# Social Security Law in the United States

TIMOTHY P. GLYNN



## Social Security Law in the United States

#### Timothy P. Glynn

This book was originally published as a monograph in the International Encyclopaedia of Laws/Social Security Law.

General Editor: Roger Blanpain Associate General Editor: Michele Colucci Volume Editor: Willy van Eeckhoutte



Published by: Kluwer Law International PO Box 316 2400 AH Alphen aan den Rijn The Netherlands Website: www.kluwerlaw.com

Sold and distributed in North, Central and South America by: Aspen Publishers, Inc. 7201 McKinney Circle Frederick, MD 21704 United States of America

Sold and distributed in all other countries by: Turpin Distribution Services Ltd. Stratton Business Park Pegasus Drive, Biggleswade Bedfordshire SG18 8TQ United Kingdom Email: kluwerlaw@turpin-distribution.com

Email: customer.service@aspenpublishers.com

DISCLAIMER: The material in this volume is in the nature of general comment only. It is not offered as advice on any particular matter and should not be taken as such. The editor and the contributing authors expressly disclaim all liability to any person with regard to anything done or omitted to be done, and with respect to the consequences of anything done or omitted to be done wholly or partly in reliance upon the whole or any part of the contents of this volume. No reader should act or refrain from acting on the basis of any matter contained in this volume without first obtaining professional advice regarding the particular facts and circumstances at issue. Any and all opinions expressed herein are those of the particular author and are not necessarily those of the editor or publisher of this volume.

Printed on acid-free paper.

ISBN 978-90-411-4012-8

This title is available on www.kluwerlawonline.com

© 2012, Kluwer Law International BV, The Netherlands

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without written permission from the publisher.

Permission to use this content must be obtained from the copyright owner. Please apply to: Permissions Department, Wolters Kluwer Legal, 76 Ninth Avenue, 7th Floor, New York, NY 10011-5201, USA. Email: permissions@kluwerlaw.com

Printed and Bound by CPI Group (UK) Ltd, Croydon, CR0 4YY.

The Author	3
List of Abbreviations	11
General Introduction	13
§1. General Background	13
§2. HISTORICAL BACKGROUND	15
§3. SOURCES OF SOCIAL SECURITY LAW  I. General II. Constitutional Law III. Legislation A. Health Care B. Family Allowances C. Incapacity to Work D. Industrial Accidents and Occupational Diseases E. Unemployment F. Pensions G. Disabled Persons H. Minimum Income Benefit IV. Regulations V. Adjudication A. Health Care B. Incapacity to Work C. Industrial Accidents and Occupational Diseases D. Unemployment E. Pensions F. Disabled Persons G. Minimum Income Benefit VI. Labor Agreements	18 18 20 20 21 21 21 21 22 22 22 22 23 23 23 23 24 24 24
Selected Bibliography	27
Part I. The Institutions	31

5

Chapter 1. Public Institutions	31
§1. FEDERAL AGENCIES	31
§2. State Agencies	32
Chapter 2. Private Institutions	34
Part II. Contribution and Financing	35
Part III. Health Care	37
Chapter 1. Territorial and Personal Fields of Application	39
§1. PRIVATE INSURANCE I. ERISA II. PPACA	39 40 42
§2. Medicare	45
§3. MEDICAID	46
Chapter 2. Benefits	48
§1. PRIVATE INSURANCE  I. Benefits and Plan Types II. Federal and State Laws Mandating Benefits	48 48 50
§2. Medicare	53
§3. MEDICAID	55
Chapter 3. Financing	57
§1. Private Insurance	57
§2. FINANCING HEALTH CARE REFORM	58
§3. Medicare and Medicaid	59
Part IV. Family Allowances	61
Part V. Incapacity to Work	63

Chapter 1. Pregnancy	64
Chapter 2. Family and Medical Emergencies	66
Part VI. Industrial Accidents and Occupational Diseases	69
Chapter 1. Territorial and Personal Fields of Application	70
Chapter 2. The Concept of "Industrial Accident"	72
§1. ACCIDENT  I. Personal Injury  II. Accident  III. Arising Out of Employment  IV. In the Course of Employment	72 72 74 75
§2. Link to an Employment Relationship	78
§3. ACCIDENTS ON THE WAY TO WORK	79
Chapter 3. The Concept of Occupational Disease	81
Chapter 4. Medical Care	84
Chapter 5. Incapacity to Work	86
§1. TEMPORARY TOTAL DISABILITY BENEFITS	86
§2. TEMPORARY PARTIAL DISABILITY BENEFITS	87
§3. PERMANENT PARTIAL DISABILITY BENEFITS	8
§4. PERMANENT TOTAL DISABILITY BENEFITS	88
Chapter 6. Death	90
Chapter 7. Prevention of Occupational Diseases	92
Chapter 8. Supplementary Benefits	93
Chapter 9. No-Fault Insurance	94
Chapter 10. Civil Liability	9

Ch	napter 11. Contribution and Financing	98
Par	rt VII. Unemployment	99
Ch	napter 1. Provision of Work	99
Ch	napter 2. Unemployment Benefits	101
§1.	FIELD OF APPLICATION  I. Territorial  II. Personal	101 101 102
§2.	AMOUNT OF THE BENEFIT	102
§3.	CONDITIONS	104
§4.	CONTRIBUTION AND FINANCING	107
Paı	rt VIII. Pensions	109
Ch	napter 1. Social Security	110
§1.	BENEFICIARIES	110
§2.	BENEFITS	110
§3.	FINANCING	112
Ch	napter 2. Private Pensions	114
§1.	OCCUPATIONAL PENSIONS  I. Beneficiaries  II. Benefits  III. Financing	114 115 116 117
§2.	INDIVIDUAL RETIREMENT ACCOUNTS I. Beneficiaries II. Benefits III. Financing	118 118 119 119
Par	art IX. Disabled Persons	121
Ch	napter 1. Social Integration	122
§1.	. Employment	122

§2. Protections in Other Areas	124
Chapter 2. Financial Allowances	126
§1. Beneficiaries	126
§2. Benefits	127
§3. Financing	128
Part X. Minimum Income Benefit	129
Part XI. Claims and Adjudication	133
Chapter 1. Health Care	134
§1. PRIVATE HEALTH INSURANCE I. ERISA Procedures II. State Law Procedures	134 134 136
§2. Medicare	136
§3. MEDICAID	137
Chapter 2. Incapacity to Work	138
§1. Pregnancy	138
§2. Family and Medical Emergencies	138
Chapter 3. Industrial Accidents and Occupational Diseases	139
§1. Workers' Compensation	139
§2. OCCUPATIONAL SAFETY AND HEALTH ACT	139
Chapter 4. Unemployment	140
Chapter 5. Pensions	141
§1. SOCIAL SECURITY	141
§2. Private Pensions	14

Chapter 6. Disabled Persons	143
§1. Social Integration	143
§2. Financial Allowances	143
Chapter 7. Minimum Income Benefit	144
§1. The Minimum Wage	144
§2. THE EARNED INCOME TAX CREDIT	145
Index	147

## **Social Security Law in the United States**

### Timothy P. Glynn

This book was originally published as a monograph in the International Encyclopaedia of Laws/Social Security Law.

General Editor: Roger Blanpain Associate General Editor: Michele Colucci Volume Editor: Willy van Eeckhoutte



Published by: Kluwer Law International PO Box 316 2400 AH Alphen aan den Rijn The Netherlands Website: www.kluwerlaw.com

Sold and distributed in North, Central and South America by:
Aspen Publishers, Inc.
7201 McKinney Circle
Frederick, MD 21704
United States of America
Email: customer.service@aspenpublishers.com

Sold and distributed in all other countries by: Turpin Distribution Services Ltd. Stratton Business Park Pegasus Drive, Biggleswade Bedfordshire SG18 8TQ United Kingdom Email: kluwerlaw@turpin-distribution.com

DISCLAIMER: The material in this volume is in the nature of general comment only. It is not offered as advice on any particular matter and should not be taken as such. The editor and the contributing authors expressly disclaim all liability to any person with regard to anything done or omitted to be done, and with respect to the consequences of anything done or omitted to be done wholly or partly in reliance upon the whole or any part of the contents of this volume. No reader should act or refrain from acting on the basis of any matter contained in this volume without first obtaining professional advice regarding the particular facts and circumstances at issue. Any and all opinions expressed herein are those of the particular author and are not necessarily those of the editor or publisher of this volume.

Printed on acid-free paper.

ISBN 978-90-411-4012-8

This title is available on www.kluwerlawonline.com

© 2012, Kluwer Law International BV, The Netherlands

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without written permission from the publisher.

Permission to use this content must be obtained from the copyright owner. Please apply to: Permissions Department, Wolters Kluwer Legal, 76 Ninth Avenue, 7th Floor, New York, NY 10011-5201, USA. Email: permissions@kluwerlaw.com

Printed and Bound by CPI Group (UK) Ltd, Croydon, CR0 4YY.

此为试读,需要完整PDF请访问: www.ertongbook.com

## The Author<sup>1</sup>



Professor Timothy P. Glynn (born February 5, 1967, St. Paul, Minnesota, U.S.) received his undergraduate degree in Government from Harvard University in Cambridge, Massachusetts, U.S., in 1989. He received his Juris Doctorate degree from the University of Minnesota Law School in Minneapolis, Minnesota, U.S., in 1994. While in law school, he served as the Editor-in-Chief of the Minnesota Law Review and was admitted to the Order of the Coif

After law school, Professor Glynn clerked for the Honorable Donald P. Lay, United States Court of Appeals for the Eighth Circuit, in St. Paul, Minnesota, U.S. He then

practiced law as an associate at the firm of Leonard, Street and Deinard in Minneapolis, Minnesota, U.S., focusing in the areas of securities, business, and employment litigation. In 1997, he returned to clerking, this time for the Honorable John R. Tunheim, United States District Court for the District of Minnesota, in Minneapolis, Minnesota. In 1999, Professor Glynn joined the faculty of Seton Hall Law School, in Newark, New Jersey. He teaches in the employment and corporate areas, and is the author of an employment law case book and numerous articles.

Currently, Professor Glynn is the Miriam T. Rooney Professor of Law at Seton Hall Law School.

 The author acknowledges the contributions of Professor Steven Willborn, the author of the prior version of this monograph. The Author

General Introduction  §1. GENERAL BACKGROUND  \$2. HISTORICAL BACKGROUND  \$3. SOURCES OF SOCIAL SECURITY LAW  I. General II. Constitutional Law  III. Legislation  A. Health Care  B. Family Allowances  C. Incapacity to Work  D. Industrial Accidents and Occupational Diseases  E. Unemployment  F. Pensions  G. Disabled Persons  H. Minimum Income Benefit  IV. Regulations  V. Adjudication  A. Health Care  B. Incapacity to Work  C. Industrial Accidents and Occupational Diseases  22. January 1. Janu	The Author	3
\$1. GENERAL BACKGROUND  \$2. HISTORICAL BACKGROUND  \$3. SOURCES OF SOCIAL SECURITY LAW I. General II. Constitutional Law III. Legislation A. Health Care B. Family Allowances C. Incapacity to Work D. Industrial Accidents and Occupational Diseases E. Unemployment F. Pensions G. Disabled Persons H. Minimum Income Benefit IV. Regulations V. Adjudication A. Health Care B. Incapacity to Work C. Industrial Accidents and Occupational Diseases 22 B. Incapacity to Work C. Industrial Accidents C. Industrial Accidents B. Incapacity to Work C. Industrial Accidents and Occupational Diseases D. Unemployment E. Pensions F. Disabled Persons G. Minimum Income Benefit VI. Labor Agreements  Selected Bibliography	List of Abbreviations	11
\$2. HISTORICAL BACKGROUND  \$3. SOURCES OF SOCIAL SECURITY LAW  I. General  II. Constitutional Law  III. Legislation  A. Health Care  B. Family Allowances  C. Incapacity to Work  D. Industrial Accidents and Occupational Diseases  E. Unemployment  F. Pensions  G. Disabled Persons  H. Minimum Income Benefit  IV. Regulations  V. Adjudication  A. Health Care  B. Incapacity to Work  C. Industrial Accidents and Occupational Diseases  Y. Adjudication  A. Health Care  B. Incapacity to Work  C. Industrial Accidents and Occupational Diseases  D. Unemployment  E. Pensions  F. Disabled Persons  G. Minimum Income Benefit  VI. Labor Agreements  Selected Bibliography	General Introduction	13
\$3. SOURCES OF SOCIAL SECURITY LAW I. General II. Constitutional Law III. Legislation A. Health Care B. Family Allowances C. Incapacity to Work D. Industrial Accidents and Occupational Diseases E. Unemployment F. Pensions G. Disabled Persons H. Minimum Income Benefit IV. Regulations V. Adjudication A. Health Care B. Incapacity to Work C. Industrial Accidents and Occupational Diseases D. Unemployment E. Pensions F. Disabled Persons G. Minimum Income Benefit  E. Pensions F. Disabled Persons G. Minimum Income Benefit  VI. Labor Agreements	§1. General Background	13
I. General II. Constitutional Law III. Legislation A. Health Care B. Family Allowances C. Incapacity to Work D. Industrial Accidents and Occupational Diseases E. Unemployment F. Pensions G. Disabled Persons H. Minimum Income Benefit IV. Regulations V. Adjudication A. Health Care B. Incapacity to Work C. Industrial Accidents and Occupational Diseases D. Unemployment E. Pensions G. Disabled Persons 422 233 244 254 255 266 276 277 277 278 278 279 279 270 270 270 270 270 270 270 270 270 270	§2. HISTORICAL BACKGROUND	15
Dest I. The Institutions	<ul> <li>I. General</li> <li>II. Constitutional Law</li> <li>III. Legislation <ul> <li>A. Health Care</li> <li>B. Family Allowances</li> <li>C. Incapacity to Work</li> <li>D. Industrial Accidents and Occupational Diseases</li> <li>E. Unemployment</li> <li>F. Pensions</li> <li>G. Disabled Persons</li> <li>H. Minimum Income Benefit</li> </ul> </li> <li>IV. Regulations</li> <li>V. Adjudication <ul> <li>A. Health Care</li> <li>B. Incapacity to Work</li> <li>C. Industrial Accidents and Occupational Diseases</li> <li>D. Unemployment</li> <li>E. Pensions</li> <li>F. Disabled Persons</li> <li>G. Minimum Income Benefit</li> </ul> </li> <li>VI. Labor Agreements</li> </ul>	18 18 18 20 20 21 21 21 21 22 22 22 23 23 23 23 24 24 24 24
	Part I. The Institutions	21

Chapter 1. Public Institutions	31
§1. Federal Agencies	31
§2. State Agencies	32
Chapter 2. Private Institutions	34
Part II. Contribution and Financing	35
Part III. Health Care	37
Chapter 1. Territorial and Personal Fields of Application	39
§1. PRIVATE INSURANCE I. ERISA II. PPACA	39 40 42
§2. Medicare	45
§3. MEDICAID	46
Chapter 2. Benefits	48
§1. PRIVATE INSURANCE  I. Benefits and Plan Types  II. Federal and State Laws Mandating Benefits	48 48 50
§2. Medicare	53
§3. MEDICAID	55
Chapter 3. Financing	57
§1. Private Insurance	57
§2. Financing Health Care Reform	58
§3. MEDICARE AND MEDICAID	59
Part IV. Family Allowances	61
Part V. Incapacity to Work	63

Chapter 1. Pregnancy	64
Chapter 2. Family and Medical Emergencies	66
Part VI. Industrial Accidents and Occupational Diseases	69
Chapter 1. Territorial and Personal Fields of Application	70
Chapter 2. The Concept of "Industrial Accident"	72
§1. ACCIDENT  I. Personal Injury  II. Accident  III. Arising Out of Employment  IV. In the Course of Employment	72 72 74 75 77
§2. LINK TO AN EMPLOYMENT RELATIONSHIP	78
§3. ACCIDENTS ON THE WAY TO WORK	79
Chapter 3. The Concept of Occupational Disease	81
Chapter 4. Medical Care	84
Chapter 5. Incapacity to Work	86
§1. TEMPORARY TOTAL DISABILITY BENEFITS	86
§2. TEMPORARY PARTIAL DISABILITY BENEFITS	87
§3. PERMANENT PARTIAL DISABILITY BENEFITS	87
§4. PERMANENT TOTAL DISABILITY BENEFITS	88
Chapter 6. Death	90
Chapter 7. Prevention of Occupational Diseases	92
Chapter 8. Supplementary Benefits	93
Chapter 9. No-Fault Insurance	94
Chapter 10. Civil Liability	96

8

Chapter 11. Contribution and Financing	98
Part VII. Unemployment	99
Chapter 1. Provision of Work	99
Chapter 2. Unemployment Benefits	101
§1. FIELD OF APPLICATION  I. Territorial  II. Personal	101 101 102
§2. Amount of the Benefit	102
§3. CONDITIONS	104
§4. Contribution and Financing	107
Part VIII. Pensions	109
Chapter 1. Social Security	110
§1. Beneficiaries	110
§2. Benefits	110
§3. Financing	112
Chapter 2. Private Pensions	114
§1. OCCUPATIONAL PENSIONS  I. Beneficiaries  II. Benefits  III. Financing	114 115 116 117
§2. INDIVIDUAL RETIREMENT ACCOUNTS  I. Beneficiaries  II. Benefits  III. Financing	118 118 119 119
Part IX. Disabled Persons	121
Chapter 1. Social Integration	122
§1. EMPLOYMENT	122