14 Employment law

Like consumer law, employment law is a very large topic in which the principles of tort and contract have been greatly added to by specific legislation. The history of employment law really begins with the industrialization of Western countries in the 19th century. Before industrialization most people worked on the land or in some craft connected with agriculture. They tended to work for the same employer in the same place most of their life. Employment rights depended upon paternalistic employers and informal agreements. Many employees were in a very weak position because part of their wages was paid in the form of food and accommodation. Although there were peasant movements which succeeded in improving conditions—over 1,000 of them in Tokugawa Japan, for example—few of them led to legislation or outlasted the protest in question.

Industrialization brought large numbers of workers together in the same workplace. Recognizing their strength in times of economic expansion and their weakness during depressions, they began to organize themselves more systematically than farmworkers. In response, governments began to see a need for legislation in order to standardize rights and conditions. Laws were passed to recognize and also limit the right of workers to strike. Other legislation dealt with health and safety in the workplace, and limits upon working hours and ages. Toward the end of the century, Germany and other countries developed systems of insurance to protect workers during sickness, unemployment and retirement.

The 20th century has seen a great increase in the detail of such legislation. Although employees' rights seem to have expanded during labor shortages (as in present-day Japan) and contracted in times of unemployment, there has been a steady increase in the areas of employment that the law has come to regulate. Most of the richer countries now have legislation which guarantees a minimum wage for all workers; prevents employees from being dismissed without some reason, period of advance notice, or compensation; and requires employers to give their employees a written statement of the main term of their employment contract. In the last twenty years, many countries have also passed laws to ensure that men and women are given equal opportunities to do the same work in the same conditions.

Employment rights

English law makes a clear distinction between employees and self-employed people. In general, employees have far more legal rights because they are thought to be in a weaker economic position than the self-employed. For example, the 1978 Employment Protection (Consolidation) Act requires that employees be given a written summary of their conditions of work; it provides that employees be given at least a week's notice if employment is to be ended; and it gives employees the right to compensation if they are dismissed unfairly or made redundant (dismissed because there is no longer any suitable work). This same Act also gives women the right to time off in order to have a baby and the right to return to work within a certain period after having the baby. The application of these rights, however, depends upon the circumstances of employment. For example, people who work part-time (under 16 hours a week) have little protection. Men over 65 and women over 60 are not entitled to compensation for redundancy. The Unfair Dismissal Tribunal sometimes rules that it is fair for an employer to dismiss a sick employee, especially if the employer is a small business. And companies employing fewer than five people do not have to re-employ a woman who leaves to have a baby.

Other English legislation, such as the 1970 Equal Pay Act, the 1976 Race Relations Act, and the 1975 and 1986 Sex Discrimination Acts, attempts to ensure equality of opportunity for employees and job applicants whatever their race or sex. People complaining of discrimination have the right to take their case to an industrial tribunal. Julie Hayward, a cook at a shipyard in Scotland, claimed that it was unfair that male painters, engineers and carpenters at her workplace were paid more than she was. Since the Equal Pay Act requires equal pay for work of equal value, the industrial tribunal carried out a job evaluation survey. The case was finally decided in her favor by the House of Lords. Mrs. Ursula Hurley won her claim against unfair dismissal after her employer dismissed her because he thought a woman should stay at home to look after her young children. A male worker won his claim that he should not have to work in a very dirty part of a factory because women were not required to work there.

EC employment law

EC law sometimes gives better protection to employees than English law. When Ms. Helen Marshall claimed that she should not have been made to retire from her job at age 62 since male employees were allowed to continue until they were 65, she lost her case at an industrial tribunal which

argued that EC law did not prevent member countries from having different retirement ages for men and women. But the European Court ruled that although different ages for receiving retirement pension were legal, it was not legal for a member state to force women to retire from work earlier than men.

Since there is supposed to be a single labor market in the EC there have been many attempts to harmonize employment rights among member states. One of the many questions still to be agreed on is whether there should be a standard minimum wage. Supporters argue that low-paid workers would be better protected if all employers had to pay a minimum hourly rate. But opponents say that this would put too much pressure on small businesses and discourage them from creating new jobs.

Sunday trading is another issue dividing the EC. Although many European countries allow businesses to open every day of the week, the 1950 Shops Act limits Sunday trading in Britain—partly for religious reasons, and partly to ensure that shopworkers get at least one day's holiday a week. But the rules are complicated and out of date. Stores can sell whiskey, for example, but not coffee; magazines but not books; lightbulbs for cars but not for houses. Some fish and chip shops can sell many kinds of takeaway food on Sundays, but not fish and chips. B & Q, a large D-I-Y business, has claimed that the 1950 Act restricts imports from other EC countries and, therefore, breaks Article 30 of the Treaty of Rome.

The right to strike was one of the first employment rights to be recognized by law, yet the specific rules have varied from time to time and country to country. Since the 1984 Trade Union Act, all strikes in Britain must be supported by a majority vote of the workers in a secret ballot. Technically, strike action still constitutes a breach of an employee's contract of employment. Indeed in 1976 when Grunwick, a London film-processing firm, dismissed all its striking workers, the workers lost their claim in an industrial tribunal for unfair dismissal. However, employers are unlikely to dismiss workers who are all backed by a trade union. When Britain had a high record of strikes in the 1970s, it was sometimes said that there were too many different unions inside each company—one to represent each kind of job. Recently there has been a trend towards adopting single-union agreements whether it is legal for an employer to decide which union a worker is to join.

Comparison with Japan

There are fewer employment laws in Japan than in many Western countries. Few workers are given clear job descriptions or written

Figure 14.1 *The right to strike: an employment right recognised by law.*

contracts and it is unusual for an employee to take legal action against his employer. The main law about sexual discrimination simply asks employers to make efforts to reduce discrimination, without imposing clear duties or penalties. However, as in other aspects of Japanese society, it is not clear if the low level of legal activity necessarily means that employees have fewer rights. It certainly seems to be the case that workers have to work very long hours and often do not ask for overtime payment. Despite the current labor shortage, which has encouraged employers to hire women to do more responsible and better paid work than before, very few women enjoy equal employment opportunities. In addition, many jobs remain closed to workers of non-Japanese origin, even those who have lived all their lives in Japan. On the other hand, Japanese workers enjoy more security than many employees in western countries. Once hired, they are unlikely to be dismissed. Insurance benefits and recreational facilities are usually made available to them by their companies, and many workers are able to live in big cities only because their employers provide low-cost accommodation for them.

One legal development in Japan which has yet to spread to western countries is law suits against the employers of workers who had died of *karoushi*—not a specific accident in the workplace or industrial-related disease, but general stress brought about by overwork. In 1992, the widow of a Mitsui Company employee was awarded ¥30 million in compensation after a court learned that her husband had been spending 103 days a year away from home on stressful business trips before his sudden death.