Index

Abbe, Ernst 333
Abella, Rosalie 249
Action Travail des Femmes (SCC) 249
Adenauer, Konrad 352
adverse impact discrimination, defined 230, 237, 241
AFL-CIO
Employee Free Choice Act proposals 315
Africa
Personnel Delegates 334
see also individual countries
African National Congress (ANC) 442, 445, 451–452
Air Canada 320
American Law Institute (ALI)
Restatement (Second) of Torts 165
Restatement of Employment Law 14, 197–198, 202, 203
on restrictive covenants 204–205, 206, 213
Amsterdam Treaty (1997) 223, 228, 385, 389, 395
Anderson, Gordon 293–294
Anglo-American vs. European labor regulation, overview 69–73
hours/vacations/leave 71–72
wages 70–71
working hours in EU 72–73
workplace health and safety regulation in US 74–77
anthropological function of law (Supiot) 153
anti-discrimination laws 25, 44–45
see also workplace discrimination and social inclusion
apprentice representation 346–347
ARBED (company) 357
Arcelor (company) 357
Arcelor Mittal 357
Argentina
collective bargaining 33
job loss and employment protection laws 281
as nonenforcer of restrictive covenants 199
Arthurs, Harry 82
Arup, Christopher 214–215
association, freedom of see freedom of association
Association of Mining and Construction Union (AMCU) 451
Australia
collective bargaining 32, 33, 34, 316, 317
constitutional provisions and labor law 24–25, 27
duty of mutual trust 41
Fair Work Act 278, 317, 320
Fair Work Commission 34
Fair Work Ombudsman 34
as federal government 30–31
freedom of association 308
High Court of Australia 41
Human Rights Act 44
job loss and employment protection laws 274, 276, 277, 278, 280, 284, 293–294
ratifies ILO Convention 158 275
statutory labor law 35
Victorian Charter of Human Rights and Responsibilities Act 45
Work Choices reforms 278, 290–291
Austria
Austrian Work Constitution Act 180
data privacy 174
job loss and employment protection laws 280, 281, 282, 284
Labor Constitution Act 338
labor courts 372
Supreme Court 193
Work Constitution Act 193
Worker Chambers 374
works councils 335, 338
autonomy, defined 155
Azerbaijan
job loss and employment protection laws 284
Baird, Douglas 142
Bangladesh
constitutional provisions and labor law 24, 26
Barnard, Catherine 229, 259
Batt, Francis 134–135
Bebel, August 333
Belgium
collective bargaining 311
476 Comparative labor law

committee for prevention and protection at work 346
constitutional provisions and labor law 26
job loss and employment protection laws 281
joint committees 342–343
labor courts 372
legislative process, employee voice in 373
restrictive covenants 210
Benjamin, Paul 120–121

BiIka-Kaufhaus GmbH v. Weber von Hartz (ECJ) 231, 251
biometric identification, country comparisons 191–193
Blanpain, R. 380
Blum, Léon 339
board level employee representation
in EU Member States 366–368
in France 358
in Germany 351–355, 366–367
in Luxembourg 357
in Netherlands 355–357
in United Kingdom 358–359
in United States 358, 359
bona fide occupational requirement (BFOR) 234–235
Botero, Juan 65–68, 292–293
Brassey, Martin 120
Brazil 467–473
acquired rights principle 38–39
Associação Nacional dos Magistrados do Trabalho (ANAMATRA) 472
collective bargaining 33
economic outlook 472–473
Federal Act 469, 470–471
flexibility 469–471
Fundo de Garantia de Tempo de Serviço (FGTS) 469–470, 472
job loss and employment protection laws 281, 284
Labor Act 35, 467–472
labor courts 372
labor law reforms 471–472
role of contracts 40
statutory labor law 35
Tribunal Superior do Trabalho (TST) 470–471, 472
breach of contract 45–46
BRICS and economic performance 440–473
overview 5–6, 8–9, 16, 440–441
Brazil 467–473
flexibility 469–471
legislative reforms 471–472
outlook for 472–473
China 459–466
agency work 464–466
labour market regulation 459–462
outlook for 466
precarious work 462–464
India 453–459
contractualisation 456–457
formalising the informal economy 457–459
informal economy 454–459
outlook for 459
South Africa 442–453
extension of sectoral agreements 448–449
labour legislation 445–446, 447–448
labour market 443–445, 446–447
outlook for 452–453
trade unions 450–452
summary conclusion 473
British Airways 320
British Columbia (Public Service Employee Relations Commission) v. BCGSEU (SCC) 242–243
British Post Office 359
British Steel Corporation 359
Brown v. Board of Education (USSC) 247
Brudney, James 265–266
Business Unity South Africa (BUSA) 447–448
Cambodia
ILO technical assistance 272
Cameron, David 278–279
Canada
Bill of Rights 28
Charter of Rights and Freedoms 250, 320–321
collective bargaining 33, 34, 128, 315–316
constitutional provisions and labor law 28–29, 30, 308
dependent contractor status 127–128
Employment Equity Act 262, 266
employment relationship test 118
as federal government 30
freedom of association 305–306, 308
human rights codes 224–225
Office of Federal Contract Compliance Programs 262–263
Ontario Court of Appeal 140
Ontario Human Rights Code 249
provincial worker health and safety laws 264
related employer doctrine 140
right to strike 319
social inclusion laws 221, 255–256, 262–266
Supreme Court of Canada (SCC) 28–29, 140, 231, 241–242, 244, 249, 250, 305–306, 308–320
*Canadian Nat’l Ry. v. Canada (Human Rights Comm’n) (SCC)* 249
Career Builder 183
career passports 424
Carl-Zeiss-Jena (company) 333
Casper, Steven 218
Central and Eastern Europe, transitions in 403–439
overview 8, 10, 17, 403–404
collective agreements
in Hungary 413
in Poland 413
in Russia 414
collective employee representation 429–431
equal treatment in employment
in Hungary 417–419
in Poland 419
in Russia 417, 419
freedom of employment contract 415–417
internal regulations
in Hungary 414
in Poland 414
in Russia 414–415
modification of employment contract 422–423
origins of transition 404–407
right to conclude collective agreements 433–437
right to strike 437–438
sources of labor law 408–415
in Hungary 411–412, 413, 414
in Poland 409–410, 412
in Russia 410–411, 412, 414
summary conclusion 439
termination of employment contract 423–429
in Hungary 424, 425–427
in Poland 424–425, 427–429
in Russia 424, 425
trade unions 404–406, 431–433
Tripartite Socio-Economic Commissions 436
working conditions regulation 419–422
Chambers of Commerce and Industry 374
Chile
job loss and employment protection laws 276, 277
as nonenforcer of restrictive covenants 199
China 459–466
agency work 464–466
economic outlook 466
Employment Contract Act 280
Five Year Plan (2011–2015) 460–461
job loss and employment protection laws 281
Labour Contract Law 461, 463–466
Labour Disputes Mediation and Arbitration Law 461, 466
labour market regulation 459–462
as low enforcer of restrictive covenants 199, 212
precarious work 462–464
Social Security Law 461
state-owned enterprises 460
trade unions 460
citizenship theory 286–287
civil society organizations, employee voice in 375–376
*Clackamas Gastroenterology Associates, PC v. Wells* (USSC) 226
class actions 45
Coase, Ronald 134–135, 142
codes of conduct 369
codetermination rights see works councils
collective bargaining
administration and enforcement 33–34
constitutional provisions and labor law 26, 28–29
ILO Conventions 301–302, 304, 323–324, 325, 449
legal frameworks of 32
legislative provisions for 31–34
level of bargaining 33
subcontracting and 143
*see also* freedom of association; *individual countries*
Collins, Harry M. 215
Collins, Hugh 122, 286, 288–289
*Commission vs. Luxembourg* (CJEU) 393
company decision-making, employee involvement 350–363
employee representation on company boards 351–358
voluntary board-level participation 358–359
worker ownership of company 359–363
comparative labor law, introduction 1–17
corporation law, cross-national analysis of legal systems; individual countries and courts
criminal law, influence on labor law 42–43
Cyprus
ILO technical assistance 272
Danone (company) 370
data collection see employee autonomy and privacy
De Gaulle, Charles 341–342, 358, 361
De Vos, Pierre 449
Deakin, Simon 293–295
decentralisation and economic pressures 321–324
Declaration on Fundamental Principles and Rights at Work (ILO) 42, 48–49, 88, 369
Dekker v. Stichting Vormingscentrum voor Jong Volwassenen (VJVCentrum) Plus (ECJ) 236–237
Demir and Baycara v. Turkey (ECtHR) 304, 324–326
Demming, Edward 2
Denmark
job loss and employment protection laws 280, 281, 282, 283
de-unionisation see freedom of association
development as freedom (Sen) 96
dignity of employee see employee autonomy and privacy
direct discrimination, defined 231
discrimination law see workplace discrimination and social inclusion
disparate impact discrimination, defined 230–231
see also workplace discrimination and social inclusion
disparate treatment, defined 230
double movement thesis (Polanyi) 299, 328–329
Downtown Eatery (1993) Ltd. v. Ontario (Ontario Court of Appeal) (Canada) 140
Eastern Europe see Central and Eastern Europe, transitions in; individual countries
EC Treaty 225–226, 229, 232, 385
economic dismissals 279–285
see also job loss and employment protection
EEC Treaty see Treaty Establishing the European Economic Community (EEC Treaty)
employee autonomy and privacy 153–194
overview 5, 9, 10–11, 15, 153–154
autonomy, country comparisons 155–164
biometric identification, country comparisons 154–155, 191–193
difference and convergence 194
dignity, country comparisons 177–182

Matthew W. Finkin and Guy Mundlak - 9781781000137
Downloaded from Elgar Online at 01/26/2019 01:57:06PM via free access
geolocation technology, country comparisons 154–155, 188–191
privacy, country comparisons 164–177
social media, country comparisons 154–155, 182–188
employee mobility and competition 195–219
overview 6, 10, 14–15, 195–199
common law jurisdiction and 203–206
economic growth values 196–197
EU countries 199, 206–211
high enforcer regulation model 212–213
information theory 214–215
literature review 213–218
low enforcer regulation model 203–212
nonenforcer regulation model 200–203
summary conclusion 218–219
employee shareholder programs 360–362
Employee Stock Ownership Plans (ESOP) 359
employee voice see non-union institutions and employee voice
employees, and cross-national analysis of legal systems 115–130
overview 4–5, 8, 14, 17, 115–116
courts-legislature dialogue 125–127
between diversity and convergence 116–121
employer misclassification and court purposive approach 121–124
intermediate groups and 127–129
summary conclusion 129–130
see also individual countries
employer access to employee social media 182–188
employer-driven employee representation 348–349
employers, single vs. plural 132–152
overview 6, 15, 16–17, 132–133
comparison of models 141–150
flexicurity perspective and 150–152
groups of companies 145–150
plural employer model 138–141
single employer model 133–138
subcontracting 142–145
Employing Workers Indicator (World Bank) 90
employment relationship 36–41
contract enforcement 41
contractor vs. employee 37
ILO, 14-factor test 118–119
implied duty of faith 40–41
implied duty of mutual trust and confidence 40–41
role of contracts 37–39
shifts in standard relationship 39–40
see also individual countries
ENI (company) 370
Epstein, Richard 289
Equator Principles 96–97
Eugen Schmidberger decision (CJEU) 392
Eurocom 183
European Central Bank (ECB) 89, 311, 321, 322–323, 327, 397
European Commission 56
anti-discrimination laws 223, 229
Committee on Safety, Hygiene and Health Protection at Work 76, 77
Company Law Directive proposal 366
European Employment Strategy (EES) 89–90, 390
flexicurity perspective and 144, 271
freedom of association 326, 327
gender equality work program 261
Green Paper on European Social Policy – Options for the Future 387
Green Paper on Modernising Labour Law 379
Maastricht Protocol on Social Policy 387, 388–389
Modernising Labour Law to Meet the Challenges of the 21st Century’ 271
Open Method of Co-ordination 89–90
on restrictive covenants 206–207
Single European Act 383–384
sovereign debt crisis impacts 322–323
subcontracting 144
White Paper on European Social Policy 387, 388
White Paper on Growth, Competitiveness, and Employment 387–388
working hours regulation 72–73
wirtschaftwirkung 366
European Committee of Social Rights 60, 392, 425
European Community 76, 223, 225, 269
see also European Union (EU)
European Constitutional Charters 209, 211
see also individual countries
480  Comparative labor law

European Court of Human Rights (ECtHR)
60, 161, 299, 300, 302, 303–307, 318, 324–326

European Court of Justice (ECJ)
on disability 259
on EU labor law 55
on gender equality principle 57–58, 225–226
on indirect discrimination 231–232
on multi-employership 149
on positive/affirmative action 232–233
protected workplace sex-differences 221
on restrictive covenants 207–208
on right to privacy 172–173, 193
right to strike 318, 319–320
on workplace discrimination 236–237, 251–253

see also individual cases

European Parliament 56, 384–385, 401
European Services Directive 390–391, 393
European Social Charter (ESC) 59, 60, 302, 307, 425
European Social Model 379–402
overview 9, 16, 379–380
economic governance 396–401
EU labor law and, appraisal of 401–402
free movement of workers 381–383
Lisbon Treaty, impact of 394–396
market making vs. social progress 390–393
social integration and EES 387–390
social policy and economics 383–386
undermining of 327

European Union (EU) 298, 303
Community Charter 385
comparative studies of 101, 102
data protection 172–173, 193
Directive on Part Time Work 257
dismissal standards 280, 281, 283
Economic and Social Committee 373–374
employee voice in transnational companies 364–371

Equal Treatment Directive 57–58
Euro Plus Pact (EPP) 322, 398–399
European Company Statute 367–368
European Posting Directive 392–393
European Social Charter (ESC) 59, 60, 302, 307, 425
European Works Councils (EWC) 312–313, 364–368
Fiscal Compact 397
Fixed-term Workers Directive 326
health and safety committees 346
Information and Consultation Directive 312
low enforcer regulation model 199
Parental Leave Directive 326
Part-time Workers Directive 326
Posted Workers’ Directive 310–311, 327
prohibition of discrimination 57–58
prohibition of gender discrimination 57–58, 126
Race Equality Directive 57
restrictive covenants 206–211
Revised Equal Treatment Directive 260–261
Social Action Programme (SAP) 380
social inclusion laws 221, 256–257, 259–260, 266
sources of labor law 55–57
Special Negotiating Body (SNB) and works councils 364–368
Stability and Growth Pact 398
subcontracting 144
subsidiarity and proportionality 56–57
transnational companies and 364–371
see also Anglo-American vs. European labor regulation, overview; European Social Model

European Works Council (EWC) 312–313, 364–368
Eurozone crisis 321–323, 396–398
Federation of Independent Trade Unions of Russia (FNPR) 431
Finland
data privacy 174
General Agreement on Protection against Dismissal 273
job loss and employment protection laws 274, 281
restrictive covenants 209
Fisk, Catherine 216
Fleming, Lee 217
flexible employee (Collins) 288–289
flexicurity perspective 144, 150–152, 271–272, 279
Fordist vertical firms see employers, single vs. plural
France
board level employee representation 358
Commercial Code 358
company committees 332, 335, 341–342, 363
company union section 344–345
constitutional provisions and labor law 26
courts on employer misclassification of employees 122
employee shareholder programs 361–362
EU Working Time Directive 59
Grenelle Agreement 344
groups of companies 146–147, 148–149
hygiene, safety and working conditions committees 346
interfirm network agreements 151–152
intermediate groups 129
job loss and employment protection laws 274, 278, 280, 281, 282–283, 293–294
Labor Code 127, 136, 145
labor courts 372
legislative process, employee voice in 373
ratifies ILO Convention 158 275
restrictive covenants 208, 210, 211
subcontracting 145
worker cooperatives 360
workplace health and safety regulation 77
works councils 335, 339–340
Free Market Foundation (FMF) 445, 448
Freeiland, Mark 37–38
freedom of association 296–299
overview 4, 14, 17, 296–299
collective bargaining and strikes 301–302
constitutional protection 26, 303–306
economic pressures towards decentralisation 321–324
EU Charter of Rights 325–326
international human rights law and 302–303
proportionality requirement 319–321
regulatory bargaining and workplace representation 311–315
regulatory bargaining models 309–311
representational bargaining models 313–317
right of limited association 308–309
right of non-association 307–308
right to organise and 306–309
right to strike and 318–321
sovereign debt crisis impacts 321–323
summary conclusion 327–329
TFEU and 326–327
trade unions 296, 300–301
Troika vs. ILO 323–324
Freese, Heinrich 333
Fudge, Judy 286–287
Fukuyama, Francis 96
Gahan, Peter 294–295
Garmaise, Mark 216–217, 218
Gebhardt, Evelyne 390–391
geolocation technology, country comparisons 188–191
Gerardo Ruiz Zambrano v. Office national de l'emploi (CJEU) 382–383
German Federation of Unions 336
Germany
Act on Board-level Representation by one Third 353–354
Act on Co-Determination by Employees on the Supervisory Boards of Undertakings of the Mining, the Iron and Steel Manufacturing Industries 352
board level employee representation 351–355, 366–367
Civil Code 160
collective bargaining 311–312, 313
collective bargaining and strikes 301–302
consitutional protection 26, 296–299
data privacy 174
employee autonomy 157–162
employee definition in social security context 126
employee dignity 178–181
employee right of personality 165–174
employee-like status 127–128
employees with disabilities representatives 347
employer access to employee social media 185–186
employer use of biometric identification 192–193
employer use of geolocation technology 189–190
Employment Termination Protection Act 161
Federal Data Protection Act 171–172, 180, 186, 190, 192–193
as federal government 29–30
Federal Supreme Court on right of personality 166–171, 180
groups of companies 146, 147–149
job loss and employment protection laws 276, 277, 278, 280, 281, 283, 293–294
labor courts 372
labor intermediation 136
Law on Statutory Safeguards in respect of the Notice to Terminate 272
Regional Equal Opportunity Acts 347
Regional Labor Chambers 374–375
482 Comparative labor law

restrictive covenants 198–199, 209, 210–211, 218
right of informational self-determination 170–171, 189–190
Weimar Constitution 157, 159, 177
workplace health and safety regulation 77
Works Constitution Act 169, 336–337, 346–347, 349, 353
Works Council Act 272, 336
works councils 169–170, 332, 335–340, 348–349
Ghana
constitutional provisions and labor law 26
Gilson, Ronald 201
global union federations (GUF) 370
globalization and labor law 80–111
overview 16–17, 80–83
comparative analysis 98–104
comparative method, new trends 82–83, 104–110
effects on national norms 107–108
globalization as social force 82, 83–87
institutions, norms and governance and 82, 87–92
labor market governance and 110–111
role of ILO 50–51
scale of labor law 105–107
scope of legal rules/institutions 108–110
values and ideology 92–98
globalized localisms (Santos) 98
good faith, duty of 40–41
Google 173
Greece
constitutional provisions and labor law 26, 305
Eurozone crisis 321–326
job loss and employment protection laws 280, 281, 283
Group Global Works Council of Volkswagen 369
GSEE (Greek trade union confederation) 324–325
Handels- og Kontorfunktionærernes Forbund I Danmark v. Dansk Arbejdsgiverforening, ex parte Danfoss (ECJ) 251
harassment see workplace discrimination and social inclusion
Harmel, Léon 333
harmonization see European Social Model

health and safety regulations and committees 64, 74–77, 264, 346, 350
Hegel, G.W.F. 158
Heineken case (ECJ) 149
Hepple, Bob 286
Howard, John 278
The Human Cloud at Work: A Study into the Impact of Wearable Technologies in the Workplace (2014) 194
human rights laws, influence on labor law 44–45

Hungary
Act on Equal Treatment and Promotion of Equal Opportunities 417–418
collective agreements 413
collective employee representation 429–430
Constitution (1949) 415
Equal Treatment Authority 418–419
equal treatment in employment 417–419
freedom of employment contract 416–417
internal regulations 414
modification of employment contract 422–423
National Economic and Social Council 436
restrictive covenants 208, 210
right to conclude collective agreements 433–437
right to strike 437–438
sources of labor law 408, 411–412, 413, 414
stand-by position 420
termination of employment contract 424, 425–427
trade unions 431–433
working conditions regulation 419–422
Hyde, Alan 202, 215

immigration law, influence on labor law 43
India 453–459
constititutional provisions and labor law 24, 25, 26, 27
Contract Labour (Regulation and Abolition) Act 200, 457
contractualisation 456–457
economic outlook 459
formalising the informal economy 457–459
Industrial Disputes Act 272–273, 456–457
informal economy 454–459
job loss and employment protection laws 293
Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by
Certain Establishments) Amendment and Miscellaneous Provisions Act 459
as nonenforcer of restrictive covenants 199, 200, 203, 219
Unorganised Workers Social Security Act 456, 458
indirect discrimination, defined 231–232
industrial justice concept 286
industrial tort laws 45–47
breach of contract or interference with contractual relations 45–46
conspiracy to injure 46
conspiracy to injure by unlawful means 46
intimidation 46
picketing and 47
inevitable disclosure theory 213, 219
information asymmetry 63
information theory 214–215
injure, conspiracy to 46
intellectual property rights see employee mobility and competition
International Biometric & Identification Association (IBIA) 191
International Convention on the Elimination of All Forms of Racial Discrimination (CERD) 54
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) 53, 54
International Federation of Chemical, Energy, Mine and General Workers’ Unions (ICEM) 370
International Framework Agreements (IFAs) 369–371
International Labour Organization (ILO) 15–16, 47–48, 127, 297, 298, 391, 404, 409, 417, 419
case law 51
Committee of Experts on the Application of Conventions and Recommendations 51, 301, 303, 320, 323–324, 325
Committee on the Application of Conventions and Recommendations 51 comparative studies of 101–102
complaint procedure 52
constitutional provisions of 48, 52
Convention 87, freedom of association 300–302, 304, 323–324
Convention 98, collective bargaining 301–302, 304, 323–324, 325, 449
Convention 135, Protection and Facilities to be afforded to Workers’ Representatives in the Undertaking 333–334
Convention 158, Termination of Employment at the Initiative of the Employer 273–279, 283, 287, 290
Convention 189, Concerning Decent Work for Domestic Workers 88, 90, 96
Conventions and Recommendations 49–52
critique of Russian trade unions 435
Declaration on Fundamental Principles and Rights at Work 42, 48–49, 88, 369
deregulatory pressure and Eurozone crisis 323–324
draft contract labour instrument 456
examination of periodic reports 52
formalising the informal economy 457
14 factor employment relationship test 118–119
Freedom of Association Committee 301, 303
General System of Preferences 88
ICRMW 54
International Labor Conference 49, 52
International Labor Office 49–52
Recommendation 91, collective agreements 324
Recommendation 119 concerning Termination of Employment at the Initiative of the Employer 272–273
Recommendation 193, Promotion of Cooperatives 360
right to strike 319
supervisory procedures 51–52
technical assistance by 97
Transferring from the Informal to the Formal Economy 454, 455
on unemployment in South Africa 444, 452–453
International Metalworkers’ Federation (IMF) 370
International Monetary Fund (IMF) 97, 298, 311, 321, 322–323
World Economic Outlook 89–90
International Trade Secretariats (ITS) 371
International Transport Workers’ Federation (ITF) and Finnish Seamen’s Union (FSU) v. Viking Line (ECJ) 319–320, 379–380, 390, 391–392, 393
International Union of Food (IUF) 370
intimidation, in industrial tort laws 46
Ireland
Eurozone crisis 322

Matthew W. Finkin and Guy Mundlak - 9781781000137
Downloaded from Elgar Online at 01/26/2019 01:57:06PM via free access
484  Comparative labor law

job loss and employment protection laws 282, 283
positive inclusion requirements 261
Israel
absence of constitution 25
courts on employer misclassification of employees 122
job loss and employment protection laws 276–277
labor courts 372
as nonenforcer of restrictive covenants 199, 202, 219
Italy
constitutional provisions and labor law 26, 305
courts on subordination concept 122
elected officials’ employment status 124
hours/vacations/leave 73
interfirm network agreements 150–152
job loss and employment protection laws 280
labor outsourcing 135–136
legislative process, employee voice in 373
long-term staff leasing 145
para-subordinate status 127–128
restrictive covenants 198, 208, 209
subcontracting 144
Workers’ Statute 284, 313
workplace health and safety regulation 76, 77
Japan
Civil Code 162
collective bargaining 33
constitutional provisions and labor law 23
employee autonomy 162–164
employee dignity 181–182
employee privacy 174–177
employer access to employee social media 186–188
employer use of biometric identification 193
employer use of geolocation technology 190–191
Employment Security Act 176, 187
Japanese Community Union Federation 376
job loss and employment protection laws 276, 277–278
as low enforcer of restrictive covenants 199, 211–212
Personal Information Protection Act 176, 190–191, 193
role of contracts 38
Sangyo Houkokukai (employer-employee cooperative associations) 162
statutory labor law 35
Supreme Court 163–164, 175–176
job loss and employment protection 268–295
overview 11, 15, 17, 268–272
economic dismissals 279–285
economic effects 290–292
employment protection laws and 285
legal origins theory and convergence 292–295
personal dismissal standards 272–279
job property concept 285–286
joint committees 340–343
joint employment doctrine see employers, single vs. plural
Jolls, Christine 245–246
Kahn-Freund, Otto 3–4, 99, 102, 120, 275, 296, 297, 299, 302, 309, 325
kaizen 2
Kant, Immanuel 177
Kennedy, David 97
Kenny, Andrew 446
Keynesian economics 93, 314
Koukiadaki, A. 322
Kretzos, L. 322
Kymlicka, Will 287
labor booklets 424
labor courts 371–372
labor market flexibility see values and globalization
labor rights protections 44–45
Landeshauptstadt Kiel v. Jaeger (ECJ) 59
Laval Un Partneri Ltd v. Svenska Byggnadsarbetareförbundet (ECJ) 379–380, 390, 391–393
The Law of the Master and Servant (Batt) 134–135
legislative process, employee voice 372–375
Lenin, Vladimir 405
lifetime employment see Japan
Linder, Marc 125
Linowes, David 165
Lisbon Treaty (2007) 325, 393, 394–396, 397
living instrument approach 304
location checks see geolocation technology, country comparisons

Matthew W. Finkin and Guy Mundlak - 9781781000137
Downloaded from Elgar Online at 01/26/2019 01:57:06PM via free access
Index 485

Longitudinal Labour Regulation Index (LLRI) 293–295

Luxembourg

apprentice and young worker representatives 347
board level employee representation 357
Chambers of Workers, Employees and Civil Servants 374
gender equality delegates 347
groups of companies 146–147
intermediate groups 129
job loss and employment protection laws 280–281, 283, 284
joint committees 342, 343
labor courts 372
legislative process, employee voice in 373
works councils 335, 340

Maastricht Treaty (1992) 385, 397–399

Malaysia

Malaysian Contracts Act 200–201
as nonenforcer of restrictive covenants 199

*Maria Martínez Sala v. Freistaat Bayern (CJEU)* 382–383

Marikana platinum mine massacre (South Africa) 450–451

market efficiencies and failures 62–79
overview 15, 62
economics of labor market failures 62–65
labor regulation, country comparison 69–73
legal origins theory and labor regulation 65–69
summary conclusion 77–79
workplace health and safety regulation, country comparison 64, 74–77

market fundamentalism 93

*Marschall Helmut v. Land Nordrhein-Westfalen (ECJ)* 232–233

Marx, Matt 217
master and servant doctrine see employers, single vs. plural

McCallum, Ronald C. 286–287

McDougall Report 397

McGregor, Douglas 2

Meitorin decision see *British Columbia (Public Service Employee Relations Commission)* v. *BCGSEU (SCC)*

Mercosur 368

Mexico

job loss and employment protection laws 272, 280
as nonenforcer of restrictive covenants 199, 201, 219

Meyers, Frederic 285
misclassification by employers 121–124

*Mitsubishi Jushi v. Takano* (Sup. Ct.) (Japan) 175–176

Mondragón Cooperatives 359–360

monopsonies 63

Monti, Mario 206–207

Mota, João Dirceu 468

*Movimento Humanos Direitos* 472

mutual trust, duty of 40–41

Napier, Brian 273

national constitutions, as sources of labor law 22–31
absence of labor rights 24–25
absolute vs. limited rights 25
formation and operation of labor law 29–31
freedom from slavery 25
freedom of association 26
quasi constitutional bills or charters of rights 27–29
rationale for labor rights in constitutions 26–27
right of equal treatment 25
right to bargain collectively 26
right to strike 26
specific labor rights 23–24

National Union of Mineworkers (NUM) 451

Neal, Alan 401

neo-liberalism 35, 92–98, 321–324

Netherlands

absence of constitutional right to strike 26
Amsterdam Court’s Company Chamber 256
co-determination model 355–357
Company Council Act 338
data privacy 174

*Flexibility and Security Act* 127
job loss and employment protection laws 281, 282, 283
Labor Foundation 373

legislative process, employee voice in 373
liberalization of postal services 127
works councils 335, 338–339

new psychological contract (Stone) 287–288

New Zealand

absence of constitution 25
Bill of Rights Act (1990) 27–28
Botero’s econometric analysis 66–67
collective bargaining 34, 317
job loss and employment protection laws 293–294
as unitary government 29
Comparative labor law

Newton-Sealey v. Armor Group Services Ltd (EWHC) (UK) 150
Njoya, Wanjiru 285–286
noncompete agreements see employee mobility and competition
non-union institutions and employee voice 330–376
overview 6–7, 8
beyond collective bargaining 330–331
civil society organizations 375–376
company decision-making 350–363
employee representation on company boards 351–358
voluntary board-level participation 358–359
worker ownership of company 359–363
functions of 333–334
methodology 331–333
state institutions 371
administrative bodies 371
labor courts 371–372
legislative process 372–375
transnational companies 363–371
board level representation in European companies 366–368
codes of conduct 369
EU law and 364–371
European works councils 364–366
international framework agreements 369–371
workplace options 334–350
employer-driven employee representation 347–350
joint committees 340–343
plant union representatives 343–345
representative bodies for issues/groups 345–347
works councils 335–340
Nordenfeld v. Maxim Nordenfeld Guns & Ammunition Co. (HL) (UK) 205
norms and globalization 87–98
see also globalization and labor law
Northern American Free Trade Association (NAFTA) 368
O’Malley v. Simpsons Sears (SCC) 231, 241–242, 244, 249, 250
Organisation for Economic Co-operation and Development (OECD)
collective bargaining 311
Employing Workers Index 291
Employment Outlook 2013 89–90, 292
Employment Protection Index 291
Jobs Study 89–90
relaxation of labor law 269, 323
on South African labour law 446
technical assistance by 97
Owen, Robert 360
Pepsico, Inc. v. Redmond (USCA) (US) 213
personal dismissal standards, country comparisons 272–279
see also job loss and employment protection
Personnel Delegates 334, 339–340, 347
Philippines
collective bargaining 34
job loss and employment protection laws 280
picketing 47
plant union representatives 343–345
plural employer model see employers, single vs. plural
Png, I.P.L. 217, 218
Poland
collective agreements 413
collective employee representation 429–430
equal treatment in employment 419
freedom of employment contract 416
internal regulations 414
modification of employment contract 423
right to conclude collective agreements 433–437
right to strike 437–438
Solidarity 406
sources of labor law 409–410, 412
termination of employment contract 424–425, 427–429
trade unions 406, 431–433
working conditions regulation 419–422
Polyani, K. 299
Portugal
Botero’s econometric analysis 66–67
constitutional provisions and labor law 26, 305
Eurozone crisis 322
job loss and employment protection laws 281, 283
labor courts 372
legislative process, employee voice in 373
works councils 340
positive inclusion see workplace discrimination and social inclusion
post-Washington consensus 92–98
Pozen, David 292
precarious work, use of term 39–40

Matthew W. Finkin and Guy Mundlak - 9781781000137
Downloaded from Elgar Online at 01/26/2019 01:57:06PM
via free access
see also China
pregnancy, discrimination during 236–237, 254–257
privacy, use of term 164
see also employee autonomy and privacy
Privacy and Freedom (Westin) 165
Privacy in America (Linowes) 165
property right 204–205
Prosser, William 164–165
Proudhon, Pierre-Joseph 360
public choice (private interest) theory 64–65
public interest theory 64–65
Qantas 320
radio frequency identification (RFID) see geolocation technology, country comparisons
Raz, Joseph 286
reasonable accommodation see workplace discrimination and social inclusion
Restatement of Employment Law (ALI) 14, 197–198, 202, 203
restrictive covenants see employee mobility and competition
Roe, Mark 78–79
Rome Treaty see Treaty Establishing the European Economic Community (EEC Treaty)
Rüffert decision (CJEU) 393
Rush Portuguesa decision (CJEU) 392–393
Russia
collective agreements 414
collective employee representation 429–431
Criminal Code (1960) 415–416
equal treatment in employment 417, 419
Federation of Independent Trade Unions of Russia (FNPR) 431
freedom of employment contract 416
internal regulations 414–415
job loss and employment protection laws 272
modification of employment contract 423
right to conclude collective agreements 433–435, 437
right to strike 437–438
sources of labor law 410–411, 412, 414
termination of employment contract 424, 425
trade unions 431–433
working conditions regulation 419–422
Rutherglen, George 245
Rwanda
ILO technical assistance 272
Samila, Sampsa 216–217, 218
Santos, Boaventura de Sousa 98
Sarkar, Prabirjit 295
Schneider, Eugène 333
Selmi, Michael 240–241, 247–248
Selznick, Philip 286
Sen, Amartya 96
shareholder meetings, employee voice in 362–363
Sharpf, Fritz 402
shop stewards see plant union representatives
Silicon Valley, California 196, 201–202, 215
Silva, Luiz Inácio Lula da 469
SIMAP case (ECJ) 59
Singh, Jasjit 217, 218
single employer model see employers, single vs. plural
Skedinger, Per 291–292
SKF (company) 370
slavery, freedom from 25
Smit v. Workmen’s Compensation Commissioners (App. Bd.) (South Africa) 120–121
social inclusion see workplace discrimination and social inclusion
social media, employer access to 182–188
Society of Human Resource Management (SHRM) 183
soft law and workplace customs/policies 42
Sorenson, Olav 216–217, 218
Soitgiu v. Deutsche Bundespost (ECJ) 232
sources of labor law 21–61
overview 7, 13–14, 16, 21–22
collective bargaining legislation 31–34
employment relationship 36–41
European Union 55–60
ILO 47–52
impacts of other laws/policies 42–43
industrial tort laws 45–47
labor legislation and constitutions 29–31
labor rights protections 44–45
national constitutions 22–29
soft law and workplace customs/policies 42
statutory provisions 34–36
summary conclusion 60–61
United Nations 53–54
South Africa 442–453
Association of Mining and Construction Union (AMCU) 451
Basic Conditions of Employment Act 442, 447
Business Unity South Africa 447–448
Congress of South African Trade Unions (COSATU) 449, 451–452
constitutional provisions and labor law 23–24, 25, 26, 305
courts on employment relationship tests 119–121
economic outlook 452–453
Employment Tax Incentive Act 445
extension of sectoral agreements 448–449
Free Market Foundation 445, 448
labour legislation 445–446, 447–448
labour market 443–445, 446–447
Labour Relations Act 442, 447, 448–449, 451
National Development Plan 447, 452
National Union of Mineworkers (NUM) 451
trade unions 450–452
South Korea
collective bargaining 34
as high enforcer of restrictive covenants 199, 212
Southern African Development Community (SADC) 368
Soviet Union, labor law 405–406, 407, 424
Spain
Act 10/1994 270
Act 11/1994 270
Act 32/1984 270
constitutional provisions and labor law 26, 305
Eurozone crisis 322
groups of companies 146, 147, 149
hours/vacations/leave 73
intermediate groups 128
job loss and employment protection laws 269–271, 276, 277, 281–282, 283, 284
labor courts 372
legislative process, employee voice in 373
Ley 20/2007 on TRADEs 126–127, 128–129
ratifies ILO Convention 158 275
restrictive covenants 208, 209, 210
Workers’ Statute 135, 270
works councils 340
Standing, Guy 50–51
state institutions, employee voice in 371–375
Statoil 370
Stephenson v. Delphi Diesel Systems (Court of Appeal) (UK) 120
Stone, Katherine 287–288
strike, right to 26, 45–47, 318–321, 437–438
Strumsky, Deborah 217
subcontracting 135–136, 140, 142–145
superannuation laws, influence on labor law 43
supervisory boards see board level employee representation
Supiot, Alain 153
Sweden
Basic Agreement 273
collective bargaining 32
constitutional provisions and labor law 23, 26
dependent contractor status 127–128
Employment (Co-Determination in the Workplace) Act 32, 34–35
Employment Protection Act (EPA) 40
job loss and employment protection laws 281, 284
ratifies ILO Convention 158 275
statutory labor law 35
Taiwan
restrictive covenants 212–213
tax laws, influence on labor law 43
Taylor, Frederick W. 2
technological oversight see employee autonomy and privacy
Thailand
as high enforcer of restrictive covenants 199, 212
Thatcher, Margaret
job loss and employment protection laws 273–274
Theory Z 2
Thomas Pringle v. Government of Ireland (CJEU) 399–400
tort law
influence on labor law 45–47
trade secrets see employee mobility and competition
trade unions
joint employment doctrine and 139
right to form 23–24, 26
US vs. UK comparison 70
see also collective bargaining; freedom of association; strike, right to
transnational companies, employee voice in
EU law 364–371
board level representation in European companies 366–368
codes of conduct 369
European works councils 364–366
international framework agreements 369–371
non-union institutions and employee voice 363–371
transversality principle, defined 285
Treaty Establishing the European Community 56
Treaty Establishing the European Economic Community (EEC Treaty) 57, 72, 223, 380, 383, 384–385
Treaty on the European Stability Mechanism (ESM) 396–401
Treaty on the European Union (TEU) 319, 325, 394–395
Tripartite Socio-Economic Commissions 436
Turkey
  court annulment of collective agreement 304

UN Convention for the Protection of Human Rights and Fundamental Freedoms 44
UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) 54
UN Convention on the Right of Persons with Disabilities (CRPD) 259
unfair dismissal laws see job loss and employment protection

Unión de Asociaciones de Trabajadores Autónomos y Emprendedores 126–127
unitary vs. federal governments 29–30
United Kingdom (UK)
  absence of constitution 25, 27
  board level employee representation 358–359
  Citizens’ Advice Bureau 376
  collective bargaining 32, 33–34, 312, 316–317
  Court of Appeal 120, 137–138
  courts on employment relationship tests 117–118, 120, 124
  criminal law and labor history 43
  duty of mutual trust 40–41
  Employment Relations Act 127
  Employment Rights Act 140–141
  Equality Act 126
  EU Working Time Directive 59
  freedom of association 309
  groups of companies 149

Growth and Infrastructure Act 362
Health and Safety at Work Act 76, 346
High Court 150
hours/vacations/leave 71–73
House of Lords 205
Human Rights Act 44
Industrial Relations Act 296–297
job loss and employment protection laws 273–274, 276, 277, 281
labor courts 372
mutuality of obligation test 137–138
National Minimum Wage Act 123, 126
plant union representatives 343–344
restrictive covenants 204–205
right to strike 318–319
role of contracts 37–38
single employer model 137
statutory labor law 35
Trade Union Act (1913) 309
Trade Union and Labor Relations (Consolidation) Act (1992) 33–34
trade unions 70–71
  as unitary government 29
  worker category 128
Working Time Regulations 126
United Nations (UN)
  Global Compact 42, 87, 96–97
  as source of labor law 53–54
see also individual conventions
United States (US)
  AFL-CIO’s Employee Free Choice Act proposals 315
  Age Discrimination in Employment Act 222
  airline industry, representation councils 348
  Americans with Disabilities Act 192, 222, 245, 248, 257–258
  board level employee representation 358, 359
  California, as nonenforcer of restrictive covenants 199, 201–202, 203, 216
  Civil Rights Act, Title VII 222, 224, 232, 238–241, 254
  class actions 45
  collective bargaining 32, 33, 34
  constitutional provisions and labor law 23, 26, 30
  court 13/20-factor employment relationship tests 118–119
  Court of Appeal 213
  courts on employer misclassification of employees 124
  duty of good faith 40–41
Eleventh Amendment
employee autonomy
employee dignity
employee privacy
employer access to employee social media
employer use of biometric identification
employer use of geolocation technology
Employment Relations Act
employment relationship
Equal Employment Opportunities Commission
Fair Labor Standards Act
Fair Labor Standards Act
Family and Medical Leave Act
as federal government
Fourteenth Amendment
Fourth Amendment
freedom of association
Genetic Information Nondiscrimination Act
hours/vacations/leave
Illinois, as high enforcer of restrictive covenants
Immigration Reform and Control Act
intellectual property rights myth
job loss and employment protection laws
long-term staff leasing
Massachusetts, employee cooperatives
Michigan, restrictive covenants
Montana, Wrongful Discharge from Employment Act
National Industrial Recovery Act
National Labor Relations Act
National Labor Relations Board (NLRB)
New Jersey, as high enforcer of restrictive covenants
Occupational Safety and Health Act
plant union representatives
plural employer model
Railway Labor Act
restrictive covenants
right to strike
role of contracts
social inclusion
social inclusion
soft law and workplace customs/policies
state laws prohibiting employee disclosure of social media passwords
state right to work laws
statutory labor law
Supreme Court (USSC)
Taft-Hartley Act
trade unions
Uniform Trade Secrets Act
wage regulation
Worker Adjustment and Retraining Notification Act
workplace anti-discrimination laws
Universal Declaration of Human Rights (UDHR)
Val-des-bois (company)
values and globalization
Vargas, Getúlio
varieties of capitalism theory
vertical disintegration of employment
Viasystem (Tyneside) Ltd v. Thermal Transfer (Northern) Ltd (Court of Appeal) (UK)
video surveillance of employees
Wal-Mart
Walsea, Lech
Washington consensus
Weber, Mark C.
Weber, Max
Weil, David
whistleblowing
worker cooperatives
worker ownership of company
employee shareholder programs
shareholder meetings, employee voice
worker cooperatives
workplace discrimination and social inclusion
Overview 5, 9, 15, 220–222
anti-discrimination laws 222–253
BFOR justification 234–235
country comparisons 233–253
coverage of employers 228
employer responsibility for disparate impacts 237–253
employment relationship 226–228
history of 224–226
occupational requirement justification and employer actions 235–237
positive/affirmative action 232–233
prohibited grounds 228–230
types of discrimination 230–232
positive inclusion requirements 253–266
accommodating pregnancy and family responsibilities 254–257
accommodating temporary illness 257–259
integrating disabled workers 257–259
observations 265–266
steps toward equity 259–263
workplace harassment prevention/remedy 263–265
summary conclusion 266–267
World Bank
critique of 293
Doing Business Reports 89–90, 101, 291
technical assistance by 97
World Development Reports 89–90
World Economic Forum 291
World Employee Committee of DaimlerChrysler 369
World Works Council of Renault 369
Yemin, Edward 272
Zaire
ILO technical assistance 272