

# Examining Japan's Labor Standards Inspection Administration and Its Challenge from the Perspective of the Inspection Offices

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Labor standards inspection offices are at the forefront of labor standards administration in Japan. This paper focuses on those organizations, shedding light on the current state of affairs and the challenges that are faced, as well as examining the potential directions for the labor standards inspection administration in the future. The operational policy of Japan's postwar labor standards inspection administration has changed with the times. The administration now follows a proactive and systematic approach directed at securing appropriate working conditions. However, Japan has for some time suffered from a shortage of labor standards inspectors, and in recent years inspectors have struggled with being unable to devote themselves to their roles as inspectors because of the diversified tasks and the impact of the public servant personnel reductions. As a means of supplementing the lack of labor standards inspectors, outsourcing to private sector providers has been pursued; but this entails unresolved issues regarding the nature of the work entrusted and the status and authority of the personnel selected to conduct it. The labor standards administration also faces the challenge of the dealing with small and medium-sized enterprises. With the approach in recent years tending toward trusting such enterprises to improve their working conditions on their own accord, it is important for the administration to ensure that an appropriate balance is being achieved with the protection of workers.

- I. Introductions
- II. Changes in the labor standards inspection administration over time
- III. The tasks of labor standards inspection offices
- IV. Current developments and issues in the labor standards inspection administration
- V. Concluding remarks

## I. Introduction

The Labor Standards Act (LSA) was enacted in 1947 with the objective of modernizing labor in Japan and establishing international-level labor standards. Following the LSA's enactment, the protection of workers in postwar Japan progressed along with the efforts to address the challenges particular to each period in time. In

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recent years, the number of industrial accident compensation claims for brain and heart diseases due to overwork has been rising, and calls from both within and outside Japan to address the issue of long working hours, including a recommendation from the United Nations Economic and Social Council for Japan (May 17, 2013) to “strengthen measures to prevent long working hours and ensure that deterrent sanctions are applied for non-compliance with limits on extensions to working hours” (MOFA 2013),<sup>1</sup> were made. The amendments to the LSA that accompany the Work Style Reform Act (Act on Arrangement of Relevant Act on Promoting the Work Style Reform), which has been incrementally implemented since April 2019, seek to rectify long working hours through the introduction of an upper limit on and penalties on employers for overtime work. This is anticipated to contribute to protecting workers’ health as well as facilitating the development of working environments that allow workers with the desire to work to harness their full potential and contribute to Japanese society’s declining working-age population. This indicates that even today, over 70 years after the enactment of the LSA, the essential role of labor standards administration—preserving the efficacy of the protection of workers—remains unchanged. However, Japan has suffered from a shortage of *rodo kijun kantokukan* (labor standards inspectors) for some time, and in recent years they have struggled with being unable to devote themselves to their roles as inspectors because of the diversified tasks and the impact of the reduction in the numbers of public servants.

This paper therefore focuses on *rodo kijun kantokusho* (labor standards inspection offices)—the forefront agencies of the labor standards inspection administration—with the aim of shedding light on Japan’s labor standards administration in terms of identifying the current state of affairs and challenges that are faced, and considering the roles that need to be played by labor standards inspectors. The structure of this paper is as follows. In Section II, we start with establishing an overview of the legal positioning of labor standards administration agencies and the historical shifts in labor standards inspection administration to identify the changes in and recent characteristics of the principles upon which the labor standards administration is operated. Section III explores the content of the work of labor standards inspection offices, to highlight the distinctive features of and issues involved in those tasks and to present the factors behind the burdens of inspection work. Section IV then draws on data on the opinions of labor standards inspectors to investigate the challenges inspectors are currently facing from four dimensions and to examine what approaches need to be taken in the future to ensure a labor standards inspection administration that could protect workers. Finally, Section V summarizes the current status and challenges of labor inspection systems for further discussion.

## II. Changes in the labor standards inspection administration over time<sup>2</sup>

In the 19th century, systems for inspecting labor standards to ensure the legal effect for protecting workers were pioneered in the UK in 1833 and spread to France in 1874 and Germany in 1878. In Japan, the Factory Act was promulgated in 1911 as labor legislation aimed at those classed as “protected workers” (workers under 15 years of age and women), and, after having taken five years for implementation due to opposition from employers and fiscal reasons, the factory inspection system was established in 1916. At the time, factory inspection was affairs under the jurisdiction of the personnel and training bureau of local authorities (under prefectural governors), and the work of a factory inspector was not a standalone role but conducted by police officers, administrative officials and other such public servants alongside their primary roles. As inspection work could often be influenced by political forces or local figures of authority, the protection of workers could vary from region to region. Moreover, while factory inspectors had the authority to conduct inspections, inquire staff, and issue warnings, they had no authority to impose administrative disposition. Administrative guidance therefore largely took the form of issuing warnings and requesting formal letters of apology, and cases were not referred to a public prosecutor (Matsumoto 1981).<sup>3</sup>

The LSA was enacted in 1947, following the end of the Second World War. This raised Japan’s labor standards

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to the level required for ratification of the International Labour Organization (ILO) Conventions<sup>4</sup> and established the labor standards inspection system. The Labor standards inspection administration at the time of the LSA's enactment primarily focused on the elimination of forced labor, intermediary exploitation, and late-night work or long working hours of women workers and workers under the age of 15, and a strict approach was taken to conducting inspections and providing guidance with the aim of preventing and rectifying legal violations such as non-payment of wages and dismissals in times of severe financial difficulty.

In the postwar period of rapid economic growth, the Policy for the Operation of Labor Standards Administration of 1956 emphasized that “inspection in accordance with the LSA should entail... ascertaining the actual state and causes of violations by implementing inspections to provide guidance with the consent and cooperation of labor and management” (Tatsuoka 1997, 183–134). In the late 1950s, the focus was on the prevention of industrial accidents in the construction of infrastructure for projects such as facilities related to the Tokyo Olympics in 1964. Measures regarding working hours shifted to a soft law policy, such as the promotion of the universal application of the six-day working week system and other such aspects, as opposed to exposing violations.

However, as Japan's economy flourished with the beginning of the 1960s, the fundamental perception of labor standards inspection administration changed. The approach up until then, which had focused on step-by-step inspection and guidance that sought the *nattoku to kyoryoku* (*consent and cooperation*) (see the quotation above) of employers, shifted to the stance that securing the legally prescribed working conditions, through careful perseverance to ensure implementation, “should now be accepted as a natural premise for running an enterprise” (Tatsuoka 1997, 190). Furthermore, as industrial accidents increased in number and variety with the high-speed economic growth of the late 1960s, the approach shifted to firmly securing the national fairness and uniformity that is the very basic precept of the labor standards inspection administration and ensuring the strict enforcement of the law. The labor standards inspection administration was strengthened to uphold legal standards, and in addition to inspection and guidance being correctly implemented, cases of serious or malicious legal violations or repeated legal violations were strictly dealt with, through means such as referral for judicial punishment (Hamaguchi 2019).

In the period of stable economic growth from the late 1970s onward, working conditions visibly deteriorated, and the demand for administrative services in the form of labor standards inspection administration rose. The government's 1980 guiding principles for economic management, “*Shin keizai shakai 7kanen keikaku* (New seven-year socioeconomic plan)” set the goal of bringing the five-day workweek system close to the standards of the US and European advanced nations by 1985; measures regarding working hours were identified as a key issue for administration (Tatsuoka 1997). These developments came to fruition in the 1987 amended Labor Standards Act and the enactment of the 40-hour working week system. In order to successfully improve the quality of people's lifestyles to a level befitting an advanced nation, the labor standards inspection administration also placed emphasis on securing working conditions, adopted the systems to provide inspections and guidance proactively and deliberately. As indicated by the subsequent issue of the *Rodo jikan no tekiseina haaku no tame ni shiyosha ga kozubeki sochi ni kansuru kijun* (Criteria on Necessary Measures for Employers to Accurately Ascertain Working Hours) in 2001 and the formulation of the *Chingin fubarai zangyo sogo taisaku yoko* (Guidelines for Comprehensive Measures on Unpaid Overtime) in 2003, the shortening of working hours and the inspection and guidance of such measures remained a significant challenge (Hamaguchi 2018).

As described above, from the enactment of the LSA onward, the labor standards inspection administration in postwar Japan has been consistently responsible for the protection of workers. The administration's operating principle largely shifted from a soft line of seeking the *consent and cooperation* of employers, to a hard line of implementing *strict inspection and guidance*. Thus, the current labor standards inspection administration can be seen as the pursuit of a proactive and deliberate approach to securing labor standards.

### III. The tasks of labor standards inspection offices

Let us now explore the current tasks of the labor standards inspection offices, the forefront agencies of the current labor standards inspection administration (See Figures 1 and 2). These local agencies of the Ministry of Health, Labour and Welfare (MHLW) consist of 47 prefectural labor offices and 321 labor standards inspection offices across the country. Each labor standards inspection office is comprised of following four departments. The Inspection Department (known in Japanese as *Hōmen*) is responsible for handling applications, consultations, inspections and guidance, and judicial police administration concerning the LSA and other related laws and regulations<sup>5</sup>; Health and Safety Department is responsible for screening applications regarding the installment of machinery and other such equipment, and for providing the necessary guidance on industrial accident prevention and maintaining workers' health; Industrial Accident Department is in charge of processing claims for industrial accident insurance benefits for occupational injuries or illnesses and related tasks; and General Affairs Department is responsible for accounting.<sup>6</sup> This section covers an overview of the first three departments' tasks.

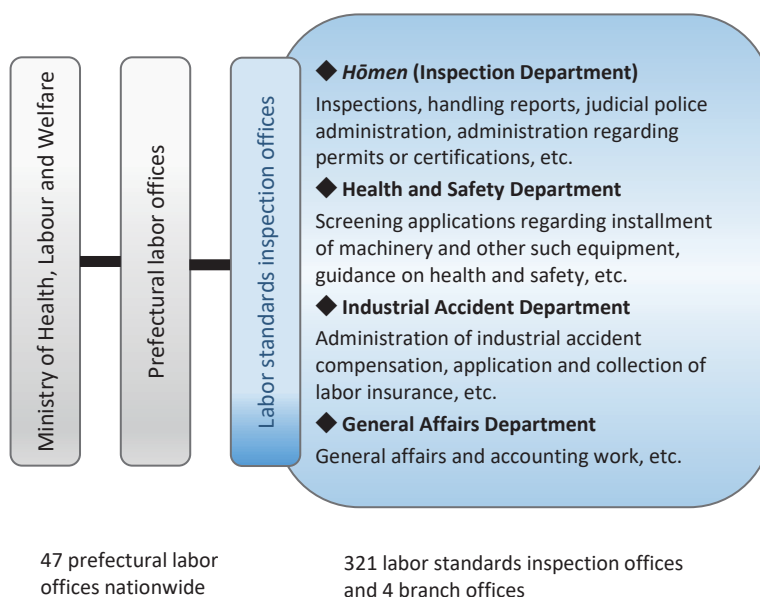
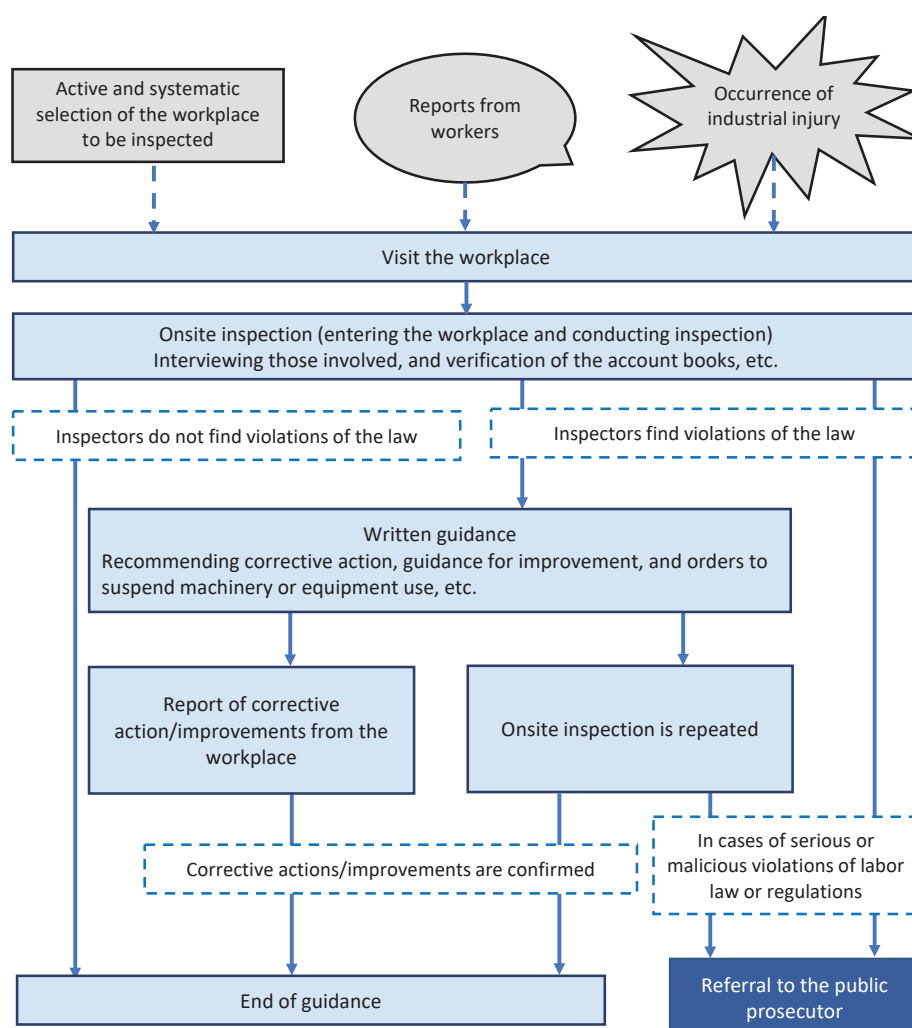


Figure 1. Structure of the labor standards administration



Notes: 1. The above diagram shows the typical steps of the inspection process, these may vary depending on the case in question.  
2. In principle, the inspection of and provision of guidance to workplaces are conducted without prior notice.

Figure 2. Typical steps of the inspection process

## 1. Inspection work

The objective of inspection work is to visit all manner of workplaces in accordance with labor standards-related laws and regulations and ensure the compliance of employers with the legally prescribed standards, thereby securing and improving working conditions, and ensuring the safety and health of the people who work there (MHLW 2022). This is the work of specialist personnel of the MHLW known as labor standards inspectors. Labor standards inspectors are granted the authority of “labor inspectors” to freely enter workplaces, and carry out any examination, test or enquiry necessary, as prescribed under ILO Convention 81, Article 12-1 (ILO 2006), and the authority of a labor standards inspector to enter a workplace to conduct investigations, questioning or other such measures under Article 101 Paragraph 1 of LSA.

Labor standards inspectors conduct four types of inspections: regular inspections, report-based inspections, inspections in response to industrial accidents, and follow-up inspections. The regular inspections entail visiting workplaces based on the annual plan of the relevant labor standards office to conduct an inspection and provide guidance. If inspectors find violations of the law, they recommend corrective actions. If inspectors find violations

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involving highly hazardous machinery or equipment, they take administrative disposition on behalf of the director of the inspection office to suspend use. However, inspectors have exclusive authority to take administrative disposition and may take administrative disposition immediately upon inspection without the approval of the director. Report-based inspections are conducted to ascertain the facts in response to a report from a worker. These are mainly cases of requests for assisting in securing individual rights, such as those involving unpaid wages or dismissal.

At the same time, Article 102 of LSA prescribes the labor standards inspector's authority as a "judicial police officer." In cases of serious or malicious violations of the LSA and other laws and regulations that are not rectified despite guidance having been given, labor standards inspectors may warrant non-compulsory investigations such as searches, seizures, or arrests, and referral to the public prosecutor's office. This is known as judicial police administration.

As noted above, labor standards inspectors have the authority to visit workplaces and conduct inspections and other measures. In the case of violations such as non-payment of wages, the inspector has the authority to issue a warning to rectify the violation, and, if the employer does not comply with the guidance, the inspector may practice their judicial policing right and refer the employer to the public prosecutor: but the inspector does not have the authority to collect unpaid wages. The worker in question must therefore file a civil suit or pursue other proceedings.

Regardless of how tenaciously labor standards inspection offices may provide enterprises with guidance, a significant number of cases of legal violations remain unrectified, because of financial difficulties or various other circumstances of employers. Cases of serious or malicious violations are referred for criminal investigation under which the employer's criminal liability is examined. And yet, according to the analysis by the labor union of full-time and part-time employees in labor administration, the *Zen rodo-sho rodo-kumiai* ("Zenrodo"; the largest trade union in the labor administration with membership of 16,000 persons), of the current status of the framework for inspection work (2020b), the system is far from being equipped with the sufficient personnel for all unrectified violations to be individually investigated.

As described in detail below, the labor standards inspection offices are also equipped with departments for specialist tasks—namely, the Health and Safety Department and the Industrial Accident Department—the personnel quotas of such departments have also been on the decrease due to the trend toward personnel cutbacks under the reforms to the public servant system. This has prompted the issue that labor standards inspectors may be assigned health and safety or industrial accident-related tasks, rendering them unable to devote themselves to their primary role of conducting inspections.

## 2. Health and safety services

Health and safety services involve providing guidance to equip workplaces to take the necessary measures to prevent industrial accidents and occupational illnesses and secure workers' health in accordance with the Industrial Safety and Health Act. In addition to inspecting cranes and other such machinery, and examining applications of planned construction work, labor standards inspectors in charge of health and safety services visit workplaces to provide guidance for more proactive measures regarding health and safety, as opposed to merely for the purpose of identifying potential legal violations. Health and safety services were formerly conducted by *kōsei rōdō gikan* (MHLW labor technical officials), who possessed specialist knowledge and experience. There were only a few cases in which labor standards inspectors were assigned to the Health and Safety Department, such as for the purpose of career development. However, with the trend toward personnel reduction in light of developments such as the policy on "*Kuni no gyosei kikan no teiin no jungun ni tsuite* (Net Reduction in Personnel of National Administrative Agencies)," approved by the Cabinet in 2006, MHLW labor technical officials were no longer hired. Currently, in or after 2008, labor standards inspectors are assigned to health and safety services.



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### 3. Industrial accident-related services

Industrial accident-related services entail providing fair protection with regard to injury while at work or commuting, in accordance with the Industrial Accident Compensation Insurance Act. Once the necessary investigation, such as interviews and other such onsite information gathering or consultation of medical experts, has been conducted, the director of the relevant labor standards inspection office certifies a case as an occupational or non-occupational accident and authorize payment of insurance proceeds (insurance benefits).

The economic growth and technological advances of the postwar period saw not only a rise in the number of industrial accidents but also led to the emergence of new occupational diseases. The MHLW has over the years amended the list of occupational diseases, as prescribed under Article 35 of the Ordinance for Enforcement of the LSA, in accordance with the results of deliberations by a review committee composed of expert physicians. It is, however, difficult to anticipate the occurrence of new industrial accidents from shifts in social circumstances and promptly certify accidents as occupational or non-occupational. Given that occupational diseases involve a number of factors—such as differences in understanding and changes in sense of entitlements between labor and management, advances in medical science, and the diversity of labor relations—certification of diseases as occupational or non-occupational continues to pose difficulties.

Providing such industrial accident-related services demands not only administrative interpretation but also specialist knowledge and experience regarding the decisions and precedents of the Labor Insurance Appeal Committee and insights from the medical field. Investigation and other such work were therefore typically conducted by *kōsei rōdō jimukan* (MHLW labor administration officials) who had acquired the necessary skills in industrial accident services through training courses and practical experience. However, with the trend toward personnel cutbacks of public servants, the hiring of MHLW labor administration officials ceased in 2008, and while it was relaunched in 2017, labor standards inspectors are still being assigned to industrial accident services at present. This also contributes to the aforementioned issue of labor standards inspectors being unable to concentrate fully on inspection work.

## IV. Current developments and issues in the labor standards inspection administration

Now that we have covered the historical background to and challenges involved in the practical work of the labor standards inspection administration, let us explore the current developments and issues. We will focus on four particular areas: (i) the problem of the shortage of labor standards inspectors; (ii) the challenges of outsourcing inspection work to private sector providers as a means of supplementing the shortage of inspectors; (iii) the increasing complexity of inspection work along with the changes in the environment and the fairness and uniformity with which it is handled, and (iv) the issue of the protection of workers in small and medium-sized enterprises (SMEs), which has been a topic of concern since the enactment of the LSA.

For this analysis, we draw on the results of the “Twenty-fourth Labor Administration Research Activity Questionnaire” (Inspector Questionnaire) conducted by the Zenrodo in July, 2019, to survey labor standards inspectors across Japan (for non-managers) on the topic of effective administration approaches and legislation to alleviate overwork at labor standards inspection offices (1,053 responses received).

### 1. Shortage and increases in the numbers of labor standards inspectors

The ILO sets the appropriate ratio for labor standards inspectors in advanced countries as one inspector for a maximum of 10,000 workers (ILO 2006). However, as various statistics indicate, not only does the current situation in Japan fall far short of this standard: but there are also insufficient number of labor standards inspectors to carry out inspection work.

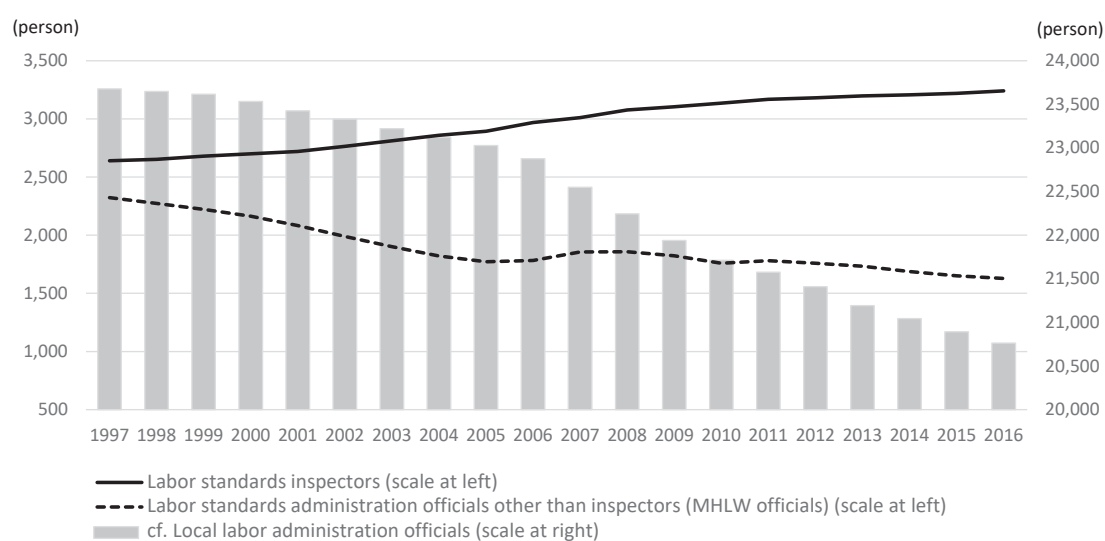
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According to data used by the 1st meeting of the “Taskforce on Outsourcing of Labor Standards Inspections to Private Sector Providers” (“the Taskforce on Private Sector Outsourcing”), hosted by the Cabinet Office on March 16, 2017, indicates that Japan had a personnel quota of 3,241 labor standards inspectors in FY 2016, which amounts to 0.62 inspectors for every 10,000 employed people. Looking at the equivalent values for other countries, Germany had 1.89 inspectors for every 10,000 employed people, the UK had 0.93 inspectors, France had 0.74 inspectors, and the US had 0.28 inspectors—namely, aside from the US, Japan had the lowest number of inspectors per 10,000 employed people after the US (Cabinet Office 2017a).<sup>7</sup> In the materials for the Taskforce on Private Sector Outsourcing, the MHLW explains that “3,241 people is the number of labor standards inspectors engaged in inspection work at labor standards inspection offices” (Cabinet Office 2017a). On the other hand, the MHLW’s “*Heisei 29 nen rodo kijun kantoku nenpo* (Annual Report on Labor Standards Inspection 2017)” quotes the number of labor standards inspectors at labor standards inspection offices across Japan for the same year, FY 2016, as 2,923 people (MHLW, Labour Standards Bureau 2019). Based on the number of employed people (66.0252 million people according to the ILO LABORSTA Database (2023)), this is a total of 0.44 officers per 10,000 employed people. This figure is lower than that of the Taskforce on Private Sector Outsourcing materials. In relation to this, the MHLW has noted that “the Annual Report on Labor Standards Inspection began including the number of labor standards inspectors engaged in inspection work at labor standards inspection offices from 2016 onward,”<sup>8</sup> but makes no clear statement on the discrepancy with the number of labor standards inspectors in the 1st Taskforce on Private Sector Outsourcing materials. Moreover, the figure for the “personnel quota” includes positions that are vacant, and staff who are on leave or holding multiple roles concurrently, or similar. Therefore, taking into account that there may be positions that are vacant or otherwise not being filled, the number of labor standards inspectors actually engaging in inspection work may in fact be even lower. “Excluding those employees in training, the number of employees engaging in inspection visits may be around 1500 people nationwide (Morisaki 2015a).” If we tentatively subtract the number of labor standards inspection office directors and deputy directors (467 persons) as recorded in the 2nd Taskforce on Private Sector Outsourcing materials from the number of labor standards inspectors as noted in the Annual Report on Labor Standards Inspection (2,923 persons), the number of labor standards inspectors actually conducting inspections is estimated to be about 2,500 people. With the current personnel, the average number of inspections per year is no more than 170,198 (MHLW, ed. 2019). This means that attempting to inspect every single workplace across Japan—approximately 5.32 million locations (MIC, Statistics Bureau 2019)—even just once, would take around 30 years.

However, the problem does not stay at the number of labor standards inspectors. As shown in Figure 3, while the number of labor standards inspectors has been on the rise in the last 20 years, there has been a decrease of as much as around 30% in MHLW labor administration officials and MHLW labor technical officials working at labor standards inspection offices. Furthermore, the local labor administration personnel quota, which includes the staff of the prefectural labor offices and *kokyo shokugyo anteisho* (public employment security offices that provide job consultation and placement services commonly known as *Hello Work*) has been reduced by around 3,000 people in 20 years.

In contrast, the scope of the role that society demands for labor standards inspection offices and labor offices has expanded in recent years. In addition to the task of ensuring the fulfillment of labor-related laws and regulations, the labor offices were also given the task of handling civil individual labor disputes in 2001 following the enforcement of the Act on Promoting the Resolution of Individual Labor-Related Disputes. On the enforcement of the Act, it was prescribed that labor standards inspectors were not to handle civil labor-management disputes. However, looking at the *Rodo kankei shokuin roku* (Directory of labor administration officials) (Rodo Shimbunsha 2008–2019), labor standards inspectors were in fact taking on the roles of MHLW labor administration officials and handling such disputes as *rōdō funsō chōseikan* (labor dispute coordinators). As seen in Figure 3,





Source: Compiled by the author using data from the MHLW's explanatory materials from the 2nd Taskforce on Outsourcing of Labor Standards Inspections to Private Sector Providers (Cabinet Office 2017b) and *Current Developments in Labor Administration* (Zenrodo 2020a).

Notes: 1. "Labor standards inspectors" are public servants assigned to perform labor standards inspection.

2. "Labor standards administration officials other than inspectors" refers to the MHLW officials (labor administration officials and labor technical officials) who are public servants performing the labor standards administration duties at labor inspection offices.

3. "Local labor administration officials" are public servants assigned to work in the prefectural labor offices, labor standards inspection offices and public employment security offices (including notes 1 and 2 above).

Figure 3. Trends in numbers of labor standards inspectors and MHLW officials working at Labor Standards Inspection Office

although the personnel quota for labor standards inspectors has increased, the number of labor administration officials other than inspectors has declined. The Directory indicates that the labor standards inspectors have been assigned to departments other than inspections and are not necessarily engaged in inspection work. Occasionally, newly hired labor standards inspectors still in practical training are assigned to Inspection Department, yet experienced labor standards inspectors are assigned to other fields.

As noted in Section III, the exact number of labor standards inspectors working in health and safety services or other such areas other than the task they were primarily intended to engage in, that is, inspection work, is not clear. Nevertheless, the increase in the personnel quota of labor standards inspectors may not be assisting to solve the issue of the quantity and the quality of inspection work being conducted. Regarding such circumstances, in its 2nd Taskforce on Private Sector Outsourcing materials, the MHLW mentions about the reduction of the personnel in Industrial Accident Department and Health and Safety Department, that they are "focusing on streamlining in industrial accident services" and "managing to deal with health and safety issues by solving problems more creatively" (Cabinet Office 2017b).

The increase in the personnel quota of labor standards inspectors has, on the other hand, raised concerns regarding whether it is possible to secure capable personnel suitable for the role. While from 2000–2008 the number of newly hired labor standards inspectors was around 70–90 persons per year, from 2009–2012 there were no more than around 50 new hires, because inspection work became the subject of budget screening by the *Gyōsei sasshin kaigi* (Government Revitalization Unit) founded under the Democratic Party of Japan government. However, it rose again in 2013 to around 230 persons, and new hiring has since then continued to rise, albeit not to the extent of supplementing the decline in the labor administration officials other than labor standards inspectors. While such increased hiring of labor standards inspectors is welcomed amid the shortage of inspectors

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and the cutbacks in the personnel quotas of other employees, it has led to falling in the scores to pass the examination for labor standards inspectors. More specifically, in the case of hiring for labor standards inspector type A (humanities background), in 2012, when 57 persons (NPA 2014, 102) were hired, the scores to pass the first stage examination (written examination) was 468 points, in contrast to 379 points in 2013 when the number hired was increased to 236 persons (NPA 2015, 84) and 204 points in 2019, when 231 persons (NPA 2021, 74) were hired.<sup>9</sup> Labor standards inspectors must have the ability to flexibly adapt to an ever-changing society and deal with employers they are working with politely and in a compelling manner. It is therefore possible that hiring is based not only on the written examination but to some extent on the persons themselves, on the basis of their performance in the second stage interview examination. It is necessary to hire persons with the suitable aptitude and disposition and ensure that they develop their skills through training and practical experience after they are hired.

## 2. Utilization of the private sector in inspection and guidance

The aforementioned Taskforce on Private Sector Outsourcing was established on March 9, 2017 with the objective of addressing that “personnel shortage is rendering it difficult for labor standards inspectors to conduct inspections sufficiently,” by “seeking to expand the use of the private sector to supplement inspection work in light of the Action Plan for the Realization of Work Style Reform, and allow labor standards inspectors to tackle cases that may involve more serious violations” (Cabinet Office 2017a). The Taskforce Private Sector Outsourcing sought to develop specialist analysis of this issue in preparation for deliberations by the Regulatory Reform Promotion Council, which had been created by the Cabinet in September 2016.

Drawing on another example of outsourcing to the private sector—the outsourcing of the regulation of abandoned vehicles to private sector businesses under the 2006 amendment to the Road Traffic Act—the Taskforce on Private Sector Outsourcing explored a proposal to outsource regular inspections to private sector businesses that employ *sharōshi* (labor and social security attorneys) and other such personnel. In response, the MHLW argued that “regular inspections entail labor standards inspectors visiting workplaces without advance notice to confirm the existence of violations of the LSA and other such regulations and provide administrative guidance or, where necessary, pursue duties of judicial police officers. If entrusted private sector businesses conducted voluntary inspections and referred any problems noted to an inspector, time would be lost in the process, making it possible for documentary evidence to be destroyed, or other such inappropriate behavior to be committed. The prompt protection of workers would become highly unlikely.” Nevertheless, the Taskforce on Private Sector Outsourcing concluded that “private sector providers selected through a public tender process may take on the tasks of sending self-inspection forms and other such documentation to workplaces that are yet to file an Article 36 Agreement (*saburoku kyotei*; a labor-management agreement regarding overtime work as prescribed under LSA Article 36) and processing the responses, and, if consent has been obtained, checking on labor-related documentation and providing consultation and guidance to those workplaces that are considered to require guidance or have failed to respond, and referring any problematic workplaces to a labor standards inspector” (Hamaguchi 2019).

There are two issues involved in allowing the employees of the private sector providers that are selected (“the private sector providers”) to carry out the work of labor standards inspectors. Firstly, one issue is that there are specifications for the status and authority of the labor standards inspectors who conduct inspections and provide guidance. ILO Convention 81 (ILO 1947) specifies that “the inspection staff shall be composed of public officials whose status and conditions of service are such that they are assured of stability of employment and are independent of changes of government and of improper external influences” (Article 6) and that “labor inspectors shall be recruited with sole regard to their qualifications for the performance of their duties” and “adequately trained for the performance of their duties” (Article 7). The LSA prescribes that the central and regional inspection

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agencies fall under the direct jurisdiction of the national government (Article 99 LSA) and determines the process for qualification and change of status of a labor standards inspector to ensure the fair exercising of authority (Article 97 LSA). The Taskforce on Private Sector Outsourcing determined that the labor and social security attorneys employed by private sector providers should be granted the same authority as a public servant. It is not, however, clear from the minutes of the taskforce meeting what consideration was given to the issue of the interpretation of the ILO Convention and the LSA in the case of outsourcing inspection work to a private sector provider. The Labour Lawyers Association of Japan (2017) submitted a “Statement of Opinion on the Outsourcing of Labor Standards Inspection Work to Private Sector Providers” in June 2017, asserting that it could not be claimed “essential” to expand the utilization of private sector services (private sector outsourcing) without considering the possibility of providing more personnel for labor standards inspection offices in order to meet ILO criteria, and also spotted a flaw involved in outsourcing work to labor and social security attorneys.

The other issue is the nature of the work outsourced to private sector providers. Labor standards inspection offices typically deal with workplaces that are yet to submit an Article 36 Agreement to the office director<sup>10</sup> (MHLW, Prefectural Labour Bureaus, and Labour Standards Inspection Offices 2022, 6) by sending self-inspection forms and other such documents to confirm that there are no issues in accordance with legal regulations. The labor standards inspectors carefully review the self-inspection forms that are submitted by the workplaces and enter any workplaces that are determined to require administrative guidance to carry out inspections and provide guidance. These tasks have been outsourced to private sector providers. It is, however, challenging for private sector provider employees to determine whether violations have occurred and determine the necessity of administrative guidance and inspections and guidance solely on the basis of the self-inspection forms submitted by workplaces. For instance, a workplace may seek to avoid suspicion of a legal violation by providing inaccurate information on its self-inspection form. This form is the sole basis on which the private sector provider determines whether legal issues exist and the need for the administrative guidance and inspections and guidance; there is therefore a risk that cases where administrative guidance and inspections and guidance are necessary might go undetected. The MHLW must address the issue of outsourcing inspection work to private sector providers by compiling information such as the status of inspection offices and opinions of labor standards inspectors; and it must comprehensively review the trends in the provision of inspections and guidance and the developments after guidance to ascertain what impact has occurred since outsourcing was introduced in terms of deterrence from or rectification of violations of the LSA. It is also necessary for continued efforts to be made to explore the issues of private sector outsourcing and the scope of the work that is outsourced.

### **3. Ensuring fairness and uniformity and tackling increasing complexity and difficulty in practice**

As society and the economy change, the work of labor standards inspectors has become more complex, and inspections and guidance likewise have become more difficult. The criteria and definitions set out in the LSA and other regulations are ambiguous, with a considerable number of exemptions and special measures that are complex themselves. Thus, there arises doubt and criticism in the interpretation and the uniformity of handling of the LSA for some cases. Let us address this issue by reviewing responses from the “Inspector Questionnaire” that touch on the problems faced by labor standards inspectors.

Starting with the issue of the interpretation and handling of legal regulations, responses from the Inspector Questionnaire reveal that there are many areas where inspectors feel the need for criteria and definitions to be explicitly indicated. More specifically, these include: “the status and scope of managerial and supervisory personnel” (68%), “the scope of working hours” (54%), “the definitions of “*jōji* (literally, “regularly”)” and “*chitai naku* (literally, “without delay”)” (the expressions often used in the application submitting rules)” (44%), “the definition of statutory days off” (38%), and “the status and scope of workers” (35%). These issues include

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areas of a combination of various factors which must be taken into consideration in order for judgment to be made; and other areas which formerly applied but may no longer be fitting depending on changes in society and the growing diversity of working styles. Once there is doubt regarding such interpretations and handling, an institutional response has been adopted according to criteria that are consistent nationwide. It is necessary, therefore, for definite and updated judgment criteria to publicize so that the system is operated on the basis of the understanding not only of the administration but also enterprises and the workers themselves.

When inspectors carry out inspections and provide guidance, “there are detailed provisions specifying the format of any documentation issued, such as written recommendations for rectification, or guidance forms, and even prescribing the kind of language to be used on those documents.” It is suggested that the “guidelines and manuals have become elaborately detailed to an extent that make conducting the inspections and guidance needed really difficult,” and, while the fairness and uniformity of administrative guidance is ensured, it has been noted that there is a “tendency for even slight deviation from the manual to lead to negative appraisal within the administration,” as well as problems with regard to “balancing the quality and quantity—amount of the work” (Zenrodo 2020b).

A further aspect of inspection work that causes concern among labor standards inspectors at the inspection work is the potential for troubles with business operators and other such managers (“employers”) at the time of inspections. Responses from the Inspector Questionnaire show that 38% of respondents feel that there are “almost no safety measures for protecting oneself from trouble or other such issues.” Labor standards inspectors typically conduct inspections and guidance by visiting workplaces for surprise inspections—namely, without advance notice. While many labor standards inspectors recognize the necessity of such unannounced visits, it is not uncommon for surprise inspections to lead to troubles with employers. Looking at the responses to the Inspectors Questionnaire, the percentage of respondents who had “sensed possible physical danger or felt uneasy as a result of how an employer spoke or behaved” (45%) and the percentage who had been “physically assaulted or threatened by an employer” (17%) together constitute as much as 62% of respondents; this is a far higher percentage than those who responded that they “had never been verbally or physically assaulted or threatened” (38%). Addressing this issue, Morisaki (2015b) notes: “Inspectors generally visit workplaces alone. This is due to the simple reason of the lack of personnel. They are often the targets of violence against administrative officials. Conducting inspections alone also makes it difficult for more experienced staff to pass on their skills to younger personnel. Inspections and guidance could be conducted more intensively if inspectors were to visit in pairs.”

Given the issues set out in this section, there appears to be a need to increase the number of labor standards inspectors and ensure a system by which inspectors typically conduct visits in groups of two or more, as a means of guaranteeing the quality of the inspections and securing the safety of labor standards inspectors. This would also be preferable for developing an environment in which labor standards inspectors are able to concentrate fully on their fundamental role and fulfill their potential.

#### 4. Inspection and guidance on SMEs

As described in Section II, the operational policy of the labor standards inspection administration in postwar Japan has shifted over time from a soft line of seeking *consent and cooperation* to a hard line of *strict inspections and guidance*, and currently the labor standards inspection administration follows a proactive and deliberate approach to securing working conditions. However, it has been questioned whether such an operational policy should be uniformly applied to all enterprises.

More specifically, there have, since the enactment of the LSA, been strong opinions among business operators for recognition that the application of the law to SMEs is an “excessive burden” or that SMEs are not “equipped with the capability for incorporating the law” (Hiromasa 1997a). The issue was addressed by the *Rodo kijun ho*

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*chosa kai* (Labor Standards Act Review Committee), which was formed in 1955 following the 1952 and 1954 amendments of the LSA with the aim of responding to the Minister of Labor's request for deliberation of the necessity of amendments of the LSA, investigation, and debate of the related issues. The Labor Standards Act Review Committee's report indicates that consideration was given to the fact that due to the "extremely significant differences in capability among enterprises depending on their size and in turn considerable discrepancies in working conditions," "expecting all SMEs, with vulnerable business foundations, to provide the same working conditions as large enterprises exceeds the capacity of SMEs." On the other hand, the opinions noted also suggested that "contemplating the relaxation of requirements for SMEs is contrary to the fundamental objective of measures for protecting labor policy" and that "the notion of seeking to improve conditions in SMEs by allowing lower standards of working conditions is a logical fallacy, in which priorities are mistaken" (Hiromasa 1997b).

In April 2018, around 60 years after such deliberations, *Rodo jikan kaizen shidou/enjo team* (Guidance and Support Teams for Improving Working Hours) were launched at labor standards inspection offices nationwide (MHLW 2018a). These teams are made up of two groups—"Working Hours Review and Guidance Group" and "Working Hours Consultation and Support Group"—and both are the work of labor standards inspectors. The Working Hours Review and Guidance Groups conduct inspections and guidance for rectifying long working hours, while the Working Hours Consultation and Support Groups respond to requests for advice and provided assistance regarding information on legal regulations and labor management frameworks, mainly for the employers of SMEs. In other words, the role of the Working Hours Consultation and Support Groups is to provide assistance, and they refrain from seeking employers to rectify legal violations.

This approach was prompted by factors such as discussions in and outside of the Diet regarding the Work Style Reform Bill, which had seen strong calls for "consideration on SMEs and micro business owners" (Zenrodo 2020b). Securing approval of the bill's submission required incorporating provisions that gave special consideration to SMEs because organizations or bodies composed of SMEs had consistently criticized the government for the upper limits on overtime and work on holidays (Hamaguchi 2019).

However, only the large-scale labor standards inspection offices are well equipped with labor standards inspectors to form two groups: a considerable number of labor standards inspection offices lack enough inspectors. Thus, individual labor standards inspectors are therefore required to fulfill two different roles, working under two different business titles. Responses to the Inspector Questionnaire show that some inspectors feel that they should not engage in the work of the Working Hours Consultation and Support Group, which involves providing only consultation and support, and not issuing recommendations to rectify violations.

The Working Hours Consultation and Support Groups were not the only form of special consideration given to SMEs. On December 28, 2018, the "Basic Policies on Labor" (hereafter "the Basic Policies") were approved by the Cabinet in accordance with the Act on Comprehensive Promotion of Labor Policies. The Basic Policies prescribed that "in conducting inspections and providing guidance, approaches shall be taken from the perspective of SMEs, which entail taking into consideration the trends in working hours, the extent to which the business is able to secure personnel, the current developments in business transactions and other such circumstances in the SMEs, and, even in the event that a violation of the LSA, the Industrial Safety and Health Act or other such labor standards-related legislation is identified, the employer shall be encouraged to make improvements on their own accord, in light of the circumstances of the SME concerned" (Chapter 2.1.(3)) (MHLW 2018b, 4–5). Namely, even in cases where violations were identified, the approach would be to *encourage* the employer to make improvements *on their own accord*. The "Code of Conduct for Labor Standards Inspectors,"<sup>11</sup> which was formulated on January 11, 2019, in response to the Basic Policies, also prescribed that "in the event that a legal violation has occurred at an SME, the inspector shall encourage the employer to make improvements on their own accord, in light of the trends in working hours, the extent to which the business is able to secure personnel,



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the current developments in business transactions and other such circumstances” (Article 5). Namely, the principle that even in cases where legal violations were found, the approach would be to *encourage* employers to make improvements *on their own accord* was also prescribed in the Code of Conduct.

Provisions on the work conduct of labor standards inspectors had traditionally been prescribed in the “Code of Duties for Labor Standards Inspectors,” enacted in 1950. This Code of Duties states that “the primary mission of labor standards inspectors is, above all, to secure working conditions for workers through the enforcement of the labor standards laws and regulations, thereby improving the social and economic benefits for the public and in turn serving the people as a whole” (Tatsuoka 1997). The LSA also prescribes that “the standards for working conditions fixed by this Act serve as minimum standards; a party to a labor relationship must not cause working conditions to deteriorate using these standards as the grounds for doing so, but instead must endeavor to improve them” (Article 1, Paragraph 2).

In fact, it is common to withhold the enforcement of an amendment of a law in the case of certain sizes of workplace. However, it is difficult to rationalize withholding the rectification of legal violations by leaving the improvement to measures to be taken by SMEs on their own in the case of laws that have been in effect for a considerable period of time, even with the gradual application of the law. There are currently approximately 32.17 million workers employed at SMEs across Japan, around 70% of all employees (The Small and Medium Enterprise Agency 2020). It prompts the question whether entrusting employers themselves to improve working condition that fall below the “minimum standards” prescribed in LSA Article 1 could be tantamount to abandoning these workers of SMEs.

If the legal violations of SMEs are dealt with as prescribed by the Basic Policies and Code of Conduct described above—that is, with nothing more than polite explanations and encouragement for employers to take action themselves—and the necessary measures are not taken, if a worker is somehow injured or adversely affected, the labor standards inspection office that did not take the necessary measures may be called into question for its “lack of administrative action.” This is an issue that surely requires further debate.

There are also concerns that the MHLW policy of accepting groundless complaints or unreasonable requests from employers could lead to a decline in the morale of inspectors and eventually discourage them from protecting worker safety. Around the time that the Code of Conduct was formulated in 2019, the MHLW set up an email contact point on its website for complaints, requests, and opinions regarding the inspection and guidance work of labor standards inspection offices.<sup>12</sup> There is no shortage of business operators who find inspections and guidance detrimental to the operation of their business and the irrational pretext of the administration. Under such circumstances, labor standards inspectors have been tackling difficult tasks with a strong sense of justice and responsibility.

In this section we drew on the survey results of the Inspector Questionnaire to investigate the current developments and issues of labor standards inspection administration from four perspectives. Despite the fact that there has typically been a shortage of labor standards inspectors, the roles and work expected of labor standards inspectors have increased given the personnel shortages that resulted from the reform of public servants, such that labor standards inspectors are unable to concentrate fully on their primary role of conducting inspections. There has also been a demand from society in recent years for labor standards inspection offices to perform an increasingly diverse range of roles. Supplementing the shortage of labor standards inspectors with outsourcing to private sector providers entails a number of unresolved issues that need further discussions, such as the problems regarding the required authority and status of the labor standards inspectors and the quality of the judgments made by such private sector providers. It is also not possible to confidently argue that there have been significant improvements in the labor environments of SMEs in comparison with around 60 years ago—when it was argued that “the notion of seeking to improve conditions in SMEs by allowing lower standards of working conditions is a logical fallacy, in which priorities are mistaken” (Hiromasa 1997b, 155). Given such



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circumstances, there are concerns that the recent basic approach to handling legal violations by SMEs—that is, entrusting employers to make improvements on their own accord—is in effect abandoning the protection of workers employed by SMEs in Japan.

## V. Concluding remarks

While Japan has a noted shortage of labor standards inspectors, the roles and work expected of labor standards inspection offices have become increasingly varied in recent years. The amount of work assigned to labor standards inspectors has also risen with the trend toward personnel cutbacks because of the reform to the system of public servants; despite increase in the number of labor standards inspectors, they are still unable to fully concentrate on their primary work of conducting inspections. Since the late 2010s, the possibility of outsourcing inspection services to the private sector has been explored as a means of compensating for the shortage of labor standards inspectors. In 2018, nationwide private outsourcing of some services began for workplaces that had not yet submitted the 36 agreements to the Labor Standards Inspection Office. It is necessary to empirically examine the effectiveness and the problems identified by the labor standards inspectors. Furthermore, discussion is needed on whether such methods lead to the protection of workers.

Looking back on the history of the labor standards inspection administration as shown in this paper, it is clear that its purpose and operational policy have changed over time and with changes in attitudes. In the 1960s, the Ministry of Labour (current MHLW) established the operational policy that securing the legally prescribed working conditions was “a natural premise for running an enterprise”; now, around 60 years later, while labor environments have improved in Japan’s SMEs, it is questionable whether it is enough to allow the administrative guidance of SMEs to merely constitute encouraging employers to address legal violations by making improvements on their own accord. Who will protect the workers of SMEs who are unable to rely on a labor union? Regardless of changes in the times, or the changes in ways of working, it is the labor standards inspection offices that are responsible for the protection of workers. Labor standards inspection offices need to strive to maintain a balance between their two contrasting roles of understanding and supporting enterprises on the one hand and conducting inspections with the possibility of imposing sanctions on the other, as they continue to serve as a presence that maintains an environment in which all workers are able to work at ease.

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### Notes

1. See Ministry of Foreign Affairs (2013). The source document in English is below.

UN Economic and Social Council, Concluding Observations on the Third Periodic Report of Japan, adopted by the Committee on Economic, Social and Cultural Rights at its fiftieth session (29 April–17 May 2013), E/C.12/JPN/CO/3. See UN Treaty Body Database, <https://digitallibrary.un.org/record/749309?ln=en>

2. This section is based on Ministry of Labour, Labour Standards Bureau (1997).

3. See Oka (1913) for details of the factory inspection system at the time.

4. Article 427, Paragraph 9 of the 1919 Treaty of Versailles (Treaty of Peace between the Allied and Associated Powers and Germany) set out provisions on the system of inspection and women’s participation. In 1923 the ILO adopted the Labour Inspection Recommendation 20, a recommendation on general principles for the organization of the inspection system to secure the implementation of the regulations and provisions intended to protect workers, which set out the need for the establishment of inspection systems as well as the scope of inspections, and aspects regarding inspectors such as their occupational authority and organization. ILO Labour Inspection Recommendation No. 20, ILO [https://www.ilo.org/tokyo/standards/list-of-recommendations/WCMS\\_238976/lang--ja/index.htm](https://www.ilo.org/tokyo/standards/list-of-recommendations/WCMS_238976/lang--ja/index.htm) (Accessed on March 1, 2021).

5. The labor standards inspectors deal with a number of laws including the Labor Standards Act, the Minimum Wage Act, the Industrial

Safety and Health Act, the Pneumoconiosis Act, the Industrial Homework Act, and the Act on Ensuring Wage Payment.

6. General Affairs Department, responsible for accounting and other such areas, currently no longer in fact exist due to personnel cutbacks, except at certain large labor standards inspection offices.

7. MHLW explanatory materials for the 1st meeting of the Taskforce on Outsourcing of Labor Standards Inspections to Private Sector Providers (March 16, 2017). It is, however, important to note that the scope of work of labor inspectors differs from country to country.

8. Results of an inquiry by the author to the General Affairs Division, Labor Standards Bureau, Ministry of Health, Labour and Welfare (December 4, 2020).

9. Hiring numbers are from the *Annual Report* (2013, 2014, 2020) of the National Personnel Authority, passing marks are from public materials (2012, 2013, 2019) of the National Personnel Authority, which are published and refreshed on the website each year and archived at National Diet Library. The passing marks for 2012 and 2013, which are from prior to the period for which documents are retained, were provided by the website *Sensei no dokugaku kōmuin juku*. The passing marks are not raw scores, but standard scores drawn from mean scores, standard deviations, and points allocations ratios for exam questions, for which the pass borderline has declined. <https://senseikoumuin.com/roukibairitu/> (Accessed on January 20, 2021).

10. In principle, an employer shall not have a worker working for more than 40 hours per week or more than eight hours per day....In the event that an employer has legally concluded an Article 36 Agreement (a labor-management agreement relating to overtime work and work on days off) with the majority of its employees and filed this with the relevant labor standards inspection office, the said employer can allow employees to engage in overtime work and work on days off within the scope of the agreement (MHLW 2022, 6). <https://www.mhlw.go.jp/new-info/kobetu/roudou/gyousei/kantoku/dl/040330-3.pdf> (Accessed on June 29, 2022).

11. See “Code of Conduct for Labor Standards Inspectors” (in Japanese) at <https://www.mhlw.go.jp/content/11200000/000711719.pdf> (Accessed on March 1, 2021).

12. See “Email point of contact for complaints regarding inspections and guidance” (in Japanese) at [https://www.mhlw.go.jp/stf/newpage\\_03073.html](https://www.mhlw.go.jp/stf/newpage_03073.html) (Accessed on March 1, 2021).

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