

A wooden-handled garden fork stands vertically in a field of green plants. The fork's head is at the bottom, partially buried in the soil. The background is a soft-focus field of similar green plants. A dark green rectangular box is overlaid on the upper part of the image, containing the text.

LONGMAN LAW SERIES

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Preface

This book is intended to be an accessible, stimulating but not overwhelming companion to an undergraduate or postgraduate course in employment or labour law. I have assumed some basic knowledge of other core subjects, particularly contract law and EU law. Each chapter seeks to set the law in its practical and political context and to draw on the relevant academic literature. There are suggestions for further reading at the end of each chapter for students who want to delve deeper into particular aspects of a topic. In a subject now heavily dominated by EU law and statute law, I have tried to avoid the common lawyer's bias towards case-law by including extensive quotations from directives and legislation, though of course there is plenty of case-law analysis too.

Although some courses may no longer include so much material on collective labour law, I have included comprehensive chapters on this topic because of its central importance to the subject's history and philosophy. Given growing academic interest in the issue, I have included a chapter on the relationship between labour law and migration (from within and outside the EU) to facilitate the inclusion of this important emerging topic on the teaching syllabus. The book considers developments up to 4 November 2014.

I have benefited enormously from working in Oxford with an outstanding group of colleagues in labour law, who have no doubt influenced my thinking on many of the topics examined in this book both directly and indirectly: Alan Bogg, Hugh Collins, Cathryn Costello, Sandy Fredman, Mark Freedland and Jeremias Prassl. Successive generations of undergraduate and graduate students have also helped to shape my thinking about how best to explain the subject and have challenged my ideas: I am grateful to them all. Anjoli Maheswaran Foster provided excellent research assistance.

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I dedicate this book, like the others, to my parents, without whose support none of this would be possible.

*Anne Davies
Oxford*

List of acronyms

ACAS	Advisory, Conciliation and Arbitration Service	EHRC	Equality and Human Rights Commission
ARD	Acquired Rights Directive	EHRLR	European Human Rights Law Review
BERR	Department for Business, Enterprise and Regulatory Reform	EHRR	European Human Rights Reports
BJIR	British Journal of Industrial Relations	EJIL	European Journal of International Law
CA	Court of Appeal	EqA 2010	Equality Act 2010
CAC	Central Arbitration Committee	ERA 1996	Employment Rights Act 1996
CBI	Confederation of British Industry	ERelA	Employment Relations Act 1999
CEACR	Committee of Experts on the Application of Conventions and Recommendations	ESC	European Social Charter
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women	ETO	economic, technical or organisational
CEEP	European Centre for Employers and Enterprises Providing Public Services	ETUC	European Trade Union Confederation
CFA	Committee on Freedom of Association	EU	European Union
CJEU	Court of Justice of the European Union	EWK	European Works Council
CMLR	Common Market Law Review	EWCA	England and Wales Court of Appeal
CPRD	Convention on the Rights of Persons with Disabilities	EWHC	England and Wales High Court
CRC	Convention on the Rights of the Child	FTER	Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002
CiRD	Citizens' Rights Directive	GEO	Government Equalities Office
CRD	Collective Redundancies Directive	GLA	Gangmasters Licensing Authority
DCMS	Department for Culture, Media and Sport	HL	House of Lords
DBIS	Department for Business, Innovation and Skills	HMRC	Her Majesty's Revenue and Customs
EA	Employment Act	HRA	Human Rights Act
EASI	Employment Agency Standards Inspectorate	HSE	Health and Safety Executive
EAT	Employment Appeal Tribunal	IANA 2006	Immigration, Asylum and Nationality Act 2006
ECR	European Court Reports	I&C	Directive on Informing and Consulting Employees
ECHR	European Convention on Human Rights	ICCPR	International Covenant on Civil and Political Rights
ECSR	European Committee on Social Rights	ICER	Information and Consultation of Employees Regulations
ECtHR	European Court of Human Rights	ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
		ICESCR	International Covenant on Economic, Social and Cultural Rights

ICLQ	International and Comparative Law Quarterly	PWD	Posted Workers Directive
ICO	Information Commissioner's Office	PWED	Posted Workers Enforcement Directive
ICR	Industrial Cases Reports	QB	Queen's Bench
ICRMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families	SDA	Sex Discrimination Act 1975
IEEAR	Immigration (European Economic Area) Regulations 2006	SE	Societas Europaea
IJCLLR	International Journal of Comparative Labour Law and Industrial Relations	SMP	Statutory Maternity Pay
ILJ	Industrial Law Journal	SNB	Special Negotiating Body
ILO	International Labour Organization	SOSR	some other substantial reason
JCHR	Joint Committee on Human Rights	SPC	service provision change
KB	King's Bench	SPL	shared parental leave
LBC	London Borough Council	SSP	Statutory Sick Pay
LEL	Lower Earnings Limit	TEU	Treaty on European Union
LPC	Low Pay Commission	TFEU	Treaty on the Functioning of the European Union
MLR	Modern Law Review	TICER	Transnational Information and Consultation of Employees Regulations
MPLR	Maternity and Parental Leave etc Regulations	TUC	Trades Union Congress
NDPB	Non-Departmental Public Body	TULRCA 1992	Trade Union and Labour Relations (Consolidation) Act 1992
NGO	Non-governmental organization	TUPE	Transfer of Undertakings (Protection of Employment) Regulations
NMW	National Minimum Wage	UDHR	Universal Declaration of Human Rights
NMWA	National Minimum Wage Act 1998	UKSC	United Kingdom Supreme Court
ONS	Office for National Statistics	UN	United Nations
OJ	Official Journal	UNICE	Union of Industrial and Employers' Confederations of Europe
OJLS	Oxford Journal of Legal Studies	WERS	Workplace Employment Relations Survey
PCP	provision, criterion or practice	WLR	Weekly Law Reports
PEA	pre-existing agreement	WTD	Working Time Directive
PrWD	Pregnant Workers Directive	WTO	World Trade Organization
PTWR	Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000	WTR	Working Time Regulations 1998

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1 Introduction

Learning outcomes

This chapter will enable readers to:

- understand the scope of labour law as a subject
- explain and justify the existence of a special body of law to govern work in English law
- explain why employment law is extensively regulated at EU level
- understand the role of collective bargaining in the historical development and contemporary practice of labour law
- identify some current themes in labour law policy and scholarship

1.1 INTRODUCTION

The aim of this chapter is to introduce the subject of employment or labour law and to develop some ideas or themes that will be of relevance throughout the book. We will begin by considering the justifications for having a separate body of legal doctrine to cover employment issues (section 1.2) before considering why employment law is extensively regulated at EU level (section 1.3). In section 1.4, we will examine the special role of collective bargaining as a regulatory technique in labour law. Section 1.5 identifies and explores a selection of current themes and debates in labour law scholarship which will recur in later chapters.

Before we begin, it may be helpful to consider the terminology we are using. Is the subject called labour law or employment law? In the US, for example, the choice of label is significant. Employment law denotes the law relating to individual employees' terms and conditions of employment, whereas labour law denotes the law relating to trade unions and their relationships with employers. In English law, the choice is less significant – the labels are used more or less interchangeably – though the decision to call a course 'labour law' rather than 'employment law' often indicates a greater emphasis on trade union topics than one might expect to find in a course called 'employment law'. Employment law is probably the more modern-sounding label, so it is used for the title of this book, but we will use both terms in the text.

The subject-matter of labour or employment law is fairly obvious: it is the law governing situations in which one person works for another person. Working relationships come in many different guises, so drawing a precise boundary line around labour law is fraught with difficulty. We will consider the exact location of the boundary in Chapter 4. We can then divide the subject into collective ('labour' law) and individual ('employment' law) topics (always remembering that there are important