



Apply Human Rights

Introduction to Litigators and others to Employees Human Rights

The aim of the international legal regulation of labor is to protect the employment rights of workers and their professional organisations, to improve the working conditions and welfare of employees by establishing the legal and actual guarantees of these rights.

This regulation should be viewed as a voluntary-compulsory and is additional to the national legislation in the field of labor relations. It is based on the ratification of conventions and other instruments of international organisations and bodies. This is mainly related to the United Nations (UN), International Labor Organization (ILO).

The fundamental rights of every human being are: the right to work, the right of association, the right to freedom from discrimination in employment, the right to freedom from forced labor and some others. These rights are expressed in such instruments as the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural rights.

The principle of **freedom of association** is at the core of the ILO's values: it is enshrined in the *ILO Constitution* (1919), the *ILO Declaration of Philadelphia* (1944), and the *ILO Declaration on Fundamental Principles and Rights at Work* (1998). It is also a right proclaimed in the *Universal Declaration of Human Rights* (1948). The right to organize and form employers' and workers' organizations is the prerequisite for sound collective bargaining and social dialogue. Nevertheless, there continue to be challenges in applying these principles: in some countries certain categories of workers (for example public servants, seafarers, workers in export processing zones) are denied the right of association, workers' and employers' organizations are illegally suspended or interfered with, and in some extreme cases trade unionists are arrested or killed. ILO standards, in conjunction with the work of the *Committee on Freedom of Association* and other supervisory mechanisms, pave the way for resolving these difficulties and ensuring that this fundamental human right is respected the world over.

Freedom of association ensures that workers and employers can associate to efficiently negotiate work relations. Combined with strong freedom of association, sound collective bargaining practices ensure that employers and workers have an equal voice in negotiations and that the outcome will be fair and equitable. **Collective bargaining** allows both sides to

negotiate a fair employment relationship and prevents costly labour disputes. Indeed, some research has indicated that countries with highly coordinated collective bargaining tend to have less inequality in wages, lower and less persistent unemployment, and fewer and shorter strikes than countries where collective bargaining is less established. Established collective bargaining practices were an element that allowed the Republic of Korea to weather the Asian financial crisis and enabled South Africa to make a relatively peaceful transition into the post-apartheid era. ILO standards promote collective bargaining and help to ensure that good labour relations benefit everyone.

Although **forced labour** is universally condemned, the ILO recently estimated that at least 12.3 million people are victims of forced labour worldwide. Of these, 9.8 million are exploited by private agents, including more than 2.4 million in forced labour as a result of human trafficking. Another 2.5 million are forced to work by the State or by rebel military groups. Traditional slavery is still found in some parts of Africa, while forced labour in the form of coercive recruitment is present in many countries of Latin America, in parts of the Caribbean and elsewhere. In numerous countries, domestic workers are trapped in situations of forced labour, and in many cases they are restrained from leaving the employers' home by means of threat or actual violence. Bonded labour persists in South Asia where millions of men, women, and children are tied to their work through a vicious cycle of debt. In Europe and North America, an increasing number of women and children are victims of traffickers who sell them into forced prostitution or sweatshops. Finally, forced labour is sometimes still imposed as a punishment for expressing one's political views.

For many governments around the world the elimination of forced labour remains an important challenge for the 21st century. Not only is forced labour a serious violation of a fundamental human right, it is a leading cause of poverty and a hindrance to economic development. ILO standards on forced labour, in combination with targeted technical assistance, are the primary international tools for combating this scourge.

Child labour is a violation of fundamental human rights and has been shown to hinder children's development, potentially leading to lifelong physical or psychological damage. Evidence points to a strong link between household poverty and child labour, and child labour perpetuates poverty across generations by keeping children of the poor out of school and limiting their prospects for upward social mobility. This lowering of human capital has been linked to slow economic growth and social development. A recent ILO study has shown that eliminating child labour in transition and developing economies could generate economic benefits nearly seven times greater than the costs, mostly associated with investment in better schooling and social services. ILO standards on child labour are primary international legal tools for fighting this problem.

Millions of women and men around the world are denied access to jobs and training, receive low wages, or are restricted to certain occupations simply on the basis of their sex, skin colour, ethnicity or beliefs, without regard to their capabilities and skills. In a number of developed countries, for example, women workers earn up to 25% less than male colleagues performing equal work. Freedom from **discrimination** is a fundamental human right and is

essential for both workers to choose their employment freely, to develop their potential to the full and to reap economic rewards on the basis of merit. Bringing equality to the workplace has significant economic benefits, too. Employers who practice equality have access to a larger and more diverse workforce. Workers who enjoy equality have greater access to training, often receive higher wages, and improve the overall quality of the workforce. The profits of a globalized economy are more fairly distributed in a society with equality, leading to greater social stability and broader public support for further economic development. ILO standards on equality provide tools to eliminate discrimination in all aspects of the workplace and in society as a whole. They also provide the basis upon which gender mainstreaming strategies can be applied in the field of labour.

The termination of an employment relationship is likely to be a traumatic experience for a worker and the loss of income has a direct impact on her or his family's well-being. As more countries seek employment flexibility and globalization destabilizes traditional employment patterns, more workers are likely to face involuntary termination of employment at some point in their professional lifetime. At the same time, the flexibility to reduce staff and to dismiss unsatisfactory workers is a necessary measure for employers to keep enterprises productive. *ILO standards on termination of employment* seek to find a balance between maintaining the employer's right to dismiss workers for valid reasons and ensuring that such dismissals are fair and are used as a last resort, and that they do not have a disproportionate negative impact on the worker.

Most people work in order to earn money. Yet, in many parts of the world access to adequate and regular **wages** is not guaranteed. In numerous countries, non-payment of wages has led to huge wage arrears, and wages are sometimes paid in bonds, manufactured goods, or even alcohol. Large wage arrears have been linked to debt bondage and slavery. In other countries, workers face loss of wages when their employer goes bankrupt. *ILO standards on wages* address these problems by providing for regular payment of wages, the fixing of minimum wage levels, and the settlement of unpaid wages in case of employer insolvency.

The regulation of **working time** is one of the oldest concerns of labour legislation. Already in the early 19th century it was recognized that working excessive hours posed a danger to workers' health and to their families. The very first ILO Convention adopted in 1919, limited hours of work and provided for adequate rest periods for workers. Today, *ILO standards on working time* provide the framework for regulated hours of work, daily and weekly rest periods, and annual holidays. These instruments ensure high productivity while safeguarding workers' physical and mental health. Standards on part-time work have become increasingly important instruments for addressing such issues as job creation and promoting equality between men and women.

ILO standards on **social security** provide for different types of social security coverage under different economic systems and stages of development. Social security conventions offer a wide range of options and flexibility clauses which allow the goal of universal coverage to be reached gradually. In a globalizing world, where people are increasingly exposed to global economic risks, there is growing consciousness of the fact that a broad-based national social

protection policy can provide a strong buffer against many of the negative social effects of crises. For these reasons, in a resolution of the International Labour Conference in 2001, governments, employers and workers called on the ILO to improve social security coverage and extend it to all those in need of such protection.

Convention No. 183 provides for 14 weeks of **maternity** benefit to women to whom the instrument applies. Women who are absent from work on maternity leave shall be entitled to a cash benefit which ensures that they can maintain themselves and their child in proper conditions of health and with a suitable standard of living and which shall be no less than two-thirds of her previous earnings or a comparable amount. The convention also requires ratifying states to take measures to ensure that a pregnant woman or nursing mother is not obliged to perform work which has been determined to be harmful to her health or that of her child, and provides for protection from discrimination based on maternity. The standard also prohibits employers to terminate the employment of a woman during pregnancy or absence on maternity leave, or during a period following her return to work, except on grounds unrelated to pregnancy, childbirth and its consequences, or nursing. Women returning to work must be returned to the same position or an equivalent position paid at the same rate. Also provides a woman the right to one or more daily breaks or a daily reduction of hours of work to breastfeed her child.

The ILO Constitution, in the Declaration of Philadelphia, states that "all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity" and that the fulfilment of this objective "must constitute the central aim of national and international policy". **Social policy** formulated through dialogue between the social partners has the best chance of achieving the aims agreed upon by the international community. Relevant ILO standards provide a framework for creating social policies which ensure that economic development benefits all those who participate in it.

These most important international standards can be found under the **Regulations category**.

We have as well covered the regional agreements on the rights of employees and published them under the geographical area, such as **Africa, Americas, Asia, Middle East, Europe and Oceania**.

At the national level most countries have implemented and enforced the human rights of employees in national law as well as in national practice in family, civil, penal, labour and commercial codes and administrative rules and regulations.

Still the effective enjoyment of these rights through their full recognition, effective protection and their application is expected from many States. Governments must not only refrain from violating the human rights of employees, but must work actively to promote and protect these rights.

Under the category **Case Law** we give reference to the most important databases with the rich access to the cases on the violation of employees' rights. Case law incorporates courts'

decisions from individual cases and encompasses courts' interpretations of statutes, constitutional provisions, administrative regulations and, in some cases, law originating solely from the courts. Ex. a link to the full text of cases by International Labour Organisation, ESCR- Net Case law Database.

The closer examination of **National Precedents** gives clear picture of the application of law on employees' rights by the international and national courts. In some systems precedent is not binding but is taken into account by the courts.

Under the **Legal Opinions** category we have most eminent cases by international and national attorneys, law experts. These formally written opinions state the experts' reasoned belief about what the law on employees' rights is, how the court would interpret it or how it applies to specific circumstances. Ex. legal opinions on the freedom of association, discrimination at work, domestic work, settlement of collective labour disputes.

Interpretation of employees' rights by UN and others is another category under which we placed Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies- International Human Rights Instruments.

To have access to legal recourse against violations of employees' rights is essential. That is why The **Complaint Procedures** category contains an overview of complaint procedures under different international and regional human rights bodies. Individuals who claim that any of their rights have been violated and who have exhausted all available domestic remedies may submit a written communication to the Committee for consideration.

The **Bibliography** category consists of the list of important publications on specific issues of employees' rights. Ex. The series of publications by ILO (International Labour Organisation) which serve as employees' rights policy and advocacy tool for judges, legal practitioners, training institutions and human rights organisations. It is aimed to help them conduct their activities, from judicial training to the adoption of laws and policies in accordance with international standards.

The **Experts within this area** category gives contacts of the legal experts who develop opinion on a matter regarding violations of employees' rights.

If you need to get in contact with the persons or organisations working on protection and promotion of employees' rights and get their view on a certain problem we have the **Contact persons/organisations category** at your disposal. Ex. "European Labour Law and Work Organisation".

