

Article

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

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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 the 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 former 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/siryu/2005/004.html> [in Japanese].

*The Tatsuo Maeda Surveys, Junko Yamaguchi Survey, and Kyoto Prefectural Labour Relations Commission Survey are summarized by Junko Hirasawa.

———. 2007. *Kaiko kisei to saiban* [Regulations on dismissal and court]. JILPT Research Material Series no.29. Tokyo: JILPT.

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dismissal]. JILPT Research Eye no.84. https://www.jil.go.jp/researcheye/bn/084_241220.html. [in Japanese].

JILPT (Japan Institute for Labour Policy and Training). 2024. *Kaikoto muko hanketsu go ni okeru fukushoku jokyō ni kansuru chosa* [Research on the state of the reinstatement of dismissed employees’ return to their former positions following court decisions to nullify dismissals]. JILPT Research Series no.244. Tokyo: JILPT. <https://www.jil.go.jp/institute/research/2024/244.html>. [in Japanese].

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