Analysis of the Content of Individual Labor Dispute Resolution Cases: Termination, Bullying/Harassment, Reduction in Working Conditions, and Tripartite Labor Relationships

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Analysis of the 1,144 individual labor dispute cases handled by the four prefectural labor bureaus during fiscal 2008 show that two-thirds of these cases (756 cases) involved termination of employment, approximately 20% (260 cases) involved bullying or harassment, and approximately 10% (128 cases) involved the reduction in working conditions. In addition, roughly half the cases involved regular employees, around 30% involved directly hired non-regular employees, and approximately 10% involved temporary agency workers. Approximately 30 % of these cases reached resolution, with the majority (around a quarter) involving a settlement between 100,000 and 200,000 yen, and other cases reaching settlements between 300,000-400,000 yen, 200,000-300,000 yen and 50,000-100,000 yen in order of decreasing frequency. This represents a significantly low level overall. In terms of content, many cases of termination involved reasons relating to "attitude," although it was difficult to clearly distinguish cases relating to "ability" from those relating to "attitude." The frequency of cases citing the sanctioning of expression (restricting the "voice" or "exercise of rights" of workers) was also noticeable. This may indicate a state of "real world" termination, differentiated from the doctrine of the abuse of the right to dismiss, which is applied in court.

I. Introduction

The following table shows changes in the number of incidents of labor consultations, advice/guidance, and conciliation recorded at prefectural labor bureaus since their instigation in October 2001 (Table 1).

The content of these individual dispute resolution cases has to date been published only as a general set of data entitled "Implementation Status of Systems for the Resolution of Individual Labor Disputes," issued once per year by the Ministry of Health, Labour and Welfare. No clarification is given regarding individual specific disputes or the way in which disputes are resolved. There is some introduction of cases considered "typical," but it does not give a clear picture of the overall situation.

For this reason, the Japan Institute for Labour Policy and Training (JILPT)'s Department of Labour Laws and Industrial Relations has focused on a comprehensive analysis of individual labor dispute resolution cases handled by labor bureaus as a main pillar of its project research since fiscal 2009, beginning research in order to give a statistical and content-based analysis of the state of labor disputes and their resolutions as they actually occur in the workplace within contemporary Japanese society, in order to clarify the overall picture.

Table 1. Changes in Number of Incidents of Labor Consultations, Advice/Guidance, and Conciliation Recorded at Prefectural Labor Bureaus

	Total number of labor consultations	Number of individual civil labor disputes	Number of advice/guidance offers received	Number of applications for conciliation received
FY2001 (second half)	251,545	41,284	714	764
FY2002	625,572	103,194	2,332	3,036
FY2003	734,257	140,822	4,377	5,352
FY2004	823,864	160,166	5,287	6,014
FY2005	907,869	176,429	6,369	6,888
FY2006	946,012	187,387	5,761	6,924
FY2007	997,237	197,904	6,652	7,146
FY2008	1,075,021	236,993	7,592	**8,457**
FY2009	1,141,006	247,302	7,778	7,821

In order to achieve this, the Labor Dispute Resolution Administration Office of the Regional Bureau Administration Division of the Minister's Secretariat within the Ministry of Health, Labour and Welfare supplied the records of all advice/guidance, and conciliation given, in fiscal 2008, by four of the labor bureaus from a total of 47 prefectural labor bureaus nationwide, subsequent to the erasure of personal information. The records supplied included "Advice/guidance resolution slips issued by the director of the labor bureau" in the case of advice/guidance, as well as, in the case of conciliation, "Applications for conciliation," "Conciliated resolution slips," "Hearing records (conciliation)," "Conciliation outline record slips" and their appendices. These appendices include "Response documents" submitted by the accused parties in issues requiring conciliation, as well as "Agreement documents" issued in cases where conciliation resulted in an agreement.

As the volume of records and information available per case was far larger for cases of conciliation than for incidents of advice/guidance, this research project focused far more heavily on cases of conciliation, with advice/guidance being utilized only in those cases where it was considered necessary. This research covered 1,144 cases of conciliation, the equivalent of 13.5% of all cases accepted nationwide in the same period (8,457 cases of conciliation).

The overall research period was intended to last for three years, from fiscal 2009 to fiscal 2011, but during the first year (fiscal 2009), deeper analysis was implemented, focusing on the content of the four areas that made up the highest proportion of individual labor disputes—dismissal and other cases of termination, bullying/harassment, reduction in working conditions, and cases of tripartite labor relationships, including temporary agency workers—so as to illustrate the major issues that are the focus of current labor law policy.

Table 2. Employment Status (by Gender) as Seen through Cases of Conciliation

	Conciliation cases (%)	Men (%)	Women (%)	Unknown (%)	Total (%)
Regular employees	583 (51.0)	382 (65.5)	190 (32.6)	11 (1.9)	583 (100.0)
Directly hired non-regular employees	344 (30.1)	139 (40.4)	204 (59.3)	1 (0.3)	344 (100.0)
Temporary agency workers	132 (11.5)	64 (48.5)	68 (51.5)	0 (0.0)	132 (100.0)
Trial employment period	76 (6.6)	51 (67.1)	24 (31.6)	1 (1.3)	76 (100.0)
Other	4 (0.3)	3 (75.0)	1 (25.0)	0 (0.0)	4 (100.0)
Unknown	5 (0.4)	5 (100.0)	0 (0.0)	0 (0.0)	5 (100.0)
Total	1144 (100.0)	644 (56.3)	487 (42.6)	13 (1.1)	1144 (100.0)

Table 3. Number of Conciliation Cases, by Size of Company

Number of employees	Number of cases (%)
1-9	183 (**16.0**)
10-29	230 (**20.1**)
30-49	120 (**10.5**)
50-99	133 (**11.6**)
100-149	65 (5.7)
150-199	30 (2.6)
200-299	39 (3.4)
300-499	49 (4.3)
500-999	26 (2.3)
1000 or more	43 (3.8)
Unclear	226 (19.8)
Total	1144 (100.0)

The research topics were delegated as follows: termination cases: Keiichiro Hamaguchi (Research Director), bullying/harassment cases: Shino Naito (Researcher), cases of reduction in working conditions: Makoto Suzuki (Assistant Fellow), and cases of tripartite labor relationships: Ryo Hosokawa (Temporary Research Assistant). The report was issued in June 2010,[1] and this paper is a summary of the results therein.

II. Outline of Cases of Conciliation in Individual Labor Disputes

Firstly, Table 2 shows the overall trends within the 1,144 cases of conciliation. Of these cases, 51.0% involved regular employees, followed by 30.1% involving directly hired non-regular employees. Cases dealing with temporary agency workers amounted to 11.5%, a relatively low proportion of the overall number of cases of conciliation. Given, however, the fact that the Employment Status Survey (2007) by the Statistics Bureau of Ministry of

[1] http://www.jil.go.jp/institute/reports/2010/0123.htm.

Table 4. Proportion and Number of Cases by Type

Case type	Number of cases (%)
1. Ordinary dismissal	330 (28.8)
2. Collective redundancy	104 (9.1)
3. Disciplinary dismissal	26 (2.3)
4. Reduction in working conditions (wages)	102 (8.9)
5. Reduction in working conditions (retirement benefits)	19 (1.7)
6. Reduction in working conditions (other)	8 (0.7)
7. Transfer to another company	5 (0.4)
8. Transfer within a single company	53 (4.6)
9. Suggestion of termination	93 (8.1)
10. Disciplinary measures	8 (0.7)
11. Withdrawal of tentative hiring decision	29 (2.5)
12. Refusal to renew repeatedly renewed fixed-term contract	109 (9.5)
13. Increase in wages/promotion	1 (0.1)
14. Resignation for personal reasons	64 (5.6)
15. Other employment conditions	80 (7.0)
16. Parental or nursing care leave	2 (0.2)
17. Recruitment	0 (0.0)
18. Hiring	0 (0.0)
19. Mandatory retirement age etc.	1 (0.1)
20. Age discrimination	0 (0.0)
21. Disability discrimination	3 (0.3)
22. Employment management improvements, etc.	6 (0.5)
23. Succession of labor contract	0 (0.0)
24. Bullying/harassment	260 (22.7)
25. Education and training	2 (0.2)
26. Evaluation	12 (1.0)
27. Damages	20 (1.7)
28. Sexual harassment	1 (0.1)
29. Maternal health management	0 (0.0)
30. Mental health	34 (3.0)
31. Other	99 (8.7)

Internal Affairs and Communications shows the proportion of “Temporary employees placed by temporary staff businesses” to be 3.0%, 11.5% could be seen as relatively high figure. The majority (65.5%) of cases involving regular employees dealt with men, while cases involving directly hired non-regular employees largely dealt with women (59.3%). A slight majority of temporary agency worker cases dealt with women, although the proportion was roughly half-and-half.

When categorized according to the scale of the company involved, a majority (58.2%) of cases involved companies with fewer than 100 employees (Table 3). This is thought to reflect the fact that companies with fewer than 100 employees do not have suitable dispute resolution procedures in place, and externalize the process of dispute processing through applying for conciliation.

Table 4 shows the proportion and number of cases by type.

Table 5. Proportion and Number of Cases of Termination of Employment, Bullying/Harassment, and Reduction in Working Conditions

	Total (%)
Termination of employment	756 (66.1)
Bullying/harassment	260 (22.7)
Reduction in working conditions	129 (11.3)

Table 6. Completion Categories, by Type of Application

	Agreement reached	Withdrawals, etc.	Non-participation of other party	Unresolved	Cases outside scope of system	Total
Termination of employment (%)	233 (30.8)	60 (7.9)	329 (43.5)	133 (17.6)	1 (0.1)	756 (100.0)
Bullying/harassment (%)	80 (30.8)	17 (6.5)	96 (36.9)	67 (25.8)	0 (0.0)	260 (100.0)
Reduction in working conditions	34 (26.6)	14 (10.9)	56 (43.8)	24 (18.8)	0 (0.0)	128 (100.0)
Total (%)	346 (30.2)	97 (8.5)	489 (42.7)	211 (18.4)	1 (0.1)	1144 (100.0)

Of these, three areas were extracted for analysis as part of this research (Table 5). "Termination of Employment" includes the eight categories of "Ordinary dismissal," "Collective redundancy," "Disciplinary dismissal," "Suggestion of termination," "Withdrawal of tentative hiring decision," "Refusal to renew repeatedly renewed fixed-term contract," "Resignation for personal reasons" and "Mandatory retirement age, etc." "Reduction in working conditions" includes those conditions relating to "Wages," "Retirement benefits" and "Other."

Even if an application for conciliation is submitted, if the party in regard to whom the application is made shows no inclination to participate in conciliation, the process ends there. Some 42.7% of cases (almost half) end in this way (in this paper, these cases are referred to using the abbreviated term "non-participation"). In addition, parties who enter into conciliation but who are unable to accept the proposed conciliation solution, and for whom no resolution appears possible, are removed from conciliation as unresolved. These cases account for 18.4% of the total. On the other hand, 8.5% of conciliation applications are withdrawn by the applicant, leaving only 30.2% of cases that reach an agreement. Table 6 shows a breakdown of the content of these applications.

Table 7 shows the resolution payment amounts awarded, categorized by employment status in cases where an agreement was reached. In cases involving regular employees, sums were concentrated between 100,000 and 400,000 yen, with amounts between 1 and

Table 7. Settlement Payments, Categorized by Employment Status

	1-49,999 yen	50,000-99,999 yen	100,000-199,999 yen	200,000-299,999 yen	300,000-399,999 yen	400,000-499,999 yen	500,000-999,999 yen	1 million-4,999,999 yen	5 million-9,999,999 yen	10 million yen or more	Unknown/ other	Total
Regular employees (%)	7 (4.3)	8 (4.9)	39 (**23.9**)	22 (**13.5**)	25 (**15.3**)	12 (7.4)	19 (**11.7**)	11 (6.7)	1 (0.6)	1 (0.6)	18 (11.0)	163 (100.0)
Directly hired non-regular employees (%)	14 (**13.1**)	18 (**16.8**)	28 (**26.2**)	10 (9.3)	14 (**13.1**)	1 (0.9)	7 (6.5)	6 (5.6)	0 (0.0)	0 (0.0)	9 (8.4)	107 (100.0)
Temporary agency workers (%)	6 (**14.3**)	9 (**21.4**)	11 (**26.2**)	7 (**16.7**)	6 (**14.3**)	2 (4.8)	1 (2.4)	0 (0.0)	0 (0.0)	0 (0.0)	0 (0.0)	42 (100.0)
Trial employment period (%)	6 (**18.8**)	8 (**25.0**)	5 (**15.6**)	6 (**18.8**)	2 (6.2)	2 (6.2)	2 (6.2)	0 (0.0)	0 (0.0)	0 (0.0)	1 (3.1)	32 (100.0)
Other (%)	0 (0.0)	0 (0.0)	1 (100	0 (0.0)	0 (0.0)	0 (0.0)	0 (0.0)	0 (0.0)	0 (0.0)	0 (0.0)	0 (0.0)	1 (100.0)
Unknown (%)	0 (0.0)	0 (0.0)	0 (0.0)	0 (0.0)	0 (0.0)	1 (100.0)	0 (0.0)	0 (0.0)	0 (0.0)	0 (0.0)	0 (0.0)	1 (100.0)
Total (%)	33 (9.5)	43 (12.4)	84 (24.3)	45 (13.0)	47 (13.6)	18 (5.2)	29 (8.4)	17 (4.9)	1 (0.3)	1 (0.3)	28 (8.1)	346 (100.0)

Table 8. Settlement Payments, Categorized by Application Content

	1-49,999 yen	50,000-99,999 yen	100,000-199,999 yen	200,000-299,999 yen	300,000-399,999 yen	400,000-499,999 yen	500,000-999,999 yen	1 million-4,999,999 yen	5 million-9,999,999 yen	10 million yen or more	Unknown/ other	Total
Termination of employment (%)	19 (8.2)	34 (**14.6**)	58 (**24.9**)	31 (**13.3**)	30 (**12.9**)	12 (5.2)	23 (9.9)	12 (5.2)	1 (0.4)	1 (0.4)	12 (5.2)	233 (100.0)
Bullying/harassment (%)	5 (6.2)	6 (7.5)	22 (**27.5**)	16 (**20.0**)	12 (**15.0**)	8 (**10.0**)	4 (5.0)	2 (2.5)	0 0.0)	1 (1.2)	4 (5.0)	80 (100.0)
Reduction in working conditions (%)	6 (**17.6**)	2 (5.9)	8 (**23.5**)	2 (5.9)	6 (**17.6**)	0 0.0)	2 (5.9)	3 (8.8)	0 0.0)	0 0.0)	5 (14.7)	34 (100.0)

50,000 yen accounting for 4.3% and those between 50,000 and 100,000 yen accounting for 4.9%. This demonstrates a relatively low proportion of settlements at low levels. Of the settlements, 11.7% were between 500,000 and 1,000,000 yen.

On the other hand, in cases involving directly hired non-regular employees, 13.1% of cases resulted in a settlement between 1 and 50,000 yen, while 16.8% were between 50,000 and 100,000 yen. In cases involving temporary agency workers, these figures equated to 14.3% and 21.4% respectively, indicating a greater trend towards low-value settlements than those awarded to regular employees. This is thought to originate in the fact that the original applications are often seeking a lower settlement, but it also indicates how non-regular employees seeking a higher value may end up accepting a lower settlement, as the resolution does not proceed as they had hoped.

In addition, when the distribution of settlement amounts is broken down according to the broad categorization of application content (Table 8), it shows that 65.7% of "Termination of employment" cases are settled between 50,000 and 399,999 yen. There were also incidences, however, of cases settled at over 10 million yen.

Of "Bullying/harassment" cases, 72.5% are settled between 100,000 yen and 499,999 yen, giving them a slightly higher settlement value in general than cases of "Termination of Employment." There were also incidences of cases settled at over 10 million yen.

Settlements in cases of "Reduction in working conditions" tend to come in lower than those in other cases, with 23.5% being settled between 100,000 and 199,999 yen, and 17.6% being settled either between 1-49,999 yen, and 300,000-399,999 yen.

III. Analysis of Cases of Termination of Employment

As mentioned above, of the 1,144 cases referred to conciliation from the four labor bureaus under the scope of this research, 756, or a majority at 66.1%, involved termination of employment in the form of dismissal, refusal to renew repeatedly renewed fixed-term contract, suggestion of termination, resignation for personal reasons, etc. Socially, cases of termination of employment are noted as the most common type of individual labor dispute.

At the same time, under the terms of labor legislation, revisions to the Labor Standards Act in 2003 established the doctrine of the abuse of termination rights developed in legal precedents. The article was transferred to the Labor Contract Act in 2007. However, with the exception of the four conditions (or four elements)[2] of collective redundancy, there were al most no criteria formularized to specifically define what decision should be made when each type of termination occurred, and as a result, individual cases were left to the discretion of the courts. In addition, the doctrine of precedent in Japan means that, in principle, since legal measures such as invalidation of termination or its application by analogy

[2] Conditions for acknowledging collective redundancy include the principle of requiring precedent, such as (1) the need for a reduced workforce, (2) the obligation to strive to avoid termination, (3) the rationality of selection of those being terminated, and (4) a consultation with labor unions, etc.

would be taken according to the abuse of dismissal rights, leaving no room for a financial settlement, then for any settlement reached that does not depend on the courts, the standard for financial settlement has hardly been socially formulated.

In this research, therefore, the authors diligently studied individual cases, precipitating types of reasons for termination of employment. Cases were categorized based thereon, in order to clarify the current state of employment termination within Japanese society. This categorization did not necessarily correspond to the status of employment termination allocated by the labor bureaus. For example, some cases considered to be management-related were listed not as collective redundancies, but as ordinary dismissals, while a significantly large number of cases involving misconduct were processed not as disciplinary dismissal but as ordinary dismissal. Furthermore, in a fair number of cases, not only was it not at all clear whether the case should be categorized into dismissal, suggestion of termination, or resignation for personal reasons, depending on the interpretation of specific statements made both by the employee and the management, a situation requiring extremely delicate judgment, but also the categorization of the case itself had become a point of dispute between the employee and the management.

Table 9 shows the categorization of final reasons for termination, and the number of cases in each category, utilized in this research.

Ordinarily, the labor law debate regarding dismissal for reasons relating to the individual employee in question, such as his or her behavior and attributes (in other words, when termination does not result from reorganization for management reasons), depends on three typical reasons for termination: insufficient achievement at work, illness or injury, or inappropriate behavior. In regard to these, consideration must be given to a comparison between elements that give grounds for judging that the right to dismiss has been abused, and those that negate this, before a decision is made as to whether the dismissal is valid or not. In such cases, where these reasons are shown to exist, it is assumed that there may have been grounds to terminate employment, and as such it could be said that the final decision is based on objective rationality and social appropriateness.

In regard to this, it is noticeable that a large number of cases referred to labor bureaus for conciliation give “attitude” as the reason for termination of employment, and that many of them represent the sanctioning of expression. In cases referring to “attitude,” it was not always clear that this had been differentiated from “ability,” and whilst this does not preclude consideration within the broad definition of “insufficient achievement at work,” given that any such decision is based essentially on the subjective view of the employer, it is considered necessary to reconsider such cases in a separate category from those giving “ability” as the reason for termination. Furthermore, it is impossible to consider termination relating to the sanctioning of expression (“voice”[3] and “exercise of rights”) to date as having been

[3] “Voice” as defined in this paper is based on the terminology of the economist Albert Hirschman, who defined the terms “voice” and “exit.” When a problem arises in an organization, either improve-

Table 9. Final Reasons for Termination, by Number of Cases

	Number of cases (%)	
Exercise of rights	14	(1.9)
Voice	23	(3.0)
Refusal to accept change in working conditions	26	(3.4)
Notification of change or termination	21	(2.8)
Attitude	167	(22.1)
Misconduct	39	(5.2)
Private issues	7	(0.9)
Side job	5	(0.7)
Ability	70	(9.3)
Illness/injury	48	(6.3)
Disability	4	(0.5)
Age	11	(1.5)
Racial discrimination	1	(0.1)
Management	218	(28.8)
Employment status	4	(0.5)
Quasi-dismissal	47	(6.2)
Miscommunication	17	(2.2)
Retirement problems	8	(1.1)
Reasons unknown	26	(3.4)
Total	756	(100.0)

implemented based on objective rational reasons from the perspective of precedent, and as such, this category could be considered the one most strongly indicative of the state of employment termination in society, separate from the doctrine of abuse of the right to dismiss as applied in court.

The following gives consideration to types of employment termination in descending order of lacking objectivity.

1. Sanctioning of the Exercise of Rights

From among termination cases relating in the broad sense to the sanctioning of expression, cases of termination where the reason given related to behavior undertaken on the initiative of the employee in question, and where such behavior was an appropriate exercise of the employee's rights based on labor law, are referred to as "exercise of rights."

A total of 14 such cases were reviewed, five of which were resolved with financial settlements. These included "Ordinary dismissal as a result of reporting to the labor stan-

ments are sought through "expression" ("voice") within the organization, or through "resignation"("exit") from the organization.

dards office that there was no paid leave or overtime allowance" (settled for 250,000 yen), "Ordinary dismissal as a result of taking paid leave" (settled for 120,000 yen), "Refusal of renewal as a result of taking maternity leave" (settled for 300,000 yen), among others.

2. Sanctioning of "Voice"

"Voice" cases are here defined as termination where the reason given related to behavior undertaken on the initiative of the employee in question, and where such behavior was not an appropriate exercise of the employee's rights based on labor law. In this category, 23 such cases were recorded.

Broadly divided, these cases were as follows.

i. Termination in order to sanction protest by an employee that is not necessarily within the range of rights which may be exercised under labor law, but which can be seen as the exercise of generally appropriate rights as an individual employee. Nine such cases were recorded, including "Ordinary dismissal after protesting in regard to personal information (family records) being leaked to other employees" (settled for 70,000 yen), "Refusal of renewal through termination of dispatching contract after revealing a situation of bullying" (settled for 200,000 yen). Of the nine, four were resolved through a financial settlement.

ii. Termination in order to sanction an emphasis on social justice rather than individual rights, for example, "Ordinary dismissal on refusing to falsify data" (settled for 300,000 yen). Three such cases were recorded, of which one was resolved through a financial settlement.

iii. Five cases were recorded where termination occurred as a result of the employee expressing an opinion about how the company was being managed. None of these was resolved.

iv. Six other "voice" cases of termination were recorded, of which three were resolved through a financial settlement.

3. Refusal to Accept Change in Working Conditions

Twenty-six cases were recorded of employment termination resulting from an employee's negative response to changes implemented in his/her working conditions on the initiative of the employer. These could be regarded as a type of "sanctioning of expression," but in fact content-wise they come into a mixed area somewhere between disadvantageous changes to working conditions and termination, and are closely connected to "notification of change or termination."

i. The majority of such cases related to an employee's refusal to be transferred within a single company (13 cases), of which three were resolved.

ii. On paper, 11 cases referred to termination of employment based on refusal to accept disadvantageous changes to conditions such as wage reductions, but of these, eight cases involved the same subject matter and were submitted by em-

ployees of the same company. Two cases were resolved with a financial settlement.

iii. In addition to this, two cases involved termination resulting from refusal to accept changes in the employment status. Neither of these cases has been resolved.

4. Notification of Change or Termination

Closely related to the category above are 21 cases in which termination occurred after the employer gave the employee a choice between disadvantageous changes in the working conditions and termination of employment ("notification of change or termination").

i. Firstly, nine cases involved changes in conditions relating to transfer within a single company, such as "Suggestion of termination after being given an order to be transferred to a distance despite his daughter's long-term hospitalization; told 'obey or leave'" (case unresolved). Of these, one was resolved with a financial settlement.

ii. Four cases were recorded of notification of change or termination relating to wages or other disadvantageous changes to conditions. Of these, only one was resolved, with a settlement figure of zero.

iii. Many of the cases involving notification of change or termination related to employment status. There were seven such cases of this, including that of an employee who was told to "transfer to a subcontractor or leave" (settled for 80,000 yen). What is clear here is that while such cases become apparent because they resulted in termination, in fact there are likely to be many more such cases in which employees have chosen to remain at work, in employment statuses different to those in which they were originally employed.

iv. Some cases involve combinations of the above situations.

5. Attitude

The largest number of cases citing personal reasons relating to the employee in question referred to their "attitude" as the reason for termination. These cases made up the largest category of cases after those relating to termination for management reasons, with a total of 167 cases. Such cases are related both to cases of sanctioning expression ("exercise of rights" and "voice"), and to cases relating to "ability" when given as the reason for termination. Although categorized as "attitude" cases, these cases in fact cover a wide range of areas.

i. Firstly, the most demonstrable cases of "attitude" included refusal to follow instructions at work, or more accurately, refusal to implement orders given in the ordinary course of work by a supervisor. There were 21 such cases of termination, including "Terminated dispatching contract on request of client company due to refusal to engage in some work responsibilities" (settled for 150,000 yen), of which five were resolved with a financial settlement.

ii. Twenty-nine cases cited termination as a result of poor attitude at work. These did not relate to refusal to follow orders, but rather something close to this, such as laziness at work. Only six of these cases were resolved with financial settlements, and the amounts involved were small.
iii. Of all cases citing "attitude," the largest group (49 cases) cited trouble in the workplace. Seventeen of these were resolved with a financial settlement. It is considered that this indicates the significance of human relationships at work within Japan's labor society.
iv. There were 22 cases of employment termination that cited trouble in regard to customers. Nine of these were resolved with a financial settlement. This is thought to reflect the importance placed on high levels of customer service in Japan, and indicates a trend within businesses to place the highest priority on honoring the customer's opinion.
v. Thirteen cases of employment termination cited tardiness or absence from work, of which five were resolved with a financial settlement.
vi. Ten cases of employment termination cited the taking of leave, of which six were resolved with a financial settlement.
vii. Five cases cited the expression of complaints as the reason for termination.
viii. While it is true that such cases come under the broad definition of "attitude," there were a number that cited "compatibility" or "chemistry" as the reason for termination ("Does not match the company culture," "Does not fit in," etc.), and did not give any indication of exactly what had been done by whom. The fact that there were as many as 15 such cases may indicate the extent to which Japanese labor society prioritizes human relationships at an instinctive level.
ix. Three cases had no clear explanation.

6. Misconduct

Considering that inappropriate conduct is a major element of justification for individual dismissal in labor law, it seems perhaps surprising that only 39 cases of termination were referred to the labor bureau for conciliation citing misconduct. It seems that misconduct as a reason for termination does not always correspond with disciplinary dismissal as a type of dismissal. While many cases cite misconduct as a reason for ordinary dismissal, there were a number of cases of disciplinary dismissal that cited attitude or "voice," which may not necessarily be defined as misconduct.

i. The majority of cases of misconduct involved breach of trust, with 17 cases including "An employee commuted to work by bicycle despite having received a commuting allowance for a commuter bus pass and neglected to submit a written apology, resulting in the implementation of disciplinary dismissal" (settled for 58,600 yen). Four of these cases involved misconduct denied by the employee in question, such as "30,000 yen in sales income having gone missing and the em-

ployee, who knew nothing of it, being suspected of stealing it, resulting in the refusal of renewal" (settled for 50,000 yen).

ii. The number of cases (six) involving incidents at work that did not constitute deliberate misconduct by the employee was also relatively large.
iii. One case of termination involved financial trouble.
iv. Five cases of termination cited theft in the workplace. The employee acknowledged the theft in only one of these cases. It was denied in all four of the other cases.
v. Two cases of termination cited clear incidents of physical violence in the workplace.
vi. Four cases cited bullying or sexual harassment instigated by the employee, whose employment was terminated, but of these, the charge was denied by three of the employees concerned.
vii. One example involved impropriety at work, in the form of inappropriate urination at the workplace.
viii. Only one case cited falsification of a work record.
ix. One case of termination did not give a clear reason for disciplinary action.

7. Private Issues

Seven cases cited private behavior as the reason for termination of employment. These included cases such as "An employee started to receive phone calls from loan sharks at work, and was ordered to stay at home and then he was ordinarily dismissed" (settled for 100,000 yen). If the company considers that such phone calls are an obstacle to work, then it is difficult to classify them entirely as "private" issues.

On the other hand, there were three cases in which the employee him/herself was not directly involved in the problems cited, which centered on family members or relatives, such as "Ordinary dismissal due to an incident involving employee's father" (non-participation).

8. Side Job

Five cases recorded side job as the reason for termination, of which two were resolved with a financial settlement.

9. Ability

Termination of employment based on reasons of "ability" is considered to be the most typical pattern of individual termination. After "attitude," the number of cases citing "ability" (70) makes it the second most common reason for individual termination. Since the Japanese workplace does not always clearly differentiate between "attitude" (subjective) and "ability" (objective). It is therefore possible to consider that "attitude" is somewhat treated as part of "ability," and that there is perhaps little significance in merely comparing

the number of cases.

i. A surprisingly small number of cases (only six) cited a specific lack of skill for the work allocated, which is perhaps the most objective interpretation of the term. Two of these cases related to driving skills, while four related to computer skills. Since some of these cases involved situations in which the employee concerned had been hired without agreeing to such conditions, it is difficult to find objective rationality in them being used as a reason for termination of employment.
ii. Seven cases involved termination for reasons relating to poor performance. In none of these cases was it demonstrated that the employee in question had agreed to performance conditions when hired.
iii. Ten cases involved termination relating to mistakes made at work. It is true that making, or particularly repeating, mistakes at work can be an objective indicator of ability, but these cases included "Ordinary dismissal after only one mistake was made" (settled for 100,000 yen).
iv. Among "ability" related termination cases, there was a significant number (38) that cited only general lack of ability, with no reference to specific work skills, mistakes made, or poor performance.
v. Nine cases cited "Unsuitability" as a reason for terminating employment. This is considered relatively abstract and unclear in comparison with general "lack of ability."

10. Illness/Injury

There were 48 cases of employment termination based on illness and/or injury. Since illness and injury undoubtedly reduce an employee's ability to work, in general they can be considered justifiable reasons to terminate employment. However various problems can be identified from the content of cases referred to labor bureaus for conciliation.

i. Eleven cases involved termination of employment resulting from an accident at work. The Labor Standards Act prohibits termination of employees involved in such an accident while he/she is on leave or within 30 days of returning to work. Details were unclear in non-participation cases, but it appears that a significant number of cases are inappropriate in regard to the spirit of the Act.
ii. Two cases cited termination for reasons of private accident/injury.
iii. Ten cases cited termination of employment for the reason of chronic illness. Of these, some cases could be considered to demonstrate discrimination on the basis of illness, such as "Ordinary dismissal due to specific illness (diabetes), citing the fact that the company did not want customers to witness the employee injecting insulin" (settled for 200,000 yen).
iv. The most common form of termination relating to illness involved mental illness. A significant number of cases deal with mental health problems playing some role in the termination of employment, while 15 cases gave mental illness

as the clear reason for termination. In almost all these cases, bullying or harassment was also involved, giving an indication that the today's Japanese workplace has some problems with maintaining a social atmosphere beneficial to mental health.

v. In contrast to this, relatively few cases of employment termination related to "normal" physical illness cited lack of work ability as a result of poor physical condition. Rather, "attitude" related issues (the fact that the employee took time off when only mildly unwell, etc.) appeared to be the true cause of the termination in many cases. None of these cases was resolved with a financial settlement.

vi. Two cases of termination cited the illness not of the employee in question, but rather a family member. These cases are considered potentially problematic in the light of the Child Care and Family Care Leave Act.

11. Disability

Since it is indisputable that physical or mental disability can be a factor causing a negative effect in an employee's ability to work, the three cases of employment termination citing reduced ability to work caused by disability may be considered to come within the definition of "ability-related" dismissal in a broad sense. At the same time, they also constitute discrimination against those with a disability.

Related to this, there was one case of "Ordinary dismissal resulting from poor attendance due to the worker's child's disability" (settled for 300,000 yen).

12. Age

There were 11 cases of termination of employment based on age, mostly involving non-regular workers for whom no mandatory retirement age was defined. Cases where increasing age is cited as a factor in reduced ability to work can be categorized as "ability" related. Ages used as reasons for termination tended to be high (65-70), which indicates that the dismissal would have been considered rational if the company had a mandatory retirement system or continued employment system in place.

13. Racial Discrimination

There was one unusual case citing "Ordinary dismissal of non-Japanese employee due to not wanting to work with him" (non-participation).

14. Management

The categories above all relate to the behavior or attributes of the employee. Reasons relating to organizational management are, however, obviously the most common in incidents of termination, with a total of 218 cases (144 cases in real terms, if counting each case per company) recorded. Divided by type of employment status, these cases can be seen as

follows.

i. Termination of employment of temporary workers for management reasons: In the case of registered temporary workers, most terminations occur for reasons relating to the company to which they are dispatched, rather than for reasons relating to the temporary agency that placed them in post. Of the 36 cases (33 in real terms) relating to such employees, 16 (13 in real terms) involved midterm dismissal—almost the same number as those involving non-renewal at the end of a contract period (15 cases).

ii. Termination of the employment of directly hired non-regular employees for management reasons: Comparing the number of incidents of midterm dismissal with those of non-renewal at the end of a contract period for directly hired non-regular employees (part-timers, casual staff, and fixed-term contract staff, etc.) shows that of 61 cases overall (41 in real terms), 32 cases referred to the former (22 in real terms) and 27 to the latter (12 in real terms). This shows that there was a slightly higher incidence of cases of midterm dismissal.

iii. Termination of employment of regular employees for management reasons: There were 109 cases of termination of employment of regular employees for management reasons (58 in real terms). Regular employees cannot have their employment ceased at the end of a contract period, but seven of these cases did involve the withdrawal of tentative hiring decision before the period of employment actually began.

Eleven cases cited management-related reasons as the cause of termination of employment, but whether or not this was the true reason for termination was considered doubtful.

15. Disputes Relating to Employment Status

Four cases involved a dispute over employment status as their main point of disagreement.

16. Quasi-Dismissal

Quasi-dismissal is defined as a case in which the employee is stated to have resigned for personal reasons, but in fact has been pressured into resignation by the behavior of his/her employer. Forty-seven such cases were recorded. Broadly categorized according to the cause of the pressure to resign, they can be viewed as follows.

i. Bullying/harassment was the cause in 17 cases. This reflects only the number of cases in which employees resigned for personal reasons as a result of bullying/harassment, and in which conciliation was subsequently requested in the termination case caused by resignation for personal reasons. In many more cases, bullying/harassment was given as the reason for the resulting resignation.

ii. Change in employment conditions: Nine cases involved transfer, eight involved

disadvantageous changes to wages or other working conditions, and two involved change in employment status, giving a total of 19 cases. These cases are linked to those described in "3. Refusal to accept change in working conditions" and "4. Notification of change or termination."

iii. Eight cases related to trouble in the workplace.

iv. Three additional cases were considered apparent quasi-dismissal, but involved situations that were unclear.

17. Miscommunication

A relatively large number of 17 cases involved termination of employment for no clear reason originating with either the employer or the employee. These cases rather appeared to involve miscommunication between the two parties, resulting in termination.

18. Retirement Problems

In eight cases, the justification for termination of employment was not in itself listed as a problem, but disputes centered on refusal by the employer to accept resignation; the date, format or reason for termination; or the amount of compensation paid.

19. Reasons Unknown

In 26 cases, while there must have been a reason for the termination of employment, the reason was impossible to establish based on the conciliation documents.

20. Collective Mediation Application

Whilst not a termination category in and of itself, a significant number of conciliation application cases (25, or 121 if counting the individual employees) involved multiple employees applying for conciliation in regard to the same workplace within the same company. Of these, cases relating to termination for management reasons and changes in working conditions by nature not only apply to individual employees but also are shared by their co-workers, and as such bear the attributes of collective labor relations problems. Companies with collective labor relations frameworks in place, such as labor unions, should use these frameworks to implement deliberation and negotiation on such matters in order to find a solution. Alternatively, the Labor Relations Committee or other collective labor dispute resolution system should be involved in finding a resolution for such cases.

IV. Analysis of Cases of Bullying/Harassment

A total of 260 cases were recorded citing bullying/harassment. When categorized according to the perpetrator, the most typical pattern was (a) supervisory employees bullying subordinate employees (44.4% of cases), followed by (b) senior employees or co-workers (27.1%), and (c) company directors (17.9%). When categorized according to victim, (a)

bullying of women accounted for 54.6% of cases, significantly higher than the 42.6% of overall conciliation cases in which women were the victims. In cases involving women, their family situation (having children, being a single mother, being divorced) often played a part in their being subject to bullying. In addition, (b) there was a somewhat disproportionately high number of cases involving non-regular employees, and (c) a noticeable number of cases involved disabled employees.

Categorized according to type of behavior, bullying cases can be broken down as follows: (a) cases involving physical harm (violence, injury, etc.), (b) cases involving mental harm (verbal abuse, profanity, criticism, discrimination, prejudice, invasion of privacy, ignoring, etc.), and (c) cases involving social harm (not being given work to do, etc.). Some cases referred for conciliation also involved relatively minor petty behavior, which should not really be classified as bullying/harassment.

In many cases, the victims of bullying incidents had approached a superior or the company in the first place, but most times this consultation had failed. Few cases involved a labor union; almost none of those that did actually reached a solution that way. It may be the case that the referral to the labor bureau was only made because the labor union could not resolve the dispute.

Among the effects of bullying on the victim, (a) the impact on mental health was significant. Around 30% of all cases involved the victim being diagnosed as having some sort of mental health problem by a doctor, or identifying it in himself/herself. For this reason, many of the applicants chose not to pursue a potentially time-consuming legal action, but rather to use the labor bureau conciliation system in order to reach a swift solution, thereby allowing them a fresh start to concentrate on their treatment. In addition, (b) the impact on employment status was also clear in many cases, with victims either being forced to resign as a result of bullying, or being dismissed (or refused the renewal of contract) as a result of seeking advice relating to bullying.

V. Analysis of Cases of Reduction in Working Conditions

Some 129 cases dealt with reductions in working conditions. Categorized according to cause of dispute, there were 21 cases of wage reduction due to change in job type, transfer within and beyond company; 18 cases of wage reduction due to reduction in working hours or number of days worked; 12 cases of wage reduction due to downturn in business; 10 cases of wage reduction based on performance evaluation; seven cases of wages being different to those agreed on hiring; six cases of wage reduction due to change in employment status (regular employee → non-regular employee); three cases of wage reduction as a result of change in wage system (monthly wage → hourly wage); two cases of wage reduction resulting from demotion; six cases of reduced or unpaid bonuses; three cases of the non-payment of commissions; two cases of reduction in benefits; and 12 cases of wages being reduced for other reasons.

In cases relating to retirement payments, seven involved the non-payment or reduction of retirement payments due to dismissal, three involved a reduction based on performance evaluation, three involved non-payment or reduction due to a downturn in business, and six cases involved reduction in retirement payments for other reasons. Eight other cases involved a reduction in conditions related neither to wages nor retirement payments.

Categorizing the 34 resolved cases among these according to type of dispute resolution resulted in (a) four cases (all involving regular employees) which resulted in the removal of reductions to working conditions and ongoing employment; (b) five cases where ongoing employment was requested, but in the end a settlement payment was accepted and the employee resigned; (c) six cases where ongoing employment was not requested, a settlement payment was accepted, and the employee resigned; (d) 14 cases in which, after resignation, an application for conciliation was made and a settlement payment was accepted (this being the largest category within the resolved cases). Additionally, (e) four cases relating to retirement payments were settled, reversing the non-payment or reduction of retirement payments, and (f) one case resulted in resignation without the acceptance of a retirement payment.

VI. Analysis of Individual Dispute Cases Involving Tripartite Labor Relationships

There are five categories included in the term "tripartite labor relationships"—temporary agencies, subcontractor companies, employment brokers, individual subcontractors, and "other." There were 270 such cases—around 25% of the total. Of these, 48.9% of cases involved dispatched workers, while 40.4% involved subcontracted work (employees of a subcontractor).

Tripartite labor relationships are the cause of a large number of disputes, but a high proportion of these disputes are resolved, and only a small proportion are abandoned as a result of non-participation of the accused party. There is, however, a trend towards financial settlements being low, as when dealing with directly hired non-regular employees.

In cases of employment termination, employees working under tripartite labor relationships are generally placed in an unstable position, with the danger of their employment being terminated at any time at the mercy of the company for which they are working. Furthermore, in the case of registered temporary workers, many cases included a dispute regarding to the introduction of a new work placement at the point at which their employment was terminated.

In addition to this, temporary workers appear more likely to be involved in disputes within the workplace environment, such as those categorized as bullying/harassment, and in a number of such cases, conciliation applications are filed with workplaces to which workers are dispatched.

VII. Continuing Research

The Japan Institute for Labour Policy and Training's Department of Labour Laws and Industrial Relations has gone on to analyze the contents of individual resolution cases during fiscal 2010, and has compiled information relating to quasi-dismissal of employees who were subjected to bullying and therefore resigned, even though there was no actual dispute regarding the termination itself, cases relating to mental health, cases relating to transfer, cases in which employees are requested damages, and cases of employees engaged in trial work periods, among others.