

Abstracts

The Legal Justification of the Employment Dismissal Regulation in Japan

Michio Tsuchida (Dokkyo University)

Japanese employment dismissal regulation has been made by case law in the absence of general employment dismissal legislation. The theoretical premise of regulation is the prohibition of the abuse of the employer's right to dismiss. Contrary to this theory, some recent decisions deny its applicability, while some economists insist on the deregulation of the dismissal regulation itself. This study examines the economic rationale of the theory in terms of recent economics theories, proves the legal justification of the theory, while analyzing the necessity and possibility of general employment dismissal legislation.

Job-Security Regulation from the Viewpoint of the Economic Theory of Incomplete Contracts

Atsushi Tsuneki (Osaka University)

In an economy where company-specific skills are required, it is well-known that "hold-up" problems occur. The investment incentive for labourers towards company-specific skills is excessively discouraged, and hence inefficiency arises as the result of free and costless contracts. Recently, the significance of the Doctrine of Abusive Dismissal as a way of preventing the above-mentioned inefficiency has been reevaluated. This article argues that this justification of that doctrine is not sufficiently persuasive, because it is inconsistent with the way that the doctrine is applied in legal practice. This article also argues that, in establishing employment practices in Japan, other aspects of Japanese labour laws, respect for the discretionary power of managers, protection of the rights of labourers to unite and bargain, and respect for the autonomy of both labour and management, are more important than directly restricting dismissals. This article also examines the argument recently made by lawyers to justify the Doctrine of the Protection of Long-Term Contracts.

Reflections on Legal Theory concerning Collective Redundancy Dismissal: Through the Re-examination of the Four Necessary Conditions

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In Japan four necessary conditions for valid collective redundancy dismissal have been established by precedent. However recently a series of cases, changing formally or virtually these four necessary conditions, have come from the Tokyo District Court. We need to review the four necessary conditions thoroughly in order to validate them for the future. This study elucidates basic principles about collective dismissal. The most important one being the employers' obligation to maintain employment as long as possible. This obligation is based on many constitutional provisions. Especially important among these are the right to maintain the minimum standards of wholesome and cultured living (Article 25), the right and the obligation to work (Article 27) and the right to be respected as individuals (Article 13).

Sachiko Kuroda Nakada (The Bank of Japan)

This paper tries to give a clue to those thinking about appropriate employment protection legislation (EPL) for Japan. In this paper, I first make international comparisons of the strictness of EPL by using several EPL indicators developed in prior studies. Second, I review the empirical literatures on EPL and its links to labour market performance. I conclude that although the relationship between the strictness of EPL and the level of unemployment rate is still unclear, many studies have reached a broad consensus that the stricter EPL tends to lower the inflow rate into unemployment but lengthen the mean duration of unemployment. Finally, I point out several future research topics related to EPL necessary to be discussed in Japan.