

Working in Silicon Valley: Economic and Legal Analysis of a High-Velocity Labor Market by Alan Hyde, Armonk, New York: M.E. Sharpe, Inc., 2003.

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Alan Hyde is a Professor and the Sidney Reitman Scholar at Rutgers University School of Law in Newark. He has served as a visiting professor of labor and employment law as well as legal theory at Yale, Columbia, University of Michigan, New York University and Cardozo law schools. Additionally, Professor Hyde frequently represents the Association for Union Democracy and the American Civil Liberties Union in labor and employment litigation. His law review articles include work on employee ownership, comparative labor legislation, new forms of employee organization and labor relations under government contract.¹

Mr. Hyde addresses the evolving labor market by utilizing the high-technology employers in Silicon Valley as a case study. He effectively describes the underpinnings of what he identifies as key characteristics specific to the unique arrangement of job-market mobility. Mr. Hyde declares that the rapid and frequent turn over of employees is a key component resulting in short job tenures. He also identifies the heavy use of temporary labor and a lack of loyalty to individual firms as contributing factors. Mr. Hyde labels these unique components of employment in the mobile market of Silicon Valley as “high-velocity.”²

¹ ALAN HYDE, Working in Silicon Valley. P.303

² Id. at Preface pp.xii.

In an attempt to explain why high-velocity labor supports rapid technological growth, Mr. Hyde effectively identifies and explains two general concepts, “flexibility” and “information diffusion.” “Flexibility” accounts for the fluid market of available employees consisting of contractors and consultants who typically move from one company to the next. “Information diffusion” accounts for the technical know how and advancements that travel between companies as those employees move from job to job. Mr. Hyde concludes that technological and economic growth depends upon a company’s ability to hire and fire employees quickly. Mr. Hyde continues to flush out how the relationship between employers and employees work in situations resulting from real employment circumstances and its influence on our laws toward temporary and short-term labor.

Mr. Hyde specifically states that the book is not a guide on how to re-create Silicon Valley’s distinctive labor structure elsewhere. Rather, the book addresses the labor market’s institution for analysis of its labor structure, and to examine its costs and benefits. Ultimately, this book successfully outlines the beginnings of an alternative employment environment, one in which the liquidity of economic information plays an essential role because growth depends upon the creation and circulation of valuable information.

Silicon Valley’s employment practices provide an understanding of the benefits and challenges of employment practices in any industry where mobility is high and working arrangements with employees are fluid and not contractually bound. However, as in a “traditional” labor market, regulation for the benefit of employees is a must and the “flexible” labor market creates further legal quandaries. Mr. Hyde acknowledges that

public policy and legal intervention can provide “social safety nets” for workers involved in high-velocity labor markets. Flexibility attributed to fast paced developments in Silicon Valley does not excuse employers from providing traditional benefits, such as health insurance and pensions. He also recognizes that constant job changes make it that much more difficult to implement social protections for workers. Interestingly, Mr. Hyde also promotes the idea that the law can potentially disrupt the labor market developed in high-velocity markets. He keenly recognizes that the legal concepts surrounding labor and employment law established in the “old economy” are formulated around employment assumptions that are no longer pliable.

Mr. Hyde acknowledges that a flexible labor market requires, “severe restrictions on (the) freedom of contract” because of the liquidity of employment.³ In such a market, employers are not free to require employees to abide by non-competition agreements or broad restrictions concerning the conveyance of trade secrets. A staunch rejection of antitrust policies is also required. As noted by Mr. Hyde, “Silicon Valley could never have developed had IBM... been permitted to monopolize computers...”⁴

Legal ramifications also arise regarding the diffusion of information resulting from employees rapidly moving from one company to another. The mobile employees contribute to the diffusion of information by carrying their technical skills, and knowledge of developing technology to other companies as they migrate from employer to employer. Although such sharing of information contributes to technological advancement, a multifaceted struggle results between employers attempting to protect certain information, employees having knowledge of certain information and transferring

³ *Id.* at xvii.

⁴ ALAN HYDE, *Working in Silicon Valley*. Introduction pp. xvii.

it, and the traditional legal conceptualization that such information of the former employer should be treated as a trade secret.

Finally, Mr. Hyde suggests that the legal community is struggling to support technological and economic growth derived from shared information. He further asserts that legal minds must reevaluate the concept of unfair competition and trade secrets because of employees ability to “create and carry” information. He concludes by insisting that continued technological advances rely upon the legal re-conceptualization of the meaning of labor.

This book discusses issues surrounding a non-stable employment environment. By analyzing everyday legal disputes arising from employer/employee conflicts resulting from a “high-velocity” labor market, Mr. Hyde exposes the difficult legal areas such as intellectual property and interpretation of non-competition agreements. He points out that traditional legal concepts don’t easily fit the new labor market. Still, Mr. Hyde freely admits that this book lacks some of the detail that legal minds might prefer, however it does pose many interesting problems for discussion.

Mr. Hyde examines whether society is better off when employees are not wedded to a corporation and may freely leave to work elsewhere. He further ponders whether company incentive to invest in the creation of information diminishes because of the fear that it will likely be carried off for the benefit of another corporation. He also wonders whether the economic success of this prosperous market depends upon barriers to employee organization, or will employee organization be made easier in a high-velocity labor market. While Mr. Hyde presents these stimulating questions, he is quick to acknowledge that the answers are not clear.

Mr. Hyde presents a general understanding of the legal ramifications of a high-velocity labor market, however the book does not delve into legal intricacies so the read is too simplistic for a person well-versed in the legal fields of labor law or intellectual property. Still, the scenarios presented to demonstrate real life situations in which legal complexities arise are both interesting and easy to follow. This book is well-suited for a general audience interested in the subject matter of labor, intellectual property and technology. Overall, this book successfully accomplishes what it set out to do, to explore a unique and influential labor market. While the book falls short in providing possible courses of action or solutions, the author's keen observations and analysis stimulates thought and conversation about the new labor market.