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Journal Highlights: Regulatory Innovation on Decent Work for Domestic Workers in the Light of ILO Convention No. 189

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We wanted to draw your attention to some interesting articles on Regulatory Innovation on Decent Work for Domestic Workers in the Light of International Labour Organization Convention No. 189 that appeared in *International Journal of Comparative Labour Law and Industrial Relations* Volume 34, issue 3, 2018, edited by Guy Davidov.

Adelle Blackett, *Introduction* (2018) 34, Issue 2, pp. 141–148

The special issue contains two articles prepared for the third biennial Labour Law Research Network Conference, in Toronto in 2017, that examine national regulation on domestic work in the light of the ILO's landmark Decent Work for Domestic Workers Convention, 2011 (Convention No. 189) and its accompanying Recommendation No. 201. (53(1) Int'l Legal Materials 250–266 (2014).) It includes a third contribution, prepared under an International Development Research Centre (IDRC) Small Grant for Research Innovation. The special issue discusses examples of regulatory innovation on decent work for domestic workers from Europe (Germany), Latin America (Argentina, Chile and Paraguay) and Africa (South Africa).

Anne Trebilcock, *Challenges in Germany's Implementation of the ILO Decent Work for Domestic Workers Convention* (2018) 34, Issue 2, pp. 149–176

Germany faces several challenges in fully applying the Decent Work for Domestic Workers Convention, 2011 (No. 189), in force for it since 2014. This article examines the situation in the light of (1) the Government's assertion that ratification did not entail any need for legislative change; (2) domestic work in the context of the country's overall demographic and labour market context, along with recommendations of a Government-appointed panel of experts on gender equality, and (3) the 2017 direct request to Germany concerning implementation of the Convention, made by the International Labour Organization (ILO) Committee of Experts on the Application of Conventions and Recommendations. The article argues that although much – but not all – of German labour law already applies to domestic workers on an equal footing with other workers, the Government still needs to take a number of steps to apply the Convention in full. The Government's blanket exemption of 'live-ins' from the Convention's scope concerns primarily

those who come from Central and Eastern European countries, under various legal constructs, to care for older persons at home without maximum hours protection. The country's exclusion of all domestic workers from the main health and safety laws is also problematic, as are some constraints on access to justice. In addition, the widespread phenomenon of undeclared paid domestic work calls for strengthened enforcement of existing legislation. Addressing these and other issues will be important not only for improving the lot of domestic workers in Germany, in line with the Convention, but also for ensuring sustainable quality care provision in a rapidly aging society while promoting greater labour market participation for women.

Lorena Poblete, 'The Influence of the ILO Domestic Workers Convention in Argentina, Chile and Paraguay' (2018) 34, Issue 2, pp. 177–201

Since the International Labour Organization Decent Work for Domestic Workers Convention (No. 189) was adopted in 2011, twelve Latin American countries have ratified it. Argentina, Chile and Paraguay are particularly interesting when analysing how C189 influenced national reforms because they made sweeping amendments to their legislation after the Convention was adopted. In the case of Argentina and Chile, the debate on the reforms took place as the Convention was in the process of being ratified, and in Paraguay after ratification. In these countries, adapting national regulatory frameworks to the Convention's provisions involved two main challenges. One of them was to draft legislation considering the specific nature of domestic work while guaranteeing these workers the same rights granted to employees. The other was to innovate in relation to enforcement mechanisms to ensure compliance with new laws when domestic work has been generally perceived as a relation based on affection and trust and regulated by customary practices. Comparing the way in which national legislation was shaped following the international standard in these three countries reveals diverse uses of C189 reflecting distinct approaches to regulating this activity and the features of the labour market in each country. This means that during the law-making process, C189 was read, interpreted and translated in different ways in each country for the purpose of filling the legal gaps associated with the protection of domestic workers. The aim of this article is to analyse how the principles and rights established in C189 are assimilated to different national contexts while considering the common challenges facing legislators in these three countries.

Adelle Blackett, Thierry Galani Tiemeni, *Regulatory Innovation in the Governance of Decent Work for Domestic Workers in South Africa: Access to Justice and the Commission on Conciliation, Mediation and Arbitration* (2018) 34, Issue 2, pp. 203–230

South Africa ratified the Decent Work for Domestic Workers Convention, 2011 (No. 189) in 2013, after playing an important role in the adoption of the Convention. South Africa is one of the countries that has a significant domestic work population that reflects the legacies of slavery and apartheid. South Africa is also one of the ILO Members to have acted decisively to foster decent work for domestic workers through law. This article offers a critical analysis of the legislative landscape on domestic work in South Africa, but focuses its attention on the innovative Commission for Conciliation, Mediation and Arbitration (CCMA). The article draws on interviews and participant observations of the CCMA's approach to dispute resolution. It canvasses the ethnographic material alongside key scholarship on topic, to suggest that there are firm indicia that

the CCMA structure, procedures and accessibility have helped to reinforce, over time, a recognition that domestic work is a form of employment to which labour law principles apply. The institution, its structure, its attempt at inclusion, play a crucial mediating role, underscoring that state law is applicable to the household as a workplace, and can help to change its asymmetrical, pluralist law. That mediation is part of the aspiration of decent work for domestic workers embodied in Convention No. 189 and Recommendation No. 201. The article concludes by affirming that the CCMA is a critically important institution, only part – but also a meaningful part – of the promise of labour law's 'citizenship at work' in the context of persisting societal inequality.

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