

EU Employment Law
Overview
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and

American Chamber of Commerce to the European Union

Outline

- EU and national employment law systems
 - How they co-exist
 - How much influence does EU law have on national traditions?
 - Does the “European Social Model” ensure convergence in employment laws?

- The importance of European Social Dialogue

- The impact of enlargement

The EU and national systems - problems

- National legal systems have existed for hundreds of years and employment laws were well established before the EEC Treaty
- EC law had to develop on top of pre-existing national legislation and on top of well established national systems
 - Shared competence in the employment field
- The fundamental problem for the EU in the employment field is that the national systems are very different
 - Much more divergence than in other areas of EU competence such as competition or environment

The EU and national systems – co-existing

- Directives are generally used for employment legislation
 - Directive is only binding as to the results to be achieved – no obligation as to the precise method of implementation
 - This gives Member States considerable leeway when implementing EU law

- EC employment law often involves difficult and messy compromises
 - A famous example: Directive 2001/86 on worker involvement in the European Company – 30 years in the making yet the result is so complex that it gives lawyers headaches

- The overlap of EU and national employment law means there is generally no single uniform law applicable across the EU
 - A few exceptions e.g. EWCs

How much influence does EU law have on national systems

- Little influence in the early days as there was little EC employment law
- Article 119 (now 141): equal pay for equal work was the main provision in the Treaty of Rome
 - The landmark court case in which it was invoked was Defrenne II (1976)
 - Equal pay directive (75/117) at same time
 - Many court cases followed on sexual equality
- Major legislation started to be passed in 1970s:
 - Sex discrimination directive (76/207)
 - Acquired rights directive (77/187)
 - Collective redundancies directive (75/129)

How much influence does EU law have on national systems

- In the past decade, EC law has had a huge influence over national law
- New legislation covering the following areas:
 - Wide ranging anti-discrimination laws, covering harassment, and with reversal of burden of proof
 - Atypical workers – part-time, fixed-term workers
 - Information and consultation – EWCs and national WCs
 - Health & Safety, including working time
 - Free movement of workers
 - Data protection
 - Pensions
- Impact of EU Social dialogue – pan-EU collective bargaining
- But many issues remain purely national in scope e.g. dismissals

The “European Social Model”

- The Commission frequently refers to the need to preserve the European Social Model to avoid “social dumping”

- But this is a minimalist concept:
 - “the European social model is based on common values. The most important factor is social cohesion. There is no country in Europe that does not actively combat poverty and does not consider ghettoization to be wrong on principle.” (Spidla, 11 May 2006)

- The European Social Model is not likely to promote convergence between different national traditions in the employment field

- Possible to identify several different types of labour market model in EU: Liberal, Nordic, Corporatist, Mediterranean

European Social Dialogue

- Introduced in the Maastricht Social Protocol
- Now in Articles 138-139 EC – so applies to the UK as well
- Idea: to introduce the sort of collective bargaining that exists in many national systems at EU level
- Two stage process
 - Commission first consults Social Partners (UNICE, ETUC and CEEP)
 - If positive reaction, then second stage is Social Partners negotiation
 - In principle, negotiations should be complete in 9 months

European Social Dialogue

- If Social Partners can reach agreement, then it gets made into law
 - May be via an EU directive; may be via amendment of national collective agreement
- Social Dialogue allows employment law to be adopted very fast
 - Fixed-term work directive (99/70) was adopted in 3 months from date that social partners reached agreement
 - Council and Parliament are essentially excluded from the process
- Notable successes: parental leave, part-time work, fixed-term work, work-related stress
- Failures: EWC, national works councils, temporary agency workers
 - Social dialogue gives Commission two bites at cherry to get new law adopted

The impact of enlargement in 2004

- Probably still too early to tell
 - There have been relatively few debates in the Council since 2004
- The new Member States themselves have different traditions
- But they have altered the balance because:
 - Some are suspicious of collective bargaining due to communist past
 - They do not like restrictions on free movement of their workers, services
 - More market-oriented than many in Europe, but views do vary
 - More open to the need for flexible working practices
 - But generally are looking for a high level of social protection

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