Research Report No. 155

May 2003

An International Comparative Study Regarding Protection of Workers' Personal Information and Access to Employment/Labor Information

(Summary)

The Japan Institute of Labour

Contributing Authors

Yoichi Shimada:	Introduction; Part 1 – Chapters 1, 2, and 4; Part 2 – Chapter 1 (I and V); Part 2 - Chapter 2 (I), and Part 4 – Chapter 2
Ikuko Sunaoshi:	Part 1 – Chapter 3; Part 2 – Chapter 1 (II, III, IV3, VI); Chapter 2 (VI and VII); Part 3 – Chapters 1, 2 and 3
Kiyoshi Takechi:	Part 2 – Chapter 1 (IV1 and IV2), Chapter 2 (II, III, IV and V); Part 3 – Chapter 5; Part 4 – Chapter 3
Keiko Ogata:	Part 3 – Chapter 4
Fumito Komiya:	Part 4 – Chapter 1

Committee Members of "An International Comparative Study Regarding Protection of Individual Workers' Information and Access to Employment/Labor Information"

Name	Position
Keiko Ogata	Assistant Professor, Kagawa University
Fumito Komiya	Professor, Hokkai Gakuen University
Yoichi Shimada	Professor, Waseda University (Chief)
Ikuko Sunaoshi	Lecturer, Rikkyo University
Kiyoshi Takechi	Assistant Professor, Toyama University
Shinobu Nogawa	Professor, Tokyo Gakugei University

Introduction: Purpose of Survey and Research

In general, Japanese people have not paid much attention to the protection of workers' personal information in the context of labor relations. Both labor and management have accepted, without much hesitation, the idea that it is vital that employers collect as much information on individual workers as possible in terms of personnel management. In addition, company health and welfare programs have developed a structure that allows employers to collect a lot of information on individual workers. Furthermore, there are some legal systems, such as the Industrial Safety and Health Law, which enable the systematic collection of health information on workers by employers.

However, in recent years, workers' awareness has been changing, and we cannot overlook their sensitivity over the collection of their personal data. The change is expected to accelerate due to the decreasing proportion of regular employees working for long periods of time and the drastic change in the firms themselves. In other words, a worker cannot join a company with much expectation that he or she will work until retirement age; consequently, the sense of total dependence on the company has reduced when compared to the past. As a result, we think that workers' resistance to the collection of personal data by companies will tend to increase.

The Japanese administration is reflecting international trends for the protection of personal information, such as: *The Directive on The Protection of Individual Data with Regard to the Processing of Personal Data and on the Free Movement of Such Data* (95/46/EC) of the EU (adopted in October 1995, effective from October 1998) and *the Code of Practice on the Protection of Workers' Personal Data* (1996) of the ILO, when it became active in the protection of individual information through the enactment of the Basic Law on Protection of Individual Information and the "action guideline" of the former Ministry of Labour. Such changes may affect the treatment of information in the Japanese labor relations.

This research has examined in detail the issue of protecting the information of individual workers, an issue that is attracting attention in Japan. The current situation in foreign countries is also addressed as is the issue of workers' access to employment and labor information regarding job offers and recruitment in a situation where information is unevenly distributed under labor legislation even in an advanced information society. While the issue of collecting personal data of workers by employers for the purpose of labor management differs from a legal perspective from the issue of collecting employment/labor information by workers from employers during the job-seeking and recruitment stage, we have tried to identify the situation of unevenly distributed

"information" by studying labor-management relations.

We studied legal systems in advanced information societies such as the United States, the United Kingdom, France and Germany and the EU (as an international organization). We conducted field surveys in the United Kingdom, France, Germany as well as the EU.

Chapter 1. Protection of Worker Personal Information in Japan

Introduction

The individual information of workers is defined as "that information on an individual worker which can identify a specific person by name, date of birth or other description"[1] under the Action Guideline to Protect Personal Information of Workers. In terms of protecting the individual information of workers, there is no legal system in Japan with such comprehensive or systematic provisions. There are only some separate provisions that protect the individual information of workers.

In terms of the recent trends concerning protection of individual worker information, we cannot overlook the provisions of the Employment Security Law and the Worker Dispatch Law amended in 1999. These provisions can be evaluated as full-fledged legislation stressing the importance of protecting individual information during the process of placement and worker dispatch.

As exemplified by the Supreme Court judgment in the Mitsubishi Plastics Case, no particular theory has been formed with regard to court precedents.

Voluntary regulation by credit institutions plays a vital role in protecting individual credit information. This voluntary regulation should also be studied in the context of protecting workers' personal information.

1. Job offer, recruitment and protection of individual workers' information

In the judgment of the Supreme Court on December 12, 1973 over the Mitsubishi Plastics Case, the judges allowed the collection of extensive information on applicants by employers during the recruitment process. This approval of the Supreme Court is drawn from the freedom of economic activity guaranteed by the Constitution. The judgment is based on the recognition that, because many Japanese employers use a lifetime employment system (long-term employment system) and employers are strictly limited in terms of abusing the right of dismissal, they should be allowed extensive freedom during the recruitment stage of hiring.

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[1] Please refer to Material 1 concerning the Action Guideline.

Collection of extensive information of jobseekers by employers during the job offer and recruitment stages has been gradually restricted in the recent years, and the freedom of recruitment established in the Mitsubishi Plastics Case mentioned above, is being limited. The following two aspects can confirm this trend.

The first is legislation that prohibits discrimination in employment including the Law Respecting the Improvement of the Welfare of Women Workers, including Guarantee of Equal Opportunity and Treatment between Men and Women in Employment (Equal Employment Opportunity Law).

The second involves various regulations to protect individual information by legislation and administration.

Article 5.4.1 of the Employment Security Law requires firms in general to properly manage the individual information of applicants. The Worker Dispatch Law has similar provisions concerning protection of the individual information of dispatched workers. The amended Employment Measures Law (effective October 1, 2001) imposes on employers an obligation in certain cases to endeavor to provide equal employment opportunity regardless of age as an incentive to relaxing age limitations during the job offer and recruitment phases.

In a country such as Japan that has a slower legislation process, the administration has a larger role to play. In fact, firms are likely to follow administrative guidelines to a certain extent in job offering and recruitment. In this sense, the Guideline to Secure Proper Conducts such as Equal Treatment, Clear Type of Working Conditions, Treatment of Individual Information of Jobseekers, Duties of Placement Agencies and Precise Description in Job Offers, Persons Recruiting Workers, Placement Agents and Manpower Agents, is important.

Japanese jobseekers generally submit a personal history and academic achievement certificate to firms offering jobs to new graduates. Junior and senior high schools submit student records of performance to firms. University graduates submit such records by themselves. There is no law in Japan concerning the requirement of firms to submit academic records and acceptance of such requests by schools. The Ministry of Health, Labour and Welfare, as an administrative agency, has distributed a brochure “Fair Selection” to personnel managers of firms in order to promote the protection of individual information.

The Action Guideline of the former Ministry of Labour is intended to offer a basis of corporate rules as an initiative for firms to protect individual workers’ information. The contents are based on the ILO Code of Practice. In the explanatory note, the Ministry of Health, Labour and Welfare considers that the current model of voluntary rules for firms is sufficient and that no legal restriction is required at the moment.

2. Protection of health information of workers relating to health examinations

Health information is regarded, internationally, as extremely private sensitive data. In Japan, however, the health information of the individual workers is not well protected. This is partly because an employer is obliged to take health measures for workers within the basic industrial health structure. Typically, the Industrial Safety and Health Law requires employers to perform periodic health examinations of its workers. As firms need to manage the health of their workers, workers' health information is an indispensable data source needed to maintain the favorable health of their employees.

Due to changes in industrial structure and technological innovation progress in recent years, there are more workers who feel stressed or worried while at work or in a working environment. Death from overwork is a serious social issue. There is an increasing number of elderly workers who have potential heart disorders. Employers, therefore, are required to further promote measures to secure the health of their workers. People recognize the necessity of taking comprehensive measures in order to prevent health disorders. Under such social circumstances, the Industrial Safety and Health Law, as amended in 1996, imposes on employers a greater responsibility for the health management of their employees.

Comprehensive health management measures by employers require even more detailed health information of their workers. Employers have become even more obliged to maintain worker health information.

As employers in Japan are also obliged to ensure safety under labor contracts, they are involved in voluntary health management. Since it is part of the health and welfare measures, extralegal medical examinations are widely performed as company health and welfare measures. As a matter of course, employers manage a large amount of health data on their workers. Later we will discuss health and AIDS examinations in order to identify situations and issues concerning workers' health information.

Japan has some legal regulations intended to protect individual credit information. Voluntary regulations play a large role in this area. Under the Moneylender Control Law and the Installment Sales Law, individual credit information institutions are established in banking, consumer finance, credit sales and credit industries. These institutions collect and maintain individual credit information of consumers from member firms or otherwise and provide such information to members upon request to prevent excessive lending to consumers and multiple consumer loans, and to maintain proper credit.

The former Ministry of Finance and the former Ministry of International Trade and Industry issued an instruction on individual credit information institutions in March 1986, which clearly imposed requirements on such institutions and member firms regarding consumers' consent to the registration of their credit information, as well as

its collection, management, use and disclosure to consumers. Each institution has internal rules based on this instruction. The tripartite council for information exchange between such institutions worked out a Guideline for the Protection of Individual Credit Information at Credit Information Institutions as part of the social infrastructural development for the expanding consumer credit market, and issued common voluntary rules to be complied with. The guideline provides principles on the collection and registration of individual credit information, its management and provision, protection of information sources, public relations activities, education and training, and measures against violations.

Since, under long-term employment, it is difficult to dismiss employees once they are hired, employers have had to be careful when recruiting and selecting. As a result they have often conducted identity investigation. Such identity investigation was often conducted for discriminative purposes to avoid employing those people from discriminated communities, former student activists and Koreans in Japan. Even now, such discriminative investigation is conducted in secret.

The amended Employment Security Law and the Worker Dispatch Law, amended in 1999, have new provisions concerning the protection of individual information of jobseekers and dispatched workers. This protection was to be embodied within certain guidelines. The national government has at last adopted some effective legal regulation on identity investigation for collecting sensitive individual information from third parties without notifying the person concerned. We need to monitor implementation of the provisions to measure the degree of effectiveness.

Dismissal has been a point at issue in court judgments in connection with criminal records and criminal information. Any person not declaring a criminal record during recruitment was often subjected to punitive dismissal. The rationale of such punitive dismissal by reason of a crime was questioned in the courts in connection with the criminal record issue.

A court doctrine to deny dismissal without reasonable grounds as an abuse of employers' rights has been established in Japan, and the right of dismissal of employees is, in fact, strictly limited. The issue of criminal record, therefore, is judged by the reasonability of dismissal for non-disclosure of the criminal record of a worker.

In many cases, workers' non-disclosure of facts upon hiring is generally regarded as a violation of good faith that disturbs the order of personnel management (worker assignment, wage system, etc.), hampering appropriate hiring decisions as well as employee evaluation and damaging trust between labor and management.

3. Working conditions, health and welfare programs, employers' exercise of personnel rights and disclosure of workers' private life information

Many companies offer benefits according to the workers' family composition in the wage system and health and welfare programs. Spouse allowance, dependents' allowance and housing allowance are some of the wages corresponding to workers' family composition. Holidays are offered for weddings and other family events. If a company has a health insurance society, the company will collect workers' family information indirectly. With regard to the pension system, a wife of a company employee earning less than 1.3 million yen per year is exempt from paying the premium; however this is related to the issue of disclosure of workers' family information. Use of corporate housing, for example, is of course another health and welfare measure that involves the disclosure of family information.

Such mechanisms have been taken for granted in Japanese labor-management relations. In an environment where the life of a worker (regular male employee) and his family was supported by the remuneration paid by a company and social systems were built upon companies, we can easily imagine that it was not usual for firms nor workers to question the disclosure of family information by workers.

Due to the diversifying situations of families, however, objections are being raised against this attitude of taking disclosure of family information of workers for granted in order to protect the workers' individual information. The number of workers who refuse to disclose family information is not insignificant now despite the disadvantages in the wage system. This suggests that those programs that depend on disclosure of family information by workers may be questioned in the future.

4. Computer monitoring by employers

Electronic mail is an indispensable tool for efficient business operations. It is convenient and likely to be used for private purposes by employees. Firms have been gradually questioning the personal use of the corporate computer system in recent years.

Private use of electronic mail (private mail) is certainly not an act to be recommended. Since private mail is generally and widely used, it is impossible, in fact, to totally prohibit private mail. We need to examine how to control the use of electronic mail, considering the current situation of e-mailing.

Since electronic mail is a form of a letter or similar to a letter, we need to consider the privacy of private mail. The Action Guideline of the former Ministry of Labour of Japan calls for protection of workers' privacy, including the monitoring of electronic mail.

Recently, for the first time in Japan, two court judgments were rendered on the issue of employees' private mail.

The first question is that private mail at work may constitute a private use of a

company facility. Private mail at work may also constitute violation of work duties as an employee. Further, we need to consider whether an employer can inspect the content of a private mail.

Even if an electronic mail is obviously “private”, we should consider that even an employer may not open it. However, there may be cases where an employer can check the content of a worker’s private mail. For example, an employer may do so in special circumstances when a private mail of an employee is highly likely to have caused material disturbance to the business of the company, and an emergency response is needed. Even so, the employer has to notify the possibility of such a check in advance and explain necessity to the worker.

Summary

In Japan it has been considered that employers have extensive powers to collect workers’ individual information according to some court judgments including the Supreme Court judgment in the Mitsubishi Plastics Case in 1973. The advanced information society, however, has boosted the recognition that protection of individual information is necessary and extensive collection of workers’ individual information by employers is gradually being restricted by legislation or administrative guidance. In the future, as people become more sensitive about the collection and management of individual information, we can expect further protective devices. We should develop a system for individual information of workers unique to Japan, after considering international trends and the experience of other countries.

Treatment of workers’ health information involves many problems in terms of protecting personal information. While health information is regarded internationally as extremely sensitive private data, Japan lacks the notion of protecting individual workers’ health information since it forms the basic system underlying industrial health and involves the employers’ obligations to the health management of their workers. As this is related to the legal system on workers’ safety and health, we will, in the future, have to strike a balance between the protection of health and the protection of workers’ personal data.

Although the issue of computer monitoring by employers is vigorously discussed in other countries, there has been insufficient consideration in Japan. We hope to have debate on this issue including the point of workers’ privacy.

Yoichi Shimada

Chapter 2. Workers’ Access to Employment/Labor Information inJapan

Introduction

It goes without saying that information is unevenly distributed between labor and management in terms of industrial relations. Various assistance measures have been instituted to ensure equal contractual negotiation between labor and management under labor law. In the main there are two techniques that have been developed for such measures. Firstly, a mechanism of representing the collective interests of workers is used to overcome the uneven access to information based on the recognition that individual negotiation between management and a worker is disadvantageous for the worker. Secondly, based on the same recognition, the legislature and administration intervene in such negotiations in order to overcome the problem.

The first mechanism is a legal system that encourages the organization of trade unions by workers and assists with union activities. As a trade union is a voluntary organization, unions have been mainly formed in traditional industrial sectors, including government employees. As a reflection of the recent conversion of the industrial structure and diversifying employment modes, the unionization rate has continued to decline. It was estimated at 20.2% in 2002. Today, the manner in which workers are collectively represented in companies without unions, is being studied.

The second mechanism includes an important legal control, such as the obligation under the Labour Standards Law to indicate working conditions. The amendment of the law in 1998 drastically increased the items to be expressly stated in writing relating to the obligation to specify working conditions. We can evaluate the system as ensuring that workers acquire sufficient information upon signing their labor contracts.

In recent years, labor-management relation discussions have been directed toward the active reform of the wage system to emphasize individual's merit or performance. In order to energize workers with this type of wage system, the management should gain the trust of workers concerning the evaluation system. It is important to build a transparent system concerning personnel management information. Another important point at issue is how much of this information should be disclosed to workers.

Maintenance of a good workplace environment for workers is another important duty of employers, with this in mind precise safety and health information should be provided.

Part of an employer's personnel management strategy in an advanced information society involves the development of monitoring and other techniques, which are highly likely to infringe on the privacy of workers. Although the techniques may, in personnel management, be reasonable to certain extent, we should not forget the limitations concerned with protecting workers' privacy. It is necessary to disclose to workers the type of personnel management means being used.

In Chapter 2, the author discusses the system of disclosing information to workers by employers in order to overcome the unevenly distributed information between labor and management.

1. Type of working conditions upon job offer and recruitment

The Employment Security Law has provisions associated with the type of working conditions upon job offer to help workers select jobs meeting their desires and aptitudes. The law requires placement businesses and parties offering jobs to indicate working conditions to jobseekers or applicants. Under the law, written indication is required on basic matters such as: the content of work, duration of contract, location of workplace, commencing and closing hours of work, possibility of overtime work, rest periods, holidays, the amount of wages and matters relating to worker claims and social insurance.

2. Type of working conditions upon employment

The Employment Security Law also has provisions on the type of working conditions upon employment or execution of labor contract. Under the law, employers are obliged to indicate working conditions such as: wages, working hours and others upon execution of labor contract, in order to clarify rights and obligations under the contract so that workers will not be forced to work under unexpected unfavorable working conditions following recruitment.

For those dispatched workers whose working conditions may have become unclear as compared to direct employment, there are relevant regulations under the Worker Dispatch Law as well as the Employment Security Law.

3. Type of working conditions during performance of labor contract

The Employment Security Law and the Trade Union Law have provisions on the type of working conditions following employment or during the performance of a labor contract.

The Employment Security Law stipulates that an employer using 10 or more workers constantly shall make work rules including particular working conditions to be submitted to the head of the Labour Standards Inspection Office. If there is a trade union organizing the majority of workers in the workplace, the employer should hear the opinions of the union when making or changing such rules. If there is no such trade union, the employer should hear the opinions of representatives of the majority of the workers.

Under Article 28 of the Constitution and the Trade Union Law, workers have collective bargaining rights and employers should not decline collective bargaining without due reason. Employers are also obliged to pursue the possibility of agreement

or to negotiate in good faith with faithful response to the demands and claims of trade unions. In other words, employers are not obliged to accept the demands of trade unions or make concessions, they need to specifically explain the response to the unions' demands and claims as well as the grounds of their argument, and produce relevant information. In this way, trade unions and union members can, through collective bargaining, obtain information on working conditions.

Japan does not have a legal system for labor-management consultation as can be found in European countries. Apart from collective bargaining, however, consultation bodies are often established between labor and management to discuss matters relating to collective agreements. According to a survey on labor-management communication in 1999 by the Ministry of Labour, 84.8% of workplaces (mainly large companies) with a trade union have labor-management consultation boards.

4. Disclosure of managerial information

Employers are obliged to pursue the possibility of agreement (obligation of good faith negotiation) through faithful response to trade unions' demands and claims in the collective bargaining with unions. If an employer proposes manpower reduction or a pay freeze in negotiations on employment or wages, the employer should provide persuasive arguments to unions by disclosing the necessary information as fully as possible, including financial statements, data on the company's financial conditions and business/financial plans. Any omission may constitute a violation of the good faith negotiation. The obligation of disclosure and explanation, however, certainly has some limitations in connection with corporate business secrets.

As far as the disclosure of managerial information to workers is concerned, the system of labor-management consultation is in fact more important than collective bargaining. Employers that disclose managerial information routinely will experience smoother business operations and better communication with their workers. The quality and quantity of such information, however, is limited in some way due to the practice of voluntary disclosure by employers.

Japan has no statute that directly controls manpower reduction. Courts have affirmed some substantive requirements and procedural requirements such as consultation with trade unions or workers. This is interpreted, under the requirements, that an employer is obliged to explain the necessity of manpower reduction and its timing, scale and method to the trade unions or workers. The employer also has an obligation to faithfully consult with these parties in order to gain their understanding.

As part of a legislative initiative concerning corporate restructuring, the Commercial Code was amended in 2000 (amended Commercial Code) in order to introduce a system of corporate separation. As corporate separation greatly affects the

status of workers, Article 5.1 of the supplementary provisions of the Code stipulates that the company that is dividing is required to engage in faithful negotiations with its workers before the separation plan is drawn up, concerning the succession of labor contracts following corporate separation. In order to protect its workers, under the Law on Succession of Labour Contracts upon Corporate Separation (Labour Contract Succession Law), a company that is legally separating has an obligation to try to gain the understanding and cooperation of its employees at all of its workplaces through consultation with a trade union that has organized the majority of workers, if there is any such union at the workplaces, or a representative of the majority of workers if there is no such union, or by other similar methods.

Employers of a company that is intending to divide are also obliged to give written notice to their employees and trade unions.

5. Disclosure of personnel information

The wage system in Japan has been characterized by seniority-based treatment of regular employees. Although performance-based pay is widely employed in Japan in the form of a meritocratic wage system, seniority has, in fact, been assumed to be more important.

A wage system that regards pay for ability as embodied in an individual's achievement or performance, has gradually pervaded Japan in recent years. This is known as the achievement-based wage system. The goal management system inherent in the wage system is based on the objective evaluation and involvement of the workers themselves. As wages are assessed on the basis of the workers' ability exhibited through work results, employers should disclose the objective evaluation standards and the results/reasons for the evaluation to workers.

The Code of Civil Procedure was amended on June 26, 1996 (effective January 1, 1998) in order to make civil actions easier for people, and to meet the current social needs inherent in such actions. As part of the amendment, the courts can now order the production of documents for an increased number of items. Under the amended Code of Civil Procedure, more petitions ordering the submission of documents have been filed, especially concerning the unequal wages between men and women. In this situation, the disclosure of wage data of a male employee comparable to the petitioning female employee was demanded. As a result, provision of personnel information possessed by the employer is indispensable to the plaintiff employee in order to establish wage discrimination. The increased scope of document production by order under the amended Code of Civil Procedure is quite significant in this connection.

As mentioned above, result-based wages are assessed by work achievement. Personnel evaluation therefore becomes more important than before. The Japanese

personnel evaluation is questionable in terms of fairness for employees as compared to similar evaluation in other advanced industrialized countries. Some employers barely hesitated in using personnel evaluation as a tool of employment discrimination.

We should consider that an employer is obliged to disclose information on the evaluation and its process as part of the obligation of consideration. A worker should have a right to raise objections as well as the right to have any error corrected.

The Labour Standards Law obliges employers to deliver a certificate of resignation to a worker when requested by the worker upon resignation. The certificate certifies date of birth, period of employment, final position achieved, date of resignation, cause of resignation, monthly income, annual income and job history. No statement can be made for those items not requested by the worker.

6. Disclosure of safety and health information

The Industrial Safety and Health Law was enacted in 1972 as comprehensive legislation apart from the Labour Standards Law to provide more adequate labour safety and health regulation. There have been several important amendments to the law in order to address changes in industry, society and mode of labour.

In terms of hazardous materials treatment, the law requires employers to disclose information to the Minister of Health, Labour and Welfare. Employers and workers are to follow the directions of the minister, rather than requiring employers to disclose relevant information to workers concerning the danger.

As in the health management of workers' case, it is always an employer who discloses and manages information and there is little emphasis on ensuring that a worker obtains his or her own information. As industrial safety and health is closely related to the health of workers, a problem exists in that there is no provision enabling workers to actively demand information disclosure.

Summary

he principle of indicating working conditions upon execution of labor contract has been strengthened in Japan in recent years. Where a trade union is organized and there is a favorable labor-management relationship, managerial information is systematically provided to workers through a labor-management council or similar. Disclosure of information to workers, however, is still insufficient even if it is important information relating to workers in general, and we could not find a way of eliminating the problem of unevenly distributed information within labor-management relations.

In particular, results-based wage systems will become popular but the development of a system of disclosing personnel information is being delayed. It will be an important point at issue whether we can maintain a system of disclosure of

managerial and other information to workers that virtually depends on the autonomy of the labor-management relations.

We have no system of providing sufficient information on hazardous materials to workers in terms of safety and health. This is based on the recognition that it is satisfactory if an employer understands the information. The system is problematic because workers themselves cannot get precise information on the various materials they deal with.

Yoichi Shimada

Chapter 3. Protection of Individual Information on Workers in in Foreign Countries

Introduction

The issue of infringement of individual privacy through the computer network is one of the global problems being discussed. In Europe, since the 1970's they have been concerned about infringements of individual privacy due to the development of computer technology. International documents were drawn up, one after the other, in the 1980's and European countries were required to develop domestic laws based on such documents.

The issue of infringement of privacy of workers is regarded as a material issue since introduction of new technology to the workplace strengthens monitoring by employers. The issue is now being studied mainly by the EU in order to draw up regulations.

As a result, European countries, led by the EU, have begun to develop comprehensive legislation on the protection of individual information. In the field of labor, not only France and Germany, which are eager to protect workers' privacy, but also the United Kingdom, which has been relatively indifferent to the issue, have made laws in accordance with the EU initiative.

The manner of building a legal system by comprehensive legislation applied to both the public and private sectors, is known as an omnibus method. Unlike the EU that employs the omnibus method, workers' privacy in the United States is protected by federal and state constitutions, common law and various federal and state statutes, which employ a sectoral method that applies regulations corresponding to the situation in the various sectors. When considering the issue, we need to keep in mind that the EU and the United States employ completely different methods of protection.

We will now overview EU countries first in terms of protecting workers'

individual information, and then the United States. After that, we will discuss the specific treatment of individual information. In particular, we will focus on various inspections involving the health information and monitoring of workers at work, which are the common issues dealt with by most of those countries in the world that are aware of the issues.

I. The legal framework for protection of workers' individual information in the EU countries

1. International trends

(1) International documents

It is notable that some international documents were adopted in the 1980's. The Organization for Economic Cooperation and Development (OECD) adopted the Recommendation on this issue in 1980(OECD Recommendation). The eight principles in the recommendation have become a basis for other similar documents.

In Europe, the Council of Europe, established in 1949 for the protection of human rights, adopted a treaty with the same content as the OECD Recommendation. The council adopted a first recommendation on this issue in the field of employment in 1989. It is said that the recommendation has the two following significant points.

Firstly, the document tried to protect workers' privacy within the collective dimension of labor-management relations. The Council of Europe considered that privacy cannot be sufficiently protected if the issue is left as an individual issue and recommended involvement of the workers' representative. Secondly, the recommendation protected privacy of those who are already employed as well as those who are jobseekers.

The Council of Europe made several international documents for the protection of individual privacy, however the legal systems of member countries differed on this issue. In order to resolve the differences between the countries, the EU adopted in 1995, *The Directive on The Protection of Individuals with Regard to the Processing of Personal Data and on the Free Movement of Such Data* (95/46/EC). As a result, member countries were obliged to develop domestic laws based on the Directive. The Directive notably regulates movement of individual data to non-member, third countries. Specifically, movement of such data to third countries is prohibited if they do not ensure "adequate level of protection". Japan cannot disregard this point.

The ILO also adopted, in 1996, *the Code of Practice on the Protection of Workers' Personal Data*.

(2) Initiatives of the EU

The Directorate General of Employment, Industrial Relations and Social Affairs of the European Commission issued a document entitled Protection of Data and Employment in the EU—Analytical Research on Laws and Practices relating to Protection of Data and Employment Relations in the EU and the Member States. The research studied the legal systems of EU member states that had laws in place to protect data dedicated to employment relations as well as the manner of protecting data for employment at the level of the EU. The report recommended establishment of a supervisory agency and development of a code of practice in each member state concerning data protection rules in employment. It also emphasized the importance of self-regulation in employment and encouraged dialogue between labor and management.

Article 29 of the 95/46/EC Directive provides for establishment of a Specialized Advice Committee composed of representatives from data protection agencies of member countries. The specialized committee is an independent organization intended to study application of domestic measures based on the Directive to promote uniform application of the Directive. The committee is studying the following issues in employment: 1. workers' consent; 2. management of medical information; 3. restriction on genetic testing, and 4. monitoring of workers' electronic mail, etc. There are differences among member states on this issue, and the manner of regulation is not unified. The committee will continue discussions with labor and management representatives as to the type of standards can be made in Europe.

On May 29, 2002, the specialized committee issued a Research Report "*Working document on the surveillance of electronic communications in the workplace"*. The report is the first document concerning research into the protection of data in the employment sector. The report emphasized that workers have some right to privacy in the workplace, and accordingly monitoring of electronic mail or the use of the Internet by workers can be allowed in exceptional cases where employers' interest should be protected. In other words, monitoring is allowed only for clarified and specific reasonable purposes and cannot be done beyond such purposes. Concerning provision of information to data sources, it recommended that collective agreements should provide for employers' obligation to provide relevant information to, and consult with, the workers' representatives before introducing a monitoring system. It also mentioned the obligation to notify the supervising agency and the workers' right of access.

Concerning workers' consent to monitoring, the specialized committee explained that monitoring can be conducted on the basis of workers' consent on the condition that the workers have truly free options and that they will not be disadvantaged by freely expressing their views.

2. Legal systems of EU member countries

(1) The United Kingdom

The UK has had no comprehensive statute upholding the right of privacy for a long time and the common law in the country was not active in terms of upholding the general right to the protection of privacy. Infringement of privacy is not a tort under the common law. In the UK, the right of privacy had no historical basis as compared to other case laws in the US, France and other countries. In other words, the UK had no clear law to do with protecting privacy in the workplace. As a result, employers were not banned from demanding that private information on workers be provided during the recruitment process.

Infringement of privacy resulting from technological development in recent years, however, has been recognized and privacy at work is being questioned in terms of labor law since employers may take advantage of advanced technology in terms of privacy infringement.

We cannot disregard the effect of the Convention of the Protection of Human Rights and Fundamental Freedoms by the Council of Europe in 1950 (Convention) on the UK. The European Court of Human Rights considered the situation in the UK, where there is no relief against the infringement of the rights of “private life” and “communication” e.g. the interception of telephone conversation at offices, a violation of the Human Rights Convention.

Today, the UK has modified the non-regulated situation by protecting the right of privacy at work through two legal developments. The first is the Human Rights Act 1998. The act provides that any interpretation of the law must be based on respect for the Convention. The convention’s guarantee of human rights will spread into the labor field. Secondly, the Data Protection Act 1984 as amended in 1998, incorporated the provisions of the 95/46/EC Directive on data protection. The Regulation of Investigatory Powers Act 2000, is an important act providing a legal framework to protect secrecy and regulate tapping of communication through public and private telephone systems.

There are other laws, including those on unfair dismissal, regulation of medical information and prohibition of discrimination, as well as the common law, that may possibly offer relief with regard to the infringement of workers’ privacy by employers.

(2) France

France has explicit provisions on protection of privacy in the Civil Code and the Penal Code. In addition, for protection of individual information in general, The Act No.78-17 on data Processing, data files and individual liberties, dated January 6, 1978 imposed various restrictions on those who collect or manage individual information. Under labor law, the Act No.82-689 respecting workers’ freedoms in the undertaking,

dated 4 August 1982 that upholds the ideal of “citizenship at work” extensively and clearly amended the Labour Code and the protection of workers’ freedom. The Labour Code were further amended by the Act No.92-1446 concerning employment, the development of part-time work and unemployment insurance, dated 31 December 1992 (the Act 1992) and the protection of workers’ freedom was further strengthened. The great significance of the amendment by the Act 1992 lies in the fact that protection of workers’ freedom at firms is clearly provided and an important principle of limiting collection of information by employers if it is not directly related to workers’ duties. It is also notable that a greater degree of protection of individual information is made available for jobseekers before recruitment. This enabled applicants to petition for relief. The law applies to headhunters, placement businesses, vocational training institutions and those organizations examining vocational abilities. Public placement offices are also covered by the law. In addition, we must note that giving certain roles to corporate committees and employee representatives further protects workers’ freedom.

As mentioned above, the employers in France have to have good reasons to collect individual information on workers and have to minimize infringement on the private life of workers when collecting such information. During the procedure, an employer has to inform the statutory corporate committee representing the employees of the manner of collection and notify the person concerned before actual collection commences.

Industrial doctors only may manage any medical information directly and employers can only have the information if the health condition of a particular worker qualifies him or her to do the particular duty and if they cannot learn the details of any disorder otherwise.

In addition, the anti-discrimination provisions prohibited “sanctions and dismissal by reason of origin, customs, family situations, nationality, race, political opinion, trade union activity or benefit society activity, or religious belief”. The Act of 2001 added to this list “physical appearance, sex, sexual orientation and age”. The anti-discrimination provision applies to all employment. Workers are free from discrimination by these reasons at any stage of employment including: recruitment, sanction and dismissal and protected from discriminatory treatment concerning remuneration, education/training and ranking. The burden of proof on workers has lightened and there are various provisions concerning compulsory measures by labor superintendents and measures by trade unions acting for discriminated workers.

Among European countries, France is thus further advanced in protecting individual information on workers. It is interesting to note, however, that France lags behind other countries in terms of the new legislation needed to meet the 95/46/EC Directive and a bill is currently under consideration. According to the deputy

chairperson of the National Committee on the Protection of Individual Information, the existing system of protecting individual information is sufficiently appropriate and rapid lawmaking is unnecessary.

(3) Germany

Since the 1980's German trade unions have dealt with the issue of protection of workers personal rights in an era of advanced information technology. The Printing Trade Unions, for example, adopted a judgment on October 18, 1986 to call for further protection of workers' individual information in that the situation existed where the development of advanced information technology was making workers "vitrified persons" in the workplace.

Federal Act on Data Protection date 27 January 1977 in Germany, amended in 1990 and further amended on May 23, 2001 based on the 95/46/EC Directive (2001 Federal Data Protection Act). It has an important role to play in industrial relations.

In addition, Works Constitution Act and the Act on Managers' Representative Committees have important roles. These Acts have provisions on works councils and managers' representative committees elected by workers or managers of private companies, which play the role of controlling agent for protecting personal rights including the protection of employees' individual information.

Works Constitution Act and the Act on Managers' Representative Committees clearly guarantee the rights that workers or managers in general can inspect their own personal records and add their opinions to them. These rights, concerning workers or managers in general, are part of the right of access to information collected and filed.

We must not forget that employers in Germany have had the obligation of consideration as one of the obligations under labor contracts for a long time. The obligation of consideration involves the personal rights of workers. The personal rights protected include: the right to their own portrait, the right to their own voice, the right to own territory and the protection of individual information.

In addition, the establishment agreements between works councils representing the interests of workers at establishments and employers have a large role in protecting workers' individual information at the workplace.

Germany has, since 1984, been moving to adopt a bill on the protection of workers' individual information as part of labor law, however this has not yet been enacted.

3. Supervising Agency

In the UK and France, there are independent administrative supervisory agencies

for the specific purpose of protecting individual information in order to ensure the proper supervision of the protection of individual information. Any person who is processing personal data is required to notify the administrative supervisory agency.

In the UK, the administrative supervisory agency can issue a compulsory notice to any data manager who is found to be violating the processing of information laws. If a dispute becomes an action, the agency can assist the individual who is a party to it. The agency also has a role in encouraging the adoption of a code of practice as well as strengthening the protection of individual information within the firms.

In France, the supervisory administrative agency can resolve issues by petition, conduct on-site inspection of information systems on its own initiative without the petition of a private person and issue warnings and statements. Any case found material by the agency can be brought to the prosecutors' office upon accusation of the agency, which can participate in the penal action. The bill, currently pending, aims to strengthen the authority of the agency. The bill includes an amendment to enable the agency to declare administrative sanctions.

In Germany, the supervisory agency ultimately controls the protection of individual information. Each state government establishes the supervisory agency or an organization commissioned by each state government.

The supervisory agency can sue any person responsible for processing of information for any violation of laws at an organization having the authority for protection or penalty. Any person commissioned by the supervisory agency has the authority to conduct an on-site investigation of a workplace during working hours as is necessary for the commissioned duties. The supervisory agency can direct an employer to take measures to remove any problems. It can prohibit the continuation of information processing if any employer disobeys the direction of the agency and fails to pay certain penalties within the proper period related to a material defect that seriously endangers personal rights.

Apart from the duties of the supervisory agency, German employers, having notified the agency, need to appoint data protection managers in establishments that will carry out the actual supervision.

Data protection managers at establishments have to have the necessary expertise and reliability to perform the duties. The managers report directly to employers but do not have to follow the directions of the employers when exercising their data protection expertise. The data protection managers have no disadvantage due to performance of their duties and their dismissal is only justified by material reason or request of the supervisory agency. Their status is thus protected.

It is a duty of the data protection managers to perform controls prior to processing

if the automatic processing of individual information by computer or otherwise might pose a special danger to the rights and freedom of the workers.

4. Collection of Individual Information

(1) General principle on individual information

The eight principles established by the OECD Recommendation, as mentioned above, were repeated in similar international documents. The data protection laws in the UK, France and Germany have provisions based on these same principles with some differences. The eight principles are: 1. Collection by notice or consent of the source (collection limitation principle); 2. Data should meet the purpose of the use and be accurate (data quality principle); 3. Purpose should be clear (purpose specification principle); 4. The use must be limited for clarified purpose (use limited principle); 5. Protection from loss, unfair access, destruction, abuse and other danger (security safeguards principle); 6. Development, operation and policy should be open to the public (openness principle); 7. Availability of own information and guarantee of the right of access and correction (individual participation principle); and 8. Data managers should follow the above principles (accountability principle).

(2) Scope of protection of individual information

Most countries with data protection laws protect the data that identifies individuals, however, we have to think about how manual data, other than automatically processed data, is treated. Most of these countries protected only that data which is automatically processed. However, data is more often manually processed and there are some firms who process data manually in order to evade the law that protects individual information. Based on the recognition that sufficient protection cannot be provided if manually processed data is exempt, the Council of Europe in 1989 recommended that manually processed data should be protected as individual information.

The United Kingdom and Germany now have new legal provisions that protect manual files in this manner. The current French law basically deals with automatically processed data but the bill will include manually processed files.

In the United Kingdom, the definition of manual files is limited due to the consideration given to small- and medium-sized firms that keep much of their individual data in manual files. The exceptions to the law include employee files date order, which are not easily accessible, binders containing unorganized individual data and unsorted papers also containing individual data.

No great differentiation is made in the German regulation between automatic information processing by computer or otherwise, and manual processing. Manual processing, however, is not subject to the obligation to notify and is free from the

limitations imposed on decisions based on information processing by computer.

In all these countries, sensitive data cannot be collected without clear consent of the source. The countries specify the nature of that data, as mentioned below.

The United Kingdom: nationality or race, political, religious or similar opinions, trade union membership, physical or mental health, sexual preference, crime, etc. France: data directly or indirectly indicating race, nationality, political, philosophical and religious opinions, trade union membership, and individual customs. The bill recommends that the term “customs” be replaced by “sexual preference”. Germany: information relating to race or nationality, political opinion, religious or philosophical creed, trade union membership, health and sexual life. It appears that there is no substantial difference between the provisions in these countries.

(3) Consent

Data protection laws in the United Kingdom, France and Germany justify data collection with the consent of the data source, but the consent is a matter of question when we consider the actual labor-management relationship. There are provisions in the UK and Germany concerning this point.

In Germany, the consent is effective only when it is a free decision of the data source. This person can request information should they wish to refuse consent, and the consent must, in principle, be in writing.

In the United Kingdom, it was generally said that the use of technology possibly infringing a worker’s rights for drug or genetic tests at the workplaces might constitute a tort without the worker’s consent. It was pointed out, however, that the courts did not examine the existence of true consent for actual actions. When collecting sensitive data, for example, the administrative supervisory agency requires positive consent by signature. The agency also stated that the consent must be freely given, the applicant should have a true choice whether to consent or not and should not be disadvantaged should they not consent. The agency stated that consent in employment cannot be entirely depended on. It means that consent to processing sensitive data cannot be freely given when it is a condition in a job offer or when employment is cancelled for not consenting.

An employer can collect all individual worker data in any situation if that is allowed with consent of workers. The treatment of consent mentioned above is thus highly suggestive.

(4) Disclosure to third parties

Those countries with data protection Acts require data managers to properly manage individual information after collection and use it for only particular purposes.

Disclosure of individual information to third parties is a questionable matter.

In the United Kingdom, you can raise an action for violation of good faith concerning disclosure of an employee's individual data to unauthorized third parties. If the data is corrected, prevented, deleted or destroyed, a court may order the data manager to notify the third party having received the data to that effect.

In France, data processors need to take safety measures such as using an access code in information management in order to avoid distortion or damage of the data or delivery of information to an unauthorized third party. There is a provision in France that data processors cannot record or store in the memory device of a computer, an individual's data relating to race, political opinion, thought, religious creed or trade union membership. This is intended to prevent leakage of individual information to unauthorized third parties inside or outside a company. If a corporate committee can collect employee information by questionnaire, the employer is not obliged to notify the committee of the workers' addresses.

Under Germany's Federal Data Protection Act 2001, "transfer" of individual information means delivery of the information collected or stored by a information processor to a third party or inspection or "retrieval" by a third party of that individual information. The Act puts certain restrictions on the automatic retrieval of individual information. The automatic procedure enabling transfer of individual information by retrieval should be appropriate in terms of the workers' rights and employers' duties or business purposes. You must clearly write down the reason and purpose of the retrieval procedure, third parties receiving individual information, kinds of individual information to be transferred and measures for protecting individual information. Employers should also guarantee clarification and examination of individual information by proper random sampling testing, etc.

5. Roles of Worker Representatives

The issue of protecting workers' individual information by firms is related to the specific labor-management relationship. However, as better protection cannot be attained at the individual level, parties concerned in Europe considered this issue of protection in the context of collective labor-management relations, not as an individual issue. The 1989 recommendation of the Council of Europe was the first international document to deal with this issue in the area of employment to be issued in this very context.

Workers representatives have various roles in Europe. An interesting fact is that while workers' representatives have a very minor role in the United Kingdom, they play a far greater role in Germany.

As the data protection Act in the United Kingdom depends heavily on individual

workers exercising their rights, there has been a criticism that this requires the assistance and cooperation of trade unions. The Act, however, has made no provision for the involvement of worker representatives.

In France, the Labour Code, as amended in 1992, has a provision that considers collective labor-management relations concerning the protection of workers' individual information. Under this provision, an employer should provide information on the introduction of new technology to works councils. The personnel representatives now also have the "right of warning". This right of warning is exercised in the following way: 1. If the personnel representatives discovers an unfair infringement on a worker's rights and freedom, the representatives shall petition the employer immediately; 2. The employer should, after investigation, take any measures required for improvement of the situation; and 3. Should there be no written objection from the relevant worker and if the employer fails to take such measures and the evaluation of the investigation's results differs from that of the employer or if the representative cannot reach an agreement with the employer, then the representative can raise an action at the judgment section of the labor tribunal. If the worker rejects the filing of complaint by the representative, he or she can file an action at the labor tribunal under the general legislation.

Worker representatives have greater roles in Germany than in France. Works councils are "watchdogs of compulsory provisions" at establishments and represent workers' interests by negotiating with employers on certain measures or introducing equipment into establishments. Works councils play no small roles in protecting workers' individual information. The councils have powers to examine the measures of employers and check compliance of data protection provisions by random sampling or otherwise.

If an employer prepares a questionnaire for applicants or a personal questionnaire for workers, it has to obtain the consent of the works council on the content of the questionnaire. General personnel evaluation standards applied by an employer within an establishment are also subject to the consent of the council. As personal evaluation standards provide how to evaluate worker performance, the involvement of the works council and its consent can limit and prevent intervention relating to workers' personal rights.

An employer should jointly determine with the works council any introduction or application of technical devices to monitor workers' behavior and ability. Information obtained through monitoring is also considered to be a worker's individual information and should be protected to guarantee personal rights. Workplaces, at present, have advanced technology capable of monitoring the behavior and ability of workers. The joint decision power of the works councils becomes more important and its scope is expanding through court cases.

6. Rights of Access to, Correction and Removal of Individual Data

Most countries with Acts that protect individual information have established mechanisms to respond to requests for disclosure of information from data sources.

In the United Kingdom, a data source can access its own individual data by request on payment of a certain charge. Most importantly, if an employer is using individual data to judge job performance, a worker can confirm whether the individual information held by the employer is properly processed. Workers have the right to require that an employer suspend judgments that are solely based on automatic processing.

A data source can file a lawsuit at a court for an order of correction, prevention, deletion or destruction of data by a data manager. The court can order the data manager to pay damages to the data source should it judge that, following examination, the manager is in violation of the Act. The court can also order the data manager to notify the third party that received the data that the data has been corrected, prevented, deleted or destroyed.

In France, a data source can inquire whether its own individual data has been processed or not and request access to its own information when it is processed. The worker, having received such information, can demand that the information be corrected, supplemented, clarified or replaced, or erased. Any obstruction of right of access and correction is subject to penal punishment. The burden of proof on the absence of obstruction is on the data manager.

In Germany, a worker may request the employer to provide its own individual information. The employer should provide the information free of charge in writing upon a worker’s request unless there is any other appropriate method or special circumstances.

Based on the right to inspect personal records provided under the Establishment Organization Law, a worker can inspect documents recording information that might affect working relations. Employers cannot reject the worker’s right to inspect personal record on the grounds that it is a secret of the establishment or business. When inspecting a personal record, a works council member can accompany a worker. The member has to keep private the content of the inspected personal record.

Any incorrect individual information must be corrected. If it is sensitive data, the employer should prove its correctness, if no proof is provided then the data must be deleted. Other information is subject to the labor-management argument based on its validity, should its validity not be verified then its use must be suspended.

II. Legal Framework for Protecting Individual Information of Workers in

the United States

1. Various legal systems for the protection of workers

In the United States, one of the advanced nations in terms of privacy protection, there is no comprehensive legislation for protecting workers' individual information, however, certain legal restrictions have been applied to individual cases. Due to the development of information technology, protection of workers' privacy was called to issue in 1990 in industrial relations, and has been recognized as a material issue.

There is no explicit provision in the Federal Constitution to guarantee the right of privacy as a legal measure that will protect the privacy of citizens in general. The interpretation of the Constitution by courts led to the recognition of the right of privacy including freedom from government monitoring of, and interference in, private matters, the right of self-determination and the limited right of information privacy.

The human rights provisions of the Federal Constitution have been applied to industrial relations. For example, there were cases where the investigation of offices and lockers was questioned. This was based on the Amendment IV of the Federal Constitution that provides for freedom from government monitoring and interference in private matters. Other cases have included information privacy where questions of polygraph examination were considered, and cases on the right of self-determination where policemen who were cohabiting were dismissed were questioned.

Most of the State Constitutions have provisions similar to Amendment IV of the Federal Constitution. These provisions have often been more moderately interpreted than Amendment IV in cases of search at workplaces or various inspections. The Constitutions in at least ten states have provisions that guarantee privacy in some way or another.

Under the common law, the right to privacy means the "right to be left alone" and infringement of such is classified into four types of tort: 1. Appropriation of names or portraits; 2. Trespassing into a private area; 3. Publication of private matters, and 4. Misleading expressions. Anyone who commits one of these torts is liable to pay compensatory damages, or, in certain cases, punitive damages. If monetary damages after the fact are not a sufficient relief, an injunction is available.

A worker can control the flow of his or her own credit information to some extent under the Fair Credit Reporting Act. In addition, a non-discriminatory series in employment laws prohibit the collection and use of individual information, which might be negatively evaluated by biased employers in order to prevent discriminatory treatment of minority workers. At the State and Federal levels, private employees are banned, in principle, from using the polygraph under the Employee Polygraph Protection Act. The Electronic Communication Privacy Act 1986 enacted by the Federal

Legislature applies to both private individuals and governments, with some exceptions, in order to prohibit and regulate telephone monitoring and tapping.

There are also State Acts that: prohibit questions and investigation of criminal history and previous offences; prohibit and regulate AIDS tests and genetic tests; prohibit the making, using and distributing of black lists; guarantee access by employees to personal records, and the Occupational Safety and Health Law and State laws that guarantee access to medical records.

One feature of the United States lies in individual and specific regulations mentioned above.

2. Disclosure of Individual Information to Third Parties

If an employer provides an employee's individual information to any private party without notifying the employee, that may be a case of "publication of private matters", one of the types of privacy infringement. Courts' findings are divided in this regard. One opinion is that publication to "relatively many audiences" is required. Information to a limited number of managers is not a "publication" under this opinion. Another opinion calls for consideration of the character of the individual information provided and the legitimate business requirement for the provision of information, not just the extent of the information provided. For example, a female employee having undergone mastectomy or suffering from some other female disorder, may feel very uncomfortable when the fact is disclosed to even a limited number of people, and that disclosure is sufficient to meet the requirement of "publication". It is also questionable whether the particular information provided relates to private matters. Private matters already known to many people will not give rise to the issue of privacy infringement.

If an employer makes a misstatement to a third party that misinforms the third party about an employee's social credit, the act may be classified as defamation under a common law tort.

3. Access to One's Own Individual Information

No employee has a common law right to claim access to his or her own personal record. In at least 17 states, however, employees or ex-employees of private firms can access their personal records under State legislation. The statutes provide that an employer is obliged to let an employee inspect their own personal record upon request, thus guaranteeing the right of inspection of personal records for employees and others.

III. Actual Situations of Some Foreign Countries concerning Treatment of Individual Worker Information

Among the issues concerning collection of individual information, the collection of individual health information and monitoring at work are the most questioned. We

focus on these two points while reviewing regulations of some countries.

1. Health Information

(1) Medical information

There are large differences between countries in terms of the treatment of medical information; this is partly due to the industrial doctor system. In the United Kingdom, a worker's health is managed by his or her own doctor. Under the regulation, an employer requiring his or her medical information for employment needs to get it from the medical expert in charge of an applicant or employee. The medical expert needs to notify the individual and obtain his or her consent if the employer requests the information.

In Germany, there is no legal obligation to undergo a medical examination upon recruitment or regularly thereafter and workers are not obliged to undergo a medical examination unless otherwise provided for in their labor contract or collective agreement. If an applicant or worker undergoes a medical examination by the doctor appointed by the establishment, the doctor is legally free from the employer's directions and orders and is only sworn to secrecy as a doctor. The only thing he or she can tell the employer is the final conclusion, i.e. "conditionally appropriate", "appropriate" or "sufficiently appropriate".

On the other hand, in France labor doctors are responsible for managing the health of workers. The Labour Code provides that an employer has to ensure that all applicants receive a medical examination by a labor doctor upon recruitment or at the expiry of the apprenticeship period. Workers also have to undergo an annual medical examination after recruitment.

A labor doctor will compile a medical record upon recruitment examination and add further results as needed. The labor doctor may not provide the information of the medical record to the employer. The labor doctor has a civil and penal responsibility concerning medical confidentiality. The medical record will be kept during employment and for five years following the resignation of an employee. The employer can only know whether an employee is suitable or not for the particular job. The employer is not allowed to perform the examination nor obtain the information it contains.

In the United States, an employer may not order an medical examination or interview of an employee unless it is related to a particular job and proved to be a necessary requirement for the business. An employer can conduct medical information between application for employment by an applicant and commencement of employment, and can, in certain cases, make employment conditional upon the results of the examination.

The Americans With Disability Act provides that an employer employing 15 or more persons cannot request the medical information or interview for the existence of disability in applicants before recruitment.

Further, the Employment Non-Discrimination Act may apply in some cases. There was a case where a court held that a medical examination that involved the taking of a blood sample without prior notice during a health examination was a material infringement of the right to privacy under the Federal Constitution.

(2) Genetic testing

Research is advanced in the United States concerning genetic testing. Due to the progress of genetic research, we can know in part that employees who handle hazardous chemicals or work under special environment may show peculiar physically responses to such workplace environmental factors. Many firms are therefore conducting genetic tests to prevent industrial accidents or to reduce health insurance premiums. “Genetic discrimination” is now a large social problem in which a person without actual disorder may be treated as a patient of genetic disorder as a result of a genetic test and be discriminated against in the employment field or discover that they are unable to buy insurance policy.

The Equal Employment Opportunity Commission is of the opinion that an employer cannot order genetic screening as it may not be related to the current working ability of an employee.

In 22 states at least, they have laws to prohibit employment discrimination by reason of genetics. Seventeen states prohibit genetic testing and/or provision of genetic information.

In the United States, no full-scale genetic testing has been conducted. They have no statute on the genetic testing of workers and no court case in this regard. The advisory commission on genetics, however, is considering the role of genetic testing in employment. The commission is of the opinion that genetic testing can, in exceptional cases, be effective for health and safety but further research is required to predict disorders that may be contracted in the future.

In France, they have definitely recognized since the 1980’s that the human body should be protected from the progress of genetic engineering. Article 160-10 of the Civil Code, as amended on July 29, 1994, prohibits genetic testing for any purpose other than medical or scientific research.

In Germany, genetic examination is not a general way of collecting individual information and there is no legal provision regulating genetic examination. Some people, however, are calling for new provisions to prohibit genetic examination and to prevent

employers from requesting a “certificate of risk factors”.

(3) Drug Testing

Drug abuse is a very serious problem in the United States. Some firms face various problems arising from the use of drugs by employees. Privacy of a test subject, however, may be infringed depending on the method or procedure of drug testing and some people doubt the correctness or effectiveness of drug testing.

The Federal Government has made rules to order employees in certain positions to undergo drug testing, and has performed these. The government also requires drug testing of certain employees in the private sector in certain positions that require special care in terms of public safety. The Supreme Court of the United States has upheld such acts to be constitutional. The Drug-Free Workplace Act obliges firms that have contracts with the Federal Government and employers receiving subsidies from the government to prohibit the use or possession of restricted drugs in the workplace. Announcements have been given to that effect. There are statutes on drug testing in at least 27 states. As a reflection of the seriousness of drug abuse in the American society, drug testing is allowed under certain conditions, although there are some differences between the states.

In the United Kingdom, discrimination by drug addiction is not covered by the Disability Discrimination Act 1995 and is hardly supported by the Unfair Dismissal Act. When an employment contract has punitive or other provisions that clearly state drug or alcohol testing, it is highly likely to be held that dismissal for refusing the test is fair. Dismissal by reason of drug or alcohol may be justified as a dismissal by reason of ability. The picture differs completely when an employer has no agreement with employees and introduces compulsory testing in violation of employment contracts. In this case, the employee may resign and dispute the unfair dismissal as a deemed dismissal. However, if the employee shows the reason for conducting the test, the damages are likely to be low.

In France, there is a document produced by an advisory committee of the Minister of Labour, Employment and Vocational Training, which clarifies that drug testing conducted in an organized way in a firm is not justified in principle and an employer therefore cannot request from workers information on the fact of using drugs. If there is any possibility of danger resulting from the use of drugs, the employer can conduct the testing in an organized way.

In Germany, the recommendation by an employer that his/her workers should undergo medical examination does not meet the purpose of industrial relations. Consequently there is no corresponding obligation of workers under labor contracts to comply, unless there is a clear reason such as danger to a third party.

(4) HIV/AIDS Testing

With AIDS, the World Health Organization (WHO) and the International Labor Organization (ILO) are of the opinion that there is no risk of AIDS infections between workers or between them and customers in the majority of occupations. Workers with HIV but without further development of the disease should be treated in the same manner as ordinary healthy workers or workers with AIDS or should be treated the same as workers with other disorders.

In France, AIDS testing at firms in general was questioned. Most of the firms were based in the United States. To cope with the situation, the advisory committee of the Minister of Labour, Employment and Vocational Training recommended that dismissal by reason of AIDS is clearly illegal unless the particular worker lacks the ability to perform or affects the firm's operation due to repeated or long-term absence. The courts also held that employers cannot avoid employing a worker due to AIDS where labor doctors have affirmed that individual's capability to work.

In the United Kingdom, an employer should obtain the clear consent of a worker before HIV antibody testing. If a doctor conducts the test and takes a blood sample without the subject's consent, he or she is criminally liable for assault and may have a civil responsibility in terms of illegal bodily contact. Employers do not have the right to know the results of HIV/AIDS tests. This situation results from the fact that all doctors are bound by medical ethics and can only disclose a patient's medical information with that patient's express permission.

Furthermore, HIV testing on employees may violate an implied provision of employment contracts that prohibits any act that might destroy the mutual trust between labor and management. The employee may resign and file an action for unfair dismissal based on the theory of deemed dismissal.

The dismissal of a HIV/AIDS carrier due to the risk to the health and safety of other colleagues depends on the judgment whether the employer considered, after discussion with the employee, and before the decision of dismissal, the possibility of transferring the carrier to another workplace where there would be no risk to the health and safety of others. If the employer is under no obligation to transfer such an employee, the employer still needs to consider this kind of transfer. The employer needs to explain the need for the transfer and give a warning that the employee may be dismissed should he or she reject the transfer. It is pointed out that, if the employee rejects the transfer, is dismissed and files an action for unfair dismissal, the complaint is highly likely to be rejected if the employer followed the above procedure.

In the United States, at least 37 of the states have laws that prohibit the ordering of employees to undergo HIV testing and/or allow performance of the test on the

condition of explaining the HIV test and obtaining the employees' written consent.

2. Monitoring Workers at Work

(1) Video monitoring

In France, acts to protect privacy that simply monitor the working situations of workers are in violation of Article 9 of the Civil Code. If such an act can be justified for security reasons, such as prevention of theft at banks, department stores and other places prone to theft, it is not an infringement of the workers' personal rights and the employer can install video cameras. If the video records may be used as evidence for sanctions, the employer must make statements in work rules to that effect. In a case where employee theft was recorded by a video camera in order to prevent crime, the Court of Cassation held that no employer can punish an employee by reason of evidence collected by a method that is unknown to the employee. The judgment is a very important precedent that clarifies that no punishment can be done on the basis of evidence collected without informing an employee in advance.

In the United Kingdom, if a worker files an action to a court, it is highly likely that video filming by an employer is justified on the basis of security. The courts and tribunals tend to judge that dismissal as a result of video monitoring of workers is fair due to the legitimate business interest of employers. On the other hand, the independent administrative supervisory agency for the protection of individual information emphasized that monitoring can be justified only when there are safety and security risks that cannot be properly addressed by other less invasive methods. The Data Protection Act 1998 is going to apply to video monitoring and it is pointed out that the law will regulate video monitoring.

In Germany, information collected by video monitoring must, in principle, only be used for predetermined purposes. Video cameras may be installed at sales spaces to prevent shoplifting but cannot be used to monitor the behavior of workers' working there.

In the United States, employers are normally allowed to monitor employees' words and actions during work hours within a workplace in order to observe their job performance. It is said that employees have no legal interests to be protected such as privacy.

Monitoring is not only an issue of a workplace. There was a case where an employer monitored an employer at home by using a high-performance camera to check whether the employee pretended to be sick as the result of an occupational injury. The court found that the employer used an invasive and uncomfortable method of monitoring but dismissed the complaint of privacy infringement by the reason that the employer has a legitimate right to check the validity of the occupational injury, which

has precedence over the plaintiff's privacy, and the legitimate right of the employee includes monitoring the plaintiff at home.

Monitoring for unfair purpose or by improper method, however, is renounced by the courts since it is based on the infringement of an individual's privacy.

As mentioned above, France and Germany prohibits, in principle, video-filming involving the monitoring of workers at work. The courts in the United Kingdom, on the other hand, judged this in a different way. However, video monitoring of workers In the United Kingdom may be regulated in the future. The independent administrative agency for the protection of individual information requires due reason such as security. In the United States, however, video monitoring by employers tends to be allowed.

(2) Telephone monitoring

The United States regulates telephone monitoring under the Electronic Communication Privacy Act of 1986 as a federal statute. The Act prohibits the intentional monitoring, disclosure and use by private individuals and governments of oral, cable and electronic communication using electronic or mechanic devices. Violation of the Act is subject to criminal punishment or civil punishment such as punitive damages.

The Act seems to provide comprehensive and important protection for workers being monitored. But the Act has two important exceptions of "normal course of business" and "prior consent" which may damage the principle of prohibiting communication monitoring. The protection under the Act may become meaningless in fact concerning employers' day-to-day telephone monitoring at the workplace.

In terms of the exception of "normal course of business", courts compared the employees' reasonable expectation for privacy and the legitimate business interests of employers' in communication monitoring. The exception of "prior consent" allows telephone monitoring if one of the parties involved in the communication gives consent to the monitoring in advance. In the context of the labor-management relations, knowing the possibility of monitoring cannot be deemed to mean implied consent. If, however, an employer clearly informs employees of the prohibition of private calls and regular monitoring of business calls, then they will be exempt on the basis of "prior consent".

In at least 12 states, prior consent of all parties is required for monitoring telephone communication. Telephone monitoring is not only regulated by such statutes but also may constitute an infringement of the common law right of privacy. In a case of indiscriminate monitoring and recording of calls by workplace phones, the court held that such an act was an infringement of privacy.

In the United Kingdom, it is difficult to provide relief, on the basis of violation of reliance or contract, to a worker whose conversation at work was heard by the employer. This is because that employer's legitimate interests may be upheld on checking the worker's performance. Workers, however, may file actions for dismissal based on private calls as unfair dismissal.

The developments in the United Kingdom are interesting in relation to the Convention. The European Court of Human Rights held that the situation in the United Kingdom violated the convention because no relief against privacy infringement is available for communication monitoring. The Telecommunication Interception Act 1985 was enacted as a result. The Act criminalizes communication monitoring during transmission by the "public telecommunication system". It is, however, difficult to apply the Act to the acts of employers intervening in the communications of employees at work because the law does not cover monitoring by private systems.

The European Court of Human Rights later pointed out that the absence of legislation to protect privacy in the United Kingdom, in the case of telephone monitoring of employees at work by a police supervisor, is a violation of the provisions of the Convention. The United Kingdom later enacted the Human Rights Act 1998 providing that laws should, as much as possible, be interpreted to respect the rights guaranteed by the convention.

The independent administrative supervisory agency for the protection of individual information emphasizes that monitoring should be conducted in limited cases where, for example, the business purpose cannot be attained by logs of calls.

In France, recording private conversation or telephone monitoring of workers at work without the employer's notice is subject to the Penal Code provisions of privacy protection. The independent administrative supervisory agency for the protection of individual information requires certain procedures for the installation of devices for monitoring workers when installing an automatic telephone switchboard which is capable of logging telephone numbers in order to check for telephone abuse by workers.

In terms of telephone abuse by workers, the courts are strict against workers concerning dismissal for private use of telephones when they are used frequently to inflict specific damage on employers. If an employer does not have any rules in place, it seems to be interpreted that an employer cannot dismiss a worker without apparent abuse of telephone by the worker. The Court of Cassation held that using a log of calls as evidence of private calls without notifying the employee is not an illegal collection of evidence.

Germany has adopted a similar stance in this area. In the case of a worker calling by a workplace phone, the employer is not permitted to tap the call or cause any third

party to listen to the call without notifying the other party of the call. It is however permitted to record the particular telephone used, the dates and duration of calls.

(3) E-mail Monitoring

E-mail monitoring of employees has already been disputed in the courts and is attracting much attention throughout the world. The court cases in the United States and EU, especially France, adopt different positions.

In France, they discussed whether the case theory of "confidentiality of correspondence" can be applied to electronic mail concerning e-mail monitoring. The French courts have held since the first half of 20th century that a supervisor unsealing a letter delivered to a worker at the workplace is a violation of the confidentiality of correspondence. The discussion came to a conclusion with the Nikon judgment of the Court of Cassation on October 2, 2001. France is the first country in the EU where the highest court has clarified its position on this delicate issue. In the judgment, the court held that an employer's unsealing of a private mail without notice is unlawful from the viewpoint of workers' confidentiality of correspondence.

Companies, however, need to check the private mail of workers for security and other reasons. It is said that the absolute prohibition of checking private mails is an erroneous interpretation. The Nikon judgment pointed out that restricting the rights and freedom of workers must be treated equally with the company's indispensable interest. If a worker consumes all of his/her work hours in a day on the Internet, then such an act may not be justified under the theory of the Nikon judgment. We must not forget, however, that exceptions to restrict the rights and freedom of workers are strictly interpreted in France. Before checking, firms should take measures to eliminate the infringement of the basic freedom of workers, unsealing of workers' private mail is prohibited in principle and a firm can do so in only very limited exceptional cases where there is pressing material reason to justify it. The firm must notify the subject person of the possibility of checking and consult with the corporate committee concerning the method of checking. The administrative supervisory agency mentioned above has been encouraging rulemaking concerning use of information equipment within firms.

In 2002, the administrative advisory agency compiled a report on e-mail monitoring, making the following remarks.

While messages transmitted on a workstation owned by an employer are limited to business purposes, if the title of an e-mail or names of the address list filed by a receiver indicate that it is a private communication, the letter is protected under the theory of correspondence confidentiality. A company can introduce various tools required under network security, prevention and control. The company should notify workers if e-mails are stored on the server and the period of storage should be limited to

the period necessary to “safeguard” them. Introduction of such devices must be notified to the administrative supervisory agency.

In the United Kingdom, the independent administrative advisory agency for the protection of individual information has clarified its stance on this issue. The agency says that e-mail monitoring should be conducted by minimizing unsealing using transmission logs and automatic equipment. No employer can monitor the apparent transmission of sensitive data or information concerning trade union activities by workers. Unsealing of workers’ private mail is not permitted unless there is an exception such as for safety reasons or the possibility of harassment. Even when private use is prohibited, an employer should check private use without unsealing mail and taking measures against the worker concerned. The agency calls for the need to notify workers of the possibility of monitoring, its purpose, as well as the scope and time period of storing e-mails for monitoring.

In Germany, if an employer limits the use of e-mails and the Internet to business purposes, private use of by workers is counter to the commitments under the labor contract. General monitoring content of e-mails, however, cannot be permitted except in cases where there are justifiable reasons. Employers should give advance notice to workers of the possibility of monitoring Internet use or other systems. Introduction of this monitoring system is subject to a joint decision between the employer and the works council.

We can point out that France, the United Kingdom and Germany tend toward severe restrictions on employers’ monitoring of workers’ e-mails.

In the United States, exceptions for prohibiting monitoring without notice under the Electronic Communication Privacy Act may apply to the monitoring of employees e-mails. The exceptions include “normal course of business”, “advance consent” and “provider”. It is a question whether the exception of “provider” can apply, not only to the providers of telecommunication services, but also to firms in general having and operating an in-house e-mail system. There have been some court cases in which the exception was applied to police stations with internal computer network as “providers of an electronic communication service”.

E-mail monitoring may pose a problem under common law of privacy infringement. Infringement of employees’ privacy, however, is not likely to be upheld because they cannot reasonably expect privacy.

In France and Germany, unsealing employees’ private mail is, in principle, prohibited. The United Kingdom seems to take the same approach. However, the US courts differ from the European trends, by making harsh judgments that can deny employee privacy entirely. Academic doctrine, however, point out the similarity

between telephone tapping/unauthorized reading of private letters and e-mail monitoring based on judgments on the former acts. Many scholars are thus of the opinion that e-mail monitoring infringes on privacy and that the privacy of employees can be protected in certain cases.

IV. Summary

In Germany and France, they pursued legislation based on the provision of "respect for private life" in Article 8 of the Convention. This concerned the protection of workers' individual information and enacted laws to protect individual information in the latter half of the 1970's. The United Kingdom has failed several times to endorse a bill on privacy through their parliament.

The main difference between nations largely depends on the differences in legal systems. German and French legal systems are known as continental legal systems and differ from Anglo-American legal systems. The United Kingdom has thus taken a different stance from those of other European countries concerning the guaranteeing of human rights.

The recent trend in the United Kingdom on the guaranteeing of human rights is of interest. The Data Protection Act 1984 was not based on the spirit of human rights protection but enacted for the reason that other advanced European countries had data protection legislation to prohibit the transmission of personal data to a country lacking an equivalent system. The law was thus evaluated as economy/trade-oriented as compared to the information privacy system of other countries. Due to the requirements of the EU Directive, however, the United Kingdom has enacted the Data Protection Act 1998. This Act has almost the same content as that of the 95/46/EC Directive. The Human Rights Act 1998 incorporated the Convention into the domestic legal system.

Germany amended the Federal Data Protection Act in 2001 and a bill for amendment is currently under discussion in France.

The court cases in the United States seem to give great weight to the managerial freedom of employers as far as the privacy of workers is concerned. The progress of science and technology, however, urged the United States to recognize the protection of workers' privacy as an important issue in labor-management relations. Academic doctrine also calls for the protection of workers' privacy. We cannot overlook individual laws having protection provisions for specific cases in the United States, which has no comprehensive European-type protection laws.

The privacy protection of workers in Europe and the United States will provide important ideas in terms of addressing this issue in Japan.

Ikuko Sunaoshi

Chapter 4. Worker's Access to Employment/Labor Information inForeign Countries

Introduction

In this chapter we outline the legal systems in the United Kingdom, France and the United States concerning working conditions, disclosure of business/financial plans, personal information and safety and health information at the various stages of job offer, recruitment, execution of labor contract, its development and termination.

1. Working conditions at the job offer/recruitment and execution of labor contract stages

In the United Kingdom, there is no common law obligation to disclose specific information to workers at the job offer stage. Jobseekers (workers) search for jobs by looking at employment opportunities displayed at the Employment Service Jobcentre, which is the equivalent of the employment security office in Japan, the Internet (company's site; Job shop), advertisements in national or local newspapers, and job offer columns in company newsletters. In addition, workers will identify a company's business activities and financial situation through the Internet (the company's site), the annual report and financial/industrial information in national newspapers. Information, including annual reports, can be obtained free of charge or for a minor charge, by visiting a company's website or using the information service (over the counter or through extensive Internet contacts) operated by the Companies House, a public agency similar to a Japanese legal affairs bureau. Labor unions used to be important information sources for blue-collar workers, but these gradually disappeared after closed shops were prohibited, and today have completely lost their importance. The Jobcentre is not used for expert positions. Specialized magazines, national newspaper advertisements and private placement offices are other important information sources.

In France, the placement business is basically monopolized by ANPE, National Employment Center. Private placements are prohibited and may, if they occur, result in a penalty. (Performers and housekeepers are the only exceptions to this.) The labor supply business, other than worker dispatch, is also prohibited and may result in penalties.

The national placement monopoly in France is not absolute due to the facts listed below.

Firstly, employers are not obliged to employ workers introduced by ANPE, and jobseekers are not obliged to take up employment as offered by ANPE (this may lead to loss of unemployment benefit).

Secondly, employers can make direct job offers. However, jobs may not be offered by posters or other means (except on the registration of housekeepers or dispatch workers). Employers can use newspaper advertisements. In this case, an upper age limit cannot be stated and foreign languages cannot be used (violations are subject to penalties).

Job offers are subject to the principle of non-discrimination and must be gender neutral.

In addition, an employer must notify jobseekers in advance as well as the works council that is legally representing employees, of the recruitment examination method.

Thirdly, approved organizations and organizations operating under an agreement with the National Employment Office (e.g. Chamber of Commerce), can operate placement businesses.

In the United Kingdom, no employer is obliged to disclose specific conditions under the labor contract. There is no legal equivalent to Article 15 of the Japanese Labour Standards Law and Article 5 of its Enforcement Regulations. The British statute requires employers to provide a written statement on working conditions. This obligation was first introduced by the Contracts of Employment Act 1963 and is currently provided within the Employment Rights Act 1996. The written statement system is an epoch-making system under British labor legislation. It has been adopted as a model of the EC Directive on employee information (contract or employment relations) (91/553/EC).

With regard to dispatched workers, the Conduct of Employment Agencies and Employment Businesses Regulations 1976 based on the Employment Agency Act 1973, provides for the obligation of informing workers in writing about employment/working conditions once employed as compared to normal employment.

In France, labor contracts without a definite time period, as in normal contracts, need not be made by employers. However, the EC Directive of October 14, 1991, requires that a notice of basic employment/labor contract information be sent within two months of its execution. The information specifically includes: parties, workplace, vocational qualification, remuneration, effective start date of contract, work hours, applicable collective agreement, paid leave and period of advance dismissal notice. As a result, employers are required to provide copies of employment declarations and wage slips to the labor superintendent and social welfare office.

The contract must be written in French. A foreign worker can request a translation of the relevant documents in order to understand the working conditions.

Apart from labor contracts without a definite time period, written contracts must

be made for labor contracts with: definite periods, part-time, dispatched workers, probationary workers, home-based workers and other non-typical employment contracts.

The United States does not have a statute on employers' obligations to indicate working conditions in general at various stages of job offer/recruitment and upon execution of labor contract. The freedom to cancel one's application for employment within no specific time period seems to reflect the character of those countries where freedom of contract also prevails in the employment field. If, however, working conditions are given to workers orally or in writing once they are employed differ from the actual situation, thus it may possibly constitute a contract violation.

2. Express working conditions during the development and at termination stage of labor contract

In the United Kingdom, any change in working conditions must be notified to each worker in writing within one month of the change. This does not depend on whether the change is advantageous or disadvantageous to the worker. An employer must therefore give a written statement regarding changed working conditions when promoting an employee.

Employers are also obliged to deliver wage slips to workers. The slip must clearly state the total amount of wages, the amounts and purposes of varying or fixed deductions and the net amount of the wage.

Any collective change to working conditions requires the consent of the trade union and the employer should clearly indicate and explain the reason for the change to the union. However, it is difficult to say that an employer's obligation to disclose information to the trade union in a collective bargaining situation is not sufficiently guaranteed under the legal system.

Any issue involving the status of employees, as a result of the transfer of business or personnel reduction, is subject to a special legal regulation, which does not apply to collective bargaining in general. This is because the regulation was made as part of the obligation imposed by the European Community Directive. Therefore, an employer must give sufficient information to the representative of the approved voluntary trade union, or a representative of the relevant employee appointed or elected, with the power to receive such information and consultation on proposed dismissals, or an employee representative elected under the requirements of the Transfer of Business (Protection of Employment) Regulations of 1981, to ensure consultation on the transfer of business or personnel reduction before the event.

In France, the workers, among others, have to know about the legal working conditions provided in the Labour Code in terms of access to information on working

conditions during the implementation of a labor contract.

Apart from legal conditions, collective working conditions should be a basic provision in collective agreements. The provisions of work rules in France are limited to safety and health, discipline of labor and disciplinary punishment. Working conditions cannot be regulated through work rules as they can in Japan. On the other hand, the scope of workers covered by a collective agreement is extensive.

A worker needs to respond as an individual during labor contract implementation when his/her individual working conditions are to be changed. This issue is not addressed by legal procedures but by standards established through court precedents. When changes to working conditions are not related to the elements of the contract, and unilateral change is possible, then an employer acting on his/her own behalf in terms of labor direction, can change them. If the change relates to the elements of labor contract, it will require the consent of the worker.

In addition, wage slips act as the workers' access to information on working conditions during the implementation of the labor contract. The slip includes the following information: name and address of the employer; the social security agency receiving social insurance premiums; the social security number; name of the collective agreement or the provisions of the Labour Code relevant to paid leave and the period required for prior notice of dismissal; employment and status of the worker; the fact that the worker can maintain the wage slips for an indefinite period; period and time of work (including overtime); total amount of remuneration; amount of insurance deducted by the employer and the worker; other deductions; additional amount of remuneration; date of payment; date of paid leave and allowance for paid leave.

Access to information on the dismissal procedure is important in terms of terminating a labor contract. The dismissal procedure is considerably stricter in the case of dismissal for economic reasons (e.g. personnel reduction in Japan) than in for individual reasons (e.g. normal or punitive dismissal).

Dismissal for an individual reason involves a procedure that precedes the decision to dismiss as well as a procedure following the decision. The dismissal procedure based on economic reasons depends on the size of the firm and the number of workers to be dismissed by the employer. While the dismissal procedure based on an individual reason includes the opportunity for an explanation by the person to be dismissed, the dismissal procedure for economic reasons is a collective one that involves the participation of the employees' legal representatives.

In the United States, if a trade union exists in a firm that has exclusive power of representation with the support of the majority of employees within a bargaining unit, the employer is obliged to enter into collective bargaining with the union when setting

or changing working conditions.

In a firm with no trade union, there is no such law obliging the employer to explain the conditions following the change, hear opinions of, or have consultations with, employees or their representatives before changing working conditions in general.

After 1980, employers on their own initiative established the system of employee participation in both unionized and non-unionized firms in order to promote labor-management communication and to encourage employees to voluntarily or independently boost their productivity. This move reflected changes in the market environment and technology as well as severer international competition. In order to achieve the intentions of this system, employers will need to provide various pieces of information to their employees.

However, any system of employee participation formed without the cooperation of a trade union as the bargaining representative or other such systems in non-unionized firms, especially programs which enable an employer to set up a committee for the participation of employees and have discussions or exchanges of views concerning working conditions, personnel affairs or other matters, may constitute an unfair labor practice of "control over, intervention in and assistance to 'worker organization'", as prohibited by Section 8(a)(2) of the National Labor Relations Act.

Although there is no Act that imposes an obligation to specify working conditions in general apart from disclosure through collective bargaining, there are some laws that oblige the employer to inform employees of the provisions of certain statutes and disclose the outline or amendment of the fringe benefit system.

3. Disclosure of business/financial plan and personnel information

In the United Kingdom, as previously mentioned, trade unions can only request corporate financial information through the legal system of information disclosure for collective bargaining. Since the latest information on managerial information of firms may affect stock prices, they are not obliged to disclose this.

Some trade unions are involved in setting personnel evaluation standards. Manufacturing, Science, Finance (MSF) Union, for example, participates in the setting of a performance rating evaluation standard and intervenes in any specific violation of the standard through the grievance procedure.

The Advisory Conciliation and Arbitration Service has been giving advice to employers on the necessity for an in-house grievance procedure to maintain the reliability of performance rating.

Labor unions sometimes demand disclosure of information on performance rating for the purpose of collective bargaining. The demand is raised in cases where the

application of performance rating is questioned in relation to agreement between management and the union concerning the system, where an employer introduces a performance rating system without changing existing collective agreement provisions on wage assessment or where the employer proposes changes to the existing provisions.

In France, employers are obliged to disclose economic and financial materials to the corporate committees. As part of the policy to encourage labor-management autonomy within firms, the obligation of annual negotiation on working conditions and other matters is provided under law. When compared to the obligation to respond to collective bargaining in Japan, the character of the French system lies in the fact that there is no obligation for *ad hoc* negotiation but for annual negotiation, and the negotiation agenda is specified.

The agenda of annual collective bargaining within firms includes the following aspects as particularly important items of information disclosure: the ratio of male to female in terms of employment and vocational rating, total amount of wages paid, total hours worked and the type of work hour system implemented.

The collective bargaining items include: substantial wages; total amount of wage for each type of work (including allowance and payment in kind); actual hours worked, and the system of work hours. Decisions on individual remuneration are not subject to bargaining but the standard of wage distribution can be negotiated.

In the United States, in the case of a firm with a trade union as a negotiating representative, the employer should, when requested by the union, as part of the obligation associated with good faith negotiation, provide information relating to the collective bargaining. Information on working conditions such as wages as well as financial conditions should be provided.

In terms of personnel information, in the case of a firm with a trade union as a negotiation representative, the employer, when requested by the union, should provide information on the following topics: incentive pay systems or bonuses based on merit; amount; standard of evaluation and rating. It is important to note that employers are also obliged to provide such assessment materials.

Firms having collective agreements with trade unions usually have grievance procedures in place to resolve disputes on the interpretation or application of such agreements. In order to improve consultation between trade and management through the procedure, the employer may have to provide some personnel information to the workers.

4. Disclosure of safety and health information

The Health and Safety at Work, etc. Act 1974 obliges employers to provide the

information necessary for securing, as much as possible, employee health and safety in the workplace.

The safety representative appointed by an approved trade union has a statutory power to obtain certain information under the Safety Representatives and Safety Committees Regulations 1977. A safety representative may legally, after giving reasonable prior notice to the employer, inspect and copy the documents kept by the employer (excluding documents constituting or relating to individual health records which can identify a person) (Section 7.1 of the Regulations). In addition, employers are obliged to provide health, safety or welfare information, to the best of their knowledge, to safety representatives to enable them to perform their duties.

After October 1996, employees not covered by safety representatives appointed by trade unions have the right to consult with employers on health and safety issues under the Health and Safety (Consultation with Employees) Regulations 1996.

In France, employers are obliged to provide safety and health information to their workers. At a firm with 50 or more employees, a health and safe working conditions committee is organized as one of the employee representation systems to secure implementation of related legislation. Employers are also obliged to provide safety and health information to the committee.

In the United States, one point at issue on legal regulations concerning the disclosure of safety and health information is the hazard communication regulation under the Occupational Safety and Health Act, also known as “the right to know law”. Under this law, when an employer manufactures hazardous substances during the course of manufacturing materials or products, or uses hazardous materials for research or experiment, the employer is obliged to advise employees of the existence of such substances at the workplace. In addition, the employer is obliged to give training to employees and fully inform employees concerning the possible physical or health effects of such hazardous substances, safe handling methods and preventive/protection measures.

While most states apply legal regulations similar to those of the federal government, some are stricter. The regulations provide for publication in response to the right to know, and the prohibition of disciplinary actions and dismissal as a result of exercising the right to know.

5. Summary

In France, where the Labour Code has detailed provisions on important working conditions and the collective agreements are adequately applied, workers’ access to employment/labor information is relatively guaranteed. Also, it is interesting to note that employers are obliged to provide various pieces of managerial information to legal

employee representative organizations and when involved with collective bargaining at firms.

In the United States, workers' access to employment/labor information is a matter of labor-management autonomy. In industrial relations without collective bargaining systems, workers' access to employment/labor information is not systematically guaranteed.

The United Kingdom is somewhere between the two. Information about working conditions in labor contracts is systematized and they have a system, which is less detailed than the French one, that obliges employers to disclose information to workers on personnel reduction, transfer of business or changes in working conditions.

Yoichi Shimada