

Evidence

9 to 5

Old ways, new gigs—the transformation of employment.

BY JANE WHITEHEAD and GABRIEL FRUMKIN '20

As an international authority on labor and employment law, BC Law Professor Thomas C. Kohler asks fundamental questions about the nature and dignity of work and its impact on the people who perform it.

In a 2008, he wrote of a looming crisis in labor and employment law globally and an urgent need for new thinking about “the kind of global economic and work relationships that will sustain democracies and allow humans to flourish.”

Nowadays, he sees an acceleration in the breakdown of long-established norms governing employment and a growing tendency of employers to see workers purely as profit centers, “mostly fungible and fully disposable.” The rise of the gig economy, he says, has challenged legal systems worldwide to reconsider who is and who is not an employee, and what that means in an era of unstable working relationships.

This shift is perhaps more unbridled in the US than in other advanced societies, says Kohler. No other country he knows of has employment “at will,” a system supposed to be conducive to the freedom of both employers and employed, but in fact is highly favorable to employers. Benefits that most Europeans take for granted, including paid vacations and parental leave, are far from universal in the US.

Another key change is erosion of the consensus that workers’ right to organize is a legitimate part of democracy. Kohler recalls that even tough employers’-side lawyers once believed that “collective bargaining as a private ordering system was far more desirable than state ordering of the employment relationship.” He sees recent SCOTUS decisions as evidence of the Court’s willingness to dismantle the very systems of self-organization he regards as the bedrock of democracy.

The stakes are high: “Work is a moral issue, and it goes beyond simply what’s equitable in the workplace to what sort of society we want,” he says.



INCOME

Earning Tiers

\$55,880

Average individual income 2018

13.4% → Workers made \$100,000+

1.6% → Workers made \$250,000+

OCCUPATIONS

2018: Health care surpassed manufacturing and retail, the most significant job engines of 20th century, to become largest source of US jobs.

68%

Increase of workers in occupations requiring average to above-average education, training, and experience from 1980 to 2015

MINIMUM WAGE

Earners

55%

Minimum wage earners over the age of 24

62.6%

Minimum wage workers who are women (4.2% of Fortune 500 CEOs are women)

Federal Minimum Wage, then and now

\$1.60/hr.

1968

\$7.25/hr.

2019

\$10.90/hr.

Value of 1968 Federal Minimum Wage (Adjusted for Inflation)

Some large employers, including Amazon, Costco, Target, and Walmart, have promised to set internal minimum wages above the federal minimum wage.

UNITED STATES EMPLOYMENT

Workforce

327.16 million

US population



128.57 million

People age 16+ employed full-time (39.2% of population)



Largest employers in US 2018

Employer, Public	No. of Employees
Government	2,700,000
Employer, Private	Global No. of Employees
Walmart	2,300,000
Amazon	541,900
Kroger	443,000
Yum! Brands	420,000
The Home Depot	406,000

UNIONS

20.1% → Workers who belonged to unions, **1983**

10.7% → Workers who belonged to unions, **2017**

In **2016**, roughly 10.6 million of the 16.3 million workers with a union contract were women and/or people of color.

485,000

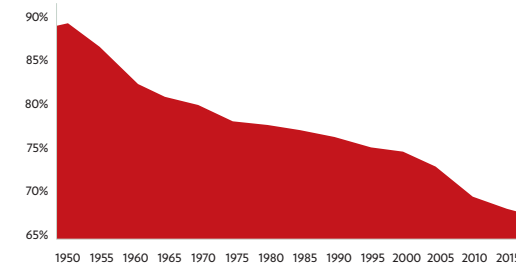
Involved in work stoppages in 2018; highest since 1986

Largest Unions in US

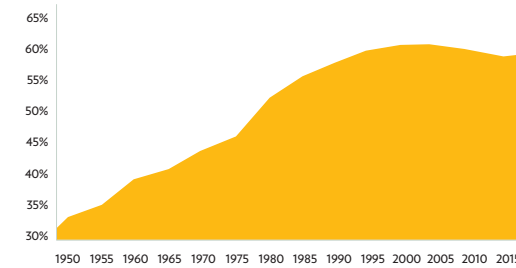
Union	No. of Members (approx.)
National Education Association	2.7 million
Service Employees International Union	1.9 million
American Federation of State, County and Municipal Employees	1.5 million
International Brotherhood of Teamsters	1.4 million
United Food and Commercial Workers	1.3 million

Male/Female Participation

Men



Women



GENDER PAY GAP 2017

\$41,997
\$52,146 = **80%**

Formula

Earnings Ratio = $\frac{\text{Women's Median Earnings}}{\text{Men's Median Earnings}}$

Louisiana

State with largest gap, gender pay ratio 69%

California

State with the smallest gap, gender pay ratio 89%

THE GIG ECONOMY

According to a 2018 Gallup poll, 36% of American workers are independent contractors, or “gig workers.” The poll further estimated that 29% of American workers have an alternative work arrangement as their full-time job. This means that approximately 57 million workers are involved in the gig economy in work ranging from computer programming to driving to construction.

SUPREME COURT AND EMPLOYMENT

Recent Cases

Janus v. American Federation of State, County, and Municipal Employees, Council 31, 585 U.S. ___ (2018): Reversed 40-year-old precedent; held that union security agreements in the public sector violate 1st Amendment right to free speech and association.

Epic Systems Corp. v. Lewis, 584 U.S. ___ (2018): Ruled that arbitration clauses in employment agreements that require individual arbitration as opposed to collective or class arbitration are enforceable under Federal Arbitration Act, regardless of allowances within National Labor Relations Act.

Cases to Watch

R.G. & G.R. Harris Funeral Homes Inc. v. Equal Employment Opportunity Commission and the combined *Zarda v. Altitude Express, Inc.* and *Bostock v. Clayton County, GA*, cases deal with whether Title VII covers employment discrimination based on sexual orientation and identity.

Mandatory Arbitration

Driven by Supreme Court decisions dating to 1991, workers whose rights are violated—e.g., through employment discrimination or sexual harassment—must submit to arbitration procedures that research shows overwhelmingly favor employers.

60 Million+

Workers now barred from pursuing their claims in court