ISSN 2433-3689

# Japan Labor Issues

Autumn 2025

Volume 9 Number 54



The Japan Institute for Labour Policy and Training

Japan Labor Issues


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*Japan Labor Issues* website
https://www.jil.go.jp/english/jli/index.html
*To sign up for mail delivery service*
https://www.jil.go.jp/english/emm/jmj.html

*Published by*
The Japan Institute for Labour Policy and Training
8-23, Kamishakujii 4-chome, Nerima-ku, Tokyo 177-8502, Japan
https://www.jil.go.jp/english/

ISSN 2433-3689

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*Key topic*

# The MHLW Study Group Proposes the Future Direction of Labor Standards-Related Laws

In January 2025, the Ministry of Health, Labour and Welfare (MHLW) published a Report compiled by the Study Group on Labor Standards-Related Laws (chaired by Professor ARAKI Takashi, The University of Tokyo (at the time; currentry Chairperson of the Central Labour Relations Commission); hereinafter referred to as the "Study Group")[1], in which the Study Group stated that it is high time to review the roles that labor standards-related laws should play in light of structural changes in society and the economy and thoroughly consider the future vision for the labor standards-related laws. Pointing out the importance of balancing the two perspectives of "protecting" and "supporting" workers, the Study Group discussed a broad range of topics, including how to understand the concepts of "worker" and "business" under the Labor Standards Act (hereinafter referred to as the "LSA") and how to solve issues involved in the majority representation system with a view to making labor-management communication more active.

## I. Key Focus of Discussion

The Study Group roughly divided the key focus of discussion into two categories: "general issues common to all labor standards-related laws" and "issues specific to working hours-related laws." In the Report, the Study Group discussed the general issues separately in relation to the following three topics: (i) the concept of "worker" under the LSA; (ii) the concept of "business" under the LSA; and (iii) ideal form of labor-management communication. As specific issues, it focused on working hours-related laws and discussed issues in the following three areas: (1) regulations on the maximum working hours; (2) regulations on release from work; and (3) regulations on premium wages.

With regard to the specific issues, the Study Group considered the necessity to review the related systems, such as regulations on upper limits of overtime work, while taking into account the Supplementary Provisions of the Act on the Arrangement of Related Acts to Promote the Work Style Reform (Work Style Reform-Related Act) that was enacted in June 2018. In Japan, it has been customary legislative practice, not only in the area of labor and employment law, to ensure that a bill that has generally gained consensus will be enacted smoothly by including "supplementary provisions" in the bill to stipulate that necessary review will be conducted at a certain point after the enacted bill comes into effect, based on the discussion during the bill drafting process. The Work Style Reform-Related Act is a blanket law to amend the eight labor-related acts, including the LSA, and the amended laws have come into effect in succession, starting with April 1, 2019. In the Supplementary Provisions of the Work Style Reform-Related Act, it is stated that the government is to review the relevant provisions of the amended acts in consideration of such matters as the enforcement status of these provisions, and take required measures based on the results of its review if it finds it necessary to do so.

## II. General Issues

### (1) "Worker" under the LSA

As the first general issue common to all labor standards-related laws, the Study Group discussed the legal and practical challenges associated with the concept of "worker" in contemporary labor context. In Japan, in order to ensure consistent determinations nationwide under the administration inspection framework, the eligibility as a "worker" has been determined comprehensively in reference to the report published by the MHLW Study Group on the Labor Standards Act on December 19, 1985, titled "Criteria for 'Worker' under the Labor Standards Act" and based on the actual conditions of individual working arrangements. However, in view of the subsequent developments, such as changes in the industrial structure, the diversification of working arrangements, and the rapid advancement of digital technology, the Study Group in 2025 pointed out as follows: "In order to accommodate new ways of working and to ensure that the LSA is applied to those who are actually "workers," it is necessary to enhance the foreseeability of the determination on the worker status"; "it may be necessary to thoroughly analyze and study the cases and court precedents accumulated over approximately 40 years, taking into account academic theories, and consider the need for a review of the definition of "worker" under the LSA, including whether there are any points where the wording should be revised to make it more appropriate." With regard to platform workers, whose worker status has been an issue in recent years, the Study Group stated that, while keeping an eye on the trends in legislative measures taken in other countries, the expert study should be continued to comprehensively review the criteria for determination on this issue, including "how to consider not only the relationship of personal subordination but also the workers' economic dependence and the imbalance in bargaining power between these workers and their clients."

### (2) "Business" under the LSA

The LSA once defined the scope of its application by enumerating applicable types of business in Article 8. It is understood that the LSA adopted the position to apply it to each "business" or establishment as a unit of location (the principle of applicability on the basis of business (or establishment)). The Study Group discussed this rule of applying the LSA on a establishment basis.

As a result of the discussion, the Study Group pointed out that "the LSA is designed on the premise of the principle of applicability on the basis of business (establishment), and that 'business' or establishment remains effective as a concept of location in defining the regional scope of application of the LSA and ensuring the effectiveness of supervision and guidance." In light of these points, the Study Group recommended that, at present, the approach of determining the applicability of the LSA on an establishment basis should be maintained as a general rule. The Study Group also suggested that it may be possible to clarify that if equal working conditions are specified for workers in each company or each group of multiple establishments and appropriate labor-management communication is conducted at the company level or across the multiple establishments, it would be an option to conduct labor-related procedures at the company level or across the multiple establishments by agreement between labor and management.

On the other hand, with the spread of telework, location-independent work has become increasingly common. The Report noted that there may be cases where it is difficult or unreasonable to identify the entity to be regulated using the traditional concept of "business" based on physical space or location, which may affect the application of the LSA. From the perspective of ensuring the effective application of the legal system, the Report pointed out that "it is necessary to examine the concept of 'business' in labor standards-related laws, including how labor-management communication should be conducted in the future."

### (3) Ideal form of labor-management communication

Regarding the ideal form of labor-management

communication, the Report first presented a view that it is desirable to revitalize labor unions and that it is necessary to work quickly to resolve the issues involved in the current majority representation system and to create a foundation for substantive and effective labor-management communication. It explained the significance and the challenges of labor-management communications as follows. Under the LSA, if there is a labor union that is organized by the majority of the workers at that establishment, that labor union, or if there is no such labor union, the representative of the majority of the workers at that establishment, is the party representing the workers to conclude a labor-management agreement. Therefore, it is desirable, first of all, that measures be taken to revitalize and organize labor unions. It is important that an environment be established in which labor and management can communicate on as equal footing as possible at all establishments, including those without a labor union organized by the majority of workers, so that the statutory standards can be adjusted to or replaced with appropriate ones. However, the estimated union membership rate has been declining over time. The representative of the majority of workers is "important not only for communication between workers and employers, but also for communication within a group of workers in the course of collecting and coordinating opinions of workers, with a view to ensuring that labor and management will make rules in the establishment through more effective communication between them." However, the representative of the majority of workers is not systematically stipulated or arranged in the LSA, but is only specified in certain clauses that provide for the procedures by which the representative of the majority becomes a party to the conclusion of an agreement with the employer. In addition, there are some business establishments where the representative of the majority of workers is not properly selected. "In many cases, since it would be a burden for workers to play the role of the representative of the majority, and not all workers have knowledge and experience in labor-management relations and communication, it is difficult to find a worker who is willing to be a candidate for the representative, or even if there is a candidate who is selected as the representative, they might not be able to fulfill the role of the representative appropriately." The Report mentioned that it may be necessary to clarify the particulars regarding the representative of the majority of workers, including the definition, the selection procedure, the provision of information and facilities by the employer, the availability of consultation support by government agencies and others, and the number of the representatives of the majority and their terms of office.

## III. Specific Issues

### (1) Regulations on upper limits of overtime work and work on days-off

The Work Style Reform-Related Act which introduces the following regulations on upper limits of working hours came into effect in April 2019: "in principle: 45 hours per month, 360 hours per year; under special clauses (based on labor-management agreement): less than 100 hours per month, average of 80 hours or less per month, and 720 hours per year." The Report stated that the overall hours of overtime work and work on days off have been gradually decreasing as a result of the enforcement of this Act, and that the effects of the regulations on upper limits in reducing working hours are becoming apparent to some extent. However, it also stated that because the impact of the COVID-19 pandemic cannot be ignored after 2020, "at this point, it is necessary to continue to monitor the implementation status of the regulations on upper limits and their impact in order to create social consensus to change the upper limits themselves." At the same time, the Report mentioned that "efforts should be made to bring the overtime work limit closer to 45 hours per month and 360 hours per year, which are the principles in a labor-management agreement under Article 36 of the LSA." With regard to automobile drivers and medical practitioners, the Report stated that, although the regulations on upper limits of overtime work and work on days off have been in effect since FY2024, "the upper limits actually

applied to these workers are still longer than those applicable to workers in general," and therefore that it is necessary to continue to examine the relevant issues on a mid to long-term basis, including appropriate measures to ensure good health and efforts to apply the general upper limits to these workers.

From the perspective of "protecting" workers, the Report mentioned that "it may be possible to take some measures at an early stage," among measures to encourage companies to reduce the working hours of their employees by requiring them to disclose information on working hours, and to introduce regulations on release from work, such as days off. With regard to the public disclosure of information on working hours, the Report emphasized that, in addition to reducing working hours through the mandatory regulations under the LSA , in order to improve the working environment of individual companies through the adjustment function of the labor market, "it is necessary to enable workers to obtain sufficient information on the length of working hours and ease of taking leave at each company when finding a job or changing employment, so that they can choose the company where they wish to work." In particular, the Report stated that it is desirable that companies disclose accurate information on the actual situation of overtime work and work on days off of their employees. The Report pointed out that in this respect, various frameworks for information disclosure have been set in place under the current legislation, including the Act on the Promotion of Women's Active Engagement in Professional Life and the Act on Advancement of Measures to Support Raising Next-Generation Children, but it is desirable to enable workers and job seekers to view the relevant information at a glance.

The Study Group examined two issues regarding flexible ways of working, such as telework, i.e., improvement of flexible work arrangements and the possibility of introducing a new version of the "deemed working hours system" for telework. With regard to improving flexible work arrangements, teleworkers tend to mix their working hours with non-working hours, such as housework and childcare, in one working day. Under the current system, flexible work arrangements cannot be partially applied. Therefore, the Report suggested that flexible work arrangements should be reviewed in accordance with actual conditions so that workers can easily use these arrangements when telework days and regular workdays are mixed during the prescribed period.

In connection with the applicability of the existing deemed working hours system to telework, first, the Report pointed out that this system cannot be applied under the system of deemed working hours outside the establishment, discretionary work system for professional work (*senmon gyomu gata sairyo rodo sei*), or discretionary work system for corporate planning (*kikaku gyomu gata sairyo rodo sei*) unless the requirements under the respective systems are satisfied. The Report also expressed concern about the management of working hours during telework. Specifically, since employers are required to manage actual working hours even when flexible work arrangements are applied, there may be cases where the employer justifies excessive monitoring of work at home, or a dispute arises between the worker and the employer over the number of hours worked (e.g., how to deal with time off from work to do housework or childcare). For these reasons, the Report suggested the possibility of establishing a new version of the deemed working hours system applicable specifically to work from home, with measures to ensure workers' good health set in place, as an optional system that workers can choose. The Report added that such a system could be introduced "on condition of individual workers' consent in addition to collective agreement between the workers and the employer, and based on the requirement that workers be allowed to withdraw their consent even after the system has been applied to them." Furthermore, from the viewpoint of preventing long working hours during telework, some concerns and opinions were expressed, such as "it may be necessary to take measures to monitor working hours and check health conditions to ensure workers' good health," and "even if the right to withdraw consent is established, if the system is designed in a manner that, for example, a worker

would no longer be able to telework after withdrawing their consent, the right to withdraw could not be exercised in effect." Therefore, the Report stated that, after understanding the actual situation, "it is considered necessary to continue to study this issue, including how to ensure workers' good health effectively."

With regard to workers, such as those in a position of management or supervision (managers and supervisors), to whom the regulations on actual working hours do not apply, the Industrial Safety and Health Act requires that their working hours be monitored, and they are subject to face-to-face guidance by a physician in terms of their long working hours. However, up until now since the LSA came into effect, no special measures have been taken to ensure good health and welfare of these workers. The Report argued that measures to ensure good health and welfare should be considered for managers and supervisors. Under the LSA, workers categorized as managers and supervisors are fully exempt from the regulations on working hours—except for the rules on night work—without requiring their consent. The legal framework governing this system differs from that of both the discretionary work system and the Highly Professional System (a special exemption system), which may not be introduced unless measures to ensure good health and welfare of workers are taken. The Report highlighted these distinctions and suggested that the content of such protective measures for managers and supervisors should be carefully considered, including the possibility of codifying them in legislation outside of the scope of the LSA. Furthermore, the Report stated that "there are cases in which workers who originally do not fall within the category of managers and supervisors are treated as such," and indicated the necessity to clarify the requirements for managers and supervisors based on the purpose of the current system for these workers.

**(2) Regulations on release from work**

There are arguments on "time off from work" regarding how much time should be set aside as time for recovery from work, time for private life, etc. The Report summarized issues concerning breaks, days off, and the work interval system (rest between work) as follows.

The LSA provides in Article 34, paragraph (1) that an employer must provide a worker with at least 45 minutes of break time during working hours if working hours exceed 6 hours, and at least one hour of break time during working hours if working hours exceed 8 hours (the "obligation to provide break time"). Paragraph (2) of that Article provides that an employer must provide all workers with the break time at the same time except where the employer has concluded an agreement to the contrary with the representative of the majority of workers (the "principle of simultaneous break time"). The Study Group focused on the following issues to be discussed regarding the obligation to provide break time: (i) break time that is required to be provided under the LSA is only one hour even in cases where workers work longer hours well in excess of 8 hours per day; and even if the actual working hours are the same, the length of break time differs depending on whether these working hours are treated as hours worked on one working day or on two working days (as in the case of working for two shifts consecutively under the three-shift rotation system, for example).[2] The Study Group stated that a possible measure for improvement would be to amend the LSA by stipulating that "an employer must provide a worker with at least 45 minutes of break time for overtime work exceeding 6 hours, or at least one hour of break time for overtime work exceeding 8 hours," but it concluded that such amendment may not be necessary because: (i) "the length of overtime work that would occur on a working day often cannot be ascertained in advance, and if it is not ascertained in advance, it is impossible to provide a combined amount of break time effectively, and therefore, when overtime work occurs, workers often work while taking breaks as needed"; and (ii) "as overtime work is work beyond a worker's prescribed working hours, some workers would prefer to finish their work earlier and go home rather than take a break." The Study Group also discussed whether the principle of simultaneous break time under paragraph (2) of Article 34 should

be revised and whether there are any procedures that would be required for revision, because this principle is based on the assumption of factory work. The Report stated that "taking into account the perspective of ensuring the effectiveness of breaks, the Study Group did not reach the conclusion that the principle under Article 34, paragraph (2) of the LSA should be reviewed immediately."

With regard to days off, the Study Group discussed "ensuring regular days off" and "specifying statutory days off." Under the current system, employers are required to provide workers with at least one day off each week as a statutory day off in principle, while they are allowed to adopt a variable day off system that provides 4 or more days off over a four-week period (4 days off per four-week period). However, depending on how busy the work is and the characteristics of the type of business or occupation, there have been cases where workers have been forced to work many consecutive days. The Report pointed out that, under the current statutory day off system, employers are permitted to provide workers with 4 or more days off over a four-week period instead of providing at least one day off per week. Consequently, "even if the employer provides statutory days off unevenly and thereby causes the workers to work many consecutive days, this does not constitute a violation of the LSA." In theory, this means that an employer could require workers to work up to 48 consecutive days without treating them as having worked on days off. The Report stated that "it may be necessary to consider measures to minimize the maximum number of consecutive working days." The Report also mentioned that, under the LSA, employers may require workers to work on statutory days off on if a labor-management agreement under Article 36 includes a clause permitting such work and premium wages are paid. Since the LSA does not impose a limit on the number of days that workers can work on their days off, it is theoretically possible for employers to require an unlimited number of consecutive days, as long as the arrangement falls within the scope of the agreement and premium wages are paid. The Report presented a view that "such manner of working consecutive days is not good for workers' health even if it is arranged in a labor-management agreement, and therefore certain limits should be imposed on work on days off, as in the case of the upper limits on overtime work." Then, the Report stated that, "taking these points into consideration comprehensively, and in order to cover cases in which a clause on work on days off is included in a labor-management agreement under Article 36 of the LSA, it should be provided in the LSA that 'an employer must not have workers work consecutively for a period exceeding 13 days,' in order to prevent workers from working consecutively for 2 weeks or more, with reference to the criteria for recognizing mental disorders as industrial injuries."

For workers who are entitled to 10 days or more of annual paid leave per year, employers must designate the timing for taking leave for 5 days each year (the "obligation to designate the timing for taking leave"). The Study Group discussed matters including the number of days for which the timing must be designated and the number of days for which workers can take leave on an hourly basis (currently 5 days), but concluded that it does not seem necessary to immediately change these matters because the percentage of days of leave actually taken has not reached the government's target.

Under the current system, companies are required to endeavor to introduce the "work interval system," as stipulated in Article 2 of the Act on Special Measures for Improvement of Working Hours Arrangements. There are no provisions in laws or regulations that specify the number of hours of work intervals, the workers who are eligible for this system, or other points to be considered when introducing the system. In Japan, the percentage of companies that have introduced this system is not very high, whereas other countries operate it while stipulating various exemptions. The Report stated that, "The Study Group sees the need to consider strengthening the relevant regulations with a view to accelerating its initiative to introduce the system and making it mandatory."

In addition, with regard to the issue of the right to disconnect, the Report stated that, in considering the

introduction of this right in Japan, "it is necessary for labor and management to consider comprehensive internal rules, covering work methods and business development, as to what types of contact are acceptable outside working hours and what types can be refused," pointing out the necessity to consider proactive measures to promote discussion between labor and management on this issue (e.g., formulation of guidelines).

**(3) Regulations on premium wages**

Based on the purpose and objective of premium wages for overtime and work on days off, i.e., "(i) to compensate workers for overtime work, work on days off, and night work outside of regular working hours, and (ii) to reduce these kinds of work by creating financial disincentives for employers," the Study Group discussed how premium wages are functioning and what issues they are posing, in light of the current economic situation and the diversification of working arrangements. The Report introduced various opinions expressed by the participants in the Study Group, including the following: "while premium wages are expected to function in encouraging companies to reduce overtime work, they might serve as incentives for workers to work longer hours for the purpose of gaining more wages"; "premium wages for night work have the nature of compensation for jobs with high work intensity, but, from the viewpoint of health management, they are paid as a kind of danger allowance"; "premium wage rates in Japan are lower than those in other countries and may not be sufficiently effective in reducing long working hours"; and "if workers who have discretion in deciding their working hours (e.g., managers and supervisors, and workers under the discretionary work system) choose to work late at night themselves, rather than being ordered by their employer, they might not be able to claim premium wages." The Report pointed out that whatever measures are taken, they must be examined based on sufficient evidence, and that it is necessary to collect information, including assessment of actual conditions, and to study the issue over the medium to long term.

Under the current system, when workers engage in multiple jobs, they are entitled to premium wages based on their aggregated working hours across all employers, pursuant to Article 38 of the LSA. Therefore, in accordance with the MHLW guidelines, premium wages must be calculated either by (i) aggregating the prescribed working hours in the order in which the labor contracts were concluded and then calculating overtime hours in the order in which they occurred, or (ii) by applying a management model to have workers work within the pre-determined working hours at each workplace. As a result, it is necessary to manage the hours worked respectively for the multiple jobs on a daily basis, and in the process, the workers themselves also need to report their working hours in detail.

The Report pointed out the following issues involved in the current system. The complicated day-to-day operations described above may make it difficult for companies to permit their workers to engage in an employment-based multiple jobs or to hire workers from other companies who wish to engage in multiple jobs, or may be one of the factors that cause workers to engage in multiple jobs without reporting it to their company. In addition, the Report also noted that the attitude of companies of not allowing their workers to engage in an employment-based multiple jobs may lead to workers giving up having multiple jobs. The Report further presented a view that, as workers engage in multiple jobs not under the order of their employer but based on their own voluntary choice or decision, "it is possible to understand that the original purposes of premium wages, such as compensating workers when the employer makes them work overtime and reducing overtime work, do not apply to both the employer of the primary job and the employer of the secondary job through the aggregation of working hours." The Report also indicated that the necessity to aggregate the hours worked for multiple jobs may make it difficult for companies to permit their workers to have multiple jobs, or to hire workers from other companies who wish to engage in multiple jobs. The Report further stated: workers are people who work under the directions and orders of their employers,

and ensuring good health of workers is a prerequisite even when workers have different employers, and therefore, when workers have multiple jobs, the management of working hours for calculating their wages and the management of working hours for ensuring their good health should be differentiated.

In light of the current situation as described above, the Report recommended that the current system be reviewed, stating that "efforts should be made to revise the system so that the aggregation of working hours will not be required for the payment of premium wages, while maintaining the rule of aggregating working hours for the purpose of ensuring workers' good health." For that to happen, there would be cases in which the aggregation of working hours is necessary and cases in which it is not necessary for the application of the law, and the Report therefore stated that "the development of a legal system would be required, instead of changing the interpretation of Article 38 of the LSA." As matters to keep in mind when reviewing the system, the Report pointed out as follows: "at the same time, if the employers would no longer be required to aggregate working hours for calculating the premium wages under the revised system, they should make even greater efforts to ensure the good health of workers who engage in multiple jobs"; and "the system should be designed in a manner that the employers would not act to avoid the regulations on premium wages in the case where workers work for multiple businesses under the order of the same employer."

**Notes**

1. The participants in the MHLW Study Group on Labor Standards-Related Laws are as follows.
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   MIZUMACHI Yuichiro
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   YAMAKAWA Ryuichi
   Professor, School of Law, Meiji University
2. For example, in the case of working for 8 hours as prescribed working hours and 8 hours as overtime work on the same working day, statutory break time is one hour; in the case of working for 8 hours as prescribed working hours on the first day and another 8 hours as prescribed working hours on the second day under the three-shift rotation system, statutory break time is 2 hours.

*News*

# Estimated Unionization Rate at Record Low of 16.1% for Third Consecutive Year: Results of MHLW's "Basic Survey on Labor Unions" in 2024

The estimated unionization rate—the percentage of union members to all employees in Japan—fell to 16.1%, renewing the record low from the previous year, according to the results of the 2024 "Basic Survey on Labour Unions" by the Ministry of Health, Labour and Welfare (MHLW). This marks the third consecutive year the rate has hit a new historic low. The number of labor union members also declined by 25,000 compared to the previous year, totaling 9.912 million, while the number of female and part-time labor union members increased.

## I. Continued decline in union membership

According to the survey results, the number of "single labor union" (*tan'itsu rodo kumiai*)[1] decreased by 276 unions (1.2%) from the previous year to 22,513 unions. This marks the 25th consecutive year of decline, dating back to 2000. The number of labor union members stood at 9.912 million in 2024, a decrease of 25,000 (0.3%) year-on-year. Membership once recovered to the 10-million mark in 2018 but began to decline in 2021, dropping below 10 million again in 2022. The downward trend has not been reversed since.

## II. Female labor union members increased by 32,000, reaching 3.506 million

In addition to these trends in union membership, the number of employed persons (based on the raw figures of June from the *Labour Force Survey* (Ministry of Internal Affairs and Communications)) increased by 300,000 year-on-year to 61.39 million. As a result, the estimated unionization rate in 2024 declined by 0.2 percentage points from 16.3% to 16.1%, marking the lowest level since the survey began in 1947. The rate gradually declined for nine consecutive years from 18.5% in 2010, once briefly rebounded to 17.1% in 2020, began falling again from 2021, and continued to decline further. Meanwhile, the number of female labor union members stood at 3.506 million, an increase of 32,000 (0.9%) compared to the previous year. The estimated unionization rate among them—the proportion of female labor union members to all female employees in Japan—was 12.4% in 2024, unchanged from the previous year.

## III. Part-time worker union membership also rises by 53,000 to 1.463 million

The number of part-time labor union members rose by 53,000 (3.8%) to 1.463 million in 2024, compared to 1.41 million in the previous year. Their share of total union membership increased by 0.6 percentage points to 14.9%, up from 14.3% the year before. The estimated unionization rate among part-time workers rose by 0.4 points to 8.8%, compared to 8.4% in the previous year (Table 1).

## IV. Decline in union membership in public and transport sectors

By industry, the highest number of union members was in manufacturing (2.615 million persons; 26.5% of the total), followed by wholesale and retail trade (1.56 million; 15.8%), construction

Table 1. Number of part-time workers in labor union members and estimated unionization rate (Unit labor unions): 2020–2024

| Year | Number of union members who are part-time workers[1] | Change from previous year | Year-on-year change rate | Proportion of total union membership | Number of employees[2] | Estimated unionization rate[3] |
|---|---|---|---|---|---|---|
| | 1,000 persons | 1,000 persons | % | % | 10,000 persons | % |
| 2020 | 1,375<br>(1,041) | 42<br>(34) | 3.1<br>(3.3) | 13.7<br>(30.4) | 1,578<br>(1,153) | 8.7<br>(9.0) |
| 2021 | 1,363<br>(1,040) | -12<br>(-1) | -0.8<br>(-0.1) | 13.6<br>(30.1) | 1,628<br>(1,213) | 8.4<br>(8.6) |
| 2022 | 1,404<br>(1,059) | 41<br>(19) | 3.0<br>(1.8) | 14.1<br>(30.6) | 1,653<br>(1,221) | 8.5<br>(8.7) |
| 2023 | 1,410<br>(1,047) | 6<br>(-12) | 0.4<br>(-1.1) | 14.3<br>(30.2) | 1,671<br>(1,231) | 8.4<br>(8.5) |
| 2024 | **1,463**<br>**(1,090)** | **53**<br>**(-43)** | **3.8**<br>**(4.1)** | **14.9**<br>**(31.2)** | **1,667**<br>**(1,219)** | **8.8**<br>**(8.9)** |

*Source*: MHLW, "Reiwa 6 nen, Rodo kumiai kiso chosa no gaikyo" [Overview of the 2024 Basic Survey on Labor Unions], 4.
*Notes*: Values in parentheses indicate figures for women.
1. "Part-time workers" are workers who meet either of the following conditions: (a) their scheduled working hours per day are shorter than those of ordinary workers; (b) their scheduled working hours per day are the same as those of ordinary workers, but their number of scheduled working days per week is fewer. "Full-time employees" are regular employees who do not fall under the category of *pato* or part-time workers.
2. "Number of employees" is based on the raw figures from the *Labour Force Survey* (Statistics Bureau, Ministry of Internal Affairs and Communications) for June of each respective year. It includes the number of employees working less than 35 hours per week excluding those classified as "regular staff/employees" by employment type, plus the number of employees working 35 hours or more per week who are referred to as "*pato*" at their workplace (i.e., so-called "full-time part-timers").
3. "Estimated unionization rate" is calculated by dividing the number of union members who are part-time workers by the "number of employees."

(839,000; 8.5%), and transport and postal activities (802,000; 8.1%). Industries with the large year-on-year increases in union membership were accommodation, eating and drinking services (+29,000 persons; +8.6%) and wholesale and retail trade (+19,000; +1.2%). On the other hand, declines were particularly seen in government (except elsewhere classified) (−16,000; −2.2%), transport and postal activities (−12,000; −1.4%), education, learning support (−10,000; −2.4%), and manufacturing (−10,000; −0.4%).

## V. Two-thirds of union members belong to firms with 1,000 or more employees

In the private sector, the number of union members was 8.695 million in 2024, a slight increase of 3,000 from the previous year. By firm size, 5.875 million (67.6% of the total) belonged to firms with 1,000 or more employees—representing over two-thirds of all private-sector union members. This was followed by 1.08 million persons (12.4%) in firms with 300–999 employees, 533,000 persons (6.1%) in firms with 100–299 employees, 162,000 persons (1.9%) in firms with 30–99 employees, and 21,000 persons (0.2%) in firms with fewer than 30 employees.

Compared to the previous year, union membership at firms with 1,000 or more employees increased by 29,000 persons (0.5%), while that of all other categories declined. The steepest drop was in firms with 30–99 employees, which saw a decrease of 5,000 persons (−2.8%).

## VI. Three national centers of trade unions saw declines in union membership

Among three national centers of trade unions in Japan, the number of union members was 6.813 million at Rengo (Japanese Trade Union Confederation), 451,000 at Zenroren (National Confederation of Trade Unions), and 73,000 at Zenrokyo (National Trade Union Council)—all down from the previous year by 5,000, 13,000, and 3,000 persons, respectively.

Looking at industrial trade unions, Rengo affiliates that saw increases in membership included the Japanese Federation of Textile, Chemical, Food, Commercial, Service, and General Worker's Unions (+42,000 to 1.936 million), Federation of All Japan Foods and Tobacco Workers' Unions (+3,000 to 116,000), and Japan Federation of Aviation Industry Unions (+2,000 to 46,000). In contrast, significant declines were seen in Confederation of Japan Automobile Workers' Unions (−18,000 to 781,000), and All-Japan Prefectural and Municipal Workers Union, (−11,000 to 706,000), with further decreases at Japan Postal Group Union (−6,000 to 221,000), the Federation of Electric Power Related Industry Workers' Unions of Japan (−5,000 to 196,000), the Federation of Information and Communication Technology Service Workers of Japan (−5,000 to 189,000), and Japan Teachers' Union (−4,000 to 196,000). Among Zenroren affiliates, membership also declined at Japan Federation of Prefectural and Municipal Workers' Union (−4,000 to 115,000), Japan Federation of Medical Worker's Unions (−3,000 to 142,000), and Japan Federation of Public Service Employees' Union (−3,000 to 47,000).

## VII. Rengo expresses strong concern over the growing number of workers outside collective labor-management protection

On December 18, 2024, Rengo's General Secretary Hideyuki Shimizu issued a statement noting that the falling estimated unionization rate "represents the ongoing increase in workers not covered by collective labor-management relations." He emphasized the need to take the decline in union membership seriously and treat it as an urgent issue, calling for analysis of the causes, efforts to accurately assess the conditions of majority-based unions—unions composed of more than half of the employees at a workplace—and consideration of revising union constitutions and collective agreements to reexamine membership coverage, all aimed at stemming the ongoing decline in union membership. He also emphasized that Rengo receives around 20,000 labor-related consultations annually, mainly from workers in non-unionized environments. Rengo committed to continuing outreach activities including for freelancers under its banner of "With you, Toward Tomorrow."

## VIII. Zenroren: Expanding fighting union ranks is the greatest force for *Shunto* wins

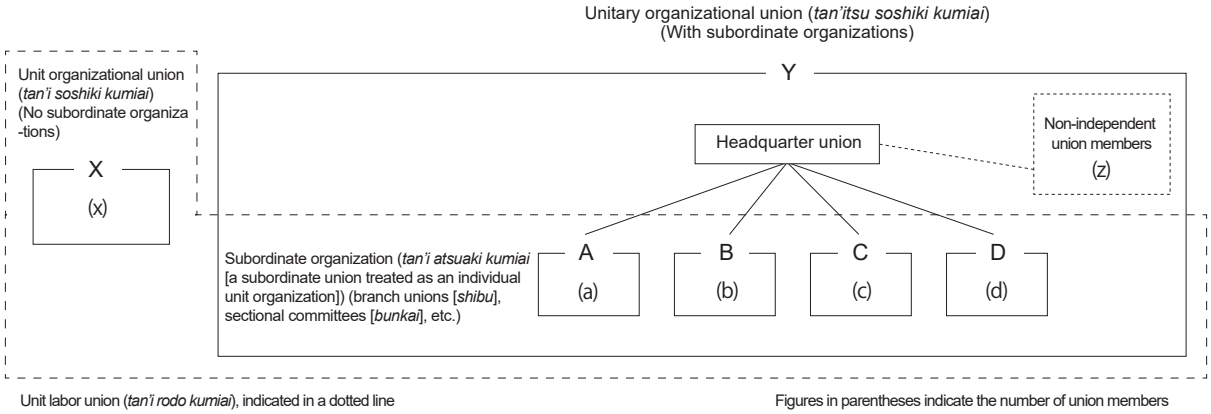
On December 20, Zenroren issued a comment on the survey results, stating that organizing in unorganized sectors such as small- and micro-sized enterprises remains a significant challenge. It stressed that amid rising prices and deepening hardships in workers' lives, its fight during the 2025 *Shunto* (spring labor-management negotiations) would focus on raising wages, expanding allowances, shortening working hours, and protecting workers' rights. General Secretary Koichi Kurosawa declared that the "greatest strength for realizing our demands lies in increasing the ranks of fighting unions."

"Basic Survey on Labour Unions" is conducted every July to clarify the actual status of labor union organization including the distribution of labor unions and union members by industry, enterprise size, and affiliation with upper-level organizations. It targets all labor unions, and the status of union members as of the end of June each year.

**Note**

1. "Single labor union" (*tan'itsu rodo kumiai*) consists of: (1) a "unit organizational union" (*tan'i soshiki kumiai*), which is formed on an individual membership basis without a subordinate organization (*tan'i atsukai kumiai*) [i.e. a subordinate union treated as an individual unit organization], and (2) a "unitary organizational union" (*tan'itsu soshiki kumiai*), which is also formed on an individual membership

basis but has a subordinate organization such as a branch union (*shibu*) or sectional committee (*bunkai*). Note that the number of members in a "single labor union" exceeds that of a "unit labor union" (*tan'i rodo kumiai*) [see the diagram below], because it includes "non-independent union members"—that is, union members who do not belong to an organization that independently conducts union activities.




*Source*: MHLW, "Reiwa 6 nen Rodo kumiai kiso chosa no gaikyo" [Overview of the 2024 Basic Survey on Labor Unions], "Yogo no teigi" [Definition of statistical terms], 1–2. https://www.mhlw.go.jp/toukei/list/13-23b.html#link01.

*Article*

# State of Reinstatement of Dismissed Employees Following Court Decisions to Nullify Dismissal

HAMAGUCHI Keiichiro

The Japan Institute for Labour Policy and Training (JILPT) conducted a survey in October and November 2023 (hereinafter, the "2023 Survey") at the request of the Ministry of Health, Labour and Welfare (MHLW), to examine the state of dismissed employees' return to their original job (reinstatement) following court decisions nullifying their termination. The findings are published in July 2024 as a research report (Hamaguchi 2024a) which provides a detailed account of the JILPT research project, including the 2023 Survey, while also analyzes policy developments and the broader framework of the financial compensation system for unfair dismissal in Japan. This article offers an overview of previous studies on reinstatement following judicial annulment of dismissals and presents key findings from the 2023 Survey.

## I. Previous surveys on the state of reinstatement of dismissed employees

In JILPT's body of dismissal research, surveys examining actual dismissal outcomes, particularly resolution amounts, have consistently garnered significant attention and have been conducted periodically. Similarly, the Fiscal Year 2004 Survey (published in 2005 as the initial survey result in this theme) on the state of dismissed employees' reinstatement following court decisions to nullify dismissal, attracted considerable interest, as it provided records and data that are directly and indirectly related to the question of financial compensation systems for unfair dismissal. With nearly two decades having passed since then, there is a renewed interest among scholars and policy makers in contemporary reinstatement practices. This increasing interest serves as the primary reason for undertaking a comparative survey to reassess current conditions in this field.

Prior to the 2004 Survey by JILPT, three surveys had been conducted on the same theme (by Tatsuo Maeda, Junko Yamaguchi, and Kyoto Prefectural Labor Relations Commission, respectively) and their summaries were included in the Research Material Series no.4 report (JILPT 2005). A comparison between the 2023 Survey and these previous surveys regarding the status of reinstatement of dismissed employees will be discussed later.

The 2004 Survey conducted by the JILPT was administered by JILPT Researcher Junko Hirasawa by sending a questionnaire by post to all member lawyers of the Labour Lawyers Association of Japan (Nihon Rodo Bengodan) and Management Lawyers Council (Keiei Hoso Kaigi). Unfortunately, the survey yielded a low response rate—4.01% from members of the Labour Lawyers Association of Japan and 5.94% from members of the Management Lawyers Council.

According to JILPT 2005, the total number of dismissal cases was 43 involving a total number of 76 dismissed employees. Of these employees, dismissal was nullified for 67.1% of cases (51/76 employees), upheld in 31.6% of cases (24/76 employees), and no answer was given for 1.3% (1/76 employee). Regarding the reinstatement of employees whose dismissals were nullified by the court, 41.2% (21/51 employees) returned to and continued in their former positions, while 13.7% (7/51 employees)

once returned to their positions but subsequently left. Another 41.2% (21/51 employees) did not return to their former positions (including those who resigned immediately). The reinstatement status was unknown for 2.0% (1/51 employees), and no answer was provided for 2.0% (1/51 employee).

By affiliation of lawyers, of the 43 dismissed employees whose cases were handled by lawyers affiliated with the Labour Lawyers Association of Japan, 41.9% (18/43 employees) returned to and continued in their former positions, 16.3% (7/43 employees) initially returned to but subsequently left their former positions, and 41.9% (18/43 employees) did not return to their former positions (including those who resigned immediately). Among the 8 dismissed employees whose cases were handled by lawyers affiliated with Management Lawyers Council, 37.5% (3/8 employees) returned to and continued in their former positions, 37.5% (3/8 employees) did not return to their former positions (including those who terminated employment without advance notice), the state of return was unknown for 12.5% (1/8 employee), and no answer was provided for the remaining 12.5% (1/8 employee).

## II. Summary of the 2023 Survey

The 2004 Survey was conducted by sending a questionnaire by post. In response to advances in internet technology, the 2023 Survey expanded its scope beyond the Labour Lawyers Association of Japan and Management Lawyers Council to include additional lawyers' associations, using a web-based questionnaire distributed through organizational mailing lists of the respective associations. The survey was conducted from October 6 to November 6, 2023. While he Labour Lawyers Association of Japan and Management Lawyers Council remained the primary focus groups, the survey was also distributed electronically to the Labor Law Committee (Rodo Hosei Iinkai), Consumer Affairs Committee (Shohisha-mondai Taisaku Iinkai), and Committee on Poverty of the Japan Federation of Bar Associations (Hinkon-mondai Taisaku Honbu), as well as to the labor law committees of both the Dai-Ichi Tokyo Bar Association and the Daini Tokyo Bar Association.

As a result, the total response rate was 14.0% (231 out of 1,655 respondents), which was two to three times higher than the 2004 Survey. Nonetheless this rate fell short of the typical response rate for standard questionnaire surveys. This may be attributable to the fact that the financial compensation system for unfair dismissal was framed not merely as a policy issue but a politically sensitive matter.

It should be noted that the responses to the questions in the 2023 Survey about the perceptions of employees and employers are predicated on the subjective views of their lawyers who represented them.

In the questionnaire, we asked which side the respondents represented in labor cases. Notably, a substantive cohort of lawyers, including those affiliated with the Labour Lawyers Association of Japan, indicated representation of both employees and employers. Among the respondents, 81 lawyers exclusively represented employees, 84 lawyers exclusively represented employers, and 60 lawyers represented both. Methodically, in the survey report, we categorized the respondents based on the party whom they represented, i.e., "exclusively representing employees," "exclusively representing employers," and "representing both employees and employers," rather than by the association they are affiliated with.

We asked about the percentage of cases in which consultation with a lawyer about dismissal resulted in the filing of a lawsuit. The survey data reveals that when employees consult lawyers about dismissal, litigation rarely follows. A majority of respondents, approximately 30%, reported that fewer than 10% of such consultations resulted in lawsuits. Another 24% indicated that lawsuits resulted in only 10% through 19% of cases. Thus, in more than half of all responses, legal consultation led to litigation in fewer than 20% of all cases. To put it differently, even if employees sought legal consultation on their dismissal, most cases did not result in the filing of a lawsuit.

Regarding the resolution of dismissal cases that

reached the courts, the data shows that court settlements are the predominant outcome. Specifically, 639 out of 830 dismissal cases (77%) were resolved through settlement rather than judicial decision, which means that more than three-quarters of dismissal cases brought to court were concluded by a settlement.

By type of court settlement, 61 employees (7.3%) settled their cases with confirmation of the employee status (or reinstatement), whereas 578 employees (69.6%) settled their cases with termination of employment by agreement. As mentioned above, based on the author's investigation into court settlement cases, and from the perspective of that experience, the survey results seem to reflect the actual landscape of cases. Meanwhile, six employees (0.7%) withdrew their case, and 185 out of 830 employees (22.3%) obtained a court decision rather than a settlement.

Examining the number of employees whose cases were concluded by a court decision based on the type of lawyer representing them yields a somewhat unexpected result. A court decision was obtained for 104 workers (18.8%) in the case of lawyers who carried out litigation exclusively taking the side of employees, 50 workers (27.9%) in the case of lawyers who engaged in dismissal cases exclusively on the side of employers, and 31 workers (31.3%) in the case of lawyers who represented both employees and employers.

When a case was concluded by a court decision, it indicates that either or both parties rejected a settlement proposal presented by the court. We inquired whether the employees or the employer refused a settlement proposal. Among the total 160 cases as counted on the basis of the number of employees involved, the settlement proposal was rejected by the employees in 72 cases (45.0%), by the employer in 34 cases (21.3%), and by both parties in 54 cases (33.8%).

In examining the reasons for the rejection of settlement proposals, among the cases in which the employee declined the proposal, 34.7% were cases in which termination of employment by agreement was proposed, but the employee sought reinstatement; 30.6% were cases in which termination of employment by agreement was proposed, but the resolution amount was deemed insufficient; and 22.3% were cases in which termination of employment by agreement was proposed, but the employee was convinced of the nullification of the dismissal. Conversely, among the cases in which the employer rejected the proposal, 19.4% were cases in which termination of employment by agreement was proposed, but the employer was unwilling to provide financial compensation; 13.9% were cases in which termination of employment by agreement was proposed, but the resolution amount was considered excessive; 15.3% were cases in which confirmation of the employee status was proposed but the employer did not wish reinstatement; and 11.1% were cases in which confirmation of the employee status was proposed, but the employer was convinced of the validity of the dismissal.

## III. State of reinstatement of dismissed employees following court decisions to nullify dismissal

Finally, we have come to the core of the survey conducted by Researcher Junko Hirasawa 20 years ago: the state of reinstatement of dismissed employees following court decisions nullifying their dismissals. This dataset likely commands the greatest attention. However, as we have seen so far, the number of cases in which consultation with a lawyer leads to the filing of a lawsuit is limited. Moreover, even if a lawsuit is filed, the majority of cases are resolved through settlement, making the number of cases that end in a court decision even smaller. Among these cases, a judgment nullifying dismissal was rendered in only 76 cases in terms of the number of lawsuits and in 99 cases in terms of the number of employees.

Among these 99 employees, 37 employees (37.4%) returned to their former positions after the dismissal was nullified by a judgment. However, even if they returned to their former positions, some continued their job (30 employees; 30.3%) and others later left their job against their will (7 employees; 7.1%). In contrast, 54 out of 99 employees (54.5%)

won a judgment to nullify dismissal but did not return to their former positions. How to construe this figure is likely to be an important issue when designing a system of financial compensation for unfair dismissal.

In any case, the most significant point of the 2023 Survey is that it was able to update the data obtained 20 years ago with new data.

Table 1. State of reinstatement of dismissed employees following court decisions to nullify dismissal

| | Cases (Employees) | % |
|---|---|---|
| Number of employees | 99 | 100.0 |
| Returned to their former positions | 37 | 37.4 |
| Continued in their former positions after reinstatement | 30 | 30.3 |
| Left their positions against their will after reinstatement | 7 | 7.1 |
| Did not return to their former positions | 54 | 54.5 |
| Unknown | 8 | 8.1 |

Comparing this data with the data obtained in the previous surveys (except for the Junko Yamaguchi Survey, which did not count the number of employees who did not return to their former positions, and the Kyoto Prefectural Labor Relations Commission Survey, which did not focus on dismissed employees who obtained court decisions to nullify dismissal), although there are considerable differences depending on the survey, the percentage of employees who returned to their former positions was between 30% and 59.9%. Of these employees, around 10% left their jobs against their will, and as a result, the percentage of those who continued their former positions mainly falls in the range between 30% and 49.9%. On the other hand, the percentage of those who did not return to their former positions mostly ranges from 40% to 59.9%. It seems that the overall trends have not changed.

Table 2. Comparison between the 2023 Survey and the previous surveys in terms of the state of reinstatement of dismissed employees following court decisions to nullify dismissal

| | Tatsuo Maeda Survey | Junko Yamaguchi Survey | Kyoto Prefectural Labor Relations Commission Survey | | JILPT 2004 Survey | JILPT 2023 Survey |
|---|---|---|---|---|---|---|
| | | | 2nd | 3rd | | |
| Number of employees | 37 (100%) | | 32 (100%) | 31 (100%) | 51 (100%) | 99 (100%) |
| Returned to their former positions | 16 (43.2%) | 710 (100%) | 11 (34.4%) | 18 (58.1%) | 28 (54.9%) | 37 (37.4%) |
| Continued in their former positions | 13 (35.1%) | 248 (34.9%) | 4 (12.5%) | 18 (58.1%) | 21 (41.2%) | 30 (30.3%) |
| Left their positions against their will | 3 (8.1%) | | 7 (21.9%) | 0 (0.0%) | 7 (13.7%) | 7 (7.1%) |
| Did not return to their former positions | 21 (56.8%) | | 20 (62.5%) | 9 (29.0%) | 21 (41.2%) | 54 (54.5%) |
| Unknown | | | 1 (3.1%) | | 2 (3.9%) | 8 (8.1%) |

By category of the party represented by the respondents, in the case of lawyers who exclusively represented employees, the number of employees who returned to their former positions was somewhat large (29 employees, 40.8%), and the number of those who returned to and continued in their former positions was also large (24 employees, 33.8 %). On the other hand, in the case of lawyers who exclusively represented employers, only three employees (20.0%) returned to their former positions and as many as 11 employees (73.3%) did not return to their former positions. However, even in the case of lawyers who exclusively represented employees, 38 employees (53.5%) did not return to their former positions and five employees (7.0%) returned to but later left their former positions against their will, which is the same as the overall trends.

Table 3. State of reinstatement of dismissed employees following court decisions to nullify dismissal, by category of the party represented

| | Exclusively representing employees | Exclusively representing employers | Representing both employees and employers | Total |
|---|---|---|---|---|
| Number of cases | 53 | 11 | 12 | 76 |
| Number of employees | 71 (100.0%) | 15 (100.0%) | 13 (100.0%) | 99 (100.0%) |
| Returned to their former positions | 29 (40.8%) | 3 (20.0%) | 5 (38.5%) | 37 (37.4%) |
| Continued in their fomer positions after reinstatement | 24 (33.8%) | 3 (20.0%) | 3 (23.1%) | 30 (30.3%) |
| Left their positions against their will after reinstatement | 5 (7.0%) | 0 (0.0%) | 2 (15.4%) | 7 (7.1%) |
| Did not return to their former positions | 38 (53.5%) | 11 (73.3%) | 5 (38.5%) | 54 (54.5%) |
| Unknown | 4 (5.6%) | 1 (6.7%) | 3 (23.1%) | 8 (8.1%) |

This is a translation of Hamaguchi (2024b) with eliminated duplication with the previous commentary, Hamaguchi 2024a.

**Related JILPT materials in this field (in chronological order)**


JILPT (Japan Institute for Labour Policy and Training). 2005. *Kaiko muko hanketsu go no genshoku fukki no jokyo ni kansuru chosa kenkyu* [Research on the state of the reinstatement of dismissed employees' return to their former position following court decisions nullifying dismissal]. JILPT Research Material Series no.4. Tokyo: JILPT. https://www.jil.go.jp/institute/siryo/2005/004.html [in Japanese].
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*Commentary*

# Illegality of a Transfer Order Following Business Abolition with Job Category Limitation Agreements

The *Shiga Prefecture Council of Social Welfare* Case
Supreme Court (Apr. 26, 2024) 1308 *Rodo Hanrei* 5

ZHONG Qi

## I. Facts

Welfare equipment centers operated by prefectures, municipalities, and private organizations are intended to exhibit and promote welfare equipment, modify and manufacture such equipment based on consultation with users, and develop technologies, etc. There are more than 1,000 welfare equipment centers across Japan. Regarding the welfare equipment center involved in this case (hereinafter referred to as "the Welfare Equipment Center"), from the time of its establishment until March 2003, the operations were carried out by Foundation R. Since April 2003, the Shiga Prefecture Council of Social Welfare (hereinafter referred to as "Y"), which succeeded to the rights and obligations of R, has performed the above operations as the designated manager.

In March 2001, Worker X was hired by R as a technician responsible for equipment modification, production, and technological development at the Welfare Equipment Center (hereinafter collectively referred to as "X's duties").

Y ordered X to be transferred to a position in charge of facility management in the General Affairs Division as of April 1, 2019, without obtaining his consent (this order is hereinafter referred to as the "Transfer Order"). X filed a lawsuit against Y for damages based on breach of contract or tort, alleging that there was an implied agreement limiting X's job category to the above-mentioned technical position, that the Transfer Order violated the agreement, or constituted an abuse of rights, and that X had suffered mental distress.

## II. Lower Court Judgments

### 1. District Court Decision

**Kyoto District Court (Apr. 27, 2022) 1308 *Rohan* 20**

There is no written agreement between X and Y to the effect that X's job category is limited to that of a technician. However, X was solicited by R because of his numerous technical qualifications, especially his welding skills, and was hired by R in response to a job opening for a technician position. He then continued to work as a technician for 18 years, including after R was replaced by Y, engaging in modifying and manufacturing welfare equipment as well as conducting technical development. In addition, it was not originally expected that Y would outsource the modification and manufacturing of welfare equipment, and X remained the only technician who could weld at the Welfare Equipment Center throughout the 18 years. Therefore, it is reasonable to find that there was an implied agreement between X and Y (hereinafter referred to as the "Agreement") to the effect that Y would have X work as a technician to modify and manufacture welfare equipment and to develop techniques.

Given that the demand for the modification of welfare equipment has dramatically decreased to a few cases per year, it cannot be said that the fact that Y stopped modifying and manufacturing welfare

equipment is unreasonable. In addition, at the time when the Transfer Order was issued, there was a pressing need to fill a vacancy in the General Affairs Division. In this way, although an implied agreement between X and Y to limit X's job category to that of a technician is recognized, there was a legitimate business necessity to reassign X to a facility management position in the General Affairs Division in order to avoid dismissing him when he stopped modifying and manufacturing welfare equipment. This did not cause a disadvantage to X beyond the extent that he should be able to accept, and it cannot be considered an abuse of rights.

The work content of the facility management position is not considered to require special skills or experience, and the workload is not heavy; therefore, the Transfer Order is not considered to cause disadvantages to X that exceed the extent that he should be able to accept. There is no evidence sufficient to support a finding that the Transfer Order has any improper motive or purpose. The Transfer Order cannot be said to be illegal or invalid.

**2. High Court Decision**

**Osaka High Court (Nov. 24, 2022) 1308 *Rohan* 16**

It can be said that the Transfer Order in this case was issued to avoid the dismissal of X, who had been hired as a technician under a limited job category, due to the discontinuation of welfare equipment modification and manufacturing operations at Y. It can also be said that there was a reasonable basis for X to be transferred to the General Affairs Section, considering the fact that the position of General Affairs Section of the Welfare Equipment Center was vacant at that time and that X had been performing duties such as handling visitors until then. Therefore, it is difficult to say that the Transfer Order has an improper purpose. Considering the various circumstances claimed by X, such as the mental distress from being transferred to a clerical position despite having consistently worked in a technical position, it cannot be said that the Transfer Order is illegal or invalid.

## III. Judgment

The judgement was partially quashed and remanded.

The above decision of the court of second instance cannot be approved. The reasons are as follows.

If there is an agreement between a worker and employer to limit the job category and duties of the worker to a specific one, it is understood that the employer should not have the authority to unilaterally order the worker to be reassigned contrary to such an agreement. According to the above facts and circumstances, there was an implied agreement between X and Y (the Agreement) to the effect that X's job category and duties would be limited to technical work related to X's duties; therefore, Y did not have the authority to order X to be reassigned to the General Affairs Section in charge of facilities management without his consent.

Accordingly, there is a clear violation of the law that affects the judgment in the decision by the court of second instance that the Transfer Order given by Y to X without his consent was not abusive, based on the premise that Y had the authority to issue the Transfer Order.

The part of the judgment of the second instance concerning the claim for damages is hereby reversed, and the case is remanded to that court for further proceedings to determine whether or not there are sufficient circumstances to find that the Transfer Order constitutes a tort, the nature of Y's employment contractual obligations to X regarding X's transfer, and whether or not Y has breached those obligations.

## IV. Commentary

**1. Significance and Characteristics of this Decision**

A transfer (*haiten*) refers to a change in work location or duties under the same employer over a considerable period of time. In Japan, the validity of an employer's transfer order has been judged in two stages: (1) whether the employer possesses the right to order a transfer (the examination of authority), and (2) even if the existence of the right to order a transfer

is affirmed, whether the exercise of the right constitutes an abuse of rights (the examination of abuse). With regard to the first stage, it is generally understood that if there is an agreement to limit the job category or duties, the employer does not have the authority to unilaterally order a transfer that exceeds the scope of the said limitation. However, some judgments have held that it is reasonable to recognize the validity of an employer transferring an employee to a different job category even in cases where there is an agreement limiting the job category, because if the job category has to be abolished, it is unrealistic to assume that the employer cannot reassign the employee to a different job category without their consent.[1] Against this background, this case marks the first time the Supreme Court has addressed how the legality of a transfer order should be determined when an employee with a limited job category is ordered to be transferred beyond that scope, in a situation where the existence of an implied limited job category agreement is recognized and the transfer is occasioned by the discontinuation of the relevant job category.

## 2. Grounds for the Employer's Right to Order a Transfer

In Japan, while long-term employment is typically planned for regular employees, personnel transfers are highly active. This is especially true for white-collar workers, who were often hired without being told where they would work or what they would do. It was generally accepted that they would be promoted through rotational personnel assignments as they experience a variety of duties.

Reflecting this employment practice, it was initially believed that the validity of an employer's transfer order could not be challenged. However, as transfers became more common and disadvantages in workers' private lives became an issue, theories were sought to legally dispute this issue. The *comprehensive agreement theory* posits that a transfer order constitutes a lawful exercise of managerial authority grounded in a broad agreement whereby the employee entrusts the employer with discretion over the location and nature of work, and that the legitimacy of a transfer order may be evaluated in terms of abuse of rights. By contrast, the *contract theory* holds that a transfer order is valid only within the scope of the labor contractual agreement regarding the job category and work location, and that a transfer order that exceeds the scope of the agreement is merely a factual act of offering a contract, and the worker's consent was necessary for the order to be recognized as effective.

The *comprehensive agreement theory* also recognizes the possibility of limiting the right to order a transfer by a special agreement. Meanwhile, the *contract theory* also recognizes the right to order a transfer by comprehensive agreement and does not deny the application of the abuse of rights doctrine. Therefore, both theories are compatible, with the only difference being the degree of legislative responsibility for the existence of the transfer order.

As a result, the validity of a transfer order is examined in two stages: (1) whether the employer possesses the right to order a transfer (the examination of authority), and (2) even if the existence of the right to order a transfer is affirmed, whether the exercise of the right constitutes an abuse of rights (the examination of abuse).

In order to express that the employer possesses the right to order a transfer, general clauses, such as "the employer may order a business trip, transfer, or job relocation for business reasons" are usually included in the employment regulations. This authority may be limited by the specific contractual relationship, and if there is an express or implied agreement in the individual contract to limit or specify the work location or job category, such changes cannot be ordered by such general clauses. In actual litigation, the employer claims a comprehensive right to order a transfer under the general clauses of the employment regulations, the worker claims the existence of an agreement that limits the job category or work location, and the court determines whether the right to order such transfer exists based on the worker's employment status, the way the labor relationship was established and developed, and other factors.

### 3. Criteria for Recognition of an Implied Job Category Limitation Agreement

In cases where work requires special qualifications or skills, such as for doctors, nurses, and drivers, a labor contract has often been interpreted to be limited to the job category concerned. In other cases, recent court interpretations have shown a marked tendency to not readily recognize the implied agreement of the limitation of job categories. For example, in the case of Nissan Motor Corporation's Murayama Plant,[2] workers who had been engaged in machinist duties at the automaker for 17 to 24 years in response to a call for machinists were ordered to be reassigned from machinists to assembly positions because the axle division in which they were engaged was transferred to another plant as part of a reorganization of production systems. The workers argued that the employer could not order them to be reassigned to a different job without their consent, claiming that their long years of employment as machinists had established their identity as machinists. The court rejected this argument regarding position limitation and ruled that the transfer order was valid because there was no evidence of an express or implied agreement between the workers and the employer that the plaintiff workers would not be assigned to any job other than machinist. It is assumed that the court's decision was based on the consideration that, in order to maintain employment in a long-term employment system, flexible changes in working conditions through transfer must be allowed, and that once the job category and work location are limited, it becomes impossible to change any of these working conditions without the individual consent of the worker, which would not be appropriate.[3]

On this point, the first instance of this decision recognized the implied job category and duty limitation agreement based on a comprehensive judgment, without emphasizing the high degree of specialization of the job category or job duties, etc., by making a finding based on the hiring process and the way the worker was expected to work, and it is significant that the appellate court and the Supreme Court upheld the first instance ruling. Compared to the court's previous stance that emphasized the maintenance of employment, this decision can be read as a shift in the trend toward placing more emphasis on the job category limitation agreement than on the maintenance of employment.

If one understands that the Supreme Court has decided that the validity of the limited job category agreement should be given priority over the evaluation of efforts to avoid dismissal, it may be thought that it will be easier to dismiss workers who have agreed to a limited job category agreement. However, when a worker with a limited job category is dismissed for refusing to accept transfer, the appropriateness of the dismissal is examined under the doctrine of abuse of the right to dismiss, so it does not necessarily mean that employers are no longer required to make efforts to avoid dismissal.

### 4. Abuse of the Employer's Right to Order a Transfer

Even in cases where an employer's right to order a transfer is affirmed after passing the examination of authority, the right to order a transfer should be exercised in consideration of the interests of the workers and should not be abused. The Supreme Court decision in the *Toa Paint* case established a framework for determining abuse in practice.[4] That is, a transfer order constitutes an abuse of rights "when there is no business necessity for the transfer; or even when there is a business necessity for the transfer, when the transfer order is made with other improper motive or purpose; or when the transfer order causes workers to suffer disadvantages that significantly exceed the extent that he should be able to accept." This means that the existence of an abuse of rights of transfer orders is assessed from the viewpoints of (1) the existence of a business necessity, (2) the existence of improper motive or purpose, and (3) the existence of a disadvantage to the worker that significantly exceeds the extent that he should be able to accept.

On this point, the first-instance and appellate-court decisions acknowledged the existence of an implied agreement to limit job categories, and found that the Transfer Order had a "business necessity" to "avoid a situation in which X would be dismissed,"

and that X would not suffer a "disadvantage that exceeds the extent that he should be able to accept" as a result of this transfer and that there was no improper motive or purpose for the transfer. In other words, at the stage of examining abuse of rights, the first-instance and appellate-court decisions positioned "avoiding the situation of dismissing the employee" as an important factor in determining the "existence of business necessity" and, as a result, the Transfer Order did not constitute an abuse of rights. However, as can be seen from the aforementioned decision framework, it is a prerequisite that the employer "has" the right to order a transfer to enter the stage of examination as to whether the employer's right to order a transfer constitutes an abuse. In this case, the existence of an implied agreement to limit job categories was recognized by the court of first instance and the appellate court, and it has been generally accepted that the employer lacks the right to unilaterally order a transfer. Therefore, the Supreme Court pointed out a problem with the logical structure of the second-instance judgment in that it ignored this issue, reversed the second-instance judgment, and remanded the case to the court of second instance.

In recent years, Japan has also seen an increase in the number of workers who are employed in limited job categories or departments without plans for long-term employment until mandatory retirement age. Article 5 of the Enforcement Regulation of the Labor Standards Act, which came into effect on April 1, 2024, added matters to be explicitly indicated concerning workplace and work engaged in (Article 5, Paragraph 1, Item 1-3), while Article 4-2, Paragraph 3 of the Enforcement Regulation of the Employment Security Act was also revised to require, as matters for explicitly indicating working conditions when recruiting workers, the following new items be explicitly indicated: (1) the scope of changes in work to be engaged in, and (2) the scope of change in the place of employment. For workers employed under the new provisions mentioned above, it will be easier to approve agreements that restrict job categories. Similar cases are expected to accumulate in the future.

**Notes**

1. The *Tokio Marine & Nichido Fire Insurance* case, Tokyo District Court (Mar. 26, 2007) 941 *Rohan* 33.
2. The *Nissan Motor Corporation Murayama Plant* case, Supreme Court, First Petty Bench, (Dec. 7, 1989) 554 *Rohan* 6.
3. Takashi Araki, *Rodo ho* [Labor and employment law] 5th ed. (Tokyo: Yuhikaku, 2022), 475.
4. The *Toa Paint* case, Supreme Court, Second Petty Bench, (Jul. 14, 1986) 477 *Rohan* 6.

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# Current State of Working Hours and "Work Style Reform" in Japan

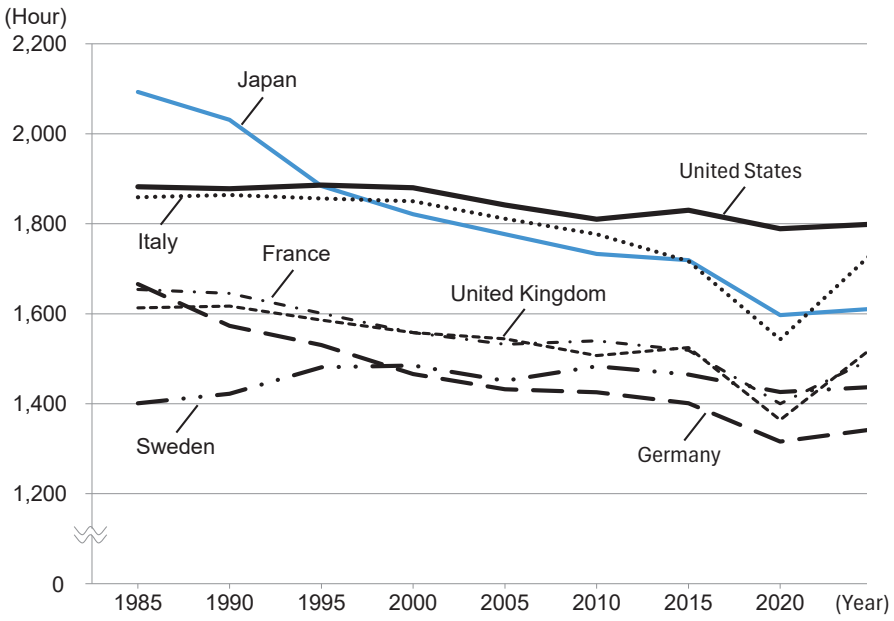
TAKAMI Tomohiro

## I. Long-Term Trends in Working Hours

This article reviews recent trends in working hours in Japan, with a particular focus on the impact of Work Style Reform Act enacted in 2018 regarding the overtime regulation, as well as future issues to be addressed.

To begin, we overview the long-term trend of working hours in Japan in an international comparison. Figure 1 shows the trends in average annual hours actually worked per worker in major industrialized countries. In the long term, working hours are on the decrease in most developed countries. This long-term reduction in working hours can be attributed to factors such as productivity improvement, labor union movements, and working hour regulations.

What are the characteristics of working hours in Japan compared to other countries? First of all, up until the 1980s, we can see that they were extremely long when compared with those of other developed countries. During this period, Japanese workers became the target of criticism from Europe and the US for "overworking" in ways that undermined fair international competition. Japan's vast trade surplus (particularly the trade imbalance between Japan and




*Source*: OECD Data, "Hours worked," https://data.oecd.org/emp/hours-worked.htm. Created based on Japan Institute for Labour Policy and Training (JILPT), *Databook of International Labour Statistics 2025* (Tokyo: JILPT, 2025), figure 6-1, 203.

Figure 1. International comparison of long-term trends in annual actual hours worked per worker

the US), coupled with the appreciation of the yen became a political issue at that time. In this context, long working hours and low-cost production by Japanese firms were criticized by their trading partners as "social dumping," which constitutes unfair trade practices. Just around the same period, Japanese people themselves began questioning the traditional work culture that allowed little leisure time. This led to a growing momentum to reconsider their work styles.

In the context of these backgrounds, the reduction of working hours became a major policy issue, aiming at 1,800 working hours per year, the level of other developed countries. The statutory working hours were in fact reduced from 48 to 40 hours per week with the 1987 amendment to the Labor Standards Act and have been set at a 40-hour workweek and 8-hour workday since then. As a result of further amendments to the act, the system of a "5-day workweek" was quickly adopted by an increasing number of employers in the 1990s.

The reduction in working hours in Japan from the end of the 1980s was, thus, largely due to the effect of legal policies. Following a significant decrease in the period from the end of the 1980s to the early 1990s, working hours in Japan have consistently been on the decrease. Recent figures show that working hours in Japan are no longer conspicuously long compared to other major industrialized countries.

However, there are some points to keep in mind when interpreting this statistic. Average working hours have been on a downward trend during this period, but the working hours of regular employees have seen little decrease since the 2000s.[1] This is because the recent reduction in average working hours can be significantly attributed to the increase in the number of part-time, non-regular workers. Among full-time regular employees, a certain percentage still work long hours, even in recent years. In 2023, the proportion of long working hours—defined as working 49 hours or more per week—was 15.2% in Japan, which is higher than in the United States (11.8%), the United Kingdom (8.9%), Italy (8.5%), France (8.3%), Sweden (5.6%), and Germany (4.6%).[2] Among Japanese men specifically, the percentage of long working hours in Japan rises to 21.8%.

## II. Japan's Work Hour Regulations and Work Style Reform Act

Why have many Japanese regular employees worked long hours? Will it remain the same in the future? To consider these questions, it is necessary to take a closer look at Japan's work hour regulations.

The Labor Standards Act stipulates a 40-hour workweek and an 8-hour workday as the upper limits on working hours ("statutory working hours")(Art. 32-1). Employers are obliged to establish the start and end time of work ("prescribed working hours") to ensure that workers do not work beyond the statutory working hours.

However, overtime work beyond the statutory working hours is permitted, provided that the necessary procedures are followed. Under Article 36 of the Act, when an employer concludes a labor-management agreement with a labor union organized by the majority of the workers in the establishment or with a person representing the majority of the workers—known as an "Article 36 Agreement" (*saburoku kyotei*)—and submits it to their local Labor Standards Inspection Office, the employer is not subject to sanctions even if they allow workers to work beyond the statutory working hours or on days off.

Prior to the Work Style Reform Act (Act on the Arrangement of Relevant Acts on Promoting Work Style Reform) enacted in 2018, it was often suggested that these regulations on overtime in Japan had little practical effect on the restriction of overtime work, because there was formerly no binding limitation on the extension of working hours that could be negotiated under an Article 36 Agreement. While in 1998 the government stipulated a limitation on overtime recognized under an Article 36 Agreement, this was merely a non-legally binding administrative guidance. This lack of legal provisions to place a cap on overtime and impose penalties for violations has continued to be pointed out by critics of the legal

system as insufficient to prevent overtime work.

Since the Work Style Reform Act was enacted in 2018 (and put into effect in stages beginning in 2019), considerable public attention has been given to the potential changes in working hours. The key feature of this new act includes its provision of definite upper limits on overtime hours—namely, 45 hours per month and 360 hours per year. Though it is permitted to conclude a labor-management agreement for working hours beyond this limit in extraordinary, special circumstances, it is required to set limits of no more than 720 hours per year, less than 100 hours in a single month (including holiday work), and an average of no more than 80 hours over multiple months (including holiday work). Employers that violate these limits will now be punished. In 2024, the upper limit regulation on overtime work was extended to include previously exempted industries and occupations—such as the construction industry, drivers, and physicians—prompting a broader societal push to reform working styles.

Why has "work style reform" become a pressing issue in recent years? There are various social factors behind the promotion of work style reform. Foremost is the persistent issue of *karoshi* (death from overwork), which underscores the urgent need to curtail excessive working hours and prevent the overburdening of workers. Additionally, labor shortages caused by a shrinking working-age population have highlighted the need to foster inclusive employment practices and adapt work arrangements to accommodate a more diverse workforce. Closely related to this demographic challenge is the imperative to improve work-life balance, particularly given concern about the declining birthrate. Furthermore, the low productivity of white-collar workers in Japan compared to international standards has been identified as a critical issue requiring comprehensive reform.

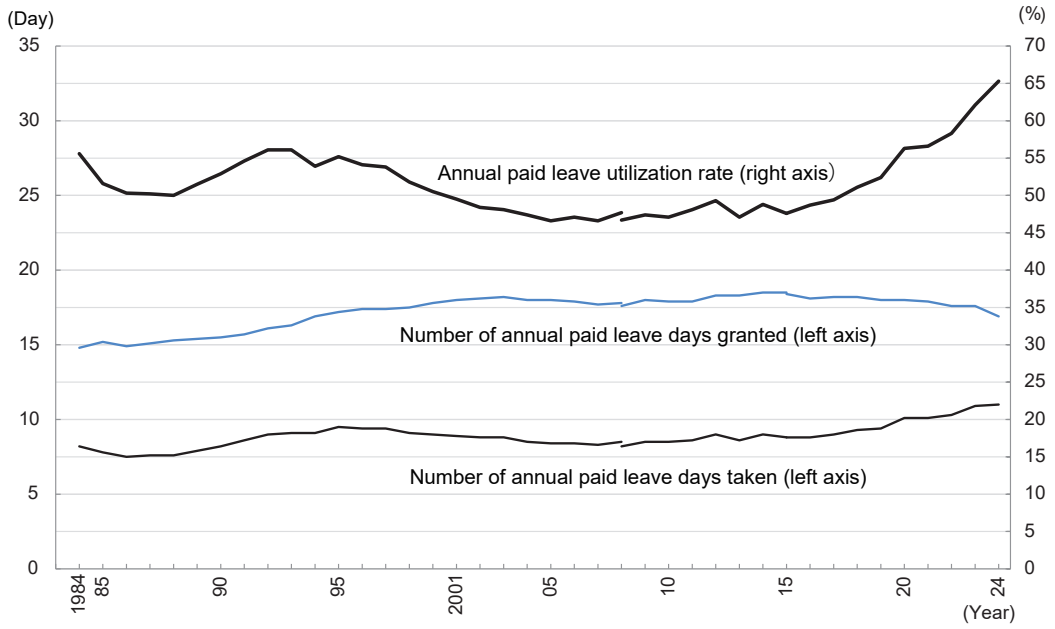
## III. Effects and Challenges of Work Style Reform

Did the work style reform lead to a reduction in working hours? Looking again at Figure 1, it is evident that working hours in Japan have been on a further declining trend in recent years. Though it is important to note that this reduction cannot be entirely separated from the significant slowdown in economic activity caused by the COVID-19 pandemic starting in 2020,[3] it is likely that stricter labor regulations have encouraged companies to reduce overtime among non-managerial employees. According to a survey by JILPT, companies have been implementing measures such as strictly enforcing "no-overtime days," monitoring and alerting employees to long overtime hours, and ensuring that employees leave the office on time through measures such as enforcing lights-out in the office (JILPT 2022). At the same time, efforts have been made to improve work efficiency through reducing paperwork, streamlining meetings, promoting telework, and evening out the distribution of workloads.

Another noteworthy effect of the Work Style Reform Act is the improvement in the rate of annual paid leave utilization (Figure 2). In Japan, various factors, such as the workplace culture and staffing levels, previously hindered employees from taking their paid leave. However, under the Work Style Reform Act, employers are now legally required to ensure that employees take at least five days of paid leave per year. As a result, the utilization rate of annual paid leave has increased significantly. Even so, the current utilization rate remains at around 65%, and further improvement is expected in the future.

What challenges lie ahead? One major issue is the increasing burden on middle managers. According to a JILPT survey, as work style reform has progressed in companies, middle managers have experienced a heavier management workload due to stricter monitoring of their subordinates' overtime hours (JILPT 2022). Additionally, middle managers in Japanese companies are generally "playing managers" who not only supervise but also perform their own tasks; therefore, some middle managers have had to take on the work of subordinates who are unable to work overtime because of overtime caps, further increasing their burden.

What direction should work style reform take in




*Source*: "Ministry of Health, Labour and Welfare, Comprehensive Survey on Working Conditions and Comprehensive Survey on Wage and Working Hour Systems (until 1999)." Quoted in Japan Institute for Labour Policy and Training (JILPT), "A Visual Guide to Long-Term Labor Statistics" (hayawakari gurafu de miru chouki roudou toukei) https://www.jil.go.jp/kokunai/statistics/timeseries/html/g0504.html.

Figure 2. Trends in the number of annual paid leave days granted and taken, and the utilization rate

the future? While some argue that uniform working hour regulations hinder flexible work styles and call for their relaxation, the continued existence of issues, primarily death from overwork, underscores the importance of maintaining these regulations. It is important to note that companies must go beyond simply strengthening overtime monitoring. It will be essential to address the underlying causes of long working hours—such as excessive workloads, tight deadlines, workplace culture, and industry customs. In addition, beyond the regulation of overtime work, it is important to create a work environment that supports employee well-being from the perspective of ensuring adequate rest periods. Under the Work Style Reform Act, companies are encouraged to adopt a work interval system (a system to ensure a minimum rest period between shifts). Promoting the wider implementation of this system remains a key challenge.

**Notes**

1. See MHLW (2023).
2. See JILPT (2025) table 6-3, 209–211.
3. During the COVID-19 pandemic, many Japanese companies responded to the economic downturn not through layoffs, but by reducing overtime and implementing temporary leave measures for employees. See JILPT (2020). Worker data also shows that many individuals experienced a decline in working hours during this period, although the extent varied depending on the feasibility of remote work across occupations. See Takami and Yamamoto (2024).

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## Main Labor Economic Indicators

### 1. Economy

The Japanese economy is recovering at a moderate pace, while the effects caused from the U.S. trade policies and so on are seen in some areas. Concerning short-term prospects, the improvement in the employment and income situation and the effects of the policies are expected to support a moderate recovery, while attention should be given to downturn risks of the Japanese economy due to the impact of the U.S. trade policies are increasing. In addition, the effects of continued price increases on private consumption through a downturn in consumer sentiment are also downside risks to the Japanese economy. Also, continued attention should be given to the effects of fluctuations in the financial and capital markets. (July 2025)[1]

### 2. Employment and unemployment

The number of employees in June increased by 660 thousand over the previous year. The unemployment rate, seasonally adjusted, was 2.5%.[2] Active job openings-to-applicants ratio in June, seasonally adjusted, was 1.22.[3] (Figure 1)

### 3. Wages and working hours

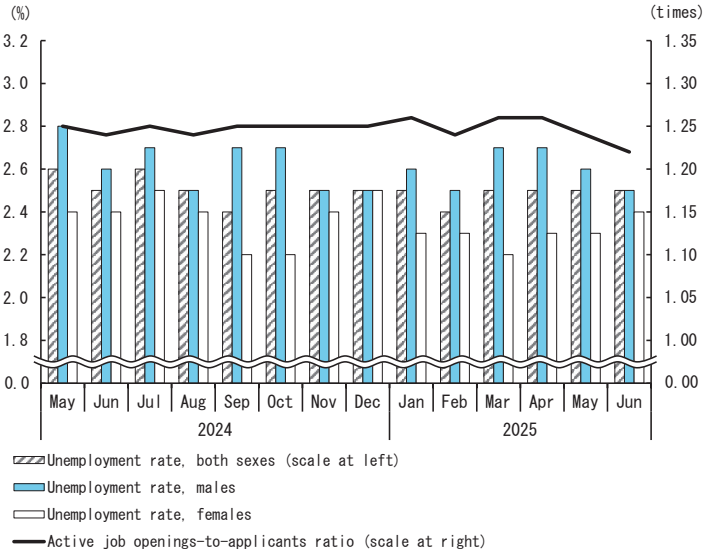
In June, total cash earnings increased by 3.1% year-on-year, while real wages (total cash earnings, realized as consumer price index (total excluding owner-occupied imputed rent)) decreased 0.8%. and real wages (total cash earnings, realized as consumer price index (composite)) decreased 0.1%. Total hours worked decreased by 0.4% year-on-year, while scheduled hours worked decreased by 0.1%.[4] (Figure 2)

### 4. Consumer price index (CPI)

In June, CPI for all items increased by 3.3% year-on-year, the consumer price index for all items less fresh food increased by 3.3%, and CPI for all items less fresh food and energy increased by 3.4%.[5]

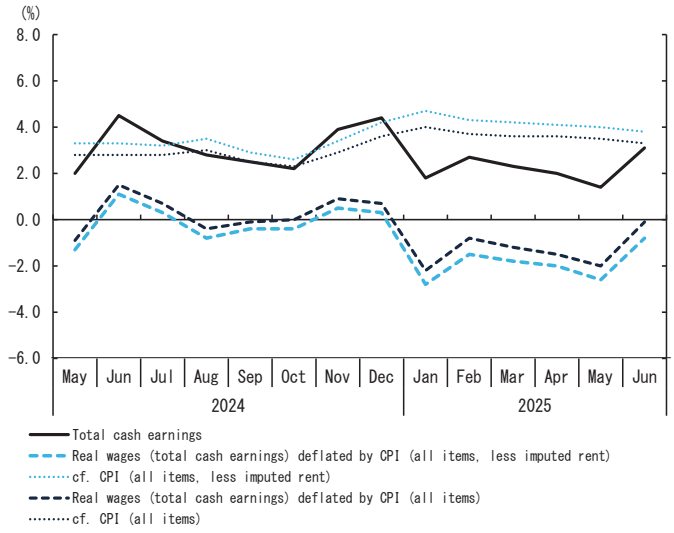
### 5. Workers' household economy

In June, consumption expenditures by workers' households increased by 7.7% year-on-year nominally and increased by 3.8% in real terms.[6]




*Source*: Ministry of Internal Affairs and Communications (MIC), *Labour Force Survey*; Ministry of Health, Labour and Welfare (MHLW), *Employment Referrals for General Workers*.
*Note*: Active job openings-to-applicants ratio indicates the number of job openings per job applicant at public employment security. It shows the tightness of labor supply and demand.

Figure 1. Unemployment rate and active job openings-to-applicants ratio (seasonally adjusted)




*Source*: MHLW, *Monthly Labour Survey*; MIC, *Consumer Price Index*.

Figure 2. Total cash earnings / real wages annual percent change

For details for the above, see JILPT, *Main Labor Economic Indicators*. https://www.jil.go.jp/english/estatis/eshuyo/index.html
*Notes*: 1. Cabinet Office, *Monthly Economic Report*, which analyzes trends in the Japanese and world economies and indicates the assessment by the government. https://www5.cao.go.jp/keizai3/getsurei-e/index-e.html
2. https://www.stat.go.jp/english/data/roudou/results/month/index.html
3. https://www.mhlw.go.jp/english/database/db-l/general_workers.html
4. For establishments with 5 or more employees. https://www.mhlw.go.jp/english/database/db-l/monthly-labour.html
5. https://www.stat.go.jp/english/data/cpi/index.html
6. MIC, *Family Income and Expenditure Survey*. https://www.stat.go.jp/english/data/kakei/index.html

# What's on the Next Issue

## *Japan Labor Issues*

Volume 9, Number 55, Special Issue 2025

*tentative*

Research reports on "Aging Population and Labor Law Policy" presented by researchers from countries and regions in the Asia-Pacific area at the 8th JILPT Tokyo Comparative Labor Policy Seminar (held on March 26, 2025).

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Daiyoung OH

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