
Employers' Response to Workers Appearing to Suffer from Mental Illness: A Recent Supreme Court Judgment, the Law and the Administration

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In 2012, the Supreme Court of Japan overturned a case of forced resignation on grounds of unauthorized absence by a worker who was deemed to have taken extended leave from work owing to mental illness. In its judgment, the Supreme Court held that the response to workers in this situation should be to consider dispositions such as leave of absence, based on the result of examination by a psychiatrist, and then to monitor subsequent progress; taking disciplinary action without having attempted this was not appropriate as a response by an employer.

There are various ways in which such workers can be made aware of their illness, the employer can prevent their condition from worsening, and the skills of managers, supervisors, and others can be improved. These include (i) medical examination provided by the employer, and the use of Health Committees pursuant to the Industrial Safety and Health Act, and (ii) promoting education, training and information provision to managers, supervisors and workers by employers, as indicated in the 12th Industrial Accident Prevention Plan. Besides these, the recent Amendment of the Act on Employment Promotion, etc. of Persons with Disabilities provides that workers with mental illness should be included in the basis for calculating the legal minimum employment rate, and obliges employers to provide reasonable accommodation for these workers. This could have a positive impact on solving the problem of poor knowledge by management and workers on the response to workers who appear to suffer from mental illness.

I. Validity of Dismissal, Disciplinary Action and Other Measures against Workers Suffering from Mental Illness

1. Characteristics of Workers Suffering from Mental Illness, Their Dismissal, Disciplinary Action, etc.

Dismissal, automatic retirement or dismissal on completion of a period of leave, reinstatement, and other dispositions toward workers suffering from non-work related injury or illness are themes that have long been debated and copiously researched in the field of labor law.¹ Of such non-work related injury or illness, the validity of dismissal and other disci-

¹ Itaru Nemoto, "Kaiko Jiyu no Ruikeika to Kaikoken Ranyo no Handan Kijun [Typology of grounds for dismissal and standards for judging the legal principle on abusive dismissal]," 99 Journal of Labour Law 52 (2002); Makoto Iwade, "Kenko Hairyo Gimu wo Fumaeta Rodosha no Shogu, Kyushoku, Kaiko [Treatment, suspensions and dismissals of workers based on employers' duty to care for employee safety and health]," 109 Journal of Labour Law 62 (2007); Makoto Iwade, *Shain no Kenko Kanri to Shiyosha Sekinin* [Employees' health management and employers' responsibility] (Rodo Chosakai, 2004); Ikuko Mizushima, "Shippei Rodosha no Shogu [Treatment of sick workers],"

iplinary action against workers appearing to suffer from mental illness has started to gather interest in recent years. If the response to these workers is mistaken, it could cause their symptoms to deteriorate, leading to self-harm or other problems, and a careful response is therefore required.

Workers suffering from mental illness are characterized, firstly, in that their illness can cause them to behave abnormally; secondly, in that there may be no self-awareness of illness and no attempt made to have it examined; and thirdly, in that, out of fear of prejudicial treatment, they sometimes conceal the fact that they have the illness or are being treated for it. Can workers in this situation be dismissed or punished on grounds of abnormal behavior? Should others in the workplace be allowed to gather information on their state of health without their consent, urge their families to seek examination and treatment, or give sick leave when information on the worker's health is not even known? And would it be deemed illegal for the employer to instigate disciplinary action, dismissal, or other measures based on formal evaluation without considering the illness, on the misunderstanding that the worker was not suffering from an illness?

2. Comparison with Other Non-Work Related Injury or Illness

The prevailing view is that, for workers suffering from non-work related illness in general, dismissal on grounds of the non-provision of labor due to an illness other than mental illness is valid if a serious condition would continue into the future and the provision of labor would be impossible.² Reinstatement is permitted if the condition has been cured

in *Koza 21-seiki no Rodoho 7: Kenko, Anzen to Katei Seikatsu* [Coursework on 21st century labor law (vol. 7): Health, safety and family life], ed. Japan Labor Law Association (Yuhikaku, 2000), 131; Ikuko Mizushima, "Howaitokara Rodosha to Shiyosha no Kenko Hairyo Gimu [Health care of white-collar employees and employers' responsibilities]," 492 *The Japanese Journal of Labour Studies* 32 (2001); Mikio Yoshida, "Shippei Rodosha no Shogu [Treatment of sick workers]," in *Rodoho no Soten (dai 3 pan)* [Issues of labor law (3rd Edition)], ed. Kunishige Sumida, Katsutoshi Kezuka, and Mutsuko Asakura (Yuhikaku, 2004), 243; Hajime Wada, "Rodosha no Byoki (Shishobyo) to Kaiko nado [Workers' sickness (non-work related) and dismissal, etc]," 252 *Hogaku Kyoshitsu* 147; Toshihiro Fujiwara, "Doitsu ni okeru Shippei Kaiko no Hori [The legal principle of sickness dismissal in Germany]," in *Rodo Hogoho no Saisei* [Revival of labor protection law], Shunichi Sato et al., (Shinzansha, 2005), 439.

² Koichi Kamata, "Shishobyo Kyushokusha no Fukushoku to Futan Keigen Sochi [Reinstatement and stress mitigation measures for workers taking leave for non-work related injury or illness]," in *Keiei to Rodo Homu no Riron to Jitsumu* [Theory and practice of management and labor law], ed. Koichiro Yamaguchi et al. (Chuo Keizaisha, 2009), 97; Tomoyuki Kato, "Mentaru Fuchosha wo Meguru Fukushoku Hairyo Gimu no Ichikosatsu [A study on the duty to consider reinstatement for workers with mental health illness]," in *Shakaiho no Saikochiku* [Restructuring of social law], ed. Fumito Komiya et al. (Junposha, 2011), 162; Kazuo Sugeno, *Rodoho (dai 10 pan)* [Labor law (10th edition)] (Kobundo, 2012), 557; Kiyotaka Hatai, "Shogai, Byoki to Kaiko [Disability, sickness and dismissal]" in *Kaiko to Taishoku no Homu* [Law issues on dismissal and retirement], ed. Susumu Noda et al. (Shoji Homu, 2012), 199; Noboru Yamashita, "Rodosha no Tekikakusei Ketsujo to Kiritsu Ihan Koi wo Riyu to suru Kaiko [Dismissal on grounds of workers' ineptitude and violation of rules]," in *Kaiko to Taishoku no Homu* [Law issues on dismissal and retirement], ed. Susumu Noda et al.

by the end of the leave period, but many theories point out that (i) there have been court precedents to the effect that, in cases of illnesses other than mental illness, workers seeking reinstatement are responsible for providing evidence of the cure,³ and that (ii) court precedents have changed their stance on the “cure”; namely, rather than acknowledging the cure to be the point at which the worker has returned to a state of health enabling him or her to perform his or her previous job to the normal degree,⁴ they hold that, for those who are not in any condition to return to their previous duties but can undertake lighter duties and seek reinstatement in such duties, employers have an obligation to consider whether there are any duties to which they can actually be assigned.^{5, 6}

Viewing the massed court precedents, the same could be said with respect to workers suffering from mental illness.

In other words, even if a worker is suffering from mental illness, dismissal is deemed valid if a serious condition would continue into the future and the provision of labor would be impossible.⁷ On reinstatement at the end of the leave period, similarly, automatic retirement or dismissal is also deemed valid in the case of mental illness if a complete cure (re-

(Shoji Homu, 2012), 180; Nemoto, *supra* note 1, at 55; Yoshida, *supra* note 1, at 242; Iwade, “Kenko Hairyo Gimu,” *supra* note 1, at 62; Tetsunari Doko, Fumito Komiya, and Yoichi Shimada, *Risutora Jidai: Koyo wo Meguru Horitsu Mondai* [Legal problems surrounding employment in the restructuring era] (Junposha, 1998), 206, and others.

³ *Schenker-Seino Case* (Tokyo Dist. Ct., Mar. 18, 2010), 1011 Rodo Hanrei 73, and in support, Yukiko Ishizaki, Case Comment, 1433 Jurist 137. Ryuichi Yamakawa, Hokusan Kiko Case Comment, 1183 Jurist 183, and Iwade, “Kenko Hairyo Gimu,” *supra* note 1, at 66, also deem the worker to be responsible. Conversely, as an opinion that the employer is responsible for proving the impossibility of reinstatement, Fumito Komiya, *Koyo Shuryo no Hori* [Legal principle on the termination of employment] (Shinzansha, 2010), 181, and Doko, Komiya and Shimada, *supra* note 2, at 215.

⁴ *Hirasen Lace Case* (Urawa Dist. Ct., Dec. 16, 1965), 16 Rominsu 1113.

⁵ *JR Tokai Case* (Osaka Dist. Ct., Oct. 4, 1999), 771 Rodo Hanrei 25.

⁶ Sugeno, *supra* note 2, at 527; Hatai, *supra* note 2, at 206; Kato, *supra* note 2, at 163. Ishizaki, *supra* note 3, at 137. As an example asserting that it is not clear in the first place what level of labor service performance is taken as the premise, etc., Kamata, *supra* note 2, 97ff. An example suggesting that this change was influenced by the Katayamagumi Case Supreme Court Judgment (Sugeno, *supra* note 2, at 527, and Iwade, “Kenko Hairyo Gimu,” *supra* note 1, at 64). For more detail, see Obata Fumiko, *Saibanrei ga Shimesu Rodo Mondai no Kaiketsu* [Resolution of labor problems indicated by court precedents] (Nihon Romu Kenkyukai, 2012), 63.

⁷ *Kadoma and Moriguchi City Dismissal Revocation Claim Case* (Osaka Dist. Ct., Mar. 16, 1987), 497 Rodo Hanrei 121, *Seibu Byoin Case* (Tokyo Dist. Ct., Apr. 24, 1975), 225 Rodo Hanrei 20. As a precedent case concerning dismissal after leave and reinstatement, the *Tokyo Godo Jidosha Case* (Tokyo Dist. Ct., Feb. 7, 1997), 1665 Rodo Keizai Hanrei Sokuho 16. In this case, dismissal on grounds that the worker’s behavior (such as quitting medical treatment after reinstatement, claiming that accidents were wholly due to the other party’s negligence, ignoring warnings from a superior and treating the superior like a “strange animal”) was deemed valid as it corresponded to “when it is deemed... that there is an impediment... in the mental state.” As two precedent cases in which dismissal was deemed abusive because a recovery was possible, the *J Gakuen Case* (Tokyo Dist. Ct., Mar. 24, 2010), 1333 Hanrei Taimuzu 153, and the *Company K (Kando) Case* (Tokyo Dist. Ct., Feb. 18, 2005), 892 Rodo Hanrei 80. See Iwade, “Kenko Hairyo Gimu,” *supra* note 1, at 62, Hatai, *supra* note 2, at 217, and Fumiko Obata, “J Gakuen Jiken Kaisetsu [J gakuen case commentary],” 766 Rodo Kijun 24.

mission) has not been achieved,⁸ and dismissal and retirement are deemed valid if no medical certificate has been submitted.⁹ In other cases, while recognizing that, for those who are not in any condition to return to their previous duties but can undertake lighter duties and seek reinstatement in such duties, employers have an obligation to consider whether there are any duties to which they can actually be assigned, dismissal was judged valid on grounds that, even after returning to work, there was no position to which they could be assigned.¹⁰

The problem is that, in connection with the second and third characteristics described above, information on the worker's own state of health is not fully grasped by the worker, and is not always fully conveyed to the employer. This makes it difficult to judge whether "a serious condition would continue into the future and the provision of labor would be impossible," or to decide what would constitute the correct response after the worker's return.¹¹

3. Abnormal Behavior of Workers Suffering from Mental Illness, and Disciplinary Action

As stated under the first characteristic above, there have been no cases in which illness other than mental illness has caused abnormal behavior and the validity of disciplinary action on these grounds has been contested. This could therefore be seen as a problem unique to workers suffering from mental illness.¹²

⁸ The *Company N Case* (Tokyo Dist. Ct., Feb. 25, 2011), 1028 Rodo Hanrei 56, deemed it valid, but the *Canon Software Information Systems Case* (Osaka Dist. Ct., Jan. 25, 2008), 960 Rodo Hanrei 49, deemed it invalid.

⁹ *Daiken Corporation Case* (Osaka Dist. Ct., Apr. 16, 2003), 849 Rodo Hanrei 35; *Ashiya Post Office Case* (Osaka High Ct., Mar. 22, 2000), 1045 Hanrei Taimuzu 148.

¹⁰ *Nogyo Shinkin Case* (Tokyo Dist. Ct., Mar. 26, 2004), 876 Rodo Hanrei 56. As a case where transfer after reinstatement was deemed problematic, the *Yonago Municipal Junior High School Teacher Transfer Case* (Tottori Dist. Ct., Mar. 30, 2004), 877 Rodo Hanrei 74.

¹¹ See *Kadoma and Moriguchi City Dismissal Revocation Claim Case* (note 7), *Tokyo Godo Jidosha Case* (Tokyo Dist. Ct., Feb. 7, 1997), 1665 Rodo Keizai Hanrei Sokuho 16, *Canon Software Information Systems Case* (note 9), and *Company N Case* (note 9), among others.

¹² These include a case where a worker was dismissed on grounds that the worker had, among others, disturbed the order of the workplace and besmirched the company's honor by, for example, claiming to have been subjected to indecent assault (which was deemed untrue), telling a superior to "go to hell," and threatening to commit suicide by hanging herself in the office. It was deemed that the defendant should have responded with greater caution, in that the plaintiff worker's behavior was thought to have been influenced by a deterioration of mental illness. At the same time, it was deemed that it would have been inappropriate to employ the worker and that the case did not constitute abusive dismissal, in that it was not subject to restrictions on dismissal under Article 19 of the Labor Standards Act, because there was no reason why the defendant should have borne responsibility for the occurrence of mental illness and the worker's absence could be not be recognized as being due to an illness suffered in the course of employment; moreover, it was not unreasonable to think it impossible that the relationship of trust could be repaired, in view of the plaintiff's bizarre and unacceptable behavior (*Company X Case* [Tokyo Dist. Ct., Jan. 25, 2011], 2104 Rodo Keizai Hanrei Sokuho 22).

On this subject, a judgment deeming that disciplinary action and dismissal amount to an abuse of discretionary powers has emerged and received some attention in recent years. In the case in question, the judgment was based on the fact that the worker's unauthorized absence was caused by schizophrenia, and that there was every reason to believe that the management employee, as the worker's superior, may well have harbored doubts that the unauthorized absence was based on free will.¹³

4. Assertions by Theories on Trends in Court Precedents

With the accumulation of court precedents like this, research on the validity of dismissal, retirement, dismissal or workplace reinstatement at the end of the leave period, and disciplinary action or others against workers suffering from mental illness not caused by work has been promoted in recent years. One of these asserted that "In the courts, questions will probably be raised on the extent to which corporate activity has been impeded by the negative behavior of workers with mental illness, or the extent to which companies (or employers) have devised a considerate and polite response and taken all possible steps, including coordinating with the families of workers suffering from mental illness."¹⁴ One assertion has been that the trend in court precedents is that, if absence from work without good reason or unauthorized absence is said to result from an illness, the path of examination and treatment should first be explored before serious disciplinary action is taken.¹⁵ Certainly, there are many judgments that mention "consideration" and "response" on the employer's side.¹⁶

Amid these trends, a noteworthy Supreme Court judgment on the treatment of a

¹³ *Government/Japan Meteorological Agency Case* (Osaka Dist. Ct., May 25, 2009), 991 *Rodo Hanrei* 101.

¹⁴ Kibihiko Haruta, "Shokuba ni okeru Seishin Shikkansha wo Meguru Hanrei Bunseki to Rodoho-jo no Kadai [Case analysis on workers suffering from mental illness in the workplace and issues in labor law]," in *Rodo Hogoho no Saisei* [Revival of labor protection law], Shunichi Sato et al., (Shinzansha, 2005), 466.

¹⁵ Makoto Iwade, *Hewlett-Packard Japan Case Supreme Court Judgment*, Comment, 1451 *Jurist* 118.

¹⁶ The judgments in the *Government/Japan Meteorological Agency Case* (note 13), the *Company K Case* (note 7) and the *J Gakuen Case* (note 7) mentioned that such consideration had been given. The judgment in the *Yonago Municipal Junior High School Teacher Transfer Case* (note 10) deemed that consideration had not been given in connection with the transfer, and the judgment in the *Ashiya Post Office Case* (note 8) asserted that the worker could not work even when offered the exceptional measure of a 50% reduction in workload. The *Toyota Tsusho Case* (Nagoya Dist. Ct., Jul. 16, 1997, 960 *Rodo Hanrei* 145) deemed that "the general assumption that a company of a certain size will adopt concrete measures for mental health management cannot be said to have been established," and that ordinary dismissal did not constitute abusive dismissal and was valid in this case, because the employer, while rejecting the plaintiff's claim that the dismissal was abusive because no concrete measures had been taken for the management of employees' mental health, had taken a cooperative attitude toward treatment, had asked the plaintiff's family to persuade the plaintiff to receive treatment from a specialist, and had offered full explanation from the standpoint of mental health in the workplace.

worker deemed to have taken extended leave on account of mental illness was handed down in 2012.¹⁷ This judgment will be studied in II below.

II. Validity of Disciplinary Action against a Worker Deemed to Have Taken Extended Leave Due to Mental Illness: Study of the Supreme Court Judgment in the Hewlett-Packard Japan Case

1. Locating the Problems

(1) Disciplinary Action on Grounds of Unauthorized Absence

Many companies cite unauthorized absence as grounds for disciplinary action, and workers who continue unauthorized absence are sometimes punished by disciplinary dismissal. In court precedents until now, it has been construed that the objects of disciplinary action, beyond responsibility for default on debt, are limited to “cases where replacement of the absentee or other measures such as changes in manpower allocations cannot be implemented quickly and normal production activity is hindered,” because the worker has been absent without giving notice.¹⁸ As court precedents in which absence from work was acknowledged to constitute unauthorized absence as grounds for disciplinary action, there have been cases where a worker was late for work on 24 days and 14-day absences in a 6-month period without giving notice, despite repeated warnings, and so on.¹⁹ Whether the worker has repeated and continued acts of negligence of duties, or whether the worker reflected on warnings from the company and tried to improve, are among the important elements in judging what constitutes grounds for disciplinary action.²⁰ Meanwhile, when a worker could not give notice of absence for justifiable reasons, this was not treated as unauthorized absence, and was deemed not to constitute grounds for disciplinary action.²¹

(2) Formal Response, Flexible Response and the Legal Principle of Abusive Dismissal

Problems arise, for example, when a worker who takes unauthorized absence is suffering from mental illness, in particular, of all types of non-work related injury or illness, and has the first and second characteristics described in I-1 above, but has not undergone an examination in self-awareness of the illness and has not submitted a notification of absence

¹⁷ *Hewlett-Packard Japan Case* (Sup. Ct., 2nd Petty Bench, Apr. 27, 2012), 1055 Rodo Hanrei 5. As an introduction to precedent cases, Yuko Shimada, “Seishinteki Fucho ni yoru Kekkin ni Taisuru Chokai Shobun wo Muko to shita Rei [A Case in Which Disciplinary Action against Absence Caused by a Mental Disorder Was Deemed Invalid],” 147 *Minshoho Zasshi* 244, among others.

¹⁸ *Mitsubishi Heavy Industries Case* (Nagasaki Dist. Ct., Jan. 31, 1972), 23 *Rominshu* 1. Tamako Hasegawa, *Hewlett-Packard Japan Case*, Judgment of Second Instance, Comment, 1439 *Jurist* 129.

¹⁹ *Tokyo Press Case* (Yokohama Dist. Ct., Feb. 25, 1977), 477 *Hanrei Taimuzu* 167.

²⁰ Hasegawa, *supra* note 18, at 129.

²¹ *Japan Weather Association Case* (Tokyo Dist. Ct., Dec. 7, 1973), 191 *Rodo Hanrei* 52; *Goryo Limousine Case* (Hakodate Dist. Ct., Dec. 21, 1973), 193 *Rodo Hanrei* 47; Hasegawa, *supra* note 18, at 129.

complete with the resultant medical certificate; or when the worker stays away from work in the mistaken belief that there is some kind of obstacle in the workplace that obstructs his or her attendance.

There are three conceivable ways in which an employer could respond to this kind of worker, namely a formal response, a flexible response, and a positive response.

The formal response is one in which a formal judgment is made on the lack of notice and whether the worker's unauthorized absence constitutes grounds for disciplinary action, and disciplinary action is taken without any consideration of the mental illness or other circumstances. Employers who adopt this response assume as a matter of course that workers who fail to manage their health, are unable to fulfil their obligation to provide labor and cannot even give notice of this should be disciplined. They assume that employers should not interfere with workers' non-work related injury or illness, out of respect for health privacy. In the case of mental illness, they assume that employers should not get involved, in that the worker in question would feel wounded pride even if merely advised to undergo a health examination,²² that this could trigger a deterioration of the symptoms and the worker could succumb to self-harm, etc. There is also the possibility that the worker could be viewed with prejudice by coworkers.

A flexible response is one in which, when acknowledging the existence of mental illness and judging whether the absence from work was "without permission," the absence is treated as a special case in which notice could not be given for unavoidable reasons, or by recognizing some other kind of contact or communication as the notice, and thus avoiding disciplinary action.

So how can the "formal response" and "flexible response" described above be viewed in their relationship to the legal principle of disciplinary authority?

Judgments on the validity of disciplinary action follow the sequence of judging (i) whether situations providing grounds for disciplinary action and the types and degrees of such action are prescribed in work rules, (ii) whether the worker's problematic behavior can be deemed to constitute grounds for disciplinary action and "objectively rational reasons" can be deemed to exist (relevance as grounds for disciplinary action), and (iii) whether, in this case, disciplinary action might not err on the side of severity in view of the nature and aspects of the behavior in question, the worker's previous working record, etc. (fairness of

²² The judgment in the Tokyo Godo Jidosha Case (note 7) upheld the ordinary dismissal of a worker who, among other things, repeatedly sent documents claiming to have been forcibly admitted to hospital without the knowledge of his family. In the Maar Case (Tokyo Dist. Ct., March 16, 1982, 383 Rodo Hanrei 23), it was deemed that admitting a worker to a mental hospital and giving leave of absence with the consent of the worker's mother did not constitute an illegal act. On health privacy, Quarterly Labor Law (no. 209, 2005) has articles by Kishio Hobara ("Rodosha no Kenko Joho no Kanri ni tsuite [On the management of workers' health information]," 13), Ikuko Sunaoshi ("Rodosha no Kenko Joho to Puraibashi [Workers' health information and privacy]," 21) and Shigeya Nakajima ("Kenko Joho no Shori Katei ni okeru Horitsu Mondai [Legal problems in the course of processing health information]," 2).

the disciplinary action).²³

If the employer instigated disciplinary action based on the formal response above, there are two conceivable methods, namely judging (i) whether the fairness of the disciplinary action is denied, considering the nature of the worker's behavior, even if affirming its relevance as grounds for disciplinary action, and thereby deeming the disciplinary action invalid, and (ii) whether the relevance of the behavior as grounds for disciplinary action is itself denied, because the worker is acknowledged to have a mental illness. Similarly, if the employer adopts a flexible response and imposes light disciplinary action (Note that no dispute arises if a flexible response is adopted and no action is taken) but the validity of said action should also be denied, conceivable methods are (i) to affirm the relevance of the worker's behavior as grounds for disciplinary action, but when judging the fairness of the disciplinary action, denying its fairness in consideration of the worker's circumstances, the employer's response, etc., and (ii) denying the relevance of the behavior as grounds for disciplinary action itself.

In one recent court precedent, the relevance of the worker's behavior as grounds for disciplinary action was itself denied, and the conclusion was therefore drawn that direct disciplinary action was invalid.²⁴

(3) Positive Response

A flexible response is advantageous to the worker, in that no disciplinary action is suffered. To achieve the radical solution of treating the illness, however, the worker should be encouraged to undergo examination as soon as possible, and measures adopted in line with the examination result. When a worker is unaware of having an illness and therefore fails to undergo examination, it is conceivable that the illness will not be cured owing to a lack of treatment, but will instead advance with time, until the provision of labor will become completely impossible at any point in the future.

Based on this rationale, the "positive response" is one in which, when a worker's behavior could be subject to disciplinary action but is thought to be the product of mental illness, some measure is taken to achieve a shift from work to treatment, rather than taking disciplinary action.

This is in direct contrast to the rationale, stated under "formal response," that workers themselves should be responsible for their own health management, or the rationale that, out of respect for health privacy, employers should not interfere with workers' non-work related injury or illness.

An important statement on this point recently was made in the Supreme Court judgment on the Hewlett-Packard Japan Case.

²³ Sugeno, *supra* note 2, at 502.

²⁴ *Hewlett-Packard Japan Case* (Tokyo High Ct., Jan. 26, 2011), 1025 Rodo Hanrei 5. Supporting it, Hasegawa, *supra* note 18, at 130.

2. The Hewlett-Packard Japan Case

(1) Factual Background

Worker X, the plaintiff in this case, was a systems engineer working for the defendant, Company Y.

Due to a persecutory delusion or some other mental illness, X was convinced that his daily life was being monitored in minute detail by a group of perpetrators who had been spying or eavesdropping on him for about three years, and that he was being harassed through co-workers and others in the workplace, even though none of this existed in reality. As a result, he thought his work was being obstructed and felt a risk that information about himself could be leaked outside the company. He therefore asked Company Y to investigate.

The investigation produced no result satisfactory to X, and Company Y refused to grant leave and urged X to return to work. X now informed Company Y that he would not return to work until he was sure the problem had been resolved, then, after using up all of his paid leave, he remained absent from work for about 40 more days without giving any notice of absence.

As a result, Company Y invoked its work rules (“when a worker is frequently absent from work and takes unauthorized absence without good reason for 14 continuous days or more”) and asked X to resign.

X then requested confirmation of his contractual position, claiming Company Y’s disposition to be invalid.

(2) Judgment of the First Instance

The judgment of the first instance²⁵ ruled that there was no justifiable or unavoidable reason for X to continue his absence from work, and that the absence in this case constituted “unauthorized absence” in both form and substance.

In addition, in that the disposition in this case was within the socially acceptable range, of X’s claims, the claim for payment of wages from the day after the final judgment was dismissed as unlawful, in that there was no merit to be gained from the action, and the remainder were rejected.

(3) Study on the Judgment of the Second Instance

The judgment of the second instance²⁶ ruled that X’s absence from work could be said to constitute “a case in which, due to unavoidable reasons, it is not possible to give advance notice” in Article 63 of the company’s work rules, and that, as X could be deemed to have “used an appropriate method to communicate the absence to a supervisor,” it was not reasonable to treat it as unauthorized absence.

On Company Y’s response, the disposition in this case was judged invalid as it was

²⁵ Tokyo Dist. Ct. Jun. 11, 2010, 1025 Rodo Hanrei 14.

²⁶ Hewlett-Packard Japan Case, *supra* note 24.

not possible to acknowledge grounds for disciplinary action, in that (i) if X was suspected to have a mental illness, it would have been conceivable to encourage X directly or through X's family or Company Y's EHS (Environment Health and Safety division) to return to the workplace, or else to urge X to take leave of absence until he had recovered from the mental illness, and (ii) if no mental illness was recognized, it was deemed that X would not have remained absent from work if Company Y had adopted a response such as notifying X of the disadvantages of long-term absenteeism. The characteristic point here is that it was not the fairness of the disciplinary action but the relevance as grounds for disciplinary action that was denied.²⁷

As described below, the Supreme Court judgment embellished further and focused on the aspect of leave of absence in connection with a company's response when there is a suspicion of mental illness, as stated here in the judgment of the second instance.²⁸

(4) Study of the Supreme Court Judgment

The Supreme Court denied the relevance of X's absence from work as grounds for disciplinary action in this case, just as the judgment of the second instance had done. However, it differed in content from the latter, stating "It is expected that workers who are recognized as remaining absent from work due to this kind of mental illness will continue not to attend work as long as the mental illness persists. Given that the cause and background of the absence was as stated above, therefore, Company Y as the employer should have adopted a response including providing a medical examination by a psychiatrist (according to the records, Company Y's work rules appear to include a provision to the effect that, if deemed necessary, an employee can be given emergency medical examination), studying dispositions such as leave of absence after recommending treatment if necessary, based partly on the result of said examination, and watching future developments. However, Company Y did not adopt this kind of response, but imposed the disciplinary action of forced resignation, in that X's absence from work was immediately assumed to have been taken without permission and without good reason because the reason for X's failure to attend work was based on a fact that did not exist. This action by Company Y could hardly be described as an appropriate response by an employer toward a worker suffering from mental illness.

"In that case, under such circumstances, it can only be construed that X's absence from work did not constitute unauthorized absence without good reason, as grounds for disciplinary action prescribed in the work rules. As such, this disposition, which was imposed because said absence was deemed to constitute grounds for disciplinary action, lacks the grounds for disciplinary action prescribed in the work rules, and must therefore be declared invalid."

According to this judgment, in cases when a worker is recognized as remaining ab-

²⁷ Hasegawa, *supra* note 18, at 130.

²⁸ Iwade, *supra* note 15, at 117.

sent from work due to mental illness, it is deemed inappropriate for the employer to take disciplinary action without adopting a “positive response.” In its judgment on the validity of forced resignation imposed on a worker in this kind of condition, the Supreme Court could be said to have adopted neither (i) the position that workers themselves are responsible for their own health management, nor (ii) the position that employers should not interfere with workers’ non-work related injury or illness, out of respect for health privacy. This has had a huge impact on practice.²⁹

As introduced in I above, court precedents have appeared to the effect that the severe disposition of disciplinary dismissal is an abuse of discretionary powers, based on the fact that unauthorized absence is caused by mental illness but there is a strong suggestion that management personnel or others may well harbor doubts that it is based on free will. Meanwhile, another theory to emerge is that, if absence from work without good reason or unauthorized absence is caused by illness, the path toward examination and treatment should first be explored before taking severe disciplinary action.³⁰ This judgment can also be positioned within such a trend. For workers who could potentially suffer from mental health problems, this will serve to mitigate their anxiety.

The Supreme Court declared that “It is expected that workers who are recognized as remaining absent from work due to mental illness will continue not to attend work as long as the mental illness persists.” Although the judgment as to whether they are “recognized as remaining absent from work due to mental illness” will be differ slightly from case to case, even in such cases it could be seen as necessary for managers to acquire the skill to tell the difference. From the viewpoint of an employer who could be faced with workers suffering from mental health problems, it will mean tackling the major task of improving the relationship skills of management personnel and others.³¹ The content of this Supreme Court judgment has thrown up this kind of major issue, but its direction is felt to be a desirable one.³²

Incidentally, in this case, it was pointed out that Company Y’s work rules appear to include a provision to the effect that, if deemed necessary, an employee can be given emergency medical examination. Although companies without this kind of provision are also thought to exist, as will be stated below, under the present system of the Industrial Safety

²⁹ Iwade (*ibid.*) states “This is expected to have a serious impact on a par with the Katayamagumi Case (Sup. Ct., Apr. 9, 1998, 736 Rodo Hanrei 15).”

³⁰ Government/Japan Meteorological Agency Case (note 13). Iwade, *supra* note 15, at 118.

³¹ In particular, it has been pointed out that careful consideration is needed, since taking sick leave tends to produce various disadvantages in terms of wages, retirement pay, pay rises, etc.; moreover, that an appropriate response based on medical findings is normally required, and that if this requirement is not satisfied, the very fact of giving leave of absence is itself deemed illegal (Iwade, *ibid.*, 119).

³² As to how great a burden this places on the employer, it is not deemed to constitute an excessive burden, as employers often take disciplinary action after adopting this kind of response, e.g. recommending examination (Iwade, *ibid.*).

and Health Act, "Examination of the presence of subjective and objective symptoms" is included as an item of medical examination,³³ and symptoms arising from mental health illness are sometimes included in this.

This Supreme Court judgment is merely, after all, a judgment on disciplinary action. If, for example, this case was a case not of disciplinary action but of dismissal, would it still be considered difficult to say that taking measures such as dismissal, rather than adopting this kind of response, was appropriate as the employer's response against a worker suffering from a mental illness? Aside from the question of this judgment's relevance, we should watch closely to see whether similar statements will be made in future litigation on dismissal, etc.³⁴

3. Issues Emerging

Two problems can be extrapolated from the study above. Namely, (i) how employers should obtain medical corroboration and take appropriate measures when a worker appearing to suffer from mental illness does not volunteer for medical examination, and (ii) how to train management personnel in the skill of correctly judging cases in which a worker is "recognized as remaining absent from work due to mental illness" when no medical corroboration has been obtained. According to a survey by the Ministry of Health, Labour and Welfare, some employers do not understand how to tackle mental health problems.³⁵

So how do the existing law and administration deal with the problems outlined above?

III. Legal and Administrative Trends on Companies' Response to Workers Appearing to Suffer from Mental Illness

First of all, we need to review the Industrial Safety and Health Act, its draft amendment, and the Industrial Accident Prevention Plans produced by the administration based on the Industrial Safety and Health Act.

In Japan, the problem of how to protect workers' mental health has, in the main, been discussed in the form of a debate on the specific content of the obligation to consider safety. Employers are expected to discharge this obligation before the event, but only insofar as it

³³ Article 44, Ordinance on Industrial Safety and Health.

³⁴ Iwade, *supra* note 15, at 119. Considering the considerable impact of the judgment in the Katayamagumi Case (note 29) on the judgment in the JR Tokai Case (note 5), this seems highly likely to occur.

³⁵ See 12th Industrial Accident Prevention Plan (Feb. 25, 2013). See also Shigeki Shiiba, "Wagakuni no Mentaruherusu Taisaku no Genjo to Kadai [Current status and issues of mental health measures in Japan]," 456 Business Labor Trend 3 (Mar. 2013), and Masato Gunji, "Shokuba no Mentaruherusu Taisaku no Jittai: Anketo Chosa kara [Situation of mental health in the workplace: From a questionnaire survey]," 456 Business Labor Trend 14 (Mar. 2013).

concerns the relationship with their liability for compensation after the event.³⁶ This has become another reason behind delayed progress in the debate on primary prevention.³⁷ Once an attempt is made to consider early prevention of risks related to mental health problems in the broad sense, concern for safety and health as a basic element of labor law could expand into all kinds of environments and decisions involving labor relations.³⁸

Besides the Industrial Safety and Health Act, moreover, we also need to study a variety of trends in laws related to workers suffering from mental illness.

1. The Current Industrial Safety and Health Act

Article 66, paragraph 1 of the current Industrial Safety and Health Act obliges employers to give their workers regular general medical examinations. These examinations include “Examination of the presence of subjective and objective symptoms” (Article 44 of the Safety and Health Ordinance), and symptoms arising from mental health illness are sometimes included in this. Of course, specific methods are left to the judgment of the physician.³⁹ Employers are required to hear the opinion of a physician on necessary measures for maintaining the health of their workers based on the results of medical examinations (Article 66-4). Moreover, taking the physician’s opinion into consideration, and when they deem it necessary, employers must take measures including changing the location of work, changing the work content, shortening the working hours or reducing the frequency of night work, and other appropriate measures, considering the circumstances of the worker in question (Article 66-5).

If the physician entrusted with medical examination, on conducting mental health tests using an appropriate method, were to discover a mental health illness, appropriate measures could then be taken. However, it is unknown how often cases of this sort occur.

The Industrial Safety and Health Act provides that employers must endeavor to give health guidance by a physician or a health nurse for workers deemed particularly in need of efforts to maintain their health based on the results of medical examination (Article 66-7). There are some indications that many health nurses employed by businesses are involved in mental health education and the response to workers with mental health illness.⁴⁰

³⁶ Eri Kasagi, “Rodosha no Seishinteki Kenko no Hogo: Anzen Eisei no Shatei no Kakudai to Jogyoin Daihyo no Yakuwari ni Kansuru Ichishiron [Protecting workers’ mental health: An essay on expanding the range of safety and health and the role of employee representatives],” in *Rodohogaku no Tenbo* [Outlook for labor law studies], ed. Takashi Araki, Masahiko Iwamura and Ryuichi Yamakawa (Yuhikaku, 2013), 357.

³⁷ *Ibid.*

³⁸ *Ibid.*, 372.

³⁹ Makoto Iwade, “Mentaruherusu Kentokai Hokoku ni Miru Mentaruherusu Mondai no Kongo no Kadai [Future tasks for mental health problems based on the report by the study group on mental health],” 233 *Quarterly Labor Law* 19.

⁴⁰ *Ibid.*, 20. Article 66-8 of the Industrial Safety and Health Act stipulates that employers must provide face-to-face guidance by a physician for workers whose working hours or other conditions fall under one of the requirements specified in Ordinances of the Ministry of Health, Labour and Welfare

“On the Concrete Promotion of Provisional Measures for Mental Health” (Administrative Circular No. 0326002, issued March 26, 2009) stated that, when a mental health illness is ascertained during a medical examination, guidance and other assistance is to be given to ensure rigorous implementation of the follow-up measures in Article 66-5 and the health guidance in Article 66-7.

Again, Article 22 (x) of the Safety and Health Ordinance lists, among the matters to be discussed by Health Committees, “Matters relating to the establishment of measures for maintaining and improving workers’ mental health.” In response to this, the aforementioned Administrative Circular (i) cites rigorous implementation of investigation and deliberation by Health Committees or Safety and Health Committees as being among the important pillars of mental health measures in businesses, and (ii) highlights the importance of Health Committees in connection with formulating “Mental Health Promotion Plans.”⁴¹ As stated earlier, once an attempt is made to consider early prevention of risks related to mental health problems in the broad sense, concern for safety and health as a basic element of labor law could expand into all kinds of environments and decisions involving labor relations. And for the very fact that this is a problem with such breadth of relevance, there is considerable importance in labor-management dialog aimed at exchanging information and identifying problems related to stress in the workplace, and raising problems from the standpoint of workers. In that sense, the role that could be played by Health Committees is significant. However, legal provisions on the involvement of Health Committees and others relate only to “deliberation” (Industrial Safety and Health Act, Article 17 onwards); the authority to investigate and the effects of failing to deliberate are not made clear. Moreover, reports to the Committee in the event of a problem are basically left to the company’s arbitrary decision (see Article 66-5, paragraph 1 and Article 66-8, paragraph 5 of the Industrial Safety and Health Act). In reality, the roles played by these organizations could probably not be described as large.⁴²

2. Draft Amendment of the Industrial Safety and Health Act

Next, let us ascertain the government’s aims for mental health maintenance and health privacy by studying the draft amendment of the Industrial Safety and Health Act. The draft amendment was scrapped with the dissolution of the Lower House of Representatives in 2012. As of September 2013, the intention was to brush it up and re-submit it to the Diet, but studying the scrapped draft amendment may reveal something of the government’s

with a view to maintaining the health of workers. Article 66-9 of the Act provides that employers must also endeavor to take necessary measures, as provided for in Ordinances of the Ministry of Health, Labour and Welfare, for other workers whose health requires consideration.

⁴¹ Kasagi, *supra* note 36, at 372. See also Takashi Haratani, “Kokoro no Kea: Shokuba ha Nani wo Shitara Yoika [Care of mental health: What should workplaces do?],” 456 Business Labor Trend 9 (Mar. 2013), Shiiba, *supra* note 35, 5.

⁴² Kasagi, *supra* note 36, at 373.

aims.

In the draft amendment, the proviso “(except when pertaining to the state of mental health; the same shall apply hereafter in this Article and in the following Article)” was to be added after “medical examination” in Article 66, paragraph 1 of the Act. A new Article 66-10 would be added to the Act, stating in paragraph 1 that “The employer must provide workers with a test by a physician or a health nurse to ascertain the state of the worker’s mental health, as provided for by Ordinances of the Ministry of Health, Labour and Welfare.” Following this, paragraph 2 specified the worker’s obligation to undergo this test, while paragraph 3 provided for the employer’s obligation to ensure that the test result would be notified to the worker by the physician or health nurse conducting the test, and the obligation of the physician or health nurse not to divulge the test result to the employer without the worker’s consent. With this, workers would obtain medical information about their own mental health, they would be made aware that they were suffering from a mental illness, and a path through which they could willingly undergo examination would be created. However, the test results would not be disclosed to the employer; thus, it could be said, workers’ privacy would be protected.⁴³

The remainder of the Article from paragraph 4 onwards focuses on the worker’s request to the employer for face-to-face guidance from the physician, stipulating that, if a worker who has received the notification of the test result in paragraph 3 wishes to receive face-to-face guidance from a physician and makes a request to the employer to this effect, the employer must provide face-to-face guidance by a physician, hear the physician’s opinion on necessary measures for maintaining the worker’s health based on the results of the guidance, and when deeming it necessary, take measures including changing the location of work, taking the physician’s opinion into consideration.⁴⁴

3. Industrial Accident Prevention Plans

Attempts to resolve the problem of poor knowledge by management and workers on the response to workers suffering from mental illness can be found in the government’s Industrial Accident Prevention Plans.

The 12th Industrial Accident Prevention Plan, announced by the Ministry of Health, Labour and Welfare on February 25, 2013, addresses mental health measures as one of its topics. The Plan sets the target of “Increasing the proportion of businesses tackling mental health measures to 80% or more by 2017,” and actually describes the directions for this area as being “To promote self-care by the workers themselves, while also promoting education,

⁴³ Keiichiro Hamaguchi, “Rodoho no Rippogaku: Mentaruherusu no Rodoho Seisaku [Legislative Studies of Labor law: Labor Law Policy on Mental Health],” 232 *Quarterly Labor Law* 167 (2011).

⁴⁴ *Ibid.* See also Itaru Nemoto, “Mentaruherusu oyobi Judo Kitsuen Boshisaku to Rodoho [Mental health, passive smoking prevention measures and labor law],” 1057 *Horitsu Jiho* 43, Takenori Mishiba, *An-Ei-Ho Kaisei no Tenbo* [Prospects for amendment of the industrial safety and health act] (Rodo Chosakai, 2011), and Shiiba, *supra* note 35, at 8.

training and information provision to managers, supervisors and workers by employers.” It also states “Since some businesses say they do not know how to tackle this issue, support measures enabling employers to make such efforts will be enhanced. Steps will be taken to strengthen support for small-scale businesses, in particular.” A collection of case studies will be compiled, and “The collected examples of workplace reinstatement support will be analyzed, and a model program for workplace reinstatement support in line with business scale and other factors will be created.” Finally, “As well as promoting efforts such as stress checks to encourage workers’ self-awareness of stress, attempts to develop systems of consultation within businesses will also be promoted.”

If this Plan comes to fruition, the number of management personnel and workers with sufficient knowledge on mental health increases, and any incidents occurring can be handled accurately in line with the model, early awareness and appropriate response will become a possibility.

4. Amendment of the Act on Employment Promotion, etc. of Persons with Disabilities

As described above, in terms of the Industrial Safety and Health Act, an adequate response cannot be said to have been adopted for two of the issues; but on the problem of poor knowledge by management and workers on the response to workers suffering from mental illness, an important factor that could influence the solution has appeared. This is the “Act for Partial Amendment of the Act on Employment Promotion, etc. of Persons with Disabilities,” which was passed during the Diet session in 2013.

(1) Revised Basis for Calculating Legal Minimum Employment Rates

The Act for Partial Amendment of the Act on Employment Promotion, etc. of Persons with Disabilities (Law No. 46 of 2013) has added workers with mental illness to the basis for calculating legal minimum employment rates (with effect from April 1st, 2018). Until now, the disabled employment rate has been calculated using the total number of physically disabled and mentally disabled workers as the basis for calculation. But with this amendment, the rate will be calculated using the total number of physically disabled, mentally disabled and mentally ill workers as the basis for calculation. Once the Act comes into effect, employers will have to ensure that the number of physically disabled, mentally disabled and mentally ill workers they employ will be no less than a figure obtained by multiplying their total number of workers by the new disabled employment rate (Article 43 paragraphs 1 and 2).

According to media reports, the Labour Policy Council’s Sectoral Committee in the Ministry of Health, Labour and Welfare judged the outline of the draft amendment to be “generally satisfactory” on March 21, and as a result, the principle of mandatory employment of the mentally ill from April 2018 was decided. Various media reported that “The objects of mandatory employment under current law are the physically disabled and men-

tally disabled, and employers are permitted to be include their employment of mentally ill workers within the legal minimum employment rate. With the mandatory employment of mentally ill workers from FY2018, the legal minimum employment rate is expected to rise by several tenths of a point. However, considering the period needed for companies to prepare, etc., measures to protect against sudden change are also incorporated to ensure the flexible operation of the system, in case the government's corporate support measures are inadequate." Another comment was that "This draft amendment could rapidly accelerate the creation of an environment for employing the mentally ill and accepting them in the workplace."⁴⁵

Given the mandatory employment of workers with mental illness, it is certain that workplace environments for accepting them will now be rapidly developed, understanding of the response to mentally ill workers will intensify among management and workers, and experience will be accumulated following acceptance. With this, skills in responding to mental illness and workers who appear to be suffering from them will also be honed. With discussion underway on broadening the definition of "disabled persons" in the Act, future trends will be under scrutiny.⁴⁶

(2) Moves to Ratify the Convention on the Rights of Persons with Disabilities

Japan signed the Convention on the Rights of Persons with Disabilities in 2007, and in response to this, the Basic Act for Persons with Disabilities (Law No. 84 of May 21, 1970) was amended (latest amendment, Law No. 90 of August 5, 2011). The contents of the Convention and the Amendment of the Basic Act have spurred reforms of the legal system concerning employment of the disabled.⁴⁷

In the area of Work and Employment (Article 27), the Convention is deemed to guarantee and promote the materialization of disabled rights through a variety of appropriate measures. These include promoting employment in the public and private sectors (1[g][h]), as well as (i) prohibiting discrimination with regard to all matters concerning all forms of employment (including conditions of recruitment, hiring and employment, continuance of employment, career advancement and safe and healthy working conditions) (1[a]), (ii) protecting the right to just and favorable conditions of work, safe and healthy working condi-

⁴⁵ Evening edition page 1, *Nihon Keizai Shimbun*, Mar. 21, 2013 and Morning edition society page, *Nihon Keizai Shimbun*, Mar. 22, 2013, etc.

⁴⁶ As relevant literature, Hitomi Nagano, "Shogaisha Koyo Seisaku ni okeru Shogaisha no Han'i: Furansu ni okeru Shogai Nintei Seido wo Tsujita Kisoteki Kento [The range of disabled persons in disabled employment policy: Basic study based on the French system of disability certification]," in *Rodohogaku no Tenbo* [Outlook for labor law studies], ed. Takashi Araki, Masahiko Iwamura and Ryuichi Yamakawa (Yuhikaku, 2013), 79.

⁴⁷ Masao Karimata, *Shogaisha Koyo to Kigyo Keiei* [Disabled employment and corporate management] (Akashi Shoten, 2012), 46, and Fumiko Obata, "Shogaisha no Rodo Anzen Eisei to Rosai Hoshou [Industrial safety and health and industrial accident compensation for the disabled]," in *Rodohogaku no Tenbo* [Outlook for labor law studies], ed. Takashi Araki, Masahiko Iwamura and Ryuichi Yamakawa (Yuhikaku, 2013), 389.

tions, and the redress of grievances (1[b]), and (iii) ensuring that reasonable accommodation is provided in the workplace (1[i]).⁴⁸

The latest amendment, therefore, included provisions prohibiting discrimination against disabled workers in recruitment, hiring, remuneration and others (Articles 34 and 35); obliging employers to provide reasonable accommodation by preparing the facilities necessary for smooth execution of work, in consideration of the nature of the disability, assigning workers to provide assistance, and devising other measures, etc., while respecting the wishes of disabled workers (Articles 36-2, 36-3 and 36-4); providing advice, guidance and recommendations from the Minister of Health, Labour and Welfare (Article 36-6); and establishing a system of resolving disputes (Articles 74-6, 74-7 and 74-8).

The fact that reviews on reasonable accommodation of the mentally ill will be promoted in the workplace means that the skill of those in the workplace to correctly judge workers who appear to be suffering from mental illness will be improved.

(3) Effect on Problems Related to Workers Who Appear to Suffer from Mental Illness

Of the three characteristics of workers suffering from mental illness highlighted in I above, in the relationship between the first characteristic (that they behave abnormally and violate the corporate order) and the second characteristic (that there may be no self-awareness of illness and no attempt made to have it examined, and therefore medical information is not always known), the Amendment of the Act on Employment Promotion, etc. of Persons with Disabilities will provide a stimulus for employers to acquire the skill to correctly judge that a worker's violation of the corporate order is caused by mental illness, and even when no medical information can be obtained, to judge the existence of the illness and respond appropriately.

It is of course possible that, immediately after mentally ill workers have started to be accepted, problems will arise due to their inexperience, and this could cause a backlash from coworkers. However, once they have grown accustomed to the sight of mentally ill workers harnessing their individuality to contribute to the organization, those workers will change from a distant presence to a familiar one. This change of awareness, seen in the long term, should also mitigate their behavior in trying to hide that they are suffering from mental illness. This in turn will reduce the employer's difficulty in responding, which, of the three characteristics of workers suffering from mental illness mentioned in I above, derives from the third characteristic (that, out of fear of prejudicial treatment, they sometimes try to conceal the fact that they have an illness or are being treated for it).

⁴⁸ Karimata, *supra* note 47, at 63, and Ryosuke Matsui and Satoshi Kawashima, eds., *Gaisetsu Shogaisha Kenri Joyaku* [Summary of the convention on the rights of persons with disabilities] (Horitsu Bunkasha, 2010), 345.