LABOR AND EMPLOYMENT
RELATIONS ASSOCIATION SERIES

THE DISUNITED STATES OF AMERICA

Employment Relations Systems in Conflict

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Chapter 7

Differences in the "Inclusiveness" of State Labor Market Institutions

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U.S. labor market institutions stand out sharply from those in the rest of the world's high-income democracies. According to internationally comparable data compiled by the Organisation for Economic and Co-operation and Development (OECD), the United States lies at or near the bottom of the major OECD economies when it comes to the generosity of the unemployment insurance benefits, the degree of employment security provided by national employment protection legislation, and the share of the workforce that is unionized. The United States is also the only one of those countries that does not guarantee its workers paid vacations, paid sick days, or paid parental leave. While there is no consensus on the overall impact of these and other labor market institutions on U.S. employment performance,[1] a substantial body of research suggests that U.S. institutions are a major determinant of high and rising levels of wage and income inequality in the United States over the past 3 decades.[2]

Given the strongly federal system of labor market regulation in the United States, however, international comparisons based on national averages may mask important differences across the 50 states and the District of Columbia. Key institutions regulating wage setting (minimum wages and the Earned Income Tax Credit), unemployment insurance, collective bargaining (in the private and public sector), and employment protection differ in important ways across the U.S. states. This chapter reviews these differences and assesses whether this state variation should alter our understanding of the United States as an international outlier. The chapter also attempts to evaluate the potential for state-level legislative action to close the gap in inclusiveness between the United States and the rest of the wealthy world.

UNITED STATES AS AN INTERNATIONAL OUTLIER

U.S. labor market institutions are among the least inclusive in the major OECD economies, where the term "inclusive" refers to systems "that have formal—and sometimes informal—mechanisms to extend the wages, benefits, and working conditions negotiated by workers in industries and occupations with strong bargaining power to workers in industries and

occupations with less bargaining power" (Appelbaum et al. 2010:7). Two of the most important inclusive institutions are minimum wages and unions, but others include unemployment insurance benefits, employment protection legislation, and the regulation of working time. The available data for the major OECD countries puts the United States at or near the bottom of indicators designed to capture each of these dimensions of labor market regulation.

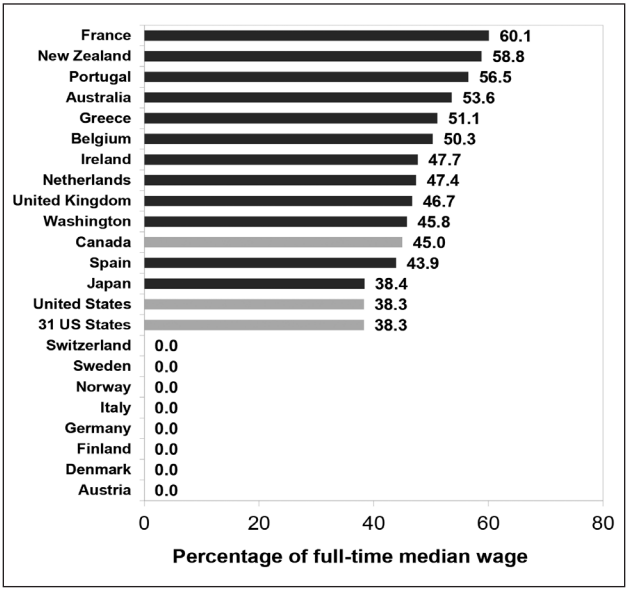
The two labor market institutions most directly involved in wage setting are minimum wages and unions. Only about half of the major OECD countries have statutory national minimum wages. Some of the countries without statutory minimum wages have a de facto national wage floor that is negotiated between employers and unions (Denmark, for example); others have sector-specific minimum wages (Germany, for example). But, as Figure 1 shows, among those countries with a national minimum wage, the federal minimum wage in the United States is the lowest when expressed as a share of the corresponding median wage for full-time workers (38.3%). Japan is nearly identical (38.4%), but in the rest of the countries with a national minimum wage, the level is at least 5 percentage points of the national median higher, and in six of the countries, the national minimum is more than 50% of the median, including France, at 60%. (Figure 1 and several subsequent figures also include two additional entries showing, separately, where the most and least inclusive U.S. states would lie if placed on the international scale. More on this later.)

The United States also has the lowest share of its workforce covered by a collective bargaining agreement (Figure 2). In 2007–08 (just before the Great Recession), about 13% of U.S. workers were represented by a union. In the rest of the major OECD economies in that same period, only two had coverage rates below 20% (Japan, 16%, and New Zealand, 17%), and coverage was near or above 50% in 14 of the 21 countries in the figure, and at or above 90% in five of the countries.

The degree of inclusiveness of labor market institutions goes beyond the immediate process of wage setting. The United States fares poorly on these other dimensions as well. Figure 3 presents a common indicator of the generosity of unemployment insurance benefits: the average unemployment insurance benefit payment expressed as the share of the average worker's wage.[3] The United States (20.2%) is not the least generous, but only five countries are worse.

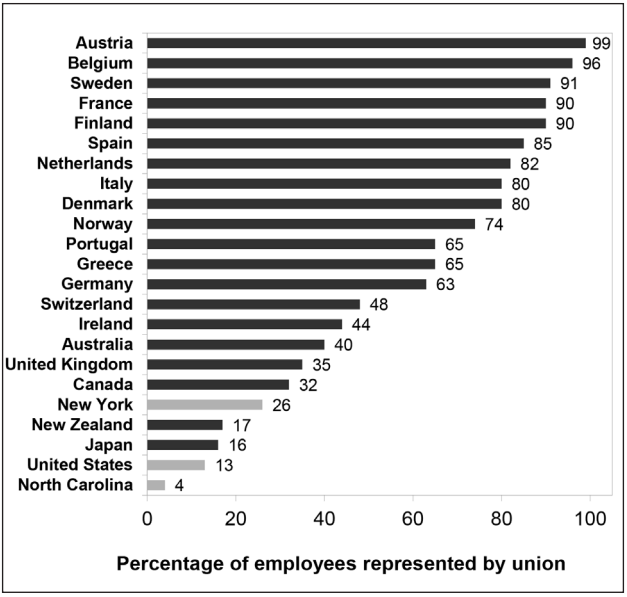
Figure 4 summarizes data prepared by the OECD on the strictness of employment protection legislation in each country. The OECD's index, which runs from 0 (the least restrictive employment legislation) to 6 (the most restrictive), evaluates the level of protection workers have against individual dismissal or layoffs, including measures such as requirements for advanced notification and severance pay. The United States (1.17) is

FIGURE 1
Minimum Wage Relative to Median Wage of Full-Time Workers, 2011



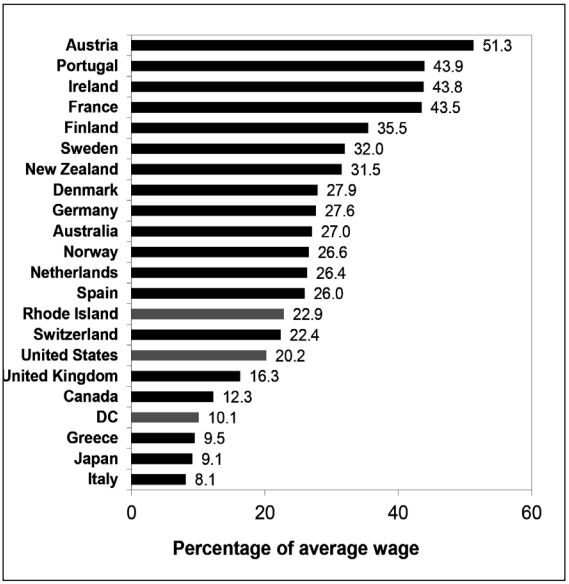
Source: OECD and author's calculations.

FIGURE 2
Union Coverage, 2007–2008



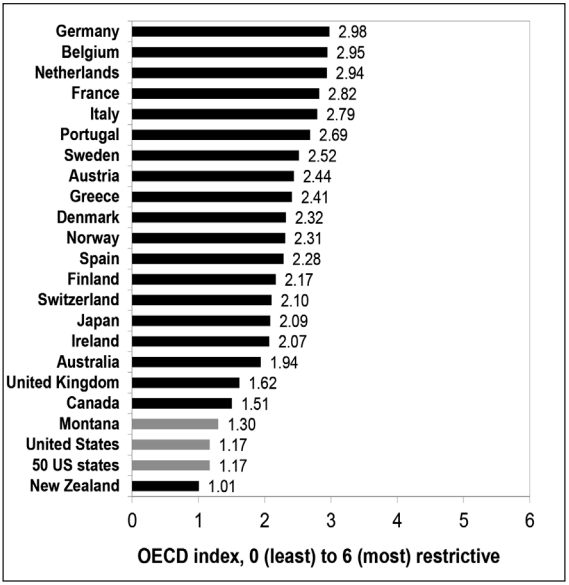
Source: ICTWSS dataset and UnionStats.com.

FIGURE 3
Unemployment Insurance, 2011



Source: OECD and author's calculations.

FIGURE 4
Employment Protection Legislation, 2013



Source: OECD and author's calculations.

second from the bottom on the OECD scale, just ahead of New Zealand (1.01) and below the other 19 countries in the figure.

Table 1 tells a similar story about the regulation of working time. The United States is the only rich democracy that does not have a statutory minimum requirement for paid annual leave, paid sick days, or paid parental leave. As a result, about one fourth of U.S. workers have no paid vacation, about 40% have no paid sick days, and an even higher share lack paid parental leave. The workers lacking these three forms of paid time off are disproportionately low wage, reinforcing the inequality in wages and other employee benefits.[4]

INSTITUTIONAL DIFFERENCES ACROSS U.S. STATES

The preceding comparison of labor market institutions follows the standard practice of treating the United States as a single, homogeneous labor market.[5] But U.S. labor market institutions are far from uniform across the states. This section reviews some key differences across the states, including minimum wages, wage subsidies (Earned Income Tax Credit), regulation of unions in the private and public sector, unemployment insurance, employment protection, and working time.

The Fair Labor Standards Act of 1938 established a national minimum wage, initially set at 25 cents per hour. Through the 1970s, increases in the federal minimum wage generally tracked the growth in average wages. But, from the 1970s on, smaller, less frequent increases led the federal minimum to fall behind average wages. In response, several states took matters into their own hands, setting state-level minimum wages above the federal standard. As Table 2 shows, in 2013, 20 states (and the District of Columbia) had state minimum wages above the federal level of $7.25 per hour, with Washington state setting the highest rate ($9.19), followed closely by Oregon ($8.95). Five states (Colorado, Florida, Nevada, Ohio, and, in 2013, New Jersey) have written the minimum wage into their state constitutions (Chokshi 2013). Of the 20 states with a higher state minimum, ten have also indexed future values to keep pace with increases in consumer prices.

The federal minimum wage establishes a separate wage floor for tipped workers, such as restaurant wait staff. In 2013, the federal minimum for tipped workers was $2.13 per hour, unchanged since 1991 despite several rounds of increases in the minimum for nontipped workers. But 31 states have set the tipped worker minimum wage above the federal level (Table 2). Once again, Washington ($9.19) and Oregon ($8.95)—which do not have a separate, lower minimum wage for tipped minimums—have the highest wage floor for tipped workers in the country.

TABLE 1
Regulation of Working Time

Country	Statutory minimum paid annual leave, 2013 (days)	Statutory sickness pay: Portion of 5-day illness covered, 2009 (days)	Statutory sickness pay: Portion of 50-day illness covered, 2009 (days)	Statutory FTE paid parental leave, 2008 (weeks/child)
Australia	20	5	10	0*
Austria	22	5	45	16
Belgium	20	5	39	18
Canada	20	0	22	29
Denmark	25	5	36	20
Finland	25	5	48	18
France	30	1	24	22
Germany	24	5	44	47
Greece	20	3.5	28	34
Ireland	20	0.7	17	21
Italy	20	1	29	25
Japan	10	0	28	26
Netherlands	20	3.5	35	16
New Zealand	20	5	5	14
Norway	25	5	50	44
Portugal	22	—	—	18
Spain	22	1.2	33	18
Sweden	25	3.2	38	47
Switzerland	20	5	15	11
United Kingdom	28	0.4	10	13
United States	0	0	0	0

Notes:

Paid annual leave, excluding statutory holidays, from Ray, Sanes, and Schmitt (2013), Figure 1. Paid sick days and paid sick leave from Heymann, Rho, Schmitt, and Earle (2010), Figure 1. Full-time equivalent paid parental leave from Ray, Gornick, and Schmitt (2010), Figure 1.

*In 2011, Australia established a paid parental leave plan; for details, see http://bit.ly/U9vLrb and http://bit.ly/1oHrdRk.

TABLE 2
State Minimum Wage, Earned Income Tax Credit (EITC), and Unemployment Insurance Benefits, by State

	Minimum wage ($/hr)	Tipped minimum wage ($/hr)	State EITC (% of federal EITC)	Average unemployment benefit as share of average wage (%)
Year	2013	2013	2012	2011
National	7.25	2.13	—	—
Alabama	7.25	2.13	0	26
Alaska	7.75	7.75	0	25
Arizona	7.80	4.80	0	25
Arkansas	7.25	2.63	0	39
California	8.00	8.00	0	28
Colorado	7.78	4.76	0	35
Connecticut	8.25	5.69	30	28
Delaware	7.25	2.23	20	25
DC	8.25	2.77	40	19
Florida	7.79	4.77	0	28
Georgia	7.25	2.13	0	31
Hawaii	7.25	7.00	0	51
Idaho	7.25	3.35	0	36
Illinois	8.25	4.95	7.5	32
Indiana	7.25	2.13	9	38
Iowa	7.25	4.35	7	42
Kansas	7.25	2.13	18	42
Kentucky	7.25	2.13	0	38
Louisiana	7.25	2.13	3.5	24
Maine	7.50	3.75	5	38
Maryland	7.25	3.63	25	32
Massachusetts	8.00	2.63	15	34
Michigan	7.40	2.65	6	33
Minnesota	7.25	6.15	33	38
Mississippi	7.25	2.13	0	28
Missouri	7.35	3.68	0	30

Table continues next page

TABLE 2 (continued)
State Minimum Wage, Earned Income Tax Credit (EITC),
and Unemployment Insurance Benefits, by State

	Minimum wage ($/hr)	Tipped minimum wage ($/hr)	State EITC (% of federal EITC)	Average unemployment benefit as share of average wage (%)
Year	2013	2013	2012	2011
Montana	7.80	7.80	0	38
Nebraska	7.25	2.13	10	40
Nevada	8.25	8.25	0	39
New Hampshire	7.25	2.13	0	28
New Jersey	7.25	2.13	20	28
New Mexico	7.50	2.13	10	36
New York	7.25	5.65	30	33
North Carolina	7.25	2.13	5	36
North Dakota	7.25	4.86	0	38
Ohio	7.85	3.93	0	35
Oklahoma	7.25	2.13	5	35
Oregon	8.95	8.95	6	35
Pennsylvania	7.25	2.83	0	37
Rhode Island	7.75	2.89	25	43
South Carolina	7.25	2.13	0	32
South Dakota	7.25	2.13	0	37
Tennessee	7.25	2.13	0	29
Texas	7.25	2.13	0	34
Utah	7.25	2.13	0	40
Vermont	8.60	4.17	32	38
Virginia	7.25	2.13	20	29
Washington	9.19	9.19	10	39
West Virginia	7.25	5.80	0	33
Wisconsin	7.25	2.33	11	34
Wyoming	7.25	2.13	0	39

Notes: Minimum wage and tipped minimum wage from Wage and Hour Division, U.S. Department of Labor (2013a, 2013b). State EITC from National Council of State Legislators (2013). Average weekly unemployment insurance benefit paid as a share of average weekly earnings from Department of Labor, Employment and Training Administration, and Bureau of Labor Statistics.

These state minimum wages for regular and tipped workers create substantial national variation in the legally binding minimum wage. For regular workers, for example, the Washington state minimum wage is more than 25% higher than the federal minimum wage; for tipped workers, the Washington minimum is more than four times greater than the federal standard.

Four U.S. cities have established citywide minimum wages that are higher than the otherwise applicable state or federal minimum wage: Albuquerque, New Mexico (in 2014, $7.60 with health insurance, $8.60 without health insurance); Santa Fe, New Mexico ($10.66 per hour, indexed to the Consumer Price Index); San Jose, California ($10.15, indexed to the CPI); and San Francisco, California ($10.74, indexed to the CPI). (A fifth U.S. city, Washington, DC, has a citywide minimum wage of $9.50, but is treated here as a state.)[6]

In addition, more than 125 cities and other localities have "living wage" ordinances.[7] These differ conceptually from minimum wages in that living wage laws typically focus narrowly on workers in particular sectors of the local economy, often those in which employers have received subsidies, tax breaks, or other forms of government support. In addition, living wages are usually set at levels that are considerably higher than more widely applied federal, state, or city minimum wages. While living wages have an important impact on the wages of covered workers, to date, the scale of coverage has probably been too small to have much impact on overall wage inequality, even within most cities that have passed such laws.[8] One estimate for 2002 put the total coverage of living wage laws at between 100,000 and 250,000 workers; a recent update, which factored in more than 50 additional living wage ordinances passed in the interim, estimated coverage in the early 2010s at between 175,000 and 325,000 directly affected workers, with somewhere between half and twice that number affected indirectly.[9]

Many states have also taken steps to increase the generosity of the federal Earned Income Tax Credit (EITC), which uses the tax system to subsidize the after-tax earnings of low-wage workers in low-income families. Table 2 displays the level of state top-ups of the federal EITC. Twenty-five states supplement the federal EITC, with the increment over the federal level ranging from 3.5% (Louisiana) to 30% and higher (Connecticut, 30%; New York, 30%; Vermont, 32%; Minnesota, 33%; and Washington, DC, 40%). The federal EITC is one of the largest federal programs benefiting low-income working families,[10] which makes state EITC extensions scaled to the federal program a potentially important state-level intervention in the low-wage labor market.

The legal environment regulating unionization also varies substantially across the states. Table 3 summarizes key features of state labor law affecting unions, as well as the corresponding state unionization rates for workers in both the private and public sectors.

The National Labor Relations Act (NLRA) sets the legal parameters for most private sector unions, but 24 states have passed right-to-work laws that further regulate private sector union activity. These laws permit employees who work in a job covered by a collective bargaining agreement to decline to pay union dues but still benefit from the terms of any contract negotiated between the union and employer. The effect of these laws is to deprive unions of resources they would otherwise use to negotiate collective agreements, organize new workplaces, and engage in political activity on behalf of their members.

The NLRA covers the large majority of workers in the private sector but excludes all federal, state, and local public employees. As a result, the regulation of public sector workers—especially teachers—falls heavily on state law. Table 3 summarizes differences across the states with respect to three key dimensions of public sector union activity, using public school teachers as a reference group (state laws often treat teachers, public safety, and other public sector workers differently)—whether public school teachers can bargain collectively, whether collective bargaining can cover wages and salaries, and whether public school teachers have the right to strike. In five states, it is illegal for public school teachers to bargain collectively (Georgia, North Carolina, South Carolina, Texas, and Virginia). In the remaining states where collective bargaining is allowed, seven have no statutes addressing public school teachers' ability to negotiate over wages, and public school teachers have the right to strike in only 12 states.

Table 3 also presents data on the share of workers covered by collective bargaining agreements in 2012. At the national level, the union coverage rate in the private sector was 7.3%. But private sector unionization rates varied widely, from only 1.7% in Arkansas and 2.3% in South Carolina to 14.8% in New York and 15.7% in Hawaii. In the public sector, the national coverage rate was 39.6%, but it also varied considerably, from about 13% in Georgia, Mississippi, North Carolina, and Virginia to almost 75% in New York.

Unemployment insurance is another area where states have substantial scope to shape labor market institutions. A key feature of the unemployment insurance system is that it is administered at the state level, with wide latitude for states to determine both eligibility requirements and benefit generosity. Table 1 (last column) displays one measure of generosity of state unemployment insurance systems—the average weekly unemployment insurance benefit paid by the state expressed as a share of the average weekly wage in the state. By this standard, the District of Columbia

TABLE 3
Unionization, by State, 2012

	Private sector		Public school teachers			All	
State	Right to work	Unionization rate (%)	Collective bargaining	Wage negotiation	Right to strike	Public sector unionization rate (%)	Unionization rate (%)
National	—	7.3	—	—	—	39.6	12.5
Alabama	YES	6.3	Legal	No Statute	Illegal	29.8	10.5
Alaska	NO	11.2	Legal	Legal	Legal	57.7	23.9
Arizona	YES	3.7	No Statute	No Statute	Illegal	22.8	6.5
Arkansas	YES	1.7	Legal	Legal	Illegal	14.1	3.7
California	NO	9.6	Legal	Legal	Legal	62.6	18.4
Colorado	NO	5.4	Legal	No Statute	Legal	27.6	8.8
Connecticut	NO	7.5	Legal	Legal	Illegal	61.5	15.1
Delaware	NO	6.6	Legal	Legal	Illegal	40.3	11.8
DC	NO	6.5	Legal	Legal	Illegal	20.5	10.3
Florida	YES	3.3	Legal	Legal	Illegal	30.3	7.3
Georgia	YES	3.8	Illegal	Illegal	Illegal	13.1	5.4
Hawaii	NO	15.7	Legal	Legal	Legal	51.2	23.2

Table continues next page

TABLE 3 (continued)
Unionization, by State, 2012

	Private sector		Public school teachers			All	
State	Right to work	Unionization rate (%)	Collective bargaining	Wage negotiation	Right to strike	Public sector unionization rate (%)	Unionization rate (%)
Idaho	YES	3.7	Legal	Legal	Illegal	15.3	5.8
Illinois	NO	9.8	Legal	Legal	Legal	53.4	15.5
Indiana	YES	7.7	Legal	Legal	Illegal	26.8	9.9
Iowa	YES	5.9	Legal	Legal	Illegal	44	12.3
Kansas	YES	5	Legal	Legal	Illegal	21.8	8.4
Kentucky	NO	8	Legal	No Statute	Illegal	27.1	11.3
Louisiana	YES	4.6	Legal	No Statute	Legal	22.6	7.5
Maine	NO	6	Legal	Legal	Illegal	57.1	13.9
Maryland	NO	6.3	Legal	Legal	Illegal	31.3	12.3
Massachusetts	NO	8.9	Legal	Legal	Illegal	63.9	16.2
Michigan	YES	11.7	Legal	Legal	Illegal	55.4	17.1
Minnesota	NO	8.2	Legal	Legal	Legal	56.9	14.9
Mississippi	YES	3.4	Legal	No Statute	Illegal	13.8	5.7

Table continues next page

TABLE 3 (continued)
Unionization, by State, 2012

	Private sector		Public school teachers			All	
State	Right to work	Unionization rate (%)	Collective bargaining	Wage negotiation	Right to strike	Public sector unionization rate (%)	Unionization rate (%)
Missouri	NO	7.9	Legal	Legal	Illegal	23.2	10.1
Montana	NO	8	Legal	Legal	Legal	45.5	16.5
Nebraska	YES	4.5	Legal	Legal	Illegal	25	8.1
Nevada	YES	12.2	Legal	Legal	Illegal	46.4	16.5
New Hampshire	NO	4.7	Legal	Legal	Illegal	55.1	12.0
New Jersey	NO	9	Legal	Legal	Illegal	61.2	16.8
New Mexico	NO	3.7	Legal	Legal	Illegal	20.8	8.7
New York	NO	14.8	Legal	Legal	Illegal	73.6	24.8
North Carolina	YES	2.5	Illegal	Illegal	Illegal	13.1	4.2
North Dakota	YES	4.8	Legal	No Statute	Illegal	21.6	8.2
Ohio	NO	9.2	Legal	Legal	Legal	44.1	13.9
Oklahoma	YES	5.1	Legal	Legal	Illegal	23.2	9.1
Oregon	NO	8.9	Legal	Legal	Legal	51.9	16.4

Table continues next page

TABLE 3 (continued)
Unionization, by State, 2012

	Private sector		Public school teachers			All	
State	Right to work	Unionization rate (%)	Collective bargaining	Wage negotiation	Right to strike	Public sector unionization rate (%)	Unionization rate (%)
Pennsylvania	NO	8.5	Legal	Legal	Legal	57.7	14.4
Rhode Island	NO	10.5	Legal	Legal	Illegal	62.5	18.4
South Carolina	YES	2.3	Illegal	Illegal	No Statute	15.1	4.6
South Dakota	YES	3.3	Legal	Legal	Illegal	21.7	6.7
Tennessee	YES	3.6	Legal	Legal	Illegal	17.7	5.9
Texas	YES	4.2	Illegal	Illegal	Illegal	22.1	6.8
Utah	YES	4.1	Legal	Legal	No Statute	18.6	6.6
Vermont	NO	4.8	Legal	Legal	Legal	53.4	13.1
Virginia	YES	3.5	Illegal	Illegal	Illegal	13.4	5.5
Washington	NO	11.8	Legal	Legal	Illegal	53.5	19.5
West Virginia	NO	9.3	Legal	Legal	Illegal	26.5	13.1
Wisconsin	NO	7.2	Legal	Legal	Illegal	40.3	12.0
Wyoming	YES	5.6	Legal	Legal	No Statute	15.7	8.1

Notes: Union coverage rates from UnionStats.com. Right-to-work data from Wage and Hour Division, Department of Labor (http://1.usa.gov/1mJRe5l) updated using Economic Policy Institute (http://bit.ly/1pdVYSb) and CBS News (http://cbsloc.al/1m4PnDJ); accessed July 9, 2013. Legal environment facing public school teachers from Sanes and Schmitt (2014).

is the least generous U.S. state: the average benefit is only 19% of the average wage. In four other states, the ratio is 25% or less (Alaska, Arizona, Delaware, and Louisiana). Only one state, Hawaii (51%), replaces, on average, at least half of usual earnings. Unfortunately, we have no systematic data on differences across states with respect to the strictness of eligibility requirements for receipt of unemployment benefits. Anecdotally, however, the probability that an identical unemployed worker would receive unemployment benefits appears to differ substantially across the states, partly reflecting differences in formal eligibility criteria and partly reflecting differences in the administrative process that determines benefit receipt.[11]

As seen earlier, the United States offers among the lowest levels of employment protection in the world's rich economies. The main reason for the low score on the OECD's index of employment protection is the central role that the employment-at-will doctrine plays in U.S. labor law. Under employment at will, in the absence of an agreement to the contrary, workers or employers are free to terminate an employment relation "for good cause, bad cause, or no cause at all."[12] The only state that deviates from the employment-at-will doctrine is Montana, which requires employers to show "just cause" before firing a worker.

The rest of the states have employment-at-will systems, though often with a limited range of exceptions determined by state statute or common law. Exceptions to employment-at-will fall into three categories: public policy, implied contract, and covenant of good faith (Muhl 2001). Public policy exceptions limit employers' ability to terminate a worker when the dismissal contravenes an aspect of broader state public policy. Implied contract exceptions arise when an employer's behavior (statements to the employee or the text of an employee handbook, for example) establish an implicit employment contract. Covenant-of-good-faith exceptions come closest to a just-cause standard by requiring that terminations "cannot be made in bad faith or with malice intended" (Muhl 2001, p. 4). Table 4 presents a summary of the exceptions in place in each of the states. Most states have narrow or broad public policy or implied contract exceptions to employment-at-will (Florida, Georgia, Louisiana, and Rhode Island are the only exceptions). Most states, however, do not allow for covenant-of-good-faith exceptions; of those that do, the exceptions are broad in only four cases (Montana, which has a just-cause standard, and Alaska, Nevada, and Wyoming).

The United States is also the only rich country that does not provide workers with minimum guarantees of paid vacation, paid sick days, and paid family leave. No U.S. state establishes a minimum standard for paid vacation, but several offer some form of paid family leave, and one requires employers to provide paid sick days.

TABLE 4
Judicial Exceptions to Employment at Will, by State, 2008

State	Public policy	Implied contract	Good faith and fair dealing
Alabama	None	Narrow	Narrow
Alaska	Broad	Broad	Broad
Arizona	Narrow	Broad	Narrow
Arkansas	Narrow	Narrow	None
California	Broad	Broad	Narrow
Colorado	Narrow	Broad	None
Connecticut	Broad	Narrow	Narrow
Delaware	Narrow	None	Narrow
DC	Narrow	Narrow	None
Florida	None	None	None
Georgia	None	None	None
Hawaii	Broad	Narrow	None
Idaho	Narrow	Narrow	Narrow
Illinois	Broad	Broad	None
Indiana	Narrow	Broad	None
Iowa	Narrow	Narrow	None
Kansas	Broad	Narrow	None
Kentucky	Narrow	Narrow	None
Louisiana	None	None	None
Maine	None	Broad	None
Maryland	Narrow	Narrow	None
Massachusetts	Narrow	None	Narrow
Michigan	Broad	Narrow	None
Minnesota	Broad	Broad	None
Mississippi	Narrow	Narrow	None
Missouri	Broad	None	None
Montana	Broad	Narrow	Broad
Nebraska	Broad	Narrow	None
Nevada	Narrow	Broad	Broad
New Hampshire	Broad	Narrow	Narrow

Table continues next page

TABLE 4 (continued)
Judicial Exceptions to Employment at Will, by State, 2008

State	Public policy	Implied contract	Good faith and fair dealing
New Jersey	Broad	Broad	None
New Mexico	Narrow	Broad	None
New York	Narrow	Narrow	Narrow
North Carolina	Narrow	Narrow	None
North Dakota	Broad	Narrow	None
Ohio	Broad	Broad	None
Oklahoma	Narrow	Narrow	None
Oregon	Broad	Broad	None
Pennsylvania	Broad	Narrow	None
Rhode Island	None	None	None
South Carolina	Narrow	Narrow	None
South Dakota	Narrow	Broad	None
Tennessee	Broad	Narrow	None
Texas	Narrow	Narrow	None
Utah	Narrow	Narrow	None
Vermont	Broad	Narrow	Narrow
Virginia	Narrow	Narrow	None
Washington	Broad	Broad	None
West Virginia	Broad	Narrow	None
Wisconsin	Narrow	Broad	None
Wyoming	Narrow	Narrow	Broad

Notes: Unpublished analysis compiled by Eric Hoyt, Center for Economic and Policy Research (2011).

Three states—California, New Jersey, and Rhode Island—provide paid family leave through dedicated social insurance programs financed by workers and their employers. Only Rhode Island, however, combines financial support with a guarantee that workers who take paid family leave can return to their job when their leave is over. The federal Family and Medical Leave Act (FMLA) offers unpaid job protection for workers taking up to 12 weeks of family or medical leave, but the law covers only the people who work for employers with at least 50 employees and who have been on the job at least 1,250 hours in the year before the leave. Workers who meet these criteria in California and New Jersey have the

legal right to return to their jobs, but workers in those states who take paid leave but don't meet the federal FMLA standard have no legal job protection. Two other states, Hawaii and New York, have state temporary disability insurance (TDI) systems that finance leave only for women who give birth; the eligibility requirements for these TDI programs exclude all other new parents, including parents adopting a child.[13]

In 2012, Connecticut became the only state to require employers (with important exceptions) to provide up to 5 paid sick days per year (accrued at the rate of 1 hour of paid sick time per 40 hours of work). The law covers all "hourly, non-exempt, services workers such as healthcare, food service/restaurant, janitorial, hospitality, retail" of employers with 50 or more employees in the state of Connecticut. The legislation explicitly excludes workers in manufacturing and national nonprofit establishments.[14] Five U.S. cities have also passed laws mandating paid sick days: New York, Portland, San Francisco, Seattle, and Washington, DC (passed as a city council resolution).[15]

A review of the available data reveals large differences in the inclusiveness of state-level labor market institutions. Across the states, the level of the minimum wage, size of wage subsidies for low-wage workers, and generosity of unemployment insurance systems all vary widely. The regulation of unions in the private and public sectors also differs markedly, contributing to overall unionization rates as low as 4% and as high as 25%. On other measures, especially the terms of employment (employment-at-will) and the regulation of working time, the differences across the states are much smaller. On these dimensions, most states have fairly similar laws and practices, with a small number of states deviating from the norm. Montana, which substituted a just-cause dismissal requirement, is the only state where employment at will does not lie at the core of state labor law. Only five states provide any form of paid parental leave, and only one of those states offers job protections beyond the minimal standard set by the federal FMLA. Only one state and a handful of cities require employers to provide paid sick days.

This chapter does not attempt to determine the causes of differences across the states. Nevertheless, the degree of inclusiveness does follow a loosely recurring pattern. While there are numerous exceptions, states in the South and the Mountain West consistently appear to offer the lowest levels of inclusiveness, while states in the Northeast and Pacific typically show among the highest levels of inclusiveness by most measures.

STATE DIFFERENCES IN INTERNATIONAL CONTEXT

Do these differences across states change the view of the United States as an international outlier? To help answer that question, each of the figures with international data presented earlier also includes two additional

entries showing where (approximately) the institutions in the *most* and *least* inclusive of the individual U.S. states would fall if they were treated as independent countries. Along all of the dimensions examined here, inclusion of the full range of state experiences makes relatively little difference to the assessment of the United States as among the least if not the least inclusive of the countries analyzed.

Using the data from the most inclusive U.S. state instead of the national average would have no impact on the international ranking of the United States in the case of employment protection (because the extra protections offered by Montana are small by international standards[16]) and paid vacation (because no state mandates paid vacation). Using the most inclusive state would increase the U.S. ranking by only one or two countries in the case of the minimum wage, unemployment insurance, or union coverage.[17] No U.S. state follows what would be considered best practices by existing international standards.

The most inclusive U.S. states fare a bit better with respect to paid sick days and paid parental leave. While it is still too early to assess the full impact of the 2012 Connecticut paid sick days law, and several features of the law (including employer exemptions and the gradual accrual of paid sick days) make it difficult to assign Connecticut a score using the same scale for short-term sick leave used in Table 3, the average for Connecticut workers would certainly finish closer to the bulk of countries scoring 5 than to the national U.S. (and Japanese) score of 0. A score in the range of 3 to 4 would push the United States ahead of France, Ireland, Italy, Spain, and the United Kingdom, to roughly where Greece and Sweden are. A similar rough calculation designed to follow the methodology used to calculate the generosity of paid parental leave would put the full-time equivalent weeks of paid family leave in New Jersey at about 4 weeks—a substantial improvement over the current full-time equivalent of 0 weeks—but not enough to move the United States out of last place (with Australia) in the international ranking.[18]

Of course, labor market institutions are not uniform across regions within some of the other OECD countries examined here. Most important, Canada and Switzerland have strongly federal systems, with important variations across regions. The inclusion of Canadian provinces (less so with Swiss cantons) would likely show a greater degree of overlap between the most inclusive U.S. states and the least inclusive Canadian provinces. In most of the economies examined here, however, even where there are strong differences in labor market outcomes (unemployment rates, wage levels, and unionization rates, for example) across regions (the southeast versus the northeast of England or southern versus northern Italy, for example), national law and labor market institutions remain the dominant forces shaping the inclusiveness of regional labor markets.

NARROWING THE GAP, PUSHING THE ENVELOPE

This review of state labor market institutions points in two somewhat conflicting directions. On one hand, state labor market institutions differ widely with respect to their degree of inclusiveness. States in the South and the Mountain West consistently offer among the lowest levels of inclusiveness, while states in the Northeast and Pacific by most measures show among the highest levels of inclusiveness. On the other hand, these important differences across the states are small relative to the differences observed in corresponding institutions across the world's rich economies. Substituting the most (or the least) inclusive state's data for the country as a whole does little or nothing to change the international ranking of the United States.

The state data suggest that there is substantial scope for increasing the inclusiveness of the overall U.S. labor market by reforming labor market institutions to match the standards set by the most inclusive states in each category. At the same time, the international data suggest that any state-level strategy to increase the inclusiveness of U.S. labor markets must simultaneously work toward some combination of raising national standards or raising the standards in what are already the most inclusive states.

ENDNOTES

[1] For a review that implicates labor market institutions in high unemployment, see International Monetary Fund (2003). For a more benign view of labor market institutions, see Howell (2005) and Howell, Baker, Glyn, and Schmitt (2007).

[2] For a comprehensive analysis of economic inequality in the United States that emphasizes the role of labor market institutions, see various editions of *The State of Working America* (http://www.stateofworkingamerica.org). Opponents of more-inclusive labor market institutions generally argue that these institutions hurt employment by artificially compressing wages, particularly by raising the bottom of the wage distribution above the market-clearing level.

[3] Specifically, Figure 3 shows the average unemployment benefit for a single worker with no children, as a share of the average worker's wage (OECD 2013b).

[4] In 2008, the year covered in the data in the last column of Table 1, Australia did not have paid parental leave. Australia implemented a system of paid parental in 2011. For more detail on paid sick days, see Heymann, Rho, Schmitt, and Earle (2010); on paid parental leave, see Ray, Gornick, and Schmitt (2010); and on paid vacation and paid holidays, see Ray, Sanes, and Schmitt (2013).

[5] Canada and Switzerland also have strong federal systems.

6 For details, see San Francisco (http://bit.ly/1tE4Owd), San Jose (http://bit.ly/1mxebcr), Albuquerque (http://bit.ly/1riHU9x), and Santa Fe (http://bit.ly/1kRNBWH).

[7] For a list of localities with living wage laws, see National Employment Law Project (2011).

[8] For a comprehensive discussion of living wage laws, see Pollin, Brenner, Wicks-Lim, and Luce (2008). For shorter discussions, see Lester and Jacobs (2010) and Luce (forthcoming).

[9] Calculations by Luce (forthcoming).

[10] For an overview of the federal EITC, see Center on Budget and Policy Priorities, "Earned Income Tax Credit" (http://bit.ly/1oTQASU).

[11] For an overview of the federal unemployment insurance system, including a detailed look at many state systems, see National Employment Law Project, "Unemployment Insurance" (http://bit.ly/1zXtPlV).

[12] Shane and Rosenthal, *Employment Law Deskbook*, § 16.02 (1999), cited in Muhl (2001), p. 3.

[13] For a detailed discussion of paid family leave in California, see Milkman and Appelbaum (forthcoming). For details of the New Jersey program, see "Family Leave Insurance" (http://bit.ly/1pe0u39). On Rhode Island, which enacted its family leave law in July 2013, see Associated Press, "Rhode Island Becomes Third State to Provide Paid Family Leave," July 11, 2013 (http://yhoo.it/1tE8Gxr).

[14] Center for Law and Social Policy, "Implementing Earned Sick Days," Policy Brief, July 18, 2003 (http://bit.ly/1pe0DDG). For details, including additional details on exemptions to the law, see "Connecticut General Statute 31-57R—Paid Sick Leave" (http://bit.ly/1mLLFmO).

[15] For an overview of paid sick days laws at the city level, see National Partnership for Women and Families, "Current Sick Days Laws" (http://bit.ly/1m7k0s3).

[16] I estimate the effect of Montana's just-cause dismissal statute on the OECD index based on descriptions of the overall methodology (OECD 2013a) and the OECD's application of this methodology to the United States (OECD, no date). The calculations in Figure 2 assume that just-cause legislation would increase the U.S. score under the component "definition of justified or unfair dismissal" from 0 ("when worker capability or redundancy of the job are adequate and sufficient grounds for dismissal") to 1 ("when social considerations, age or job tenure must when possible influence the choice of which worker(s) to dismiss"). This decision likely overstates the impact of just-cause on the U.S. score because such laws are, strictly speaking, compatible with a score of 0 on the OECD scale. Based on Table 2 in OECD (http://bit.ly/1joT9go; no date), the contribution of this component to the overall is calculated by multiplying by 2 and applying a weight of 1/16 of the total. This would raise the score in Montana by 0.125 (2 × 1/16) index points, from the overall U.S. level of 1.17, to 1.30.

[17] The unionization data for OECD countries in Figure 4 are taken from Schmitt and Mitukiewicz's (2012) analysis of data from the ICTWSS database maintained by Jelle Visser at the AIAS (http://bit.ly/U8s2ui). State-level data in the same figure are based on an analysis by Barry Hirsch and David Macpherson of the Current Population Survey and posted at UnionStats.com.

[18] For a worker at average earnings in New Jersey, the state's family leave insurance benefit covers about 67% of earnings for up to 6 weeks, for a full-time equivalent of 4 weeks.

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