

EMPLOYER'S IMPLIED DUTIES AND JUDICIAL CREATION: CONTRASTING EXAMPLES IN COMPARATIVE LAW*

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THE IMPLIED DUTY OF MUTUAL TRUST AND CONFIDENCE IN BRITISH LAW:
AN EXAMPLE OF JUDICIAL CREATION

The British doctrine is in liveliness when it evokes the duty of mutual trust. It was described as “assuming a central position in the law of the contract of employment”¹, “undoubtedly the most powerful engine of movement in the modern law of employment contracts”² or “the cornerstone of the legal construction of the contract of employment”³. Many famous academics devoted even articles to him⁴ mimicking the judicial interest for this duty of mutual trust.

* Please notice that the entire “Comparative Labour Law case” Section entitled “*Employer’s implied duties and judicial creation: Contrasting examples in comparative law*” is not fully reproduced below in this English Electronic Edition but can be found in the French print issue: see *Jurisprudence sociale comparée “Obligations implicites de l’employeur et création prétorienne : des exemples contrastés en droit comparé”*, *Revue de droit comparé du travail et de la sécurité sociale*, 2015/2, pp. 99-125.

¹ D. Brodie, «Mutual Trust and the Values of the Employment Contract», *Industrial Law Journal*, 2001, vol. 30, n°1, pp. 84-100, spéc. p. 86.

² M. Freedland, *The Personal Employment Contract*, Oxford University Press, 2003, p. 166.

³ H. Collins, *Employment Law*, Oxford University Press, 2003, p. 104.

⁴ L. Barmes, «The Continuing Conceptual Crisis in the Common Law of the Contract of Employment», *Modern Law Review*, 2004, Vol. 67, n° 3, pp. 435-464; D. Brodie, «The Heart of the Matter: Mutual Trust and Confidence», *Industrial Law Journal*, 1996, vol. 25, n°2, pp. 121-136; «Beyond Exchange: The New Contract of Employment», *Industrial Law Journal*, 1998, vol. 27, n°2, pp. 79-102; «A Fair Deal at Work», *Oxford Journal of Legal Studies*, 1999, vol. 19, n°1, pp. 83-98; «Mutual Trust and Confidence: Catalysts, Constraints and Commonality», *Industrial Law Journal*, 2008, vol. 37, n°4, pp. 329-346; A. Brooks, «The Good and Considerate Employer: Developments in the Implied Duty of Mutual Trust and Confidence», *University of Tasmania Law Review*, 2001, vol. 20, n°1, pp. 29-69; D. Cabrelli, «The Implied Duty of Mutual Trust and Confidence: An Emerging Overarching Principle?», *Industrial Law Journal*, 2005, vol. 34, n°4, pp. 284-307; M. Freedland, «Constructing Fairness in Employment Contracts», *Industrial Law Journal*, 2007, vol. 36, n°1, pp. 136-140; J. Lindsay, «The Implied Term of Trust and Confidence», *Industrial Law Journal*, 2001, vol. 30, n° 1, pp. 1-16.