

# **LLB363 Employment Relations Law**

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# INTRODUCTION TO EMPLOYMENT RELATIONS LAW

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**Employment Relations Law:** Also referred to as labour law, industrial law and/or workplace law. The law relating to employment involves **individual legal relationships** (between an employee and employer) and **collective relationships** (employees in the multiple, often represented by a trade union) as well as social, economic and political relations. ***It is about the regulation of relationship between employees and employers*** under the common law and legislation.

- Social relationships: gives people money to spend, to be consumers, important to all Australians who engage in it. Social issues include a person's ability to participate in the workforce, minority groups, workplace discrimination.
- Economic relationships: rate of pay, ability of employer to make a profit.
- Political relationships: government reforms of employment law (eg. Howard Government reforms), topical issue during election periods.

***Involves balancing the tension between employers' demands, and employees' needs.***

## Employee Protection or Economic Efficiency, or Both?

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To what extent should regulation respond to labour market changes? Australian parliaments & courts have created law that restricts freedom of contract in employment.

- A primary purpose of statute law is adjustment of a perceived *inequality of bargaining power* between an employer and an employee.
  - Legislation and case law predominately protects the employees' interests.
  - Basis of necessity: employee will have to say yes to anything in order to survive.
  - Employee rights embedded in statute are applicable irrespective of any contract/agreement to the contrary.
- Statutes may also seek economic efficiency objectives, by enabling employers to manage their enterprise without or with less interference.

Early origins of regulation (master and servant): Legislation introduced to restrict working hours and the punishment employers could give. Relationship between employer and employee is still one of subordination; follow orders/under directions of employer; not equal parties.

Minimum rates of pay were introduced. Even if employee accepted below minimum, free to later ask for minimum rate. Maximum hours of work, penalty for long hours of work.

Recently: new regulations introduced on the basis of economic efficiency and competitiveness, giving employers some more freedom/flexibility.

- Only in last 20 years (under the Howard Government in the late 1990s-2000s) that regulations have moved away from a rigid, third party tribunal making decisions to a more flexible approach to employment law known as deregulation (granted power to employers to make individual bargaining agreements to their employees; no penalty rates).
- *Deregulation:* taking away law; giving employers more flexibility (not necessarily reducing the body of law).

***Four enduring values embedded in the State's role:***

- Independent tribunal: third party, not biased, experts able to resolve disputes between employees (represented by trade union) and employers, facilitate resolution of dispute, make recommendations to the parties.
- Public interest consideration: striking/industrial action, argument that the public requires people to provide their service (nurses, pilots etc.).
- Protection of the weak: employees have not got the same bargaining power.
- Trade unions are privileged: forced, automatic involvement of the Commission gave trade unions a privileged position, automatic right to represent their members.

## Perspectives

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- *Social equity and justice issues:*
  - Women in the workforce (eg. childcare workers dispute for better pay)
  - Discrimination: discussion in pre-employment phase, restrictions on hiring
  - Health and safety: OHS law
  - Immigration
  - Job creation
- *Interaction with other areas of the law* (eg. company law).

## International Standards

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- **United Nations (UN):** human rights covenants, protocols and standards on FOA, collective bargaining, industrial action, discrimination against women, equal pay, minimum pay, maternity leave, etc.
- **International Labour Organisation (ILO):** conventions, recommendations and declarations on hours of work, minimum age, injury compensation, child labour, forced labour, fair termination of employment.

Australia is a UN and ILO member. ***Only if a convention or other instrument is ratified are its obligations to be implemented by federal legislation.***