

2021/4

REVUE DE DROIT COMPARÉ DU TRAVAIL ET DE LA SÉCURITÉ SOCIALE

STUDIES

- P. UPSON** How does brain-computer interface technology present challenges for labour law in New Zealand?
I. ZOPPOLI How to overcome the paradoxes of redundancy in France and Italy?
H. BARRETTO GHIONE The emergence of the concept of "due diligence" in labour law and the forms of its legal integration
M. MOHAN, M. BABU, S. PELLISSERY & K. BHARADKAR The pensions system in Italy: a continuous reform
L. COMPA The double standard at work: European Corporate investment and workers' rights in the American South

THEMATIC CHAPTER

NATIONAL LABOUR LAW AND SOCIAL SECURITY SYSTEMS THROUGH THE LENS OF THE COVID HEALTH CRISIS. ADAPTATIONS OR FUNDAMENTAL CHANGES? (Coordinated by Loïc LEROUGE)

- P. Andersson & T. A. Novitz** Risk Assessment and Covid-19: Systems at work (or not) in England and Sweden
C. Marzo A Franco-British comparison of attempts at social protection for platform workers in the light of the pandemic: towards a new balance between public and private actors?
G. Golding Unfair dismissal and the coronavirus pandemic: Creative responses from Australia's Fair Work Commission
E. Ales Social protection in Italy during the pandemic: A comprehensive and adaptive approach in the sign of continuity
C. Murphy & L. Ryan National labour law and social security systems through the lens of the Covid health crisis. Adaptations or fundamental changes?
L. Lamarche Unemployment in the age of Covid: Will the canadian unemployment insurance system survive the pandemic?

COMPARATIVE LABOUR CASE LAW

JUDICIAL CREATIVITY PUT TO THE TEST IN THE FACE OF NEW HEALTH PROBLEMS AT WORK (Coordinated by Allison FIORENTINO)

- A. SALA** The creativity of the judge faced with new health-at-work problems: the Japanese case of karōshi and karōjisatsu
A. FIORENTINO English case law to the test of mental health at work

INTERNATIONAL LABOUR CASE LAW

- M. DOHERTY** The « worker », EU Law, and collective bargaining
M. D'APONTE New technologies and respect for workers' privacy in the case law of the ECHR

COMPARATIVE LABOUR LAW LITERATURE

- C. Carta & G.-F. Moraru** Labour law beyond national borders: major debates in 2018-2019-2020

INTERNATIONAL LEGAL NEWS

AMERICA: USA - **ASIA-OCEANIA:** AUSTRALIA - **EUROPE:** REPUBLIC OF SERBIA / UNITED KINGDOM - **INTERNATIONAL ORGANIZATION:** UNITED NATIONS ORGANIZATION

Scientific Committee Members

N. Aliprantis (Grèce), G.-G. Balandi (Italie), U. Becker (Allemagne), U. Carabelli (Italie), J. Carby Hall (Royaume-Uni), A. Cissé Niang (Sénégal), L. Compa (États-Unis), W. Däubler (Allemagne), P. Davies (Royaume-Uni), M. Dispersyn (Belgique), S. Gamonal C. (Chili), A. O. Goldin (Argentine), Z. Góral (Pologne), M. Iwamura (Japon), J.-C. Javillier (France), P. Koncar (Slovénie), M. Nasr-Eddine Koriche (Algérie), A.-M. Laflamme (Canada), R. Le Roux (Afrique du Sud), A. Lyon-Caen (France), A. Monteiro Fernandes (Portugal), A. Montoya Melgar (Espagne), A. Neal (Royaume-Uni), R. Owens (Australie), C. Papadimitriou (Grèce), P.-G. Pougoué (Cameroun), M. Rodríguez-Piñero (Espagne), J.-M. Servais (Belgique), A. Supiot (France), M. Sur (Turquie), G. Trudeau (Canada), C. Vargha (Bureau International du Travail), M. Weiss (Allemagne), A. Zheng (Chine).

Director Editor

Philippe Martin, COMPTRASEC (UMR CNRS 5114), Université de Bordeaux.

Editor in Chief

Isabelle Daugareilh, COMPTRASEC (UMR CNRS 5114), Université de Bordeaux.

Associate Editor

Alexandre Charbonneau, COMPTRASEC (UMR CNRS 5114), Université de Bordeaux.

Editor

Marie-Cécile Clément, COMPTRASEC (UMR CNRS 5114), Université de Bordeaux.

Technical Realization / PAO

Corinne Blazquez, Maison des Sciences de l'Homme d'Aquitaine (MSHA).

Editorial Committee Members

Pablo Arellano Ortiz (Organisation Internationale du Travail - Université Pontifica de Valparaiso PUCV - Chili), Jérôme Porta (COMPTRASEC - Université de Bordeaux - France), Eri Kasagi (CNRS - Université de Bordeaux - France), Risa L. Lieberwitz (Université de Cornell - États-Unis), Pascale Lorber (Université de Leicester - Royaume-Uni), Yuki Sekine (Université de Kobé - Japon), Achim Seifert (Université Friedrich Schiller de Iéna - Allemagne) et Ousmane O. Sidibé (Mali).

International Legal News Correspondents

■ **AFRIQUES** : A. Govindjee et K. Malherbe (Afrique du Sud), C. Boukli-Hacène et Z. Yacoub (Algérie), B. Millefort Quenum (Bénin), P. Kiemde et H. Traoré (Burkina-Faso), P.-E. Kenfack (Cameroun), S. Yao Dje et D. Koffi Kouakou (Côte d'Ivoire), P. Kalay (République Démocratique du Congo - Congo Kinshasa), S. Ondze (République du Congo - Congo Brazzaville), I. Yankhoba Ndiaye et M. Gaye (Sénégal), N. Mzid et A. Mouelhi (Tunisie)

■ **AMÉRIQUES** : A. O. Goldin, D. Ledesma Iturbide et J. P. Mugnolo (Argentine), A. V. Moreira Gomes, S. Machado et J. Sarmiento Barra (Brésil), R.-C. Drouin, A.-M. Laflamme, L. Lamarche et G. Trudeau (Canada), P. Arellano Ortiz et S. Gamonal C. (Chili), C. Castellanos Avendano, A. N. Guerrero et V. Tobon Perilla (Colombie), R. L. Lieberwitz (États-Unis), P. Kurczyn Villalobos (Mexique), L. Gamarra Vilchez et M. K. Garcia Landaburu (Pérou), M. Ermiada Fernández et H. Barretto Ghione (Uruguay).

■ **ASIE-OCÉANIE** : D. Allen, S. McCrystal et T. Walsh (Australie), A. Zheng (Chine), J. Park (Corée du Sud), G. Davidov (Israël), S. Dake, M. Iwamura, E. Kasagi, H. Nagano, Y. Sekine et Y. Shibata (Japon), S. Taweejamsup (Thaïlande) et Tuân Kiệt Nguyễn (Vietnam).

■ **EUROPE** : A. Seifert (Allemagne), A. Csuk et G. Löschnigg (Autriche), A. Lamine et V. De Greef (Belgique), A. Filcheva et Y. Genova (Bulgarie), C. Jacqueson (Danemark), I. Vukorepa (Croatie), J. L. Gil y Gil (Espagne), E. Serebryakova et A. Alexandrova (Fédération de Russie), M. Badel, J.-P. Laborde et M. Ribeyrol-Subrenat (France), C. Papadimitriou et A. Stergiou (Grèce), T. Gyulavári et K. Rúsz Molnár (Hongrie), M. O'Sullivan (Irlande), A. Mattei et S. Nadalet (Italie), B. Bubilaityte Martisiene et G. Tamašauskaitė (Lituanie), S. Burri et N. Gundt (Pays-Bas), M. Gajda, A. Musiała et M. Pliszkiwicz (Pologne), T. Coelho Moreira et A. Monteiro Fernandes (Portugal), M. Stefko et V. Štangová (République Tchèque), F. Rosioru (Roumanie), J. Carby-Hall et P. Lorber (Royaume-Uni), F. Bojić et L. Kovačević (Serbie), P. Koncar et B. Kresal (Slovénie), J. Julén Votinius (Suède) K. Pärli et A. Meier (Suisse), K. Doğan Yenisey et M. Sur (Turquie).

REVUE

ENGLISH ELECTRONIC EDITION

2021/4

DE DROIT COMPARÉ
DU TRAVAIL
ET DE LA SÉCURITÉ SOCIALE

REVIEW SUPPORTED BY THE INSTITUTE OF HUMAN AND SOCIAL SCIENCES OF THE CNRS

International Association of Labour Law Journals - IALLJ

The Comparative Law Review of Labour and Social Security [Revue de Droit Comparé du Travail et de la Sécurité Sociale] is member of the «International Association of Labour Law Journals», the exchange network of publications, ideas, legal and economic developments.

The other members of the association are:

Análisis Laboral (Peru)
Arbeit und Recht (Germany)
Australian Journal of Labor Law (Australia)
Bulletin on Comparative Labour Relations (Belgium)
Canadian Labour and Employment Law Journal (Canada)
Comparative Labor Law & Policy Journal (United States)
Derecho de las Relaciones Laborales (Spain)
Diritto delle Relazioni Industriali (Italy)
Diritti lavori mercati (Italy)
E-journal of International and Comparative Labour Studies (Italy)
Employees & Employers - Labour Law and Social Security Review: Delavci in delodajalci (Slovenia)
Europäische Zeitschrift für Arbeitsrecht : EuZA (Germany)
European Labour Law Journal (Belgium)
Giornale di Diritto del lavoro e relazioni industriali (Italy)
Industrial Law Journal (United Kingdom)
Industrial Law Journal (South Africa)
International Journal of Comparative Labour Law and Industrial Relations (The Netherlands)
International Labour Review (OIT)
Japan Labor Review (Japan)
Labour and Social Law (Belarus)
Labour Society and Law (Israel)
La Rivista Giuridica del Lavoro e della Previdenza Sociale - RGL (Italy)
Lavoro e Diritto (Italy)
Pécs Labor Law Review (Hungary)
Revista de Derecho Social (Spain)
Revue de Droit Comparé du Travail et de la Sécurité Sociale (France)
Revue de Droit du Travail (France)
Rivista giuridica del lavoro e della sicurezza sociale (Italy)
Russian Yearbook of Labour Law (Russia)
Temas Laborales (Spain)
Zeitschrift für ausländisches und internationales Arbeits- und Sozialrecht (Germany)

STUDIES

- p. 6 Peter Upson**
How does brain-computer interface technology present challenges for labour law in New Zealand?
- p. 16 Irene Zoppoli**
How to overcome the paradoxes around worker dismissal in France and Italy?
- p. 28 Hugo Barretto Ghione**
Emergence of the notion of «due diligence» in labour law and how it is integrated into the legal system
- p. 38 Mani Mohan, Mathew Babu, Sony Pellissery and Kavya Bharadkar**
Ushering thin welfare regimes at the cost of thick labour jurisprudence: A tale of new labour codes in India
- p. 50 Lance Compa**
The double standard at work: European corporate investment and workers' rights in the American south

THEMATIC CHAPTER

NATIONAL LABOUR LAW AND SOCIAL SECURITY SYSTEMS THROUGH THE LENS OF THE COVID HEALTH CRISIS. ADAPTATIONS OR FUNDAMENTAL CHANGES?

COORDINATED BY LOÏC LEROUGE

- p. 66 Peter Andersson and Tonia A. Novitz**
Risk assessment and COVID-19: Systems at work (or not) in England and Sweden
- p. 80 Claire Marzo**
Franco-British comparison of attempts to provide social protection for platform workers at the time of the pandemic: towards a new balance between public and private actors?
- p. 100 Gabrielle Golding**
Unfair dismissal and the Coronavirus pandemic: Creative responses from Australia's Fair Work Commission
- p. 116 Edoardo Ales**
Social protection in Italy during the pandemic: A comprehensive and adaptive approach in the sign of continuity
- p. 132 Caroline Murphy and Lorraine Ryan**
National labour law and social security systems through the lens of the COVID health crisis. Adaptations or fundamental changes?
- p. 144 Lucie Lamarche**
Unemployment in the age of COVID: Will the Canadian unemployment insurance system survive the pandemic?

2021/4 CONTENTS

COMPARATIVE LABOUR CASE LAW

JUDICIAL CREATIVITY PUT TO THE TEST IN THE FACE OF NEW HEALTH PROBLEMS AT WORK

COORDINATED BY ALLISON FIORENTINO

- p. 160 Adrienne Sala**
The creativity of the judge faced with new health-at-work problems: the Japanese case of karôshi and karôjisatsu
- p. 170 Allison Fiorentino**
English case law and the challenge of mental health at work

INTERNATIONAL LABOUR CASE LAW

- p. 182 Michael Doherty**
The « Worker », EU Law, and collective bargaining
- p. 192 Marcello D'Aponte**
New technologies and respect for the worker's privacy in ECHR case law

COMPARATIVE LABOUR LAW LITERATURE

- p. 204 Cinzia Carta and Gratiela-Florentina Moraru**
Labour law beyond national borders: major debates in 2018-2019-2020

INTERNATIONAL LEGAL NEWS

AMERICA

- p. 230 UNITED STATES OF AMERICA** - Risa L. Lieberwitz, Cornell University, School of Industrial and Labor Relations

ASIA - OCEANIA

- p. 234 AUSTRALIA** - Shae McCrystal, Faculty of Law, University of Sydney

EUROPE

- p. 240 REPUBLIC OF SERBIA** - Filip Bojic, University of Belgrade
- p. 246 REPUBLIC OF SERBIA** - Ljubinka Kovačević, University of Belgrade
- p. 250 UNITED KINGDOM** - Jo Carby-Hall, University of Hull
- p. 256 UNITED KINGDOM** - Jo Carby-Hall, University of Hull

INTERNATIONAL ORGANIZATION

- p. 262 UNITED NATIONS ORGANIZATION** - Elena Sychenko, Saint Petersburg State University



**INTERNATIONAL
LEGAL NEWS**



DANIEL TRACEY AND SHAE MCCRYSTAL

FACULTY OF LAW, UNIVERSITY OF SYDNEY

CODIFYING THE MEANING OF “CASUAL EMPLOYMENT”
IN AUSTRALIA

In many countries around the world, regulators are seeking solutions to tackle the rising problem of “zero hours” employment - where workers are paid only for the hours they work each week, no minimum hourly engagement is guaranteed, and no leave entitlements are provided.

In Australia, the concept of “zero hours” employment is known as “casual employment” and has long existed as part of the industrial landscape. The Australian approach to the problem has been to allow casual employment to occur, but only where it is paid at a higher rate to “compensate” for the loss of permanency, predictability and other benefits. However, this approach has led to the entrenchment of “casualization” in the Australian employment landscape. Workers may be engaged as casuals, and paid as such, irrespective of the reality of their work relationship (as otherwise stable, reliable employment), making this form of engagement just one option for employers to choose, with relatively few disadvantages. Further, the longstanding failure on the part of Australian regulators adequately to define the term ‘casual’ for different regulatory purposes has created a regulatory tangle where employees have been considered casual for some purposes, but not others, creating uncertainty over their employment entitlements.

Prompted by a series of cases in the Federal Court of Australia which dealt with historical claims for annual and other leave entitlements from employees who had been treated as “casual” by their employers¹, the Australian Parliament introduced a legislative solution to the issue of “zero hours” employment, in the form of the enactment of the *Fair Work Amendment (Supporting Australia’s Jobs and Economic*

1 Those cases were *WorkPac Pty Ltd v Skene* [2018] FCAFC 13 (*‘Skene’*); and *WorkPac Pty Ltd v Rossato* (2020) 278 FCR 179 (*Rossato*). The cases were discussed at length in an earlier addition of this Revue in S. McCrystal “Casual Employment and Labour Standards in Australia”, *Comparative Labour and Social Security Law Review*, 2020-4, p. 180 (English Electronic Edition). Notably, after the passage of the Amendment Act, the decisions in *Rossato* and *Skene* were overturned by the High Court of Australia. The High Court found, contrary to the lower court decisions that a casual employee is someone who does not have a firm advance commitment from their employer that they will receive continuing work, and whether such a firm advance commitment has been made is determined by the terms of the employment contract. Put simply, the High Court has ruled that if an employee’s contract states that they are a casual worker, then that is the nature of their employment.

Recovery Act 2021 (Cth) (“Amendment Act”) in March 2021. The Act has (among other things) codified the meaning of ‘casual employment’ in Australia. The impact of the Amendment Act on casual employment in Australia is the subject of this update.

I - The scope of the Amendment Act

The key changes introduced by the Amendment Act are those relating to identifying casual employment. Specifically the Amendment Act has introduced a definition of casual employment, requires employers (other than small business employers) to offer casual employees engaged on a regular basis the option to convert their engagement to continuing full-time or part-time employment after 12 months (in certain circumstances), and requires employers to provide casual employees with a ‘Casual Employment Information Statement’ before they begin their employment, or as soon as practicable after their employment commences².

II - A new definition of “casual employment”

The FW Act has not previously contained a definition of casual employment. This has created difficulties because certain provisions of the FW Act create statutory entitlements to minimum employment standards including annual and personal leave, but exclude from those entitlements “casual” employees who had not been otherwise defined. With the introduction of the Amendment Act, the FW Act now provides some clarity to employers and employees about who can be characterised as a casual, and who cannot.

Under the FW Act, a person is a casual employee if³:

- an offer of employment is made to that person on the basis that the employer makes no firm advance commitment of continuing and indefinite work according to a regular pattern of work;
- the person accepts the offer of employment on that basis; and
- the person is an employee as a result of accepting that offer.

This definition of casual employment raises the question of when an employer will have made no firm advance commitment of continuing and indefinite work.

In answer to this question, the FW Act provides that only the following factors may be considered⁴:

- whether the employer can elect to offer work and whether the person can elect to accept or reject work;
- whether the person will work as required according to the needs of the employer;

2 For reference, the Amendment Act also provides courts with the authority to offset casual loadings paid to an employee against claims for unpaid entitlements (FW Act s 545A), and gives the Fair Work Commission (Australia’s national industrial relations tribunal) the power to vary an enterprise agreement to resolve inconsistencies between that agreement and the new casual employment terms in the FW Act (FW Act Schedule 1, clause 45). However, these particular changes are not discussed in detail in this update, as they relate more to processes flowing from other disputes between employers and employees and less about identifying casual employment and the rights that flow from that identification.

3 FW Act s 15A(1).

4 FW Act s 15A(2).

- whether the employment is described as casual employment; and
- whether the person will be entitled to a casual loading or an equivalent payment under an industrial instrument given effect under the FW Act⁵.

The time at which these factors are to be considered is the time at which the offer of casual employment is made by the employer and then accepted by the employee. The subsequent conduct of the employer and the employee cannot be considered in determining whether the employer has made a firm advance commitment of continuing and indefinite work, and the FW Act makes it clear that a regular pattern of hours does not, in and of itself, indicate such a firm advance commitment⁶.

III - A right to convert from casual employment to full-time or part-time employment

In addition to providing a new definition of casual employment, the Amendment Act also introduced new obligations on employers to offer casual employees the opportunity to convert to continuing employment.

Under the FW Act, employers are now required to make such an offer if⁷:

- the employee has been employed for at least 12 months;
- during at least the last six months of the employee's employment, the employee has worked a regular pattern of hours on an ongoing basis, that could continue if the employee becomes a part-time or full-time employee without significant adjustments;
- no exceptions under the FW Act apply.

From an employer's perspective, this obligation to offer casual employees ongoing employment may seem onerous. However, the exceptions on which an employer might seek to rely to excuse themselves from this obligation are broad (and arguably, generous). For example, an employer is not required to make a conversion offer to a casual employee if there are reasonable grounds not to make the offer⁸. Such "reasonable grounds" might include, but are not limited to, that the employee's position will cease to exist in the 12 month period after the decision not to make the offer, that the hours of work which the employee is required to perform will be significantly reduced in that same period, or that there will be a significant change to the days or times at which an employee will be required to work which cannot be accommodated within the days or times that the employee will be available to work⁹.

5 This casual loading is usually a payment of 25% of the employee's base salary and is usually paid in lieu of an employee's entitlement to things like annual leave and personal (sick and carer's) leave.

6 FW Act s 15A(3).

7 FW Act s 66B.

8 FW Act s 66C.

9 FW Act s 66C(2).

If an employer decides not to make a conversion offer to a casual employee, or if the employee has not worked a regular pattern of hours on an ongoing basis during at least the preceding six months, the employer must give the employee a written notice to advise them that a conversion offer will not be made¹⁰. That written notice must set out the reasons for why an offer is not being made to the casual employee and must be given to the employee within 21 days.

Casual employees also retain the right to request that their engagement be converted to continuing employment, provided that in the preceding six months, they have not been issued with a written notice by their employer, have not had a request for conversion rejected, and have not rejected a conversion offer from their employer¹¹.

Importantly, and in light of the somewhat nebulous nature of what might constitute “reasonable grounds” on which to refuse to make a conversion offer to a casual employee, the Amendment Act also provides employees (and employers) an opportunity to challenge these specific provisions if a disagreement arises. That is, if an employee disagrees with an employer’s reasons for refusing to make a conversion offer, or disagrees with the application of any other aspect of these casual conversion provisions, the employee may file a dispute in the Fair Work Commission (FWC)¹². However the Commission will have no power to arbitrate the dispute unless both parties agree to arbitration, and therefore will not be able to enforce outcomes on employers who do not agree. Further, access to the FWC can be removed through an alternative term in the contract of engagement or other written agreement providing an alternative manner of dispute resolution (which again, need not include arbitration of the dispute). The extent to which this jurisdiction will be utilised by employees and employers to resolve casual conversion issues, however, remains to be seen.

IV - The new Casual Employment Information Statement

Lastly, as a result of the Amendment Act, the FW Act now requires the Fair Work Ombudsman (Australia’s primary enforcement regulator) to prepare a “Casual Employment Information Statement” (‘Statement’) and publish that Statement¹³.

The Statement must contain information about, for example, the meaning of casual employment and the new obligation on employers to offer casual conversion, as well as the Fair Work Commission’s new jurisdiction to deal with disputes about changes brought in by the Amendment Act¹⁴. Employers are required to provide the

10 FW Act s 66C(3).

11 FW Act s 66F. This reflects that changes already made to modern awards by the Fair Work Commission, into which clauses were inserted that provide for casuals to request conversion to ongoing employment. Most modern awards were amended to include this provision on 1 October 2018, with remaining awards amended shortly afterwards through the Commission’s 4 Yearly Review process.

12 FW Act s 66M.

13 FW Act s 125A.

14 FW Act s 125(2).

Statement to each casual employee before their casual employment begins or as soon as practicable after they commence working with the employer¹⁵.

V - Key implications arising from these changes to the FW Act

The changes to the FW Act described in this update, and brought about by the Amendment Act, have provided new parameters for “zero hours” employment in Australia.

Importantly, the amendments to the FW Act apply retrospectively, and in doing so, provide certainty for employers by minimising the risk that casual employees may seek to challenge the characterisation of their employment at a later date. On the other hand, employers must also ensure that they afford casual employees the right to casual conversion enshrined in the FW Act, and in doing so, must carefully consider the circumstances of each casual employee to determine whether those employees are entitled to casual conversion, and must only rely on *reasonable* grounds to not offer, or reject a request for, more stable and ongoing employment.

In the wake of years of court challenges and politically-charged social debate about the nature and treatment of casual employees in Australia, the FW Act provides a path forward (albeit a path on which many disputing parties will tread, as the notion of “reasonableness” for offering casual conversion is tested and these latest amendments find their feet).

This is not to say, however, that the way forward paved by the Amendment Act answers all questions and resolves all issues arising from “zero hours” employment. Over time, work changes; employees’ duties change, industries change, and the way in which work is undertaken changes too. The Amendment Act has characterised casual employment as something that may only be identified with reference to a limited set of criteria, not the least of which are the terms set out in the contract of employment. Fixing the nature of an employment relationship by reference to a contractual agreement made at a particular moment in time risks ignoring the dynamic and often fluid nature of employment relationships. This is because the “characterisation of [a] relationship in a written contract... will not always reflect the true reality”¹⁶ of that relationship, even if the High Court has recently ruled that such an approach to characterising casual employment “stray[s] from the orthodox path”¹⁷ of contractual interpretation principles.

All things considered, the changes brought about by the Amendment Act, despite seeming to address the ambiguities that have historically attended the meaning of casual employment in Australia, do not go far enough in terms of addressing some of the systemic deficiencies in the Australian system with respect to precarious work. The approach to defining casuals will further entrench this type of engagement in the Australian labour law landscape, rather than reserving casual employment for engagements that are genuinely casual, irregular and unpredictable. While the Amendment Act does present options for allowing casual employees to convert to continuing employment, the ways in which employers might side-step obligations to

¹⁵ FW Act s 125B.

¹⁶ *Rossato*, [94].

¹⁷ *WorkPac Pty Ltd v Rossato & Ors* [2021] HCA 23, 66.

facilitate conversation are numerous, and may be subject to exploitation. It remains to be seen how effectively the new casual conversion provisions in the FW Act will be regulated, and until such time as that regulatory environment becomes clear, employees engaged under "zero hours" contracts will remain vulnerable in the face of continuing economic insecurity, which arises predominantly from uncertainty about the consistency of their future engagements for work and denial of access to basic employment rights like annual and personal leave.

REVUE

DE DROIT COMPARÉ
DU TRAVAIL
ET DE LA SÉCURITÉ SOCIALE

Manuscripts submitted for publication in the **Comparative Law Review of Labour and Social Security** [Revue de Droit Comparé du Travail et de la Sécurité Sociale] should be sent by e-mail or by post before **February, the 1st** of each year (for the Studies, the Comparative Social Jurisprudence and the International Social Jurisprudence) and before **June, the 1st** of each year for the Thematic Chapter. About the contributions to the International Legal News, they must be sent before **February, the 1st** (for the first issue) and before **September, the 1st** (for the third issue).

The opinions expressed in the articles are the sole responsibility of the authors. When translation is carried out in French, it is under the responsibility of the Chief Editor and members of the Editorial Board.

Every manuscript is submitted, without mentioning the name of the author, to two readers for evaluation and publication notice.

A subsequent publication in another journal would require authorization express of the Direction of the Review.



COMPTRASEC - UMR 5114

Mme Marie-Cécile CLÉMENT

Université de Bordeaux

16, avenue Léon Duguit - CS 50057 - F 33608 PESSAC cedex

Tél : 33(0)5 56 84 54 74 - Fax : 33(0)5 56 84 85 12

marie-cecile.clement@u-bordeaux.fr

<http://comptrasec.u-bordeaux.fr/revue-de-droit-compare-du-travail-et-de-la-securite-sociale>

GUIDELINES FOR AUTHORS

Manuscripts

The article must be submitted preferably in French. English or Spanish are also admitted.

Texts should include:

- **40 000 characters** - including footnotes and spaces - for topics «**Studies**» and «**Thematic Chapter**» when submitted in French. The limitation is set at **30 000 characters** when submitted in English or Spanish;
- **25 000 characters** - including footnotes and spaces - for topics «**Comparative Social Jurisprudence**» and «**International Social Jurisprudence**» regardless of the language of submission of the article;
- **15 000 characters** - footnotes and spaces included - for the rubric «**International Legal News**» when submitted in French. The limitation is set at **12 000 characters** when submitted in English or Spanish.

In addition, all manuscripts must be accompanied by the following elements:

- 5 key words (in French and English) to identify the content of the article;
- the institution of attachment, the title, and the postal and electronic address of the author;
- the title of the article.

Manuscripts for the «**Studies**», «**Thematic Chapter**» and «**International Social Jurisprudence**» should also include:

- a summary, in French and in English (**400 characters** each);
- two publications to choose from.



Notes and bibliographical references

The annotations and bibliographic references of the works and articles cited must be integrated within the article and placed in footnotes.

Their presentation will be as follows:

- For books: initial of the First Name, Name, Title of the book, place, publisher, «collection», date, p.
- For review articles: Initial of the First Name, Name, «Title of the article», Title of the review, no., date, p.
- For a contribution into collective books: Initial of the First Name, Name, «Title of article», in initial of the First Name, Name (dir.), Title of the book, place, publisher, date, p.

IALLJ CALL FOR PAPERS ~ 2022 MARCO BIAGI AWARD

To stimulate scholarly activity and broaden academic interest in comparative labour and employment law, the **International Association of Labour Law Journals** announces a **Call for Papers** for the **2022 Marco Biagi Award**. The award is named in honor of the late Marco Biagi, a distinguished labour lawyer, victim of terrorism because of his commitment to civil rights, and one of the founders of the Association. The Call is addressed to doctoral students, advanced professional students, and academic researchers in the early stage of their careers (that is, with no more than three years of post-doctoral or teaching experience).



1. The Call requests papers concerning comparative and/or international labour or employment law and employment relations, broadly conceived. Research of an empirical nature within the Call's purview is most welcome.
2. Submissions will be evaluated by an academic jury to be appointed by the Association. Submitted papers should include an abstract.
3. The paper chosen as the winner of the award will be assured publication in a member journal, subject to any revisions requested by that journal.
4. Papers may be submitted preferably in English, but papers in French, or Spanish will also be accepted. The maximum length is 12,500 words, including footnotes and appendices. Longer papers will not be considered.
5. The author or authors of the paper chosen as the winner of the award will be invited to present the work at the **Association's 2021** meeting which is to be announced soon on the website of the Association. Efforts are being undertaken to provide an honorarium and travel expenses for the presentation of the paper. Until that effort bears fruit, however, the Association hopes that home institutional funds would be available to support the researcher's presentation.
6. The deadline for submission is **1 March 2021** (final date of submission). Submissions [and a short bio of the author] should be sent electronically in Microsoft Word both to Lavoro e diritto at lavoroediritto@unife.it and to Frank Hendrickx, the President of the Association, at frank.hendrickx@kuleuven.be and his secretariat: iar@kuleuven.be.

Prior Recipients of the Marco Biagi Award

2020 Harry Stylogiannis (KU Leuven, Belgium), Platform work and the human rights to freedom of association and collective bargaining.

2019 Giovanni Gaudio (Bocconi University, Milan, Italy), «Dapting labour law to complex organisational settings of the enterprise. Why re-thinking the concept of employer is not enough».

2018 Matteo Avogaro (University of Milan, Italy), «New perspectives for worker organization in a changing techonological and social environment».

2017 Nicolas Buenos (University of Zurich, Switzerland, Insitute of Law), «From the right to work to the freedom from work».

2016 Mimi Zou, «Towards Exit and Voice: Redesigning Temporary Migrant Workers's Programmes».

2015 Uladzislau Belavusau (Vrije Universiteit Amsterdam, Pays-Bas), «A Penalty Card for Homophobia from EU Labor Law: Comment on Asociația ACCEPT (C-81/12)».

2014 Lilach Lurie (Bar-Ilan University, Israel), «Do Unions Promote Gender Equality?».

2013 Aline Van Bever (University of Leuven, Belgium), «The Fiduciary Nature of the Employment Relationship».

2012 Diego Marcelo Ledesma Iturbide (Buenos Aires University, Argentina), «Una propuesta para la reformulación de la conceptualización tradicional de la relación de trabajo a partir del relevamiento de su especificidad jurídica».

ABBREVIATIONS LIST

(PUBLISHERS, JOURNALS, BOOKS)

AuR = Arbeit und Recht (Germany)
AJLL = Australian Journal of Labour Law (Australia)
AJP/PJA = Aktuelle juristische Praxis - Pratique juridique Actuelle (Suisse)
BCLR = Bulletin of Comparative Labour Relations (Belgium)
CLELJ = Canadian Labour & Employment Law Journal (Canada)
CLLPJ = Comparative Labor Law & Policy Journal (United States)
DRL = Derecho de las Relaciones Laborales (Spain)
DLM = Diritti Lavori Mercati (Italy)
E&E = Employees & Employers: Labour Law & Social Security Review (Slovenia)
EuZA = Europäische Zeitschrift für Arbeitsrecht (Germany)
ELLJ = European Labour Law Journal (Belgium)
DLRI = Giornale di Diritto del Lavoro e delle Relazioni Industriali (Italy)
ILJ = Industrial Law Journal (UK)
IJCLLIR = Giornale di Diritto del Lavoro e delle Relazioni Industriali (Italy)
ILR = International Labour Review (ILO)
JLR = Japan Labor Review (Japan)
JCP = Juris-Classeur Périodique (France)
LD = Lavoro e Diritto (Italy)
OIT = Revue internationale de travail
PMJK = Pécsi Munkajogi Közlemények (Pecs Labour Law Journal) (Hungary)
RL = Relaciones Laborales (Spain)
RDS = Revista de Derecho Social (Spain)
RDCTSS = Revue de Droit Comparé du Travail et de la Sécurité Sociale (France)
RDT = Revue de Droit du Travail (France)
RGL = Rivista Giuridica del Lavoro e della Previdenza Sociale (Italy)
TL = Temas Laborales (Spain)
ZIAS = Zeitschrift für ausländisches und Internationales Arbeits und Sozialrecht (Germany)

SUBSCRIPTIONS AND RATES

ABONNEMENTS ET TARIFS

SUSCRIPCIONES Y PRECIOS

2021 RATES

REVUE DE DROIT COMPARÉ
DU TRAVAIL ET DE LA SÉCURITÉ SOCIALE

(PRINT) ISSN 2117-4350
(E-JOURNAL) ISSN 2262-9815

COMPTRASEC
UMR 5114

Mme Marie-Cécile Clément
UNIVERSITÉ DE BORDEAUX
Avenue Léon Duguît - 33608 PESSAC cedex FRANCE
Tél. 33(0)5 56 84 54 74
Fax 33(0)5 56 84 85 12
Email : revue.comptrasec@u-bordeaux.fr

PER YEAR

3 PRINT ISSUES PAPERS (FRENCH)
1 ELECTRONIC ISSUE (ENGLISH)

		Price/Prix/Precio
Annual Subscription	Print Journal / Revue papier / Revista Impressa (3 numéros en français / 3 issues in french / 3 números en francés)	105 €
Abonnement Annuel	E-journal / Revue électronique / Revista Electrónica (1 numéro en anglais / 1 issue in english / 1 número en inglés)	70 €
Suscripción anual	Printed copies & E-journal / Pack Revues papier et électronique / Revistas impresa y electrónica (3 numéros en français & 1 numéro en anglais / 3 issues in french & 1 in english / 3 números en francés & 1 en inglés)	145 €
Unit Price Prix à l'unité Precio unitario	Print Journal / Revue Papier / Revista Impressa	40 €
	E-Journal / Revue électronique / Revista Electrónica	70 €
	Journal article / Article / Artículo	6 €
<i>Postal charges included / Frais de port compris / Gastos de envío incluidos</i>		
VAT TVA IVA	2,10% France / 1,05% Outre-mer & Corse / 0% UE & hors UE	

MODE DE PAYMENT / MODE DE RÈGLEMENT / FORMA DE PAGO

ONLINE PAYMENT / PAIEMENT EN LIGNE / PAGO EN LINEA

(Credit card - Carte de crédit - Tarjeta de credito) <http://comptrasec.u-bordeaux.fr/revue/abonnement>

PURCHASE ORDER / BON DE COMMANDE / ORDEN DE COMPRA

to / à / a : revue.comptrasec@u-bordeaux.fr

NB : Online payment is preferred. If you have any difficulty, please contact us at
Le paiement en ligne est à privilégier. En cas de difficulté, veuillez nous contacter à
El pago en linea se prefiere. Si tiene alguna dificultad, contáctenos a

revue.comptrasec@u-bordeaux.fr

Achévé d'imprimer en janvier 2022
sur les presses de l'imprimerie Aquiprint
Dépôt légal 1^{er} trimestre 2022
Imprimé en France

REVUE

2021/4

DE DROIT COMPARÉ
DU TRAVAIL
ET DE LA SÉCURITÉ SOCIALE

The Comparative Law Review of Labour and Social Security [Revue de Droit Comparé du Travail et de la Sécurité Sociale] has been published by COMPTRASEC, UMR 5114 CNRS of the University of Bordeaux since 1981. It is edited three times a year in order to contribute to the development of analyses and exchanges on labour and social security law around the world. The Comparative Law Review of Labour and Social Security is a member of the International Association of Labour Law Journals (IALLJ), an international network for the exchange of ideas and publications on labour law and social security.

For any correspondence or contribution proposal write to:

Marie-Cécile CLÉMENT

COMPTRASEC - UMR CNRS 5114 - University of Bordeaux
16, avenue Léon Duguit - CS 50057 - 33608 PESSAC cedex - France

E-mail : marie-cécile.clement@u-bordeaux.fr

Phone: +33 (0)5 56 84 54 74 - Fax: +33 (0)5 56 84 85 12

<http://comptrasec.u-bordeaux.fr>

The opinions expressed in the articles are the sole responsibility of the authors. When translation is carried out in French, it is under the responsibility of the Director Editor and members of the Editorial Board. Every manuscript is submitted, without mentioning the name of the author, to two readers for evaluation and notice before publication.

PREVIOUS ISSUE

2021/3

THEMATIC CHAPTER

NATIONAL LABOUR LAW AND SOCIAL SECURITY SYSTEMS THROUGH THE LENS OF THE COVID HEALTH CRISIS. ADAPTATIONS OR FUNDAMENTAL CHANGES?

COORDINATED BY LOÏC LEROUGE

WITH THE CONTRIBUTIONS OF:

PETER ANDERSSON & TONIA A. NOVITZ (SWEDEN, UNITED KINGDOM), VALÉRIE FLOHIMONT (BELGIUM), ELIZABETH BLUFF & RICHARD JOHNSTONE (AUSTRALIA), GABRIELLE GOLDING (AUSTRALIA), CAROLINE MURPHY & LORRAINE RYAN (IRELAND), EDOARDO ALES (ITALY), VAGELIS KOUMARIANOS (GREECE), LUCIE LAMARCHE (CANADA), CLAIRE MARZO (UNITED KINGDOM), SILVIA FERNÁNDEZ MARTÍNEZ (SPAIN).

INTERNATIONAL LEGAL NEWS

AFRICA: ALGERIA

AMERICA: ARGENTINA / CHILE / UNITED STATES

ASIA-OCEANIA : AUSTRALIA / JAPAN

EUROPE: RUSSIAN FEDERATION / REPUBLIC OF SERBIA / UNITED KINGDOM / SWISS

FORTHCOMING

2022/1

STUDIES

INTERNATIONAL LEGAL NEWS

REVUE

DE DROIT COMPARÉ
DU TRAVAIL
ET DE LA SÉCURITÉ SOCIALE

REVUE DE DROIT COMPARÉ DU
TRAVAIL ET DE LA SÉCURITÉ SOCIALE

4 numéros par an
~3 éditions papier (en français)
~1 édition électronique (en anglais)

2021/1

Études
Actualités Juridiques Internationales

2021/2

Jurisprudence Sociale Comparée
Jurisprudence Sociale Internationale
Actualités des organisations
internationales
Chronique bibliographique

2021/3

Dossier thématique
Actualités Juridiques Internationales

2021/4

Studies
Thematic Chapter
Comparative Labour Case Law
Comparative Labour Law Literature
International Legal News

Pour plus d'informations

<http://comptrasec.u-bordeaux.fr/revue-de-droit-compare-du-travail-et-de-la-securite-sociale>

Contact

revue.comptrasec@u-bordeaux.fr

COMPTRASEC

Centre de droit comparé du travail
et de la sécurité sociale

université
de **BORDEAUX**



70 euros

ISSN 2117-4350