

PREFACE

This Fourth Edition of Volumes IIA and IIB of *International Labor and Employment Laws* covers developments through 2012, with a few updates into 2013. Chapters on Indonesia and Nigeria are added in this volume for the first time, and significant changes such as a new Trade Union Law and New Labor Code in Vietnam in 2013 and amendments to the Fair Work Act in Australia at the end of 2013 are discussed.

The purpose of the Volumes is not to present an exhaustive discussion of the different systems of law, but rather to provide basic knowledge of the statutory and regulatory systems of the countries covered. The authors have attempted to describe the most prominent features in each country covered, in straightforward, understandable language. The complete outline sent to the author contributors is reproduced below, in the hope that it will give readers a meaningful overview of the broad subject matter approach that has been taken in preparing the work.

On behalf of all the authors, we are indeed pleased to present this Fourth Edition. Our work to record the many changes that affect workplaces around the world will continue as we supplement this edition, from time to time adding chapters on additional countries. Firms that have expertise in the labor and employment law systems of one or more countries not covered in these Volumes, and who have an interest in writing a chapter for publication, are requested to contact William L. Keller.

Again, our deepest thanks to the members of the Senior Editorial Board and to the author contributors of the individual chap-

ters, all of whom are fully identified in the book. Without their strong commitment, many talents, expertise, and tireless work, this publication would never have been possible.

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October 2013

OUTLINE OF TOPICS IN COUNTRY CHAPTERS

The country chapters were written following the basic outline shown below. Where the authors deviated from that outline, it was in the interest of giving a better, more understandable explanation of the law. They have, however, tried to at least cover, in some way, the points listed if relevant to the country they were writing about.

INTRODUCTION

- A. Basic makeup of the government (legislative, executive, judicial?)
- B. General sources of labor/employment law—domestic, international (membership in ILO, European Union?)
- C. Division of responsibility for labor/employment law between federal and state or provincial and local governments
- D. Major administrative bodies responsible for overseeing labor/employment law regulatory system (with cross-references to later, more detailed discussions in the chapter)
- E. Structure of judicial/dispute resolution system for labor law, including appeals system
- F. Class or Group Actions
- G. Extraterritorial Application of Law

I. INDIVIDUAL EMPLOYMENT

- A. Individual Contract of Employment
 - 1. Historical Background
 - 2. Summary of main legal instruments regulating the individual contract of employment
 - 3. What forms of atypical employment are not covered by these laws (e.g., part-timers)?
- B. Statutory Regulation of Employment
 - 1. Must an employer list job vacancies with the regional labor bureau?
- C. Substance of the Individual Contract of Employment
 - 1. Mandatory terms in the contract
 - 2. Notice Periods
 - 3. Presumption of Term (indefinite or employee at will)
 - 4. Incorporation of terms in a collective agreement
- D. Employee Dismissal
 - 1. Can the employer dismiss an employee for cause without warning or notice?
 - 2. Can the employer dismiss an employee without the union's or works council's approval?
 - 3. What employee conduct justifies dismissal? Is this set down in statutes or case law?

4. How can the employee protest this dismissal?
 5. Is there a government tribunal or other body that reviews complaints of unfair dismissal?
- E. Privacy
1. What laws if any govern this area in the employment context?
- F. Employee Duty of Loyalty, Trade Secrets, Covenants Not to Compete
1. What laws if any govern this area?

II. COLLECTIVE BARGAINING

- A. Introduction
1. Historical Background
 2. Summary of main legal instruments regulating collective bargaining
- B. Union Recognition
1. The Union Recognition Process
 - a. How does a union become recognized for bargaining? Are there elections? Do workers indicate in some manner that the union is their representative?
 - b. If workers elect a union as representative, describe the law regarding this process.
 2. Inter-union disputes. Does it happen that more than one union seeks to represent the same group of workers? If yes, how is this matter settled?
 3. Union Membership
 - a. Aside from collective bargaining, do workers have a right to belong to a union? If yes, what is the source of this right?
 - b. If there is a right to belong to a union, does this right extend to all workers, both public and private sector, and at all levels (including managers, high executives)?
 - c. Does the employer have a right to know if a worker belongs to a union?
 - d. Is a worker protected against discrimination in employment on the basis of union membership?
- C. Level of Bargaining
1. Summary of structure of bargaining
 - a. Where does most bargaining take place—at plant, company, or industry level?
 - b. Is bargaining local, regional, or national?
 2. Identity of the Signatory Parties
 - a. Employers: Do employers negotiate through employers associations or individually?
 - b. Unions: What level of the union is responsible for negotiating and signing the agreement?
 - c. Does a central union federation coordinate bargaining?
- D. Effect of the Agreement
1. Is the collective agreement legally binding?

2. If it is not legally binding, are its terms enforceable through the individual contract of employment?
 3. Is the collective agreement binding on nonsignatory employers? If yes, how is the extension of the terms of the agreement accomplished (e.g., by ministerial decree, ministry regulations)?
- E. Duration of the Collective Agreement
1. Are collective agreements concluded for specific terms?
 2. If the agreement does not have a specific duration, does custom dictate when a new agreement is negotiated (e.g., the concept of the annual wage round, the Spring Wage Offensive, etc.)?
 3. When a collective agreement is deemed to have expired, do its terms survive in the individual contracts of employment? Can the employer unilaterally change the terms and conditions of employment?
- F. Scope of the Collective Agreement
1. Subjects of Bargaining. Must the parties, by law, bargain over certain subjects? If yes, list the subjects.
 2. Terms governing the employer-union relationship
- G. Strikes and Other Industrial Action
1. Strikes
 2. Lockouts
 3. Picketing
 4. Handbilling
 5. Slowdowns, sit-ins
 6. Secondary Action
- H. Third Party Resolution of Disputes
1. Are nongovernmental dispute resolution mechanisms used? If yes, how is the arbitrator or mediator elected?
 2. Is arbitration used? If yes, is the result binding on the parties?
 3. Is there a distinction between interest and rights disputes? If yes, are either or both types resolved through arbitration? What types of issues go to arbitration? Is arbitration used frequently?
 4. Is there judicial review of private arbitration awards?
 5. Is mediation or conciliation used?
- I. Union Security
1. Do employees have a right not to belong to a union?
 2. Does the union receive membership fees from workers? Can the union compel payment of such fees?
 3. Is the union obliged to represent non-members?
 4. Do all the terms of the collective agreement extend to non-members of the union?
 5. Does the union have the right to an office on company premises? If yes, who pays for this?
 6. Do union officers have the right to time off for duties connected to the collective agreement? If yes, is this paid time off? If yes, who pays for this?

7. Do union officers have the right to time off for union training courses? If yes, is this paid time off? If yes, who pays for this?

III. REPRESENTATION BY ENTITIES OTHER THAN UNIONS

- A. Introduction
 1. Historical Background
 2. Summary of main legal instruments regulating this other channel of employee representation
 3. Employer initiated forms of employee representation (e.g., consultation committees)
- B. Establishment of the Works Council
 1. Must a works council exist in a company of a certain size or is it a voluntary option?
 2. How is a works council formed? Are there elections? If yes, describe any laws or regulations controlling this process.
 3. Are all employees represented by the works council or only certain classes of employees?
- C. Scope of the Works Council's Powers
 1. Information Rights
 2. Consultation Rights
 3. Co-determination Rights
 4. Relationship between the works council and issues determined in the collective agreement

IV. REDUNDANCY AND TRANSFERS OF UNDERTAKINGS

- A. Redundancy
 1. Can an employer terminate employees for redundancy without warning or notice?
 - a. Can the employer dismiss an employee without the union's or works council's approval?
 - b. Must the labor ministry be notified? If yes, must it approve the redundancies before they can be carried out?
 2. What constitutes redundancy? Is this set down in statutes, regulations, or case law?
 3. If the employees disagree that a redundancy situation exists, what complaint mechanism is there?
 4. Must a redundancy payment be made by the employer? If yes, is there a mandatory formula for calculating the amount? If yes, is the actual amount paid often higher than that required by law?
 5. Is this subject covered in collective agreements?
- B. Transfers of Undertakings
 1. Does a change in the ownership of an undertaking affect the employee's status especially in regard to the amount of service the employee has for purposes of the redundancy calculation?

2. Which employer, the seller or the buyer, is responsible for making the redundancy payments to workers?
3. Must the new owner abide by the terms of the collective agreement that is in effect?
4. Must the new owner abide by the terms in the individual contracts of employment?

V. WAGES, HOURS, AND LEAVE

- A. Wages
 1. Is there a minimum wage? If yes, what categories of workers does it cover?
 2. Overtime Pay
 3. Taxes (including Social Security)
- B. Hours
 1. List any laws or regulations concerning
 - a. The maximum length of the work day
 - b. The maximum number of hours in a work week
 - c. Restrictions on night work
 - d. Restrictions on Sunday work
 2. Do any laws or regulations specify the payment of premium pay for work deemed to be in excess of a normal workday or work week?
- C. Leave
 1. Do any laws or regulations mandate a specific amount of annual leave (vacation)? If yes, is this paid leave?
 2. Do any laws or regulations mandate the granting of time off for holidays? If yes, is this paid time off?
 3. Do any laws or regulations mandate pregnancy, childbirth, and/or family leave?
 4. Do any laws or regulations mandate time off for military service?

VI. ANTIDISCRIMINATION

- A. Introduction
 1. Historical Background
 2. Summary of the main legal instruments regarding equality of treatment in employment
- B. Protected Groups
 1. List the basis for protection (e.g., race, sex, religion, age)
 2. If handicap (disability) is not covered in an antidiscrimination statute, explain what laws relate to the employment of persons with disabilities.
 3. If pregnancy or maternity is not covered in an antidiscrimination statute, explain what laws and regulations relate to the employment of pregnant women or new mothers.
 4. Is there a mandatory maternity leave? If yes, what is the duration? If such a leave is paid, who pays for the leave?

VII. OCCUPATIONAL SAFETY AND HEALTH AND WORKERS' COMPENSATION

- A. Occupational Safety and Health
 - 1. Historical Background
 - 2. Summary of main legal instruments regulating safety and health at the workplace
 - 3. Enforcement Mechanisms
- B. Workers' Compensation

VIII. PENSIONS AND BENEFITS

- A. Introduction
 - 1. Historical Background
 - 2. Summary of main legal instruments regulating employee benefits
- B. Pensions
 - 1. Must employers make contributions for employee pensions? If not, is it customary to do so?
 - 2. Must employers pay into a state scheme for employee pensions?
 - 3. Are pensions portable?
- C. Health and Disability Funds
 - 1. Must employers make contributions for employee health (medical, sickness) insurance? If not, is it customary to do so?
 - 2. Must employers make contributions for employee disability insurance? If not, is it customary to do so?

IX. IMMIGRATION

- A. What laws govern employment of aliens?