The development of international labor and employment policy occurs in an environment and in institutions that are unfamiliar to most U.S. labor and employment lawyers and human resources practitioners. Because the policies and processes are substantially different from the legislative and regulatory approach in the United States, the question is frequently asked: Why should we care?

As a starting point, the U.S. system of employment and labor relations is unique in the world. Based on the concepts of termination at will and laissez-faire regulation of the workplace, businesses in the United States have more legislative and regulatory flexibility than almost any other country. Many conditions of employment are dictated by legislation in other nations.
From a comparative labor relations perspective, industrial relations in the United States is fundamentally different. U.S. employers have free speech rights during organizing campaigns. In Europe and the rest of the world, employee speech is restricted and employers are supposed to take a “positive” approach during union organizing campaigns. Trade union pluralism in other countries leads to systems of automatic recognition and multiple unions representing the same employees in some instances. Europe and other countries have a concept of industrial democracy that leads to mandated employee involvement in the form of works councils. Collective bargaining in the United States is usually on a company by company basis and at the plant level. In Europe and elsewhere, collective bargaining is done through employer associations and agreements are at the national, regional, and industrial sector level.

So why should we care about international labor standards promulgated by the International Labor Organization and the European Union? First, the different orientation to employment law matters in the rest of the world results in a desire for mandates in the form of international labor standards, European Union directives, and multilateral codes of conduct that place restrictions on U.S. business operating overseas that we do not have in the U.S. Second, U.S. trade law is promoting these standards in bilateral and multilateral trade agreements as a result of requirements in trade promotion authority. Third, laws like the Alien Tort Claims Act use these standards as the basis for lawsuits against U.S. companies for alleged torts occurring overseas that violated the law of nations and treaties ratified by the United States. Fourth, these standards are being used as the basis for secondary boycotts in other countries based on the alleged lack of protection of U.S. workers’ rights because the U.S. has not ratified many of these standards. And, fifth, if these standards are ratified by the United States, they would fundamentally change labor and employment law in the United States.
Headquartered in Brussels, the European Union is an economic union of 25 countries. Its institutions establish minimum social and labor policy for member nations that must be implemented.

Headquartered in Geneva, Switzerland, the International Labor Organization establishes minimum labor standards by adoption of multilateral treaties that may be ratified by its 176 member nations as a binding international obligation. It has established multinational guidelines applicable to multinational companies.

Based in Paris, the OECD addresses economic and social issues for its 30 industrialized member countries. It has promulgated guidelines applicable to the behavior of multinational companies.

Based in New York City, the United Nations has established a Global Compact of 10 principles for multinational companies. Its Human Rights Commission is presently developing a code of human rights practices applicable to multinational companies.
The ICFTU is a confederation of national trade union centers, each of which links together the trade unions of that particular country. Established in 1949, it is composed of 234 affiliated organizations in 152 countries and territories, with a membership of 148 million. The AFL-CIO is its largest member.

It has three major regional organizations, APRO for Asia and the Pacific, AFRO for Africa, and ORIT for the Americas. It also maintains close links with the European trade union Confederation (ETUC) (which includes all ICFTU European affiliates) and International Trade Secretariats, which link together national unions from a particular trade or industry at the international level.

The relationship of international trade union structures to multilateral organizations is complex. The ICFTU has direct relationships to the UN and the ILO as the secretariat for national trade union centers such as the AFL-CIO. National trade union centers have direct participation rights in the ILO.

Established in 1973, the European Trade Union Confederation (ETUC) is composed of 76 national trade union confederations from 34 European countries and 11 European industry federations. It is the lead trade union secretariat in the European Union.

The Trade Union Advisory Committee (TUAC) represents nation trade union centers, including the AFL-CIO, from the 30 industrialized member countries comprising the Organization of Economic and Cooperative Development. TUAC has consultative status with the OECD.

The 10 international trade union secretariats (ITS) interface with the ILO and the European Union.
There are 10 international trade union secretariats. The three largest are the International Metalworkers Federation, the International Federation of Chemical, Energy, Mine and General Workers’ Union (ICEM), and the Union Network International.

This chart shows U.S. union participation in the ICFTU, TUAC, IMF, UNI and ICEM.
To participate in labor and employment issues internationally, U.S. business must work through the established international business associations that are designated to have primary representation responsibility.

Based in New York City, the U.S. Council for International Business (USCIB) has been the designated business association that represents U.S. business through several international employer associations. Until 1979, the U.S. Chamber of Commerce represented U.S. business in the ILO. In 1980, the USCIB took over this function.

Based in Paris, the International Chamber of Commerce (ICC) has primary consultative status with the UN and its constituent agencies. It also represents business interests in the WTO, the World Bank, the IMF, regional development banks, and other international financial organizations. Thousands of companies from over 130 countries are members of the ICC which was formed in 1919.

Formed in 1920 and based in Geneva, the International Organization of Employers (IOE), an independent affiliate of the ICC, represents over 130 national employer associations in the ILO and the UN on social and labor matters.

Formed in 1962 and based in Paris, the Business and Industry Advisory Committee (BIAC) is the officially recognized voice in the OECD for the business interests of its 30 member nations.

To coordinate U.S. business activities in the European Union, the U.S. Coordinating Group was formed in 1980. It is composed of the U.S. Chamber of Commerce, the National Association of Manufacturers, the American Chamber of Commerce in Europe, the National Foreign Trade Council and the U.S. Council for International Business.

Headquartered in Manila, the Asia Pacific Economic Cooperation (APEC) was formed in 1989 in response to the growing interdependence among Asia-Pacific economies. It has a membership of 21 economic jurisdictions, with a population of 2.5 billion, and accounts for almost one-half of the world’s trade. Members include Australia, Brunei, Canada, China, Hong Kong, Indonesia, Japan, Republic of Korea, Malaysia, Mexico, New Zealand, Papua New Guinea, Peru, the Philippines, Russia, Singapore, Taipei, Thailand, the United States, and Vietnam.

The Asia Business Advisory Council (ABAC) was created by APEC economic leaders in November 1995 to provide business perspectives on a range of issues and, specifically, to advise APEC on implementing an ambitious agenda to promote human resource development as an essential element of regional economic growth. ABAC is composed of up to three leader-appointed private sector representatives from each of APEC’s member economies.
Overall, the structure for business to be represented in the various multilateral organizations affecting industrial relations are similar to those involving trade unions. These will be examined in more detail in the discussion of the various multilateral organizations addressing industrial relations.

**European Union**

Beginning with six member countries in 1957—Belgium, France, Germany, Italy, Luxembourg, and the Netherlands, the European Union has expanded to 25 countries. Its biggest expansion occurred in May 2004 with the addition of 10 former Soviet block countries.
Directives are the most common way labor and employment policies are made applicable across EU member states. With respect to the main areas authorized in the Social Chapter of the EU treaty, Article 137 specifies that directives must be used. Directives are binding but member states have flexibility in how they implement the Directive provided that the Directive’s requirements are met. Member states are typically given 18 months after adoption of a new EU Directive to implement its provisions.

Regulations are binding and automatically enforceable in all member countries without the need for any national implementing legislation. For individuals in the EU, the difference between directives and regulations is important. The European Court of Justice has held that individuals cannot rely on the provisions of directives in contractual actions before the national courts until they have been brought into effect.

Decisions are binding but are applicable only to those whom they address, e.g., a specific country, enterprise or individual.

Recommendations are non-binding.
The European Commission is the EU policy engine. Located in Brussels, it proposes legislation and is responsible for its administration, enforcement, and implementation after it is adopted. The 30 Commissioners—two each from France, Germany, Italy, Spain and the United Kingdom, and one from each of the other member states—are elected for 5-year terms.

The European Court of Justice sitting in Luxembourg is the EU’s Supreme Court. It ensures that EU legislation is interpreted and applied in the same way in each member state. The Court has the power to settle legal disputes between member states, EU institutions, businesses, and individuals. The Court is composed of one judge per member state.

The Council of the European Union—also referred to as the Council of Ministers—is the European Union’s main decision-making institution and final legislative authority. The Council of Ministers enacts EU laws, acting on proposals submitted by the European Commission. Composed of ministers from each member state, e.g., the Minister of Labor, different ministers participate in the Council depending on the subject under discussion. The Council is assisted by a Committee of Permanent Representatives (COREPER) in Brussels, comprising member state officials holding ambassadorial rank, and a Secretariat, with a staff of about 2,000.

The European Parliament has 731 members, elected in EU-wide elections for 5-year terms. Members of the European Parliament (MEPs) are aligned in political rather than national groups. The seat of the Parliament is in Strasbourg, France but the Secretariat of the Parliament is located in Luxembourg and the Parliament’s committees meet in Brussels. The Parliament shares legislative authority with the Council on two bases depending on the subject matter: co-decision, cooperation, and consultation.

The Economic and Social Committee is an advisory body representing employers, trade unions, farmers, consumers, and other interest groups. It must be consulted before decisions are taken on economic and social policy. Composed of over 250 members, the number from each EU country is proportional to its population. The employers group is made up of public and private sector medium, small, and large businesses and representatives of chambers of commerce.

In certain areas, a decision can only be taken after the Council or the Commission have consulted the Economic and Social Committee. This applies for: agricultural policy; free movement of persons and services; transport policy; harmonization of indirect taxation; approximation of laws for the single market; employment policy; social policy; education, vocational training and youth employment policy; public health; consumer protection; trans-European networks; industrial policy; economic and social cohesion; research and technological development; and environment.
With respect to business representation in the European Union, the picture is complex. Functioning through the Economic and Social Committee, the lead business organization is the Union of Industrial and Employers Confederations of Europe (UNICE), which was formed in 1958. UNICE’s mandate encompasses a broad range of business matters, not only employment, education, labor, and social affairs. Headquartered in Brussels, UNICE currently represents nearly 40 principal business federations from 27 European countries, with several federations participating as observers.

Also based in Brussels, the European Round Table of Industrialists (ERT) has an informal voice on EU affairs. It is composed of chairmen and chief executives of major European multinational companies, some of which are not headquartered in Europe. Membership is by invitation and is personal rather than corporate. The ERT works in close cooperation with UNICE.

The Social Protocol to the EU treaty became effective in 1993. It provided employers and workers with the possibility of preempting the normal legislative process by reaching their own framework agreements. Under article 138 of the EU Treaty, the Commission has to consult the European employers and workers before submitting proposals on social policy to the Council and the Parliament. Article 138(4) provides for an extendable 9-month period to allow employers and workers to reach agreement. When this occurs, they can then decide to deal with the subject under consideration through negotiations at EU level. According to article 139 of the EU Treaty, to implement an agreement concluded at European level, the social partners can:

- either ask the Commission to transmit their agreement to the Council, which then turns it into EU legislation, or
- rely on their members to implement it in accordance with the procedures and practices specific to the social partners in the Member States.

Thus, in instances involving workplace matters, the European Commission will ask through a first phase of the consultation process if the social partners want to negotiate a solution rather than having it legislated by the Council. The Commission may proceed with its original proposals only if the social
partners decide not to exercise their right of preemption or if an agreement is not reached within the required time period.

Framework agreements have been negotiated in lieu of legislation concerning parental leave, part-time work, fixed term agreements, work-related stress, and telework by UNICE, UEAPME, CEEP, and ETUC.

When employers and workers are unwilling or unable to negotiate framework agreements, the issues are then addressed in normal EU legislative process involving consultation, cooperation or co-decision.

The consultation procedure was the earliest legislative process within the Community. It has become less and less important since the cooperation and co-decision procedures were established, and is now only used in instances where neither of the other two procedures are specifically required, including the adoption of provisions to combat discrimination on the grounds of gender, race, ethnic origin, religion or belief, disability, age or sexual orientation, visas and immigration, guidelines on employment policies, social security, protection of worker interests, and improvement of working conditions.

Under the consultation procedure, the Commission sends its proposal to both the Commission and the Parliament, but it is the Council that officially consults Parliament and other bodies such as the Economic and Social Committee. If Parliament asks for amendments, the Commission will consider them. If the Commission accepts any of the amendments, it will send the Council an amended proposal.

The cooperation procedure largely follows the same lines as the consultation procedure, but involves a much stronger role for Parliament in the decision-making process and operates more quickly. In practice, this procedure is only relevant in relation to economic and monetary union matters. The cooperation procedure introduces a second reading by Parliament and the Council into the legislative process.

All other issues are addressed by the co-decision legislative procedure. Although the Council may unanimously override Parliament's views under the cooperation procedure, the Council and Parliament are effectively equal under the co-decision procedure. The co-decision procedure denies the Council the right to adopt its common position if efforts to reach agreement with Parliament fail. This increases the incentive to reach a compromise as the entire legislative process must otherwise be abandoned.
The co-decision procedure has become by far the most important element in the legislative process. It is used in connection with the ban on discrimination on grounds of nationality, measures to bring about freedom of movement, measures to ensure social security when exercising the right to move freely, social policy, including measures to bring about equality of the sexes, measures to promote education and vocational training, and formulation of general principles on access to documentation (general principles of transparency, the production of statistics, and the establishment of an independent supervisory body to monitor data protection).

Under the co-decision procedure, the Council sends its proposal to both the Council and the Parliament. Under a two-reading procedure, the Council considers amendments by the Parliament and positions taken by the European Economic and Social Committee. If the Council and Parliament cannot agree on legislation, a conciliation committee of equal numbers of Council and Parliament representatives is formed. After an agreement is reached, the legislation is sent to the Council and Parliament for a third reading and final adoption.

The Council acts by a simple majority of its members, by a qualified majority or by unanimous decision. Where the Council acts by a qualified majority, the votes of each of its members are weighted. In the Community sphere, a large proportion of legislative decisions are taken by qualified majority. The policy areas subject to unanimity include taxation, industry, culture, regional and social funds, and the framework program for research and technology development.

In recent years, there has been a significant shift from unanimous voting to qualified majority voting. This change has been driven by the process of enlargement of the EU and the desire to avoid gridlock at Council meetings. The Council can decide by unanimous vote to move to qualified majority voting on: protection of workers whose employment contracts are terminated; the representation and collective defense of workers and employers interests, including co-determination; and conditions of employment for foreign nationals residing in the EU.

Member states retain a national veto on: social security and the social protection of workers; unfair dismissal; and the representation and collective defense of workers and employers.
International Institutions Impacting Industrial Relations

As part of the Treaty of Versailles in 1919, the International Labor Organization was formed as part of the League of Nations to establish minimum international labor standards that can be ratified by its member countries. Based in Geneva, it now has 176 members. It is the only multilateral agency that provides for direct participation of employers and unions, in addition to governments.

The Governing Body is the Board of Directors of the ILO. It is composed of 14 employer, 14 worker, and 28 government representatives who are elected every three years. Among other things, it sets the budget and establishes the agenda for the annual ILO Conference. It also has a Committee on Freedom of Association that considers allegations of violations of trade union rights.

The ILO Conference is the legislative body and the most powerful organ of the ILO. It meets annually each June in Geneva and negotiates new and revised international labor standards. Through a committee of the Conference, it examines whether countries are meeting their international commitment to implement ILO conventions that they have ratified.

The ILO Office is the secretariat of the ILO. It is composed of about 600 international civil servants about half of whom are based in Geneva.

The secretariats for employers and workers in the ILO are the International Organization of Employers (IOE) and the International Confederation of Free Trade Unions (ICFTU). Their memberships are made of the designated “most representative” employer and worker organizations from the ILO member nations.
Although President Woodrow Wilson was the prime mover to establish the League of Nations in 1919 and Samuel Gompers, the head of the American Federation of Labor, was chairman of the Labor Commission that created the ILO within the League of Nations, the United States did not join the ILO until 1934. The U.S. never joined the League of Nations.

The ILO is unique in the multilateral system because workers and employers are direct participants. To organize itself for participation in the ILO in 1980, an advisory committee known as the President’s Committee on ILO was established. Chaired by the Secretary of Labor, it is composed of the Secretaries of State and Commerce, the National Security Advisor, the Director of the National Economic Council, and the presidents of the U.S. Council for International Business and the AFL-CIO. It establishes U.S. priorities in the ILO.

The President’s Committee functions through two working groups. The ILO Consultative Group is a tripartite day-to-day working group on ILO matters that usually meets three times a year. The Tripartite Advisory Panel on International Labor Standards (TAPILS) is composed of the legal representatives of the President’s Committee. It conducts legal reviews of ILO conventions to identify whether there are differences in the requirements of ILO conventions and U.S. law and practice.

Since its formation in 1919, the ILO has adopted over 180 ILO conventions and a slightly larger number of recommendations. Conventions are multilateral treaties that are binding on countries that ratify them. Recommendations are non-binding and usually supplement a related convention. These standards are negotiated usually in a two-year process at the annual June ILO Conference in Geneva. The content of ILO standards is heavily influenced by European social legislation.
Two years before a standard is negotiated at the June ILO Conference, the ILO Governing Body selects a subject to be negotiated usually over a two-year period. The ILO Office prepares a law and practice report and questionnaire that is sent to all ILO constituents for comment a year before the first round of negotiations. Based on the responses of governments, and employer and worker organizations, the ILO Office prepares a draft set of conclusions that serves as the basis for the first year negotiations, which take place in a technical committee of the ILO conference over a three week period.

After the first June Conference, the ILO Office circulates a summary of the first year’s negotiations and the draft convention and recommendation for comment by governments and worker and employer organizations. The ILO Office prepares a report compiling and analyzing the comments and, as it thinks appropriate, prepares a revised convention and recommendation. There is a second negotiation at the June Conference and then a vote as to whether to adopt the new instrument(s).
If a country ratifies an ILO convention, the ratifying country is held accountable to implement the terms of the convention through an ILO review and supervision process. After responding to a detailed questionnaire on how the country implements the convention, a Committee of Experts, through follow-up questions and observations, makes an assessment on whether the country concerned is meeting its international obligation. The Committee of Experts’ analyses are published in a 400-page report for consideration by a standing ILO Conference Committee on the Application of Conventions and Recommendations each June. About 25 of the most significant cases are examined each June with government ministers from the country concerned. The ILO supervisory system has been remarkably successful in achieving country compliance with their international obligations.

The ILO Constitution provides for two complaint procedures for investigating non-compliance with ratified ILO standards. Under Article 24, a worker or employer organization may file a representation alleging that a particular country has violated a ratified convention. If the ILO Governing Body—the Board of Directors of the ILO—determines that a representation is receivable, it establishes a three-member tripartite committee to examine it. During its examination, the committee may request further information from the complainant organization; invite the government to provide documentation in reply to the representation; and invite a representative of the complainant organization and/or the government to appear before the committee to furnish further information orally. The government concerned may request that the Director-General send a direct contacts mission to the country to obtain information for presentation to the committee. After collecting the facts, the tripartite Governing Body committee publishes a report to be approved by the Governing Body.

Article 26 provides for the most formal type of ILO supervisory procedure. Under this procedure, a member state may file a complaint if it is not satisfied that another member is effectively observing a convention which both have ratified. The complaint procedure may also
be initiated by the Governing Body or by a delegate to the ILO Conference. When an Article 26 complaint is filed, the Governing Body may appoint a Commission of Inquiry to make a thorough examination of the matter, on the basis of written and oral testimony as well as in-country visits as long as the government against which the complaint was filed consents. The three-person Commission of Inquiry, which consists of eminent legal scholars serving in their personal capacity, then write a report. After its report is adopted by the Governing Body, the government concerned has three months to accept the Commission’s recommendations or refer the complaint to the International Court of Justice.

Article 24 representations have generally dealt with matters of labor law or administration, while Article 26 complaints are usually reserved for the most serious questions of fundamental human rights. Both procedures are used only rarely, although the number of representations has increased in recent years. At the conclusion of either procedure, there is follow-up by the regular supervisory bodies to ensure that recommendations for remedial action are implemented.

In view of the critical importance of freedom of association to the functioning of the ILO, a separate special procedure was established for its promotion and protection in 1950. Over 3,000 freedom of association complaints have been filed. Unlike the representation and complaint procedures, the freedom of association machinery may be called into action against countries like the United States which have not ratified the freedom of association conventions. The legal basis for ILO jurisdiction is that member countries agree to respect the principle of freedom of association in joining the ILO by accepting its Constitution.

The majority of freedom of association complaints filed against the United States involve alleged violations of trade union rights. Consequently, U.S. companies have a direct interest in ILO freedom of association cases.

The ILO also has a complaints procedure concerning company compliance with its 1977 Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy within the ILO Governing Body. The most detailed of the existing multilateral guidelines that address workplace practices of multinational companies, it is composed of 58 paragraphs that encompass the full breadth of workplace issues from freedom of association to training and education to occupational safety and health to child labor. Each paragraph is footnoted in an addendum with relevant ILO conventions that address company policies in the area. Periodically the Guidelines have been updated by footnoting newly adopted ILO conventions that are relevant to the content of the Tripartite Declaration.
On June 18, 1998, the ILO Conference, without a dissenting vote, adopted the Declaration on Fundamental Principles and Rights at Work, which is applicable to all ILO member nations. The Declaration commits all ILO members to “respect, to promote and to realize . . . the principles concerning fundamental rights” that are the subject of eight ILO human rights conventions. The eight fundamental conventions are:

• Convention No. 29 concerning forced labor (1930)
• Convention No. 87 concerning freedom of association and the protection of the right to organize (1948)
• Convention No. 98 concerning the right to organize and collective bargaining (1949)
• Convention No. 100 concerning equal remuneration (1951)
• Convention No. 105 concerning abolition of forced labor (1957)
• Convention No. 111 concerning discrimination in employment and occupation (1958)
• Convention No. 138 concerning minimum age (1973)
• Convention No. 182 concerning worst forms of child labor (1999).

Because the legal basis for the substance of the Declaration is drawn from the ILO Constitution, the Declaration represents a solemn commitment by virtue of ILO membership and requires no additional action by the member nation.

The Declaration has follow-up procedures to hold ILO members accountable for their commitment to seek to achieve the goals and objectives of the fundamental ILO conventions. Under annual review and global report procedures, the follow-up constitutes a political track in the ILO to address egregious or “worst case” violations of fundamental worker rights.

Under the Declaration, the 176 ILO member nations promise to seek to achieve the goals and objectives, but not the specific legal requirements, of the fundamental ILO conventions. The principles are:

• Freedom of association and the effective recognition of the right of collective bargaining
• The elimination of all forms of forced or compulsory labor
• The effective abolition of child labor
• The elimination of discrimination in respect to employment and occupation.

The Declaration and its follow-up are based on the view that “sunshine,” in the form of peer review and publicity, and targeted technical assistance will do much more—and more quickly—to promote fundamental worker rights than the sledgehammer approach of trade sanctions that will be strongly resisted by developing countries.

Apart from its inclusions as part of U.S. trade promotion authority in 2001, the Declaration has been incorporated in the OECD Guidelines on Multinational Guidelines and the United Nations Global Compact.
International Institutions Impacting Industrial Relations

Organization for Economic Cooperation and Development (OECD)

Formed in 1960, an outgrowth of the post-World War II Marshall plan and now composed of 30 industrialized countries, the OECD’s principal purpose is to address economic, social and environmental challenges of globalization. It is best known for its high quality comparative economic analyses and forecasts including employment and labor market conditions.

More than 70 countries have working relationships with the OECD.

The OECD Council is made up of one representative from each member country plus a representative of the European Commission, which takes part in the work of the OECD. Each member country has a permanent representative to the OECD who meet regularly in the Council. The Council meets at ministerial level once a year to discuss important issues and set priorities for OECD work. The Council is supported by a secretariat of 2,300 based in Paris.

The Committees are where all the real work is done through representatives of member countries and countries with observer status working with the OECD secretariat. The Committees of most importance for labor and employment matters are the Committee on International Investment and Multinational Enterprises (CIIME) and the Manpower and Social Affairs Committee. These Committees regularly consult with BIAC and TUAC as well as a growing number of organizations from civil society.
First adopted in 1976, the OECD has the oldest of the guidelines applicable to multinational companies. In addition to an employment and industrial relations chapter, the guidelines also address the environment, intellectual property, bribery, consumer interests, science and technology, competition, and taxation. The guidelines apply both in OECD and non-OECD countries and apply to both the actions of the parent and its subsidiaries.

Overall, the Employment and Industrial Relations Chapter varies from U.S. law and practice in several ways. First, they require a positive approach to union organizing campaigns. Second, they require that companies provide information on company performance to employee representatives in all circumstances. Third, there is a requirement to provide notice prior to major operational changes. Fourth, with respect to those operational changes, the company must mitigate all adverse impacts on employees. Fifth, there can be no threats to transfer facilities during organizing campaigns. Sixth, management must provide a person authorized to make decisions during negotiations.

The OECD guidelines have an elaborate dispute resolution procedure involving filing complaints of violations of the guidelines with the National Contact Points of member countries for resolution. If the complaint is not resolved, it may be taken to the Committee on International Investment and Multinational Enterprises for clarification and resolution.

The Employment and Industrial Relations Chapter provides that:

“Enterprises should, within the framework of applicable law, regulations and prevailing labour relations and employment practices:

1. a) Respect the right of their employees to be represented by trade unions and other bona fide representatives of employees, and engage in constructive negotiations, either individually or through employers’ associations, with such representatives with a view to reaching agreements on employment conditions;

   b) Contribute to the effective abolition of child labour;

   c) Contribute to the elimination of all forms of forced or compulsory labour;
d) Not discriminate against their employees with respect to employment or occupation on such grounds as race, colour, sex, religion, political opinion, national extraction or social origin, unless selectivity concerning employee characteristics furthers established governmental policies which specifically promote greater equality of employment opportunity or relates to the inherent requirements of a job.

2. a) Provide facilities to employee representatives as may be necessary to assist in the development of effective collective agreements;
   b) Provide information to employee representatives which is needed for meaningful negotiations on conditions of employment;
   c) Promote consultation and co-operation between employers and employees and their representatives on matters of mutual concern.

3. Provide information to employees and their representatives which enables them to obtain a true and fair view of the performance of the entity or, where appropriate, the enterprise as a whole.

4. a) Observe standards of employment and industrial relations not less favourable than those observed by comparable employers in the host country;
   b) Take adequate steps to ensure occupational health and safety in their operations.

5. In their operations, to the greatest extent practicable, employ local personnel and provide training with a view to improving skill levels, in co-operation with employee representatives and, where appropriate, relevant governmental authorities.

6. In considering changes in their operations which would have major effects upon the livelihood of their employees, in particular in the case of the closure of an entity involving collective lay-offs or dismissals, provide reasonable notice of such changes to representatives of their employees, and, where appropriate, to the relevant governmental authorities, and co-operate with the employee representatives and appropriate governmental authorities so as to mitigate to the maximum extent practicable adverse effects. In light of the specific circumstances of each case, it would be appropriate if management were able to give such notice prior to the final decision being taken. Other means may also be employed to provide meaningful co-operation to mitigate the effects of such decisions.

7. In the context of bona fide negotiations with representatives of employees on conditions of employment, or while employees are exercising a right to organise, not threaten to transfer the whole or part of an operating unit from the country concerned nor transfer employees from the enterprises’ component entities in other countries in order to influence unfairly those negotiations or to hinder the exercise of a right to organise.

8. Enable authorised representatives of their employees to negotiate on collective bargaining or labour-management relations issues and allow the parties to consult on matters of mutual concern with representatives of management who are authorised to take decisions on these matters.”
In July 2000, United Nations Secretary-General Kofi Annan initiated the UN Global Compact. Now supported by over 1,200 companies worldwide, it comprises 10 principles in the areas of human rights, labor, the environment, and corruption. Four of the principles are taken directly from the 1998 ILO Declaration on Fundamental Principles and Rights at Work. Parties filing complaints against companies concerning violations of labor rights are directed to use the procedures of the ILO.

The UN Commission on Human Rights is currently considering whether to adopt draft Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with regard to Human Rights. The 23 provisions of the Norms are in greater detail than the 10 principles of the Global Compact. If adopted, the Norms would establish a mechanism for enforcement.
Asia-Pacific Economic Cooperation (APEC)

Asia-Pacific Economic Cooperation, or APEC, is the premier forum for facilitating economic growth, cooperation, trade and investment in the Asia-Pacific region. APEC is the only intergovernmental grouping in the world operating on the basis of non-binding commitments, open dialogue and equal respect for the views of all participants. Unlike the WTO or other multilateral trade bodies, APEC has no treaty obligations required of its participants. Decisions made within APEC are reached by consensus and commitments are undertaken on a voluntary basis.

APEC’s 21 Member Economies are Australia; Brunei Darussalam; Canada; Chile; People’s Republic of China; Hong Kong, China; Indonesia; Japan; Republic of Korea; Malaysia; Mexico; New Zealand; Papua New Guinea; Peru; The Republic of the Philippines; The Russian Federation; Singapore; Chinese Taipei; Thailand; United States of America; and Viet Nam.

Based in Manila, the Asia-Pacific Economic Cooperation (APEC) Business Advisory Council (ABAC) is the voice of business within APEC. It is the sole non-government entity that has an official role in the APEC Economic Leaders’ Meeting through a formal dialogue. ABAC is tasked with reviewing the progress of APEC’s work on trade and investment liberalization through the individual action plans. It recommends future work that would improve the business environment within the region.

The APEC Business Advisory Council (ABAC) was created by the APEC Economic Leaders in November 1995 to provide advice on the implementation of the Osaka Action Agenda and on other specific business sector priorities, and to respond when the various APEC fora request information about business-related issues or to provide the business perspective on specific areas of cooperation. ABAC comprises of up to three members of the private sector from each economy.
As discussed earlier, international labor and employment policy is often used to drive policy worldwide and to impose regulation on multinational and domestic employers alike. This visual representation shows the key pressure points on international labor and employment policy, with the green circles highlighting the major pressure points. As can be clearly seen, there are numerous institutions that affect this policy. The strong global presence of trade unions and their significant role in policy formation at international institutions is an additional factor that should emphasize why it is important for the views of employers to also be considered at these institutions.