

The transfer of undertakings protection of employment law employment essay

[Law](#)



The Working Time Regulations 1998 set limits on working time, and implement the basic requirements of the Working Time Directive.[2] Its most concrete measure is, again following basic rights in international law, [3] mandating a minimum period of 28 days, or four full weeks, in paid holidays for all workers each year although this includes public holidays. [4] There is no qualifying period for this, or any other working time right, because beyond the importance of the law in seeking to strike a balance between work and life, sufficient periods of rest and leisure are seen as a critical element of workers health and safety. It is possible for an employer to give a worker "rolled up holiday pay", for instance an additional 12.5% in a wage bill, in lieu of taking actual holidays. The employer must make sure the worker does in fact take paid holidays, and if the worker has not done so and the job terminates, the employer must give an additional payment for the unused holiday entitlement.[5] Where a person works at night, she may only do 8 hours in any 24 hour period on average, or simply 8 hours at most is dangerous.[6] Moreover every worker must receive at least 11 consecutive hours of rest in a 24 hour period, and in every day workers must have at least a 20 minute break in any 6 hour period.[7] The most controversial and widely known provisions in the working time laws, however, concern the maximum working week. The maximum does not apply to anyone who is self-employed or who can set their own hours of work, as it is aimed to protect workers who possess less bargaining power and autonomy over the way they do their jobs.[8] The European Court of Justice's decision in *Landeshaupstadt Kiel v Jaeger* [9] that junior doctors' on call time was working time led a number of countries to exercise the same "opt out"

derogation as the UK, albeit limited to medical practice. The Health and Safety Executive is the UK body charged with enforcing the working time laws, though it has purposively taken a "light touch" approach to enforcement. There is also a principle of equality which means that people should be judged according to the content of their character, and not another irrelevant status, is fundamental to UK and EU law. The Equality Act 2010 reaches beyond employment, into access to private and public services, but in the field of work it largely reflects the EU's case law and the Equal Treatment Directive for gender, the Racial Equality Directive and the Employment Equality Framework Directive for disability, sexual orientation, religion or belief and age, major EU Equality Directives.

[10]Beyond the absolute prohibition of discrimination against trade union members, the Equality Act 2010 brushes-off discrimination based on gender, pregnancy, race, sexuality, marital status, belief, disability and age.[11]A worker has generally to show that they were treated directly less favorably than another person who does not have their trait such as sexuality or race, or that actions an employer applies to everyone have an indirectly disparate impact on people with their trait. Workers are also entitled to not suffer harassment at work, and if they bring a claim they should not be victimised, or suffer any other disadvantage for trying. Direct discrimination can be justified if the employer shows a status is a genuine occupational requirement. Indirect discrimination can be justified if there is objective justification for the rule, generally based on business necessity. Age discrimination is seen as a special case, so it may always be objectively justified. Equal pay between men and women has also has been treated

separately in law and follows differently worded legal requirements. The law on disability goes further than other categories by placing positive duties on employers to make reasonable adjustments to help disabled people.

Australian labour law has had a unique development that distinguishes it from other English-speaking jurisdictions. In 1904 the Conciliation and Arbitration Act was passed mandating "Conciliation and Arbitration for the Prevention and Settlement of Industrial Disputes extending beyond the Limits of any one State". In 2005, the WorkChoices Act removed certain dismissal laws, removed the "no disadvantage test", and made it possible for workers to submit their certified agreements directly to Workplace Authority rather than going through the Australian Industrial Relations Commission. There were also clauses in WorkChoices that made it harder for workers to strike, made it easier for employers to force their employees onto individual workplace agreements rather than collective agreements, and banning clauses from workplace agreements which supported trade unions. WorkChoices came into operation in 2006, it gave effective control of 85% of the Australian labour law system to the Federal Government.[12]The constitutional validity of the legislation was challenged in the High Court of Australia in *New South Wales & Ors v Commonwealth*. [13]The Court decided by a majority of 5–2 by Kirby and Callinan JJ in November 2006 that all of the reforms were valid. The case was also a significant constitutional law decision in the area of Federal-state relations. Workchoices eventuated in the demise of the 11 year old government of John Howard. A comprehensive election defeat on this issue showed that he had pushed to issue more right than the Australian electorate were willing to accept. Howard became only

the second Prime Minister to lose his seat. As for contract of employment, Workplace Relations Act 1996, introduced individual employment contracts described as " Australian workplace agreements" in the legislation, as an alternative to collective employment contracts. Ex parte H. V. McKay[14], well known as the Harvester case is a landmark Australian labour law decision on a fair living wage for workers. The case had national ramifications and was of international significance.[1] Higgins J in the Commonwealth Court of Conciliation and Arbitration held that an employer was required by law to pay a decent, fair wage to his workers. Higgins J had been appointed President of the newly created Commonwealth Court of Conciliation and Arbitration in 1907 and had been a Justice of the High Court of Australia since 1906. Hugh Victor McKay, one of Australia's largest employers, owned the Sunshine Harvester Works where agricultural machinery was built. Under the Excise Tariff Act 1906, the Federal Australian government had required the payment of an excise tax from all employers who did not pay a wage that was " fair and reasonable", as defined by the government, or the Court of Conciliation and Arbitration. McKay was charged for the tax, given the payments he paid his workers. Higgins J held that McKay was obliged to pay his employees a wages that met " the normal needs of an average employee, regarded as a human being in a civilised community", regardless of his capacity to pay. This gave rise to the legal requirement for a basic wage. In defining a 'fair and reasonable wage, Higgins J employed Pope Leo XIII's Rerum Novarum of 1891, an open letter to all the bishops that addressed the condition of the working classes. Higgins ruled that remuneration " must be enough to support the wage earner in

reasonable and frugal comfort." A 'fair and reasonable' minimum wage for unskilled workers of around 70 cents, or 42/- per week. Later surveys showed that this minimum was adequate to provide subsistence. Indian labour law refers to laws regulating employment in India. There are over fifty national laws and many more state-level laws. Traditionally Indian governments at federal and state level have sought to ensure a high degree of protection for workers. So for instance, a permanent worker can be terminated only for proven misconduct or for habitual absence.[15]In Uttam Nakate case, the Bombay High Court held that dismissing an employee for repeated sleeping on the factory floor was illegal, a decision which was overturned by the Supreme Court of India. Moreover, it took two decades to complete the legal process. In 2008, the World Bank has criticised the complexity, lack of modernisation and flexibility in Indian regulations. [16]India is considered to be a highly regulated and most rigid labor law country in the world. Rigid labor laws in India have been criticized as the cause of low employment growth, large unorganized sector, underground economy, use of casual labor and low per capita income.[17]Workmen's Compensation Act of 1923 compensates a workman for any injury suffered during the course of his employment or to his dependents in the case of his death. The Act provides for the rate at which compensation shall be paid to an employee. This is one of many social security laws in India. Trade Unions Act of 1926 was enacted the rules and protections granted to Trade Unions in India. This law was amended in 2001. Payment of Wages Act of 1936 regulates by when wages shall be distributed to employees by the employers. The law also provides the tax withholdings the employer must

deduct and pay to the central or state government before distributing the wages. Industrial Employment (Standing orders) Act of 1946 requires employers in industrial establishments to define and post the conditions of employment by issuing so-called standing orders. These standing orders must be approved by the government and duly certified. These orders aim to remove flexibility from the employer in terms of job, hours, timing, leave grant, productivity measures and other matters. The standing orders mandate that the employer classify its employees, state the shifts, payment of wages, rules for vacation, rules for sick leave, holidays, rules for termination amongst others. Industrial Disputes Act of 1947 regulates how employers may address industrial disputes such as lockouts, layoffs, retrenchment etc. It controls the lawful processes for reconciliation, adjudication of labour disputes. The Act also regulates what rules and conditions employers must comply before the termination or layoff of a workman who has been in continuous service for more than one year with the employer. The employer is required to give notice of termination to the employee with a copy of the notice to appropriate government office seeking government's permission, explain valid reasons for termination, and wait for one month before the employment can be lawfully terminated. The employer may pay full compensation for one month in lieu of the notice. Furthermore, employer must pay an equivalent to 15 days average pay for each completed year of employee's continuous service. Thus, an employee who has worked for 4 years in addition to various notices and due process must be paid a minimum of the employee's wage equivalent to 60 days before retrenchment, if the government grants the employer permission to layoff.

Minimum Wages Act of 1948 prescribes minimum wages in all enterprises, and in some cases those working at home per the schedule of the Act. Central and State Governments can and do revise minimum wages at their discretion. The minimum wage is further classified by nature of work, location and numerous other factors at the discretion of the government. The minimum wage ranges between 143 to 1120 per day for work in the central sphere. State governments have their own minimum wage schedules.