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From Mandates to Governance: Restructuring the Employment Relationship

Brett H. McDonnell
University of Minnesota Law School

Matthew T. Bodie
Saint Louis University School of Law

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Recommended Citation

McDonnell, Brett H. and Bodie, Matthew T., From Mandates to Governance: Restructuring the Employment Relationship (2021). Maryland Law Review (Forthcoming 2021), Saint Louis U. Legal Studies Research Paper No. 2021-15.

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SAINT LOUIS UNIVERSITY SCHOOL OF LAW
Legal Studies Research Paper Series

No. 2021-15

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Brett H. McDonnell
University of Minnesota Law School

Matthew T. Bodie
Saint Louis University - School of Law

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Brett H. McDonnell
University of Minnesota Law School

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Saint Louis University - School of Law

Abstract

Employers are saddled with a dizzying array of responsibilities to their employees. Meant to advance a wide array of workplace policies, these demands have saddled employment with the burden of numerous social ends. However, that system has increasingly come under strain, as companies seek to shed employment relationships and workers lose important protections when terminated. In this Article, we propose that employers and employees should be given greater flexibility with a move from mandates to governance. Many of the employment protections required from employers stem from employees' lack of organizational power. The imbalance is best addressed by providing workers with governance rights within the firm. In exchange for these governance rights, governments can lift or relax many employment mandates. In addition, certain responsibilities currently assigned to employers will be lifted and placed on the larger society—where they would be more appropriately carried. This rebalancing of the employment relationship will lead to a more economically secure and empowered populace while at the same time freeing businesses to better pursue their entrepreneurial endeavors.

Keywords: employment law, corporate governance, labor law, employment representation

Suggested Citation:

McDonnell, Brett H. and Bodie, Matthew T., From Mandates to Governance: Restructuring the Employment Relationship (2021). *Maryland Law Review* (Forthcoming 2021), Saint Louis U. Legal Studies Research Paper No. 2021-15.