

## Abstracts

### Consideration of the Theory of “Abuse of the Right to Dismissal” in Terms of Legal Remedy and Procedural Regulation

**Shuhei Koga** (Miyazaki Sangyo-Keiei University)

This article aims to consider the significance of the theory of “abuse of the right to dismissal,” which has been constructed by case law and is now provided as Article 16 of the Labor Contract Act, in terms of the legal remedy stating that the dismissal shall be invalid. The nullity is an adequate remedy in consideration of the purpose of the restriction of the right to dismissal and its preventive function. With regard to the unlawfully dismissed being afforded the right to claim payment of wages against the employer between the dismissal and the judgment, that payment plays a role of compensation of damages in practice, but this became an obstacle of progress to form the true compensation of damages as tort. This article also considers the necessity of procedural regulation at the termination of employment. Procedural regulation is expected to ensure the employee’s voluntary decision of the termination of contract and to make clear the type of termination of contract or the application of law that does not admit the employer’s evasive behavior from the regulation of termination of contract.

### The Concept of the Full Compensation Rule

**Keisuke Kawata** (The University of Tokyo)

This paper adopts the perspective of economic theory to address the state of the regulations on dismissals for the purpose of corporate restructuring. In addition to discussing the key points regarding the “full compensation rule” proposed in Ouchi et al. (2018) in particular, it also critically reexamines policy analysis in terms of its methodological background and the resulting arguments. The methodological background referred to here is an approach that entails seeking to combine data analysis with theoretical models on the basis of a similar concept to that adopted in the sufficient statistics approach. This critical reexamination also provides insights on the ways in which the implications of the full compensation rule change—or do not change—in the event of cases such as shifts in market structure, changes in labor policy, or where dismissals involve non-monetary damages.

### Employment Insurance Benefits for the Unemployed: Focusing on Differences in Benefits Depending on the Reason for Termination of the Employment Contract

**Junko Takahata** (Kyoto Sangyo University)

Under the current Employment Insurance Law, there are a number of large differences in benefits depending on the reason for termination of an employment contract. In this paper, the following conclusions were obtained. First, the provision of generous benefits for those who lose their jobs for reasons such as bankruptcy or dismissal has reduced the coverage of other workers. Differences in benefits due to reasons for severance should be reduced. Second, because of the low predictability of dismissal regulations, employees are treated at a disadvantage under the Employment Insurance Law, and the employment insurance covers dismissal costs that employers should bear. Third, the basic allowance must be returned if the dismissal is invalid. However, even if the employer does not fulfil its wage payment obligation, the unemployed person must return the basic allowance. To solve this problem, a mechanism is needed to adjust the right to claim wages and payment of the basic allowance.

### Non-Financial Losses Incurred through Job Loss

**Miho Takahashi** (The University of Tokyo)

This paper discusses non-financial losses incurred through job loss from a clinical psychology perspective. Workers after leaving their company may also lose their “company,” “workplace,” and “work.” This includes losses such as “oneself in the past,” “pride,” “self-esteem,” “confidence,” “health,” and “trust in company, organization, and society.” These workers should therefore be compensated with psychological care.

as well as prevention by achieving a psychological distance from their company in advance. Unemployed persons may lose their “framework of life,” “health,” “space,” “pride,” “interpersonal contact,” “approval,” “human relations,” and “social trust.” These individuals should be compensated through recurrent education and the opportunity to reflect on their careers. Jobseekers may lose “confidence,” “self-esteem,” and “health.” These individuals should be compensated with information about the reality of reemployment activities, the ability to share information in real time, and recurrent education. “Self-esteem” and “health” are the most common losses. Thus, it is necessary to obtain psychological care after leaving company as well as preventive coping to keep psychological distance and get information about reemployment activities in advance. Furthermore, the contemporary problem in Japan regarding non-financial losses is discussed using three meanings of life. It is also necessary to address these losses through a social structure that provides recurrent education and opportunities to reflect on life and career from this perspective.

#### Legal Issues in Establishing a Financial Compensation System for Illegal Dismissal

**Chikako Kanki** (Rikkyo University)

The principle of judicial relief for illegal dismissals is confirmation of a worker’s status as an employee under contract. However, in cases where it is difficult to return to the workplace, solutions involving money payment are often attempted out-of-court. Over the past 15 years, there have been discussions about introducing a formal financial compensation system for illegal dismissals. Currently, a committee of the Ministry of Health, Labour and Welfare is discussing legal and technical issues regarding the financial compensation system. This paper does not discuss whether or not such a system should be introduced, but is intended to indicate the issues that should be the basis for discussions on system design. Specifically, it examines the scope of the subject dismissal, the method of exercising the right to request compensation and for cancellation of contracts, and the components and calculation method of compensation. With regard to purely technical issues such as the generation and exercise of rights, although they are complex, it is not very difficult to find paths to solutions. On the other hand, the nature of the compensation and the design of the calculation method involve difficult problems that cannot be technically debated. In order to secure a one-stop solution and predictability of dispute resolution, a unified calculation method is desirable. However, there is also a need for room to take into consideration individual circumstances. In designing the system, it is also important to consider the fairness of the whole labor market. It is necessary to conduct essential discussions with social partners while examining what should be compensated.