

International Labour Review

Special Issue

Overcoming legal segmentation: Extending legal rules to all workers?

Guest Editors: Ulrich MÜCKENBERGER and Irene DINGELDEY

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- 511 **Introduction: Worldwide patterns of legal segmentation
in employment law**

Ulrich MÜCKENBERGER and Irene DINGELDEY

This Special Issue aims to enrich the discussion on individual employment re-regulation by introducing the concept of legal segmentation from a global perspective and distinguishing between the standard-setting, privileging and equalizing functions of employment law. This introductory article draws on a new database created by the authors that allows countries worldwide to be clustered into types of legal segmentation. It presents the authors' methodology and first findings, which are contrasted with the regional and thematic studies in this Special Issue. Together, these contributions provide policy proposals to support the creation and enforcement of inclusive rules protecting all working people worldwide.

Keywords: employment law, standard employment relationship, legal segmentation, labour market segmentation, gender discrimination, racial discrimination, informal economy.

535 **Employment law and its contribution to labour market segmentation in Latin America**

Graciela BENSUSÁN AREOUS

This article examines legal segmentation in five Latin American countries (Argentina, Brazil, Chile, Mexico and Uruguay) by drawing on the employment regulation typology developed by Dingeldey et al. (2022), based on three functions – standard-setting, privileging and equalizing. The author distinguishes between three factors of inequality and precarity: lack of coverage (namely of self-employed workers), discrimination and the circumvention of standards. Lack of enforcement, together with an unfavourable economic environment, results in informality. The analysis identifies different forms and levels of protection under standard and non-standard employment, as well as compensatory rules and other regulations seeking to eliminate inequality.

Keywords: labour segmentation, legal segmentation, standard employment, non-standard employment, inequality, precarity, exclusion, Latin America.

555 **Labour market segmentation in Southern Africa and its impact on vulnerable workers**

Elmarie FOURIE and Marius VAN STADEN

This article considers how the regulative functions of labour law have been developed within the Southern African Development Community (SADC) region and seeks to identify instances of legal segmentation. The authors provide an overview of the demographic nature of the informal economies in SADC Member States, drawing the conclusion that the labour law mechanisms employed in the region substantially contribute to the legal segmentation of the regional economies. This has occurred despite the constitutionalization of labour law in the SADC region.

Keywords: labour market segmentation, SADC, informal economy, labour law, Southern Africa.

573 **Legal segmentation in China, India, Malaysia and Viet Nam**

Sean COONEY

This article applies a qualitative approach to the legal segmentation analysis developed by Dingeldey et al. (2021), considering exclusion from, and hierarchies of, worker protection. Examining the cases of China, India, Malaysia and Viet Nam, the author finds that several factors distinguish these countries from those in the global North and produce distinct labour market outcomes, namely: in terms of the relative size of the workforce operating outside the effective coverage of employment regulation; legal terminology that is not readily translated into Western languages; and legal history, especially as regards the mismatch between statutory frameworks and the labour market resulting from colonialism.

Keywords: comparative labour law, labour market segmentation, informal economy, Asia, China, India, Malaysia, Viet Nam.

593 **Not just black and white, but different shades of grey: Legal segmentation and its effect on labour market segmentation in Europe**

Irene DINGELDEY and Jean-Yves GERLITZ

This article studies the impact of employment law on de facto labour market segmentation for 22 European countries from 1991 to 2014. Applying the concept of legal segmentation, the authors distinguish between the standard-setting (protective), privileging and equalizing functions of employment law and use descriptive and multivariate statistics to indicate their effects on overall employment, and male and female standard and non-standard employment. High privileging, in combination with high standard-setting, is found to favour male standard employment and female non-standard employment, while the equalizing function, aimed at improving the protection of women and other marginalized groups, actually increases male non-standard employment.

Keywords: labour law typology, labour market segmentation, standard employment relationship, atypical employment, gender, multivariate analysis, Europe.

615 **Legal segmentation and early colonialism in sub-Saharan Africa: Informality and the colonial exploitative legal employment standard**

Heiner FECHNER

Labour markets in sub-Saharan Africa are characterized by a gendered division between formal and informal sectors. This article argues that this division originates from a rationality introduced by racist and gendered colonial legal segmentation, produced by a variety of legal regimes in and beyond employment law. Labour market segmentation in postcolonial settings cannot be understood or overcome without analysing the specific colonial institutional origins of the commodification of labour. In sub-Saharan Africa, the “colonial exploitative legal employment standard” that commodified labour focused on black African male employees for European employers, excluding or marginalizing women and domestic labour relations.

Keywords: colonialism, legal segmentation, gender segmentation, racial segmentation, law and development, recruitment, sub-Saharan Africa, comparative law.

635 **Segmenting and equalizing narratives in the ILO’s standard-setting practice**

Jenny HAHS and Ulrich MÜCKENBERGER

In shaping the employment relationship internationally, the ILO initially reproduced the Western normative narrative of the standard employment relationship (SER). When the global South and women gained a stronger voice within the ILO, a contrasting egalitarian narrative emerged, challenging the SER-hegemony and creating a layering of narratives. Combining historical institutionalism and structuration theory, the authors follow the development of these narratives and consider how the resultant legal and normative conflicts between them can be explained by focusing on the composition of ILO membership and the representation of women in International Labour Conferences over time. The authors draw a number of legal-political conclusions from their findings.

Keywords: ILO, international labour standards, standard employment relationship, gender equality, legal segmentation, labour market segmentation, global South, global North.

657 **Law and gendered labour market segmentation**

Judy FUDGE and Guy MUNDLAK

This article captures the shared understanding in the literature of labour law’s interaction with gender, distinguishing between law’s different functions – constituting labour market institutions, sustaining them, addressing unwarranted outcomes and transforming the institutions. Constituted, in part, by law, the standard employment relationship and the institutions of formal employment have segmenting gendered effects. While legal norms designed to correct these effects are important, they also sustain them. The authors argue for a transformative alternative that would follow two general principles in designing new labour standards, namely, universalization of scope and adaptive content in the interests of differently situated women and men.

Keywords: gender, labour market segmentation, labour law, social reproduction, sex discrimination, informal employment.

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