

**LABOR LAW  
AND  
EMPLOYEE SAFETY**

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**LAWS RELATING  
TO  
LABOR UNIONS**

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**LABOR - MANAGEMENT RELATIONS**

**COMMON LAW**

employment at will  
public policy of competition  
unions are a criminal conspiracy

**INDUSTRIAL REVOLUTION**

impersonal relationship  
name of boss prior to Ind. Rev.?

unequal power  
monopsony

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**LABOR - MANAGEMENT RELATIONS**

federal law

**SHERMAN ACT**

legal if

proportional to  
legitimate  
business  
interest

felony if not

per se unreasonable restraints of trade  
price fixing  
group boycott: i.e., strike

**INJUNCTION**

equitable remedy to compel action  
cease and desist in collective action

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economic realities versus economic assumptions  
monopsony versus competition

law based on assumptions favors one side

leads to

violence in the streets  
deflation

triggers legalization of unions

proportional to legitimate business interest

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**ADVERSARIAL v. CODETERMINATION**

USA is adversarial

peace through bargaining

us v. them

viewed as

labor v. management

rest of world is codetermination

us v. them

viewed as

(labor + management) v. world

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**Federal Laws Governing Labor-Management Relations**  
**Clayton Act, section 6 1914**  
labor is not an article of commerce  
labor is exempt from the antitrust laws

**Norris - Laguardia 1932**  
no federal injunctions

**Wagner (NLRA) 1934**  
peace through bargaining  
favored unions  
management unfair labor practices

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**Federal Laws Governing Labor-Management Relations**  
**Taft - Hartley Act (L - MR Act) 1947**  
union unfair labor practices  
mediation and cooling off

**Lanham - Griffin (L - M Rept & Disc Act 1959)**  
union corruption  
bill of rights

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**Wagner (National Labor Relations Act), 1934**  
right to organize  
"direct effect"  
v.  
"close and substantial affect"  
secret election  
laboratory conditions  
justifiable reliance on unilateral offer  
bargaining unit  
labor or management?  
question of agent's loyalty  
implement v. formulate policy  
independent judgment  
managed care  
nurses v. doctors

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**Wagner (National Labor Relations Act), 1934**  
subjects of bargaining

- mandatory
  - wages,
  - hours, and
  - terms and conditions of employment
- past contracts
- permissive
- prohibited

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**Wagner (National Labor Relations Act), 1934**

**Arbitration**  
no precedence, but **Rule of Shop**

private property rights v. right to organize

**Secondary Boycott**

- 1) primary employer present
  - 2) primary employer's normal hours
  - 3) reasonably close to primary employer
- AND**
- 4) clearly disclose primary employer dispute

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**LAWS RELATING  
TO  
WORKPLACE SAFETY**

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**Risk cannot equal zero**

**MARKET AND LAW FAIL IF RISK IS EITHER**  
not known  
or  
not voluntarily accepted

**INDUSTRIAL REVOLUTION**  
impersonal relationships  
abuse of unequal bargaining power

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**Employee's View of Workplace risk**

limited information  
one worker  
justification for unions

complex causation

present value of risk premium

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**STATE LAW**  
**employment at will**  
**common law:** slow, favors employer  
fellow servant  
failed duty to report  
**assumption of risk:** normal risk  
known and voluntary  
**contributory negligence**  
bar v. offset  
**statute:** fast, favors employee  
**Workers' Compensation Insurance**  
no fault  
employee v. independent contractor  
insurance rating  
industry and firm

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STATE LAW: **Workers' Compensation Insurance**

the insured risks include those risks which are

**ARISING OUT OF**  
risk peculiar

**AND HAPPENING IN THE COURSE OF EMPLOYMENT**  
time and place

going and coming rule

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**FEDERAL LAW OF WORKPLACE SAFETY**

Occupational Safety and Health Act  
**OSHA**

11 or more employees  
safe and healthful working conditions  
degree of objectivity

What is the State's Police Power?  
How does OSHA fit under the Commerce Clause?  
Can the federal government preempt the States?

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**OSHA**

**General Duty Clause: arising from**

**IF**

- 1) known risk of
- 2) serious physical injury which is
- 3) preventable

**THEN**

- 4) **absolute duty**  
to remove the cause of the risk.

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**OSHA**  
**Specific Duty Clause**  
OSHA selected means of  
avoiding the known risk

enforcement  
record keeping

no reprisals

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**WORKPLACE SAFETY POLICY QUESTIONS**

labor is 80% or risk  
Design v. Performance

innovation retarded?

job loss for poor safety?

**SAFETY v. HEALTH**  
objective  
immediate harm  
cost of harm  
cost of prevention

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**WORKPLACE SAFETY POLICY QUESTIONS**

what is **FEASIBLE** ?  
OSHA variance  
firm variance  
v.  
industry variance

**A legislative selection of a technology**  
carries with it  
the clear implication of a **legislative desire**  
for some **firms to go bankrupt**.  
Specifically, those firms that can **only survive**  
if use the **rejected technology**.

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