

Labour Law

Labour Law offers a comprehensive and critical account of the subject by a team of prominent labour lawyers, and includes both collective labour rights and individual employment rights. As the book places the law in its social, economic and political contexts, and shows how the law works in practice through case-studies, students will acquire not only a good knowledge of the law but also an appreciation of its importance and the complexity of the issues. Fully updated with recent developments in the field, the text's clear structure, logical chapter organisation, and uncluttered text design combine to make it a truly accessible way into the subject.

Suitable for undergraduates and postgraduates studying British labour and employment law, this book is a must-read for those wishing to excel in the field.

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Preface

This textbook aims to provide a comprehensive study guide for students on labour law or employment law courses. It is divided into twenty chapters, corresponding approximately to a full-year university course. It includes both a comprehensive discussion of collective labour law issues as well as individual employment law disputes. For shorter or more focused courses, teachers may prefer to concentrate on some of the chapters or parts of the book and will find that each chapter is largely self-contained. As well as providing a description and analysis of the law in Great Britain, in the spirit of the *Law in Context* series, the textbook offers criticisms of the law drawn from different perspectives and disciplines. Most chapters also include brief vignettes, often based on examples drawn from the news, which should provide a stimulus to classroom discussion.

The second edition of this book has retained the same organisation of chapters as the first. As before, responsibility for the different chapters has been divided unevenly: Collins: Chapters 1, 3–7, 10, 11 and 18–20; Ewing: Chapters 2, 8 and 12–17; and McColgan: Chapter 9. The second edition examines recent legislation including notably the Children and Families Act 2014, the Modern Slavery Act 2015, the Trade Union Act 2016, the National Minimum Wage Regulations 2015, and the Shared Parental Leave Regulations 2014. There is extensive discussion of recent cases in the courts including controversial decisions about employment status in the Supreme Court, such as *Pimlico Plumbers Ltd v. Smith*, and innovative decisions of the European Court of Human Rights regarding the right to privacy, such as *Bărbulescu v. Romania*. At the time of writing, other important appeals are pending, notably in *Uber v. Aslam*.

In the years since the first edition, perhaps the most significant legal development in practice was the introduction by the Coalition government of substantial fees in employment tribunals. This had the predictable effect of reducing sharply the number of tribunal applications, as the cost of enforcing many of the legal rights described in this book was rendered prohibitive for most workers. In *R (Unison) v. Lord Chancellor*, however, the Supreme Court ruled that the tribunal fees were unlawful because they violated the rule of law and disproportionately obstructed the constitutional right to access to justice.

Lord Reed reminded governments that ‘When Parliament passes laws creating employment rights . . . it does so not merely in order to confer benefits on individual employees, but because it has decided that it is in the public interest that those rights should be given effect.’

But although fees have been removed, access to justice continues to be a concern, as does the evidence of non-compliance with workers’ rights by employers, whether it be the statutory minimum wage or maternity rights. There is also concern about the emergence of a new ‘precarariat’, and the development of new precarious forms of employment, often beyond any significant regulatory protection. More alarming still, however, has been the evidence of new forms of exploitation, whether they be trafficking, forced labour, or modern slavery, and with them the need for legal responses to behaviour that we thought had long been eradicated from modern civilisation.

This edition will be published in the centenary year of the International Labour Organization (ILO), the work of which is referred to in the pages that follow. Now an agency of the United Nations, the ILO is one of the oldest international organisations in existence, having operated continuously ever since 1919. Much of the Organization’s work continues to be highly relevant, not least its commitment to the principle that ‘labour is not a commodity’, all the more relevant today as workers are constantly degraded as objects in ‘labour markets’. But although we can celebrate the ILO’s institutional survival as the conscience of the international community, we have a long way to go before we can celebrate its unequivocal institutional success. If anything, labour law is experiencing an era of sustained regression after long periods of progress. A matter of real anxiety in particular is the rapid decline in collective bargaining coverage in many countries, putting at risk the very principle of tripartism by which the ILO is sustained.

As we reflect on these matters of great importance to workers everywhere, we take this opportunity to renew our thanks to those already acknowledged in the preface to the first edition. On this occasion, we would like to record our debts specifically to Daniel Blackburn (ICTUR), Alan Bogg (Bristol), Nicola Countouris (UCL), Ruth Dukes (Glasgow), Kate Ewing, Michael Ford (Bristol), Mark Freedland (Oxford), John Hendy QC, Carolyn Jones (Institute of Employment Rights), Ewan McGaughey (KCL), Virginia Mantouvalou (UCL), Tonia Novitz (Bristol), Keith Puttick (Staffordshire), Hannah Reed (formerly TUC, now RCN), Joo-Cheong Tham (Melbourne), and Jeff Vogt (Solidarity Center, formerly International Trade Union Confederation). We are grateful to the editors of this series and the publishers at Cambridge University Press for their encouragement for revising the book and their patience in awaiting its delivery.

We have endeavoured to state the law up to 1 January 2019. At the time of writing, the issue of whether, when, and on what terms the United Kingdom

would leave the European Union was unresolved. We have assumed, however, that whatever happens, in the short term there will be no significant changes to the substantive law described in this work.

HC
KDE
AMcC
10 May 2019

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Abbreviations

AC	Appeal Cases
ACAS	Advisory, Conciliation and Arbitration Service
ACTTS	Association of Cinematograph, Television and Allied Technicians
AEEU	Amalgamated Engineering and Electrical Union
All ER	All England Law Reports
ALR	American Law Reports
AML	additional maternity leave
APEX	Association of Professional, Executive, Clerical and Computer Staff
ASLEF	Associated Society of Locomotive Engineers and Firemen
ASTMS	Association of Scientific, Technical and Managerial Staffs
AUEFW	Amalgamated Union of Engineering and Foundry Workers
AUEW	Amalgamated Union of Engineering Workers
BALPA	British Airline Pilots' Association
BECTU	Broadcasting Entertainment Cinematograph and Theatre Union
BEIS	Department for Business, Energy and Industrial Strategy
BIS	Department for Business, Innovation and Skills
BNP	British National Party
BRB	British Railways Board
BT	British Telecommunications plc
CA	Court of Appeal
CAC	Central Arbitration Committee
CBI	Confederation of British Industry
CEEP	European Centre for Employers and Enterprises Providing Public Services
CFA	ILO Freedom of Association Committee
ChD	Chancery Division

CJEU	Court of Justice of the European Union
CMLR	Common Market Law Reports
CPS	Crown Prosecution Service
CWU	Communication Workers Union
DDA 1995	Disability Discrimination Act 1995
DG	Directorate General
DR	Decisions and Reports of the European Commission of Human Rights
DTI	Department of Trade and Industry
EAT	Employment Appeal Tribunal
EC	European Community/European Communities
ECHR	European Convention on Human Rights
ECJ	European Court of Justice
ECommHR	European Commission on Human Rights
ECR	European Court Reports
ECtHR	European Court of Human Rights
EDT	effective date of termination
EEA	European Economic Area
EEC	European Economic Community
EEPTU	Electrical Electronic Telecommunications and Plumbing Union
EHRR	European Human Rights Reports
EMLR	Entertainment and Media Law Reports
EqA 2010	Equality Act 2010
EqPA 1970	Equal Pay Act 1970
ERA 1996	Employment Rights Act 1996
ET	employment tribunal
ETI	Ethical Trade Initiative
ETOR	economic, technical or organisational reason
ETUC	European Trade Union Confederation
EU	European Union
EWC	European Works Council
EWC	expected week of confinement
EWCA	England and Wales Court of Appeal
EWHC	England and Wales High Court
FBU	Fire Brigades Union
FSR	Fleet Street Reports
GCHQ	Government Communications Headquarters
GDPR	General Data Protection Regulation
GLA	Gangmasters Licensing Authority
GLAA	Gangmasters and Labour Abuse Authority
GMB	General Municipal and Boilermakers Union
GOR	genuine occupational requirement

GPMU	Graphical, Paper and Media Union
GSP	Generalised System of Preferences
GUF	Global Union Federation
HC	House of Commons
HL	House of Lords
HMRC	Her Majesty's Revenue and Customs
HMSO	Her Majesty's Stationery Office
HRA 1998	Human Rights Act 1998
HRM	Human Resources Management
HSE	Health and Safety Executive
ICCPR	International Covenant on Civil and Political Rights 1966
ICE Regulations	Information and Consultation of Employees Regulations 2004
ICFTU	International Confederation of Free Trade Unions
ICO	Information Commissioner's Office
ICR	Industrial Cases Reports
ICTU	Irish Congress of Trade Unions
ILO	International Labour Organization
IRLR	Industrial Relations Law Reports
ITF	International Transport Workers' Federation
ITUC	International Trade Union Confederation
IUF	International Union of Foodworkers
KB	King's Bench
MP	Member of Parliament
MR	Master of the Rolls
MSF	Manufacturing, Science and Finance Union
NAECI	National Agreement for the Electrical Contracting Industry
NALGO	National and Local Government Officers' Association
NAS/UWT	National Association of Schoolmasters/Union of Women Teachers
NATSOPA	National Society of Operative Printers, Graphical and Media Personnel
NCP	National Contact Point
NGA	National Graphical Association
NGH	National Group on Homeworking
NGO	Non-Governmental Organisation
NHS	National Health Service
NICA	Northern Ireland Court of Appeal
NIRC	National Industrial Relations Court
NISA	News International Staff Association
NMW	National Minimum Wage

NMWA 1998	National Minimum Wage Act 1998
NMWR 2015	National Minimum Wage Regulations 2015
NUGSAT	National Union of Gold, Silver and Allied Trades
NUJ	National Union of Journalists
NUM	National Union of Mineworkers
NUPE	National Union of Public Employees
NUR	National Union of Railwaymen
NUT	National Union of Teachers
ODW	overseas domestic worker
OECD	Organization of Economic Co-operation and Development
OFSTED	Office for Standards in Education, Children's Services and Skills
OJ	Official Journal of the European Communities/Union
OML	ordinary maternity leave
PCP	provision, criterion or practice
PCS	Public and Commercial Services Union
POA	Prison Officers' Association
POEU	Post Office Engineering Union
QB	Queen's Bench
QBD	Queen's Bench Division
RMT	National Union of Rail, Maritime and Transport Workers
RORR	range of reasonable responses
RRA 1976	Race Relations Act 1976
SBWU	Swedish Building Workers' Union
SC	Supreme Court
SCC	Supreme Court of Canada
SCR	Supreme Court Reports
SDA 1975	Sex Discrimination Act 1975
ShPP	shared parental pay
SI	Statutory Instrument
SLT	Scots Law Times
SNB	Special Negotiating Body
SOGAT	Society of Graphical and Allied Trades
SPL	shared parental leave
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
TGWU	Transport and General Workers Union
TICE Regulations	Transnational Information and Consultation of Employees Regulations 1999
TLR	Times Law Reports
TNCs	transnational corporations

TPP	Trans-Pacific Partnership
TSSA	Transport Salaried Staffs' Association
TTIP	Transatlantic Trade and Investment Partnership
TUC	Trades Union Congress
TULRCA 1992	Trade Union and Labour Relations (Consolidation) Act 1992
TUPE 2006	Transfer of Undertakings (Protection of Employment) Regulations 2006
UCATT	Union of Construction and Allied Trades and Technicians
UCTA	Unfair Contract Terms Act 1977
UEAPME	European Association of Craft, Small and Medium-sized Enterprises
UKHL	United Kingdom House of Lords
UKSC	United Kingdom Supreme Court
UNI	UNI Global Union (representing service-sector workers)
UNISON	Public Services Union
USDAW	Union of Shop, Distributive and Allied Workers
WLR	Weekly Law Reports
WTD	Working Time Directive
WTO	World Trade Organization