PART I

The Mechanism for Establishing and Changing Terms and Conditions of Employment

The System of Regulating the Terms and Conditions of Employment in Japan

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The conspicuous feature of the system regulating working conditions in Japan lies in that the Japanese system enables flexible modification in accordance with the changing situations. This is the compensatory mechanism for Japan's long-term employment system where numerical adjustment of the workforce is restrained. Through flexible modification of terms and conditions of employment or flexible deployment of workers, Japanese companies have coped with changing socio-economic circumstances while maintaining employment security.

After the collapse of bubble economy in the early 1990s, however, employment is becoming more unstable and atypical or non-regular employment is increasing. In 1990, non-regular employees made up 20.2% of the Japanese work force, whereas in 2002 this had risen to 29.8%. To cope with increased lateral mobility, the Japanese government has provided a series of measures to activate the external labor market. In accordance with the structural changes occurring in Japanese society, labor law is experiencing drastic reforms.

This article first overviews the general framework of the Japanese labor law. Second, it explains the four legal tools regulating terms and conditions of employment: 1) minimum standards of working conditions fixed by mandatory laws, 2) individual contracts of employment, 3) work rules established by employers, and 4) collective agreements. Third, the enforcement mechanism is overviewed. Finally, after reviewing recent legislative developments in labor law, this article provides some comments on the future direction of Japanese labor law.

1. Overview of the Japanese Labor Law System

Japanese labor law was traditionally understood to be comprised of two major branches: individual labor relations law and collective labor relations law. However, an increasing number of scholars have begun to recognize a third branch, namely labor market law.[1] These three branches have their legislative grounds in the Constitution promulgated in 1946.

1.1. The Constitution

The Japanese Constitution guarantees fundamental social rights in Articles 25 to 28. Article 25, commonly called the "right to live" provision, proclaims the principle of the welfare state.[2] Article 26 establishes people's right to, and obligation of, education.[3] Articles 27 and 28 deal directly with labor and employment relations as seen below.

These provisions on the fundamental social rights were influenced significantly by the *Weimar* Constitution in Germany. These social rights provisions in the Constitution provided an important political and legislative basis to develop social policy in Japan.

1.2. Labor Market Law

Article 27 Paragraph 1 of the Constitution ("All people shall have the right and the

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1 Kazuo Sugeno (Leo Kanowitz Trans.), *Japanese Labor and Employment Law*, (University of Tokyo Press, 2002).

2 Article 25: "All people shall have the right to maintain the minimum standards of wholesome and cultured living. In all spheres of life, the State shall use its endeavors for promotion and extension of social welfare and security, and of public health."

3 Article 26: "All people shall have the right to receive an equal education correspondent to their ability, as provided by law. All people shall be obliged to have all boys and girls under their protection receive ordinary education as provided for by law. Such compulsory education shall be free."

obligation to work.") has been interpreted to require two political obligations of the state.[4] First, the state shall intervene in the labor market so as to enable workers to obtain suitable job opportunities. Second, the state bears a political obligation to guarantee the livelihood of those workers who cannot obtain such opportunities.[5] This Article forms the basis of "labor market law."

Corresponding to the first legislative mandate, various statues were enacted. The Employment Security Law of 1947 regulates employment placement services, recruitment and labor supply businesses. The Employment Measures Law of 1966 proclaims the general principles of labor market policies. Other examples include, the Law Promoting the Development of Occupational Ability of 1969, the Disabled Employment Promotion Law of 1960, and the Older Persons' Employment Stabilization Law of 1971. Corresponding to the second mandate, the Unemployment Insurance Law of 1947 and its successor, the Employment Insurance Law of 1974, were enacted.

1.3. Individual Labor Relations Law

Article 27 Paragraph 2 of the Constitution ("Standards for wages, hours, rest and other working conditions shall be fixed by law.") requires the state to enact laws to regulate terms and conditions of employment. This Article provides the legislative ground for individual labor relations law.[6]

After World War II, when Japan was in economic and material ruin, the establishment of economic security and protection of minimum standards of living was the most prioritized task for the government. Thus, the government established the Ministry of Labor in 1946 and enacted a series of employee protective laws. In 1947, the Labor Standards Law, the Workers' Accident Compensation Insurance Law, the Employment Security Law and the Unemployment Insurance Law were enacted. Among these, the Labor Standards Law (LSL) is the most important and comprehensive piece of protective labor legislation, establishing minimum standards of working conditions.

Subsequently, two chapters contained in the LSL were separated and became independent statutes: the Minimum Wages Law of 1959 and the Industrial Safety and Health Law of 1972. Other labor protective legislation followed, including the Security of Wage Payment Law of 1976, the Equal Employment Opportunity Law of 1985, the Child Care Leave Law of 1991 and so forth. The LSL underwent large scale amendments in 1987, 1998 and 2003 to modernize its regulations.

Labor protective norms have also been established by the courts through an accumulation of judgments. As mentioned above, the role of such case law is sometimes more important than enacted legislation in the context of Japanese employment relations.

1.4. Collective Labor Relations Law

Collective labor relations are mainly regulated by Japan's Constitution, the Trade Union Law of 1949 and the Labor Relations Adjustment Law of 1946.

The Constitution of Japan guarantees workers' fundamental rights. Article 28 of the Constitution reads, "the right of workers to organize and to bargain and act collectively is guaranteed." Any legislative or administrative act that infringes upon these rights without reasonable justification is therefore unconstitutional and void. Workers are immune from any criminal or civil liability for their engagement in proper union activities. Article 28 is understood to stem from the provision in the *Weimar* Constitution of 1919, which guaranteed the

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[4] Sugeno, *supra* note 1, 15.

[5] Art. 27, Para. 1 also mentions the obligation to work. The literal meaning of the phrase implies industrial conscription. However, since that interpretation is not appropriate, "obligation to work" is interpreted to mean the state has no obligation to countenance those who do not have an intention to work. Thus, the availability of unemployment benefits is confined to those who intend to work.

[6] Art. 27 Para. 3 of the Constitution, concerning prohibition of child labor, ("Children shall not be exploited.") is incorporated into the child labor protective provisions of the LSL of 1947.

freedom of association and created the "third-party effect" (*Drittwirkung*) regulating relations between private citizens. Thus, in the opinion of most, Article 28 is construed as regulating not only relations between the state and private citizens, but also relations between employers and workers. Consequently, workers have a cause of action against an employer who infringes upon their union rights. For instance, a dismissal of a worker by reason of his/her legal union activities is deemed as null and void because it amounts to a violation of the constitutional norm.[7]

Article 28 is further interpreted to entrust the Diet to enact statutes to effectuate basic union rights. Accordingly, the TUL sets requirements for "qualified" unions,[8] establishes the unfair labor practice system prohibiting employers' anti-union actions, gives collective bargaining agreements normative effect, and establishes the Central and Local Labor Relations Commissions.

The Labor Relations Adjustment Law was also enacted in 1946 to facilitate the resolution of collective labor disputes. Under this Law, the Labor Relations Commissions are entrusted with the conciliation, mediation and arbitration of labor disputes.

From a comparative perspective, it is noteworthy that Japanese law not only gives civil and criminal immunity to proper acts of trade unions, but also encourages collective bargaining by imposing a duty to bargain on employers and by sanctioning it through the unfair labor practice system.

Major Laws Regulating Labor and Employment Relations in Japan

Constitution

Art. 27: right to work, mandate to establish minimum standards of working conditions by statutes

Art. 28: right of workers to organize and to bargain and act collectively

Individual Labor Relations Laws

Labor Standards Law
Minimum Wages Law
Security of Wage Payment Law
Industrial Safety and Health Law
Workers' Accident Compensation Insurance Law
Equal Employment Opportunity Law
Child Care and Family Care Leave Law
Labor Contract Succession Law

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[7] See Satoshi Nishitani, *Rodo Kumiai Ho (Trade Union Law)*, 36 (1998); Nobuyoshi Ashibe, *Kenpo shinpan (Constitutional Law, new ed.)*, 248 (1997). Other human rights provisions in the Constitution are generally understood as regulating exclusively the relations between the state and individuals, and thus, have no "third-party effect" on private relationships. Accordingly, fundamental rights provisions may have legal effect on relations between private individuals only through the "public policy" concept found in Article 90 of the Civil Code, which invalidates legal acts violating public order and good morals. Some influential labor law scholars apply the same theory to Article 28 too. According to certain of these scholars, dismissals for union activities can be nullified because such dismissals are in violation of the public policy reflecting the norms expressed in Article 28 of the Constitution. See Sugeno, *supra* note 1, 20.

[8] The TUL sets forth five requirements for a labor organization to enjoy statutory rights and remedies. First, the organization must be "primarily formed by workers." (TUL Art. 2) Second, the organization must be independent of the employer. Third, the main purpose of the organization must be "to maintain and improve the working conditions and to raise the economic status of workers." (TUL Art. 2) Therefore, an organization which has the limited objective of "mutual aid or conducting other welfare activities" (TUL Art. 2 Proviso No. 3) or which "mainly aims at political or social movements" (TUL Art. 2 Proviso No. 4) is not a qualified union under the TUL. Fourth, the organization must be an "organization or a federation thereof." (TUL Art. 2) To be deemed an organization, there must be more than two members. Finally, the organization must establish a union constitution which includes the enumerated items in the Article 5 Paragraph 2 of the TUL. Most of the enumerated items concern the democratic administration of the internal affairs of the Union, such as the equal treatment of union members, and secret ballot elections for union officers or for strike decisions. Other than the foregoing prerequisites, there are no further requirements. Majority support of the workers is not required. Neither is a minimum number of members, or registration with a governmental agency. In short, Japan has few requirements for the organization of a union.

Civil Code Art. 623-631.

Collective Labor Relations Laws
Trade Union Law
Labor Relations Adjustment Law

Labor Market Laws
Employment Measures Law
Employment Security Law
Worker Dispatching Law
Part-time Work Law
Employment Insurance Law
Older Persons' Employment Stabilization Law
Disabled Persons' Employment Promotion Law
Regional Employment Development Promotion Law
Human Resources Development Promotion Law

2. Minimum Standards of Working Conditions Fixed by Mandatory Statutes

2.1. Worker Protective Laws

The individual employment relationship between an employer and a worker is regulated by protective laws such as the Labor Standards Law, the Minimum Wages Law, the Security of Wage Payment Law, the Industrial Safety and Health Law, the Workers' Accident Compensation Insurance Law, the Equal Employment Opportunity Law, and the Worker Dispatching Law.

As mentioned already, the most fundamental and important is the Labor Standards Law which establishes minimum working standards. The LSL regulates fundamental rights of workers, payment of wages, working hours, paid leave, special protection of young workers and pregnant women, workers compensation for work-related accidents, work rules, and so forth.

Until the 1998 LSL revision, the applicable establishments were enumerated in Article 8. Though almost any business fell under the listed establishments, some businesses were not covered, such as election campaign offices. However, they were not intentionally exempted with concrete justification, but rather inadvertently not included in the list. Therefore the 1998 LSL revision deleted Article 8. Consequently, all establishments which engage in employment of workers are subject to the LSL. The remaining exceptions are family businesses which employ family members only (LSL Art. 116 Para. 2), domestic workers (LSL Art. 116 Para. 2) and other employment relations for which special regulations apply, namely seamen (LSL Art. 116 Para. 1) and some civil servants. From a comparative perspective, the Labor Standards Law is very broad in its coverage.

Working conditions set forth by employment contracts, work rules and collective agreements that are inferior to the standards set by the Labor Standards Law are void and replaced by the Law's mandatory legal norms (LSL Art. 13[9]).

Minimum standards prescribed in worker protective laws are enforced by the Labor Standards Inspection Offices, in addition to sanction by the criminal penalties.

2.2. Derogation from the Mandatory Norm through Labor-management Agreements (Majority-representative Agreement)

To provide flexibility, the LSL allows derogation from the mandatory norms based upon a "labor-management agreement" or "majority-representative agreement." A labor-management agreement is a written agreement between an employer and the "representative of the majority

[9] Article 13 of the Labor Standards Law stipulates that "A labor contract which provides for working conditions which do not meet the standards of this Law shall be invalid with respect to such portions. In such a case the portions which have become invalid shall be governed by the standards set forth in this Law."

of workers at an establishment," namely a union organizing a majority of the workers in the establishment or a person representing a majority of the workers in the absence of a majority union. Deviation from the mandatory minimum standards is allowed when the Law explicitly prescribes such derogation. For instance, the LSL requires a labor-management agreement for deduction of wages, hours-averaging schemes or overtime work.

Where a majority union exists, there will be few problems. However, where no such union exists, an individual chosen to represent the majority of workers plays an important role and bears much responsibility. In spite of such significant responsibility, for years the LSL and bylaws did not provide any provisions concerning qualifications of a person representing the majority of workers or procedures to select such a person.

It was thus criticized that, as a consequence in practice, persons controlled by the management were appointed to be the majority representatives and employers' derogation proposals were rubber stamped. Faced with such criticism, the Ministry of Labour issued administrative guidance concerning the proper selection of the majority representative in 1988. In ten years' time, the 1998 revision of the LSL explicitly incorporated the contents of the guidance into the Enforcement Order (Art. 6-2). The revised Enforcement Order requires that the majority representative cannot be a person in a position of supervision or management and such person must be elected by voting, raising of hands and other procedures.

A labor-management agreement concluded between an employer and a majority representative is totally different from a collective agreement concluded between an employer and a labor union. A labor-management agreement is a written agreement to simply allow derogation from the minimum legal standards and have no normative effect on employment contracts of workers in the establishment. In other words, when a labor-management agreement allows, for instance, overtime, it merely provides the employer with the immunity from criminal sanctions when the employer orders his/her workers to work overtime. It does not create any right or obligation to work overtime. Since a majority representative who concludes a labor-management agreement has no mandate to establish terms and conditions of employment of workers, as a principle, it has no normative effect on their employment contracts. Therefore, in order to be in a position to compel workers to work overtime, an employer is required to establish contractual grounds through an individual contract, work rules or a collective agreement.

3. Employment Contracts

The LSL requires the employer to clarify the working conditions to the worker when concluding an employment contract (LSL Art.15). Article 5 of the Enforcement Order of the LSL enumerates matters which shall be clarified. In particular, the clarification pertaining to the place of work, content of work, work hours, payment of wages, and retirement must be made in writing (EOLSL Art. 5, Para. 2).

It is, however, rather rare for an employer and a worker to make a written contract and prescribe concrete working conditions in detail. Workers merely agree orally that they will work for the company. To satisfy the requirement to clarify working conditions, the employer usually presents the worker with the work rules, which cover most items to be clarified. As long as the worker raises no objection to the content of the work rules, he is regarded as having agreed to the conditions. Thus, the conditions stipulated in the work rules become the substantive content of employment contracts.

Flexible modification of working conditions in accordance with socio-economic changes are made possible by the practice in which the parties to an employment contract do not specify the conditions of employment, particularly the place and type of work, in the employment contract. In Japan, the clarification of place or types of work at the conclusion of an employment contract is not construed as specification of terms which cannot be modified without the worker's consent. Employers, in drafting the work rules, reserve and prescribe particular rights to deploy workers, including the right to order transfers which entail changes in the place and/or type of work based on business necessity. Therefore, the employer unilaterally orders a change of place

and/or type of work without obtaining the worker's consent, though modifications in the place and/or type of work are reviewed for their validity by the courts since such changes can cause workers significant personal inconvenience.

4. Work Rules

Work rules are the most important legal tools to regulate terms and conditions of employment in Japan.

4.1. Duty to Draw up Work Rules

Work rules are a set of regulations set forth by an employer for the purpose of establishing uniform rules and conditions of employment at the workplace. Article 89 of the LSL prescribes that the employer who continuously employs ten or more workers[10] must draw up work rules on the following matters: 1) the time at which work begins and ends, rest periods, rest days, leaves, and matters pertaining to shifts, 2) the method of decision, computation and payment of wages, date of payment of wages and matters pertaining to wage increases, 3) retirement including dismissals, 3-2) retirement allowances, 4) extraordinary wages and minimum wages, 5) cost of food or supplies for work, 6) safety and health, 7) vocational training, 8) accident compensation, 9) commendations and sanctions, and 10) other items applicable to all workers at the workplace. Items 1 to 3 are absolutely mandatory matters which must be included in the work rules. Items 3-2 to 10 are conditionally mandatory matters which must be included in the work rules when the employer wants to introduce regulations concerning these matters.

When the employer institutes the work rules for the first time or when the work rules are altered, the employer must submit those new rules to the competent Labor Standards Inspection Office. The rules must also be made known to the workers by conspicuous posting, distribution of printed documents or setting up accessible computer terminals (LSL Art. 106, EOLSL Art. 52-2). The duties for drawing up, submitting and displaying work rules are sanctioned by criminal provisions (LSL Art. 120).

In drawing up or modifying the work rules, the employer is required to ask the opinion of a labor union organized by a majority of the workers at the workplace or, where no such union exists, the opinion of a person representing a majority of the workers. However, a *consensus* is not required. Even when the majority representative opposes the content of the work rules, the employer may submit them to the Labor Standards Inspection Office with such an opposing opinion and the submission will be accepted. In this sense, the employer can unilaterally establish and modify work rules.

4.2. The Legal Effect of Work Rules and Their Unfavorable Modification

The work rules apply to all workers in a workplace or establishment. Work rules cannot violate enacted laws or collective agreements applicable to the establishment (LSL Art. 92, Para. 1). The LSL gives work rules an imperative and direct effect on individual employment contracts. Namely, the Law states that employment contracts that stipulate working conditions inferior to those provided in the work rules shall be invalid and that such conditions are to be replaced by the standards in the work rules (LSL Art. 93). By contrast, the Law remains silent regarding the effect of work rules when they set inferior standards to those in individual employment contracts. This leads to a difficult legal question when an employer facing economic difficulties modifies work rules unfavorably vis-à-vis the workers. The binding effect of such modified work rules has been challenged in courts.

The majority of theorists argued that work rules modified by the employer unilaterally or without the consent of the worker concerned, cannot have a binding effect on individual employment contracts. According to this view, therefore, the employer must seek a worker's

[10] Though it is not clear from the provision, it is generally interpreted that "ten or more workers" should be calculated not in the enterprise but in the establishment, on the rationale that work rules apply in each establishment and procedures for drawing up work rules presuppose each establishment as a unit (LSL Art. 90).

individual consent or conclude collective agreements with the labor union if one exists, in order to modify the working conditions in a manner unfavorable to the workers concerned.

4.3. Case Law on a "Reasonable Modification" of Work Rules

The Supreme Court took a different position and established a unique rule applicable to unfavorable modifications in the work rules. According to this rule, a "reasonable modification" of the work rules has a binding effect on all workers, including those who were opposed to the modification itself.[11] In spite of the severe criticism asserting that there was no legal ground for recognizing such a binding effect, the Supreme Court has adhered to this rule and reconfirmed its position repeatedly.[12] This rule has accordingly become the established case law.

Underlying this ruling is a consideration for employment security and the necessity of adjusting working conditions. The traditional contract theory dictates that a worker who opposes the modifications of working conditions be discharged. However, according to the established Japanese case law, such a dismissal may well be regarded as an abuse of the right to dismiss.[13] On the other hand, because the employment relationship is a continuous contractual relationship, modification and adjustment of the working conditions is inevitable. In light of these circumstances, Japanese courts have given unilaterally modified work rules a binding effect on the condition that the modification is reasonable. The implication of this rule is that courts give priority to employment security, and in exchange therefor, workers are expected to accept and be subject to reasonable changes in the working conditions. This is a manifestation of internal or qualitative flexibility of the employment relationship through flexible modifications of the working conditions compensating for the lack of external or quantitative flexibility grounded in employment security.[14]

4.4. Criteria for "reasonableness"

The principal test for "reasonableness" is weighing the disadvantage to the worker by the modification against the business necessity for changing the working conditions. Simultaneously, courts take other matters surrounding the modification into consideration, such as whether compensatory measures to mitigate the disadvantages to the workers were or are being taken, whether similar treatment is common in other companies in the same industry, or whether the majority union or the majority of the workers agreed to the modification. Recent Supreme Court cases[15] suggest that consent of the majority union weighs heavily in a court's determination that a work rules modification is reasonable. This position respecting the consent of the majority workers is supported by commentators for the following reasons.[16] First, the nature of the issue of work rules modification is more a dispute of interests rather than a dispute of right since the modified work rules establish a new terms and conditions of employment for

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[11] The *Shuhoku Bus* case, 22 *Minshu* 3459 (Supreme Court, December 25, 1968).

[12] The *Takeda System* case, 1101 *Hanrei Jiho* 114 (Supreme Court, November 25, 1983); The *Omagari-shi Nokyo* case, 42 *Minshu* 60 (Supreme Court, February 16, 1988); The *Dai-ichi Kogata Haiya* case, 1434 *Hanrei Jiho* 133 (July 13, 1992); The *Asahi Kasai Kaijo Hoken* case, 50 *Minshu* 1008 (March 26, 1996); The *Daishi Ginko* case, 51 *Minshu* 705 (Supreme Court, February 28, 1997); The *Michinoku Ginko* case, 54 *Minshu* 2075 (Supreme Court, September 7, 2000).

[13] However, one lower court decision in 1995 held that the employer could discharge workers who had opposed the proposed new working conditions under certain conditions. As for the critical analysis on this case, see Takashi Araki, *Modification of Working Conditions Through Dismissals?: A Comparative Analysis of the SAS Case*, 34-8 Japan Labor Bulletin 5 (1995).

[14] Takashi Araki, "Accommodating Terms and Conditions of Employment to Changing Circumstances: A Comparative Analysis of Quantitative and Qualitative Flexibility in the United States, Germany and Japan", in C. Engels & M. Weiss (Ed.), *Labour Law and Industrial Relations at the Turn of the Century, Liber Amicorum in Honour of Prof. Dr. Roger Blanpain*, 509 (Kluwer Law International, 1998).

[15] The *Dai-ichi Kogata Haiya* case, July 13, 1992, *Hanrei Jiho* no. 1434 p. 133; The *Daishi Ginko* case, Supreme Court, February 28, 1997, *Minshu* vol. 51 no. 2 p. 705.

[16] Kazuo Sugeno, "Shugyo Kisoku Henko to Roshi Kosho (Work Rules Modification and Labor-Management Negotiation)", 718 *Rodo Hanrei* 6 (1997); Takashi Araki, *Koyo Sisutemu to Rodojoken Henko Hori (Employment systems and Variation of Terms and Conditions of Employment)*, 265 (Yuhikaku Publishing, 2001).

the future. Thus, it is more appropriate to respect the negotiating parties' attitude than for the court to intervene and review the reasonableness of the substantive content of newly established working conditions from the judges' standpoint. Second, the most significant defect of the case law rule is its legal instability or lack of predictability of reasonableness. A position that presumes reasonableness when a majority union agrees on the modification is an attempt to enhance the predictability of the reasonableness test. Simultaneously, such position respecting the majority union's attitude gives the parties an incentive to negotiate in good faith and reach an agreement.[17]

However, several Supreme Court decisions[18] issued in 2000 suggest that the Supreme Court does not necessarily respect the majority unions' attitude towards a work rules modification and it actively reviews the reasonableness of the modification on the basis of its own criteria. Therefore it is premature to state that the established judicial stance is to respect the attitude of majority unions.

5. Collective Agreements

The fourth vehicle for regulating the content of individual employment contracts is a collective bargaining agreement between the employer and the union.

5.1. Normative Effect

According to Article 16 of the TUL, any portion of an individual labor contract is void if it contravenes the standards concerning conditions of work and other matters relating to the treatment of workers that are provided for in a collective agreement. In such a case, the invalidated parts of the individual contract are governed by the standards set forth in the collective agreement. Similarly, if there are matters that the individual employment contract does not cover, the same rule applies.

Therefore, the "normative effect" actually consists of two legal effects: an imperative effect that nullifies the portion of an individual contract that contravenes the standards contained in the collective agreement, and a direct regulating effect that alters provisions of the individual contract.

Collective agreements not only supersede individual contracts but also invalidate work rules that contravene the collective agreement (LSL Art. 92).

5.2. Enterprise-level Bargaining and Legal Effect of Collective Agreements

Almost all collective agreements in Japan are concluded at the enterprise level because unions are normally organized on an individual company basis. Consequently, in contrast to the practices in Western Europe, collective agreements can regulate not minimum, but actual working conditions. Therefore, according to the accepted interpretation,[19] the normative effect of collective agreements invalidates not only disadvantageous individual contracts but also advantageous contracts unless the collective bargaining agreement itself allows such contracts. In other words, *Günstigkeitsprinzip*, or the principle which permits more favorable individual agreements, is not generally accepted. Decentralized collective bargaining enables the parties concerned to adjust and determine working conditions in a particular company swiftly and appropriately.

5.3. Limitation in Collective Bargaining Autonomy

When such a binding effect is given to collective agreements, unfavorable modifications of working conditions through collective agreements becomes possible. In fact, in the 1970s when

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[17] Yasuo Suwa, "Shugyo Kisoku no Kozo to Kino (Structure and Function of Work Rules)" 71 *Nihon Rodoho Gakkai-shi* 19 (1988); Araki, supra note 16, 267.

[18] The *Michinoku Ginko* case, supre note 12; the *Ugo (Hokuto) Ginko* case, 788 Rodo Hanrei 23 (Supreme Court, September 12, 2000); The *Hakodate Shinyo Kinko* case, 788 Rodo Hanrei 17 (Supreme Court, September 22, 2000).

[19] Kazuo Sugeno, *Japanese Labor Law*, p. 514 (1992)

Japan's economy entered a low economic growth period, the courts faced claims which contested the validity of collective agreement provisions that had imposed unfavorable working conditions or a new obligation on union members. Some lower courts invalidated these provisions on the grounds that a labor union's main purpose is "maintaining and improving working conditions and raising the economic status of workers (TUL Art. 2)." However, this interpretation was severely criticized because collective bargaining is a "give and take" exchange and the invalidating of disadvantageous provisions curtails tremendously a union's function in industrial relations. For example, this interpretation makes it impossible for a union in collective bargaining to accept a pay cut in exchange for maintaining high employment levels. In addition, it is not easy to determine what is advantageous and disadvantageous to union members in the long run.[20] In response to these criticisms, the courts no longer strike down disadvantageous provisions using the reason that a union's purpose is to improve working conditions.

More recently, a debate is now occurring on how to maintain collective bargaining autonomy while protecting individual union member's interests. Courts tend to proactively review the reasonableness of collective agreement provisions, and some scholars support such scrutiny to protect the interests of individuals or a minority group in the union. Others contend that in order to respect autonomous collective bargaining, court intervention should be confined to exceptional cases such as when the collective agreement violates public policy, a union attempts to usurp an individual's vested rights, or where there exists evidence of a violation of the internal procedure for decision making. Recently, the Supreme Court recognized the binding effect of a disadvantageous collective agreement on a union member who contested the binding effect after considering the reasonableness of the regulations as a whole and the lack of intent to treat certain union members unfavorably.[21]

5.4. Employer's Duty to Bargain Collectively

In most industrialized countries, because employers have no duty to bargain, labor unions must put economic pressure on employers to make them come to the bargaining table. In contrast, the Trade Union Law imposes upon an employer a duty to bargain with a union in good faith, and a refusal to bargain is prohibited as an unfair labor practice (TUL Art. 7 no. 2).

The duty to bargain in good faith is not synonymous with the duty of co-determination. The employer must bargain in good faith, but he is not forced to make concessions or to reach an agreement. Therefore, when the employer and the union are at an impasse, a collective agreement is not concluded. In this case, the employer can regulate or change working conditions through unilateral modification of the work rules.[22] Hence, the judge-made law which mandates "reasonableness" in the unilateral modification of work rules is one of the most important rules in Japanese labor law.

As to the introduction of the unfair labor practice system, the Trade Union Law of Japan is modeled on the Wagner Act in the United States. However, the TUL does not adopt an exclusive representation system. Each union that meets statutory requirements enjoys full-fledged rights to bargain collectively and go on strike. Therefore, in Japan, there are neither elections to choose an exclusive representative of workers nor the notion of a bargaining unit. Even a union that organizes a few workers in a single company has an equal bargaining right as a union that organizes the majority of workers in the company (plural representation system).

A second difference is that, unlike the Taft-Hartley Act in the United States, the TUL does not impose a duty to bargain on labor unions.

5.5. Plural Unionism and Establishment of Uniform Working Conditions

Although the Trade Union Law modeled on the Wagner Act in the United States as far as the

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[20] Id.

[21] The *Asahi Kasai Kaijo Hoken* (Ishido) Case, Supreme Court (March 27, 1997), 713 *Rohan* 27.

[22] As mentioned above, asking an opinion of the majority representative is required but its opposition may not block employer's modification of the work rules. See 3.1 Duty to draw up work rules.

introduction of the unfair labor practice system, the collective bargaining system in Japan significantly differs from the American model.

The Japanese labor law does not incorporate the exclusive representation principle as seen in the United States. To be a lawful union, it is not required to be elected by the majority of workers. It is possible that multiple unions exist in a single company. Even if a company has an enterprise union organizing the majority of workers, another union within the company, or even an outside union that unionizes just one worker of the company, has the full-fledged right to bargain with the employer and the right to strike (plural representation system). Therefore, in Japan, there are neither elections to choose an exclusive representative of workers nor the notion of a bargaining unit.

Under this legal framework, there can be multiple collective agreements within a single company or establishment. A collective agreement is, as a general rule, applicable only to union members. Therefore, multiple working conditions can co-exist. This situation causes difficulties for the employer because most working conditions require uniform treatment. Accordingly, the employer attempts to establish uniformity by negotiating for the same working conditions with all the existing unions. If this is not possible, he endeavors to apply the collective agreement concluded with the majority union to other union members. Article 17 of the TUL provides for a system to expand the effect of a collective agreement to those who are not covered by the agreement when the agreement applies to more than three-fourths of the workers of a similar kind in the establishment. However, according to the majority opinion in academic circles and court precedents, this provision cannot apply to members of other unions because such an expansion to minority union members would be an infringement on the minority union's right to bargain.

Therefore, a practical way to establish uniform working conditions in a situation with multiple unions is for the employer to first conclude a collective agreement with the majority union. Then, the employer, while negotiating with the minority union in good faith so as not to violate his duty to bargain, may refuse to agree to any different agreements with the other minority unions. Where no agreement is reached with the minority union, the employer may then modify the work rules according to the agreement with the majority union. Such a modification of work rules to transpose the collective agreement with the majority union tends to be regarded as reasonable. This is a common situation in which the "reasonable modification rule" concerning work rules applies.

6. Enforcement Mechanism of Labor Law

6.1. Court System

Japan has no courts specially designated for labor litigation. All labor and employment related lawsuits must be filed in ordinary courts. The judges are professional jurists. Lay judges who are common in labor courts in European countries, such as *Arbeitsgerichte*, Employment Tribunals, and *conseil des prud' hommes*, do not exist in Japan. There is no special procedure for labor litigation.

Japan has a three-tiered court system: district courts, high courts and the Supreme Court. The district court in each prefecture is usually the court of first instance.[23] A party may appeal from a judgment of the district court to the competent High Court. It is possible for a party who is not satisfied with the judgment to further appeal to the Supreme Court. However, the grounds for appeal to the Supreme Court are limited to errors of interpretation of the Constitution or other violations of the Constitution in the original judgment (Code of Civil Procedure, Art. 312 Para. 1). The Supreme Court also has discretion to accept appeals where the original judgment contradicts the precedents of the Supreme Court or involves other significant matters

[23] Cases whose amount of controversy does not exceed 900,000 yen must be filed in the summary court. The cases filed in the summary court can be appealed to a district court and to an appellate court, but not to the Supreme Court.

concerning the interpretation of law (Code of Civil Procedure, Art. 318 Para. 1).[24]

The number of labor cases is extremely small compared to other countries (see Table 1-1). The number of labor-related cases newly filed in Japanese local courts in 2002 was 3,271 (12,307 ordinary civil cases; 811 provisional disposition cases; and 151 administrative cases).[25] Compared to the number in Germany, the labor cases in Japan was only one two-hundredth of those in Germany. The statistically small amount of litigation triggers debate on the effectiveness of case law.

Table 1-1: Number of Labor Cases (Newly filed, 1st Instance)

Japan	Germany	France
3,120 (2002)	568,469 (1999)	163,218 (2000)

6.2. Administrative Agencies of the National Government

The Ministry of Labour was responsible for the administration of labor law and labor policy until the end of 2000. However, as a part of the reform of Japan's central bureaucracy, the Ministry of Labour and the Ministry of Health and Welfare were merged and the Ministry of Health, Labour and Welfare (MHLW) was established in January 2001. Within the MHLW, several bureaus are in charge of administration and implementation of labor laws. The MHLW maintains Prefectural Labor Bureaus in each of the 47 prefectures to implement the laws at the local level.

The Labour Standards Bureau within the MHLW administers labor standards established by the Labour Standards Law, the Minimum Wages Law, the Industrial Safety and Health Law. The Labour Standards Bureau also administers the Workers' Accident Compensation Law. Actual implementation of this labor protective legislation occurs through the Labor Standards Inspection Offices in each prefecture. Approximately 3,500 Labor Standards Inspectors work at 343 Labor Standards Inspection Offices throughout Japan. The Labor Standards Inspectors are authorized to inspect workplaces, to demand the production of books and records, and to question employers and workers (LSL Art. 101). Furthermore, with respect to a violation of the LSL, Labor Standard Inspectors shall exercise the duties of judicial police officers under the Criminal Procedure Law (LSL Art. 102).

A worker may report violation of labor protective laws to the Labor Standards Inspection Office. Dismissal and other disadvantageous treatment by reason of such worker's having made a report is prohibited by criminal sanctions (LSL Art. 104, 119 No.1).

The Equal Employment Opportunity Law is administered by the Equal Employment, Children and Family Bureau within the MHLW. Under its Prefectural Labor Bureaus, the Equal Employment Offices (*Koyo Kinto-shitsu*) are responsible for the daily enforcement of the laws related to employment equality and harmonization of work and family life.

The Employment Measures Law, the Employment Security Law, the Worker Dispatching Law and other labor market policy and regulations are administered by the Employment Security Bureau within the MHLW. The Public Employment Security Offices are responsible for public placement services, vocational guidance, and the employment insurance system including distribution of benefits and grants to workers, as well as firms.

6.3. Labor Offices Established by Local Government

Apart from the above-mentioned organs established by the national government, local governments often establish Labor Offices (*Rosei Jimusho*). A Labor Office provides consultation, conciliation and other administrative support for resolution of individual and collective labor disputes.

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[24] Oda, *Japanese Law*, 64ff (2nd. ed. 1999).

[25] 55-8 *Hoso Jiho* 27 (2003).

6.4. Labor Relations Commission (*Rodo Iinkai*)

The Central Labor Relations Commission at the national level and the Local Labor Relations Commissions in each prefecture deal with collective labor disputes. This commission is an independent administrative committee comprised of an equal number of commissioners representing employers, workers and the public interests.

The Labor Relations Commission has two main functions. First, it engages in adjustment of collective labor disputes through conciliation, mediation and voluntary arbitration. Second, it adjudicates unfair labor practice cases and issues remedial orders when it finds that an unfair labor practice was committed by an employer.

6.5. Support for Individual Labor Dispute Resolution

The above-mentioned small number of labor lawsuits does not indicate a scarcity of employment disputes in Japan. In the 1990s, corporate reorganizations, diversification of personnel and human resource management, and increased labor mobility resulted in an increasing number of labor disputes being brought to national and local government's labor offices and labor lawyers' counseling desks. The need to establish a new dispute resolution mechanism that is more efficient than the current system was generally recognized. Since the late 1990s, various reform plans have been proposed. Labor unions advocated giving the Labor Relations Commissions the competence to deal with individual labor disputes.[26] The employers proposed to utilize civil mediation procedures at ordinary courts rather than the Labor Relations Commissions.[27] However, the Ministry of Labour chose to expand the function of the Prefectural Labor Bureaus to include individual labor dispute resolution. Consequently, the Individual Labor Disputes Resolution Law (ILDRL) was enacted in July 2001 and put into effect as of October 1, 2001.

Although the ILDRL confirms the importance of voluntary resolution by the parties, the Law allows Prefectural Labor Bureaus to take part in the resolution of individual labor disputes. In order to help people to find suitable channels for labor dispute resolution, 250 general counseling desks were established across the nation, thereby providing a kind of "one-stop service" to give general guidance and counseling to handle various questions about labor issues. In addition, the Law authorizes the Director of Local Labor Bureau to give the necessary advice or guidance when asked for such support by workers, job seekers, and employers involved in an individual labor dispute. The ILDRL also authorizes the Director to establish a Dispute Adjustment Committee (*Funso Chosei Iinkai*) consisting of academic members to offer conciliation as requested. Under the ILDRL, "individual labor dispute" is broadly defined as dispute between individual workers, including job seekers, and employers concerning working conditions and other labor related matters (ILDRL Art. 1). Therefore, the Prefectural Labor Bureau has jurisdiction over a wide variety of disputes. However, its jurisdiction does not extend to disputes between a labor union and an employer or to disputes between workers.

This dispute resolution system by the Prefectural Labor Bureau does not preclude other dispute resolution routes. Therefore, it is possible for parties concerned to bring the case directly to courts, to seek dispute resolution at local government labor offices, or to resort to other channels.

7. Recent Developments in Labor Legislation

7.1. Structural Changes

From the mid-1980s, the situation surrounding labor and employment relations in Japan has been experiencing structural changes. The labor force structure is changing drastically because

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[26] RENGO (Japan Trade Union Confederation), *Atarashii Roshi Funso Kaiketsu Shisutemu no Kenkyu (Study on the new System for Labor Dispute Resolution)* (1998).

[27] Nikkeiren (Japan Federation of Employers' Association), *Rodo Iinkai Seido no Arikata ni Tsuite (On the System of the Labor Relations Commissions)* (1998).

of increased longevity and a continuously declining birth rate. The structure of the Japanese labor force is becoming more and more diversified. Individualism is more prevalent than before among workers. Changing corporate behavior resulting from severe competition in the globalized market also affects current employment practice. After the collapse of the bubble economy in the early 1990s, Japan experienced an unprecedented economic slump. To compete with resurgent American industries and rapidly growing Asian industries in the globalized market, Japanese industries engaged in restructuring and re-engineering.

These structural changes effecting the labor market, workers, and employers, coupled with the political drives for deregulation, inevitably affect labor laws designed about fifty years ago. Reforms and modernization of labor laws are required to accommodate changed situations. Modernization means abolishing obsolete regulations and, at the same time, introducing new forms of regulations to cope with new situations. As a result, the picture of the current Japanese labor law reforms presents a mixture of both deregulation and re-regulation.

7.2. Deregulation of Labor Market Law

To respond to the structural changes in the labor market, the government introduced a substantial amount of legislation. In 1985, the Worker Dispatching Law was enacted to properly regulate temporary work services and to provide protection of temporary workers. After the bubble economy, labor market deregulation was further accelerated. The Worker Dispatching Law was drastically deregulated by the 1999 revision. The 1999 revision of the Employment Security Law also lifted general ban on fee-charging employment placement business. The 2003 revisions of the Worker Dispatching Law and Employment Security Law furthered deregulation. In particular, the revision of the Worker Dispatching Law lifted a ban on worker dispatching for the production site and deregulated the period of worker dispatching.

To cope with the aging of the Japanese society, several re-regulation measures were introduced, the Older Persons' Employment Stability Law of 1986 was enacted. The Law was intensified by the 1994 amendment which prohibits setting a mandatory retirement age below 60 years of age. Currently the government is proposing a Bill to revise the Law in order to promote employment of those between 60 and 65 years of age.

To modernize the occupational training system, the Occupational Training Law of 1969 was drastically revised and renamed the Law Promoting the Development of Occupational Ability of 1985.

7.3. Modernization of Individual Labor Relations Law

In response to the diversification and individualization of workers, traditional regulatory measures on individual employment relations are experiencing mixed reforms: deregulation on the one hand and reshaping on the other.

First, the Equal Employment Opportunities Law (EEOL) was enacted in 1985. The Labor Standards Law prohibits wage discrimination on the ground of sex but does not prohibit different treatment of men and women. The 1985 EEOL expanded prohibition of sex discrimination to workers' education and training, fringe benefits and termination. However, the 1985 EEOL was severely criticized as a toothless law because it imposed simply a "duty to endeavor" to treat women equally with men as regards to recruitment, hiring, assignment and promotion. Responding to such criticism, the 1997 amendment of the EEOL prohibits discrimination against women concerning recruitment, hiring, assignment and promotion. At the same time, prohibition on night work in the LSL was abolished in order to eliminate obstacles for women to develop their working career.

In 1991, to support harmonizing work and family life, the Child Care Leave Law was enacted to provide workers with a right to take childcare leave of up to one year. In 1995, The Law was revised and introduced family care leave for three months. Thus, the Law was renamed as the Child Care and Family Care Leave Law and took effect in 1999. The CCFCLL was further strengthened by the 2001 revisions.

As for the LSL, in 1987, the Japanese government implemented the large-scale revision of the working hour regulations in the Labor Standards Law. The revised Law reduced the

maximum workweek from 48 hours to 40.[28] Simultaneously, the revised Law introduced various working hours averaging systems and the systems of conclusive presumption on hours worked. Eleven years later, the LSL underwent further amendments to cope with individualization and mobilization of workers.[29] The 1998 LSL revision relaxed the employment contract limitation on the one hand, however, it introduced new regulations such as requiring written clarification of working conditions including not only wages but also working hours and other items designated by the Enforcement Order (1998 LSL Art. 15). It also requires the employer to issue a certificate concerning the reasons for termination of employment including those for dismissal upon the worker's request (1998 LSL Art. 22).

The 2003 revision of the Labor Standards Law (LSL) made the case law rule on abusive dismissals an explicit provision in the Law. A new provision (Art. 18-2) was inserted into the LSL: "In cases where a dismissal is not based upon any objectively reasonable grounds, and is not socially acceptable as proper, the dismissal will be null and void as an abuse of right." The 2003 revision of the LSL also introduced provisions requiring clarification of grounds for dismissals (Art. 89 No. 3) and obliging the employer to deliver a certificate stating the reasons for dismissals upon the employee's request even during the period between the notice of dismissal and the date of leaving employment (Art. 22 Para. 2).

Faced with slow recovery from the business slump after the bubble economy, the government introduced a series of new laws to encourage and facilitate corporate restructuring.[30] The final measure was an introduction of corporate division scheme through the revision of the Commercial Code in May 2000. To counterbalance the significant impact of the corporate division scheme, the Labor Contract Succession Law was enacted simultaneously.

7.4. Collective Labor Relations Law

Apart from the privatization of public sector corporations,[31] collective labor relations law has remained untouched for the last two decades. However, the unionization rate has continuously declined since 1975 and finally reached below 20% (19.6% in 2003). Further, the diversification of the workforce has led to questions as to the representative legitimacy of enterprise unionism. Traditionally enterprise unions solely organized regular employees and non-regular workers such as part-time workers and fixed-term contract workers remained unorganized. However, currently 30% of all employees are non-regular employees. The target of corporate restructuring in the 1990s concentrated on middle management employees. Employees promoted to middle management are supposed to leave unions. Therefore they are provided little protection by labor law and labor unions. These circumstances require reconsideration of the channel conveying the voice of employee. Some scholars contend that Japan should introduce an employee representation system like the works council in Germany (*Betriebsrat*) which represents all the employees in the establishment irrespective of union membership.

The 1998 revision of the LSL introduced a new representation system called a *roshi iinkai* (labor-management committee). Half of the members of this committee must be appointed by the labor union organized by a majority of workers at the workplace concerned, or with the

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[28] The reduction to a 40-hour workweek was, however, put into effect stage by stage. The maximum duration of the workweek was set as 46 hours in 1988, as 44 hours in 1991 and as 40 hours in 1994.

[29] Ryuichi Yamakawa, "Overhaul After 50 Years: The amendment of the Labour Standards Law" 37-11 *Japan Labor Bulletin* 5 (1998).

[30] In June 1997, the revision of the Anti-Monopoly Law liberalized genuine holding companies. In August 1999, the revision of the Commercial Code introduced a system for the exchange and transfer of stocks between companies. In August 1999, the Industry Revitalization Law was enacted which was followed by the enactment of the Civil Rehabilitation Law in December 1999.

[31] In the arena of collective labor relations, three public corporations, the Telephone and Telecommunication Public Corporation, the Tobacco Monopoly Corporation, and the National Railway were privatized in the course of an administrative reform in the early 1980s. As an ironic result, those workers in the privatized corporations who had resorted to the strike for the right to strike of the workers in the public sector in 1975 were given the very right through the privatization.

person representing a majority of the workers where no such union exists. The labor-management committee must be established when the employer intends to introduce the discretionary work scheme (management planning type),[32] which functions as a Japanese counterpart of the white-collar exemption from overtime regulations. The labor-management committee is the first permanent organ with equal membership for labor and management that represents all the employees in the establishment. Therefore, this committee can be regarded as the embryonic form of a Japanese works council, although the jurisdiction of this committee is currently confined to regulation of working hours and its establishment is not compulsory.

Since the procedures to adopt the discretionary work scheme are very complicated, currently there are very few labor-management committees. However, the 2003 revision of the LSL simplified the procedure to introduce the discretionary work scheme. Previously, decision making in the committee was by unanimous agreement, but under the revised LSL, it can be achieved by four-fifths majority among the committee members. Although it remains to be seen whether the labor-management committee will become more common and solidify as a system of employee representation, the introduction of this embryonic form of representation by recent legislative change is noteworthy.

8. Future of Japanese Labor Law

8.1. Balanced Flexibility in both the Internal and External Labor Market

Faced with the structural changes described above, employment practice is being modified considerably. So, will the Japanese employment system disappear? Considering the various surveys and attitudes of labor and management, the author expects that seniority based employment management will be drastically modified but the employment system based upon employment security will, though its role will diminish slightly in importance, remain central to Japan's employment relations, at least for the foreseeable future. The drastic modification of the seniority based wage system can be interpreted as an attempt to maintain the long-term employment system.

However, employment security will not remain unchanged. Present employment security is maintained through flexible adjustment of working conditions and flexible deployment of workers. Such an employment system relies heavily on internal or functional flexibility which sometimes imposes inconveniences on individuals in return for employment security. Increasingly diversified and individualized workers may regard such inconveniences as irrational and execute employment contracts specifying concrete terms and conditions of employment including a place and type of work. Under such a contract, it is difficult to afford the employer flexibility through the adjustment of working conditions and the flexible deployment of workers, thereby avoiding economic dismissals.[33] In order to keep employment relations and the labor market adaptable to changing circumstances, reduced internal flexibility must inevitably be compensated for by external or numerical flexibility through the relaxation of dismissal regulations. This will be, however, an adjustment or re-balancing of internal and external flexibility centering on the long-term employment practice and, thus, not a revolutionary change but a gradual evolution.

8.2. New Measures for Diversified and Individualized Workers

Even if the employment security remains the basis of Japan's labor and employment relations, diversification and individualization of workers will require significant policy changes. Traditional labor laws presupposed weak homogeneous workers who needed direct state intervention to protect them. Now we have increasingly individualized workers with differing orientations and various bargaining powers. Given this situation, the following

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[32] There are two types of discretionary work schemes: professional work type and management planning type. For details, see Takashi Araki, Labor and Employment Law in Japan, 94 (2002).

[33] Takashi Araki, *Koyo Shisutemu to Rodo-Joken Henko-hori (Employment Systems and Variation of Terms and Conditions of Employment)*, 224 (Yuhikaku, 2001).

measures will be necessary in the future.

First, to support individual transactions in the external labor market, measures to enhance labor market performance should be taken. Deregulation of fee-charging employment services and dispatched work businesses are typical measures for this purpose.

Second, in individual employment relations law, the mode of state intervention or the content of protective legislation should be reconsidered. When the state sets uniform mandatory norms and applies them to a diversified workforce, such universal intervention will inevitably infringe on some individuals' freedom of self-determination. In order to avoid such infringement, first, the coverage of the LSL sanctioned by criminal provisions should be confined to traditional workers with weaker bargaining powers. As for workers with stronger bargaining powers in the labor market as individuals, more flexible and less interventional legislation without penal provisions should be considered. The 2003 LSL revision transforming established case law rules concerning dismissals into statutes without criminal sanction is a good example. The government is also planning to enact an employment contract law without criminal sanction incorporating established case law rules concerning probation, transfer of workers, legality of employers' disciplinary measures and other issues arising from employment relations. Such a statute could also satisfy the need for transparency by making the law more accessible to the public. A second change in the mode of state intervention could be a shift from substantive norms to procedural requirements. For example, rather than establishing substantive requirements for derogation from the minimum standards, the state should merely establish procedural requirement. This will protect workers' interests without unduly limiting employers' flexibility.

Third, in the collective labor relations law, a continuous decrease in the union density will require the reconsideration of the role of labor unions. Some advocate enacting statues establishing works councils or employee representatives to represent various interests among diversified workers at the workplace level. However, since Japan's enterprise unions have already played the double roles of both labor union and works council, a careful deliberation will be indispensable for the new measures.

Fourth, deregulation and respect of individuals' choice means a policy shift from ex ante regulations to ex post facto adjustments through dispute resolution mechanisms. Japan, however, does not have any labor courts or agencies specializing in individual labor disputes. Therefore, to efficiently cope with conflicts arising from individual employment relations, accessible, expeditious and low-cost dispute resolution systems are urgently needed.

If these measures are required in the future, the traditional concept of labor law, characterized by the protection of mandatory, interventional labor standards and by the right to apply collective pressure, will no longer be sufficient. Reflecting the emergence of diversified and individualized workers, labor law in the future must provide diversified regulations ranging from traditional interventional measures to less interventional, optional measures.

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The traditional Japanese employment system has relied too much on internal flexibility coupled with employment security and excessively restricted external flexibility. Given the changed circumstances surrounding contemporary employment relations, a new balance between the two types of flexibility needs to be struck. The problem of the traditional Japanese employment system is that it provides only two options: one is a "regular worker model" coupled with employment security and high internal or functional flexibility, and the other is a "non-regular worker model" which simply provides external or numerical flexibility. What is required for the future is diversification of employment models with various combinations of internal and external flexibility allowing for individual choice.

Future employment relations will be accompanied by greater external flexibility than exists today. Reforms should be designed to cope with the changing environment of employment relations. However, it is by no means enough to leave everything to the functioning of the external labor market and negate the role of labor law. Labor law plays a pivotal role in providing a framework that allows for an optimum combination of the two types of flexibility.

The law must keep both the labor market and employment relations flexible enough to adapt to changing socio-economic circumstances while maintaining necessary protections for working people.