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# Legal Benefits System for Retirement Risk in Japan: Basic Structure and Relationship with the Employment System

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This paper studies the legal benefits system for retirement risk in Japan, while looking at its historical developments. It clarifies the following points. First, responding to the uniqueness of the concept of “unemployment” as a covered event has always been the task to cope with. In the debate over the legislation of the unemployment insurance system before the Second World War, the difficulty in recognizing unemployment and the likelihood of abusive claims of benefits were already pointed out. These problems have not yet been solved. Secondly, the legal benefits system for retirement risk has been associated with the employment system in Japan. The Employment Insurance Act, since its enactment, has provided the foundation for continuous employment, in tandem with the imposition of restrictions on dismissal. On the other hand, this system has sometimes served in mitigating the workers’ resistance to retirement through the payment of unemployment benefits, and in this respect, it has played a role in ensuring the “flexibility” of the employment system to a certain extent.

## **I. Introduction**

In Japan, income security benefits for the unemployed have conventionally been composed of two benefit systems. One is the unemployment benefit system under the Employment Insurance Act, which relies on the principle of social insurance. The other is the public assistance system under the Public Assistance Act, which covers not only the unemployed but a wide range of the poor and needy. In addition to these two systems that provide support for the unemployed, a new system for supporting job seekers has been established under the Act on Support for Job Seekers in Finding Jobs through the Implementation of Vocational Training, enacted in May 2011. Now, the Japanese unemployment benefits system is comprised of three pillars.

The job seekers support system is designed to provide job seekers who are unable to receive unemployment benefits with 100,000 yen per month for up to two years, on condition that their income and assets (on an individual/household basis) are below the specified levels and that they attend training sessions. It is regarded as a supplementary service of the employment insurance system; half its funds are paid by the government, and the remaining half is shared by labor and management.

Thus, a drastic reform has been carried out in the system for providing benefits for the unemployed; however, it still remains as an important task to conduct a more fundamental review of the basic structure of the benefits system which covers unemployment risk and

retirement risk,<sup>1</sup> in terms of the risks to be targeted and the framework to be applied in system design.

Furthermore, the benefits system for retirement risk sometimes affects the employment system built on the basis of policy measures and legal arrangements, and it is also sometimes affected by the employment system. Therefore, in order to study the benefits system for retirement risk, it is necessary to examine the relationship with the employment system.

Being aware of these issues, the author of this paper aims to study (i) the basic structure of the legal benefits system for retirement risk and (ii) its relationship with the employment system, while looking at its historical developments. As for the first theme, (i) the basic structure of the legal benefits system for retirement risk, the central point in discussion is what kinds of events involving retirement risk have been treated as covered events under the legal benefits system for retirement risk. As for the second theme, (ii) the relationship with the employment system, the main focus is placed on the legal restrictions imposed on employers upon retirement of workers (in particular, restrictions on dismissal), for such restrictions play an important role in forming the employment system.

## II. Developments Up Until the End of the Second World War

### 1. Submission of the Unemployment Insurance Bill<sup>2</sup>

Due to the financial crisis that occurred after the end of the First World War, a great number of people lost their jobs, and unemployment became a serious social issue. Under such circumstances, driven by an increasingly growing demand for the legislation of an unemployment insurance system, an unemployment insurance bill was laid before the Diet in 1921.

Under this bill, factory workers and employees over 17 years of age and less than 60 years of age, and clerical personnel and technicians whose annual income was not more than 1,200 yen were designated as the insured. Those insured were to be paid insurance benefits in an amount between half and two-thirds of their basic wage at the time of losing their employment, for up to one year starting from the 16th day following the loss of employment. Concerning restrictions on benefits, persons who voluntarily left their jobs were unqualified to receive insurance benefits, and insurance benefits were stopped if the insured person was offered a job that suited his/her capability but he/she refused to accept that job. Although the bill did not provide a definition of the term “unemployment,” it did not regard

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<sup>1</sup> In this paper, the term “retirement risk” is used to refer to “actual retirement and likelihood of retirement.”

<sup>2</sup> Ministry of Labour, ed., *Rodo Gyoseishi, Dai Ikkan* [History of labor administration, 1st volume] (Tokyo: Rodo Horei Kyokai, 1961); Unemployment Insurance Division, Employment Security Bureau, Ministry of Labour, ed., *Shitsugyo Hoken Junenshi* [10-year history of the unemployment insurance] (Tokyo: Unemployment Insurance Division, Employment Security Bureau, Ministry of Labour, 1960).

the seasonal loss of jobs of workers engaged in seasonal labor as unemployment, and excluded those workers from the scope of recipients of insurance benefits. The cost of benefits was to be evenly shared among three parties, i.e. the government, labor, and the management. The bill also incorporated an arrangement for providing drawbacks for the insured workers who were in continuous employment as well as for their employers; thus, the bill was designed while taking into account an aspect of a merit system.

This bill failed to be enacted and was shelved. The same bill was laid before the Diet in the following year, 1922, but met the same fate. Subsequently, until the end of the Second World War, no bill to create unemployment insurance was submitted to the Diet.<sup>3</sup>

## 2. Retirement Funds and Retirement Allowance Act<sup>4</sup>

### (1) Background Leading Up to the Enactment

After the unemployment insurance bill was shelved in the Diet, the government continued to consider how to solve the problem of unemployment. A subcommittee was set up within the Social Policy Bureau of the Ministry of Home Affairs in order to discuss the possibility of providing monetary relief through the unemployment insurance system and the dismissal allowance system, and it deliberated this issue while making reference to the unemployment insurance systems operated in the major European countries. Meanwhile, at that time, there was a customary practice in Japan to pay money as dismissal allowance or retirement allowance,<sup>5</sup> and employers argued that such allowance served as the same role as unemployment insurance, so there was no need to establish an unemployment insurance

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<sup>3</sup> On the level of local administration in large cities, such as Osaka, Kobe, Nagoya, and Tokyo, unemployment relief programs were established during the period between later 1920s and early 1930s.

<sup>4</sup> Kotora Akamatsu, *Taishoku Tsumitatekin Hoan no Igi to Sono Naiyo* [Significance and content of the retirement funds bill] (Tokyo: Rodo Jijo Chosajo, 1936); Rodo Jijo Chosajo, ed., *Taishoku Tsumitatekin Oyobi Taishoku Teate Ho Shakai* [Detailed explanation on the Retirement Funds and Retirement Allowance Act] (Tokyo: Monasu, 1936); Masami Numakoshi, *Taishoku Tsumitatekin Oyobi Taishoku Teate Ho Shakugi* [Commentary on the Retirement Funds and Retirement Allowance Act] (Tokyo: Yuhikaku, 1937); Kenzo Arakawa, *Taishoku Tsumitatekin Oyobi Taishoku Teate Ho Jitsumu Teiyo* [Outline of practice under the Retirement Funds and Retirement Allowance Act] (Tokyo: Kogyo Shuppansha, 1939). Ministry of Labour, ed., *Rodo Gyoseishi, Dai Ikkai*, *supra* note 2, at 310ff.

<sup>5</sup> According to the survey conducted by the Social Policy Bureau of the Ministry of Home Affairs in 1935, more than 30% of the factories and mining sites which employed 30 or more workers had a rule or practice to pay retirement allowance. The average duration of retirement allowance (dismissal allowance) was classified by the length of service. In the case of dismissal for a reason attributable to the employer, the allowance was paid for 27 days for those in service for one year or more, 194 days for those in service for ten years or more, 433 days for those in service for 20 years or more, and 897 days for those in service for 30 years or more; and in the case of workers' voluntary retirement, the allowance was paid for 12 days for those in service for one year or more, 144 days for those in service for ten years or more, 353 days for those in service for 20 years or more, and 651 days for those in service for 30 years or more. For the actual practice of retirement allowance of that time, see Numakoshi, *Taishoku Tsumitatekin Oyobi Taishoku Teate Ho Shakugi*, *supra* note 4, at 36ff., and Akamatsu, *Taishoku Tsumitatekin Hoan no Igi to Sono Naiyo*, *supra* note 4, at 6ff. and 47ff.

system, and that the objective of protection of workers should be attained by improving the content of the dismissal or retirement allowance system that had already become popular to a considerable extent. In view of these circumstances, the subcommittee determined that the creation of an unemployment insurance system should be a matter to be discussed in the future, and shifted the subject of discussion to the dismissal allowance system. The proposed dismissal allowance systems that were under discussion at the subcommittee are as follows.

The first proposal was to create a statutory duty of the employer to pay dismissal allowance. The Order for Enforcement of the Factory Act<sup>6</sup> effective at that time, which had gone through revision in 1926, provided that when discharging a worker, the factory owner shall give him/her 14-days notice or pay him/her at least 14 days' wage in lieu of such notice. Under the proposed system, the employer was supposed to pay dismissal allowance equivalent to some 50 days' wage. This proposal was subject to criticism, arguing that: (i) it is generally difficult for an employer who had not made any preparations during normal times to pay a large amount of money as allowance upon facing the need to dismiss workers due to the depressed business conditions; (ii) under the existing dismissal notice system, the employer does not need to pay any allowance on condition of giving dismissal notice, whereas under the proposed system, the employer is obligated to pay a considerable amount of wage as dismissal allowance, which would be a heavy burden on the employer; and (iii) if the proposed dismissal allowance system would not be very different from the existing dismissal notice system in terms of the duration of allowance, there is no need to newly legislate a dismissal allowance system.

Secondly, in order to ensure the payment of dismissal allowance, the subcommittee discussed the creation of a fund in two possible forms, (i) an individual fund by each employer or (ii) a joint fund by multiple employers. (i) As for the proposal that each employer should create an individual fund, it was argued that the possibility of dismissal would greatly differ according to the types of business, so the reserve funds might exceed or significantly fall short of the necessary amount depending on the level of necessity of dismissal. (ii) The creation of a joint fund would be recommendable for its advantage in distribution of risk; however, since whether dismissal was made due to circumstances on the employer's side or on the worker's side could be determined through negotiation between the parties, it was expected that even where a worker was dismissed for circumstances attributable to him/her, he/she would claim that his/her dismissal was attributable to the employer and demand payment of dismissal allowance. It is interesting that those who participated in the discussion at that time already expressed a concern about the idea of regarding a matter that contained a subjective element as an event to be paid.<sup>7</sup>

Through the discussion process outlined above, the subcommittee concluded that it

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<sup>6</sup> The Factory Act is a worker protection law enacted in 1911 for regulating the maximum working hours for female and juvenile workers and so on.

<sup>7</sup> Akamatsu, *Taishoku Tsumitatekin Hoan no Igi to Sono Naiyo*, *supra* note 4, at 5.

was difficult to design a specific framework of a dismissal allowance system, and continued deliberating on the possibility of legislation to create a statutory retirement allowance system wherein allowance would be paid to not only those workers dismissed by their employers but all retired workers. As a result of the deliberation, the subcommittee arrived at a conclusion that legislation of a retirement allowance system was possible, and accordingly, it decided on the outline of a retirement funds bill in June 1935.

However, due to the objection to this outline of the bill voiced from the employers' associations, the subcommittee then decided on the revised outline of a retirement funds bill in December 1935. Based on this revised version, the government formulated a retirement funds and retirement allowance bill. This bill, after being partially revised by the House of Representatives, was finally enacted into law as the Retirement Funds and Retirement Allowance Act in May 1936 (put into effect as of January 1, 1937).

## (2) Details of the Retirement Funds and Retirement Allowance System

The retirement funds and retirement allowance system is, in principle, applicable to factories subject to the Factory Act and businesses subject to the Mining Act, which regularly employ 50 or more workers. Workers employed at such factories and businesses shall basically be covered by this system, except for those employed for a fixed term of not more than six months,<sup>8</sup> those employed on a daily basis, and those employed for seasonal labor.

The employer shall withdraw from a worker's wage an amount equivalent to 2% of the wage every month and reserve it for retirement payment in the name of the worker, and shall pay the reserved amount upon the retirement (or dismissal or death) of the worker (retirement funds system). The retirement funds had in effect a nature of compulsory savings that workers were forced to make.<sup>9</sup>

Upon retirement, workers were entitled to receive retirement allowance in addition to payment from the reserved retirement funds mentioned above. In order to secure payment of retirement allowance, the employer was also required to reserve an amount equivalent to 2% of a worker's wage and further reserve an additional amount within a range up to 3% of the wage in proportion to the employer's capacity to pay (retirement allowance funds system). The reserved amount was calculated for each worker and used as the basis for determining the amount of his/her retirement allowance. Thus, as a general rule, the employer was obligated to reserve the full amount to be paid upon retirement, but this obligation was not imposed under certain conditions, because it was not considered necessary to reserve the full amount when the business was in a favourable state. Retirement allowance was catego-

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<sup>8</sup> These workers shall be covered by this system if they continue to be employed for a longer period due to an extension of the initial term. Article 27-2 of the Order for Enforcement of the Factory Act which provided for payment of allowance in lieu of dismissal notice was explained in the directive as being applicable to workers whose fixed-term labor contract has been renewed (*Shuro* No. 85 of June 3, 1930).

<sup>9</sup> Refund of retirement funds to workers before their retirement was prohibited.

rized into two types: ordinary allowance to be paid in general upon retirement of workers, and special allowance<sup>10</sup> to be paid in addition to ordinary allowance upon dismissal of workers on the grounds attributable to the employer.<sup>11</sup> The amount to be paid as retirement allowance was classified depending on the worker's wage, length of service, and reason for retirement, as well as the employer's capacity to pay. Special allowance was considered to be not directly related in legal terms with allowance in lieu of dismissal notice payable under the Order for Enforcement of the Factory Act; they were regarded as separate systems, so duplicate payments were considered to be possible.<sup>12</sup>

Retirement funds and retirement allowance under the Retirement Funds and Retirement Allowance Act were not arranged so as to pay benefits by applying the insurance technique to regard "unemployment" facing the problem of re-employment of retired workers as an insured event but they were designed as a system for paying benefits by means of the funds created by individual employers while focusing on "retirement." Because of such design, there was little possibility that the use of this system could cause a moral hazard. In addition, under this system, the employer would be liable to pay special allowance to workers who retire for the dismissal arising in relation to the employer's business. Therefore, at that time, although there were no regulations that generally restricted the grounds for dismissal by the employer, the retirement allowance system under this Act appears to have been oriented toward restraining employers from dismissing workers.

### (3) Abolition of the Retirement Funds and Retirement Allowance System on a War Footing<sup>13</sup>

During wartime, the enactment of a workers' pension insurance law started to be discussed from the perspective of reinforcing national productivity and ensuring the stability of the lives of the citizens. A workers' pension insurance system, under which workers who

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<sup>10</sup> The base amount of special allowance is 20 days' standard wage for those in service for not less than one year and not more than three years, and 35 days' standard wage for those in service for three years or more. If the reserved funds are insufficient to pay such base amount, special allowance shall be paid only up to the available reserved funds.

<sup>11</sup> Those who retire upon the expiration of the employment period or upon reaching the mandatory retirement age shall be paid the full amount of ordinary allowance but shall not be qualified for receiving special allowance. However, if the employment period was formally fixed but the parties were expected to renew the employment contract upon the expiration of the initial period, the labor relation between the parties was deemed not to be terminated but remain valid, and the worker concerned was considered to be qualified for receiving special allowance. Numakoshi, *Taishoku Tsumitatekin Oyobi Taishoku Teate Ho Shakugi*, *supra* note 4, at 564ff.

<sup>12</sup> Kenzo Arakawa, *Taishoku Tsumitatekin Oyobi Taishoku Teate Ho Jitsumu Teiyo, Kaitei Dai 2 Han* [Outline of practice under the Retirement Funds and Retirement Allowance Act, 2nd revised edition] (Tokyo: Kogyo Shuppansha, 1940), 66.

<sup>13</sup> Insurance Bureau, Ministry of Health and Welfare, *Kosei Nenkin Hoken Jugonen Shi* [15-year history of the employees pension insurance] (Tokyo: Koseidan, 1958), 14 and 71 ff.; Ministry of Labour, ed., *Rodo Gyoseishi, Dai Ikkkan*, *supra* note 2, at 682 and 1037ff.

have been in service for a long period of time shall be paid an old-age pension<sup>14</sup> and shall also be paid withdrawal allowance upon retirement, can be deemed to be similar in nature to the system under the Retirement Funds and Retirement Allowance Act, under which workers shall be paid benefits in proportion to their length of service. Therefore, some people advocated an influential opinion that the retirement funds and retirement allowance system should be integrated into a workers' pension insurance system. However, in consideration of the fact that the retirement funds and retirement allowance system still played a significant role in personnel management and brought about an important effect in relief measures for the unemployed, it was decided that this system would continue in existence even after the enactment of the Workers Pension Insurance Act in 1941.

The controversy over the integration between the retirement funds and retirement allowance system and the workers' pension system became increasingly lively, and in the end, when the Workers Pension Insurance Act was renamed the Employees Pension Insurance Act in 1944, the retirement funds and retirement allowance system was abolished.

### **III. Enactment and Development of the Unemployment Insurance Act**

#### **1. Enactment of the Unemployment Insurance Act**

After the end of the Second World War, many of soldiers who were demobilized and sent home and citizens who repatriated from abroad were unable to find jobs, and the unemployment situation in Japan was extremely serious. Accordingly, the government set up the Investigation Committee on the Social Security System in 1946, and the third subcommittee established within this committee conducted research and study regarding the creation of an unemployment insurance system. In December 1946, the committee submitted an outline of the unemployment insurance system to the government, advising that a state-run, compulsory unemployment insurance system should be created. Before that, on the occasion of the enactment of the Public Assistance Act in August 1946, the House of Representatives had passed a supplementary resolution to the effect that the government should go forward toward the creation of unemployment insurance.<sup>15</sup> Under such circumstances, in August 1947, the government submitted an unemployment insurance bill and an unem-

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<sup>14</sup> Old-age pension was to be paid to persons who have been insured for 20 years or more, when they reached the age of 55 after becoming unqualified for insurance or when they became unqualified for insurance after reaching the age of 55. The basic pension amount was one-fourth of the average annual standard earnings over the entire insured period; for those who have been insured for 20 years or more, 1% of the basic pension amount was to be added for one additional year in the insured period.

<sup>15</sup> In the debate over this issue at the House of Representatives, it was argued that the public assistance system was posing a huge fiscal burden on the government, so security for the living standards of the unemployed should be provided by means of social insurance benefits, instead of public assistance benefits. Takashi Sukanuma, "Nihon ni okeru Shitsugyo Hoken no Seiritsu Katei (2) [Process of establishment of unemployment insurance in Japan (2)]," *Journal of Social Science* 43, no. 2 (1991): 292ff.

ployment allowance bill to the Diet. Having gone through partial revision as a result of the deliberation at the Diet sessions, these bills were passed and the Unemployment Insurance Act and the Unemployment Allowance Act<sup>16</sup> were enacted in November 1947.<sup>17</sup>

## 2. Details of the Unemployment Insurance System

The Unemployment Insurance Act defined the term “unemployment” as referring to the “conditions under which an insured person is separated from employment and is unable to find employment in spite of having the will and ability to work.” The “will to work” was construed as meaning a person’s will to work under certain working conditions suitable for his/her own labor ability; qualified recipients were deemed to have the will to work when they applied for jobs at public employment security offices. Having the “ability to work” was construed as meaning the state of not being incapable of working; it was understood that if qualified recipients met the requirement for receiving unemployment insurance benefits, i.e. having been insured for six months or more within one year prior to their separation

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<sup>16</sup> The unemployment allowance system under the Unemployment Allowance Act was a system for providing the unemployed with allowance benefits, funded by the government, for a period until the unemployed starts to receive insurance benefit under the Unemployment Insurance Act. According to Gen Shimizu, who chaired the subcommittee for study of unemployment insurance, there was an argument at that time that such allowance for the unemployed should be provided under the Public Assistance Act, but the creation of an unemployment allowance system was finally chosen, based on the idea that the reason for the legislation of workers’ right to receive allowance in return for their service was to preserve workers’ status and dignity. (“Shitsugyo Hoken Junen Shi ni Yosete [On the occasion of the publication of the 10-year history of the unemployment insurance],” in *Shitsugyo Hoken Junenshi*, ed. Unemployment Insurance Division, Employment Security Bureau, Ministry of Labour, *supra* note 2, at 11.)

<sup>17</sup> Hiroaki Fuwa, *Saihan, Shitsugyo Hoken Ho, Shitsugyo Teate Ho: Kaisetsu to Tetsuzuki* [Second edition, Commentaries and procedures of the Unemployment Insurance Act and the Unemployment Allowance Act] (Tokyo: Tairyusha, 1948), 25, a guidebook written by an official of the Ministry of Labour who participated in the work for the enactment of the Unemployment Insurance Act and the Unemployment Allowance Act from the start, explained as follows. Possible measures to maintain the standard of living of the unemployed may be: (i) savings made by the workers themselves; (ii) retirement benefits paid by the employer; (iii) and public assistance provided by the government. All of these measures are inappropriate because: (i) in view of the wage level at that time, it is extremely difficult for workers to make savings; (ii) As retirement benefits are paid in proportion to the worker’s length of service, they have a strong characteristic of a kind of favour done by the employer, and the amount of such benefits is not always enough for the unemployed to maintain their standard of living; (iii) from the perspective of respecting workers’ independence, it is improper to regard the unemployed as being incapable of making their living, like the elderly, sick or injured, and leave them only to the relief that they could receive from the government without assuming any burden. For these reasons, it is necessary to treat “unemployment,” which threatens workers’ living standards, as an insured event, and provide workers with unemployment insurance benefits under the unemployment insurance system designed for the distribution of risk. Meanwhile, Minister of Labour Mitsusuke Yonekubo explained, in the statement of reasons for submitting the bill, that the unemployment insurance system had an active meaning of providing the unemployed with the opportunity to find new jobs, by associating the system closely and inseparably with the management of job placement agencies. Unemployment Insurance Division, Employment Security Bureau, Ministry of Labour, ed., *Shitsugyo Hoken Junenshi*, *supra* note 2, at 262.

from employment, they could prove that they have the ability to work.<sup>18</sup> As for the duration of benefits, those who had been insured for six months or more were to be paid insurance benefits uniformly for up to 180 days<sup>19</sup> within one year following the date of separation from employment (the “period of benefits”)<sup>20</sup>; there was no classification of the duration of benefits in terms of the insured period or age. Meanwhile, there were restrictions on benefits, such as that if qualified recipients voluntarily retire without any unavoidable reasons to do so, they would not be paid unemployment benefits for a certain period of time; even in such a case, they would not be deprived of their right to receive benefits.<sup>21</sup>

With regard to the relationship between unemployment insurance benefits or allowance and retirement allowance to be paid by the employer, the delegation of the government stated that retirement allowance had unique characteristics such as being paid in proportion to workers’ term of office and such characteristics would not be affected by the enforcement of the Unemployment Insurance Act.<sup>22</sup>

### 3. Development of the Unemployment Insurance Act

#### (1) Response to the Uniqueness of the Concept “Unemployment” and the Imbalance between Benefit and Burden

After the Unemployment Insurance Act came into effect, there occurred a trend among seasonal workers<sup>23</sup> of abusively claiming unemployment insurance benefits. Under

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<sup>18</sup> Fuwa, *Saihan, Shitsugyo Hoken Ho, Shitsugyo Teate Ho: Kaisetsu to Tetsuzuki*, *supra* note 17, at 56ff.

<sup>19</sup> In the statement of the reasons for submitting the unemployment insurance bill to the Diet, Ministry Yonekubo explained that the duration of benefits was decided in light of the situation of employment and separation from employment as well as the conditions of the unemployment insurance systems in other countries. Unemployment Insurance Division, Employment Security Bureau, Ministry of Labour, ed., *Shitsugyo Hoken Junenshi*, *supra* note 2, at 263.

<sup>20</sup> The reasons why the period of benefits under unemployment insurance was set as one year were initially explained as follows: (i) the purpose of unemployment insurance was to secure the living of qualified recipients during the period after their separation from employment until re-employment and to preserve the workforce, and under normal conditions, such a period would not be long; (ii) if the period to exercise the right to receive benefits was set without limitation, it would be difficult to prove the qualification or right to receive benefits. Fuwa, *Saihan Shitsugyo Hoken Ho, Shitsugyo Teate Ho: Kaisetsu to Tetsuzuki*, *supra* note 17, at 128; Hikaru Kamei, *Kaisei Shitsugyo Hoken Ho no Kaisetsu* [Commentary on the revised Unemployment Insurance Act] (Tokyo: Nihon Rodo Tsushinsha, 1949), 191ff.

<sup>21</sup> In the outline of the unemployment insurance system and the outline of the unemployment insurance bill, submitted to the government by the Investigation Committee on the Social Security System in December 1946 and July 1947, respectively, it was provided that if qualified recipients voluntarily retire for no reason, they shall be paid no insurance benefits.

<sup>22</sup> Unemployment Insurance Division, Employment Security Bureau, Ministry of Labour, ed., *Shitsugyo Hoken Junenshi*, *supra* note 2, at 280ff. and 285.

<sup>23</sup> The Unemployment Insurance Act then in force enumerated those employed for seasonal labor for a fixed term of not more than four months or otherwise employed seasonally, as a category of workers excluded from the scope of the insured. However, there was no uniform interpretation or practice regarding “those employed seasonally.” Unemployment Insurance Division, Employment

the unemployment insurance system as initially legislated, the prescribed duration of benefits was uniformly set as 180 days, irrespective of the length of their insured period. However, since it was difficult to determine whether or not retired workers were actually in the state of “unemployment,” an increasing number of retired workers claimed unemployment benefits to the limit of the prescribed duration of benefits. This tendency was considered a problem, in particular, for workers who had been insured only for a short period of time, in which case the imbalance between the benefit they enjoyed and the burden they assumed became relatively larger than among those whose insured period was longer. In addition, the unemployment situation deteriorated along with the austere fiscal policy begun in 1953, to the extent that the unemployment insurance system was expected to show a deficit of about one billion yen at the end of fiscal 1954. In view of these circumstances, the eighth revision in 1955 extended the prescribed duration of benefits for workers who had been insured for a long period of time,<sup>24</sup> while reducing the duration for seasonal workers and other short-term insured workers. This system reform was carried out based on the assumption that it was difficult to accurately determine the existence of unemployment, an insured event to be paid by unemployment insurance benefits, and in an attempt to strike balance between workers’ burden (insured period) and benefit (prescribed duration of benefits), so as to prevent the moral hazard caused by short-term insured workers.<sup>25</sup>

However, even in the 1960s and thereafter, following this revision, when the Japanese economy entered the high growth period and Japan had an insufficient workforce, the number of unemployment benefit recipients did not decrease, and there was a rapid increase in the number of benefit recipients among seasonal workers and female workers. Accordingly, in August 1964, the Ministry of Labour issued a directive titled “For Realizing Fair Payment of Unemployment Insurance Benefits.” Furthermore, upon the 26th revision in 1969, from the perspective of reducing seasonal unemployment and ensuring stable employment, a new system was created to collect special insurance premiums from those employers who

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Security Bureau, Ministry of Labour, ed., *Shitsugyo Hoken Junenshi*, *supra* note 2, at 658.

<sup>24</sup> In the statement of reasons for submitting the unemployment insurance bill to the Diet, it was explained that the duration of benefits for long-term insured workers was extended because: (i) it was relatively difficult for those who had been employed by the same employer for a long period of time to find a new job quickly after leaving the previous job; and (ii) those workers had contributed to the insurance management for a long period of time. Unemployment Insurance Division, Employment Security Bureau, Ministry of Labour, ed., *Shitsugyo Hoken Junenshi*, *supra* note 2, at 652.

<sup>25</sup> On the occasion of the revision of the Unemployment Insurance Act, the Central Employment Security Council submitted a report to the Minister of Labour (dated May 3, 1955), in which the Council agreed with the idea of granting a short-term extension of the duration of benefits for long-term insured workers on condition that the merit system be introduced in the future, while pointing out that further extension might be possible if the insurance management would allow it, but a careful decision should be made on this point. In the deliberation process at the Diet, it was also explained that this revision was made while taking into account an aspect of a merit system in that it aimed to adjust the duration of benefits depending on the length of the insured period. Unemployment Insurance Division, Employment Security Bureau, Ministry of Labour, ed., *Shitsugyo Hoken Junenshi*, *supra* note 2, at 645 and 659.

would generate the unemployed regularly at short intervals, and allocate such premiums to expenses for employment measures. This system also has partly an aspect of a merit system in that it imposed a special burden on employers who would cause payment of a large amount of unemployment benefits, thus, taking into consideration the balance between benefit and burden.

## (2) Relationship between the Unemployment Insurance System and the Employment System

### (i) Idea of Legislation of Restrictions on Dismissal, and Formation of the Doctrine of Abusive Dismissal

The labor laws enacted in the post-war period provided for procedural regulations for dismissal, such as the dismissal notice system,<sup>26</sup> as well as restrictions on dismissal by the employer under certain circumstances, but did not include any provision that generally restricted the grounds for dismissal. In August 1954, the Minister of Labour Zentaro Kosaka issued a New Basic Labor Policy. This policy included an idea of creating a law on restrictions on dismissal, under which dismissal shall be invalid unless due to statutory and socially reasonable grounds, and of developing measures for dismissed workers to claim judicial relief.<sup>27</sup> This idea attracted attention from various sectors, but did not mature into legislation of restriction on dismissal.

However, at that time, progress was being made, on a judicial level, in the movement toward restricting employers from dismissing workers. Through accumulation of a number of court rulings, the doctrine of restricting the employer's exercise of the right of dismissal was in the making. Finally, in 1975, the Supreme Court ruled that "if dismissal lacks objectively reasonable grounds and is not considered to be appropriate in general societal terms, it should be treated as an abuse of right and be invalid."<sup>28</sup> Thus, the doctrine of abusive dismissal was established as case law.<sup>29</sup>

### (ii) Unemployment Insurance System and Promotion of Continuous Employment

With such movement toward restricting dismissal by the employer, measures to pro-

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<sup>26</sup> In the event that an employer wishes to dismiss a worker, the employer shall provide at least 30 days advance notice, or pay the average wages for a period of not less than 30 days in lieu of such notice (Article 20 of the Labor Standards Act).

<sup>27</sup> For the details of the fundamental idea presented by Minister Kosaka, see Ministry of Labour, ed., *Rodo Gyoseishi, Dai Sankan* [History of labor administration, 3rd volume] (Tokyo: Rodo Horei Kyokai, 1982), 14ff.

<sup>28</sup> *Nippon Salt Manufacturing Case*, judgment of the Second Petty Bench of the Supreme Court, April 25, 1975, 29 *Minshu* 4, 456.

<sup>29</sup> Subsequently, the doctrine of abusive dismissal remained yet to be legislated, but through the revision of the Labor Standards Act in 2003, a new clause was introduced to provide, "A dismissal shall, where the dismissal lacks objectively reasonable grounds and is not considered to be appropriate in general societal terms, be treated as a misuse of that right and invalid" (Article 18-2). This clause currently exists as Article 16 of the Labor Contract Act (enacted in 2007).

mote continuous employment were taken under the unemployment insurance system.

Having experienced the deterioration of the unemployment situation due to the austere fiscal policy in 1954, and with the aim of avoiding massive unemployment and reducing labor disputes over dismissal, the government issued a directive titled “Handling of Unemployment Insurance under the Layoff System” on July 16, 1954, thereby adopting the layoff system in the unemployment insurance system. Under this new system, a three-month layoff period was contemplated, so that if re-employment was agreed upon by a collective agreement or labor-management agreement,<sup>30</sup> the employer shall pay unemployment insurance benefits to laid-off workers.<sup>31</sup> It was an arrangement to provide laid-off workers with unemployment benefits while they were separated from employment, on condition that they would be re-employed. This system, in legal terms, did not cover the case where the employment relationship was maintained, but it served to help workers be in effect continuously employed by the same employer.

Also in connection with promotion of continuous employment, it is necessary to make additional mention of the eighth revision in 1955, by which the prescribed duration of benefits, which had been uniformly set as 180 days irrespective of the length of the insured period, was divided into four classes depending on the length of the insured period. Given the situation where it is difficult to accurately determine whether or not workers are actually experiencing an insured event, that is, being in the state of “unemployment,” the prescribed duration of benefits, set uniformly irrespective of the length of the insured period, could induce the parties to labor contracts to shorten the period of employment so as to receive unemployment benefits for as long as possible. To avoid this manipulation, the eighth revision was intended to give more incentives for workers to continue to work than before the revision. Such measure taken under the unemployment insurance system at that time in order to prevent abusive claims of benefits can be described as ultimately having indirectly supported the Japanese employment system movement toward promoting long-term employment, in tandem with the formation of the doctrine of restrictions on dismissal through the abovementioned accumulation of court rulings.

#### **IV. Enactment and Development of the Employment Insurance Act**

##### **1. Enactment of the Employment Insurance Act**

After more than 20 years passed since the legislation of the unemployment insurance

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<sup>30</sup> labor-management agreement is a written agreement between the employer and a labor union organized by a majority of the workers at the workplace (in the case that such labor union is organized) or a person representing a majority of the workers (in the case that such labor union is not organized).

<sup>31</sup> Ministry of Labour, ed., *Rodo Gyoseishi, Dai Sankan*, *supra* note 27, at 17ff.; Unemployment Insurance Division, Employment Security Bureau, Ministry of Labour, ed., *Shitsugyo Hoken Junenshi*, *supra* note 2, at 660ff.

system, various problems emerged in relation to the management of the system. Among others, unemployment insurance benefits tended to be provided for seasonal recipients<sup>32</sup> and young female recipients in particular.<sup>33</sup> This tendency intensified a sense of distrust in the system among ordinary insured persons, while they came to feel dissatisfied with paying premiums but receiving no refund.<sup>34</sup> To cope with this situation, the Study Group on the Unemployment Insurance System set up in the Ministry of Labour reviewed problems with the existing unemployment insurance system and considered a drastic reform, and submitted a report to the Minister of Labour in December 1973. In this report, the study group pointed out that the existing unemployment insurance system caused imbalance in the payment of benefits and that unemployment insurance benefits were not conducive to responding to imbalance in supply and demand of workforce at different ages, and recommended the creation of an employment insurance system that could work in terms of employment in general. At the same time, the study group noted the necessity to reinforce security for the living of the unemployed and to correct the excessive imbalance in benefits and burdens.

An employment insurance bill, prepared based on the report of the Study Group on the Unemployment Insurance System, was laid before the Diet in February 1974. It was passed by the House of Representatives after being partially revised, but was shelved by the House of Councilors, and finally scrapped.

However, under the subsequent circumstances where the unemployment situation became increasingly severe due to the impact of the First Oil Crisis and more and more companies took measures for employment control such as temporarily closing their businesses or dismissing workers, the employment insurance bill suddenly gained prominent attention as a legislative proposal that would improve the function to provide security for the living of those unemployed facing difficulty in finding employment and take positive measures to, for example, prevent unemployment. There were successive calls for early enactment and enforcement of the bill. Accordingly, on December 14, 1974, the government submitted the employment insurance bill to the Diet again. Through the intensive deliberation at the Diet, the bill was finally enacted as the Employment Insurance Act on December 25, 1974.

## 2. Details of the Employment Insurance System

While the prescribed duration of benefits under the unemployment insurance system

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<sup>32</sup> It seemed that only 2.7% of all insured persons received about 40% of the total unemployment benefits every year; seasonal recipients paid premiums corresponding to a few days' benefits but received about 50 days' benefits in average. Masao Endo, *Koyo Hoken no Riron* [Theory of the employment insurance] (Tokyo: Nikkan Rodo Tsushinsha, 1975), 102ff.

<sup>33</sup> In fiscal 1973, female recipients accounted for only slightly below one-third of all insured persons but they accounted for 51% of all benefit recipients. As for the status one year after becoming qualified to receive benefits, 29.1% of female recipients were no longer engaged in work (5.7% of male recipients were in such status), and most of them ceased to be in working force immediately after payment of the insurance benefits ended. Endo, *Koyo Hoken no Riron*, *supra* note in 32, at 98 ff.

<sup>34</sup> Endo, *Koyo Hoken no Riron*, *supra* note in 32, at 4.

was set depending on the length of the insured period, the Employment Insurance Act set the duration within the range between 90 days and 300 days depending on the workers' age, physical or mental situation, and difficulty in finding employment due to social circumstances.<sup>35</sup> This Act further provided that special lump-sum payment, equivalent to 50 days' basic allowance, shall be provided when (i) persons employed seasonally and (ii) persons normally engaged in short-term employment (continuously employed by the same employer as the insured for less than one year) became unemployed. The insurance premium rate applicable to the types of business which employ many persons in these categories was set higher than the rate applicable to ordinary types of business, so as to strike balance between benefit and burden. Thus, the employment insurance system was also designed while partly taking into account an aspect of a merit system.

The Employment Insurance Act provided for the unemployment benefits system, and for the purpose of preventing and reducing unemployment, which is an event insured under the employment insurance,<sup>36</sup> it provided for additional services, namely, the services for employment improvement (to improve the employment structure), services for human resources development (to develop and improve workers' abilities), and services for employment welfare (to promote welfare of workers).<sup>37</sup> Among these services, the employment adjustment subsidy system, stipulated as part of the services for employment improvement, is noteworthy. This is a system for providing subsidies for employers who are compelled to curtail their business activities for economic reasons, in order to prevent unemployment of the insured. When designing this system, the system of short-term allowance due to the economic situation implemented in West Germany, called *Kurzarbeitergeld*, was used as a model. The employment adjustment subsidy system drastically changed the conventional policy direction that had tried to cope with unemployment by taking measures *ex post facto*. In the 1970s when the employment insurance system was created, the doctrine of abusive dismissal was established and the mandatory retirement system<sup>38</sup> became increasingly popular among companies.<sup>39</sup> The employment adjustment subsidy system, newly developed at that time, played a role in promoting continuous employment, in combination with and as a

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<sup>35</sup> It is explained that the primary purpose of unemployment benefits under the employment insurance is to protect short-term unemployment; the issue of long-term, permanent unemployment should be solved by promoting employment measures, so the period of unemployment benefits is basically set as one year. Endo, *Koyo Hoken no Riron*, *supra* note in 32, at 396.

<sup>36</sup> This is understood from Article 1 of the Employment Insurance Act (prior to the revision), which provided as follows: "The purpose of the employment insurance is..., as well as to improve the employment structure, develop and improve the capacity of workers, and promote their welfare, so as to contribute to their employment security."

<sup>37</sup> These services are funded only by the insurance premiums collected from employers.

<sup>38</sup> In Japan, when workers reach a certain age (e.g. the age of 60), their labor contracts terminate automatically or by reason of dismissal by the employer. This practice, called the mandatory retirement system, is widely popular among Japanese companies.

<sup>39</sup> Masaru Ogiwara, *Teinensei no Rekishi* [History of the mandatory retirement system] (Tokyo: Nihon Rodo Kyokai, 1984), 224ff.

complement to the long-term employment system which had been formed in Japan.<sup>40</sup>

### 3. Development of the Employment Insurance System

#### (1) Response to the Uniqueness of the Concept “Unemployment” and the Imbalance between Benefit and Burden

After its enactment in 1974, the Employment Insurance Act has undergone several revisions in order to respond to the uniqueness of the concept “unemployment” and the imbalance between benefit and burden. The employment insurance system initially established set the prescribed duration of benefits mainly by age, focusing on the difficulty in finding re-employment. However, this method of setting the duration was subject to criticism that it caused excessive imbalance between benefit and burden. More specifically, as pointed out in the discussion on the revision of the Unemployment Insurance Act, since it was difficult to accurately determine whether or not workers who had left their jobs were actually in the state of “unemployment,” there was a tendency that workers who were not in the state of “unemployment” due to the lack of the will to work continued to receive unemployment benefits. To solve this problem, the sixth revision in 1984 introduced the approach of setting the prescribed duration of benefits while taking into consideration the length of the insured period, in addition to the age of qualified recipients. While, in light of its primary purpose, the benefits system, which covers unemployment as an insured event, should be expected to focus only on “unemployment” and provide security for workers depending on the length of the period of their unemployment, irrespective of the length of their insured period, this revision revealed the difficulty in overcoming the paradoxical situation where, due to the uniqueness of the concept “unemployment,” the length of the insured period should inevitably play a substantial role in designing the unemployment benefits system.

The prescribed duration of benefits was later revised in the 29th revision in 2000, from the perspective of balance between benefit and burden. Under the conventional system, it was found that the length of time that workers would need to find re-employment tended to vary depending on how they were separated from employment. Therefore, this revision took into account the reasons for separation from employment when setting the prescribed duration of benefits. More specifically, the system was designed to set a longer duration of benefits for those who were separated from employment without having enough time before preparing for re-employment because their company went bankrupt or they were dismissed, compared to workers separated from employment for other reasons (e.g. reaching the mandatory retirement age).

In order to respond to the uniqueness of the concept of unemployment, the Ministry of Health, Labour and Welfare issued a directive on September 2, 2002, to publicize the following rules: recognition of unemployment shall be given to workers if they are found to have engaged in job-seeking activities two times or more during the period subject to rec-

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<sup>40</sup> Endo, *Koyo Hoken no Riron*, *supra* note in 32, at 459ff.

ognition of unemployment; when dealing with persons who cyclically leave their jobs, it is necessary to confirm their will to work carefully; the restrictions on benefits should be applied more accurately.

## (2) Relationship between the Employment Insurance System and the Employment System

Through the enactment of the Employment Insurance Act, a new scheme to promote continuous employment was introduced by providing employment adjustment subsidies for employers who reduce their business activities. Upon the 17th revision in 1994, new benefits systems were also introduced to promote continuous employment of the insured, namely, continuous employment benefits: continuous employment benefits for the elderly, and childcare leave benefits.<sup>41</sup> These systems were established based on the recognition that, supposing that workers suffer a decline in their ability to work or a decline in their income due to the difficulty in engaging in ordinary service when they get old, or they lose all or part of their income due to taking childcare leaves, these kinds of hardship, if left unaddressed, would lead to “unemployment,” a more serious insured event; therefore, while regarding such “state of facing difficulty in continuing employment” as an event occurring in working life that is equivalent to “unemployment,” the systems aimed to help and encourage workers who suffer this event to continue their working life smoothly, thereby avoiding their unemployment and stabilizing their employment.<sup>42</sup> Thus, the employment insurance system started to provide insurance benefits to cover, as an insured event, not only “unemployment” but also a broader scope of cases where there is “retirement risk.”<sup>43</sup>

In connection with the restrictions on dismissal, it is necessary to make mention of

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<sup>41</sup> The family care leave benefits system was introduced upon the 23rd revision in 1998 for the same purpose as introducing the childcare leave benefits system.

<sup>42</sup> Employment Insurance Division, Employment Security Bureau, Ministry of Labour, ed., *Kaisei Koyo Hoken Seido no Riron* [Revised theory of the employment insurance system] (Tokyo: Zaikei Fukushi Kyokai, 1995), 144ff.; Institute of Labour Administration, ed., *Shinpan Koyo Hoken Ho* [New edition, Employment Insurance Act] (Tokyo: Romu Gyosei, 2004), 140.

<sup>43</sup> Subsequently, upon the 23rd revision in 1998, the educational training benefits system was introduced under the employment insurance system. Under the circumstances where in order to stabilize employment of workers and encourage them to find employment, it is necessary for workers themselves to make voluntary efforts to develop their own vocational abilities, and in consideration of the fact that the burden to pay expenses for this purpose has become a common risk to a wide range of workers (written and edited by Shin Watanabe, *Kaisei Koyo Hoken Seido no Riron* [Revised theory of the employment insurance system] [Tokyo: Zaikei Fukush Kyokai, 1999], 147ff.), this system provides workers with benefits equivalent to part of expenses for educational training. This revision can be understood as the outcome of the employment insurance system starting to cover, as an insured event, not only “retirement risk” but also “risk in working life.” Its theoretical basis can be found in the concept of “right to career,” advocated by Professor Yasuo Suwa, who served as the chief of the Employment Insurance Subcommittee at the time when the revision was discussed (Yasuo Suwa, “Kyariaken no Koso wo meguru Ichishiron [An attempt to establish the concept of right to career],” *The Monthly Journal of the Japanese Institute of Labour* 41, no. 7 [1999]:54 ff.)

the 29th revision which classified the prescribed duration of benefits depending on the reasons for retirement. In Japan, where the restrictions on dismissal exist, if dismissal lacks objectively reasonable grounds and is not considered to be appropriate in general societal terms, it shall be treated as an abuse of employer's right of dismissal and be invalid (see Article 16 of the Labor Contract Act). However, dismissed workers do not always allege invalidity of dismissal, but in reality, even in cases where dismissal lacks objectively reasonable grounds and is not considered to be appropriate in general societal terms, it is often the case that the dismissed workers would endure such dismissal. This is more likely to happen where the employer provides workers with more retirement allowance<sup>44</sup> when they are dismissed due to grounds attributable to the employer than when they retire voluntarily. The same tendency can be recognized in relation to the employment insurance system under which the prescribed duration of benefits is longer in the case of retirement by reason of the employer's bankruptcy or dismissal than in the case of retirement by reason of reaching the mandatory retirement age or expiration of the period of employment. Theoretically, unemployment insurance benefits are supposed to be provided for workers who are in the state of "unemployment" because "unemployment" is an insured event, but in reality, it is difficult to determine whether or not workers who have left their jobs are actually in the state of "unemployment," and insurance benefits are often provided even if workers would not be in the state of "unemployment" in a strict meaning. In addition, it is supposed that some of insured workers would still consider "unemployment benefits as a kind of savings." Given such circumstances, it is presumed that the dismissed workers would recognize the relatively longer duration of benefits as prescribed for the case of leaving their jobs due to dismissal as an "extra payment of benefits provided upon retirement," and as a result, they would tend to tolerate being dismissed by the employer even if the dismissal is unfair. Furthermore, the employer and the worker might collude with each other to create "dismissal" so as to receive favourable treatment in terms of the duration of benefits.<sup>45</sup> In view of such circumstances, aside from whether it is good or bad, the existing unemployment insurance benefits system can be regarded as functioning as a "bypass" to avoid the strict restrictions on dismissal, thereby somewhat contributing to the "flexibility" in the employment system.

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<sup>44</sup> In Japan, it is usually established as a system under work rules (not obligatory by law) for the company to pay a retired worker a reasonable amount of money upon retirement (usually calculated by using the wage level and the length of service at the time of retirement as important criteria).

<sup>45</sup> However, in practice under the employment insurance system, the collusion between the employer and the worker in carrying out the procedure for paying benefits based on fictitious grounds for separation from employment is treated as unlawful payment of benefits (Employment Insurance Division, Employment Security Bureau, Ministry of Health, Labour and Welfare, ed., *Kaisei Koyo Hoken Ho no Hayawakari* [Quick guide to the revised Employment Insurance Act] [Tokyo: Romu Gyosei Kenkyujo, 2001], 43.)

## V. Conclusion

Through the study as discussed thus far, the following two points can be recognized in the history of the legal benefits system for retirement risk in Japan.

The first point is that responding to the uniqueness of the concept of “unemployment” as an insured event has always been the task to cope with. “Unemployment,” which is an insured event, is premised on the existence of factors that are difficult to ascertain in appearance, i.e. the workers’ “will and ability to work.”<sup>46</sup> In addition, “unemployment” is a unique phenomenon which can be created through the choices made by the parties concerned, such as the worker’s voluntary resignation or the period of employment set arbitrarily (subjective nature of unemployment). Because of these unique characteristics, in the process of designing the unemployment insurance system, it is essentially necessary to take note of the high risk of moral hazard.<sup>47</sup> In the debate over the legislation of the unemployment insurance system, the difficulty in recognizing unemployment and the likelihood of abusive claims of benefits were already pointed out.<sup>48</sup> These problems have not yet been solved. The arguments regarding the uniqueness of the concept of “unemployment” are valid with regard to not only the unemployment insurance system which provides benefits upon the occurrence of an insured event of unemployment by applying the insurance technique, but also the unemployment assistance system which provides benefits under the scheme of assistance.

The second point is that the legal benefits system for retirement risk has been associated with the employment system in Japan. The Employment Insurance Act, since its enactment, has expanded the scope of insured events to include not only “unemployment” but also some additional types of “retirement risk,” and provided the foundation for continuous employment, in tandem with the imposition of restrictions on dismissal. On the other hand, due to the subjective nature of unemployment and the ways of setting the prescribed duration of benefits, the legal benefits system for retirement risk has actually served in mitigating the workers’ resistance to retirement, and in this respect, the system has played a role in ensuring the “flexibility” of the employment system to a certain extent.

How to cope with these points still remains to be addressed. As for the first point, it is necessary to reconsider whether or not unemployment needs to be covered as an insured event<sup>49</sup> by applying the insurance technique and operating an independent system.<sup>50</sup> In this

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<sup>46</sup> Under the Employment Insurance Act, “unemployment” refers to the conditions under which an insured person is separated from employment and is unable to find employment in spite of having the will and ability to work (Article 4, paragraph [3]).

<sup>47</sup> For the history of the Japanese unemployment insurance system studied from the perspective of moral hazard, see Keiichiro Hamaguchi, “Shitsugyo to Seikatsu Hoshō no Hō Seisaku [Legal policy for unemployment and income security],” *Quarterly Labor Law*, no. 221 (2008):187ff.

<sup>48</sup> Saganuma, “Nihon ni okeru Shitsugyo Hoken no Seiritsu Katei (2),” *supra* note 15, at 282ff.

<sup>49</sup> It is possible to conceive of a system which covers retirement and separation from employment as insured events. See II-2 in this paper. Internationally, in Italy, for example, it is provided by law that

process, the relationship with employment placement should also be discussed. Now that a new unemployment benefits system which provides benefits for workers who are not qualified to receive employment insurance benefits (the “second safety net”) has been established, the desirable figure of the “first safety net,” which has conventionally been managed by the employment insurance system, should be reviewed. As for the second point, in connection with the first point, what type of event should be treated as an insured event, and to what extent the income security system should be committed to employment measures, will be the subjects of discussion.

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workers have the right to receive retirement allowance upon retirement (Civil Code, Article 2120).

<sup>50</sup> See II-2 (3) in this paper.