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NEXT ISSUE (Winter 2005)

The Winter 2005 issue of the *Review* will be a special edition devoted to **Changing Corporate Governance and Labor Employment Relations**.

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## **INTRODUCTION**

### **Legal and Policy Issues Concerning Labor Market**

The changes which have occurred in Japanese employment practices over the past 10 years have necessitated profound revisions in Japanese labor law. In particular, the transformation of the industrial structure which has placed more importance on the service sector, the increasing number of white-collar employees and atypical employees such as part-time workers and dispatched workers, and the erosion of the lifetime employment system, evidenced by the high unemployment rate, have made obsolete traditional Japanese labor laws, the original purpose of which were to protect mainly blue-collar employees in the manufacturing industry while developing employment security for regular employees afterwards.

In 2003, to ensure that labor laws better corresponded to changed socio-economic conditions, as above-mentioned, the Employment Security Law (ESL) and the Law for Securing the Proper Operation of Worker Dispatching Undertakings and Improved Working Conditions for Dispatched Workers (the Worker Dispatching Law) were partially modified. In addition Article 18-2, which limits the right of an employer to dismiss in a general way, was introduced into the Labour Standards Law (LSL).

The first of the three articles in this issue by Professor Ikuko Mizushima provides an overview of the revisions to the ESL and the Worker Dispatching Law and discusses legal problems arising from these amendments. The fee-charging employment placement industry was further deregulated with the revision to the ESL. This was in line with the drastic change of the legal policy that took place in this sector in 1999. The revision of the Worker Dispatching Law was an attempt to satisfy an increasing demand for worker dispatching from both management and labor. Nevertheless, Prof. Mizushima is skeptical about the positive effects stemming from the revised law. She acknowledges that the revision will allow some dispatched workers to find suitable employment opportunities, but notes that at the same time many workers will be forced to become dispatched workers and face an unstable employment situation.

The second article by Prof. Michio Tsuchida examines legal problems

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concerning part-time workers that need to be tackled by the government. According to Prof. Tsuchida, today, part-time workers constitute an indispensable human resource for companies and, therefore, it is crucial to support their career formation. In particular, the author notes the substantial gap in wages between regular employees and part-time workers. In this context, the guidelines associated with the “Law concerning the Improvement of Employment Management, etc. of Part-time Workers” revised in 2003 mandates that employers maintain balanced treatment between regular employees and part-time workers engaged in the same duties and employed under the same career management schemes and conditions. Prof. Tsuchida stresses the necessity of incorporating a general legal norm (the idea of balance) into the Part-time Work Law so it can become a basis for rules concerning Japanese-style balanced treatment.

The third article by Prof. Shimada examines the working hour schemes for white-collar employees. As the performance-based wage system is more widely applied to white-collar workers, there are increasing calls to revise the linkage between working hours and wage determination. But Prof. Shimada is opposed to drastically revising the working hour schemes for white-collar employees — for example, introducing an exemption system — when considering the increasing phenomenon of “unpaid overtime” and excessively long working hours. The LSL contains some schemes regarding working hours in response to the special nature of white-collar workers, such as excluding managers and supervisors from coverage of regulations on working hours, flex-time schemes and discretionary work schemes. Prof. Shimada argues that, when taking into consideration the freedom and discretion that white-collar employees have, it is not appropriate to regulate their working hours according to effective working hours. However, if they are exempt from such regulations, they should be protected by a mechanism to bring their workload under control.

The review of *Examining Dismissal Law: From the Perspective of Legal and Economic Studies* by Prof. Kambayashi provides not only an introduction to the articles in the book, but also examines the difference between legal and economic approaches and points out the problems inherent in both from an economic standpoint. This book was originally published in 2002, but after the LSL was revised in 2003, it was reprinted

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with a supplement containing a round-table discussion by the three editors of the book on Article 18-2, which was inserted into the LSL. Obviously, how dismissal law should be established is one of the most important issues in Japanese labor policy. However, the Article 18-2 doesn't make any addition or alteration to the case law doctrine, "abusive exercise of the right to dismiss." Instead of resolving problems regarding interpretation and application in case-law doctrine, as was expected, the new article contains some of the same problems. Thus, discussion on dismissal law must continue, and the contribution of economists will be indispensable. Prof. Kambayashi concludes, "The question seems to present a great venue for deepening our understanding of the nature of labor-related economic transactions or advancing our thinking about the workings of public rules in our society and economy."

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