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Race and Racism – Why does European Law have Difficulties with Definitions?

Erica Howard

Abstract: Within Europe, a number of legislative instruments provide protection against racism and race/racial discrimination, but definitions of the terms race and racism are mostly absent from these instruments. This paper examines the different terms used in the different instruments and the definitions given. Particular attention is given to the question as to whether the grounds mentioned can be extended to cover discrimination based on race/racial or ethnic origin, colour, descent, nationality, national origin and religion or belief. Another question discussed is whether common definitions/interpretations of the terms race, racism and racial discrimination should exist in Europe and, if so, from which source these should be drawn.

Dismissal and Discrimination: Illegal Workers in England and Australia

Robert Guthrie and Rebecca Taseff

Abstract: This paper deals with various topical issues in relation to illegal workers. The legal rights of illegal workers have become an international concern. In this paper two common law countries are examined. The engagement of illegal workers raises a number of delicate employment law and policy issues. This article compares the attitude of the courts in England and Australia in relation to the question of the rights of workers who work contrary to immigration laws (illegal workers). In England, the courts have tended to adopt a traditional approach of not enforcing contracts which are tainted by illegality in relation to cases involving payment of wages and termination of employment. This has often meant that workers employed illegally have no rights to enforce agreements with employers who are a party to the illegal agreement. However, in relation to discrimination cases the English courts have used a number of devices to sidestep this harsh approach, and recently a number of workers who have been engaged illegally have been successful in establishing that their employer has discriminated unlawfully against them. Within the last decade in Australia the picture is even less clear with a mixture of outcomes in relation to cases by workers claiming wages when they have been working illegally. No discrimination cases have emerged in Australia, although this paper speculates that the Australian courts may be receptive to adopting the English approach.

The Impact of Global Employment Models in a Developing Country: Industrial Relations Management in Multinational Banks in Tanzania

Aloysius Newenham-Kahindi

Abstract: This paper examines Industrial Relations (IR) in a developing country under the influence of two foreign-owned Multinational Companies (MNCs). By means of qualitative research, two banks, one US-based, the other South African-owned, are studied to determine the influence of the firm and of the host country in shaping IR practices. The paper begins by discussing employment relations in Tanzania, and then focuses on how the banks are actively transferr their employment practices to their subsidiaries. Considering the challenges posed by the host country IR systems, the paper illustrates how Tanzania aims to strike a balance between IR practices in the two MNCs and the social and economic need to sustain employment.

Voluntarism and the Single Channel: the Development of Single-Channel Worker Representation in the UK

Ruth Dukes

Abstract: As a contribution to the debate on the possibility of an end to single-channel worker representation in the UK, this paper seeks to explain the persistence of single-channel representation in Britain throughout the twentieth century. It explores the meaning of the term 'single channel' generally, and in the British context, and examines the possibility of a causal relationship between the voluntarist approach to the regulation of industrial relations and the persistence of single-channel representation. The focus of the paper is on the Second World War and its aftermath, and the decision of the post-war government not to legislate to institute workplace representation across the board.

Fixed-term Employment Contracts: The Exception to the Rule?

Roger Blanpain

Abstract: This article examines the use of fixed-term employment contracts, and the limits that are placed on their use in EU Member States such as Belgium and the Netherlands. A failure on the part of the employer to comply with the provisions regulating such contracts leads to their transformation into open-ended employment contracts. he article then considers the case of contractual agents hired by the EU on three-year contracts to perform permanent tasks and functions, on a different pay scale to that of permanent officials. The author highlights the fact that this practice is in contrast with the general principle of equal pay for equal work, and with the framework agreement on fixed-term contracts negotiated between the social partners at EU level in 1999. The rulings of the European Court of Justice in Adelener and in Vassallo are also examined in this connection. In conclusion, the author points to the need for the EU social partners to reconsider this issue in the light of general (European) legal principles.

Fixed-Term-at-Will: The New Regulation of Fixed-term Work in Sweden

Samuel Engblom

Abstract: Since 1 July 2007, Swedish employers have no longer been required to provide an objective reason, such as the special nature of the work or a temporary peak in their business, when they hire someone on a fixed-term rather than an open-ended contract. The long list of different types of fixed-term contracts in the Employment Protection Act has been shortened, and a radical new type – fixed-term-at-will – has been introduced. Fixed-term-at-will marks a departure from earlier attempts to rein in fixed-term work by only allowing it when justified by some inherent characteristic of the work itself. Instead, the abuse of consecutive fixed-term contracts is to be prevented by time limits. An employee can work on fixed-term-at-will contracts for the same employer for up to two years during a five-year period. Through generous possibilities to combine fixed-term-at-will with the other remaining types of temporary contracts, substitute work and seasonal work, Sweden will have virtually no statutory protection against the abuse of successive temporary contracts. In the light of the ECJ's Adeneler judgment, it must therefore be questioned whether the Swedish regulation complies with directive 1999/70/EC.

Documentation and comments

Young People, Education and Training, Employment and industry: the challenges for Italy in a Changing World

Luca Cordero di Montezemolo