

# BULLETIN

of the

**U.S. BRANCH**

**INTERNATIONAL SOCIETY for LABOR and SOCIAL SECURITY LAW**

ALVIN GOLDMAN, *editor*

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[U.S. Branch's web site: <http://law2.unl.edu/islssl/>; Int'l Socy. web site: <http://islssl.org/>]

## Note from the Chair

by Steve Befort

This newsletter is being distributed along with ballots for the director election. As you will see, the nominating process coordinated by **Steve Willborn, Susan Mackenzie, and Jay Youngdahl** has generated a terrific slate of candidates. Please exercise your vote in a timely and thoughtful manner.

I want to mention two upcoming opportunities. First, the 21<sup>st</sup> ISLSSL World Congress will be held on **September 15 – 18, 2015** in **Cape Town, South Africa**. The four themes of the Congress are 1) collective bargaining and beyond, 2) from social exclusion to social security, 3) equality and citizenship at work as conceptual foundations for labor law, and 4) labor law and development. Even if you cannot make it to this scenic destination, please consider assisting in the preparation of national reports for the U.S. Branch on these topics.

Second, we are hoping to schedule a U.S. educational conference during the fall of 2015. Although only in the planning stage at this point, the leading scenario is for a conference on Saturday, November 7 in Philadelphia following on the heels of the annual ABA Labor and Employment Law Section continuing education conference. Recommendations for program topics and presenters are welcome. Stay tuned for more details.

So please vote and please participate. This is your organization.

## **ISLSSL World Congress in September**

As noted by Steve Befort, above, The South African Labour Law Society will host the 21<sup>st</sup> ISLSSL World Congress from **September 15-18, 2015**, at the Cape Town International Convention Centre, **Cape Town, S.A.** For the full program see: [labourlawcongress2015.co.za](http://labourlawcongress2015.co.za)

The Congress registration fee of R8000 (c. \$680 at the current exchange rate) includes: opening ceremony and cocktail reception, teas, refreshments and lunches, delegate bag and contents

and digitally delivered congress papers. (Additional R500 late fee after July 31<sup>st</sup>.) An added R900 (c. \$76) will be charged for the gala three-course dinner with wine, entertainment and transportation. Register at:

[labourlawcongress2015.co.za/registration-islssl-21st-world-congress-2015-cape-town-south-africa](http://labourlawcongress2015.co.za/registration-islssl-21st-world-congress-2015-cape-town-south-africa)

For accommodation information check:

[labourlawcongress2015.co.za/accommodation-islssl-21st-world-congress-2015-cape-town-south-africa](http://labourlawcongress2015.co.za/accommodation-islssl-21st-world-congress-2015-cape-town-south-africa)

For information regarding land and marine safaris and other travel in the area, go to:

<http://www.labourlawcongress2015.co.za/tours-islssl-21st-world-congress-2015-cape-town-south-africa>

Those attending the Congress should note that South Africa requires that persons entering the country have a passport with two blank pages that lie side-by-side when the passport is opened. Also, the passport must be valid for at least six months. Currently, US passport holders are not required to obtain a visa.

## **ILERA WORLD CONGRESS**

The ISLSSL World Congress will be preceded by the **ILERA World Congress**, to be held in **Cape Town** from **September 7 -11, 2015**, at the Southern Sun, Cape Sun Hotel and Conference Centre. Its theme: "The Changing World of Work: Implications for Labour and Employment Relations and Social Protection". Registration until July 1<sup>st</sup> is R7500 (c. \$637); thereafter R8000 (c. \$680). For full-time students and those 65 and older R5000 (c. \$425) until July 1<sup>st</sup> when it is R5500 (c. \$467). The gala dinner is an added R900 (c. \$76). Further information is available at: <http://www.ileraworldcongress.com/index.php/en/home-eng?id=37>

## **Other Upcoming Conferences**

**-June 4 and 5, 2015, Santiago de Compostela, Spain.** The European Young Legal Scholars' Sec-

tion of ISLSSL will conduct a follow-up meeting of its meeting during the XI European Regional Congress in Dublin. This meeting will be in preparation for the session to be held at the XXI World Congress of the ISLSSL (Cape Town, September 15-18, 2015). A Latin American group has been formed, as well, and it is anticipated that the two groups will merge and be joined by others at World congress.

The Dublin session of the European Group produced 12 national reports that are available at: <http://islssl.org/category/young-legal-scholarssection>.

**-June 30 to July 9, 2015, Venice, Italy.** The European Seminar on International and Comparative Labour Law at the University of Ca' Foscari will convene to examine the topic of "Enterprise Transformation and Labor Law". Registration for this ISLSSL co-sponsored program remains open until May 30<sup>th</sup>. For further information go to: <http://islssl.org/2nd-international-seminar-on-international-and-comparative-labour-lawregistration>.

**-July 8-10, 2015, Geneva, Switzerland.** The ILO will sponsor a multi-disciplinary conference on "Developing and Implementing Policies for a Better Future at Work". Researchers from all regions are welcome to this program that is co-hosted by the University of Amsterdam Institute for Advanced Labour Studies, the University of Melbourne Centre for Employment and Labour Relations Law, the University of Manchester Fairness at Work Research Centre, and the University of Duisburg-Essen Institut Arbeit und Qualifikation. Details and contact links are available at: <http://www.rdw2015.org/pages/info>

**-July 13 to August 20, 2015, Montreal, Canada.**

The University of Montreal School of Industrial Relations will conduct a graduate program that will address several comparative and international subjects including: international perspectives on health and safety at work, globalization and labor relations, and international human resource management. For further information, go to: [en.eri.umontreal.ca/home](http://en.eri.umontreal.ca/home)

**-November 6 and 7, 2015, Bergamo, Italy.** The Graduate School of Human Capital Formation and Labour Relations of the University of Bergamo will sponsor an international conference on "The

Great Transformation of Work". Details can be found at:

<http://adapt.it/englishbulletin/wp/?p=1657>.

### Member Activities

The last Bulletin did not have enough space for all of **Ron Brown's** recent activities. His additional publications include a chapter on *Developing Labor in ASEAN* (Routledge 2015) and another on *Asian and U.S. Perspectives on Labor Rights Under International Trade Agreements Compared* for a Leuven University book project on International Trade Agreements, (Springer 2015).

**Lance Compa** delivered the inaugural lecture as the first holder of the Paul van der Heijden Chair in Social Justice at Leiden Law School. For his talk, "Re-Planting a Field: International Labour Law for the Twenty-First Century", see:

<http://media.leidenuniv.nl/legacy/inaugural-talk-leiden-october-13.pdf>

### Relevant Publications

Michael Quinlan, an Australian scholar, has published TEN PATHWAYS TO DEATH AND DISASTER: LEARNING FROM FATAL INCIDENTS IN MINES AND OTHER HIGH HAZARD WORKPLACES. Quinlan's study compared mine disasters in Australia, New Zealand, the U.S., Britain, and Canada. He found the following repeated causal patterns: flaws in maintenance, risk assessment, and engineering design; failure to heed warning signs and expressed supervisor and worker concerns; deficient management structure and system auditing; reward pressures that compromised safety; inadequate regulatory oversight; poor worker-management relations and communication; and deficient emergency and rescue procedures.

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If you wish to jumpstart comparative labor law research, you may consider checking the Baker & McKenzie law firm's 2015 edition of THE GLOBAL EMPLOYER: FOCUS ON TERMINATION, EMPLOYMENT DISCRIMINATION, AND WORKPLACE HARASSMENT LAWS. Authored by the firm's attorneys based in the featured nations, the handbook highlights key aspects of the subject laws in 38 countries. The book can be downloaded in one of three formats. Those interested should go to:

<http://www.bakermckenzie.com/bkemploymenttheglobalemployerterminationsept14/>.

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Prof. Emeritus **Kazuo Sugeno**, former president of the ISLSSL, and Keiichi Yamakoshi, have

published a study “Dismissals in Japan Part Two: How Frequently Do Employers Dismiss Employees?” 11 *Japan Labor Review*, no. 4 p. 118 (2014). They report that a survey of over 20,000 enterprises of all sizes and across all industries found that over 16% of all surveyed employers and over 30% of employers with 1,000 or more workers reported have dismissed workers for cause during the 2007-2012 survey period. This led the authors to conclude: “dismissals for employee misconduct, disorder, absence or insufficient job performance are actually not rare.” The authors’ description of current practices in Japan suggests considerable similarity with modern HR practices in the U.S., especially for larger enterprises. They explain that: “firms take steps against misconduct, etc., before resorting to individual dismissals, such as delivering a warning, giving a chance to correct behavior or to improve performance, ordering a transfer or, in a case of grave misconduct, requesting voluntary retirement.”

Reflecting a cultural difference with the U.S., a very common Japanese reaction to disciplinary infractions is to extract a letter of apology. In the event of economic dismissals, the authors reported significant voluntary severance payments. Over a third of enterprises with less than 100 employees and over three-fourths of those with 300 or more employees provided the equivalent of six-months or more in voluntary severance pay.

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A Japanese researcher, Kelichiro Hamaguchi, has compared results from litigated and conciliated resolution of employment disputes in his country. He found that the latter approach was more common among small enterprises and that while 80% of workers involved in cases presented to labor tribunals had an attorney, workers represent themselves in most conciliated disputes.

Although about two-thirds of conciliated cases in Japan relate to dismissal, threat of dismissal, or contract non-renewal, over a fifth involve bullying or harassment. Also, many conciliated cases are resolved prior to a meeting and only about 30% reach a conciliated settlement. Moreover, whereas on average employees receive almost \$12,000 in cases resolved in their favor before labor tribunals, on average employees receive only a little over a tenth of that amount in conciliated settlements. [jil.go.jp/english/researcheye/bn/RE001.htm]

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The Asian Regional Congress of ISLSSL, that was held in November 2014, produced a number of

papers on issues respecting migrant workers. Links to these papers can be found near the end of the Congress announcement at: [org/asian-conference-on-globalization-and-labor-administration](http://org/asian-conference-on-globalization-and-labor-administration)

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An English electronic edition of issue 3 of the 2014 *Revue De Droit Comparé Du Travail Et De La Sécurité* is now available at <http://comptrasec.u-bordeaux.fr/en/revue/english-electronic-edition-1>.

This issue of the *Revue* includes a case law section on religious and racial discrimination and another on employee use of social networks and a report on comparative labor law literature published in 2013 in the 23 journals belonging to the International Association of Labor Law Journals. Additionally, there are articles on a variety of labor law developments in a wide range of countries.

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Transparency International is a non profit organization dedicated to revealing government corruption and discouraging such practices. Relying on a survey of unidentified country analysts, business people or the general public, it compiles an annual index of perceived levels of corruption in 175 nations. The 2014 index lists Denmark and New Zealand as the least corrupt followed closely by Finland and Sweden. Canada is 10<sup>th</sup>, Germany 12<sup>th</sup> the UK 14<sup>th</sup> and Japan 15<sup>th</sup>. The U.S. is 17<sup>th</sup> on the list, tied with Barbados, Ireland, and Hong Kong. Puerto Rico is separately listed as 31<sup>st</sup>. Among other U.S. trading partners, United Arab Emirates- 25, Taiwan- 35, Israel and Spain tied at 37, South Korea 43, Saudi Arabia- 55, China 100 and Russia is listed as 136<sup>th</sup>.

The full index can be found at: [issuu.com/transparencyinternational/docs/2014\\_cpi\\_brochure\\_en?e=2496456/10375881](http://issuu.com/transparencyinternational/docs/2014_cpi_brochure_en?e=2496456/10375881)

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### **Obesity as a Disability Requiring Accommodation Under European Law**

For 15 years Mr. Kaltoft was employed by the city of Billund, Denmark, to provide child care in his home. When the number of children needing such care dwindled, he was selected for dismissal. When dismissed there was discussion respecting his obesity. He sought relief on the ground of discrimination due to his weight. However, the city denied that this was the reason he was selected for the reduction in force. After suit was filed, the local Danish court certified two questions to the European Court of Justice: Whether EU law prohibits discrimination on grounds of obesity and whether obesity can constitute a disability pro-

ected by the requirement of reasonable accommodation to ensure equal treatment for all employees. The Court rejected the contention that there is a specific prohibition of obesity discrimination. However, it explained that disability is a long-term physical, mental or psychological impairment that “may hinder the full and effective participation of the person concerned in professional life on an equal basis with other workers.” Accordingly, it ruled that a worker must receive reasonable accommodation if the obesity hindered “participation on account of reduced mobility or the onset of medical conditions preventing that person from carrying out work or causing discomfort when exercising professional activity.” The case was remanded for the trial court’s findings based on that guidance. *Kaltoft v. Municipality of Billund*, CJEU Case C-354/13 (Dec. 18, 2014)

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The Supreme Court of Canada, in *Saskatchewan Federation of Labour v. Saskatchewan*, 2015 SCC 4, rejected a provincial law that, without providing an alternative deadlock resolution mechanism, prohibited certain groups of public employees from striking. The court ruled that the prohibition “substantially interferes with a meaningful process of collective bargaining” and therefore violates the freedom of association protection granted by the Canadian Charter of Rights and Freedoms and Canada’s international human rights obligations. The decision indicated that a no stoppage requirement is permitted under Canadian law if limited to work activities that constitute essential public services and if provision is made for the bargaining role of a work stoppage to be replaced “by one of the meaningful dispute resolution mechanisms commonly used” in labor management relations.

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### **Comparing the U.S. Minimum Wage**

To what extent does the federal minimum wage law place U.S. products at a competitive disadvantage? Wage rate comparisons between countries are always difficult inasmuch as accuracy requires accounting for differences in payroll taxes and the extent to which welfare benefits (such as old age insurance, unemployment and disability insurance benefits, health insurance, and housing and family allowances) are supported by such taxes. In addition, some countries establish minimum rates based on the industry, occupation or location. For example, according to the Japan Institute for Labour and Policy Training, that nation has close to

250 rates with most varying by industry and prefecture. In 2012 it was estimated that the weighted average minimum was 807 yen or about \$6.66 an hour (using the current rate of conversion).

Minimum wage rates in some countries are established on an hourly basis while in other countries they are weekly or monthly and the number of work hours covered by those minimums vary. Comparing the minimum wage in three European countries that use an hourly minimum with the current U.S. federal rate of \$7.25, we find that the rate in current dollars (as of early March) in the United Kingdom is \$6.99/hr, in Denmark- \$9.14 and in Ireland \$9.30.

### **New Editor for INTERNATIONAL LABOUR LAW REPORTS**

INTERNATIONAL LABOUR LAW REPORTS (ILLR) is an annual English language compilation of recent significant court decisions for well over a dozen countries. A scholar from each country edits the selected decisions and prepares a commentary explaining the significance of the decision in relation to the labor and employment law developments of the issuing judicial system.

ILLR has been published for more than three decades. For the past 17 years it was edited by Alan Gladstone, an American who is a former ILO official. Alan recently announced his retirement from the editorial position. His successor is Jane Hodges, an Australian who prior to retirement was Director of ILO’s Bureau for Gender Equality and Diversity.

**PLEASE CAST THE ACCOMPANYING BALLOT, PAY YOUR 2015 DUES, AND ENCOURAGE COLLEAGUES TO JOIN THE U.S. BRANCH OF THE INTERNATIONAL SOCIETY FOR LABOR AND SOCIAL SECURITY LAW.**