Dismissals in Japan

Part One: How Strict Is Japanese Law on Employers?

Part Two: How Frequently Do Employers Dismiss Employees?

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Part One: How Strict Is Japanese Law on Employers?

Introduction

In its 2004 Employment Outlook, the Organisation for Economic Co-operation and Development (OECD) estimated that the legal protection of permanent workers against individual dismissal in Japan was one of the most strictly regulated among nations. However, in its 2013 Employment Outlook, the OECD reassessed the laws regarding dismissals among its member nations and reclassified Japan in the top third of OECD countries in which regulation is less stringent.[1] On the other hand, a prestigious newspaper commented recently that "in Japan, employment laws make it almost impossible to fire regular workers."[2] Such stereotypical view still exists among international observers. In this paper, the authors provide more precise information on the law and practice of dismissals in Japan. This Part One gives an overview of the law regulating dismissals. In Part Two to follow later, the authors will outline the practice of dismissals in Japan.

1. Substantive Law: Overview

In Japan, the Civil Code (CC) has, since before World War II, provided that either party can terminate a contract of employment at any time by giving two weeks' advance notice. The CC thus guarantees the "freedom of dismissal" to the employer.[3]

This general principle has been modified in part by the labor law reforms since World War II.

The Labor Contract Act (LCA) restricts the freedom of dismissal by enjoining abusive dismissal. The Labor Standards Act (LSA) and several other Acts restrain certain types of dismissal, and the LSA strengthens the notice of a dismissal to thirty days' advance notice with criminal sanctions.[4]

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[1] OECD, Employment Outlook 2013.

[2] Editorial, "Abe's Missing Arrow," *Financial Times*, October 7, 2013.

[3] The Civil Code provides that "If employment is not for a definite period, either party may request to terminate the contract at any time, in which event the contract will be terminated in two weeks after the request is made." (§627CC)

[4] "Dismissal" in this article signifies the employer's expressed intention to terminate an employment contract with an indefinite period. It is distinguished from the employer's refusal to renew a

2. The Concept of "Abusive Dismissals"

2.1 History

The Civil Code (CC), which still provides the freedom to terminate employment, was established in 1896, and for many years thereafter, Japan had no legislation regulating abusive or unfair dismissals. During the post-World War II Reform, the Labor Union Act of 1945 and 1949 came to prohibit the dismissal of union members as an unfair labor practice. Yet, the Labor Standards Act (LSA) of 1947 maintained the CC's freedom of dismissal and merely strengthened the requirement to give notice of dismissal. In the 1950s, nevertheless, lower courts came to nullify abusive dismissals using a general principle in the CC which restricts the abuse of rights. Such decisions continued to accumulate in lower courts which even ruled that "a dismissal without appropriate reasons is invalid." Between 1975 and 1977, the Supreme Court, in two cases, endorsed the interpretation of lower courts to formulate that a dismissal should be considered null and void as an abuse of right without objective and appropriate reasons.

In 2003, the LSA was revised to integrate the case law rule of abusive dismissals established by the Supreme Court. The case law rule was then moved from the LSA to the Labor Contract Act when the latter Law was enacted in 2007.

2.2 The LCA Provision regarding Abusive Dismissals

The Labor Contract Act provides that "a dismissal shall, if it lacks objectively reasonable grounds and is not considered to be appropriate in general societal terms, be treated as an abuse of right and be invalid" (§16).

This provision applies to all kinds of dismissal—dismissals due to an employee's misconduct, an employee's incapability and job redundancy. It applies not only to individual dismissals but also to collective dismissals.

3. Prohibited Dismissals

Apart from the abusive-dismissal provision in the Labor Contract Act, Japanese labor-law statutes prohibit the employer from discharging employees discriminatorily on the grounds of sex, nationality, creed, etc. These statutes also prohibit dismissals during family leave related to childbirth, maternity or family care.[5]

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fixed-term employment upon its expiration, or the employee's voluntary or agreed resignation from employment.

[5] In detail, Japanese Acts prohibit the employer from dismissing his/her employees:

(a) during a period of incapability for work caused by a work-related accident (§19LSA).
(b) during a period of statutory childbirth leave (§19LSA).
(c) on the grounds of nationality, creed or social status (§3LSA).
(d) on the grounds of sex, marriage, pregnancy (Act on Securing, Etc. of Equal Opportunity and Treatment between Men and Women in Employment).

4. Notice of Dismissals

The Labor Standards Act (LSA) provides that the employer must give at least thirty days' advance notice before dismissal (§20). Notice is required regardless of length of service (there are exceptions, such as temporary workers for a term of less than two months). The LSA also provides that the employer must deliver to the retiring employee a certificate stating the reasons for retirement upon his/her request (§22). This provision also applies to dismissals.

5. Criteria of Abusive Dismissals

5.1 Introduction

For understanding the criteria of abusive dismissals in Japan, one should first know that firms in Japan usually specifically list the reasons for dismissal in their employment regulations. The employee regulations (literally, "work rules") are drawn up by the employer and stipulate the rules and working conditions of the establishment. The Labor Contract Act endorsed its case-law binding effect on labor relations on condition that the regulations provide reasonable rules or working conditions and are promulgated to the employees of the establishment. The Labor Standards Act requires the employer to seek the opinion of the union organizing a majority of employees or, if there is no such union, a representative of a majority of employees of the establishment. If there is a union organizing such employees, the employer usually negotiates with the union when making or changing the employee regulations to obtain the union's agreement.

The major reasons for dismissal listed in the employee regulations can be roughly classified into three types: employee's misconduct, employee's incapability and the firm's economic necessity. When judging whether a dismissal is to be nullified as abusive, the court starts with the question of whether the alleged misconduct, incapability or economic necessity falls under the reasons for dismissal set forth in the employee regulations. The court first assesses the reasonableness of the statutory reason, and then examines its applicability to the dismissal.

(e) on the grounds of discrimination against a part-time worker (Act on Improvement, Etc. of Employment Management for Part-Time Workers).
(f) on the grounds of labor union membership or participation in labor union activities (Labor Union Act).
(g) by reason of applying for statutory maternity/paternity leave, sick/injured child care leave or nursing care leave (Act on the Welfare of Workers Who Take Care of Children or Other Family Members Including Child Care and Family Care Leave).
(h) by reason of reporting the facts regarding violation of Acts related to labor standards to a labor standards inspector (§104 LSA, etc.)
(i) by reason of whistle-blowing protected by the Whistle Blowing Protection Act.

5.2 Dismissal by Reason of Employee's Misconduct

Employee's misconduct spelled out in the employee regulations includes negligence of duties, defiance or disobedience of job-related orders or instructions, obstruction or disturbance of the work, violation of workplace discipline, infringement of the interest or reputation of the employer in the employee's private life and falsification of the employee's past record. In the case of an employee's misconduct, the court usually takes into consideration the following factors in making a decision on whether the dismissal is abusive:

(a) Components of facts regarding the misconduct such as its manner, gravity, motives, circumstances, damages or disorder caused, etc.

(b) Propriety of the dismissal as a means of sanction, i.e., whether the dismissal is too harsh considering the overall nature, type and degree of the misconduct as well as the employee's record. For example, the employee regulations usually institute disciplinary sanctions less rigorous than dismissal, such as suspension of employment for a certain period, demotion, monetary punishment and reprimand, and the court may evaluate the dismissal as too severe if it finds that past similar misconducts had been disposed of by milder means.

(c) Due process, such as whether the employee was given an opportunity to give an explanation in his/her defense, and whether he/she had received a proper warning upon committing a similar but less serious misconduct in the past.

5.3 Dismissal by Reason of Employee's Incapability

There are three main types of employee's incapability:

(a) Loss of occupational capacity as a result of injury or illness: In this type, the court usually considers its nature and extent to see whether the employee became unable to fulfill the requirements of the occupation permanently. If the employee is likely to recover his/her capacity in due course through medical treatment, the court will require the employer to give the employee a chance to do so. As a matter of practice, the employer tends to grant sick-leave up to a certain (lengthy) period specified in the employee regulations. The employer will dismiss the employee only when he/she does not recover the capacity to return to work within the leave period.

(b) A certain period (usually specified in the employee regulations of the firm) of absence not informed by the employee (typically, disappearance, confinement due to criminal charges, etc.). The court will endorse the validity of dismissal if it finds that the employer waited long enough to terminate employment.

(c) Insufficient job performance: In this type of dismissal, the court will examine the nature and degree of insufficient performance to see if the employer has no other recourse than dismissing the employee. The court will consider whether the employer offered any assistance to the employee including education and training to improve their performance, or whether the employer is not making an effort to match the employee to a job more fitting to the employee's qualifications. The court also tends to

require the employer to give a warning of termination. The court considers these various aspects in the case of ordinary employees in long-term employment. On the other hand, the court is more likely to approve the validity of dismissals of well-paid professional or managerial employees who were recruited mid-career but who failed to exhibit the expected high level of special capability.

5.4 Dismissals by Reason of Firm's Economic Necessity (Collective Redundancy)

The Labor Contract Act (LCA) does not include any substantive or procedural regulation about collective dismissals to cope with redundancy, and it is left to the courts to decide whether such collective dismissal constitutes abusive dismissal under §16LCA. The employee regulations are also inclined to give an abstract expression such as "compelling economic reasons of the firm." Since the latter half of the 1970s, the court has been formulating four factors to be considered for deciding the abusiveness of economic dismissals:

(a) Economic necessity of reducing the workforce
(b) Efforts made to avoid dismissal in attaining the reduction
(c) The method of selecting the employees to be dismissed, i.e., whether the selection is done fairly on the basis of objective criteria
(d) The extent and manner of labor management consultation in executing the collective dismissal

The courts have already judged many cases, which have been analyzed and classified by jurists[6] and presented to those who are in charge of HRM.

Japanese labor legislation does not impose on the employer the requirement to create a social plan to reduce the hardship of collective dismissal. However, the Labor Union Act requires the employer to bargain collectively with the labor union organizing his/her employees. Therefore, the employer is required to bargain with the union about a workforce reduction or collective dismissal involving its members. In fact, when an employer intends to reduce the workforce, the management will usually engage in extensive negotiations with the union to work out the size, timing and method of the reduction, and the social plan is usually agreed on particularly when it includes soliciting voluntary retirement.

Also, as explained in (d) above, the courts consider the extent and manner of labor management consultation as one of the major factors in deciding whether an economic dismissal constitutes an abuse of dismissal right. The employer is pressed to explain and consult with the union or representatives of the relevant employee group in carrying out a restructuring involving economic dismissals. The employer also tends to present some kind of social plan to minimize the reaction of employees against the restructuring.[7]

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[6] See for example, Kaoko Okuda, "Seiri Kaiko no Zian Ruikei to Handan Kijun [Types of collective redundancy and criteria for judgment]," *Journal of Labour Law* 98 (2001): 47–63.

[7] In this context, there is one administrative regulation in regard to collective dismissals due to redundancy. When a firm intends to terminate more than thirty employees, the employer is required to submit a re-employment assistance plan to the Public Employment Security Office. This plan requires

6. Severance Pay

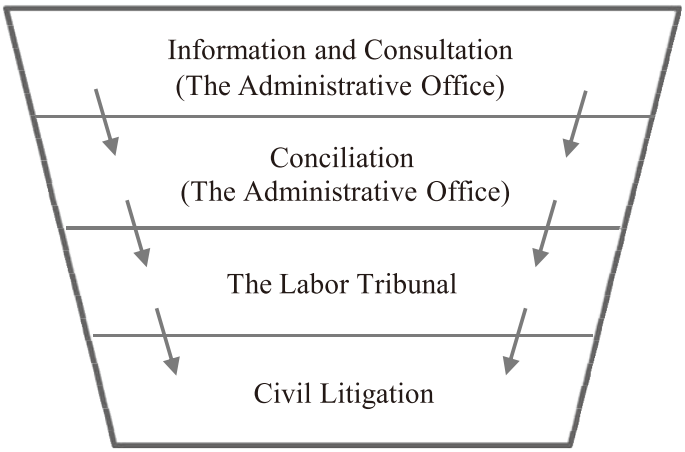
Severance pay is not required by any Acts in Japan. There is a subsidy program instituted by the Employment Insurance System to help small companies with establishing severance pay systems.

On the other hand, it is a long-standing and widely-established practice that firms offer considerable retirement benefits to retiring employees, in the form of lump-sum payments and/or pensions, and this benefit is offered even in the case of discharges; except in the case of disciplinary ones for serious misconduct. Such benefits function, in effect, as severance payment for discharge. In the case of soliciting voluntary retirement for workforce reduction, firms usually offer a considerable severance payment in addition to the retirement benefit. If a union exists in the firm, the amount of such payment will be one of the major points of negotiations.

7. Administrative and Judicial Procedures to Resolve Dismissal Disputes

7.1 Overview

There are several administrative and judicial procedures for dismissed employees who wish to raise their grievance. These procedures are structured as a four-layered system: the first and second layers are the consulting and conciliation services offered by the Labor Administration and the third and fourth layers are the labor-tribunal and the civil-procedure systems administered by the judiciary. Those four layered services and procedures are elective for grievants; namely, the parties of the disputes are free to choose (or skip) any of the services or procedures in any order. However, as a matter of practice, the parties tend to start with the first layer, and proceed to the second, then to the third, and finally to the fourth layer, if the dispute is not resolved at the first or intermediate layers.



the employer to consult with the labor union organized in the firm.

7.2 Administrative Remedies

(a) The Information and Consultation Services

The first layer is the information and consultation services offered by Regional Offices of the National Labor Administration.[8] When requested, such Regional Offices provide such services to both employers and employees regarding all kinds of questions arising from employment relations. Thus, if an employee feels that his/her dismissal was unfair, he/she may bring the grievance to those offices to clarify and assess his/her legal position. The parties using such services are frequently satisfied or relieved merely by understanding the merits or demerits of their case through counseling in the Office. However, if the party using the service wishes to pursue his/her legal claim, the Office may request the employer to appear in the Office to discuss how to resolve the dispute. This advisory service is done informally and expeditiously (usually within one month from the date of consultation).

(b) The Conciliation Service

The second layer is the conciliation service performed by a panel[9] set up in the Regional Offices mentioned above. The panel is usually composed of practicing lawyers and law professors serving on a part-time basis. If requested by either party of a dispute concerning employment relations, a member of the panel, with the assistance of the staff of the Office, ascertains the facts of the case and the allegations of both parties, and proposes a settlement. The service is offered without charge, and is accomplished expeditiously, in most cases, within one session of a few hours (within two months of the request for conciliation). The success rate of such conciliation services is about 40 percent.[10] Dismissal disputes are one of the most major types of disputes handled in this expeditious conciliation service. When successfully conciliated, they are mostly resolved with a modest monetary payment.[11]

7.3 Judicial Procedures

(a) The Labor Tribunal System

The third layer is the Labor Tribunal System instituted in the judiciary. According to the Labor Tribunal Act of 2004, either party in an employment relationship can bring a dispute of rights arising from employment relations under this procedure in the district court. A tribunal composed of one career judge and two part-time experts in labor relations examine

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[8] More exactly, the Prefectural Labour Bureaus and the Labour Standards Inspection Offices of the Ministry of Welfare and Labour.

[9] The Dispute Adjustment Committee.

[10] About 70% of the cases in which the other party appears.

[11] The amount of payment is rather inexpensive; a JILPT research found that in 65.7% of the employment termination disputes successfully conciliated, payments fell in the range of ¥50,000–400,000 (The Japan Institute for Labour Policy and Training [JILPT], *Kobetsu Rodo Kankei Funso Shori Jian no Naiyo Bunseki* [Content analysis on the treatment of individual labor-related disputes], JILPT Research Report no.123 [Tokyo: JILPT, 2010]).

the written claims and responses and hold informal hearings to clarify the facts and the issues. The tribunal then makes mediation efforts, and, if such efforts fail, renders a decision specifying measures to resolve the case. The decision is not binding, and if either party objects, the case is automatically transferred to the formal civil procedure. The Law requires the tribunal to dispose of the case within three sessions, and is premised upon the cases lasting a few months. The parties usually hire lawyers to go through such procedures.

As a matter of practice, about 80% of the disputes brought in the labor tribunal procedure are resolved successfully; about 70% through the panels' mediation proposals and 10% through advisory decisions. Of the remaining about 20% of the disputes, 10% are withdrawn and only 10% (about a half of the advisory decisions) are transferred to the formal civil procedure explained below.

Here also, dismissal disputes are the most common type of disputes handled. They are resolved in most cases by monetary agreements (mediation) or awards (decisions). Generally speaking, the amount is much higher than that attained in the administrative conciliation services,[12] but less than that in the formal procedure.

(b) The Civil Procedure

The fourth layer is the civil procedure. An employee may file a suit to confirm or restore his/her right with the civil court. This is a formal adversarial procedure, in which the parties are mostly represented by their own lawyers. The court clarifies issues by grasping allegations expressed by their briefs, and examines exhibits and listens to the testimony of witnesses through formal hearings. After this process, the court usually tries to settle the dispute, and, if it fails, renders a judgment. On average, it takes about a year for the court to dispose of the case either by a settlement or a judgment.

In judging a dismissal dispute, if the court finds that the dismissal was abusive and, accordingly, invalid, the court will confirm the continuation of employment relations and will order the employer to compensate the employee for the loss of earnings. The amount of compensation is usually the sum of the salary that the employee would have been paid between the date of the dismissal and the date of the court judgment. Even when the dismissal is found invalid, in effect the employer is obliged to continue to pay the salary that the employee had been earning until the dismissal, and the employee has no right to actual reinstatement.[13]

[12] One survey found that the average amount is around ¥1,000,000 or 3–4 months' salary. Kazuo Sugeno and others, ed., *Rodo Shinpan Seido no Riyosha Chosa* [Labor tribunal system: Users' survey] (Tokyo: Yuhikaku, 2013), 102.

[13] There is no statute of limitation for claims of abusive dismissal.

Table 1. Statistics on the Settlement of Dismissal Disputes (Fiscal 2012)

Administrative Office	
Consultation (Grievances brought in)	51,515
Conciliation (claimed)	1,904
Labor Tribunal*	
Cases Filed	1,735
Mediation (successfully completed)	1,282
Decisions (rendered)	298
Civil Litigation*	
Filed	1,026
Concluded	963
Concluded (963)*	
Settlement	482
Judgment	343
Found abusive	166
Found not abusive	177

Sources: From the statistics of the Ministry of Welfare and Labour and the Supreme Court.

Note: *These figures include all kinds of disputes involving all kinds of employment termination (not only dismissals, but also alleged resignation, refusal of renewing fixed-term employment upon its expiration, compulsory retirement, etc.) and requesting confirmation of employee status. Nevertheless, the predominant type is dispute involving dismissal.

7.4 Statistics

Table 1 shows the number of dismissal disputes brought in or handled by the services or procedures described above. First, the table shows that more than 50,000 dismissal cases are handled in fiscal 2012 by the information and consultation services. In other words, such services play a major role in resolving dispute dismissals. Next, approximately 5,000 disputes involving dismissals are brought either to conciliation, labor tribunal or civil procedures every year, and a great majority of such disputes are resolved informally and expeditiously through the administrative conciliation services or the judicial labor-tribunal system, mostly in the form of monetary payment. Relatively few dismissal disputes were filed with the formal civil procedure: less than 1,000 cases in fiscal 2012. In addition, a majority of such civil litigations are settled, mostly monetarily, and judgments are rendered in only a third of them. Furthermore, employees won in just under half of such judgments.

Conclusion

This article on Japanese labor law regarding dismissals clearly shows that the claim "in Japan, employment laws make it almost impossible to fire regular workers" is a gross exaggeration of the regulatory aspect of Japanese dismissal law.

In terms of the procedural or remedial aspect of Japanese dismissal law, more than 50,000 disputes involving dismissals are brought before the administrative information and consultation services and approximately 5,000 dismissal disputes are filed with the administrative conciliation service, the labor-tribunal and civil procedures in the judiciary in one year. Most of them are disposed of informally and expeditiously with relatively inexpensive monetary arrangements; only a small number of dismissal disputes attain judgments confirming continuation of employment relations. On the whole, the dispute resolution systems are not so onerous that employers are reluctant to resort to dismissals. For employees, on the other hand, the systems provide a good range of recourses that they can select in accordance with their needs.

Also, the substantive rules of dismissals are not so strict as to make employers abandon the idea of dismissing employees who have committed serious misconduct, who exhibit exceptionally poor job performance or when the firm runs into serious economic difficulties. Basically, Japanese dismissal law is premised upon the employer's freedom of dismissal, and protects the interest of employees by restraining its abusive exercise. The abusive dismissal doctrine established by case law and incorporated into the Labor Contract Act is a legal framework that balances the interest of employers and employees in regard to dismissals.

In conclusion, Japanese dismissal law is neither too strict nor too loose for the employer. It is by nature protective for workers, but it does not impose excessive rigidity on the employer for establishing discipline and efficiency in the workplace or carrying out necessary adjustments of the workforce.

Dismissals in Japan
Part Two: How Frequently Do Employers Dismiss Employees?

Introduction

In "Dismissals in Japan Part One: How Strict is Japanese Law on Employers?"[1] the authors examined the substantive and procedural structures of the dismissal law in Japan, and concluded that the dismissal law was neither too strict nor too loose for employers despite its stereotypical image of excessive strictness.

Following "Part One," this "Part Two" intends to depict the practice of dismissals in Japan. The authors first try to assess the frequency or infrequency of dismissals within firms. The authors then describe how dismissals are handled in firms' human resource management (HRM), labor management relations and dispute resolution processes. They further examine the extent of mobility in the Japanese labor market with a view to assessing the effect of the practice of dismissals on the labor market.

1. Individual Dismissals in HRM

1.1 Frequency of Dismissals

First of all, how frequently (or infrequently) do employers resort to dismissals in Japan? In March 2012, the Japan Institute for Labour Policy and Training (JILPT) conducted a large-scale survey regarding practices of hiring and termination, by sending questionnaires to about 20,000 firms across industries and firm sizes, 29.8% of which sent back responses.[2] This was JILPT's second survey regarding hiring and dismissal practices, following the first one conducted in 2004. These serial surveys may be regarded as the first major attempt to obtain empirical data on the practice of dismissals and other related measures in all workplaces in Japan.

According to the 2012 JILPT Hiring and Termination Survey,[3] 16.0% of the 5,964

[1] *Japan Labor Review* 11, no. 2 (2014): 83–92.

[2] JILPT, *Jugyoin no Saiyo to Taishoku ni Kansuru Jittaichosa* [Survey on practices regarding hiring and termination of employment], JILPT Domestic Labor Information 14–03 (Tokyo: JILPT, 2014). Hereinafter cited as the "2012 JILPT Hiring and Termination Survey." See Appendix Table (page 30) for the composition of the firms which responded to the 2012 JILPT Hiring and Termination Survey.

[3] The authors, hereinafter, wholly use the data of the 2012 survey since the data of 2004 survey shows the same tendencies as the 2012 survey.

Table 1. Reasons for Individual Dismissals

	(Multiple answers %)
Misconduct	30.8
Disorder	24.0
Illness	12.2
Frequent absence without notice	15.0
Insufficient job performance	28.0

Source: *2012 JILPT Hiring and Termination Survey.*
Note: Percentages are among the number of firms that dismissed employees for individual reasons during 2007–2012.

responding firms in Japan had dismissed one or more regular workers during the five year period between 2007 and 2012 for individual reasons distinguished from firms' economic necessity. It is notable that 30.3% of 76 larger firms with 1,000 or more employees responded that they had dismissed regular workers for such reasons during the same period. Such figures make us dubious about the theory that it is almost impossible for employers to fire regular workers in Japan.

The reasons for dismissals executed by 16.0% of firms in the same survey are classified in Table 1. The survey demonstrates that dismissals for employee misconduct, disorder, absence or insufficient job performance are actually not rare.

1.2 Cautious Approach on Dismissals in HRM

One could recognize in the previous section that firms resorted to dismissals not so infrequently in cases of employees' misconduct, disorder, absence or insufficient job performance. Nevertheless, one should also note that the employer does not directly dismiss his/her employee when finding some problem with the employee. The employer ordinarily deals with such a problem with educational or disciplinary means other than dismissals. This is particularly true when the employer takes some disciplinary sanctions against employee misconduct.

The Labor Standards Act requires businesses employing ten or more employees to draw up and promulgate employment regulations stipulating rules and working conditions in workplaces. Abiding by the law, most firms set forth such regulations, and most of such regulations stipulate the means and procedures for disciplinary actions against employee misconduct and poor performance. Thus, firms take steps against misconduct, etc., before resorting to individual dismissals, such as delivering a warning, giving a chance to correct behavior or to improve performance, ordering a transfer or, in a case of grave misconduct, requesting voluntary retirement.

Employers choose the means of sanction in accordance with the nature, type, and degree of the misconduct. Generally speaking, it is only when firms find that the misconduct is too grave to be dealt with by other means that they resort to dismissals. Table 2 shows a

Table 2. Firms' Progressive Disciplinary Actions

	(Multiple answers %)
Warning	33.3
Letter of apology	42.3
Suspension	12.3
Pay cut	19
Demotion	14.9
Dismissal	9.4
Dismissal (disciplinary discharge)	13.2

Source: *2012 JILPT Hiring and Termination Survey*.
Note: Disciplinary discharge is the most severe sanction accompanying, in most cases, deprivation of retirement benefits.

Table 3. Steps Taken before Dismissal

(Multiple answers %)

	Misconduct	Insufficient job performance
Warning	59.2	63.7
Giving a chance to correct conduct or improve performance	41.8	59.9
Ordering a transfer	16.7	32.6
Asking for voluntary retirement	38.4	46.8
(Doing nothing before dismissal)	(9.9)	(1.5)

Source: *2012 JILPT Hiring and Termination Survey*.

variety of disciplinary actions with the ratio of selection, and Table 3 indicates the ratio of steps other than dismissals taken against employee misconduct or poor performance.

As mentioned in Part One, in judging the abusiveness of individual dismissals, the court usually takes into consideration due process before dismissal, such as giving a warning or affording a chance to correct conduct or improve performance. Such an approach in the court is in conformity with the common HRM practices noted above.

2. Collective Redundancy in HRM

The next issue is collective redundancy, which may generate economic dismissals.

2.1 Labor Management Efforts to Avoid Economic Dismissals in Case of Collective Redundancy

First of all, the 2012 JILPT Hiring and Dismissal Survey found that 8.6% of the responding firms had resorted to economic dismissals during the last five years.

The survey also found that labor unions played an important role in the course of re-

dundancy. Regarding enterprises where labor unions were organized, 68.7% of employers consulted with unions concerning economic dismissals. In contrast, only 19.9% of enterprises not organized by labor unions consulted with some form of workplace delegates concerning economic dismissals.

Typically, in the case of redundancy, labor and management at each enterprise first engage in joint consultations to share information and to form understanding on the scale and gravity of business crises. They then discuss a wide range of practical issues, including the goals of cost reduction and the methods to attain them. In particular, they perform serious negotiations on the necessity of reducing the workforce and means of doing so. When labor and management find it necessary to resort to termination of employment at a certain scale, they work out a voluntary-retirement program with additional compensation as generous as they can afford. They find dismissals unavoidable only when they cannot attain the goal of downsizing of employment with such alternative measures. They then discuss the number of employees to be dismissed, the amount of additional retirement payment, and the method of selecting such employees. Most of those labor and management negotiations are carried out successfully, with adjustments made to their positions. According to the 2012 JILPT Hiring and Termination Survey, labor and management reached agreements in 84.1% of negotiations resulting in economic dismissals.

2.2 Transition of Labor and Management Approach on Collective Redundancy

The labor and management practice of pursuing solutions other than dismissals in cases of redundancy was established during the period of employment adjustment after the 1973 oil crisis.

Since labor unions were liberalized in 1945 in the course of post-World War II reforms to democratize Japan, unions had been imbued with leftist class-struggle ideology and had engaged in aggressive drives against management to defend worker interests in the postwar economic turmoil. Management, on the other hand, directly resorted to massive dismissals to get rid of large-scale redundancy caused by hardship under the deflationary policies of the government. Unions naturally resisted fiercely with radical and prolonged industrial actions. Such antagonistic union-management relations continued even when Japan overcame postwar economic difficulties and entered an economic growth period starting the mid-1950s.

Their confrontation culminated in the 1960 Mitsui Miike Coal Mine Dispute involving massive economic dismissals to resolve redundancy in the declining coal mining industry. The coal miners' industrial union launched a large-scale strike with indefinite period, and the largest national labor organization, *Sohyo* (the General Council of Trade Unions in Japan) mobilized thousands of workers to support massive and forcible picket lines. Management was also determined to reestablish production, with the full support of financial institutions. The dispute lasted for a full year, generating violent clashes and public disorder. The result was a defeat for the union, but labor and management realized the high price of

fierce labor-management confrontations. Japan has experienced very few large-scale violent labor disputes ever since.

The Japanese economy enjoyed high and stable economic growth until the oil crisis of 1973, which caused hyperinflation. Many industries, such as electric appliances and textiles, faced economic difficulties. However, unions and management had developed, by this time, joint consultation procedures at the enterprise level to work out solutions on managerial matters affecting employees. Thus, through such procedures, labor and management in those industries struggled to prevent the termination of employment by working out alternative solutions to attain necessary reductions in workforce, such as diminution of working hours, transfers, and temporary layoffs.[4] Even when it seemed inevitable to reduce the number of employees, they first resorted to attrition (suspension of new hiring), and then attempted to call for voluntary retirements instead of dismissals.[5] Thanks to serious discussions between labor and management, they could prevent confrontational disputes.

Even during the long-term economic slump starting in the early 1990s and intensifying after the 1997 Asian financial crisis, labor and management maintained the same practices toward employment adjustment. Recently, even during the global recession beginning in 2008 as well as during economic difficulties after the Great East-Japan Earthquake in 2011, labor and management still tried to arrive at moderate solutions other than dismissals as much as possible. One should emphasize that the practice of pursuing milder solutions during redundancy is not a consequence of the legal regulations governing dismissals, but the product of the deliberate efforts of labor and management to attain necessary labor-cost cuts while minimizing sacrifice of employment.

2.3 Data on Economic Dismissals in Contemporary Japanese Workplaces

As mentioned in 2.1, the 2012 JILPT Hiring and Dismissal Survey found that 8.6% of the responding firms had resorted to economic dismissals during 2007–2012. Considering that the surveyed five-year period included the global financial crisis that began in 2008, one may infer that Japanese firms demonstrated rather a restrictive attitude toward economic dismissals. The question, then, is how Japanese firms deal with, in contemporary HRM, collective redundancy caused by economic downturns.

Facing the necessity of reducing labor costs, most firms first make efforts to avoid personnel reduction by choosing a variety of alternative measures, such as limiting overtime work, personnel relocation (transfers to other departments or group enterprises), cuts in bonuses, containment of annual wage increases, temporary layoffs,[6] etc. Even when firms find

[4] In Japan, "temporary layoffs" means measures to endow "days off" to employees as a means to temporarily reduce production. It does not have the effect of terminating employment even temporarily.

[5] The government also passed the Employment Insurance Act, in 1974, to subsidize a substantial portion of the wage costs of employers, who maintain employment in the case of collective redundancy with the measures of transfers to related firms, educational programs, or temporary lay-offs.

[6] The Labor Standards Act requires firms to compensate at least 60% of wages during temporary

Table 4. Steps Taken before Dismissal for Economic Reasons

	(Multiple answers %)
Suspension of hiring	38.8
Transfer within the firm	36.5
Transfer to related firms	11.4
Cutting bonuses	22.7
Containment of wage increases	22.4
Reducing employee's wage rate	22.5
Temporary lay-off	21.2
Limiting overtime	23.9
Reducing the number of branches	36.9
Calling for voluntary retirement	25.3

Source: *2012 JILPT Hiring and Termination Survey.*

reductions in the number of employees unavoidable, they still try to stay away from dismissals by resorting to other means, such as suspension of recruitment (attrition) or solicitation of early (voluntary) retirement.

Table 4 indicates the measures that were taken before resorting to dismissal by the responding firms during 2007–2012, with the percentages of selection. The same table indicates that 25.3% of the responding firms called for voluntary retirement during the same period. This percentage was much higher among larger enterprises (47.4% of the firms with more than 300 employees). Generally speaking, it has been rather rare that large public-listed firms resort to dismissals of their employees due to economic necessity.[7]

As shown in Part One, Japanese employment laws do not require additional severance pay to mitigate the loss of jobs due to redundancy. However, as a matter of HRM practices, various benefits are usually offered to dismissed workers, which are laid out in Table 5 with the percentages of selection.

Table 6 shows the distribution of the amounts of additional severance pay found by the same Survey. One finds that approximately one-fourth of the firms paid an amount corresponding to approximately six months' salary and one-fifth an amount equivalent to a few months' salary. It should be noted that there was a significant difference between larger firms with 300 or more employees and smaller firms with less than 100 employees. In the case of the larger firms, 76.9% paid more than six months' salary, while only 33.4% of the

layoffs. Firms can receive subsidies from the Employment Insurance Program to make up for their wage costs for temporary lay-offs, educational programs, or transfers across group enterprises.

[7] According to the survey of TSR (Tokyo Shoko Research), *2012-nen no Omona Jojo Kigyo no Kibo Taishokusha Boshu Jokyo Chosa* (Survey on the solicitation of voluntary retirement by listed corporations in 2012) issued Feb. 2013, 63 companies listed on Japanese stock markets called for voluntary retirement. The total number of people solicited to be retired was 17,705. On the other hand, it is rather rare that collective (economic) dismissals at large companies are reported.

Table 5. Benefits Afforded for Redundancy Termination

	(Multiple answers %)
Additional severance pay	34.3
Special leave	19.0
Mediation services in job-seeking	24.3
Referral to a staffing agency	7.1
(Nothing offered additionally as a termination benefit)	(24.7)

Source: *2012 JILPT Hiring and Termination Survey*

Table 6. Amount of Additional Severance Pay

(%)

	Number of employees		
	All	Less than 100	300 or more
Equivalent to a few months' salary	21.1	27.8	23.1
Equivalent to approximately six months' salary	25.7	17.6	30.8
Equivalent to approximately one year's salary	11.4	13.0	30.8
Equivalent to 2–3 years' salary	4.0	2.8	15.4
Equivalent to over three years' salary	0.0	0.0	0.0
(Re-calculating) equivalent to more than six months' salary	41.4	33.4	76.9

Source: *2012 JILPT Hiring and Termination Survey*.
Note: The data consists of only the firms that paid additional severance pay.

smaller firms paid the same level of severance pay.

2.4 Changes of Case Law regarding Economic Dismissals

As was already mentioned above and in Part One, labor and management came to avoid dismissals as a means of reducing the workforce after the 1973 oil crisis, and such practices of employment adjustment have been integrated into court decisions dealing with economic dismissals since the latter half of the 1970s. In deciding whether economic dismissals are abusive, the court first required firms to meet all of the four standards[8]: (a) substantial economic necessity to reduce the workforce; (b) exhaustive efforts to avoid dismissals as a means of the reduction; (c) selection of employees to be dismissed with objective and rational criteria; and (d) sufficient labor-management consultation.

Two decades later, in the 1990s, the Japanese economy went into a long-term stagnation, which forced Japanese companies to execute a large-scale restructuring of their businesses. Observing the difficulties faced by businesses, the courts partly changed the framework of judgments on economic dismissals.

[8] A representative decision is Toyo-Sanso, Tokyo High Court, Oct. 29, 1979.

In earlier decisions, the court required firms to meet all of the four standards to win the judgment that an economic dismissal was not abusive. However, the court came to relax this regulatory framework in the 2000s. In specific terms, the court is now inclined not to examine the four standards independently, but to scrutinize standards relatively to reach a conclusion based on the entirety of the relevant facts.

This change of approach typically took effect in cases involving dismissals of redundant employees with generous termination packages. In one case, for example, a Japanese subsidiary of a British bank eliminated one business branch that had lost profitability, and dismissed a branch manager who did not agree to early retirement with a large amount of severance pay and outplacement service. Relying on the old regulatory framework, the court at first temporarily held the dismissal as abusive, because the firm did not make efforts to create vacancies in other branches so as to absorb the manager (failure of meeting the second standard). However, in the subsequent decision involving the same dismissal, the court relaxed the framework in the way mentioned above and approved the validity of the dismissal, holding that it is not abusive considering the generous retirement package offered by the firm.[9]

Also, the court occasionally renders a decision holding economic dismissals not abusive, even though a firm reduced the workforce by partially resorting to economic dismissals to cope not with deficits but with decreased profits in business (so-called aggressive restructuring) if the firm offered a generous package to minimize dismissals.[10]

In general, the court still requests that firms meet the four standards as much as possible. However, the court is more likely to allow employers to take measures on a case-by-case basis to cope with redundancy.

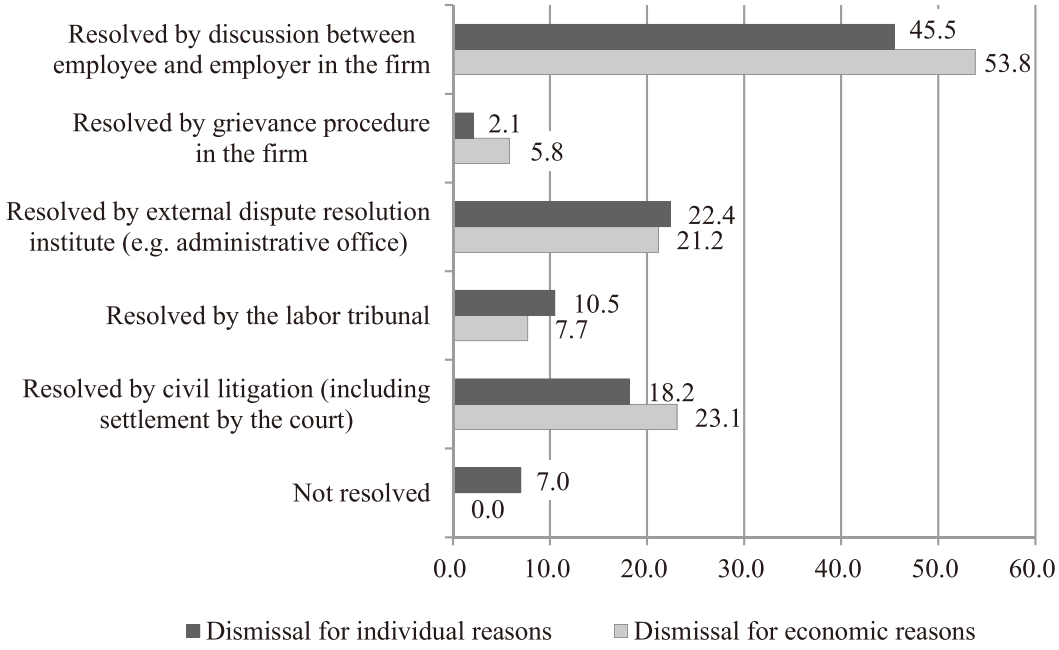
3. Practices in Processing Dismissal Disputes

In Part One of this article, the authors explained the structures and elements of administrative and judicial procedures to resolve disputes involving dismissals. In Part Two, the authors further discuss practical features of processes to resolve disputes involving dismissals.

3.1 Overview of Processes to Deal with Dismissal Disputes

First, it should be emphasized that only a small percentage of employees bring complaints about dismissals to the employer. According to the 2012 JILPT Hiring and Termination Survey, 78.4% and 79.4% of firms that dismissed employees for individual and economic reasons respectively during the 2007 through 2012 period did not have any conflicts with such employees.

[9] National Westminster Bank, Tokyo District Court, Jan. 21, 2000.
[10] The Development Bank of Singapore, Osaka District Court, Jun. 23, 2000.



Source: *2012 JILPT Hiring and Termination Survey*.
Note: This data consists of firms that answered that disputes occurred over dismissal.

Figure 1. How Dismissal Disputes Are Resolved

Secondly, according to Figure 1 summarizing the data of the same survey, even when dismissals gave rise to disputes, about half of such disputes (45.5% and 53.8% of those involving individual and economic dismissals respectively) were resolved through dealings between the dismissed employee and his/her employer.

Thirdly, according to a Ministry of Welfare and Labor (MHLW) survey,[11] a little fewer than 40% of enterprise-based unions have formal grievance procedures instituted in their written agreements with the enterprise. Such procedures usually set forth a few formal steps of negotiations between union and management to resolve grievances brought by union members. However, complaints tend not to follow such grievance procedures, and even if they are made known to unions, they are not usually brought in line with grievance procedures. In daring to support the grievances of their members, unions are inclined to attain some solution through either informal dealings or formal collective-bargaining sessions with management. As a consequence of such labor management practices, the percentage of dismissal disputes resolved by grievances procedures is small, as shown in Figure 1 (2.1% and 5.8% of individual and economic dismissals respectively).

Fourthly, according to the same JILPT survey, 51.1% and 52.0% of disputes involving individual and economic dismissals respectively were resolved by administrative

[11] MHLW, Survey on Collective Agreements (2011).

Table 7. Measures Selected to Resolve Dismissal Disputes

(Multiple answers %)

	Dismissals for individual reasons	Dismissals for economic reasons
Monetary compensation	44.1	55.8
Alteration of the reason or the form of employment termination	20.3	9.6
Reinstatement	4.9	5.8
No additional measure necessitated	25.2	17.3

Source: *2012 JILPT Hiring and Termination Survey*.

Note: This data consists of firms that answered that they had had disputes over the dismissal during 2007–2012.

procedures (counseling, or advice and conciliation services offered by MHLW Prefectural Labor Offices) or judicial procedures (labor tribunal and civil litigation procedures conducted by the court) during 2007–2012. The composition of resolutions attained by such external procedures is indicated in Table 1 in Part One also presents the number of dismissal disputes that were settled in those external procedures during fiscal 2012 on the basis of the statistics of MHLW and the Supreme Court.

3.2 Contents of Arrangements to Settle Dismissal Disputes

Table 7 shows the measures selected to resolve dismissal disputes in both internal (between employee and employer) and external (administrative and judicial) processes. One finds that one-fifth of the disputes were resolved without any additional measures, and half of them were solved by means of paying additional compensation. It should be noted that only a small number of employees were reinstated; the percentage was approximately five percent of the number of dismissal disputes.

Also, according to different sources, even in the resolutions attained by administrative conciliation and labor-tribunal procedures, reinstatements were very rare (Table 8). One of the factors is that most of the employees who file complaints with the administrative office or labor tribunal do not insist on reinstatement. In most cases, they seek monetary compensation to settle dismissal disputes.

Though the amounts of monetary compensation ranged widely, most of them were at rather low levels. Half of them fell below 175,000 yen in conciliation settlements by administrative offices, and 1,000,000 yen in decisions or settlements following labor tribunal procedures (Table 9).[12] The lower levels of monetary settlement in administrative

[12] Regarding settlements in civil courts, the average payment amount was estimated as 6,640,500 yen. JILPT, *Kaiko Muko Hanketsu Go No Genshoku Fukki no Jokyo ni Kansuru Chosa Kenkyu* [Survey on reinstatement after court decisions holding dismissal as invalid], JILPT Research Material Series no. 4 (Tokyo: JILPT, 2005).

Table 8. Resolution of Dismissal Disputes

(%)

	Conciliation of Administrative Office[1]	Labor Tribunal[2]
Reinstatement	1.3	4.0
Monetary compensation	94.8	95.0

Sources: [1]*Kobetsu Rodo Kankei Funso Shori Jian no Naiyo Bunseki* [Analysis of the contents of resolutions in individual dispute cases], JILPT Research Report no. 123 (Tokyo: JILPT, 2010). This was a survey on conciliation of four administrative offices in fiscal year 2008. This data consists of employment termination cases that were settled (N=233). Termination of employment includes not only dismissal but also voluntary retirement, expiration of fixed-term contacts, mandatory retirement, etc.

[2]*Rodo Shinpan Seido ni tsuite no Ishikichosa* [Survey on attitude toward labor tribunal procedures], Institute of Social Science, the University of Tokyo (October 2011). This data consists of workers who appeared before the tribunal at the date of the oral announcement of the decision or conciliation of the Labor Tribunal Procedure between July 12 and November 11, 2010, and answered the questionnaire (N=302). This number includes many different types of workplace disputes.

Table 9. Amounts of Monetary Compensation

(¥)

	Median	Minimum	Maximum
Administrative office (Conciliation)	175,000[1]	10,000[2]	Over 10,000,000[2]
Labor tribunal	1,000,000[3]	30,000[3]	14,680,000[3]

Sources: [1]Kazuo Sugeno and others, eds., *Rodo Shinpan Seido no Riyosha Chosa* [Labor tribunal system: User's survey] (Tokyo: Yuhikaku, 2013).

[2]JILPT Research Report no.123 (2010).

[3]Institute of Social Science, University of Tokyo (2011).

conciliations may be attributable to the fact that conciliators mainly seek to attain a quick and amicable solution rather than to examine the legal merits of the case.

Another feature of the administrative conciliation and the labor tribunal procedures is their rapid resolution. Regarding the conciliation by the administrative offices, the median duration between the submission of complaints and conclusion of the procedure was found to be approximately thirty days.[13] One can emphasize that early resolution is what the dismissed employees really desire. This would make it possible for the employees to seek and find a new job earlier, and that should also contribute to the mobility of the labor market.

[13] JILPT Research Report no.123 (2010). The four major prefectural offices are Chiba, Nagano, Osaka and Shimane. Those offices disposed of 1,144 conciliation cases, which represent 13.5% of 8,457 cases disposed of by the entire 47 offices.

Table 10. Number of Conciliation Cases regarding Employment Termination by Firm Sizes

Firms with 300 or less employees	566	90.1%[1]
Firms with more than 300 employees	62	9.9%[1]
Firms the sizes of which were not known	128	
Total	756	

Source: JILPT Research Report no. 123 (2010). Re-calculated by authors.
Note: [1]Percentage among the number of firms the sizes of which were known (N=628).

4. Different Features of Dismissals in Small Businesses

The authors have so far described the tendencies of practices in HRM and labor management relations, as well as the features of dispute-resolution processes, regarding dismissals in Japan. One should yet further explain, in these respects, about different features of dismissals to be found in small firms.

One can grasp such features through a recent study on conciliation cases involving employment termination disputes handled by the prefectural administrative offices of MHLW, since the large part of such conciliation cases are brought in by workers at small businesses.

JILPT conducted an extensive study on individual labor-dispute conciliation cases handled by the four representative prefectural-administrative offices of MHLW during fiscal 2008.[14] It made intensive analyses of the voluminous records of such cases to examine reasons and motives for the dismissals contained therein.

According to this study, the four administrative offices dealt with 756 conciliation cases arising from employment termination disputes in fiscal 2008 (Table 10). In terms of firm sizes, 90.1% of these conciliation cases were those generating from firms with 300 or less employees (small and medium sized enterprises).[15]

Table 11 shows the composition of employment termination conciliation cases involving small and medium-sized enterprises (SMEs), by type of employment termination. The table shows that the cases involved not only dismissals but also other types of employment termination such as solicitation of voluntary retirement, resignation for personal reasons, or termination of fixed-term contracts.

[14] This is an elaboration of Keiichiro Hamaguchi, Chief Researcher at JILPT. See also JILPT, *Nihon no Koyo Shuryo* [Employment termination in Japan] (Tokyo: JILPT, 2012); Keiichiro Hamaguchi, "Analysis of the Content of Individual Labor Dispute Resolution Cases: Termination, Bullying/Harassment, Reduction in Working Conditions, and Tripartite Labor Relationships," *Japan Labor Review* 8, no.3 (2011): 118–37.

[15] Workers in small or medium-sized enterprises account for about 69% of total workers (Ministry of Economy, Trade and Industry).

Table 11. Employment Termination Conciliation Cases Involving SMEs by Types of Termination

	(%)	N
Ordinary dismissal	42.2	239
Disciplinary dismissal	3.7	21
Collective redundancy	16.3	92
Induced termination	12.2	69
Resignation for personal reasons	9.7	55
Withdrawing of tentative hiring decision	4.1	23
Refusal to renew repeatedly renewed fixed-term contract	11.8	67
Total	100.0	566

Source: JILPT Research Report no. 123 (2010). Re-calculated by authors.

Table 12. Grounds for Individual Dismissals regarding Conciliation Cases Involving Dismissals by SMEs

Sanctioning of the exercise of rights	5
Sanctioning of "voice" (employees' opinions)	7
Refusal to accept change in working conditions	15
Notification of change or termination	4
Attitude	90
Misconduct	9
Private issues	3
Ability	35
Illness/Injury	21
Management	28
Miscommunications	5
Unknown	12
Others	5
Total	239

Source: JILPT Research Report no. 123 (2010). Re-calculated by authors.

Table 12 shows the in-depth grounds for individual dismissals. The survey revealed the tendency of SMEs to dismiss their employees by the reasons clearly inappropriate or unlawful, such as dismissing workers for the exercise of rights guaranteed by the labor statutes (e.g., employee's request for statutory annual paid leave), or for expressing critical views on, e.g., the firm's managerial or personnel policies. The survey also found many cases in which SMEs dismissed employees upon their refusal to accept management pro-

posals to alter working conditions (jobs, workplaces, wages, etc.).

The survey also found that SMEs' dismissals are frequently attributed to employers' distaste for employees' rational attitudes. Typically, there were cases in which employees were dismissed when refusing to obey management's orders to neglect legal duties. One could even find cases of dismissal caused by his/her disagreement with the boss on minor matters. Sometimes, the employees were discharged for obscure reasons, such as that the employees did not match the firms' culture or did not have good relationships with his/her colleagues. In some cases, the reason alleged by the employer could be regarded an excuse, and the real motive for the dismissals was estimated as the employer's dislike of the employee's personality.

Also, in many cases of dismissals for alleged poor performance, the employer could not demonstrate concrete or specific facts substantiating the allegation, presenting only abstract reasons such as "low performance" or "lack of aptitude."

Regarding economic dismissals appearing in conciliation processes, the study found that, in a majority of cases, firms did not specifically clarify economic necessity, merely stating in abstract terms that "the company run into financial difficulties," etc. In many of those cases, one could suspect, from the records of cases, the existence of other motives of dismissal, such as expelling a strong dissident or a poor performer from the management viewpoint. The study found the tendency of SMEs to make use of economic necessity as a panacea to get rid of employees undesirable for management, which is in sharp contrast with the case law restricting economic dismissals.

Thus, one could presume from the findings of the JILPT study of conciliation cases involving dismissal disputes that SMEs are not so conscious of case standards relating to the law of abusive dismissals, but are exercising the right of dismissal rather easily and discretionarily.

This distinctive tendency of SMEs is closely related with the sharp contrast of union density between larger and smaller firms. Larger firms ordinarily have labor unions organizing their regular employees, while smaller firms scarcely have such unions.[16] One of the greatest concerns of enterprise unions is the employment security of their members. Enterprise unions accordingly endeavor to clarify the standards and procedures for dismissals in collective agreements and employee regulations. They also engage in intensive consultations with management to jointly work out measures to cope with economic changes affecting employment. Management is also keenly aware of these strong union concerns, and

[16] Union density by firm sizes is shown below:

Total	16.6%
Firms with 1,000 or more employees	44.9%
Firms with 100−999 employees	13.1%
Firms with less than 100 employees	1.0%

Source : MHLW, *Basic Survey on Labor Unions* (2013).

takes a cautious attitude toward dismissals to maintain cooperative industrial relations. One does not often find such a thoughtful approach in SMEs' dismissal practices.[17]

5. Relationship between Dismissals and Labor Mobility

So far the authors have described the legal regulations governing dismissals in their substantive and procedural aspects (Part One), and analyzed dismissal practices in firms' HRM and labor management relations (Part Two). The remaining issue, then, is the relationship between the law and practices of dismissals and the state of labor market. The central question is whether the law and practices of dismissals as have been described have a negative effect on labor mobility.

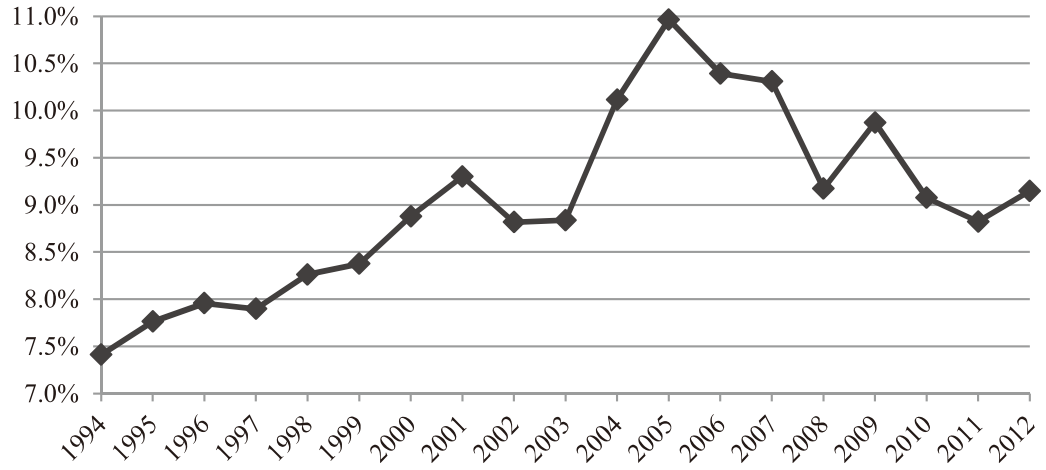
First, according to government statistics, the Japanese labor market seems to demonstrate significant mobility due to job turnover. For example, the Survey on Employment Trends (by MHLW) shows that 6,730,000 workers left their employment during 2012 (14.8% of the total number of workers).

In addition, during the last decade, Japan experienced a dynamic work shift mainly from the manufacturing industry to the medical, health care and welfare sector. According to the Labour Force Survey (Ministry of Internal Affairs and Communications [MIC]), workers employed in the manufacturing industry decreased from 10,910 to 9,890 thousand persons in the decade beginning 2003, while those employed in the medical, health care and welfare sector increased from 4,690 to 7,040 thousand persons in the same decade (workers in the wholesale and retail trade also increased from 9,390 to 9,560 thousand persons). The entire job turnover rate has been trending upward since the middle of the 1990s, as Figure 2 indicates, despite the long-term and serious slump of Japanese economy since late '90s.[18]

Secondly, one should also note that the dynamic work shift from the manufacturing industry to the medical, health care and welfare sector, as described above, does not mean

[17] One should, however, note that there are many small general or industrial unions organizing employees of smaller enterprise within certain regions. Such regional unions make efforts to protect their members against abusive or unlawful dismissals through negotiations with management. In the case of failed negotiations, such unions make use of MHLW's administrative conciliation services, mediation or unfair labor practice procedures of the Labor Relations Commissions, or labor tribunal or civil suit procedures of the court. Regarding the functions performed by regional unions, see Hak-soo Oh, *Roshi Kankei no Furontia* [Frontiers of industrial relations in Japan] (Tokyo: JILPT, 2012).

[18] According to the Basic Survey on Wage Structure 2013 (MHLW), the average length of service of regular workers (excluding part-time workers) in Japan was 11.9 years, which is much the same as many OECD countries (i.e. the average length of service of total employees in Germany in the same period was 11.4, 12.2 in France, 12.7 in Italy, 9.0 in the U.K. (OECD Data Base, Employment by job tenure intervals)). The U.S. A. had the median of 4.6 years (U.S. Department of Labor, Employment of Tenure in 2012). The length of service might be more different among industries than among countries. In Japan, it was 14.0 years for the manufacturing industry, while it was 8.4 years for the accommodation and food service industry. In Japan, the average length of service of 50- to 54-year-old workers has been declining since the mid-1990s. That length for 45- to 49-year-old workers has been declining since the early 1990s.



Source: MHLW, *Survey on Employment Trends*.

Figure 2. The Ratio of Hirees Who Had Changed Jobs

that manufacturing industry workers have massively moved to the medical, health care and welfare sectors. As Table 13 below shows, 46.3% of the workers who left manufacturing firms found new jobs again in the manufacturing industry, and only 7.9% found new jobs in the medical, health care and welfare sector. It is not easy for workers to find jobs in new fields they have not experienced. Labor market policies that merely demand workers move out of declining businesses may only have the effect of generating unemployment.

Thirdly, the most frequent type of job (employment) changes is worker resignation for personal reasons. During 2012, 4,680,000 workers resigned from employment for personal reasons including desire to change employment. They constituted 69.5% of the total employment turnover. On the other hand, the percentage of workers leaving employment due to their employer's economic necessity was only 4.0%, which included not only dismissals but also agreed (or voluntary) terminations of employment due to economic reasons. In addition, summing up dismissals for both economic reasons and personal reasons (such as misconduct, dissatisfaction with employee performance), dismissals represent only a small portion of the labor turnover.[19] From this viewpoint, facilitating or encouraging dismissals does not seem to be an effective means of enhancing mobility of the labor market.

Fourthly, as indicated in Figure 3, the number of workers who left employment due to their employer's economic necessity increased significantly in 2009, in the wake of the global financial crisis, signifying that firms do reduce a large number of workers in the face of economic crises although the reduction may not be to their desired scale.

Finally, courts judged merely 343 cases regarding employment terminations in fiscal 2012, a number that should be considered too small to affect the entire labor market. Most

[19] One can estimate from the Survey on Employment Trends that the percentage of dismissals for both economic reasons and personal reasons was less than 4.9%.

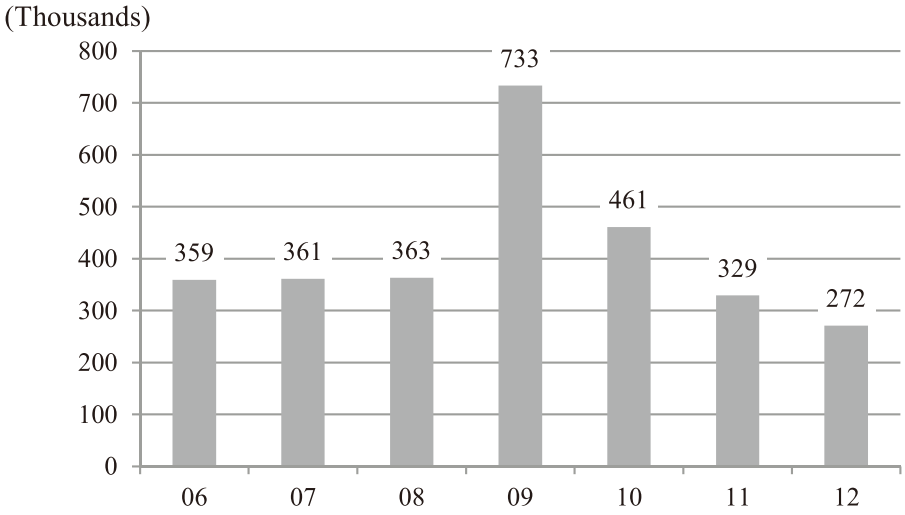
Table13. Job Turnover (Former Industries and Present Industries Workers Belong to)

(thousand)

	Former industries workers belonged to								
	Total	Construction	Manufacturing	Information and Communications	Transport and Postal Service	Wholesale and Retail trade	Accommodations and Dining Services	Medical, Health Care and Welfare	Services, N.E.C. (not elsewhere classified)
Present industries workers belong to									
Total	11,905	721	**1,906**	425	657	2,120	1,119	1,289	736
Construction	663	298	**80**	14	36	62	27	14	32
Manufacturing	1,582	75	**733**	38	66	211	96	47	76
Information and Communications	337	7	**27**	147	6	39	10	7	26
Transport and Postal Service	744	45	**114**	12	255	98	39	20	46
Wholesale and Retail Trade	**1,912**	**63**	**247**	**44**	**73**	**773**	**191**	**92**	**91**
Accommodations, and Dining Services	908	20	**85**	12	26	168	371	48	37
Medical, Health Care and Welfare	**1,731**	**27**	**137**	**19**	**37**	**205**	**124**	**835**	**64**
Services, N.E.C. (not elsewhere classified)	1,055	53	**169**	48	59	159	69	52	198

Source: MIC, *Employment Status Survey* (2012).

Note: Workers who changed jobs (employment) in the last five years.



Source: MHLW, *Survey on Employment Trends*.

Figure 3. Workers Who Left Employment Due to Economic Necessity

dismissal disputes are resolved by the administrative or judiciary fast-track services[20] rather than by civil litigation.

In short, there seems to be little evidence demonstrating the negative effect of Japanese dismissal laws and practices on labor mobility. Moreover, what is important in evaluating dismissal laws and practices is not only economic efficiency but also the fairness of an industrial society. From this perspective, one should not impose the burden wholly on workers in cases of redundancy, since it is usually difficult for dismissed workers to find a new job in an economic downturn. It is particularly so for older ones fifty or more years of age, whose wages often decrease significantly even if they manage to find a new job.[21] In addition, dismissals can have a negative impact on mental health.[22]

Conclusion

Summarizing the practice of dismissals depicted here in Part Two, even in Japan, not a negligible but a substantial ratio of firms implement dismissals. Characteristically, however, they resort to dismissals in a thoughtful manner. In cases of employees' misconduct, or insufficient job performance, employers do not resort directly to dismissals, but take cau-

[20] Administrative conciliation services or judicial tribunal procedures.

[21] In these situations, 35.7% of 50–54 year old and 34.9% of 55–59 year old workers experienced lower wages after job turnover in 2012. MHLW Survey on Employment Trends.

[22] According to a survey by Hisata and Takahashi, the average General Health Questionnaire 28 indicator was much higher regarding dismissed workers (N=34) than the average for healthy people. Mitsuru Hisata and Miho Takahashi, "Ristora ga Shitsugyosha oyobi Geneki Jugyoin no Seishin Kenko ni Oyobosu Eikyo [Influence of firms' restructuring on unemployed and employed workers]," *The Japanese Journal of Labour Studies* 45, no. 7 (2003): 78–86.

tious steps, such as delivering a warning to give the employee a chance to correct his/her behavior. Dismissals are executed only when the misconduct is too grave to use other means. In times of redundancy, firms endeavor to achieve the necessary adjustment of employment with milder solutions other than dismissals. Firms strive to strike a balance among the interests of various stakeholders, including the workers, regarding whether workers are to remain or to leave in the course of redundancy. Employers usually engage in extensive joint consultations with the unions organizing their employees in working out means to cope with redundancy. Their last resort is often not dismissals but solicitation of early voluntary retirement with increased retirement benefits.

This cautious approach on dismissals was an outcome of HRM under the long-term employment system as well as enterprise-based labor management collaborations. By comparison, legal regulations governing dismissals played a much smaller role, in the authors' view.

It should be noted, however, that the features of dismissals are considerably different in small businesses. They are unlikely to follow such cautious steps as are ordinarily taken by larger firms. Small businesses do not have sufficient economic or human capacity to emulate the pattern of larger businesses. Nor are labor unions often organized in small enterprises.

With regard to the features of the processes to deal with disputes involving dismissals, JILPT surveys find that even if such disputes arise, most of them are resolved within the firms. Rather a small percentage of them are subjected to external procedures, most of which are resolved expeditiously through various forms of administrative or judiciary services such as counseling, advising, conciliation, mediation or awards. In consequence, only very few employees file suits with the courts, and court decisions holding the dismissal null and void are exceptional among dispositions of dismissal disputes in administrative and judiciary procedures. Thus, dispute resolution processes are not imposing a high level of cost on either employees or employers.

The final issue the authors addressed was whether the law and the practices of dismissals as described in Part One and Part Two had any negative effect on the mobility of workers in the labor market. The authors find there is significant mobility in the Japanese labor market, a significant scale of job turnover, and an increasingly high job-turnover rate. One can also recognize a considerable shift of the workforce from the matured manufacturing industries to the growing healthcare and welfare sectors. Encouraging dismissals could yet be neither an effective nor a fair means to enhance labor market mobility. Considering that a large portion of job turnover is, as a matter of fact, taking place within the same industry, the policy to be pursued is to help workers in matured industries to acquire new skills or abilities needed for growing industries, to provide information and consultation services so they can find new workplaces, and to help growing firms to employ workers smoothly using matching services.

Appendix Table: The Composition of the Firms Which Responded to the 2012 JILPT Hiring and Termination Survey

	N=5,964	%
Industries		
Mining and Quarrying of Stone	7	0.1
Construction	422	7.1
Manufacturing	1,516	25.4
Electricity, Gas, Heat Supply and Water	34	0.6
Information and Communications	194	3.3
Transport and Postal Service	556	9.3
Wholesale and Retail Trade	1,033	17.3
Finance and Insurance	50	0.8
Real Estate and Goods Rental and Leasing	59	1.0
Scientific Research, Professional and Technical Services	107	1.8
Accommodations and Dining Services	335	5.6
Living-related and Personal Services, Services for Amusement and Recreation	187	3.1
Education, Learning Support	131	2.2
Medical, Health Care and Welfare	260	4.4
Compound Services	10	0.2
Services, N.E.C. (not elsewhere classified)	756	12.7
Miscellaneous	108	1.8
No answers	199	3.3
Firm Sizes (regular employees)		
Fewer than 50 employees	1,562	26.2
50−99 employees	2,266	38.0
100−299 employees	1,466	24.6
300−999 employees	360	6.0
1,000 employees or more	76	1.3
No answer	234	3.9