

The Justice System and Jobs

How Court Decisions Are Shaping Americans' Work Lives

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Background Information

Courts have always played an important role in setting labor policy. Two employment-related cases drew headlines in the last Supreme Court term – Janus and Epic Systems – while lower courts across the country are determining the rules for non-compete clauses, no-poaching agreements, employee classification, and more. This event will explore how court decisions are shaping the experience of work today.

For the purposes of today's conversation, below is a quick overview of some cases that may come up, as well as a brief timeline of major elements of federal labor law, that may also be referenced today.

Janus Decision

- The Supreme Court, in a 5-4 decision, ruled that public sector unions cannot require workers to pay fees to cover the costs of collective bargaining, viewing such a requirement as a violation of those workers' free speech rights.
- Previously, 22 states allowed "fair share" fees, which required people represented by unions who were not members to pay fees to cover these costs.
- 7.2 million people are currently members of public sector unions, and, according to one study, unions could lose 8 percent of members, or 726,000 people, as a result of the decision.¹

Epic Systems Decision

- In May, the Supreme Court ruled that employers can require employees to submit to individual arbitration.
- The ruling affirmed employers' ability to require workers to sign contracts that waive their right to take work-related claims to court, and instead have them settled individually through private arbitration.

¹ Manzo, Frank IV and Bruno, Robert. "After Janus The Impending Effects on Public Sector Workers from a Decision Against Fair Share." Project for Middle Class Renewal and Illinois Economic Policy Institute. May 9, 2018. <https://illinoisepi.files.wordpress.com/2018/05/ilepi-pmcr-after-janus-final.pdf>

Dynamex Operations West Case – California Supreme Court Decision on Employee Status

- The rise of the “gig economy” and platforms such as Uber, Lyft, and Taskrabbit have raised new questions about when workers should be classified as employees and receive benefits from their employers.
- In April, the California Supreme Court created a three-part standard to define an independent contractor, requiring that they:
 - o Be free from control and direction of the employer
 - o Do work outside the employer’s usual business
 - o Engage in an independently established business²
- This ruling could have an effect on the estimated 12 million Americans who participate in the gig economy.

Non-Compete Clauses and No-Poaching Agreements

- Workers and businesses often enter into agreements that limit the ability of individuals to move to competitors.
- Initially designed for high-wage workers or those who know trade secrets, noncompete agreements are increasingly being included in contracts for low wage workers.
 - o About one in five employees had a noncompete clause in 2014.³
- No-poaching agreements, which have been used by big tech companies and fast food companies, do not allow businesses to hire workers from competitors.
 - o In July, seven fast food chains agreed to end “no-poaching” rules that prohibited workers from moving to a new restaurant in the same chain.⁴

Timeline of Federal Labor Laws

While minimum wages are increasing at the state level, and tipped minimum wages are being eliminated, the foundations of our nation’s labor policy rests on laws passed 80 years ago. The laws that govern organized labor and workers’ rights were created in the New Deal, and expanded in the early 70s, with minor additions more recently.

July 6, 1935 – National Labor Relations Act guaranteed right to form unions, collective bargaining, and strike.

August 14, 1935 – Social Security Act created the Social Security program as a government retirement pension and unemployment insurance.

June 25, 1938 – Fair Labor Standards Act created the right to minimum wage, overtime, prohibited child labor.

December 29, 1970 – Occupational Health and Safety Act created an agency tasked with assuring “safe and healthy working conditions.”

September 2, 1974 – Employee Retirement Income Security Act of 1974 established standards for private pension plans and contains rules regarding employee benefit plans.

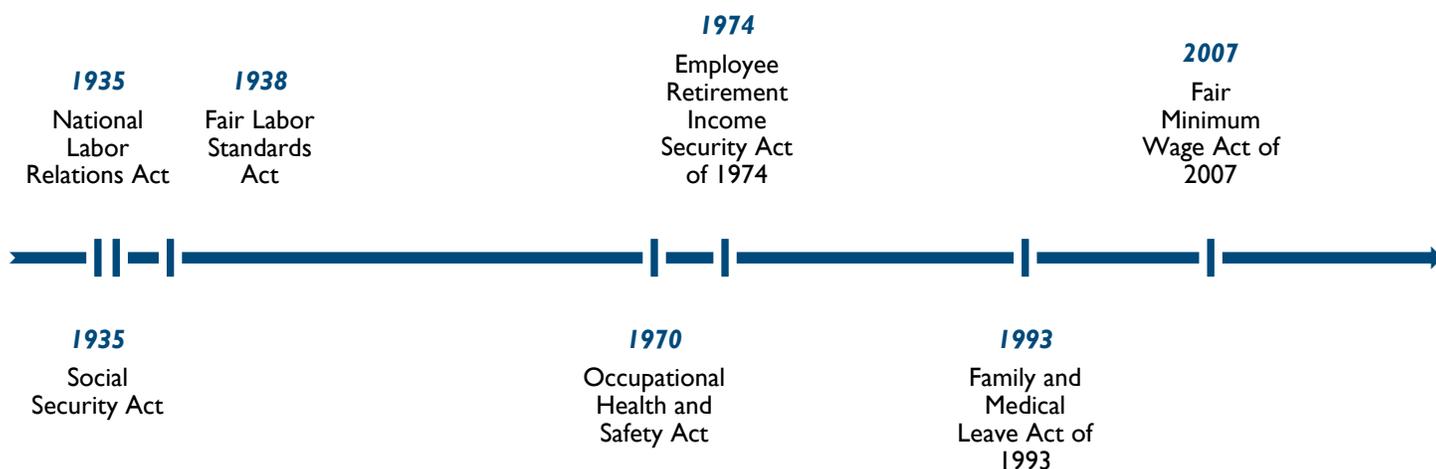
February 5, 1993 – Family and Medical Leave Act of 1993 required employers to provide unpaid, job-protected leave for workers to attend to family and medical needs.

May 25, 2007 – Fair Minimum Wage Act of 2007 was the last legislation to raise the federal minimum wage.

² Dolan, Muara and Khouri, Andrew. “California’s Top Court Makes it More Difficult for Employers to Classify Workers as Independent Contractors.” Los Angeles Times. April 30, 2018. <http://www.latimes.com/local/lanow/la-me-ln-independent-contract-20180430-story.html>

³ Starr, Evan and Prescott, J.J. and Bishara, Norman, Noncompetes in the U.S. Labor Force.. U of Michigan Law & Econ Research Paper No. 18-013. September 12, 2018. https://papers.ssrn.com/sol3/Papers.cfm?abstract_id=2625714

⁴ Stein, Jeff. “Seven Fast Food Chains Agree to Drop ‘No-Poaching’ Clauses.” The Washington Post. July 12, 2018. https://www.washingtonpost.com/business/2018/07/12/fast-food-chains-agree-drop-no-poaching-clauses/?utm_term=.a328f46a0e3e



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This event is part of the Working in America series, an ongoing discussion series hosted by the Aspen Institute Economic Opportunities Program that highlights an array of critical issues affecting low- and moderate-income workers in the United States and ideas for improving and expanding economic opportunities for working people. We are grateful to the Ford Foundation, the Prudential Foundation, and the Walmart Foundation for their support of this series. For more information, visit [as.pn/workinginamerica](https://aspeninstitute.org/workinginamerica).

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