Contract labour act 1970 and central rules 1971 pdf



Academia.edu uses cookies to personalize content, tailor ads and improve the user experience. By using our site, you agree to our collection of information through the use of cookies. To learn more, view our Privacy Policy. US laws on fair pay and conditions, unions, democracy, equality and security at work The Statue of Liberty greeted millions of people who migrated to America for work, saying "Give me your tired, your poor, Your huddled masses yearning to breathe free..." In 2013, in a 155.5 million working population, union membership was 35.9% in the public sector, 6.6% in the world inequality-adjusted human development index.[2] United States labor law sets the rights and duties for employees, labor unions, and employees and employees and employees and employees in the corporate or other forms of ownership association".[3] Over the 20th century, federal law created minimum social and economic rights, and encouraged state laws to go beyond the minimum wage, currently \$7.25 but higher in 29 states and D.C., and discourages working weeks over 40 hours through time-and-a-half overtime pay. There is no federal law, and few state laws, requiring paid holidays or paid family leave. The Family and Medical Leave Act of 1993 creates a limited right to 12 weeks of unpaid leave in larger employers. There is no automatic right to an occupational pension beyond federally guaranteed social security,[5] but the Employee Retirement Income Security Act of 1974 requires standards of prudent management and good governance if employees have a safe system of work. A contract of employment can always create better terms than statutory minimum rights. But to increase their bargaining power to get better terms, employees organize labor unions for collective bargaining. The Clayton Act of 1914 guarantees all people the right to organize,[6] and the National Labor Relations Act of 1935 creates rights for most employees to organize without detriment through unfair labor practices. Under the Labor Management Reporting and Disclosure Act of 1959, labor union governance follows democratic principles. If a majority of employing entities have a duty to bargain in good faith. Unions can take collective action to defend their interests, including withdrawing their labor on strike. There are not yet general rights to directly participate in enterprise governance, but many employees and unions have experimented with securing influence through pension funds,[7] and representation on corporate boards.[8] Since the Civil Rights Act of 1964, all employing entities and labor unions have a duty to treat employees equally, without discrimination based on "race, color, religion, sex, or national origin."[9] There are separate rules for sex discrimination in pay under the Equal Pay Act of 1963. Additional groups with "protected status" were added by the Age Discrimination in Employment Act of 1967 and the Americans with Disabilities Act of 1990. There is no federal law banning all sexual orientation or identity discrimination, but 22 states had passed laws by 2016. These equality laws generally prevent discrimination in hiring, terms of employment, and make discharge because of a protected characteristic unlawful. There is no federal law against unjust discharge, and most states also have no law with full protection against wrongful termination of employment.[10] Collective agreements made by labor unions and some individual contracts require people are only discharged for a "just cause". The Worker Adjustment and Retraining Notification Act of 1988 requires employing entities give 60 days notice if more than 50 or one third of the workforce may lose their jobs. Federal law has aimed to reach full employment through monetary policy and spending on infrastructure. Trade policy has attempted to put labor rights in international agreements, to ensure open markets in a global economy do not undermine fair and full employment. History Main articles: History of labor law in the United States and Labor history of the United States After the Declaration of Independence, slavery in the US was progressively abolished in the north, but only finished by the 13th Amendment in 1865 near the end of the American Civil War. Modern US labor law mostly comes from statutes passed between 1935 and 1974, and changing interpretations of the US Supreme Court.[11] However, laws regulated the rights of people at work and employers from colonial times on. Before the Declaration of Independence in 1776, the common law was either uncertain or hostile to labor rights.[12] Unions were classed as conspiracies, and potentially criminal.[13] It tolerated slavery and indentured servitude. From the Pequot War in Connecticut from 1636 onwards, Native Americans were enslaved by European settlers. More than half of the European immigrants arrived as prisoners, or in indentured servitude, [14] where they were not free to leave their employers until a debt bond had been repaid. Until its abolition, the Atlantic slave trade brought millions of Africans to do forced labor in the Americas. However, in 1772, the English Court of King's Bench held in Somerset v Stewart that slavery was to be presumed unlawful at common law.[15] Charles Stewart from Boston, Massachusetts had bought James Somerset as a slave and taken him to England. With the help of abolitionists, Somerset escaped and sued for a writ of habeas corpus (that "holding his body" had been unlawful). Lord Mansfield, after declaring he should "let justice be done whatever be the consequence", held that slavery was "so odious" that nobody could take "a slave by force to be sold" for any "reason whatever". This was a major grievance of southern slave owning states, leading up to the American Revolution in 1776.[16] The 1790 United States Census recorded 694,280 slaves (17.8 per cent) of a total 3,893,635 population. After independence, the British Empire halted the Atlantic slave trade in 1807,[17] and abolished slavery in its own territories, by paying off slave owners in 1833.[18] In the US, northern states progressively abolished slavery. However, southern states did not. In Dred Scott v Sandford the Supreme Court held the federal government could not regulate slavery, and also that people who were slaves had no legal rights in court.[19] The American Civil War was the result. President Lincoln's Emancipation Proclamation in 1863 made abolition of slavery a war aim, and the Thirteenth Amendment of 1865 enshrined the abolition of most forms of slavery in the Constitution. Former slave owners were further prevented from holding people in involuntary servitude for debt by the Peonage Act of 1867.[20] In 1868, the Fourteenth Amendment ensured equal access to justice, and the Fifteenth Amendment required that everyone would have the right to vote. The Civil Rights Act of 1875 was also meant to ensure equality in access to housing and transport, but in the Civil Rights Cases, the Supreme Court found it was "unconstitutional", ensuring that racial segregation would continue. In dissent, Harlan J said the majority was leaving people "practically at the mercy of corporations".[21] Even if people were formally free, they remained factually dependent on property owners for work, income and basic services. Labor is the superior of capital, and deserves much the higher consideration ... The prudent, penniless beginner in the world labors for wages awhile, saves a surplus with which to buy tools or land for himself, then labors on his own account another while, and at length hires another new beginner to help him. This is the just and generous and prosperous system which opens the way to all, gives hope to all, and consequent energy and progress and improvement of condition to all. No men living are more worthy to be trusted than those who toil up from poverty; none less inclined to take or touch aught which if surrendered will surely be used to close the door of advancement against such as they and to fix new disabilities and burdens upon them till all of liberty shall be lost. —Abraham Lincoln, First Annual Message (1861) Like slavery, common law repression of labor unions was slow to be undone.[22] In 1806, Commonwealth v Pullis held that a Philadelphia shoemakers union striking for higher wages was an illegal "conspiracy", [23] even though corporations—combinations of employers—were lawful. Unions, the National Trades Union was established in 1834 to achieve a 10 hour working day, but it did not survive the soaring unemployment from the financial Panic of 1837. In 1842, Commonwealth v Hunt, held that Pullis was wrong, after the Boston Journeymen Bootmakers' Society struck for higher wages.[24] The first instance judge said unions would "render property insecure, and make it the spoil of the multitude, would annihilate property, and involve society in a common ruin". But in the Massachusetts Supreme Judicial Court, Shaw CJ held people "are free to work for whom they please, or not to work, if they so prefer" and could "agree together to exercise their own interests." This stopped criminal cases, although civil cases persisted.[25] In 1869 an organisation called the Knights of Labor was founded by Philadelphia artisans, joined by miners 1874, and urban tradesmen from 1879. It aimed for racial and gender equality, political education and cooperative enterprise, [26] yet it supported the Alien Contract Labor Law of 1885 which suppressed workers migrating to the US under a contract of employment. Industrial conflicts on railroads and telegraphs from 1883 led to the foundation of the American Federation, to create a strong, unified labor movement. Business reacted with litigation. The Sherman Antitrust Act of 1890, which was intended to sanction business cartels acting in restraint of trade, [28] was applied to labor unions. In 1895, the US Supreme Court in In re Debs affirmed an injunction, based on the Sherman Act, against the striking workers of the Pullman Company. The strike leader Eugene Debs was put in prison. [29] In notable dissent among the judiciary,[30] Holmes J argued in Vegelahn v Guntner that any union taking collective action in good faith was lawful: even if strikes caused economic loss, this was equally legitimate as economic loss from corporations competing with one another.[31] Holmes J was elevated to the US Supreme Court, but was again in a minority on labor rights. In 1905, Lochner v New York held that New York limiting bakers' working day to 60 hours a week violated employers' freedom of contract. The Supreme Court majority supposedly unearthed this "right" in the Fourteenth Amendment, that no State should "deprive any person of life, liberty, or property, without due process of law."[32] With Harlan J, Holmes J dissented, arguing that the "constitution is not intended to embody a particular economic policy, courts should never declare legislation "unconstitutional". The Supreme Court, however, accelerated its attack on labor in Loewe v. Lawlor, holding that triple damages were payable by a striking union to its employers under the Sherman Act of 1890.[33] This line of cases was finally quashed by the Clayton Act of 1914 §6. This removed labor from antitrust law, affirming that the "labor of a human being is not a commodity or article of commerce" and nothing "in the antitrust laws" would forbid the operation of labor organizations "for the purposes of mutual help".[34] In his State of the Union address of 1944, President Franklin D. Roosevelt urged that America develop Second Bill of Rights through legislation, including the right to fair employment, an end to unfair competition, to education, health and social security. Throughout the early 20th century, states enacted labor rights to advance social and economic progress. But despite the Clayton Act, and abuses of employers documented by the Commission on Industrial Relations from 1915, the Supreme Court struck labor rights down as unconstitutional, leaving management powers virtually unaccountable.[35] In this Lochner era, the Courts held that employers could force workers to not belong to labor unions,[36] that a minimum wage for women and children was void,[37] that states could not ban employment agencies charging fees for work,[38] that workers could not strike in solidarity with colleagues of other firms,[39] and even that the federal government could not ban child labor.[40] It also imprisoned socialist activists, who opposed the fighting in World War I, meaning that Eugene Debs ran as the Socialist Party's candidate for President in 1920 from prison.[41] Critically, the courts held state and federal attempts to create social security to be unconstitutional.[42] Because they were unable to save in safe public pensions, millions of people bought shares in corporations, causing massive growth in the stock market.[43] Because the Supreme Court precluded regulation for good information on what people were buying, corporate promoters tricked people into paying more than stocks were really worth. The Wall Street Crash of 1929 wiped out millions of people's savings. Business lost investment and fired millions of workers. Unemployed people had less to spend with businesses. Business fired more people. There was a downward spiral into the Great Depression. This led to the election of Franklin D. Roosevelt for president in 1932, who promised a "New Deal". Government committed to create full employment and a system of social and economic rights enshrined in federal law.[44] But despite the Democratic Party's overwhelming electoral victory, the Supreme Court continued to strike down legislation, particularly the National Industrial Recovery Act of 1933, which regulated enterprise in an attempt to ensure fair wages and prevent unfair competitions. In West Coast Hotel Co v Parrish the Supreme Court found that minimum wage legislation and Roosevelt's threat to create more judicial positions. In West Coast Hotel Co v Parrish the Supreme Court found that minimum wage legislation and Roosevelt's threat to create more judicial positions. was constitutional,[46] letting the New Deal go on. In labor law, the National Labor Relations Act of 1935 guaranteed every employees of other firms. The Fair Labor Standards Act of 1938 created the right to a minimum wage, and time-and-a-half overtime pay if employers asked people to work over 40 hours a week. The Social Security Act of 1935 gave everyone the right to a basic pension and to receive insurance if they were unemployed, while the Securities Act of 1933 and the Securities Act of 1934 ensured buyers of securities on the stock market had good information. The Davis-Bacon Act of 1931 and Walsh-Healey Public Contracts Act of 1936 required that in federal government contracts, all employers would pay their workers fair wages, beyond the minimum, at prevailing local rates.[47] To reach full employment and out of depression, the Emergency Relief Appropriation Act of 1935 enabled the federal government to spend huge sums of money on building and creating jobs. This accelerated as World War II began. In 1944, his health waning, Roosevelt urged Congress to work towards a "Second Bill of Rights" through legislative action, because "unless there is security here at home there cannot be lasting peace in the world" and "we shall have yielded to the spirit of Fascism here at home."[48] President Lyndon B. Johnson explains the Civil Rights Act of 1964 as it was signed, to end discrimination and segregation in voting, education, public services, and employment. collective bargaining, a Republican dominated Congress revolted when Roosevelt died. Against the veto of President Truman, the Taft-Hartley Act of 1947 limited the right of labor unions to take solidarity action, and enabled states to ban unions requiring all people in a workplace becoming union members. A series of Supreme Court decisions, held the National Labor Relations Act of 1935 not only created minimum standards, but stopped or "preempted" states enabling better union sights, even though there was no such provision in the statute.[49] Labor unions became extensively regulated by the Labor Management Reporting and Disclosure Act of 1959. Post-war prosperity had raised people's living standards, but most workers who had no union, or job security rights remained vulnerable to unemployment. As well as the crisis triggered by Brown v Board of Education, [50] and the need to dismantle segregation, job losses in agriculture, particularly among African Americans was a major reason for the civil rights movement, culminating in the March on Washington for Jobs and Freedom led by Martin Luther King Jr. Although Roosevelt's Executive Order 8802 of 1941 had prohibited racial discrimination in the national defense industry, people still suffered discrimination because of their skin color across other workplaces. Also, despite the increasing numbers of women in work, sex discrimination was endemic. The government of John F. Kennedy introduced the Equal Pay Act of 1964, finally prohibiting discrimination against people for "race, color, religion, sex, or national origin." Slowly, a new generation of equal rights laws spread. At federal level, this included the Age Discrimination in Employment Act of 1967, the Pregnancy Discrimination Act of 1978, and the Americans with Disabilities Act of 1990, now overseen by the Equal Employment Opportunity Commission. Bernie Sanders became the most successful Democratic Socialist presidential candidate since Eugene Debs, winning 22 states and 43.1% of votes in the 2016 Democratic primary. He co-authored the 2016 Democratic platform, [51] before Hillary Clinton lost the electoral college to Donald Trump. Although people, in limited fields, could claim to be equally treated, the mechanisms for fair pay and treatment were dismantled after the 1970s. The last major labor law statute, the Employee Retirement Income Security Act of 1974 created rights to well regulated occupational pensions, although only where an employer had already promised to provide one: this usually depended on collective bargaining by unions. But in 1976, the Supreme Court in Buckley v Valeo held anyone could spend unlimited amounts of money on political campaigns, as a part of the First Amendment right to "freedom of speech".[citation needed] After the Republican President Reagan took office in 1981, he dismissed all air traffic control staff who went on strike, and replaced the National Labor Relations Board members with pro-management men Dominated by Republican appointees, the Supreme Court suppressed labor rights, removing rights of professors, religious school teachers, or illegal immigrants to organize in a union, [52] allowing employees to be searched at work, [53] and eliminating employees to be searched at work, [53] and eliminating employee rights to super school teachers, or illegal immigrants to organize in their own health care. [54] Only limited statutory changes were made. The Immigration Reform and Control Act of 1986 criminalized large numbers of migrants. The Worker Adjustment and Retraining Notification Act of 1988 guaranteed a right to 12 weeks leave to take care for children after birth, all unpaid. The Small Business Job Protection Act of 1996 cut the minimum wage, by enabling employers to take the tips of their staff to subsidize the minimum wage. A series of proposals by Democratic and independent politicians to advance labor rights were not enacted, [55] and the United States began to fall behind most other developed countries in labor rights, [56] Contract and rights at work See also: UK labour law, Australian labour law, Australian labour law, Australian labour law, German labour law, French labour law, German labour law, French labour law, German labour law, European labour law, Canadian labour law, Canadian labour law, German labour law, German labour law, European labour law, Eu international Magna Carta of all". Based on the President's call for a Second Bill of Rights in 1944, articles 22-24 elevated rights to "social security", "just and favourable conditions of work", and the "right to rest and leisure" to be as important as the "right to rest and leisure" to be as important as the "right to a security", "just and favourable conditions of work", and the "right to rest and leisure" to be as important as the "right to rest and leisure" to be as important as the "right to a security", "just and favourable conditions of work", and the "right to rest and leisure" to be as important as the "right to rest and le usually begin an employment relationship, but are often not enough for a decent livelihood. Because individuals lack bargaining power, especially against wealthy corporations, labor law creates legal rights that override arbitrary market outcomes. Historically, the law faithfully enforced property rights and freedom of contract on any terms, [58] whether or not this was inefficient, exploitative and unjust. In the early 20th century, as more people favored the introduced law reform. First, the Fair Labor Standards Act of 1938 created a minimum wage (now \$7.25 at federal level, higher in 28 states) and overtime pay of one and a half times. Second, the Family and Medical Leave Act of 1993 creates very limited rights to take unpaid leave. In practice, good employment contracts improve on these minimums. Third, while there is no right to an occupational pension or other benefits, the Employee Retirement Income Security Act of 1974 ensures employers guarantee those benefits if they are promised. Fourth, the Occupational Safety and Health Act 1970 demands a safe system of work, backed by professional inspectors. Individual states are often empowered to go beyond the federal minimum, and function as laboratories of democracy in social and economic rights, where they have not been constrained by the US Supreme Court. Scope of protection See also: Worker, Employees", but not people who are autonomous and have sufficient bargaining power to be "independent contractors". In 1994, the Dunlop Commission on the Future of Worker-Management Relations: Final Report recommended a unified definition, but this was not implemented. As it stands, Supreme Court cases have stated various general principles, which will apply according to the context and purpose of the statute in question. In NLRB v Hearst Publications, Inc,[59] newsboys who sold newspapers in Los Angeles claimed that they had a right to collectively bargain under the National Labor Relations Act of 1935. The newspaper corporations argued the newsboys were "independent contractors", and they were under no duty to bargain in good faith. The Supreme Court held the newsboys were employees, and common law tests of employment, particularly the summary in the Restatement of the Law of Agency, Second §220, were no longer appropriate. They were not "independent contractors" because of the degree Supreme Court decided United States v Silk,[60] holding that "economic reality" must be taken into account when deciding who is an employee under the Social Security Act of 1935. This meant a group of coal loaders were employees, having regard to their economic position, including their lack of bargaining power, the degree of discretion and control, and the risk they assumed compared to the coal businesses they worked for. By contrast, the Supreme Court found truckers who owned their own trucks, and provided services to a carrier company, were independent contractors.[61] Thus, it is now accepted that multiple factors of traditional common law tests may not be replaced if a statute gives no further definition of "employee" (as is usual, e.g., the Fair Labor Standards Act of 1938, Employee Retirement Income Security Act of 1974, Family and Medical Leave Act of 1993). Alongside the purpose of labor legislation to mitigate inequality of bargaining power and redress the economic reality of a worker's position, the multiple factors found in the Restatement of Agency must be considered, though none is necessarily decisive.[62] "Newsboys" in L.A. were held in the leading case, NLRB v Hearst Publications, Inc, to be employees with labor rights, not independent contractors, on account of their unequal bargaining power.[63] Common law agency tests of who is an "employee" take account of an employer's control, if the employee is in a distinct business, degree of direction, skill, who supplies tools, length of employer has a business. [64] Some statutes also make specific exclusions that reflect the common law, such as for independent contractors, and others make additional exceptions. In particular, the National Labor Relations Act of 1935 §2(11) exempts supervisors with "authority, in the interest of the employees' jobs and terms. This was originally a narrow exception. Controversially, in NLRB v Yeshiva University [65] a 5 to 4 majority of the Supreme Court held that full time professors in a university were excluded from collective bargaining rights, on the theory that they exercised "managerial" discretion in academic matters. The dissenting judges pointed out that management was actually in the hands of university administration, not professors. In NLRB v Kentucky River Community Care Inc,[66] the Supreme Court held, again 5 to 4, that six registered nurses who exercised supervisory status over others fell into the "professional" exemption. Stevens J, for the dissent, argued that if "the 'supervisory status over others fell into the "professional" exemption. Stevens J, for the dissent, argued that if "the 'supervisory status over others fell into the "professional" exemption. Similarly, under the Fair Labor Standards Act of 1938, in Christopher v SmithKline Beecham Corp,[68] the Supreme Court held 5 to 4 that a traveling medical salesman", and so could not claim overtime. People working unlawfully are often regarded as covered, so as not to encourage employers to exploit vulnerable employees. For instance in Lemmerman v AT Williams Oil Co,[69] under the North Carolina Workers' Compensation Act an eight-year-old boy was protected as an employee, even though children working under the Age of 8 was unlawful. However, in Hoffman Plastic Compounds v NLRB,[70] the Supreme Court held 5 to 4 that an undocumented worker could not claim back pay, after being discharged for organizing in a union. The gradual withdrawal of more and more people from the scope of labor law, by a slim majority of the Supreme Court since 1976, means that the US falls below international law standards, and standards in other democratic countries, on core labor rights, including freedom of association.[71] In September 2015, the California Labor and Workforce Development Agency held that Uber drivers are controlled and sanctioned by the company and are therefore not self-employed.[72] Common law tests were often important for determining who was, not just an employee, but the relevant employers who had "vicarious liability". Potentially there can be multiple, joint-employers could who share responsibility, although responsibility, although responsibility, although responsibility, although responsibility in tort law can exist regardless of an employer had more control, whose work was being performed, whether there were agreements in place, who provided tools, had a right to discharge the employee, or had the obligation to pay.[74] In Local 217, Hotel & Restaurant Employees Union v MHM Inc[75] the question arose under the Worker Adjustment and Retraining Notification Act of 1988 whether a subsidiary or parent corporation was responsible to notify employees that the hotel would close. The Second Circuit held the subsidiary was the employer, although the trial court had found the parent responsible while noting the subsidiary would be the employer under the NLRA. Under the Fair Labor Standards Act of 1938, 29 USC §203(r), any "enterprise" that is under common control will count as the employing entity. Other statutes do not explicitly adopt this approach, although the NLRB has found an enterprise to be an employer if it has "substantially identical management, business purpose, operation, equipment, customers and supervision."[76] In South Prairie Construction Co v Local No 627,[77] the Supreme Court found that the DC Circuit had legitimately identified two corporations as a single employer given that they had a "very substantial qualitative degree of centralized control of labor", [78] but that further determination of the relevant bargaining unit should have been remitted to the NLRB. When employees are hired through an agency, it is likely that the end-employer will be considered responsible for statutory rights in most cases, although the agency may be regarded as a joint employee and the employing entity (usually a corporation but occasionally a human being).[80] A "contract" is an agreement enforceable in law. Very often it can be written down, or signed, but an oral agreement is also a fully enforceable contract. Because employees have unequal bargaining power compared to almost all employing entities, most employment contracts are "standard form".[81] Most terms and conditions are photocopied or reproduced for many people. Genuine negotiation is rare, unlike in commercial transactions between two business corporations. This has been the main justification for enactment of rights in federal and state law. the inherently unequal bargaining power of individuals against organizations to make collective agreements.[82] The federal right to a minimum wage, and increased overtime pay for working over 40 hours a week, was designed to ensure a "minimum standard of living necessary for health, efficiency, and general well-being of workers", even when a person could not get a high enough wage by individual bargaining.[83] These and other rights, including family leave, rights against discrimination, or basic job security standards, were designed by the United States Congress and state legislatures to replace individual contract provisions. Statutory rights override even an express written term of a contract, usually unless the contract is more beneficial to an employee. Some federal statutes also envisage that state law rights can improve upon minimum rights. For example, the Fair Labor Standards Act of 1938 entitles states and municipalities to set minimum rights. Labor Relations Act of 1935, the Occupational Safety and Health Act of 1970,[84] and the Employee Retirement Income Security Act of 1974,[85] have been interpreted in a series of contentious judgments by the US Supreme Court to "preempt" state law enactments.[86] These interpreted in a series of contentious judgments by the US Supreme Court to "stay experimentation in things". social and economic" and stop states wanting to "serve as a laboratory" by improving labor rights. [87] Where minimum rights do not exist in federal or state statutes, principles of contract law, and potentially torts, will apply. Employment contracts are subject to minimum rights in state and federal statute, and those created by collective agreements [88] Aside from terms in oral or written agreements, terms can be incorporated by reference. Two main sources are collective agreements and company handbooks. In JI Case Co v National Labor reactive agreements and company handbooks. In JI Case Co v National Labor reactive agreements and company handbooks. In JI Case Co v National Labor reactive agreements and company handbooks. by refusing, because it had recently signed individual contracts with its employees.[89] The US Supreme Court held unanimously that the "very purpose" of collective bargaining and the National Labor Relations Act 1935 was "to supersede the terms of separate agreements of employees with terms which reflect the strength and bargaining power and serve the welfare of the group". Terms of collective agreements, to the advantage of individual employees, therefore supersede individual contracts. Similarly, if a written contract states that employees do not have rights, but an employee has been told they do by a supervisor, or rights are assured in a company handbook, they will usually have a claim.[90] For example, in Torosyan v Boehringer Ingelheim Pharmaceuticals, Inc the Supreme Court of Connecticut held that a promise in a handbook that an employee could be dismissed only for a good reason (or "just cause") was binding on the employing corporation. Furthermore, an employee could be dismissed only for a good reason (or "just cause") was binding on the employing corporation. Most other state courts have reached the same conclusion, that contracts cannot be altered, except for employees' benefit, without new consideration can be altered, except for employees' benefit, without new consideration can be altered and true agreement. [92] By contrast, a slight majority on the California Supreme Court, appointed by Republican governors, held in Asmus v Pacific Bell that a company policy of indefinite duration can be altered after a reasonable time with reasonable notice, if it affects no vested benefits.[93] The four dissenting judges, appointed by Democratic governors, held this was a "patently unfair, indeed unconscionable, result—permitting an employer that made a promise of continuing job security ... to repudiate that promise with impunity several years later". In addition, a basic term of good faith which cannot be waived, is implied by common law or equity in all states. This usually demands, as a general principle that "neither party shall do anything, which will have the effect of destroying or injuring the right of the contract".[94] The term of good faith persists throughout the employment relationship. It has not yet been used extensively by state courts, compared to other jurisdictions. [95] However others, such as the California Supreme Court has recognized that extensive and even punitive damages could be available for breach of an employee's reasonable expectations. [95] However others, such as the California Supreme Court has recognized that extensive and even punitive damages could be available for breach of an employee's reasonable expectations. Court limit any recovery of damages to contract breaches, but not damages regarding the manner of termination.[96] By contrast, in the United Kingdom the requirement for "good faith"[97] has been found to limit the power of discharge except for fair reasons[98] (but not to conflict with statute[99]), in Canada it may limit unjust discharge also for self-employed persons,[100] and in Germany it can preclude the payment of wages significantly below average.[101] Finally, it was traditionally thought that arbitration clauses could not displace any employment rights, and therefore limit access to justice in public courts.[102] However, in 14 Penn Plaza LLC v. Pyett,[103] in a 5 to 4 decision under the Federal Arbitration Act of 1925, individual employment contract arbitration clauses are to be enforced according to their terms. The four dissenting judges and pay Main articles: Fair Labor Standards Act, Minimum wage in the US, List of U.S. minimum wages, Executive pay in the US, and Income tax in the US While contracts often determine wages and terms of employees.[105] Today, the Fair Labor Standards Act of 1938 aims to create a national minimum wage, and a voice at work, especially through collective bargaining should achieve fair wages. A growing body of law also regulates executive pay, although a system of "maximum wage" regulation, for instance by the former Stabilization Act of 1942, is not currently in force. Historically, the law actually suppressed wages, not of the highly paid, by ordinary workers. For example, in 1641 the Massachusetts Bay Colony legislature (dominated by property owners and the official church) required wage reductions, and said rising wages "tende to the ruin of the Churches and the commonwealth".[106] In the early 20th century, democratic opinion demanded everyone had a minimum wage, and could bargain for fair wages beyond the minimum. But when states tried to introduce new laws, the US Supreme Court held them unconstitutional. A right to freedom of contract, argued a majority, could be construed from the Fifth and Fourteenth Amendment's protection against being deprived "of life, liberty, or property, without due process of law". Dissenting judges argued that "due process" did not affect the legislative power to create social or economic rights, because employees "are not upon a full level of equality of choice with their employer".[107] The real federal minimum wage has declined by one third since 1969. Lower line is nominal dollars. Top line is inflation-adjusted to 2020 dollars.[108] After the Wall Street Crash and the New Deal with the election of Franklin D. Roosevelt, the majority in the US Supreme Court was changed. In West Coast Hotel Co v Parrish Hughes CJ held (over four dissenters still arguing for Freedom of Contract) that a Washington law setting minimum wages for women was constitutional because the state legislatures should be enabled to adopt legislation in the public interest.[109] This ended the "Lochner era", and Congress enacted the Fair Labor Standards Act of 1938.[110] Under §202(a) the federal minimum wage aims to ensure a "standard of living necessary for health, efficiency and general well being".[111] Under §207(a)(1), most employees (but with many exceptions) working over 40 hours a week must receive 50 per cent more overtime pay on their hourly wage.[112] Nobody may pay lower than the minimum wage, but under §218(a) states and municipal governments may enact higher wages.[113] This is frequently done to reflect local productivity and requirements for decent living in each region.[114] However the federal minimum wage has no automatic mechanism to update with inflation. Because the Republican Party has opposed raising wages, the federal real minimum wage is over 33 per cent lower today than in 1968, among the lowest in the industrialized world. People have campaigned for a \$15 an hour minimum wage, because the real minimum wage has fallen by more than 33% compared to 1968. In "tipped" jobs, some states still enable employers to take their workers' tips for between \$2.13 and the \$7.25 minimum wage per hour. Although there is a federal minimum wage, it has been restricted in (1) the scope of who it covers, (2) the time that counts to calculate the hourly minimum wage, and (3) the amount that employees' tips or deduct for expenses. First, five US Supreme Court judges held in Alden v Maine that the federal minimum wage cannot be enforced for employees of state governments, unless the state has consented, because that would violate the Eleventh Amendment.[115] Souter J, joined by three dissenting justices,[116] held that no such "sovereign immunity" existed in the Eleventh Amendment.[117] Twenty-eight states, however, did have minimum wage laws higher than the federal level in 2016. Further, because the US Constitution, article one, section 8, clause 3 only allows the federal government to "regulate Commerce" among the several States", employees of any "enterprise" under \$500,000 making goods or services that do not enter commerce are not covered: they must rely on state minimum wage may not be paid to 18 categories of employee, and paying overtime to 30 categories of employee. [120] This include under §213(a)(1) employees of "bona fide executive, administrative, or professional capacity". In Auer v Robbins police sergeants and lieutenants at the St Louis Police Department, Missouri claimed they should not be classed as executives or professional employees, and should get overtime pay.[121] Scalia J held that, following Department of Labor guidance, the St Louis police commissioners were entitled to exempt to define staff as more "senior" and make them work longer hours while avoiding overtime pay.[121] Another exemption in §213(a)(15) is for people "employed in domestic service employment to provide companionship services". In Long Island Care at Home Ltd v Coke, a corporation claimed exemption, although Breyer J for a unanimous court agreed with the Department of Labor that it was only intended for carers in private homes.[123] Second, because §206(a)(1)(C) says the minimum wage is \$7.25 per hour, courts have grappled with which hours count as "working".[124] Early cases established that time traveling to work did not count as work, unless it was controlled by, required by, and for the benefit of an employer, like traveling through a coal mine.[125] For example, in, Anderson v Mount Clemens Pottery Co a majority of five to two justices held that employees had to be paid for the long walk to work through an employer's Mount Clemens Pottery Co facility.[126] According to Murphy J this time, and time setting up workstations, involved "exertion of a physical nature, controlled or required by the employer and pursued necessarily and primarily for the employer's benefit."[127] In Armour & Co v Wantock firefighters claimed they should be fully paid while on call at their station for fires. The Supreme Court held that, even though the firefighters claimed they should be fully paid while on call at their station for fires. employer".[128] By contrast, in 1992 the Sixth Circuit controversially held that needing to be infrequently available by phone or pager, where movement was not restricted, was not working time.[129] Time spent doing unusual cleaning, for instance showering off toxic substances, does count as working time.[120] and so does time putting on special protective gear.[131] Under §207(e) pay for overtime should be one and a half times the regular pay. In Walling v Helmerich and Payne Inc, the Supreme Court held that an employer's scheme of paying lower wages in the morning, and higher wages in the morning wag was unlawful. Overtime has to be calculated based on the average regular pay.[132] However, in Christensen v Harris County six Supreme Court judges held that police in Harris County, Texas could be forced to use up their accumulated "compensatory time" (allowing time off with full pay) before claiming overtime.[133] Writing for the dissent, Stevens J said the majority had misconstrued §207(o)(2), which requires an "agreement" between employees on the applicable rules, and the Texas police had not agreed.[134] Third, §203(m) allows employers to deduct sums from wages for food or housing that is "customarily furnished" for employees. The Secretary of Labor may determine what counts as fair value. Most problematically, outside states that have banned the practice, they may deduct money from a "tipped employee" for money over the "cash wage required to be paid such an employee must still pay the \$7.25 minimum wage. But this means in many states tips do not go to workers: tips are taken by employers to subsidize low pay. Under FLSA 1938 §216(b)-(c) the Secretary of State can enforce the law, or individuals can claim on their own behalf. Federal enforcement is rare, so most employees are successful if they are in a labor union. The Consumer Credit Protection Act of 1968 limits deductions or "garnishments" by employers to 25 per cent of wages, [135] though many states are considerably more protective. Finally, under the Portal to Portal Act of 1947, where Congress limited the minimum wage laws in a range of ways, §254 puts a two-year time limit on enforcing claims, or three years if an employing entity is guilty of a willful violation.[136] Top marginal income tax rates Income tax in the United States State income tax rates Income tax rates Income tax in the United States State income tax rates Income tax in the United States State income tax rates Income tax rates Income tax in the United States State income tax rates Income tax rates Income tax in the United States State income tax rates Income tax in the United States State income tax rates Income United States, Maternity leave in the United States, and Work-family balance in the United States The Universal Declaration of Human Rights of 1948 article 23 requires "reasonable limitation of working hours and periodic holidays with pay", but there is no federal or state right to paid annual leave: Americans have the least in the developed world. [137] People in the United States work among the longest hours per week in the industrialized world, and have the least annual leave.[138] The Universal Declaration of Human Rights of 1948 article 24 states: "Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay." However, there is no general federal or state legislation requiring paid annual leave. Title 5 of the United States Code §6103 specifies ten public holidays will be paid.[139] Many states do the same, however, no state law requires private sector employers to provide paid holidays. Many private employers follow the norms of federal and state government, but the right to annual leave, if any, will depend upon collective agreements and individual employment contracts. State law proposals have been made to introduce paid annual leave, if any, will depend upon collective agreements and individual employment contracts. minimum of 3 weeks of paid holidays each year to employees in businesses of over 20 staff, after 3 years work. Under the International Labour Organization Holidays with Pay Convention 1970[140] three weeks is the bare minimum. The Bill did not receive enough votes.[141] By contrast, employees in all European Union countries have the right to attempt least 4 weeks (i.e. 28 days) of paid annual leave each year. [142] Furthermore, there is no federal or state law on limits to the length of the working hours. Under the heading "Maximum hours", §207 states that time and a half pay must be given to employees working more than 40 hours in a week.[112] It does not, however, set an actual limit, and there are at least 30 exceptions for categories of employee which do not receive overtime pay.[143] Shorter working time was one of the labor movement's original demands. From the first decades of the 20th century, collective bargaining produced the practice of having, and the word for, a two-day "weekend".[144] State legislation to limit working time was, however, suppressed by the US Supreme Court in Lochner v New York State Legislature had passed the Bakeshop Act of 1895, which limited work in bakeries to 10 hours a week, to improve health, safety and people's living conditions. After being prosecuted for making his staff work longer in his Utica, Mr Lochner claimed that the law violated the Fourteenth Amendment on "due process". Despite the dissent of four judges, a majority of five judges held that the law was unconstitutional. The Supreme Court, however, did uphold Utah's mine workday statute in 1898.[146] The Mississippi State Supreme Court upheld a ten hour workday statute in 1912 when it ruled against the due process arguments of an interstate lumber company.[147] The whole Lochner era of jurisprudence was reversed by the US Supreme Court in 1937,[148] but experimentation to improve working time rights, and "work-life balance" has not yet recovered. Because there is no right to education and child care for children under five, the costs of child care for child car or family leave in federal law. There are minimal rights in some states. Most collective agreements, and many individual contracts, provide paid time off, but employees who lack bargaining power will often get none.[150] There are, however, limited federal rights to unpaid leave for family and medical reasons. The Family and Medical Leave Act of 1993 generally applies to employees of 50 or more employees in 20 weeks of the last year, and gives rights to employees who have up to 12 weeks of unpaid leave for child birth, adoption, to care for a close relative in poor health, or because of an employee's own poor health.[152] Child care leave should be taken in one lump, unless agreed otherwise.[153] Employees must give notice of 30 days to employers if birth or adoption is "foreseeable",[154] and for serious health conditions if practicable. Treatments should be arranged "so as not to disrupt unduly the operations of the employer" according to medical advice.[155] Employers must provide benefits during the unpaid leave.[156] Under §2652(b) states are empowered to provide "greater family or medical leave rights. Under §2612(2)(A) an employee substitute the right to 12 unpaid weeks of leave for "accrued paid vacation leave, personal leave or family leave" in an employer's personnel policy. Originally the Department of Labor had a penalty to make employees that this might happen. However, five judges in the US Supreme Court in Ragsdale v Wolverine World Wide, Inc held that the statute precluded the right of the Department of Labor to do so. Four dissenting judges would have held that nothing prevented the rule, and it was the Department of Labor's job to enforce the law.[157] After unpaid leave, an employee generally has the right to return to his or her job, except for employees who are in the top 10% of highest paid and the employer can argue refusal "is necessary to prevent substantial and grievous economic injury to the operations of the employer."[158] Employees or the Secretary of Labor can bring enforcement actions, [159] but there is no right to a jury for reinstatement claims. Employees can seek damages for lost wages and benefits, or the cost of child care, plus an equal amount of liquidated damages unless an employer can show it acted in good faith and reasonable cause to believe it was not breaking the law. [160] There is a two-year limit on bringing claims, or three years for willful violations. [161] Despite the lack of rights to leave, there is no right to free child care or day care. This has encourage several proposals to create a public system of free child care, or for the government to subsize parents' costs.[162] Pensions Main articles: Pensions in the US, and Investment manager In the early 20th century, the possibility of having a "retirement" became real as people lived longer,[163] and believed the elderly should not have to work or rely on charity until they died.[164] The law maintains an income in retirement in three ways (1) through public social security created by the Social Security Act of 1935,[165] (2) occupational pensions managed through the employment relationship, and (3) private pensions or life insurance that individuals buy themselves. At work, most occupational pension schemes originally resulted from collective bargaining during the 1920s and 1930s. [166] Unions usually bargained for employees could keep their pensions if they moved jobs. Multi-employer retirement plans, set up by collective agreement became known as "Taft-Hartley plans" after the Taft-Hartley Act of 1947 required joint management of funds by employees and employers. [167] Many employees and employers. [167] Many employees and employee express requirement for participants to have voting rights for the plan trustees. [168] These could be collective and defined benefit schemes: a percentage of one's income (e.g. 67%) is replaced for retirement, however long the person lives. But more recently more employers have only provided individual "401(k)" plans. These are named after the Internal Revenue Code §401(k),[169] which allows employees to pay no tax on money that is saved in the fund, until an employee retires. The same tax deferral rule applies to all pensions. But unlike a "defined benefit" plan, a 401(k) only contains whatever the employee contribute. It will run out if a person lives too long, meaning the retiree may only have minimum social security. The Pension Protection Act of 2006 §902 codified a model for employees in a pension, with a right to an occupational pension. The Employee Retirement Income Security Act of 1974 does create a series of rights for employees if one is set up. It also applies to health care or any other "employee benefit" plan.[171] Investment managers, like Morgan Stanley and all pension trustees, are fiduciaries. This means they must avoid conflicts of interest. During a takeover bid, Donovan v Bierwirth held trustees must take advice or not vote on corporate stocks if in doubt about conflicts.[172] Five main rights for beneficiaries in ERISA 1974 include information, funding, vesting, anti-discrimination, and fiduciary duties. First, each beneficiaries make claims any refusal must be justified with a "full and fair review". [173] If the "summary plan description" is more beneficial than the actual plan documents, because the pension or other plans, all employees must be entitled to participate after at longest 12 months, if working over 1000 hours.[175] Second, all promises must be funded in advance.[176] The Pension Benefit Guaranty Corporation was established by the federal government to be an insurer of last resort, but only up to \$60,136 per year for each employees' benefits usually cannot be taken away (they "vest") after 5 years,[177] and contributions must accrue (i.e. the employee owns contributions) at a proportionate rate.[178] If employees and pension funds merge, there can be no reduction in benefits,[179] and if an employee goes bankrupt their creditors cannot take their occupational pension.[180] However, the US Supreme Court has enabled benefits to be withdrawn by employers simply amending plans. In Lockheed Corp v Spink a majority of seven judges held that an employer could alter a plan, to deprive a 61-year-old man of full benefits when he was reemployed, unbound by fiduciary duties to preserve what an employee had originally been promised.[181] In dissent, Breyer J and Souter J reserved any view on such "highly technical, important matters". [182] Steps to terminate a plan depend on whether it is individual, or multi-employer, and Mead Corp v Tilley a majority of the US Supreme Court held that all contingent and future liabilities must be satisfied.[183] Fourth, as a general principle, employees or beneficiaries cannot suffer any discrimination or detriment for "the attainment of any right" under a plan.[184] Fifth, managers are bound by responsibilities of competence and loyalty, called "fiduciary duties".[185] Under §1102, a fiduciary is anyone who administers a plan, its trustees, and investment managers who are delegated control. Under §1104, fiduciaries must follow a "prudent" person standard, involving three main components. First, a fiduciary must act "in accordance with the documents and instruments governing the plan".[186] Second, they must act "in accordance with the documents and instruments governing the plan".[186] Second, they must act "in accordance with the documents and instruments governing the plan".[186] Second, they must act "in accordance with the documents and instruments governing the plan".[186] Second, they must act "in accordance with the documents and instruments governing the plan".[186] Second, they must act "in accordance with the documents and instruments governing the plan".[186] Second, they must act "in accordance with the documents and instruments governing the plan".[186] Second, they must act "in accordance with the documents and instruments governing the plan".[186] Second, they must act "in accordance with the documents and instruments governing the plan".[186] Second, they must act "in accordance with the documents and instruments governing the plan".[186] Second, they must act "in accordance with the documents and instruments governing the plan".[186] Second, they must act "in accordance with the documents and instruments governing the plan".[186] Second, they must act "in accordance with the documents and instruments governing the plan".[186] Second, they must act "in accordance with the documents and instruments governing the plan".[186] Second, they must act "in accordance with the documents and instruments governing the plan".[186] Second, they must act "in accordance with the documents governing the plan".[186] Second act "in accordance with the documents governing the plan".[186] Second act "in accordance with the documents governing the plan".[186] Second act "in accordance with the documents governing the plan".[186] Second act "in accordance with the documents governing the plan".[186] Second act "in accor including "diversifying the investments of the plan" to "minimize the risk of large losses".[187] Liability for carelessness extends to making misleading statements about benefits,[188] and have been interpreted by the Department of Labor to involve a duty to vote on proxies when corporate stocks are purchased, and publicizing a statement of investment policy.[189] Third, and codifying fundamental equitable principles, a fiduciary must avoid any possibility of a conflict of interest.[190] He or she must act "solely in the interest of the participants ... for the exclusive purpose of providing benefits" with "reasonable expenses",[191] and specifically avoiding self-dealing with a related "party in interest. [192] For example, in Donovan v Bierwirth, the Second Circuit held that trustees of a pension which owned shares in the employees' company as a takeover bid was launched, because they faced a potential conflict of interest, had to get independent legal advice on how to vote, or possibly abstain. [193] Remedies for these duties have, however, been restricted by the Supreme Court to disfavor damages.[194] In these fields, according to §1144, ERISA 1974 will "supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan".[195] ERISA did not, therefore, follow the model of the Fair Labor Standards Act of 1938 or the Family and Medical Leave Act of 1993, which encourage states to legislate for improved protection for employees, beyond the minimum. The preemption rule led the US Supreme Court to strike down a New York that required giving benefits to pregnant employees in ERISA plans.[196] It held a case under Texas law for damages for denying vesting of benefits was preempted, so the claimant only had ERISA remedies. [197] It struck down a Washington law which altered who would receive life insurance designation on death. [198] However, under §1144(b)(2)(A) this does not affect 'any law of any State which regulates insurance, banking, or securities.' So, the Supreme Court has also held valid a Massachusetts law requiring mental health to be covered by employer group health policies.[199] But it struck down a Pennsylvania statute which prohibited employees for insurance after accidents.[200] Yet more recently, the court has shown a greater willingness to prevent laws being preempted,[201] however the courts have not yet adopted the principle that state law is not preempted or "superseded" if it is more protective to employees than a federal minimum. The Workplace Democracy Act of 1999,[202] proposed by Bernie Sanders but not yet passed, would give every employee the representatives on boards of their pension plans, to control how vote are cast on corporate stocks. Currently investment managers control most voting rights in the economy using "other people's money".[203] The most important rights that ERISA 1974 did not cover were who controls investments and securities that beneficiaries' retirement savings buy. The largest form of retirement fund has become the 401(k). This is often an individual account that an employer sets up, and an investment management firm, such as Vanguard, Fidelity, Morgan Stanley or BlackRock, is then delegated the task of trading fund assets. Usually they also vote on corporate shares, assisted by a "proxy advice" firm such as ISS or Glass Lewis. Under ERISA 1974 §1102(a),[204] a plan must merely have named fiduciaries who have "authority to control and manage the operation and administration of the plan", selected by "an employee organization" or both jointly. Usually these fiduciaries or trustees, will delegate management to a professional firm, particularly because under §1105(d), if they do so, they will not be liable for an investment manager's breaches of duty.[205] These investment managers buy a range of assets, particularly corporate bonds, commodities, real estate or derivatives. Rights on those assets are in practice monopolized by investment managers, unless pension funds have organized to take voting in house, or to instruct their investment managers. Two main types of pension fund to do this are union organized Taft-Hartley plans, and state public pension fund to do this are union bargained plan has to be jointly managed by representatives of employees and employees. [206] Although many local pension funds are not consolidated and have had critical funding notices from the Department of Labor, [207] more funds with employee representation ensure that corporate voting rights are cast according to the preferences of their members. State public pensions are often larger, and have greater bargaining power to use on their members' behalf. State pension schemes invariably disclose the way trustees are selected. In 2005, on average more than a third of trustees are selected. In 2005, on average more than a third of trustees are selected. CalPERS has 13 members on its board, 6 elected by employees and beneficiaries. However, only pension funds of sufficient size have acted to replace investment manager voting. Furthermore, no general legislation requires voting rights for employees in pension funds, despite several proposals. [209] For example, the Workplace Democracy Act of 1999, sponsored by Bernie Sanders then in the US House of Representatives, would have required all single employer pension plans to have trustees appointed equally by employers and employer so the Dodd-Frank Act of 2010 §957 banned broker-dealers voting on significant issues without instructions.[210] This means votes in the largest corporations that people's retirement savings buy are overwhelmingly exercised by investment managers, whose interests potentially conflict with the interests of beneficiaries' on labor rights, fair pay, job security, or pension policy. Health and safety Main articles: Occupational Safety and Health Act, [211] signed into law in 1970, US tort law, and Affordable Care Act of 2010 The Occupational Safety and Health Act, [211] signed into law in 1970 by President Richard Nixon, creates specific standards for workplace safety. The Act has spawned years of litigation by industry groups that have challenged the standards limiting the amount of permitted exposure to chemicals such as benzene. The Act also provides for protection for "whistleblowers" who complain to governmental authorities about unsafe conditions while allowing workers the right to refuse to work under unsafe conditions in certain circumstances. The Act allows states to take over the administration of OSHA in their jurisdictions, so long as they adopt state laws at least as protective of workers' rights as under federal law. More than half of the states have done so. Child labor laws in the United States Civil liberties Pickering v Board of Education, 391 US 563 (1968) 8 to 1, a public school teacher was dismissed for writing a letter to a newspaper that criticized the way the school board was raising money. This violated the First Amendment and the Fourteenth Amendment and the Fourteenth Amendment Connick v Myers, 461 U.S. 138 (1983) 5 to 4, a public attorney employee was not unlawfully dismissed after distributing a questionnaire to other staff on a supervisor's management practices after she was transferred under protest. In dissent, Brennan J held that all the matters were of public concern and should therefore be protected by the First Amendment right to say, after the assassination attempt on Ronald Reagan "Shoot, if they go for him again, I hope they get him." Dismissal was unlawful and she had to be reinstated because even extreme comments (except potentially advocating a right in the Constitution. Waters v Churchill, 511 U.S. 661 (1994) 7 to 2, a public hospital nurse stating, outside work at dinner, that the cross-training policies of the hospital were flawed, could be dismissed without any violation of the First Amendment because it could be seen as interfering with the employer's operations Garcetti v Ceballos, 547 U.S. 410 (2006) 5 to 4, no right against dismissal or protected speech when the speech relates to a matter in one's profession Employee Polygraph Protection Act of 1988 outlawed the use of lie detectors by private employers except in narrowly prescribed circumstances Whistleblower Protection Act of 1989 Huffman v Office of Personnel Management, 263 F.3d 1341 (Fed. Cir. 2001) O'Connor v Ortega, 480 U.S. 709 (1987) searches in the workplace Ontario v Quon, 130 S.Ct. 2619, (2010) the right of privacy did not extend to employee could be dismissed for sending sexually explicit messages from an employee could be dismissed for sending sexually explicit messages from an employee could be dismissed for sending sexually explicit messages from an employee could be dismissed for sending sexually explicit messages from an employee could be dismissed for sending sexually explicit messages from an employee could be dismissed for sending sexually explicit messages from an employee could be dismissed for sending sexually explicit messages from an employee could be dismissed for sending sexually explicit messages from an employee could be dismissed for sending sexually explicit messages from an employee could be dismissed for sending sexually explicit messages from an employee could be dismissed for sending sexually explicit messages from an employee could be dismissed for sending sexually explicit messages from an employee could be dismissed for sending sexually explicit messages from an employee could be dismissed for sending sexually explicit messages from an employee could be dismissed for sending sexually explicit messages from an employee could be dismissed for sending sexually explicit messages from an employee could be dismissed for sending sexually explicit messages from an employee could be dismissed for sending sexually explicit messages from an employee could be dismissed for sending sexually explicit messages from an employee could be dismissed for sending sexually explicit messages from an employee could be dismissed for sending sexually explicit messages from an employee could be dismissed for sending sexually explicit messages from an employee could be dismissed for set and the employee could be dismissed for sending sexually explicit messages from an employee could be dismissed for set and the employee corporate law, Codetermination, and Work council The US Supreme Court's policy of preemption since 1953 means federal collective bargaining rules cancel state rules, even if state law is more beneficial to employees.[49] Despite preemption, many unions, corporations, and states have experimented with direct participation rights, to get a "fair day's wage for a fair day's work".[212] The central right in labor law, beyond minimum standards for pay, hours, pensions, safety or privacy, is to participate and vote in workplace governance.[213] The American model developed from the Clayton Act of 1914,[214] which declared the "labor of a human being is not a commodity or article of commerce" and aimed to take workplace relations out of the reach of courts hostile to collective bargaining. Lacking success, the National Labor Relations Act of 1935 changed the basic model, which remained through the 20th century. Reflecting the "inequality of bargaining power between employees ... and employees who are organized in the corporate or other forms of ownership association", [215] the NLRA 1935 codified basic rights of employees to organize a union, requires employees to organize a union, requires employees to bargain in good faith (at least on paper) after a union has majority support, binds employees to collective agreements, and protects the right to take collective action including a strike. Union membership, collective bargaining, and standards of living all increased rapidly until Congress forced through the Taft-Hartley Act of 1947. Its amendments enabled states to pass laws restricting agreements for all employees in a workplace to be unionized, prohibited collective action against associated employees, and introduced a list of unfair labor practices for unions, as well as employers. Since then, the US Supreme Court chose to develop a doctrine that the rules in the NLRA 1935 preempted any other states were inhibited from activity was "arguably subject" to its rights and duties.[216] While states were inhibited from activity was "arguably subject" to its rights and duties.[216] While states were inhibited from activity was "arguably subject" to its rights and duties.[216] While states were inhibited from activity was "arguably subject" to its rights and duties.[216] While states were inhibited from activity was "arguably subject" to its rights and duties.[216] While states were inhibited from activity was "arguably subject" to its rights and duties.[216] While states were inhibited from activity was "arguably subject" to its rights and duties.[216] While states were inhibited from activity was "arguably subject" to its rights and duties.[216] While states were inhibited from activity was "arguably subject" to its rights and duties.[216] While states were inhibited from activity was "arguably subject" to its rights and duties.[216] While states were inhibited from activity was "arguably subject" to its rights and duties.[216] While states were inhibited from activity was "arguably subject" to its rights and duties.[216] While states were inhibited from activity was "arguably subject" to its rights and duties.[216] While states were inhibited from activity was "arguably subject" to its rights and duties.[216] While states were inhibited from activity was "arguably subject" to its rights and duties.[216] While states were inhibited from activity was "arguably subject" to its rights and duties.[216] While states were inhibited from activity was "arguably subject" to its rights and duties.[216] While states were inhibited from activity was "arguably subject" to its rights and duties.[216] While states were inhibited from activity was "arguably subject" to its rights and duties.[216] While states were inhibited from activity was "arguably subject" to its from 1980 and membership fell, the NLRA 1935 has been criticized as a "failed statute" as US labor law "ossified".[217] This has led to more innovative experiments among states, progressive corporate boards, and elect work councils with binding rights on workplace issues. Labor unions in the US and List of labor unions in the US Freedom of association in labor unions in the US and List of labor unions in the US Freedom of association in labor unions in the US and List of labor un

were routinely suppressed by the government. Recorded instances include cart drivers being fined for striking in 1677 in New York City, and carpenters prosecuted as criminals for striking in 1746.[219] After the American Revolution, however, courts departed from repressive elements of English common law. The first reported case, Commonwealth v Pullis in 1806 did find shoemakers in Philadelphia guilty of "a combination to raise their wages".[220] Nevertheless, unions continued, and the first federation of trade unions was formed in 1834, the National Trades' Union, with the primary aim of a 10-hour working day.[221] In 1842 the Supreme Court of Massachusetts held in Commonwealth v Hunt that a strike by the Boston Journeymen Bootmakers' Society for higher wages was lawful.[222] Chief Justice Shaw held that people "are free to work, if they so prefer" and "to agree together to exercise their own acknowledged rights". The abolition of slavery by Abraham Lincoln's Emancipation Proclamation during the American Civil War was necessary to create genuine rights to organize, but was not sufficient to ensure freedom of association. Using the Sherman Act of 1890, which was intended to break up business cartels, the Supreme Court imposed an injunction on striking workers of the Pullman Company, and imprisoned the leader, and future presidential candidate, Eugene Debs.[223] The Court also enabled unions to be sued for triple damages in Loewe v Lawlor, a case involving a hat maker union in Danbury, Connecticut.[224] The President and United States Congress responded by passing the Clayton Act of 1914 to take labor out of antitrust law Then, after the Great Depression passed the National Labor Relations Act of 1935 to positively protect the right to organize and take collective action. After that, the law increasingly turned to regulate unions' internal affairs. The Taft-Hartley Act of 1947 regulated how members can join a union, and the Labor Management Reporting and Disclosure Act of 1959 created a "bill of rights" for union members. The Change to Win Federation of unions, with 12.5m members. The two have negotiated merging to create a united American labor movement. While union governance is founded upon freedom of association, the law requires basic standards of democracy and accountability to ensure members are truly free in shaping their associations, [226] but they divide between those where members are truly free in shaping their associations. directly elect the executive. In 1957, after the McClellan Committee of the US Senate found evidence of two rival Teamsters Union executives, Jimmy Hoffa and Dave Beck, falsifying delegate vote counts and stealing union funds, [227] Congress passed the Labor Management Reporting and Disclosure Act of 1959. Under § 411, every member has the right to vote, attend meetings, speak freely and organize, not have fees raised without a vote, not be deprived of the right to sue, or be suspended unjustly. [228] Under § 431, unions should file their constitutions and bylaws with the Secretary of Labor and be accessible by members: [229] today union constitutions are online. Under § 481 elections must occur at least every 5 years, and local officers every 3 years, by secret ballot.[229] Additionally, state law may bar union officials who have prior convictions for felonies from holding office.[230] As a response to the Hoffa and Beck scandals, there is also an express fiduciary duty on union officials who have prior convictions for felonies from holding office.[230] As a response to the Hoffa and Beck scandals, there is also an express fiduciary duty on union officials who have prior convictions for felonies from holding office.[230] As a response to the Hoffa and Beck scandals, there is also an express fiduciary duty on union officials who have prior convictions for felonies from holding office.[230] As a response to the Hoffa and Beck scandals, there is also an express fiduciary duty on union officials who have prior convictions for felonies from holding office.[230] As a response to the Hoffa and Beck scandals, there is also an express fiduciary duty on union officials who have prior convictions for felonies from holding office.[230] As a response to the Hoffa and Beck scandals, there is also an express fiduciary duty on union officials who have prior convictions for felonies from holding office.[230] As a response to the Hoffa and Beck scandals, there is also an express fiduciary duty on union officials who have prior convictions for felonies from holding office.[230] As a response to the Hoffa and Beck scandals, there is also an express fiduciary duty on union officials who have prior convictions for felonies from holding office.[230] As a response to the Hoffa and Beck scandals, there is also an express fiduciary duty on union officials who have prior convictions for felonies from holding office.[230] As a response to the Hoffa and Beck scandals, there is also an express fiduciary duty on union officials who have prior convictions for felonies from holding office.[230] As a response to the Hoffa and Beck scandals, there is also an express fiduciary duty on union officials who have prior conviction executives, requirements for bonds for handling money, and up to a \$10,000 fine or up to 5 years prison for embezzlement. These rules, however, restated most of what was already the law, and codified principles of governance that unions already undertook. [231] On the other hand, under § 501(b) to bring a lawsuit, a union member must first make a demand on the executive to correct wrongdoing before any claim can be made to a court, even for misapplication of funds, and potentially wait four months' time. The Supreme Court has held that union members can intervene in enforcement proceedings brought by the Department to proceed with any prosecutions.[233] The range of rights, and the level of enforcement has meant that labor unions display significantly higher standards of accountability, with fewer scandals, than corporations or financial institutions.[234] Sharan Burrow leads the International Trade Union Confederation, which represents labor unions display significantly higher standards of accountability. union members worldwide, via each national group including the AFL-CIO.[235] Beyond members in unions. This affects union members in unions. This affects union members in unions. This affects union members in unions. collective agreements with employers that all new workers would have to join the union. This was to prevent employers trying to dilute and divide union support, and ultimately refuse to improve wages and conditions in collective bargaining. However, after the Taft-Hartley Act 1947, the National Labor Relations Act of 1935 § 158(a)(3) was amended to ban employers from refusing to hire a non-union employee can be required to join the union (if such a collective agreement is in place) after 30 days. [236] But § 164(b) was added to codify a right of states to pass so called "right to work laws" that prohibit unions making collective agreements to register all workers as union members. or collect fees for the service of collective bargaining.[237] Over time, as more states with Republican governments passed laws restricting union membership agreements, there has been a significant decline of unions with a right to opt out. In Machinists v Street, a majority of the US Supreme Court, against three dissenting justices, held that the First Amendment precluded making an employee become a union member against three dissenting justices. without the member's consent.[238] Unions have always been entitled to publicly campaign for members of Congress or presidential candidates that support labor rights.[239] But the urgency of political spending was raised when in 1976 Buckley v Valeo decided, over powerful dissents of White J and Marshall J, that candidates could spend unlimited money on their own political campaign, [240] and then in First National Bank of Boston v. Bellotti, [241] that corporations could be essentially no limits to corporate spending. By contrast, every other democratic country caps spending (usually as well as regulating donations) as the original Federal Election Campaign Act of 1971 had intended to do. A unanimous court held in Abood v Detroit School Board that union security agreements to collect fees from non-members were also allowed in the public sector.[243] However, in Harris v Quinn five US Supreme Court judges reversed this ruling apparently banning public sector union security agreements, [244] and were about to do the same for all unions in Friedrichs v California Teachers Association until Scalia J died, halting an anti-labor majority on the Supreme Court. [245] In 2018, Janus v AFSCME the Supreme Court held by 5 to 4 that collecting mandatory union fees from public sector employees violated the First Amendment. The dissenting judges argued that union fees merely paid for benefits of collective bargaining that non-members otherwise received for free. These factors led campaign finance reform to be one of the most important issues in the 2016 US Presidential election, for the future of the labor movement, and democratic life. Collective bargaining Main articles: Collective bargaining, Arbitration in the US, National Labor Relations Statute, and Railway Labor Act of 1926 Since the industrial revolution, collective bargaining has been the main way to get fair pay improved conditions, and a voice at work. The need for positive rights to organize and bargain was gradually appreciated after the Clayton Act of 1914. Under §6,[246] labor rights were declared to be outside of antitrust law, but this did not stop hostile employers and courts suppressing unions. In Adair v United States,[247] and Coppage v Kansas, [248] the US Supreme Court, over powerful dissents, [249] asserted the Constitution employees to sign contracts "were offered to employees on a "take it or leave it" basis, and effectively stopped unionization. They lasted until the Great Depression when the Norris-La Guardia Act of 1932 banned them. [250] This also prevented the courts from issuing any injunctions or enforcing any agreements in the context of a labor dispute. [251] After the landslide election of Franklin D. Roosevelt, the National Labor Relations Act of 1935 was drafted to create positive rights for collective bargaining in most of the private sector.[252] It aimed to create a system of federal rights so that, under \$157, employees to get better terms in load or other protection".[253] The Act was meant to increase bargaining power of employees to get better terms in than individual contracts with employing corporations. However §152 excluded many groups of workers, such as state and federal government employees, [256] These groups depend on special federal statutes like the Railway Labor Act of 1926 or state law rules, like the California Agricultural Labor Relations Act of 1975. In 1979, five US Supreme Court judges, over four forceful dissents, also introduced an exception for church operated schools, apparently because of "serious First Amendment questions". [257] Furthermore, "independent contractors" are excluded, even though many are economically dependent workers. Some courts have attempted to expand the "independent contractor" exception. In 2009, in FedEx's lawyer Ted Cruz, held that post truck drivers were independent contractors because they took on "entrepreneurial opportunity". Garland J dissented, arguing the majority had departed from common law tests.[258] The "independent contractor" category was estimated to remove protection from 8 million workers.[259] While many states have higher rates, the US has an 11.1 per cent unionization rate and 12.3 per cent rate of coverage by collective agreement. This is the lowest in the industrialized world.[260] After 1981 air traffic control strike, when Ronald Reagan fired every air traffic controller, [261] the NLRB was shut down as the President and then Senate refused to collective bargaining. Between 2007 and 2013 the NLRB was shut down as the President and then Senate refused to collective bargaining. and make a collective agreement. Under NLRA 1935 §158(d) the mandatory subjects of collective bargaining include "wages, hours, and other terms and conditions of employment".[262] A collective agreement will typically aim to get rights including a fair day's wage for a fair day's work, reasonable notice and severance pay before any necessary layoffs, just cause for any job termination, and arbitration to resolve disputes. It could also extend to any subject by mutual agreement. A union can encourage an employing entity through collective action to sign a deal, without using the NLRA 1935 procedure. But, if an employing entity refuses to deal with a union, and a union wishes, the National Labor Relations Board (NLRB) may oversee a legal process up to the conclusion of a legally binding collective agreement. By law, the NLRB will determine an consent of the Senate", [263] and play a central role in promoting collective bargaining. First, the NLRB will determine an appropriate "bargaining unit" of employees with employe support of employees in a bargaining unit becomes "the exclusive representatives of all the employees".[265] But to ascertain majority support, the NLRB to take six weeks from a petition from workers to an election being held.[266] During this time, managers may attempt to persuade or coerce employees using high-pressure tactics or unfair labor practices (e.g. threatening job termination, alleging unions will bankrupt the firm) to vote against recognizing the union. The average time for the NLRB to decide upon complaints of unfair labor practices had grown to 483 days in 2009 when its last annual report was written.[267] Third, if a union does win majority support in a bargaining unit election, the employing entity will have an "obligation to bargain collectively". This means meeting union representatives "at reasonable times and confer in good faith with respect to wages, hours, and other terms" to put in a "written contract". The NLRB cannot compel an employer to agree, but it was thought that the NLRB's power to sanction an employer for an "unfair labor practice" if they did not bargain in good faith would be sufficient. For example, in JI Case Co v NLRB the Supreme Court held an employer could not refuse to bargain on the basis that individual contracts were already in place. [268] Crucially, in Wallace Corp v NLRB the Supreme Court also held that an employer only bargaining with a company union, which it dominated, was an unfair labor practice. The employer should have recognized the truly independent union affiliated to the Congress of Industrial Organizations (CIO).[269] However, in NLRB v Sands Manufacturing Co the Supreme Court held an employer did not commit an unfair trade practice by shutting down a water heater plant, while the union was attempting to prevent new employees being paid less.[270] Moreover, after 2007 President George W. Bush and the Senate refused to make any appointments to the Board, and it was held by five judges, over four dissents, in New Process Steel LP v NLRB that rules made by two remaining members were ineffective.[271] While appointments were made in 2013, agreement was not reached on one vacant seat. Increasingly it has been made politically unfeasible for the NLRB to act to promote collective bargaining. The proposed Employee Free Choice Act, sponsored repeatedly by Hillary Clinton, Bernie Sanders and Democrat representatives, would require employers to bargain in 90 days or go to arbitration, if a simple majority of employees sign cards supporting the union.[272] It has been blocked by Republicans in Congress. Once collective agreements have been signed, they are legally enforceable, often through arbitration, and ultimately in federal court. [273] Federal law must be applied for national uniformity, so state courts must apply federal law when asked to deal with collective agreements or the dispute so binding arbitration, governed by the Federal Arbitration Act of 1925.[275] For example, in United Steelworkers v Warrior & Gulf Navigation Co a group of employees at a steel transportation works in Chickasaw, Alabama requested the corporation go to arbitration over layoffs and outsourcing of 19 staff on lower pay to do the same jobs. The United Steelworkers had a collective agreement which contained a provision for arbitration. Douglas J held that any doubts about whether the agreement. [276] An arbitrator's award is entitled to judicial enforcement so long as its essence is from the collective agreement. [277] Courts can decline to enforce an agreement based on public policy, but this is different from "general considerations of supposed public interests".[278] But while federal policy had encouraged arbitration over individual statutory rights In Alexander v Gardner-Denver Co an employee claimed he was unjustly terminated, and suffered unlawful race discrimination under the Civil Rights Act of 1964. The Supreme Court held that he was entitled to pursue remedies both through arbitration and the public courts, which could re-evaluate the claim whatever the arbitrator had decided.[279] But then, in 2009 in 14 Penn Plaza LLC v Pyett Thomas J announced with four other judges that apparently "[n]othing in the law suggests a distinction between the status of arbitration agreements signed by an individual employee and those agreed to by a union representative."[280] This meant that a group of employees were denied the right to go to a public court under the Age Discrimination in Employment Act of 1967, and instead potentially be heard only by arbitrators their employer selected. Stevens J and Souter J, joined by Ginsburg J, Breyer J dissented, pointing out that rights cannot be waived even by collective bargaining.[281] An Arbitration Fairness Act of 2011 has been proposed to reverse this, urging that "employees have little or no meaningful choice whether to submit their claims to arbitration".[282] It remains unclear why NLRA 1935 §1, recognizing workers' "inequality of bargaining power" was not considered relevant to ensure that collective bargaining can only improve upon rights, rather than take them away. To address further perceived defects of the NLRA 1935 and the US Supreme Court's interpretations, major proposed reforms have included the Employee Free Choice Act of 2009.[284] All focus on speeding the election procedure for union recognition, speeding hearings for unfair labor practices, and improving remedies within the existing structure of labor relations. Right to organize Main articles: Freedom of association, Unfair labor practice, and Federal preemption To ensure that employees are effectively able to bargain for a collective agreement, the NLRA 1935 created a group of rights in §158 to stall "unfair labor practices" by employers. These were considerably amended by the Taft-Hartley Act of 1947, where the US Congress over the veto of President Harry S. Truman decided to add a list of unfair labor practices for labor unions. This has meant that union organizing in the US may involve substantial levels of litigation which most workers cannot afford. The fundamental principle of freedom of association, however, is recognized worldwide to require various rights. It extends to the state, so in Hague v. Committee for Industrial Organization held the New Jersey mayor violated the First Amendment when trying to shut down CIO meetings because he thought they were "communist".[285] Among many rights and duties relating to unfair labor practices, five main groups of case have emerged. Unfair labor practices, made unlawful by the National Labor Relations Act of 1935 §153, prohibit employers discriminating against people who organize a union must suffer no discrimination or retaliation in their chances for being hired, terms of their work, or in termination.[286] For example, in one of the first cases, NLRB v Jones & Laughlin Steel Corp, the US Supreme Court held that the National Labor Relations Board was entitled to order workers be rehired after they had been dismissed for organizing a union at their plant in Aliquippa, Pennsylvania.[287] It is also unlawful for employees to monitor employees who are organizing, for instance by parking out union fliers.[289] This can include giving people incentives or bribes to not join a union. So in NLRB v Erie Resistor Corp the Supreme Courts of the Supreme Co held it was unlawful to give 20 years extra seniority to employees who crossed a picket line while the union had called a strike.[290] Second, and by contrast, the Supreme Court had decided in Textile Workers Union of America v Darlington Manufacturing Co Inc that actually shutting down a recently unionized division of an enterprise was lawful, unless it was proven that the employer was motivated by hostility to the union.[291] Third, union members need the right to be represented, in order to carry out basic functions of collective bargaining and settle grievances or disciplinary hearings with management. This entails a duty of fair representation.[292] In NLRB v J Weingarten, Inc the Supreme Court held that an employee in a unionized workplace had the right to a union representative present in a management interview, if it could result in disciplinary action. [293] Although the NLRB has changed its position with different political appointees, the DC Circuit has held the same right goes that non-union workers were equally entitled to be accompanied.[294] Fourth, under §158(a)(5) it is an unfair labor practice to refuse to bargaining work. However, in Detroit Edison Co v NLRB the Supreme Court divided 5 to 4 on whether a union was entitled to receive individual testing scores from a program the employer used. [295] Also, in Lechmere, Inc. v. National Labor Relations Board the Supreme Court held 6 to 3 that an employer was entitled to prevent union members, who were not employees, from entering the company parking lot to hand out leaflets. [296] Fifth, there are a large group of cases concerning "unfair" practices of labor organizations, listed in §158(b). For example, in Pattern Makers League of North America v NLRB an employees who had been members, but quit during a strike when their membership agreement promised they would not. Five judges to four dissents held that such fines could not be enforced against people who were no longer union members. [297] As union members. [298] The US does not yet require employee representatives on boards of directors. [298] As union members. [298] The US does not yet require employee representatives on boards of directors. [298] The US does not yet require employee representatives on boards of directors. [298] The US does not yet require employee representatives on boards of directors. [298] The US does not yet require employee representatives on boards of directors. [298] The US does not yet require employee representatives on boards of directors. [298] The US does not yet require employee representatives on boards of directors. [298] The US does not yet require employee representatives of directors. [298] The US does not yet require employee representatives of directors. [298] The US does not yet require e elected work councils.[299] The US Supreme Court policy of preemption, developed from 1953,[300] means that states cannot legislate where the NLRA 1935 does operate. The NLRA 1935 does operate. The NLRA 1935 does operate. maximum hours are preempted, unless they are more beneficial to the employee.[113] The first major case, Garner v Teamsters Local 776, decided a Pennsylvania statute was preempted from providing superior remedies or processing claims quicker than the NLRB because "the Board was vested with power to entertain petitioners' grievance, to issue its own complaint" and apparent "Congress evidently considered that centralized administration of specially designed procedures was necessary to obtain uniform application of its substantive rules".[301] In San Diego Building Trades Council v Garmon, the Supreme Court held that the California Supreme Court was not entitled to award remedies against a union for picketing, because if "an activity is arguably subject to §7 or §8 of the Act, the States as well as the federal courts must defer to the exclusive competence of the NLRB had not given any ruling on the dispute because its monetary value was too small. [303] This reasoning was extended in Lodge 76, International Association of Machinists v Wisconsin Employment Relations Commission, where a Wisconsin Employment Relations Commission, where a Wisconsin Employment Relations Commission, where a Wisconsin Employment Relations Commission sought to hold a union liable for an unfair labor practice, by refusing to work overtime. Brennan J held that such matters were to be left to "be controlled by the free play of economic forces".[304] While some of these judgments appeared beneficial to unions against hostile state courts or bodies, supportive actions also began to be held preempted. In Golden State Transit Corp v City of Los Angeles a majority of the Supreme Court held that Los Angeles and or entitled to refuse to renew a taxi company's franchise license because the Teamsters Union had pressured it not to until a dispute was resolved.[305] Most recently in Chamber of Commerce v Brown seven judges on the Supreme Court held that California was preempted from passing a law prohibiting any recipient of state funds. efforts. Breyer J and Ginsburg J dissented because the law was simply neutral to the bargaining process. [306] State governments may, however, use their funds to procure corporations to do work that are union or labor friendly. [307] Collective action Main articles: Strike action All workers, like the Arizona teachers in 2019, are guaranteed the right to take collective action, including strikes, by international law, federal law, [308] The right to state laws.[308] The right to state laws.[308] The right to state laws.[308] The right of labor to take collective action, including the right of labor to take collective action, including strikes, by international law, federal law, [308] The right of labor to take collective action, including strikes, by international law for over a century.[311] As New York teacher unions argued in the 1960s, "If you can't call a strike you don't have real collective bargaining, you have 'collective bargaining, you have 'collective bargaining, in restraint of trade, it was first used against labor unions. This resulted in Eugene Debs, American Railway Union leader and future Socialist Presidential candidate, being imprisoned for taking part in the Pullman Strike.[314] The Supreme Court persisted in Loewe v Lawlor in imposing damages for strikes under antitrust law,[224] until Congress passed the Clayton Act of 1914. Seen as "the Magna Carta of America's workers", [315] this proclaimed that all collective action by workers was outside antitrust law under the commerce". It became fundamental that no antitrust sanctions could be imposed, if "a union acts in its self-interest and does not combine with nonlabor groups."[316] The same principles entered the founding documents of the International Labour Organization in 1919.[317] Finally at the end of the Lochner era[318] the National Labor Relations Act of 1935 §157 enshrined the right "to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or and in §163, the "right to strike".[319] Cesar Chavez organized the United Farm Workers and campaigned for social justice under the slogan "Yes we can" and "Si, se puede".[320] Although federal law guarantees the right to strike, American labor unions face the most severe constraints in the First, the law constrains the purposes for which strikes are allowed. The National Labor Relations Act of 1935 only covers "employees" in the private sector, and a variety of state laws attempt to suppress government workers' right to strike, including for teachers, [321] police and firefighters, without adequate alternatives to set fair wages. [322] Workers have the right to take protected concerted activity.[323] But NLRB v Insurance Agents' International Union held that although employees refusing to perform part of their jobs in a "partial strike" was not a failure to act in good faith, they could be potentially be discharged: perversely, this encourages workers to conduct an all-out strike instead.[324] Second, since 1947 the law made it an "unfair labor practice" for employees to take collective action that is not a "primary strike or primary corporation, employees striking with employees of competitors, against outsourced businesses, or against suppliers.[326] However the same standards are not applied to employers: in NLRB v Truck Drivers Local 449, the Supreme Court held that a group of seven employers were entitled to lock out workers of a union at once, in response to a strike at just one of the employers by the union.[327] This said, employees may peacefully persuade customers to boycott any employer or related employer, for instance by giving out handbills.[328] Third, a union is bound to act in good faith if it has negotiated a collective agreement, unless an employer commits an unfair labor practice. The union must also give 60 days warning before undertaking any strike while a collective agreement is in force.[329] An employer must also act in good faith, and an allegation of a violation must be based on "substantial.[330] 2016 Presidential candidate Bernie Sanders joined the Communication Workers Union strike against Verizon. American workers face serious obstacles to strike is the lack of protection from unjust discharge. Other countries protect employees from any detriment or discharge for strike action,[331] but the Supreme Court held in NLRB v Mackay Radio & Telegraph Co that employees on strike could be replaced by strikebreakers, and it was not an unfair labor practice for the employees on strike could be replaced by strikebreakers, and it was not an unfair labor practice for the employees on strike could be replaced by strikebreakers. violation of international law.[333] However the Supreme Court further held in NLRB v Fansteel Metallurgical Corporation that the Labor Board cannot order an employers could induce younger employees more senior jobs as a reward for breaking a strike.[335] Fifth, the Supreme Court has not consistently upheld the right to free speech and peaceful picketing. In NLRB v Electrical Workers the Supreme Court held that an employee's TV broadcasts while a labor dispute [336] On the other hand, the Supreme Court has held there was a right to picket shops that refused to hire African-American workers.[337] The Supreme Court declared an Alabama law, which fined and imprisoned a picketer, to be unconstitutional.[338] The Supreme Court declared an Alabama law, which fined and imprisoned a picketer, to be unconstitutional.[337] The Supreme Court held unions could write newspaper publications to advocate for pro-labor political candidates.[339] It also held a union could distribute political leaflets in non-work areas of the employees for unfair labor practices are minimal, because employees emplo dispute. For this reason, a majority of labor law experts support the laws on collective bargaining and collective bargain introduced by Tammy Baldwin, for at least one third of listed company boards to be elected by employees, [342] and more for large corporations. [343] In 1980 the United Auto Workers collectively agreed Chrysler Corp employees would be on the board of directors, but despite experiments, today asset managers monopolize voting rights in corporations with "other people's money".[344] While collective bargaining was stalled by US Supreme Court preemption policy, a dysfunctional Labor Relations Board, and falling union membership rate since the Taft-Hartley Act of 1947, employees have demanded direct voting rights at work: for corporate boards of directors, and in work councils that bind management.[345] This has become an important complement to both strengthening collective bargaining, and securing the votes in labor's capital on pension boards, which buy and vote on corporate stocks, and control employers.[346] Labor law has increasingly converged with corporate law,[347] and in 2018 the first federal law. the Reward Work Act was proposed by three US senators to enable employees to vote for one third of the directors on boards of listed companies.[348] In 1919, under the Republican governor Calvin Coolidge, Massachusetts became the first state with a right for employees in manufacturing companies to have employee representatives on the board of directors, but only if corporate stockholders voluntarily agreed.[349] Also in 1919 both Procter & Gamble and the General Ice Delivery Company of Detroit had employee spread through the 1920s, many without requiring any employee stock ownership plan.[351] In the early 20th century, labor law theory split between those who advocated collective bargaining backed by strike action, those who advocated a greater role for binding arbitration,[352] and proponents of codetermination as "industrial democracy".[353] Today, these methods are seen as complements, not alternatives. A majority of countries in the Organisation for Economic Co-operation and Development have laws requiring direct participation rights.[354] In 1994, the Dunlop Commission on the Future of Worker-Management Relations: Final Report examined law reform to improve collective labor relations, and suggested minor amendments to encourage worker involvement.[355] Congressional division prevented federal reform, but labor unions and state legislatures have experimented. ... while there are many contributing causes to unrest ... one cause ... is fundamental. That is the necessary conflict—the contrast between our political liberty and our industrial absolutism. We are as free politically, perhaps, as free as it is possible for us to be. ... On the other hand, in dealing with industrial problems, the position of the ordinary worker is exactly the reverse. The individual employee has no effective voice or vote. And the main objection, as I see it, to the very large corporation is, that it makes possible—and in many cases makes inevitable—the exercise of industrial absolutism. ... The social justice for which we are striving is an incident of our democracy, not its main end ... the end for which we must strive is the attainment of rule by the people, and that involves industrial democracy. —Louis Brandeis, Testimony to Commission on Industrial Relations (1916) vol 8, 7659–7660 Corporations are chartered under state law, the larger mostly in Delaware, but leave investors free to organize voting rights and board representation as they choose.[356] Because of historic caution among American labor unions about taking on management,[357] shareholders have come to monopolize voting rights in American corporations. From the 1970s employees and unions sought representation on company boards. This could happen through employees demanding further representation through employees and unions sought representation on company boards. capital risks that could not be diversified. By 1980, workers had attempted to secure board representation at corporations including United Airlines, the General Tire and Rubber Company, and the Providence and Worcester Railroad. [358] However, in 1974 the Securities and Exchange Commission, run by appointees of Richard Nixon, had rejected that employees who held shares in AT&T were entitled to make shareholder proposals to include employee representatives on the board of directors.[359] This position was eventually reversed expressly by the Dodd-Frank Act of 2010 §971, which subject to rules by the Securities and Exchange Commission entitles shareholders to put forward nominations for the board.[360] Instead of pursuing board seats through shareholder resolutions the United Auto Workers, for example, successfully sought board representation by collective agreement at Chrysler in 1980.[361] The United Steel Workers secured board representation by collective agreement at Chrysler in 1980.[361] The United Steel Workers secured board representation by collective agreement at Chrysler in 1980.[361] The United Steel Workers secured board representation by collective agreement at Chrysler in 1980.[361] The United Steel Workers secured board representation by collective agreement at Chrysler in 1980.[361] The United Steel Workers secured board representation by collective agreement at Chrysler in 1980.[361] The United Steel Workers secured board representation by collective agreement at Chrysler in 1980.[361] The United Steel Workers secured board representation by collective agreement at Chrysler in 1980.[361] The United Steel Workers secured board representation by collective agreement at Chrysler in 1980.[361] The United Steel Workers secured board representation by collective agreement at Chrysler in 1980.[361] The United Steel Workers secured board representation by collective agreement at Chrysler in 1980.[361] The United Steel Workers secured board representation by collective agreement at Chrysler in 1980.[361] The United Steel Workers secured board representation by collective agreement at Chrysler in 1980.[361] The United Steel Workers secured board representation by collective agreement at Chrysler in 1980.[361] The United Steel Workers secured board representation by collective agreement at Chrysler in 1980.[361] The United Steel Workers secured board representation by collective agreement at Chrysler in 1980.[361] The United Steel Workers secured board representation by collective agreement at Chrysler in 1980.[361] The United Steel Workers secured board representation by collective agreement at Chrysler in 1980.[361] The United Steel Workers secured board representation linked to employee stock ownership plans, and were open to abuse. At the energy company, Enron, workers were encouraged by management to invest an average of 62.5 per cent of their retirement savings from 401(k) plans in Enron collapsed in 2003, employees lost a majority of their pension savings.[363] For this reason, employees and unions have sought representation because they invest their labor in the firm, and do not want undiversifiable capital risk. Empirical research suggests by 1999 there were at least 35 major employees and unions have sought representation because they invest their labor in the firm, and do not want undiversifiable capital risk. though often linked to corporate stock.[364] Powered by a solar farm,[365] the Volkswagen plant at Chattanooga, Tennessee has debated introducing work councils to give employees and its labor union more of a voice at work. As well as representation on a corporation's board of directors, or top management, employees have sought binding rights (for instance, over working time, break arrangement, and layoffs) in their organizations through elected work councils. After the National War Labor Board was established by the Woodrow Wilson administration, firms established to concede the "right to employ and discharge, the direction of the working forces, and the management of the business" in any way,[367] which from the workforce perspective defeated the object. As the US presidency changed to the Republican party during the 1920s, work "councils" were often instituted by employers that did not have free elections or proceedings, to forestall independent labor unions' right to collective bargaining. For this reason, the National Labor Relations Act of 1935 §158(a)(2) ensured it was an unfair labor practice for an employer "to dominate or interfere with the formation or administration of any labor organization, or contribute financial or other support to it".[368] This was designed to enable free work councils, genuinely independent from management, but not dominated work councils or so called "company unions".[369] For example, a work councils if elected by democratic methods, with secret ballots, using participation of free labor unions, with basic functions ranging from how to apply collective agreements, regulating health and safety, rules for engagements, dismissals and grievances, proposals for improving work methods, and organizing social and welfare facilities.[370] These rules were subsequently updated and adopted in German law, although American employees themselves did not yet develop a practice of bargaining for work council rules, even though neither were preempted by the National Labor Relations Board in its Electromation, Inc,[372] and EI du Pont de Nemours,[373] decisions confirmed that while management dominated councils were unlawful, genuine and independent work councils were unlawful, genuine and independent work councils.[374] A Republican Congress did propose a Teamwork for Employees and Managers Act of 1995 to repeal §158(a)(2), but this was vetoed by President Bill Clinton as it would have enabled management dominated unions and councils. In 2014, workers at the Volkswagen Chattanooga, Tennessee, sought to establish a work council. This was initially supported by management, but its stance changed in 2016, after the United Auto Workers succeeded in winning a ballot for traditional labor law goals of workplace and economic democracy. Equality and discrimination law, the Civil Rights Act of 1964, followed the March on Washington for Jobs and Freedom in 1963. The head of the movement, Martin Luther King Jr. told America, "I have a dream that one day ... little black boys and black girls will be able to join hands with little white boys and white girls as sisters and brothers." Since the US Declaration of Independence in 1776 proclaimed that "all men are created equal",[376] the Constitution was progressively amended, and legislation was written, to spread equal rights to all people. While the right to vote was needed for true political participation, the "right to work" and "free choice of employment" came to be seen as necessary for "life, liberty and the pursuit of happiness".[377] After state laws experimented, President Franklin D. Roosevelt's Executive Order 8802 in 1941 set up the Fair Employment Practice Committee to ban discrimination by "race, creed, color or national origin" in the defense industry. The first comprehensive statutes were the Equal Pay Act of 1963, to limit discrimination based on "race, color, religion, sex, or national origin."[378] In the following years, more "protected characteristics" were added by state and federal acts. The Age Discrimination in Employment Act of 1990 requires "reasonable accommodation" to include people with disabilities in the workforce. Twenty two state Acts protect people based on sexual orientation in public and private employment, but proposed federal laws have been blocked by Republican opposition. There can be no detriment to union members, or people who have served in the military. In principle, states may require rights and remedies for employees that go beyond the federal minimum. Federal law has multiple exceptions, but generally requires no disparate treatment by employing entities, no disparate impact of formally neutral measures, and enables employers to voluntarily take affirmative action favoring under-represented people in their workforce.[379] The law has not, however, succeeded in eliminating the disparities in income by race, health, age or socio-economic background. Constitutional rights See also: Equal opportunity and Discrimination The right to equality in employment in the United States comes from at least six major statutes, and limited jurisprudence of the US Constitutional rights. entrenched gender, race and wealth inequality by enabling states to maintain slavery, [380] reserve the vote to white, property owning men, [381] and enabling employers to refuse employment to anyone. After the Emancipation Proclamation in the American Civil War, the Thirteenth, Fourteenth Amendments attempted to enshrined equal civil rights for everyone,[382] while the Civil Rights Act of 1866,[383] and 1875 spelled out that everyone had the right to make contracts, hold property and access accommodation, transport and entertainment without discrimination. However, in 1883 the US Supreme Court in the Civil Rights Cases put an end to development by declaring that Congress was not allowed to regulate the actions of private individuals rather than public bodies.[384] In his dissent, Harlan J would have held that no "corporation or individual wielding power under state authority for the public benefit" was entitled to "discriminate against freemen or citizens, in their civil rights".[385] A constitutional right to equality, based on the equal protection clauses of the Fifth and Fourteenth Amendments has been disputed. 125 years after Harlan J wrote his famous dissent that all social institutions should be bound to equal rights, [386] Barack Obama won election for President. By 1944, the position had changed. In Steele v Louisville & Nashville Railway Co, [387] a Supreme Court majority held a labor union had a duty of fair representation and may not discriminate against members based on race under the Railway Labor Act of 1935. Murphy J would have also based the duty on a right to equality in the Fifth Amendment). Subsequently, Johnson v Railway Express Agency admitted that the old Enforcement Act of 1870 provided a remedy against private parties.[388] However, the Courts have not yet accepted a general right of equality, regardless of public or private power. Legislation will usually be found unconstitutional, under the Fifth or Fourteenth Amendment if discrimination is shown to be intentional [389] or if it irrationally discriminates against one group. For example, in Cleveland Board of Education v LaFleur the Supreme Court held by a majority of 5 to 2, that a school's requirement for women teachers to take mandatory maternity leave was unconstitutional, against the Due Process Clause, because it could not plausibly be shown that after women teachers to take mandatory maternity leave was unconstitutional. child birth women could never perform a job.[390] But while the US Supreme Court has failed, against dissent, to recognize a constitutional principle, federal equality law always enables state law to create better rights and remedies for employees.[392] Equal treatment See also: Disparate treatment, Bona fide occupational qualification, Harassment, US workplace sexual harassment, and Retaliation (law) Today legislation bans discrimination, that is unrelated to an employee's ability to do a job, based on sex, race,[393] ethnicity, national origin, age and disability.[394] The Equal Pay Act of 1963 banned gender pay discrimination, amending the Fair Labor Standards Act of 1938. Plaintiffs must show an employing entity pays them less than someone of the opposite sex in an "establishment" for work of "equal skill, effort, or responsibility" under "similar working conditions". Employing entities may raise a defense that pay differences result from a seniority or merit system unrelated to sex.[395] For example, in Corning Glass Works v Brennan the Supreme Court held that although women plaintiffs worked at different times in the day, compared to male colleagues, the working conditions were "sufficiently similar" and the claim was allowed.[396] One drawback is the equal pay provisions are subject to multiple exemptions for groups of employees found in the FLSA 1938 itself. Another is that equal pay rules only operate within workers of an "enterprises being more male dominated, nor child care being unequally shared between men and women that affects long-term career progression. Sex discrimination includes discrimination based on pregnancy,[398] and is prohibited in general by the landmark Civil Rights Act of 1964.[399] Rosie the Riveter symbolized women factory workers in World War II. The Equal Pay Act of 1963 banned pay discrimination within workplaces.[400] Beyond gender equality on the specific issue of pay, the Civil Rights Act of 1964 is the general anti-discrimination statute. Titles I to VI protects the equal right to vote, to access public accommodations, public services, schools, it strengthens the Civil Rights Act of 1964 bans discrimination in employment Under §2000e-2, employers must not refuse to hire, discharge or discriminate "against any individual with respect to his compensation, terms, conditions or privileges of employment, because of such individual's race, color, religion, sex, or national origin."[401] Segregation in employment is equally unlawful.[402] The same basic rules apply for people over 40 years old,[403] and for people with disabilities.[404] Although states may go further, a significant limit to federal law is a duty only falls on private employers of more than 15 staff, or 20 staff for age discrimination.[405] Within these limits, people can bring claims against disparate treatment. In Texas Dept of Community Affairs v Burdine the US Supreme Court held plaintiffs will establish a prima facie case of discrimination for not being hired if they are in a protected group, qualified for a job, but the job is given to someone of a different group. It is then up to an employer to rebut the case, by showing a legitimate reason for not hiring the plaintiff. [406] However, in 1993, this someone of a different group. It is then up to an employer to rebut the case, by showing a legitimate reason for not hiring the plaintiff. position was altered in St Mary's Honor Center v Hicks where Scalia J held (over the dissent of four justices) that if an employee must not only show the reason is a pretext, but show additional evidence that discrimination has taken place.[407] Souter J in dissent, pointed out the majority's approach was "inexplicable in forgiving employers who present false evidence in court". [408] Disparate treatment can be justified under CRA 1964 §2000e-2(e) if an employer shows selecting someone reflects by "religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise."[409] Race is not included. For example, in Dothard v Rawlinson the state of Alabama prohibited women from working as prison guards in "contact" jobs, with close proximity to prisoners. It also had minimum height and weight requirements (5"2 and 120 lbs), which it argued were necessary for proper security. Ms Rawlinson claimed both requirements were unlawful discrimination. A majority of 6 to 3 held that the gender restrictions in contact jobs were a bona fide occupational qualification, because there was a heightened risk of sexual assault, although Stewart J suggested the result might have differed if the prisons were better run. A majority held the height and weight restrictions, while neutral, had a disparate impact on women and were not justified by business necessity.[410] By contrast, in Wilson v Southwest Airlines Co, a Texas District Court held an airline was not entitled to require women only to work as cabin attendants (who were further required to be "dressed in high boots and hot-pants") even if it could show a consumer preference. The essence of the business was transporting passengers, rather than its advertising metaphor of "spreading love all over Texas", so that there was no "bona fide occupational requirement".[411] Under the ADEA 1967, age requirements can be used, but only if reasonably necessary, or compelled by law or circumstance. For example, in Western Air Lines, Inc v Criswell the Supreme Court held that airlines could require pilots to retire at age 60, because the Federal Aviation Administration required this. It could not, however, refuse to employ flight engineers over 60 because the Federal Aviation Administration required this. It could not, however, refuse to employ flight engineers over 60 because the reduced by powerful forces telling us to rely on the good will and understanding of those who profit by exploiting us. They deplore our discontent, they resent our will to organize, so that we may guarantee that humanity will prevail and equality will be exacted. They are shocked that action organizations, sit-ins, civil disobedience, and protests are becoming our everyday tools, just as strikes, demonstrations and union organization became yours to insure that bargaining power genuinely existed on both sides of the table. ... - Martin Luther King Jr., Speech to the Fourth Constitutional Convention AFL-CIO Miami, Florida (11 December 1961) In addition to prohibitions on discriminatory treatment, harassment, and detriment in retaliation for asserting rights, is prohibited. In a particularly obscene case, Meritor Savings Bank v Vinson the Supreme Court unanimously held that a bank manager who coerced a woman employee into having sex with him 40 to 50 times, including rape on multiple occasions, had committed unlawful harassment within the meaning of 42 USC §2000e.[413] But also if employees or managers create a "hostile or offensive working environment", this counts as discrimination. In Harris v Forklift Systems, Inc the Court held that a "hostile environment" did not have to "seriously affect employees' psychological well-being" to be unlawful. If the environment "would reasonably be perceived, and is perceived, as hostile or abusive" this is enough.[414] Standard principles of agency and vicariously liability apply, so an employing entity can avoid vicarious liability if it shows it (a) exercised reasonable care to prevent and promptly correct any harassment and (b) a plaintiff unreasonably failed to take advantage of opportunities to stop it.[416] In addition, an employing entity may not retaliate against an employee for asserting his or her rights under the Civil Rights Act of 1964,[417] or the Age Discrimination in Employment Act of 1967.[418] In University of Pennsylvania v Equal Employment Opportunity Commission, the Supreme Court held that a university was not entitled to refuse to give up peer review assessment documents in order for the EEOC to investigate the claim.[419] Furthermore, in Robinson v Shell Oil Company the Supreme Court held that writing a negative job reference, after a plaintiff brought a race discrimination claim, was unlawful retaliation: employees were protected even if they had been fired.[420] It has also been held that simply being reassigned to a slightly different job, operating forklifts, after making a sex discrimination complaint could amount to unlawful retaliation.[421] This is all seen as necessary to make equal rights effective Equal impact and remedies See also: Disparate impact In addition to disparate treatment, employing entities may not use practices having an unjustified disparate impact on protected groups. In Griggs v Duke Power Co, a power company on the Dan River, North Carolina, required a high school diploma for staff to transfer to higher paying nonregation in states like North Carolina, fewer black employees than white employees had diplomas.[422] The Court found a diploma was wholly unnecessary to perform the tasks in higher paying non-manual jobs. Burger CJ, for a unanimous Supreme Court, held the "Act proscribes not only overt discri manual lobs. Because of racial sed also practices that are fair in form, but discriminatory in operation." An employer could show that a practice with disparate impact followed "business necessity" that was "related to job performance" but otherwise such practices would be prohibited.[423] It is not necessary to show any intention to discriminatory effect. Since amendments by the Civil Rights Act of 1991,[424] if disparate impact is shown the law requires employers "to demonstrate that the challenged practice is job related for the position in question and consistent with business necessity" and that any non-discriminatory "alternative employment practice" is not feasible.[425] On the other hand, in Ricci v DeStefano five Supreme Court judges held the City of New Haven had acted unlawfully by discarding test results for firefighters, which it concluded could have had an unjustified disparate impact by race.[426] In a further concurrence, Scalia J said "resolution of this dispute merely postpones the evil day" when a disparate impact might be found unconstitutional, against the equal protection clause because, in his view, the lack of a good faith defense meant employers were compelled to do "racial decision making" that "is ... discriminatory." In dissent, Ginsburg J pointed out that disparate impact theory advances equality, and in no way requires behavior that is not geared to identifying people with skills necessary for jobs.[427] The Paycheck Fairness Act, repeatedly proposed by Democrats such as Hillary Clinton, would prevent employer defenses to sex discrimination that are related to gender. It has been rejected by Republicans in the United States Congress. Both disparate treatment and disparate impact claims may be brought by an individual, or if there is a "pattern or practice" by the Equal Employment Opportunity Commission, the Attorney General, [428] and by class action. Under the Federal Rules of Civil Procedure, Rule 23 a class of people who share a common claim must be numerous, have "questions of law or fact common to the class", have representatives typical of the claimants, who would "fairly and adequately protect the interests of the class". [429] Class actions may be brought, even in favor of people who are not already identified, for instance, if they have been discouraged from applying for jobs, [430] so long as there is sufficiently specific presentation of issues of law and fact to certify the action. [431] A significant practical problem for disparate impact claims is the "Bennett Amendment" in the Civil Rights Act of 1964 §703(h). Though introduced as a supposedly "technical" amendment by a Utah Republican Senator, it requires that claims for equal pay between men and women cannot be brought unless they fulfill the requirements of the Fair Labor Standards Act of 1938 § 206(d)(1).[432] This says that employees have a defense to employee claims if unequal pay (purely based on gender) flows from "(i) a system; (ii) a system; (ii) a system; (iii) a sys claims alleging discriminatory pay on grounds of race, age, sexual orientation or other protected characteristics, an employer only has the more restricted defenses available in the CRA 1964 §703(h).[433] In County of Washington v Gunther[434] the majority of the Supreme Court accepted that this was the correct definition. In principle, this meant that a group of women prison guards, who did less time working with prisoners than men guards, and also did different clerical work. However Rehnquist J dissented, arguing the Amendment should have put the plaintiffs in an even worse position: they should be required to prove they do "equal work", as is stated in the first part of §703(h).[435] Nevertheless, the majority held that the gender pay provisions could be worse because, for example, an employer could apply "a bona fide job rating system," so long as it does not discriminate on the basis of sex", whereas the same would not be possible for other claims under the Civil Rights Act of 1964. Given that a significant gender pay gap remains, it is not clear why any discrepancy or less favorable treatment, should remain at all.[436] Affirmative action Civil Rights Act of 1964, 42 USC §2000e-(j) United Steelworkers of America v. Weber, 443 U.S. 193 (1979) 5 to 3 held that the Civil Rights Act did not prohibit preference being given to under-represented groups as a temporary measure to correct historical disadvantage. Black workers were assured half the places in an on the job training program, pursuant to a collective agreement. Rehnquist J dissented. Bushey v New York State Civil Service Commission, 733 F2d 220 (2nd 1984) the use of a separate grading curve on the New York Civil Service Commission, 733 F2d 220 (2nd 1984) the use of a separate grading curve on the New York Civil Service Commission, 733 F2d 220 (2nd 1984) the use of a separate grading curve on the New York Civil Service Commission entrance test for minority candidates was legitimate Johnson v. Transportation Agency, Santa Clara County 480 US 616 (1987) 7 to 2, White J and Scalia J dissenting an employer was entitled to give preference to women who possessed qualifications for a job, even if not equally qualified. Local No. 93, International Association of Firefighters v City of Cleveland 478 US 501 (1986) a consent decree giving preference in promotions to black fireman in Cleveland was lawful under Title VII, although a District Court would not be entitled to impose a similar preference. Local 28, Sheet Metal Workers' International Association v EEOC 478 US 421 (1986) a district court could have a goal of minority membership in a union that had a history of race discrimination in the construction industry. Wygant v Jackson Board of Education 476 US 267 (1986) a preference for teachers to be laid off in reverse order of seniority unless this would reduce the percentage of minority teachers was collectively agreed. Held, under strict scrutiny, the preference was unlawful under the Fourteenth Amendment because it was not based on evidence of past discrimination. Marshall J, joined by Brennan J, Blackmun J, Stevens J dissented US v Paradise 480 US 149 (1987) a judicially ordered preference to remedy longstanding discrimination in the Alabama Department of Public Safety hiring and promotion of state troopers was lawful. City of Richmond v J.A. Croson Co., 488 US 469 (1989) 6 to 3, government contracting according to diversity criteria unlawful. Race preference is subject to strict scrutiny, or more difficult to justify than other remedies for discrimination. Adarand Constructors, Inc. v. Peña, 515 US 200 (1995) federal agency contracts and subcontracts Piscataway School Board v. Taxman, 91 F3d 1547 (3d Cir. 1996) case dropped, on affirmative action Morton v Mancari 417 US 535 (1974) held preference of Native Americans in the Bureau of Indian Affairs was compatible with Title VII and the Fifth Amendment, as it was "reasonably designed to further the cause of Indian self-government and to make the BIA more responsive to the needs of its constituent groups." EEOC, Guidelines on Affirmative Action (2009) 29 CFR §1608 OFCCP Regulations, 41 CFR §60 based on Executive Order 11246, 3 CFR 339 Franklin Delano Roosevelt, suffering from polio, required a wheelchair through his Presidency, Veterans' Preference Act of 1944 Rehabilitation Act of 1973, 29 USC §8705, 791-794e Borkowski v Valley Central School District 63 F3d 131 (2nd 1995) burden of proof Vande Zande v Wisconsin Department of Administration 44 F3d 538 (7th 1995) Southeastern Community College v. Davis 442 US 397 (1979) a duty of reasonable accommodation did not apparently amount to a duty of affirmative action under §§501–3 Americans with Disabilities Act of 1990, 42 USC §§12101–12213 Cleveland v Policy Management Systems Corp 562 US 795 (1999) Sutton v United Airline, Inc 527 US 471 (1999) Albertson's Inc v Kirkingburg 527 US 555 (1999) Murphy v United Parcel Service 527 US 516 (1999) Murphy v United Parcel Service 527 US 516 (1999) Murphy v United Parcel Service 527 US 516 (1999) Toyota Motor Manufacturing, Kentucky, Inc. v. Williams 534 US 184 (2002) US Airways Inc v Barnett 535 US 391 (2002) bad back, request for transfer against seniority system. Breyer J saying that (apparently) seniority systems "encourage employees to invest in the employing company, accepting 'less than their value to the firm early in their careers' in return for greater benefits in later years." New York City Transit Authority v. Beazer 440 U.S. 568 (1979) Civil Rights Act of 1964, legality of discrimination against methadone users Family and Medical Leave Act of 1993, Equality Act of 2015 Free movement and immigration Main articles: Freedom of movement under United States Corfield v. Coryell, 6 Fed. Cas. 546 (1823) Paul v. Virginia, 75 U.S. 168 (1869) Hoffman Plastic Compounds, Inc. v. National Labor Relations Board, 535 U.S. 137 (2002) 5 to 4, an immigrant worker, who had arrived without permission, denied effective rights under the NLRA 1935 for helping in union organizing. History of immigration Reform and Control Act of 1986, 8 USC §1324b and §1324a "unlawful employment of aliens" Illegal immigration to the United States Comprehensive Immigration Reform Act of 2007 Job security Main articles: Job security and Full employment President Franklin D. Roosevelt brought unemployment down from over 20% to under 2%, with the New Deal's investment in jobs during the Great Depression. Job security laws in the United States are the weakest in the developed world, as there are no federal statutory rights yet.[437] Any employment contract for job security, but employees other than corporate executives or managers rarely have the bargaining power to contract for job security.[438] Collective agreements often aim to ensure that employees can only be terminated for a "just cause", but the vast majority of Americans have no protection other than the rules at common law. Most states follow a rule that an employee can be terminated "at will" by the employer: for a "good reason, or no reason at all", so long as no statutory rule is violated.[439] Most states have public policy exceptions to ensure that an employee's discharge does not frustrate the purpose of statutory rights. Although the Lloyd-La Follette Act of 1912 required that federal civil servants cannot be dismissed except for a "just cause", no federal or state law (outside Montana[440]) protects all employees yet. There are now a growing number of proposals to do this.[441] There are no rights to be given reasonable notice before termination, apart from whatever is stated in a contract or collective agreement, and no requirements for severance pay if an employee for economic reasons. The only exception is that the Worker Adjustment and Retraining Notification Act of 1988 requires 60 days notice is given if a business with over 100 employees lays off over 33% of its workforce or over 500 people. While a minority of theorists defend at will employees of the empirical evidence suggests that job insecurity hampers innovation, reduces productivity, worsens economic recessions, [443] deprives employees of liberty and pay,[444] and creates a culture of fear.[445] US unemployment has historically been extremely volatile, as Republican presidents have reduced it.[446][citation needed] In its conduct of monetary policy, it is the duty of the Federal Reserve to achieve "maximum employment",[447] although in reality Federal Reserve chairs prioritize the reducing of inflation. Underemployment from growing insecurity of working hours has risen. Government may also use fiscal policy (by taxing or borrowing and spending) to achieve full employment, but as unemployment affects the power of workers, and wages this remains highly political.[448] Termination and cause See also: Wrongful termination, Unfair dismissal, At-will employment affect everything from people's income, to the ability to pay the rent, to getting health insurance. Despite this, the legal right to have one's job terminated only for a "just cause" is confined to just three groups of people. First, in the Lloyd-La Follette Act of 1912 Congress codified executive orders giving federal civil servants the right to have their jobs terminated "only for such cause" is confined to just three groups of people. First, in the Lloyd-La Follette Act of 1912 Congress codified executive orders giving federal civil servants the right to have their jobs terminated "only for such cause" is confined to just three groups of people. century, courts in New York developed a rule that corporate directors could only be dismissed for a "just cause", requiring reasons related to the director's conduct, competence, or some economic justification.[450] Third, since 1987, Montana has enacted a "wrongful discharge" law, giving employees the right to damages if "discharge was not for good cause and the employee had completed the employeer's probationary period of employment", with a standard probation set at 6 months work.[440] However a right to reasons before termination has never been extended to ordinary employees outside Montana. By contrast, almost all other developed countries have legislation requiring just cause in termination.[451] The standard in the International Labour Organization Termination of Employment Convention, 1982 requires a "valid reasons related to union membership, being a worker representative, or a protected characteristic (e.g. race, gender, etc.). It also requires reasonable notice, a fair procedure, and a severance allowance if the terminations, to neutralize the employer's potential conflicts of interest.[453] Most countries treat job security as a fundamental right [454] as well as necessary to prevent irrational job losses, to reduce unemployment, and to promote innovation [443] An alternative view is that making it easier to fire people encourages employees to hire more people because they will not fear the costs of litigation [442] although the empirical credibility of this argument is doubted by a majority of scholars.[455] The slogan "you're fired!" was popularized by Donald Trump's TV show, The Apprentice before he became president. This reflects the "at will employees of job security, and lets people become unemployed for arbitrary reasons. Because most states have not yet enacted proposals for job security rights, [456] the default rule is known as "at-will employment". For example, in 1872, the California Civil Code was written to say "employment for a specified term may be terminated by the employment". duty or the employee's incapacity.[457] In the late 19th century, employment at will was popularized by academic writers as an inflexible legal presumption,[458] and state courts began to adopt it, even though many had presumed that contract termination usually required notice and justifications.[459] By the mid-20th century this was summed up to say that an employee's job could be terminated for a "good reason, a bad reason, or no reason at all".[439] However, the employer's discretion to termination based on a protected characteristic (e.g. race, gender, age or disability), [461] and bringing claims for occupational health and safety, [462] fair labor standards, [463] retirement income, [464] family and medical leave, [465] and under a series of other specific Acts. [466] Many state courts also added at least four "public policy" exceptions, [467] to ensure that the purpose of statutes in general would not be frustrated by firing. First, employees will be wrongfully discharged if are discharged after they refused to act unlawfully, for instance for refusing to performing public duties such as serving on a jury or responding to a subpoena even if this affects an employer's business. [469] Third, an employee cannot be discharged for exercising any statutory right, such as refusing to take a lie detector test or filing litigation.[470] Fourth, employees will be wrongfully discharged if they legitimately blow the whistle on unlawful employee cannot be discharged if they legitimately blow the whistle on unlawful employees will be wrongfully discharged if they legitimately blow the whistle on unlawful employees will be wrongfully discharged if they legitimately blow the whistle on unlawful employees will be wrongfully discharged if they legitimately blow the whistle on unlawful employees will be wrongfully discharged if they legitimately blow the whistle on unlawful employees will be wrongfully discharged if they legitimately blow the whistle on unlawful employees will be wrongfully discharged if they legitimately blow the whistle on unlawful employees will be wrongfully discharged if they legitimately blow the whistle on unlawful employees will be wrongfully discharged if they legitimately blow the whistle on unlawful employees will be wrongfully discharged if they legitimately blow the whistle on unlawful employees will be wrongfully discharged if they legitimately blow the whistle on unlawful employees will be wrongfully discharged if they legitimately blow the whistle on unlawful employees will be wrongfully discharged if they legitimately blow the whistle on unlawful employees will be wrongfully discharged if they legitimately blow the whistle on unlawful employees will be wrongfully discharged if they legitimately blow the whistle on unlawful employees will be wrongfully discharged if they legitimately blow the whistle on unlawful employees will be wrongfully discharged if they legitimately blow the wrongfully discharged if they legitimately blow the wrongful employees will be nursing home.[472] However none of these exceptions limit the central problem of terminations by an employee's conduct, capability, or business efficiency.[473] Some states interpret the general duty of good faith in contracts to cover discharges,[474] so that an employee cannot, for example, be terminated just before a bonus is due to be paid.[475] However the vast majority of Americans remain unprotected against most arbitrary, irrational or malicious conduct by employers.[476] Despite the default, and absence of job security rights in statute, a contract may require reasons before dismissal as a matter of construction. When there is a "just cause" term

in a contract, courts generally interpret this to enable termination for an employee's inadequate job performance after fair warning,[477] and job-related misconduct where the employee's job may be constructively and wrongfully terminated if an employer's inadequate job related misconduct where the employee's inadequate job performance after fair warning,[477] and job-related misconduct where the employee's inadequate job performance after fair warning,[478] but not actions outside of the job.[479] and job-related misconduct where the employee's inadequate job performance after fair warning,[478] but not actions outside of the job.[479] and job-related misconduct where the employee's inadequate job performance after fair warning,[478] but not actions outside of the job.[479] and job-related misconduct where the employee's inadequate job performance after fair warning,[478] but not actions outside of the job.[479] and job-related misconduct where the employee's inadequate job performance after fair warning,[478] but not actions outside of the job.[479] and job-related misconduct where the employee's inadequate job performance after fair warning,[478] but not actions outside of the job.[479] and job-related misconduct where the employee's inadequate job performance after fair warning,[478] but not actions outside of the job.[479] and job-related misconduct where the employee's inadequate job performance after fair warning,[478] but not actions outside of the job.[478] but not actions outside of the job performance after fair warning,[478] but not actions outside of the job performance after fair warning,[478] but not actions outside of the job performance after fair warning,[478] but not actions outside of the job performance after behavior objectively shows it no longer wishes to be bound by the contract, for instance by unfairly depriving an employee of responsibility.[480] If a written contract.[481] and oral agreements can override the written contract.[482] Economic layoffs Main articles: Layoff and Worker Adjustment and Retraining Notification Act Many job terminations in America are economic layoffs, where employees are redundant. In most countries, economic layoffs are separately regulated because of the conflicts of interest between workers, management and shareholders, and the risk that workers are discharged to boost profits even if this damages the long-term sustainability of enterprise. The ILO Termination is for economic reasons, as well as consultation with worker representatives about ways to avoid layoffs.[452] Most developed countries regard information and consultation in the event of any economic change as a fundamental right.[483] The United States government also helped write Control Council Law No 22 for post-war Germany which enabled unions to collectively bargain for elected work councils, which would have the right to participate in decisions about dismissals.[484] However, there are no state or federal laws requiring severance pay or employee participation in layoff decisions. Where employees broad discretion,[485] and immunity from the social consequences for the laid off workforce. American workers do not yet have a right to vote on employer layoff decisions, even though the US government helped draft laws for other countries to have elected work councils.[486] The only statutory right for employees is for extreme cases of mass layoffs under the Worker Adjustment and Retraining Notification Act of 1988. The WARN Act regulates any "plant closing" where there is an "employees if that is over 50 employees, or any case of over 50 employees, employee if they have none, and the State.[488] Employment loss is defined to include reduction of over 50% of working time, but exclude cases where an employee is offered a suitable alternative job within reasonable commuting distance.[489] Despite the absence of any duty to consult, employees can argue three main defenses for failure to give notice of mass layoff. First, an employer can argue that they believed in good faith that less notice was necessary to improve chances of a capital injection.[491] Third, an employer can argue it had reasonable grounds for believing its failure was not a violation of the Act.[492] The only remedies are pay that would have been due in the notice period, and a \$500 a day penalty to the local governments that were not notified.[493] States such as Massachusetts, Connecticut and Maine have statutes with slightly more stringent notice requirements, but none yet require real voice for employees before facing economic hardship. A common cause of layoffs is that businesses are merged or taken over, either through stock market acquisitions or private equity transactions, where new managements want to fire parts of the workforce to augment profits for shareholders. [494] Outside limited defenses in corporate law, [495] this issue is largely unregulated. However, if an employer is under a duty to bargain in good faith with a union, and its business is transferred, there will be a duty on the successor employer to continue bargaining if it has retained a substantial number of the previous workforce. This was not made out in the leading case, Howard Johnson Co v Detroit Local Joint Executive Board, where the new and the successor employer to continue bargaining if it has retained a substantial number of the previous workforce. owner of a restaurant and motor lodge business retained 9 out of 53 former employees, but hired 45 new staff of its own.[496] The majority held there must be "substantial continuity of identity" of the business for the good faith bargaining duty to continue. Full employment Main articles: Unemployment in the United States, Job guarantee, and Full employment The right to full employment or the "right to work" in a fair paying job is a universal human right in international law, [497] partly inspired by the experience of the New Deal in the 1930s. [498] Unemployment has, however, remained politically divisive because it affects the distribution of wealth and power. When there is full employment has, however, remained politically divisive because it affects the distribution of wealth and power. under 2%, and everyone can easily find new jobs, worker bargaining power tends to be higher and pay tends to rise, but high unemployment tends to reduce worker power and pay,[499] and may increase shareholder profit. It was long acknowledged that the law should ensure nobody is denied a job by unreasonable restrictions by the state or private parties, and the Supreme Court said in Truax v Raich that "the right to work for a living in the common occupations of the community".[500] During the New Deal with unemployment having reached 20% after the Wall Street Crash of 1929, the Emergency Relief Appropriation Act of 1935 empowered the President to create the Works Progress Administration, which aimed to directly employ people on fair wages.[501] By 1938, the WPA employed 3.33 million people, and built streets, bridges and buildings across the country. Also created by the 1935 Act, the Rural Electrification Administration brought electrification of farms from 11% in 1934 to 50% by 1942, and nearly 100% by 1949. After war production brought full employment, the WPA was wound up in 1943. Unemployment since WW1 has been lower under Center and higher under Republican presidents. The high rate of incarceration raised real unemployment by around 1.5% since 1980. [502] After World War II, the Employment Act of 1946 declared a policy of Congress to "promote full employment and production, increased real income... are entitled to an opportunity for useful, remunerative, regular, and full-time employment".[504] By the 1970s, there was a growing opinion that the equal protection clause itself in the 14th Amendment should also mean that "every citizen who applies for a government job is entitled to it unless the government can establish some reason for denying the employment." [505] The Humphrey-Hawkins Full Employment Act of 1978 was passed and enabled the President to create jobs to maintain full employment: it stated "the President shall, as may be authorized by law, establish reservoirs of public employment to ensure unemployment is below "3 per centum among individuals aged twenty and over" with inflation also under 3 per cent.[507] It includes "policy priorities" of the "development of energy sources and supplies, transportation, and environmental improvement".[508] These powers of a job guarantee, full employment, and environmental improvement have not yet been used.[509] The Works Progress Administration from 1935 to 1943,[510] created 8.5m jobs spending \$1.3bn a year to get out of the Great Depression. While the laws for a federal Reserve Act 1913 does require that the Board of Governors of the Federal Reserve Act 1913 does require that the Board of Governors of the Federal Reserve Act 1913 does require that the Board of Governors of the Federal Reserve Act 1913 does require that the Board of Governors of the Federal Reserve Act 1913 does require that the Board of Governors of the Federal Reserve Act 1913 does require that the Board of Governors of the Federal Reserve Act 1913 does require that the Board of Governors of the Federal Reserve Act 1913 does require that the Board of Governors of the Federal Reserve Act 1913 does require that the Board of Governors of the Federal Reserve Act 1913 does require that the Board of Governors of the Federal Reserve Act 1913 does require that the Board of Governors of the Federal Reserve Act 1913 does require that the Board of Governors of the Federal Reserve Act 1913 does require that the Board of Governors of the Federal Reserve Act 1913 does require that the Board of Governors of the Federal Reserve Act 1913 does require that the Board of Governors of the Federal Reserve Act 1913 does require that the Board of Governors of the Federal Reserve Act 1913 does require that the Board of Governors of the Federal Reserve Act 1913 does require that the Board of Governors of the Federal Reserve Act 1913 does require that the Board of Governors of the Federal Reserve Act 1913 does require that the Board of Governors of the Federal Reserve Act 1913 does require that the Board of Governors of the Federal Reserve Act 1913 does require that the Board of Governors of the Federal Reserve Act 1913 does require that the Board of Governors of the Federal Reserve Act 1913 does require that the Board of Governors of the Federal Reserve Act 1913 does require that the Board of Governors of the Federal Reserve Act 1913 does require that the Board of Governors of the Federal Reserve Act 1913 does require t stable prices, and moderate long-term interest rates."[511] During the Great Depression it was understood that inequality in the distribution of wealth had contributed to the lack of employment, and that Federal lending policy and bank regulation should pursue a range of objectives.[512] However, the Federal Reserve became dominated by a theory of a natural rate of unemployment, taking the view that attempts to achieve full employment would accelerate inflation to an uncontrollably high. Instead it was said by theorists such as Milton Friedman that central banks should use monetary policy only to control inflation, according to the non-accelerating inflation rate of unemployment (NAIRU). [513] It is doubted that any natural rate of unemployment exists, because the United States and other countries have sustained full employment rate follows which political party is in the White House.[514] and the US unemployment with low inflation before,[514] and the US unemployment exists, because the United States and other countries have sustained full employment with low inflation before,[514] and the US unemployment with low inflation before,[514] and the US unemployment exists, because the United States and other countries have sustained full employment exists. plants will be closed and useless, and millions of munitions workers will be thrown out upon the market... First they ignore you. And then they build monuments to you. And then they attack you and want to burn you. And then they attack you and want to burn you. And then they build monuments to you. And then they attack you and want to burn you. And then they build monuments to you. And then they attack you and want to burn you. strikers, and courage to the delegates, because great times are coming, stressful days are here, and I hope you will be strong, and I hope you will be strong, and I hope you will be strong, and I hope you will be strong are here. unemployed, the Social Security Act of 1935 creates unemployment insurance.[516] One of its goals is to stabilize employers to retain workers in downturns. Unlike other systems, this makes social security highly dependent on employers to retain workers in downturns. higher rates based on past experience. A laid off employee brings a claim to state unemployment office, the former employee is informed and may contest whether the employee scannot get benefits if they are laid off for misconduct, [518] and for participation in strikes, [519] even though the reality may be the employer's fault and there are no other jobs available. Social security claimants must also accept any suitable job. [520] Unemployment offices usually provide facilities for claimants to search for work, but many also turn to private employment agencies. The Supreme Court has held that licensing, fees and regulation of employment agencies under state law is constitutional.[521] Trade and international labor law and International labor law and International labor law and International labor law and such a peace can be established only if it is based upon social justice ... conditions of labor exist involving such injustice, hardship, and privation to large numbers of people ... and an improvement of those conditions is urgently required: as, for example, by ... a maximum working day and week, the regulation of the labor supply, the prevention of unemployment, the provision of an adequate living wage, the protection of the worker against sickness, disease and injury, protection of the interests of workers when employed in countries other than their own, recognition of the principle of freedom of association, the organization of vocational and technical education ... -Versailles Treaty of 1919 Part XIII US Constitution, Article I, Section 8, Clause 3, Congress has the power: "To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." Article IV, Section 2, Clause 1, "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States." Freedom of movement under United States law Gibbons v. Ogden, 22 US 1 (1824) and Federal Trade Commission Act of 1914 International Labour Organization and international labor standards Bargaining power, race to the bottom, foreign direct investment, human development, technological change, global workforce, immigration Tariff Act of 1930, Great Depression United States free trade agreements, United States International Trade Commission, 19 USC Eugene V. Debs, founder of the American Railway Union and five-time presidential candidate, was jailed twice for organizing the Pullman Strike and denouncing World War I. His life story is told in a documentary by Bernie Sanders. [522] Trade Act of 1979, Trade A Trade Agreement, 19 USC ch 21, §3301 World Trade Organization and Uruguay Round Agreements Act of 1994 Permanent normal trade relations Trans-Pacific Partnership Three potential views are: (1) expansion of trade is good because it increases the scope for division of labor and expanding markets. So, all customs, taxes, and equivalent restrictions against market access should be limited and regulated by systems of taxes and tariffs according to the state of other countries' development (3) trade, without barriers to movement of capital, goods and services, improved in all countries: as people's lives improved in all countries: as people's lives improved at a rate to ensure stability in capital and labor flows (c) in turn requires that standard should not enable workers to be paid less than is necessary for human development and the workers' rate of productivity. Labor law in individual states California Added the Division of Fair Employment Practices to the California Department of Industrial Relations. The Fair Employment and Housing Act[523] of 1980 gave the division its own Department of Fair Employment and medical caread purpose of protecting citizens against harassment and employment and medical caread purpose of protecting citizens against harassment and employment and medical caread purpose of protecting citizens against harassment and employment and medical caread purpose of protecting citizens against harassment and employment and medical caread purpose of protecting citizens against harassment and employment and medical caread purpose of protecting citizens against harassment and employment and medical caread purpose of protecting citizens against harassment and employment and medical caread purpose of protecting citizens against harassment and employment and medical caread purpose of protecting citizens against harassment and employment and medical caread purpose of protecting citizens against harassment and employment against harassment and employment and employment and employment and employment and employment and employment against harassment a leave, disability (including HIV/AIDS), marital status, medical condition, national origin, race, religion, sex, transgender status and sexual orientation. Sexual orientation was not specifically included in the original law but precedent was established based on case law. On October 9, 2011, California Governor Edmund G. "Jerry" Brown signed into law Assembly Bill No. 887 alters the meaning of gender for the purposes of discrimination on the basis of gender so that California law now prohibits discrimination on the basis of gender so that California law now prohibits discrimination on the basis of gender so that California law now prohibits discrimination on the basis of gender so that California law now prohibits discrimination on the basis of gender so that California law now prohibits discrimination on the basis of gender so that California law now prohibits discrimination on the basis of gender so that California law now prohibits discrimination on the basis of gender so that California law now prohibits discrimination on the basis of gender so that California law now prohibits discrimination on the basis of gender so that California law now prohibits discrimination on the basis of gender so that California law now prohibits discrimination on the basis of gender so that California law now prohibits discrimination on the basis of gender so that California law now prohibits discrimination on the basis of gender so that California law now prohibits discrimination on the basis of gender so that California law now prohibits discrimination on the basis of gender so that California law now prohibits discrimination on the basis of gender so that California law now prohibits discrimination on the basis of gender so that California law now prohibits discrimination on the basis of gender so that California law now prohibits discrimination on the basis of gender so that California law now prohibits discrimination discrimination on the basis of gender so that California law now prohibits discrimination discrimina Act. New Jersey In 1945, New Jersey enacted the first statewide civil rights act in the entire nation. with the purpose of protecting citizens against harassment and employment discrimination on the basis of: race, creed, color, national origin, nationality, or ancestry.[526] This has since been expanded to age, sex, disability, pregnancy, sexual orientation, perceived sexual orientation, marital status, civil union status, domestic partnership status, affectional orientation, marital status, affectional Right-to-work law Right-to-work law As of 2019[update], twenty-six states plus Guam prevent trade unions from signing collective agreements with employees pay fees to the union when they are not members (frequently called "right-to-work" laws by their political proponents). In 2010, the organization "Save Our Secret Ballot" pushed four states: Arizona, South Carolina, South the NLRB to withdraw its submissions to the Court were at the court's discretion In re NLRB, 304 U.S. 486 (1938) to enforce an order, the NLRB must file a petition and transcript with the court's discretion In re NLRB, 304 U.S. 486 (1938) to enforce an order, the NLRB must file a petition and transcript with the court's discretion In re NLRB, 304 U.S. 486 (1938) to enforce an order, the NLRB must file a petition and transcript with the court's discretion In re NLRB, 304 U.S. 486 (1938) to enforce an order, the NLRB must file a petition and transcript with the court's discretion In re NLRB, 304 U.S. 486 (1938) to enforce an order, the NLRB must file a petition and transcript with the court's discretion In re NLRB, 304 U.S. 486 (1938) to enforce an order, the NLRB must file a petition and transcript with the court's discretion In re NLRB, 304 U.S. 486 (1938) to enforce an order, the NLRB must file a petition and transcript with the court's discretion In re NLRB, 304 U.S. 486 (1938) to enforce an order, the NLRB must file a petition and transcript with the court's discretion In re NLRB, 304 U.S. 486 (1938) to enforce an order, the NLRB must file a petition and transcript with the court's discretion In re NLRB, 304 U.S. 486 (1938) to enforce an order, the NLRB must file a petition and transcript with the court's discretion In re NLRB, 304 U.S. 486 (1938) to enforce an order, the NLRB must file a petition and transcript with the court's discretion In re NLRB, 304 U.S. 486 (1938) to enforce an order, the NLRB must file a petition and transcript with the court's discretion In re NLRB, 304 U.S. 486 (1938) to enforce an order, the NLRB must file a petition and transcript with the court's discretion In re NLRB, 304 U.S. 486 (1938) to enforce an order, the NLRB must file a petition and transcript with the court's discretion In re NLRB must file a petition and transcript with the court's discretion In re NLRB must file a petition In re NLRB must file a petition In re NLRB must file a petition In re NLRB must file a petitio (2012) 6 to 3, under the Civil Service Reform Act of 1978 federal employees have no recourse to the federal courts over wrongful discharge cases, but must instead go to the Merit Systems Protection Board. United Mine Workers of America v. Gibbs, 383 U.S. 715 (1966) state and federal jurisdiction in labor disputes See also Organized labour portal Labor law European labour law UK labour law Child labor laws in the United States Organizations American Rights at Work, a charity supporting union rights Congress of Industrial Organization supporting workers outside the protection of federal labor laws United States Department of Labor, includes a list of labor legislation Notes ^ See International Labour Organization, Recent US Labor Market Data (2013) ^ UN, Human Development Report (2018) Table 3 ^ National Labor Relations Act of 1935, 29 USC §141. JR Commons and JB Andrews, Principles of Labor Legislation (Harper 1916) ch 1, The basis of labor law, 9, "where bargaining power on the one side is power to withhold access to physical property and the necessaries of life, and on the other side is only power to withhold labor by doing without those necessaries, then equality of rights may signify inequality of bargaining power." ^ Most statutes explicitly encourage this, including the FLSA 1938, the Civil Rights Act of 1964, and the Family and Medical Leave Act of 1993. "Federal preemption" rules have, however, restricted experimentation in key areas. These include the National Labor Relations Act 1935, as the US Supreme Court developed a doctrine not found in the Act, and Employee Retirement Income Security Act of 1974. ^ 42 USC §§301–306 on federally funded state programs and §§401-434 on federal old age, survivors and disability insurance benefits. ^ 15 USC §17, "The labor of a human being is not a commodity or article of commerce. Nothing contained in the antitrust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the antitrust laws." ^ D Webber, The Rise of the Working Class Shareholders: Labor's Last Best Weapon (2018) ^ E McGaughey, 'Democracy in America at Work: The History of Labor's Vote in Corporate Governance' (2019) 42 Seattle University Law Review 697 ^ CRA 1964 §703(a)(1), 42 USC §2000e-2(a), "Employers must not refuse to hire, discharge or otherwise discriminated 'against any individual with respect to his compensation, terms, conditions or privileges of employment, because of such individual's race, color, religion, sex, or national origin." ^ cf International Labour Organization, Termination of Employment Convention, 1982 setting out general principles on fair reasons for discharge of workers. ^ The National Labor Relations Act of 1935 to the last major statute Employee Retirement Income Security Act of 1974. CL Estlund, 'The Ossification of American Labor Law' (2002) 102 Columbia Law Review 1527 argues that collective labor right "ossified" with the Labor Management Reporting and Disclosure Act of 1959, after which there was a "longstanding political impasse at the national level". E McGaughey, 'Fascism-Lite in America (or the Social Ideal of Donald Trump)' (2018) 7(1) British Journal of American Legal Studies, 14, argues that since 1976, "No modern judiciary had engaged in a more sustained assault on democracy and human rights. In particular, its attack on labor and democratic society made inequality soar." ^ See JV Orth, Combination and conspiracy: a legal history of trade unionism, 1721–1906 (1992) ^ R v Journeymen-Taylors of Cambridge (1721) 8 Mod 10, 88 ER 9 ^ C Tomlins, 'Reconsidering Indentured Servitude: European Migration and the Early American Labor Force, 1600–1775' (2001) 42 Labor History 5 ^ (1772) 98 ER 499 ^ AW Blumrosen, 'The Profound Influence in America of Lord Mansfield's Decision in Somerset v Stuart' (2007) 13 Texas Wesleyan Law Review 645 ^ Slave Trade Act 1807 ^ The Slavery Abolition Act 1833 distributed around \$20 million, around \$3 billion in 2017 dollars. See the UCL Legacies of British Slaveownership page. ^ 60 US 393 (1857) ^ See also JR Commons, Principles of Labor Legislation (1916) ch II, 38-40 ^ Civil Rights Cases, 109 US 3 (1883) ^ S Perlman, A History of Trade Unionism in the United States (1922) ^ 3 Doc Hist 59 (1806) ^ 45 Mass. 111, 4 Metcalf 111 (1842) ^ See EE Witte, 'Early American Labor Cases' (1926) 35 Yale Law Journal 829, employers brought at least three successful claims against their employees before 1863, and fifteen up to 1880 for "conspiracy". See also FB Sayre, 'Criminal Conspiracy". See also FB Sayre, 'Criminal Conspiracy". See also FB Sayre, 'Criminal Conspiracy' (1922) 35 Harvard Law Review 393. W Holt, 'Labor Conspiracy' (1922) 35 Harvard Law Review 393. W Holt, 'Labor Conspiracy' (1922) 45 Harvard (1922) 45 Harvard Law Review 393. W Holt, 'Labor Conspiracy' (1922) 45 Harvard (1922) 45 Har Osgoode Hall Law Journal 591. 'Tortious Interference with Contractual Relations in the Nineteenth Century' (1980) 93 Harvard Law Review 1510. ^ L Fink, Workingmen's Democracy: The Knights of Labor and American Politics (1983) xii-xiii, it declined due to a 'titanic' lack of leadership, and divisions. Members turned over quickly. ^ See U.S Congress, Senate, Final Report and Testimony Submitted to Congress by the Commission on Industrial Relations (Government Printing Office, 1916) 64th Cong., 1st sess., S. Doc. 415, 2, 1526–1529 ^ See TW Hazlett, 'The Legislative History of the Sherman Act Re-examined' (1992) 30 Economic Inquiry 263, 266 and H Hovenkamp, 'Labor Conspiracies in American Law, 1880–1930' (1988) 66 Texas Law Review 919 ^ 64 Fed 724 (CC Ill 1894), 158 U.S. 564 (1895) imposed an injunction on the striking workers of the Pullman Company, leading to Eugene Debs being imprisoned. See the Documentary by Bernie Sanders (1979) ^ See also Oklahoma v Coyle, 1913 OK CR 42, 8 Okl.Cr. 686, 130 P. 316 per Henry Marshall Furman ^ 167 Mass. 92 (1896) See also Plant v Woods, 176 Mass 492, 57 NE 1011 (1900) ^ 198 US 45 (1905) ^ 208 U.S. 274 (1908) ^ Now 15 USC §17 ^ On the "science" of management that developed, see FW Taylor, The Principles of Scientific Management (1911). Contrast LD Brandeis, 'The Fundamental Cause of Industrial Unrest' (1916) vol 8, 7659-7660 from the US Commission on Industrial Relations, Final Report and Testimony (Government Printing Office 1915) ^ Adair v. United States 208 US 161 (1908) on yellow-dog contracts being banned in the Erdman Act of 1898 §10 for railroads, not reversed until the Norris-LaGuardia Act. Also Coppage v Kansas 236 US 1 (1915) Holmes J, Hughes J and Day J dissenting. Adkins v Children's Hospital, 261 US 525 (1923) Adams v Tanner, 244 US 590 (1917) Duplex Printing Press Co v Deering, 254 US 443 (1921) Adams v Tanner, 244 US 590 (1917) Duplex Printing Press Co v Deering, 254 US 443 (1921) Adams v Tanner, 244 US 590 (1917) Duplex Printing Press Co v Deering, 254 US 443 (1921) Adams v Tanner, 244 US 590 (1917) Duplex Printing Press Co v Deering, 254 US 443 (1921) Adams v Tanner, 244 US 590 (1917) Duplex Printing Press Co v Deering, 254 US 443 (1921) Adams v Tanner, 244 US 590 (1917) Duplex Printing Press Co v Deering, 254 US 443 (1921) Adams v Tanner, 244 US 590 (1917) Duplex Printing Press Co v Deering, 254 US 443 (1921) Duplex Printing Press Co v De See Debs v. United States, 249 US 211 (1919) ^ State Board of Control v Buckstegge, 158 Pac 837, 842 (1916) Arizona Supreme Court striking down a new state pension law. Railroad Retirement Board v Alton Railroad Co, 295 US 330 (1935) striking down a new state pension law. Railroad Retirement Board v Alton Railroad Co, 295 US 330 (1935) striking down a new state pension law. of Ownership and Control in American Industry' (1931) 46(1) The Quarterly Journal of Economics 68 and LD Brandeis, Other People's Money And How the Bankers Use It (1914) ^ See FD Roosevelt, Campaign Address on Progressive Government at the Commonwealth Club in San Francisco, California (1932) written by AA Berle. ^ ALA Schechter Poultry Corp v US, 295 US 495 (1935) ^ 300 US 379 (1937) ^ See also Copeland "Anti-kickback" Act of 1965 wage rates to be paid as prevail in the locality. ^ Franklin Delano Roosevelt, Eleventh State of the Union Address (1944) ^ a b See San Diego Building Trades Council v Garmon 359 US 236 (1959) but contrast Chamber of Commerce v Brown, 522 US 60 (2008) where Brever J and Ginsburg J dissented. ^ Brown v Board of Education of Topeka, 347 US 483 (1954) ^ See 2016 Democratic Party Platform (July 21, 2016 Archived November 10, 2016, at the Wayback Machine) ^ NLRB v Yeshiva University, 444 US 672 (1980), NLRB v Catholic Bishop of Chicago, 440 US 490 (1979) 5 to 4 on the National Labor Relations Act of 1935 ^ Brown v Hotel and Restaurant Employees, 468 US 491 (1984) 5 to 4 on the NLRA of 1935 ^ Brown v Hotel and Restaurant Employees, 468 US 491 (1984) 5 to 4 on the NLRA of 1935 ^ Brown v Hotel and Restaurant Employees, 468 US 491 (1984) 5 to 4 on the NLRA of 1935 ^ Brown v Hotel and Restaurant Employees, 468 US 491 (1984) 5 to 4 on the NLRA of 1935 ^ Brown v Hotel and Restaurant Employees, 468 US 491 (1984) 5 to 4 on the NLRA of 1935 ^ Brown v Hotel and Restaurant Employees, 468 US 491 (1984) 5 to 4 on the NLRA of 1935 ^ Brown v Hotel and Restaurant Employees, 468 US 491 (1984) 5 to 4 on the NLRA of 1935 ^ Brown v Hotel and Restaurant Employees, 468 US 491 (1984) 5 to 4 on the NLRA of 1935 ^ Brown v Hotel and Restaurant Employees, 468 US 491 (1984) 5 to 4 on the NLRA of 1935 ^ Brown v Hotel and Restaurant Employees, 468 US 491 (1984) 5 to 4 on the NLRA of 1935 ^ Brown v Hotel and Restaurant Employees, 468 US 491 (1984) 5 to 4 on the NLRA of 1935 ^ Brown v Hotel and Restaurant Employees, 468 US 491 (1984) 5 to 4 on the NLRA of 1935 ^ Brown v Hotel and Restaurant Employees, 468 US 491 (1984) 5 to 4 on the NLRA of 1935 ^ Brown v Hotel and Restaurant Employees, 468 US 491 (1984) 5 to 4 on the NLRA of 1935 ^ Brown v Hotel and Restaurant Employees, 468 US 491 (1984) 5 to 4 on the NLRA of 1935 ^ Brown v Hotel and Restaurant Employees, 468 US 491 (1984) 5 to 4 on the NLRA of 1935 ^ Brown v Hotel and Restaurant Employees, 468 US 491 (1984) 5 to 4 on the NLRA of 1935 ^ Brown v Hotel and Restaurant Employees, 468 US 491 (1984) 5 to 4 on the NLRA of 1935 ^ Brown v Hotel and Restaurant Employees, 468 US 491 (1984) 5 to 4 on the NLRA of 1935 ^ Brown v Hotel and Restaurant Employees, 468 US 491 (1984) 5 to 4 on the NLRA of 1935 ^ Brown v Hotel and 800 (1984) 5 to 4 on the NLRA of 1935 ^ Brown v Hotel and 800 (1984) 5 to 4 on the NLRA of 1935 ^ Brown v Hotel and 800 (1984) 5 to 4 on the NLRA of 1935 ^ Brown v Hotel and 5 to 4 under ERISA 1974. ^ e.g. the Dunlop Report of 1994, Workplace Democracy Act of 1999, Employee Free Choice Act, Paycheck Fairness Act, Equality Act of 2015 ^ See Z Adams, L Bishop and S Deakin, CBR Labour Regulation Index (Dataset of 117 Countries) (Cambridge, Centre for Business Research 2016) 761, United States of America ^ UDHR 1948 art 17 ^ See Lochner v New York 198 US 45 (1905) ^ 322 U.S. 111 (1944) ^ 331 U.S. 704 (1947) ^ See also Goldberg v Whitaker House Cooperative, Inc, 366 US 28 (1961), on homeworkers making 'knitted, crocheted, and embroidered goods of all kinds.' ^ Nationwide Mut Ins Co v Darden, 503 U.S. 318 (1992) employee under ERISA rejecting two-prongs of the Fourth Circuit's substitute test, based on expectations and reliance. ^ 322 U.S. 111 (1944), confirmed in United States v Silk, 331 U.S. 704 (1947) and Nationwide Mut Ins Co v Darden, 503 U.S. 318 (1992) ^ Restatement of the Law of Agency, Second §220 and Community for Creative Non-Violence v Reid, 490 US 730 (1989) ^ 444 U.S. 672 (1980) ^ 532 U.S. 706 (2001) ^ cf Clackamas Gastroenterology Associates v Wells, 538 U.S. 440 (2003) a majority of the Supreme Court held four physician shareholders could potentially be "employees" under the Americans with Disabilities Act of 1990. Ginsburg J, joined by Breyer J dissenting on reasoning, held it was clear (2012) ^ 350 S.E.2d 83 (1986) ^ 535 U.S. 137 (2002) ^ See International Labour Organization, Freedom of Association and Protection of the Right to Organise Convention, 1948 C087 and Right to Organize and Collective Ba employee as the company loses another ruling". The Guardian. ^ 413 F.2d 310 (1969) ^ See also, Zheng v Liberty Apparel Co, 335 F3d 61 (2003) Second Circuit, Cabranes J finding joint employment. ^ 976 F.2d 805 (1992) ^ Advance Electric, 268 NLRB 1001 (1984) ^ 425 US 800 (1976) ^ Local No International Union of Operating Engineers v National Labor Relations Board, 518 F.2d 1040 (1975) ^ e.g. Castillo v Case Farms of Ohio, 96 F Supp. 2d 578 (1999) an employer who used an employer who conditions in violation of the Migrant and Seasonal Agricultural Workers Protection Act of 1983. ^ If there is no contract (written, oral, or by conduct) a quantum meruit claim for restitution can be available. ^ See F Kessler, 'Contracts of Adhesion—Some Thoughts About Freedom of Contract' (1943) 43(5) Columbia Law Review 629 ^ National Labor Relations Act 1935 §1, 29 USC §151, "The inequality of bargaining power between employees who do not possess full freedom of association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries." ^ Fair Labor Standards Act 1938, 29 USC §202 ^ e.g. Gade v National Solid Wastes Management Association, 505 US 88 (1992) holding 5 to 4 that OSHA 1970 preempted Illinois state law that improved training and handling hazardous waste materials. ^ e.g. Ingersoll-Rand Co v McClendon, 498 US 133 (1990) holding 6 to 3 that ERISA 1974 precluded a Texas wrongful termination action for denying an employee benefit from the federal statute on general grounds in §514. The minority only endorsed preemption on specific ground in §510. ^ See generally BI Sachs, 'Despite Preemption: Making Labor Law in Cities and States' (2011) 124 Harvard Law Review 1153 ^ cf New State Ice Co v Liebmann, 285 US 262 (1932) per Brandeis J "To stay experimentation in things social and economic is a grave responsibility. Denial of the right to experiment may be fraught with serious consequences to the nation. It is one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country. This Court has the power to prevent an experiment." ^ JI Case Co v National Labor Relations Board 321 US 322 (1944) ^ 321 US 322 (1944) ^ 321 US 322 (1944) ^ See McLain v Great American Insurance Co, 208 Cal. App. 3d 1476 (1989) holding the parol evidence presumption will rarely apply to employment. ^ 662 A2d 89 (1995) ^ e.g. Demasse v ITT Corp, 984 P2d 1138 (1999) in the Arizona Supremotion will rarely apply to employment. ^ 662 A2d 89 (1995) ^ e.g. Demasse v ITT Corp, 984 P2d 1138 (1999) in the Arizona Supremotion will rarely apply to employment. ^ 662 A2d 89 (1995) ^ e.g. Demasse v ITT Corp, 984 P2d 1138 (1999) in the Arizona Supremotion will rarely apply to employment. ^ 662 A2d 89 (1995) ^ e.g. Demasse v ITT Corp, 984 P2d 1138 (1999) in the Arizona Supremotion will rarely apply to employment. ^ 662 A2d 89 (1995) ^ e.g. Demasse v ITT Corp, 984 P2d 1138 (1999) in the Arizona Supremotion will rarely apply to employment. ^ 662 A2d 89 (1995) ^ e.g. Demasse v ITT Corp, 984 P2d 1138 (1999) in the Arizona Supremotion will rarely apply to employment. ^ 662 A2d 89 (1995) ^ e.g. Demasse v ITT Corp, 984 P2d 1138 (1999) in the Arizona Supremotion will rarely apply to employment. ^ 662 A2d 89 (1995) ^ e.g. Demasse v ITT Corp, 984 P2d 1138 (1999) in the Arizona Supremotion will rarely apply to employment. ^ 662 A2d 89 (1995) ^ e.g. Demasse v ITT Corp, 984 P2d 1138 (1999) in the Arizona Supremotion will rarely apply to employment. ^ 662 A2d 89 (1995) ^ e.g. Demasse v ITT Corp, 984 P2d 1138 (1999) in the Arizona Supremotion will rarely apply to employment. ^ 662 A2d 89 (1995) ^ e.g. Demasse v ITT Corp, 984 P2d 1138 (1999) in the Arizona Supremotion will rarely apply to employment. ^ 662 A2d 89 (1995) ^ e.g. Demasse v ITT Corp, 984 P2d 1138 (1999) in the Arizona Supremotion will rarely apply to employment. ^ 662 A2d 89 (1995) ^ e.g. Demasse v ITT Corp, 984 P2d 1138 (1995) ^ e.g. Demasse v ITT Corp, 984 P2d 1138 (1995) ^ e.g. Demasse v ITT Corp, 984 P2d 1138 (1995) ^ e.g. Demasse v ITT Corp, 984 P2d 1138 (1995) ^ e.g. Demasse v ITT Corp, 984 P2d 1138 (1995) ^ e.g Court ^ 999 P2d 71 (2000) ^ See Kirke La Shelle Company v The Paul Armstrong Company et al 263 NY 79 (1933) and see Restatement (Second) of Contracts §205 ^ Stark v Circle K Corp, 230 Mont 468, 751 P2d 162 (1988) ^ See Foley v Interactive Data Corp, 765 P2d 373 (1988) ^ This is also referred to as "mutual trust and confidence". See Eastwood v Magnox Electric plc [2004] UKHL 35, per Lord Steyn ^ See Wilson v Racher [1974] ICR 428 ^ Johnson v Unisys Limited [2001] UKHL 13 ^ Bhasin v Hrynew [2014] SCR 494 ^ Bürgerliches Gesetzbuch §138. See also Italian Constitution, art 36 ^ e.g. Alexander v Gardner-Denver Co, 415 U.S. 36 (1974) state policy favoring arbitration, but arbitrator decision can be reviewed de novo on employment rights. 556 U.S. 247 (2009) See also AT&T Mobility v. Concepcion, 563 U.S. 333 (2011) 5 to 4, binding arbitration can be imposed in class action cases for employment and consumer rights. XI, §§9–11 and generally Shelley v. Kraemer, 334 US 1 (1948) ^ Massachusetts Bay Colony Records (1641) vol I, 223. See also JR Commons, History of Labor in the United States (Macmillan 1918) vol I, ch II, 50 ^ Adkins v Children's Hospital, [www.worldlii.org/us/cases/federal/USSC/1923/78.html 261 US 525] (1923) per Taft CJ (dissenting). The majority held a minimum wage passed by Congress for young people and women in Washington DC was unconstitutional. Continued in Murphy v Sardell, 269 US 530 (1925) wage laws for young people struck down, Brandeis J dissenting and Holmes J objecting. ^ FRED Graph. U.S. Department of Labor, Federal Minimum Hourly Wage for Nonfarm Workers for the United States. Inflation adjusted (by FRED) via the Consumers: All Items in U.S. City Average (CPIAUCSL). Graph retrieved February 8, 2020. ^ 300 US 379 (1937) ^ United States v Darby Lumber Co, 312 US 100 (1941) dismissed a challenge to the FLSA 1938 being constitutional. ^ FLSA 1938, 29 USC §202(a) ^ a b "[USC02] 29 USC 207: Maximum hours". uscode.house.gov. ^ a b 29 USC §218(a). ^ See the California Labor Code §1182.12, requires \$9 per hour from 2016. Lawsuits from business groups have mostly been rejected, e.g. in New Mexicans for Free Enterprise v Santa Fe, 138 NM 785 (2005) the City of Santa Fe enacted a minimum wage ordinance, above the federal and state wages. Businesses challenged it as being beyond the City's powers. Fry J held that the ordinance was lawful and constitutional. ^ 527 US 706 (1999) ^ Souter J, Stevens J, Ginsburg J, Breyer J dissented. ^ This brought the effective position back to National League of Cities v Usery, 426 US 833 (1976) where 5 judges to 4, held the FLSA 1938 could not be constitutionally applied to state governments. Brennan, White, Marshall, Stevens J dissenting. Yet in Garcia v San Antonio Metro Transit Authority, 469 US 528 (1985) 5 judges to 4 upheld extension of the FLSA 1938 to state and local government workers. There was authority under the FLSA consistent with the Tenth Amendment to extend the Act's protection to public transport employees. Blackmun J gave the majority opinion. Powell, Burger, Rehnquist, O'Connor J dissenting. ^ See today FLSA 1938, 29 USC §203(r)-(s). Previously, Walling v Jacksonville Paper Co, 317 US 564 (1943). See also AB Kirschbaum Co v Walling 316 US 517 (1942), workers building for firms that would not do interstate commerce were not covered, and Borden Co v Borella 325 US 679 (1945) ^ FLSA 1938, 29 USC §203(s)(2) ^ 29 USC §213 n.b. the statute does not make clear what justifications there are for any exemptions. ^ 519 US 452 (1997) ^ See Adams v United States, 44 Fed Claims 772 (1999) and Erichs v Venator Group, Inc 128 F Supp 2d 1255 (ND Cal 2001) ^ 551 U.S. 158 (2007) ^ Under 29 USC §211(c) employers must keep payroll records for evidence of working time. ^ Jewell Ridge Coal Corp. v. United Mine Workers of America 325 US 161 (1945) time traveling to work through the coal mine did count as working because it (1) required physical and mental exertion that was (2) controlled and required by the employer's benefit. See also, Tennessee Coal, Iron & Railroad Co v Muscoda Local No 123, 321 US 590 (1944) travel to work, once underground, was working time. ^ 328 US 680 (1946) ^ 328 US 680 (1946) per Murphy J. See also Morillion v Royal Packing Co, 22 Cal 4th 575 (2000) the California Supreme Court held an employer must pay for hours traveling on company vehicles. ^ 323 U.S. 126 (1944) ^ See Martin v Onion Turnpike Commission 968 F2d 606 (6th 1992) See also Merrill v Exxon Corp, 387 FSupp 458 (SD Tex 1974) while pep meetings are working, but Department of Labor approved standard apprenticeship mandatory training was not working time. ^ 323 US 37 (1944) Murphy J holding that higher afternoon wages did not count as "premium" pay that could be ignored. ^ 529 US 576 (2000) ^ See also Skidmore v Swift & Co, 323 US 134 (1944) the Department of Labor's recommendations over what counted as overtime would be given a level of deference commensurate with its persuasiveness, the thoroughness of investigation, its consistency, and the validity of its reasoning. ^ 15 USC §1672 ^ 29 USC §254. See McLaughlin v Richland Shoe Co, 468 US 128 (1988) Stevens J, 'willful' means reckless disregard for whether conduct was forbidden by the state. Brennan J and Blackmun J dissented. ^ See R Ray, M Sanes and J Schmitt, 'No Vacation Nation Revisited' (Washington DC 2013) Center for Economic and Policy Research 1, "the average worker in the private sector in the United States receives only about ten days of paid vacation and Development, 'Average annual hours actually worked per worker' (Retrieved August 9, 2016) showing 1790 hours per year in the US, 1674 hours in the UK, and 1371 in Germany. OECD, 'Society at a glance 2009: OECD social indicators' (2009[permanent dead link]) 39, Figure 2.17 ^ See 5 USC §6303. These are (1) New Year's Day (2) Martin Luther King Jr.'s Birthday (3) Washington's Birthday (3) Washington's Birthday (4) Memorial Day (5) Independence Day (6) Labor Day (7) Columbus Day (8) Veterans Day (9) Thanksgiving Day (10) Christmas Day. ^ Holidays with Pay Convention 1970 (no 132) ^ See HB 2238 ^ See the Working Time Directive 2003 art 7 ^ FLSA 1938, 29 USC §213 ^ See HB 2238 ^ See the Working Time Directive 2003 art 7 ^ FLSA 1938, 29 USC §213 ^ See HB 2238 ^ See the Working Time Directive 2003 art 7 ^ FLSA 1938, 29 USC §213 ^ See HB 2238 ^ See the Working Time Directive 2003 art 7 ^ FLSA 1938, 29 USC §213 ^ See HB 2238 ^ See the Working Time Directive 2003 art 7 ^ FLSA 1938, 29 USC §213 ^ See HB 2238 ^ See the Working Time Directive 2003 art 7 ^ FLSA 1938, 29 USC §213 ^ See HB 2238 ^ See the Working Time Directive 2003 art 7 ^ FLSA 1938, 29 USC §213 ^ See HB 2238 ^ See the Working Time Directive 2003 art 7 ^ FLSA 1938, 29 USC §213 ^ See HB 2238 ^ See the Working Time Directive 2003 art 7 ^ FLSA 1938, 29 USC §213 ^ See HB 2238 ^ See the Working Time Directive 2003 art 7 ^ FLSA 1938, 29 USC §213 ^ See HB 2238 ^ See the Working Time Directive 2003 art 7 ^ FLSA 1938, 29 USC §213 ^ See HB 2238 ^ See the Working Time Directive 2003 art 7 ^ FLSA 1938, 29 USC §213 ^ See HB 2238 ^ See the Working Time Directive 2003 art 7 ^ FLSA 1938, 29 USC §213 ^ See HB 2238 ^ See the Working Time Directive 2003 art 7 ^ FLSA 1938, 29 USC §213 ^ See HB 2238 ^ See the Working Time Directive 2003 art 7 ^ FLSA 1938, 29 USC §213 ^ See HB 2238 ^ See the Working Time Directive 2003 art 7 ^ FLSA 1938, 29 USC §213 ^ See HB 2238 ^ See the Working Time Directive 2003 art 7 ^ FLSA 1938, 29 USC §213 ^ See HB 2238 ^ See the Working Time Directive 2003 art 7 ^ FLSA 1938, 29 USC §213 ^ See HB 2238 ^ See the Working Time Directive 2003 art 7 ^ FLSA 1938, 29 USC §213 ^ See HB 2238 ^ See the Working Time Directive 2003 art 7 ^ FLSA 1938, 29 USC §213 ^ See HB 2238 ^ See the Working Time Directive 2003 art 7 ^ FLSA 1938, 29 USC §213 ^ See HB 2238 ^ See the Working Time Directive 2003 art 7 ^ See HB 2238 ^ See the Working Time Directive 2003 art 7 ^ See HB 2238 ^ See the Working Time Directive 2003 art 7 ^ See HB 2238 ^ See the Workin James L. (2019). Heroes, Rascals, and the Law: Constitutional encounters in Mississippi History. Jackson, Ms: University Press of Mississippi. ISBN 9781496819949. p. 258. A Robertson, pp. 262 ff. A West Coast Hotel Co v Parrish, 300 US 379 (1937) California, New Jersey, Rhode Island and New York On the economic effects of rules, see J Frieson, 'The Response of Wages to Protective Labor Legislation: Evidence from Canada' (1996) 49(2) ILR Review 243 (showing empirical evidence that wages do not fall in unionized workplaces where workers have sufficient bargaining power). Contrast L Summers, 'Some simple economics of mandated benefits' (1989) 79(2) American Economic Review 177 (theorizing (without evidence) that pay will fall to compensate for the cost of any mandated benefit, such as family and medical leave). ^ But under 29 USC §2611(2) employees if the total number of employees if the total 50." ^ 29 USC §2512(a)(2) and on adoption, see Kelley v Crosfield Catalysts 135 F2d 1202 (7th Circuit 1998) The same rules for federal employees were codified in 5 USC §2612(a)(2) and 29 USC §2612(a)(2) and USC §2614(c). If an employee quits, the employees to another position with similar pay and benefits if health absences could be intermittent. Under §2618 special rules apply for employees of local educational agencies. 29 USC §2617, and see Frizzell v Southwest Motor Freight, 154 F3d 641 (6th Circuit 1998) ^ 29 USC §2617(a)(1)(A)(iii) ^ See Moore v Payless Shoe Source (8th Circuit 1998) ^ 29 USC §2617(a)(1)(A)(iii) ^ See Moore v Payless Shoe Source (8th Circuit 1998) ^ 29 USC §2617(a)(1)(A)(iii) ^ See Moore v Payless Shoe Source (8th Circuit 1998) ^ 29 USC §2617(a)(1)(A)(iii) ^ See Moore v Payless Shoe Source (8th Circuit 1998) ^ 29 USC §2617(a)(1)(A)(iii) ^ See Moore v Payless Shoe Source (8th Circuit 1998) ^ 29 USC §2617(a)(1)(A)(iii) ^ See Moore v Payless Shoe Source (8th Circuit 1998) ^ 29 USC §2617(a)(1)(A)(iii) ^ See Moore v Payless Shoe Source (8th Circuit 1998) ^ 29 USC §2617(a)(1)(A)(iii) ^ See Moore v Payless Shoe Source (8th Circuit 1998) ^ 29 USC §2617(a)(1)(A)(iii) ^ See Moore v Payless Shoe Source (8th Circuit 1998) ^ 29 USC §2617(a)(1)(A)(iii) ^ See Moore v Payless Shoe Source (8th Circuit 1998) ^ 29 USC §2617(a)(1)(A)(iii) ^ See Moore v Payless Shoe Source (8th Circuit 1998) ^ 29 USC §2617(a)(1)(A)(iii) ^ See Moore v Payless Shoe Source (8th Circuit 1998) ^ 29 USC §2617(a)(1)(A)(iii) ^ See Moore v Payless Shoe Source (8th Circuit 1998) ^ 29 USC §2617(a)(1)(A)(iii) ^ See Moore v Payless Shoe Source (8th Circuit 1998) ^ 29 USC §2617(a)(1)(A)(iii) ^ 29 USC §2617(a)(1)(A)(ii plans and public policy (1976), S Sass, The Promise of Private Pensions: The First 100 Years (Harvard University Press 1997) ^ See JR Commons and JB Andrews, Principles of Labor Legislation (1920) 423–438 ^ See 42 USC ch 7 ^ See L Conant, A Critical Analysis of Industrial Pension Systems (1922) and MW Latimer, Trade Union Pension Systems (1932) ^ See LMRA 1947, 29 USC §186(c)(5)(B) ^ This followed Carnegie's attendance the Commission on Industrial Relations in 1916 to explain labor unrest. See W Greenough, It's My Retirement Money – Take Good Care of It: The TIAA-CREF Story (Irwin 1990) 11–37, and E McGaughey, 'Democracy in America at Work: The History of Labor's Vote in Corporate Governance' (2019) 42 Seattle University Law Review 697 ^ 26 USC §401(k) ^ On the theory behind automatic enrolment, see R Thaler and S Benartzi, 'Save more tomorrow: Using Behavioral Economics to Increase Employee Savings' (2004) 112(1) Journal of Political Economy 164 and E McGaughey, 'Behavioural economics and labour law' (2014) LSE Legal Studies Working Paper No. 20/2014 ^ ERISA 1974, 29 USC §1003(a). This could include any Voluntary Employee Beneficiary Association, such as for child care cover, sick leave, fringe benefits or extra unemployment insurance. ^ 680 F2d 263 (1982) ^ ERISA 1974, 29 USC §1002–1133 ^ Rhorer v Raytheon Engineers and Constructors, Inc 181 F3d 364 (5th 1999) a plan beneficiary can enforce terms in the summary plan description, even if the underlying document conflicts. ^ ERISA 1974, 29 USC §1052 ^ ERISA 1974, 29 USC §1053. The employer can extend to 7 years, with staggered vesting and a labor union can collectively agree for up to 10 years. Most will seek the shortest period of time. ^ ERISA 1974, 29 USC §1058 ^ Patterson v Shumate, 504 US 753 (1992) Blackmun J, a pension is treated like a right under a spendthrift trust, so in bankruptcy proceedings pensions cannot be taken away. Scalia J concurred. See again, Guidry v Sheet Metal Workers National Pension Fund, 493 US 365 (1990) ^ 517 US 882 (1996) ^ cf Imperial Tobacco Ltd [1991] 1 WLR 589 and Equitable Life Assurance Society v Hyman [2000] UKHL 39 ^ 490 US 714 (1989) ^ 29 USC §1140, however see the highly controversial case McGann v H&H Music Co (5th 1991) where a man diagnosed HIV positive, filed for treatment to \$5000. Fifth Circuit held the employer's motive was not specifically to injure the worker but to control costs and apparently lawful. ^ See EP Serota and FA Brodie (eds), ERISA Fiduciary Law (2nd edn 2007). In general, people who manage other people's money will be a "fiduciary" in law, and bound by special duties. The core duty is to avoid any possibility of a conflict of interest. Other duties that fiduciary Law (2nd edn 2007). In general, people who manage other people's money will be a "fiduciary" in law, and bound by special duties. and competence (i.e. not to be negligent) and the duty to follow the terms of one's assignment. Discussed further in Peacock v Thomas 516 US 349 (1996) ^ 29 USC §1104(a)(1)(D) ^ 29 USC §1104(a)(1)(D investment policy, including proxy voting policy or guidelines (1994) 29 CFR 2509.94–2, "The fiduciary duties described at ERISA Sec. 404(a)(1)(A) and (B), require that, in voting proxies, the responsible fiduciary consider those factors that may affect the value of the plan's investment and not subordinate the interests of the participants and beneficiaries in their retirement income to unrelated objectives. These duties also require that the named fiduciary appointing an investment manager with regard to proxy voting decisions. The named fiduciary must carry out this responsibility solely in the interest of the participants and beneficiaries and without regard to its relationship to the plan sponsor." ^ See Meinhard v Salmon, 164 NE 545 (NY 1928) and Keech v Sandford [1726] EWHC Ch J76 ^ 29 USC §1104(a)(1)(A) ^ 29 USC §1106 ^ 680 F2d 263 (1982) per Friendly J, "We do not mean by this either that trustees confronted with a difficult decision need always engage independent counsel or that engaging such counsel and following their advice will operate as a complete whitewash. ... perhaps, after the events of late September, resignation was the only proper course." ^ e.g. Local 144, Nursing Home Pension Fund v Demisay, 508 US 581 (1992) and Great-West Life & Annuity Insurance Co v Knudson 534 US 204 (2002) ^ 29 USC §1144 ^ Shaw v Delta Air Lines, Inc, 463 US 85 (1983) per Blackmun J ^ Ingersoll-Rand Co v McClendon, 498 US 133 (1990) ^ Egelhoff v Egelhoff, 532 US 141 (2001) ^ Metropolitan Life Insurance Co v Massachusetts 471 US 724 (1985) ^ FMC Corp v Holliday 498 US 52 (1990) per O'Connor J. Stevens J dissented. See also District of Columbia v Greater Washington Board of Trade, 506 US 125 (1992) Stevens J dissented. A Rush Prudential HMO, Inc. v. Moran, 536 US 355 (2002) Souter J, 5 to 4, held an Illinois statute requiring 'independent to the second statute requiring 'independent medical review' of a denial of a claim for treatment under an HMO contract was not preempted because it was insurance regulation. ^ a b See HR 1277, Title III, §301 ^ See earlier, LD Brandeis, Other People's Money And How the Bankers Use It (1914) and JS Taub, 'Able but Not Willing: The Failure of Mutual Fund Advisers to Advocate for Shareholders' Rights' (2009) 34(3) The Journal of Corporation Law 843, 876 ^ ERISA 1974, 29 USC §1102 ^ 29 USC §1102 (d) ^ 29 U Evidence on the Effects of Governance Structures and Practices' (2005-2006) 39 UC Davis LR 187, 195. The recommended Uniform Management of Public Employee Retirement Systems Act of 1997 §17(c)(3) suggested funds publicize their governance structures. This was explicitly adopted by a number of states, while others already followed the same best practice. ^ See, sponsored by Peter Visclosky, Joint Trusteeship Bill of 1989 HR 2664[permanent dead link]. See further R Cook, 'The Case for Joint Trusteeship of Pension Plans' (2002) WorkingUSA 25. Most recently, the Employees' Pension Plans' (2002) WorkingUSA 25. Most recently, the Employees' Pension Plans' (2002) WorkingUSA 25. Most recently, the Employees' Pension Plans' (2002) WorkingUSA 25. Most recently, the Employees' Pension Plans' (2002) WorkingUSA 25. Most recently, the Employees' Pension Plans' (2002) WorkingUSA 25. Most recently, the Employees' Pension Plans' (2002) WorkingUSA 25. Most recently, the Employees' Pension Plans' (2002) WorkingUSA 25. Most recently, the Employees' Pension Plans' (2002) WorkingUSA 25. Most recently, the Employees' Pension Plans' (2002) WorkingUSA 25. Most recently, the Employees' Pension Plans' (2002) WorkingUSA 25. Most recently, the Employees' Pension Plans' (2002) WorkingUSA 25. Most recently, the Employees' Pension Plans' (2002) WorkingUSA 25. Most recently, the Employees' Pension Plans' (2002) WorkingUSA 25. Most recently, the Employees' Pension Plans' (2002) WorkingUSA 25. Most recently, the Employees' Pension Plans' (2002) WorkingUSA 25. Most recently, the Employees' Pension Plans' (2002) WorkingUSA 25. Most recently, the Employees' (2002) WorkingUSA 25. Most assets of a pension plan which is a single-employer plan shall be held in trust by a joint board of trustees, which shall consist of two or more trustees representing on an equal basis the interests of the employer or employers maintaining the plan and their beneficiaries.' ^ This inserted a new Securities Exchange Act of 1934 §6(b)(10) ^ Text of the Occupational Safety and Health Act ^ See E Appelbaum and LW Hunter, 'Union Participation in Strategic Decisions of Corporations' in RB Freeman (ed), Emerging labor market institutionalized? Union Representation on American Corporate Boards' (1998) 51(4) Industrial and Labor Relations Review 557 ^ A Cox, DC Bok, MW Finkin and RA Gorman, Labor Law: Cases and Materials (2011) ^ 15 USC §17 ^ NLRA 1935, 29 USC §151 ^ See San Diego Building Trades Council v Garmon 359 US 236 (1959) and previously Garner v Teamsters Local 776, 346 US 485, 490 (1953) and most recently Chamber of Commerce v Brown, 522 US 60 (2008) Breyer J and Ginsburg J dissented. A BI Sachs, 'Revitalizing labor law' (2010) 31(2) Berkeley Journal of Employment and Labor Law 333 and CL Estlund, 'The Ossification of American Labor Law' (2002) 102 Columbia LR 1527. See further BI Sachs, 'Despite Preemption: Making Labor Law in Cities and States' (2011) 1224 Harvard Law Review 1153, 1162–1163, 'Scholars have repeatedly noted the central problems. When it comes to the rules of organizing, the regime provides employers with too much latitude to interfere with employees' efforts at self-organization, while offering unions too few rights to communicat with employees about the merits of unionization. The NLRB's election machinery is dramatically too slow, enabling employees against employees against employees to defeat organizing drives through delay and attrition. The NLRB's remedial regime is also too weak to protect employees against employees bargaining, the regime's "good faith" bargaining obligation is rendered meaningless by the Board's inability to impose contract terms as a remedy for a party's failure to negotiate in good faith.' ^ See NAACP v Alabama, 357 US 449 (1958) referring to the "constitutionally protected right of association". ^ JR Commons, History of Labor in the United States (Macmillan 1918) vol I, ch 1, 25 ^ JB Commons, A Documentary History of American Industrial Society (1910) ^ A Cox, DC Bok, MW Finkin and RA Gorman, Labor Cases' and Materials (2006) 11. The federation collapsed during the Panic of 1837. ^ 45 Mass. 111, 4 Metcalf 111 (1842) See further EE Witte, 'Early American Labor Cases' (1926) 35 Yale Law Journal 829, finding that only three cases on conspiracy were brought between 1863 and 1880. A re Debs, 64 Fed 724 (CC Ill 1894), 158 U.S. 564 (1895) a b 208 US 274 (1908) c f ILO Freedom of Association Convention 1948 c 87, art 3(1) "Workers' and employers" organisations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes." ^ See historically TW Glocker, The Government of American Trade Unions: A survey, with a program of action (1943) ^ See the McClellan Committee, Interim Report of the Select Committee on Improper Activities in the Labor or Management Field, S Rep No 1417, 85th Cong, 2d Sess 60 ff. Summarized by Joseph R. Grodin's Union Government and the Law: British and American Experiences (1961) 158–159. There was minor wrongdoing found in four other unions, recounted in Robert F. Kennedy's The Enemy Within (1960) 190-212. At the Bakery and Confectionary Workers, the president had doubled his salary. At the Allied Trades Unions the Vice President made a self-dealing transaction. At the International Union of Operating Engineers officials had extorted money from employers. At the United Textile Workers Union, the president and treasurer bought second homes. ^ 29 USC § 481 ^ De Veau v. Braisted, 363 U.S. 144 (1960) 5 to 3, the dissenting judges argued that state law could introduce no additional requirement to those in the NLRA 1935. See also Brown v. Hotel and Restaurant Employees, 468 US 491 (1984) 4 to 3, New Jersey could impose a requirement that all union officials in a casino had no association with organized crime, consistently with NLRA 1935 § 7. The dissent argued that the requirement was disproportionate because it applied penalties to the whole union rather than the officials. ^ e.g. JR Grodin, Union Government and the Law: British and American Experiences (1961) 159, "there is little doubt that in nearly every case [against Beck] a court would agree that conduct found by the committee to be "improper" was also a violation of the union officer's fiduciary obligation. So far as substance, as distinguished from remedy, is concerned, it appears that existing common law [was] probably adequate." ^ Trbovich v. United Mine Workers, 404 U.S. 528 (1972) See also Hall v Cole, 412 U.S. 1 (1973) holding that if plaintiffs are successful, they can be awarded fees. ^ Dunlop v. Bachowski, 421 U.S. 560 (1975) ^ For a contrasting set of views, compare MJ Nelson, 'Slowing Union Corruption: Reforming the Landrum–Griffin Act to Better Combat Union Embezzlement' (1999–2000) 8 George Mason Law Review 527 ^ See the ITUC, Constitutionally compel contributions from dissenting nonmembers in an agency shop only for the costs that "a union may constitutionally compel contributions from dissenting nonmembers in an agency shop only for the costs." of performing the union's statutory duties as exclusive bargaining agent." See also Lincoln Fed Labor Union 19129 v. Northwestern Iron & Metal Co, 335 US 525 (1949). Communications Workers of America v. Beck, 487 US 735 (1988) 5 to 3 that unions could have an agreement with employers that fees be collected to pay for the union's activities, but only up to the point that it was necessary to cover its costs. Locke v. Karass, 129 S Ct 798 (2008) legitimate costs included the Maine States v. Congress of Industrial Organizations, 335 U.S. 106 (1948) there was no violation of the Federal Corrupt Practices Act 1910 in a union publicly advocating for particular Congress members to be elected. ^ Buckley v Valeo, 424 US 1 (1976) ^ 435 US 765 (1978) ^ 558 US 310 (2010) ^ 431 US 209 (1977) See further Lehnert v. Ferris Faculty Association, 500 US 507 (1991) 5 to 4, the union can require nonmembers to give service fee contributions only for its activities as an exclusive bargaining agent, and not for political activities. Also Davenport v. Washington Education Association, 551 US 177 (2007) state legislation could require, consistently with the First Amendment, that a union member opts into the fund for political expenditure. ^ 573 US (2014) ^ 578 US (2016) ^ "[USC02] 15 USC 17: Antitrust laws not applicable to labor organizations". uscode.house.gov. ^ 208 US 161 (1908) ^ 236 US 1 (1915) ^ In Adair, from Holmes J and McKenna J, and in Coppage from Holmes J and McKenna J, and in Coppage from Holmes J and McKenna J, and in Coppage from Holmes J and Hughes J ^ 29 USC §101–115. This was approved and applied by New Negro Alliance v Sanitary Grocery Co, 303 US 552 (1938) ^ 29 USC §104 ^ This reenacted labor provisions from the National Industrial Recovery Act of 1933, after A.L.A. Schechter Poultry Corp v United States, 295 US 495 (1935) struck it down. NLRA 1935, 29 USC §157, "Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection." ^ NLRA 1935, 29 USC §152(2) ^ 29 USC § the four dissenting justices said an exception for this employer was not in §152(2), it was twice rejected in 1935 and 1947, it was "invented by the Court for the purpose of deciding this case", and was a "cavalier exercise in statutory interpretation". Joined by White J, Marshall J, Blackmun J. ^ 563 F3d 492 (DC 2009) ^ R Eisenbrey and L Mishel, 'Supervisor in Name Only: Union Rights of Eight Million Workers at Stake in Labor Board Ruling' (2006) Economic Policy Institute Issue Brief #225 ^ See Bureau of Labor Statistics, 'Union Members, 16.4m people covered by collective bargaining or union representation. Union membership was 7.4% in private sector, but 39% in the public sector. In the five largest states, California has 15.9% union membership, Texas 4.5%, Florida 6.8%, New York 24.7% (the highest in the country), and Illinois 15.2%. See further OECD, Trade Union Density (1999–2013) ^ See HS Farber and B Western, 'Ronald Reagan and the Politics of Declinin Union Organization' (2002) 40(3) British Journal of Industrial Relations 385 ^ NLRA 1935, 29 USC §158(d). See NLRB v Borg-Warner Corp 356 US 342 (1958) Burton J held an employees. Harlan J dissented. See also First National Maintenance Corp v NLRB 452 US 666 (1981) holding there was no mandatory duty to bargain over First National Maintenance Corp's "decision to terminate its Greenpark Care Center operation and to discharge the workers". Brennan J, joined by Marshall J, dissented saying the majority "states that "bargaining over management decisions that have a substantial impact on the continued availability of employment should be required only if the benefit, for labor-management relations and the collective-bargaining process, outweighs the burden placed on the conduct of the business."... I cannot agree with this test, because it takes into account only the interests of management; it fails to consider the legitimate employment interests of the workers and their union." ^ 29 USC §153 ^ 29 USC §159(a) ^ BI Sachs, 'Revitalizing labor law' (2010) 31(2) BJELL 335-6 ^ National Labor Relations Board, Seventy Fourth Annual Report (2009) 152 ^ 321 US 332 (1944) ^ 306 US 332 (1939) 5 to 2 ^ 560 US 674 (2010) ^ H.R. 1409, S. 560. ^ 29 USC §185 and see Textile Workers Union of America v Lincoln Mills 353 US 448 (1957) holding federal law is to be applied to promote national uniformity and carry out policies in the national labor laws. ^ Charles Dowd Box Co v Courtney, 368 US 502 (1962) Also Avco Corporation v Machinists, Aero Lodge 735, 390 US 557 (1968) suits to enforce collective agreements may be removed from state court to federal court. ^ 9 USC §§1 ff ^ 363 US 574 (1960) See also United Steelworkers v American Manufacturing Co 363 US 564 (1960) construction or interpretation of an agreement is for the arbitrator, not the court to decide, and the court must order arbitration even if a claim made seems frivolous. ^ United Steelworkers v Enterprise Wheel & Car Corp 363 US 593 (1960) ^ United Paperworkers v Misco, Inc 484 US 29 (1987) ^ 415 US 36 (1974) ^ 556 U.S. 247 (2009) joined by Roberts CJ, Scalia J, Kennedy J and Alito J ^ See also AT&T Mobility v Concepcion, 563 U.S. 333 (2011) another 5 to 4 decision on consumers. ^ S.987 and H.R.1873 ^ HR 8410, 95th Cong (1977) S 1883, 95th Cong (1977) ^ HR 1409. S 560. ^ 307 US 496 (1939) ^ 29 USC §158 ^ 301 US 1 (1937) Hughes CJ stated "a single employee was helpless in dealing with an employer; that he was dependent ordinarily on his daily wage for the maintenance of himself and family; that, if the employer refused to pay him the wages that he thought fair, he was nevertheless unable to leave the employ and resist arbitrary and unfair treatment; that union was essential to give laborers opportunity to deal on an equality with their employer." ^ Filler Products Inc v NLRB 376 F2d 369 (4th 1967) ^ e.g. Sunbelt Manufacturing Inc, AFL-CIO, 308 NLRB 780 (1992) ^ 373 US 221 (1963) ^ 380 US 263 (1965) ^ Marquez v. Screen Actors Guild Inc., 525 US 33 (1998) ^ 420 US 251 (1975) ^ Epilepsy Foundation of North-east Ohio v NLRB (DC 2001) ^ 440 US 301 (1979) Stevens, White, Brennan, Marshall J dissented. ^ 502 US 527 (1992) ^ 473 US 95 (1985) Blackmun, Brennan, Marshall, Stevens J dissented. ^ Sources: E McGaughey, 'Do corporations increase inequality?' (2015) TLI Think! Paper 32/2016, 29. Bureau of Labor Statistics, Series D 940–945 and Thomas Piketty (2014) Technical Appendices, Table S9.2 ^ See further RL Hogler and GJ Grenier, Employee Participation and Labor Law in the American Workplace (1992) ^ See A Cox and MJ Seidman, 'Federalism and Labor Relations' (1950) 64 Harvard Law Review 211 called for 'an integrated public labor policy' and warned 'enforcement of ... state regulation will thwart the development of federal policy.' A Cox, Federalism in the Law of Labor Relations (1954) 67 Harvard Law Review 1297 argued for a 'rule of total federal preemption' for 'uniformity'. A Cox, 'Labor Law Preemption Revisited' (1972) 85 Harvard Law Review 1337. ^ 346 US 485 (1953) per Jackson J ^ 359 US 236 (1959) as Frankfurter J put it, "because the amount of interstate commerce involved did not meet the Board's monetary standards in taking jurisdiction. ... " ^ 427 US 132 (1976) ^ 475 US 608 (1986) Rehnquist J dissented. ^ 522 US 60 (2008) ^ Building & Construction Trades Council v Associated Builders & Contractors of Massachusetts/Rhode Island, Inc 507 US 218 (1993) ^ B Gernigo, A Odero and H Guido, 'ILO Principles Concerning the Right to Strike' (1998) 137 International Labour Review 441. In US federal law, see the National Labor Relations Act of 1935, 29 USC §163. ^ Commonwealth v Hunt 45 Mass. 111 (1842) decided that a union called the "Boston Journeymen Bootmakers' Society" was entitled to strike against an employer who hired non-union members. Shaw CJ held that pre-Independence English cases creating liability for "conspiracy" in organizing a union no longer applied. Contrast R v Journeymen-Taylors of Cambridge (1721) 88 ER 9 ^ Clayton Antitrust Act of 1914 §6 and National Labour Review 441 ^ LJ Siegel, 'The unique bargaining relationship of the New York City Board of Education and the United Federation of Teachers' (1964) 1 Industrial & Labor Relations Forum 1, 46, referring to Jules Kolodney, during teacher strikes, 'In New York, you can't have true collective bargaining without the implied threat of a strike. If you can't call a strike you don't have real collective bargaining, you have 'collective begging.' ... Never give up the right of withholding services; have a threat in the background; the leverage of a strike possibility. We must awaken the public to the fact that the largest single employer in the United States is Government. We could become a nation that can't strike, and that is moving towards Totalitarianism.' Further, A Anderson, 'Labor Relations in the Public Service' [1961] Wisconsin Law Review 601, as 'Collective conferences, collective begging have been used to describe the public service' [1961] Wisconsin Law Review 601, as 'Collective conferences, collective begging have been used to describe the public service' [1961] Wisconsin Law Review 601, as 'Collective conferences, collective begging have been used to describe the public service' [1961] Wisconsin Law Review 601, as 'Collective conferences, collective begging have been used to describe the public service' [1961] Wisconsin Law Review 601, as 'Collective conferences, collective begging have been used to describe the public service' [1961] Wisconsin Law Review 601, as 'Collective begging have been used to describe the public service' [1961] Wisconsin Law Review 601, as 'Collective begging have been used to describe the public service' [1961] Wisconsin Law Review 601, as 'Collective begging have been used to describe the public service' [1961] Wisconsin Law Review 601, as 'Collective begging have been used to describe the public service' [1961] Wisconsin Law Review 601, as 'Collective begging have been used to describe the public service' [1961] Wisconsin Law Review 601, as 'Collective begging have been used to describe the public service' [1961] Wisconsin Law Review 601, as 'Collective begging have been used to describe the public service' [1961] Wisconsin Law Review 601, as 'Collective begging have been used to describe the public service' [1961] Wisconsin Law Review 601, as 'Collective begging have been used to describe the public service' [1961] Wisconsin Law Review 601, as 'Collective begging have been used to describe the public service' [1961] Wisconsin Law Review 601, as 'Collective begging have been used to describe the public service' [1961] Wisconsin Law Review 601, as 'Collective begging have been used to describe the public service' [1961] Wisconsin Law Review 601, as 'Collective begging have been used to describe the public se Journal 829, employers brought at least three successful claims against their employees before 1863, and fifteen up to 1880 for "conspiracy". See also FB Sayre, 'Criminal Conspiracy". See also FB Sayre, 'Criminal Conspiracy". See also FB Sayre, 'Criminal Conspiracy' (1922) 35 Harvard Law Review 393. W Holt, 'Labor Conspiracy' (1922) 35 Osgoode Hall Law Journal 591. 'Tortious Interference with Contractual Relations in the Nineteenth Century' (1980) 93 Harvard Law Review 1510. ^ In re Debs, 64 Fed 724 (CC Ill 1894), 158 US 564 (1895) ^ See Samuel Gompers, 'Labor and the War: the Movement for Universal Peace Must Assume the Aggressive' (October 1914) XXI(1) American Federationist 849, 860. ^ United States v Hutcheson 312 US 219 (1941) per Justice Frankfurter ^ See the Versailles Treaty 1919 art 427. The right to strike is now embedded in core Conventional labor law, ILO Freedom of Association and Protection of the Right to Organise Convention, No 87. See B Gernigon, A Odero and H Guido, 'ILO Principles Concerning the Right to Strike' (1998) 137 International Labour Review 441, 461-465. ^ e.g. Coppage v Kansas 236 US 1 (1915) purported to allow employees to sign a contract with their employer promising to not join a union (a "yellow dog contract"). Duplex Printing Press Co v Deering, 254 US 443 (1921) holding that the Clayton Act of 1914 §17 did not enable secondary action. Truax v Corrigan 257 US 312 (1921) Brandeis J, dissenting, struck down an Arizona law under the 14th amendment that prohibited any injunction Act of 1932 was subsequently passed to void contracts promising to not join a union, and articulated that no federal court could pass an injunction to stop any non-violent labor dispute. Roughly half the states have enacted their own version of the Norris-LaGuardia Act. ^ NLRA 1935 29 USC §§157 and 163 ^ See 'Cesar Chavez Explains Boycotts' and 'Cesar Chave Oklahoma it has been illegal for teachers to strike - a prohibition that violates international law - and teachers went on strike, and won anyway. See the 2018–19 education workers' strikes in the United States. ^ Notably Calvin Coolidge, then Governor of Massachusetts said in the Boston Police Strike of 1919: "There is no right to strike against the united States. ^ Notably Calvin Coolidge, then Governor of Massachusetts said in the Boston Police Strike of 1919: "There is no right to strike against the strike against the united States. ^ Notably Calvin Coolidge, then Governor of Massachusetts said in the Boston Police Strike of 1919: "There is no right to strike against the united States. ^ Notably Calvin Coolidge, then Governor of Massachusetts said in the Boston Police Strike of 1919: "There is no right to strike against the united States. ^ Notably Calvin Coolidge, the united Sta public safety, anywhere, anytime." ^ NLRA 1935 29 USC §157. n.b. NLRB v City Disposal Systems, Inc 465 US 822 (1984) one man, Brown, without the union was allowed to refuse to work on unsafe machinery, pursuant to a collective agreement. He was protected even without the union also taking action. ^ NLRB v Insurance Agents' International Union, 361 US 477, 495-496 (1960) interpreting NLRA 1935, 29 USC §158(b)(3) ^ NLRA 1935 29 USC §158(b)(4)(i)(A)-(B). ^ NLRB v Truck Drivers Local 449, 353 US 87 (1957) workers were going strike against the employers one by one, known as a whipsaw strike. ^ Edward J. DeBartolo Corp v Florida Gulf Coast Building & Construction Trades Council 485 US 568 (1988) urging a secondary boycott cannot be an unfair labor practice. ^ NLRA 1935 29 USC §158(d) ^ National Labor Relations Board v. Columbian Enameling & Stamping Co., 306 U.S. 292 (1939) 5 to 2, Reed J and Black J dissented. ^ e.g. under the European Convention on Human Rights 1950 article 11, the no detriment rule for union membership is seen in Wilson v United Kingdom [2002] ECHR 552. In the UK, the Trade Union and Labour Relations (Consolidation) Act 1992 s 238A protects employees on strike from unfair dismissal for 12 weeks at least. ^ 304 US 333 (1938) ^ See International Labour Organization, Complaint Against the Government of the United States Presented by the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) (1991) [92] 'The right to strike is one of the essential means through which workers and their organisations may promote and defend their economic and social interests. The Committee considers that, if a strike is otherwise legal, the use of labour drawn from outside the undertaking to replace strikers for an indeterminate period entails a risk of derogation from the right to strike which may affect the free exercise of trade union rights.' P Weiler, 'A Principled Re-Shaping of Labor Law for the Twenty-First Century' [2001] University of Pennsylvania Journal of Labor and Employment Law 201, Mackay is 'the worst contribution that the U.S. Supreme Court has made to the current shape of labor law in this country.' ^ NLRB v Fansteel Metallurgical Corporation 306 US 240 (1939) Reed J and Black J dissented. ^ Trans World Airlines, Inc v Flight Attendants 489 US 426 (1989) Brennan J, Marshall J, Blackmun J dissented. ^ NLRB v Electrical Workers 346 US 464 (1953) ^ New Negro Alliance v. Sanitary Grocery Co., 303 US 552 (1938) ^ Thornhill v. Alabama, 310 US 88 (1940) ^ United States v. Congress of Industrial Organizations, 335 US 106 (1948) holding that unions advocating members vote for particular Congress candidates did not violate the Federal Corrupt Practices Act as amended by the Labor Management Relations Act. ^ Eastex, Inc v NLRB 437 US 556 (1978) ^ e.g. Clean Slate for Worker Power: Building a Just Economy and Democracy (2019) Labor and Worklife Program, Harvard Law School. ^ See the Reward Work Act, S.2605, sponsored by Tammy Baldwin, Elizabeth Warren, Brian Schatz, joined by Kirsten Gillibrand ^ The Sanders, "Corporate Accountability and Democracy" plan proposes 45% of boards to be elected by workers for companies with over \$100 million in revenue, while Warren's Accountability and Democracy" plan proposes 45% of boards to be elected by workers for companies with over \$100 million in revenue, while Warren's Accountability and Democracy" plan proposes 45% of boards to be elected by workers for companies with over \$100 million in revenue, while Warren's Accountability and Democracy" plan proposes 45% of boards to be elected by workers for companies with over \$100 million in revenue, while Warren's Accountability and Democracy" plan proposes 45% of boards to be elected by workers for companies with over \$100 million in revenue, while Warren's Accountability and Democracy" plan proposes 45% of boards to be elected by workers for companies with over \$100 million in revenue, while Warren's Accountability and Democracy" plan proposes 45% of boards to be elected by workers for companies with over \$100 million in revenue, while Warren's Accountability and Democracy" plan proposes 45% of boards to be elected by workers for companies with over \$100 million in revenue, while Warren's Accountability and Democracy" plan proposes 45% of boards to be elected by workers for companies with over \$100 million in revenue, while Warren's Accountability and Democracy" plan proposes 45% of boards to be elected by workers for companies with over \$100 million in revenue, while Warren's Accountability and Democracy" plan proposes 45% of boards to be elected by workers for companies with over \$100 million in revenue, while Warren's Accountability and Democracy with over \$100 million in revenue, while Warren's Accountability and Democracy with over \$100 million in revenue, while Warren's Accountability and Democracy with over \$100 million in revenue, while Warren's Accountability and Democracy with over \$100 million in revenue, while Warren's Accountability and Democra Accountability and Democracy: Shareholder Democracy. JR Commons, Industrial Government (1921) ch 6, LD Brandeis, Other People's Money And How the Bankers Use It (1914). See E McGaughey, 'Corporate Law School Forum on Corporate Governance and Financial Regulation and 'Democracy in America at Work: The History of Labor's Vote in Corporate Governance' (2019) 42 Seattle University Law Review 697. RL Hogler and GJ Grenier, Employee Participation and Labor Law in the American Workplace (1992) ^ See D Webber, The Rise of the Working Class Shareholder: Labor's Last Best Weapon (2018) and the section above on "Pensions". ^ See the popular text by the former Dean of Harvard Law School, RC Clark, Corporate activities but only to grasp the basic legal 'constitution' or make-up of the modern corporation, you must, at the very least, also gain a working knowledge of labor law.' ^ See the Reward Work Act, S.2605, sponsored by Kirsten Gillibrand. In the House, HR 6096 was sponsored by Keith Ellison and Ro Khanna. ^ Massachusetts Laws, General Laws, Part I Administration of the Government, Title XII Corporations, ch 156 Business Corporations, §23. This was originally introduced by An Act to enable manufacturing corporations to provide for the representation of their employees on the board of directors (April 3, 1919) Chap. 0070. cf C Magruder, 'Labor Copartnership in Industry' (1921) 35 Harvard Law Review 910, 915, mentioning the Dennison Manufacturing Co at Framingham. ^ NM Clark, Common Sense in Labor Management (1919) ch II, 29–30 ^ See WO Douglas and CM Shanks, Cases and Materials on the Law of Management of Business Units (Callaghan 1931) ch 1(7) 130 and JR Commons, Industrial Government (1921) ch 6 ^ See generally JR Commons and JB Andrews, Principles of Labor Legislation (1920) and US Congress, Report of the Committee of the Senate Upon the Relations between Labor and Capital (Washington DC 1885) vol I, 92 ff, and LD Brandeis, The Fundamental Cause of Industrial Unrest (1916) vol 8, 7672 and S Webb and B Webb, The History of Trade Unionism (1920) Appendix VIII ^ See further, www.worker-participation.eu, E McGaughey, 'Votes at Work in Britain: Shareholder Monopolisation and the 'Single Channel' (2018) 15(1) Industrial Law Journal 76 and 'The Codetermination Bargains: The History of German Corporate and Labour Law' (2016) 23(1) Columbia Journal of European Law 135. ^ Dunlop Commission on the Future of Worker-Management Relations: Final Report (1994) ^ n.b. The New Jersey Revised Statute (1957) §14.9–1 to 3 expressly empowered employee representation on boards, but has subsequently been left out of the code. See further JB Bonanno, 'Employee Codetermination: Origins in Germany, present practice in Europe and applicability to the United States' (1976–1977) 14 Harvard Journal on Legislation 947 ^ e.g. RA Dahl, 'Power to the Workers?' (November 19, 1970) New York Review of Books 20 ^ See B Hamer, 'Serving Two Masters: Union Representation on Corporate Boards of Directors' (1981) 81(3) Columbia Law Review 639, 640 and 'Labor Unions in the Boardroom: An Antitrust Dilemma' (1982) 92(1) Yale Law Reporter 79,658 (1974) see JW Markham, 'Restrictions on Shared Decision-Making Authority in American Business' (1975) 11 California Western Law Review 217, 245–246 ^ This was stalled by litigation in Business Roundtable v SEC, 647 F3d 1144 (DC Cir 2011). See D Webber, The Rise of the Working Class Shareholder: Labor's Last Best Weapon (2018) ^ JD Blackburn, 'Worker Participation on Corporate Directorates: Is America Ready for Industrial Democracy?' (1980–1981) 18 Houston Law Review 349 ^ 'The Unions Step on Board' (October 27, 1993) Financial Times ^ PJ Purcell, 'The Enron Bankruptcy and Employee Benefit Law (4th edn Foundation 2006) 640–641 ^ See RB McKersie, 'Union-Nominated Directors: A New Voice in Corporate Governance' (April 1, 1999) MIT Working Paper. Further discussion in E Appelbaum and LW Hunter, 'Union Participation in Strategic Decisions of Corporations' (2003) NBER Working Paper. Further discussion in E Appelbaum and LW Hunter, 'Union Participation in Strategic Decisions of Corporations' (2003) NBER Working Paper.

2013) USA Today ^ National Industrial Conference Board, Works Councils in the United States (1919) Research Report Number 21, 13, found that in 1919 in a survey of 225 work council Manual (1920) Supplemental to Research Report No 21, 25, Appendix, Model Article II(1) ^ NLRA 1935 §158(a)(2) ^ See further NLRB v Newport News Shipbuilding Co 308 US 241 (1939) ^ Control Council for Germany (1945–1946) 43 (R498) arts III-V. ^ See San Diego Building Trades Council v Garmon 359 US 236 (1959) holding that state laws are only preempted for bargaining, rather than outcomes (like setting minimum wages, pension rights, health and safety, or workplace representation) which are protected by "§7 of the National Labor Relations Act, or constitute an unfair labor practice under §8 ... When an activity is arguably subject to § 7 or § 8 of the Act, the States as well as the federal courts must defer to the exclusive competence of the National Labor Relations Board if the danger of state interference with national policy is to be averted." ^ 309 NLRB No 163, 142 LRRM 1001 (1992) ^ 311 NLRB No 88, 143 LRRM 1121 (1993) ^ US Department of Labor and US Department of Commerce, Commission on the Future of Worker-Management Relations: Final Report (1994) 22, 27, 30-31. J Ramsey, 'VW Chattanooga plant union votes to approve collective bargaining' (December 6, 2015) autoblog.com and NE Boudette, 'Volkswagen Reverses Course on Union at Tennessee Plant' (April 25, 2016) NY Times ^ US Declaration of Independence, "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the Pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed. ... ^ See the Universal Declaration of Human Rights of 1948 and the Second Bill of Rights of 1944. ^ Civil Rights Act of 1964 §703(a)(1), 42 USC §2000e-2(a), "Employees must not refuse to hire, discharge or otherwise discriminated 'against any individual with respect to his compensation, terms, conditions or privileges of employment because of such individual's race, color, religion, sex, or national origin." ^ Civil Rights Act of 1964, 42 USC §2000e-2(j) ^ See Dred Scott v Sandford, 60 US 393 (1857). US Constitution Article IV, Section 2, "no person held to service or labor in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due." This was extended by the Fugitive Slave Act of 1850 and entrenched by Ableman v Booth, 62 US 506 (1859) ^ Or the end of this, see Harper v Virginia Board of Elections, 383 US 663 (1966) and contrast Yick Wo v Hopkins 118 US 356, 370 (1886) referring to 'the political right, because [it is] preservative of all rights. ' ^ Contrast the Slaughter-House Cases, 83 US 36 (1873) holding that states were entitled to regulate or shut down slaughter houses, causing pollution, without violating the Fourteenth Amendment's clause that "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States". ^ 42 USC §1981(a) ^ 109 US 3 (1883) ^ See also Plessy v Ferguson, 163 US 537 (1896) holding that state laws segregating black from white people in public places (or "Jim Crow laws"), such as Louisiana's Separate Car Act of 1890, were constitutional. Harlan J dissented. See also Lochner v New York 198 US 45 (1905) ^ See the Civil Rights Cases 109 US 3 (1883) where the majority struck down the Civil Rights Act of 1875 ^ 323 US 192 (1944) ^ 421 US 454 (1975) ^ See Washington v Davis 426 US 229 (1976) holding that a prima facie case of unconstitutionality would be established by evidence of intent. It was not enough that verbal tests had a disparate impact. Brennan J and Marshall J dissented. ^ 414 US 632 (1974) ^ See Massachusetts Board of Retirement v Murgia, 427 US 307 (1976) and Regents of the University of California v Bakke 438 US 265 (1978). Contrast Kücükdeveci v Swedex GmbH & Co KG (2010) C-555/07 affirming a constitutional equality principle in EU law and Matadeen v Pointu [1998] UKPC 9, per Lord Hoffmann discussing the principle of equality as it is potentially seen in Commonwealth jurisdictions. California Fed Savings and Loan Ass v Guerra 479 US 272 (1987) holding the California Fair Employment and Housing Act of 1959 §12945(b)(2) was not preempted. ^ e.g. Saint Francis College v al-Khazraji, 481 US 604 (1987) an Arabic man was protected from race discrimination under CRA 1964 ^ Contrast the International Labour Organization Discrimination Convention 1958 c 111, art 1(1)(b) applying to "such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employees subject to any provisions of this section shall discriminate, within any establishment in which such employees are employees of the opposite sex in such establishment for equal work on jobs the performance of which requires equal skill, effort, and responsibility. and which are performed under similar working conditions, except where such payment is made pursuant to (i) a seniority system; (ii) a merit system; (iii) a wage rate differential in violation of this subsection, reduce the wage rate of any employee." §206(d)(2) expressly prevents any discrimination caused by labor unions also. ^ 417 US 188 (1974) See also Schultz v Wheaton Glass Co., 421 F2d 259 (3rd 1970) if work is "substantially equal" then the provisions of this subsection, reduce the wage rate of any employee." §206(d)(2) expressly prevents any discrimination caused by labor unions also. work must be paid the same, regardless of the job title. See also County of Washington v Gunther, 452 US 161 (1980). ^ FLSA 1938, 29 USC §203(r) ^ After the Supreme Court held by 6 to 3 in Geduldig v Aiello 417 US 484 (1974) that pregnancy was not included in the concept of sex, Congress reversed the decision by the Pregnancy Discrimination Act of 1978. But see AT&T Corporation v Hulteen, 556 U.S. 701 (2009) 7 to 2, holding that maternity leave taken before the Pregnancy Discrimination Act 1978 did not need to count as time worked that will contribute to pension earnings. ^ CRA 1964, 42 USC §2000e-2 ^ cf ILO Equal Remuneration Convention 1951 c 100, art 2(2) requiring the principle of equal pay through "(a) national laws or regulations; (b) legally established or recognised machinery for wage determination; (c) collective agreements between employers and workers". ^ CRA 1964, 42 USC §2000e-2(a)(1) ^ CRA 1964, 42 USC §2000e-2(a)(2) ^ ADEA 1967, 29 USC §623 and 631 ^ ADA 1990, 42 USC §12112(a)–(b) ^ CRA 1964, 42 USC §2000e(b). See Walters v Metropolitan Educational Enterprises, Inc 519 US 202 (1997) ^ 450 US 248 (1981) and see previously McDonnell Douglas Corp v Green, 411 US 792 (1973) ^ 509 US 502 (1993) ^ Contrast O'Connor v Consolidated Coin Caterers Corporation 517 US 308 (1996) on age discrimination ^ CRA 1965, 42 USC §2000e-2(e) ^ 433 US 321 (1977) ^ 517 FSupp 292 (ND Tex 1981) ^ 472 US 400 (1985) ^ 477 US 57 (1986) ^ 510 US 17 (1993) reversing the Sixth Circuit. ^ Burlington Industries Inc v Ellerth 524 US 742 (1998) relying on Restatement of Torts §219 ^ 524 US 775 (1998) n.b. Oncale v. Sundowner Offshore Services, 523 US 75 (1998) sexual harassment was possible between members of the same sex. ^ CRA 1964, 42 USC §2000e-3 ^ Gomez-Perez v. Potter, 553 US 474 (2008) 6 to 3. ^ 493 US 182 (1990) ^ 519 US 337 (1997) ^ Burlington Northern & Santa Fe (BNSF) Railway Co. v. White, 548 US 53 (2006) ^ At the time, only 34% of white men and 12% of black men had high school diplomas: U.S. Bureau of the Census, U.S. Census of Population (1960) vol 1, Characteristics of the Population, pt. 35, Table 47. This rate, under a segregated education system, was worse than most non-segregated systems for European-Americans. ^ 401 US 424 (1971) ^ This overturned Wards Cove Packing Co, Inc v Atonio 490 US 642 (1989) where it was held 5 to 4 that employees had the burden of showing a disparate impact did not serve an employer's "legitimate employment. ^ 557 U.S. ({{{5}}} 2009) 557 (dissent) Ginsburg J, joined by Stevens J, Souter J and Breyer J ^ 42 USC §\$2000e-5 to 2000e-6 ^ Federal Rules of Civil Procedure Rule 23 ^ e.g. International Brotherhood of Teamsters v US 431 US 324 (1977) ^ See General Telephone Co of Southwest v Falcon 457 US 147 (1982) ^ 29 USC §206(d)(1). ^ This exempts (i) a bona fide seniority systems (ii) a bona fide seniority systems (iii) systems measuring earnings by quantity or quality or of production. ^ 452 US 161 (1981) ^ See also Schultz v Wheaton Glass Co, 421 F.2d 259 (3rd Cir 1970) ^ Similar problems are evident in the UK's Equality Act 2010 and its separate "equal pay" provisions. It has been argued that they should be scrapped, so that a claimant can choose the most favorable legal avenue. ^ See Centre for Business Research, Labour Regulation Index (Dataset of 117 Countries) (2016) 763-4 ^ See LE Blades, 'Employment at Will vs. Individual Freedom: On Limiting the Abusive Exercise of Employer Power' (1967) 67(8) Columbia Law Review 1404, 1411-12. Contrast the Delaware General Corporation Law §141(k) where a corporation can require a "classified board" where directors can only be removed "with cause". This happens frequently, e.g. Campbell v Loew's Inc, 36 Del Ch 563, 134 A 2d 852 (Ch 1957) referring to Auer v Dressel, 306 NY 427, 118 NE 2d 590, 593 (1954) ^ a b Cusano v NLRB 190 F 2d 898 (1951) citing NLRB v Condenser Corp, 128 F.2d 67, 75 (3rd Cir 1942) stating "poor reason" See further Payne v Western & Atlantic Railroad, 81 Tennessee 507 (1884) ^ a b Montana Code Annotated 2015 Title 39 ch 2 part 9, §4 ^ e.g. Bernie Sanders presidential campaign, Workplace Democracy Plan (2019). Mike Siegel Congress campaign in Texas 2020, Dignity for Workers by Protecting and Growing Union Membership Archived March 22, 2020, at the Wayback Machine ^ a b e.g. R Epstein, 'In Defense of the Contract at Will' (1984) 57 University of Chicago Law Review 947 ^ a b e.g. R Epstein, 'In Defense of the Contract at Will' (1984) 57 University of Chicago Law Review 947 ^ a b e.g. R Epstein, 'In Defense of the Contract at Will' (1984) 57 University of Chicago Law Review 947 ^ a b e.g. R Epstein, 'In Defense of the Contract at Will' (1984) 57 University of Chicago Law Review 947 ^ a b e.g. R Epstein, 'In Defense of the Contract at Will' (1984) 57 University of Chicago Law Review 947 ^ a b e.g. R Epstein, 'In Defense of the Contract at Will' (1984) 57 University of Chicago Law Review 947 ^ a b e.g. R Epstein, 'In Defense of the Contract at Will' (1984) 57 University of Chicago Law Review 947 ^ a b e.g. R Epstein, 'In Defense of the Contract at Will' (1984) 57 University of Chicago Law Review 947 ^ a b e.g. R Epstein, 'In Defense of the Contract at Will' (1984) 57 University of Chicago Law Review 947 ^ a b e.g. R Epstein, 'In Defense of the Contract at Will' (1984) 57 University of Chicago Law Review 947 ^ a b e.g. R Epstein, 'In Defense of the Contract at Will' (1984) 57 University of Chicago Law Review 947 ^ a b e.g. R Epstein, 'In Defense of the Contract at Will' (1984) 57 University of Chicago Law Review 947 ^ a b e.g. R Epstein, 'In Defense of the Contract at Will' (1984) 57 University of Chicago Law Review 947 ^ a b e.g. R Epstein, 'In Defense of the Contract at Will' (1984) 57 University of Chicago Law Review 947 ^ a b e.g. R Epstein, 'In Defense of the Contract at Will' (1984) 57 University of Chicago Law Review 947 ^ a b e.g. R Epstein, 'In Defense of the Contract at Will' (1984) 57 University of Chicago Law Review 947 ^ a b e.g. R Epstein, 'In Defense of the Contract at Will' (1984) 57 University of Chicago Law Review 947 ^ a b e.g. R Epstein, 'In Defense of the Contract at Will' (1984) 57 University of Chicago Law Review 947 ^ a b e.g. R Epstein, 'In Defense of the Contract at Will' (1984) 57 University of Chicago Law Review 947 (2014) 27(1) Review of Financial Studies 301 ^ e.g. LE Blades, 'Employment at Will vs. Individual Freedom: On Limiting the Abusive Exercise of Employees About Their Rights, and Why Does It Matter?' (2002) 77 NYU Law Review 6 ^ e.g. L Ryan, 'Ten Ways Employment At Will Is Bad For Business' (October 3, 2016) Forbes. See chart below. Federal Reserve Act of 1913, 12 USC §225a M Kalecki, 'Political Quarterly 322 5 USC §7513(a) Campbell v Loew's Inc, 36 Del Ch 563, 134 A 2d 852 (Ch 1957) referring to Auer v Dressel, 306 NY 427, 118 NE 2d 590, 593 (1954) ^ e.g. in UK labour law, see the Employment Rights Act 1996 ss 94 ff. ^ a b ILO, Termination of Employment Convention, 1982 arts 4-13 ^ See the German Civil Code or Bürgerliches Gesetzbuch 1900 §622 (notice before dismissal) and the Work Constitution Act 1972 or Betriebsverfassungsgesetz 1972 (worker participation). ^ e.g. Charter of Fundamental Rights of the European Union art 30 ^ e.g. WB MacLeod and V Nakavachara, 'Can Wrongful Discharge Law Enhance Employment?' (2007) 117 Economic Journal of Labor Economics 465. On OECD studies, see E McGaughey, 'OECD Employment Protection Legislation Indicators and Reform' (2019) ssrn.com ^ cf Bernie Sanders presidential campaign, Workplace Democracy Plan (2019). Mike Siegel Congress campaign in Texas 2020, at the Wayback Machine ^ California Civil Code (1872) §1999 ^ Especially HG Wood, Master and Servant (3rd edn 1886) 134, 'With us the rule is inflexible that a general or indefinite hiring is prima facie a hiring at will, and if the servant seeks to make it out a yearly hiring, the burden is upon him to establish it by proof. A hiring at so much a day, week, month, or year, no time being specified, is an indefinite hiring, and no presumption attaches that it was for a day even, but only at the rate fixed whatever time the party may serve.' ^ In New York, Adams v Fitzpatrick 125 NY 124 (NY 1891) 'In this country, at least, if a contract for hiring is at so much per month, it will readily be presumed that the hiring was by the month, even if nothing was said about the term of service.' But subsequently in Martin v New York Life Insurance Co 148 NY 117 (NY 1895) the New York Life Insurance Co 148 NY 117 (NY 1895) the New York Supreme Court held the at will doctrine was 'correctly stated by Mr Wood.' Also Adair v United States, 208 US 161 (1908) the minority dissenting against the lawfulness of yellow dog contracts, but Harlan J conceding that an employee "was at liberty, in his discretion, to discharge [an employee] from service without giving any reason for doing so." Contracts. Termination of Employment at Weekly Salary' (1927) 40(4) Harvard LR 646 ^ National Labor Relations Act of 1935 §8(a)(3) preventing union discrimination ^ Civil Rights Act of 1964 42 USC §2000e-2(a). Age Discrimination in Employment Act of 1970, 29 USC §§621-634. Americans with Disabilities Act of 1938, 29 USC §§20-219 ^ ERISA 1974, 29 USC §1140-41 ^ Family and Medical Leave Act, 29 USC §2615 ^ Vietnam Era Veterans Readjustment Assistance Act, 38 USC §2021(a)(A)(i). Vocational Rehabilitation Act of 1973. Energy Reorganization Act of 1974, 42 USC §5851. Clean Air Act of 1963, 42 USC §7622. Federal Water Pollution Control Act, 33 USC §1367. Railroad Safety Act, 45 US §441(a). Consumer Credit Protection Act, 15 USC §1674. Judiciary and Judicial Procedure Act, 28 USC §1875 ^ Petermann v International Brotherhood of Teamsters 214 Cal App. 2d 155 (Cal App 1959) public policy is 'a prohibition for the good of the community against whatever contravenes good morals or any established interests of society'. ^ Ivy v Army Times Pub Co 428 A.2d 831 (DC App 1981) declining to perjure at employer's request. ^ e.g. Nees v Hocks 536 P2d 512 (Or 1975) refusing to seek to be excused from serving on a jury. Daniel v Carolina Sunrock Corp 335 NC 233 (NC 1993) responding to a subpoena. ^ e.g. Perks v Firestone Tire & Rubber Co 611 F2d 1363 (3rd Cir 1979) refusing to take a lie detector test where the state prohibited it. Tacket v Delco Remy, Division of General Motors Corp 937 F.2d 1201 (7th Cir 1992) filing litigation against the employer ^ e.g. Sheets v. Teddy's Frosted Foods, Inc. 179 Conn. 471, 427 A.2d 385 (1980) plaintiff noticed violations of the Connecticut Uniform Food, Drug and Cosmetic Act, told the employer, and was fired. Held, wrongful discharge, as he could not be required to perform an illegal act. ^ e.g. Hausman v St Croix Care Center Inc, 558 NW2d 893 (Wis App 1996) the Wisconsin Supreme Court noting 'a criminal penalty is no remedy to the terminated employee'. Also Fortunato v. Office of Stephen M. Silston, D.D.S., 856 A.2d 530 (Conn. Super. 2004) the Connecticut Supreme Court held that it was contrary to public policy because it frustrated a person's right to access the courts. ^ cf Model Employee for termination Act (8 August 1991) "\$1(4) 'Good cause means (i) a reasonable basis related to an individual employee's duties, responsibilities, conduct on the job or otherwise, job performance, and employment record..." ^ Restatement (Second) of Contracts 1981 §205, 'Every contract imposes upon each party a duty of good faith and fair dealing in its performance and enforcement' ^ e.g. Fortune v National Cash Register Co, 373 Mass 96, 364 NE 2d 1251 (1977) the employee's employment was terminated shortly before a large commission on sales fell due. Held that this breached an obligation to perform the contract in good faith. But contract in good faith. But contract in good faith was a rule of construction, which could not contradict the express terms of a contract. However, the rule of good faith did not require a good reason for a discharge under Connecticut law. ^ e.g. Bammert v. Don's Supreme Court held that it was not contrary to public policy for an employee on grounds of her husband's drunk driving charge. cf Brockmeyer v. Dun & Bradstreet 113 Wis. 2d 561 (Wis. 1983) employee after another worker sued for sex discrimination and the case had to be settled. The Wisconsin Supreme Court acknowledged there could be public policy reasons to hold a dismissal is unlawful. Dismissal was justified in this case. ^ e.g. Wilking v County official expected to the settled. Ramsey 983 F. Supp. 848 (8th Cir 1998) poor performance claims are more credible if the employer shows it gave a warning about improving. ^ e.g. Taylor v Procter & Gamble Dover Wipes (D Del 2002) terminated worker involved of serious acts that cannot be tolerated at work, like assaulting a fellow worker. Pearson v Metro-North Commuter Railroad 1990 WL 20173 (SDNY 1990) if a rule is not consistently enforced, it cannot be relied on by the employee tested positive for marijuana twice. The employee's right to be dismissed for a 'just cause' under a collective agreement contained the remedy of reinstatement. The arbitrator found he was discharged without just cause and ordered reinstatement. The Supreme Court held that this could not be found contrary to public policy. ^ e.g. Lincoln v University System of Georgia Board of Regents 697 F2d 928 (11th Cir 1983) a college took teaching away from a faculty member and assigned her to prepare a revision of a handbook and other large clerical duties for grant applications. Held, constructively terminated. ^ Toussaint v Blue Cross & Blue Shield of Michigan, 408 Mich 579 (1980) employee was told at hiring that he would be employed as long as he did his job. The handbook said the employer's policy was only to terminate for 'just cause'. Held, that both express and implied promises were enforceable, and raised legitimate expectations for the employee. See also Torosyan v Boehringer Ingelheim Pharmaceuticals, Inc, 662 A2d 89 (1995) ^ e.g. Schipani v Ford Motor Co 102 Mich 606 (1981) an employer made an oral agreement, along with personnel manuals, policies and employment practice, for an employee to work till age 65. The written contract, however, said that employment was terminable at will. The employer sought summary judgment. Michigan Court of Appeals held there would be no summary judgment. The other assurances were enough to potentially rebut the written agreement. ^ cf Charter of Fundamental Rights of the European Union 2000 art 27 ^ Control Council Law No 22 (10 April 1946) art V. Today see the Work Constitution Act 1972 or Betriebsverfassungsgesetz 1972 (worker participation). ^ e.g. Telesphere International Inc v Scollin 489 So 2d 1152 (Fla App 1986) eliminating a product or service. Nixon v Celotext Corp 693 F Supp 547 (WD Mich 1988) consolidating operations. ^ See the Control Council Law No 22 (10 April 1946) art V, in post-war Germany, now re-enacted in the Work Constitution Act 1972 or Betriebsverfassungsgesetz 1972 (worker participation in layoffs). ^ WARN Act 1988 §2101(a)(2)-(3). §2101(a)(1), the 100 employee threshold excludes part-time employees. ^ WARN Act 1988 §2102(a) ^ WARN Act 1988 §2101(a)(6) and 2101(b)(2) ^ WARN Act 1988 §2102(b) ^ WARN Act 1988 §2102(b)(2) and see Local Union 7107, United Mine Workers v Clinchfield Coal Co 124 F3d 639 (4th Cir 1997) cancellation of major contract in unforeseeable circumstances. ^ WARN Act 1988 §2102(b) ^ WARN v Electro-Wire Products Inc 60 F. Supp. 2d 710 (6th Cir 1998) not giving notice to employees on a reasonable misunderstanding that they were not entitled to it counts as good faith. ^ WARN Act 1988 §2104(a)(1)-(3) ^ See E Appelbaum and R Batt, Private Equity at Work – When Wall Street Manages Main Street (2014) ^ Unocal Corp v Mesa Petroleum Co 493 A 2d 946 (Del 1985) ^ 417 US 249 (1974) ^ Universal Declaration of Human Rights 1966 art 6 ^ See also Franklin D. Roosevelt, 'Second Bill of Rights', in State of the Union Address (January 11, 1944) ^ See AW Phillips, 'The Relation between Unemployment and the Rate of Change of Money Wage Rates in the United Kingdom 1861–1957' (1958) 25 Economica 283 ^ 239 US 33 (1976) holding that an age limit of 50 years old for police in Massachusetts was constitutional. ^ The Works Progress Administration was created by Executive Order 7034, and replaced the Federal Emergency Relief Administration which was itself created by the Federal Emergency Relief Administration which was itself created by the Federal Emergency Relief Administration which was itself created by the Federal Emergency Relief Administration which was itself created by the Federal Emergency Relief Administration which was itself created by the Federal Emergency Relief Administration which was itself created by the Federal Emergency Relief Administration which was itself created by the Federal Emergency Relief Administration which was itself created by the Federal Emergency Relief Administration which was itself created by the Federal Emergency Relief Administration which was itself created by the Federal Emergency Relief Administration which was itself created by the Federal Emergency Relief Administration which was itself created by the Federal Emergency Relief Administration which was itself created by the Federal Emergency Relief Administration which was itself created by the Federal Emergency Relief Administration which was itself created by the Federal Emergency Relief Administration which was itself created by the Federal Emergency Relief Administration which was itself created by the Federal Emergency Relief Administration which was itself created by the Federal Emergency Relief Administration which was itself created by the Federal Emergency Relief Administration which was itself created by the Federal Emergency Relief Administration which was itself created by the Federal Emergency Relief Administration which was itself created by the Federal Emergency Relief Administration which was itself created by the Federal Emergency Relief Administration which was itself created by the Federal Emergency Relief Administration which was itself created by the Federal Emergency Relief Administration which was itself created by the Federal Emergency Relief Administration which was itself created by the Federal Emergency Relief Administ Cambridge, Working Paper no. 496 ^ Employment Act of 1946, 15 USC §1021 ^ See GJ Santoni, 'The Employment Act of 1946: Some History Notes' (1986) 68(9) Federal Reserve of St Louis Paper 7. KVW Stone, 'A Right to Work in the United States: Historical Antecedents and Contemporary Possibilities' in V Mantouvalou (ed), The Right to Work: Legal and Philosophical Perspectives (2015) ch 15. ^ Board of Regents of State Colleges v Roth 408 US 564, 588 (1972) per Justice Marshall dissenting. ^ 15 USC §1022a. ^ 15 USC guarantee. ^ Emergency Relief Appropriation Act of 1935 ^ Amended by the Federal Reserve Reform Act of 1977, 12 USC §225a ^ See Marriner Stoddard Eccles, Beckoning Frontiers: Public and Personal Recollections (1951) "As mass production has to be accompanied by mass consumption, mass consumption, in turn, implies a distribution of wealth ... to provide men with buying power. ... Instead of achieving that kind of distribution, a giant suction pump had by 1929-30 drawn into a few hands an increasing portion of currently produced wealth. ... The other fellows could stay in the game only by borrowing. When their credit ran out, the game stopped." Also JM Keynes, The General Theory of Employment, Interest and Money (1936) ch 22, IV, pointing to "the chronic tendency of contemporary societies to under-employment is to say, to social practices and to a distribution of wealth which result in a propensity to consume which is unduly low." ^ M Friedman, 'The Role of Monetary Policy' (1968) 58(1) American Economic Review 1. M Friedman, 'Inflation and Unemployment' (1977) 85 Journal of Political Economy 451-72 ^ See G Marshall, The Marshall, The Marshall Plan Speech (5 June 1947) Harvard (on the investment plan for post-war Europe). SP Hargreaves Heap, 'Choosing the Wrong 'Natural' Rate: Accelerating Inflation or Decelerating Employment and Growth?' (1980) 90(359) Economic Journal 611. ^ E McGaughey, 'Will Robots Automate Your Job Away? Full Employment, Basic Income, and Economic Democracy' (2018) Centre for Business Research, University of Cambridge, Working Paper no. 496, part 2(1) ^ Social Security Act of 1935, 42 USC §§501-4, 1101-5. Steward Machine Company v. Davis, 301 US 548 (1937) held unemployment benefits to be constitutional. ^ e.g. Millner v Enck 709 A 2d 417 (Pa Super 1998) ^ e.g. Cullison v Commonwealth Unemployment Compensation Board of Review 444 A.2d 1330 (Pa 1982) and Employment Division, Department of Human Resources v Smith, 494 US 872 (1988) ^ Ohio Bureau of Employment Services v Hodary, 431 US 471 (1977) ^ Internal Revenue Code §3304(a)(5) ^ Brazee v. Michigan, 241 US 340 (1916). Contrast Adams v. Tanner, 244 US 590 (1917) where over strong dissent the majority held that a ban on private employment agencies was unconstitutional. See now the ILO, Private Employment Agencies Convention, 1997 ^ Bernie Sanders, Eugene V. Debs Documentary (1979) ^ The Fair Employment and Housing Act ^ Details of law from the DFEH website ^ Barnes & Thornburg LLP (October 12, 2011). "California Enacts 22 New Employment Laws Impacting All Companies Doing Business in the State". The National Law Review. ^ New Jersey, Legislature (April 16, 1945). "L.1945 c.168-174. AN Act concerning civil rights, and amending sections 10:1-3, 10:1-6 and 10:1-8 of the Revised Statutes". NJ State Library. 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