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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 plans, 120 were created under federal supervision, and 105 on employers initiative. ^ NICB, Works Council Manual (1920) Supplement to Research Report No 21, 25, Appendix, Model Article III(1) ^ NLRA 1935 §156(a)(2) ^ See further NLRB v Newport News Shipbuilding Co 308 US 241 (1939) ^ Control Council Law No 22 Works Councils (April 10, 1946) in Official Gazette of the 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), "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." ^ 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 on claim of the party to whom such service or labor may be due." This was extended by the Fugitive Slave Act of 1793, limited by Prigg v Pennsylvania, 41 US 539 (1842), restored by the Fugitive Slave Act of 1850 and entrenched by Ableman v Booth, 62 US 506 (1859) ^ On 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 franchise of voting' as a 'fundamental 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 Kükükdöveci 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 employment or occupation". ^ 29 USC §206(d)(1), "No employer having employees subject to any provisions of this section shall discriminate, within any establishment in which such employees are employed, between employees on the basis of sex by paying wages to employees in such establishment at a rate less than the rate at which he pays wages to 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 system which measures earnings by quantity or quality of production; or (iv) a differential based on any other factor other than sex; Provided, That an employer who is paying a wage rate differential in violation of this subsection shall not, in order to comply with the provisions 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 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 goals". ^ CRA 1964, 42 USC §2000e-2(k)(1)(A) ^ 557 US. 557 (2009) Kennedy J giving the first judgment. ^ 557 US. {{{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 system (ii) merit systems (iii) systems measuring earnings by quantity or quality 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. CL Estlund, 'How Wrong Are 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 aspects of full employment' (1943) 14(4) 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) ^ 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. VV Acharya and RP Baghai, 'Labor Laws and Innovation' (2013) 56(4) Journal of Law and Economics 997 and VV Acharya, RP Baghai, KV Subramanian, 'Wrongful Discharge Laws and Innovation' (2014) 27(1) Review of Financial Studies 301 ^ e.g. LE Blades, 'Employment at Will vs. Individual Freedom: On Limiting the Abusive Exercise of Employer Power' (1967) 67(8) Columbia Law Review 1404. CL Estlund, 'How Wrong Are 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 aspects of full employment' (1943) 14(4) 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 s 94 ff. ^ a b ILO, Termination of Employment Convention, 1982 arts 4-13 ^ See the German Civil Code or Bürgerliches Gesetzbuch 1900 §672 (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 F218. J. Marinescu, 'Job Security Legislation and Job Duration: Evidence from the United Kingdom' (2009) 27(3) Journal of Labor Economics 465. On OECD studies, see E McGaughy, 'OECD Employment Protection Legislation Indicators and Reform' (2019) srn.com ^ cf 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 ^ 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 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 employer "was at liberty, in his discretion, to discharge [an employee] from service without giving any reason for doing so." 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