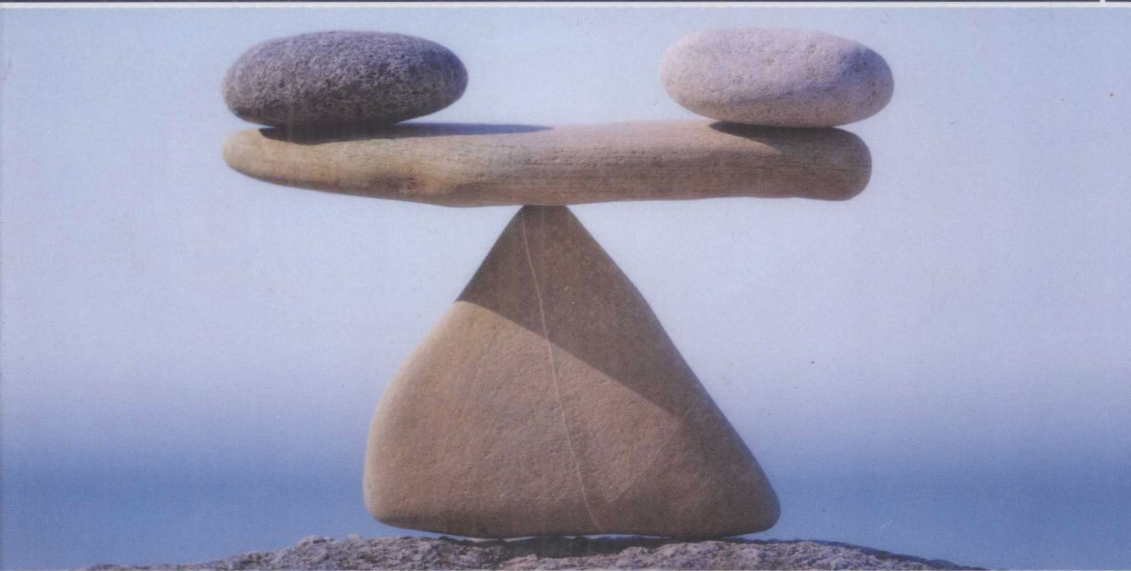


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EU LABOUR LAW

A.C.L. DAVIES



ELGAR EUROPEAN LAW

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A.C.L. Davies

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Founding editor: John Usher, *formerly Professor of European Law and Head, School of Law, University of Exeter, UK*

European integration is the driving force behind constant evolution and change in the laws of the member states and the institutions of the European Union. This important series will offer short, state-of-the-art overviews of many specific areas of EU law, from competition law to consumer law and from environmental law to labour law. Whilst most books will take a thematic, vertical approach, others will offer a more horizontal approach and consider the overarching themes of EU law.

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EU Labour Law
A.C.L. Davies

Preface

My aim in writing this book was to provide an intelligent and thought-provoking introduction to EU labour law. The book has three main objectives. First, and most obviously, I want to introduce you to the main provisions of EU labour law. This is not a textbook and it is not possible to do this at a high level of detail: the aim instead is to give an overview of the most important and interesting points. Second, we will examine some of the history of EU labour law. Again, the book cannot offer a detailed historical account, but we will consider how EU labour law emerged when it is helpful to do so. For example, disagreements among the Member States when a new directive is proposed often explain the compromises to be found in the directive itself. Third, I want to explore the major policy issues in EU labour law today. These are both substantive – related to the content of EU labour law – and procedural – relating to the way it is created and enforced. Some of the substantive policy issues we will examine include the so-called ‘constitutionalisation’ of EU labour law (in which greater emphasis is placed on workers’ rights as human rights) and the policy of ‘flexicurity’ currently advocated by the European Commission (which is about combining flexibility with security, to enable the EU to be competitive on a global stage). Some of the procedural issues to be considered include the role of the social partners (trade unions and employers’ associations) in formulating EU labour law, and the role of the Court of Justice in interpreting the provisions of EU labour law and giving guidance to national courts.

The book is organised as follows. In Part 1, I will introduce the main policy themes that I want to explore in the rest of the book. Chapter 1 will focus on substantive themes: on the reasons why labour law might be dealt with at EU level and on the factors influencing its content today. Chapter 2 will analyse the procedural themes, identifying the main actors in EU labour law and examining their roles. In Part 2, the larger part of the book, I will consider a selection of the main topics in EU labour law in the light of the themes identified in Part 1. I will not attempt to consider every theme in every chapter: instead, each chapter will consider two or three themes that are most relevant to the topic under consideration. It is best to regard the themes as strands to be woven in and out of the Part 2

chapters, with a different group of strands coming to prominence in each chapter. Since part of my purpose is to whet your appetite for the study of EU labour law, each chapter will conclude with some suggestions for further reading among the vast literature on the subject.

A couple of caveats are in order. First, I have assumed some very basic knowledge of EU law: of the Treaties and institutions, the legislative process and major doctrines such as supremacy and direct effect. If you need clarification (or a refresher course) on these matters, it is best to look them up in one of the well-known textbooks on EU law. Second, I have written the book from a UK perspective. Although my focus is on labour law at the EU level and not on its implementation in the 27 Member States (at the time of writing), it is sometimes interesting to consider how EU labour law fits with national traditions. Most of my examples are drawn from the UK just because it is the system I know best.

This book states the law as it stood in September 2011, though I am grateful to the publishers for allowing me to incorporate a few minor updates during the production process.

Acknowledgements

I am very fortunate to work in Oxford with a wonderful set of colleagues in labour law and related areas, who help to create a stimulating environment for teaching and research. Whilst they bear no responsibility for errors in this book I would like to thank Alan Bogg, Cathryn Costello, Sandy Fredman, Mark Freedland, Chris McCrudden and Wanjiru Njoya. I would also like to thank the Dean, Timothy Endicott, for his support.

Brasenose College provided two terms' sabbatical leave, which was a great help in bringing this project to completion, and I owe a debt of gratitude to my colleagues there, particularly Bill Swadling and Tom Krebs, for shouldering additional administrative burdens and for keeping my spirits up during the writing process. Lots of other people helped with the latter, but special thanks are due to Peter, Beatrice, Michael and Edward Groves.

Finally, my biggest thanks go, as always, to my parents, to whom this book is dedicated, for their interest in the progress of the book, and for their love and support.

A.C.L. Davies
Oxford, October 2011

Abbreviations

ARD	Acquired Rights Directive, Directive 2001/23/EC
BEPG	broad economic policy guidelines
BUSINESSEUROPE	Confederation of European Business, formerly UNICE
CEC	European Confederation of Executives and Managerial Staff
CEEP	European Centre of Employers and Enterprises Providing Public Services
CFI	(European) Court of First Instance
CRD	Citizens' Rights Directive, Directive 2004/38/EC
EC	Treaty of Rome, as amended; European Community; European Commission
ECHR	European Convention on Human Rights
ECJ	European Court of Justice
ECtHR	European Court of Human Rights
EES	European Employment Strategy
EGF	European Globalisation Adjustment Fund
ESF	European Social Fund
ESM	European Social Model
ETOR	(dismissals for) economic, technical or organisational reasons
ETUC	European Trade Union Confederation
ETUI	European Trade Union Institute
EU	European Union
EWG	European Works Councils
I&C	information and consultation of employees
ILO	International Labour Organization
NGO	non-government organisation
NRP	National Reform Programmes (previously National Action Plans – NAP)
nyr	[case] not yet reported
OMC	open method of co-ordination

PWD	Posted Workers Directive, Directive 96/71/EC
PrWD	Pregnant Workers Directive, Directive 92/85/EEC
SE	<i>Societas Europaea</i>
SNB	Special Negotiating Body (for negotiating EWC)
TCA	transnational company agreement
TCN	third-country national
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
UEAPME	European Association of Craft, Small and Medium Sized Enterprises

For my parents

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