

Abstracts

Policy Issues relating to Foreign Workers: From the Viewpoint of Labor Law

Chizuko Hayakawa (Saga University)

The amended Immigration Control Act (the Immigration Control and Refugee Recognition Act amended according to the Act for the Partial Amendment of the Immigration Control and Refugee Recognition Act and the Act for Establishment of the Ministry of Justice [December 14, 2018; Act No. 102]) came into effect on April 1, 2019. The Act established a new status of residence for workers with specified skills as a means of enabling employers in fields of industry with labor shortages to take on foreign workers already equipped with the relevant professional skills. It is suggested that the Act will open the doors for the employment of foreign workers who engage in unskilled labor, whose acceptance was previously restricted under the former policy of immigration control law. This paper explores the amended Immigration Control Act and the related policies on foreign workers from the viewpoint of labor law. More specifically, this paper first outlines the kinds of methods adopted in Japan's policies on immigration control law and labor law with reference to the relationship between labor law policy and immigration control law policy in the context of policy on foreign workers. This is used as a basis to define the respective roles of immigration control law policy and labor law policy and evaluate each in relation to the specified skills system under the amended Immigration Control Act. In conclusion, this paper points out the challenges that will need to be addressed in the future.

The Characteristics of the Specified Skills System and Its Social Impacts: A Comparison between Systems for the Acceptance of Foreign Workers

Chieko Kamibayashi (Hosei University)

The introduction of the "specified skills" system in 2018 marked a turning point in Japanese immigration policy. It enabled Japan to openly accept low-skilled foreign workers for the first time. Before 2018, low-skilled jobs in Japanese society were filled by technical internship workers under the Technical Internship Training Program (TITP) or Brazilian or Peruvian workers of Japanese descent. As both TI trainees and Japanese Brazilians are largely employed in manufacturing industries, the growing numbers of low-skilled jobs in service industries have remained unfilled. The new specified skills system was intended to assist employers to fill such vacancies, in addition to filling middle-skilled jobs in small-and-medium enterprises (SMEs) in the manufacturing industry. This specified skills system demonstrates the typical characteristics of immigration policy, such as upper limits on the number of workers that can be accepted, the designation of the sectors in which such workers are permitted to work and a limit on the period of stay. The labor conditions of workers with specified skills can be positioned between those of TI trainees and workers of Japanese descent. They are given the right of free movement, which is denied for TI trainees. The levels of wages and right of free movement afforded to workers with specified skills may serve to limit growth in their numbers for the moment, but in the long run, the demand for middle-skilled workers in Japanese companies looks set to ensure an increase in the employment of such workers.

An Economic Analysis of Bottlenecks in the Labor Market and Relationship between Internal and International Migration : From Comparable Perspectives in Japan and Germany

Yasushi Iguchi (Kwansei Gakuin University)

This article starts with the assumption that in-country economic gaps in developed countries are in widening tendency with stagnation of economic development in competition with emerging economies. Under such circumstances, international migration takes place in close connection with internal migration. To explore such mechanism, the author develops a new two-region labor market model. One region represents industrial agglomeration with inflow of capital, population and technology. Another represents

depopulation with deteriorating industrial agglomeration and outflowing youngsters. By using population registration data in Germany and Japan, we can identify two different types of regions with different combination of international and internal migration. By assuming disequilibrium in the labor market, we can classify two different types of mismatches. One is normal short-term mismatch and another is bottleneck which can be defined as long-term unfilled vacancies with declining labor supply, which is typical in middle skill occupations. There is no optimum indicator of such bottlenecks in Germany or in Japan. However, we have some prospects to improve them in order to guarantee priority of hiring existing labor force in the country and to encourage labor migration from outside in sectors with bottlenecks through linguistic and occupational qualification measures and fair integration measures at the local levels. From such vision as well as digital technologies, we will be able to realize an administrative innovation in immigration control and labor market policies in collaboration with municipalities.

Policy Issues relating to Foreign Workers

Shoichi Ibusuki (Akatsuki Law Firm)

The number of foreign workers in Japan had reached 1,460,463 people at the end of October 2018 and is expected to rise significantly further in the coming years. While Japan has a policy of not accepting “so-called unskilled laborers,” “unskilled laborers” are in fact employed in large numbers under the systems of “status of residence based on personal status or position,” “technical intern training,” and “activity other than that permitted under the status of residence previously granted (work permits for international students, etc.)” Since the 1980s, foreigners who have overstayed their visas, second- and third-generation Japanese descendants, and participants of training and technical internship programs have been employed in order to secure the necessary labor forces, a trend known as “acceptance through the side or back door.” Within this trend, the Technical Intern Training Program is operated on the basis of the false pretense of “international contribution by way of technology transfer,” and entails structural issues such as denial of participants’ freedom to change workplace, and exploitation by intermediaries or violations of human rights in the recruitment or job-seeking processes. In such a context, the December 2019 amendment to the Immigration Control Act allows for the launch of “acceptance through the front door” with the establishment of a new system for accepting foreign workers known as the “specified skills” system. At the same time, a number of problems remain, such as the lack of regulation of employment brokers.

The Basis for Calculating the Basic Daily Benefit for Employees with Side Jobs

Makiko Amaya (Kyoto University)

While the numbers of workers with side jobs have been growing in recent years, under the current Industrial Accident Compensation Insurance Act workers with a side job who suffer an industrial accident at one of their places of work face the question of whether the amount of wages that they would normally receive from their employer at their other place of employment is included in the basis for calculating their basic daily insurance benefit (Industrial Accident Compensation Insurance Act; Article 8, Paragraph 1). Administrative rulings and judicial precedents suggest that the basis for calculation should be based solely on the wages paid at the place of work where the accident occurred, as opposed to the total of the wages paid at both places of work. However, this results in the notable problem that a worker with a side job who suffers an accident at one place of work which forces them to take leave at all of their places of work will face a considerable discrepancy between the amount of wages that they would normally have received if they had not had the accident and the actual amount of industrial accident insurance benefits, and, in turn, both they and their family are highly likely to face difficulties maintaining their livelihood. This paper provides a general overview of the existing system related to this issue and introduces the judicial precedents and the discussions that have typically been pursued, and, on that basis, refers to three arguments in discussing the validity of adopting the amounts from all of the side-job worker’s places of work in the basis for calculating the basic daily benefit.

Proposed means of addressing this issue in the future include relaxing the interpretation of the liability to provide industrial accident compensation under the Labor Standards Act that should rightfully be borne by employer organizations such that the liability can be seen to extend beyond individual employers, rational measures as opposed to excessive burdens under the existing risk-related premium system, and developing a system by which the total working hours at multiple places of work are calculated. From the perspective of protecting workers, this paper concludes that with the growing diversity in workers' ways of living and working, it is essential to include the total amounts of wages in the basis for calculation in order to give priority to maintaining workers' typical living standards.

Should Base Salary Structure for Older Employees be Present-Job-Based, If Older Employees are Utilized and Performed? The Shift to the Present Job-Based Salary Structure from the Past Contribution-Based Salary Structure

Miho Fujinami (Chiba Keizai University)

Haruyuki Kanou (Japan Organization for Employment of the Elderly, Persons with Disabilities and Job Seekers)

This paper examines the development process of determining base salary for older employees, with reference to the correlation of the intensity of utilization on older employees beyond mandatory retirement age and the means of determining base salary. This analysis draws on two types of quantitative data from corporate HR departments and older employees. Looking at companies' strategies for utilizing older employees, it can be deduced that it is more reasonable to adopt the "present job-based" structure, under which base salary is determined on the basis of employees' current contributions. However, the quantitative survey of corporate HR departments showed that the majority of companies currently choose the "past contribution-based" structure, which relies on evaluation of contributions prior to mandatory retirement age. The two sets of survey results also indicate that the means of determining base salary may change according to the intensity of utilization of older employees. This result implies that the means of determining base salary will change in the medium to long term. More specifically, it indicates a shift from an "across-the-board approach for all," by which no distinctions are made between older employees, to the past contribution-based approach, and furthermore a gradual progress toward the present job-based approach. It is also expected that the switch to the present job-based structure will come at the time when older employees are given positions in which they are expected to play the roles that they played prior to mandatory retirement age, as opposed to roles assisting and training regular employees.

Selection and Training of Women Union Officers: Focusing on Enterprise Unions

Kayo Goto (Labour Research Council)

Recognition of the importance of the selection of women for officer positions in labor unions has prompted a rise in the numbers of women union officers. However, there are still major gaps between the rates of women union members and the rates of women officers, and union-officer positions tend to be dominated by men. While the selection of women union officers is also an issue in national centers and industry-based organizations, the officers in these organizations are largely selected from among officers of enterprise unions, and it is important to focus on enterprise unions in order to ensure the participation of women in the decision-making organizations of labor unions as a whole. This paper draws on the results of the Labour Research Council's "Union Leader Survey" of union officers of enterprise unions to reanalyze the means of selecting and training men and women union officers in private enterprise unions, and attitudes toward labor union activities and careers as union officers, in order to clarify the challenges regarding the selection and training of women union officers in enterprise unions. The results of the Union Leader Survey revealed that while women union officers engage in union activities with similarly high levels of awareness of being trained as union officers as their men counterparts, women's attitudes toward careers as union officers—namely, the desire or willingness to take on a higher office than their present position—were less

proactive than those of men. Such attitudes may be attributable to factors such as the differences in women's experience of union activities in comparison with men as a result of the gender division of assigned work or other reasons, or the time burdens of labor union activities.

What Are the Factors behind Joining a Labor Union? From a Case Study of an Open Shop Union

Tsutomu Nishio (Kokugakuin University)

This research draws on a case study of an open shop union to explore the factors behind workers joining labor unions. The key aim of the survey research was to investigate the findings of four previous research studies on decrease in unionization rates which suggest a decline in the appeal of unions (and the suggestion that revitalizing union activities leads to increased appeal and in turn rises in unionization rates). The survey looked at the faculty members' and employees' union of University A, an open shop union that saw a drop in its unionization rate to 30.7% as of the end of January 2018. As said union has a branch (workplace) with a high unionization rate and a branch (workplace) with a low unionization rate, the differences between the respective branches in terms of the requirements for and state of union membership and union activities were examined using the results of questionnaire and interview surveys of union officers and members and other such materials. This revealed that it is necessary to readdress the hypothesis that revitalizing union activities and developing appealing union activities in and outside organizations are essential to improving unionization rates—the argument that has been adopted by labor circles since the Union Identity (UI) movement era in the 1980s. It was concluded that said hypothesis does not hold up in the case of open shop labor unions expanding their organizations. That is, increases or decreases in unionization rates are significantly influenced by a tendency to conform, in the sense that workers join unions because they are invited to do so by union officers at their workplace when they enter employment (at training sessions for new employees) and at workplaces they are later assigned to, and because everyone else is a member. Whether this hypothesis of the tendency to conform can be generally applied is therefore an aspect that needs to be addressed when exploring factors behind and measures against declines in labor unionization rates.