

Abstracts

How Should We Understand the Discussion on Job-based Employment? Suggestions for Reforming Japan's Human Resource Management System

Hiroki Sato (Chuo University)

Much of the discussion in the media and beyond about “job-based employment” characterizes Japan’s human resource (HR) management system as a “membership-based employment” model, and views a transition to a “job-based employment” model as the solution to the problems associated with “membership-based employment”. Furthermore, the discussions on “job-based employment” often assume that white-collar HR management systems in Western countries are “job-based.” This paper summarizes Keiichiro Hamaguchi’s discussion on “membership-based employment” and “job-based employment”; it also examines “job-based employment” through the perspective of “various regular employee systems” and others. Based on interviews with HR managers, the paper examines whether white-collar HR management systems in Western countries fall under the category of “job-based employment”. Building on these analyses, the paper argues that the key to reforming Japan’s HR management system is whether it is possible to shift from a “company-led career management” model, in which the company has comprehensive powers to allocate and transfer human resources, to a “company-employee coordinated career management” model, in which allocation and transfer of human resources are based on internal recruitment and on coordination and agreement between the employer and employees. If Japan’s HR management system was to shift to a “company-employee coordinated career management” model, employees will be required to take initiative over their own career progression.

The Reality of Job-Based Employment from the Perspective of a Foreign Capital Company Human Resources Department

Shuntaro Baba (NCR Japan,Ltd.)

This article outlines what is considered to be general description of the actual situation of job-based employment, based on practices at companies where the author has worked in the past and present, as well as on what the author has learned about practices at other companies through information exchange. In the section on evaluation, promotion, and rotation, the similarities and differences regarding the annual evaluation cycle will be described with that of membership-based employment companies. As for the differences, the degree of respect for the autonomy and judgment of each department will be described. In the section on graduate and mid-career recruitment, the recruitment framework, job description, and transfer process as internal recruitment are described. Job descriptions are often thought to be detailed descriptions that cover all aspects of the job, but in reality, they are often limited to descriptions of the job’s responsibilities, scope of coverage, complexity of the tasks involved, and skill requirements. In the section on employment restructuring, the actual situation of employment restructuring in job-based employment will be discussed. Some argue that it is easier to terminate employees in job-based employment than in membership-based employment. However, the legal restrictions on companies, of course, do not differ depending on whether the employment is job-based or membership-based. The common denominator is that Japanese companies are not able to take drastic actions regarding employment. In the section on companywide training and event management, the author discusses the constraints on holding some sort of event or training in Japan from a cost management perspective. At first glance, this may seem like a trivial case, but the author believes that there are many restrictions unique to job-based employment. In the section of merits and challenges of job-based employment, several merits are described, and then the challenges are discussed from the perspective of maturity level of the manager, being prone to partial optimization, and the positioning of the human resources organization. As a supplement, the differences in compensation within the company are also discussed. In conclusion, job-based employment certainly has merits from a practical point of view, but it also has challenges, and in particular, when shifting to job-based employment, it is necessary to fully discuss whether the underlying

organizational culture is suitable for the job-based employment in the first place. It is also pointed out that strong support and leadership from the management is necessary.

Does Job-based HRM System Fit with the Employment System in Japan?

Takeshi Matsuo (The Fujitsu Labor Union)

In the early 1990s, as the internal and external environments around Fujitsu changed drastically, there were requests from workplaces for a personnel and treatment system based on performance. As a labor union, we engaged in labor-management consultations from the perspective of pursuing attractive working conditions, pursuing a sense of job satisfaction, a fair and equitable evaluation system, enhancing communication within the workplace, and expanding individual options in terms of working conditions. In 1994, the company introduced a target management evaluation system (currently the results evaluation system) and the SPIRIT work system (discretionary work). In 1998, the company introduced a personnel system based on function classifications and grades with the following objectives: to abolish the classification into comprehensive and skill-based systems so that employees can fully demonstrate their own abilities and motivation; to reorganize the qualifications and function classifications of both comprehensive and skill-based positions into a grading system based on job responsibilities, with no management based on academic background or years of service; and to accelerate the promotion of employees who have achieved outstanding results. The wage system was also revised to provide a main salary plus a responsibility-based salary. Subsequently, in 2010, in response to changes in the business environment, maintenance and improvement of the motivation of core employees, and issues with the current system, the company introduced a personnel system based on function classifications and competency grades. Wages were changed to the main salary plus a competency grade salary, and the mechanism for raising the salary was based on each person's competency evaluation. In 2014, we ascertained issues through opinions from workplaces and the results of a questionnaire on the personnel system, and as a result of labor-management consultations, the evaluation sheet and the frequency of evaluations were revised. In 2017, a review of the wage structure and evaluation system was carried out from the perspectives of progress in digital technology, promotion of work style reform, and issues with the current system. Whether or not a personnel and treatment system can be fully utilized depends on the daily operation of the system. Fujitsu's results-oriented personnel and treatment system has been reviewed through labor-management consultations as needed, based on our respective analyses as the labor union of changes in the surrounding environment, improvement in the consent of union members, and issues related to the system. In the future, when reviewing the transition of the current system to a new system, we will also engage in labor-management consultations to create an environment in which union members can fully demonstrate their abilities, putting the actual conditions of the workplace first. Next, with regard to the job-based personnel system, Fujitsu introduced a new personnel system called "Connect" in April 2021 for management employees and above, under which compensation will be determined based on the size and importance of the job rather than the person. In terms of the relationship between this system and the union, if the company makes a request to the union for labor-management consultations regarding the introduction of a new personnel system, after thoroughly examining the content of the request, we will participate to confirm why the system is being introduced, whether the system will lead to motivating and satisfying work for union members, and so on. With regard to the differences from membership-based employment, I believe that the definition of job-based employment is unclear in Japan, and feel uncomfortable with the tendency to compose a binary opposition between job-based employment versus membership-based employment. The merits and demerits of both job-based and membership-based employment need to be re-examined and correctly understood from the perspective of both employers and workers. Regarding compatibility with Japanese employment and labor-management relations, I believe that it is possible to create a Japanese version of a hybrid system for professional duties and treatment that combines job-based and membership-based approaches, in which employees are hired and their professional duties and treatment are determined based on the size and importance of the

job rather than the person. However, even in this case, we must not let the “job” take on a life of its own and leave the “person” behind. The growth and development of a company depend on the employees and union members who work there, and it is most important for labor and management to pool their wisdom to build and enhance the operation of the system so as to improve motivation. I believe that affinity will be created only when this enhancement is achieved.

What Changes Does “Job-Based” Employment Bring About in Japanese Labor and Employment Law?

Hisashi Takeuchi-Okuno (Waseda University)

This article discusses possible changes that “job-based” employment (employment in which, unlike the traditional Japanese form of employment, the job and the place of work are specified in a contract) brings about in Japanese labor and employment law. Firstly, existing dismissal regulations need adaptations. Regarding the four-factor test for economic dismissals, while the test itself should not be abandoned, it needs to be more cautiously applied considering the limited possibility for transferring employees in that type of employment to another job. This especially impacts its second prong, which requires economic dismissals to be made as a last resort by, among other considerations, weighing transfer of employees. Dismissals due to a lack of ability also require adaptations, by shifting the focus of the test from the ability to perform the work of the company to the ability to perform the specified job. Though such modifications are necessary, job-based employment does not and should not mean a total rejection of the existing dismissal regulations. Secondly, since specification of the job is made through an individual agreement, the shift to job-based employment will necessitate the development of rules for individual determination and modification of working conditions, such as the doctrine of *Änderungskündigung* (dismissal for the purpose of changing working conditions). Such development will lead to a more profound re-affirmation of the principle that an employment contract is concluded based on an agreement between employer and employee, which is a principle that Japanese labor and employment law often overlooks.

Pressure for Changes in Elderly Employee Human Resource Management from the Equal Pay for Equal Value Work Movement

Miho Fujinami (Chiba Keizai University)

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

Eiichi Oki (Tamagawa Academy & University)

This paper examines the direction and targets of the human resource (HR) management system for employees in their early 60s (hereinafter referred to as “elderly employees”), the utilization level of whom is increasing in line with the increase in their numbers, focusing on the balance with the HR management of non-regular employees. Due to the impact of the Part-Time/Fixed-Term Employment Act, which came into effect in April 2020, the movement to eliminate the irrational disparity between regular and non-regular employees will accelerate. The HR system for elderly employees should be designed not only for equal and balanced treatment of HR management before and after retirement, but also for total optimization, including equal and balanced treatment with other non-regular employees. Therefore, this paper examines the following two points from the above perspective. The first is the direction of evolution of HR management for elderly employees. Specifically, we examine the following two points: whether the HR management of non-regular employees should be integrated or separated; and whether or not the continuity of HR management before and after retirement should be enhanced. The second is how far reform of the HR system for elderly employees will progress (where the target of evolution is) to solve the issue of equal and balanced treatment with non-regular employees. The results of the analysis suggest that when companies consider the overall optimal balance between employee categories, they should choose to separate the HR management of elderly employees and non-regular employees, and also promote reforms in the direction of bringing the HR management of elderly employees closer to that of regular employees. The second subject of analysis showed that when companies

consider overall optimization, they should strengthen the capabilities of elderly employees and significantly evolve their overall HR management. Also, the results of the analysis, in which the work motivation of elderly employees and awareness of the issue of balancing their treatment with that of regular employees were used as dependent variables, suggest that wage system reform is chosen by companies that start to address both issues. Organized from the perspective of the targets of HR system reforms for elderly employees, improving the work motivation of elderly employees and eliminating the disparity in their treatment before and after retirement limit the scope of HR system reforms in companies to reform of the wage system, which still remains an issue. On the other hand, we can expect that the overall HR system will evolve in the direction of strengthening the capabilities of elderly employees by changing employee classification. The movement toward equal and balanced treatment has the potential to significantly evolve the HR management of elderly employees.

The Legitimate Interest in Restrictive Covenants under New York State Law in the United States

Toru Ueda (Tokoha University)

In Japanese court practice, the enforceability of covenants that impose a duty not to compete on former employees (restrictive covenants) is determined based on whether the restrictions are reasonable to protect the legitimate interests of the employer, because the covenants restrict the employees' freedom to choose their occupation (Article 22, Paragraph 1 of the Constitution of Japan). The common law in the state of New York, in the United States, adopts a similar framework, harmonizing public policy that militates against sanctioning the loss of one's livelihood and the necessity to forestall unfair competition. The law enumerates trade secrets and confidential information, customer relationships and goodwill, and the former employee's "unique or extraordinary services" as what constitute the legitimate interests of employers. The courts attempt not only to enforce covenants but also to broadly grant remedies to employers, against the risk of misappropriation of trade secrets. For instance, there is a position that irreparable harm, a central prerequisite for the issuance of an injunction, is presumed where a trade secret has been misappropriated. The nature and substance of legitimate interests define a reasonable scope of restrictions, such as duration and territory. For instance, in order to protect customer relationships, the time needed to recover relationships with customers for the employee replacing the former employee is the reasonable duration, and the geographical area is also reasonable if the employer makes no attempt to extend its influence beyond the area from which its customers are drawn. In addition, it would be an unnecessary, and therefore unreasonable, restriction if the non-solicitation covenants cover customers with whom former employees had never acquired a relationship through their employment or customers with whom relationships were acquired solely through the employees' own efforts, without limiting the scope of customers. These judicial approaches under New York State Law are suggestive for Japanese law. However, there are some issues that need to be considered based on the remedies theory, such as whether trade secrets that constitute legitimate interests have any implications in the interpretation and determination of the enforcement of covenants, including injunctive relief.

Promoting Labor Market Participation without "Unemployment?" A Historical Study of Policy Changes to Provide Work Opportunities for Low-income Earners in the United Kingdom

Kentaro Hayashi (Keio University)

This paper aims to obtain suggestions for legislation and policy for promoting the labor market participation of low-income earners. To this end, I examine social policy in the United Kingdom (UK), and especially the social security benefit Universal Credit (UC) recently introduced in the UK, and its impact on work opportunities for low-income earners. Subsequently, to clarify the implications of recent UC policy, I consider the historical experience of the introduction of a system of unemployment insurance and collective bargaining machinery in the UK in the nineteenth to twentieth centuries, which was analogous to the current situation. In the nineteenth to twentieth centuries, the

system of unemployment insurance and collective bargaining machinery together regulated the structure of the labor market, and allowed low-income earners to be “unemployed” in order to standardize working conditions in the labor market. In contrast, the recent UC benefits can promote workers’ labor market participation through supplementing their low incomes regardless of whether they are in-work or out-of-work, which will de-standardize conditions of working and labor market participation for benefit recipients. This paper concludes that, in light of the lessons learned from historical analysis above, we should take into account the structure of the labor market surrounding low-income earners, and discusses how to establish legal regulations enabling them to avert situations of being compelled to work under poor conditions due to their own hardship.

The “Quasi-internalization” of Non-regular Workers in Local Governments: Cases of Workplaces for Welfare Services

Hodaka Maaura (The Japan Institute for Labour Policy and Training)

Shinsuke Furuya (Osaka Sangyo University)

The purpose of this paper is to shed light on actual situations in which non-regular workers are integrated into the internal labor market, by conducting research on the workplaces for welfare services of two local governments. As is suggested by previous studies on the same sort of internal labor market found in the private sector, non-regular workers climb up the career ladder within the organization as they come to fill a more irreplaceable role and to take on a more substantial role among the workforce. Moreover, in the private sector, there are cases where non-regular workers are promoted to regular workers in organizations that have institutionalized that sort of promotion system. In this way, the private sector has been observed to show a tendency to integrate non-regular workers into the internal labor market. Therefore, this paper analyzed the current situation of non-regular workers in local governments by carrying out interview surveys, using those conducted by previous studies on non-regular workers in the private sector as a basis for comparison. As a result, this paper reveals some aspects in which non-regular workers in local governments can be recognized to have been integrated into the internal labor market to some extent, as well as other aspects in which they are prevented from doing so. Regarding the former aspects, it can be pointed out that the two local governments renew the appointment (employment) period of non-regular workers, having those workers continue to work for a certain period, and that a certain system has been organized so that wages are raised according to the length of service, which can be considered to be a proxy variable for skill improvement. Regarding the latter aspects, it should be pointed out that, due to collective bargaining and consultations between labor and management, the two local governments have made divisions of duties between regular workers and non-regular workers, and have limited the careers of non-regular workers within a narrow range of their work. Also, the Local Public Service Act does not allow local governments to directly promote non-regular workers to regular workers. In other words, regular workers are not positioned as an extension of a line on which non-regular workers develop their careers in local governments. Based on this fact-finding, this paper characterizes the current position of non-regular workers in local governments as “quasi-internalization.”