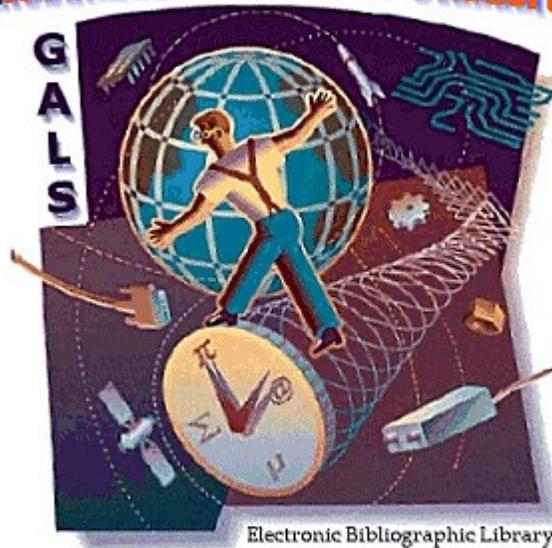


Globalization and Labor Standards



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Katherine V.W. Stone – Editor and Project Director

Managing Editor:

Brendan Smith

Student Contributors:

Lincoln Ellis

Jessica Barclay-Strobel

Todd Kyle

Amy Martin

Ryan Chin

Tech Advisor:

Salman Quazi

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Short Takes

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

Immigration Reform as Labor Policy in the United States

On April 13, 2010, the Arizona state House of Representatives passed Senate Bill 1070, which became regarded as “the toughest measure in the country against illegal immigrants.” Currently six other states -- Georgia, Mississippi, Nebraska, Oklahoma, Pennsylvania and South Carolina -- are considering enacting similar measures. While much of the controversy about the Arizona law involves racial profiling and constitutional rights, one of the underlying issues involves the employment rights of immigrants. A common complaint by supporters of such measures is that the presence of a large undocumented immigrant population takes jobs away from native workers. As a result, the Arizona state law is expected to make employment more difficult for documented and undocumented immigrants alike.

Under the Arizona law, immigrants will be required to carry documentation proving their registration in the country and police will be required to check for these documents whenever there is a reasonable suspicion that the individual is an undocumented alien. In addition, the law makes it a criminal offense to hire any individual from a vehicle that “blocks or impedes the normal movement of traffic.” This particular provision directly impacts day laborers by punishing anyone attempting to hire them. The statute also has a broad provision making it a criminal violation to assist or transport undocumented immigrants. Overall, the law will make employment much more difficult for undocumented immigrants by criminalizing it at the hiring stage and then requiring constant documentary proof of legal employment status.

The Arizona law has been challenged in court, and its central features have been suspended while the case moves to the higher courts. The case poses the question of whether, and to what extent, states and localities can engage in immigration regulation – specifically, the regulation of employment of undocumented workers -- without encroaching on the federal immigration power.

Another case currently before the Supreme Court could well determine the fate of the Arizona ordinance and the others on the agenda in numerous states. The case, called *CPLC v. Napolitano*, involves the tension between the Immigration Reform and Control Act of 1986 (IRCA), which contains an express preemption clause, and a Supreme Court case that granted states considerable latitude to regulate the employment status of immigrants. IRCA states: “[t]he provisions of this section preempt any State or local law imposing civil or criminal sanctions (other than through licensing and similar laws) upon those who employ, recruit or refer for a fee for employment, unauthorized aliens.” Prior to IRCA, the Supreme Court had held in a 1976 case called *De Canas v. Bica*, that the state of California could enact a law that prohibited the employment of foreign nationals without work authorization. In the *De Canas* decision, the Court defined activity that would be legitimate state immigration regulations as those including “a determination of who should or should not be admitted into the country, and the conditions under which a legal entrant may remain.” When Congress subsequently enacted IRCA, it did not explicitly state whether the preemption provision was meant to override *De Canas* decision.

In 2007, Arizona tested the tension between *De Canas* and IRCA by enacting an ordinance that conditioned business licensing on compliance with the federal E-Verify system used to exclude ineligible aliens from employment. The ordinance was challenged in the courts and, in 2008, the Ninth Circuit Court of Appeals upheld the ordinance in *CPLC v. Napolitano*. The Appeals Court relied on *De Canas* to hold that “the authority to regulate the employment of unauthorized workers is ‘within the mainstream’ of the state’s police power.” On December 8th, 2010, the

Supreme Court heard oral argument in an appeal originating from the 9th Circuit's decision in *CPLC*.

The outcome of the *CPLC* case will determine the extent to which states and localities are can engage in immigration-related lawmaking. A finding of federal preemption would deal a serious blow to sub-federal immigration regulation. A contrary conclusion would likely lead to increased sub-federal lawmaking and copycat efforts around the country.

Arizona is not the only state engaged in immigration-related lawmaking. In 2009, the fifty states had combined to consider an estimated 1,500 immigration related bills. However, the battles taking place in Arizona will remain in the spotlight, serving as a microcosm of the broader problems regarding immigration policy and enforcement in the United States. Whatever the result, the labor market for immigrants, legal and undocumented alike, could be facing substantial shifts in regulation in the immediate future.

-- Ryan Chin, UCLA School of Law

Country-Specific Case Studies

Koukiadis, Ioannis D, "General Characteristics of the Greek Labor Law", *Comparative Labor Law & Policy Journal* v. 30 no2 (Winter 2009) p. 145-158

Abstract:

This article summarizes the current state of labor law in Greece, splitting its analysis between "individual labor relations" and "collective labor law." Like most West European countries, Greek law contains protections against discrimination and for extra pay for overtime work. However, Greece departs from most Western European countries by allowing employers to terminate employees without justification or reason. At the same time, unlike most European nations, the Greek Minister of Employment can prevent mass dismissals by decree. Under Greece's collective labor law, workers are entitled to collective negotiation. If that fails, they are entitled to mediation, and if that fails, to arbitration. For the last fifteen years, mediation and arbitration has been conducted by a non-governmental organization called the Organization of Mediation and Arbitration (OMED), which the author calls successful in deterring major conflicts and important in fighting poverty wages in Greece.

Subjects: [Collective Bargaining](#), [Country-Specific Case Studies](#), [Employment Law](#)

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Forced Labor

Mariconda, Stephanie L., "Breaking the Chains: Combating Human Trafficking at the State Level", *Boston College Third World Law Journal* v. 29 no1 (Winter 2009) p. 151-187

Abstract:

Recognizing a human rights crisis in human trafficking within the U.S., Mariconda argues that,

while there is some federal legislation that combats human trafficking, additional state measures are required in order to effectively combat this crisis. Arguing that better protection of human trafficking victims can only be accomplished by understanding the economies that benefit from trafficking, Part I summarizes the industries -- sexual slavery, domestic servitude, and forced hard labor -- in which trafficking is the most pervasive, analyzes the factors that contribute to continued human trafficking, and quickly surveys the effects of human trafficking on victims. Part II appraises three pieces of federal legislation that currently provide relief to victims of human trafficking: the Mann Act, the Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today (PROTECT) Act of 2003, and the Trafficking Victims Protection Act (TVPA). Finally, in Part III, Mariconda argues that state legislation is needed to supplement federal anti-trafficking legislation; describes a Massachusetts anti-trafficking bill currently under consideration, and contrasts the Massachusetts bill with state anti-trafficking law in other states. Mariconda urges the Massachusetts legislature to pass anti-trafficking bill and urges other states to quickly follow suit.

Subjects: [Forced Labor](#), [Immigration](#), [Sex Slavery](#), [Slavery](#)

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Extraterritorial Application of Law

Hambrick, David, "Reconsidering Extraterritoriality: U.S. Labor Law, Transnational Organizing, and the Globalization of the Airline Industry", *Columbia Journal of Transnational Law* v. 47 (2009) p. 576-608

Abstract:

Focusing on the airline industry, this Note explains that the courts' current approaches to regulating transnational secondary labor organizing are underdeveloped and inconsistent. Unions in the airline industry engage in transnational organizing in order to counteract the power of international air carriers to lower wages and diminish work rules by selectively utilizing different national flight crews. The author argues that courts should adopt a balancing approach that accounts for both U.S. and foreign interests in determining the legality of transnational secondary activity. Part I introduces the Railway Labor Act (RLA), the statute regulating collective bargaining in the airline industry. This section presents two issues that will likely be addressed by the Supreme Court or Congress in the near future: 1) whether secondary activity in the airline industry can be enjoined, and 2) whether foreign secondary activity can be regulated under U.S. labor law. Part II explores the scope of the RLA and discusses the current conflict between circuits regarding the application of the RLA to transnational secondary activity both within the United States and abroad. The author explains that the courts' current views regarding the proper reach of the RLA is troubled by a vague definition of "extraterritorial" and uncertainty over whether the statute applies in situations in which there is some activity in the U.S. and some abroad. Part III explains the U.S. and foreign interests at stake and argues that these interests require a balancing approach to determine when the RLA reaches transnational secondary activity. In the Conclusion, Hambrick acknowledges the limits of such a balancing approach, but

argues that it is ultimately the best way to determine whether the RLA should apply to situations involving transnational secondary activity.

Subjects: [Country-Specific Case Studies](#), [Extraterritorial Application of Law](#), [Industry-Specific Case Studies](#), [Secondary Strikes and Boycotts](#)

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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/celrl/>

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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Project Director:

[Katherine V.W. Stone](#)

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