

## Abstracts

### Work Arrangement and Laws and Regulations

**Shinobu Nogawa** (Meiji University)

This paper inspects the reality of employment and the corresponding legal system in Japan, and studies the institutional problem at the back of the current state of affairs. It points to the serious situation of retrogression to primitive labor relations in the workplace which is casting a big dark shadow over the ongoing changes in the employment society. Firstly from the historical aspect we clarify how the employment system from before the Meiji period to the modern times was actually in a situation where a social practice that deems employment relations as a form of subordinate-superior relationship was widely accepted, and where the laborers were more or less resigned to these terms prompted by a certain paternalism that derives from salary payment and feudal subordinate-superior relationships. This system did not have any regulatory infrastructure in place that considers the actions, such as overwork as regards employment relationships and the violation of human rights of the laborers, as unjust or illegal. Furthermore, although the Factory Act did function as a protection for laborers for a certain period since the Taisho period (1912–1926), the war impeded its development before this structure was radically modified, and even the post-war basic labor law system such as the Labour Standard Act is showing its limitations as a penalty regulation, instead of preventing the spreading of unlawful labour, due to the modal principal of controlling illegal labour with penalty as a result of its extremely poor execution system. The reform of the current system would require a focused expansion of Labor Standards Management, and realization of the organized combination of soft law and hard law provisions, without putting too much expectation on the flexibility of soft law. Also required would be the clarification of the specific significance of the labour contract in the general provisions of Article 3 (4) and Article 3 (5) of the Labour Contract Act, and the seeking of legislative support for civil responses that target infringement of personal interests and so forth.

### A Preliminary Study on Motivations for Obeying and Breaking the Law

**Takashi Iida** (Seikei University)

The purpose of this paper is to provide for a systematic analysis of illegal behavior in the area of labor and employment law. This paper begins by rearranging the various notions of our motivations for obeying the law, and classifies these motivations into two categories; instrumental motivations and non-instrumental motivations. Although we are prone to pay too much attention to instrumental motivations when we discuss desirable legal policies, non-instrumental motivations actually play significant roles in our decision-making and behavior. We then examine conditions under which people tend to engage in an illegal behavior, taking into consideration the characteristics of the situations which labor and employment law covers. Particularly, altruistic illegal behavior is often seen in the workplace, and deterring or controlling them is an important issue. In conclusion, this paper suggests that legal policies that appropriately harness our non-instrumental motivations should be adopted in order to prevent the vicious circle of violations and clampdowns.

### Factors of Unlawful HRM and Employee Recognition of “Black Companies”

**Toru Kobayashi** (The Japan Institute for Labour Policy and Training)

This paper considers the factor of Unpaid Overtime Work, Violation of Right to Paid Holidays and Constructive Dismissal, and analyzes the problems which cause employees to recognize their company as being a “black company” (a company that forces its employees to work long hours for minimal pay). As a result of several analyses, I found that employer’s lack of compliance awareness generates Unpaid Overtime Work, and consequently Unpaid Overtime Work brings improvements to employer’s profit. All these three problems caused employees to see their companies as being “Black Companies”. In particular, to solve the problem of Unpaid Overtime Work is a large

subject and is regarded to be in the interest of the public good.

#### An International Comparison of Unlawful Work

**Kazuya Ogura** (Waseda University)

The world-wide interest in recent years concerning unlawful work is focused on forced labor, human trafficking, undeclared work, and so on. In the beginning of this paper, the research results of the above issues are presented. In order to compare unlawful work viewed from a Japanese standpoint with one viewed from an international standpoint, this paper reviews research papers on unpaid overtime presented by the UK, Germany and Australia, which have accumulated studies on this issue. As a result, it was revealed that there exists a certain amount of unpaid overtime and the types of jobs that frequently cause the problem of unpaid overtime work in these advanced countries. At the same time, the status of Japanese management-level employees and white-collar workers was found to be common to that of these countries. To put it plainly, the problem of unpaid overtime by managerial workers and white-collar workers who tend to be judged mainly by their achievements has become serious in the advanced countries at the least. Even in Europe, where office hours are shorter than Japan, such an unpaid overtime work actually exists. Unpaid overtime is an issue for most Japanese workers, and moreover the length of time is estimated to be considerably long.

#### International Overview of Labour Inspection Systems

**Toshiharu Suzuki** (Daito Bunka University)

This study examines international trends about labour inspection systems for supervising illegal labour. The ILO believes that it is desirable to have one or more labour inspectors per 10,000 workers in the advanced nations, and the standard is met in general with no big difference seen among the advanced EU countries. However, there is a difference regarding whether a country has a single inspection system or several inspection systems divided in each field, and there is debate about which system is more effective. The former can realize more comprehensive activities, but when countries adopt it, it becomes more difficult to train inspectors. Moreover, there is a difference in which inspectors have what kind of legal power when they inspect workplaces. However, we cannot draw a fixed conclusion about what is the best system in inspecting illegal labour effectively. In addition, it has been an issue of how to determine the places to inspect, but we have not found an effective way yet because each method has merits and demerits. Under such circumstances, in order that each country may carry out this job more effectively, countries are trying to make a stronger international cooperation, and invent a practical use of the Internet network.

#### Legal Response to Illegal Labor: Summary and Problem of Norm, Subject and Method

**Takeo Sakai** (Doshisha University)

This article considers the legal response to illegal labor in Japan. In detail, in the second chapter I focus on the relations between illegal labor and legal norms applied to labor relations and determine illegal labor from three aspects —labor (or acts connected to labor) to be carried out in violation of labor contracts, that of labor legislation and that of tort law— and then analyze the system (including subject and method) which these norms plan for the prevention or the relief of illegal labor. Then, in the third, fourth, fifth and sixth chapters, I take up specific examples of illegal labor, including overwork, failure to pay wages, harassment and constructive dismissal, which are serious cases especially in recent times and have distinctive characteristics in methods of regulation, and then analyze the administrative, criminal and civil legal response to these cases. Finally, in the seventh chapter, I examine problems over the current legal response to illegal labor, and show some personal opinions from the point of view of (1) the motivation for legal compliance of a company (interpretation theory about the pursuit of responsibilities of directors) and (2) the exclusion and the shakeout of illegal labor in the labor market (legislation theory about the publication system related to the violation of laws and ordinances).

Law and Policy regarding “Violation” of Labor and Employment Laws in Japan

**Ryuichi Yamakawa** (The University of Tokyo)

This article is intended to examine issues regarding law and policy to respond to the problems of the violation of labor and employment laws in Japan. After defining the term “violation” of labor and employment laws broadly so that it can include the violation of mandatory and prohibitory norms under public and private laws, this article describes present measures including criminal and administrative sanctions, dispute resolution among private parties, and measures to prevent violation of laws. In view of such various measures, this article points out several issues that need to be examined further as well as new angles for future policies, focusing on the measures to prevent violations.