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Special Edition Illegal Labor

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EDITORIAL OFFICE
The Japan Institute for Labour Policy and Training
International Affairs Department
8-23, Kamishakujii 4-chome, Nerima-ku, Tokyo 177-8502, Japan
TEL: +81-3-5903-6315 FAX: +81-3-3594-1113
Email: jlr@jil.go.jp
Homepage: http://www.jil.go.jp/english/JLR/index.htm
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NEXT ISSUE (Winter 2017)
The winter 2017 issue of the Review will be a special edition devoted to **Balancing Work and Caregiving**.

Introduction

Illegal Labor

Laws set out the rules that should be obeyed when people act socially. Actions that violate the rules set forth by these laws are illegal, and must therefore not be committed. The same is true of labor, where the various rules to be observed by everyone involved in labor, and particularly employers, are stipulated by law, or more specifically by labor and employment law. In actual society, however, illegal actions do occur. And again, the same is true of labor, where workers are sometimes employed in illegal formats. This is what we call illegal labor.[1]

In connection with illegal labor, "black companies" have become a topical issue in Japan over the last few years. "Black companies" do not exist as a legal concept, and they have not been clearly defined. These are companies that employ workers (or more particularly, young workers) in excessively hard labor for long hours. In other words, they use these workers as "disposable commodities." Besides this, the phrase "black companies" is also used more broadly when referring to companies that employ workers in illegal formats, such as non-payment of overtime premiums,[2] failure to act against harassment in the workplace,[3] and dismissal or unfair attempts to encourage retirement.[4] People in Japan are now growing more concerned about various forms of illegal labor, with non-payment of overtime premiums, harassment in the workplace, and dismissal or unfair attempts to encourage retirement as representative examples.

Merely prohibiting illegal labor by law and imposing penalties on offenders will not

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[1] See the paper by Ryuichi Yamakawa for a definition of "illegal labor." Based on Yamakawa's description, actions that are considered illegal in light of labor and employment laws governing labor relationships in the broad sense will be assumed to be illegal labor in this Introduction.

[2] Under Article 37 of the Labor Standards Act of 1947, employers are obliged, in principle, to pay an overtime premium to workers, such as when they work for more than forty hours in one week or eight hours in one day, with the exception of workers listed in Article 41 of the Act (i.e. workers within a comparatively limited scope; in terms of management posts, for example, the exception only includes senior management posts).

[3] In employment contracts, employers are assumed to have a duty of care, such as preventing sexual harassment, bullying, and other forms of harassment in the workplace, or, if any such act has occurred, taking prompt and appropriate steps to resolve it. Failing to deal with workplace harassment could give rise to liability for damages as an act of tort. Of course, it is difficult to ascertain whether or not employers can be deemed to have violated this duty of care in individual cases, partly because a careful judgment is required as to whether a given act constitutes harassment or not.

[4] In Japan, dismissal is generally limited by the doctrine of abuse of the right to dismiss set forth in Article 16 of the Labor Contract Act of 2007. Dismissal constituting abuse of the right to dismiss is illegal. Meanwhile, attempts to encourage retirement, if persistent to a degree deemed socially unreasonable, could give rise to liability for damages as an act of tort. Of course, as mentioned in connection with workplace harassment in note 3 above, whether or not an attempt to encourage retirement is persistent to a degree deemed socially unreasonable is a problem that requires careful judgment and is difficult to ascertain.

suffice to address this problem. Rather, appropriate action aimed at correcting the problem needs to be taken after analyzing the causative factors lying behind illegal labor. This kind of research on efforts to eradicate illegal labor is a very basic yet important task. Moreover, the fact that "black companies" have become a topical issue in society, as mentioned above, would suggest that this kind of research is now a matter of urgency in Japan.

Based on these concerns, the aim of this Special Edition is to contribute to the discussion and efforts aimed at eradicating illegal labor. To this end, it will involve (1) examining the causative factors lying behind illegal labor in Japanese society from three perspectives—the historical perspective, that of behavioral economics and psychology, and that of human resources and labor management; (2) analyzing trends for systems of labor inspectors in EU and other countries, as representative examples of action against illegal labor; and (3) studying the present situation and future challenges facing methods of addressing illegal labor and the enforcement of labor and employment law.

Of the various kinds of illegal labor, forced labor (including human trafficking for sexual exploitation and other purposes) and child labor (often itself involving forced labor) may be cited as the most serious examples.[5] It is also seen as highly problematic that, in Japan today, not enough action has been taken for foreign workers under the Technical Intern Training Program for Foreigners,[6] senior high school girls under "JK business" such as "*enjo kosai* (compensated dating)," and others, even though these are all victims of forced labor and/or child labor.[7] Of course, this Special Edition will not deny that this forced labor and child labor are important problems in the field of illegal labor. But while recognizing forced labor and child labor as serious problems, the aim will be to study methods of addressing illegal labor more broadly, including these problems, and methods of achieving the enforcement of the law. Recent Japanese-language research on the problems of foreign workers in Japan, including the Technical Intern Training Program for Foreigners, has appeared in the *Nihon Rodo Kenkyu Zasshi* (Japanese Journal of Labour Studies), No. 662 (2015). Similarly, recent Japanese-language research on the problem of child labor, including the situation in Japan, can be found in *Kikan Rodoho* (Quarterly Labor Law), No. 249 (2015).

The papers included in this Special Edition will now be briefly introduced.

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[5] In Japan, forced labor is prohibited under Article 5 of the Labor Standards Act. As for child labor, Article 27, paragraph 2 of the Constitution of Japan prohibits child abuse, while the provisions of Article 56 to 64 of the Labor Standards Act, based on this prohibition, stipulate (among others) a minimum age for admission to employment, in line with related ILO conventions.

[6] The Technical Intern Training Program for Foreigners, implemented since July 1, 2010, is an amended version of the previous Industrial Training and Technical Internship Program for Foreigners. In 2015, the Cabinet submitted a "Bill on Proper Implementation of Intern Training for Foreigners and Protection of Trainees" to the Diet, aiming partly to improve the Technical Intern Training Program for Foreigners. Deliberation on this Bill will continue in the next Diet session, due to start in September 2016.

[7] *See, e.g.*, U. S. Department of State, "Trafficking in Persons Report 2016," pp. 217–18.

In “Developments and Issues in the Regulation of Illegal Labor in Japan,” Shinobu Nogawa first looks back over the history of employment systems in Japan, revealing that the employment relationship has developed as one premised on differences in status between employers and workers. For this reason, the employment relationship is seen as a master-retainer relationship, and this tends to blur judgments recognizing acts such as overwork and violations of workers’ rights as unfair or illegal. This structure survived even after employment relationships came to be positioned as legal contracts in the modern era, and if anything, was preserved within the outer form of a contract. Nogawa points out that Japan’s legislation for the protection of workers after the beginning of the 20th century, in response to vigorous resistance from financial circles, was strongly geared to securing good quality manpower, but that it had a weaker presence in terms of protecting the human rights and personal interests (i.e. physical health, freedom, privacy and other such factors that allow individuals to lead their lives with personal character and dignity) of workers. He also argues that, even after the Second World War, while a degree of employment security was given to regular employees under the custom of long-term employment that permeated in the period of high-level growth, authority-based employment relationships with a strong family-like orientation were conversely strengthened. At the same time, long working hours and infringements of personal interests in the workplace were not sufficiently regulated. On methods of enforcing legal regulations, Nogawa points out that the number of labor standards inspectors involved in criminal justice and administrative supervision is grossly inadequate compared to the number of businesses subject to supervision, and that even in connection with civil regulation, infringements of personal interests and other forms of workplace harassment that are often described as illegal labor in Japan today are not adequately protected under the Labor Contract Act. Moreover, cases of civil liability such as workers’ claims for damages are not being effectively pursued. Nogawa asserts that, in order to correct this situation, the number of labor standards inspector needs to be dramatically increased, while protection under the Labor Contract Act against workplace harassment and other infringements of personal interests needs to be enhanced.

In “Motivations for Obeying and Breaking the Law: A Preliminary Study Focused on Labor Law and the Role of Non-Instrumental Motivations,” Takashi Iida presents a framework for analyzing illegal acts in the field of labor and employment law, based on knowledge of social sciences other than jurisprudence. To this end, he examines specific motivations for compliance with laws and conditions that make it easier to violate laws, while also raising suggestions for labor policy based on this examination. According to Iida, motivations for obeying the law consist of “instrumental motivation,” which seeks to avoid direct sanctions (such as punishment by the state) or indirect sanctions (such as social disapproval), and “non-instrumental motivation,” whereby people try to obey laws because those laws have legitimacy or because they concur with their own sense of morals and values. In addition, according to Iida, people are more likely to break the law when the benefit of illegal behavior exceeds that of obeying the law, in connection with instrumental motiva-

tion, or when there is no legitimacy and they feel no psychological resistance, in connection with non-instrumental motivation. On the subject of labor relationships, Iida first stresses the importance of focusing on non-instrumental motivation in relation to non-compliance with the law. He then asserts that, as an important reason why people do not feel psychological resistance to labor-related legislation, "altruistic illegal behavior" is prone to occur in situations where people collaborate with each other, such as in the workplace. In particular, Japanese workplaces have a strong aspect of collective action, and "altruistic illegal behavior" is even more prone to occur there. Based on this examination, Iida asserts that there are limits to designing legal systems with focus only on instrumental motivation, and such designs also need to consider the effect of non-instrumental motivation.

In the first part of "Factors Contributing to Labor Law Violations and Employees' Subjective Perceptions of "Black Companies": Focus on Workplace Characteristics and Human Resource Management," Toru Kobayashi analyzes the causes of uncompensated overtime, failure or inability to take paid leave,[8] and coerced resignation, which often become problematic as illegal labor, based on aggregated data. Secondly, he analyzes the causes behind workers' perceptions that their own employer is a "black company," again based on data. The focus here will be on analyzing the former, as it pertains to the overall theme of this Special Edition, and the analysis results will be summarized. Based on his analysis, Kobayashi indicates that, when a company has a system of performance-based pay or profit targets, or when it has imposed a total ban on overtime, it is more difficult for workers to apply for overtime payment even if they do work overtime, and this gives rise to uncompensated overtime. Moreover, the existence of overtime surveys and implementation of compliance training by companies has the effect of reducing uncompensated overtime. Kobayashi also sees a link between uncompensated overtime and improved corporate profits, asserting that the reduction in cost by not paying overtime premiums could outweigh the disadvantage resulting from non-compliance with the law, and therefore that it is important to improve this situation. The existence of profit target systems and large fluctuations in the daily volume of work per week are seen as causes of the failure or inability to take paid leave. As for coerced resignation, Kobayashi shows that coerced resignation is more prone to occur when accumulating human capital through continuous service is not so important

[8] In Japan, paid annual leave is provided as a right of workers under Article 39 of the Labor Standards Act (contrary to the impression given by the text of said provision), and it is left to the worker's discretion whether to actually take the leave or not. Strictly speaking, therefore, a worker merely not taking paid leave could in itself hardly be called illegal. On the other hand, employers are prohibited from obstructing efforts by workers to take paid leave (Article 119, paragraph 1 of the Act). On this point, if an employer creates a workplace atmosphere in which it is difficult for workers to take paid leave, it would be seen as a social problem, though not directly falling under a violation of the prohibition mentioned above. The general perception is that, in most Japanese workplaces, there is an atmosphere in which it is difficult for workers to take paid leave. In his paper, Kobayashi focuses on this situation in Japan, and appears to include failure or inability to take paid leave as one kind of illegal labor.

for a company, even though it may be required to a certain extent.

In "International Trends in Systems for Inspection of Labor Law Violations," Toshiharu Suzuki makes a comparative study of labor inspector systems, mainly in EU countries, as representative methods that are actually used as a legal response to illegal labor, and discusses trends in them. In his paper, Suzuki reports that the ratio of inspectors to workers in EU countries is generally higher than the level set by the ILO as a rough guide (moreover, as stated in note 6 of the paper, the ratio in Japan is regrettably lower than the level set by the ILO), that there are differences from country to country in whether inspectors take overall charge of all fields related to labor or whether they are divided into specific fields such as health and safety, and that the level of inspectors' authority also differs from country to country. Besides this, Suzuki introduces initiatives aimed at cross-border collaboration between countries, and the use of the Internet to share information and build systems of inspection, train inspectors and increase the efficiency of information provision to society, as new attempts related to labor inspector systems by EU countries in recent years. Suzuki also asserts that not enough research has been accumulated on the administration of labor inspection, and that this needs to be enhanced.

In "Policy Measures to Tackle Violations of Labor and Employment Laws in Japan," finally, Ryuichi Yamakawa discusses directions for labor policy to address violations of labor and employment law, with particular focus on measures for implementing labor and employment law (in the paper, violations of labor and employment law are defined broadly to include not only those for which penalties and administrative measures are planned but also acts in violation of norms that establish rights and obligations in civil law). As measures for implementing labor and employment law in response to violations, Yamakawa points out that steps have been taken for implementation by criminal justice, implementation by administrative agencies, and implementation through civil litigation or other means between private individuals (the paper also mentions measures designed to implement the law by preventing violations, such as by increasing awareness of laws to be obeyed, or developing organizations and systems). Of these, Yamakawa states that implementation based on criminal justice is not necessarily commonplace, and that implementation is more often attempted by administrative agencies. In particular, this takes the form of demanding voluntary correction by employers, such as by issuing recommendations to correct violations of the law. Of the violations often regarded as problems in Japan today, Yamakawa then describes the current legal response to overwork, long working hours leading to health impairments, and harassment in the workplace, but points out that it would appear difficult to address each of these problems using the methods adopted until now. Based on this examination, Yamakawa asserts that the present situation of illegal labor and of the response to illegal labor have not yet been fully ascertained, but also that it is important to ascertain and analyze these present situations, and that the perspective of a policy mix combining various policies is required as a method of responding to law violations. He finally proposes several improvement measures for a reactive response to law violations and proactive prevention

thereof.

Seen through the papers in this Special Edition, the strong characteristic of Japanese workplaces as closed communities can be discerned as a major causative factor lying behind the occurrence of long working hours (and, related to this, uncompensated overtime and the failure or inability to take paid leave) as well as harassment in the workplace, which are often mentioned as illegal labor in Japan today. This characteristic of Japanese workplaces is partly rooted in the Japanese employment system founded on long-term employment. In this sense, when addressing illegal labor such as the above, it would appear important that we also reconsider the pros and cons of the employment system currently practiced in Japan.

I strongly expect this Special Edition to contribute to an understanding of problems concerning illegal labor in Japan, and of action aimed at reducing illegal labor and enforcing the law. In turn, I expect it to contribute to enhancing research and policies aimed at reducing illegal labor and enforcing the law in our readers' own countries.

Hisashi Takeuchi-Okuno
Waseda University

Developments and Issues in the Regulation of Illegal Labor in Japan

Shinobu Nogawa
Meiji University

Employment laws and their related systems in Japan first appeared in the form of state conscription in around the eighth century onward, and shifted over the course of history in the direction of employment that is fundamentally based on consensus. However, despite such changes brought about by economic progress and the establishment of contractual principles, there were no signs that such laws and systems were protecting the human rights of workers or fostering an independent labor movement, not only in the feudal period, but even after the Meiji Restoration in the late nineteenth century. Even the Labor Standards Act and other legislation enacted to protect workers under the Japanese constitution, which is centered on respect for fundamental human rights, have not been sufficiently effective. Instead, power structures supported by binding personal relationships and paternalism became commonplace in Japanese company organizations. As a result, contemporary Japan faces ongoing difficulty in sufficiently preventing harsh long working hours that undermine physical and mental health, and tackling the prevalence of harassment that denies workers their rights to personal character and dignity. In order to overcome this situation, it is hoped that active policy responses will be taken on the basis of an effective combination of hard law, using penalties and other such means, and soft law, using administrative guidance and other such approaches.

I. Introduction: Concepts of and Responses to Illegal Labor

In the current decade, labor laws and systems in Japan are in a period of major transition. As part of a series of major reforms following Japan's defeat in the Second World War, the Constitution of Japan established principles such as individual workers' guaranteed rights to work, the legal stipulation of minimum working conditions, and a society free of child labor (Article 27). By guaranteeing workers' rights to organize and engage in collective bargaining and action (Article 28), the constitution also established a system to overcome the inevitable difficulties that arise from individual labor relations (such as a lack of the equality and impartiality between contractual parties needed to support the principle of freedom of contract, workers conducting labor based on unilateral orders and other such relationships that tend to generate social hierarchies, and the potential for harmful effects on health and lifestyle to arise due to the content of obligations being to provide one's labor). While the fundamental framework of this structure remains the same, specific labor laws and systems founded on the constitution are changing significantly to respond to the considerable shifts in economic society.

At the same time, a dark shadow is being cast on the development of such changes by the breakdown of labor-management relations and retrogression to primitive labor relations in the workplace. Leaving the breakdown of labor-management relations aside as an issue to

be discussed in detail at another opportunity, here I would like to note the retrogression to primitive labor relations and its role as a powerful factor in encouraging reform to labor laws and systems in Japan.[1] The shift toward primitive labor relations is evident from the growing numbers of "black companies" (*burakku kigyo*). While "black companies" are generally perceived as companies that treat young people as expendable commodities, in legal terms the term refers to unscrupulous employers that almost deliberately fail to comply with the mandatory laws and regulations that should be applied to workers. For instance, there are numerous cases of employers that force workers to work long hours that far exceed the maximum working hours clearly prescribed in the Labor Standards Act without fulfilling—or by simply ignoring—the requisites for such work to be recognized as an exceptional case, or that make workers engage in hard labor without taking into account their duty to ensure that workers take days off and breaks from work. There is also frequent violation of "personal interests" (physical health, freedom, privacy and other such factors that allow individuals to lead their lives with personal character and dignity) in the workplace, and also a number of cases in which workers are placed under such mental strain that it leads to their death.

This paper addresses this situation by examining the actual conditions of employment in Japan and the state of the legal system in place to regulate it, and highlights the issues in the system that are factors behind the current situation. It then draws on these insights to present a few views on potential future directions.

II. Legal Regulations in the History of Employment

1. The Situation before the Meiji Period[2]

As in many other countries and regions, the institutional foundations of Japan as a unified nation originated from a social hierarchy based on statuses. People's rights and obligations were defined by their status, and contracts based on free will were not the foundation for economic activity. Examples of labor in the Nara Period (710–94), at the time when Japan first began to function as a unified nation, include the work of *nuhi* (domestic slaves), a group in the lowest rank of the hierarchy, who were supplied through the slave trade, and of *komin* (peasants who held land assigned to them by the government), who were under obligation to fulfil a number of different duties. In addition to being obliged to engage in hard labor in the imperial capital for a certain period each year without compensation (a system known as *saieki*), *komin* were frequently also put to work as necessary for a wide range of other purposes, work that was in fact an even greater burden than their initial obligations (Maki 1977, 10). On the other hand, aside from such obligatory labor, in this period it was also possible to put people to work having paid for their labor costs, under certain

[1] See Konno (2012).
[2] The following description is largely based on Maki (1977).

conditions. However, this was mainly used by government offices and other authorities, and therefore differed from modern employment in the sense that although the worker received wages they were not guaranteed the freedom to accept or refuse the work (Maki 1977, 11). However, even in the *ritsuryo* period (the period when the nation was governed under the *ritsuryo* system of criminal and administrative codes) from the Nara period to the thirteenth century, there was a system by which labor was provided under consent and wages were paid. At the same time, even this form of labor, which was the closest to the modern form of employment, operated on the premise of difference in the status of the person employing and the person being employed, and free consent transcending differences in status did not exist with regard to employment (Maki 1977, 13*ff.*).

It is thought that in the *ritsuryo* period—which, as noted above, was the first period in which administration through a legal system came into widespread use in some form—the types of work that had legal significance as people providing their labor to others were the slave trade, unpaid conscription, paid conscription, and employment based on consent on the premise of difference in status. There was no sign at this point of the concepts of regulating severe heavy labor or improving the efficiency of labor relationships, and it can easily be inferred that the prohibition of the slave trade of *komin* was introduced with the need to procure taxes and secure public labor as necessary in mind.

In contrast, the concept of *hoko* (service) that developed in Japan's feudal period from the thirteenth century onward differed in some aspects from the institutionalization of labor in the *ritsuryo* period. Particularly from the seventeenth century, following the establishment of the Tokugawa shogunate (1603–1867) and the beginning of a period of stability in the state organization, *hoko* arrangements were, in principle, established on the basis of the consent of the parties concerned. There were also certain limitations on the period and the work duties, and it was assumed that remuneration would be paid—albeit with certain differences according to whether the *hoko* was for samurai families, merchant families, or farming communities. This could therefore be interpreted as "a transitional period" during which there was a "shift from relationships based on the subordinate status of workers, to employment relationships based on laws of obligations" (Maki 1977, 47). However, although status did not have the same implications in feudal society as it had during the *ritsuryo* period, differences in status still formed the foundation of employment relationships. The Tokugawa shogunate's institutional approach to *hoko* was to regard the relationship between the *hokonin* (servant) and their *shujin* (master) as a hierarchical relationship like that between a master and his retainer. Up until its fall, the shogunate maintained the framework that the *hoko* relationship could only be terminated by the master, on the premise that a *hokonin* should remain loyal toward their master, and this approach allowed the general perception of employment relationships as "master-retainer relationships" to firmly take root (Maki 1977, 47). It must be noted that the Tokugawa shogunate did adopt certain approaches that seem to suggest that the concept of protecting personal liberty was recognized to a certain extent, as it consistently enforced a strict ban on the slave trade, and also initial-

ly refused to allow *hoko* arrangements for a period limited to one year. However, neither of these provisions seems to involve the concept of protecting servants' rights or restricting overwork. The prohibition of the slave trade was due to fears that, as peasants were the source of supply for the slave trade, the trade could lead to the collapse of farming communities and a drain on the agricultural labor force (Maki 1977, 94), while the ban on *hoko* for short term periods was aimed at avoiding the potential instability in *hoko* relationships and thereby stabilizing the status-based social order (Maki 1977, 88).

As this section has described, employment in Japan prior to the Meiji Restoration (1868) started out as a system by which manpower was mobilized through the use of authority, and although it later shifted to a pseudo-modern system under which labor was provided on the basis of consensus and the payment of remunerations, it can be suggested that in reality the outcomes of such a system were the justification of exercising of authority over workers and strong administrative power based on status. While still lacking the institutional foundations required for labor relationships involving overwork and violations of workers' human rights to be recognized as unjust or illegal, the employment system in Japan throughout this period of its history can be surmised to have established the perception of employment relationships as "master-retainer relationships" as a universally-accepted view, at the same time encouraging workers to submit to such conditions through such factors as the payment of wages and the certain amount of paternalism that stemmed from such feudalistic master-retainer relationships.

2. The Situation before the Enactment of the Factory Act

Not long after the Meiji Restoration, a symbolic incident occurred in which Japan faced international criticism for the antiquated nature of its employment relationships—the earliest known incident of such criticism. This was the incident of the Peruvian cargo ship *María Luz* in 1872.

The *María Luz* entered the port of Yokohama for repairs on June 5, 1872. While it was there, one of 231 Chinese coolies onboard escaped to avoid the hard labor they were subject to, and was rescued by a British warship. As the British representatives determined that the *María Luz* was a "slave transport ship," the British consul to Japan made an appeal to the Japanese government to rescue the Chinese coolies. Foreign Minister Soejima Taneomi responded by decisively rescuing the Chinese, and the ship's captain was prosecuted at a specially-established court. The court permitted the ship to leave on the condition that it release the Chinese coolies, based on the grounds that the "immigration contract" under which the Chinese coolies were working was essentially a slave contract and thereby contrary to the laws of humanity. At the same time, the ship's captain's defense cited the Japanese custom by which women could be forced into prostitution (*shogi seido*) as an example that there were "far harsher slave contracts" that were considered valid in Japan. This highlighted the fact that Japan was not in the position to criticize the slave trade given that such prostitution was essentially a form of slavery, and the Japanese government had no choice

but to issue an act to emancipate *geisha* and prostitutes in October that year.

In reality, the emancipation act did not lead to the prohibition of prostitution or the abolition of the pleasure quarters, but only placed prostitutes in harsh circumstances under which they returned debts through prostitution (Maki 1977, 268). However, it is at least notable that it was possible for labor conducted in relationships between individuals to resemble slave labor, and that at this time there arose concrete examples of the fact that the first step to liberation from such circumstances was employment through a contract based on free will. On one hand, this represented the gradual materialization of the development from *hoko*, a power structure centered on master-retainer relationships, toward a modern legal system of employment based on contracts. On the other hand, it is undeniable that the framework of "contracts based on free will" in fact essentially legally justified the master-retainer relationships of *hoko*, and opened up the way for the spread of even harsher forms of heavy labor.

As the Meiji Period progressed, Japan's factory labor system was rapidly modernized amid the government's calls to "enrich the nation and strengthen the army," but before long the grave conditions of the forms of labor that had developed under such efforts were gradually brought to light.[3] Inhumanely harsh working conditions were widespread, including cases such as severe late-night work in spinning mills (Ministry of Agriculture and Commerce 1903, 1:46), employers forcing workers to stay by deducting "guarantee money" or "compulsory savings" from their wages (Ministry of Agriculture and Commerce 1903, 1:117), and long working hours (a 12 hour day was almost the shortest working day, and 16 to 18 hour days were considered a matter of course) (Ministry of Agriculture and Commerce 1903, 1:308). It is also well known that the factory girls (*joko*) working in the silk mills were confined in dormitories and had limited freedom even outside of work (Hosoi 1925, 164). Moreover, under Japan's legal system at the time these labor conditions were hardly ever recognized as illegal. It could be said that the modernization of the factory labor system also even diminished the little brakes that the paternalistic system of the feudal age had been able to place on working conditions, and in turn less institutional and social consideration was given to the situations in which workers were placed. It was therefore natural that it became urgently necessary for legislation to be established to address such working conditions in factories. This meant addressing the problem of what specific principles and content such an act should contain.

3. The Enactment of the Factory Act and Issues of Legal Regulation

Was the enactment of the Factory Act achieved in a form that incorporated principles and content that took health and safety, and freedom and human rights into consideration? To some extent, such a form was realized.

[3] The following descriptions are based on Ministry of Agriculture and Commerce (1903), Yokoyama (1899) and Hosoi (1925).

As the difficult conditions faced by factory workers began to come to light around the end of the nineteenth century—following developments such as the publication of a report *Shokko Jijo* (Ministry of Agriculture and Commerce 1903), the government body responsible for addressing labor issues—awareness of the necessity of a legal system for protecting workers gradually became more widespread. However, the actual work of enacting laws and regulations ran into difficulty. The Ministry of Agriculture and Commerce frequently prepared bills to protect factory workers and other workers, but both the financial and political circles were for the most part not ready to accept such proposals, and comprehensive laws and systems to protect workers were not enacted before the Russo-Japanese War (1904–1905). With the growing competitiveness of Japan's production system, which had started out as government enterprise and gradually shifted to private enterprise, extremely harsh labor for long hours without breaks and squalid working environments took root in the factories such as the mills that powered the silk-spinning industry, a powerful export industry, and recognition of the necessity to tackle such conditions, particularly from the point of view of hygiene and health, gradually began to develop. The Factory Bill was submitted to the Diet several times, but failed to get as far as deliberations, and ultimately it was not until 1911 that it was finally passed.[4] A discussion of its specific content is beyond the aims of this paper, but the distinctive nature of the Factory Act from the point of view of responses by legal systems regarding forms of labor was that its emphasis was on the contents that responded to appeals from industrial circles for the stable supply and maintenance of the labor force, rather than elements aimed at guaranteeing the personal interests of workers on the whole and ensuring "decent work" (work that meets human values and aspirations for quality of life and a dignified existence).

The regulations in the Factory Act that directly protected workers can be divided into guarantee of minimum age, the establishment of the concept of "protected factory workers," and limited industrial accident compensation. The minimum age prohibited taking on people under the age of 12, excluding cases of allowing people aged ten or over to continue work (Article 2, Paragraph 1). However, employers were permitted to employ people aged ten or over provided that they had permission from the authorities. Workers under 15 years of age and female workers were defined as "protected factory workers," and were prohibited from working more than 12 hours a day (Article 3), working late at night, namely, between 22:00 and 4:00 the following morning (Article 4), and engaging in dangerous or harmful work (Article 9). The act also established the provision that in principle workers should receive two days off per month and breaks in the working day (a 30 minute break for work lasting more than six hours, and a one hour break for work lasting more than ten hours) (Article 7). At the same time, it must also be noted that strong opposition from the textile industry led to the inclusion of a stay on the prohibition of late night work for the

[4] For information on the events leading up to the enactment of the Factory Act see Oka (1917, 59*ff*.).

first 15 years after the act came into effect, during which time two-team systems of day and night shifts were permitted (Article 5). To address the need for assistance in the case of illness or injury, provisions were also included to ensure that a certain amount of assistance would be provided by imperial ordinance in the event of work-related illness, injury, or death that was not due to the gross negligence of the factory worker (Article 15). These provisions themselves were insufficient based on current standards. Moreover, the number of workers to whom they actually applied was also limited, given that the act was based on the premise that it would only be applied to factories that normally employ 15 people or more, and that factories could be exempted from its application by imperial ordinance in the event that it was not deemed dangerous in terms of the nature of the operations.

As described above, it can be suggested that while the external conditions for the Factory Act to be enacted were in place, there was extremely strong resistance from financial circles, and the bill that was finally enacted as the culmination of a great amount of efforts was extremely limited in its capacity as a law to protect workers. It is also noted that its enactment was largely due to the initiative of bureaucrats from the Ministry of Agriculture and Commerce and scholars from organizations such as the Association for the Study of Social Policy (*Shakai Seisaku Gakkai*), as opposed to calls from labor movements, political movements, or other such action by workers themselves.[5] In that sense, it was natural that there were suggestions that the act was aimed not so much at protecting workers as preserving a labor force (Ishii and Hagisawa 1979, 19).[6]

On the other hand, we cannot overlook the fact that due to various factors—including the publication of and popular support received by *Joko Aishi* (The Pitiful History of Factory Girls) (Hosoi 1925) which followed on from "Conditions of Factory Workers" in presenting the real conditions faced by factory girls in the silk mills; the prosperity of the labor union movement; the ground that was gained by the proletarian parties; the popular democratic movement in the Taisho period (1912–26), and the influence of the Russian Revolution—the Factory Act was revised repeatedly and gradually furnished with provisions that could actually provide protection for workers. In addition to the expansion of its scope of application to factories employing ten or more factory workers, when the act came into effect in 1916, factory inspectors were assigned to factories nationwide to oversee its implementation, and working hours were also gradually shortened (in 1939 they were shortened

[5] The Ministry of Agriculture and Commerce published a report entitled *Shokko Jijo* (Conditions of factory workers) in 1903, and frequently drew up bills and sought to secure understanding from relevant parties, particularly the financial circles. Moreover, the Association for the Study of Social Policy supported the enactment and enforcement of the Factory Act in their responses to government inquiries (Reports from 1909, 1910 and 1916).

[6] In explanations of the Factory Bill, the government representative noted that the proportion of illness among factory operatives was extremely high in comparison with that of the average for general citizens, and even higher than that of "prisoners in jail," and went on to say that "if such circumstances are in fact the case, this constitutes an issue that is highly related to the military preparedness for the national defense of our country" (Records of the Imperial Japanese Diet, vol. 8, 207).

to a maximum of 12 hours for male adult workers). In addition to the Factory Act, the Mining Act, the Act on the Minimum Age of Industrial Workers, the Shops Act, the Workers' Accident Assistance Act, and other such acts each established provisions to protect workers. While many of these regulations were temporarily suspended due to the Second World War, on the whole the laws and systems to protect workers had been enriched to the extent that they would be able to make a significant impact once the Labor Standards Act was enacted in the postwar period.[7] Two key points of such prewar legislation that are noted for their links with the Labor Standards Act and the Labor Contract Act are firstly the system of factory inspectors (this was naturally a factor behind the establishment and smooth implementation of the system of labor standards inspectors), and secondly the enactment and notification system for rules of employment prescribed in Article 27-4 of the enforcement ordinance of revisions to the Factory Act in 1926 (this became an institutional guideline that encouraged the tendency to prioritize rules of employment in postwar labor relationships).

As described above, improvements were undoubtedly being made to the specific regulations that made up the provisions for protecting workers. However, on the whole Japan's labor laws and systems prior to the Second World War ultimately failed to express the principles of protecting workers' human rights or respecting their personal interests. There was also no sign of the influence of labor unions or the trends in labor movements opening the way for the development of laws to protect workers. Even in the case of specific provisions to protect workers—such as provisions for curbing long working hours, giving consideration to workers requiring protection, and aid in the case of industrial accidents—if such provisions have been developed under the agreement of industrial circles from the point of view of stably securing good quality manpower, the tendency to curb long working hours and violations of workers' personal interests is diminished as long as manpower can be secured. Moreover, efforts to secure the human rights and freedoms of individual workers in the workplace and to control violations of those rights and freedoms will be determined from the point of view of maintaining team work and securing productivity as opposed to respecting personal interests, and it is easy to expect that this trend will gather increasing strength if the power of the labor unions declines.

It is surmised that such developments significantly determined the way in which the laws and systems to protect workers would take shape when Japan's legal system was completely reset under the new constitution following the Second World War.

III. Issues in Regulations Established by Legislation to Protect Workers

In addition to provisions of general fundamental rights such as respect for basic human rights, prohibition of forced labor, and the right to the pursuit of happiness, the Constitution of Japan, which took effect in 1947, set out the guarantee of the right to a certain

[7] For more on these points see Watanabe (1996, 11*ff*.).

standard of living (Article 25) and provisions for the protection of workers, such as the right to work, the legal provision of working conditions, and the prohibition of child labor (Article 27) as direct rules of the constitution. For the most part the content of these provisions could be said to have been aimed at ensuring that respect for individuals—a concept that had not materialized before the Second World War—is also consistently applied to workers as another form of individual. However, there is significant reason to question whether or not this has actually been achieved in concrete terms, as is clear from the harsh handling of workers that continues even today on a certain scale. What are the factors behind or foundations of such a divergence between the principles of legislation and the reality?

Firstly, it is necessary to note the fact that the short period between the end of the Second World War and the enactment of the Labor Standards Act was covered with a provisional revival of the Factory Act. Namely, with Imperial Ordinance No. 600, "Annulment of Wartime Exemptions to the Factory Act" and Imperial Ordinance No. 601, "Annulment of the Factory Workplace Management Ordinance, etc.," of October 24, 1945, the government abolished the special exceptions that had been implemented in the wartime to relax the content of the Factory Act, and adopted the makeshift measure of temporarily reviving the Factory Act, Mining Act, and the Workers' Accident Assistance Act as a stopgap until the enforcement of the Labor Standards Act (Watanabe 1996, 12). It is particularly noted that the work of the labor inspector system, which had continued to the smallest detail even during the war, was once again reviewed as part of the revival of the Factory Act, and before long was renewed as the system of labor standards inspectors. As is clear from prior research (Watanabe 1996, 13), while Japanese representatives were not able to guide the development of the Labor Union Act, they were to a considerable extent able to shape the Labor Standards Act, despite being under the guidance of GHQ. On one hand, this allowed them to construct rules that were compatible to the labor relations that actually developed along with the circumstances faced by Japan. On the other, it also meant that the limitations and inconsistencies that were intrinsic to the existing laws and systems for protecting workers remained in the new act.

For instance, the GHQ Advisory Committee on Labor called upon the Japanese representatives to consider a succession of points, in which the committee suggested that it was questionable that bonuses be excluded from average wages, and recommended that deductions from wages should be strictly regulated and that it should be mandatory to ensure that wages after deduction were sufficient to cover costs of living. However, many of these points were not accepted as they were. Instead, they were adjusted by the Japanese representatives and settled in a form that matched the trends in the economic environment and labor market at the time (Watanabe 1998, 60).[8] On the other hand, the Labor Standards Act was also devised under firm links with the administration of the labor standards inspection

[8] For more on the specific course of events such as the detailed content of GHQ's demands and the Japanese government's responses, see Nakakubo (1998, 60*ff.*).

system. The civil validity of labor contracts was left up to the provisions of the Civil Code—apart from the application of the minimum standards set out by the Labor Standards Act to contracts that fail to meet those standards—and no provisions whatsoever were established regarding the conditions required for the validity and legal consequences of hiring, reassignment, secondment, disciplinary action, or dismissal, and other such practices. Moreover, as the prohibition of discrimination was established as a provision entailing penalties, no provisions were set out regarding compensation for damage for, or the invalidity of juristic action against, discrimination on the grounds of sex, creed, or other factors. Furthermore, in the period of rapid economic growth that followed the practice of long-term employment and internal labor markets took root, and coupled with the principle of treating one's company as one's family, the connections between companies and their employees developed into strong human relationships. Consequently, on the one hand it became the norm for companies to provide benefits and limit the number of dismissals, while on the other, unique power structures that differ from normal civil society became widespread. This in turn generated a tendency for marked neglect of workers' personal interests and rights to protect those interests, and the structures of the Labor Standards Act and related laws were almost powerless against this.

Furthermore, concurrent with the enactment of the Labor Standards Act, the Industrial Accident Insurance Act was also enacted to officially guarantee compensation in the event of industrial accidents. The enactment of the Employment Security Act, the Minimum Wage Act, the Industrial Safety and Health Act, and other such laws that also followed undoubtedly allowed for fine-tuned responses that appropriately addressed the enhancement of industrial structures, the diversification of forms of employment, and other such developments, at least in the fields in which it was possible for government inspection, guidance and other such intervention to function.

As described above, even under the application of the Labor Standards Act and other acts established in the postwar period, the legal systems that have covered the protection and support of workers since the Meiji Period remained the same in the fact that they involved penalties, advice, and guidance as tools for enforcement, with a focus on responses centered on administrative supervision. It is undeniable that until the 1970s the labor unions held a certain extent of power despite this and supplemented and thereby supported the legal system for the protection of the rights and benefits of individual workers. However, following the two oil crises and other such developments, suggestions arose that Japan was suffering from "advanced nations' disease"—the adverse effects suffered by modern industrial societies such as the UK—and the labor movement began to decline, in turn highlighting the lack of substance of the measures to overcome the issues faced by workers in the workplace.

IV. Methods of Regulating Illegal Labor

1. The Labor Standards Act and Penalties and Administrative Supervision

How are the historical developments described above specifically reflecting themselves upon the state of illegal labor and responses to it within current labor laws and systems?

Firstly, as noted in the introduction to this paper, when the concept of illegal labor is limited to cases in which workers are illegally forced to engage in harsh labor that can undermine physical and mental health and safety, the most typical examples of such illegal labor practices in Japan at present are the normalization of long working hours, work late at night and on prescribed days off, as well as bullying, sexual harassment, "power harassment" (using one's authority to harass subordinates), and other repeated violations of personal interests in labor relationships. The legal tools that are potentially available for suppressing and offering aid in response to such situations are supervision and crackdown systems on the basis of the Labor Standards Act and related laws, as well as civil measures based on civil laws and regulations such as the Labor Contract Act.

The structure of the Labor Standards Act covers the elements that constitute criminal conduct in each article of the act, encourages employers that have actually committed violations to make corrections based on guidance and recommendations, etc. from labor standards inspectors, and allows for employers to be turned over to the public prosecutor's office in the case of malicious intent.[9] If we take working hours as an example, the maximum number of working hours is 40 hours per week, eight hours per day, and work on prescribed days off is also prohibited in principle. The system allows for more relaxed terms regarding what constitutes direct violations of the act due to the normalization of overtime work or work on holidays under labor-management agreements (agreements on overtime and holiday work based on Article 36 of the Labor Standards Act, also known as "Article 36 Agreements"), but under Article 37 (Paragraphs 1–4) employers are obliged to ensure that workers receive extra pay for any work that falls under either overtime, work on days off, or work at night—or risk facing penalties—and there is sufficient potential for cracking down on violations of this article. As the normalization of work in excess of legally prescribed working hours or late at night or on days off without extra pay truly undermines physical and mental health, this should be an effective means of protecting workers from being forced to engage in harsh labor.

However, even if violations of Article 37 are in fact prevalent, such violations are not being prevented or curbed through responses that exercise the functions of the labor standards inspector system. Two key issues can be highlighted as reasons for this. Firstly, across Japan there are only 321 labor standards inspection offices and only just under 3,000 in-

[9] However, for a criminal violation of the Labor Standards Act to actually be established it is necessary for deliberate intent to be ascertained when determining illegality.

spectors with more than 52 million workers and more than 4 million places of business under their jurisdiction. Given the limits on resources, it is clear that there are extremely large physical restrictions on the ability of labor standards inspectors to crack down on illegal labor. It is therefore necessary for them to attach orders of priority to the cases that need to be cracked down on, and, even in cases involving violations that are equal in terms of the prescriptions of the Labor Standards Act, to respond first to the case that involves higher levels of actual maliciousness. Moreover, considering the need to ensure that such crackdowns are implemented efficiently, as targeting companies of and above a certain scale rather than exposing the violations of small and medium sized companies clearly provides more effective deterrents, even companies where violations are liable to occur are not always subject to having such violations exposed. In other words, in the current circumstances it cannot be expected that the system can effectively crack down on and demonstrate its capacity to curb normalized illegal labor.

Secondly, the premise for violations of Article 37 to be established is that the same article can be applied to the relevant worker, and the types of workers who are said to work too much are often white collar workers who have a certain amount of flexibility to determine their own working hours and how they conduct their work. Companies therefore treat such workers as "persons in positions of supervision or management" ("supervisors and managers") as defined under Article 41 (Item 2) of the Labor Standards Act, allowing companies to refuse requests for the payment of extra pay on the grounds that such employees are excluded from the provisions regarding working hours under the terms of said article. Even if the labor standards inspector begins the process of exposing a company, if it is necessary to determine whether the relevant worker falls under the "supervisors and managers" category as a premise for this, this comes under the jurisdiction of the courts, and is no longer under the scope of administrative supervision. Moreover, even if the employer does not fall under the "supervisors and managers" category, in the case of white-collar work there are many times that do not clearly qualify as working hours, and there are a number of cases in which it is extremely difficult to determine whether or not the employee actually engaged in overtime work when such time is included in calculations. As labor standards inspection offices and inspectors also do not have the authority to determine what classifies as working hours, they lack the premise for exposure if it is not made clear. In other words, it can be said that the labor standards inspection system is operating under a legal structure that does not allow it to sufficiently demonstrate its functions as a tool for protecting workers from long working hours and late night work, etc. While there is no end to the number of lawsuits demanding extra pay on the grounds of Article 37 of the Labor Standards Act, there are next to no precedents of violations being exposed by a labor standards inspector and a court disputing whether or not a crime is established under Article 37, and also almost no precedents of employers actually having penalties imposed upon them. In addition to the fact that it is difficult to take cases down the route of criminal procedures—as crimes under the Labor Standards Act are in principle intentional crimes, are difficult to prosecute as

criminal cases, and most cases are dealt with fines—it is also undeniable that the structural issues raised above are significantly diminishing the intrinsic functions of administrative supervision.

The same issues arise in applying the other provisions of the Labor Standards Act. If we look up the existing judicial precedents related to the various provisions of the Labor Standards Act, particularly in the last fifty years almost all cases have been civil cases, and there have been no cases in which the administrative supervision of labor standards seeking to "crack down on illegal labor" is reflected. There are many civil cases in which long working hours that far exceed the content of an "Article 36 Agreement" are approved, and cases in which workers have no choice but to work on days off or late at night are prominent, but in spite of this, labor standards inspectors have not exercised their functions for ensuring that employers engaging in illegal labor practices receive punishment.

2. The Functions of the Equal Opportunity Act and the Child Care and Family Care Leave Act

On the other hand, illegal labor also encompasses potential issues that accompany the extension of the concept of human rights, and there are also many issues with regard to the legal responses to such issues.

The discriminatory treatment of workers based on their nationality, creed or social status is also prohibited in labor contract relationships (Labor Standards Act, Article 3), and equal wages are guaranteed for both male and female workers (Labor Standards Act, Article 4). However, given that, as described above, it is not possible at the level of the Labor Standards Act to sufficiently respond to illegal labor that is in violation of such regulations, at present various other laws are adding certain regulations on discrimination or different treatment related to the worker's sex, whether or not the worker has a disability, old age, or form of employment. Gaps in treatment of workers due to discrimination or differential treatment without reasonable grounds inevitably come in a variety of different forms, and are also varied in extent and scale. There are also a significant number of cases in which it is difficult to ascertain whether or not the case falls under the type of "illegal labor" that is addressed in this paper. However, at the least, there is no question that equal treatment for workers is a principle that forms the basis of human rights, and that forms of employment that violate such rights may fall under the category of illegal labor.

In Japan, the practice of long-term employment and seniority-based wages and personnel systems, which took root in the period of rapid economic growth, led to the establishment of the category known as "full-time housewives," and also to the development of clear disparities in terms of labor conditions and personnel treatment between males in their twenties to early sixties and other groups (women, older people, and minors) in companies, as well as highly severe differences between the treatment of regular employees and non-regular workers. It can be said that the certain amount of "success" of such "Japanese style employment practices," combined with the ubiquitous trend of strong and cooperative

labor-management relations between companies and company-based unions, has led to increased discrimination in Japanese business society on the basis of sex, health, age, and form of employment, and developed the conditions by which workers accept such circumstances.

However, the international trend toward seeking to abolish discriminative treatment on all fronts, and the development of various factors such as women gaining high levels of education and pursuing professional careers, the increasing use of electrical appliances for housework, the progressive decrease in the birthrate and the development of nuclear families—factors that arose due to the establishment of a mature society in Japan following its achievement of high economic growth—encouraged focus to first be placed on establishing a legal system aimed at abolishing gender discrimination in the workplace. In 1985, the Act on Securing Equal Opportunity and Treatment between Men and Women in Employment (Equal Opportunity Act) was enacted as a revision of the Working Women's Welfare Act. As the objective of this paper is to investigate the legal system and issues regarding illegal labor, we will not look at a detailed account of the contents of the Equal Opportunity Act and its later developments, but it is well known that the act underwent a process by which it was revised into effective content, to the extent that it could ensure a marked decrease in blatant gender discrimination, and, at the least, types of illegal labor that involve discriminatory treatment based on sex are on the decline.

The questions that need to be addressed are in what way the Equal Opportunity Act seeks to eliminate labor that is in violation of the relevant regulations—as has not been achieved by the Labor Standards Act—and if such approaches are effective, then why. Here the key point is the division of functions and the difference in effect between "hard law" and "soft law." If we distinguish the nature of each of the types on the basis of their functions, "hard law" is mainly concerned with using penalties and civil compulsory provisions, etc. to correct violations, and has its effectiveness secured by the court, while in contrast "soft law" is mainly focused on providing measures to present administrative guidance and standards or models regarding practical legal effects, and encouraging employers to conform with such standards by repeatedly noting employers' "obligation to make a sincere effort" (Araki 2004, 19*ff*.). While the typical forms of the conventional legal system have largely been directed toward hard law, there are suggestions that there are now an increasing number of fields in which it is effective to adopt the approaches of soft law. Acts such as the Equal Opportunity Act, the Child Care and Family Care Leave Act, and the Part-Time Employment Act are thought to be strong precedents in this trend toward soft law.

The initial Employment Opportunity Act did include frequent mention of employers' "obligation to make a sincere effort," and while the legal effectivity of this was questioned, it did in fact encourage the improvement of personnel management systems in companies, and understanding of gender equality in the workplace became more the norm as the promotion of women saw a certain amount of progress. These developments in turn led to the dramatic progress, expansion and increased depth of the Employment Opportunity Act that

followed. In issues such as work-life balance and information management—areas in which it is necessary to apply new values—it is also clear that the guiding approaches of soft law are better adapted than the methods of hard law, in which courts seek to draw clear-cut decisions between right and wrong.

However, in rectifying the illegal labor that directly violates the human rights, health, and safety of workers, it is essential for social rules that completely refuse to accept such illegal labor to be consistently upheld, and it is undeniable that the functions of hard law are still beneficial as a method for doing so. While the correction of illegal labor is a field in which the benefits of soft law are recognized in terms of the spread of new senses of values, there are in fact also a considerable number of cases in which a court decision which establishes a clear recognition of illegality should be utilized, and also many situations in which administrative functions are effective. For instance, cases where employers intentionally develop human resources management that makes it impossible for workers to take child care or family care leave, and said workers are faced with the choice of either pushing themselves to continue working with hardly any leave, or having no choice but to leave their jobs, should be clearly dealt with as illegal labor practices—in addition to demanding compensation for damage, it is necessary to confirm the suspension of validity or invalidity of the rules of employment, etc. in accordance with the Labor Contract Act as the basis for taking measures, to apply government supervision and crackdowns, and ultimately consider penalties based on defined requisites. This is not only because ensuring that workers are able to take child care and family care leave is necessary in order to respect their private lives, but also because such care contributes to supporting Japanese society, given its declining birth rate and aging population, and any measures by employers or companies that seek to obstruct the provision of such leave should be strictly abolished.

As this suggests, even in fields in which situations should by nature be dealt with using the flexible guidance of administrative bodies, in cases in which the conduct of employers violates workers' fundamental rights, such as their human rights and health, forceful measures need to be considered as responses to illegal labor.

3. Regulations through the Labor Contract Act

Let us now consider how responses to illegal labor are being achieved, and how they should be achieved, with regard to the field of labor contracts for which the Labor Contract Act should be applied.

In principle, the means of addressing illegal situations or illegal conduct in the field of civil law are such that in the case of contracts it is possible to dissolve or terminate the contract with the other party and receive compensation for damage, and that in the case of other legal conduct, it is possible to receive compensation for damage for illegal conduct. In both cases, the fundamental structure is being able to confirm invalidity. In response to actual conduct, damage compensation for illegal conduct is possible.

The same is true for labor contracts. After providing definitions of the parties of a la-

bor contract, namely, workers and employers, from Article 3 onward the Labor Contract Act prescribes the principles that apply to labor contracts, and also sets out the minimum provisions regarding the establishment, development, and termination of labor contracts. It does not differ from the field of general civil law in terms of the fact that in the event of violations of these provisions, confirmation of invalidity, denial of designated validity, and damage compensation, etc. may be recognized. However, do such principles also have completely the same functions in the case of illegal labor that violates workers' human rights, and merely influence the amount of damage compensation and factors for determining confirmation of invalidity?

We should first note that of the types of cases that have become a problem as illegal labor in Japan in recent years, cases involving conduct that violates personal interests in the workplace, such as bullying, power harassment, and sexual harassment, particularly encompass issues regarding the state of civil responsibility. Of course, in many cases such conduct is coupled with the aforementioned labor such as labor for long working hours and labor involving forced restrictions on freedom, but in a considerable number of cases it is not dealt with using the penalties of the Labor Standards Act, etc. or government supervision or crackdown provisions, and responses are focused on civil compensation for damage. As a result, from the point of view of the operation and issues of the legal system to address illegal labor, it is important to confirm how the Labor Contract Act and other general civil laws and regulations are serving their functions, or how they can serve their functions in response to bullying and harassment that leads to the violation of personal interests.

Looking at relevant court precedents concerning workplace bullying and harassment, etc., in many of the cases it has been approved that compensation for damage should be paid by the direct perpetrator on the grounds of illegal conduct under Article 709 of the Civil Code, and that compensation should be paid by the employer (the company) on the grounds of the liability of employers under Article 715 or liability for nonfulfillment of obligations under Article 415. One symbolic court precedent, in which the wording of an answerphone message (in which the victim was aggressively told to hand in his resignation and effectively threatened) was recognized as illegal power harassment,[10] states that with regard to the criteria required for power harassment to be illegal conduct, the case constitutes illegal conduct under Article 709 of the Civil Code as violation of the victim's personal rights only in the case that it is assessed that in the pursuit of their work duties a supervisor, etc. overstepped or abused the status or authority afforded to them in their role in handling their subordinates, and engaged in conduct that placed tangible or intangible pressure significantly beyond the scope of what a reasonable person would tolerate from an objective point of view in accordance with socially-accepted ideas. It then sets out a specific judgement in line with these criteria. As a result, other types of harassment claimed by the victim, the worker, in this case—such as other inappropriate messages on the victim's answer phone, or

[10] The Windsor Hotels International Case (Tokyo District Court, Mar. 9, 2012), 1050 *Rohan* 68.

the fact that the victim was forced to consume alcohol—were not recognized as illegal conduct. Here the criteria for processing cases of the inappropriate pressure placed upon workers through the hierarchies in corporate organizations are designated within the framework of general civil law, and the distinctive characteristics of labor relationships are not reflected on decisions.

Moreover, in one precedent related to the legal responsibility of an employer (in this case, the employing company) in bullying and harassment,[11] an employer that criticized, demanded explanations from, and engaged in other conduct to influence a worker with regard to union activities, continuing persistently and until late at night, to the extent that the worker developed a mental disorder, was recognized to be subject to the "liability of employers" set out in Article 715 of the Civil Code, and was ordered to pay compensation for damage. However, the court rejected the plaintiff's claim that the employer had violated their "duty to ensure the health of workers," without particularly addressing the significance or requisites of said duty. In another case in which it was recognized that the victim had been subject to illegal sexual harassment, and the company was ordered to pay compensation for damage on the grounds of the liability of employers,[12] although the court recognized the liability of employers under Article 715, it did not touch on responsibility under the Labor Contract Act. In contrast, there are still a remarkable number of cases in which bullying and harassment is recognized[13] in cases of workers seeking damage compensation for "violations of the duty to ensure safety," which was recognized prior to the enactment of Article 5 of Labor Contract Act, but all cases simply determine whether or not there is duty to ensure safety or whether or not that duty was violated, and there are few cases in which the grounds are sought in Article 5 of Labor Contract Act.

As noted above, it can be said that in the present situation courts almost only process cases regarding conduct that violates workers' personal interests using the framework of general civil law, and the Labor Contract Act is hardly used at all.

In parallel with Paragraphs 2 and 3 of Article 1 of the Civil Code, Paragraphs 4 and 5 of Article 3 of the Labor Contract Act establish the principle of good faith and provisions on the abuse of rights with regard to labor contracts. The Labor Contract Act then goes on to prescribe the "duty to ensure safety" (Article 5) as an obligation under positive law. As the Labor Contract Act is regarded as a special civil law, the principle of good faith, abuse of rights, and duty to ensure safety designated in the act should be in line with the unique legal nature of labor contract relationships, unlike the content that is recognized under the comprehensive provisions set out in the general articles and general rules on obligations of the

[11] The Kenshinkai Medical Corporation Case (Osaka District Court, Apr. 13, 2012), 1053 *Rohan* 24.

[12] Company C Case (Osaka District Court, Nov. 29, 2012), 1068 *Rohan* 59.

[13] Recent cases include the Case of Honda Cars Corporation A (Osaka District Court, Dec. 10, 2013; 1089 *Rohan* 82) and the Case of Social Welfare Corporation Y (Okayama District Court, Apr. 23, 2014; to be included in law reports).

Civil Code. For instance, the aforementioned duty to ensure the health of workers may also be established as part of the duty to ensure safety in Article 5, but in fact it is also sufficiently possible for it to be established as the materialization of "the principle of good faith in labor contracts" in Paragraph 4 of Article 3. If we make effective use of the principle of good faith and duty to ensure safety under the Labor Contract Act and also combine the fact that Article 1 of the Labor Contract Act cites "protection of workers" as one of the objectives of the act, illegal conduct that clearly violates workers' personal interests, such as persistent bullying or harassment should naturally be dealt with in a special manner on the basis of the Labor Contract Act. To be specific, it is conceivable that employers' obligations such as the duty to ensure a safe and comfortable workplace environment and respect for personal interests can be derived from the principle of good faith of Paragraph 4 of Article 3 of the Labor Contract Act, and that in response to violations of these obligations an amount of compensation that is sufficient to potentially act as a deterrent could be approved on the basis of the principle of protecting workers under the Labor Contract Act. It is of course undeniable that, as is clear from the recent trends in judicial precedents, particularly those concerning industrial accidents, there are cases in which factors on the side of the worker are taken into consideration, and decreases may in fact be made to the amount of compensation based on factors attributable to the worker and on the basis of comparative negligence. However, if such adjustments are made, it is also natural to reflect the objectives of the Labor Contract Act and the make-up of employers' duties on the amount of compensation. This point is an issue to be addressed in the future, but the fact that the Labor Contract Act—which was enacted as a special law of the Civil Code with the protection of workers as one of its objectives—does not have any effect against the type of illegal labor in which workers are actually subject to severe violations of their human rights in the course of their duties in the workplace highlights the essential need to review the Labor Contract Act.

V. Views on Future Approaches

Finally, I would like to conclude by giving a few views on future approaches for the state of the legal system with regard to illegal labor in Japan.

Firstly, the administration's systems for supervising and cracking down on illegal labor—which stemmed from the system of factory inspectors established in the Meiji Period and were reborn into the system of labor standards inspectors under the Labor Standards Act established as part of the post Second World War labor reform—have not been able to fulfil their anticipated role, and require radical reform. It is difficult to anticipate that responses to tackle labor practices that violate regulations will develop effectively given not only that the number and scale of the labor standards inspection offices and the number of labor standards inspectors are completely insufficient in proportion to the huge scale of the jurisdictions they oversee, but also that the regulations of the Labor Standards Act are in some aspects focused on penalties. However, as is clear from the recent prevalence of "black com-

panies," it is still essential to have a labor standards inspection system that is able to use forceful measures such as arrests and house searches, and such a system is an indispensable legal tool for eradicating malicious illegal labor. At the least, labor standards inspection offices should be increased to several times their current number and a dramatic increase should also be made in the number of inspectors.

Secondly, soft law certainly has advantages that are effective in responding to illegal labor by rectifying discrimination and achieving work-life balance, but its functions should not be overemphasized. While the methods of soft law are functional in the initial stages of establishing new rights and principles, it is necessary to effectively combine them with hard law methods, in order to avoid giving rise to the tendency for those rights and principles not to develop any further.

Thirdly, responses to illegal labor through civil measures represented by the Labor Contract Act can hardly be said to be functioning sufficiently, which may also in part be due to the fact that less than a decade has passed since its enactment. In addition to utilizing Article 3 (Paragraph 4) and Article 5 of the Labor Contract Act, in the process of revising the act in the future it will also be necessary to try to devise legislative responses regarding civil responses aimed at tackling breaches of personal interests and other such violations.

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Motivations for Obeying and Breaking the Law: A Preliminary Study Focused on Labor Law and the Role of Non-Instrumental Motivations

Takashi Iida
University of Tokyo

The purpose of this paper is to provide for a systematic analysis of illegal behavior in the area of labor and employment law, by drawing on insights from other fields of social science. This paper begins by setting out the various notions of our motivations for obeying the law, and classifies these motivations into two categories: instrumental motivations and non-instrumental motivations. It also establishes that although there is a tendency to pay too much attention to instrumental motivations when discussing desirable legal systems and policies, non-instrumental motivations actually play significant roles in our decision-making and behavior. We then examine conditions under which people tend to engage in illegal behavior, taking into consideration the characteristics of the situations that labor and employment law covers. "Altruistic illegal behavior" is particularly common in the workplace, and it is important to address how to deter or control such behavior. This paper concludes by suggesting that in order to prevent the vicious circle of violations and clampdowns, it is necessary to adopt legal systems and policies that appropriately harness our non-instrumental motivations, rather than attempting to rely on direct sanctions alone.

I. Introduction

The process of enacting and enforcing legal regulations generates new cases of behavior and situations that are judged to be "illegal." While one of the tasks of this paper is to analyze why illegal labor practices persistently occur, it is difficult to say whether a lack of decrease in illegal labor practices should be regarded as a negative or a positive trend.

To put it in extreme terms, if no legal regulations were enacted or enforced, there would be no "illegal" labor. However, it is hardly beneficial to have "zero" illegal labor in such a sense. Moreover, the fact that illegal behavior and situations are coming to light is evidence that the system for cracking down on such practices is functioning to a considerable extent. In the field of criminal law, it is thought that a complete absence of illegal behavior indicates that a society is in fact fraught with problems.

In the case of labor and employment law (particularly the Labor Standards Act) the circumstances are somewhat different, and it is not sufficient to simply apply the same arguments as those used when considering criminal law. It is particularly important to note that while in the field of criminal law cases of illegal behavior (crimes) are seen as anomalies, there are those who regard violations of labor and employment law as practically the norm.

This is well demonstrated by evidence such as the results of the on-site investigation

conducted by the Japanese Ministry of Health, Labour and Welfare (MHLW)[1]—which revealed that a large majority of companies are violating the law—and the efforts to provide guidance and supervision that were subsequently conducted,[2] as well as the dismissive statements that some management executives have made regarding the Labor Standards Act.

There are some specific figures that reveal the fact that illegal behavior is deeply ingrained in workplaces. For instance, a common method used to estimate the number of hours of unpaid labor is to compare the working hours recorded in the Japanese Ministry of Internal Affairs and Communications' Labour Force Survey with the working hours recorded in the MHLW's Monthly Labour Survey. As the Labour Force Survey collects responses from workers, while the Monthly Labour Survey collects responses from companies and business establishments (reports of the overtime hours for which overtime pay was paid), the gap between the two is used as a rough indicator of the number of hours of unpaid labor.[3]

It has been noted that the working hours recorded in the Labour Force Survey and those recorded in the Monthly Labour Survey differ by around 300–350 hours per year for several decades (Morioka 2013).[4] The MHLW responded in 2001 by formulating a set of standards that employers should follow in order to properly ascertain working hours, and followed this in 2003 by publishing a set of guidelines regarding measures that should be taken toward eliminating unpaid overtime, but these steps failed to have a notable effect. People's attitudes toward working unpaid overtime—commonly known as *sabisu zangyo* (literally "service overtime"; "service" referring to something provided for free)—do not change so easily, and employers also devise various tricks for slipping through the nets of the law or evading the eyes of the authorities. Examples of this include the abuse of the "deemed working hours systems" (*minashi rodojikansei*; systems by which workers are deemed to have worked a predetermined set of working hours regardless of the hours they actually work, such as the "discretionary work system" [*sairyo rodosei*]) or the abuse of the system of assigning workers to positions of supervision or management (positions to which Labor Standards Act provisions regarding working hours, etc. are not applied).

Here it is important to note that while the above examples of abuse of labor systems can be judged to be effectively illegal in the sense that they entail unpaid labor, some of them are not classed as illegal behavior according to formal criteria. In other words, such abuses of labor are often cases of "law evasion"—cases in which people take advantage of

[1] See press release materials available on the MHLW website. http://www.mhlw.go.jp/stf/houdou/0000032425.html (Japanese only).

[2] See MHLW website materials demonstrating the actual state of overtime work in 2015. http://www.mhlw.go.jp/stf/houdou/0000115620.html (Japanese only).

[3] This method is not without its problems, because the Labour Force Survey and the Monthly Labour Survey not only survey different subjects, but also differ in aspects such as their sampling methods and the definitions of the items surveyed. Ogura and Sakaguchi (2004) provide details on the features of and differences between the two surveys.

[4] This is noted in an article from the Tokyo Shimbun Newspaper, June 18, 2014.

the ambiguities and deficiencies of the systems to secure the same results as would be achieved through illegal behavior.

It is such law evasion—rather than illegal behavior that openly violates the law—that is forcing workers into extremely difficult circumstances. The majority of problematic behavior by employers—such as nonpayment of wages, "fraudulent subcontracting" (*giso ukeoi*; the practice of employing temporary agency workers, etc. under subcontracting or outsourcing agreements to avoid having to apply the legal regulations in place to protect such workers), and the use of "banishment rooms" (*oidashibeya*; departments where employees are given menial, mind-numbing tasks or unachievable assignments in an attempt to force them to leave the company voluntarily)—is being pursued within the gray area between what is legal and what is not. Therefore if action is only taken to tackle behavior that crosses the line into illegality, it will not be possible to improve the situations faced by workers, and the authorities may face an endless process of catching one perpetrator only for another to quickly appear elsewhere.

The aim of this paper is to draw on research from other fields of social science to provide insights into the reasons why law evasion and illegal behavior occur. The following section provides an overview of the kinds of arguments that are being set out regarding compliance with the law, and outlines people's motivations for obeying the law. Section III then describes the conditions in which labor and employment-related laws and regulations tend to be broken, and Section IV sets out a few points that may be of help in guiding future approaches.

II. Overview of Discussions regarding Compliance with the Law

1. Reexamining the "Prevalence of Violations"

In the previous section I stated that "illegal behavior is deeply ingrained in workplaces," but this is not to suggest that illegal behavior is *consistently* widespread. Naturally, while there are people who break the law, there are those who obey it.

The MHLW investigation touched on in the previous section was carried out as part of a month-long inspection campaign in September 2013 aimed principally at addressing potential cases of employees being subjected to overwork. The investigation found violations of the Labor Standards Act at 4,189 of the 5,111 workplaces investigated—namely, 82.0% of the workplaces investigated. As it was an on-site investigation specifically targeted at workplaces suspected of being "black companies" (*burakku kigyo*),[5] this is thought to be an exaggerated estimate of the percentage of violating companies. That being said, it is a highly beneficial indicator of how much illegal labor that could be detected upon inspection

[5] The term "black companies" refers to companies that "use up" workers, employing workers (particularly young workers) on low wages and forcing them to work long hours, etc. In its investigation, the MHLW describes such companies as "companies suspected of using young people as if they were expendable commodities."

is being left ungoverned.

The main types of violations brought to light by the investigation were "illegal overtime work" (43.8%), "unpaid overtime" (23.9%), "failure to properly ascertain working hours" (23.6%) and "insufficient measures to prevent health hazards caused by overwork" (21.9%).

In contrast, the content of the free legal consultations provided by the MHLW in the same month gives a considerably different impression to the investigation results. The most common topic of consultation was "unpaid overtime" (53.6%), followed by "long working hours/overwork" (39.8%), and "power harassment (a senior employee taking advantage of their authority in order to harass subordinates)" (15.6%). There were also consultations on topics such as "dismissal/termination of employment contracts" and "bullying in the workplace."

The following two points can be surmised from the investigation results alone. Firstly, there are a considerable number of cases of illegal labor that could be detected upon inspection but are being left unaddressed. The occurrence of illegal labor is partially due to the low probability of it being exposed, and it would surely be possible to decrease the amount of illegal labor to a certain extent by increasing the number of labor standards inspectors and thereby allowing for greater monitoring and more crackdowns.[6]

Secondly, it seems impossible to decrease the amount of illegal labor to an ideal level, even with an increase in the number of labor standards inspectors. As illegal labor includes both types that are likely to be brought to light and those that are not, the extent to which labor standards inspectors are able to defend workers against illegal labor practices is extremely narrowly limited from a legal point of view (Konno 2013). For instance, the various forms of harassment are types of illegal labor that are unlikely to surface, and there is very little that a labor standards inspector is able to do even in the event that a case of harassment is revealed. To begin with, nothing can be done without sufficient evidence.

In addition to the fact that illegal labor is unlikely to be exposed, labor and employment law has very little capacity to coerce compliance in comparison with criminal law. Given the low likelihood of illegal labor being exposed and the weakness of the potential penalties, it would hardly be surprising if illegal labor practices were far more prevalent.

The results of the MHLW investigation explained above can also be interpreted as indicating that "even among companies that are strongly suspected of being 'black companies,' around 20% of companies are following the law precisely." Even the majority of the employers that were violating the law are not completely ignoring it. Naturally there are cases of malicious intent, but nearly all violations were cases such as partially falsifying figures, or failing to conduct the measures that are legally required due to negligence or lack

[6] The number of labor standards inspectors in Japan was 3,181 as of FY 2012. This amounted to one labor standards inspector for every 16,400 workers, which is a large number of workers per inspector even by international standards; Japan is far from the International Labour Organization's benchmark of one inspector per 10,000 workers.

of understanding.

The fact that illegal labor is prevalent does not necessarily mean that "the majority of people will break the law whenever they have the chance." Employers surely have an enormous number of opportunities to violate the law. They often come across opportunities in which it is beneficial to break the law, and in which there is a sufficiently low probability of the violation being detected. However, only a low percentage of employers seek to use every opportunity to violate the law. Many employers try to obey the Labor Standards Act in one way or another. For this very reason, employers devise and adopt methods that evade the law but remain just within the realm of legality.

It is therefore necessary to start by considering the question of why people try to obey the law, and then draw on these insights to consider under what kinds of conditions people tend to engage in illegal behavior. This approach will surely be a more effective means of envisaging possible solutions than seeking to develop strategies that hedge employers and workers in with laws.

2. Instrumental Motivations: Compliance in Order to Avoid Sanctions

We do in fact have surprisingly little understanding of the kinds of cases in which people obey the law and the kinds of cases in which they break it. For a number of years there has been significant activity in both academic and practical settings to pursue the question of what motivations are behind people's decisions to obey or violate the law. However, these discussions have not produced a common consensus, and there is a marked divergence between academic views and actual policies.

The simplest and most firmly-rooted theory regarding why people obey the law suggests that people do so because of its capacity to coerce. In this case, "the capacity to coerce" refers to the use of penalties and other such forceful measures by state organs or government bodies to ensure that the law is implemented. This includes imposing criminal penalties (such as imprisonment or pecuniary penalties), seeking compensation for damage, and utilizing government penalties and warnings of penalties for non-execution of duty under administrative law.

In other words, this is the concept that law is a tool for invoking sanctions and that people obey the law in order to avoid being subject to sanctions. This concept is underlined by the "rational choice model," which suggests that people choose to engage in illegal behavior when the benefits of illegal behavior exceed the costs (the severity of penalties multiplied by the likelihood of being exposed).

The law does not only influence people's behavior through direct sanctions. "Indirect sanctions" invoked by society also play an important role. There are at least two ways of how the power of society can help the law to influence people's behavior. Firstly, if we engage in behavior that violates the law, we may be looked upon accusingly by others, and our social recognition or reputation may be adversely affected. If a drop in an employer's recognition or reputation will have an impact on their interests, they will surely refrain from

pursuing illegal behavior.

Secondly, as changes in people's awareness of rights have led them to strongly assert their own rights, there is the possibility that employers will be forced to take some kind of measures, even when they have no legal obligation to do so.

Within the field of labor and employment law, indirect sanctions are playing a particularly significant role in the area of harassment. While it is difficult to regulate sexual harassment and power harassment with direct sanctions alone, people's awareness of and behavior in relation to harassment are changing steadily. It is the effect of pressure "from below" and concerns for one's recognition or reputation—rather than the result of regulation "from above"—that have ensured that employers refrain from engaging in harassing behavior and encouraged them to voluntarily pursue means of cracking down on such behavior.[7]

There are also cases in which indirect sanctions are incorporated in laws. A typical example of this is the practice of publicly announcing the names of perpetrating companies, a method that has been used in various settings in labor and employment law. For instance, even the Act on Employment Promotion for Persons with Physical Disabilities prior to 1976 (up until 1976 employers were only obliged to make a sincere effort to fulfil the legally prescribed percentage of persons with physical disabilities among employees) stipulated that the names of companies that failed to increase the percentage of persons with disabilities in their workforce would be released to the public.

In this paper, we will refer to efforts to obey the law in order to avoid direct or indirect sanctions as legal compliance that is based on "instrumental motivations" (Tyler 1990).

3. Non-Instrumental Motivations: Compliance Due to the Internalization of Rules

However, if laws are only able to influence people's behavior through instrumental motivations, they ultimately have no more than a superficial impact on human behavior. It is difficult to imagine that a law that is obeyed exclusively due to instrumental motivations could continue to have an effect on society. This brings us to the possibility that somewhere there are other motivations that lead people to obey the law, other than the instrumental motivations touched on above.

Over the years this question has been addressed by researchers from various academic fields. Approaches for investigating non-instrumental motivations can be broadly divided into two types: approaches that focus on legal legitimacy, and approaches that emphasize the links with personal morals and values.[8]

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[7] The interview survey results in Japan Institute for Labour Policy and Training (2012) show that the most common response from employers regarding why they had introduced measures to combat harassment was: "because we have been approached by employees or union members seeking advice regarding harassment, or have seen an increase in such cases of employees or union members seeking advice." Responses also included "because we value corporate image" and "because it allows the company to gain trust from society."

[8] There are also cases in which people engage in behavior that conforms to the law simply due to habit or imitation (in reality such cases are perhaps the most common) but such cases will not be ad-

The term "legitimacy" has various meanings, but it is often used to refer to "properties which generate in people the feeling that they should voluntarily obey rules or comply with authority." There is a long history of research on legitimacy, and Max Weber's classifications of types of legitimate rule are well known in the field of sociology. Weber lists several reasons why a certain system comes to be considered to be legitimate, one of which is the "belief in the legality of positive law" (Weber 1922). It is also said that legitimacy applies "in cases where a consensus has been reached between the parties involved" and "in cases of leadership by a person recognized as legitimate."

Similarly, in cases where people refer to "the legitimacy of the law," they cite the following factors as the source of such legitimacy: (i) that procedural fairness has been guaranteed, and (ii) that the organization that enacts or declares the law (such as a national assembly or court) is recognized to be in a suitable position to establish or apply standards (Levi, Sacks, and Tyler 2009). According to a series of studies by psychologist Tom Tyler, people are more likely to obey a law if it fulfills both (i) and (ii) (Tyler 1990, 2011; Tyler and Huo 2002).

For example, people tend to comply with a law if the parties concerned have been guaranteed participation in the formulation process and it has been prescribed according to an appropriate procedure.[9] Moreover, people who trust organizations that enforce the law (the police department and other government bodies), or courts and judges, tend to comply with the law. There are cases in which it is more effective—in terms of both the results and the costs involved—to encourage voluntary compliance using measures that increase legitimacy, rather than relying on sanctions alone.

On the other hand, people are more likely to comply with the law when its content is in line with their personal morals and values (Robinson and Darley 1995), and vice versa, laws that diverge from the morals and values of the general public tend to be broken.[10] Laws unavoidably contain loopholes, but it is whether they are in line with people's morals and values that influences whether people seek to engage in illegal behavior by taking advantage of such cracks in the law.

Of course, it can be said that in modern society many of the legal provisions are technical, and there is a decreasing proportion of areas in which the law is closely connected to morals. This is indeed the case, but it is also necessary to take account of the fact that there are cases in which even legal provisions that initially have almost no hint of influence from moral concepts gradually take on the hue of moral issues over the course of time (for instance, provisions such as traffic rules and rules regarding the management of personal

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dressed in this paper.

[9] Tyran and Feld (2006) use the public goods game to confirm that where a law has the support of the members of society, it will have an effect even if it entails only light sanctions.

[10] There are also cases in which the law influences people's values, subsequently causing their awareness to correspond with the content of the law, but such cases will not be addressed in this paper. See Bilz and Nadler (2014) for a review regarding this point.

Table 1. Types of Motivation for Complying with the Law

Instrumental motivations	**Direct sanctions**	Formal influence
	Indirect sanctions ・Use of the law by individuals ・Recognition or reputation	
Non-instrumental motivations	**Legitimacy** ・Procedural fairness ・Trust in institutions that establish/enforce the law	Informal influence
	Personal morals/values	

Note: In practice, it is not possible to draw a clear distinction between instrumental and non-instrumental motivations. For example, as the more behavior conflicts with people's values, the stronger indirect sanctions become, there are cases in which even the person engaging in the behavior is unable to distinguish whether the motivations that influenced them were instrumental or non-instrumental. The categories in Table 1 should be seen as a simplified model that does not encompass such points.

information have progressively come to be addressed as moral issues). Furthermore, considering that there is a need to ensure that people understand rules intuitively, it is vital for rules to correspond with morals and values in some form or other.

The two factors addressed above—namely, "legitimacy" and "morals and values"—can both be grouped under the concept of the "internalization of rules," and do in fact overlap in some aspects. At the same time, there are many cases in which the two clash, an example of this being situations in which there are meticulous provisions that unnecessarily restrict behavior.

4. Section Summary

It is unquestionable that the law is supported by direct sanctions. There is surely also no objection to the suggestion that pressure from various agents in society allows the content of laws to be put into practice.

However, there is more to the effects of the law than that. In addition to the aforementioned instrumental motivations, non-instrumental motivations play a substantial role as a factor behind people's behavior.

At this point let us summarize the factors that encourage compliance with the law (see Table 1). The column furthest right shows the types of influence that arise from the respective motivations. Among the types of influence exerted by the law, importance tends to be attached to "formal influence." Here "formal influence" refers to influence through the methods of control that are anticipated from a legal point of view, and includes both direct sanctions and a portion of the indirect sanctions.

On the other hand, compliance based on non-instrumental motivations falls under "informal influence." "Informal influence" is influence that is generated through interaction between people in society, and overlaps with the scope of so-called "soft law."

III. Conditions under Which Laws Tend to Be Broken

1. Violations in the Field of Labor and Employment Law

The arguments raised in Section II are mainly concerned with settings in which the national government, the police, and other such public bodies regulate people's behavior by applying the law. In other words, they address regulation on the basis of public law, cases in which there is a clear relationship between those imposing and implementing the regulations (the regulators) and those who are subject to the regulations (the regulated entities).

In contrast, regulation on the basis of private law, including labor and employment law, is aimed at contracts between individuals and behavior conducted on the basis of said contracts—collaboration between multiple people. As such collaboration is often in the interests of both parties concerned, illegal behavior is particularly unlikely to be detected. Naturally there are also cases in which small rifts appear in the tacit understanding between the parties concerned, thereby allowing problems to surface, but in the whole scheme of things, the cases that are detected are just the tip of the iceberg.

Labor and employment law can be divided into (i) rules that regulate the (unilateral) behavior of employers and (ii) rules that regulate the bidirectional behavior between employers and workers (collaboration or collusion). In the case of type (i), the arguments regarding compliance set out in Section II seem to be applicable just as they are. However, in the case of type (ii), special consideration is required, because there is a tendency for illegal behavior to seep into the depths of society and organizations undetected.

2. Investigating Instrumental Motivations

Let us say that the regulated entities are engaging in behavior on the basis of instrumental motivations alone. In this case, their behavior is determined by the relative amount of benefit that can be gained from complying with the law in comparison with the benefit that can be gained from violating it.

On the one hand, as is clear from the rational choice model, if the sanctions that the regulated entity expects to face are small in scale, there are all the more situations in which violating the law will be to their benefit. In the event that it is difficult to monitor the regulated entities, or in the event that only light penalties have been stipulated, the anticipated scale of the direct sanctions decreases.

The anticipated scale of *in*direct sanctions decreases in the event that violating the law will not influence the company's social recognition or reputation, and in the event that the person who suffered damage due to the violation is unlikely to complain.

On the other hand, the *costs* of complying with the law are also important. The more

elaborate the regulations, the higher the costs of complying with them. These costs include not only the costs generated in the process of producing goods and services (personnel expenditure, etc.), but also the "transaction costs" that arise in the negotiations between employers and workers. In the context of labor and employment law, the obligations to "clearly indicate working conditions" (Labor Standards Act, Article 15) and "draw up rules of employment" (Article 89) are examples of provisions that may increase the transaction costs entailed in entering into a labor contract.[11] Moreover, the transaction costs of each contract generally increase as forms of employment become more diverse, and the content of contracts and necessary procedures become more complex in turn.

Personnel expenditure is a point that surely does not need to be noted again. Executive managers incessantly bemoan the fact that following the law to the letter means greater personnel expenditure. There are therefore consultants and certified legal specialists in labor and social security that offer various kinds of advice to employers in the name of "optimizing personnel expenditure," but such advice often includes suggestions that may entail infringement of the law.

There are also structural factors behind increases in the costs of complying with the law. A factor that is particularly frequently highlighted is the relationship with the intensification of market competition. Executive managers repeatedly insist that "in intensely competitive industries, companies that comply with the law will fall by the wayside," and there certainly are companies that are willing to violate the law in order to decrease expenditure.

Industries in which companies that are complying with the law face difficulty operating as businesses are facing a form of "collective action problem" (Olson 1965). Specifically, if all companies within an industry were to shoulder the costs and comply with the law, it would surely be possible for the industry as a whole to pursue competition in the most preferable way. On the other hand, from the point of view of each individual company, engaging in law evasion or illegal behavior brings greater benefits and allows the company to outmaneuver competitors. At the same time, devising means of law evasion and illegal behavior and conceiving measures to deceive the eyes of the supervising authorities is merely an excessive cost that makes very little contribution to increasing social welfare. In order to avoid such waste, it is necessary to regulate the industry as a whole with legal regulations and other such means.

3. Investigating Non-Instrumental Motivations

It is possible to break laws that lack legitimacy without feeling much psychological resistance. Whether the psychological cost of violating the law decreases has a significant influence on to what extent illegal behavior will proliferate within society. The more frequently people witness the illegal behavior of others around them, the more their own psy-

[11] This is not to suggest that such provisions are not advisable because they increase the transaction costs. As clarifying labor conditions has the effect of mitigating the incompleteness of contracts, it may have benefits that exceed the transaction costs entailed in forming contracts.

chological costs of violating the law will also decrease. There is a possibility that cases of minor illegal behavior may influence each other and escalate (Nadler 2005).

In the case of labor-related laws and regulations, it is relatively easy to psychologically justify violations of the law. This can be attributed to the following reasons: (i) there are many technical provisions, (ii) there are provisions that reflect the benefits of only a portion of people, and lack a clear legislative purpose, and (iii) "altruistic behavior" tends to occur. As it is easy to see that (i) and (ii) are factors that lead to a decrease in the legitimacy of the law, let us look at factor (iii), including some specific examples.

Behavioral economist Dan Ariely and colleagues have been investigating the kinds of situations in which people engage in deception, and have conducted a number of experiments on this topic (Ariely 2012). Ariely and fellow researchers Francesca Gino and Shahal Ayal have carried out an experiment to ascertain in what way cheating occurs in an environment in which people engage in collaboration (the workplace is a typical example of such an environment) (Gino, Ayal, and Ariely 2013). In the experiment, subjects are instructed to solve certain problems, and are given a certain amount of money for each problem they solve correctly. When doing so, those conducting the experiment observe whether the number of correct answers differs depending on whether they check the answers, or whether the experiment subjects are made to assess the number of correct answers themselves. The experiment is implemented under various other conditions—for instance, there are cases in which subjects solve problems alone and cases where they solve them in groups—and comparisons are drawn between the results.

In these experiments, Ariely, Gino, and Ayal found that the average number of correct answers reported by the subjects themselves increases under conditions in which the subjects recognize that other persons in the group will benefit from their cheating. In other words, in cases in which one's own cheating benefits others, *altruistic* cheating is likely to occur, as there are legitimate grounds for one's behavior. Surprisingly, cases of cheating are more frequent under conditions in which only other people will enjoy the benefits, than under conditions in which both the person cheating and others will enjoy the benefits. This can be said to be a hidden aspect of people's altruism.

A considerable number of people will willingly get involved in illegal behavior if it will benefit their company or someone who belongs to their company. Instrumental and non-instrumental motivations link with each other particularly in cases in which a company is struggling under the pressure of competition. Generally if the members of a group are closely connected and the group is highly cohesive, altruistic cheating tends to arise, and there is also sometimes a greater tendency for it to cause illegal behavior to occur (Janis 1982; Waytz and Epley 2012).

4. Environments That Promote Altruistic Illegal Behavior

Japan's working and social environments contain elements that make them more likely to generate altruistic illegal behavior. As the Japanese employment system is struc-

tured around "'membership-type' employment contracts under which work duties are not specified" (Hamaguchi 2009, 2011), companies are like communities made up of regular employees (*seishain*). Companies seek to educate their employees—expecting them not only to engage in the vocational training required for their work but also to study diligently and cultivate their characters on a day-to-day basis—and ensure that they acclimatize themselves to the standards within the company.[12] In such environments, employers tend to choose to engage in illegal behavior or law evasion, and workers tend to accept such behavior as well.

A few years ago, it was reported that in a case in which an employee exposed their company's violations of the Labor Standards Act, the president of the company told the employee that "there is no way the company would be able to operate if it were to obey the Labor Standards Act."[13] The fact that a company president would make such a statement to an employee, and that such a statement would exert pressure on an employee, is proof that both employers and workers see their company as an "indispensable community."[14]

It is not only regular employees who see their company in this way. There are cases in which even non-regular workers—who are not permitted "membership" of the company—approach their work with the same frame of mind. Non-regular workers are said to have less loyalty to their company than regular workers, and there are empirical analyses by researchers outside of Japan that indicate that an increase in the number of non-regular workers diminishes the subjective attachment that regular workers feel to their companies (e.g., Pedulla 2013). However, the results of these empirical analyses do not seem to exactly apply in the case of Japanese workers. In Japan, it is not uncommon that even workers who in theory stand to gain no benefit at all from demonstrating their loyalty voluntarily work in a similar way to regular employees.[15]

There is a significant fear among Japanese workers of being dismissed from their company of employment. Recent data from the World Values Survey (Wave 6: 2010–2014) shows that in fact as much as 83.4% of full-time workers in Japan are either "very much" or "a great deal" worried about losing their jobs; in response to the question "To what degree are you worried about losing your job (or not finding a job)?" 51.7% of full-time workers responded that they are "very much" worried (incidentally, in the US, Germany, and the

[12] In Japan, people tend to be expected to accustom themselves to such environments from the stage of school education. Naito (2009) provides useful insights on this point.

[13] Asahi Shimbun Newspaper, September 6, 2014.

[14] We touched upon competitive pressure when addressing instrumental motivations, but it should be noted that as employment is based on 'membership-type' employment contracts, not only employers but also the workers corralled within the company are in a position in which they are squarely affected by the pressure of competition.

[15] A sense of community, and the loyalty that it generates, often arises not only within the unit of a company as a whole but also within individual workplaces. It is perhaps due to such circumstances that there are cases in which workers in part-time or side jobs (*arubaito*) have the same mental approach to work as regular employees.

Netherlands, 20.9%, 13.5%, and 5.9% of full-time workers selected this response respectively), and 31.7% of full-time workers responded that they are "a great deal" worried about losing their job. These percentages are even higher in the case of part-time workers.[16]

It is not possible to say which comes first: loyalty to one's company, or fear of dismissal. However, regardless of the fundamental cause, both regular workers and non-regular workers in Japan are going about their work with a strong sense of responsibility, against a background of pressure from both within and beyond the workplace. Amid such intense pressure, the feeling of tension in the workplace mounts, bringing about a labor environment in which people are forced to give consideration to others. Psychiatrist Satoshi Kato refers to such a tendency for the workplace to be governed by standards aimed at perfectionism and consideration for others as "the tendency for workplaces to cause the development of melancholic personality types" (Kato 2013).

Such excessive and unbalanced consideration for other people provides a hotbed for altruistic illegal behavior. There are generally various groups of "other people" who need to be considered, and the interests of the workplace or company are not necessarily always compatible with the interests of society as a whole. Even if a law contributes to the benefits of society as a whole, a person can easily justify violating that law on the basis of the interests of the people around them.

IV. Some Implications for Legal Systems and Policies

The previous sections have only discussed the factors that generate or encourage illegal behavior in general terms, without addressing each type of illegal behavior individually. As it is probably best to avoid hastily forming policy recommendations on the basis of such insights alone, I will simply set out some general guidelines that can be drawn from the arguments raised so far.

1. The Limitations of Direct Sanctions

There is no question that the coercion and threat that can be applied through direct sanctions are important means of regulating the behavior of entities pursuing benefits. However, conducting regulation solely through the use of direct sanctions will not be as efficacious as may be expected. This is due to the following three reasons.

Firstly, contracts and laws inevitably leave ambiguities and incompleteness. In other words, it is impossible to prescribe in advance an explicit and flawless set of provisions on working and contract arrangements, such as the kind of work the worker should carry out under what conditions, the amount of remuneration the employer should provide to the worker, or the measures that should be taken if the contract is violated. Labor contracts in

[16] In the case of part-time workers, 55.3% are "very much" worried about losing their job, and 30.4% are "a great deal" worried about losing their jobs (that is, 85.7% of part-time workers are "very much" or "a great deal" afraid of losing their jobs).

Japan have a particularly strong tendency to be like "blank slates," and aspects such as work content, conditions, and evaluation methods are hardly specified at all (Hamaguchi 2009). Contracts prescribe rights and obligations in a vague manner, and laws are open to interpretation. The greater the scope of this gray zone, the more difficult it becomes to use direct sanctions.

Secondly, there are vast costs involved in monitoring the behavior of the regulated entities. As far as can be seen from the low number of personnel affiliated with public bodies, it seems practically impossible to commit the labor standards inspectors and other personnel required to sufficiently control or deter illegal behavior. When it comes to invoking direct sanctions, it is necessary to provide evidence that can prove the facts, but it is questionable whether the regulators possess the capacity to be able to track down such evidence.

Thirdly, direct sanctions may generate adverse effects. Using a large amount of direct sanctions is the equivalent of sending out the message that people are pursuing behavior on the basis of instrumental motivations alone (Tyler 2011). Moreover, a legal system or policy that is constructed on the assumption that people engage in behavior on the basis of instrumental motivations alone may become a "self-fulfilling prophecy" (Stout 2011). Rules that rely too heavily on sanctions diminish non-instrumental motivations and tend to be broken due to instrumental motivations.

Using coercive laws to restrict people's behavior may be an appealing method at first glance. However, it is necessary to take into account the fact that such restrictions alone may not solve everything, and may encourage a never-ending game of cat and mouse between the regulators and the regulated entities.

2. Use of Indirect Sanctions

As set out above, the "indirect sanctions" referred to in this paper can be broadly divided into two types: firstly, recognition or reputation, and secondly, the assertion or exercise of rights by individuals (workers).

The field of labor and employment law is said to entail a great amount of illegal behavior, but there are also a considerable number of employers that are afraid of attracting the reputation that they are engaging in illegal behavior or evasion of the law (Konno et al. 2014). For instance, if a company is thought to be a "black company," this may lead to a decrease in the number of applicants for employment with that company, and may directly result in adverse effects on the image that consumers hold of that company.

Such information can now be easily gathered on the internet.[17] Moreover, more data has now become available to allow people to form an idea of how enjoyable a company

[17] As of 2016, there are webpages offering rankings and lists of "black companies," and a large number of companies are listed on these sites, along with specific comments from people who have experienced working for them. Needless to say, many students refer to such sites when looking for employment. Moreover, negative information regarding companies is also rapidly disseminated through social networking sites.

may be to work for, such as information on employee retention rates, employee benefits and welfare, and corporate social responsibility initiatives. In some industries, there has been a dramatic increase in the opportunities for workplaces themselves to be exposed to appraisal from entities outside the company, and workplaces are ceasing to be closed environments.

There are still many industries in which these mechanisms based on concerns regarding recognition or reputations do not work, and illegal behavior and law evasion are seen as a matter of course. Particularly in industries in which the top-level managers and executives of the leading companies openly profess to violations of labor and employment law, indirect sanctions through recognition or reputation-based mechanisms will surely have little effect.

Even in such cases, workers have the option of persistently asserting and exercising their rights in order to appeal to their companies to change their approach. It is true that individual workers are merely weak entities, especially for large-scale companies. If it comes to a protracted struggle, companies have a greater likelihood of coming out on top, and have the capacity to solve issues financially when they do not. Furthermore, as employers face similar situations time and time again, they are better equipped to mobilize the various resources they need to contend with such challenges. As noted by legal sociologist Marc Galanter, legal systems tend to favor the "haves" (Galanter 1974).

However, such action by individual workers sometimes develops into a powerful surge enveloping various actors. With new informal connections gradually being formed in society at present, there are a surprisingly great number of situations in which indirect sanctions can have an effect.

3. Evoking Non-Instrumental Motivations

In the long term it will probably be most advisable for compliance to be conducted on the basis of non-instrumental motivations. Securing compliance on the basis of non-instrumental motivations will make it possible to significantly curb the costs of coercing compliance.

Psychologist Tom Tyler, whose studies we touched on in Section II, distinguishes between formal compliance and deference to the law, and emphasizes the necessity of policies that attach importance to the latter. "Compliance" refers to cases in which people perceive a law as a hurdle that restricts the scope within which they can choose the behavior they engage in, while "deference" is when people are prepared to voluntarily obey a law on the basis of its objectives. Such deference is brought about by non-instrumental motivations.

Laws related to labor and employment include both those that are similar to our intuitive ethics and morals, and those that are not necessarily close to those beliefs and ideas. Careful consideration needs to be given to the question of how to evoke non-instrumental motivations in the case of provisions that do not correspond with our sensibilities or notions, or provisions that are unrelated to our morals or values.[18] However, at the least we can say

[18] See Stout (2011), Killingsworth (2012), and Reynolds (2014) for recent sources from the field

that the situation can be remedied to a certain extent by ensuring that appropriate processes and procedures are used to enact laws and determine policies. Laws and other such social rules influence people not only depending on their content, but also depending on the way in which they are created.

Evoking non-instrumental motivations is essential for deterring behavior that evades the law in such a way that is not strictly classified as illegal but does run counter to the spirit of the law. However, it is rather difficult to evoke non-instrumental motivations using only policies "from above."

4. Deterring or Controlling Altruistic Illegal Behavior

It is therefore better to prioritize efforts that seek to prevent the development of environments that tend to hinder the effects of non-instrumental motivations, rather than attempting to directly evoke non-instrumental motivations. In environments in which altruistic illegal behavior tends to occur, non-instrumental motivations may influence people in a different direction to that which the law anticipates to guide people in. Put differently, they may increase the frequency of cases in which people break the law with the aim of protecting the interests of the people around them and the workplace or company.

This leads to the creation of working environments in which engaging in illegal behavior (or law evasion that is very nearly illegal) is considered a matter of course, and illegal behavior is reproduced. If people become convinced that they cannot change an environment, the environment will in fact cease to change. At the same time, in Japan's current labor society, individual workers are not being given the capacity they need to dispel such situations.

As mentioned above, many workers in Japan are highly afraid of losing their jobs, and find themselves in an exceedingly weak position in both their relationships with employers and their relationships with people and entities beyond the workplace (such as rival companies or customers). If we are going to seek to decrease the cases of illegal behavior or law evasion, we must consider questions such as how we can facilitate the development of desirable working environments by improving the position of workers who have no connection with the outside world and only their workplaces to rely on, and how we can find mutual interests between fellow workers who share the same awareness of issues despite being employed by different workplaces, and mutual interests between employers and workers, who may appear to have different concerns at first glance.[19]

There is one more point that should be noted before concluding this paper. The points discussed above are based on the assumption that the content of the law is such that it will bring greater benefits for society. However, there are many cases in which the law does not fit with the actual state of labor, and conversely leads to reduced benefits for society (in

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of law on this point.

[19] Mizumachi (2010) is a useful reference regarding the state of collective communication.

other words, cases in which the standards of the workplace stand more to reason than the law, and illegal behavior is in fact socially preferable). Laws that have been created with no regard for actual workplaces are unlikely to be obeyed on the basis of non-instrumental motivations. A decrease in such laws would allow for a significant reduction in "illegal behavior."

V. Concluding Remarks

In this paper, we have divided the motivations upon which people obey the law into "instrumental" and "non-instrumental" motivations, and examined under what kinds of conditions laws tend to be broken. We have focused on non-instrumental motivations—a topic which is otherwise given little attention—and emphasized the importance of evoking and utilizing such motivations.

Where there are laws that attach too much importance to people's instrumental motivations, and fail to take into account non-instrumental motivations, we must be prepared for a vicious circle of illegal behavior and clampdowns. This would not be an issue if public bodies were able to mobilize the human resources required to endure such a vicious circle, or if laws were sufficiently enforced through the actions of individuals, but neither of these conditions currently exist in Japan. Keeping non-instrumental motivations in consideration should open up greater options to make the workplace better through law.

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Factors Contributing to Labor Law Violations and Employees' Subjective Perceptions of "Black Companies": Focus on Workplace Characteristics and Human Resource Management

Toru Kobayashi
Takasaki City University of Economics

This article deals primarily with two analyses. The first is an analysis of factors contributing to uncompensated overtime, failure or inability to take paid leave, and coerced resignation, all of which are frequently cited as labor law violations, and the correlations between each of these issues and business performance. The second examines which issues, including the above labor law violations as well as workplace harassment and so forth, are most crucial in shaping employees' perceptions of their employers as "black companies," defined as rogue companies or those that habitually flout labor standards, which have increasingly been recognized as a social issue. The results of the analyses indicated that while harassment and unreasonable quotas enhanced the perception of companies as being "black," the most clearly identifiable factors were uncompensated overtime, failure or inability to take paid leave, and coerced resignation. In addition, it was found that uncompensated overtime had a statistically significant positive effect on workplaces' ordinary income growth over the past three years, showing that over the short term, companies were rewarded for violating the rules with commensurate profits.

I. Introduction

The Framework for Comprehensive Countermeasures against Uncompensated Overtime, formulated in May 2003, states that uncompensated overtime "violates the Labor Standards Act and is unacceptable," and outlines multiple specific countermeasures including formulation of Guidelines for Measures to Take for Elimination of Uncompensated Overtime and implementation of active oversight. However, the total amount of wage corrections for uncompensated overtime resulting from this oversight in fiscal 2012 was ¥10.45693 billion. While this was down from the amount in fiscal 2009,[1] it indicates that "unacceptable" uncompensated overtime is still widespread. With regard to percentage of allotted paid holidays that are actually taken, as well, the 2013 rate of 47.1% is far below the 70% target for 2020 set in the Action Plan for Promotion of Work-Life Balance (revised

[*] I am deeply grateful for the valuable data I received from the Research Institute for the Advancement of Living Standards when researching this article. It should be noted that any errors in this paper should be attributed to the author, and that the content reflects the author's personal opinions and does not represent an official position of the organization to which I (the author, Kobayashi) belong.

[1] Refer to Figure 1 for the results of correction of uncompensated overtime through supervision and guidance (FY2012). http://www.mhlw.go.jp/bunya/roudoukijun/dl/chingin-c_02.pdf (In Japanese). In the figure, the blue bar, the black bar and the line show the number of companies, the number of worker subjects for wage correction and the total amount of wage corrections, respectively.

June 2010), and in fact it has been trending downward over the past 20 years (General Survey on Working Conditions). Coerced resignation, as well, was identified as a problem at major corporations in a December 31, 2012 article in the *Asahi Shimbun* newspaper, and there is growing recognition of it as a social issue.

With regard to these issues, Ogura (2006) and Oki and Taguchi (2010) showed the effects of industry categories where work tends to be irregular and the presence or absence of an overtime pay system. This article seeks first of all to add to these findings by analyzing the impact of workplaces' internal and external environments and HRM (human resource management) systems on uncompensated overtime, failure or inability to take paid leave, and coerced resignation, using the Survey on the Status of Diverse Working Styles and Human Resource Portfolios, which contains detailed questions on these subjects. In addition, the correlations between these problems' presence or absence and business performance were analyzed, and incentives for illegal labor management were examined.

This article's second analysis deals with which problems are particularly correlated with workers' subjective evaluations of their employers as "black companies." The slang term "black companies," which emerged in the late 2000s and rapidly gained popularity among young Japanese workers, refers to companies with illegal or barely legal labor management practices, marked by high rates of turnover and high risk of physical and mental disorders affecting workers while they are employed there. There is broad public recognition of the issue, with the Budget Committee of the lower house of the National Diet raising it for consideration in May 2013 and the Ministry of Health, Labour and Welfare declaring September of the same year Special Overwork Surveillance Month, but consensus on an objective definition is yet to be reached, and subjective perceptions of "black companies" differ.[2] To address the problem of "black companies," Ouchi (2014, 90) notes that it is more important to disclose as much information about companies as possible so that workers can reference it when searching for jobs than to label specific companies as "black" or otherwise according to an objective standard and take measures against these companies. With this in mind, in this article we will clarify which workplace characteristics are most correlated with employees' subjective perception of "black companies," and consider what information most needs to be disclosed to prospective employees beforehand. Specifically, we will analyze which factors, such as unreasonable quotas, long working hours, and uncompensated overtime, had the highest impact in the 26th Questionnaire on Workers' Jobs and Lifestyles (referred to below as the 26th Workers' Tankan), which contains questions pertaining to perceived degree of "blackness," and in light of this analysis, what information items should be disclosed.

Section II contains an overview of existing studies on uncompensated overtime, failure or inability to take paid leave, and coerced resignation, and establish this article's hy-

[2] "Black companies" have been described in numerous books such as Konno (2013) and Kanisawa (2010), but definitions have not been consistent.

pothesis on the factors contributing to these problems. Section III outlines the data and analysis methods used for analysis of the occurrence of the problems and their impact on business performance, and enumerates the results of the analysis. Section IV outlines existing studies and examines how workers view and evaluate their "black" employers. Section V outlines the data and procedures used in the analysis of subjective perceptions of "blackness," and considers what kinds of workplace problems are most central to these perceptions. Section VI sums up the analysis results described thus far and examines their policy implications.

II. Hypothesis regarding Factors Contributing to Uncompensated Overtime, Failure or Inability to Take Paid Leave, and Coerced Resignation

1. Uncompensated Overtime

There have been many previous studies on uncompensated overtime, including Mitaini (1997), Takahashi (2005), and Oki and Taguchi (2010). Takahashi (2005) has pointed out one aspect of uncompensated overtime, namely, that workers who are supposed to apply for permission each time they work overtime fail to do so. Analyses have shown that among white-collar employees of large enterprises, more uncompensated overtime is directly correlated with higher compensation including bonuses, and white-collar workers in the late 1990s seem to have worked off the clock willingly in expectation of such rewards. Mitaini (1997) also observes that when evaluations based on results and performance are carried out, there is an incentive for workers to do uncompensated overtime of their own accord, as demonstrated by analyses showing that employees in workplaces with performance-based evaluations tend to do more uncompensated overtime. The study suggests that not only the presence or absence of performance evaluations, but also the use of performance indicators dependent on cost-based factors such as amount of profit generated, are factors contributing to workers' not applying for overtime (i.e. working overtime, but not applying to receive compensation for it).

From the perspective of these studies, uncompensated overtime may be perceived as voluntary and leading to higher compensation, and therefore may not be a significant problem. On the other hand, Oki and Taguchi (2010) point out that non-voluntary overtime, with no potential reward, also exists. Their analysis points to lack of a company-wide system for monitoring work hours, and existence of a system setting limits for overtime hours, as factors exacerbating non-voluntary uncompensated overtime. These systems may reflect a stance of making efforts toward compliance, but it seems what is truly important is a systemic, company-wide effort to monitor and manage overtime hours in practice.

Although it is not possible to ascertain, from the data used for analysis in this article, whether uncompensated overtime is voluntary or non-voluntary, we would like to verify whether there is a link between the various variables impacting voluntary and non-voluntary uncompensated overtime and the perception of a company as "black," and consider the im-

portance of the non-voluntary uncompensated overtime issue.

2. Failure to Take Annually Allotted Paid Leave

Next, with regard to inability to take annual paid leave, Ogura (2006) carried out an analysis of factors for a dummy for taking paid leave and percentage of paid leave taken. The analysis showed that higher income was correlated with lower percentage of vacation days used, and it has been pointed out that taking few days of leave may be incentivized, as it leads to promotions or raises. It is suspected the same systemic, structural problems that encourage voluntary uncompensated overtime also lead to failure or inability to take paid leave.

In addition, being in the wholesale, retail or food-service industries, or sales, marketing and customer service occupations, makes workers less likely to take paid vacation days. Ogura (2006) identified the cause of this as lying in the irregularity of work schedules, which make it difficult to plan to take vacation days in advance.

Workers in the wholesale, retail, and food-service industries and sales, marketing and customer service positions are prone to doing non-voluntary uncompensated overtime, as stated by Oki and Taguchi (2010), and it is evident that the irregular nature of the work is linked not only to non-voluntary uncompensated overtime but also to failure or inability to take paid leave.

3. Coerced Resignation

With regard to the issue of forced resignation, Gunji and Okuda (2014) have observed that a larger scale of enterprise, and worsening business performance, are often correlated with companies encouraging workers to resign. However, Gunji and Okuda's analysis was only a cross tabulation of data, and it is not clear why large companies are more likely to push employees to resign. Also, it is conceivable that encouragement to retire when performance is deteriorating cannot always be equated with coerced resignation. When encouragement to resign resembles unavoidable dismissal due to economic conditions, employees may accept the situation and not need much convincing. For the purposes of this article, what we want to focus on is encouragement to resign under circumstances far removed from so-called "restructuring" (unavoidable layoffs due to business performance). Specifically, this means encouragement to resign in a situation that does not meet the four conditions[3] for economically motivated layoffs enumerated under the Japanese labor law system. When employees are encouraged to resign even while personnel number are increasing, or encouragement to resign or reshuffling of personnel only targets employees who are consid-

[3] These conditions on the employer's side are (i) that there is a need to reduce personnel, (ii) that the obligation to make efforts to avoid dismissal has been discharged, (iii) that the standards for selecting staff for dismissal are reasonable, and (iv) that full discussions have been held with workers or labor unions. For more details on conditions for dismissal under Japanese labor law, refer to Araki and Otake (2008).

ered underperforming, it is regarded as a form of coerced resignation, and we will analyze the factors in this article.[4]

Coerced resignation is suspected under the following three sets of circumstances: First, after hiring staff, the employer directly monitors employees at work, determines which employees to keep and which to dismiss, and after dismissing employees, replaces them with new ones. In these workplaces, performance-based compensation (wages determined based on work outcome) is common, and such differing wage systems are correlated with differences in coerced resignation. Second, the employer does not require sophisticated human capital, and there is little disadvantage even if employees are repeatedly dismissed and replaced. In such situations, companies will not need extensive or long-term training programs. A third indicator is rapid obsolescence of skills and/or drastic changes in the business environment. Under such circumstances, companies have an incentive to encourage middle-aged personnel, who have difficulty keeping up, to resign, and to continually replace them with young employees who are highly adaptable to change. It seems probable that the situation vis-à-vis coerced resignation differs depending on job characteristics such as industry, occupation, and susceptibility to change.

III. Analysis of Factors Contributing to Uncompensated Overtime, Failure or Inability to Take Paid Leave, and Coerced Resignation: Data, Analysis Methods, and Analysis Results

1. Data Used for Analysis

Data used in the analysis of factors contributing to uncompensated overtime, failure or inability to take paid leave, and coerced resignation is from the Enterprise Survey and Employee Survey sections of the Survey on the Status of Diverse Working Styles and Human Resource Portfolios, which the Japan Institute for Labour Policy and Training carried out in February 2014.

For analysis of uncompensated overtime and failure or inability to take paid leave, we used labor-management matching data that matched employee data from the Employee Survey with Enterprise Survey data from the enterprises the employees belonged to. Only data from respondents who were regular employees was used, as the Enterprise Survey questions pertaining to evaluation-based compensation systems and corporate training policies applied only to regular employees. Also, respondents were limited to those already working for one year or more, as they were likely to have finished training for new employees and begun their actual duties. Meanwhile, managerial personnel of section manager level or above were excluded. As a result, the survey target population numbered 5,632 people belonging to 1,352 establishments.

For analysis of coerced resignation, only data from the enterprise questionnaire was

[4] The specific variables are described in Section III-2.

used. This questionnaire contains a question about whether or not regular employees were actually encouraged to resign, and enables monitoring of the increase or decrease in the number of regular employees. Also, the questionnaire inquiries about enterprises' intentions regarding employees with poor performance—whether to encourage them to resign, dismiss them, or reassign them. Analysis was performed with data from 1,721 establishments, which includes all the variable data used in the analysis described later.

2. Analysis Procedures and Definitions of Variables

Next, we will describe the analysis model and the definitions of variables. The explained variables D_i in the analysis using labor-management matching data are "dummy with uncompensated overtime" and "dummy with failure or inability to take paid leave," while the explained variable in the analysis using enterprise data is regarded as a dummy with coerced resignation implemented, with a Probit analysis carried out according to formula (1) below. Note that in the analysis employing enterprise data, Probit estimates are weighted according to the number of regular employees at the enterprise.

$$\Pr(D_i = 1 \mid X_i, J_i, M_i) = \Phi(\delta_1 X_i + \delta_2 J_i + \delta_3 M_i) \qquad (1)$$

As for the definitions of explained variables, the "dummy with uncompensated overtime" is defined as a dummy variable with value of 1 when a respondent to the employee questionnaire did one or more hours of overtime per week while "almost never" applying for overtime pay, or else did 15 or more hours of overtime per week while "sometimes" applying for overtime pay. These responses point to two types of employees, those that do a significant amount of uncompensated overtime, and those that either do little uncompensated overtime or else work at enterprises where there is no overtime whatsoever. Also, because the survey is designed to inquire about application for overtime pay only when employees do one or more hour of overtime per week, the analysis was structured with two stages, i.e. the question of whether or not overtime was done, and whether employees applied for overtime pay in cases when they did overtime. Specifically, we carried out a two-stage Heckman estimation, with the first stage being estimation of the "dummy with one hour or more of overtime," and the second being a linear probability model estimation of "dummy with uncompensated overtime."

For the "dummy with failure or inability to take paid leave," a value of 1 was assigned when the employee questionnaire response indicated that an employee had taken 0 days of paid vacation in the year (starting in April) prior to the year the survey was implemented.

With regard to coerced resignation, there were two patterns, one where a value of 1 was assigned to a "dummy with encouragement to resign not accompanied by personnel reductions" (when at least one employee was encouraged to resign over the past three years while the number of regular employees had increased over the past year), and one where a value of 1 was assigned to a "dummy with encouragement to resign, dismissal, or reassign-

ment of poorly performing employees" (where employees whose performance was poorly evaluated for three consecutive years were dismissed, encouraged to resign, or reassigned.) The "dummy with encouragement to resign not accompanied by personnel reductions" is problematic in that coerced resignation may not have taken place at some enterprises, as two or three years ago employees may have been encouraged to resign due to personnel reductions, whereas the number of employees increased just during the past year. Another problem is that the "dummy with encouragement to resign, dismissal, or reassignment of poorly performing employees" sets the very high bar of poor performance evaluations for three consecutive years. For this reason, factors contributing to coerced resignation are interpreted in light of trends common to analysis results from both patterns.

Next, let us turn to the explanatory variables and their definitions. First of all, personal attributes X_i include age, a male dummy, a university or graduate school completion dummy, a married dummy, number of years of service, dummy for prioritization of leisure-time activities (a dummy variable with a value of 1 if the subject's reason for choosing a particular employer was "I want to work at a time that fits my schedule," "It is easy to take vacation days," "Because of my housework, child-rearing, or nursing care situation," or "Because I was ill"), and dummy for employees whose self-evaluations place them in the top 20% (a dummy variable with a value of 1 if the employee's subjective view of how they are evaluated in the workplace puts them in the top 20%). J_i represents workplace attributes, and a dummies for industry, enterprise size, and existence of an in-house labor union, year of establishment, regular employees as a percentage of all employees in the workplace, "sales office or storefront dummy" indicating the workplace is a sales office or storefront, and a "factory dummy" indicating the workplace is a factory were used.

M_i employs the variables that were examined in the previous section as factors contributing to uncompensated overtime and failure or inability to take paid leave. Specifically, the variables used were a "performance-based evaluation dummy" assigned a value of 1 if "performance evaluations" were selected as the factor that most affects the wages of regular employees, a "profit target dummy" with a value of 1 when the response to the question on the employee questionnaire related to target management was that "profit targets are established," a "dummy with prohibition on doing overtime" with a value of 1 when responses to the enterprise questionnaire question about overtime systems indicated that "as a general rule, overtime is prohibited company-wide," and a "dummy with system for surveying overtime hours" assigned a value of 1 when respondents reported that "in-house surveys and investigations of off-the-clock work are carried out."

Also, in order to control heterogeneity in perceptions of how workplaces abide by the law, we used a "dummy with compliance training program" assigned a value of 1 if the employee has received compliance training. For job characteristic variables, an "amount of discretion regarding volume of work" variable, derived from a four-step graded response to the employee questionnaire item "I can determine my volume of work myself," and an "amount of discretion regarding work procedures" variable, derived from a four-step graded

response to the item "I am free to determine how I carry out work duties," were used. Also, in addition to the "dummy for fluctuations of double or more in work volume for a single day" and "dummy for fluctuations of double or more in work volume for a single week," which show the extent to which amount of work fluctuates and can be created from the enterprise questionnaire, a "dummy for customers doing business with the company continually for five years or more" was used to assess the rate of customer turnover, so as to account for irregularities.

Next, let us discuss the explanatory variables in the analysis, derived from the enterprise data. Although personal attributes X_i are not monitored here, variables similar to those using in the labor-management matching data analysis were used for workplace attributes J_i, to which were added female employees as a percentage of all regular employees in the workplace and percentage of regular employees under 40 years of age so to take into employee attributes into account.

For M_i, variables were determined in light of the context of "coerced resignation" discussed in the preceding section. With regard to performance-based wage systems, we used a "performance-based evaluation dummy" and a "workplace profit management dummy" assigned a value of 1 when enterprise questionnaire response indicated that amount of profit is used as a key management indicator for the workplace. For a variable pertaining to the importance of human capital, a "dummy for length of time within which employees are expected to become autonomous" is used. In addition, a "degree of long-term development orientation" variable was used, based on a four-step evaluation of whether or not the workplace emphasizes long-term development. For variables related to the intensity of change, such as obsolescence of skills, a "dummy for increased scope, difficulty, or amount of work" was used, with a value of 1 when enterprise questionnaire response indicated that regular employees' work had become more advanced, broader in scope, and greater in volume compared to three years ago, and a "dummy for customers doing business with the company continually for five years or more," indicating that there have not been drastic changes in the business environment. See Appendix Table 1 for basic statistics on the data set.

3. Results of Analysis

The analysis results are shown on Table 1. First, let us examine the results of analysis of "dummy with uncompensated overtime." The bias adjustment term λ result was significant, but Probit model analysis results were nearly the same for both, and there are commonalities in interpretation of the results.

It was predicted that systemic prohibitions on doing overtime would affect the amount of non-voluntary uncompensated overtime, and the result was, as expected, a statistically significant positive correlation between company-wide bans on doing overtime and difficulty in applying for overtime pay. On the other hand, such systems were negatively correlated with incidences of working one hour or more overtime. It appears that such pro-

hibitions on overtime have the effect of reducing overtime itself, but when it does occur, employees are unable to apply for overtime pay, leading to the occurrence of uncompensated overtime. Examining the "dummy with system for surveying overtime hours," we find a negative impact on the occurrence of uncompensated overtime, but on the other hand an increase in generation of overtime exceeding one hour. With regard to occurrences of more than an hour of overtime, it seems unlike that the survey system itself is generating the overtime, and indeed the opposite causality seems likely, but as for the occurrence of uncompensated overtime, it is unnatural to assume a reverse causality in which ease of applying for overtime pay is positively correlated with implementation of a survey system. It is more conceivable that establishment of a survey system that monitors the actual amount of overtime work done results in a reduction in overtime with no application for overtime pay. In addition, the "dummy with compliance training" variable was negatively correlated with uncompensated overtime, and it appears that the stronger a stance toward compliance is adopted, the more workers are able to apply for overtime pay. Examining variables related to job characteristics, we find that the more discretion workers have over their volume of work, the more the amounts of both uncompensated overtime and overtime itself are curtailed, and it is only amount of discretion regarding work procedures that shows a statistically significant positive correlation with occurrence of overtime work. No significant results were obtained for variables related to irregularity and changes in work duties. Turning our attention to the workplace attribute variables, we find that the existence of a labor union is negatively correlated with overtime, including uncompensated overtime, and it appears that the efforts of labor unions help to combat illegal or excessive labor. Another finding is that uncompensated overtime is less common in the financial and information/communications industries and in factories, while it is more common for specialized services such as in the academic research and education, medical and welfare fields. Large corporations and enterprises with high percentages of regular employees were correspondingly less likely to have uncompensated overtime occur.

Next, when we examine the impact of job characteristics thought to lead to non-voluntary failure or inability to take paid leave, we find a statistically significant positive correlation with "fluctuations of double or more in work volume for a single week." This is no doubt because paid leave is often taken in single-day units, meaning that irregularity on a weekly basis has a stronger impact than fluctuation in volume of work within a single day. Also, it was found that failure or inability to take paid leave is curtailed by the "dummy with system for surveying overtime hours." This would seem to reflect the workplace's efforts toward effective labor management. In terms of workplace attributes, failure or inability to take paid leave is negatively correlated with large enterprises, the information and communications industries, and factory work, and positively correlated with directly serving customers as in the wholesale and retail industries, sales offices, and storefronts, evidently reflecting irregularity of work, which could not be effectively controlled for among job characteristics variables in the analysis. Here, as well, higher percentage of

Table 1. Results of Analysis of Factors Contributing to Uncompensated Overtime,

Explained variables	Dummy with uncompensated overtime		Dummy with uncompensated overtime (second stage)	
Sample	Labor-management matching data		Labor-management matching data	
Model	Probit		Heckman	
Explanatory variables	Marginal effect	Marginal effect	Coef.	Coef.
Individual attributes				
Subject's annual income (unit: ¥1 million)	-0.003	-0.003	-	-
	[0.017]	[0.017]	-	-
Male dummy	0.045	0.045	0.044	0.045
	[0.046]***	[0.046]***	[0.024]*	[0.023]**
Dummy with university or graduate school degree	0.05	0.051	0.064	0.064
	[0.043]***	[0.043]***	[0.016]***	[0.016]***
Dummy for prioritization of leisure-time activities	-0.027	-0.027	-	-
	[0.067]	[0.067]	-	-
Enterprise attributes				
Dummy with in-house labor unions	-0.025	-0.025	-0.027	-0.026
	[0.047]**	[0.048]**	[0.015]*	[0.015]*
Dummy for regular employees as a percentage of all employees	-0.069	-0.068	-0.076	-0.077
	[0.086]***	[0.086]***	[0.030]**	[0.029]***
Sales office, storefront, or other customer service provider dummy (compared with offices and research facilities)	0.009	0.008	0.005	0.006
	[0.066]	[0.067]	[0.023]	[0.023]
Factory dummy (compared with offices and research facilities)	-0.096	-0.096	-0.112	-0.112
	[0.088]***	[0.089]***	[0.028]***	[0.028]***
Scale of enterprise (Reference group: 300−499 employees)				
Fewer than 100 employees	0.014	0.014	0.037	0.038
	[0.073]	[0.073]	[0.025]	[0.025]
100−299 employees	-0.01	-0.01	0.005	0.005
	[0.064]	[0.064]	[0.022]	[0.022]
500−999 employees	-0.046	-0.045	-0.044	-0.045
	[0.079]**	[0.079]**	[0.027]*	[0.027]*
1,000 or more employees	-0.053	-0.051	-0.048	-0.05
	[0.081]***	[0.082]***	[0.026]*	[0.026]*

Failure or Inability to Take Paid Leave, and Coerced Resignation

Dummy with 1 hour or more of overtime (first stage)		Dummy with failure or inability to take paid leave		Dummy with encouragement to resign, dismissal, or reassignment of poorly performing employees		Dummy with encouragement to resign not accompanied by personnel reductions	
Labor-management matching data		Labor-management matching data		Enterprise data		Enterprise data	
Heckman		Probit		Probit		Probit	
Coef.	Coef.	Marginal effect	Marginal effect	Marginal effect	Marginal effect	Marginal effect	Marginal effect
0.15	0.15	-0.001	0	-	-	-	-
[0.018]***	[0.018]***	[0.021]	[0.021]	-	-	-	-
0.487	0.485	0.067	0.066	-	-	-	-
[0.042]***	[0.042]***	[0.057]***	[0.057]***	-	-	-	-
0.181	0.182	0.017	0.019	-	-	-	-
[0.042]***	[0.042]***	[0.051]**	[0.051]**	-	-	-	-
-0.143	-0.143	-0.035	-0.035	-	-	-	-
[0.059]**	[0.059]**	[0.088]***	[0.088]***	-	-	-	-
-0.102	-0.108	0.003	0.007	-0.055	-0.064	-0.044	-0.045
[0.046]**	[0.046]**	[0.054]	[0.055]	[0.123]	[0.124]	[0.191]***	[0.188]***
-0.28	-0.279	-0.039	-0.038	-0.13	-0.128	0.005	0.005
[0.086]***	[0.086]***	[0.100]**	[0.100]**	[0.291]	[0.290]	[0.330]	[0.332]
-0.164	-0.171	0.03	0.026	0.033	0.04	-0.038	-0.035
[0.066]**	[0.066]***	[0.080]**	[0.080]**	[0.192]	[0.196]	[0.250]*	[0.255]
0.147	0.148	-0.033	-0.027	-0.024	-0.029	0.04	0.035
[0.085]*	[0.085]*	[0.102]**	[0.103]*	[0.236]	[0.239]	[0.355]	[0.351]
-0.077	-0.066	0.014	0.013	-0.031	-0.026	0.034	0.033
[0.073]	[0.073]	[0.086]	[0.087]	[0.171]	[0.169]	[0.292]	[0.298]
-0.084	-0.076	-0.008	-0.007	0.052	0.059	0.067	0.067
[0.064]	[0.064]	[0.076]	[0.076]	[0.156]	[0.154]	[0.274]**	[0.282]**
-0.204	-0.201	-0.025	-0.025	0.1	0.094	0.049	0.041
[0.076]***	[0.076]***	[0.096]*	[0.096]*	[0.211]	[0.209]	[0.393]	[0.398]
0.038	0.049	-0.031	-0.03	0.021	0.003	0.141	0.126
[0.081]	[0.080]	[0.096]**	[0.097]**	[0.236]	[0.235]	[0.361]***	[0.360]***

Table 1

Explained variables	Dummy with uncompensated overtime		Dummy with uncompensated overtime (second stage)	
Sample	Labor-management matching data		Labor-management matching data	
Model	Probit		Heckman	
Explanatory variables	Marginal effect	Marginal effect	Coef.	Coef.
Industry (Reference groups: Construction, manufacturing, other)				
Wholesale and retail trade	0.036	0.037	0.027	0.027
	[0.075]*	[0.075]*	[0.026]	[0.026]
Finance, insurance, real estate	-0.082	-0.081	-0.091	-0.096
	[0.122]***	[0.123]***	[0.034]***	[0.034]***
Dining and drinking, accommodations, amusement and living-related services	0.013	0.012	0.032	0.032
	[0.116]	[0.116]	[0.041]	[0.041]
Scientific research, professional and technical services, education, health care and welfare	0.057	0.058	0.088	0.088
	[0.081]**	[0.082]***	[0.027]***	[0.027]***
Compound services, human resources, and services (not elsewhere classified)	-0.005	-0.005	-0.011	-0.01
	[0.069]	[0.070]	[0.022]	[0.022]
Information and communications	-0.113	-0.112	-0.15	-0.151
	[0.173]***	[0.174]***	[0.046]***	[0.046]***
Wage system and overtime system				
Performance-based wages dummy	0.028	0.028	0.036	0.036
	[0.052]**	[0.052]**	[0.017]**	[0.017]**
Profit target dummy	0.029	0.028	0.028	0.029
	[0.045]**	[0.045]**	[0.016]*	[0.015]*
Dummy with prohibition on doing overtime	0.068	0.068	0.133	0.132
	[0.093]**	[0.093]***	[0.042]***	[0.041]***
Dummy with system for surveying overtime hours	-0.047	-0.046	-0.069	-0.069
	[0.042]***	[0.043]***	[0.015]***	[0.015]***
Dummy with compliance training program	-0.051	-0.05	-0.06	-0.061
	[0.049]***	[0.049]***	[0.015]***	[0.015]***
Importance of human capital				
Dummy for length of time within which employees are expected to become autonomous (compared to “6 years or more”):				
Approx. 1 year	-	0.001	-0.005	-
	-	[0.092]	[0.030]	-
Approx. 2–3 years	-	-0.004	-0.005	-
	-	[0.080]	[0.026]	-
Approx. 4–5 years	-	0.007	0.009	-
	-	[0.084]	[0.027]	-
Degree of long-term development orientation	-	-0.004	-0.007	-
	-	[0.025]	[0.009]	-

(*Continued*)

Dummy with 1 hour or more of overtime (first stage)		Dummy with failure or inability to take paid leave		Dummy with encouragement to resign, dismissal, or reassignment of poorly performing employees		Dummy with encouragement to resign not accompanied by personnel reductions	
Labor-management matching data		Labor-management matching data		Enterprise data		Enterprise data	
Heckman		Probit		Probit		Probit	
Coef.	Coef.	Marginal effect	Marginal effect	Marginal effect	Marginal effect	Marginal effect	Marginal effect
0.275	0.279	0.038	0.038	0.052	0.047	0.046	0.039
[0.080]***	[0.080]***	[0.088]**	[0.088]**	[0.212]	[0.211]	[0.270]	[0.266]
0.007	0.014	-0.029	-0.027	-0.145	-0.15	0.007	0.003
[0.105]	[0.104]	[0.139]	[0.141]	[0.244]*	[0.246]*	[0.402]	[0.389]
-0.115	-0.107	0.037	0.036	-0.044	-0.033	0.034	0.033
[0.114]	[0.114]	[0.128]	[0.129]	[0.281]	[0.283]	[0.437]	[0.423]
0.121	0.138	-0.003	-0.006	-0.203	-0.193	0.061	0.067
[0.084]	[0.083]*	[0.100]	[0.100]	[0.241]**	[0.238]**	[0.386]	[0.358]
0.214	0.215	0.014	0.012	-0.073	-0.073	-0.032	-0.032
[0.068]***	[0.068]***	[0.079]	[0.080]	[0.194]	[0.194]	[0.239]**	[0.240]**
0.146	0.163	-0.06	-0.06	-0.104	-0.089	0.007	0.013
[0.145]	[0.144]	[0.233]**	[0.232]**	[0.339]	[0.329]	[0.437]	[0.438]
-0.073	-0.074	0.013	0.013	0.043	0.044	0.005	0.005
[0.050]	[0.050]	[0.060]	[0.061]	[0.144]	[0.145]	[0.175]	[0.176]
0.219	0.218	0.024	0.025	-	-	-	-
[0.044]***	[0.044]***	[0.052]***	[0.052]***	-	-	-	-
-0.474	-0.467	-	0.01	-	-0.073	-	-0.022
[0.086]***	[0.086]***	-	[0.117]	-	[0.231]	-	[0.385]
0.195	0.195	-	-0.033	-	0.094	-	0.029
[0.041]***	[0.041]***	-	[0.051]***	-	[0.126]**	-	[0.143]**
-0.012	-0.013	-0.012	-0.01	-	-	-	-
[0.047]	[0.046]	[0.056]	[0.057]	-	-	-	-
-0.063	-	-	0.009	0.164	0.159	0.033	0.032
[0.088]	-	-	[0.110]	[0.255]*	[0.256]	[0.340]	[0.341]
0.012	-	-	0.006	0.203	0.201	0.073	0.07
[0.078]	-	-	[0.095]	[0.232]**	[0.230]**	[0.325]**	[0.325]**
-0.107	-	-	-0.006	0.189	0.185	0.039	0.036
[0.081]	-	-	[0.100]	[0.248]**	[0.249]*	[0.312]	[0.314]
0.068	0.069	-	0.001	-0.02	-0.024	0.007	0.005
[0.025]***	[0.024]***	-	[0.030]	[0.069]	[0.069]	[0.083]	[0.084]

Table 1

Explained variables	Dummy with uncompensated overtime		Dummy with uncompensated overtime (second stage)	
Sample	Labor-management matching data		Labor-management matching data	
Model	Probit		Heckman	
Explanatory variables	Marginal effect	Marginal effect	Coef.	Coef.
Job characteristics				
Increased scope, difficulty, or amount of work	-0.002 [0.047]	-0.002 [0.047]	-0.008 [0.015]	-0.008 [0.015]
Dummy for customers doing business with the company continually for five years or more	0.001 [0.055]	0.001 [0.055]	-0.003 [0.018]	-0.002 [0.018]
Dummy for fluctuations of double or more in work volume for a single day	0.003 [0.059]	0.003 [0.059]	-0.009 [0.020]	-0.01 [0.020]
Dummy for fluctuations of double or more in work volume for a single week	0.005 [0.061]	0.006 [0.062]	0.019 [0.020]	0.017 [0.020]
Amount of discretion regarding volume of work	-0.017 [0.028]**	-0.017 [0.028]**	-0.018 [0.010]*	-0.018 [0.010]*
Amount of discretion regarding work procedures	0.007 [0.033]	0.008 [0.033]	0.018 [0.011]	0.018 [0.011]
Workplace attributes				
Profit amounts are managed on a workplace basis (dummy)	- -	- -	- -	- -
Less than 20% of regular employees are under 40 years of age (compared with 60% or more)	- -	- -	- -	- -
Between 20% and 59% of regular employees are under 40 years of age (compared with 60% or more)	- -	- -	- -	- -
Constant term	- [1.304]	- [1.315]	0.846 [0.419]**	0.792 [0.414]*
Sample size	5632	5632	4207	4207
λ	- -	- -	- -	- -

Notes: 1. Figures in brackets indicate the standard error.
2. Explanatory variables include age, years of continuous service dummy, dummy for employees and female employees as a percentage of all regular employees.
3. *** indicates significance at the 1% level, ** at the 5% level, and * at the 10% level.

(*Continued*)

Dummy with 1 hour or more of overtime (first stage)		Dummy with failure or inability to take paid leave		Dummy with encouragement to resign, dismissal, or reassignment of poorly performing employees		Dummy with encouragement to resign not accompanied by personnel reductions	
Labor-management matching data		Labor-management matching data		Enterprise data		Enterprise data	
Heckman		Probit		Probit		Probit	
Coef.	Coef.	Marginal effect	Marginal effect	Marginal effect	Marginal effect	Marginal effect	Marginal effect
0.014	0.013	0	-0.001	0.102	0.107	0.032	0.035
[0.045]	[0.045]	[0.055]	[0.055]	[0.148]*	[0.147]*	[0.189]*	[0.183]*
-0.027	-0.018	0.004	0.004	0.087	0.087	0.021	0.02
[0.054]	[0.054]	[0.064]	[0.065]	[0.163]	[0.164]	[0.202]	[0.203]
0.017	0.015	0.001	0	-	-	-	-
[0.059]	[0.058]	[0.070]	[0.070]	-	-	-	-
-0.025	-0.015	0.063	0.061	-	-	-	-
[0.061]	[0.061]	[0.067]***	[0.067]***	-	-	-	-
-0.119	-0.119	-0.007	-0.007	-	-	-	-
[0.028]***	[0.028]***	[0.034]	[0.034]	-	-	-	-
0.067	0.069	0.004	0.004	-	-	-	-
[0.032]**	[0.032]**	[0.039]	[0.039]	-	-	-	-
-	-	-	-	-0.01	-0.014	-0.019	-0.019
-	-	-	-	[0.125]	[0.126]	[0.172]	[0.169]
-	-	-	-	0.107	0.108	0.259	0.25
-	-	-	-	[0.280]	[0.274]	[0.327]***	[0.328]***
-	-	-	-	-0.007	-0.006	0.034	0.033
-	-	-	-	[0.138]	[0.139]	[0.202]**	[0.207]**
-0.957	-0.802	-	-			-	-
[1.346]	[1.344]	[1.536]	[1.563]	[3.012]	[3.031]	[3.488]	[3.504]
5632	5632	5632	5632	1721	1721	1721	1721
0.146	0.15	-	-	-	-	-	-
[0.074]**	[0.071]**	-	-	-	-	-	-

whose self-evaluations place them in the top 20%, married dummy, year of establishment,

regular employees was negatively correlated to a statistically significant degree. It appears that the more non-regular employees and fewer regular employees there are, the more difficulty regular employees have in taking paid leave.

Finally, let us turn our attention to the analysis of coerced resignation. Here we will look at results common to explained variables fitting two patterns. With regard to wage system, an increase in coerced resignation was not seen even when performance-based evaluations were carried out or profits are managed on a workplace basis. However, examination of variables pertaining to importance of human capital reveals a statistically significant positive correlation with the dummy for "length of time within which employees are expected to become autonomous: two or three years," suggesting that when development of human capital is completed in only two or three years, it has a tendency to lead to coerced resignation. However, for the even shorter dummy for "employees expected to become autonomous in around one year," a clear impact could not be seen. This suggests that there are few incentives for employees to remain at companies that devote practically no effort to development of human capital, and many employees resign of their own accord (rather than being coerced.) Also, expansion of the scope of work duties, rising degree of difficulty, and increasing amount of work are correlated with coerced resignation, indicating the significant impact of change in work contents.

Next, we will analyze the impact on performance of each of the issues, using the Propensity Score Matching method, based on the results of analysis with Formula (1). To explain this analysis in simple terms, it is a comparison of changes in workplace business performance between workplaces where the issues (uncompensated overtime, failure or inability to take paid leave, and coerced resignation) occur and workplaces where they do not, using specimens with similar theoretical probability of the issues occurring obtained from analysis using Formula (1). Then, the question of whether illegal labor practices exert a positive impact on business performance is examined, along with the question of whether the work environment promotes illegal labor practices.

The specific analysis procedure used is ATT (Average treatment effect on the treated), in which workplaces, with similar values for theoretical probability of problems' occurring, are compared to see differences in business performance between workplaces where the problems occurred (1) and those where they did not (0). ATT is defined according to Formula (2) below.[5]

$$\begin{aligned} ATT &= E(Y_1 - Y_0 \mid D=1) \\ &= E\mid_{p(\cdot)\mid D=1} \{E(Y_1 \mid D=1, P(X,J,M)) - E(Y_0 \mid D=1, P(X,J,M))\} \\ &= E\mid_{P(\cdot)\mid D=1} \{E(Y_1 \mid D=1, P(X,J,M)) - E(Y_0 \mid D=0, P(X,J,M))\} \end{aligned} \tag{2}$$

[5] Explanatory variables used when estimating the Propensity Score are placed in a model that includes many of the explanatory variables in Table 1 that are subject to analysis. None of the targets of analysis were rejected due to testing based on balancing properties as per Dehejia and Wahba (1999, 2002).

In Formula (2), *Y* is the index of performance change for each individual workplace. In this article, responses to the enterprise questionnaire that show the workplace's difference in ordinary profit and sales amounts between three years ago and today are used, and in one analysis an "improved performance dummy" assigned a value of 1 when these figures increased is employed, while in another analysis degree of change in performance was expressed as increase = 1, unchanged = 0, and decrease = -1, with both analyses applied to ordinary profit and sales. *D* are the dummy variables for occurrence of each of the problems in workplaces, used in the Formula (1) analysis employing explained variables. *P (X, J, M)* is the theoretical probability value of problems' occurrence obtained from the Formula (1) analysis results, for which the consistent estimator of ATT was obtained by matching similar specimens.[6]

The analysis results are shown on Table 2. First, examining uncompensated overtime, we find a clear and statistically significant positive correlation, with workplaces where uncompensated overtime occurs tending to show improvement in ordinary profits. With regard to sales, however, no impact could be recognized. From these results, we can infer that uncompensated overtime contributes to cost cutting by reducing the amount of compensation paid, implying that the uncompensated overtime is not done voluntarily in expectation of compensation, but rather is non-voluntary.

As for failure or inability to take paid leave, there is a particularly clear positive impact on sales. Also, in some but not all cases, there was a statistically significant positive effect on ordinary profit. The implication is that when workers take paid leave, economically productive activities are curtailed, meaning that fewer days of leave taken lead to increased sales. However, no clear correlation could be found in terms of profits, and the results did not indicate that failure or inability to take paid leave has a positive impact on companies' business performance.

Finally, vis-à-vis coerced resignation, consistent results were not found for the two indicators, and in terms of ordinary profits, a statistically significant positive correlation could only be found with "dummy for encouragement to resign, dismissal, or reassignment of poorly performing employees." This dummy is based on a strongly worded question, regarding employees who received the lowest possible evaluations for three consecutive years, and even if encouragement to resign is occurring in these cases, it cannot be directly viewed as problematic.

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[6] The consistent estimator is shown as $ATT = \frac{1}{n_1}\sum_{i=1\{D_i=1\}}^{n_1}\left[Y_{1i} - \sum_{j=1\{D_i=0\}}^{n_0} W(i,j)Y_{oj}\right]$, where n_1 is the sample size where D = 1, and n_0 is the sample size where D = 0. $W(i,j)$ represents the weighting toward subjects where D = 0 based on the Propensity Score, and is equivalent to $\sum_j W(i,j) = 1$. It should be noted that the two weighting methods used, Nearest Neighbor Matching and Kernel Matching, are those that have commonly been used in previous studies.

Table 2. Results of Analysis of Impact on Business Performance of Uncompensated Overtime, Failure or Inability to Take Paid Leave, and Coerced Resignation

	D: Dummy with uncompensated overtime							
	Nearest Neighbor Matching				Kernel Matching			
	N (Treatment)	N (Control)	ATT	Standard error	N (Treatment)	N (Control)	ATT	Standard error
Y: Change in ordinary profit of workplace (1: Increase, 0: No change, -1: Decrease)	1082	662	0.135	[0.058]**	1082	4521	0.084	[0.030]***
Y: Dummy for ordinary profit increase at workplace	1082	855	0.066	[0.024]***	1082	4521	0.039	[0.013]***
Y: Change in sales of workplace (1: Increase, 0: No change, -1: Decrease)	1082	665	0.091	[0.068]	1082	4521	0.041	[0.037]
Y: Dummy for sales increase at workplace	1082	855	0.048	[0.054]	1082	4521	0.023	[0.019]

	D: Dummy with failure or inability to take paid leave							
	Nearest Neighbor Matching				Kernel Matching			
	N (Treatment)	N (Control)	ATT	Standard error	N (Treatment)	N (Control)	ATT	Standard error
Y: Change in ordinary profit of workplace (1: Increase, 0: No change, -1: Decrease)	579	404	0.021	[0.070]	579	4976	0.046	[0.033]
Y: Dummy for ordinary profit increase at workplace	579	502	0.038	[0.022]*	579	4976	0.038	[0.023]*
Y: Change in sales of workplace (1: Increase, 0: No change, -1: Decrease)	579	407	0.134	[0.036]***	579	4976	0.130	[0.030]***
Y: Dummy for sales increase at workplace	579	502	0.093	[0.019]***	579	4976	0.079	[0.017]***

	D: Dummy with encouragement to resign, dismissal, or reassignment of poorly performing employees							
	Nearest Neighbor Matching				Kernel Matching			
	N (Treatment)	N (Control)	ATT	Standard error	N (Treatment)	N (Control)	ATT	Standard error
Y: Change in ordinary profit of workplace (1: Increase, 0: No change, -1: Decrease)	638	345	0.124	[0.013]***	638	1100	0.094	[0.045]**
Y: Dummy for ordinary profit increase at workplace	638	433	0.071	[0.01]***	638	1100	0.067	[0.024]***
Y: Change in sales of workplace (1: Increase, 0: No change, -1: Decrease)	638	347	0.124	[0.143]	638	1100	0.136	[0.060]**
Y: Dummy for sales increase at workplace	638	433	0.075	[0.050]	638	1100	0.087	[0.021]***

	D: Dummy with encouragement to resign not accompanied by personnel reductions							
	Nearest Neighbor Matching				Kernel Matching			
	N (Treatment)	N (Control)	ATT	Standard error	N (Treatment)	N (Control)	ATT	Standard error
Y: Change in ordinary profit of workplace (1: Increase, 0: No change, -1: Decrease)	80	60	0.065	[0.126]	80	1537	0.074	[0.103]
Y: Dummy for ordinary profit increase at workplace	80	76	0.013	[0.117]	80	1537	0.042	[0.064]
Y: Change in sales of workplace (1: Increase, 0: No change, -1: Decrease)	80	60	0.281	[0.203]	80	1537	0.184	[0.142]
Y: Dummy for sales increase at workplace	80	76	0.125	[0.173]	80	1537	0.073	[0.072]

Notes: 1. Figures in brackets indicate the standard error.
2. Kernel Matching bandwidth is 0.05.
3. *** indicates significance at the 1% level, ** at the 5% level, and * at the 10% level.

IV. Interpretations of Employees' Subjective Perceptions of "Black Companies"

This section addresses the second analysis, i.e., employees' subjective perceptions of their employers as "black companies." Here, in addition to the uncompensated overtime, failure or inability to take paid leave, and coerced resignation discussed in the preceding section, we will examine whether characteristics of "black companies" cited by Konno (2013), Kanisawa (2010), and Ouchi (2014), such as harassment and unreasonable quotas, are linked to subjective perceptions of "blackness."

This article considers employees' perceptions of "blackness" to be a subjective variable. There is a wealth of existing quantitative analysis dealing with subjective variables like those examined in this article, including Ota (2013), Sannabe and Saito (2008), Shimanuki (2007), and Shinozaki et al. (2003). In all of these studies, the subjective variables subject to analysis are believed to be assessed by employees through comparison of their companies with others having similar attributes. With this in mind, this article follows previous studies in assuming that employees' subjective perceptions of whether or not they work for a "black company" are formed through comparison with other workplaces.

Also, as reflected in the phrase "self-sacrifice without reward" in Hamaguchi (2013),[7] even when assuming that employees in two different workplaces face similar degrees of adversity, and the workers' subjective perceptions are formed in similar ways, assessments of their workplaces as "black" differ depending on whether or not they consider their efforts rewarded in some manner. For example, the same person forced to do uncompensated overtime may not perceive the employer as "black" if this effort is rewarded in some way other than overtime pay, such as long-term training, a raise in basic wages, or job security, whereas the company will be seen as "black" if these rewards are scarce or nonexistent. The theory of compensatory wages (i.e. that wages compensate for working time overall, even when some specific work performed is uncompensated) holds that if wages are high enough, workers will act with the same utility even when their jobs entail risks. With this in mind, it is necessary to take differentials in wages as a whole, as well as non-monetary compensation, into account when analyzing the problems affecting workplaces.

[7] According to Hamaguchi (2013), in the past many Japanese companies were what would today be considered "black companies" purely in terms of working styles, but employees reaped benefits in terms of long-term job security and seniority-based pay increases. Today's "black companies" tend to saddle employees with the same burden as the traditional companies but without rewards such as long-term job security and seniority-based raises, which Hamaguchi characterizes as "self-sacrifice without reward."

V. Analysis of Subjective Perceptions of "Blackness": Data, Analysis Methods, and Analysis Results

1. Data and Procedures Used for Analysis

Data from the Workers' Tankan 26[8] survey is employed in analysis of workers' subjective perceptions of "blackness." This survey, which directly asked workers whether or not they consider their employers "black companies," was an online survey[9] targeting employees of private-sector enterprises aged 20–64, in the Tokyo and Kansai (Osaka-Kyoto-Kobe) regions, and although allocation was used to avoid the tendency of online surveys to be biased toward younger respondents, Japan Institute for Labour Policy and Training (2005) and Ishida et al. (2009) have noted that subjective responses on online surveys also tend to be more negative, meaning we must take into account the possibility of exaggerated perceptions of "blackness." For consistency with early analyses in this article, non-regular employees and management-level personnel (section manager or above) were omitted from the analysis.

The analysis model is expressed as Formula (3) below. B_i on the far left side of Formula (3) is a subjective variable expressing each subject's response to the question of whether his or her employer is a "black company," assigned the values of 4 (Yes, I think it is), 3 (I agree more than disagree that it is), 2 (I disagree more than agree that it is), and 1 (No, I don't think it is). OLS and order logit analysis[10] were carried out with these as the explained variables.

$$B_i = a + \beta_1 \ln w^a + \beta_2 \ln w^b + \beta_3 A^{a-b} + \beta_4 p^{a-b} + \beta_5 j + \beta_6 i + \varepsilon \qquad (3)$$

W^a the far right-hand side are values for the workers' annual income from working, obtained from the survey. However, these are approximated continuous variables, as the Workers' Tankan 26 features multiple-choice responses placing workers in income brackets, so, for example a worker making "from ¥3 million to ¥39.9 million" is calculated as earning ¥3.5 million, the median for this category. W^b was derived by obtaining employees' "prescribed monthly salary" and "annual bonuses and other compensation" by prefecture, industry, size category of company, age group, and gender from data of the 2012 Basic Survey on Wage Structure, and inserting the numerical value for "prescribed monthly salary × 12 + annual bonuses and other compensation" of the cell that most closely fits the Workers' Tankan 26 survey subject's attributes out of 7,800 possible cells. Thus, it is possible to

[8] Individual sample data for the Workers' Tankan 26 (courtesy of the Research Institute for the Advancement of Living Standards) was supplied by the SSJ Data Archive of the University of Tokyo Center for Social Research and Data Archives.

[9] For sample extraction and allocation methods, refer to the Research Institute for the Advancement of Living Standards (2013, 2).

[10] A separate Probit analysis was also carried out with the dummy for perception of subject's employer as a "black company" assigned as value of "1" when the response to the question is valued 3 or 4.

compare workers' incomes with other people who have similar attributes and work for enterprises with similar attributes.[11] $A^{a\text{-}b}$, $P^{a\text{-}b}$ of the right-hand side are variables relating to non-monetary rewards at each place of employment, and variables representing the severity of workplace issues. Although the Workers' Tankan 26 contains answers to questions relating to the presence or absence of problems such as workplace harassment, and about the presence or absence of opportunities for career advancement, these are subjective responses and are thought to constitute survey respondents' evaluations of the situations at their own workplaces in comparison with those of another comparable workplace *b* that they envisioned. Specifically, as shown in Table 3, for each explanatory variable involved, $A^{a\text{-}b}$, $p^{a\text{-}b}$ was created from the responses to the relevant questions. *j* on the right-hand side represents the enterprise attributes, consisting of enterprise size, industry dummy, and dummy with in-house labor unions within the enterprise. *i* represents individual attributes, dummy with university or graduate school degree, age, male dummy, married dummy, dummy for having a child, years of continuous service, dummy for number of working hours per week last month, and area of residence dummy used, with data controlled for economic circumstances at the time the employee began working by matching with the annual average ratio of job offers to job seekers by prefecture at the time the employee was hired, derived from the general employment placement situation data.

This analysis controls for monetary and non-monetary rewards, so as to elucidate which among the multiple labor problems have a particularly strong impact on subjective perceptions of "blackness." The results should provide insight into which information ought to be provided to workers when they are choosing a place of employment. For example, if workplace harassment has a major impact, we can conclude that word-of-mouth comments on corporate culture from employees, which are made available by some employment placement information services, ought to play an important role. See Appendix Table 2 for basic statistics on the data set.

2. Results of Analysis

The results of analysis using Formula (3) are shown on Table 4.[12] Here, taking into account the possibility that for women, the workplaces with which they are comparing their own workplaces contain many non-regular workers, with a corresponding impact on income, an analysis limited to male subjects was added. In addition, an analysis was added in which variables related to non-monetary rewards and workplace problems are omitted from the

[11] However, as Shinozaki et al. (2003) have pointed out, it is not clear what sort of other workers the workers are comparing themselves to, and there is a problem in that w^b defined in this way includes some degree of observational error. In fact, in the analysis results of Shinozaki et al. (2003), there were multiple cases in which a wage gap that corresponds to the w^a, w^b in this article did not affect the subjective responses.

[12] In the estimate using OLS, the Variance Inflation Factor (VIF) was calculated in order to verify the multicollinearity problem, but in all models there were no more than a few variables with a maximum VIF of around 3.5 at the maximum, and the average VIF was below 2 in all models.

Table 3. Treatment of $A^{a\text{-}b}$, $p^{a\text{-}b}$ Based on Responses to the Workers' Tankan 26

Variable	Question item	Value after treatment	
		1	0
Non-monetary amenities: $A^{a\text{-}b}$			
Opportunities for development of skills or career	I have opportunities or support for development of my professional skills or career	Agree, or agree more than disagree	Response other than those at left
Allocation of responsibility and discretion	I am allocated a certain degree of responsibility and/or discretion	Agree, or agree more than disagree	Response other than those at left
Realization of work-life balance	I am able to achieve an appropriate balance between work and personal life	Agree, or agree more than disagree	Response other than those at left
Status of workplace problems including illegal labor practices: $p^{a\text{-}b}$			
Employer does not pay the designated overtime wages	My employer does not pay some or all of the designated overtime wages	Yes	No
Unable to take paid leave days	I am unable to get paid leave approved even if I submit an application	Yes	No
Sexual harassment or power harassment occurs	Sexual harassment or power harassment occurs in the workplace (employees are sexually harassed or psychologically abused by supervisors, violence takes place in the workplace without consequences)	Yes	No
Unreasonable quotas are assigned	I am assigned quotas that would be impossible to meet through ordinary effort	Yes	No
Employees are encouraged to resign or reassigned so as to encourage resignation	Employees are reassigned, relocated, placed on loan, etc. as punitive measures, or company otherwise seeks to drive workers to voluntary resignation	Yes	No
High rate of employee turnover	Many workers resign within a short period of time	Yes	No

Table 4. Analysis Results for Subjective

Explained variables	Degree of subjective perception			
Model	Order logit			
Sample	Total		Male	
Explanatory variables	Coef.	Coef.	Coef.	Coef.
Subject's annual income (log value)	-0.213	-0.371	-0.249	-0.316
	[0.161]	[0.153]**	[0.211]	[0.197]
Annual income of object of comparison (log value)	0.182	0.278	0.303	0.702
	[0.395]	[0.361]	[0.543]	[0.493]
Number of work hours per week last month (compare with "less than 40 hours")				
40−45 hours dummy	0.287	0.092	0.102	-0.022
	[0.183]	[0.169]	[0.240]	[0.225]
45−50 hours dummy	0.326	0.385	0.044	0.141
	[0.214]	[0.197]*	[0.266]	[0.248]
50 hours or more dummy	0.482	0.978	0.383	0.932
	[0.205]**	[0.187]***	[0.248]	[0.229]***
Male dummy	-0.035	0.13	-	-
	[0.186]	[0.173]	-	-
Age	-0.05	-0.037	-0.046	-0.041
	[0.011]***	[0.009]***	[0.015]***	[0.013]***
Dummy with university or graduate school degree	0.05	0.022	0.271	0.16
	[0.150]	[0.138]	[0.184]	[0.170]
Ratio of job offers to job seekers at time employee was hired	0.091	0.098	0.001	-0.015
	[0.230]	[0.212]	[0.275]	[0.260]
Scale of enterprise (Reference group: Fewer than 100 employees)				
100−999 employees dummy	0.054	0.199	-0.143	0.083
	[0.183]	[0.168]	[0.227]	[0.212]
1,000 or more employees dummy	0.018	0.149	-0.306	-0.086
	[0.234]	[0.216]	[0.300]	[0.278]
Industry (Reference groups: Other)				
Construction, manufacturing dummy	0.32	-0.008	0.097	-0.295
	[0.270]	[0.245]	[0.324]	[0.295]
Wholesale and retail trade dummy	0.273	-0.061	-0.006	-0.36
	[0.315]	[0.293]	[0.384]	[0.362]
Finance, insurance, real estate dummy	0.535	0.055	0.372	-0.185
	[0.355]	[0.327]	[0.461]	[0.433]
Services dummy	0.351	0.106	0.193	-0.231
	[0.290]	[0.265]	[0.351]	[0.324]
Information and communications dummy	0.664	-0.346	0.358	-0.628
	[0.340]*	[0.314]	[0.405]	[0.375]*

Perceptions of "Blackness"

of "black company" (4−1)				Subjective "black" perception dummy			
OLS				Probit			
Total		Male		Total		Male	
Coef.	Coef.	Coef.	Coef.	Marginal effect	Marginal effect	Marginal effect	Marginal effect
-0.1	-0.206	-0.102	-0.167	-0.052	-0.086	-0.073	-0.085
[0.059]*	[0.073]***	[0.080]	[0.094]*	[0.127]*	[0.110]***	[0.167]*	[0.149]**
0.008	0.01	0.021	0.185	0.012	-0.005	0.02	0.057
[0.132]	[0.163]	[0.185]	[0.219]	[0.314]	[0.269]	[0.435]	[0.376]
0.074	0.029	0.028	-0.007	0.047	0.017	0.039	0.008
[0.063]	[0.078]	[0.085]	[0.103]	[0.152]	[0.131]	[0.205]	[0.181]
0.105	0.197	0.006	0.088	0.074	0.109	0.037	0.075
[0.074]	[0.092]**	[0.095]	[0.114]	[0.174]*	[0.148]**	[0.222]	[0.195]
0.155	0.471	0.142	0.457	0.093	0.213	0.102	0.222
[0.074]**	[0.089]***	[0.091]	[0.107]***	[0.165]**	[0.139]***	[0.204]*	[0.177]***
-0.009	0.076	-	-	-0.035	0.003	-	-
[0.066]	[0.082]	-	-	[0.151]	[0.130]	-	-
-0.014	-0.015	-0.014	-0.017	-0.005	-0.004	-0.005	-0.006
[0.003]***	[0.004]***	[0.005]***	[0.006]***	[0.008]***	[0.007]**	[0.012]*	[0.010]**
0.018	-0.011	0.078	0.041	0	-0.015	0.01	-0.007
[0.052]	[0.065]	[0.065]	[0.078]	[0.121]	[0.103]	[0.146]	[0.128]
0.037	0.002	0.015	-0.044	-0.023	-0.039	-0.055	-0.079
[0.081]	[0.101]	[0.101]	[0.121]	[0.193]	[0.170]	[0.237]	[0.219]
0.03	0.1	-0.027	0.047	0.001	0.027	-0.003	0.015
[0.065]	[0.080]	[0.082]	[0.098]	[0.147]	[0.126]	[0.181]	[0.158]
0.033	0.112	-0.078	-0.017	0.059	0.082	0.011	0.026
[0.081]	[0.100]	[0.107]	[0.128]	[0.181]	[0.158]*	[0.237]	[0.211]
0.107	0.004	0.026	-0.123	0.027	-0.002	0.012	-0.031
[0.091]	[0.112]	[0.112]	[0.133]	[0.202]	[0.178]	[0.245]	[0.218]
0.075	0.003	-0.011	-0.122	-0.011	-0.022	-0.024	-0.049
[0.109]	[0.135]	[0.137]	[0.162]	[0.245]	[0.212]	[0.300]	[0.261]
0.179	0.07	0.127	-0.041	0.06	0.034	0.031	-0.024
[0.122]	[0.151]	[0.167]	[0.199]	[0.272]	[0.235]	[0.371]	[0.327]
0.139	0.068	0.057	-0.107	0.049	0.035	0.016	-0.029
[0.099]	[0.122]	[0.123]	[0.146]	[0.218]	[0.191]	[0.265]	[0.235]
0.198	-0.193	0.089	-0.314	0.018	-0.106	-0.005	-0.117
[0.120]*	[0.148]	[0.146]	[0.172]*	[0.285]	[0.249]*	[0.335]	[0.294]*

Table 4

Explained variables	Degree of subjective perception			
Model	Order logit			
Sample	Total		Male	
Explanatory variables	Coef.	Coef.	Coef.	Coef.
Dummy with in-house labor unions	-0.261 [0.173]	-0.519 [0.160]***	-0.272 [0.212]	-0.631 [0.196]***
Non-monetary amenities				
Dummy for opportunities for development of skills or career	-0.075 [0.173]	- -	-0.056 [0.219]	- -
Dummy for allocation of responsibility and discretion	-0.033 [0.149]	- -	-0.037 [0.186]	- -
Dummy for realization of work-life balance	-0.673 [0.153]***	- -	-0.627 [0.190]***	- -
Status of workplace problems including illegal labor practices				
Employer does not pay the designated overtime wages (dummy)	0.67 [0.165]***	- -	0.652 [0.203]***	- -
Unable to take paid leave days (dummy)	0.877 [0.193]***	- -	0.763 [0.242]***	- -
Sexual harassment or power harassment occurs (dummy)	0.373 [0.186]**	- -	0.339 [0.228]	- -
Unreasonable quotas are assigned (dummy)	0.339 [0.208]	- -	0.5 [0.249]**	- -
Employees are encouraged to resign or reassigned so as to encourage resignation (dummy)	1.318 [0.201]***	- -	1.176 [0.250]***	- -
High rate of employee turnover (dummy)	0.924 [0.167]***	- -	0.712 [0.209]***	- -
Cut point 1	-1.334 [5.775]	-2.554 [5.273]	-0.402 [7.811]	3.844 [7.116]
Cut point 2	0.466 [5.776]	-1.261 [5.272]	1.456 [7.811]	5.241 [7.117]
Cut point 3	2.366 [5.776]	0.125 [5.272]	3.299 [7.812]	6.642 [7.118]
Constant term	- -	- -	- -	- -
Sample size	961	961	637	637
Quasi-coefficient of determination	0.212	0.044	0.197	0.051
Coefficient of determination adjusted for degree of freedom	-	-	-	-

Notes: 1. Figures in brackets indicate the standard error.
2. Explanatory variables include male dummy, continuous years of service, married dummy, at time employee was hired.
3. *** indicates significance at the 1% level, ** at the 5% level, and * at the 10% level.

(*Continued*)

of "black company" (4−1)				Subjective "black" perception dummy			
OLS				Probit			
Total		Male		Total		Male	
Coef.	Coef.	Coef.	Coef.	Marginal effect	Marginal effect	Marginal effect	Marginal effect
-0.09	-0.235	-0.103	-0.275	-0.059	-0.1	-0.071	-0.114
[0.061]	[0.076]***	[0.076]	[0.090]***	[0.143]*	[0.122]***	[0.175]*	[0.152]***
-0.044	-	-0.042	-	-0.024	-	-0.02	-
[0.059]	-	[0.076]	-	[0.137]	-	[0.175]	-
0.001	-	0.003	-	0.009	-	0.035	-
[0.052]	-	[0.067]	-	[0.118]	-	[0.148]	-
-0.186	-	-0.172	-	-0.044	-	-0.052	-
[0.053]***	-	[0.067]**	-	[0.124]	-	[0.155]	-
0.277	-	0.279	-	0.081	-	0.079	-
[0.062]***	-	[0.078]***	-	[0.124]**	-	[0.152]**	-
0.39	-	0.331	-	0.148	-	0.148	-
[0.073]***	-	[0.093]***	-	[0.138]***	-	[0.173]***	-
0.162	-	0.147	-	0.113	-	0.089	-
[0.068]**	-	[0.087]*	-	[0.136]***	-	[0.172]**	-
0.185	-	0.237	-	0.096	-	0.131	-
[0.078]**	-	[0.094]**	-	[0.154]**	-	[0.183]***	-
0.498	-	0.446	-	0.128	-	0.084	-
[0.075]***	-	[0.096]***	-	[0.145]***	-	[0.186]*	-
0.39	-	0.309	-	0.171	-	0.119	-
[0.062]***	-	[0.080]***	-	[0.122]***	-	[0.154]***	-
-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-
3.254	5.202	3.23	2.38	-	-	-	-
[1.943]*	[2.397]**	[2.694]	[3.211]	-	-	-	-
961	961	637	637	961	961	637	637
-	-	-	-	0.321	0.078	0.307	0.102
0.407	0.078	0.373	0.089	-	-	-	-

dummy with children, place of residence dummy, and ratio of job offers to job seekers

explanatory variables, and only the easily and externally verifiable explanatory variables such as labor conditions and indicators such as industry and enterprise size were used.

On Table 4, turning our attention first to labor-derived income, we find that the respondent's own labor-derived income generally has a significant negative impact. In particular, when variables such as labor issues are omitted from the explanatory variables, it is clear that the higher the income, the lower the likelihood of subjective perceptions of "blackness." We may infer that among the rewards cited by Hamaguchi (2013), monetary rewards are highly important. On the other hand, the annual income at workplaces with which subjects compared their own workplaces did not show a statistically significant result. As Shinozaki et al. (2003) have indicated, there is a possibility of wide margin of observational error for such variables. As for working hours, a significant positive result emerged from the "50 hours or more" dummy. While the results may be seen as not significant when men only are treated, as a general rule longer working hours are positively correlated with subjective "black" perceptions. Examining the variable related to non-monetary rewards, in the analysis using perceived "blackness" as the explained variables, the "dummy for successful work-life balance" shows a significant negative correlation. However, significant impact was not found for variables such as professional development and allocation of responsibility and discretion. It can be inferred that the more workplaces are designed to facilitate work-life balance, the more the perception of "blackness" is diminished.

Next, let us examine the analysis results for variables related to workplace problems such as uncompensated overtime. Each of these problems generally shows a statistically significant positive result, i.e. the more these problems are present, the greater the subjective perceptions of "blackness." In particular, the variables pertaining to uncompensated overtime, failure or inability to take paid leave, and coerced resignation, as well as "high rate of employee turnover," showed a clear impact across all analysis results. We may conclude that these problems are especially strongly linked to workers' subjective perceptions of "blackness," and thus that information on whether or not these issues exist, and if so to what degree, should be disclosed to job seekers regarding potential places of employment.

Finally, when we examine the individual attribute and enterprise attribute variables, it is evident that age has a statistically significant negative correlation across all analyses, i.e. the younger workers are, the more likely they are to perceive workplaces as "black."[13] Meanwhile, with regard to the dummy with in-house labor union, when using a model that does not include workplace problem variables or non-monetary compensation variables,

[13] Konno (2013) states that what differentiates contemporary "black companies" from traditional companies where illegal labor practices existed is that young workers, who at conventional companies would be cultivated for the future, are instead "used up and discarded." The Research Institute for the Advancement of Living Standards (2013) notes that the younger workers are, the less likely they are to seek help outside the company regarding labor law violations, and it is possible that workplaces with many young employees are have a low risk of legal consequences and little motivation to address illegal labor practices.

there is a consistent result of statistically significant negative impact. However, the impact of labor unions disappears when the above-mentioned variables are included in the explanatory variables, suggesting that companies with in-house labor unions are more likely to have improved with regard to workplace problems and non-monetary compensation. No clear impact was visible with regard to the industry and enterprise size dummy variables. This is true also if subjective responses are omitted from the explanatory variables, indicating that it is difficult to judge whether a workplace is likely to be perceived as "black" from industry and enterprise size alone.

VI. Summary

The analyses in this article found that workers tend not to apply for overtime pay, even when overtime work is performed, when performance-based evaluations and profit targets are in place, as well as when there is a company-wide prohibition on overtime. On the other hand, the problem was less likely to occur when compliance training was carried out, and when there was a company-wide system of overtime surveys in place. With respect to performance-based evaluations and profit targets, in some cases workers may do uncompensated overtime voluntarily with the expectation of receiving high remuneration for results achieved, but this study found the effects of overtime survey systems and compliance training on occurrence of uncompensated overtime were significant, implying that the problem largely arises due to management's lax stance toward compliance. It was also found that although the practice of uncompensated overtime has no apparent effect on business establishments' sales figures, it does have the effect of boosting ordinary income. This suggests that the cost reduction benefits of not paying wages outweigh the potential punitive costs of not following labor rules,[14] and if the situation does not improve, there is a risk of economic "natural selection" weeding out the rule-abiding businesses in favor of the non-abiding ones. Uncompensated overtime was found to be a major factor in employees' subjective perceptions of their employers as "black companies," suggesting that much uncompensated overtime should be considered non-voluntary.

Causes of failure or inability to take paid leave were found to include being assigned profit targets, and irregularity in workload on a week-to-week basis. Meanwhile, factors contributing to coerced resignation were found to include job attributes such as lack of major emphasis on human capital accumulation, even though it may be considered important to some extent, and significant fluctuations in volume or difficulty of work. Neither issue

[14] The Ministry of Health, Labour and Welfare "Results of Correction of Uncompensated Overtime Through Supervision and Guidance" (FY2012) lists enterprises that paid 1 million yen or more to compensate for unpaid wages at higher overtime rates. The figures show that the maximum amount paid by a single company was 540.8 million and the average amount 8.19 million, and one may assume that these amounts would have gone directly into the companies ordinary income if government guidance had not taken place.

seems to be clearly correlated with improved profitability of workplaces, thus this cannot be considered an incentive for non-compliance with labor regulations in this regard. However, no negative impact on profit was evident either. This indicates that there is a need for measures to induce voluntary compliance with rules governing both paid leave and resignation. It should also be noted that failure or inability to take paid leave, and coerced resignation, both clearly heightened employees' perceptions of "blackness."

This study found that in addition to the above three issues, workers' subjective perceptions of "blackness" are shaped by such factors as high rate of employee turnover, excessively long working hours, workplace harassment, and unreasonable quotas. As described in Ouchi (2014), disclosure to job seekers of as much information as possible about prospective employers, to aid in the process of selecting an employer, is an important social mechanism to address the problem of "black companies." It is vital that information about companies, enabling the labor force to gauge the extent of problems such as those described in this article, be made available in advance. Specifically, this information could include actual, rather than nominal, working hours and salary payments; percentage of paid leave days actually taken; rate of employee turnover and employees' primary reasons for resigning. As this information is organized and made available, business establishments where these problems are severe will have a corresponding degree of difficulty in securing human resources, and compliance with labor rules will be linked to better business performance even in the short term. We can conclude that such information disclosure would be a highly significant step forward.

Appendix Table 1. Basic Statistics for Data Set Used in Analysis of Factors of Contributing to Labor Law Violations

Explanatory variables	Labor-management matching data		Enterprise data	
	Average	Standard deviation	Average	Standard deviation
Explained variables				
Dummy with uncompensated overtime	0.192	0.394	-	-
Dummy with failure or inability to take paid leave	0.103	0.304	-	-
Dummy with encouragement to resign, dismissal, or reassignment of poorly performing employees	-	-	0.365	0.482
Dummy with encouragement to resign not accompanied by personnel reductions	-	-	0.046	0.211
Individual attributes				
Subject's annual income (unit: ¥1 million)	3.535	1.412	-	-
Male dummy	0.633	0.482	-	-
Age	31.528	5.067	-	-
Married dummy	0.541	0.498	-	-
Dummy with university or graduate school degree	0.442	0.497	-	-
Dummy for prioritization of leisure-time activities	0.110	0.313	-	-
Dummy for employees whose self-evaluations place them in the top 20%	0.118	0.322	-	-
Continuous service for 1 or more years, but less than 3 years	0.188	0.390	-	-
Continuous service for 3 or more years, but less than 5 years	0.156	0.363	-	-
Continuous service for 5 years or more	0.657	0.475	-	-
Enterprise attributes				
Dummy with in-house labor unions	0.361	0.480	0.347	0.476
Year of establishment	1955.198	33.236	1956.804	34.157
Dummy for regular employees as a percentage of all employees in the workplace	0.743	0.246	0.674	0.281
Sales office, storefront, or other customer service provider dummy	0.527	0.499	0.528	0.499
Factory	0.244	0.430	0.209	0.406
Other workplace format	0.473	0.499	0.472	0.499
Dummy with compliance training implemented	0.287	0.452	-	-
Scale of enterprise				
Fewer than 100 employees	0.174	0.379	0.202	0.402
100–299 employees	0.428	0.495	0.402	0.490
300–499 employees	0.112	0.315	0.120	0.325
500–999 employees	0.135	0.342	0.125	0.331
1,000 or more employees	0.144	0.351	0.143	0.350

Appendix Table 1 (*Continued*)

Explanatory variables	Labor-management matching data		Enterprise data	
	Average	Standard deviation	Average	Standard deviation
Industry				
Wholesale and retail trade	0.107	0.309	0.125	0.331
Finance, insurance, real estate	0.046	0.209	0.043	0.203
Dining and drinking, accommodations, amusement and living-related services	0.042	0.201	0.067	0.251
Scientific research, professional and technical services, education, health care and welfare	0.231	0.422	0.225	0.418
Compound services, human resources, and services (not elsewhere classified)	0.153	0.360	0.178	0.382
Information and communications	0.022	0.147	0.016	0.127
Construction, manufacturing, other	0.398	0.490	0.346	0.476
Wage system and overtime system				
Performance-based wages dummy	0.193	0.395	0.193	0.395
Profit target dummy	0.297	0.457	-	-
Dummy with prohibition on doing overtime	0.043	0.203	0.044	0.204
Dummy with system for surveying overtime hours	0.414	0.493	0.393	0.489
Importance of human capital				
Length of time within which employees are expected to become autonomous:				
Approx. 1 year	0.174	0.379	0.203	0.403
Approx. 2–3 years	0.487	0.500	0.475	0.500
Approx. 4–5 years	0.262	0.440	0.250	0.433
Approx. 6 years or more	0.064	0.246	0.071	0.257
Degree of long-term development orientation	2.586	0.868	2.504	0.889
Job characteristics				
Increased scope, difficulty, or amount of work	0.254	0.435	0.270	0.444
Dummy for customers doing business with the company continually for five years or more	0.704	0.456	0.693	0.461
Dummy for fluctuations of double or more in work volume for a single day	0.157	0.364	-	-
Dummy for fluctuations of double or more in work volume for a single week	0.138	0.345	-	-
Amount of discretion regarding volume of work	2.552	0.809	-	-
Amount of discretion regarding work procedures	2.919	0.708	-	-
Workplace attributes				
Profit amounts are managed on a workplace basis (dummy)	-	-	0.515	0.500
Female employees as a percentage of all regular employees in the workplace	-	-	0.300	0.253
Less than 20% of regular employees are under 40 years of age (compared with 60% or more)	-	-	0.126	0.332
Between 20% and 59% of regular employees are under 40 years of age (compared with 60% or more)	-	-	0.660	0.474
Sample size	5632		1721	

Appendix Table 2. Basic Statistics for Data Set Used in Analysis of Subjective Perceptions of "Blackness"

	Total		Male	
	Average	Standard deviation	Average	Standard deviation
Degree of subjective perception of "black company"	1.776	0.949	1.782	0.939
Subjective "black" perception dummy	0.222	0.416	0.217	0.412
Subject's annual income (log value)	15.186	0.505	15.306	0.470
Annual income of object of comparison (log value)	15.297	0.317	15.408	0.286
Number of work hours per week last month				
Less than 40 hours	0.272	0.445	0.209	0.407
40−45 hours dummy	0.328	0.470	0.312	0.464
45−50 hours dummy	0.182	0.386	0.206	0.404
50 hours or more dummy	0.219	0.413	0.273	0.446
Individual attributes				
Male dummy	0.663	0.473	1.000	0.000
Age	39.260	10.188	39.843	9.801
Years of continuous service	10.079	8.620	10.881	9.125
Married dummy	0.493	0.500	0.578	0.494
Dummy with children	0.380	0.486	0.436	0.496
Dummy with university or graduate school degree	0.574	0.495	0.620	0.486
Ratio of job offers to job seekers at time employee was hired	0.785	0.330	0.789	0.337
Tokyo dummy	0.285	0.452	0.267	0.443
Kanagawa, Chiba, Saitama dummy	0.374	0.484	0.394	0.489
Scale of enterprise				
Fewer than 100 employees	0.383	0.486	0.336	0.473
100−999 employees dummy	0.305	0.461	0.323	0.468
1,000 or more employees dummy	0.312	0.464	0.341	0.474
Industry				
Construction, manufacturing dummy	0.376	0.485	0.394	0.489
Wholesale and retail trade dummy	0.124	0.330	0.118	0.323
Finance, insurance, real estate dummy	0.079	0.270	0.060	0.237
Services dummy	0.233	0.423	0.204	0.403
Information and communications dummy	0.092	0.289	0.110	0.313
Other indstries dummy	0.097	0.296	0.115	0.319

Appendix Table 2 (*Continued*)

	Total		Male	
	Average	Standard deviation	Average	Standard deviation
Dummy with in-house labor unions	0.386	0.487	0.424	0.495
Non-monetary amenities				
Dummy for opportunities for development of skills or career	0.283	0.451	0.272	0.445
Dummy for allocation of responsibility and discretion	0.510	0.500	0.493	0.500
Dummy for realization of work-life balance	0.451	0.498	0.407	0.492
Status of workplace problems including illegal labor practices				
Employer does not pay the designated overtime wages (dummy)	0.254	0.435	0.264	0.441
Unable to take paid leave days (dummy)	0.171	0.376	0.179	0.384
Sexual harassment or power harassment occurs (dummy)	0.272	0.445	0.276	0.448
Unreasonable quotas are assigned (dummy)	0.153	0.360	0.176	0.381
Employees are encouraged to resign or reassigned so as to encourage resignation (dummy)	0.223	0.416	0.234	0.424
High rate of employee turnover (dummy)	0.267	0.443	0.262	0.440
Sample size	961		637	

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International Trends in Systems for Inspection of Labor Law Violations

Toshiharu Suzuki
Ibaraki University

This article seeks to outline trends in labor inspection systems that monitor labor law violations, mainly focusing on the European Union (EU) nations. The International Labour Organization (ILO) has stated that in developed countries, it is desirable to have at least one inspector for every 10,000 workers, a standard that is generally met in the developed countries of the EU. However, there are differences among nations in terms of whether they have a single, unified labor inspection system overseeing all fields of industry, or separate systems for individual fields. There are also broad variations among nations as to the degree of authority held by labor inspectors. Meanwhile, the method of determining which work sites to inspect has emerged as another important issue. Under these circumstances, countries are engaged in ongoing explorations of various means of boosting the effectiveness of inspection systems, such as strengthening of international cooperation and utilization of the Internet. Moving forward, there is a need to amass further research findings with the goal of building more effective labor inspection systems.

I. Introduction

In Japan, labor standards inspectors (*rodo kijun kantokukan*) constitute the most important organization imposing controls on labor law violations. Looking at the international picture, at least in all developed countries there are similar organizations inspecting and monitoring labor law violations. However, in Japan there has thus far been scarcely any academic research that describes and analyzes organizations for oversight of labor law violations from an international perspective, and little is known about the practices of these organizations.[1] With this in mind, this article's objective is to clarify the organizational structure, scale, content of duties, and scope of authority of organizations corresponding to Japan's labor standards inspectors, primarily focusing on EU member states. This article will also examine recent attempts to heighten the effectiveness of monitoring of labor law violations. After offering this overview, this article will go on to elucidate issues facing labor inspection organizations from an international vantage point.

It should be noted that in this article, organizations that correspond to Japan's labor standards inspectors are collectively referred to as "labor inspectors." Also, because the objective of this article is to outline labor inspection *systems* from an international compara-

[1] One Japanese publication that comprehensively introduces and analyzes labor inspection systems from an international perspective is the Japan Labor Law Association, ed., "Rodo kijun kantoku seido no saikento [Re-examination of labor inspection systems]," *Journal of the Japan Labor Law Association*, No. 50 (1977).

tive standpoint, it does not address the nature of labor law *violations* occurring in specific countries. This is an issue that needs to be examined in detail elsewhere. Another point to note is that for the most part, this paper does not address the situation in Japan. This is because in Japan there is scant documentation of the labor inspection system and scarcely any academic studies have been done, making it difficult to examine analytically. The need to perform an accurate analysis of Japan's labor inspection system underscores the importance of supplying basic data that enables international comparisons, which hopefully we will see happen in the future. For the above-described reasons, this article primarily focuses on elucidating international trends in the labor inspection system.

This article is composed as follows. Firstly, Section II contains an overview of the frameworks for labor inspection systems established by the United Nations International Labour Organization (hereinafter referred to as "the ILO"). Section III examines what sort of labor inspection systems are in place in various EU member nations, within the ILO's international framework, and what authority they hold, as well as what sort of discussions are occurring with regard to these issues, primarily focusing on countries for which relatively reliable data is available, such as the UK, France, and Italy. Section IV outlines recent trends relating to labor inspection systems, such as enhancement of international cooperation and utilization of the Internet. Finally, Section V summarizes the findings and highlights the current status of and issues facing labor inspection systems.

II. International Frameworks Established by the ILO

1. Frameworks Formed through ILO Conventions and Recommendations

Establishment of labor inspection systems by the ILO began with the establishment of the organization itself.[2] Part XIII of the Treaty of Versailles, the 1919 peace treaty officially ending World War I, consisted of provisions concerning labor. These provisions included establishment of the ILO, as well as General Principles including the right of association, the adoption of an eight-hour work day, the abolition of child labor, equal pay for equal work, and a call for establishment of labor inspection systems (Article 427, "Each State should make provision for a system of inspection in which women should take part, in order to ensure the enforcement of the laws and regulations for the protection of the employed.")

Afterward, at the 5th General Conference in 1923, the ILO adopted Recommendation No. 20, the Recommendation Concerning the General Principles for the Organization of Systems of Inspection to Secure the Enforcement of the Laws and Regulations for the Protection of the Workers. This recommendation stated that "the institution of an inspection system is undoubtedly to be recommended as one of the most effective means of ensuring the enforcement of Conventions and other engagements for the regulation of labour condi-

[2] Among Japanese publications, refer to Hirano (1977, 96*ff.*) for a discussion of the ILO's creation of labor inspection systems.

tions" (Recommendation No. 20, Preamble). It advised ILO member states that the main duties of inspection systems established in accordance with Article 427 of the Treaty of Versailles were the implementation of laws and regulations governing labor conditions, and the protection of workers engaged in work activities (Recommendation No. 20, Article 1). However, as this was merely a recommendation, i.e. guidance for formation of policies and legislation, there was an urgent need to put it in the form of a binding convention. For this reason, at the 30th General Conference of the ILO in 1947, the Convention Concerning Labour Inspection in Industry and Commerce (hereinafter referred to as "Convention No. 81") and a recommendation adding specific content to this convention ("Recommendation No. 81") were adopted.[3] Somewhat later, in the agricultural sector, the Convention Concerning Labour Inspection in Agriculture (hereinafter referred to as "Convention No. 129") and an accompanying recommendation ("Recommendation No. 133") were adopted at the 53rd General Conference in 1969. For the public sector and other sectors, because appropriate legislation had not been passed although there existed occupational risks similar to those of the industry and commercial sectors, the Protocol of 1995 to the Labour Inspection Convention, 1947 ("1995 Protocol") was passed in 1995, extending the provisions of the 1947 convention to cover workers in these sectors. The framework primarily consisting of the above-described Convention No. 81 and Convention No. 129 acts as the foundation for labor inspection systems under the auspices of the ILO as they exist to this day. It is not possible to outline the contents of this framework in detail due to space constraints, but basically, Convention No. 81 directs governments to set up labor inspection organizations staffed with labor inspectors, who have secure positions and the authority to conduct on-site inspections, question related persons, and require submission of documents in order to ensure compliance with regulations (Sugeno 2013, 123*ff*.). Article 3 of the Convention describes the functions of labor inspection systems as (i) to ensure the implementation of legal provisions regarding labor conditions including working hours, wages, safety, health and welfare, child and youth labor, and the protection of workers, (ii) to provide management and workers with technical information and guidance about the most efficient ways to comply with these legal provisions, and (iii) to inform the relevant governmental authorities of defects or abuses not specifically covered by existing legal provisions (also see Convention No. 129, Article 6).

2. Status of Ratification in Various Countries Including Japan

As of 2011, of the 183 ILO member countries, 141 countries have ratified Convention No. 81. Even among countries that have not ratified the Convention, many appear to be laying the groundwork for its ratification (ILO 2011, 5). However, only 11 countries have ratified the 1995 Protocol, which expands the scope of the Convention to apply to more

[3] It should be noted that at the 30th General Assembly, Recommendation No. 82 covering labor inspection recommendations for the mining and transportation industry was also adopted.

occupational sectors, and the number of ratifying countries shows no signs of increasing (ILO 2011, 6). Various reasons for this have been noted, including (i) that in most developed countries, labor inspection systems already cover the entire range of industries, and there is no perceived need to ratify a new Protocol, (ii) that some countries are unable to ratify the Protocol because of exceptions made by the nation's labor inspection system, such as for local governments, religious groups, or nuclear power plants, which contradict the terms of the Protocol, and (iii) that among developing countries in particular, a labor inspection system covering all sectors is not feasible due to financial difficulties (ILO 2011, 6). Also, only 50 nations have ratified Convention No. 129, which calls for the establishment of labor inspection systems for the agricultural sector. A major reason cited for this is that in many countries, the agricultural sector is treated as exempt from legal provisions governing labor to begin with and thus falls outside the scope of the labor inspection system. In addition, in many countries the agricultural sector is viewed as in the private (rather than public) domain, and landowners are recognized as having something like extraterritorial rights, which acts as another hurdle to ratification (ILO 2011, 6).

Japan ratified Convention No. 81 in 1953, but has yet to ratify the 1995 Protocol or Convention No. 129.

III. Comparison of Labor Inspection Systems in Different EU Countries

1. Scale of Labor Inspection Systems

Generally speaking, the more labor inspectors there are, the more effectively labor inspection can be carried out. Because industries and infrastructure differ from country to country, it is difficult to determine how many labor inspectors constitutes a sufficient number in any given country, but the ILO provides a rough index. According to this, one inspector for every 10,000 workers is viewed as desirable in developed nations, one for every 20,000 workers in emerging nations, and one for every 40,000 workers in developing nations (Weil 2008, 351; Casale and Sivananthiran 2010, 45–46).

So, how many labor inspectors are actually working in EU member states? As noted above, one inspector for every 10,000 workers is viewed as desirable in developed nations, and nearly all EU countries either meet this criterion or come close to meeting it. For example, in France, as of 2012 there were 2,236 inspectors, with a ratio of one inspector to every 8,229 workers.[4] According to ILO surveys from 2003 through 2006, there were 1,587 labor inspectors in Spain and 3,810 in Germany. The only EU country in which the number of workers for each labor inspector greatly exceeded 10,000 was the Czech Republic, where it

[4] However, this is the value of the combined number of labor inspectors in the strict sense (inspecteur du travail) and the supplementary labor inspectors who assist with their duties (contrôleur du travail). The number of labor inspectors in the strict sense was 743 as of 2012. French statistics are from *Bilans & Rapports l'inspection du travail en France en 2012*, Ministère du Travail, de l'Emploi, de la Formation professionnelle et du Dialogue social, 2012.

is said to be approximately 20,000.[5] It is notable that among developed countries, the one that falls the farthest below the ILO recommendation is the United States. Due to a lack of willingness to allocate funds for labor inspection administration, the current number of labor inspectors is extremely small at approximately one for every 75,000 workers.[6]

2. Presence or Absence of a Comprehensive Inspection System

(1) Circumstances in Each Country

To make effective use of limited resources and streamline and simplify the chain of command, it is better to carry out unified labor administration at the national level. To do so, it is ideal for labor inspectors to be under the direct control of a central (national) government. Convention No. 81, Article 4, Paragraph 1 advises that the labor inspection system of each country be placed under the supervision and control of a central authority. However, for countries that are federations, the term "central authority" can mean either a federal authority or a central authority of a federated unit (i.e. a state, province, etc.) (Convention No. 81, Article 4, Paragraph 2).

Many of the EU countries have labor inspection systems under the jurisdiction of the central government. However, among these are both countries in which a single labor inspection system covers the entire wide range of duties, and those with individual labor inspection systems that specialize in specific fields. France is an example of the former.[7] In the past, there were four separate labor inspection organizations in France, each covering an industrial sector, but a 2008 decree united these in a single organization under the direct control of the Direction Générale du Travail (the bureau of labor).[8] Actual day-to-day regulatory administration is carried out by DIRECCTE (Les Directions Régionales des Entreprises, de la Concurrence, de la Consommation, du Travail et de l'Emploi), a coalition of regional organizations.

Italy also passed an amendment in 2004 that created an inspection organization known as the DGAI (General Directorate for Inspection Activities), which carries out labor inspection administration in close cooperation with the Ministero del Lavoro e delle Politiche Sociali (Ministry of Labor and Social Policy), one of the central government ministries and agencies (Fasani 2011, 19–20). Another 2004 amendment established the Commissione Centrale di Coordinamento dell'Attività di Vigilanza (Central Commission on Coordination of Inspection Activities). This committee consists of 15 members including the Minister of Labor, officials responsible for labor inspection administration, and those re-

[5] In the neighboring countries of Russia and Ukraine, there is approximately one inspector for every 30,000 people.

[6] The number of labor standards inspectors in Japan was 3,954 as of 2014 now. The number of workers at that time was approximately 55,410,000, meaning that there was approximately one inspector for every 14,000 workers.

[7] For an overview of the French labor inspection system, see Kapp, Ramackers, and Terrier (2013).

[8] Décret n° 2008-153 du 30 décembre 2008.

sponsible for local health administration, as well as four persons each representing workers and management respectively. In addition to formulating guidelines and setting the order of priorities for labor inspection administration, the committee carries out various activities including utilizing past inspection data to advise the Minister of Labor on how to improve the efficiency of labor inspection organizations.

In countries that employ a single labor inspection system, such as those described above, inspectors carry out comprehensive oversight and enforcement in a wide range of fields. Italy is notable in that labor inspectors are also responsible for oversight and administration of social security programs, and their duties include monitoring whether companies' social security programs are properly maintained and providing employers or workers with advice regarding implementation of these programs. However, in Italy there are also labor oversight and enforcement agencies specifically tailored to respective fields, such as the Istituto Nazionale della Previdenza Sociale (National Institute of Social Security and Welfare, hereinafter referredto as "the INPS"), a supersivory agency that deals exclusively with the social security system. In cases like these, both organizations cooperate closely with one another in carrying out their duties (Fasani 2011, 23–26). For example, with regard to oversight of the social security system, when the INPS performs an inspection of a certain company, it reports this fact to labor inspectors so as to avoid duplication of inspections. Also, during the inspection, if the INPS finds a legal violation outside the scope of its own jurisdiction, it provides information to labor inspectors and other institutions so they can examine the need for administrative guidance or criminal penalties. Meanwhile, in the field of occupational health and safety, in addition to labor inspectors there are Regional Health Administrations (ASL) under the direct control of the Ministero della Salute (Ministry of Health). Here as well, the two agencies cooperate closely, with Regional Health Administration officials conducting technical inspections related to machinery safety and so forth and dispensing relevant guidance, while labor inspectors look at the big picture, monitoring companies to determine whether they are violating labor laws, and giving advice and guidance. Labor inspectors are expected to carry out more comprehensive duties encompassing all aspects of labor oversight and enforcement, including education and training.

On the other hand, in the UK, labor oversight and enforcement duties are divided among a number of organizations.[9, 10] Among them, the most important organization is the Health and Safety Executive (hereinafter referred to as "the HSE") established by the Health and Safety at Work etc. Act of 1974 (hereinafter referred to as "the HSWA"). The HSE performs only duties related to occupational safety and health, its functions being (i) providing advice to personnel involved in implementing the provisions of the HSWA, (ii)

[9] For an overview of the UK labor inspection system, see Mantouvalou (2011) and the ILO website. http://www.ilo.org/labadmin/info/WCMS_112675/lang--en/index.htm.

[10] Besides the UK, other countries with this type of system include Germany and Denmark. *A mapping report on Labour Inspection Services in 15 European countries*, A SYNDEX report for the European Federation of Public Service Union (2012, 11).

conducting surveys and publicizing their results, carrying out training, and providing information, (iii) offering information and advice to the central government, local governments, labor and management, etc. and (iv) proposing laws and regulations (HSWA 11 [2] [3]). In the UK, besides the HSE there exist a variety of organizations engaged in labor oversight and enforcement for specific fields, including the Employment Agency Standards Inspectorate (EAS), which aims to improve the labor conditions of workers through the supervision of employment agencies, and the Gangmasters Licensing Authority (GLA), which oversees businesses that procure human resources for the agriculture, forestry and fisheries industries and the food processing industry, and HM Revenue and Customs, which monitors compliance with the minimum wage.

(2) Debate regarding Inspection Organizations

With regard to the scope of labor inspectors' duties, there is some debate as to whether it is better to have a single labor inspection system cover all duties, or to have labor inspection system in which separate agencies specialize in their respective fields, such as health and safety.

With a single labor inspection system, a labor inspector will have a very broad and inclusive job description. This has the disadvantage of diluting the position's character as one entailing technical oversight of management in specific fields, and reinforcing the aspect of administrative and legal oversight. In addition, it has been pointed out that while an individual inspector's degree of ability has a significant impact on oversight activities, diversification of job duties makes it more difficult to evaluate this degree of ability (Kapp, Ramackers, and Terrier 2013, 64–65).

At the same time, there is an advantage to a broad scope of duties in that each labor inspector is able to carry out activities with a broad-based perspective and a coherent and consistent viewpoint, leading to efficient oversight with no wasteful duplication (Kapp, Ramackers, and Terrier 2013, 64–65). Also, it is said that a single labor inspection system makes it easier to adopt a unified strategy in implementing measures for illnesses and injuries, such as mental illnesses and musculoskeletal disorders, that must be resolved by comprehensively addressing a range of personal and organizational factors including working hours, working conditions, labor intensity, and labor-management dialogue (Bessiere 2011, 1024). However, because a single labor inspection system encompasses various fields and requires a wider range of knowledge, entailing the need for coordination of discussions among various experts, there is a perceived need for more intensive education and training of labor inspectors (Fasani 2011, 26).

3. Degree of Authority in Performance of Duties

(1) Inspection Procedures and Administrative Measures

Labor inspectors are vested with a broad scope of authority. According to the ILO Convention No. 81, Article 12, when inspections are in progress, labor inspectors may enter

work sites freely, day or night, without giving advance notice. In addition, if there are reasonable grounds to believe monitoring is necessary, labor inspectors can enter any building whatsoever during the day. When it is judged necessary in order to verify strict compliance with legal provisions, any type of survey, test, or investigation may be carried out, detailed procedures for which are outlined in the Convention.

If the results of the inspection indicate an imminent threat to the health and safety of workers, labor inspectors can take immediate measures to eliminate risk factors, including ordering a suspension of operations. Also, if legal violations are discovered, labor inspectors have the authority to take administrative measures including providing guidance and imposing fines (Convention No. 81, Articles 13, 18; Convention No. 129, Articles 18, 24).

With regard to administrative measures, in Italy, for example, when inspections uncover legal violations punishable by imposition of a civil fine, labor inspectors are required to give management a "Warning" and set a certain period of time within which improvements must be made. If management makes the improvements and eliminates the illegal labor practice as ordered, in cases where there are maximum and minimum fine amounts set, management pays the minimum amount, and in cases where there is a fixed fine amount, management is charged 1/4 that amount. This type of warning is delivered in cases where improvements can be made to eliminate legal violations, and in such cases, labor inspectors are unable to impose fines, etc. without going through the Warning procedure (Fasani 2011, 30–33). On the other hand, in the field of occupational health and safety, when it is deemed necessary in order to prevent industrial accidents, labor inspectors have the authority to give management not a "Warning" but an "Order" to eliminate the violation. Because laws and regulations do not specify what management is supposed to do in such cases, labor inspectors have broad discretionary authority in issuing any type of order. If management fails to follow the order, the result is not a civil fine, but criminal penalties where applicable, and the process shifts from civil to criminal proceedings.

In inspections by the HSE in the UK, there is no provision for administrative measures in the form of imposition of fines, but in some cases employers may have permits or licenses revoked or restricted. Another characteristic of HSE administrative measures is the serving of two types of notices, "improvement notices" and "prohibition notices" (Mantouvalou 2011, 4). Improvement notices are issued either for violations of the Safety and Health Law, or to employers who have committed violations in the past, where there is a possibility of the same violation being committed again (HSWA, Article 21). These notifications state the contents of the violation (or possibility thereof) and the inspector's reason for making this judgment, and give management a directive to improve the relevant labor conditions. On the other hand, prohibition notices are directives to suspend activities, and are issued when specific business activities are causing serious injuries or threaten to do so (HSWA, Article 22). If businesses fail to comply with the directives in either of these notices, criminal proceedings are instigated.

(2) Criminal Prosecution

When employers' actions have a high degree of illegality, labor authorities may move beyond administrative measures to impose criminal penalties. However, labor inspectors' degree of authority varies depending on the country, and while there are countries where labor inspectors themselves are granted prosecutory authority, there are others where inspectors are not vested with prosecutory authority, but are able to recommend cases to prosecutors. In France, for example, prosecutory authority is expressly limited to prosecutors and denied to labor inspectors themselves (Kapp, Ramackers, and Terrier 2013, 430–51). Instead, when French labor inspectors identify legal violations deemed to be worthy of criminal prosecution, they create records of interrogation known as *procès-verbal*. They then submit these records to the provincial governor and the prosecutor, and request a decision on indictment or non-indictment. As long as there is no evidence to the contrary, the *procès-verbal* is recognized as evidence that a legal violation has occurred.

As for the UK, in Scotland inspectors engaged in occupational health and safety inspections do not have prosecutory authority (Mantouvalou 2011, 4). Scottish inspectors instead submit reports to a district public prosecutor known as the Procurator Fiscal, and seek a decision on whether or not to indict. However, in England and Wales, inspectors engaged in occupational health and safety inspections are vested with prosecutory authority.

(3) Debate regarding When to Commence Inspections[11]

There is some debate on what ought to prompt labor inspectors to perform inspections, with two constrasting models coexisting. In one, inspections are triggered by reports from workers, while in the other, regular inspections are conducted according to a predetermined inspection plan. Here we shall refer to these as "report-based inspections" and "regularly scheduled inspections." What are their characteristics, and which model is more effective?

In many countries, report-based inspections account for a high percentage of inspections overall. For example, in the United States in 2007, 75% of inspections into wages, working hours and so forth were triggered by reports from workers (Weil 2008, 356). Report-based inspections are highly pragmatic in that they make it easy to carry out inspections at work sites where serious issues are actually occurring, especially in cases where there is a need for inspectors to take immediate measures. However, there are a significant number of problems. First of all, (i) since report-based inspections are based on the premise of workers reporting violations, in some cases these violations have already caused serious consequences by the time the inspection is carried out. In many cases, inspections are not performed in time to protect the safety and health of workers. Also, (ii) as a rule, workers only report violations when they are extremely serious, more serious than inspectors themselves would consider worthy of reporting. If violations at a given work site are not severe enough that workers feel compelled to report them, an inspection may never be performed.

[11] This section is primarily based on the discussion in Weil (2008, 349).

Furthermore, (iii) since in an overwhelming number of cases reports from workers are only submitted when the workers themselves have actually suffered damage, even when investigations are carried out, they may not extend to damage caused by structural defects lurking in work sites, and inspections may not lead to a fundamental improvement in the working environment (Weil 2008, 356). On top of that, a survey carried out in the United States found that (iv) there is not a very significant correlation between the number of reports from workers and the actual number of violations occurring, and worker reports are not necessarily an accurate reflection of the labor environment (Weil 2008, 357). (v) What's more, it seems that in some cases, workers who have personal grudges against their employers request inspections by way of revenge, so as to cause trouble to the employer (Fasani 2011, 28).

By contrast, regularly scheduled inspections are carried out without any prelude, having a significant "surprise effect" on management, and are generally said to have a higher probability of boosting compliance with laws and regulations (Fasani 2011, 28). However, numerous problems with regularly scheduled inspections have been pointed out as well (Weil 2008, 364–68). First of all, (i) it is difficult to determine a policy on which to base selection of work sites to inspect. A common practice is to focus inspections intensively on industries with a high frequency of occupational accidents, but aside from this, it has proven difficult to identify other valid indicators to determine inspectors' order of priority in conducting inspections, making it difficult to set priorities. Large companies are often prioritized because of the high number of workers, but this is not necessarily an effective approach, as the evidence points to fewer legal and regulatory violations the larger a company is. Also, (ii) regularly scheduled inspections often fail to find a significant number of violations. These inspections are carried out with no knowledge of whether or not violations are occurring, and if so what sort of violations, and as a result they often prove to have been unnecessary. In addition, (iii) regularly scheduled inspections only identify violations that exist at individual companies, and are incapable of revealing the big picture in terms of fundamental structural problems leading to violations occurring across entire industries.

As we have seen, both methods (report-based inspections and regularly scheduled inspections) have both advantages and drawbacks, and as a result there is no option but to employ a combination of both. However, there have scarcely been any persuasive surveys or studies on how the two methods ought to be combined for maximum effectiveness.

IV. Innovation in Labor Inspection Systems

1. Systems That Transcend National Borders

In recent years, various attempts have been made to further streamline the duties of labor inspectors. Notable among these is the endeavor to build labor inspection organizations that transcend national frameworks. Within the EU European Commission, there is an organization called the Senior Labour Inspectors Committee (hereinafter referred to as "the

SLIC"). The SLIC, after being established in informal form in 1982, was officially launched by the Commission Decision of 1995 (95/319/EC). The main missions of the SLIC are to establish occupational safety and health principles that are shared across national borders, and to define procedures for oversight of individual countries' systems so as to fulfill these principles. In addition, the committee seeks to promote mutual understanding of countries' labor inspection systems and the exchange of information. The SLIC also carries out a wide range of other activities, including providing support to third-party nations regarding international labor issues, working to build more effective systems for supervision of occupational health and safety, and investigating the labor inspection systems of other countries.[12] SLIC members consist of European Commission members as well as one representative of each of the labor inspection organizations of the EU countries. Committee meetings are held once every six months.

In 2003, the SLIC conducted its first large-scale Europe-wide campaign with the goal of improving occupational safety and health environments in the construction industry. This campaign involved the mass media and heightened public recognition of the relevant issues, and in addition to contributing to a lower occupational accident rate in the construction industry, is said to have reduced the number of cases where administrative measures had to be taken. Following up on this success, since 2003 campaigns with a variety of themes have been held every year, and significant progress has been achieved across the EU (ILO 2011, 95).

2. Utilization of the Internet

(1) Internal Use within Labor Inspection Systems

In the field of labor oversight and enforcement, adoption of information technology has gradually progressed, and has made noteworthy contributions to improving the quality of labor oversight and enforcement. For example, in France, the Ministry of Labor established an Internet network system known as SITERE in 2000. This system is intended to support labor inspection operations, provide a database of administrative documents, and facilitate exchange of information among inspectors. Currently, more than 3,000 central government and local government documents are saved on this site, and labor inspectors use them in the performance of their duties. In particular, the section of the site called CAP SITERE aggregates all manner of information about internal conferences and data obtained from inspections of work sites. Labor inspectors analyze this data when drawing up plans for future inspections, and prepare and release statistical materials on inspections and so forth. Also, in the section of the site known as Rédac, inspectors can document their day-to-day supervisory activities, and an application called RHRC is available, both mechanisms helping ensure that in serious cases that could result in termination of workers' employment, the central government can carry out more efficient monitoring (ILO 2011, 54).

[12] For details on the SLIC, see http://ec.europa.eu/social/main.jsp?catId=148&intPageId=685.

In addition to providing information, websites can serve to train and educate inspectors, and there are sites for which this is the primary role. For example, Belgium has launched a network site called the Belgian Federal Public Service Employment, Labour and Social Dialogue with the goal of investigating labor discrimination, which features a program to train inspectors in how to identify discrimination and what sort of measures to take against it (ILO 2011, 54).[13]

There have also been attempts to build cross-border online networks. In the EU, in 2011, the Spanish labor inspectorate spearheaded the creation of an international computer network system called CIBELES (Convergence of Inspectorates Building a European Level Enforcement) with funding from the European Commission. The project aims to establish a unified EU-level labor inspection system, and to address stubbornly persistent international labor law violations such as illegal migrant labor, and has the primary purposes of exchanging information about labor inspection systems in EU countries and promoting mutual cooperation. The current participants are Austria, Belgium, France, Germany, Hungary, Malta, Italy, Portugal, and Spain (ILO 2011, 58).

(2) Utilization Aimed at Encouraging Compliance with Laws and Regulations

When businesses commit legal violations, the final step in the enforcement process is imposition of a fine. In some cases, however, the amount of the fine is not particularly high, and especially for large companies, the problem is that penalties do not have a deterrent effect sufficient to discourage illegal labor practices. To address this, EU countries have taken measures such as raising fines, and some nations have sought to utilize the Internet to augment the effectiveness of deterrence. A well-known example of this is Denmark's "smiley scheme" (ILO 2009, 33). In this scheme, the Danish Working Environment Authority investigates each company and lists company names on its website alongside smiley faces of three different colors reflecting the quality of its health and safety environment, with green, yellow, and red smileys indicating level of quality, in that order. In addition, companies that have earned the top "green smiley" are eligible to earn an "elite smiley" wearing a crown, if they achieve a particularly outstanding safety and health environment. It is expected that companies whose health and safety environments are a matter of online public record will take voluntary measures to improve their health and safety environments.[14]

(3) Issues in Utilizing the Internet

As we have seen, active utilization of Internet networks for labor oversight and en-

[13] Other countries have also begun utilizing the Internet not only for internal labor oversight administration, but also to share information with other government agencies. As of 2011, in Spain, a system was being created for labor inspectors and the social security agency to share information. (ILO 2011, 55)

[14] As of June 20, 2016, 3,989 companies have earned the crown-wearing "elite smiley," 80,161 the green smiley, 5,489 the yellow smiley, and 567 the red smiley. http://arbejdstilsynet.dk/.

forcement can facilitate information sharing among labor inspectors and improve their capacity to do their jobs effectively. Also, there are advantages in terms of public relations, in that government-held information can be delivered to people quickly, and the viewpoints of the public are more likely to reach the government. For this reason, if Internet networks are used, it is possible that labor oversight and enforcement can be streamlined without aggressively expanding physical infrastructure, such as by hiring additional labor inspectors or creating additional inspection departments, and that geographic inequalities can be resolved. Due to these numerous advantages, utilization of the Internet in labor oversight and enforcement is expected to continue as an international trend.

However, the construction of such Internet networks requires a significant amount of funding and technology, including ongoing maintenance and program updates. Also, as long as these networks are online, system failures can cause serious hindrances to the performance of duties, and constant vigilance is required due to the risk of unauthorized access and leakage of companies' private information. To make full and effective use of such systems, it will be necessary for each country to formulate appropriate guidelines.[15]

V. Conclusion

1. International Trends in Labor Inspection Systems

In this article, we have examined trends in other countries, primarily in the EU, pertaining to labor inspection systems that play a central role in monitoring labor law violations. With regard to the scale of labor inspection systems, the ILO has set a standard for developed countries of one or more inspectors for every 10,000 workers, at least in developed countries in the EU, the criteria are generally met, and significant disparities between countries do not exist. However, there is an ongoing debate about whether it is preferable to have a single labor inspection system to oversee all areas or a labor inspection system subdivided according to field, with different EU countries falling on different sides of the debate. Although single labor inspection systems tend to carry out activities in a more unified and efficient fashion, they make it more difficult to provide technical guidance, and there are discussions underway about whether more extensive training is required. There are also differences among countries in terms of the scope of labor inspectors' authority, for example, whether or not they are able to impose fines or pursue criminal prosecutions. However, it is difficult to perform a comparison that clearly reveals the degree of difference in inspections' effectiveness depending on inspectors' scope of authority, and it is impossible to reach a definitive conclusion at this time. Vis-à-vis inspections, another important issue that has emerged is that of how to determine which work sites to inspect. There are two models, inspections in response to worker reports and regularly scheduled inspections, both of which have advantages and disadvantages, and no clearly effective method for determining

[15] With regard to the above, see ILO (2011, 58).

inspection targets has yet been identified.

Under these circumstances, each country continues to explore means of carrying out duties more effectively, such as Internet utilization and enhancement of international cooperation. Although it can be said that these efforts are still at the trial and error stage, if things go well, there is a possibility of achieving much more efficient labor oversight and enforcement, and it is likely that similar endeavors will become more widespread in the future.

2. Toward More Pragmatic Labor Oversight and Enforcement

This paper has analyzed frameworks for oversight of labor law violations in the labor inspection systems of various countries, in terms of scale, content, scope of authority and so forth. However, the duties of labor inspectors and the process of labor oversight and enforcement do not entail only creation of various supervisory frameworks to ensure the effectiveness of laws and regulations. They have other important missions to provide employers and workers with information and understanding about the legal system or health and safety concerns (ILO 2011, 59). More than penalizing violators, it is important to ensure that companies do not fall into a state of violation in the first place, and in light of this fact, differences in the details of labor inspection systems' contents and scope of authority are perhaps not very important. In addition to creation of frameworks for oversight and enforcement, there should be ample discussion of measures to raise awareness and pre-empt violations, including utilization of the Internet and cooperation with other public institutions, labor unions and so forth.[16] However, in the Japanese and international materials analyzed for this paper, there were scarcely any analyses of these points, and this is an area where we hope to see much more research and discussion in the future.

In any case, there is currently a severe shortage of materials studying and analyzing labor oversight and enforcement in general. Moving forward, it is essential to analyze the infrastructure status and effectiveness of individual countries' labor inspection systems, and further enrich the literature of international comparative studies, so as to realize more effective labor oversight and enforcement.

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[16] For an introduction to initiatives in the UK, see Mantouvalou (2011, 23–25).

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Policy Measures to Tackle Violations of Labor and Employment Laws in Japan

Ryuichi Yamakawa
University of Tokyo

This paper sets out to identify and study ways in which labor policies respond to violations of labor and employment laws. Firstly, the term "violations of labor and employment laws" will be defined, in terms of labor policies, as referring to acts that violate certain prohibitive or instructive norms when these have been imposed on employers and others by law. Next, types of labor policy response to violations of labor and employment laws will be identified from the viewpoint of measures for implementing labor law. Thirdly, the current situation of labor and employment law violations seen as particularly problematic in Japan today will be introduced, along with the action taken to address them. And finally, future issues and perspectives for study will be indicated, with focus on the aspect of proactively preventing violations of the law, in connection with the future directions to be taken for policy response against violations.

I. Introduction

This paper sets out to identify and study ways in which labor policies respond to violations of labor and employment laws. In Japan, there have been increasing reports in the mass media and elsewhere of labor problems caused by "black companies," companies that defy labor and employment laws, in recent years (e.g., Konno 2012), but there does not appear to have been much systematic or theoretical study on the question of what sort of policy response should be made to address labor and employment law violations efficiently and sufficiently.

Therefore, this paper will attempt to study this problem with focus on the measures for implementing labor law that should be applied to address violations of labor and employment law in the policy response.

In the following, after first briefly discussing the definition of "violations of labor and employment laws" (Section II), various directions for policy response to this problem will be identified (Section III). Then, after introducing the present situation of the problem in Japan and the policy response thereto (Section IV), issues and perspectives when considering future policy responses will be identified (Section V).

II. Definition of Violations of Labor and Employment Laws

First, the definition of the term "violations of labor and employment laws" will be

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briefly considered. To clarify the scope of discussion in this paper, violations of labor and employment laws would typically refer to cases in which employers are judged unlawful or illegal in their employment of workers, in light of laws governing labor and employment relationships (labor law in the broad sense).

Of course, even when adopting this interpretation, it is still not necessarily clear what actually constitutes an "illegal" act. On the one hand, as for example in violations of the Labor Standards Act, cases that are prohibited by law based on criminal penalties, or for which certain administrative measures are planned against violations (including those with no binding force, such as a recommendation for correction by a Labor Standards Inspector), may certainly be regarded "illegal." These could be seen as acts for which governmental power or public authority is to be exercised with regard to certain prohibitive norms and instructive norms.

On the other hand, the question also arises as to whether acts that are not accompanied by criminal penalties and such administrative measures under the law may be described as "illegal." For example, there may be cases in which a worker acquires certain rights vis-à-vis an employer under legal norms that only establish legal effects under civil law, in the form of establishing rights and obligations between private individuals, such as provisions on employment in the Labor Contract Act or the Civil Code. More specifically, this could include unlawful acts of tort that give rise to liability for damages (Article 709 of the Civil Code) or dismissal adjudged to be an abuse of dismissal rights (Article 16 of the same).

On this point, we need to bear in mind that the question as to whether it is appropriate to use the expression "illegal" may depend on the purpose of using that expression. The purpose of this paper is to study directions for labor policy, and in light of this purpose, when there are legal norms (prohibitive or instructive norms) that prohibit employers and others from committing certain acts or order their implementation, in the broad sense, it should not be impossible to use the expression "illegal" for acts that violate these and to study the policy response to them. This should be true whether or not implementation based on criminal penalties or administrative measures is taken as a result of the violation of such norms. In that sense, the term "violations of labor and employment laws" in this paper should be positioned as a relative concept established in line with the purpose of the study.

III. Policy Measures to Tackle Violations of Labor and Employment Laws

1. Measures for Implementing Labor Policies[1]

(1) The Definition of Labor Policy

While there is not necessarily a clear definition of the term "labor policy," one could say that a strict definition is not really necessary. Here, it will be broadly defined as policy

[1] On issues such as the relationship between measures for implementing labor policy and labor law, respectively, see Yamakawa (2014, 171; 2015).

Figure 1. The *Kurumin* Mark

with labor-related objectives, in line with the broad interpretation of the phrase "violations of labor and employment laws" above. Seen from this angle, the term "labor policy" would not only be used for cases where the government establishes specific legal norms related to labor. Rather, this term can be broadly used for cases where the government takes various actions to implement certain objectives as the administration.

(2) Measures for Implementing Labor Policies

While there could be various measures for implementing labor policy in the broad sense as defined above, regulation by law could be seen as the most representative way of doing so. Of course, there are also various conceivable measures even when it comes to regulation by law.

Firstly, the most direct measure would be that of setting certain prohibitive or instructive norms under labor law vis-à-vis the addressees of legal provisions. Criminal penalties and administrative measures when prohibitive or instructive norms have been violated would be positioned as measures for implementing the respective norms.

Under the law, meanwhile, there is also the measure of seeking voluntary implementation of certain policy objectives without going as far as setting prohibitive or instructive norms. This would include imposing a moral obligation on the addressees of legal provisions to make good-faith efforts. Another measure would involve inducement aimed at reaching policy objectives by awarding subsidies or other incentives. These incentives need not be limited to financial ones, but could also be incentives in the sense of boosting a company's social reputation. An example of this is the "*Kurumin* mark" (Figure 1), which businesses can attach to their products and services when certified by the Minister of Health, Labour and Welfare. This certification is based on the assessment of the businesses' action plans as well as their achievement aimed at improving the environment for employees who raise children, in line with the Act on Advancement of Measures to Support Raising Next-Generation Children.

Besides the above, steps can also be taken to implement certain labor policies by setting private legal norms on rights and obligations in labor relationships, as in Article 16 of

the Labor Contract Act on the abuse of dismissal rights. Here, private legal norms are measures for implementing labor policies, and court systems and alternative systems of dispute resolution would, in turn, implement such legal norms.

A measure that has appeared in recent years, moreover, is that of requiring the parties concerned (particularly employers) to establish norms consistent with certain policy objectives, and of requiring them to establish the content of their own norms, of which the detailed content is entrusted to the parties concerned. An example of this is the requirement that businesses draw up action plans under the aforementioned Act on Advancement of Measures to Support Raising Next-Generation Children. Recently, businesses have also been obliged to draw up action plans for promoting women's active participation in the workplace, under the Act for the Promotion of Women's Active Participation in Employment. Moreover, this Act requires businesses to publish these action plans and information on the situation of women's participation in their own companies on the Internet and elsewhere, and this information is expected to be used by women engaged in jobseeking activity.[2] The intention of this requirement is to implement the policy of promoting women's participation by stimulating competition between companies for recruiting human resources, based on the disclosure of information in the labor market and therefore on their reputation in the market.[3]

Besides this, attempts are sometimes made to implement labor policy via legal regulation other than labor law. An example of this is the so-called employment promotion tax, or more specifically, the system in which businesses are given tax incentives if they increase their workforce.[4] Though not subject to legal regulation on the labor relationship itself, this is still positioned as a means of achieving the labor policy objective of promoting employment. Again, when the government and local authorities enter into agreements (public contracts) with private businesses, whether or not the businesses concerned meet certain standards in terms of the labor relationship is sometimes used as a factor for consideration when selecting contractors. In the aforementioned Act for the Promotion of Women's Active Participation in Employment, for example, companies whose action plans for promoting the active participation of women in the workplace have been certified by the Minister of Health, Labour and Welfare are expected to increase opportunities for winning public contracts from the government.

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[2] The Ministry of Health, Labour and Welfare has created a website that can be used by businesses to publish this kind of information (http://www.positive-ryouritsu.jp/positivedb/).

[3] Besides these examples, under the Act for the Promotion of Youth Employment, companies that engage in excellent employment management are certified as "Youth Support Companies" by the Minister of Health, Labour and Welfare. These companies are permitted to use a symbol mark and are given priority PR in public employment security offices.

[4] Regarding employment promotion tax, see the website of the Ministry of Health, Labour and Welfare. http://www.mhlw.go.jp/stf/seisakunitsuite/bunya/koyou_roudou/koyou/roudouseisaku/koyousokushinzei.html.

(3) Political Measures

So far, the discussion has focused on measures that attempt to implement labor policy by setting legal norms in the broad sense, but political measures other than legal norms are also sometimes used to achieve objectives in labor policy. In spring 2014, for example, the government adopted a policy of seeking wage rises from companies as part of "Abenomics," which stands for the economic policies announced by the current Prime Minister Abe. In doing so, the measure of political arrangement including the establishment of a Tripartite Roundtable was adopted (Hisamoto 2014, 2). This kind of movement is positioned as having objectives in terms of labor policy, but does not depend on the format of establishing legal norms (this point will not be broached in this paper, as its main focus is on violations of labor and employment laws).

2 Violations and Implementation of Labor Law

As shown above, labor law is positioned as one measure for implementing labor policy, but we could also consider measures for implementing the labor law itself. While there are also various measures for implementing labor law such as providing subsidies, the aim of this paper will be to enumerate only those that are necessary for addressing violations of labor and employment laws, as that is the focus of study here.[5] When "responding to" violations of labor and employment laws, meanwhile, a proactive response of preventing violations of the law in advance is also conceivable besides the reactive response taken after a violation has occurred. As such, that point will also be dealt with here.

As will be shown below, labor law is sometimes implemented through the exercise of public authority and sometimes through the resolution of disputes between private individuals. The characteristics of such dual-style implementation of labor law is based on the fact that, while labor relationships governed by labor law are basically relationships between private individuals (i.e. workers and employers who are contractually bound to each other), they also have the characteristic that public intervention by government is inevitable, in light of the disparity in bargaining power between the two parties, and that the state of the labor relationship or the labor market is related to the government's economic policy.

(1) Implementation through the Exercise of Public Authority

i. Implementation through Criminal Sanctions

When certain acts are prohibited by law, or when there are norms that order certain acts, sanctions based on criminal penalties could be imposed on persons who violate such legal requirements. The Labor Standards Act, the Industrial Safety and Health Act and the Minimum Wage Act are typical examples of this kind of legal norm, including provisions on criminal penalties against violation.

[5] For details such as measures that merely specify a principle or an obligation to make efforts, and set out to implement these voluntarily through administrative guidance and various incentives such as subisidies, see Yamakawa (2013, 75).

But criminal procedures are not often implemented in Japan. Of 173,250 inspections carried out by Labor Standards Inspectors in 2012, violations of law were discovered in 68.4% of workplaces, but only 1,133 cases were sent to the Public Prosecutor's Office as having violated those laws.[6] Of course, it is not always desirable to pursue criminal liability for violations of laws. This is because it is sometimes more desirable to actually provide reliefs for workers (for example, by resorting to the recommendation for correction discussed below), rather than through sanctions based on criminal penalties, considering the fact that labor relationships are relationships between private individuals. Also, when pursuing criminal liability, it should be borne in mind that more stringent procedures and proof are required under the Code of Criminal Procedure than civil and administrative procedures.

ii. Implementation by Administrative Agencies

In Japan's case, the efficacy of prohibitive or instructive norms under labor law is often secured by administrative agencies. In the field of labor law, it is not unknown for the cessation of illegal acts to be ordered directly by an administrative measure (such as an order suspending the use of machinery or equipment under the Industrial Safety and Health Act). Nevertheless, administrative recommendations including recommendations for correction under the system of Labor Standards Inspectors in the Labor Standards Act and elsewhere tend to play the larger role. Recommendations for correction do not have legally binding force as administrative penalties, as their purpose is only to seek voluntary correction. But they are premised on the finding that violations have occurred, and employers are normally asked to report that they have corrected the violation in question.

Unlike cases where individuals file for civil proceedings, the object of correction is not limited to specific individuals who claim their rights when measures for implementing labor law such as recommendation for correction are taken by administrative agencies. When a violation of the law is recognized in a workplace investigated by a Labor Standards Inspector, for example, the correction may apply to all of the workers affected by the violation. This is because the system of recommendation for correction does not stop at relief for damages to individuals, but also has the nature of enforcing the public interest throughout the workplace. As such, it could be seen as another advantage of having labor law implemented by administrative agencies.

Besides the above, there is also the measure of publishing the names of companies that fail to comply with prohibitive or instructive norms, after following certain procedures such as administrative recommendations. This "naming and shaming" system has already been used for some time in connection with the Act on Employment Promotion, etc. of Persons with Disabilities.[7] Recently, this system has also been adopted for the Equal Employ-

[6] Labour Standards Bureau, MHLW, *2012 Annual Labor Standards Inspection Report* (2012, 40, 51).

[7] There were between one and seven cases of 'naming and shaming' based on the Act on Employment Promotion, etc. of Persons with Disabilities between FY2006 and FY2011, but none in

ment Opportunity Act, the Worker Dispatching Act, the Elderly Employment Stabilization Act and the Industrial Safety and Health Act. Under the Equal Employment Opportunity Act, there was no case of "naming and shaming" for some years after the system was introduced under the 2007 amendment. In September 2015, however, a company name was published for the first time in a case involving discrimination on grounds of pregnancy.[8] This method of responding to violations of the law by "naming and shaming" not only imposes social sanctions on companies that break the law by publishing their names, but could also be seen as a measure to prevent future violations, in that employers would refrain from such violations, being afraid of the loss of their reputation in society.

While this "naming and shaming" system is intended to disseminate information on employers that violated labor law, another measure relating to information is to deny access to public employment agencies to employers that violated labor law, thereby excluding their information on job posting from the labour market, as long as employment agencies are concerned. The Act for the Promotion of Youth Employment, enacted in 2015, contains a provision (Article 15) under which the Public Employment Offices may reject applications for posting job offering for young workers by an employer who violates certain labor laws.[9]

iii. Measures to Secure Efficacy for Exercising Public Authority

Mechanisms are in place to appropriately implement responses to violations of law in the forms described above and to ensure their efficacy (these could be described as secondary measures for implementing labor law in order to make the main measures more effective). Firstly, administrative agencies have been established to enforce labor law based on administrative measures and criminal penalties. Under the Labor Standards Act, for example, Labor Standards Inspectors are responsible for duties including recommending correction when a violation has been discovered, as well discovering and preventing violations through their supervision.

Meanwhile, mechanisms for creating and preserving records related to compliance with labor legislation are another important aspect when administrative agencies address violations of the law. Under the Labor Standards Act, for example, employers are obliged to prepare a wage ledger for each workplace, enter the facts upon which wage calculations are based, the amount of wages, and other matters, and preserve said records for three years. By requiring employers to prepare and preserve records and to submit or report them if neces-

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FY2012 and FY2013. There were eight cases in FY2014, but again none in FY2015 and FY2016. See the MHLW web page. http://www.mhlw.go.jp/file/04-Houdouhappyou-11704000-Shokugyouanteikyoku koureishougaikoyoutaisakubu-shougaishakoyoutaisakuka/0000118555.pdf.

[8] See the MHLW web page (http://www.mhlw.go.jp/stf/houdou/0000096409.html). Meanwhile, there have been no cases of publication under the Worker Dispatching Act, the Elderly Employment Stabilization Act, or the Industrial Safety and Health Act, perhaps because the system has not been in place for very long in those cases.

[9] See the web page of the Diet (Lower House). http://www.shugiin.go.jp/internet/itdb_gian.nsf/html/gian/honbun/houan/g18905050.htm.

sary, the aim is to discover violations and, in turn, to make it easier to secure correction. Under the Labor Standards Act, Labor Standards Inspectors are authorized to demand the submission of documents from employers.

Furthermore, Article 104 of the Labor Standards Act stipulates that workers may report violations of the Act, and there are similar provisions in the Industrial Safety and Health Act and the Minimum Wage Act. This system of reporting could be said to have both the function of promoting supervision by administrative agencies and their response to violations through reports by workers as private individuals, and the function of promoting the implementation of workers' statutory rights.

(2) Implementation through Resolution of Disputes between Private Individuals

When labor law stipulates norms that establish private rights and obligations between employers and workers, and when disputes arise between such private individuals, these are typically implemented by one of the parties using civil litigation or other dispute resolution procedures against the other party. As a result, rights may thus be implemented through a court ruling, for example. Since such rulings that order the implementation of rights can be secured through civil enforcement when the addressees fail to comply, they may ultimately have a tone of enforcement by public authority.

Meanwhile, because normal civil proceedings are not easily accessible for many workers in labor disputes, because of a number of factors such as the cost required and the time taken, there has been a progressive improvement of resolution procedures for labor disputes and particularly for individual labor disputes in recent years in Japan. A system to promote resolution of individual labor disputes as a procedure for promoting the resolution of disputes by the administrative agencies under the Act on Promoting the Resolution of Individual Labor Disputes, and a labor tribunal system as a procedure for the resolution of disputes by courts under the Labor Tribunal Act have been introduced.

A representative legal norm that is expected to be implemented through this kind of dispute resolution in civil law is the Labor Contract Act. However, Article 13 of the Labor Standards Act establishes rights under private law based on minimum standards of labor conditions, among others, as well as establishing prohibitive or instructive norms against employers. It thereby adopts a mechanism whereby workers can exercise their rights in civil procedure against employers. This means that the exercise of rights under the Labor Standards Act could also be implemented through the aforementioned dispute resolution systems.

The implementation of labor law through this kind of resolution of disputes between private individuals is consistent with the objective of providing relief for individuals, and since it is a procedure carried out by private individuals. Under existing law, conversely, there is a limitation in that the recipient of relief for damages is limited only to the individual who raised the litigation. Also, labor law is not only limited to adjusting interests between private individuals but also has an aspect of implementing the public interest. For this reason, it is sometimes subject to different treatment compared to normal civil disputes. For

example, under Article 114 of the Labor Standards Act, courts may order employers to pay an additional sum equal to the sum of unpaid money in the case of certain violations of the Act, such as violation of the obligation to pay a dismissal notice allowance or to pay increased wages for overtime work under Articles 20 and 37 of the Labor Standards Act (i.e. in total, the employer may be ordered to pay double). This may be designed to focus attention on and promote the fact that the Labor Standards Act includes a function of implementing the public interest (Yamakawa 2013, 86).[10]

(3) Preventing Violations of the Law

In measures for implementing prohibitive or instructive norms under labor law, the main effectiveness could be said to lie in cases where these norms are violated. In reality, however, it is important to ensure that the law is complied in the first place. With regard to labor law, if a worker suffers damages due to a violation, it may not always be possible to provide full restitution for those damages through criminal sanctions or administrative recommendations after the event, or through a mechanism whereby rights and obligations are implemented through civil proceedings alone. As such, preventing violations of the law from occurring in the first place is of great significance.

Although there are various ways of preventing violations of the law, they are all premised on sufficient familiarity with the laws that should be observed. In labor law, it goes without saying that employers, who are often the main subjects of compliance with the law, must be sufficiently familiar with the law. Educating workers on labor law also has an important significance, since workers' knowledge about their protection under labor law is useful not only for implementing rights and obligations but also for preventing violations from occurring in the first place (e.g., Doko [2014, 4]). This is also the case with employer's dissemination of the legal rules in the workplace in order for workers to understand such rules.

Another useful measure is to prepare systems that smoothly promote compliance with the law by employers. For this reason, some labor laws make it mandatory for employers to prepare organizations and systems for fulfilling their obligations under the law. For example, the Industrial Safety and Health Act requires employers to appoint general safety and health managers, safety officers, health officers and industrial physicians as persons responsible for safety and health in the workplace, and to establish safety committees, health committees, or safety and health committees, depending on the scale of the workplace.

These mechanisms to promote the prevention of violations sometimes go beyond merely preparing organizations and systems. For example, Article 11 of the Equal Employment Opportunity Act (as amended in 2006) obliges employers to establish necessary measures in terms of employment management to provide consultation and advice to work-

[10] In the United States, various systems that incorporate an aspect of materializing the public interest in the civil resolution of disputes have been developed. These include attorney fees being borne by the losing party and filing of suits against employers by administrative agencies. For details, see Yamakawa (2013, 87–88).

ers on sexual harassment in the workplace and cope with complaints filed by workers. The specific content of such measures includes (i) clarifying and familiarizing policies prohibiting sexual harassment, (ii) developing systems to respond appropriately when workers seek advice or file a complaint, and (iii) promptly and appropriately responding when a worker actually files a complaint on sexual harassment.[11] Although sexual harassment in itself is not prohibited under the Equal Employment Opportunity Act, it can be subject to illegal assessment as an act of tort for both the direct perpetrator and the employer under the rule of vicarious liability under the Civil Code (e.g., Yamakawa [1996, 69]). The Equal Employment Opportunity Act obligates employers to take measures for prevention of such illegal conduct as well as resolution of disputes.

Sometimes, prevention of violation is promoted indirectly by granting certain benefits in exchange for taking measures to prevent violation, rather than making the prevention of violation compulsory in itself. For example, Article 121 of the Labor Standards Act states that, while criminal liability for violations of the Act shall primarily be borne by the person who actually committed the violation (the perpetrator punishment principle), if a person who has violated the Act is an agent or other employee acting on behalf of the employer of the enterprise, a fine shall also be assessed against the employer (dual liability rule). It also states, however, that this shall not apply if the employer has taken necessary measures to prevent such violation.

This provision stipulates that employers shall be penalized under certain conditions, but from another angle, it can be seen as encouraging measures for employers to prevent violation of the law, in that it gives employers an opportunity to avoid liability by taking the necessary measures to prevent violation.

IV. Problems of Labor Law Violation in Japan and the Response Thereto

Below, the problems of long working hours and harassment in the workplace will be described as patterns of labor law violation that are seen particularly problematic in Japan recently. After introducing the present situation and response by the government, the issues involved will be presented.[12]

1. Long Working Hours

(1) Present Situation

Japan's Labor Standards Act sets maximum limits of 40 working hours per week and 8

[11] See "Guidelines on measures to be taken by employers in employment management concerning problems caused by sexual harassment in the workplace" (Ministry of Health, Labour and Welfare Notice No.615 of 2006). As discussed below, a similar obligation to take measures against so-called maternity harassment has also been established recently.

[12] Besides these, non-payment of wages, forced redundancy and others are sometimes cited as typical violations of labor and employment laws. See Sakai (2015, 63).

hours per day (Article 32) and invalidates agreements that violate these limits. It also stipulates that contractual working hours shall be automatically amended to meet the standards given above (Article 13) and includes penal provisions for employers who violate the standards (Article 119). There are several exceptions to these rules, however. Most notably, if the employer has entered into a written agreement either with a labor union organized by a majority of the workers in the workplace, when a union has been organized, or with a person elected to represent a majority of the workers, when there is no union (known as an "Article 36 agreement"), the employer may extend the working hours or have workers work on days off to the limit specified in the agreement, on the condition that the employer submit the contents of the Article 36 agreement to the Director of the Labor Standards Inspection Office (Article 36).

Statistically, working hours in Japan (actual working hours) have gradually been decreasing since 1987, when the aforementioned 40-hour week rule was added to the Labor Standards Act. The annual average in FY2015 was 1,734 hours, decreasing from 2,031 hours in 1990.[13] However, this trend toward shorter working hours has not been so pronounced for regular employees. The decrease in average working hours seen in statistics is largely due to an increase in part-timers and others atypical workers with short working hours, while the present situation among regular employees is that many still work long hours.[14]

It goes without saying that these long working hours bring a high risk of detrimental effects on the health of workers. In fact, Industrial Accident Compensation Insurance benefits are increasingly being paid on grounds that excessive work typified by long working hours aggravates underlying ailments like high blood pressure and arteriosclerosis and causes acute brain and heart diseases like stroke and heart attack, or that long working hours increase workers' stress, leading to depression and other mental illness.[15]

(2) Response

Regulation by the current Labor Standards Act cannot completely control the problem of long working hours, and there have been calls for the Act to be amended. Specifically, first of all, the provisions of the existing Labor Standards Act do not prescribe an upper limit for overtime work, except in cases of dangerous and harmful work. Secondly, although notification by the Minister of Health, Labour and Welfare concerning the upper limit on overtime work (the upper limit standard) is stipulated for Article 36 agreements that permit temporary overtime work, the obligation on the employer to observe the upper limit standard under the Minister's notification is merely a moral obligation to make efforts, the viola-

[13] See the JILPT web pages. http://www.jil.go.jp/kokunai/statistics/shuyo/201607/0401.html and http://www.jil.go.jp/kokunai/statistics/databook/2016/06/p203-204_t6-1.pdf.

[14] See the MHLW web page. http://www.mhlw.go.jp/file/05-Shingikai-11601000-Shokugyouanteikyoku-Soumuka/201312061-2.pdf.

[15] For details of insurance payments in FY2015, see the MHLW web page. http://www.mhlw.go.jp/stf/houdou/0000128216.html.

tion of which does not result in criminal sanction or administrative recommendation for correction. And thirdly, the Labor Standards Act includes no interval regulation requiring employers to guarantee a given number of non-working hours.

Therefore, in the process of preparing a report as the basis of a Bill for Amendment of the Labor Standards Act (which was submitted to the Diet in 2015 and is still under deliberation as of September 2016), the Working Conditions Subcommittee of the Labour Policy Council discussed whether or not to introduce an upper limit or interval regulation on overtime work. In the end, however, neither of these was introduced into the Bill owing to opposition from corporate management, although certain measures to reinforce regulation were incorporated, such as abolition of the period of grace for SMEs regarding the premium rate for overtime work exceeding 60 hours per month.[16]

As a result, measures against long working hours are being attempted by strengthening regulatory administration rather than through draft legislation. From April 2016, for example, the Ministry of Health, Labour and Welfare changed the standard for on-site inspections by Labor Standards Inspectors to businesses where overtime work exceeded 80 hours per month, as targets of priority supervision, compared the previous standard of overtime work exceeding 100 hours.[17]

Again, action on preventing the adverse impact of long working hours on physical and mental health has been implemented under the Industrial Safety and Health Act. For example, the Act obliges employers to take measures such as giving interview guidance on request from workers who work more than a certain number of hours, and changing their job duties if deemed necessary, based on the opinion of a doctor. Moreover, on Industrial Accident Compensation Insurance benefits for "*karoshi*" (sudden death due to overwork), the notification by the Ministry of Health, Labour and Welfare[18] has been amended to make insurance benefits more widely applicable, in light of an accumulation of court rulings that overturn decisions by Directors of Labor Standards Inspection Offices to dismiss requests for insurance benefits. Besides the above, the Act to Promote Measures for the Prevention of Karoshi was enacted in 2014, and the government is now responding by researching and providing data on *karoshi* and other problems, holding Consultative Meetings on the Promotion of Measures for the Prevention of Karoshi, and so on.

The problem of long working hours is difficult to resolve, and a response through law amendments faces considerable opposition from corporate management. The background to this is that the factors behind long working hours are thought to be closely tied to the way work is done, as well as the demands of customers and suppliers, so that a uniform strengthening of regulation would be difficult to observe in practice. In this sense, the problem of long working hours could be seen as an example that highlights the limitations to

[16] See the MHLW web page. http://www.mhlw.go.jp/topics/bukyoku/soumu/houritu/dl/189-41.pdf.

[17] See the MHLW web page. http://www.mhlw.go.jp/file/05-Shingikai-12602000-Seisakutoukatsukan-Sanjikanshitsu_Roudouseisakutantou/0000121610.pdf.

[18] *Kihatsu* (Labour Standards Bureau Notification) No.1063 of December 12, 2001.

conventional ways of implementing labor law.

2. Harassment

(1) Present Situation

Harassment in the workplace takes a variety of forms. In Japan, sexual harassment started to be seen as a problem in court cases from around the beginning of the 1990s (Yamakawa 1996). And still today, numerous disputes involving sexual harassment seem to arise. Although precise statistical surveys on disputes involving sexual harassment cannot be found, in the Equality Offices of Prefectural Labor Bureaus responsible for enforcing the Equal Employment Opportunity Act, more than half of the consultation cases initiated by workers have been related to sexual harassment almost every year in recent years.[19]

Besides sexual harassment, the phenomenon known as "power harassment" in the workplace has also been seen as a serious problem in recent years. Although the concept of power harassment is not necessarily clear, a typical case would be one in which a superior harasses a worker in the workplace by abusing his or her authority in a manner that impairs the worker's personal dignity. If this power harassment is added to cases of bullying by coworkers and others in the workplace, these are the types of dispute with the largest number of cases of consultation, advice and guidance, and mediation based on the system of promoting resolution of individual labor disputes operated by Prefectural Labor Bureaus in recent years.[20]

Recently, moreover, a phenomenon known as "maternity harassment," in which female workers are harassed on grounds of their pregnancy or childbirth, or of requesting or taking maternity or childcare leave, has come to be seen as a problem (since fathers may also take childcare leave, harassment because of childcare leave is called "paternity harassment"). This maternity harassment is second only to sexual harassment in consultation cases brought by workers to the Equality Offices of Prefectural Labor Bureaus, accounting for around 20% in recent years.[21]

(2) Response

When sexual harassment first became a problem in Japan, there was no legislation governing it in labor law. In many cases, therefore, the offended worker would claim damages from the offender, in that the offending act corresponded to tort under the Civil Code, or pursued the vicarious liability of the employer (liability for damages) in that the act occurred within the scope of work. In the 1996 amendment to the Equal Employment Opportunity Act, however, a duty of care to prevent sexual harassment and provide appropriate

[19] On the number of consultations since FY2013, see the MHLW web page. http://www.mhlw.go.jp/bunya/koyoukintou/sekou_report/dl/160603.pdf.

[20] See the MHLW web page. http://www.mhlw.go.jp/file/04-Houdouhappyou-11201250-Roudoukijunkyoku-Roudoujoukenseisakuka/0000126541.pdf.

[21] See the MHLW web page cited in note 19.

response was imposed on employers. Furthermore, as stated above, the 2006 amendment made this duty of care more concrete as an obligation on employers to declare the principle of prohibiting sexual harassment and set up systems for consultation and grievance procedure. It also imposed an obligation to take certain measures (such as responding appropriately after the occurrence of a dispute) which, if not taken, could lead to liability for violations of the law. As stated above, however, cases of administrative consultation involving sexual harassment have continued to be numerous since then, so that the efficacy of the measures also needs to be verified.

Next, power harassment is sometimes regarded as tort under the Civil Code, in that it infringes workers' rights to personal dignity. If a worker who has been subjected to power harassment consequently suffers from depression, the case may be eligible for Industrial Accident Compensation Insurance benefits as a work-related mental illness. Unlike sexual harassment, however, power harassment is not regulated by labor law as a statute, because the definition of power harassment is unclear, among other reasons. Currently the Ministry of Health, Labour and Welfare is responding to this problem with non-statutory measures. As well as promoting the voluntary resolution of disputes in the system for promoting resolution of individual labor disputes mentioned above, it has set up a website on power harassment. The website explains the definition and types of power harassment, and introduces measures for prevention and resolution, court precedents, and other information.[22] In this case, the response may be seen as one of providing information to promote employers' voluntary prevention of disputes and resolution after they have arisen, as well as spreading problem awareness vis-à-vis power harassment.

Finally, on maternity harassment, disadvantageous treatment of workers by employers on grounds of maternal leave, pregnancy or childbirth was originally prohibited under the Equal Employment Opportunity Act, while disadvantageous treatment on grounds of childcare leave was prohibited under the Child Care and Family Care Leave Act. However, as only disadvantageous treatment by employers was prohibited under these Acts, maternity harassment by superiors and coworkers could not be directly prohibited. This led to a growing need to take more proactive measures under labor law requiring employers to take measures to prevent maternity harassment and to respond after the occurrence of such harassment including the conduct by superiors and coworkers. The resultant legislative response occurred just recently. In March 2016, the Equal Employment Opportunity Act and the Child Care and Family Care Leave Act were amended to make employers responsible for taking measures to prevent maternity harassment and responding appropriately if it did occur. This obligation to take measures was modeled on a similar obligation concerning sexual harassment in the Equal Employment Opportunity Act.

With harassment in the workplace, not only is it unclear in what cases it would be illegal (this applies particularly to power harassment); it also has the characteristic that it is

[22] See the MHLW web page. https://no-pawahara.mhlw.go.jp/.

not limited to the format whereby employers exercise their personnel rights through dismissal and the like, but that superiors and coworkers are often the perpetrators. Therefore, as with the problem of long working hours, it is seen as difficult to respond to this problem through conventional labor law that has focused on conduct of employers. Imposing an obligation on employers to take measures such as preventing harassment including harassment by superiors and coworkers could be seen as one response to this characteristic. Nevertheless, there remain issues regarding more effective enforcement, such as rigorously instilling policies of prohibiting harassment in the workplace.

V. Future Tasks and Policy Perspectives

1. Understanding, Analysis, and Evaluation of the Present Situation

Until now, the problem of how to respond to violations of labor and employment laws seems not to have been studied systematically as an independent research and policy issue in itself. Therefore, we first need to understand and analyze the present situation of this problem by looking at specific details of labor law violations and how they have been addressed.

As stated earlier, the discovery rate of violations of the Labor Standards Act and other legislation under the system of labor standards inspection appears to be markedly high. Therefore, it would seem that one task for study would be to consider what sort of response should be attempted in order to implement labor law more effectively. In evaluating the present situation, however, further finding and analysis are needed in light of such factors as the matters governed by the violated law, the industrial sector, and the company scale.

Based on the above finding and analysis of the present situation, the next step would be to evaluate whether more effective implementation of labor law is required in light of violations of a specific law. If this is answered in the affirmative, we will need to study contents of response measures to further improve the present situation. When doing so, we will need to study a number of points, such as what has caused the present problems to occur, what should be done to address these causes, whether the present measures for implementing labor law provide a sufficient result, and whether we should consider introducing new measures in accordance with matters governed by the law. At the more realistic level, we also need to consider whether the organizations and systems involved in implementing labor law are adequate.

When attempting the study outlined above, it would be useful to ascertain the situation in other countries, as a kind of benchmark. In fact, this problem could even become a theme for joint international research.

2. Perspectives When Studying Response Measures

(1) The Perspective of Policy Mix

When studying the response to violations of labor and employment laws, and in turn, ways of implementing labor law in terms of policy through the process outlined above, a diversity of measures for policy response is assumed. This is because measures for implementing labor law are also diverse, as seen above. Moreover, since the responses and measures studied here are not necessarily mutually exclusive, they could be combined as appropriate, or interconnected with each other. In this case, the response to violations of labor and employment laws would have to be studied as a kind of policy mix.

Since the content of such a policy mix would be difficult to study fully in this paper, the perspectives of reactive response to violations of the law and proactive prevention of violations will now be examined. In particular, the latter of these has not been studied much in the past, and will therefore be discussed in slightly more detail.

(2) Reactive Response to Violations of the Law

When studying measures for responding to violations of labor and employment laws, two aspects need to be considered—namely, the problem of how to respond reactively to violations that have already occurred, and what response is required in order to prevent future violations proactively.

Firstly, studying the response to violations that have already occurred is important in terms of whether damages are adequately recovered, or whether the response has any effect on controlling future violations, and so on. On the other hand, a problem is how to appropriately find violations of the law. From this kind of angle, for example, a task for study would be how to enhance labor standards inspections and other systems of administrative agencies, including measures to ensure the accuracy of investigation and finding of violations, developing or securing the organizations and personnel needed for this purpose, and so on. In addition, it is significant that an increasing number of legislation have a provision for the system of publishing the names of violating companies. This measure has the novel character of responding to violations of law by reducing violators' reputations in society and markets, and benefits should arise from studying more effective ways of utilizing this.

Next, sanctions based on criminal penalties are thought to have particular significance against violations of convictable crimes and other malicious cases, but certain issues could be taken as subjects for study in this case. For example, study could be aimed at further enhancing lawsuit prosecution activity enabling firm convictions to be secured, and investigation activities such as evidence gathering. As for implementation through the resolution of disputes between private individuals, there has recently been progress in developing systems for resolving individual labor disputes, but from the public interest angle of implementing labor law, there must be room for study on ideas to make greater use of these such as enhancing accessibility of each system.

(3) Proactive Prevention of Violations

As stated above, once a violation of the law has occurred in a labor relationship and an individual has suffered damages as a result, it is often not easy to recover these in reality. For this reason, measures to prevent violations of the law are particularly important. Some suggestions for introducing new measures to promote the prevention of violations will be indicated below.

To prevent violations of any law, the first requirement is that everyone concerned has a proper understanding of that law. Means to this end include ensuring familiarity with the law, as stated above, and in particular, ensuring that employers have a detailed understanding of the content of legislation. More specifically, as well as spreading awareness through pamphlets and the Internet, it is beneficial to promote a more detailed understanding by holding seminars and training sessions.

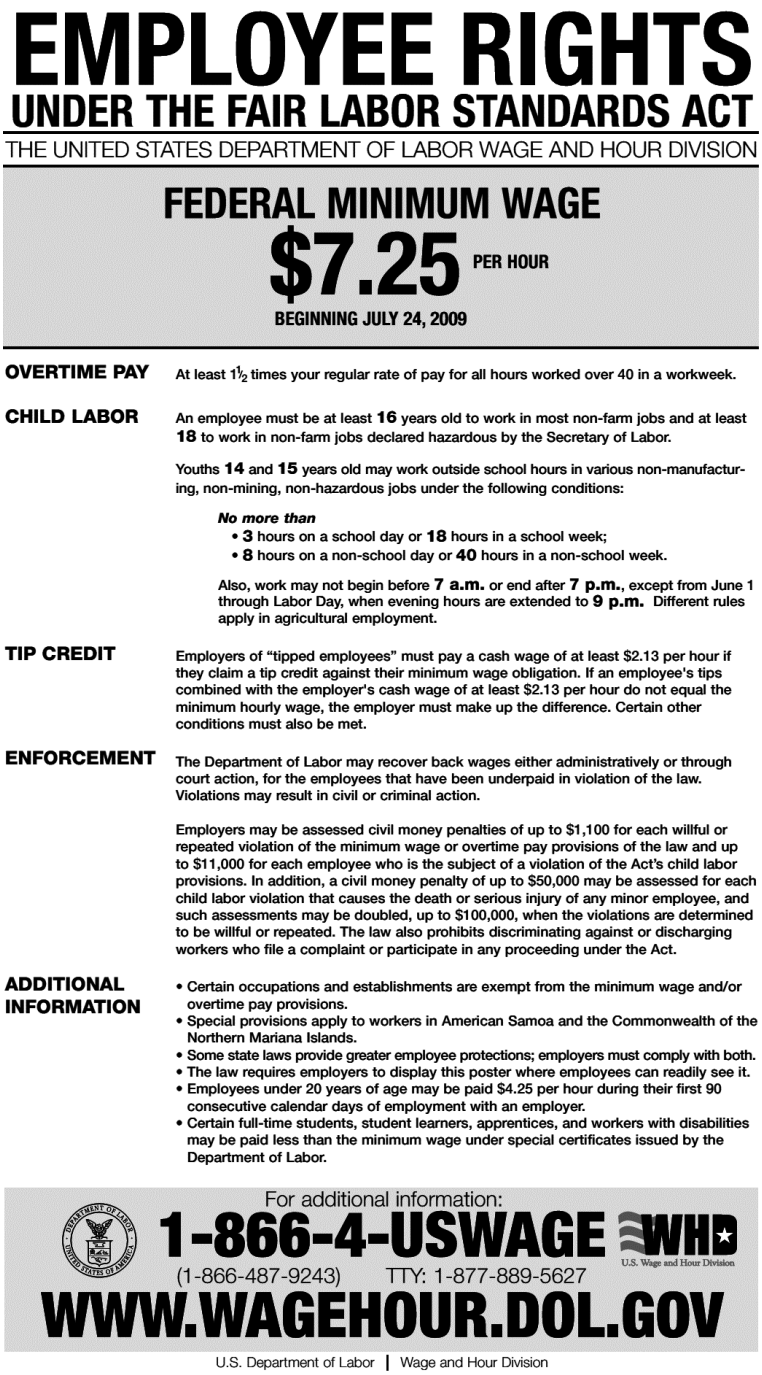
Although these measures are of course effective, ways of further enhancing familiarity inside companies will need to be considered in order to directly familiarize management and workers in each workplace with the law. On this point, Article 106 of the Labor Standards Act already provides that employers must make known to the workers the substance of the Act and ordinances issued under it, as well as work rules and labor agreements. Here, "make known" means displaying or posting the details at all times in conspicuous locations in the workplace, distributing written copies, or using other methods prescribed in ordinances of the Ministry of Health, Labour and Welfare. Until now, this has been construed as meaning that the requirements of the law will be satisfied if this material is placed in a situation whereby workers can be easily aware of it.[23]

In the United States, on the other hand, many labor laws and ordinances require that posters giving an outline of the law must be posted, and these posters are provided free of charge by administrative agencies such as the U.S. Department of Labor[24] (see the Federal Fair Labor Standards Act poster stipulating minimum wages, overtime pay, etc., shown in Figure 2). While the content of the poster differs depending on the law in question, the outline of the law is shown in concise terms, with web page addresses and telephone numbers of the competent authority often given for those wanting to know more detail. In Japan, too, it might be a good idea to study familiarization methods that offer higher potential for creating awareness, from the viewpoint of raising understanding of labor legislation at workplace level and awareness of compliance with the same, thereby promoting the prevention of violations.

Also, to prevent violations of labor and employment laws, it would also be beneficial

[23] E.g., *Kihatsu* (Labour Standards Bureau Notification) No.45 of January 29, 1999.

[24] The US Department of Labor (DOL) website includes a page introducing statutes and regulations enforced by DOL that require notices to be posted (http://www.dol.gov/compliance/topics/posters.htm), and a page where employers, by inputting the relevant information required on the screen, can find applicable legislation and posters that must be posted (http://www.dol.gov/elaws/posters.htm), among others.



EMPLOYEE RIGHTS
UNDER THE FAIR LABOR STANDARDS ACT

THE UNITED STATES DEPARTMENT OF LABOR WAGE AND HOUR DIVISION

FEDERAL MINIMUM WAGE

$7.25 PER HOUR

BEGINNING JULY 24, 2009

OVERTIME PAY

At least 1½ times your regular rate of pay for all hours worked over 40 in a workweek.

CHILD LABOR

An employee must be at least **16** years old to work in most non-farm jobs and at least **18** to work in non-farm jobs declared hazardous by the Secretary of Labor.

Youths **14** and **15** years old may work outside school hours in various non-manufacturing, non-mining, non-hazardous jobs under the following conditions:

No more than

- **3** hours on a school day or **18** hours in a school week;
- **8** hours on a non-school day or **40** hours in a non-school week.

Also, work may not begin before **7 a.m.** or end after **7 p.m.**, except from June 1 through Labor Day, when evening hours are extended to **9 p.m.** Different rules apply in agricultural employment.

TIP CREDIT

Employers of "tipped employees" must pay a cash wage of at least $2.13 per hour if they claim a tip credit against their minimum wage obligation. If an employee's tips combined with the employer's cash wage of at least $2.13 per hour do not equal the minimum hourly wage, the employer must make up the difference. Certain other conditions must also be met.

ENFORCEMENT

The Department of Labor may recover back wages either administratively or through court action, for the employees that have been underpaid in violation of the law. Violations may result in civil or criminal action.

Employers may be assessed civil money penalties of up to $1,100 for each willful or repeated violation of the minimum wage or overtime pay provisions of the law and up to $11,000 for each employee who is the subject of a violation of the Act's child labor provisions. In addition, a civil money penalty of up to $50,000 may be assessed for each child labor violation that causes the death or serious injury of any minor employee, and such assessments may be doubled, up to $100,000, when the violations are determined to be willful or repeated. The law also prohibits discriminating against or discharging workers who file a complaint or participate in any proceeding under the Act.

ADDITIONAL INFORMATION

- Certain occupations and establishments are exempt from the minimum wage and/or overtime pay provisions.
- Special provisions apply to workers in American Samoa and the Commonwealth of the Northern Mariana Islands.
- Some state laws provide greater employee protections; employers must comply with both.
- The law requires employers to display this poster where employees can readily see it.
- Employees under 20 years of age may be paid $4.25 per hour during their first 90 consecutive calendar days of employment with an employer.
- Certain full-time students, student learners, apprentices, and workers with disabilities may be paid less than the minimum wage under special certificates issued by the Department of Labor.

For additional information:

1-866-4-USWAGE WHD U.S. Wage and Hour Division

(1-866-487-9243) TTY: 1-877-889-5627

WWW.WAGEHOUR.DOL.GOV

U.S. Department of Labor | Wage and Hour Division

Source: US Department of Labor website.

Figure 2. Fair Labor Standards Act Poster Issued by the US Department of Labor

if there were systems for supervision within companies to ensure that violations do not occur. If there is a labor union with bargaining power inside a company, it can often serve this supervisory or monitoring function that has a role of preventing violations of the law, but this cannot be expected of companies where there is no union. On this point, if legislation for an employee representative system other than labor unions were drafted, it is conceivable that a monitoring function could be given to the employee representatives. However, since the role of employee representatives would not be limited to that, a more multifaceted study would be required.

It would also be beneficial for companies themselves to develop systems (organizations and procedures) for preventing violations of the law. Since the enactment of the Whistleblower Protection Act, some companies have established hotlines for employees to consult on or report labor problems (Naito 2009). If a situation involving labor law problems is recognized in the company as a result of consultation or reports using these hotlines, they could prove effective in preventing violations of the law and promoting early correction.

Besides the above, it might also be conceivable that legal incentives could be created to encourage companies themselves to take measures to prevent violations of the law. In the United States, for example, if an employer has developed a system for handling complaints about sexual harassment and a victim of sexual harassment failed to use the system without good reason, it is construed that the employer could be fully or partially exempted from employer liability for the sexual harassment in question.[25] This kind of measure for exemption of liability may be regarded as incentivizing companies to develop and implement their own systems for preventing sexual harassment. It would also be conceivable, for example, for such a system to be introduced in Japan (a similar idea has already been provided for criminal liability in Article 121 of the Labor Standards Act). Another possibility as a matter of statutory interpretation, with reference to the proviso to Article 715 paragraph 1 of the Civil Code, is that the employer is exempted form vicarious liability for the tortious conduct of the employees when the employer exercised reasonable care in appointing the employee or supervising his/her job activities (Yamakawa 2000, 26).

As an incentive that would encourage employers to prevent violations of the law, another measure could be to attach negative evaluation to violations of the law when the government issues various permits and licenses. This kind of measure is already being used, for example, in Article 6 of the Worker Dispatching Act, which provides that any person who has been sentenced to certain punishment for an offense under the provisions of the Act or of other related laws and ordinances may not be granted a license as a Worker Dispatching Undertaking. There must be room for study on the further application of this kind of system, such as applying it to the conditions for eligibility when applying for various subsidies relating to labor policies, in conjunction with the preferential treatment of companies that

[25] Burlington Industries, Inc. v. Ellerth, 524 U.S. 742 (1998); Faragher v. City of Voca Raton, 524 U.S. 775 (1998).

have taken desirable measures.

Meanwhile, as to the response to violations by subcontractors or subsidiaries on which their client or parent companies have a certain level of influence, it is also worth studying a system whereby this could be taken into account when those client and parent companies apply for various permits and licenses, or when tendering for or entering into public contracts, for example. Even without mandatory provisions of labor legislation, such companies are also expected to make efforts to promote compliance with labor legislation, including subcontractors and others, as part of their Corporate Social Responsibility (CSR) initiatives.[26]

VI. Conclusion

In this paper, the term "violations of labor and employment laws" has been defined as meaning an act of violation when certain prohibitive or instructive norms have been established by law against employers and others based on labor policy. The various responses to violations of labor and employment laws under existing labor policy have been identified and the present situation and responses in Japan have been introduced. Issues and perspectives connected with future directions for developing more effective measures to tackle violation have been indicated. Finally, because this problem has not been studied systematically in the past, it has been pointed out that the present situation of violations of labor and employment laws and the responses to them needs further research and analysis, followed by evaluation based on these as well as future system design as a matter of policy mix. In this sense, there is much room for more comprehensive study on this subject.

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[26] In CSR, efforts include ensuring compliance with laws and environmental standards by suppliers of raw materials and others, otherwise known as "supply chain management" (Tanimoto 2004, 274*ff.*).

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Comparative Analysis of Employment Dispute Cases Resolved by Labor Bureau Conciliation, Labor Tribunals and Court Settlement

Keiichiro Hamaguchi
The Japan Institute for Labour Policy and Training

In Japan, there are three representative systems for resolving individual labor disputes: conciliation by labor bureaus, labor tribunals, and court settlement. When we compare these, we find a tendency for males to be more numerous, regular employees to be more numerous, years of service to be longer, the managerial position to be higher, and the monthly wage to be incrementally higher in the second and third of these than in the first. However, while the difference in monthly wage is 1.4 times and 1.6 times, respectively (i.e. in the second and third systems compared to the first), the difference in resolution amounts is 7.0 times and 14.7 times. This could be because labor bureau conciliation—a voluntary system—gives more incentive to settle on low resolution amounts, while in labor tribunals and courts, a ruling or judgment will be made if no compromise is reached, meaning that the case can be concluded without considering the "risk of the other party getting away."

I. Background to the Research

In recent years, "the creation of a highly foreseeable system of labor dispute resolution" has been advocated as part of the government's reform of the employment system. For example, in the "Japan Revitalization Strategy Revised in 2014—Japan's Challenge for the Future" decided by the Cabinet on June 24, 2014, the section on "Reforming the employment system and reinforcing human resource capabilities" included the following statement:

> **ii) Creating a highly foreseeable labor dispute resolution system**
>
> The Government will attempt to create a highly foreseeable labor dispute resolution system in order to resolve the problem that Japanese employment practices are less transparent especially for foreign countries, protect workers at SMEs, and promote foreign direct investment in Japan.
>
> ① **Analysis of cases dealt with via mediation** [labor bureau conciliation]**, labor tribunal decision, and conciliation** [court settlement]
>
> Regarding the analysis and classification of cases of mediation [labor bureau conciliation], labor tribunal decision, and conciliation [court settlement], which are used to resolve labor disputes, the Government will clarify as far as possible the relationship between the amount of money paid to resolve disputes and various factors, such as workers' attributes in terms of employment, their wage levels, and company size. Based on the results of this analysis, the Government will develop a usable tool within one year.

On this basis, the government's aim was taken to be one of analyzing individual cases of labor dispute resolution involving conciliation by Prefectural Labour Bureaus, labor tribunals and court settlement. In response, the Ministry of Health, Labour and Welfare, which has jurisdiction over labor and employment problems, decided to have this research carried out by the Japan Institute for Labour Policy and Training (JILPT). Of this research, JILPT has already carried out prior research on cases of labor bureau conciliation, specifically involving statistical analysis and contents analysis of full records related to conciliation cases received by four Prefectural Labour Bureaus in FY2008. The results of this research were published in the JLR 2011 Summer issue as "Analysis of the Content of Individual Labor Dispute Resolution Cases: Termination, Bullying/Harassment, Reduction in Working Conditions, and Tripartite Labor Relationships." On labor tribunals, by contrast, there has been no research of a census type, though there has been research based on questionnaire surveys of users. A characteristic of the present research is that it also involved research of a census type on labor tribunals and court settlement, with the cooperation of judicial authorities.

Bearing in mind differences in the way administrative authorities and courts organize data, cases covered by this research were as follows.

- Labor bureau conciliation: 853 cases of individual labor relations disputes accepted by four labor bureaus in FY2012.
- Labor tribunals: 452 labor tribunal cases concluded in mediation or rulings (limited to those where there is no appeal) by four district courts in 2013 (calendar year) (limited to cases classified as "Other than for monetary objectives, status confirmation [dismissal, etc.]" in judicial statistics).
- Court settlements: 193 labor relations civil litigation cases (limited to cases classified as "Litigation related to labor [other than for monetary objectives]" in judicial statistics) concluded in settlement by four district courts in 2013 (calendar year).

II. Comparative Analysis of Statistics

1. Gender

In terms of the gender of workers, 457 cases (53.6%) of labor bureau conciliation involved males and 396 (46.4%) involved females, showing a slight majority for the former, although both were at more or less the same level. In labor tribunals, 310 cases (68.6%) involved males and 142 (31.4%) involved females, showing a higher ratio of males than for labor bureau conciliation, males accounting for more than two-thirds. This trend was even stronger for court settlement, where there were 149 cases (77.2%) involving males but only 44 cases (22.8%) involving females, males accounting for three-quarters of the total but females for only just over 20%.

Thus, the ratio of males was higher in labor tribunals than in labor bureau conciliation and higher in court settlement than in labor tribunals, while the ratio for females decreased accordingly.

2. Employment Status

In terms of workers' employment status, 402 cases (47.1%) of labor bureau conciliation involved regular employees, 325 cases (38.1%) involved directly-hired non-regular employees, and 64 cases (7.5%) involved dispatched workers. In labor tribunals, the ratio of regular employees was much higher than for labor bureau conciliation, with 342 cases (75.7%) or more than three-quarters involving regular employees, while only 95 cases (21.0%) or just over one-fifth involved directly-hired non-regular employees, and a mere 13 cases (2.9%) involved dispatched workers. This trend was even stronger for court settlement, where 154 cases (79.8%) or nearly four-fifths involved regular employees, while only 37 cases (19.2%) or less than one-fifth involved directly-hired non-regular employees. Particularly noteworthy is the fact that only 1 dispatched worker filed a case (0.5%).

Thus, analysis of the employment status also reveals clear differences between regular employees, directly-hired non-regular employees and dispatched workers. Specifically, there is a general tendency for labor tribunals to be chosen over labor bureau conciliation, and litigation over labor tribunals, as employment becomes more stable and remuneration becomes higher for regular employees. Conversely, the less stable the employment and the lower the remuneration for non-regular employees, the more labor tribunals tend to be chosen over litigation, and labor bureau conciliation over labor tribunals, this being particularly conspicuous among dispatched workers compared to directly-hired non-regular employees.

Comparing these results to ratios of employment status in the Employment Status Survey by the Statistics Bureau of the Ministry of Internal Affairs and Communications (2012), in the latter "Regular staffs" accounted for 61.8%, "Part-time workers," "Arbeit (temporary workers)," "Contract employees" and "Entrusted employees" for a total of 33.7%, and "Dispatched workers from temporary labor agency" for 2.2%. As this shows, labor bureau conciliation is used more commonly by directly-hired non-regular employees (particularly dispatched workers) than the overall ratio of their employment status, while labor tribunals and court settlement are used more commonly by regular employees than the overall ratio of their employment status.

3. Length of Service

To analyze this attribute, length of service were divided into five segments (Table 1). For labor bureau conciliation, first of all, shorter-serving employees with less than one year's employment were very numerous with 41.9%. In particular, those with less than one month's service accounted for nearly 10%, illustrating a conspicuous trend for disputes to occur soon after starting employment. Given the inclusion of some long-serving employees in the total, the average length of service was rather long at 4.4, but the median value was 1.7 years, showing that workers with fewer length of service use this option more frequently.

In the case of labor tribunals, by contrast, while shorter-serving employees with less than one year in employment accounted for about one-third with 33.0%, those with 10 or more years of service were not so numerous with 16.8%. Although the average number was

Table 1. Workers' Length of Service

Length of service	Labor bureau conciliation	Labor tribunals	Court settlement
	cases (%)	cases (%)	cases (%)
Less than 1 month	73 (9.7)	17 (3.8)	2 (1.0)
1 month−less than 1 year	243 (32.1)	132 (29.2)	32 (16.7)
1 year−less than 5 years	235 (31.1)	155 (34.3)	68 (35.4)
5 years−less than 10 years	106 (14.0)	72 (15.9)	30 (15.6)
10 years or more	99 (13.1)	76 (16.8)	60 (31.3)
Total	756 (100.0)	452 (100.0)	192 (100.0)

Table 2. Workers' Managerial Position

Managerial Position	Labor bureau conciliation	Labor tribunals	Court settlement
	cases (%)	cases (%)	cases (%)
No managerial position	811 (95.1)	396 (87.6)	149 (77.2)
Chief clerk or supervisor grade	22 (2.6)	9 (2.0)	4 (2.1)
Section manager or store manager grade	16 (1.9)	18 (4.0)	13 (6.7)
Department manager or factory manager grade	3 (0.4)	20 (4.4)	19 (9.8)
Executive grade	1 (0.1)	9 (2.0)	8 (4.1)
Total	853 (100.0)	452 (100.0)	193 (100.0)

5.5 years, the median value was 2.5, showing that workers with middling length of service used this option more frequently. When we turn to court settlements, we find that while shorter-serving employees with less than one year of service accounted for a mere 17.7%, longer-serving employees with 10 years or more accounted for 31.3% or nearly one-third, revealing that this option was used more often by workers with longer length of service. The average was 9.6 years and the median value 4.3 years.

4. Managerial Position

For this analysis, workers' managerial positions were divided into five grades (no managerial position, chief clerk or supervisor grade, section manager or store manager grade, department manager or factory manager grade, and executive grade) (Table 2). Although there may be doubts as to how far managerial positions can be compared in companies with different corporate scales, these could be useful as reference for ascertaining overall trends.

In terms of labor bureau conciliation, the overwhelming majority of cases (95.1%) involved employees with no managerial position. Of the mere 4.9% involving workers in managerial positions, more than half were in the chief clerk or supervisor grade, proving that this option is used with greater frequency by lower grade workers. In cases using labor tribunals, the proportion of workers with no managerial position was slightly lower at 87.6%, while both the section manager or store manager grade and the department manager

Table 3. Distribution of Monthly Wage

Monthly Wage	Labor bureau conciliation	Labor tribunals	Court settlement
	cases (%)	cases (%)	cases (%)
1−99,999 yen	48 (9.9)	20 (4.4)	3 (1.6)
100,000−199,999 yen	196 (40.6)	76 (16.8)	17 (8.9)
200,000−499,999 yen	229 (47.4)	283 (62.6)	123 (64.4)
500,000−999,999 yen	10 (2.1)	60 (13.3)	37 (19.4)
1,000,000 yen or more	− (−)	13 (2.9)	11 (5.8)
Total	483 (100.0)	452 (100.0)	191 (100.0)

or factory manager grade accounted for around 4%. This trend was stronger still in cases of court settlement, where the section manager or store manager grade accounted for 6.7% and the department manager or factory manager grade for 9.8%, both therefore increasing. Here, the executive grade also accounted for 4.1%, while cases involving workers with no managerial position decreased to 77.2%.

5. Workers' Monthly Wage

As the monthly wage is an important piece of data that assists in analyzing resolution amounts, wages were divided into five grades for analysis (Table 3). While workers' wages are not always paid on a monthly basis but also daily or hourly in some cases, and moreover hourly wages are common among non-regular employees, these were all converted to monthly equivalents for the analysis.

The result was that, in the case of labor bureau conciliation, just over about 40% of workers received monthly wages in the 100,000 yen range, while just over one third were in the 200,000 yen range. If we include those with less than 100,000 yen (about 10%), more than 85% of the total had a monthly wage of less than 300,000 yen, thus belonging to relatively low wage bands. According to the Monthly Labour Survey (2012 Final Report) by the Ministry of Health, Labour and Welfare, aimed at establishments with 5 or more employees, the average wage (contractual cash earnings) paid to workers as a whole was 261,600 yen, showing that the majority of workers involved in conciliation belonged to a relatively low wage bracket. The average was 202,556 yen and the median value 191,000 yen.

In the case of labor tribunals and court settlement, by contrast, more than one-third of workers had a monthly wage in the 200,000 yen range. Moreover, workers with a higher monthly wage than this, i.e. those belonging to a relatively high wage band of 300,000 yen or more per month, accounted for 43.1% or just under half of labor tribunals and 52.9% or just over half of court settlements. The average for labor tribunals was 342,561 yen and the median value was 264,222 yen. For court settlement, the average was 433,363 yen and the median value 300,894 yen. Thus, when considering monthly wages, again, we see that there is a clear difference between users of labor bureau conciliation, labor tribunals and litigation.

Table 4. Time Taken to Use Each System

Months	Labor bureau conciliation	Labor tribunals	Court settlement
	cases (%)	cases (%)	cases (%)
Less than 1 month	64 (19.8)	1 (0.2)	− (−)
1.0−1.9 months	197 (60.8)	118 (26.1)	3 (1.6)
2.0−2.9 months	49 (15.1)	196 (43.4)	7 (3.6)
3.0−5.9 months	14 (4.3)	131 (29.0)	37 (19.2)
6.0−11.9 months	− (−)	6 (1.3)	67 (34.7)
1 year or more	− (−)	− (−)	79 (40.9)
Total	324 (100.0)	452 (100.0)	193 (100.0)

6. Time-Related Cost

Here, time-related cost was analyzed for two different indicators, namely the time taken by each system of dispute resolution, and the time from the start of a given dispute to its resolution. However, since there are numerous cases of labor bureau conciliation where no agreement is reached, the comparative analysis only took account of cases where agreement was reached.

(1) Time Taken for System Use

A clear difference is seen in the time taken to use the systems of labor bureau conciliation, labor tribunals and court settlement (Table 4). Namely, the time required for conciliation (i.e. the time from the date of accepting the conciliation request to the date of concluding the conciliation by reaching an agreement) was 1.0–1.9 months in an overwhelmingly large 60.8% of cases. If the 19.8% of cases resolved in less than 1 month are included, the procedure was complete within 2 months in more than 80% of cases. The average was 1.6 months and the median value 1.4 months. Meanwhile, the time needed for labor tribunals (i.e. the time from the date of a petition for a labor tribunal to the date of conclusion by mediation or ruling) was 2.0–2.9 months in nearly half (43.4%) of all cases, only slightly longer than conciliation. In most cases, the procedure was complete within 6 months, hardly any cases lasting longer than this. The average was 2.3 months and the median value 2.1 months. By contrast, when litigation is finally resolved by settlement, the procedure itself takes a long time. The most common duration was 1 year or more with 40.9%, followed by 6.0–11.9 months with 34.7%; hardly any cases were resolved in a short time. The average was 10.8 months and the median value 9.3 months. Although attempts have been made to make the court time shorter than it used to be, there is a clear tendency for the process to be protracted if litigation is raised.

Table 5. Time Needed for Resolution

Months	Labor bureau conciliation	Labor tribunals	Court settlement
	cases (%)	cases (%)	cases (%)
Less than 2 months	122 (38.5)	10 (2.2)	− (−)
2.0-2.9 months	90 (28.4)	52 (11.5)	2 (1.0)
3.0-5.9 months	82 (25.9)	202 (44.7)	13 (6.8)
6.0-11.9 months	15 (4.7)	166 (36.7)	60 (31.3)
12.0-23.9 months	7 (2.2)	19 (4.2)	82 (42.7)
24 months or more	1 (0.3)	3 (0.7)	35 (18.2)
Total	317 (100.0)	452 (100.0)	192 (100.0)

(2) Time Needed for Resolution

To measure time-related cost more accurately, we need to compare not only the time taken to use the systems of labor bureau conciliation, labor tribunals and litigation, but also the time needed from the start of the dispute case (e.g. termination of employment) to the resolution of the problem. This is determined by adding the time taken from the occurrence of the dispute until the use of the system, to the time taken to use the system itself (Table 5).

Labor bureau conciliation took 1.0–1.9 months in 35.6% of cases and 2.0–2.9 months in 28.4%, these two totaling 64.0%. Because a request for conciliation is almost always made very soon after the occurrence of the dispute in the case of conciliation, the time needed for resolution is also very short. The average was 2.9 months and the median value 2.1 months.

In comparison, a certain number (13.7%) of labor tribunal cases were resolved in less than 3 months, but 44.7% (or nearly half) took 3.0–5.9 months and 36.7% (or more than one-third) took 6.0–11.9 months, considerably longer than cases of conciliation. The average is 6.0 months and the median value 5.1 months.

However, this also turns out to be extremely short compared to the time needed to reach resolution in cases of court settlement. That is, court settlement cases lasting less than 6 months accounted for only 7.8%, while those lasting 6.0–11.9 months also only accounted for 31.3% or less than one-third, but 42.7% or nearly half of cases last between 1 and 2 years. The average is 17.8 months and the median value 14.1 months.

7. Use of Attorneys or Certified Social Insurance Labor Consultants

When considering whether specialist professionals such as attorneys or certified social insurance labor consultants were used when using these dispute resolution bodies, a significant difference is seen between labor bureau conciliation, labor tribunals and court settlements (Table 6). Because certified social insurance labor consultants cannot be used for representation in labor tribunals and litigation, only the situation pertaining to the use of attorneys will be shown for the latter.

Table 6. Use of Specialist Professionals

User	Labor bureau conciliation		Labor tribunals	Court settlement
	Certified social insurance labor consultants	Attorney	Attorney	Attorney
	cases (%)	cases (%)	cases (%)	cases (%)
Both sides	1 (0.1)	− (−)	402 (88.9)	184 (95.3)
Worker's side	5 (0.6)	6 (0.7)	8 (1.8)	1 (0.5)
Employer's side	45 (5.3)	37 (4.3)	39 (8.6)	8 (4.1)
Neither side	802 (94.0)	810 (95.0)	3 (0.7)	− (−)
Total	853 (100.0)	853 (100.0)	452 (100.0)	193 (100.0)

Firstly, on examining the degree to which parties engaged in conciliation used certified social insurance labor consultants and attorneys, we find that they were used by neither labor nor management in the majority of cases. If anything, they were used more frequently by the employers' side, this being just over 5% in the case of certified social insurance labor consultants and just over 4% for attorneys. By contrast, use by the workers' side was extremely small, being less than 1% in both cases. To put it differently, about 90% of employers and nearly 99% of workers did not rely on the assistance of certified social insurance labor consultants or attorneys. On this point, there was a clear contrast between labor tribunals and court settlement on the one side and conciliation on the other, with both labor and management using attorneys in most cases. Even then, in labor tribunals, cases in which the worker's side applied alone without the use of an attorney accounted for just under 10%, while in the case of litigation the ratio was no more than about 4%. Attorneys were used by both labor and management in 90% of cases of labor tribunals and in more than 95% in cases of litigation, suggesting that this represents a monetary cost for users.

8. Resolution Amount

The distribution of resolution amounts in cases of labor bureau conciliation shows that nearly 30% of cases were concentrated in the 100,000–199,999 yen range. If we include the fact that cases of less than 100,000 yen accounted for just over one-quarter, this means that the majority of cases were resolved for less than 200,000 yen (Table 7). The average was 279,681 yen, but this is due to the upward pull of high-value resolutions. The median value was 156,400 yen, with the reality that nearly half of all cases were resolved for sums of 150,000 yen or less.

By contrast, the resolution amount in labor tribunals was either in the 500,000–999,999 yen range or the 1,000,000–1,999,999 yen range in more than half of all cases. Moreover, resolution amounts of 2,000,000–2,999,999 yen and 3,000,000–4,999,999 yen each accounted for around 10% of the total. The average was 2,297,119 yen and the median value 1,100,000 yen, with more than half of cases resolved for more than 1,000,000 yen. As

Table 7. Resolution Amount

Resolution amounts	Labor bureau conciliation	Labor tribunals	Court settlement
	cases (%)	cases (%)	cases (%)
1–49,999 yen	38 (12.1)	− (−)	− (−)
50,000–99,999 yen	42 (13.4)	11 (2.5)	1 (0.6)
100,000–199,999 yen	89 (28.4)	13 (3.0)	10 (5.7)
200,000–299,999 yen	47 (15.0)	22 (5.1)	1 (0.6)
300,000–399,999 yen	32 (10.2)	17 (3.9)	3 (1.7)
400,000–499,999 yen	17 (5.4)	18 (4.1)	4 (2.3)
500,000–999,999 yen	29 (9.3)	103 (23.7)	25 (14.4)
1,000,000–1,999,999 yen	17 (5.4)	117 (27.0)	36 (20.7)
2,000,000–2,999,999 yen	2 (0.6)	45 (10.4)	21 (12.1)
3,000,000–4,999,999 yen	− (−)	42 (9.7)	27 (15.5)
5,000,000–9,999,999 yen	− (−)	27 (6.2)	27 (15.5)
10,000,000–19,999,999 yen	− (−)	14 (3.2)	9 (5.2)
20,000,000 yen or more	− (−)	5 (1.2)	10 (5.7)
Total	313 (100.0)	434 (100.0)	174 (100.0)

these figures show, there is a clear difference between labor tribunals and conciliation when it comes to the resolution amount.

The difference between labor tribunals and court settlement was that, in the former, the resolution amount peaked at a mode of around 1,000,000 yen, while in the latter, the amounts were distributed in a gentle plateau fashion between 500,000 yen and 10,000,000 yen. To put it another way, resolutions for considerably high amounts were seen with some frequency. The average was 4,507,660 yen and the median value 2,301,357 yen, which was generally about twice the resolution amount reached in labor tribunals.

9. Resolution Amounts in Terms of Monthly Wage

A fairly clear proportional relationship exists between monthly wage and resolution amounts in each system of labor dispute resolution, but at the same time, it is also clear that there is a considerable scattering of resolution amounts, even among workers with the same monthly wage. That is, the resolution amount was relatively low compared to the monthly wage in some cases, but relatively high in others, with considerable variation. To clarify this situation, it might be useful to analyze figures reached by dividing the resolution amount by the monthly wage each worker, or in other words, how many months' wage the resolution amount corresponds to (Table 8).

For labor bureau conciliation, the resolution amount was less than 1 month's wage in nearly half of all cases (43.6%). Although the average was 1.6 months, the median value of 1.1 months suggests that the amounts are distributed around the 1 month-plus mark in cases of conciliation. In labor tribunals, by contrast, the amount was distributed evenly between 2.0–2.9 months and 5.0–5.9 months'wage, with many cases of 6.0–8.9 months as well. The

Table 8. Resolution Amounts in Terms of Monthly Wage

Resolution amounts in terms of monthly wage	Labor bureau conciliation	Labor tribunals	Court settlement
	cases (%)	cases (%)	cases (%)
Less than 1 month	115 (43.6)	32 (7.4)	12 (6.9)
1.0–1.9 months	71 (26.9)	40 (9.2)	18 (10.4)
2.0–2.9 months	33 (12.5)	57 (13.1)	14 (8.1)
3.0–3.9 months	23 (8.7)	63 (14.5)	12 (6.9)
4.0–4.9 months	9 (3.4)	45 (10.4)	12 (6.9)
5.0–5.9 months	5 (1.9)	46 (10.6)	7 (4.0)
6.0–8.9 months	7 (2.7)	77 (17.7)	27 (15.6)
9.0–11.9 months	1 (0.4)	20 (4.6)	26 (15.0)
12.0–23.9 months	− (−)	37 (8.5)	29 (16.8)
24 months or more	− (−)	17 (3.9)	16 (9.2)
Total	264 (100.0)	434 (100.0)	173 (100.0)

average was 6.3 months and the median value 4.4 months, showing that the amounts are broadly spread around 4–5 months in labor tribunal cases. Turning finally to court settlement, many cases (15–16%) were concentrated in each of the three groups from 6.0–8.9 months to 12.0–23.9 months, showing that the resolution amount is even higher. The average is 11.3 months and the median value 6.8 months.

III. Some Observations

As the above analysis shows, there were large differences between the three systems of labor dispute resolution in terms of their levels of monetary resolution. In cases of labor bureau conciliation, the peak amount was in the range of 100,000–199,999 yen and the majority of cases were resolved for less than 200,000 yen, while for labor tribunals, more than half were concentrated in the 500,000–999,999 yen and 1,000,000–1,999,999 yen ranges. And in court settlement, the amounts were distributed in a gentle plateau fashion between 500,000 yen and 10,000,000 yen. Median values were 156,400 yen for labor bureau conciliation, 1,100,000 yen for labor tribunal, and 2,301,357 yen for court settlement. So, what actually causes such large differences?

In workers' attributes such as gender, employment status, length of service, managerial position and monthly wage, clear differences are observed between labor bureau conciliation, labor tribunals and court settlement. These, when combined, appear to cause differences in resolution amounts. In terms of gender, specifically, cases of labor bureau conciliation were spread more or less evenly between males and females, but the ratio was about 7:3 (male:female) for labor tribunals and about 8:2 for court settlement. In other words, the latter two increasingly involved more males. In employment status, regular employees accounted for just under half of labor bureau conciliation cases but about

three-quarters of labor tribunal cases and nearly 80% of court settlement cases. In length of service, workers with less than one year of service accounted for just over 40% of labor bureau conciliation cases but about one-third of labor tribunal cases and less than 20% of court settlement cases, while conversely, long-serving employees with more than 10 years of employment accounted for just over 10% of the first two systems but almost one-third of court settlement cases. A similar situation pertained for managerial position, with the proportions of higher positions increasing in stages from the first to the third system. Reflecting these attributes of workers, the distribution of monthly wages also increased from the first to the third system, the respective median values being 191,000 yen for labor bureau conciliation, 264,222 yen for labor tribunals and 300,894 yen for court settlement.

But although the monthly wage certainly increased in this way, the difference was not so great when compared to the considerable difference in the resolution amount. For while the difference in median values of the monthly wage was 1.4 times and 1.6 times, respectively, for labor tribunals and court settlement compared to labor bureau conciliation, the difference between the respective median values of resolution amounts was as great as 7.0 times and 14.7 times. This situation is seen even more clearly when comparing resolution amounts in terms of monthly wage, as shown in Section II-9. The median values in this case were 1.1 months for labor bureau conciliation, 4.4 months for labor tribunals and 6.8 months for court settlement, revealing differences between the three systems of dispute resolution when workers' attributes are removed.

Another factor that explains the difference between the systems is the cost involved in using the respective procedures. Viewing time-related cost in terms of the median values of time taken to use the systems, it was 1.4 months for labor bureau conciliation, 2.1 months for labor tribunals and 9.3 months for court settlement, showing notable speed in both labor bureau conciliation and labor tribunals. The median values of time needed to resolve these cases were 2.1 months for labor bureau conciliation, 5.1 months for labor tribunals, and 14.1 months for court settlement, showing widening gaps between the three. One might therefore imagine that the difference in the resolution amount between the systems is caused by this difference in time-related cost. However, when this is actually cross-analyzed, no correlation between resolution time and resolution amount was observed in cases of labor bureau conciliation, labor tribunals and court settlement (details omitted from this paper). Labor bureau conciliation cases were relatively quick and relatively low in cost while court settlement cases were relatively protracted and relatively expensive, with labor tribunal cases positioned between the two in both time and cost. As such, there is no correlation between these two factors within each system. The same is true for resolution amounts in terms of monthly income.

Another cost factor is the use of professionals, i.e. attorneys and certified social insurance labor consultants. These were not used in the overwhelming majority of labor bureau conciliation cases, but were used in the overwhelming majority of labor tribunal and court settlement cases. As such, this is almost equivalent to the cost factors being embedded

in the systems themselves.

Seen in this light, factors other than the aforementioned workers' attributes or the cost required for resolution are thought to contribute to the large differences in resolution amounts between the systems. The voluntary nature of participation and agreements in labor bureau conciliation could be considered an important factor here. The non-participation rate of the other party was nearly 40%, and the possibility of a case ending without agreement despite entering conciliation was by no means small at 16.4%. In such a situation, the incentive to compromise on a relatively low resolution amount that is more likely to be accepted by the other party, rather than seeking an amount that could be rejected by the other party, must be a contributory factor. By contrast, if no mediation is established in a labor tribunal case, a ruling is made as a judgment-based resolution, and if there is an objection to this, it is regarded as the same as if a lawsuit had been filed from the beginning. Therefore, there is little likelihood of the petitioner being compelled to compromise while harboring dissatisfaction with the content of the resolution. In cases of court settlement, too, a ruling is of course made if no settlement is reached, and so the case concludes without having to consider "the risk of the other party being able to get away because the petitioner does not make an involuntary compromise," as in cases of labor bureau conciliation.

If this observation is correct, this "risk of getting away" could conceivably be discounted from the resolution amount in cases of labor bureau conciliation (excluding elements due to workers' attributes and other factors), compared to labor tribunals and court settlement.

While there are clear differences in the resolution amount between these three systems, it is also clear that user cost (in the sense of the time taken to use the system, the time needed to reach resolution, and the use of attorneys and other professionals) increases in stages from labor bureau conciliation to labor tribunals and finally court settlement. As such, a need is seen to inform users more fully about these system characteristics and to encourage them to use the resolution system that best suits their needs.

Again, while there were clear differences in the resolution amount between the three systems, some elements (for example, in resolution amounts in terms of monthly wage) showed a degree of bias in gender, employment status, length of service, monthly wage, etc. Nevertheless, a broad distribution was also seen in these, and it was confirmed that the level of resolution is not determined by meeting certain conditions. This is thought to be because matters not covered by this research are taken into account when resolving disputes—namely, what the parties to the dispute have specifically done or said, or whether more responsibility for the dispute is thought to lie on the employer's side or the worker's side (i.e. whether the case is "likely to be won" or "likely to be lost"). Therefore, we need to conduct further research from angles such as this on the specific question of how the levels of resolution amounts are decided in these systems.

JILPT Research Activities

International Workshop

The Japan Institute for Labour Policy and Training (JILPT) and the Korea Labor Institute (KLI) held a research forum on the theme "Issues regarding Women's Employment: A Comparison between Japan and South Korea with Regard to the Development of Societies in Which Women Can Advance Their Careers and the Related Challenges" on June 3, 2016, in Tokyo, Japan. The two institutes hold a forum annually to address themes that are shared by Japan and Korea in the field of labor policy. At the forum, they present their research results with the aim of promoting mutual understanding between the two countries and raising the standards of research. This was the sixteenth forum held with the collaboration of the two research institutes. The Japanese texts of the research papers presented at the forum will be uploaded on the JILPT website (http://www.jil.go.jp/foreign/report/index.html#year_2016).

Research Reports

The findings of research activities undertaken by JILPT are compiled into Research Reports in Japanese. Below is a list of the reports published since May 2016. The complete Japanese texts of these reports can be accessed via the JILPT website (http://www.jil.go.jp/institute/pamphlet/). English summaries of selected reports are also available on the JILPT website (http://www.jil.go.jp/english/reports/jilpt_01.html).

Research Reports

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No.183 Research on Employment with NPOs: Understanding Its Constant Growth and Changes Due to the 2011 Great East Japan Earthquake Disaster (May 2016)

No.182 Research and Development of the "Workshop for Visualization of Vocational Counseling Skills—'Kan' and 'Kotsu'": Training Research That Incorporates Cognitive Task Analysis (May 2016)

Research Series

No.158 Summary of the Results of a Survey on Publicity of and Publication of Information on Corporate Human Resources Development, Education, and Training, etc. (August 2016)

No.156 Survey regarding the Employment of Older People (Survey of Companies) (May 2016)

No.155 The Actual Conditions of Services Related to Information on Job Vacancies and Services Related to Information on Job Seekers: From the Results of a Survey on Services Related to Information on Job Vacancies and Services Related to Information on Job Seekers (May 2016)

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