
Labor Mobility and Employment Policy

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This paper discusses issues of employment policy based on the viewpoint that the labor market should be made more flexible, in order to halt the polarization of regular and non-regular employees and to achieve labor mobility to growth industries without problems of unemployment. To this end, the author will trace the evolution of employment policy concerning the organization of the labor market. Taking the harsh employment environment after World War II as a starting point, it will be shown that efforts to tackle immediate issues could be said to have developed into a basic system, and that the external labor market was insufficiently developed due to improvements in the employment environment caused by corporate labor demand in the period of high-level economic growth. As Japanese-style employment practices became established, fluidity between the internal labor market comprising regular employees and the external labor market comprising non-regular employees was impaired. As a result, even at the stage of employment adjustment by companies, there was no alternative but to choose policies that supported the maintenance of employment by companies rather than supporting labor mobility. In this sense, the task at hand is to improve the current working format of unrestricted regular employees, or in other words, to reform regular employment. Future employment policy should include measures such as supporting the introduction of restricted regular employment systems and making use of agency business by increasing the flexibility of worker dispatch systems.

I. Introduction: Locating the Problem

Currently, achieving a labor market that can respond with smooth labor mobility without causing unemployment has been highlighted as a policy task within the growth strategy of the Abe administration. Meanwhile, a report by the Council for Regulatory Reform Employment Working Group (May 14, 2013) advocates “human mobility,” as a major target of employment reform, to encourage people who have hope and make positive movements of their own volition.¹ This idea is premised upon the perception that Japan’s current labor market lacks the flexibility to achieve the necessary labor mobility. Certainly, the current employment situation is polarized between regular employees who are forced into unrestricted working formats (including long working hours) in return for stability of employment, and non-regular employees who have difficulty in achieving economic independence and also have dim prospects for the future. An important task in employment policy will be to overcome this situation through suitable labor mobility.

¹ Although the author is also a member of the Employment Working Group, it should be stressed that the opinions expressed here are purely personal ones. Meanwhile, many studies have already been conducted on the issues in this paper, but citations will be kept to a minimum.

The stated purpose of employment policy in the first place is to promote a balance between labor supply and demand by appropriately manifesting the functions of the labor market, and to enable workers to make effective use of their abilities. This will create employment security for workers and improve their socio-economic status, as well as contributing to economic and social development and the achievement of full employment (Article 1 of the Employment Measures Act). But the current situation is far removed from full employment. Indeed, many of today's non-regular employees are close to the state of underemployment once targeted as an issue to be overcome by employment policy after World War II. Although underemployment was eliminated amid high-level economic growth during this period, the expansion of growth industries with large employment absorption capacity is less in evidence today. As such, providing employment security for non-regular employees can only be seen as a more difficult task than it was in those days. Problems of youth employment were surely not discussed so seriously back then. A new employment policy befitting the present situation needs to be developed.

The task of this paper is to study directions for employment policy necessary to achieve the labor mobility demanded of the labor market today, based on the above problem awareness and with a view to achieving full employment. To approach this task, the author will first look back briefly at how the labor market was organized by employment policy after World War II. This is because, although a situation close to full employment was achieved under high-level economic growth, it may be possible to obtain hints for studying employment policy today by looking at the functions served by employment policy in the process leading to polarization of the labor market amid subsequent changes in the economic environment. Secondly, problems faced by Japan's labor market will be enumerated. By doing so, it will become clear that the current lack of fluidity between external and internal labor markets derives from Japanese-style employment practices. And thirdly, the author will present specific tasks for employment policy in the short term, with a view to making the labor market more flexible so that labor mobility support measures can function.

II. Employment Policy and Organization of the Labor Market until Now

As the premise for studying future employment policy issues, the author will first give an overview of the organization of the labor market via the development of employment policy after World War II. In doing so, the period in question will be divided into three segments: from the aftermath of World War II until the start of high-level growth, from the period of high-level economic growth until the 1st oil crisis, and the period subsequent to that.

1. From the Aftermath of World War II until the Start of High-Level Growth

After World War II, Japanese society faced a situation of mass unemployment and national starvation. In this period, the basic framework for organizing the labor market was

formed, with the elimination of national subsistence insecurity as its most pressing concern. The following is a brief overview of that period, aided by reference to Shojiro Ujihara's work.²

With the national economy reeling from a devastating blow at the end of World War II, it became a basic task for employment and unemployment measures to secure minimum levels of subsistence for the people. This would be done by creating employment opportunities through economic reconstruction, increasing the supply of consumer requisites, and so on. As specific measures for the labor market, the aim was to organize the labor market with a view to achieving labor mobility in the process of industrial reorganization from military production to a focus on consumer requisites, and to achieve livelihood security for the unemployed and underemployed.³ Turning attention to the organization of the labor market, the Employment Security Act and Unemployment Insurance Act were enacted in 1947, and the basic framework was now in place. Of course, at the time, no adequately functioning conditions were yet in place, as shown by the fact that many unemployed persons and persons in unstable employment were receiving welfare. Even then, Public Employment Security Offices were starting to be developed under the Employment Security Act, and in tandem with the unemployment insurance system, the "institutional foundation for employment policy" was formed.⁴

Moreover, in response to the massive personnel restructuring arising from the deflationary policy based on the Dodge Plan at this time, the Emergency Unemployment Measures Act was enacted in 1949. This had the aim of providing temporary employment for the unemployed until they could find new jobs. Of course, this led to an influx of middle-aged and older workers who had difficulty in finding re-employment, self-employed workers who had trouble making ends meet, women with no previous employment, and others, all of whom were not originally planned to be covered by the measures but then became stagnated in unemployment countermeasure businesses.⁵

2. The Period of High-Level Economic Growth

In this period, achieving full employment became the concrete policy target, while eliminating the massive underemployment that existed at the time (i.e. latent unemployment) became an important task. On this point, the 1960 concept of a "Plan to Double the National Income" played an important role. In terms of employment policy, this Plan has been appraised as "eliminating the state of underemployment, narrowing the income gap, ... and creating preconditions for full employment by inducing a reorganization of industrial structure toward an expansion of heavy chemical industries and other high-productivity

² Shojiro Ujihara, *Nihon Keizai to Koyo Seisaku* [The Japanese economy and employment policy] (Tokyo: University of Tokyo Press, 1989).

³ *Ibid.*, 4.

⁴ *Ibid.*, 15.

⁵ *Ibid.*, 9ff.

sectors, filling the employment demand that arises there by transferring low-income underemployed workers who were stuck in primary industries, small and micro business sectors in secondary industries, commercial and service sectors in tertiary industries, etc., and raising the productivity of these low-productivity sectors.”⁶ Thanks to high-level economic growth, underemployment was basically eliminated in the 1970s. This enabled workers to achieve economic independence through employment, while welfare and other social security now mainly targeted the elderly, disabled and others who could not participate in employment relationships. In other words, steps were taken to separate employment from social security.⁷

High-level economic growth required large-scale labor mobility associated with the burgeoning demand for manpower and changes in the industrial structure. This need was met through the provision of large numbers of new graduates in the population structure of the time. As Ujihara points out, “This workforce had the potential to enter a wide range of professions, because labor mobility between regions was easy as they were single and also because they had not yet experienced any profession, and moreover had a high level of adaptability to new technologies and new production methods because they had good educational backgrounds.”⁸ Vocational guidance and job introductions by schools and Public Employment Security Offices served a major function in this labor mobility.

During this period, in addition to general employment measures, a special employment policy was adopted for those who became “structurally unemployed” amid the transition of industrial structure. These included ex-workers of armed forces stationed in Japan, former mine workers, middle-aged and older workers who had left their jobs, and migrant workers from farming households.

The basic framework of a positive employment policy was laid down in the process leading up to this period of high-level economic growth. This consisted, firstly, of a Keynesian aggregate demand management policy; secondly, general employment measures such as providing job information, vocational guidance and training, development of unemployment insurance, etc.; thirdly, special employment measures for structural unemployment; and fourthly, livelihood security for the unemployed through unemployment insurance.⁹ The stated purpose of the 1966 Employment Measures Act was “for the national government to promote a balance in terms of both quality and quantity between labor supply and demand throughout its policies, as well as to enable workers to make effective use of their abilities by comprehensively taking the necessary measures for employment, thereby creating employment security for workers and improving workers’ economic and social

⁶ *Ibid.*, 26–27.

⁷ Yoichi Shimada, “Hinkon to Seikatsu Hoshō: Rodōho no Shiten kara [Poverty and livelihood security: From the perspective of labor law],” *Journal of the Japan Labor Law Association*, no.122 (2013): 103.

⁸ Ujihara, *supra* note 2, at 30.

⁹ Ujihara, *supra* note 2, at 37–38.

status, as well as contributing to the balanced development of the national economy and economic and social development and the achievement of full employment.” As this reveals, the purpose was to formulate and materialize employment plans closely related to economic plans.

Of course, companies in this period were actively hiring new graduates on the presumption of continuing upward growth. As a result, an external labor market that would support workers’ labor mobility was not developed.

3. Since the 1st Oil Crisis

In the period of high-level economic growth, the fact that unique employment relationships that came to be known as Japanese-style employment practices had been formed in companies had a major impact on employment policy after the 1st oil crisis. As already shown above, labor demand in the period of high-level economic growth was mainly filled by new graduates. Partly because of this, companies did not hire workers who had the special vocational skills they needed, but rather those with general job adaptability, and then set out to train them in vocational skills. As a result, the scope of workers’ job duties remained opaque and was entrusted to workplace practices; the employment relationship had only a very slight contractual element.¹⁰

Then, systems whereby wages would also rise in accordance with seniority were adopted, and schemes for promoting long-term employment were formed via systems of lump-sum retirement payments, etc. Meanwhile, companies also came to pay family allowances and others of the type often paid as social benefits in continental Europe. Generous systems of employee welfare were adopted by the larger companies, while labor-management relations were managed by individual company unions. These factors produced workers with a high level of loyalty to their companies.

This “community”-based formation of corporate employment relationships gave rise to a lack of fluidity between external and internal labor markets (companies).¹¹ In this kind of situation, maintaining their status became the logical choice for regular employees, as the constituent members of a company.

The 1st oil crisis in 1973 ended high-level economic growth worldwide. In Japan, too, large-scale personnel reductions were undertaken in the name of belt-tightening (mainly in manufacturing industries). In this kind of situation, maintaining the employment of regular employees who were union members became the most important issue for company unions.

In employment policy, too, as employment shrank, the priority turned to supporting the maintenance of employment by companies, because there was no flexibility between the

¹⁰ This point has been covered by many studies, and an excellent recent analysis can be found in Keiichiro Hamaguchi, *Wakamono to Rodo* [Youth and labor] (Tokyo: Chuo Koron Shinsha, 2013).

¹¹ Yoichi Shimada, “Seishain to Hiseishain no Kakusa Kaisho ni Nani ga Hitsuyo ka [What must be done to eliminate disparity between regular and non-regular employees?],” *Sekai* (October 2008): 174.

external labor market and companies. In 1974, the Unemployment Insurance Act was radically amended and re-enacted as the Employment Insurance Act. In it, three undertakings including improvement of employment were established as measures to improve employment and unemployment insurance, as well as preventing unemployment. In essence, though, the direction of supporting the maintenance of employment by companies can be said to have been reinforced. Employment adjustment benefits (as they were then, or, from 1981, “employment adjustment subsidies”) are a typical example of this. Employment adjustment benefits were partially paid as leave allowance to companies adopting shutdown measures as a way of avoiding dismissals in the process of employment adjustment. Although this may be appraised as a reasonable policy judgment designed to eliminate employment uncertainty in the short term, it has to be said that the limits of its effectiveness were not sufficiently understood. Of course, measures like the system of employment adjustment subsidies function effectively when a company subject to support for maintaining employment recovers its own ability to absorb employment.¹² Therefore, in a period when there were prospects for a transformation of the industrial structure, an environment that could encourage labor mobility within the labor market also had to be formed at the same time.

Before this external labor market could be sufficiently developed, however, companies started to limit their hiring of regular employees, and instead came to use many more part-time workers and other non-regular employees, i.e. workers with fixed-term contracts. Unlike regular employees, non-regular employees were not made full members of the company as a community, but were regarded as manpower procured temporarily from the external labor market. Their conditions were also formed under separate principles to those of regular employees. But as long as the focus of non-regular employment was on labor as secondary support for household incomes, this was not perceived as a particularly serious problem in terms of employment policy.

4. Summary

Until the start of high-level economic growth after World War II, the Unemployment Insurance Act and Employment Security Act had been enacted, Public Employment Security Offices had been developed, and the basic framework for organization of the labor market had been formed. In the economic environment of the time, however, it was not possible to provide employment enabling workers to be economically independent, or to reduce the vast numbers of underemployed and unemployed persons. In this period, unemployment countermeasure businesses that gave the unemployed temporary employment opportunities produced large numbers of stagnant workers, and performed a function contrary to their policy objective.

¹² On this point, see Yoichi Shimada, “Kigyonai no Misumacchi to Kaikoken Ranyo Hori [Employment mismatch and the doctrine of abusive dismissal],” *The Japanese Journal of Labour Studies*, 54, no. 9 (2012): 51–52.

Industrial expansion in the period of high-level economic growth gradually absorbed ever-larger numbers of underemployed persons, and large numbers of new graduates supported this labor demand. The basic framework for employment policy was also set down in this period. It consisted of (i) aggregate demand management policy, (ii) general employment policy, (iii) special employment policy and (iv) unemployment measures. Meanwhile, Japanese-style employment practices were established, companies came to be organized as “communities,” and a labor market with weak fluidity between external and internal labor markets was formed.

The response to unemployment uncertainty after the 1st oil crisis was that, as shown typically in the creation of employment adjustment benefits, a policy to support the maintenance of employment by companies was adopted. But even after that, no measures to promote greater fluidity between the internal and external labor market were developed.

To survey the organization of the labor market under the employment policy until then, we may conclude that, although a basic system had been developed, its functions were not adequate. The emergence of a situation close to full employment in the period of high-level economic growth was dependent on labor demand. In this period, Japanese-style employment practices in which companies were organized as communities became established without any direct relationship to employment policy. Subsequent employment policy supported the maintenance of employment by companies.

The 1998 amendment of the Employment Insurance Act established “Educational Training Benefits” directly supporting workers’ own efforts to acquire vocational skills. These were the green shoots of a new employment policy that differed from conventional support measures for maintenance of employment by companies. Then, under the 2001 amendment of the Employment Measures Act, the purpose of employment policy was redefined as being “...for the national government to facilitate proper functioning in the labor market in order to strike a balance in terms of both quality and quantity between labor supply and demand, as well as to enable workers to make effective use of their abilities by comprehensively taking the necessary measures for employment in response to the demographic changes caused by the declining birthrate and the aging of the population as well as other changes in economic and social circumstances, thereby creating employment security for workers and improving workers’ economic and social status, as well as contributing to economic and social development and the achievement of full employment” (Article 1). As such, it was confirmed that the functions of the labor market would be prioritized, and it was clear that maintenance of employment by companies was not the only mainstay of employment policy.

Besides these, the Human Resources Development Promotion Act stated, as its basic principle, that “In view of the fact that having workers exercise their abilities effectively throughout the entire period of their vocational lives is indispensable for their security of employment and an improvement of their status and will constitute a basis for the development of the economy and society as a whole, the development and improvement of human

resources pursuant to the provisions of this Act shall, as a basic principle, be carried out systematically by stages throughout the entire period of workers' vocational lives, while giving due consideration to their vocational life planning, so as to make them more adaptive to changes in their duties caused by changes in industrial structures, advances in technology, and other changes in the economic environment, and to contribute to their smooth reemployment in the case of job transfers" (Article 3). The rationale of workers "exercising their abilities effectively throughout the entire period of their vocational lives" can be seen as being premised upon the fact that employment policy should aim for a flexible labor market conditional upon labor mobility, rather than support measures for maintenance of employment in companies.

However, the specific evolution of employment policy still remained inadequate, in terms of the increased flexibility of the labor market.¹³ Seen in this light, the development of an employment policy that positively organized the labor market in the true sense had already been achieved as a legal doctrine of employment policy, but steps to put it into practice must be regarded as a new issue.

III. Increased Flexibility of the Labor Market and Issues for Employment Policy

1. Problems Facing Japan's Labor Market

If the target of employment policy is to achieve full employment, the present situation could be described as far divorced from that. The days when it was taken for granted that new graduates would first embark on their careers as regular employees are now in the past; now, young people are increasingly starting their vocational lives as non-regular employees, without originally intending to. The ratio of non-regular employees was around 20% in 1990 but had risen sharply to 36.7% by 2013. Viewed by age group, similarly, the increase is particularly marked among males aged 15 to 34. For a growing section of the population, moreover, the income of non-regular employees is no longer supplementary to the household income, but has become the main source of income. According to the 2011 General Survey on Part-time Workers, the ratio of workers who live mainly on income from part-time labor has risen to 29.5% (males 61.4%, females 15.9%). By contrast, regular employees remain stable from the viewpoint of maintaining employment, at least in medium-sized or larger companies, but they are forced to work long hours without restriction on the place of employment or the job content. Indeed, they could be described as "unrestricted regular employees." A polarization of the labor market has taken place.

Previously, unrestricted regular employment was a working format that was tolerated in exchange for long-term employment security, at least. In recent years, however, unre-

¹³ Of course, it is a fact that, in the external labor market, employment measures in support of labor mobility were gradually enhanced during this time, including job cards and labor mobility support subsidies.

stricted working formats with no guarantee of long-term employment have become prevalent in some companies. Concrete manifestations of this include an increase in power harassment and the problem of “black companies” (sweatshops).¹⁴ From that viewpoint, too, a need could be seen to improve unrestricted working formats.

Therefore, both regular and non-regular employees are facing problems that cannot be overlooked. Even if the capacity to absorb employment existed, it would not be acceptable for non-regular employees to be absorbed as unrestricted regular employees in their present state.

This current situation also entails numerous problems from the viewpoint of employment in a society with a declining birth rate and aging population. The working format of unrestricted regular employees is difficult to balance with childcare, and this causes women to abandon hope of continuing their employment. And even when a woman who has temporarily left her job wants to return to work after the childcare period, it is difficult to acquire the status of a regular employee. Moreover, unrestricted working formats make it difficult to raise children while remaining in employment. While the Child Care and Family Care Leave Act provides for a system of supporting childcare while working, these are difficult to use when employed in unrestricted working formats. In unrestricted working formats, the scope of each worker’s job duties is unclear; therefore, if workers take leave, are absent or work short hours, it is highly likely to impact their colleagues’ work volume. With this as a background factor, taking leave for childcare has recently led to a lack of understanding by coworkers, as illustrated by the phrase “maternity harassment.” Without developing an employment environment that offers a work-life balance, no progress can be expected in the employment of women; and there can surely be no prospect of reversing the trend toward declining birth rates, either.

These problems may be seen as a manifestation of deficiencies inherent in Japanese-style long-term employment practices formed in Japanese companies from medium-sized and up. These employment practices were originally established among male regular employees on the premise of gender-based job division amid the upward growth of the Japanese economy, and cannot be taken as an employment model for the future. What is required of employment policy from now on is to overcome the problems inherent in Japanese-style employment practices, and to increase the flexibility of a polarized labor market. Absorbing women into the labor market over the long term by converting current non-regular employees to stable employment and increasing employment with work-life balance could be seen as the labor mobility that should be pursued by employment policy today.

Therefore, its aims should be to transform the basic structure of employment society, rather than just patching up the holes appearing in it. This would amount to a reform of regular employment.

¹⁴ As pointed out by Hamaguchi, *supra* note 10, at 217ff.

2. Specific Tasks for Future Employment Policy

As specific tasks for the time being with a view to reforming regular employment, one could propose supporting the creation of regular employment systems in which the scope of work, working hours, place of employment and other aspects are restricted (restricted regular employees), reforming regulations on human resource business, and strengthening safety nets, including enhancement of vocational skill development. Here, the issues of restricted regular employees and worker dispatch will first be considered.

In order to reform regular employment, a core segment of Japan's employment system, the specific policy for this and the processes used to achieve it will be extremely important. In terms of policies that support labor mobility, the issue of easing regulations on dismissal is occasionally proposed.¹⁵ For sure, dismissal regulation effectively obliges employers to maintain employment within a reasonable range, and consequently has the function of suppressing labor mobility. However, it would not necessarily be appropriate to speak of easing dismissal regulation without first preparing conditions that would support greater flexibility in the labor market. In the following, after briefly touching on dismissal regulation, the specific tasks mentioned above will be discussed.

(1) Greater Flexibility of the Labor Market and Dismissal Regulation

Without developing a labor market in which dismissed workers' lives are secure during the period of unemployment and they can find new jobs in a short time, relaxing dismissal regulation would place workers in a harsh situation. In the post-Lehman recession, the inadequate preparation of an external labor market meant there was no option but to adopt a realistic response of relaxing the conditions for paying employment adjustment subsidies and supporting companies in their maintenance of employment. Also, the need to stabilize workers' employment made it essential that companies should be prevented from making easy dismissals through opportunistic behavior. Moreover, even in Denmark, a country with more relaxed dismissal regulation, a flexible labor market has been formed by means of positive labor market policies. In other words, the formation of a flexible labor market with easy labor mobility should be seen as an essential requirement for relaxing dismissal regulation; relaxing dismissal regulation would not in itself make the labor market more flexible.

Furthermore, it should be borne in mind that Japan's substantive regulation on dismissal was formed through the doctrine of legal precedent. The doctrine on abuse of dismissal rights is currently incorporated in the Labor Contract Act, and is now statute, but its rules still retain the characteristic that they are based on legal precedent. This means that dismissal regulation was not developed as an embodiment of employment policy. As a national legislative policy, dismissal regulation has been entrusted to the judiciary without any special measures being taken. And the doctrine on abuse of dismissal rights reflects practic-

¹⁵ On this point, see Shimada *supra* note 12, at 52ff.

es related to the termination of employment that were raised within Japanese-style employment practices. What's more, these are abstract provisions demanding that dismissal be based on "objectively reasonable grounds" and "appropriateness in general societal terms" (Labor Contract Act, Article 16). The interpretation of their specific application has been left to the judgement of judges, based on the accumulation of judicial precedents to date. Judges make their judgements by applying the specific facts of a case under their jurisdiction to abstract norms. Therefore, there will be no great change in the principle of legal precedent, in that the current unrestricted regular employees constitute the premise. In other words, the nature of the employment relationship in question forms the basis for judgment.

Considering the above as a premise, it cannot be seen as appropriate to start a discussion by revising dismissal regulation, even if greater flexibility of the labor market is targeted as a support measure for labor mobility.¹⁶

(2) Support for Creation of Restricted Regular Employment Systems

Restricted regular employees are those who have no fixed term stipulated in their labor contracts, but whose work duties, place of employment or working hours are restricted in labor contracts. Since the scope of their duties in the broad sense is clear, they could also be called "job-type regular employees." This is an attempt to reform regular employment by newly introducing systems of restricted regular employment into regular employment, comprised until now of the unrestricted regular employees mentioned above. Reform of regular employment cannot be achieved through policy development in the external labor market, as with ordinary employment policy, and deep inroads need to be made into corporate personnel systems, i.e. the internal labor market. As stated above, this is because the current system of regular employees was formed within Japanese-style employment practices. Nevertheless, it is a system created autonomously by companies, and as far as employment policy is concerned, the only option lies in indirect means of supporting the introduction of restricted regular employment systems. As employment policy, firstly, information including system design for diffusing restricted regular employment systems needs to be provided. After that, the legislation necessary to support restricted regular employment systems will need to be developed.

(i) Outline of the Framework of Restricted Regular Employment Systems

Regular employment until now, called "membership-type employment" in contradistinction to job-type employment,¹⁷ not only has no fixed contract term, but also has no restriction on the job content or place of employment; long working hours are a given. Until

¹⁶ However, since the doctrine on abuse of dismissal rights is a doctrine of legal precedent, judgments only concern the validity of dismissal contested in court, and a reappraisal is needed in that procedural regulation as in the EU would be inadequate.

¹⁷ On the typology of job-type employment and membership-type employment, see Hamaguchi, Hamaguchi, *supra* note 10, at 25ff.

now, in exchange for this “company-bound” labor contract, regular employees have been guaranteed security of employment and a wage with which to support their families. Employment by companies today has been polarized into unrestricted regular and non-regular employment, as described above. Restricted regular employment may be regarded as a personnel system that needs to be introduced in order to eliminate the disadvantages of this polarization.¹⁸

It is not that restricted regular employment-type systems have not previously existed in Japan. The term “employees with restricted place of employment” may well sound familiar to the Japanese reader. In fact, according to a report by a Ministry of Health, Labour and Welfare research group on “Regular Employees under Diverse Formats” (April 2011), approximately half of all companies with 300 or more employees had adopted some type of restricted regular employment system as described here, and about 40% of those are said to be regular employees with restricted place of employment. The results of this survey suggest that restricted regular employment systems are not merely at the conceptual stage, but are already capable of entering the stage of implementation.

However, an important point is the specific deployment of such a system. Until now, even if the job content or place of employment has already been restricted, it has in reality often not been deployed with particular rigor. Even when hired as restricted regular employees, it has not been rare for capable employees to be upgraded above the job duties originally planned, and to do the same work as unrestricted regular employees. Also, rules of employment and others are often not developed in a way befitting restricted regular employees. Under such circumstances, restricted regular employment cannot be considered established as a system.

Here, “restricted regular employment systems” refers to those that have been clearly established as personnel systems distinct from those for unrestricted regular employees. Specifically, restricted regular employment systems need to be created as separate personnel systems alongside conventional regular employment systems, i.e. systems for unrestricted regular employees.

Specifically, restricted regular employment systems are created by developing work rules, etc. However, this does not stop at developing work rules, but should be made clear in labor contracts as well. This is because, for restricted regular employees, the scope of work duties is strictly stipulated in labor contracts. Based on the premise of the existing system, the written specification of working conditions based on Article 15 (1) of the Labor Standards Act and Article 5 of the Labor Standards Act Enforcement Regulations (Notification of Working Conditions) has an even more important significance than hitherto. This is because labor contracts of restricted regular employees, unlike those of unrestricted regular employees, do not specify provisional job content and place of employment, but define the actual

¹⁸ In future, this system will probably function as personnel treatment to cope with cases when fixed-term labor contracts become open-ended through exercise of the right to apply for conversion to open-ended contracts (Labor Contract Act, Article 18).

job content and place of employment according to the labor contract. In this sense, when concluding labor contracts for restricted regular employees, the contract content must be stipulated with a strong contractual awareness on both labor and management sides.

Meanwhile, for restricted regular employment systems to function appropriately, it is not sufficient for top management and personnel divisions alone to understand the distinction between unrestricted and restricted regular employees; all employees must understand it. In view of this, it is vital to enhance all employees' understanding of restricted regular employment systems through training, etc. This is because, without such understanding of the system by the whole staff, there is a risk that the treatment of restricted regular employees in actual sites of deployment could be inappropriate, and the essential distinction compared to unrestricted employees in terms of work content and other aspects could be lost.

It would also be appropriate for future personnel management to create systems for upgrading from restricted to unrestricted regular employment. Taking this one step further, it would also be desirable to create a system of interchangeable conversion between restricted and unrestricted regular employees. For example, a person may join a company as an unrestricted regular employee, but employees with family responsibilities of childcare, nursing or home-based care may be permitted to become restricted regular employees just for that time, then later go back to unrestricted regular employment. This kind of system could be seen as indispensable in future, from the viewpoint of employing women or achieving work-life balance.

In restricted regular employment systems, too, it must be possible to engage in work differing from the original contract content. What is important in such cases is that the labor contract must be amended. Under existing law, written specification of working conditions is only mandatory at the time of concluding the labor contract, but in future, it will be desirable to have written confirmation when changing the working conditions, too. This should also be considered necessary in view of the fact that the Labor Contract Act requires the content of labor contract to be confirmed in writing as far as possible (Article 4 [2]).

(ii) Tasks When Developing Legislation to Accompany Systems of Restricted Regular Employment

Firstly, specified matters for working conditions in restricted regular employment systems should be developed in the Labor Standards Act and Labor Standards Act Enforcement Regulations.¹⁹ In particular, not only when concluding labor contracts, but also when changing the content of labor contracts, it should be made mandatory to expressly state the content thereof. Secondly, to correct inconsistency in working conditions between restricted and unrestricted regular employees, a provision similar to Article 20 of the Labor Contract Act, which prohibits unreasonable discrimination on grounds of the contract term, should be

¹⁹ Whether this legislation should be prepared within the Labor Standards Act or the Labor Contract Act would be an issue for future debate.

introduced to achieve a balance of treatment according to the actual conditions of work (Labor Contract Act, Article 3 [2]). This is because, if the conditions for restricted regular employees were to remain about the same as for current non-regular employees, an attractive system could not be established.

In terms of the relationship between restricted regular employees and dismissal regulation, meanwhile, even when considering judicial precedents related to the doctrine on abuse of dismissal rights until now, these are applied differently in cases typifiable as pure restricted regular employees, compared to unrestricted regular employees. An example can be seen in the Murakami Gakuen School Corporation case, concerning the validity of laying off a university professor when a special course was discontinued (Osaka District Court, November 9, 2012, *Rodo Hanrei Journal* 12–8). In the court’s judgment on the four requirements (4 factors) of economic dismissal, a judgment differing from that for unrestricted regular employees was given.²⁰

However, focusing on the relationship with dismissal regulation when discussing the introduction of restricted regular employment systems is like putting the cart before the horse. This is because, if restricted regular employment systems were to be established, it would mean that the way of applying the doctrine on abuse of dismissal rights would itself change, and not that restricted regular employment systems would be introduced in order to create a system that makes dismissal easy.

(3) Optimization of Worker Dispatch Systems: From Preventing Substitution of Full-Time Workers to Prohibiting Abuse of Agency Labor

Although the ILO was negative toward agency business in view of its earlier target of state management of labor markets, the 1997 Treaty No.181 (Private Employment Agencies Convention) brought major changes to this basic stance. Now, agency business such as job introductions and worker dispatch was regarded as a manpower supply-demand adjustment mechanism on a par with Public Employment Security Offices in the labor market. Japan ratified Treaty No.181 in 1999. Now, manifesting the effective functions of agency business in the labor market and protecting the workers handled there must be at the core of Japan’s employment policy. There are many points to be discussed in this respect, but the focus of study here will be on worker dispatch systems.

Since it was enacted in 1985, the Dispatched Workers Act has been amended in 1999, 2003 and 2012. The amendments up to 2003 moved toward expanding the scope of use of worker dispatch, in response to the rationalization of ILO Treaty No.181. During the recession caused by the Lehman crisis in 2008, however, there was a spate of cancellations of worker dispatch contracts, particularly in manufacturing industries, putting many agency workers out of work. This acted as a major trigger for a growing debate aimed at intensify-

²⁰ On the introduction of judicial precedents, see “Annex 3: Analysis of Judicial Precedents in Cases Where a Restricted Place of Employment or Job Duty Has Ceased to Exist” in the “Employment Working Group Report,” 15ff.

ing the regulation of worker dispatch systems. The 2012 amendment was passed in response to this. This amendment, it must be said, includes many parts where regulation of worker dispatch systems as a whole is strengthened in order to prevent abuses that had arisen in some areas of worker dispatch. A typical example of this is the basic prohibition of day labor dispatch (dispatch of 30 days or less). While it is a fact that cases of abuse were found in day labor dispatch, prohibiting this will not achieve employment security for agency workers whose lives depend on such work. Meanwhile, because the demand for day labor dispatch is large, exceptions are tolerated in accordance with the business and workers' attributes.²¹ Consequently, work is taken away from agency workers who had previously been engaged in day labor dispatch. Employment security of agency workers whose lives depended on day labor dispatch should be sought by means other than prohibiting day labor dispatch.

Based on a Diet resolution supplementary to the 2012 amendment, a research group aiming to revise the worker dispatch system was launched under the Ministry of Health, Labour and Welfare. In 2013, it submitted its "Research Group Report on Future Directions for Worker Dispatch Systems." The report has come under the spotlight as it proposes a major transformation in ways of regulating worker dispatch. Protecting agency workers while simplifying dispatch regulation and promoting the effective use of worker dispatch may be appraised as an appropriate future direction. An example of this is the proposal that the so-called 26 sectors with no restriction on dispatch acceptance period be scrapped, and regulation on the dispatch period be changed from units based on businesses to units based on individuals. As there is no space for a detailed study, a few thoughts will now be given on the principle of dispatch regulation to prohibit what is known as full-timer substitution.

The Dispatched Workers Act that was enacted in 1985, before the ILO Treaty No.181 was adopted, created a framework that recognizes worker dispatch as long as it "does not impair employment practices which are considered to contribute to the effective realization of the capacities of workers and the stability of their employment throughout their working lives" (Article 25, Article 40.2). Here, employment practices are of course Japanese-style employment practices. This must therefore be said to be aimed at securing the scope of unrestricted regular employees. This is generally replaced with the term "prevention of full-timer substitution" and discussed as such. However, there is no regulation or other control on the use of part-time workers and fixed-term labor contract workers, for example, from the viewpoint of preventing full-timer substitution. The difference between agency workers and part-time or fixed-term labor contract workers is that the latter two are hired directly. However, in that dispatch labor is positioned as a system of manpower supply and demand on the labor market, it can be said to lack consistency that, merely because agency

²¹ On workers' attributes, persons aged 60 and over, students or pupils not eligible for employment insurance, persons engaged in day labor dispatch as a side business (income requirement at least 5 million yen), and persons other than main breadwinners (only when the household income is at least 5 million yen) are excluded from the prohibition of day labor dispatch.

workers are not hired directly, they are subject to prevention of full-timer substitution.

Given that the ratio of non-regular employees is rising in the first place, employment formats are diversifying, and Japanese-style employment practices have been transformed, it is not appropriate to impose regulation on worker dispatch alone, simply because of the principle of preventing full-timer substitution. As stated above, Japanese-style employment practices invite polarization of the labor market between unrestricted regular and non-regular employees, and therefore this in itself is the true target of reform.

The report may be worthy of praise in that it focuses on changes in Japanese-style employment practices and revises ways of preventing full-timer substitution, but it is not enough that this principle is still maintained. In order to develop appropriate roles for worker dispatch systems in the labor market and make it possible for agency workers to work without discrimination based on their employment format—or, in other words, to make it possible to position dispatch labor as an important step in the career formation of workers—the principle of dispatch regulation should be changed from preventing full-timer substitution, which functions to protect unrestricted regular employees, to “preventing abuse of dispatch labor.”

IV. Conclusion

To achieve suitable labor mobility into growth industries without causing unemployment, the task for employment policy at the current point in time is to comprehensively promote the greater flexibility of the labor market by means of reforming regular employment. In this paper, the discussion has mainly focused on systems of restricted regular employment and worker dispatch, as the first steps in reforming regular employment. On worker dispatch systems, however, the discussion has only considered problems with the principle of preventing full-time substitution, proposing that this be replaced with the principle of preventing abuse of dispatch labor. Problems such as the balanced treatment of agency workers have remained outside the discussion.

Meanwhile, the policy task of increasing the flexibility of the labor market presents a mountain of problems that require study, such as revising systems of workers' vocational skill development and replacing safety nets. These should be made tasks for the future.