeed, unlike the partners in a commercial company, who are united by *the affectio societatis* that drives them to unite and collaborate from the beginning of the company until its end, in a spirit of unity and pursuit of the same goal, the employees of a company are, from recruitment through to the development of their careers, in a position of constant, unacknowledged competition and even rivalry. In the company, employees generally have nothing to share with each other and are therefore not, in principle, obliged to help each other by sharing knowledge and transferring skills.

The competitive relationship is already apparent at the recruitment stage. All job applicants are subject to selection based on their profile, aptitudes, and skills, but also on the company's orientation in relation to the position to be filled. As Jean-Marie Peretti points out, "the selection of candidates begins with a comparison of the applicants' characteristics with the company's requirements, and the person responsible for the selection bases their initial choice on essentially factual criteria, the facts contained in the CV".

Throughout one's professional career, competition exists and manifests itself through annual performance reviews. A career in a company is a succession of positions and responsibilities that make up the employee's professional path. In fact, in terms of human resources and career management, there is an evaluation system based on individual appraisal interviews. While this system makes it possible to evaluate employees' achievement of objectives, it has the disadvantage of downplaying the collective nature of the company's performance and placing the spotlight on the individual achievements of each employee.

Individual interviews, therefore, do not take sufficient account of teamwork. In such a situation, it will be difficult to transfer skills between employees who believe they are in constant competition with each other. The existence of a climate of trust or the possibility of creating a relationship of trust around the transfer of skills between the parties concerned is a particularly important condition for the success of the system. This climate cannot exist when employees are in a competitive mindset.

Added to this is the thorny issue of intergenerational conflicts between junior employees and their senior counterparts, which do not promote the transfer of interpersonal skills. The generational difference, therefore, prevents collaborative work from making progress within the company and a real transfer of skills between employees.

Employees generally show indifference to the transfer of skills, since the employment contract, like any contract, has a relative effect and is binding only on the employer and each employee. Each is a third party to the other's contract. This indifference is also due to the low level of employee involvement in the company. The employment contract, as defined by legislation and implemented in practice, disregards the psychological element of the worker's commitment and their contribution to the common goal that the company is called upon to achieve.

Apart from the obstacles linked to the dynamics of the employment contract, there are others related to the precarious nature of these contracts themselves.

B) Obstacles Related to the Precariousness of Employment Contracts

One of the major challenges facing modern labor law is the precariousness of employment contracts. This situation raises fundamental questions about job security and workers' access to training. While contracts allow companies to be more flexible, they leave employees with great uncertainty about the permanence of their jobs and their ability to train and advance professionally.

The lack of stable prospects, coupled with a lack of training, not only leads to increased vulnerability for workers but also to general economic inefficiency. In this context, the challenges associated with precarious employment contracts focus on two main issues that have a significant impact not only on the status and prospects of employees, but also on the issue of skills transfer: obvious job insecurity and the employer's refusal to actively participate in employee training.

Without offering existential eternity or at least infinite longevity in employment relationships, these contracts present a certain degree of precariousness with regard to the powers available to the employer. As French legal doctrine emphasizes, "power and contract are two structuring elements of the employment relationship". On the one hand, the coexistence of power and contract contributes to the organization of the employment relationship; on the other hand, it determines the rules governing the evolution of this relationship. Through its managerial powers, which manifest themselves in the possibility of modifying or terminating the employment contract, the employer undermines the process of skills transfer between the employees of its company, whose interests take precedence over all other considerations.

An essential concept in labor law that has sparked heated doctrinal debate, "the interests of the company" is, according to Chrystelle LECŒUR, a pure creation of case law used to control the decisions and behavior of the parties to the employment relationship. In the absence of a legal or jurisprudential definition of interest, a definition drawn from doctrine may be used as a reference. The interests of the company are understood as the set of conditions that enable the company to maintain and develop itself in a competitive environment. Traditionally, the expression emphasizes the essential balance between the economic objectives of the company and the preservation of employee rights. However, this balance, which is already vulnerable, is reinforced in times of crisis, when the interests of the company can legitimize more profound, even radical changes in working conditions.

This concept has no formal definition; it is perceived as "a balance between a highly respectable personal interest and the overall economic interest on which the interests of fellow workers depend". This balance is linked in certain decisions either to the "economic, social, and human purpose of the company, which justifies changes in functions in the service of that purpose", sometimes to job stability, which would imply "in a realistic view of things, that the worker must also obviously contribute to safeguarding the job he occupies", and sometimes to "the well-conceived general interest". The interests of the company can also be understood as the set of conditions that enable the company to maintain and develop itself in a competitive environment.

Indeed, during a period of economic stability, i.e., outside of any crisis situation within the company, the employer is concerned with the interests of the company. The employer, therefore, has fairly broad discretionary power to modify the employment contract, provided that such modifications are justified by the interests of the company. This authority is subject to two legal rules, as well as to review by the competent courts, which may be seized in the event of a dispute. Judicial review is carried out responsibly, taking into account the specific circumstances of each case.

The issue of modifying employment contracts has been raised at length before the judges of the Court of Cassation. For a long time, they have ruled by distinguishing between "substantial modifications" to employment contracts and "non-substantial modifications". In two rulings handed down by the Court of Cassation on July 10, 1996, including the famous "Berre" ruling, the high court made a crucial change. Since these rulings, the terminology used in case law has been clear. Anything that constitutes a "contract" can only be modified by mutual agreement between the parties, in accordance with the rules of common law.

However, a distinction must still be made between changes to the contract that concern its essential elements, i.e., the instrumentum of the contract, the elements that the parties intended to contractually agree upon, and changes to working conditions that relate to non-essential elements. The essential elements of the contract cannot be modified without the employee's consent. The worker still has the right to refuse, which does not in itself constitute a real and serious cause for dismissal. Since the Raquin ruling of October 8, 1987 (Bull. civ. V, no. 541; GADT, no. 49), the expression must no longer be tacit but explicit.

In times of crisis, the employer's legitimacy to unilaterally modify the contract increases considerably in the name of the company's interests. Whether economic, health-related, or of another nature, a crisis exacerbates tensions between the company's imperatives and the rights of employees. In this context, the interests of the company become an even more decisive factor, often legitimizing more profound and rapid changes to the employment contract.

The economic crisis of 2008, as well as the health crisis caused by the COVID-19 pandemic, are telling examples of this dynamic. During these periods, many companies, faced with a drastic reduction in their activity, were forced to quickly adapt the working conditions of their employees. These adaptations were often imposed unilaterally by the employer, under the guise of the best interests of the company, giving rise to intense doctrinal and jurisprudential debate. This situation has been widely discussed in legal doctrine. Some authors believe that, in times of crisis, employers have greater leeway to unilaterally modify employment contracts, particularly with regard to remuneration, place of work, and working hours, in order to ensure the survival of the company. This interpretation is echoed to some extent in recent case law, which tends to recognize broader powers for employers in times of crisis, while reiterating that these powers must always be exercised in accordance with the principles of proportionality and good faith . A particularly illustrative ruling held that unilateral changes to the employment contract, justified by the need to deal with a major economic crisis, were lawful, provided that they met the imperative of safeguarding the company and its jobs. Another power of the employer that makes the employment contract precarious and therefore has a negative impact on the process of transferring interpersonal skills is the power to terminate the employment contract. The unilateral termination of the employment contract by the employer is a significant source of insecurity for employees. It is defined as the dissolution of the contract by voluntary act without retroactivity. The power to terminate the employment contract conferred on the employer is one of the most striking expressions of the insecurity that weighs on employees. This insecurity is particularly accentuated by the fragility of the cause for dismissal, which is the cornerstone of the employment relationship. Despite the protections that labor law attempts to put in place, it facilitates, in a certain way, the dismissal of employees by employers. This ease of dismissal, combined with grounds that are often not very rigorous, highlights the precariousness of workers' status and affects the process of skills transfer. Article 82 of the Togolese Labor Code stipulates that the dismissal of an employee must be based on a genuine and substantial reason. However, the definition of what constitutes a "real and serious cause" remains relatively vague and open to interpretation, leaving employers with considerable leeway to justify a dismissal. The situation in France, although more regulated, is not without criticism. French case law has been called upon many times to clarify what constitutes a real and serious cause for dismissal. However, despite these interventions, the cause of dismissal remains a subject of debate, as it can be interpreted in a broad manner.

Bernard BOSSU observes in this regard that "real and serious cause is not always assessed with the necessary rigor, which leads to a weakening of the employment contract". This statement highlights the difficulty judges face in ruling on the legitimacy of a dismissal, particularly when the reasons given by the employer are vague or subjective. We agree with Dupont, who asserts that the flexibility granted to employers in assessing the causes for dismissal has led to the "trivialization of dismissal, with the aim of integrating dismissal as a common and normal part of a professional career", which is a source of job insecurity for workers. Furthermore, Article 84 of the same Code provides that an employer may dismiss an employee for economic reasons; however, the criteria for determining these reasons are not sufficiently stringent. This allows the employer to invoke economic reasons relatively easily, without employees being able to effectively challenge the legitimacy of these reasons. In fact, in the absence of a precise definition of economic criteria, the door remains open to abuse, where economic reasons are invoked to mask unilateral decisions by the employer aimed at reducing the workforce without justifying a genuine economic necessity.

Termination can be initiated by one party, as in the case of permanent contracts (unilateral termination), or by mutual agreement between both parties (mutual termination). Termination can also be judicial. Within the scope of its management powers, the employer was allowed to resort to judicial termination to terminate the employment contract of employee representatives when the labor inspector refused to grant the employer authorization to dismiss them. For a long time, this method was extended by the Court of Cassation to employees without a mandate.

In the Grignan ruling of March 9, 1999, the French Court of Cassation reversed its case law by deciding that when an employee fails to fulfill their obligations, it is up to the employer to exercise their disciplinary power and dismiss the employee in question. The labor chamber of the same court confirmed this new approach in the Mulin ruling of March 13, 2001. The court subsequently ruled that such an appeal must be declared inadmissible and may be considered an unlawful circumvention of dismissal law and classified as dismissal without real and serious cause at the employee's request.

In any case, the precarious nature of employment contracts, whether in terms of their nature or the powers granted to the employer, constitutes a major obstacle to the transfer of interpersonal skills. Indeed, a worker who is unsure of staying with the company for a long time cannot feel concerned about its interests and therefore cannot invest in sharing skills with colleagues for the company's benefit.

One of the major obstacles to skills transfer is also linked to the employer's clear refusal to contribute to employee training. Having not contributed to the acquisition of knowledge and skills by its co-contractors, the employer cannot expect them to transfer skills to each other. This situation is reflected in the haphazard use of temporary contracts, which has unfortunate consequences. Although temporary contracts are often considered a flexible solution for companies, they can nevertheless entail significant risks for both employers and employees.

Under Article 60 of the Togolese Labor Code of 2021, "a temporary employment contract is a contract that binds a worker to a temporary employment agency or a company that provides workers." In France, this type of contract is provided for in Articles L1251-1 et seq. of the Labor Code. In Benin, the 1998 Labor Code does not provide for this type of contract. Any reform in this area should take into account the reality of this type of contract so that the legislator can provide a more comprehensive framework. The temporary employment contract is a tripartite contract between the temporary employment agency, the user company, and the employee.

However, the legal nature of the relationships in this tripartite agreement differs from one another. The employment contract, which implies a relationship of legal subordination, exists only between the employee and the temporary employment agency. The employer, who is, in principle, responsible for training employees, is relieved of certain obligations, including social obligations and specific responsibilities. The consequence is instability for the employee and a crisis of confidence between the temporary worker and the employees who are part of the workforce of the user company to which he or she does not belong. In such a situation, the transfer of skills will be uncertain insofar as there is a kind of discrimination against the temporary worker. This special status means that the employee does not enjoy the same rights as permanent employees of the user company, particularly in terms of continuing education. As Alain SUPIOT points out, "temporary work, due to its precarious nature, does not allow the employee to engage in a process of sustainable professional development".

The temporary employment contract is therefore a precarious contract, the precariousness of which constitutes an obstacle to the transfer of interpersonal skills between employees of a company. Moreover, workers on temporary contracts are not employees of the company that uses them. They therefore cannot have a relationship with the company where they carry out their assignment in terms of skills development. The user company has no obligation to provide long-term training for these employees, which limits their access to training that could strengthen their skills, in the case of Soc. Prestature v. Durand, the Court of Cassation reiterated that the user company had no training obligation towards temporary workers, thus confirming the precariousness of their situation.

The French, Togolese, and Beninese legal frameworks recognize this inherent precariousness of temporary contracts. French case law also highlights this situation. Indeed, the Court of Cassation confirmed that the lack of continuing training for temporary workers did not constitute a violation of fundamental rights. It ruled that compensation for employees whose employers fail to meet their training obligations is not automatic. It is up to the employee to demonstrate the harm suffered before the trial judges, regardless of the length of time during which training was not provided. This decision reflects a certain legal tolerance towards the precariousness of this category of workers.

Some legal scholars point out in this regard that temporary employment agencies have little incentive to invest in training temporary workers, as the latter generally do not remain on assignment long enough to justify such an investment. This observation is all the more true given that the lack of career prospects in the user company discourages temporary employment agencies, which are the actual employers, from investing in training that would be more beneficial in the long term than in the short term.

One of the main criticisms of temporary contracts is that they do not contribute to the long-term development of employees' professional skills. Indeed, the very nature of this type of contract, based on temporary employment and flexibility, runs counter to the need for continuous training and consolidation of professional skills. Temporary contracts are designed to meet specific labor needs. This short-term focus means that user companies have little incentive to invest in training temporary employees. Temporary work is primarily a tool for flexibility for companies, which considerably limits training opportunities for employees.

It should be noted that, although temporary contracts are a pragmatic solution to meet the temporary needs of companies, they are a major obstacle to the development of employees' professional skills. The parties involved, whether the temporary employment agency, the temporary employee, or the user company, are bound by obligations that, in practice, do not promote continuous and sustainable training. This situation is reinforced by a legal framework that, although it regulates temporary work, does not impose sufficient training obligations, thereby leaving temporary workers in a precarious professional situation.

It is therefore clear from the various developments that labor law regulations are fundamentally an obstacle to the process of transferring interpersonal skills within companies, and it is not out of the question to consider this from the perspective of improving the legal framework governing labor relations. The transfer of interpersonal skills: a desirable prospect in labor law

The transfer of skills between employees is essential today for the sustainability and productivity of companies. However, as it is poorly regulated, this process takes place informally, without any intervention from the legislator. It is therefore necessary

for the parties to the employment contract to bring about a change in the conventional paradigm for the transfer of skills (A). The legislator should also regulate the skills transfer process so that it can be formally implemented and become effective (B).

C) The Need for a Change in the Conventional Paradigm

For the successful transfer of skills between employees with a view to productivity and the sustainability of the company, it is appropriate to define a conventional framework for this purpose. The change in the conventional paradigm aims to make the transfer of interpersonal skills a reality, and can be achieved through two fundamental channels. On the one hand, employers will have to make adjustments that encourage employees to transfer their skills. On the other hand, the gradual improvement of the company's performance could be an important lever in the process of knowledge transfer between employees. To achieve this, the company, through its employer, must be involved in managing the employee's career. This involvement can take the form of an extension of the employer training program.

Legislation indeed places an obligation on employers to train their staff. This training is considered to be part of the actual work. In this case, it is simply a matter of fulfilling the terms of the employment contract, as specified in French case law and by the legislator in Article L. 6321-2 of the Labor Code. However, training may extend beyond working hours. To this end, it will be necessary to agree, through a contract, on the benefits of individual training leave or the enjoyment of an individual right to training.

Created in France in 1971, the purpose of training leave is to enable all workers to undertake, on their own initiative and on an individual basis, training courses that are independent of their company's training plan. It enables them to achieve a higher level of qualification, change their activity or profession, or open themselves up to culture, social life, and voluntary work. This individual training leave is subject to certain conditions, in particular the employee's length of service. Articles R 6322-1 and 2 of the French Labor Code require at least 24 months of seniority as an employee, consecutive or otherwise, including 12 months with the company. However, this seniority requirement is waived for employees who have changed jobs following redundancy for economic reasons.

The employer may set a waiting period for training leave. Thus, an employee who has previously taken training leave is not eligible for further leave in the same company until a certain waiting period has elapsed.

Regarding exercising the individual right to training, this is an intermediate situation between taking training leave (which results from an employee's decision) and improving skills as part of a training plan (which results from an agreement between the parties). The exercise of an individual's right to training is the result of the employee's initiative; however, the choice of training course is made through a written agreement with the employer. According to legal doctrine, this explains its hybrid nature. This right allows employees with a permanent contract who have at least one year of seniority in the company to receive training throughout their professional life, enabling them to acquire new skills that can be easily transferred. Legal doctrine notes that the employer then pays the employee a training allowance corresponding to half of their net remuneration and covers the training costs corresponding to the rights covered. This approach can only encourage the employee to agree to transfer the skills they have acquired during the training.

The individual right to training is represented by a training credit of 20 hours per year, which can be accumulated up to a maximum of 120 hours over a six-year period. The implementation of this right is at the initiative of the employee, but the choice of training course is made by written agreement with the employer. These must be courses aimed at promoting, acquiring, maintaining, or improving knowledge, or training courses leading to a diploma or professional qualification.

During training leave, the employment contract is suspended, but remains in force between the parties. As the employee remains attached to the company, training leave is considered a period of work for the purposes of the employee's seniority rights within the company and their entitlement to paid annual leave. Case law has also ruled that the employee's subordination to the employer remains partially in force, in the form of an obligation to attend and be diligent, as well as an obligation of loyalty.

As part of the arrangements to encourage employees to transfer skills, the employer must contribute to the training costs. To this end, the French Labor Code requires all employers to devote a minimum of 1.6% of their total payroll (2% in temporary employment agencies) to vocational training. Training activities eligible for financial support from companies may be part of a company training plan and may be organized either by the company itself or by external organizations under agreements concluded for this purpose.

It is also possible, in order to provide employees with a greater incentive to transfer their skills, to include them in the company's capital through an employee share ownership scheme. Employee share ownership, which Gérard Cornu describes as worker share ownership, is defined as "a situation in which the employees of a company hold a fraction of its capital through the free allocation of shares". It is one form of financial participation in the company, alongside participatory remuneration and the

formation of employee assets through savings plans . Employee share ownership can be direct or indirect. Mechanisms to encourage direct share ownership consist of making workers shareholders in the company where they work. This is the most comprehensive way of ensuring their responsibility and "interest" in the smooth running of the company. Indirect share ownership is a form of employee shareholder involvement that involves the development of "plans" or ad hoc companies.

Regardless of its form, employee share ownership contributes, according to Xavier Hollandts and Zied Guedri, to "improving the pension system by transferring part of its financing to the individual capitalization of employees. For companies, employee share ownership is a tool that has a positive impact on employees' identification with their company, their commitment, motivation, and satisfaction". Such motivation will encourage employees to be willing and available to participate in the skills transfer process that the employer desires.

In addition, the gradual improvement of company performance through the development of staff skills and the reduction of expertise loss can be a valid incentive for employees to embrace the culture of interpersonal skills transfer. Employers can support their staff in acquiring professional certifications that will enable them to enhance their skills. Professional certification refers to the act by which a certifying body attests that a person has acquired, through initial or continuing training or through professional experience, a set of skills necessary for the exercise of a clearly identified profession or job. It is a lever for securing career paths and achieving long-term employment. Such long-term integration can only motivate and encourage employees to share their skills with one another.

Skills could also be transferred appropriately between employees if the employer ensures that the loss of expertise is minimized. This requires good management of the skills accumulated by senior employees who are about to leave the company. An arrangement that allows these employees to transfer their skills freely and without restraint could be beneficial for both the company and junior employees. This could involve arranging working hours during which the senior employee acts as a trainer to share their experience and knowledge. It could also consist of a consulting contract that the company can sign with one of its former employees who has recently retired, as there is nothing to prevent a retiree from working on a personal and independent basis as a consultant.

While these contractual arrangements between the parties to the employment contract are conducive to the transfer of interpersonal skills, they remain insufficient if the legislator does not intervene to better regulate the process.

D) Legislative Changes Necessary for the Effective Transfer of Skills

David Affodjou notes that labor law is the branch of private law defined as "the set of legal rules governing individual and/or collective relations that arise between the employer and the employee". These relations must be well regulated. In this arrangement, the legislator must take into account not only the interests of the company but also ensure the legal protection of the employee who agrees to transfer their skills. In fact, the arrangement in the interests of the company will consist of imposing on the employee a duty to transfer skills between workers within the same company. This duty will be accompanied by civil liability in the event of refusal or non-performance by the employee of this obligation.

In practice, this obligation imposed by the employer on the employee amounts to a professional obligation in the same way as the traditional obligations of the worker, which are the obligation to perform the agreed service in good faith and without competing with the employer. This obligation can be seen as part of what David Affodjou calls "the obligation to behave correctly towards one's colleagues and superiors". This obligation can go further and be established as a public policy measure, a kind of social public policy, a concept which today, according to Alain Supiot's cherished phrase, constitutes "the cornerstone of labor law." Social public policy refers to a characteristic of the legal and regulatory rules of French labor law, according to which they establish a minimum that can be improved through contracts and agreements. Social public policy is also sometimes used by authors as a term to refer to a conflict rule specific to labor law that is not limited to the relationship between the law, in the broad sense, and agreements and contracts. Indeed, public policy in the social sphere enables the improvement of legislative and regulatory provisions. Thus, in the name of public policy in the social sphere, and in a drive to improve instruments aimed at promoting skill transfer, adjustments are possible.

Once these arrangements have been made and the duty to transfer skills has been imposed on the employee, the latter may be held liable if they refuse to fulfill this obligation. Such refusal will therefore be considered professional misconduct for which the employee may be held liable. However, the employer must provide evidence of the damage suffered as a result of the employee's failure to transfer their skills, and there must be a genuine causal link between this refusal and the damage suffered by the employer. It will therefore be up to the judge to analyze the situation and determine an appropriate penalty.

However, if the employee agrees to transfer their skills, which is highly desirable, the legislator needs to take measures to provide legal protection for the employee. Legal protection for the transferring employee could take two forms. On the one hand, they must have a guarantee of job security. In other words, this employee must not be dismissed after transferring their skills.

They must also have priority for re-employment if their contract has been terminated due to force majeure or a situation beyond the employer's contro. On the other hand, and with regard to potential liability, the criminal liability of the transferring employee must be excluded. This means that the transferring employee cannot be held liable for coercion or complicity, and that the possibility of their involvement in a situation simply because they witnessed it must be ruled out. In civil law, there must be a limitation of the causes of liability. Thus, simple or slight misconduct on the part of the transferring employee must not be the cause of any liability. Only serious misconduct or gross misconduct can be retained.

Legislative reform is therefore a possible solution to facilitate and better regulate the transfer of interpersonal skills. Such a reframing or regulation will enable the transition from the informal practice of unofficial and non-mandatory mutual assistance between employees to one that aligns with the formal requirements of labor law.

II. CONCLUSION

In short, labor law, with its requirements related to the dynamics of employment contracts and their occasional precariousness, constitutes a major obstacle to the transfer of skills. Indeed, there is a legislative vacuum at both the international and national levels regarding the transfer of interpersonal skills. Relationships between employees within a company cannot justify the transfer of skills, as they are often too focused on competition between employees. Added to this is the precarious nature of employment contracts, manifested by the omnipotence of the employer, whose power to modify the contract does not allow employees to be involved in the transfer of skills. Thus, the transfer of skills cannot be a legal obligation for the employee.

However, skills transfer can be a factor that promotes such an ambition. It is all a question of the orientation of the parties to the employment contract and the logic devised by the legislator, which can be applied by the judge at the appropriate time. To do this, it will be necessary to adjust the agreements between the parties and encourage the involvement of the legislator to oversee the process.

III. REFERENCES

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[30] Firstly, an attitude of taking initiative and responsibility in situations for which the individual is responsible; secondly, practical knowledge that reflects an understanding of these situations and draws on experience and knowledge acquired during training; finally, the existence, development, consolidation, and mobilization of networks of actors who contribute directly to the management of situations or provide support.
[31] International Labor Organization General Conference: R195 - Recommendation (No. 195) on human resources development, 2004.

[32] IKujiro Nonaka and Hirotaka Takeuchi, The Knowledge-Creating Company, Oxford University Press, 1995. 8 Tacit skills, unlike explicit skills, are generally linked to the company or organization. They are integrated into individuals in the form of practical know-how, modes of action, and personal intuitions.
[33] Explicit skills are formalizable skills (knowledge, know-how) that can be transcribed in books, defined through procedures, operating methods, manufacturing ranges, explained in maintenance notices, safety manuals, manufacturing standards, and integrated into software.
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[37] The retirement of the most experienced workers, combined with longer periods of study, could create temporary shortages of skilled labor.
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[44] This recommendation was adopted on June 17, 2004, at the92ndsession of the ILC, and concerns lifelong education and training in the context of human resources development. Information consulted on 04/30/2024 at 9:18 a.m. on www.normlex.ilo.org.
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[46] ILO, Report of the112thSession of the ILC: Labor Administration in a Changing World of Work, February 2024. 23 This convention was adopted in 1978 and entered into force on October 11, 1980. It concerns labor administration: role, functions, and organization.
[47] PESKINE (E.) and WOLMARK (C.), Labor Law 2024, Dalloz 2023, p. 67.
[48] See Article 52(2) of Law No. 2021-012 of June 18, 2021, on the Labor Code in Togo.
[49] The Interprofessional Collective Agreement of Togo currently in force dates from December 20, 2011, and was signed between the National Employers' Council and six (06) trade union confederations, namely the National Confederation of Workers of Togo (CNTT), the Trade Union Confederation of Workers of Togo (CSTT), the General Confederation of Executives of Togo (CGCT), the National Union of Independent Trade Unions of Togo (UNSIT), the General Union of Free Trade Unions (UGSL), and the Group of Autonomous Trade Unions (GSA). 27 The collective agreement is a hybrid act in that it is first concluded as a contract between two parties, one representing the interests of employees and the other representing those of employers. It then takes on a normative effect. Like a legal or regulatory standard, it governs the situation of persons who did not take part in its drafting. In other words, it applies to all employees of employers who have signed it, either directly or indirectly through the employers' organization of which they are members. The agreement also applies to employees who are not members of the employee union(s) that signed the agreement. See Elsa PESKINE and Cyril WOLFMARK, Droit du travail 2024, op. cit., p. 66.
[50] PESKINE (E.) and WOLMARK (C.), Labor Law 2024, Dalloz 2023, op. cit., p. 66.
[51] The employment relationship is a legal concept widely used to describe the relationship between a person known as an "employee," often also referred to as a "worker," and an "employer" for whom the "employee" performs work under defined conditions in exchange for remuneration.
[52] Affectio societatis is a Latin expression that refers to the intention that should motivate partners to collaborate on an equal footing. It implies not only a spirit of collaboration, but also the right of each partner to exercise control over the actions of those responsible for administering the company.
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[59] Brussels Labor Court, November 23, 1976, Journal des Tribunaux du Travail 1977, No. 162.
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[61] Brussels Labor Court, 4thChamber, December 10, 1980, Journal des Tribunaux du Travail 1982, No. 190. 40 On this issue, see KCHIRID (A.) and TEMNATI (R.), Management des entreprises, Ellipses, "Hors collection," 2021, p. 174.
[62] PESKINE (E.) and WOLMARK (C.), Labor Law 2024, Dalloz,17thedition, 2023, p. 209.
[63] Bull. civ. V, no. 278; GADT, no. 50.
[64] The essential elements of an employment contract are remuneration, qualifications, place of work, and working hours.
[65] They consist of remuneration for the qualification, the place of work, and working hours.
[66] Soc. November 14, 2007, no. 06-43.762.
[67] Prior to this ruling, when a significant change in the employment relationship occurred, the fact that the employee performed their work under the new conditions without protest allowed the judge to conclude that the employee had consented to the change. Since the Raquin ruling, the employee's acceptance can no longer be inferred from their continued work. The employee either expressly accepts the change or does not accept it.
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[73] Soc. July 5, 2005, Bull. civ. V, no. 232; RJS 2005, no. 971.

[74] The relationship between the employee and the temporary employment agency is an employment contract. The relationship between the employee and the user company is a contract for services, and the relationship between the temporary employment agency and the user company is a contract for the provision of services.
[75] SUPIOT (A.), op. cit., p. 172.
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[77] See the provisions of Article L6315-1 of the Labor Code.
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[83] Soc. May 10, 2001: Bull.civ. V, no. 159, Dr. soc. 2001. 888, obs. A. Mazeaud (an employee who undertakes training with a company that is a competitor of their employer is in breach of this obligation of loyalty). 72 See Article L. 6331-9 of the Labor Code.
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[88] AFFODJOU (D), Le droit du travail béninois (Beninese labor law), op. cit., p. 239.
[89] As the point of contact between the state legal order and the "social order," public order guarantees the realization of society's "idea of law" by imposing discipline in social and legal life. It thus appears at first glance to be an order that limits freedoms, particularly the freedom to create law. It is governed by the provisions of Article 6 of the Civil Code and specified in the context of contracts by the provisions of Article 1102 of the same code.
[90] See, for example, P. Lokiec, Droit du travail, volume 1, PUF, no. 231, p. 217: "Public policy has a unique meaning in labor law, since in the event of a conflict of norms, preference is in principle given not to the highest in the hierarchy of norms, but to the most advantageous for the employee. See E. Peskine and C. Wolmark, Labor Law, Dalloz "Hypercours," 2015, no. 105, p. 65: "Higher-level rules that can be set aside by more favorable lowerlevel rules are referred to as 'social public policy' rules." See also G. Auzero and E. Dockès, Labor Law, Dalloz "Précis," 2015, No. 1319, p. 1408.
[91] Force majeure is a defense that allows a debtor to be exempt from liability when an event prevents them from fulfilling their obligation. Three cumulative criteria are necessary to characterize force majeure: the event must be unforeseeable, irresistible, and beyond the debtor's control.
[92] An example of this is an economic upheaval that causes difficulties for the company and forces it to lay off staff or place them on technical leave, as provided for in Article 66 of the Togo Labor Code.
[93] Simple misconduct may be established for an act or series of acts attributable to the employee that constitute a breach of their professional obligations, particularly those arising from their employment contract or collective bargaining agreements.
[94] Serious misconduct, according to the provisions of Article 77-a of the Togolese Labor Code, is misconduct whose seriousness makes it impossible to keep the employee in the company or establishment, even during the notice period.
[95] Gross misconduct is misconduct committed by the employee with the intention of harming the employer. In this case, the intention to cause harm will be characterized by objective criteria that can be assessed in relation to the purpose of the company.