Commentary

Disguised Contracting and the Deemed Labor Contract Application by the Client under Item 5 of Paragraph 1 of Article 40-6 of the Worker Dispatching Act

The *Tori* Case
Osaka High Court (Nov.4, 2021) 1253 *Rohan* 60

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I. Facts

Y is a joint-stock company engaged in the manufacture and sale business of various floor coverings and carpets. There are many manufacturing works at Y's Factory D, among which X et al. were in charge of the baseboard and chemical product manufacturing processes.

Company A is a special limited liability company whose purpose is to provide contracting services for the manufacture of baseboards and flooring materials, etc. There is no capital relationship or personnel relationship, such as a concurrent directorship, between Company A and Y.

Since March 30, 1999, Company Y has concluded and revised a basic service contract agreement with Company A concerning the manufacturing and processing of baseboards. The latest basic contracts include one for the manufacture and processing of baseboards (hereinafter referred to as "Service Contract 1") and another for the manufacture and processing of adhesives ("Service Contract 2"). Each contract and memorandum of understanding stipulates the content, duration, amount, quantity, and place of work to be performed, etc.

X et al. were employed by Company A and were engaged in the baseboard or chemical product manufacturing processes at Company Y's Factory D.

Company A decided to terminate Service Contract 1 on February 28, 2017, and on March 1 of the same year, it concluded an individual worker dispatch contract with Y, specifying the dispatch destination as Factory D, the work as baseboard manufacturing work, the dispatch period as March 1 to 30, 2017, and dispatched 12 workers including 4 from X et al. to the baseboard manufacturing process. Meanwhile, Service Contract 2 continued until March 31, and was terminated on the same day. In accordance with this, X et al. were dismissed from Company A along with other workers on the 30th of the same month. Thereafter, Company Q took over Company A's business using dispatched workers, while X et al. were not hired by Company Q.

X et al. claimed that after March 21, 2017, Y was deemed to have made an offer of direct employment to X et al. on the grounds that Service Contract 1 and 2 fell under item 5 of paragraph 1 of Article 40-6 of the Worker Dispatching Act (Concluding any contract for work or other contract under any title other than worker dispatch for the purpose of evading the application of the provisions of this Act or any law that is applicable = so-called disguised contracting), and that X et al. expressed their acceptance of Y's offer, and that a labor contract was established between them and Y. However, since Y denied the existence of a labor contract with X et al., X et al. filed a suit seeking confirmation of their status under the labor contract and payment of wages.

The judgment in the first instance (Kobe District Court (Mar. 13, 2020) 1223 *Rohan* 27) dismissed X et al.'s claim on the grounds that their work relationship did not constitute disguised contracting, and X et al. appealed.

The contentious issues are (1) whether working in the baseboard and chemical product manufacturing processes were conducted in a state of disguised contracting, etc., at around March 2017 at the latest, (2) whether Y had the intent to engage in disguised contracting, etc., (3) the working conditions of X et al. and (4) when X5 expressed his intention to accept. In this paper, (3) and (4) will be omitted.

II. Judgment

Reversal of the original judgment (confirming that X et al. have labor contract status at Y).

1. Whether workers were engaging in the baseboard and chemical product manufacturing processes in a state of disguised contracting, etc., at around March 2017 at the latest.

"If the contractor does not give the workers any orders, and the client gives direct orders to the workers to perform the work in the same place, this cannot be considered to be a contract agreement, even if the legal form of the service contract is adopted between the contractor and the client."

"With regard to the distinction between worker dispatching and contracting, the 'Notice of the Standards for the Classification of Worker Dispatching Undertakings and Subcontracting Undertakings' (hereinafter referred to as the "Classification Standards") is an administrative interpretation of the Worker Dispatching Act from the perspective that, in order to ensure proper implementation of the Act, it is necessary to accurately determine whether or not an undertaking falls under the classification of worker dispatching. Since its content is regarded as reasonable, it is appropriate to refer to it in this case."

(1) Whether or not Company A directly utilizes the labor force of workers employed by itself

"The fact that Y did not communicate directly with Company A's workers does not mean that Y did not give instructions to Company A's workers. Rather, looking at the content of the information that was communicated, it is recognized that the content of the communication prepared by Y's technical staff was specific instructions on work procedures."

"While there is no evidence to suggest that Company A requested changes to Y's manufacturing requests or negotiated the content of such requests, the weekly manufacturing schedule prepared by Company A and confirmed by Y's technical staff was a detailed one that described the model numbers and quantities of products to be manufactured daily on site, and was subject to revision by Y's technical staff." Therefore, it cannot be recognized that Company A was able to freely determine the speed of work execution, the allocation and the order of work at its own discretion when preparing the weekly manufacturing schedule. Furthermore, there is insufficient evidence to support that Company A conducted its own quality inspections of the products manufactured in each process before delivering them to Y. Therefore, it is difficult to evaluate the delivery of the manufacturing request form and the preparation of the weekly manufacturing schedule as the process of receiving and placing an order for a service contract (from Y to Company A). "Rather, the preparation of the weekly manufacturing schedule indicates that Y had direct control over the on-site labor force in the baseboard and chemical product manufacturing processes, as well as in other processes."

"Company A cannot be found to have provided instructions or other management regarding the method of execution of the work in the baseboard and chemical product manufacturing processes, and thus the requirements for contracting as stipulated in Article 2 (1) (a) of the Classification Standards 'The party shall give instructions and other management regarding the performance of the work by falling under any of the following conditions: (1) To give instructions and other management concerning the method by which work should be performed to workers by itself. (2) To give instructions and other management related to the evaluation, etc. of the

workers' performance of work itself.' have not been met."

"Since Company A merely formally kept track of the workers' working hours and cannot be found to have managed the working hours, the requirements for contracting as stipulated in Article 2 (1) (b) of the Classification Standards 'The party shall give instructions and other management regarding working hours, etc. by itself by falling under any of the following conditions: (1) To give instructions and other management regarding the times that workers start and end work, their rest periods, days off, leave, etc., (excluding mere ascertainment of these) by themselves. (2) To give instructions and other management when extending the working hours of workers, or having them work on days off (excluding mere ascertainment of working hours, etc. in these cases.) by itself.'" have also not been met."

"It is recognized that when a worker from Company A caused an accident, the full-time chief manager or the chief manager of Company A reported the accident to Y and instructed the worker concerned, but there is insufficient evidence to support that this was reported to President C (the president of Company A) or that, based on this, Company A gave instructions on worker discipline. In addition, ...when X5 took paid leave, the arrangement for a support person was made by contacting the Section Chief I, an employee of Y, and there is no evidence that President C was involved in this arrangement. In light of these points, the requirements for contracting, as stipulated in Article 2 (1) (c) of the Classification Standards 'The party shall give instructions and other management to maintain and ensure order in the company by itself by falling under any of the following conditions: (1) To give instructions and other management relating to the discipline of workers by itself. (2) To make decisions and changes in worker assignments, etc., by itself.' cannot be said to have been met."

(2) Whether or not Company A independently handles the work undertaken under the service contract as its own business.

"Although Company A made reports, etc. to Y when defects occurred in its products, there is no evidence that Company A was ever requested by Y to fulfill its legal responsibilities as a contractor under Service Contract 1 and 2, so it is not recognized that Company A was, in fact, legally responsible as a contractor under the service contract."

"Company A cannot be considered to have prepared and procured raw materials and manufacturing machines at its own responsibility or expense."

"It is not recognized that Company A had the ability or know-how to independently provide the worker training necessary for the baseboard and chemical product manufacturing processes. In the first place, the knowledge and skill required for X et al. to operate in the baseboard manufacturing process were acquired through on-the-job instruction by R, who was an employee of Y, and not through education or training received from Company A."

"Considering these circumstances, it cannot be said that Company A handled the work contracted by Y as its own business independently from Y. Therefore, the following requirements for contracting, as stipulated in Article 2 (2) of the Classification Standards, are not satisfied: 'The party shall handle the work undertaken under the contract independently from the counterparty of the contract as its own work by falling under (a), (b), and (c). (1) To handle the work by means of machinery, equipment or tools (excluding simple tools necessary for work), or materials or supplies to be prepared and procured at its own responsibility and expense. (2) To handle the work based on its own planning or its own specialized techniques or experience'"

"It is recognized that Company A's workers have been working in the baseboard manufacturing process at Factory D based on a service contract between Company A and Y since around 1999, and that Company A's workers and Y's workers were mixed in the baseboard manufacturing process at that time, both providing labor under the direction and supervision of Y. It is clear that the said service contract was not an actual service contract, but an evasive act to escape the prohibition of worker dispatch in the manufacturing industry. Even after

the 2004 revision permitted worker dispatch in the manufacturing industry, there was a mixing of Company A's workers and Y's workers in the baseboard and chemical product manufacturing processes until around 2010, and even after the mixing was eliminated, workers like X et al., who worked in other processes at Y, received instructions from Y regarding detailed manufacturing procedures and methods, and manufactured products according to Y's manufacturing plants. It is also recognized that Y was the one who practically managed the working hours of the workers. Therefore, there was no actual status of Service Contract 1 and 2 as independent service contracts. …Therefore, the baseboard and chemical product manufacturing processes have been conducted in a state of disguised contracting, etc. since April 1, 2016, the conclusion date of Service Contract 1 and 2."

2. Whether Y had the intent to engage in disguised contracting, etc.

"In the case of item 5 of paragraph 1 of Article 40-6 of the Worker Dispatching Act (disguised contracting), the requirement is that the person receiving the provision of worker dispatch services has the intent to engage in disguised contracting, etc. This is because, while the fact of violation is relatively clear in the case of items 1 through 4 of the same paragraph, in the case of Item 5 of the same paragraph, the distinction between the order in worker dispatching and the instruction, etc. by the contracting client may be subtle, and it is not reasonable to immediately impose the aforementioned civil sanction merely because the person who concluded the service contract gave the order as in worker dispatching. It is understood that a subjective requirement of the intent to engage in disguised contracting, etc., in particular, is added. Such a subjective requirement is usually inferred from objective facts, except in cases where the recipient of the worker dispatch services admits this itself. However, in light of the purpose for which the subjective requirement of the intent to engage in disguised contracting, etc. was specifically added, it is not reasonable to infer that the intent to engage in disguised contracting, etc. exists immediately upon the occurrence of the state of disguised contracting, etc. However, in cases where it is recognized that the contractor has routinely and continuously engaged in disguised contracting, etc., unless there are special circumstances, it is reasonable to infer that a representative of a juridical person receiving worker dispatching services, or a person who has the authority to conclude a contract concerning worker dispatching services, while being aware of the state of disguised contracting, etc., has been systematically receiving services for the purpose of disguised contracting, etc."

"It is clear that Company A's provision of services to Y around 1999, when Company A entered into a service contract with Y and began to be involved in the baseboard manufacturing process, was a disguised contract, and it is conceded that Y was also aware of this fact. Even after the manufacturing industry was recognized as a target industry for worker dispatching under the 2004 amendment of the Worker Dispatching Act, there was no immediate change in the way Company A's workers provided labor in the baseboard manufacturing process at Factory D. Until around 2010, it is recognized that Y's worker R was working together with Company A's workers in the baseboard manufacturing process, and that Company A's workers were mixed with Y's workers in the chemical product manufacturing process. It is recognized that around 2014, Y moved R from the baseboard manufacturing process because it was considered that R's instruction to Company A's workers in the baseboard manufacturing process was problematic from the perspective of the right of order in the service contract, but this, conversely, indicates that Y was aware of the possibility that Service Contract 1 and 2 could be regarded as disguised contracting. And since Y continued to give specific instructions to Company A's workers in the baseboard and chemical product manufacturing processes regarding the performance of their work, even after the mixing of workers had ceased, and the state of disguised contracting etc. continued on a daily and continuous basis without its dissolution, it can be inferred that Y had the intent to engage in disguised contracting, etc.

until the dissolution of Service Contract 1 and 2."

"Y has alleged that (1) at the time of 2016, there were some processes at Factory D for which worker dispatch contracts were concluded, and there was no need to use disguised contracting, (2) the processes for which service contract agreements were concluded were suitable for contracting, and (3) Y concluded a worker dispatch contract on March 1, 2017 for the baseboard manufacturing process at the request of Company A and Company Q. In light of the aforementioned, etc., it is clear that the Factory Manager B, who was the party entitled to conclude the service contract between Y and Company A, had no intention to avoid the restrictions of the Worker Dispatching Act."

"However, points (1) and (2), which are asserted by Y, are not sufficient to overturn the aforementioned inference as to the intent to engage in disguised contracting, etc. As for point (3), the fact that Y agreed to switch the baseboard manufacturing process from a service contract to a worker dispatch contract on March 1, 2009, and was able to continue manufacturing in the same manner as before, infers that Y was aware of the state of disguised contracting, etc., before the switching, but systematically continued to engage in disguised contracting, etc., without improving this situation. Therefore, none of Y's arguments can be adopted. And there is no room for Y to be found to be negligent in good faith under the proviso of paragraph 1 of Article 40-6 of the Worker Dispatching Act."

III. Commentary

1. The Overall Picture of Japanese Worker Dispatching Regulations and the Significance of this Judgment

In Japan, until the enactment of the Worker Dispatching Act in 1985, worker dispatching was totally prohibited by Article 44 of the Employment Security Act as a form of worker supply services. However, from the late 1970s to the 1980s, while companies needed to reduce labor costs by using external labor, there was a need among job seekers, especially among highly educated women, to utilize their own advanced skills and develop a proactive professional life with a good work-life balance, and worker dispatching, which should have been prohibited, expanded in practice. Therefore, the Worker Dispatching Act of 1985 was enacted to legalize worker dispatching while regulating it as a new supply-demand adjustment system that fulfills the matching function between job seekers and job offers. However, because of the fear of eroding the employment of workers at the client, the 1985 Worker Dispatching Act adopted the so-called positive list system, which enumerated a limited number of target works for which dispatching was permitted. Subsequently, the ILO revised Convention No.96, recognizing "private employment agencies," including worker dispatching services, as labor supply and demand adjustment agencies alongside state-run public employment security offices, and required countries ratifying the Convention to set basic rules for these employment-related services. This international situation encouraged Japan to deregulate the labor market. In 1999, the Worker Dispatching Act was revised to, in principle, lift the ban on dispatching work in all types of work and to list only prohibited works as exceptions, making worker dispatching, which had been limited to specialized work, a general labor supply and demand adjustment system. Despite this deregulation, dispatched workers still account for only 2.4% of the total Japan's labor force as of 2018.

Until 2003, the Worker Dispatching Act had been deregulated, but after the global financial crisis of 2008, the need to protect dispatched workers was recognized, and the 2012 amendment to the Worker Dispatching Act put forth measures to strengthen the protection of dispatched workers. A typical provision is the establishment of Article 40-6 of the Worker Dispatching Act, which stipulates that, in the event of certain violations of the Worker Dispatching Act, the client shall be deemed to have made an offer of direct employment to the dispatched worker. This is the first lawsuit in which the effect of item 5 of paragraph 1 of Article 40-6 of the Worker Dispatching Act has been disputed since its establishment by the 2012 amendment, and is expected to have a significant impact on court practice in the future.

2. Development of laws and regulations governing indirect employment, including worker dispatching

In Japan, until the enactment of the Worker Dispatching Act in 1985, worker dispatching was comprehensively prohibited as a worker supply service under the objective of eliminating the harmful effects of labor coercion, kickback, etc. under parent-subsidiary control relationships and to break away from feudal labor practices. Prior to the enactment of the Worker Dispatching Act in 1985, worker supply was defined as "having a worker work under the direction and orders of another person based upon a supply contract" (Employment Security Act, Para. 6 (now Para. 8), Art. 4) and was prohibited under Article 44 of the Employment Security Act. If a worker supply service was conducted, the worker supply service owner was punished with imprisonment or a fine (Employment Security Act, Para. 10, Art. 64).

When the Worker Dispatching Act was enacted in 1985, worker dispatching, originally a form of worker supply, was excluded[1] from the definition of worker supply and excluded from the prohibition on it. Worker dispatching is defined as (1) having a worker employed by one person (2) so as to be engaged in work for another person under the instructions of the latter, while maintaining the worker's employment relationship with the former, (3) excluding cases where the former agrees with the latter that such worker is to be employed by the latter (Worker Dispatching Act, Item 1, Art. 2). Insofar as it meets the aforementioned definition, worker dispatching is excluded from the definition of worker supply. In addition, worker dispatching is distinguished from an outsourcing service contract, in which a worker is directly employed by an employer as a contractor and engages in work under its direction and orders, in that the worker is engaged in work for another person other than the contractual employer.[2]

When the Worker Dispatching Act was enacted in 1985, it was based on the so-called "positive list" system, which enumerated the jobs that could be dispatched and limited the number of dispatched workers to 16 jobs: specialized jobs (software development, interpretation, etc.) and jobs requiring special employment management (parking lot management, building cleaning, etc.). The 1996 amendment expanded the number of types of work covered to 26 (26 types of specialized work), and the 1999 amendment reversed the principle and exception to the regulation and adopted the so-called negative list system, in which only prohibited work that cannot be dispatched is enumerated. The dispatch work for which the ban was lifted is called "liberalized work," and while there are no restrictions on the dispatch period for the 26 types of specialized work, there have been restrictions on the dispatch period for liberalized work. In addition, the ban on dispatch work in the manufacturing industry, which had been prohibited under the 1999 amendment, was lifted in 2003.

3. Development of provisions for deemed application for direct employment by the client

When the 1999 revision lifted the ban on the dispatching of liberalized work, it was stipulated that when a client hires a worker for work after the dispatch has ended, it must make an effort to hire the dispatched worker who was engaged in the work, which is also inherited in the current law (Worker Dispatching Act, Art. 40-4). In addition to this obligation of effort, the 2003 amendment further stipulates the obligation of the client to offer direct employment to the dispatched worker when exceeding the dispatchable period for liberalized work (Worker Dispatching Act, Former Art. 40-4) and when accepting a dispatched worker for the same work for more than three years for 26 types of specialized work (Worker Dispatching Act, Former Art. 40-5).

However, even if the obligation to offer direct employment had arisen, if the client violated that obligation and did not in fact offer direct employment, it was not possible to establish a labor contract relationship between the dispatched worker and the client, although sanctions, etc., under public law were in place. In response to a question about whether it is necessary in the legislative process to make

employment itself mandatory, rather than merely requiring the client to apply for employment, the government took a negative attitude toward making employment itself mandatory, because a "deemed employment system" that establishes an employment relationship regardless of the intent of the parties involved is not necessary or appropriate in relation to the freedom of companies to hire, and because there are also issues about how working conditions should be determined.[3]

Under the aforementioned legal circumstances, if "disguised contracting" in which dispatched workers are accepted under a name other than worker dispatch, such as contracting, is performed for the purpose of evading the application of the provisions of the Act, the question arises whether disguised contracting that constitutes illegal dispatching constitutes labor supply and violates the prohibition of worker supply under Article 44 of the Employment Security Act or whether it should be treated as worker dispatching and thus within the framework of the Worker Dispatching Act. In this regard, the High Court decision in the *Panasonic Plasma Display (Pasco)* case (Osaka High Court (Apr. 25, 2008) 960 *Rohan* 5) held that disguised contracting is worker supply in violation of the Employment Security Act, and that the contractual relationship between the subcontracting business operator (dispatching agency) and the worker is invalid because it violates public order, and also the court recognized the establishment of an implied labor contract between the worker and the client company. However, the Supreme Court decision (Supreme Court of Japan, Japan (Dec. 18, 2009) 993 *Rohan* 5) reversed the judgment of the court below and held that, in the absence of special circumstances, the labor contract between a dispatched worker and the dispatching agency is not invalid merely because the dispatch of a worker in violation of the Worker Dispatching Act has been carried out. The court also denied the establishment of an implied labor contract between the client company and the dispatched worker.

Therefore, the issue of employment liability of the client in the case of illegal worker dispatching was left to the legislative decision. Under the 2012 amendment to the Worker Dispatching Act, in the case of (1) acceptance of dispatching for prohibited work (violation of paragraph 3 of Article 4), (2) acceptance of dispatching from an unlicensed or unreported dispatching business operator (violation of Article 24-2), (3) acceptance of dispatching beyond the limit of the period allowed for dispatching (violation of paragraph 1 of Article 40-2, and Article 40-3), and (4) disguised contracting (acceptance of dispatched workers under a name other than worker dispatching for the purpose of evading the application of the provisions of the Act), the client is "deemed" to have made an offer directly to the dispatched worker to conclude a labor contract with the same working conditions as those of the dispatched worker concerned at the time of the offer (Worker Dispatching Act, Para.1, Art. 40-6).

Such regulations do not apply in cases where the client did not know that the dispatch was illegal and was not negligent in not knowing, i.e., in cases of good faith and without negligence. On the other hand, if a client accepts a dispatched worker with knowledge of illegal dispatching or without knowledge due to negligence, the client is considered to have directly offered a labor contract to the dispatched worker at the time the illegal situation occurred. This application may not be withdrawn during the period until the day on which one year has elapsed from the day on which the aforementioned act ((1)-(4)) pertaining to the application ends (Worker Dispatching Act, Para.2, Art. 40-6). Therefore, if the dispatched worker accepts said application during this period, they become directly employed by the client.

These regulations have completed the legal basis for the conversion of dispatched workers from indirect employment to direct employment with a client in Japan.

4. Criteria for Deemed Application for Labor Contract

The court presented a framework for judging that in order to fall under item 5 of paragraph 1 of Article 40-6 of the Worker Dispatching Act and to be deemed to have applied for a labor contract, it is necessary to

find that the relationship between the parties was a disguised contract and that the client had the intent to engage in disguised contracting. With regard to the judgment on the state of disguised contracting, the court held that the "Classification Standards," which is an administrative interpretation of the Worker Dispatching Act, should be referred to, and held that (1) whether the contracting business operator gave the workers instructions on how to perform their work and managed the workers' work, (2) whether the contracting business operator managed the workers' working hours, (3) whether the contracting business operator gave the workers instructions on paid leave, etc., and (4) whether the contracting business operator treated the work contracted by the client as its own work, independently from the client. Regarding the determination of the intent to engage in disguised contracting, the court held that it should not be immediately inferred that there was intent to engage in disguised contracting, merely because a state of disguised contracting, etc. has occurred. However, when it is recognized that the client or ordered has continued to engage in disguised contracting on a daily and continuous basis, it is inferred that the client or ordered has the intent to engage in disguised contracting, etc., unless there are special circumstances. In this case, it was found that Y was aware that it was in a state of disguised contracting from around 1999, when it entered into a service contract with Company A and began to be involved in the baseboard process. Since it was found that Y continued in a state of disguised contracting for many years without resolving it, it was inferred that Y had the intent to engage in disguised contracting.

There are two opposing theories on the interpretation of "the purpose of evading the application of the provisions of the Act." One is the view that the existence of a purpose to evade the Act should be presumed by the continuation of the state of disguised contracting, and that it is not necessary to independently establish that purpose.[4] The other holds that it is necessary to independently establish the purpose of illegal evasion.[5] The former emphasizes the importance that direct employment should be the principle, while the latter seems to be rooted in the idea that the employer's freedom to hire should not be excessively restricted. In the case of items 1-4 of paragraph 1 of Article 40-6 of the Worker Dispatching Act, the requirement for the legal effect of deeming a direct application is simply that the receiving company or client has committed an act in violation of the Worker Dispatching Act. In contrast, in the case of the disguised contracting type (Item 5, Para. 1, Art. 40-6), a more stringent requirement of "the purpose of evading the application of the provisions of this Act" is added for the deemed effect to occur. It is understood that this stricter requirement is imposed in consideration of the fact that the distinction between a direction as an employer and an instruction by the client in a contract agreement may be subtle in some cases. The judgement, faithful to such legal text, takes the latter position in principle. Notwithstanding that, in the absence of special circumstances, the existence of a purpose to evade the Act is inferred in cases where disguised contracting has been routinely and continuously continued. In effect, the former argument is partially adopted, and the disguised contracting purpose requirement is interpreted more loosely than the latter. This judgement adopted the ideas of opposing theories, and thus lacks logical consistency in some parts. Therefore, there will be differences of opinion as to how to evaluate this judgement.

The *Tori* case, *Rodo Hanrei* (*Rohan*, Sanno Research Institute) 1253, pp.60–83. See also, *Rodo horitsu junpo* (*Rojun*, Junposha) 2003, pp.6–12 and pp.13–24; *Monthly jurist* (*Jurist*, Yuhikaku) 1566, pp.4–5; *Hogaku Seminar* (Nippon Hyoron Sha) 67(9), pp.132–133; *Journal of Management Lawyers Council* (Keiei hoso kaigi) 214, pp.145–158 and pp.267–322.

1. The term "worker supply" as used in this Act means having a worker work under the direction and orders of another person based upon a supply contract, and does not include anything that constitutes worker dispatch as provided in Article 2, Item (i) of the Act on Securing the Proper Operation of Worker Dispatching Services and Protecting Dispatched Worker (Act No. 88 of 1985; hereinafter referred to as the "Worker Dispatching Act"). (Employment Security Act, Para. 8, Art. 4)
2. Under the 1999 revision to the Worker Dispatching Act, the maximum period of dispatch was limited to one year, and the 2003 revision extended the dispatch period limit from one year to

three years.

3. Ichiro Kamoshita, Vice Minister of Health, Labour and Welfare, in responding to questions in the Diet, May 14, 2003, 156th Diet Session, House of Representatives, Committee on Health, Labour and Welfare, Minutes no. 14: 34.

4. For details, see Takuya Shiomi, “2015 nen Rodosha haken ho 40 jo no 6 o meguru ronten” [Issues concerning Article 40-6 of the Worker Dispatching Act of 2015], *Rojun*, no. 1887 (May 2017): 23.

5. For the consideration on this theory, see Ryuichi Yamakawa, “Dai 10 hen, Dai 3 sho, Iho haken no baai no rodo keiyaku no moshikomi minashi seido”[Part 10, Chapter 3, Deemed application of labor contract in the case of illegal dispatching] in *Rodosha haken ho, Dai 2 han* [Worker Dispatching Act, 2nd ed.] eds, Koichi Kamata and Yasuo Suwa, (Tokyo: Sanseido, 2022), 340.

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