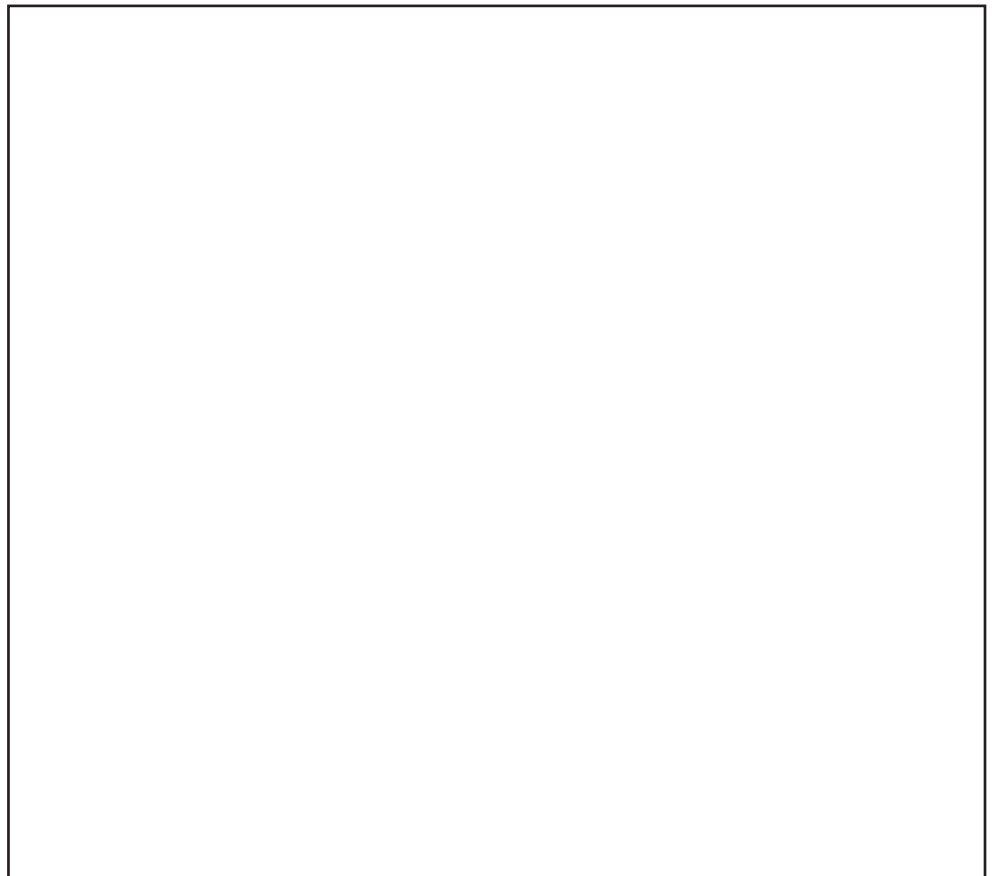




Eurofound

United States: Industrial relations profile



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Facts and figures

Area:	9,826,675 square kilometres
Population:	313,914,040
Language:	English
Capital:	Washington, DC
Currency:	United States dollar (USD 1 = €0.75 as at 4 October 2013)

Economic background

GDP per capita (2012) (in purchasing power standards; index: EU27=100)	149
Real GDP growth (% change on previous year) (2013)	2%
Inflation rate (2013)	2%
Average monthly labour costs, in € (2013)	€3,751 (USD 4,974)
Average labour productivity (2013)	0.5%
Gross annual earnings, in € (2012)	€34,569 (USD 45,790)
Gender pay gap (2012)	18%
Employment rate (15–64 years) (2013)	59%
Female employment rate (15–64 years) (2013)	53%
Unemployment rate (15–64 years) (2013)	7%
Monthly minimum wage (2013)	Federal minimum wage: €5.47 per hour (USD 7.25) Range of state minimum wages: €3.89 (Georgia and Wyoming)–€6.94 (Washington) per hour (USD 5.15–9.19)

Industrial relations characteristics, pay and working time

Trade union density (2012) (Trade union members as a percentage of all employees in dependent employment)	11%
Employer organisation density (2013) (Percentage of employees employed by companies that are members of an employer organisation)	2%
Collective bargaining coverage (2013) (Percentage of employees covered by collective agreements)	13%

Number of working days lost through industrial action per 1,000 employees (2013)	5.3
Collectively agreed pay increase (annual average 2011–2012)	2%
Actual pay increase (annual average 2010–2011)	1.7%
Collectively agreed weekly working hours (2013)	38
Actual weekly working hours (2013)	34.4 for all workers, both full-time and part-time; 47.5 for full-time workers separately.

Sources: Central Intelligence Agency (CIA) (2014), Department of Labor (2013)

Background

Economic context

Since its founding to the present day, the United States has been shaped by its experience with mass immigration. According to the United Nations, 14% of the US population, or 45 million people, are immigrants, more than four times any other country. As a result, the US is one of the world's most multicultural nations and is highly diverse, with Americans representing an array of cultural, ethnic and racial backgrounds. In fact, the US Census Bureau has projected that the US will soon be a 'plurality nation', where within three decades no specific ethnic or racial group will constitute a majority.

The US government does not track migration from the country, but it is estimated to be much lower, although nearly six million Americans live abroad. Internal migration within the US is much higher; each year, nearly 40 million Americans migrate from one area of the country to another, moving across regions to growing labour markets that value their skill sets higher. However, since the Great Recession began in 2008, US internal migration has fallen significantly, as more Americans have been able to sell their homes in a changing housing market, to shift between more local labour markets.

Reflecting its immigrant experience, the American workforce is distinguished from its counterparts in other countries by a work ethos marked by longer working hours and less time off for leave, including for holidays. According to the International Labour Organization (ILO), Americans typically work 10 more weeks each year than their European counterparts. On average, American men work 8.5 hours a day, while American women work 7.5 hours a day.

From the early 1970s to the 1990s, as US society changed following the women's liberation movement, the American workforce underwent a radical transformation with the entry of a large proportion of women. Over the past two decades, however, the US workforce's gender balance has remained mostly stagnant, a trend most experts have attributed to disparities in how men and women balance work with family, under current policies. While compared to other nations, women in the US are less likely to work, if they do work, they are more likely to occupy high-level jobs. A total of 52% of all US professional and managerial positions are occupied by women.

As the world's largest economy, the US economy is distinct from other advanced economies in that it has limited central government intervention in favour of a free market, private enterprise system. In 2013, it had a nominal gross domestic product (GDP) of USD 15.7 trillion (€11.8 trillion), representing 26% of global economic output. However, following the global economic downturn in the autumn of 2008, the US economy has experienced anaemic economic growth, as measured by GDP. Historically, from 1948 until 2012, US GDP grew annually at an average rate of over 3%. But, in 2013, according to the US Bureau of Economic Analysis, GDP was on track to grow less than 2% year on year. A decline in US

GDP has been precipitated by a decline in productivity. In 2012, according to the US Bureau of Labour Statistics, US productivity decreased 2% year on year, reflecting increases of just 0.5% in output and 2.5% in hours worked.

Compounding weak GDP growth and declines in productivity, the US economy also continues to deal with inflationary pressures. In 2012, the US consumer price index (CPI) rose by 3%, as wholesale prices continued to nudge upward. US inflation was expected to be 2% in 2013.

Global companies that are amongst the largest, most competitive and profitable in the world feature highly in the US economy. US multinational companies contribute nearly 23% of national GDP, are responsible for 33% of job creation, and directly or indirectly create 31% of real GDP growth and 41% of productivity gains.

However, small and medium-sized enterprises in the US account for the vast majority of firms, and more than 50% of national GDP, create 67% of all jobs, and are responsible for more than 50% of productivity gains, through the adoption of production processes and lean manufacturing methods. Global companies in the US differ from small and medium-sized enterprises in that the former typically are more likely than the latter to export. Global companies contribute roughly 70% of US exports, while small and medium-sized enterprises contribute around 30%, with just 4% of such firms engaged in exporting.

In the US, global companies and small and medium-sized enterprises operate across several industrial sectors. In 2013, the largest US industrial sectors were: services, which accounts for 80% of GDP; manufacturing, which accounts for 19% of GDP; and agriculture, which accounts for 1% of GDP. According to the US Census Bureau, the US services sector includes scientific, technical and other professional services; information technology services; management and administrative services; financial services; healthcare; real estate and rental and leasing services; arts and entertainment, accommodation and food services, transportation and warehousing; and utilities. The manufacturing sector includes natural resource mining; energy exploration including petroleum and gas; chemical production; textile production; metal, plastics, wood and paper production; electrical and electric component and computer production; furniture production; apparel production; and food and beverage production.

Over the past 10 years, the US national employment rate has been as high as 63% and as low as 59%, fluctuating with economic cycles. Over the same period, the US national unemployment rate fluctuated from a low of 5% to a high of 8%. As of 2013, the national employment rate stands at just 59%, while the national unemployment rate hovers at 7%, with 17 million individuals unemployed. Most signs indicate that the US labour market is expanding, and in 2013, the country incrementally added 2.37 million new jobs, or about 197,000 each month, which marks a nominal increase year on year. According to Global Insight, an international organisation that synthesises national economic data to make forecasts, the US economy should continue to add roughly the same number of new jobs in the year ahead.

Contributing nearly 8% of US GDP, the nation's black economy is valued at an estimated \$2 trillion or €1.5 trillion, including legal and illegal activities, and undeclared work.

Labour market context

The US workforce comprises 154.4 million working individuals, with men accounting for 53% of the total and women 47%. Of the US workforce, 81% (about 125.2 million working individuals) are employed full-time, with 19% (about 29.2 million working individuals) employed part-time. According to the US Census Bureau, the workforce is divided across several occupational groupings. Almost two-fifths (39%) of the US workforce is engaged in professional or managerial occupations. Almost one-quarter (23%) is engaged in sales and office occupations. A further 18% are engaged in service occupations, including healthcare, while 12% are engaged in production, transportation and material-moving occupations. Finally, 9% are engaged in natural resources, construction and maintenance occupations.

In the US, where employment contracts are rare, there are just 2.96 million standard full-time and part-time contract workers, most hired on a temporary basis, with the vast majority of workers considered 'at

will', meaning either the employer or worker may terminate the working relationship at any time for any reason.

Legal and administrative context

Under the US Constitution, power is divided between the national and state governments under a system of dual federalism, where specific, clearly defined powers have been accorded to each, and each is free to exercise those powers unimpeded by the other.

In terms of international relations, the US national government has the exclusive power to negotiate treaties with other countries, which then become binding under federal law on the states. Under this power, the US national government has assumed a leadership role in the ILO. A part of the ILO's governing body, the US is also its largest member and donor. While the US has adopted the ILO Declaration, it has ratified only two of the ILO Core Labour Standards to date: Convention 105, the Abolition of Forced Labour Convention, and Convention 182, the Worst Forms of Child Labour Convention. Additionally, the US has ratified 14 other ILO conventions. While the US has incorporated both the ILO Declaration and the ILO Core Labour Standards into its newest bilateral trade agreements with other countries as a standard for trade-related employment and labour concerns, both conflict with existing national laws, although ratified ILO conventions do not.

In terms of domestic relations, the US national government has the exclusive power to regulate interstate commerce and this has been used to regulate interstate commerce with respect to employment and labour concerns. State governments have the power to regulate intrastate commerce, which has been used to regulate intrastate commerce with respect to employment and labour concerns. In addition to US national law and state laws, respective federal and state government agencies issue regulations to municipalities concerning commerce and employment and labour concerns; where none of these are implicated, common law principles of contract may govern the employment relationship.

The US Constitution heavily informs national and state laws concerning commerce, employment and labour concerns, yielding several core principles. It guarantees all individuals equal protection under the law alongside the right to associate freely, which provides broad protection for individuals to enjoy equal employment opportunities without discrimination based on protected classes and to organise and participate in unions without obstruction. To this end, US national and state employment and labour laws generally govern the relationship between employers and workers, with the goal of ensuring the employer keeps workers safe in the workplace, and that employers treat workers fairly with respect to all terms, conditions and privileges of employment.

At the federal level, the US Department of Labor administers and enforces more than 180 federal employment and labour laws. These mandates and the regulations that implement them cover many workplace activities for about 10 million employers and 125 million workers. Some important employment and labour laws fall outside the scope of the Department of Labor. Under the National Labour Relations Act (NLRA), collective bargaining is regulated by the National Labor Relations Board (NLRB), while under Title VII of the Civil Rights Act, equal employment opportunities are regulated by the Equal Employment Opportunity Commission.

Although federal law provides the right to collective bargaining, due to constitutional prohibitions against the federal government intruding upon the operation of state governments, many state laws prescribe whether that right can be extended to their state employees. With many states experiencing economic shortfalls stemming from the global recession in 2008, state governments have been under pressure to reduce the size of government by reducing the workforce to save costs, an effort that some have argued has been complicated by union participation in negotiating these employees' contracts. With new elections in certain states, some state governments have moved to restrict union participation of their employees as a result. In 2010, in Wisconsin, and in 2011, in Ohio, state governors successfully passed laws restricting state government employees from unionising.

When no federal, state or municipal statutory right, or contractual right, is implicated, the common law presumes that employment relationship is 'at will'. That is to say, employers and employees are free to terminate the relationship at any time and for any reason. This presumption can be overcome by showing the parties entered into an employment contract or made other promises regarding when and how the relationship would end. Courts will also ignore the 'at will' presumption when one of several exceptions applies.

Industrial relations context

From the 19th century, the US underwent a period of extraordinary industrialisation, giving way to not only a rapid social transformation, but a changing workplace, where health and safety concerns became more prominent, and a changing, more regimented workforce, giving rise to quality of life issues. To address these changes, industrial unions formed in the US to represent workers, modelled after 18th century craft unions that represented workers in specific trades. Today, the US labour movement is still divided between industrial and craft unions. These are organised at the national, state or local level to represent workers collectively on a wide array of issues, including negotiating the terms of employment, determining wages and overtime compensation, advocating for benefits, and voicing concerns about other policies.

Under US national law, specifically the National Labour Relations Act, whether at the industry or craft level, once a union is selected or designated as the bargaining representative, it becomes the representative of all the employees in the unit, regardless of whether they voluntarily participate in the union or not.

The union is certified as the majority representative of the employer's employees and the exclusive representative for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment. The law also provides that individual employees or groups of employees have the right at any time to present their grievances to their employer and to have such grievances addressed, without the intervention of the union, as long as any adjustment made is not inconsistent with the terms of the collective bargaining agreement in effect at the time and the union representative is given the opportunity to be present at any such adjustment.

Owing to US federalism, national and state laws regarding public sector unions vary. At the national level, the Civil Reform Act of 1978 governs unions and the process of collective bargaining. The Act created three bodies to oversee federal labour relations.

Firstly, the Office of Personnel Management acts as the human resources office of the federal government, overseeing health benefits and security clearance for employees. Secondly, the Merit Systems Protection Board adjudicates cases alleging unfair personnel decisions, for example, if an employee was fired because of their partisan affiliation. Lastly, and most importantly to public sector labour unions, the Federal Labor Relations Authority oversees collective bargaining, arbitrates negotiations in cases of an impasse, and adjudicates unfair labour practices. At the state level, because the federal government cannot interfere with sovereign state affairs, it cannot regulate its public sector unions, and so regulations vary by state.

Reflecting historical trends in the US, national union penetration amongst workers is declining. In 2013, according to the Bureau of Labor Statistics, the number of workers belonging to a union in the US was just 11.3%. Across industry, the most unionised sectors fall within the public sector, including transportation and education. Compared to their non-union counterparts, union workers earn anywhere between 10% to 30% higher wages, depending on the industry.

Companies in the US, unlike those in the EU, do not typically use employer organisations to advance their interests in dealing with workers. However, some companies do voluntarily participate in employer organisations to join together to lobby governmental bodies to adopt employer-friendly laws with respect to worker relations and to more effectively navigate a growing web of federal and state laws concerning workers' rights.

Main actors

Public authorities

In terms of international relations, relevant US public authorities include:

- **The President:** Under the US Constitution, the president has the exclusive power to negotiate treaties with other countries concerning commerce and implicating employment and labour concerns. The president must submit negotiated treaties to Congress for ratification. With respect to the ILO, the president therefore would have the exclusive power to propose adoption of ILO declarations and conventions to Congress.
- **The Congress:** Once the president has negotiated a treaty, Congress must agree to ratify it, and pass enabling legislation if required. If the president recommended adoption of an ILO declaration or convention, for example, Congress would then have to ratify it to give it full effect under national law.
- **President's Committee on the ILO:** In respect to the ILO, the president's Committee on the ILO, consisting of the president's national security advisor, the secretaries of state and commerce, the assistant to the president for economic policy, and the presidents of the United States Council for International Business and AFL-CIO, consult on whether ILO conventions should be ratified before they are presented to Congress.

In terms of national and state government regulations concerning employment and labour legislation and enforcement, relevant public authorities include:

- **President:** The president signs legislation that Congress has passed regulating congress and employment and labour concerns.
- **Congress:** Congress is responsible for passing legislation on interstate commerce and employment and labour issues.
- **The United States Department of Labor:** This department is responsible for enforcing 180 federal employment laws.
- **Equal Employment Opportunity Commission:** This agency is responsible for enforcing federal employment discrimination laws
- **The NLRB:** This agency is responsible for enforcing federal union laws.
- **State legislative bodies:** State legislative bodies are responsible for passing legislation on intrastate commerce and employment and labour laws.

There are also the state governors.

Trade unions

In the US, several national trade federations have been organised to confederate various industrial and trade unions to provide broader support in representing worker interests. The main national trade federations are the American Federation of Labor and Congress of Industrial Organisations (AFL-CIO) and the Change to Win Federation.

The AFL-CIO is the nation's largest federation of industrial and trade unions, representing 11 million workers. Federated unions are across industries and trades.

The Change to Win Federation is a coalition of national industrial and trade unions, representing 4.5 million workers. The coalition includes three unions: the International Brotherhood of Teamsters, the Service Employees International Union, and the United Farm Workers.

Within the main national trade federations, the largest national unions are organised across industry or trade and represent workers across multiple companies. They include:

- National Education Union of the United States

- Service Employees International Union
- American Federation of State, City, and Municipal Employees
- Teamsters
- United Food and Commercial Workers
- American Federation of Teachers
- United Steelworkers
- International Brotherhood of Electrical Workers
- Laborers' International Union of North America
- International Association of Machinists and Aerospace Workers
- United Auto Workers
- Communication Workers of America
- International Longshore and Warehouse Union.

Under US law, company unions are prohibited.

Workplace representation

Unlike in many countries in Europe, there are no national or state laws in the US authorising alternative workplace representation, such as workplace councils. While not commonplace in most US companies, some companies will engage employees in informal bilateral arrangements where employees are included in managerial decision-making processes, but these arrangements are entirely voluntary and are mostly informal.

Employer organisations

In the US, the density of companies involved in employer organisations is quite low at just 1.6%. However, an emerging trend is for companies to increasingly voluntarily participate in employer organisations to more effectively navigate a growing web of federal and state laws concerning workers in managing employee relations. On behalf of the companies they represent, a number of employer organisations have also focused on union avoidance measures including anti-union litigation, lobbying and publicity campaigns, though traditionally they do not have bargaining power. The National Association of Professional Employers' Organizations (NAPEO) is the largest trade association, representing 85% of the nation's employer organisations. Nationally, companies can voluntarily associate with over 470 different trade-specific employer organisations.

Industrial relations characteristics

Collective bargaining

In the US, collective bargaining agreements are sometimes harmonised at the national level by trade federations but are negotiated at the sectoral, and company levels across both the public and private sector by affiliated unions. The Teamsters Union, for example, negotiates a national master agreement that serves as a template to be used by affiliated regional and local unions who negotiate their own agreements, often with some local variations. However, the vast majority of collective bargaining agreements are decentralised and occur at the sectoral or company level, between the companies and the union.

In the US, in 2013, according to the Bureau of Labor Statistics, trade union density was 11%. US public sector workers had a union membership rate (36%) more than five times higher than that of private sector workers (7%). Within the public sector, local government workers had the highest union membership rate, at 42%. However, because under US law a union must conduct collective bargaining on behalf of

members and non-members alike if they are part of the same workplace, the percentage of employees covered by collective bargaining agreements is slightly higher at 13%.

Collective bargaining agreements are legally binding on the company, the union and the workers, and typically expire according to the terms specified by the parties in the agreement. They may include an extension clause, again according to the terms agreed by the parties.

Levels of collective bargaining

There is no nationally centralised, tripartite system, including companies and unions, for collective bargaining in the US, so there is not a high level of coordination of collective bargaining wages. However, national trade confederations such as the AFL-CIO or major unions are increasingly developing standards for collective bargaining and collective bargaining wages that often set the trend for negotiations by affiliated unions.

Across industry sectors, and certainly inter-sectorally, there is some tripartite consultation to the extent that pattern bargaining emerges during annual collective bargaining negotiations, where individual sectors or intersectoral affiliations take the lead in setting prevailing wages for other sectors or intersectoral affiliations that follow.

A union that is certified by the board in an appropriate bargaining unit is the exclusive representative of all the employees in the unit for purposes of collective bargaining with respect to pay, wages, hours of employment and other conditions of employment. Once a union is selected or designated as the bargaining representative, it becomes the representative of all the employees in the bargaining unit, regardless of whether they are members of the union or not.

Main issues in industrial relations

In the US, major trade confederations such as the AFL-CIO alongside major unions are increasingly negotiating national master agreements to which affiliated regional and local unions join with their own agreements, often with some local variations.

Unlike in other countries, a myriad of qualitative and quantitative issues are addressed through collective bargaining. Qualitative issues are diverse and may include workplace organisation and general workplace conditions, as well as worker development and training. Likewise, quantitative issues are diverse and may include employee wages and benefits as well as working hours.

Minimum wage

The federal government sets a binding national minimum wage to be paid by companies to workers. As of 2013, the federal minimum wage is set at €5.47 per hour (USD 7.25). However, the federal minimum wage is currently exceeded by a higher state minimum wage in 21 states. Nearly all states have a separate minimum wage; just five do not. Individual state minimum wages range from a low hourly rate in Georgia and Wyoming of €3.89 (USD 5.15) to a high hourly rate in Washington of €6.94 (USD 9.19).

A concerted campaign is afoot to boost the federal minimum wage to €7.58 (USD 10.10) per hour, and since early 2014, 13 states have raised their minimum wages accordingly. In the next few years, four states will have minimum wages higher than any others now in effect. California's minimum wage will be set at €7.50 (USD 10) on 1 January 2016; Connecticut's and Maryland's will be set at €7.58 (USD 10.10) on 1 January 2017; and Hawaii's will be set at €7.58 (USD 10.10) on 1 January 2018.

The federal government also dictates a premium wage for workers earning an hourly rate who work over 40 hours per week, although many salaried workers are exempted. Compared to their non-union counterparts, union workers earn anywhere between 10% to 30% higher wages, depending on the industry.

When a company enters into a collective bargaining agreement with a union, the parties stipulate minimum and maximum wages to be paid to workers, which become contractually binding under common law.

Pay developments

The US workforce is grappling with growing income disparity. Based on the Gini Index, national income inequality rose 1% in 2011 to stand at 0.477. American workers are also grappling with declining personal disposable income. Historically, Americans' personal income has grown 10% a year. But, since 2009, it has grown at an annual average rate of just 3.6%. In 2013, the US Census Bureau confirmed that median household income has declined over recent years, but that poverty rates had not changed. In 2012, US real median household income was €38,766 (USD 51,404) with a median individual income at €34,532 (USD 45,790), while the national poverty rate was 15%, with roughly 46.2 million people living in poverty as measured by those living on less than USD 2 a day before government benefits.

In addition, the US still struggles with a gender gap. In 2012, it was 18%, with US men working full time earning a median income of €32,627 (USD 43,264) and women working full time earning a median income of €26,823 (USD 35,568). In recent years, the gender pay gap has narrowed.

A major goal of US unions has been to collectively bargain with companies on behalf of workers for better wages, to reduce this income disparity and gender gap. This includes negotiating on issues crucial for women, including not only gender pay equity, as well as prevention of workplace violence and sexual harassment and provision of childcare facilities. US unions have had some success with regard to this. Compared to non-unionised workers who are not covered by a collective bargaining agreement, unionised women workers earn 13% higher wages. Although in the US, union membership is disproportionately male, like in most other countries, the efforts of unions to collectively bargain on wages for members and non-members has also yielded greater gender pay equity. A narrower gender pay gap of 14% exists among union members.

Agreements on working times

Federal and state governments do not dictate the maximum or minimum hours for a working week. However, the federal government does stipulate that employees earning an hourly wage must earn a premium rate for any working hours that exceed 40 hours in one working week. This requirement does not apply to workers earning a set salary. Usually, an employer and a union will negotiate within a collective bargaining agreement how many hours constitute one working week, however, and what rate of overtime will be paid, if exceeding the federal minimum. In 2012, the average American worker worked 34.4 hours per week, while the average American worker represented under a collective bargaining agreement worked 38 hours per week.

The US Congress designates national holidays, while state legislators designate state holidays, though companies are not bound to grant workers time off for these holidays, unless they are a government institution. Rather, companies can permit workers time off for these holidays at their discretion, and if they do, decide whether they will grant it as paid time off or not. Companies will often work with unions to stipulate within collective bargaining agreements which holidays will be granted and whether they will be paid or not.

Likewise, neither the federal nor the state government prescribes to companies what workers should enjoy in terms of working time flexibility, including holiday time. Companies also have discretion to provide workers working time flexibility or holiday time, though again companies who have entered into collective bargaining agreements with unions will often specify within the agreement if workers are afforded such flexibility including how much time will be granted for holidays.

Industrial disputes

Under US federal law, specifically the National Labor Relations Act (NLRA), there are two ways a union can be selected as the representative of a collective bargaining unit. The union can collect enough authorisation cards from employees in the bargaining unit. If a union collects cards from the majority of employees in the bargaining unit (50%+1), the union automatically becomes those employees' collective bargaining representative. It can also happen by a vote if less than 50%+1 authorisation cards are signed by bargaining unit employees. In order for a vote to happen, a union would have to collect authorisation cards from at least 30% (but less than 50%+1) of the bargaining unit. In such cases, the NLRB, formed to administer the NLRA, holds an election. In order for the election to result in unionisation, the majority of employees who vote would have to vote in favour.

Once a union is selected as the representative of a collective bargaining unit, the employer and union are required to meet at reasonable times to bargain in good faith about worker wages, hours and other mandatory subjects. Even after a contract expires, the parties must bargain in good faith for a successor contract, or the termination of the agreement, while terms of the expired contract continue.

To this end, federal law, under the NLRA or other laws governing the private employees, does not mandate that a union and an employer engage alternative dispute settlement mechanisms such as mediation or third-party arbitration, when negotiations on such terms fail. However, a union and an employer may voluntarily agree to use such mechanisms under the terms of their contract.

Conversely, federal law does govern how public unions and employers use alternative dispute settlement mechanisms. The law establishing the Federal Service Labor-Management Relations Statute requires that collective bargaining agreements between unions and employers establish grievance procedures that can be used to resolve a workplace dispute. If the dispute involves an equal employment opportunity complaint (which can be filed under an Equal Employment Opportunity Commission complaint procedure), a serious disciplinary action (which can be filed as a Merit Systems Protection Board (MSPB) appeal) or an unfair labour practice (which can be filed with a Federal Labor Relations Authority regional office), then the employee may choose between the grievance procedure or another statutory procedure. The last step in the negotiated grievance process is binding arbitration, conducted by an arbitrator whose services are paid for by the union or the agency or both. Arbitration may be invoked by an agency or a union, but not by an individual employee. Once an arbitrator issues an award, either an agency or a union may appeal the arbitrator's decision by filing an 'exception' to the arbitrator's award with the authority within 30 days.

Likewise, many states have laws that govern how their public sector unions and employers use alternative dispute settlement mechanisms. Many states also now mandate that public sector unions arbitrate with employers when negotiations fail.

Typically, when efforts fail between an employer and union to collectively bargain, in the absence of alternative dispute mechanisms, a union may resort to a strike to enforce its demands. The NLRA specifically guarantees the right to strike and defines a strike as 'any strike or concerted stoppage of work by employees and any concerted slowdown or other concerted interruption of operations by employees'.

The NLRA provides that 'Nothing in this Act, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications of that right'. The right to strike is not an unqualified right, however. Nothing in the NLRA precludes the right from being bargained away as part of the contractual agreement between a union and an employer. The employer also has the legal right by judicial interpretation to replace striking employees, even permanently.

Furthermore, under the NLRA, an employer can lawfully temporarily lay off or lock out its employees during a labour dispute to bring economic pressure in support of their bargaining position provided that an impasse has been reached and that the employer has not interfered with, restrained or coerced employees in the exercise of some protected right. Under the NLRA, it is important to make a distinction

between ‘protected’ and ‘unprotected’ concerted activity inasmuch as employees who are engaged in ‘unprotected’ activity may not enjoy the relief afforded under the law and may be subject to discharge.

Over the past 10 years, the number of major union strikes and lockouts has steadily decreased. In 2012, there were just 19 major union strikes and lockouts involving 1,000 or more workers and lasting at least one shift. In 2012, there were 1.13 million days idle from major work stoppages, affecting with 148,000 workers.

Tripartite concertation

In terms of international relations, the federal government consults with social partners, including representatives from business and labour groups, in the negotiation of treaties, including ratifying ILO conventions and bilateral trade agreements that include employment and labour regulations.

When the US ratified the ILO Declaration in 1980, then-President Carter established a tripartite commission of federal government officials, along with major business and labour groups and non-profit organisations to consult on the further ratification of specific ILO conventions. Likewise, presidents typically have established tripartite working agreements in advance of negotiating major bilateral trading agreements with other countries to include employment and labour regimes.

In terms of governance and federal and state laws governing employment and labour practices, there is no formal tripartite consultation process and there are no tripartite partnerships in forming regulations and rules. However, under the NLRA, the NLRB regulates collective bargaining, bridging the interests of the union, employer and employees.

The NLRB comprises five members, who serve as an appellate judicial body, and a general counsel, who serves as a prosecutor, all appointed by the president. An independent federal agency, the NLRB bridges the interests of employers and employees and protects the rights of the latter to join together by forming a union or otherwise to improve their working conditions and wages. While the NLRB monitors relations between employers and employees to ensure fair labour practices and prevent unfair labour practices by all parties, particularly in unionised environments, it does not develop common national strategies for improving working conditions and wages.

Following the economic crisis in 2008, a unique situation arose whereby the federal government forged a tripartite partnership with major automobile manufacturers, their unions and employees to negotiate terms for restructuring business operations to remain viable. However, the federal government’s tripartite partnership was short lived, as automobile manufacturers rebounded and resorted again to dealing with their unions and employees themselves.

Workers’ rights

Under US federal employment and labour laws, most workers’ rights are accorded to ‘employees’. This designation is defined in each labour statute and may vary from liberal to restrictive interpretations. The most common definitions utilise the master–servant tradition and the right of control. Some statutes, for example the NLRA, exclude non-employees, such as supervisors, from the laws’ protections. Other laws exclude or exempt certain categories from coverage. Under the Fair Labor Standards Act and the Fair Minimum Wage Act, for example, many workers are exempted from coverage. Nearly all professional and managerial workers are exempt from the maximum working week regulations, as are those workers on a salary. Likewise, many workers, including those in service industries who receive tips and domestic workers, are exempt from receiving a minimum wage. No federal employment and labour law covers workers who are self-employed.

The use of independent contractors, who are not ‘employees’, has been a legal problem, as some employers misclassify them as such, thus avoiding the many rights and obligations that go with that status, including tax obligations. The use of irregular (or contingent) workers continues to be a widely used human resource practice as part-time, temporary or casual workers may have fewer rights and lower benefits than regular employees.

Under US law, employment relationships do not require a formal labour contract as is required by statute in many civil law countries, and such contracts are not commonplace, except in the instance of high-level employees. Where they do exist, federal and state laws may not be circumvented by an employment contract as it pertains to statutory rights, but the company and worker may stipulate to terms, conditions, and privileges of employment not stipulated by law. By contrast, an employment contract between a company and a union for collectively bargained agreements, by law, must be written.

The Fair Labor Standards Act sets the minimum age for employment at 14 years. In addition, workers under 16 years are subject to restrictions on work in certain dangerous jobs, how many hours they can work and how much they can earn.

Dismissal and termination procedures

Although the US has certain statutory worker protection laws, in the absence of an express employment contract including a collective bargaining agreement, companies typically can dismiss and terminate a worker without justification and the worker is not protected. Under US common law, in the absence of a federal or state statute or contract, there is a presumption that the employment relationship is ‘at will’, which means that either the employer or worker may terminate the relationship at any time for any reason. However, if an employment relationship is covered by a contract or collective bargaining agreement, common law principles of contract must be adhered to in order to terminate the relationship, according to the terms of the agreement to which the parties have consented, which generally require the parties to act in good faith and have just cause for terminating the relationship. This also applies to companies who make collective terminations of employees.

Coverage of fundamental rights

Maternity

Maternity is considered a temporary disability, and is treated consistently with general employer disability policies under anti-discrimination laws. Under federal law, the Family Medical and Leave Act requires companies that employ 50 or more workers to provide workers with up to 12 weeks of unpaid leave to facilitate the natural birth or adoption of a child, or to care for a sick child. State laws on this vary, but some exceed the federal requirement, granting more unpaid leave time. Employment relations governed by a contract may provide additional time and may stipulate whether it is paid or not. Federal and state laws with respect to family leave as they pertain to both maternity and paternity time are binding on employers and are enforced. Common law principles govern contracts. Federal and state laws do not provide workers paid time, making it hard for working families to use the benefit.

Sick leave

There are no federal laws providing for temporary sick leave, paid or not, although many employers voluntarily provide it depending on their market situation. For qualifying employees, there is unpaid leave for certain conditions and situations under the federal Family Medical Leave Act and state law equivalents. There was no federal requirement for employee health insurance until the recent Affordable Care Act. While this law has an individual mandate, only employers with over 50 employees must provide health insurance. The federal Americans with Disabilities Act prohibits employers from discriminating against job applicants and employees based on an actual or perceived disability, if they are qualified to do the job with or without reasonable accommodation. Reasonable accommodation may result in leave time.

Employees with work-related injuries are provided medical and wage benefits under compensation laws for state workers. The Family Medical Leave Act and the Affordable Care Act are binding and enforced.

Federal law pertaining to workers with disabilities is binding and enforced by conciliation and litigation. Common law principles govern contract enforcement. Disability discrimination cases make up the largest proportion of cases before the Equal Employment Opportunity Commission.

Health and safety

The primary law to prevent injuries and occupational diseases in the workplace is the federal Occupational Safety and Health (OSH) Act. It is administered by the Occupational Safety and Health Administration (OSHA). Safety and health conditions in most private industries are regulated by OSHA or OSHA-approved state programmes, which also cover public sector employers. Employers covered by the OSH Act must comply with the regulations and the safety and health standards promulgated by OSHA. Employers also have a general duty under the OSH Act to provide their employees with work and a workplace free from recognised, serious hazards.

OSHA enforces the Act through workplace inspections and investigations. Compliance assistance and other cooperative programmes are also available. State laws also may govern workplace safety. Federal and state laws involving occupational safety are binding and enforced.

Given the extensive nature of federal and state laws concerning occupational safety, enforcement is sometimes tenuous.

Discrimination

Under US law, employers may not discriminate against workers in the terms, conditions and privileges of employment based on race, colour, religion, sex, national origin, age or disability. State laws also provide protections for other classes of workers; in some states sexual orientation is included.

Federal and state laws are binding on employees and are enforced. Federal law and most state laws do not provide protections against discrimination for workers based on sexual orientation, though in 2013 the US Congress is discussing its addition.

Right to join trade unions

Under the NLRA, private sector workers have a right to join trade unions. Many states also have laws that protect the rights of workers to join unions. Both federal and state laws prohibit employers from interfering with the ability of the worker to join a union and are enforced. Many states prohibit state employees from participating in public unions.

Right to access vocational training

There are federal and state laws creating vocational training programmes, and they are available for qualified applicants on a non-discriminatory basis. Workers do not have a right to vocational training, but they do have a right to access many of the government-provided programmes.

Right to access unemployment benefits

Workers have a right to access unemployment benefits. There is a dual system of federal and state unemployment benefits. Under the Social Security Act, the federal government standardises the unemployment benefit system, but states administer it under a shared funding arrangement.

The federal government jointly administers with the state governments an unemployment benefits regime, funded with both federal and state payroll taxes. The federal government apportions its funding to the states, which set unemployment benefit requirements for workers and establish the terms of the benefit, with regard to duration and amount. Varying from state to state, the base period of the unemployment benefit ranges from 1 to 26 weeks, and typically covers about 50% of previous wages.

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