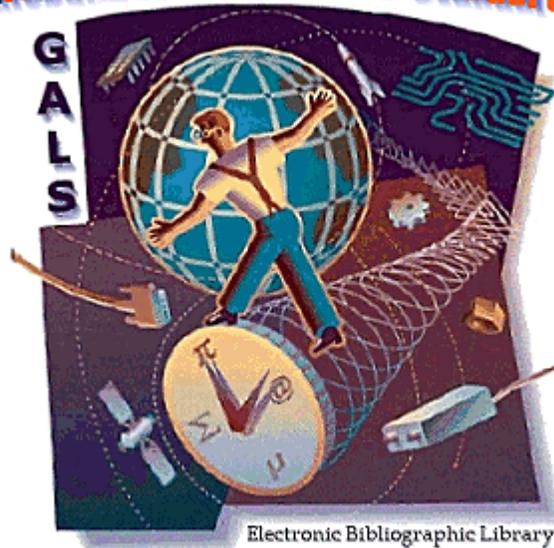


Globalization and Labor Standards



GALS Newsletter

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Short Takes

**Brief updates on labor law developments
In different parts of the world**

Anti-Union Tide Sweeps Through State Legislatures in the U.S.

A deluge of anti-union funding to 2010 political campaigns has yielded a bumper crop of state legislation in the past few months. Media attention has focused on a recent three-week standoff in Wisconsin between labor supporters and the Republican-dominated state legislature. Yet, the resulting Wisconsin law – which strips certain public sectors unions of their collective bargaining rights, bars collection of dues from members’ paychecks, and requires unions to win a new election every year to retain representational status– is but one of several state-level assaults on unions. Recently enacted laws in Alabama, Idaho, and Utah curb unions’ ability to collect dues directly from members’ paychecks – referred to disingenuously by proponents as “paycheck protection” – and similar measures have been introduced in Arizona, Kansas, Mississippi and Missouri. Legislation in Indiana, Ohio, and New Jersey would also gut public sectors unions’ collective bargaining rights.

These successful attacks on public sector unions highlight the need for federal protection for *all* workers’ collective bargain rights. Because public sector unions receive little protection under federal law, they are subject to the whims of state legislatures. Private sector unions, in contrast, enjoy federal protection. Thus, while states may enact paycheck protection laws even against private sector unions, other elements of the Wisconsin law, such as the requirement of annual elections, could not be imposed on private sector unions.

The value of federal protection is evident from an ongoing skirmish between the National Labor Relations Board (NLRB), which is the agency charged with enforcing federal labor law, and the attorneys general of Arizona, South Carolina, South Dakota, and Utah. Each of these states has just enacted a constitutional amendment that limit employees’ methods for choosing a union. On January 14, 2011, the NLRB announced that it may seek to enjoin these states’ constitutional amendments on the grounds that they are preempted by the federal labor law.

The four state amendments, passed in November 2010, are deceptively phrased so as to appear to preserve, rather than limit, the methods of choosing a union. Arizona’s ballot initiative, for example, amends the state constitution to declare that the “right to vote by secret ballot . . . shall be guaranteed where local, state or federal law permits or requires an election, designation or authorization for employee representation.”¹ This language conceals the fact that, under the NLRA, there are two methods of choosing a union: (1) a secret election in which a majority of voters favor the union; or (2) employer voluntary recognition based on evidence that a majority of employees support the union, often referred to as “card check.” The Arizona amendment would eliminate the second method and limit employees to secret ballot elections.

The NLRB has taken the position that the four states’ amendments conflict with federal law because they eliminate one of the methods by which employees can choose a union – card check – by instead guaranteeing a secret election where state or local law permits one. The NLRB stated that it would refrain from pursuing costly litigation if the states stipulated that the amendments are preempted by federal law. All four states have refused to do so. Instead, the states contend that there is no conflict because the amendments only provide for a secret election *if the other method for choosing a union is not available*, that is, if an employer refuses to voluntarily recognize a union through card check. In short, the states contend that the amendments are simply redundant to the federal law.

The states’ argument is belied by the donor profiles of the ballot initiatives that passed these amendments, which reveal that the initiatives were funded by anti-union organizations and opposed by unions and Democrats. It is no accident that initiatives seeking to eliminate the card

¹ <http://www.azsos.gov/election/2010/Info/PubPamphlet/english/Prop113.htm>

check path to union recognition were funded by anti-union interests. In recent years, unions' organizing efforts have been more successful when using card check because this method blunts employers' unlawful but routine election campaign tactics that have tainted the election process.

The states' efforts to avoid preemption are unlikely to prevail given that the Supreme Court recently reaffirmed the broad scope of federal labor law preemption in *Chamber of Commerce of U.S. v. Brown*, 554 U.S. 60 (2008), in which it struck down a pro-union state law due to federal preemption. The states' seemingly deliberate obtuseness may nonetheless serve their desired purpose of forcing the NLRB to engage in wasteful litigation, thus diverting NLRB resources from other worthwhile endeavors at the same time that the federal Congress seeks to cut the agency's budget and amend federal law to eliminate union certification through card check.

-- Jessica Barclay-Strobel, UCLA Law School, 2011

Temporary Employment Agencies

Bartkiw, Timothy J., "Baby Steps? Toward the Regulation of Temporary Help Agency Employment in Canada", *Comparative Labor Law & Policy Journal* v. 31 no1 (October 2009) p. 163-206

Abstract:

This article identifies five harms to labor standards resulting from temporary employment agencies and assesses Canadian efforts to address these harms. These harms are: (1) increased precariousness in compensation and job security for all workers resulting from the downward pressure created by a temporary workforce; (2) agency contracts that erect barriers for temporary workers obtaining full-time employment with an agency's client; (3) under-enforcement of labor standards due to the lack of clarity regarding who is the true employer in a triangular work relationship, as well as statutory loopholes for agencies; (4) structural disincentives to training and safety inherent in a transitory workforce; and (5) temporary workers' practical lack of access to unionization. The article then summarizes four "baby steps" that Canada has made toward regulation of the temporary work relationship that have resulted in the passing of legislation in one province. The author concludes that these steps are inadequate because they focus primarily on individual employment rights, without addressing the structural threat to labor standards posed by temporary workers' lack of access to unionization.

Subjects: [Contingent Work](#), [Employment Law](#) **Full-text links:** || [WESTLAW](#) || [LEXIS-NEXIS](#) |

Work-Family Balance

Hobson, Barbara & Fahlen, Susanne, "Competing Scenarios for European Fathers: Applying Sen's Capabilities and Agency Framework to Work-Family Balance", *Annals of The American Academy of Political and Social Science* (July 2009) p. 214-233

Abstract:

This article analyses the impact of labor policies that promote child-rearing and job security on European fathers' ability to pursue work-life balance. It analyzes responses by parents of young children in 10 countries to the 2004 European Social Survey. First, the article observes that the work-life ideal espoused by fathers is not reflected in the reality of their work hours. For example, although the vast majority of parents of both sexes believe that one's main priority should be family, many fathers report that they work more hours than they would prefer. On the surface, fathers' desire to work fewer hours appears directly correlated to their individual sense of job security. In fact, however, the data shows that fathers' desire to work fewer hours is even more strongly correlated with two other factors -- a lack of labor policies that promote child-rearing and job security, and cultural norms that emphasize men as breadwinners instead of caretakers. Given this empirical data, the article concludes that fathers' ability to pursue work-life balance is limited less by individual factors than by the laws and norms that shape their employment relationship.

Subjects: [Employment Law](#), [European Union](#) **Full-text links:** || [WESTLAW](#) || [LEXIS-NEXIS](#) ||

World Bank

Santos, Alvaro, "Labor Flexibility, Legal Reform, and Economic Development," *Virginia Journal of International Law* v. 50 no1 (October 2009) p. 43-106

Abstract:

This article critiques the methodology and normative assumptions of the influential World Bank project, "Doing Business," which assesses countries' progress in creating legal regimes that offer employers flexibility to define the scope and limits of the employment relationship. Doing Business (DB) promotes five reforms: (1) reduction of employment regulation; (2) introduction of flexible part-time and fixed-term contracts; (3) elimination of minimum wages; (4) elimination of overtime pay; and (5) reduction of limitations on firing, such as severance pay, notice, and dismissal only for cause. The DB Report argues that deregulation spurs economic growth, as evidenced by the fact that countries with legal regimes that adopt these reforms are richer, whereas those that lack these reforms are poorer. The article contends that this conclusion is weak at best because it is based only on correlation, rather than causation. In addition, the author argues that the DB methodology is flawed because it assesses countries' flexibility based on the laws on their books, but fails to consider whether these laws are actually enforced. Furthermore, the DB Report errs by treating countries' economies as monolithic, whereas empirical evidence shows that some of the most productive sectors of a nation's economy are also the ones where worker-friendly laws or norms are enforced. Finally, the article criticizes Doing Business for couching its reforms in the language of economic growth, whereas its data reveal instead that the benefits of such reforms are exclusively enjoyed by employers, while the negative externalities of such deregulation are shifted to workers.

Full-text links: || [WESTLAW](#) || [LEXIS-NEXIS](#) ||

Subjects: [Employment](#)

[Law](#), [Flexibilization](#), [World Bank](#)

Links to Related Projects

The International Labour Organization's (ILO) Informal Economy Resource Database:

<http://www.ilo.org/dyn/infoecon/iebrowse.home>

The Informal Economy Resource Database contains a myriad of ILO activities, research or tools directly or indirectly related to the informal economy and decent work. This source is a "living" and dynamic inventory of information on labour issues relating to the informal economy, such as access to finance, data and statistics, employment, gender equality, policy, rights, social protection and working conditions. It is a valuable tool for anyone undertaking research or working on labour issues and the informal economy.

International Labour Organization's (ILO) Conditions of Work and Employment Laws

<http://www.ilo.org/travdatabase>

The Program maintains a Database of Conditions of Work and Employment Laws, which provides information on laws from around the world. The database covers measures on minimum wages, working hours and holidays, and maternity protection and provides information on around 130 countries from all regions.

Asian Law Center: <http://www.law.unimelb.edu.au/alc/bibliography/browse.asp?s=45>

The Asian Law Centre, an initiative of the University of Melbourne Law School, devoted to the development of understanding of Asian law, offers an extensive bibliography of Asian labor law articles and reports.

Centre for Employment and Labour Relations Law: <http://www.law.unimelb.edu.au/celr/>

Centre for Employment and Labour Relations Law is a research and teaching center devoted to the development of an understanding of labor law at the University of Melbourne. The Center's website describes the activities of the Center and contains links to several databases that are of interest to labor law scholars and practitioners. For example, the Center's Work Relations Law Project contains extensive information about Australian labor law that can be accessed directly at <http://www.austlii.edu.au/au/special/industrial/>.

ETUI Labourline: <http://www.labourline.org/Etui>

ETUI Labourline is a database of European labor information resources covering European, international and comparative aspects of industrial relations and health and safety issues, developed by the Documentation Centres of the European Trade Union Institute and the

European Trade Union Institute for Health and Safety(Brussels). The consolidated bibliographic database contains more than 20,000 references to documents focusing on industrial relations, and more than 15,000 references to documents on health and safety issues.

Globalization Bulletin: <http://www.rci.rutgers.edu/~dbensman/bulletin.html>

The Globalization Bulletin is a weekly e-newsletter providing linked access to the latest articles, research, and web resources on a range of global labor issues—ranging from union organizing and labor markets to immigrations and trade agreements. The Bulletin is produced by the Globalization Task Force of the New Jersey Division of the United Nations Association-USA and the Department of Labor Studies and Employment Relations School of Management and Labor Relations, Rutgers University. To subscribe, email David Bensman at dbensman@smlr.rutgers.edu.

International Social Security and Workers Compensation Journal:

<http://www.business.curtin.edu.au/business/research/journals/international-journal-of-social-security-and-workers-compensation>

The International Social Security and Workers Compensation Journal is an on-line journal that focuses on international scholarship in the areas of social security, workers compensation, and occupational health, and disability support. It is published by the School of Business Law, Curtin Institute of Technology in Perth Australia. The IJSSWC contains inter-disciplinary articles in fields such as law, occupational medicine, health economics, and disability studies.

Labor and Global Change Database: <http://www.ilir.umich.edu/lagn/>

The Labor and Global Change Database provides bibliographies, citation information and (where available) web links to the full text of research exploring connections between labor and globalization. The database aims to provide researchers with an easy means to make the results of their work widely available to other scholars and the interested public. The database is run by and continually updated by the Labor and Global Change Program of the University of Michigan.

LabourWeb: <http://www.lex.unict.it/eurolabor/en/>

The Labour Web is a comprehensive documentation center for information about European labor law, social law, industrial relations and the welfare state. It contains up-to-date versions of European Union law, directives, pending directives, EU news, press releases, economic statistics and decisions of the European Court of Justice. It also contains a Working Papers series and subject matter reports (dossiers) on issues concerning European integration. The site also provides links to other websites that contain working papers, statistical reports, and other information about social, economic and industrial relations affairs in the European context. It is run by the Massimo D'Antona Centre for the Study of European Labour Law, at the Faculty of Law of the University of Catania.

The Marco Biagi Centre for International and Comparative Studies:

<http://www.csmb.unimo.it>

The Marco Biagi Centre for International and Comparative Studies at the University of Modena and Reggio Emilia, Italy, functions as policy resource center on comparative labor issues. Besides publishing books and law journals, the Center provides a clearinghouse of international law journals, including the International Journal of Comparative Labour Law and Industrial Relations (<http://www.csmb.unimo.it/journal.html>). Currently only in Italian, the Center's website will soon offer an English version.

Trade Unions and Labor Relations Database: <http://www.polwiss.fu-berlin.de/tu/english/>

The database, produced by the Institute of Labor Relations of the Otto-Suhr-Institute of the Freie University of Berlin, contains almost 7,000 citations of books, articles, working papers, brochures, proceedings etc. The bulk of the citations address aspects of labor relations in Germany, but there is a substantial body of literature in the database covering the EU and Eastern Europe.

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