

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**



LEGAL POSITION OF SEASONAL WORKERS IN THE REPUBLIC OF SERBIA

In the Republic of Serbia, employers are able to fulfil requirement for seasonal work in two ways: engaging workers on a fixed term employment contract basis, or by engaging them under contracts for temporary and occasional work, which, according to the Serbian law, do not mean having an employment status. In the first instance, general employment regulations do apply on seasonal workers, while in case of contract for temporary and occasional work two legal situations may occur. According to the Labour Law, seasonal workers may be engaged under contracts for temporary and occasional jobs for a maximum of 120 working days in a calendar year, with compulsory social insurance covering sickness, occupational injuries, old age, disability, death of breadwinner and unemployment. Another regime is set out by the Law on Simplified Work Engagement in Seasonal Jobs in Certain Activities (LSWE)¹, whereby seasonal workers may be engaged for temporary and seasonal jobs in instances when written form of contract is not required, when their compulsory social insurance covers only health insurance in case of accidents at work and occupational diseases, as well as applicable entitlements to pension and disability insurance if accident at work or occupational disease have caused worker's disability or personal injury. LSWE thereby regulates engagement of workers only in sectors of agriculture, forestry and fishery, while their employers may be both legal entity and a natural person (entrepreneur or agricultural property owner or family member engaged in farming).

Workers engaged in line with LSWE do not have rights deriving from employment relationship. Exemptions are rights to occupational health and safety, antidiscrimination, protection against harassment, and whistle-blowers against employer's retaliation, having in mind that application of special laws which regulate such issues is also extended (from employees) to certain categories of persons engaged under contracts of the civil and business law, including the contract for temporary and occasional jobs². One should also bear in mind that, in line with LSWE, seasonal workers are provided with certain provisions concerning *working conditions*. This applies foremost to employer's obligation to inform seasonal workers about their jobs before their work commences, then about the workplace, expected duration of employment, health and safety regulations, daily and weekly working hours, breaks during working hours, as well as pay rates and terms of payment³. *Payment* is hereby calculated per hour and shall not be lower than the minimal payment rate applicable on the day of payment, which is paid at the end of the working day or according to any other agreed terms. On the other hand, *working hours of seasonal workers* must not be

1 Official Gazette RS, no. 50/18.

2 Occupational Safety and Health Law (Official Gazette RS, no. 101/05, 91/15 and 113/17), art. 4, § 1; Law on the Prohibition of Discrimination (Official Gazette RS, no. 22/09), art. 2; Law on Protection of Whistleblowers (Official Gazette RS, no. 128/14), art. 2, § 2 and 5.

3 Rulebook on the Content of the Certificate of Employment of Seasonal Workers (Official Gazette RS, no. 67/18).

longer than 12 hours a day, which is a rather extensive amount of working hours, especially having in mind the health and safety of workers, as well as their familial, i.e. private life. Besides, workers are entitled to a minimum of 30 minutes' breaks if they work eight-hour shifts or more, which also represents a disadvantage when compared to breaks employees are entitled to. When the termination of contract is concerned, employer has the right to initiate termination of working contract when engagement of seasonal worker is no longer needed, or if the work has not been satisfactory.

Employer may engage seasonal workers for a maximum of 180 calendar days, calculating calendar days from the initial notification via the Tax Administration Portal until the last employment day of the worker recorded via Portal, with non-working days of the worker exempt from calculation. When it comes to hiring timelines of seasonal workers, employer may engage one person for a maximum of 120 working days in one calendar year. This maximum day timeline encompasses not only working days of seasonal worker under LSWE, but also the working days under the contract for temporary and occasional work under the Labour Law⁴.

Employer shall provide, upon seasonal worker's request, a *written statement containing information about working conditions and any changes of the working conditions* within two months from the beginning of employment. This enables the workers to have a proper overview of their legal position, and in case of a lawsuit, facilitates verification of the contracted working conditions. Moreover, obligation to provide the statement contributes to curbing illegal work, as not having employer's written statement about working conditions may indicate a breach of rights of seasonal workers to the labour inspectors. This solution is in line with regulations of the Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union, bearing in mind and following the provisions of the Directive, it is necessary to include regulations for protection of workers' rights in the Serbian legal system considering workers who think that employer breached his obligation to provide a written statement. This is particularly important considering the difficulties workers encounter having to prove the damages in legal proceedings caused by employer's negligence to inform them about working conditions in a correct and comprehensive manner.

On the other hand, one should not overlook that the Directive 2019/1152 also lays down minimum entitlements for all the workers. We believe that harmonization with the Directive provisions would be very important in regard to the section covering the *right to training*, which employer should provide to workers covering the expenses and calculating the training hours as working hours. Moreover, according to the Directive, workers have the right to a *minimal predictability of work*, regarding their right to be informed in advance about the timelines for completing tasks, having the right to refuse to do so if this exceeds the agreed (approximate) working hours, and having protection from employer's unfavourable action as a consequence. The Directive also ensures worker's entitlements to compensation in case of early contract termination, a solution which should be included in LSWE as well.

Beside the simplified work engagement, LSWE also regulates a *simplified registration of seasonal workers to the Tax Administration and the Central Registry of Compulsory Social Insurance*. Registration and deregistration of seasonal workers to the Tax Administration is done on-line every calendar month. Based on the data from the registration and deregistration records, the Tax Administration further submits a mandatory social insurance

4 For example, in 2019 was the highest number of employers who had engaged seasonal workers for up to one month period of time, with an average from 15 to 21 days a year (M. Andjelkovic Djokovic, I. Smigic, M. Jovanovic, *Seasonal Employment in Agriculture: Analysis of the Reform Effects*, National Alliance for Local Economic Development, Belgrade, 2020, p. 60).

application for workers to the Central Registry of Compulsory Social Insurance. According to LSWE provisions, fixed tax and contribution rates are determined, and they are calculated daily for every worker at 30% of minimal monthly rate. Employer, therefore, pays taxes and contributions only for days in a month when seasonal worker has actually been employed, while payable taxes and contributions are electronically submitted at the end of month for the current month.

During the work engagement in line with LSWE, seasonal workers are not exempt from the National Employment Registry, nor is their unemployment compensation discontinued. Also, wages the seasonal workers earn do not affect realisation and exercising of rights to unemployment compensation, in line with social insurance regulations. Such regulations have been included in LSWE in an effort to prevent undeclared work, having in mind that a substantial number of seasonal workers have opted to do so, not to lose unemployment benefits or social assistance. It, however, seems that the presented legal solution creates an undue discrepancy between individuals eligible for social benefits who perform seasonal jobs, under LSWE provisions, and all other social insurance beneficiaries who cannot be hired under different conditions⁵. Moreover, LSWE implementation allows exemption of seasonal work income even when this income is relatively high and when multiple members of one household are engaged in seasonal jobs in the course of several months, as maximum annual income from seasonal work per one household which is deductible from social assistance has not been defined. On the contrary, employment under the contract for temporary and occasional work in accordance with the Labour Law is a basis for discontinuation of unemployment benefits, while income generated from such contract renders enjoyment of social assistance impossible. In this respect, we should bear in mind that the adoption of LSWE has been motivated by the necessity to prevent the practise of engaging seasonal workers in agriculture in the so called grey zone, as undeclared work comprises 18.2% of overall employment in the Republic of Serbia⁶. This practise has been widespread because of high expenses arising from employment contracts and contracts for temporary and occasional work concluded in line with the Labour Law, and because of complicated employment procedures and employee registration, i.e. workers agreeing to do jobs without proper registration and consequently lose their social benefits⁷. In this respect, a positive influence of LSWE implementation is a figure from 2019 when number of officially registered seasonal workers has been 8.5 times higher (29,778 seasonal workers) than the total registered in the previous year.

- 5 In 2019, over one third of seasonal workers in agriculture were on unemployment records of the National Employment Service, where the highest number represented persons unemployed for almost four years. On the other hand, just 1% of seasonal workers has been engaged in seasonal work and enjoyed their right to unemployment benefits in parallel, while 7% of seasonal workers have at the same time been engaged on the basis of employment contracts or other civil or business law contract. However, when seasonal workers who are beneficiaries of the social assistance are considered, they comprised approximately 20% of the total. See M. Andjelkovic Djokovic, I. Smigic, M. Jovanovic, *op. cit.*, p. 30-31-39.
- 6 I. Djordjevic, « Ex Ante Analysis of Extended System for Simplified Engagement of Workers on Temporary and Occasional Jobs », *Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ), GmbH, Belgrade, 2020, p. 8.*
- 7 Inasmuch so, in 2017, number of undeclared seasonal workers in agriculture was estimated to be 70,000, while only 3,585 seasonal workers were engaged under contracts for temporary and occasional work; one year later, only 3,500 workers were engaged under contracts for temporary and occasional work, while 65,000 seasonal workers in agriculture worked illegally, without being registered in the Central Registry of Compulsory Social Insurance of the Tax Administration. See M. Andjelkovic Djokovic, I. Smigic, M Jovanovic, *op. cit.*, p. 58; I. Djordjevic, *op. cit.*, p. 27.

However, number of officially registered seasonal workers made only 37% of the total estimated number of seasonal workers in the Republic of Serbia in 2019, having in mind that undeclared work is still widespread⁸. This practise has been an incentive for the Ministry of Labour, Employment, Veteran and Social Policy in 2020 to initiate a new LSWE proposal, which would broaden the possibility for simplified work engagement to *seasonal workers in construction, tourism and catering, as well as household workers*⁹. Extension of LSWE personal domain would also entail adaptation of the existing system of simplified work engagement further to other activities, in respect of their specific traits.

The Ministry's proposal has, however, encountered a justified criticism in scientific and academic community. The main justification for encompassing new activities in the LSWE implementation domain is prevention of undeclared work. Although it is a legitimate and important goal, it does not seem acceptable that, as a core instrument in fighting undeclared work, narrow legal protection of seasonal workers is practised. In this particular instance, the Republic of Serbia has a prospect for improvement of inspection controls, both in relation to activities of tax and labour inspection, where the latter faces numerous difficulties, where insufficient number of labour inspectors is the most significant one: less than 250 labour inspectors are currently monitoring implementation of labour regulations in all registered and unregistered entities in Serbia.

On the other hand, there is an open question of justified use of the term « seasonal work » to nominate temporary and occasional work in other activities, having in mind that, unlike in agriculture, there are no seasonal variations and no activities specific for farming. For example, construction may not necessarily entail seasonal jobs only because a considerable range of construction works can be performed in poor weather conditions, while in the fields of tourism and catering there is a demand for engaging on-call workers, and not necessarily as seasonal workers. In this respect, it seems that a more precise legal definition of seasonal work is required to avoid malpractices related to simplified engagement of seasonal workers when certain activities are not necessarily understood as seasonal, being of a continuous nature. This could be supported with an indicative legal listing of seasonal works, which has been provided in LSWE for agriculture where seasons and the need for engaging more workforces are clearly outlined. The same tool may apply to the clarification of the seasonal nature of such jobs, and their close correlation to climatic and ecological processes and cycles, which means that certain seasonal jobs (i.e. temporary and occasional) are essentially not influenced by the decision of employers (and workers).

Finally, the proposal for broader LSWE implementation may not seem acceptable, raising a concern that employers motivated to lower their employment costs (either to maintain their business continuity, or to maximise their profits) may decide to lay off a number of their employees and to bridge the workload using simplified engagement of seasonal workers, which does not eliminate the risk of rehiring the laid off workers again as seasonal workers, who are then not entitled to benefits of the employment contract. This extended loophole for workers who can be hired with no employment contract, with no guarantees for minimal employment benefits, is not acceptable both from the aspect of right to a decent work and the requirement to ensure decent working conditions, regardless of their legal employment status. This requirement entails, of course, a defined catalogue of fundamental individual rights, including the right to be duly informed and to be organized in trade unions.

8 M. Andjelkovic Djokovic, I. Smigic, M Jovanovic, *op. cit.*, p. 6.

9 It's estimated that 11.3% of the total number of workers in informal economy are working in the construction, while in catering and tourism this number rises to 15%. It is also estimated that over 55,000 households engage household workers without the legal basis. I. Djordjevic, *op. cit.*, p. 15.

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