

## **LABOUR LAW II**

**IE University**

Professor: **ANTONIO ALOISI**

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### **PREREQUISITES**

It requires a basic knowledge of Labour Law and European Union Law.

## **SUBJECT DESCRIPTION**

In line with Labour Law I, this course is aimed at providing students with the necessary tools, skills and knowledge on the main foundations, institutions, sources and mechanisms of labour law which are necessary to handle legal issues that arise at today's global workplace and to tackle common day-to-day problems related to this area of practice. Specific themes and material aspects of European Labour Law will be explored in more detail. These include: Freedom of Movement of Workers, Atypical employment, Protection against Discrimination, Business Reorganisation, Transfer of Undertakings and Employee Involvement in the undertaking, to list but a few. Most of the topics will be covered from an international, European and comparative perspective. Where possible and useful, reference will also be made to the national systems of Labor Law of the EU member states.

## **OBJECTIVES AND SKILLS**

The objective of the course is that students become familiar with the principles and institutions of labour law. More concretely, the student will:

- Acquire the necessary skills to master labour law, and to be able to apply it in connection with other relevant the areas of law (such as administrative, company and criminal law).
- Assess the role of international laws and EU law in governing workplace's interactions and power relationships
- Be able to study, analyze and discuss common labour law issues on the basis valuable insights into employer strategies and practical options for dealing with such issues.

## **METHODOLOGY**

The Professor will lead the learning process through lectures and presentations, students are expected to show a proactive attitude by participating in class discussion and activities.

Legal materials, cases and news reports will help students to investigate the key issues that labour law deals with and the solutions it provides.

Students will be asked to question what they already know and to think about a number of legal questions critically. They will be given elements to discuss work-related issues from a purely legal / technical perspective.

Active participation in class, presentations and debates are essential elements. Dynamic, informed and independent interaction in class will be positively rewarded in the final evaluation.

Students are encouraged to demonstrate a deep knowledge of the course topics (i) through an independent research activity and (ii) showing interest in employment related news / situations they come across during the course.

Note: All sessions are face to face

<b>Teaching methodology</b>	<b>Weighting</b>	<b>Estimated time a student should dedicate to prepare for and participate in</b>
Lectures	30.0 %	45 hours
Discussions	13.33 %	20 hours
Exercises	13.33 %	20 hours
Group work	20.0 %	30 hours
Other individual studying	23.33 %	35 hours
<b>TOTAL</b>	<b>100.0 %</b>	<b>150 hours</b>

## PROGRAM

### SESSIONS 1 - 2

#### **Introduction. Syllabus presentation and quick recap.**

What is going on here? The European Pillar of Social Rights, the ILO initiative on the Future of Work, towards a new social dimension?

*R.A.: Flexibilization, Globalization and Privatization: Three Challenges to Labour Rights in Our Time*

*R.A.: The European Pillar of Social Rights: An Assessment of its Meaning and Significance*

Stone K.V.W. (2008), *Flexibilization, Globalization and Privatization: Three Challenges to Labour Rights in Our Time* in Bercusson and Estlund (Eds.), *Regulating Labour in the Wake of Globalization*; also in (2005) 44 *Osgoode Hall LJ* 77

Otto. M. (2019), *The EPSR: an assessment of its meaning and significance*

### SESSIONS 3 - 4

#### **International employee mobility. Main legal aspects. Freedom of movement.**

Resources: Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States; Regulation 492/2011 on freedom of movement for workers within the Union.

Case Study: CJEU 15th December 1995, C-415/93, “Bosman”

### SESSIONS 5 - 6

#### **Freedom of establishment. Posted workers directive.**

*R.A.: Posted workers: single market or protection of national labour law systems*

*R.A.: One Step Forward, Two Steps Back? The Viking and Laval Cases in the ECJ*

*R.A.: The Court of Justice and the Social Market Economy: The Emergence of an Ideal and the Conditions for its Realization*

Resources: Directive 96/71/EC concerning the posting of workers in the framework of the provision of services. Directive (EU) 2018/957 of 28 June 2018 amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services (Text with EEA relevance).

Case Study: CJEU 18th December 2007, C-341/2005, “Laval”

Case Study: CJEU 11th December 2007, C-438/2005, “Viking”

Davies P. (1997), *Posted workers: single market or protection of national labour law systems* in *Common Market L. Rev.*, 34(3), pp. 571-602.

Davies A. C. L. (2008), *One Step Forward, Two Steps Back? The Viking and Laval Cases in the ECJ* in *Industrial Law Journal*, 37(2), pp. 126–148.

Azoulai L. (2008), *The Court of Justice and the Social Market Economy: The Emergence of an Ideal and the Conditions for its Realization* in *Common Market Law Review*, 45(5), pp. 1335-1356.

### SESSIONS 7 - 8

#### **Scope of Employment. Employment contracts. Types. Content**

*R.A.: The Concept of ‘Worker’ in European Labour Law: Fragmentation, Autonomy and Scope*

*R.A.: The concept of ‘worker’ in EU law: status quo and potential for change*

Resources: ILO Convention 138 on Minimum Age; ILO Convention 175 on Part Time Work; ILO Convention 177 on Homeworking, Directive 99/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP; Council Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC

Case Study: CJEU 3rd July 1986, C-66/85, "Lawrie-Blum"

Jeffery M. (1998), Not really going to work? Of the directive on part-time work, 'atypical work' and attempts to regulate it in *Industrial Law Journal*, 27(3), pp. 193-213.

Countouris N. (2018), "The Concept of 'Worker' in European Labour Law: Fragmentation, Autonomy and Scope in *Industrial Law Journal*, 47(2), pp. 192-225.

Risak M. and Dullinger T. (2018), The concept of 'worker' in EU law: status quo and potential for change. Brussels: ETUI, available at <https://ssrn.com/abstract=3190912>.

## **SESSIONS 9 - 10**

### **Subcontracting and intermediaries in the labour market. Contractors.**

De Stefano V. (2016), Casual Work beyond Casual Work in the EU in *European Labour Law Journal*, 7(3), pp. 421-441

Lo Faro A. (2017), Core and Contingent Work: a Theoretical Framework in Ales E., Deinert O. & Kenner J. (Eds.), *Core and contingent work in the European Union: a comparative analysis*, Oxford, UK, pp. 7-23.

Collins H. (1990), Independent contractors and the challenge of vertical disintegration to employment protection laws in *Oxford J. Legal Stud.*, 10(3), pp. 356-360

### **Illegal lease of employees. Temporary employment agencies.**

Resources: ILO Convention 181; Directive 2008/104/EC of 19 November 2008 on temporary agency work.

Countouris N. & Horton R. (2009), Temporary Agency Work Directive: Another Broken Promise in *Industrial Law Journal*, 38(3), pp. 329-338.

*R.A.: Casual Work beyond Casual Work in the EU*

*R.A.: Core and Contingent Work: a Theoretical Framework*

*R.A.: Independent contractors and the challenge of vertical disintegration to employment protection laws*

## **SESSIONS 11 - 12**

### **The hiring process.**

Resources: ILO Convention 181 on Private Employment Agencies

### **Working conditions. Minimum standards: wages and hours of work.**

Resources: ILO Convention 95 on Protection of Wages; ILO Convention 131 on Minimum Wage Fixing; ILO Convention 47 on Forty-Hour Week; ILO Convention 132 on Holidays with Pay; Directive 2008/94/EC of 22 October 2008 on the protection of employees in the event of the insolvency of their employer; Directive 2003/88 of 4 November 2003 concerning certain aspects of the organization of working time, Directive 2019/1152 of 20 June 2019 on transparent and predictable working conditions in the European Union

Case Study: CJEU 9th September 2003, C-151/2002, "Jaeger"

Case Study: CJEU 21st February 2018, C-518/15, "Matzak"

## **SESSIONS 13 - 14**

## **Health and safety.**

Resources: ILO Convention 155 on Occupational Safety and Health; Framework Directive 89/391/EEC on health and safety, Directive 89/654 on minimum safety and health requirements for the workplace.

Moore P. (2019), OSH and the Future of Work: benefits and risks of artificial intelligence tools in workplaces

**Other typical clauses in employment contracts. Trial periods. Exclusivity and post contractual non-compete clauses. Permanence agreements.**

**Changes in working conditions. Novation agreements and unilateral decisions. Substantial and non-substantial changes. Geographical mobility.**

*R.A.: OSH and the Future of Work: benefits and risks of artificial intelligence tools in workplaces*

*\*Co-funded by the Erasmus+ Programme- Jean Monnet Activities -of the European Union*

## **SESSIONS 15 - 16**

Mid-term Exam

## **SESSIONS 17 - 18**

### **Maternity/paternity/family related rights**

Resources: Directive 2010/18/EU implementing the revised Framework Agreement on parental leave; Directive 2/85/EEC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding; Directive 2010/18/EU of 8 March 2010 implementing the revised Framework Agreement on parental leave. Directive (EU) 2019/1158 of 20 June 2019 on work-life balance for parents and carers and repealing Council Directive 2010/18/EU

### **Equality. Equal pay, equal treatment and types of discrimination**

Resources: Directive 2000/78/EC of 27 November 2000, establishing a general framework for equal treatment in employment and occupation; Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast); ILO Convention 173 on Equal Remuneration.

Case Study: CJEU 22nd January 2005, C-144/04, "Mangold"

Case Study: CJEU 10th July 2008, C-54/07, "Feryn"

*R.A.: Solidarity and Conflict: European Social Law*

*R.A.: Solidarity and Conflict: European Social Law, Cambridge University Press*

*R.A.: The EU Charter of rights and the right to equality*

## **SESSIONS 19 - 20**

### **Protection of employer's interests. Duty to obey. Employers' surveillance rights. Workplace Monitoring and AI. Whistleblowing. Grievances procedures. Sanctions.**

Resources: Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation). Article 29 group's working document on the surveillance of electronic communications in the workplace.

Aloisi A. and Gramano E. (2019), Artificial Intelligence is Watching You at Work, Digital surveillance, employee monitoring and regulatory issues in the EU context, Comparative Labor Law and Policy Journal.

*R.A.: Artificial Intelligence is Watching You at Work, Digital surveillance, employee monitoring and*



\*Co-funded by the Erasmus+ Programme- Jean Monnet Activities -of the European Union

## **SESSIONS 21 - 22**

### **Transfer of undertakings.**

Resources: Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses.

Case Study: CJEU 21st October 2010, C-242/09, "Albron"

Case Study: CJEU 6th March 2014, C-458/12, "Amatori"

Weil D. (2014), *The Fissured Workplace: why work became so bad for so many and what can be done to improve it*, Cambridge, MA & London, pp. 1-27.

Watson P. (2014), *Transfer of Undertakings in Watson P.*, EU Social and Employment Law, 2nd Ed., Oxford, pp. 137-171.

*R.A.: The Fissured Workplace: why work became so bad for so many and what can be done to improve it*

*T.N.: Transfer of Undertakings in Watson P., EU Social and Employment Law*

## **SESSIONS 23 - 24**

### **Termination of employment. Termination by the employee. Termination by the employer. Post termination obligations.**

#### **Termination of employment. Objective dismissals, collective redundancies.**

Resources: Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies.

Barnard C. (2013), *The Charter in Time of Crisis: a case study of dismissal in Countouris N. and Freedland M. (Eds), Resocialising Europe in a time of crisis*, Cambridge, pp. 262-272.

*R.A.: The Charter in Time of Crisis: a case study of dismissal*

*R.A.: European Labour Law*

## **SESSIONS 25 - 26**

### **International and European Protection of Collective Rights.**

#### **Employee Involvement and collective bargaining in the EU**

Resources:

Case Study: CJEU 12st September 1999, C-67/96, "Albany"

Case Study: CJEU 4th December 2014, C-413/13, "FNV Kunsten"

De Stefano V. (2017), *Non-Standard workers and freedom of association: a critical analysis of restrictions to collective rights from a human rights perspective in Industrial Law Journal*, 46(2)

Aloisi A. and Gramano E. (2019), *Workers without workplaces and unions without unity. Non-standard forms of employment and collective rights*, Bulletin of Comparative Labour Relations

Velyvyte V. (2016), *The Right to Strike in the EU after Accession to the ECHR: A Practical Assessment in Freedland M. and Prassl J. (Eds.), Viking, Laval and Beyond*, London

*R.A.: Non-Standard workers and freedom of association: a critical analysis of restrictions to collective rights from a human rights perspective*

*T.N.: Workers without workplaces and unions without unity. Non-standard forms of employment and collective rights, Bulletin of Comparative Labour Relations*

*T.N.: The Right to Strike in the EU after Accession to the ECHR: A Practical Assessment*

## **SESSIONS 27 - 28**

Practice. Wrap up

Guest lecture

## **SESSIONS 29 - 30**

Final Exam

## **BIBLIOGRAPHY**

### **COMPULSORY**

Title: EU Employment Law

Author: Catherine Barnard

Publisher / Edition / Year: [ Oxford, 4th edition, 2012 ]

ISBN: [ 978-0-19-969292-7 ]

Medium: PRINT

Title: European Labour Law

Author: Teun Jaspers, Frans Pennings and Saskia Peters (eds.)

Publisher / Edition / Year: [ Intersentia, 1th edition, 2019 ]

ISBN: [ 978-1-78068-704-9 ]

Medium: PRINT

Title: Handbook of Spanish Employment Law

Author: Francisco Javier Gómez Abelleira

Publisher / Edition / Year: [ Tecnos, 1st edition, 2012 ]

ISBN: [ 978-84-309-5519-0 ]

Medium: PRINT or ELECTRONIC

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### **RECOMMENDED**

Title: Social justice as expressed in International Labour Standards: Documents and materials of the ILO.

Author: José Luis Gil y Gil and Tatsiana Ushakova.

Publisher: Juruá Editorial/1st. edition 2015.

ISBN: 978-989-712-349-8.

Medium: PRINT

Title: EU Labour Law: A commentary.

Author: Monika Schlachter.

Publisher: Kluwer Law International/2015

ISBN: 978-90-411-4978-7

Medium: PRINT

Title: EU Labour Law

Author: Ruth Nielsen

Publisher: Djof Publishing/2nd edition 2013

ISBN: 978-87-574-2566-6

Medium: PRINT

Title: EU Anti-Discrimination Law

Author: Evelyn Ellis and Philippa Watson.

Publisher: Oxford University Press/ 2014

ISBN: 978-0-19-873703-2

Medium: PRINT

Title: The law of TUPE transfers  
Author: Charles Wynn-Evans  
Publisher: Oxford University Press/ 1st Edition/ 2013  
ISBN: 978-0-19-966169-5  
Medium: PRINT

Title: Comparative employment relations in the global economy  
Author: Carola Frege & John Kelly  
Publisher / Edition / Year: Routledge / 1st Edition / 2013  
ISBN: 978-0-415-68662-4  
Medium: PRINT

Title: Employment Law: An Introduction  
Author: Stephen Taylor & Astra Emir  
Publisher / Edition / Year: Oxford University Press/3rd Edition/2012  
ISBN: 978-0-19-960489-0  
Medium: PRINT

Title: Employment Law  
Author: Samuel Estreicher and Gillian Lester.  
Publisher / Edition / Year: Thomson-Foundation Press/2008  
ISBN: 978-1-58778-479-8  
Medium: PRINT

Title: Principles of Employment Law  
Author: Peggie R. Smith, Ann C. Hodges, Susan J. Stabile and Rafael Gely.  
Publisher / Edition / Year: Thomson Reuters/2009  
ISBN: 978-0-314-16877-1  
Medium: PRINT

Title: Employment Law in a nutshell  
Author: Robert N. Covington  
Publisher / Edition / Year: Thomson Reuters/2009  
ISBN: 978-0-314-19540-1  
Medium: PRINT

Title: The Global Workplace. International and Comparative Employment Law: Cases and Materials  
Author: R. Blanpain, Bisom-Rapp, Corbett, Josephs, Zimmer  
Publisher / Edition / Year: Wolters Kluwer, 2nd edition, 2012  
ISBN: 978-1-4548-1566-2  
Medium: PRINT

## **EVALUATION CRITERIA**

### **GENERAL OBSERVATIONS**

Each student has four attempts over two consecutive academic years to pass this course.

Students must attend at least 70% of the sessions. Students who do not comply with the 70% attendance rule will lose their 1st and 2nd chance, and go directly to the 3rd one (they will need to enroll again in this course next academic year).

Students who are in third or fourth call should contact the professor during the first two weeks of the course.

### **RETAKE POLICY**

In July's retake the maximum final score would be of 8 out of 10. Grading for retakes will be subject to the following rules:

Students failing the course in the first regular period will have to do a retake in July (except those not complying with the attendance rules, which are banned from this possibility).

Dates and location of the July retakes will be posted in advance and will not be changed.

<b>Criteria</b>	<b>Percentage</b>	<b>Comments</b>
Class Participation	20 %	
Group Presentation	20 %	
Mid-Term Exam	30 %	
Final Exam	30 %	

## **PROFESSOR BIO**

Professor: **ANTONIO ALOISI**

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Antonio Aloisi is full-time professor of European and Comparative Labour Law. Prior to joining IE University, Antonio was a Max Weber Postdoctoral Fellow at the European University Institute (EUI), Florence. In 2018 he defended his doctoral dissertation, entitled “Facing the challenges of platform-mediated labour. The employment relationship in times of non-standard work and digital transformation”, at Bocconi University, Milan, where he was a Lecturer at the School of Law and the LLM of Internet Technology. Previously, he was a visiting researcher at the Saint Louis University School of Law. After graduating in Law from Bocconi University (2013), Antonio worked on a long-term policy framework for school reform in Italy at the Ministry of Education, Universities and Research.

Antonio's interests span employment law and industrial relations. His research mainly focuses on the impact of digital technologies on labour regulation and social institutions. In particular, he studies non-standard forms of employment, automation, artificial intelligence, and new organisational arrangements and practices of collective action. He has been involved in several research projects, some of which were developed in consortium with or commissioned by international institutions or research centres (the Joint Research Centre and the Directorate-General for Employment of the European Commission, the Eurofound and the OECD). He has authored and co-authored a number of articles, book chapters and op-eds in international peer-reviewed journals, books and blogs.

## **OTHER INFORMATION**