

European Union labor law- a comparison between the labor laws of the United States and the European Union

Clifford Fisher

Cara Putman

Alborz (Al) Hassani

Purdue University, Indiana, USA

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Abstract

Because total United States' (US) investment in the European Union is three times higher than US investment in all of Asia, public awareness on the role of labor laws in the global economy has intensified. This paper seeks to compare the similarities and differences in labor laws in the United States and the European Union by looking at differences in regulation between the two bodies in addition to comparing regulation as a whole in comparison to individual countries and US federal law in the areas of Contract Formation, Parental Leave (FMLA), Wages and Vacation, and Child Labor.

Preface

Because total United States' (US) investment in the European Union is three times higher than US investment throughout Asia, public awareness on the role of labor laws in the global economy has intensified. With the EU or the US being the largest trade and investment partner for almost all other countries in the global economy (Europa, 2015a), business attention should focus on the labor laws of not only the United States but also the European Union. Labor laws define the work environment, shape conditions of employment, and have implications for trade, foreign direct investment, employment, and economic competitiveness.

With that in mind, this paper seeks to compare the labor laws in the United States and the European Union. We also will provide a historical analysis of the labor laws in both the United States and the EU. The differences in the labor laws of these two governmental units reflect their values and have different implications for workers as well as the respective economies.

In this analysis, the paper will look at differences in regulation between the two bodies in addition to comparing regulation as a whole in comparison to individual countries and US federal law in the areas of Contract Formation, Parental Leave (FMLA), Wages and Vacation policies, and Child Labor.

The Fictional Company: Sierra Enterprises Inc.

Sierra Enterprises, Incorporated is a company based in the United States. After noticing that United States' investment in the European Union is three times higher than that in all of Asia, it has decided to expand its business into the European Union. It hired Nick Jenson, a labor attorney skilled in international labor laws, to work with its Human Resources department to study the labor laws and regulations involved in a potential expansion of the company into various locations in the European Union. Mr. Jenson is tasked with comparing current labor laws in the United States with the labor laws of a western European country such as France as well as an eastern European country such as Bulgaria and prepare a report for the executives of Sierra Enterprises, Inc. on what major differences and similarities there are between the countries.

The Sources of Employment Law

The goal of the European Union as found in the preamble of The Treaty On Functioning of the European Union is "the constant improvements of the living and working conditions of their peoples" (Official Journal of the European Union, 2012). In the European Union, laws are divided into primary and secondary legislation. Primary laws (treaties) are the basis or foundation for European Union actions. Secondary legislation is derived from the objectives of the primary treaties, and this secondary legislation takes the form of regulations, unilateral acts, directives and decisions (Europa, 2015b). The primary labor laws governing the European Union member states are found in The Treaty on Functioning of the European Union in Articles 145-164. Similar to the labor laws of the United States, the laws set forth by the European Union set minimum standards for member states to follow and exceed if those countries so chose. In addition to the guidelines set forth by The Treaty on Functioning of the European Union, additional case law governs topics like equality and employment contracts.

With many parallels, the United States' federal laws set the minimum states must follow or can choose to exceed. In contrast to The Treaty on Functioning of the European Union, the source of US labor laws is rooted in various legislation such as the Fair Labor Standards Act, the Civil Rights Act of 1964, and The Family and Medical Leave Act. In addition to federal and state laws, case law also governs employment in the United States.

Culture

When comparing the labor laws and regulations of the United States and the European Union it is vital to also analyze the cultural differences between the two. Although the United States has a fairly uniform business culture, the European Union is comprised of 28 member states, a majority of which have contrasting business culture and etiquette. For example, in Eastern European countries such as the Czech Republic people are less confrontational while in Slovenia or Poland a person will be more straight forward (Passport to Trade, 2014). Although these cultural norms are important to study before expanding into Europe, a critical difference when comparing the United States and the European Union is the work-leisure balance. In the United States, the average number of hours a member of the work force will work is 25.13, much higher than the averages of the European Union. Hours worked per week range from 16.68 hours per week in Italy to 21.42 hours per week in the United Kingdom. While these averages include full time and part time employees, some argue that this drastic difference between the work-leisure ratio in the United States and Europe is caused by culture, while others argue that this gap is caused by labor unions advocating for European labor market regulations (Alesina, Glaeser, and Sacerdote, 2005). It is important for Mr. Jenson to ensure Sierra Enterprises, Inc., evaluates the number of workers and hours of labor it will need when deciding where to expand.

Now that we've established some background information, we will turn our attention to specific areas of labor law and the differences between the United States and the European Union. Understanding these distinctions is critical if Sierra Enterprises, Inc., and other companies are going to have success expanding into either the European Union or the United States.

Labor Contracts

The first major difference when analyzing the differences in labor law between the United States and the European Union is the form labor contracts take between employers and employees. The concept of at-will employment in the United States is one that dates back to the late 19th century. Since then the concept of at-will employment has become common law and is assumed to be the foundation of employment contracts in the United States unless a law or a contract specifically states otherwise. In the California Supreme Court Case, *Guz v. Bechtel National Inc.*, the court defined at-will employment as:

"An employer may terminate its employees at will, for any or no reason...the employer may act peremptorily, arbitrarily, or inconsistently, without providing specific protections such as prior warning, fair procedures, objective evaluation, or preferential reassignment...The mere existence of an employment relationship affords no expectation, protectable by law, that employment will continue, or will end only on certain conditions, unless the parties have actually adopted such terms. Thus if the employer's termination decisions, however arbitrary, do not breach such a substantive contract provision, they are not precluded by the covenant of good faith and fair dealing" (John Guz v. Bechtel National, Inc., 100 Cal. Rptr. 2d 352, 375 (2000).

Although at-will employment contracts are the norm in the United States, the concept does not exist in the European Union. This difference can be traced back to the United States' use of common law, while the European Union (with the exception of the United Kingdom and Ireland which use common law) uses Civil/Roman Law. In contrast to Common Law, Civil Law is codified. Countries have "legal codes that specify all matters capable of being brought before a court" (The Robbins Collection). In the European Union workers' contracts are fixed-term work contracts and are governed by European Council Directive 1999/70/EC. In addition to the laws of each member state, this directive provides numerous protections for workers. These include forbidding fixed-term employees from being discriminated against, as well as limits on the number of renewals and equal training opportunities (Official Journal of the European Communities, 1999).

In addition to European Union directives, most member states have a code of labor requiring written contracts. For example, in France, the *Code du Travail* regulates employee contracts and requires a contract be in writing and termination must be with "real and serious" grounds. However, "in practice, it is very difficult to carry out a unilateral termination on anything other than clear economic grounds or for gross or serious misconduct, without giving rise to legal proceedings" (UK Trade & Investment France, 2013). Although the United Kingdom and Ireland use common law, the at-will doctrine is still not accepted there and termination

must be justified. At first glance, having fixed-term employment contracts may not be a major factor to Sierra Enterprises, Inc.; however, by entering binding term fixed contracts with employees, it becomes vital to ensure the company hires qualified workers who will be able to serve its needs over the course of years.

Wrongful Termination

A concept that goes hand in hand with the differences between at-will employment and fixed-term employment is wrongful termination claims. The law governing notification of termination in the United States is the Fair Labor Standards Act. The Fair Labor Standards Act does not require “a discharge notice, reason for discharge, or immediate payment of final wages to terminated employees” (United States Department of Labor, 2016a). Under at-will employment an employer may terminate an employee for any reason that does not include discrimination or retaliation. In contrast, under European Union labor laws, a worker can claim wrongful termination if the employer breaches the employment contract. The source of the law in most of the European Union varies from country to country. Under article 30 of the Charter of Fundamental Rights of the European Union, “Every worker has the right to protection against unjustified dismissal, in accordance with Union law and national laws and practices” (European Commission, 2006).

In our example, France, the source of law is found in its *Code du Travail*, Law 2005-32, Law of 25 July 2005, Law 23 July 1991, and in collective agreements themselves (European Commission, 2006). In order to terminate an employee for reasons such as poor conduct or underperformance, there is an intricate set of steps that must be followed under French and European Union laws. A letter must be hand delivered or sent by registered mail to the employee’s home address asking them to attend a preliminary meeting. The reason for termination must be provided at the meeting, and the meeting must be a minimum of 5 days following delivery of the letter. The employee then has the right to have a fellow employee or an employee representative present with them. Unless specified in the employment contract, the costs associated with terminating an employee for a *faute simple*, or regular fault are:

- A notice period passed on seniority (Usually around three months)
- Severance pay package based on seniority and average salary
- Pay compensating for holidays not taken.

Because French labor courts are more employee friendly, it is to the advantage of the employer to reach a compromise agreement outside of court (UK Trade & Investment France, 2013).

Similar to making Sierra Enterprises, Inc., familiar with the form of contracts in the European Union, Mr. Jensen must inform Sierra Enterprises, Inc., that generally employees in the European Union have many more protections in termination and that it is important to ensure potential employees are qualified and the right choice prior to hiring.

Wages and Working Hours

In the United States there is no federal law governing the maximum number of hours worked by employees. Although there is no cap at the number of hours an employee can work, per the Fair Labor Standards Act, “employees must receive overtime pay for hours worked over 40 per workweek (any fixed and regularly recurring period of 168 hours – seven consecutive 24-hour periods) at a rate not less than one and one-half times the regular rate of pay” (United States Department of Labor, 2016b). Note these overtime rules do not apply to exempt workers such as employees on a salary. Note further that the current exemption is changing drastically in December 2016 (United States Department of Labor, 2016c).

However in Europe, per Directive 2003/88/EC of the European Parliament, “the average working time for each seven-day period, including overtime, does not exceed 48 hours” (Official Journal of the European Union, 2003). In numerous member countries, including our example, France, either through legislation or collective bargaining the work week has been further capped. In France the length of the work week is 35 hours (UK Trade & Investment France, 2013).

Unlike overtime, the minimum wage laws of the United States are fairly simple. Effective January 1, 2009, the federal minimum wage under the Fair Labor Standards act is \$7.25 per hour (United States Department of Labor, 2016b). If a state does not have a minimum wage or if its minimum wage is below the federal minimum wage, the federal minimum wage applies. However, currently 29 states and the District of Columbia have minimum wage laws that are above \$7.25 per hour (National Conference of State Legislatures, 2016). However, the European Union’s minimum wage laws are not as simple. Because the 28 members of the European Union have such different economies there is no one set minimum wage. Instead minimum wage is governed by individual member state’s legislation. In 2016, 22 of the 28 member states have set a minimum

wage, while the remaining six use collective bargaining agreements. Another difference between minimum wages in the United States and the European Union is that wages are reported by hour in the United States, but by the month in the European Union. The highest minimum wage in the European Union is that of Luxembourg with a minimum wage of €1923 per month based on a 40-hour work week, which equates to roughly \$12.50 per hour based on a 52 week year (Reins Fischer, 2016). The lowest minimum wage in the European Union is in Bulgaria, with a minimum wage of €215 per month based on a 40-hour work week, which equates to roughly \$1.44 per hour based on a 52 week year (Reinis Fischer, 2016).

When discussing the wages and working hours of European nations, it is very important for Mr. Jensen to emphasize the differences in minimum wage laws, but more importantly caps on the workweek. As mentioned earlier, the average number of hours worked in the United States can vary more than eight hours per week when compared to European nations.

Paid Leave

The Fair Labor Standards Act does not require payment for any time not worked such as sick leave, vacation, or holidays. Although there are no laws requiring it “many employers provide holidays off or extra pay for working on a holiday. These arrangements are considered employee benefits and are typically included in an Employment Contract” (Rocket Lawyer, 2012).

In contrast to the United States, per the Directive 2003/88/EC of the European Parliament, “every worker is entitled to paid annual leave of at least four weeks” (Official Journal of the European Communities, 1999). Although there is a minimum of four weeks or 20 days, many countries exceed that with national legislation. In addition, each member state also provides employees with 4-14 paid national holidays depending on the country (Independent, 2016). In France “[t]he standard annual paid vacation is 30 workable days (i.e. 5 weeks) if the employee has worked for the employer for 12 months” (UK Trade & Investment France, 2013) in addition to 10 national holidays. The additional cost of paying for a minimum of four weeks of leave is one that is tremendous and should be considered by Sierra Enterprise, Inc., prior to deciding if it will expand its business into the European Union.

Child Labor

Mr. Jensen is approached by Mr. Bowman, a member of the human resources department at Sierra Enterprises, Inc., regarding a question about child labor laws. Sierra Enterprises, Inc., currently brings in five to ten high school students every semester who are interested in going into the industry. To avoid the negative stigma surrounding unpaid internships, they offer the students a basic wage to be office assistants and perform basic tasks. Mr. Bowman asks Mr. Jensen if such a program could be implemented in the European Union.

In the United States, the employment of minors is governed by the Fair Labor Standards Act. Per Part 570 of the Fair Labor Standards Act, a minor between the ages of 14-15 can perform “[o]ffice and clerical work, including the operation of office machines” (U.S. Government Publishing Office, 2016). Per Article 32 of Charter of Fundamental Rights of the European Union, “the employment of children is prohibited. The minimum age of admission to employment may not be lower than the minimum school-leaving age, without prejudice to such rules as may be more favourable to young people and except for limited derogations” (United States Department of Labor, 2016a). Depending on the member state in the European Union, this program of employing students may be implemented.

In our example country, France, the school-leaving age is 16 (Melchiorre, 2004), and therefore if the student is older than 16, Sierra Enterprises may hire them for the semester program despite the fact they are a minor. If a student is less than the minimum school leaving age in their country, Sierra Enterprises, Inc., may not hire them. Although the highest school leaving age in the European Union is 18, countries with the school leaving age of 18 also have state laws that allow a lower working age. Mr. Jensen should report back to Mr. Bowman that in a majority of situations its semester long program for high school students can be implemented in the European Union. However, it is important to verify the laws once the company decides on a specific country to conduct business.

Maternity and Paternity Rights

The most drastic difference between US and European Union labor laws may be the maternity and paternity leave rights. The law in the United States governing maternity and paternity rights falls under the Family and Medical Leave Act of 1993. The Family and Medical Leave Act (FMLA) provides the following to qualified employees at covered employers:

“1. Twelve workweeks of leave in a 12-month period for:

- a. The birth of a child and to care for the newborn child within one year of birth
- b. The placement with the employee of a child for adoption or foster care and to care for the newly placed child within one year of placement;
- c. to care for the employee's spouse, child, or parent who has a serious health condition
- d. A serious health condition that makes the employee unable to perform the essential functions of his or her job;
- e. Any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on "covered active duty;" or

2. Twenty-six workweeks of leave during a single 12-month period to care for a covered service member with a serious injury or illness if the eligible employee is the service member's spouse, son, daughter, parent, or next of kin (military caregiver leave)" (United States Department of Labor, 2016d).

Because FMLA is the only guarantee for maternity or paternity leave, the United States is the last industrialized nation in the world without paid maternity leave requirements and one of four countries who do not provide women such benefit (Hall, 2013). Because no federal or state paid leave policy exists in the United States, an overwhelming majority of companies still do not have a paid maternity leave policy. A 2015 report from the Society of Human Resource Management claims only 21% of companies offer some sort of paid maternity leave. (Society of Human Resource Management, 2015) Unpaid paternity leave is still the standard and a concept that is slowly breaking in to US companies through the FMLA.

In stark contrast, the European Union is home to some of the countries recognized worldwide for their generous maternity and paternity leave policies. The laws of the European Union governing maternity and paternity leave can be found in European Council Directive 92/85/EEC where women are entitled to "a continued period of maternity leave of at least 14 weeks allocated before and/or after confinement in accordance with national legislation and/or practice" (Official Journal of the European Communities, 1992). Below are two graphs comparing the wide variety of maternity and paternity laws in various members of the European Union.

Notes:

-Dark represents mandatory leave. Light represents non-mandatory leave.

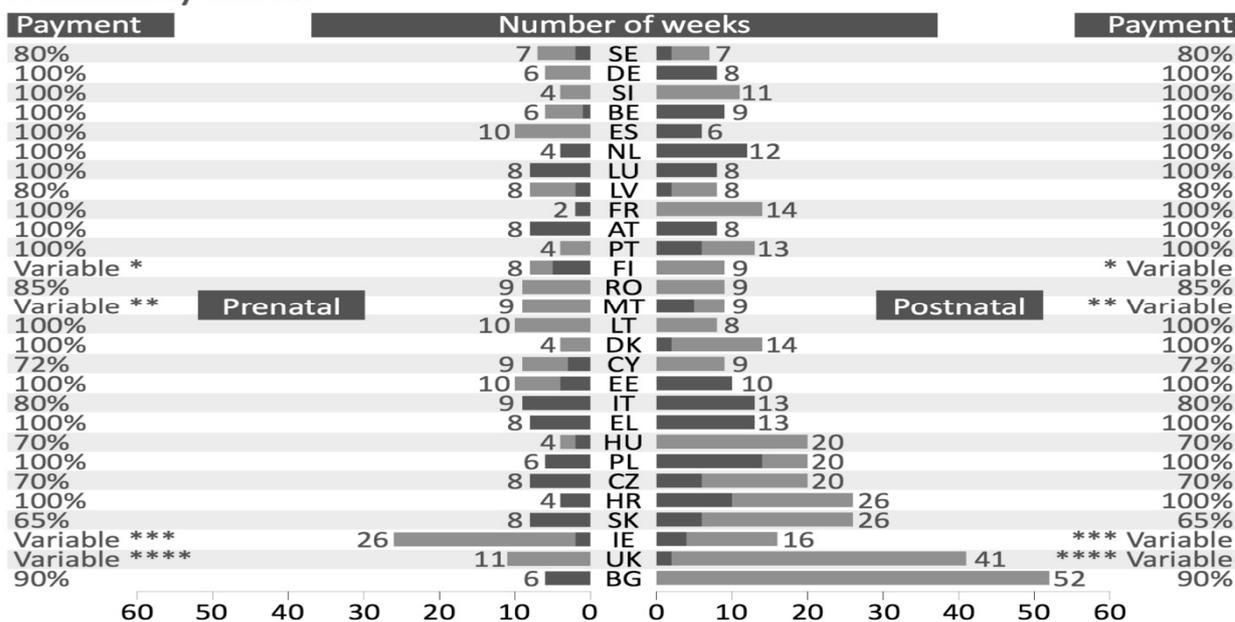
* FI- First 56 days, 90% of salary; remainder (49 days) 70%

** MT- 100% of earnings (for 14 weeks) +4 week's flat rate

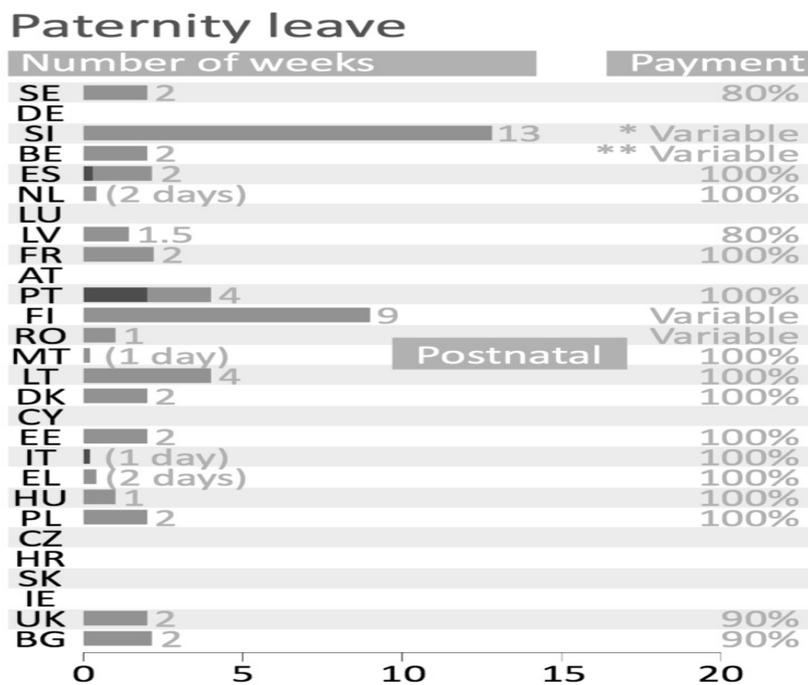
*** IE- Weekly rate (€230) paid for 26 weeks; the remaining 16 weeks unpaid

**** UK- First 6 weeks, 90%; next 33 weeks, flat-rate payments of either £138.18 (€170) or 90% of average gross weekly earnings (whichever is lower); the remaining 13 weeks are unpaid.

Maternity leave



(European Parliament, 2014)



Notes:

- Dark represents mandatory leave. Light represents non-mandatory leave.

*SI- 15 days 'paid' + 75 days 'non-paid' (non-paid means that the state pays social security contributions based on the minimum salary (approximately €174 per month)

**BE- 100% for 3 days (paid by employer), 82% of salary for remaining period.

Similar to the United States, the European Union provides protection for pregnant woman aside from paid leave. In European Council Directive 92/85/EEC laws exist to protect women from dismissal, work with dangerous chemicals, night work, unreasonable work hours, and other necessary protections.

Mr. Jenson should make sure that Sierra Enterprises, Inc., analyzes the additional cost of doing business in the European Union caused by maternity leave. With over 260 million women in the European Union (Eurostat, 2016) Sierra Enterprises, Inc., can expect to have a significant cost added despite the country it chooses to operate in.

Unemployment Insurance

The concept of unemployment insurance has always been a controversial one in the United States. Unlike most laws and social programs in the United States, unemployment benefits are a combination of state and federal laws. "Unemployment insurance is a state-operated insurance program designed to partially replace lost wages when you are out of work" (Illinois Department of Employment Security, 2016). These programs in the United States combine funding from state and federal governments in addition to taxes collected from private companies. Under the Federal Unemployment Tax Act, the Internal Revenue Service is authorized to collect an annual federal employer tax that is then used to fund state workforce agencies (Internal Revenue Service, 2016). The heavy reliance on state funding is what causes the variance between state benefits. The maximum weeks of benefits ranges from 18 weeks (Georgia) to 30 weeks (Massachusetts) and maximum benefits per week benefits ranges from \$235 (Mississippi) to \$1,019 (Massachusetts) (File Unemployment, 2016).

Similar to the United States, each European Union member state has its own unemployment insurance program. In addition to individual programs, legislation union-wide that governs any sort of unemployment

program is found in The Treaty on the Functioning of the European Union. Article Nine states, "In defining and implementing its policies and activities, the Union shall take into account requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health" (Official Journal of the European Union, 2012).

In our example country, France, the unemployment insurance system is governed by the UNEDIC (National Professional Union for Employment in the Industry and Trade). The Pôle Emploi organizes all employment services under its umbrella, acting as a single point of contact. Benefits are paid based on a "Aide au retour à l'emploi" (ARE) which is the highest of 40.4% of the daily reference wage plus 11.76 Euro or 57% of the daily reference wage (CLEISS, 2016). The duration of benefits ranges from a minimum of 4 months to a maximum of 24 months for employees under 50 and a maximum of 36 months for employees over 50 (CLEISS, 2016).

Overall unemployment benefits are larger and longer lasting in Europe. The portion of prior earnings replaced by unemployment benefits, known as the replacement ratio is generally much higher in Europe than in the United States. The income replacement ratio during the first year of unemployment in France was 79%, 66% in Germany and 81% in Sweden, while only 34% in the United States (Sarzos, 2016). Because of the higher replacement ratio, the average duration of unemployment in Europe is as a result longer because there is less incentive to find a job. When Mr. Jenson discusses expansion options with Sierra Enterprises, Inc., it will be important for the company to analyze the additional costs of unemployment benefits in Europe due to larger benefits for a longer duration.

Conclusion

After comparing numerous aspects of labor law between the United States and the European Union, there is a clear distinction that labor laws in the United States are generally more employer friendly while the labor laws in the European Union clearly provide employees with more protections and more generous benefits. It is important for Sierra Enterprises, Inc., to carefully decide if it wants to expand into the European Union after taking into consideration the more employee friendly laws and numerous additional costs. If it decides to expand into the European Union, it must then compare individual countries and decide which country best fits the needs of the company based on the potential economic gains as well as additional costs incurred compared to operating in the United States.

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