
The Great East Japan Earthquake and a Future Vision for Labor Law in Japan

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This paper discusses a future vision for the labor law system in Japan, while taking into account the situation after the Great East Japan Earthquake. Upon the occurrence of the earthquake, the government took emergency measures which may have been inadequate, but which have been effective to some degree in preventing the labor market from rapidly plunging into turmoil and in maintaining employment to the greatest possible extent. However, these measures were based on the conventional type of employee insurance system, and it would not be advisable to use the same approach in the future. Japan had been experiencing an increase in the number of non-standard workers even before the earthquake, as well as a gradual decrease in the total number of employed persons, and it has also been under pressure to achieve an appropriate work-life balance for its workers. In view of these circumstances and in order to establish a labor law system in anticipation of large-scale natural disasters, increasing opportunities to work to the greatest extent possible is a critical task. To achieve this, the government should firstly provide non-standard workers with opportunities to develop their careers and undergo vocational training, and offer them opportunities to work other than as company employees, such as at NPOs or workers' cooperatives. Secondly, the government should strengthen the secondary labor market as a foothold to stable employment, and should consider improving the support system for job seekers and establishing a labor contract system.

I. Labor Policy after the Great East Japan Earthquake

1. Measures Taken by the Government Immediately after the Earthquake

The earthquake and tsunami that occurred on March 11, 2011, caused enormous property damage and loss of life. Emergency employment and labor policy measures were required to cope with the problems faced by workers, such as harm caused to their lives and health and that of their families and damage to their residences, not to mention the loss of employment and wages due to damage to their workplaces. Employers were also directly or indirectly affected by the disaster, and some were forced to cease operations or experienced difficulty due to damage to their parent or affiliated companies. These circumstances had a great impact on their treatment of workers.

It should be noted that the government took measures as quickly as it could in response to this unprecedented crisis. The Ministry of Health, Labour and Welfare (MHLW) issued nearly 20 notices in rapid succession on the very day that the earthquake occurred, requesting support and rescue for persons in need of care, elderly persons, and persons with disabilities. The MHLW instructed the authorities concerned to extend the payment terms of

social security contributions for disaster victims, clearly showing consideration for people in need of special attention. The MHLW also quickly took necessary measures in the field of employment and labor policy, such as instructing prefectural labor bureaus to promptly and flexibly handle applications from affected workers for industrial accident compensation insurance benefits (Notice of the Labour Standards Bureau, Worker's Compensation Department, Compensation Division, No. 9).

The MHLW issued another notice on March 17, entitled "Special Measures Concerning Employment Adjustment Subsidies in Response to the Occurrence of the Great East Japan Earthquake" (Notice of the Employment Security Bureau, No. 2), in which it provided special measures concerning the payment of government subsidies for employment adjustments by employers in the affected areas. Then, after expanding the scope of employers covered by the special measures by way of its notice dated April 5 (Notice of the Employment Security Bureau, No. 16), the MHLW further issued notices and instructions in order to take the best measures while giving due consideration to the interests of those affected by the disaster, in terms of the payment of employment insurance benefits, industrial accident compensation insurance benefits, unpaid wages (which were temporarily paid by the government on behalf of employers), and public assistance benefits, as well as the overall application of the Labor Standards Act and the Labor Contract Act.¹ The MHLW compiled all of the information on the measures taken in response to the earthquake and made it available to the public on its website (*Information on the Great East Japan Earthquake*), with the aim of promoting the comprehensive and functional use of such information.

The abovementioned efforts made by the government deserve appreciation as emergency measures at least, and there is no doubt that they prevented the employment situation in the affected areas from becoming more serious to some degree.

However, the outcomes of these measures demonstrate the limits of what could have been done by the government at that time. The first limit, the counterpoint of the abovementioned benefit, is that none of the measures taken after the earthquake represented drastic or extensive policy developments, and were rather policy measures which had already been available and which were enhanced only by increasing the speed of their implementation or their scope. For instance, the relaxing of the requirements for employment adjustment subsidies and the expansion of their scope may have been temporarily effective in preventing turmoil in the labor market, but the employment adjustment subsidies should not have been used as a major countermeasure as their future reduction or elimination had been previously discussed. In addition, extensions for the payment of social security contributions reduced the burden on affected workers, but given that claims for employment insurance benefits increased in the post-earthquake period, this action reduced the funds available for benefits and placed further strain on the national treasury, further worsening the national fiscal situa-

¹ Nogawa, *Q&A Shinsai to koyo mondai* [Questions and answers: Earthquake and employment issues] (Tokyo: Hoji Homu, 2011), 219ff., provides a list of these notices and instructions issued by the government.

tion.

In addition, government agencies were also damaged by the disaster and were unable to take the systematic measures they had intended to. In fact, the disaster hit labor standards bureaus, public employment security offices (generally called *Hello Work* offices) and other entities in charge of labor administration located in the affected prefectures in the Tohoku region, compelling them to rely on support from the relevant agencies in the surrounding areas. As it was naturally anticipated that there would be limits to what the government agencies could do to cope with the situation, the private sector should have played a leading role in helping affected workers. However, due to the lack of a system that could help NPOs provide support efficiently and effectively, the large number of volunteers who headed for the affected areas individually or in groups were unable to function satisfactorily and were unable to effectively complement the limited measures taken by the government.

2. *Japan As One Work Project*

The *Japan As One Work Project*, designed and implemented by the government as a full-scale comprehensive initiative, was a turning point in post-earthquake employment policy. The government held the Conference on the Promotion of Employment Support and Job Creation for Disaster Victims on March 28, which decided on the Phase 1 Countermeasures on April 5, and the Phase 2 Countermeasures on April 27, respectively.

In Phase 1, the conference adopted basic guidelines which provide that disaster victims' employment and lives will be supported by *Japan becoming one*, through the following measures: (i) creating employment opportunities for disaster victims by utilizing the companies and resources located in the affected areas on reconstruction projects; and (ii) helping disaster victims find employment outside the affected areas if they wished while carefully taking the desires of disaster victims and of local areas that accommodate them into consideration. Specifically, the conference adopted the following measures to promote job creation: [1] promotion of reconstruction projects, such as restoration of infrastructure, removal of debris, construction of temporary housing, and repair and rebuilding of homes affected by the disaster; [2] expansion of the "job creation project in priority areas" and the "emergency job creation project," by adding "post-earthquake response areas" to the priority areas targeted in the former project, and by abolishing the one-year limit on the employment period under these projects; and [3] prioritizing the employment of people from local areas by increasing opportunities for local construction companies to receive commissions for ongoing restoration projects and providing incentives in the form of employment subsidies for companies that hire people who have lost their jobs due to the disaster. Secondly, with the aim of building a system to match disaster victims to jobs, the conference decided to [1] enhance the ability to match disaster victims to jobs in the affected areas by expanding the functions of public employment security offices and holding job fairs for disaster victims, and [2] enhance the ability to match disaster victims to jobs outside the affected

areas by securing job opportunities for those engaged in work related to agriculture, forestry, and fisheries and for self-employed workers. Thirdly, in order to maintain and secure employment for disaster victims, the conference advocated [1] expanding the employment adjustment subsidy system by broadening the scope of the special measures from five prefectures to include more areas in need, and by implementing new special measures for businesses located outside the affected areas but with close business relationships with those in the affected areas, and [2] assisting affected students in finding employment by increasing the subsidies for employers who hire them.

The goal of Phase 2 was to implement the countermeasures through budgeting and legislation. Specifically, while moving forward with the countermeasures launched in Phase 1, the conference decided on the following measures: [1] providing additional subsidies (Employment Development Subsidies) for companies that hire disaster victims; [2] strengthening public employment security offices' on-site employment counseling services, and increasing the number of special staff promoting the development of job opportunities; and [3] expanding the employment adjustment subsidy system (granting subsidies for up to 300 additional days of business cessation during the period covered by the special measures; extending the period of the temporary measures [to cover persons insured for a period of less than six months.]

On October 25, the conference laid out the Phase 3 Countermeasures based on the third supplementary budget. Backed up by budgetary measures to support employment recovery, the conference clearly indicated three major goals while setting specific numerical targets: [1] job creation through the revival and reconstruction of local economies and industries (5.7 trillion yen; jobs to be created for 350,000 people); [2] integrated support for industrial development and employment (0.4 trillion yen; jobs to be created for 150,000 people); and [3] training personnel who contribute to reconstruction and support to place disaster victims in stable jobs (0.1 trillion yen; supporting employment for 70,000 people). The specific measures taken to achieve these goals, as decided by the conference, include the following: [1] support for business entities (establishment of a subsidy program for the construction of production bases in growth areas, and continuation and expansion of financial support for small and medium-sized enterprises [SMEs]); [2] support for the agricultural, forestry, and fisheries industries and for the tourism industry (early recovery and reinforcement of agricultural land and facilities and sea ports and fishing grounds, as well as prevention of harmful rumors regarding affected areas); [3] reduction of corporation taxes (creation of a tax system to promote the establishment of new companies by freeing newly established companies from taxation for five years); and [4] extension of the payment of employment insurance benefits (90-day extension implemented in the coastal areas of the three affected prefectures: Iwate, Miyagi, and Fukushima).

Phase 3 is the only phase of the project which presents specific, direct measures backed up by the necessary financial resources. As of January 2012, the conference had the

following outlook with regard to the implementation of these measures.²

In the area of “job creation through the revival and reconstruction of local economies and industries,” 206.4 billion yen had been spent to provide subsidies for the restoration of facilities for common use by SME groups, and an additional 50 billion yen was allocated under the FY2012 budget. Under the program for the construction of temporary stores and other facilities, 201 facilities have been completed (applications have been accepted for 515 facilities). However, the conference did not indicate the budgets allocated or numerical targets in relation to the other measures listed in Phase 3, namely support for agricultural, forestry and fisheries industries, promotion of an integrated community care system, creation of the Great East Japan Earthquake Subsidy, and promotion of projects relating to the environment and new types of energy use. The conference only stated that these measures were under consideration or expected to be implemented by the end of FY2012. In the area of “integrated support for industrial development and employment,” the program for comprehensive employment recovery in the affected areas was expected to create jobs for 5,000 persons by the end of March 2012 and for about 45,000 persons by the end of March 2013 in the three affected prefectures. By increasing the funds for the emergency earthquake, etc. employment program, the conference expected the creation of jobs for 5,000 persons by the end of March 2012 and for about 20,000 persons by the end of March 2013. In the area of “training of personnel who contribute to reconstruction and support to place disaster victims in stable jobs,” the conference stated that public vocational training had already been provided for 12,165 persons in total and would be provided for an additional 6,468 persons during the period between January and March 2012 in the three affected prefectures. Under the program for employment of disaster victims in agriculture, the conference stated that 550 trainees would be selected by the end of April 2012, and through the extension of the program to support the employment of new graduates, support measures would be provided for 2,500 new graduates affected by the disaster by the end of March 2012.

Furthermore, the conference confirmed the results of the unemployment benefit support program implemented immediately after the earthquake and announced the termination of the extension of unemployment benefit payments for affected workers, declaring that it would make every effort to create more jobs by promoting industrial policy measures to revive and reconstruct local economies and facilitate the offering of jobs in restoration and reconstruction projects through the effective functioning of the network of public employment security offices. As of November 2011, 64,232 persons had received unemployment benefits in the three affected prefectures.

² MHLW, “Further Employment Support under *Japan As One* Work Project, and the Outlook for Implementation” (January 20, 2012).

3. Assessment of the Labor Policy Measures Implemented Thus Far, and Issues for the Future

We are unable to make a proper assessment of the labor policy measures that have been implemented in response to the post-earthquake situation only one year after the Great East Japan Earthquake. However, while in the process of developing a new type of labor law system which takes the experience of this disaster into account, we should attempt a tentative assessment of the effects of these comprehensive measures to some extent and explore future options based on this assessment.

From this viewpoint, there is no denying that the implementation of the employment policy projects lacked speed, as described above. As of January 2012, the specific numerical data provided in the government's projections for the measures to be taken under the *Japan As One Work Project* were largely targets for the future, and the achievements up to that time were largely attributed to the expansion of the conventional systems for granting unemployment benefits and employment adjustment subsidies or to the implementation of temporary support measures. This outcome must be said to be far from satisfactory for a taskforce set up as early as March 28, 2011. The total number of jobs expected to be created directly through the project did not even reach 70,000, and other job creation projections were nothing more than qualitative assumptions which relied on the implementation of industrial policy measures or action by public employment security offices. In light of the urgency of the situation—in particular, the fact that the government's estimate of the number of jobs to be created by the end of FY2012 falls below 70,000, although it had announced Phase 1 as early as the beginning of FY2011—, doubts have arisen about the effectiveness of the policy measures.

At the same time, it can be said that a catastrophic effect on the employment situation as a result of the earthquake was narrowly avoided. As would be expected, the total number of active job offers in the three affected prefectures dropped in March 2011 by 8.9% over the previous month, but rose thereafter on a month-to-month basis for almost all of 2011, increasing from 61,290 job offers in March to 106,239 in November. The number of new job offers also dropped sharply in March, by 26.6% over the previous month, but rose rapidly in April by 61.5% and continued to increase in every month except August, finally reaching 43,484 new job offers in November, more than a 100% increase from the level in March (21,578 new job offers). Similarly, the number of job seekers who were successful in finding employment decreased markedly—in March by 40.7% and in April by 19.5% over the respective previous months—but then dramatically increased by more than 20% on average from May through August, reaching 11,864 in November, up by 11.9% over the previous year. We should of course not overlook the fact that the total number of job separation slips, which must be submitted to receive unemployment insurance benefits, reached 204,036 in the three affected prefectures during the period between March 12 and December 18, 2011, 1.5 times the number submitted in the previous year. Even taking this into

consideration, we can at least say that the employment situation remained better than expected, when compared to the situation in other areas, such as housing, medical care, welfare programs, and industrial development.

Thus, although the government-led large-scale project has not been sufficiently successful, employment has been protected comparatively well. This phenomenon demonstrates that conventional employment measures—i.e., the granting of employment adjustment subsidies to maintain employment and the networking of public employment security offices and local agencies to secure employment—have been exceedingly effective. However, the results also lead to the assessment that the new project launched by the government has not even played a role in complementing these conventional measures. It is a valuable finding that conventional measures have proven effective in a crisis of such a scale, but this effect is due partly to the structure of the labor market and the employment environment in the three affected prefectures. Looking to a future in which it may become impossible to avoid similar disasters, we must review the issues found as a result of this project and explore ways of reconstructing the labor law system.

II. Designing a System in Anticipation of Large-Scale Natural Disasters

In the past, the impact of economic fluctuations on employment was studied under the premise that the business cycle is inherent to a capitalist economy. The main objective of employment policy was to realize full employment given the cyclical economic process wherein a boom creates a bubble, which leads to a crisis, and then another boom following the resulting recession. The collapse of Lehman Brothers in 2008 and the subsequent economic situation has had such a serious impact on the global economy that even the risk of a panic cannot be denied. The measures implemented on that occasion in the area of employment also centered on variations on conventional policy measures: reinforcement of the shrinking labor market by maximizing the employment insurance system and increasing employment adjustment subsidies to promote the efforts of individual companies to maintain employment. It is worth noting in connection with the establishment of a new labor law system that the implementation of these measures resulted in the enactment and enforcement of the Job Seekers Support Act, which will be discussed later.³

The structure of the economic fluctuations and the objectives of employment policy will basically remain unchanged for the time being, but given the possibility that an external factor of considerable scale, such as this great earthquake, could cause devastating damage to the employment system in an instant, it goes without saying that we must implement an employment system with some resistance to these kinds of unforeseen events. In particular,

³ The Job Seekers Support Act was created by codifying the emergency human resource development support program (fund-sponsored training program) originally established as a tentative program in response to employment uncertainty after the Lehman Crisis.

Japan is one of the most earthquake-prone countries in the world, and its topographical features—its many volcanoes, as well as its many rivers and the fact that it is surrounded by the ocean—will always carry the risk of various kinds of natural disasters. As is apparent from a report that there is a 70% of chance of a magnitude 7 or larger earthquake occurring in the Tokyo metropolitan area within the next four years, Japan must equip its employment system in preparation for the occurrence of such a disaster.

The question, then, is what employment and labor policy should be formulated. As a prerequisite, in order to respond to the threat of a large-scale unexpected event, the system should be doubly and triply reinforced to ensure that it is capable of mitigating the impact of such an event. For example, a system which protects long-term employment, designed to maintain employment at individual companies to the extent possible, would not work if companies' activities collapse in a chain reaction within an extremely short period of time. Obviously, most of the large number of workers who would suddenly lose their jobs and be thrown out of their workplaces in such an event would not be able to find new employment if they have only acquired skills specific to the companies where they worked. A framework must therefore be built in anticipation of large-scale job losses within a short period of time.

Policy measures in response to such a situation may first of all include encouraging workers to make efforts on a daily basis to acquire universal vocational capabilities which would enable them to find new jobs quickly, enhancing the job market for those who want to change their current jobs, and keeping career paths open to workers to enable them to escape unstable employment. These should be considered preventive measures to be taken in response to the threat of a sudden and rapid shrinking of the labor market. Secondly, providing more opportunities to work other than as company employees, such as helping people find jobs at NPOs, workers' cooperatives, and micro businesses, and facilitating the formation of entrepreneur cooperatives, should also be fully discussed. It will thus be possible to achieve results beyond those possible with conventional labor market policy, by making minor changes to the Japanese social structure, in which most people tend to work as company employees, and thereby offering as many choices as possible. Thirdly, in order to smoothly implement such an employment policy, due consideration must be given to the position of workers in the transitional process. To be more precise, substantial support should be provided for workers during the period of their unemployment, and at the same time, an appropriate process for changing jobs and developing careers must be established. These goals should not be achieved merely by providing employment insurance benefits or temporary monetary benefits but should rather be developed into permanent systems. Furthermore, if the employment environment is sufficiently improved in this regard, more dramatic reforms, such as the establishment of a system to resolve disputes over dismissal with monetary compensation and lifting the ban on concurrently holding two or more job posts, would become possible.

By implementing the policy measures suggested above, the labor market will become more stable and flexible, providing it with a variety of means to absorb excess labor in the

face of a sudden labor surplus.

III. Actual Direction of the Labor Law System Reforms

1. Development of Job Experience and Career Building

The Job Creation Fund was used by the government after the earthquake to directly create new jobs in the affected areas. This fund was to be allocated to the job creation project in priority areas and the emergency job creation project, both of which were expanded accordingly. Supported by this fund, which was used in every prefecture, local governments are struggling to create new jobs in the affected areas by taking various measures. One of these measures is a program wherein people affected by the disaster are paid to engage in restoration and reconstruction projects in the affected areas. They can then use their pay to rebuild their lives, in accordance with the concept of cash-for-work (CFW). Specifically, disaster victims engaged in various kinds of work necessary for the operation of evacuation shelters in the affected areas (e.g. providing security, taking care of elderly people and children, preparing meals, and supporting administrative affairs) are to be paid for their work. The CFW concept was originally derived from a project carried out in Africa to distribute food to refugees in exchange for their engagement in work, such as drought prevention.⁴ It has come to be used to secure employment for disaster victims while encouraging them to participate in the restoration and reconstruction process. However, the CFW scheme is designed only to achieve the goals set for the initial stage immediately after the disaster, i.e., participation of disaster victims in the restoration and reconstruction process, and needless to say, the issue that arises here is how to link their engagement in such temporary work to stable employment after the reconstruction process gets on track to a certain level. As the CFW scheme involves a variety of parties, including not only government agencies but NPOs and citizens' groups, as well as many staffing companies that play a role in ensuring efficient job matching, it is expected that a network for each type of work will be expanded and organized, thereby firmly establishing the work as an independent business and ultimately providing a sort of permanent employment.

Conventional employment measures, such as helping employers maintain employment via increased employment adjustment and SME subsidies and creating jobs through the reconstruction of local industries and the creation of new industries, result in the restoration of the traditional company-reliant employment system which would remain vulnerable to disasters in the future. By contrast, the CFW scheme is notable because if it were to succeed in creating new types of business entities, it could possibly bring about a new model of employment different from the traditional, self-contained model that has heretofore been adopted by companies. For example, after the earthquake, in addition to members of the

⁴ For the specific significance and functions of the CFW scheme, see the article entitled "Kyasshu-fo-waku ga Nihon wo Sukuu? [Will CFW save Japan?]," *Posse* 13 (November 2011).

Japan Self-Defense Forces and government personnel, a number of volunteers assembled in the affected areas, and various non-governmental organizations such as labor unions, citizens' groups, and workers' cooperatives engaged in restoration work. The operations undertaken by these organizations were temporary and did not directly lead to the creation of permanent jobs in the affected areas. If the building of an alternative employment system is urgently needed, aggressive efforts need to be made to develop an environment linking the CFW scheme to permanent employment. To achieve this, the government should provide more financial assistance for the establishment and management of NPOs, codify workers' cooperatives, support micro businesses, promote the creation of social enterprises, abolish the union shop rule; abolish the check-off system, expand the scope of the definitions of "employer" and "worker" under the Labor Union Act and develop laws enabling labor unions to be independent of companies (e.g. a tax system to support labor unions).

It is assumed that these new type of business entities will be more motivated to take part in the target project and to increase their specialized capabilities in relation to the type of project, rather than merely increasing the size of their businesses or their profits. Accordingly, more emphasis will be placed on the job experience and career building of individual workers rather than on the features relating to the organizational structure of the project. From this viewpoint, it is necessary to develop a system and institution to help workers improve their careers. This will lead to increased mobility in the labor market as a whole and will benefit conventional Japanese corporations as well, as they are under continual pressure to become more internationally competitive. As is well known, talented university students in the United States are most eager to find employment in IT ventures and other new businesses. They do not see joining a large corporation to be a priority. If these new types of business entities become popular in Japan, more young people will aspire to cultivate their abilities while working in efficiently managed micro businesses, and to then start up NPOs of their own. The need to develop human resources equipped with universal educations and career experience rather than capabilities useful exclusively to a particular company has been repeatedly pointed out. It is absolutely necessary to carry out reforms based on the current state of conventional employment, but at the same time, we must not think lightly of taking action in anticipation of a new employment system. Japan has to create labor market policy with the risk of a large-scale natural disaster always in mind, and cannot avoid tackling the reorganization of the employment system, among other reforms.

2. Reorganization of the Employment System

In order to build a disaster-resistant labor market, it is essential to create new types of business entities that suit the abovementioned job/career-oriented employment approach. Among these business entities, NPOs have not yet been given sufficient legislation to fulfill their potential. The government should enact the necessary measures as soon as possible, such as relaxing the requirements for the establishment of NPOs (e.g. relaxing the require-

ment that an NPO have at least ten members and simplifying the authorization procedure) and applying preferential treatment to them in terms of the taxation of donations (e.g. lowering the minimum donation tax deduction [10,000 yen for income tax and 100,000 yen for local inhabitants tax], extending the authorization period [two years], and introducing a provisional authorization system). At the same time, in order to prevent anti-social groups from obtaining NPO status while ensuring that NPOs act properly and vigorously, the government should also strengthen the system for ensuring the transparency of NPO activities, such as disclosure of their activity reports. At present, 60% of all NPOs in Japan have an annual income of five million yen or less. Among these, 46.7% operate at a deficit and 14.9% are insolvent. Issues that cannot be attributed immediately to deficiencies in legal systems or administrative measures are to blame for this serious situation, but there is no doubt that promoting system reform is a top priority.

The delay in passing legislation related to workers' cooperatives may also be a problem. A workers' cooperative is a type of organization widely used in developed countries other than Japan, first established by Father José María Arizmendiarieta in Mondragón, Spain, in the mid-20th century; it has since spread widely and has rapidly developed.⁵ Unlike a general type of industrial cooperative, a workers' cooperative is established with funds contributed by its worker-members, and profits earned by the cooperative are distributed to them. As workers themselves are responsible for establishing and managing the cooperative and earn profits from it, there is, in principle, no labor contract or labor-management relationship between workers and the cooperative, and participants in the cooperative do not fall within the definition of "workers" under the Labor Standards Act. Although some arrangements could be made to give members of workers' cooperatives the status of workers under the Labor Standards Act, the workers' cooperatives bill now being deliberated in the Diet would not offer them such status. It is true that a workers' cooperative is a common type of organization throughout the world, and that there are complicated factors behind the failure of the bill to mature into a law, but the most important problem is that the creation of workers' cooperatives as legal entities has not been supported widely among the general public or sufficiently supported by various other organizations that should be championing it, such as the Labour Lawyers Association of Japan. It cannot be completely denied that members of workers' cooperatives might be improperly used as cheap labor,⁶ but this risk is not an issue specific to a workers' cooperative but is rather a general issue arising from the existing wage system that has been unable to accommodate the dramatic increase in the number of non-standard workers or to otherwise change with the times. The risk of the abuse of workers is insufficient to support an argument that a

⁵ For the origin and specific significance and functions of a workers' cooperative, see Shinobu Nogawa, Hajime Wada and Susumu Noda, *Hatarakikata no chie* [Wisdom for working] (Tokyo: Yuhikaku, 1999), 50ff.

⁶ Tetsuo Kamota, "Kyasshu-fo-waku wo Rodoho kara Kangaeru [Cash-for-work under the labor law], *Posse* 13 (November 2011).

workers' cooperative would limit opportunities to work, and should therefore be reconsidered. Above all, workers' cooperatives have, in general, provided a solid foundation for international cooperation, and moreover, they accumulate know-how which allows them to provide people who tend to be at a disadvantage on the ordinary labor market, such as women and elderly people, with opportunities to exert their potential through engagement in work. Progress should be made in passing the legislation in relation to workers' cooperatives.

IV. Future Prospects for the Labor Law System

1. Basic Framework

In addition to making arrangements to the labor law system based on the assumption that an external, sudden event, such as a large-scale natural disaster, would have a massive and serious impact on the labor situation, it is also important to take the labor law system's current state into account and determine a future direction for it. Major changes have been made to the labor law system since the beginning of the 21st century, such as the establishment of a labor dispute resolution system centered on the labor tribunal system, expansion and deepening of the legal system governing non-standard workers (e.g. revision to the Temporary Agency Workers Act (Act for Securing the Proper Operation of Worker Dispatching Undertakings and Improved Working Conditions for Dispatched Workers) and the Part-Time Workers Act (Act on Improvement, etc. of Employment Management for Part-Time Workers) and codification of fixed-term labor contracts), and the enactment of the Labor Contract Act. However, the reforms to the labor law system have not fully taken disaster resistance into account. Although it is unavoidable that priority would be given to the restructuring of the labor law system for normal times, efforts should be made to design new mechanisms or interpretative theories focusing on disaster preparedness.

The basic framework for a future vision for the labor law system would be closely connected with the abovementioned arrangements. In concrete terms, this task should be accomplished via the following process: [1] as an initial measure, provide workers with more diversified jobs and encourage them to develop more universal careers, thereby enhancing and securing their opportunities to work in various forms, not limited to working as company employees; [2] in accordance with the principle of progressing toward an elastic and flexible labor market while avoiding an overly hasty transition, build mechanisms to enable targeted groups of people — non-standard workers, women, elderly people, young people who usually work on a part-time basis (generally referred to as *freeters* (a combination of the English word “free” and the German word “arbeiter”) in Japan) and those who are currently not in employment, education or training (NEETs), and foreign workers — to exert their potential to the fullest extent, achieve an appropriate work-life balance for all workers, and invigorate the labor market.

2. Work-Life Balance

Dramatic changes in the workforce caused by various factors, including changes in economic structure and the declining birth rate coupled with the aging of society, call for legislative and administrative responses. As the concept of work-life balance has permeated society, provisions concerning equal treatment of part-term and regular workers have been incorporated into the Part-Time Workers Act and the provisions of the Child Care Leave Act (Act on the Welfare of Workers Who Take Care of Children or Other Family Members Including Child Care and Family Care Leave) have been upgraded. Furthermore, the prevalence of temporary agency workers—a new type of workers which signifies the diversification of employment status—has given rise to problems, including the practice of dispatching workers in the guise of service contracts or dispatching workers on a daily basis in violation of the law. This has pressed the government to take appropriate measures, and as a result, a substantive law to regulate fixed-term labor contracts is finally near passage. Taking these developments and the situation after the great earthquake into account, what does the future of the labor law system look like?

The Part-Time Workers Act was revised in 2007 to incorporate provisions requiring employers to treat part-time and regular workers equally in terms of per-hour wages if they engage in the same jobs for the same number of hours. Specifically, the revised Act stipulates equal treatment in terms of wages, education/training, and welfare programs for part-time workers if they are subject to the same conditions as regular workers with regard to three factors: job description, promotion, and contract period. In actuality, this revision may not be very effective in improving the working conditions of part-time workers. For example, in a workplace where the prescribed working hours for regular workers are eight hours each day, and part-time workers are engaged in the same job as said regular workers for six hours each day, the employer only has an obligation to “endeavor” to apply equal treatment. Nevertheless, it is expected that personnel management practices which accord with the essence of this revision will become widespread. In addition, as a result of revisions to the Employee Pension Insurance Act in 2007, part-time workers who have been employed for one year or more, who work for 20 hours or more per week, and who receive 98,000 yen or more as compensation per month (about 1.18 million yen per year) are eligible for employee pension insurance. However, as SMEs with 300 or fewer employees are currently exempt from this rule, it is estimated that fewer than 200,000 part-time workers will actually receive employee pension insurance.⁷ These legal revisions are significant steps forward in the process of increasing the perceived importance of jobs undertaken by part-time workers and enabling these workers to shape their careers while building homes, but they are focused on achieving equal treatment for part-time and regular workers within

⁷ For issues relating to the enforcement of the revised Part-Time Workers Act, see Daisuke Kitaoka, “Kaisei Pato Rodoho Shiko Tsutatsu no Kaisetsu [Commentary on the notice of enforcement of the revised Part-Time Workers Act],” *Rodohogaku Kenkyukaiho*, no. 2422 (2008): 3ff.

their respective companies. Companies should make better use of the unique characteristics of part-time workers, such as the fact that they do not firmly belong to the companies where they work and can move more freely than regular workers. Specifically, companies should provide part-time workers with opportunities to develop their careers, and should place more importance on giving them adequate annual paid leave, allowing them to take days off to engage in activities to obtain qualifications. Companies should also pay part-time workers wages that befit their jobs. Compared to these measures, applying the same employment protection rules or the same personnel management systems to part-time and regular workers may not necessarily be top priority tasks.

Regarding the concept of work-life balance, the Child Care Leave Act has been upgraded since the beginning of the 21st century to make it easier for workers to take child care leave and nursing care leave. For example, workers employed on a daily or a fixed-short time basis may now take child care leave, discriminatory treatment of workers who take child care leave or nursing care leave has been prohibited, workers may now take nursing care leave several times within the prescribed period, and increased allowances for child care leave or nursing care leave are paid under employee insurance during the leave. In Japan, workers still face difficulty in finding enough time for childrearing or private activities and in maintaining a balance between their working and private lives, and it is absolutely necessary for the government to undertake diverse policy measures to achieve an appropriate work-life balance. Meanwhile, in anticipation of a sudden, large-scale disaster, the government should improve the special rules which apply in the event of a natural disaster, provided in Articles 19 and 20 of the existing Labor Standards Act, to protect workers on child care leave or nursing care leave by, for example, giving preference to such workers in returning to their original jobs or finding them re-employment.

3. Policy Measures to Cope with Non-Standard Workers

There have been many developments in recent years with regard to the treatment of the major types of non-standard workers, i.e., part-time workers, temporary agency workers, and fixed-term contract workers. For part-time workers, as discussed above, the Part-Time Workers Act has been revised to achieve equal treatment between part-time and regular workers in terms of the status under the personnel management system, working hours and other working conditions, and related reforms are ongoing in line with the long-advocated principle of *equal pay for work of equal value*. For temporary agency workers, efforts have been made to publicize the necessary information and improve the functions of public employment security offices so that workers dispatched by temporary staffing agencies on a daily basis can also receive job applicant benefits for day workers. Furthermore, with regard to fixed-term labor contracts, the Labor Policy Council submitted a proposal to the Minister of Health, Labour and Welfare at the end of 2011 to the effect that the rule prohibiting employers from refusing to renew fixed-term labor contracts without reasonable grounds upon

the expiration of their terms, which has been established as case law, should be expressly stipulated in the Labor Contract Act. The proposal also included the idea of vesting fixed-term contract workers with a right to turn their fixed-term contracts into labor contracts without a fixed-term if their contracts have been repeatedly renewed for more than five years. These proposed measures may be effective in realizing stable employment and improved treatment for non-standard workers whose number has been rapidly increasing. However, in the context of disaster preparedness, a certain policy shift is necessary to attach more weight to promoting the career development of non-standard workers. Regulations designed to maintain the employment of non-standard workers at their respective companies must not reduce their chance to change jobs smoothly and fairly when necessary, and it is also urgently necessary to create a system to address the career development handicap that non-standard workers suffer as a result of their employment status to the extent possible. With regard to the latter objective, if promotion to regular employment is impossible for non-standard workers, employers must establish rules allowing such workers to concurrently engage in second employment or to engage in activities to obtain qualifications, while the government must build extensive mechanisms to promote their career development.

4. Initiatives to Reinvigorate the Labor Market and Rectify Its Disparities

The diversification of employment status and workers' statuses has given rise to the need to provide people with as many choices of work as possible and to develop an environment where people can enter the labor market as easily as possible. It is now also absolutely necessary to take measures to guide people who are unemployed or in unstable employment—not only including elderly people and women but also young people categorized as *freeters* and NEETs—into the labor market and thereby rectify social disparity. Against this background, the laws and regulations whose major purpose is to control the labor market (e.g. the Employment Insurance Act, the Employment Countermeasures Act, etc.) have undergone repeated revision, as has the Minimum Wage Act, to support workers' standards of living. There is a need to consider how these trends may be further advanced in the future with a view to establishing a framework for a post-earthquake labor law system.

Looking at developments in recent years, the Employment Insurance Act has undergone a shift in its core functions, resulting in the elimination of employment welfare services from the categories of employment-related services carried out under it, leaving only employment stabilization services and human resource development services. Revisions were also made to this Act in 2007 to lower the insurance premium rate from 1.6% to 1.2%, while increasing the child care leave allowance to 50% of a worker's normal wages. Furthermore, the relevant systems have been reformed in various ways in order to provide modest benefits for a large number of workers. The distinction has been abolished between part-time workers and generally insured persons in terms of the length of the insured period required to receive job applicant benefits, the maximum benefit amount for educational

training has been reduced while the length of the insured period required to receive such benefits has been shortened.

In addition, the long-awaited Job Seekers Support Act was enacted in 2011, building a system to support job seekers who are not covered by employee insurance to sustain their livelihoods, participate in vocational training courses, and have access to job offers. This new system is based on a concept that is similar to the concept of “basic security benefits for job seekers,” adopted in foreign countries (referred to as *Grundsicherung für Arbeitsuchende* in Germany). It targets workers who are not eligible to receive employee insurance benefits because they have not paid insurance premiums for an adequate period, such as *freeters*, NEETs, and new graduates, as well as entrepreneurs who have been forced out of business due to the economic recession. Under this system, the targeted people may apply to public employment security offices to receive 100,000 yen (or 120,000 yen in the case of the head of a household) per month as living expenses, and may apply for and take vocational training courses after consultation with these offices. After completing the training courses, targeted persons will have the chance to find jobs in collaboration with the public employment security offices. Some people fault this system for setting strict requirements for the receiving of support, such as only providing support for people with individual incomes of 80,000 yen or less (or household incomes of 250,000 yen or less) per month, requiring support recipients to participate in all of their training courses during the training period and disqualifying people who are absent from training for over 20% of the course, even if their absence was due to illness or other unavoidable reasons. However, this system was originally designed to give emergency assistance to unemployed workers who are ineligible for employee insurance benefits and who may remain unable to enter the labor market, to allow such workers the chance to find employment. In this respect, it is different from the conventional support system covered by employee insurance, which is designed to help workers who enjoyed stable employment but suddenly lost their jobs due to the bankruptcy of their employers return to the labor market. Therefore, the requirements for receiving support and the process leading to employment must be strict to some degree.

The job seeker support system can be regarded as one of the key labor market policies formulated in anticipation of a large-scale disaster. When a vast number of people become unemployed at the same time, emergency measures are necessary, such as the *Japan As One* Work Project discussed above. However, it would be more effective to ensure that various ways of accessing the labor market are always available and that flexible and progressive opportunities for employment are provided. When this system, which has been in operation since April 2011, gets on track, it will be possible, for example, to enhance the system for a limited time to also target unemployed people who cannot be sufficiently covered by employee insurance or emergency measures in the event of a disaster, thereby providing them with various training programs with the aim of shifting the labor force away from industries that have suffered catastrophic damage.

To achieve this, the job seeker support system must be publicly financed, and the

current financing scheme of allocating employee insurance funds to this system must be abolished in three years as scheduled.

V. Road to an Integrated Labor Market Policy

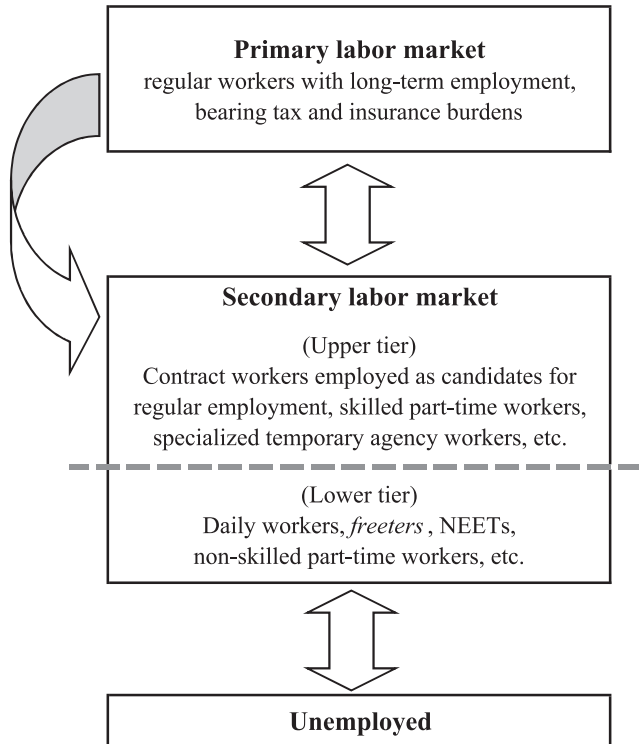
1. Possibility of a Multi-Stage Labor Market

The structure of Japanese employment in recent years displays several characteristics.⁸ Firstly, the number of employed persons has continued to decrease over the long term. The number of persons employed in many industrial sectors has declined, with significant downward trends in construction and manufacturing in particular, while the number of persons employed in accommodations, food and drink services, and in medical, health care and welfare services has increased slightly. Thus, the number of employed persons has been increasing in industrial sectors which do not primarily rely on the long-term employment system, and it may be assumed that this could be one of the causes of the increase in the number of non-standard workers. Secondly, one-third of unemployed job seekers voluntarily left their previous jobs, while 37% left their previous jobs involuntarily, due to reasons attributable to their employers or due to mandatory retirement/termination of their employment. These results may suggest that workers are unable to sustain the motivation to work at the same jobs for long periods because of the limited number of good quality jobs, and may also reflect the recent harsh economic conditions, the increase in the number of fixed-term contract workers, and the growing concern for life after retirement. Thirdly, reviewing the unemployment rate by family relationship, the unemployment rate was less than 3% for heads of a household and for spouses of a head of household, while exceeding 8% for other family members of a household and standing at about 6% for the unmarried. It may be assumed that this trend reflects the increase in the number of new graduates without jobs and *freeters* and also implies that people find it difficult to form a household due to the lack of prospects for stable income.

These employment realities indicate the limits of the employee insurance system premised on stable employment, and suggest that job seekers facing difficulty in finding employment or re-employment are becoming a semi-permanent group.

Taking into consideration the above-described current situation, combined with the risk of a large-scale disaster, it is clear that at present, Japan must move in the direction of eliminating rigidity in employment and the structured distinction between standard and non-standard workers, thereby drastically increasing the opportunities to work and reconstructing the labor market into a multi-staged form.

⁸ Ministry of Public Management, Home Affairs, Posts and Telecommunications, *Labor Force Survey* (December 2011).



Labor Market in Japan

2. Future Labor Market Policy

In the existing labor market, the number of workers able to enjoy stable employment has been gradually diminishing, while the number of workers in low-wage and unstable employment, such as fixed-term contract workers, daily workers, and part-time workers, has been increasing. This situation can be illustrated as shown in the figure.

In Japan, the capacity of the primary labor market, which exists on the basis of stable employment, is rapidly diminishing. The secondary labor market, to which a number of non-standard workers belong and which provides jobs that are not of good quality in terms of wage and working conditions, is expanding. Another group of people who are unemployed and seeking a job—that is, people who do not belong to neither of these markets—is also increasing. In such a situation, the secondary labor market is expected to serve as a buffer to prevent a rapid increase in unemployment while at the same time serving as the preparatory stage to finding a better job.⁹

⁹ This is similar to the concept of an “intermediary labor market,” proposed by Professor Yuki Honda of the University of Tokyo. See Professor Honda’s comments, *supra* note 4, at 111, in the article entitled “Kyasshu-fo-waku ga Nihon wo Sukuu? [Will CFW save Japan?]”

From this viewpoint, the first key to long-term future labor market policy is to provide job seekers with access to the primary labor market if possible, and at least to the second labor market. The recently enacted and implemented reforms to the employee insurance system and to the permanent system to support job seekers are basically consistent with this key element. Although employee insurance may continue to be very useful in helping people who have fallen out of the primary labor market and become unemployed, the permanent job seeker support system will play an effective role in supporting those who have left the secondary labor market. A second, and absolutely necessary key is to establish a route from the secondary labor market to the primary labor market. For example, Germany, which served as a central model in the drafting of the Job Seekers Support Act, is trying to provide workers who have entered the secondary labor market with various opportunities to improve their vocational capabilities and gain access to job offers, thus assisting them in ascending to the primary labor market.¹⁰ Japan also needs to have a grand design to prevent workers who have been forced out of the primary labor market and into the secondary labor market from falling into unemployment, and to help them return to the primary labor market. Essential factors in this may be wider dissemination of the vocational training system and large-scale implementation of career consulting services. The third key is to drastically increase opportunities to work other than as company employees. As discussed above, in addition to supporting business start-ups in general, a new system should be developed to make it easier to establish and manage NPOs and micro businesses, and the workers' cooperatives bill should be enacted as soon as possible. Lastly, the passage of the employment contract law is also a pressing issue. The Labor Contract Act currently in effect is a very small law for various reasons. It is hoped that, in concert with the movement toward drastic revision of the law of obligation in the Civil Code, actions will be taken to delete the provisions concerning employment contracts from the Civil Code and to re-define the category of "employment contracts" so as to cover "labor contracts" in strict legal terms as well as similar forms of contracts concluded for providing labor, thus establishing a legal basis for coping with problems faced by non-standard workers and other workers who are under service contracts in appearance but, in substance, are engaged in work as employees.

¹⁰ For the details and significance of the labor market reforms in Germany, see Michitaka Nako, "Doitsu no Kyushokusha Shien Seido [Job seeker support system in Germany]," *Quarterly Labor Law*, no. 232: 29, and for the significance of these reforms to Japan, see Shinobu Nogawa, "Koyo Hoken to Kyushokusha Shien Seido no Kadai to Tenbo [Issues and prospects with regard to employee insurance and the job seeker support system]," *Quarterly Labor Law*, no. 232: 2.