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CONTENTS

Special Feature on Research Papers (II)

Japan Labor Issues is pleased to present its annual special feature on research papers. This time, six significant papers will be presented for three parts (I-III). In the following pages, you will find two of them as Part II.

The Editorial Office selects research papers every year from various relevant ones written in Japanese and published within a year or two, from the viewpoint of communicating the current state of labor research in Japan to the rest of the world.

We hereby sincerely thank authors for their kind effort arranging their original papers for the benefit of overseas readers.

Editorial Office, *Japan Labor Issues*

Examination of the Occupational Polarization Hypothesis: Analysis on the Japanese Labor Market in 21st Century Based on the *Employment Status Survey* Data

SANO Kazuko

The "job polarization hypothesis"—which posits that there has been a decline in the share of middle-pay jobs relative to jobs with higher or lower pay—has become a prominent theoretical framework, particularly in Europe and the US. The objective of this paper is to examine the extent to which the polarization hypothesis applies to the Japanese labor market since the late 2000s. The analysis draws upon the methodological framework of international comparative studies, with a particular focus on the institutional complementarities observed in advanced economies. The study utilizes individual-level data from the *Employment Status Survey* (Shugyo Kozo Kihon Chosa) to substantiate its findings. In the analysis, jobs at a detailed occupational classification level are ranked into five quintiles based on the average income level. A subsequent analysis will present changes in the composition of each quintile over the 10-year period from 2007 to 2017 by sex and educational background.

The analysis indicates that, when considered as a whole, no polarization has occurred. Conversely, a moderate upgrading of the occupational structure is evident, marked by a decrease in the "middle and lower" quintiles and an expansion of the "upper middle" and "top" quintiles. With respect to background factors, the growth of service occupations in the bottom-end quintile, a factor that drives polarization, is constrained, while the proportion of women with a university degree increases in the top quintile. In contrast to the upgrading observed in advanced European countries during the same period, as indicated by previous studies, the degree of expansion in the upper quintile is comparatively slight.

Additionally, occupations related to the healthcare sector exhibit a tendency to increase their share across a wide range of the occupational structure. Previous studies conducted in Europe and the US have indicated that the advent of computer technology and the influx of immigration have brought changes to occupational structures. In Japan, on the other hand, since the mid-2000s, the expanding demand for care services for the elderly has led to significant changes in the occupational structure.

I. Introduction

A review of long-term changes in the occupational structure reveals that technological change has resulted in a shift in industries characterized by high productivity and a transformation in the types of jobs held by the working population. The transition from an industrial to a post-industrial economy since the 1970s has resulted in a decline in the number of production-line jobs in manufacturing, which had previously constituted a significant segment of employment across the middle of the income distribution. Consequently, this transition has led to the emergence of a significant number of service sector jobs at the below-median income level. In recent years, with the progression of digital transformation in various industries, there has been an increase in the prevalence of highly specialized technical occupations and managerial positions that are not supplanted by computerization (Ministry of Economy, Trade and Industry 2018).

These changes in the occupational structure have been a primary subject in the fields of labor economics, sociology, and comparative welfare state research. Elucidation of the relationship between occupational expansion and decline, on the one hand, and the structure of income stratification, on the other, furnishes valuable policy recommendations in terms of suggesting the extent to which social equality is upheld (Oesch 2013).

Research trends published since the year 2000 demonstrate that the view of advancing "polarization" in occupational structure in the US since the 1980s has become firmly established, with similar discussions unfolding in Europe. The term "polarization" of the occupational structure refers to patterns of changes in which the share of employees in the middle-skill jobs decreases while the shares of employees in the high- and low-skill jobs increase when occupations are ranked from high to low based on income levels and examined for shifts in the share of employees within high-, middle-, and low-level groups (Acemoglu and Autor 2011; OECD 2017). The present study aims to examine the extent to which the job polarization hypothesis, a theory that has gained prominence in the US labor market, applies to the Japanese labor market since the late 2000s, utilizing a descriptive analysis approach.

The polarization of the US employment structure has been empirically analyzed using various theories and indicators, beginning with Wright and Dwyer (2003). Analytical findings supporting this polarization of the employment structure have accumulated in recent years. These findings are based on the "routinization hypothesis," which utilizes the tasks inherent to each occupation as indicators to assess changes in the occupational structure with respect to its substitutability with computer technology.

Concurrently, since the year 2000, international comparative studies have advanced in Europe, aiming to reevaluate the polarization hypothesis—which gained prominence after the routinization hypotheses—by focusing on the characteristics of employment systems in advanced countries. These studies center on the question of why disparities in patterns of changes in the occupational structure were observed across countries despite the experience of similar technological change. Among the representative empirical studies, Oesch (2013) and Oesch and Piccitto (2019) analyzed European advanced economies, including the UK, since the 1990s. In their study, the scholars demonstrated that "upgrading," defined as an upward shift in the occupational structure, has occurred in countries other than the UK. In the subsequent analysis, the underlying factors were examined from three dimensions: technological change, changes in the skill sets of the labor force, and labor market institutions.

This paper elucidates the changes in the Japanese occupational structure since the late 2000s using individual-level data from the *Employment Status Survey*. The analysis draws upon the methodological framework of international comparative studies as articulated by Oesch and other scholars in the field. In addition to overall changes, it also examines how the labor force of women[1]—which brought significant changes to labor supply during this period—has changed in the occupational structure.

II. Theories and empirical research on changes in the occupational structure

2.1 Patterns of changes

Theories concerning changes in the occupational structure have been developed by presenting either one of three distinct patterns of change: downgrading, upgrading, or polarization.

One of the predominant theories that lends support to the occupational downgrading hypothesis is the deskilling theory, which was proposed by Harry Braverman. He predicted that the technological change driven by the Industrial Revolution would lead to the breakdown of jobs into smaller tasks, the elimination of the need for highly skilled craftsmanship, and the expansion of low-skill, low-autonomy occupations (Braverman 1974).

Concurrently, the concept of post-industrial society emerged in the 1970s (Bell 1973), emphasizing the expanding demand for professionals due to the rise of the knowledge society. This development introduced the concept of upgrading theory. The notion that technological change leads to an increase in skill levels, resulting in an upward shift in the occupational structure, is a common tenet of the recent theory of skill-biased technological change (SBTC). The SBTC theory, which has undergone continuous development since the early 1990s, is distinguished by its approach for comprehending occupational transformation through the "race" between skill levels—measured by workers' educational attainment—and technological change. The introduction of new technologies has been demonstrated to augment the demand for highly skilled workers to a greater extent than for low-skilled workers. Furthermore, technological change and increasing educational attainment have developed in a mutually complementary manner (Goldin and Katz 2008). While employment opportunities for the less educated do not expand to the same extent as those for the highly educated, the SBTC theory posits that technological change leads to an overall upgrading of the employment structure.

More recently, research based on the routinization hypothesis has become increasingly prevalent. The objective of this hypothesis is to examine the substitutability of jobs with computer technology in order to capture occupational change. The utilization of specific task characteristics inherent within various job roles serves as the primary indicator. These studies suggest that the substitutability of occupations due to technological change is dependent on the inherent nature of the tasks within these occupations, thereby leading to shifts in occupational structure. The substitution of computers for routine production-line or clerical jobs is becoming increasingly widespread. Occupations that require sophisticated communication or analysis remain largely unaffected by this transition. Likewise, tasks that require physical adaptability or interpersonal flexibility exhibit a low degree of substitutability (Autor et al. 2003; Acemoglu and Autor 2011). Consequently, the middle tier of the occupational hierarchy, which comprises routine physical or clerical tasks, becomes hollowed out. Subsequently, an expansion of both the upper and lower tiers occurs, leading to the development of polarization.

A comparison of the aforementioned theories reveals that, while these arguments differ in terms of the direction of the changes that technological innovation brings to employment, they hold the common view that the most significant employment expansion occurs in occupations requiring high-level skills. Conversely, there is a paucity of consensus regarding the impact of technological change on jobs in the middle to lower tiers of the occupational hierarchy, and no consistent explanation has been established. To resolve this issue, the findings from international comparative studies examining changes in the occupational structure based on the institutional characteristics of advanced countries offer practical solutions.

2.2 Analytical perspectives of international comparative studies

Since the late 1990s, research in Europe has been conducted with the objective of capturing the characteristics of patterns of changes in the occupational structure. This research focuses specifically on the institutional framework of each country and examines the applicability of the hypothesis of labor market polarization in the US—which is based on the routinization hypothesis—to other advanced countries. This body of research,

drawing upon theories typifying welfare capitalist countries, such as the "Varieties of Capitalism (VoC)" theory or the welfare regime theory, posits the following views.

A triad of factors has been identified as contributing to occupational change. Firstly, technological change has resulted in shifts in labor demand. Secondly, the expansion of education and the influx of immigrants have led to changes in the labor supply. Thirdly, the institutional environment of each country's labor market should be considered. Among these factors, the first—the widespread adoption of computers—corresponds to a transition that has been uniformly observed across advanced countries. The differential impacts observed across countries can be attributed to variations in the second and third factors. Specifically, the occupations most strongly affected by technological change are determined by the characteristics of the labor force, as well as by how the welfare states support workers through labor market institutions—particularly how it integrates low-educated workers into the labor market. Consequently, disparities emerge among countries in the proliferation of low-paid service sector employment or the unemployment rates of low-skilled workers (Esping-Andersen 1999; Oesch 2013).

This assertion has been substantiated by analyses employing extensive European microdata. A representative study, Oesch (2013), drawing on the analytical approach of Wright and Dwyer (2003) that initiated the polarization hypothesis in the US, descriptively examines the overall direction of changes in the occupational structure for the period 1990–2008 in the UK, Germany, Spain, Switzerland, and Denmark, in terms of changes in the share of employment across five occupational categories ranked by income. The analysis reveals a clear upgrading trend across the four countries, with the exception of the UK, where the top tier of the occupational structure expanded most significantly. The analysis elucidates that discrepancies in the direction of change emanated from the institutional framework governing the labor market. Specifically, the continental European economy, predicated on coordinated wage bargaining, contrasted with the UK's less regulated liberal market economy. The analysis further elucidates that the influx of immigrants and their skill sets also contributed to these discrepancies (Oesch 2013).

International comparative studies also examine occupational change by national origin and sex. Analyses encompassing the US (Wright and Dwyer 2003), in addition to five European countries (Oesch 2013), reveal that in each country, women born in that country contribute to the expansion at the top-end of the occupational structure. This outcome is attributable to the enhancement of women's skill sets, which has been prompted by the expansion of educational opportunities and the heightened demand from employers for highly skilled occupations.

The objective of this paper is to provide a descriptive analysis of an overview of the changes in the Japanese occupational structure, based on the findings from these international comparative studies. Prior empirical research on the Japanese occupational structure has been constrained to analyses that rely on the routinization hypothesis. A representative study by Ikenaga and Kambayashi (2010) demonstrated the changes in the Japanese occupational structure since 1960. The study examined long-term changes in the five task categories, which were classified as either routine or non-routine types. Nevertheless, the principal objective of this study was to examine the impact of substitutability with computer technology on the labor market. Consequently, it remains challenging to indicate the direction of changes in the Japanese occupational structure more comprehensively, based on changes in the share of employees by occupation, as seen in the international comparative studies in Europe and the US, which are examined in this section. This paper provides a comprehensive analysis of the changes in the Japanese occupational structure and examines the underlying factors by drawing on patterns observed in other countries.

2.3 Research topics on the Japanese labor market

The primary objective of this paper is to provide an overview of the changes in Japan's occupational structure.

To this end, the study employs individual-level data from the 2007 and 2017 *Employment Status Surveys*. The time period from 2007 to 2017 is selected for analysis due to the availability of data, as will be explained in the subsequent section. This time frame is also chosen to facilitate a comparison with the findings of Oesch and Piccitto (2019), who examined occupational change patterns in four European countries during the nearly identical period of 2008–2015. The following analyses are undertaken.

In addressing the first research topic, the analytical methods of Wright and Dwyer (2003) as well as Oesch (2013) are utilized to classify occupations into five categories based on income level. The direction of changes in the overall occupational structure of Japan is demonstrated based on the changes in the share of each category relative to the total labor force.

As discussed in Section 2.1, the polarization of the occupational structure is closely linked to the expansion of low-tier jobs within the occupational hierarchy. The extent of this expansion varies across countries due to differences in labor market institutions and the characteristics of the labor force. In consideration of this perspective, the following outlines a predicted pattern of possible change for Japan.

First, according to the VoC theory, which classifies advanced countries based on the characteristics of their labor market institutional frameworks, Japan is classified as a coordinated market economy (CME). In comparison to countries that adhere to a liberal market economy (LME), such as the US and UK, Japan has implemented a more robust system of employment protection measures, including minimum wage systems and labor unions[2] (Hall and Soskice 2001; OECD 2017). In addition, Thelen (2014) conducted a comparative analysis of institutional changes in CME countries since the 1980s, a period during which these countries experienced pressure from globalization and liberalization. Thelen's study indicated that Japanese labor market institutions underwent no significant changes during this period.[3] In light of these findings, it is expected that Japan has not experienced the expansion of low-end service jobs observed in LME countries, such as the US and UK. In contrast, consistent with the patterns observed in CME countries in Europe since the late 1990s (Oesch 2013), Japan is expected to exhibit a restrained growth in jobs at the lowest quintile of its occupational structure.

Next, characteristics of the Japanese labor force reveals notable distinctions from those of the US and UK during their periods of increasing polarization. While the labor force in these countries has become increasingly highly educated, similar to other advanced countries, the polarization was largely driven by the influx of immigrants and their skill sets, which matched the demand for low-end service jobs (Oesch and Piccitto 2019; Wright and Dwyer 2003). In contrast, the impact of immigration is minimal in Japan. As the SBTC theory posits, the ongoing trend toward higher educational attainment causes the overall skill distribution of the labor force to shift upward. As a consequence, there has been a decline in low-educated workers entering low-end jobs and an increase in highly educated workers entering higher-paid jobs. Consequently, the occupational structure is expected to undergo an upgrade. Given these considerations, the first hypothesis is hereby postulated as follows.

> Hypothesis 1: The overall direction of changes in the occupational structure suggests an upgrade. Specifically, the proportion of the top quintile exhibits the most significant growth, while the proportion of the bottom quintile remains relatively stable.

The second research topic focuses on the identification of the characteristics of the labor force that produced the results of the first analysis. To this end, an analysis of trends in changes by sex and educational background is conducted. In contrast to Europe and the US, where the entry of immigrants into the labor market has resulted in changes to the labor force, the predominant impetus behind the observed changes in Japan since 2007 appears to be the expansion of women's participation in the labor force. As educational attainment levels rise, there is a concomitant increase in women's employment rates. As a result, there has been an increase in the proportion of highly educated women in occupations that demand high-level skills. As a result, it is postulated that women are

expanding their share in the upper tiers of the occupational structure and contributing to upgrading, thus leading to Hypothesis 2.

Hypothesis 2: Within the top quintile, there is a greater increase in the proportion of women compared to men.

III. Analytical method

3.1 Data

The analysis employs the individual-level data from the 2007 and 2017 *Employment Status Surveys* for on-site facilities, which was provided under Article 33 of the Statistics Act in Japan. Analyses that encapsulate an overview of the occupational transformation, predicated on the number of employees per occupation, yield more precise results when employing national data with finer occupational classifications (Oesch 2013). According to Oesch (2013), the UK possesses the most detailed occupational classification among the analyzed countries, with 171 categories (minor occupational classifications). The two-point data employed in this analysis encompasses 231 occupational unit groups (minor occupational classifications), excluding unclassifiable cases, which renders it suitable for the objectives of this paper. In contrast, data collected at 10-year intervals may prove inadequate for capturing trends over time. However, occupational data prior to 2002 are available only at an aggregated middle-group level, making it necessary to collapse the 2007 and 2017 classifications to this coarser level in order to extend the time period. This paper therefore prioritizes analytical precision by using data with finer occupational classifications.

3.2 Methods for capturing changes in the occupational structure

The analysis is methodically structured into three sequential stages. Firstly, this analysis targets respondents aged 18–69 who were employed, excluding those enrolled in school, and who worked 20 hours or more per week, as captured in the microdata of the *Employment Status Survey* for on-site facilities (Table 1).

With respect to the definition of analytical sample, previous studies employed a variety of criteria. For instance, Wright and Dwyer (2003) included only full-time workers, while Oesch (2013) focused on individuals who worked 20 hours or more per week. The distribution of weekly working hours among the respondents in the *Employment Status Survey* (Table 2) reveals an increase in the proportion of workers with less than 30 hours per week over the decade, from 4.4% to 7.4% for men and from 27.1% to 30.4% for women. Excluding these workers from the analysis may result in an underestimation of the impact of part-time workers on changes in the

Table 1. Analytical sample

	2007	2017
Men	33,207,046	31,426,117
(%)	(59.9)	(58.3)
Women	22,237,133	22,509,551
(%)	(40.1)	(41.7)
Total	55,444,179	53,935,668
(%)	(100.0)	(100.0)

Note: Estimates are weighted using aggregation factors.

Table 2. Respondents in the *Employment Status Survey*

	2007		2017	
	Men	Women	Men	Women
Under 20 hours	1.9	10.9	4.4	14.4
20–29 hours	2.5	16.2	3.1	16.0
30–34 hours	2.6	8.0	2.7	7.8
35–42 hours	25.1	31.1	27.4	32.9
43–48 hours	26.9	18.4	28.5	17.0
49–59 hours	22.5	9.7	20.2	7.9
60 hours and over	18.5	5.7	13.8	4.0
Total	100.0	100.0	100.0	100.0

occupational structure. Conversely, the inclusion of all workers in the analysis may result in an overestimation of the growth in short-hour employment. The present study adopts a middle ground between the 30-hour threshold defining full-time versus part-time work and including all workers, selecting weekly work hours of 20 hours or more as the analysis cutoff, consistent with Oesch (2013). In order to ascertain the validity of this selection, an examination was conducted to determine how the occupational rankings and five occupational categories derived from this analysis vary based on the cutoff for weekly hours. The findings of the study demonstrate that no discrepancies emerge in the analysis outcomes.[4]

Secondly, occupations are ranked based on job quality, determined by income earned from each occupation, serving as an indicator, as of 2007. Job quality is primarily indicated by factors including income, skill (education) requirements, and job satisfaction. In the context of the aforementioned factors, empirical evidence has demonstrated that income is the most comprehensive indicator of job quality and skill levels (Goos and Manning 2007; Oesch and Piccitto 2019). A preponderance of earlier studies that focused on Europe and the US frequently rank occupations based on the median or average hourly earnings of workers within each occupation. In this analysis, occupations are also ranked based on the average hourly earnings of the individuals analyzed included in each occupational unit group. This approach is employed to determine whether there is an increase in "good jobs" or "bad jobs" (Oesch 2013).

Japan's wage structure is characterized by significant disparities in compensation for comparable occupations. The disparities in this regard are influenced by factors such as age, sex, employment type, and firm size. This prompts the question of whether average hourly earnings by occupational unit group—calculated without controlling for these variables—can strictly rank occupations. The methodology of representative studies on occupational change is employed in the present study, conceptualizing income as a broadly representative indicator of "job quality" (Acemoglu and Autor 2011; Goos and Manning 2007; Oesch and Piccitto 2019; Wright and Dwyer 2003). The study employs an analytical framework that examines occupational changes in relation to income, with the aim of identifying specific characteristics associated with sex and skills (educational) levels within the resulting changes in the occupational structure. To confirm the validity of ranking occupations based on average values for occupational unit groups, a comparison of occupational ranks derived from regression models was conducted: one with hourly earnings as the dependent variable and occupational unit groups as the independent variable, and another incorporating additional control variables for age, sex, employment type, and firm size. This finding suggests that there is minimal probability of obtaining differing analytical results.[5]

Furthermore, this analysis operates under the assumption that the relative ranking of each occupation's income level remains constant over the specified time periods. Consequently, the hourly earnings in the initial survey year of 2007 are employed as an indicator representing occupational rank. The rank correlation coefficient for occupational rank based on income level between the two time points is high at 0.975. When constructing the ranking based on the 2007 data, the analytical sample is restricted to individuals who had been employed at the same workplace one year prior.

Thirdly, occupations are ranked into five quintiles according to their income level, ranging from the highest-paying to the lowest-paying occupations. As of 2007, each quintile is classified to contain approximately 20% of the target individuals, categorized sequentially from the top quintile to the lowest quintile as Q5, Q4, Q3, Q2, and Q1. By examining how this approximate 20% composition ratio changes for the year 2017, it is possible to capture changes in the occupational structure. With regard to the occupations assigned to these five categories, Table 3 presents the distribution of occupational unit groups included in each quintile, aggregated at the major group level. Table 4 presents a list of representative occupations categorized by each quintile.

The classification of occupations into multiple categories and the subsequent analysis of changes in their relative shares has become a well-established method for capturing occupational change (Acemoglu and Autor 2011). It should be noted, however, that the number of categories employed is contingent upon the specific

objective of the study. The adoption of five categories in this study is predicated on the rationale of facilitating a comparative analysis with the findings reported by Oesch and Piccitto (2019). In their study, the authors examined occupational change by employing the same five categories for four European countries over the period from 2008 to 2015. This timeframe closely aligns with that of this study, thereby enabling a meaningful comparison between the two studies. The analysis in this study examines the impact of changes in the shares of the five quintiles from 2007 to 2017 by comparing them with the magnitude of changes in other countries.

Table 3. Aggregation of occupational unit groups in the five quintiles by major group level

	Administrative and managerial workers	Professional and technical workers	Clerical workers	Sales workers	Service workers	Security workers	Agricultural, forestry and fishery workers	Production-line jobs in manufacturing
Q1		1		2	19		3	3
Q2		11	4	2	15	2	7	19
Q3		5	5	2	2		1	25
Q4	1	17	6	5	3		1	22
Q5	4	29	1	3		4		7

Table 4. Top five occupations with the largest shares in each quintile

Q1	Shop assistants; Cooks; Crop farming workers; Food manufacturing workers; Food and drink service and personal assistance workers, etc.
Q2	Motor vehicle drivers; Care workers (medical or welfare facilities, etc.); Delivery workers; Carpenters; Automobile maintenance and repair workers, etc.
Q3	Comprehensive clerical workers; Accountancy clerks; Electro-mechanical apparatus assembly workers; Other product manufacturing and processing workers (metal products); Other construction and civil engineering workers, etc.
Q4	Other sales workers; General affairs and human affairs workers; Nurses (including assistant nurses); Sales clerical workers; General-purpose, manufacturing and business-use mechanical apparatus assembly workers, etc.
Q5	Other general clerical workers; Company officers; System consultants and designers; Machinery, communication and system sales workers; Elementary school teachers, etc.

IV. Results

4.1 Overview of the changes

Figure 1 presents an overview of the changes in the Japanese occupational structure since the late 2000s, which serves as the primary analytical focus of the present study. The horizontal axis of the graph delineates five income quintiles, based on income rankings from 2007, with Q1 through Q5 denoting the first to the fifth quintile, respectively. The vertical axis indicates the extent to which the proportion of workers employed in occupations within each quintile relative to the total target population has changed over the decade. For instance, among all workers analyzed in 2007, 19.55% are employed in occupations classified in Q3. This share exhibits a 2.56 percentage point decrease, reaching 16.99% in 2017. This decrease in percentage points is represented in the scale depicted in Figure 1 (shown to two decimal places). Given that the sum of the shares for each year is equivalent to 100%, it can be concluded that the aggregated changes in the shares of the five quintile groups over

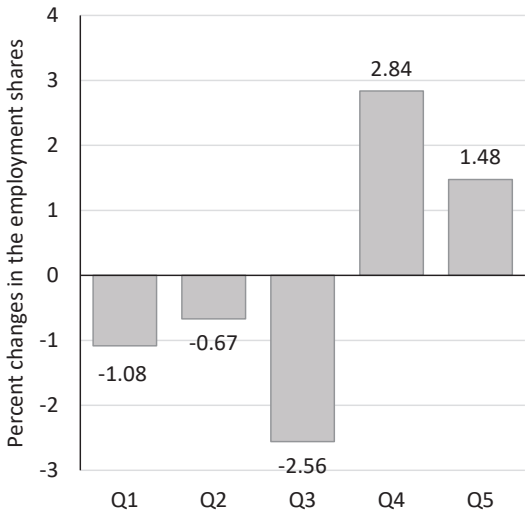


Figure 1. Changes in the occupational structure of Japan (2007–2017)

the 10-year period is equal to zero. Consequently, the height of the bar graph serves as an indicator of the relative degree of increase or decrease for each quintile group relative to total employment. By examining the extent to which the points that decreased in Q1 to Q3 show increases in Q4 and Q5, changes in the occupational structure can be captured.

Job polarization is defined by a decline in the proportion of middle-pay jobs, concurrent with an increase in the proportions of higher-pay and lower-pay jobs. Figure 1, however, does not demonstrate a trend toward polarization. The middle-to-lower quintiles (Q3, Q2, Q1) demonstrate a contraction, while the upper quintiles (Q4 and Q5) demonstrate an expansion, suggesting an upgrading trend. A notable point is that the rate of expansion in Q4 exceeds that of Q5. In this regard, the observed pattern deviates from the clear upgrading predicted by Hypothesis 1, in which the top-tier is expected to undergo the most substantial expansion. Consequently, Hypothesis 1 appears to be partially substantiated.

During the 10-year period from 2007 to 2017, Q4 exhibits an increase of 2.84 percentage points, while Q5 demonstrates a rise of 1.48 percentage points. This prompts the question of the extent to which this change is truly significant. With reference to the findings of Oesch and Piccitto (2019), who conducted an examination of occupational changes in four European countries from 2008 to 2015, Q5 experiences the most significant expansion in Germany, Sweden, and the UK. The graph shows approximate changes of 5.0 percentage points for Germany, 6.0 percentage points for Sweden, and 7.5 percentage points for the UK. Consequently, the changes in the Japanese occupational structure from 2007 to 2017 are characterized by a relatively minor upgrade, with the integration of Q4 and Q5.

Specifically, it is evident that the bottom-end occupations of Q1 exhibit a decline of 1.08 percentage points. The aforementioned decreases in Germany and Sweden's Q1 are approximately −4.0 percentage points and −6.0 percentage points, respectively, showing a change comparable to the increase in Q5 (Oesch and Piccitto 2019). In comparison to the pronounced trade-off pattern between the decline in the bottom quintile and the expansion in the top quintile, the decrease in Q1 indicated by the results of Japan represents a negligible change.

The subsequent section undertakes a thorough examination of the occupational changes that have contributed to these distinctive Japanese patterns of change.

4.2 Occupations showing increases or decreases

Table 5 presents the top 15 occupations with larger increases and decreases, based on changes in their respective shares. The occupations demonstrating the highest increases are predominantly concentrated in Q4 or Q5. Among these occupations showing the largest increases, care workers (e.g., those employed at medical and welfare facilities) in Q2 hold the first rank. According to Esping-Andersen (1999), who examined the post-industrial employment structures from the viewpoint of the welfare regime theory, while aging populations and expanding demand for healthcare are commonly observed in advanced countries, the question of which part and to what extent of the occupational hierarchy low-skilled care service occupations (excluding professionals such as medical doctors and nurses) are expanding depends on each country's institutional framework. In the Nordic countries, care service occupations have expanded significantly as an integral component of the welfare state, which has ensured the provision of stable employment protections in the public sector. In the US, where regulations are less stringent, similar occupations are expanding as low-cost private services. In contrast, in Germany, Southern European countries, and Japan—where families are the primary providers of welfare—the growth of care service occupations has been constrained.[6]

An examination of Japan's results since 2007, as presented in Table 5, reveals that care workers have the highest rate of growth. Among the occupations in the care service sector, excluding professionals, which have also experienced significant growth, only care workers are included, and they are positioned in Q2. The Long-Term Care Insurance Act, enacted in 2000, has been a significant factor in increasing the demand for care workers in medical and welfare facilities, thereby shifting the care of the elderly from the home environment to other settings. With respect to the Long-Term Care Insurance system, the profession of providing care is positioned in Q2 in the occupational hierarchy based on job quality, rather than occupying the bottom-end of the occupational hierarchy.

The occupation with the second-most significant increase is "Other general clerical workers," which is included in Q5. The occupational unit groups delineated by the *Employment Status Survey* encompass eight types of clerical jobs.[7] This particular clerical job is the only one classified under Q5. Among the top 15 occupations by growth, three clerical jobs are included—two from Q4 and one from Q5—all scoring high in non-routine tasks (Komatsu and Mugiyama 2021).[8] The increasing trend of clerical jobs involving more non-routine tasks at the upper tiers of the occupational structure is consistent with the routinization hypothesis.

Concurrently, there has been an increase in the number of professionals. The tendency for IT-related highly specialized occupations, such as "Software creators" in Q4 and "Other data processing and communication engineers" in Q5, to exhibit a marked prevalence within the upper tiers of the occupational structure is consistent with the SBTC theory and the routinization hypothesis. At the same time, medical and welfare-related professions, encompassing "Nurses," "Other social welfare professionals," and "Physiotherapists and occupational therapists," demonstrate expansion in Q4.

Among the occupations in the top 15 for growth in Q1 are "Building cleaning workers," "Other carrying, cleaning, packaging and related workers," and "Service workers not classified elsewhere." In the US, the proliferation of these low-cost service occupations since the 1980s has been propelled by an influx of immigrants who have become integral contributors to the labor force (Wright and Dwyer 2003). While similar occupations have exhibited growth in Q1 in Japan, the extent of this expansion is not as pronounced as the job polarization hypothesis would suggest when compared to occupations that increased in Q4 and Q5. The Japanese institutional framework of a coordinated market economy, which is based on employment protections and wage bargaining, coupled with the upgrading of the skill distribution of the labor force due to increasing educational attainment, has restrained the expansion of Q1.

Additionally, among the top 15 occupations exhibiting the higher growth, the proportion of workers in non-regular employment has increased in 12 occupations.[9] This finding suggests that non-standard working

Table 5. Occupations showing larger increases or decreases in the employment shares

Rank-ordering by increase

	Occupation	Quartile rank	Share in 2007 (%)	Share in 2017 (%)	Percentage-point change
1	Care workers (medical or welfare facilities, etc.)	Q2	1.44	2.38	0.94
2	Other general clerical workers	Q5	6.89	7.83	0.95
3	Sales clerical workers	Q4	1.08	1.85	0.77
4	Software creators	Q4	0.27	0.83	0.56
5	Automobile assembly workers	Q5	0.19	0.69	0.50
6	Nurses (including assistant nurses)	Q4	1.93	2.42	0.49
7	Other social welfare professionals	Q4	0.45	0.92	0.46
8	Production-related clerical workers	Q4	0.74	1.18	0.43
9	Other carrying, cleaning, packaging and related workers	Q1	1.07	1.46	0.39
10	Other data processing and communication engineers	Q5	0.03	0.39	0.36
11	Building cleaning workers	Q1	0.64	0.98	0.34
12	Childcare workers	Q2	0.78	1.11	0.33
13	General affairs and human affairs workers	Q4	2.36	2.65	0.29
14	Service workers not classified elsewhere	Q1	0.38	0.66	0.28
15	Physiotherapists, occupational therapists	Q4	0.15	0.35	0.21

Rank-ordering by decrease

	Occupation	Quartile rank	Share in 2007 (%)	Share in 2017 (%)	Percentage-point change
1	Comprehensive clerical workers	Q3	4.48	3.48	-1.00
2	Shop assistants	Q1	6.07	5.28	-0.79
3	Other sales workers	Q4	3.59	3.08	-0.51
4	Crop farming workers	Q1	2.21	1.75	-0.46
5	Electro-mechanical apparatus assembly workers	Q3	1.34	0.93	-0.41
6	Other cleaning workers	Q2	0.53	0.16	-0.37
7	Spinning, weaving, apparel and fiber product manufacturing workers	Q1	0.85	0.50	-0.35
8	General-purpose, manufacturing and business-use mechanical apparatus assembly workers	Q4	1.03	0.71	-0.33
9	Retailers, retail manager	Q2	0.82	0.49	-0.32
10	Company officers	Q5	1.77	1.49	-0.28
11	Civil engineering workers	Q3	1.09	0.82	-0.27
12	Other product manufacturing and processing workers (metal products)	Q3	1.16	0.89	-0.27
13	Carpenters	Q2	0.87	0.61	-0.27
14	System consultants and designers	Q5	1.50	1.24	-0.26
15	Administrative and managerial workers of corporations and organizations	Q5	0.66	0.41	-0.24

arrangements are becoming increasingly prevalent not only in lower-level occupations but also in those at other levels.

An analysis of declining occupations reveals that “Comprehensive clerical workers” in Q3 ranks first. This occupation is marked by a high proportion of women, with 74.0% in 2007 and 75.9% in 2017. Declines in production-line jobs in manufacturing are also observed in the 5th (Q3), 7th (Q1), 8th (Q4), and 12th (Q3) ranks.

The routinization hypothesis posits that occupations comprising predominantly routine tasks, such as clerical jobs and manufacturing process jobs, exhibit a tendency to decline in the middle quintile of the occupational structure. This tendency is evident in the findings of the present study, which are consistent with the decline observed in clerical jobs, where women are highly represented, as well as in various production-line jobs in the manufacturing sector.

4.3 Changes by sex

Figure 2 presents a detailed analysis of the changes in the occupational structure, as depicted in Figure 1, subdivided into changes experienced by sex. As demonstrated in Figure 2, the observed expansion of Q5 (1.48 percentage point increase) in Figure 1 is attributed to changes among women (1.16 percentage point increase), thereby supporting Hypothesis 2. The occupation contributing to the expansion of Q5 for women is "Other general clerical workers." The proportion of women employed in this occupation relative to the total individuals analyzed increased by 0.73 percentage points.

As demonstrated in Figure 3, the data presented in Figure 2 is further subdivided to reveal changes in each quintile for both men and women. The analysis is categorized by educational background, distinguishing between those with a university degree and those in other categories.

In Q5, the proportion of women with a university degree increased by 0.96 percentage points, indicating a more pronounced upward trend compared to the change for women without a university degree. As indicated by the evidence presented in Hypothesis 2, the tendency of highly educated women to enter occupations that require a high degree of skill has increased over the examined decade.

Meanwhile, an unanticipated change not predicted by the hypothesis is that for both sexes, those with a university degree expanded their share in Q4. For women, the largest increased share is for "Nurses," followed by "Other social welfare professionals." Among men, the occupations demonstrating the highest growth in share are "Sales clerical workers" and "Software creators." The SBTC hypothesis exhibited a clear upgrade, indicating that those with a university degree in the US experienced an increase at the highest end of the income distribution. In contrast, in Japan, from 2007 to 2017, those with a university degree also contributed to the expansion in Q4.

In sum, although the proportion of men in Q5 and Q4 remained higher than that of women in 2017,[10] the descriptive analysis in this section suggests a period in which women increased their presence in the labor market and began to catch up with men in terms of job quality.

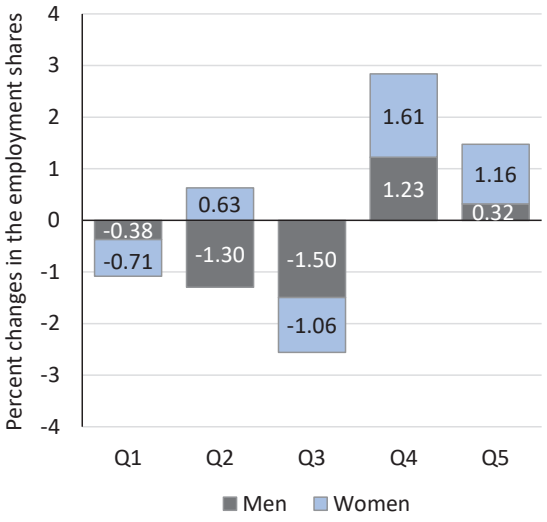
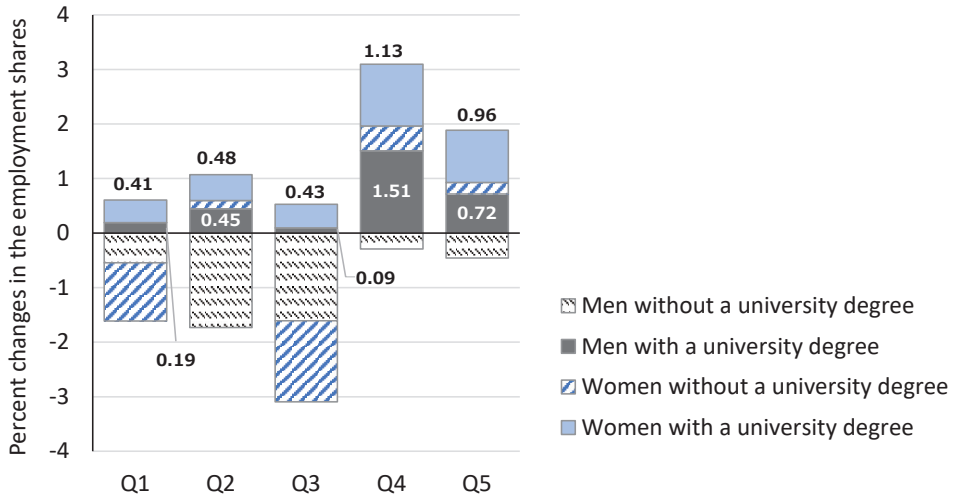


Figure 2. Changes in the occupational structure of Japan by sex



Note: The values for men and women with a university degree are shown.

Figure 3. Changes in the occupational structure of Japan by sex and educational background

V. Discussion

A comprehensive analysis of Japan's data from 2007 to 2017 reveals a decline in Q3, Q2, and Q1. In contrast, Q4 and Q5 exhibit growth. While the degree of change is comparatively modest when viewed in conjunction with that of Europe and the US during the same period, an upgrade is occurring. This upgrade is marked by a decline in the middle and lower quintiles of the occupational structure, accompanied by an increase in the upper quintiles. The subsequent section will review and discuss the background to these key findings.

An absence of expansion trend is evident in the bottom-end occupations of Q1, which is regarded as indicative of whether the pattern of change is polarization or upgrading. The first factor is that, as Hypothesis 1 suggests, Japan's institutional framework, based on a coordinated market economy, hinders the expansion of low-cost service occupations, in contrast to the US and UK, which are based on liberal market economies. The second factor, which was not anticipated in the hypothesis, is that occupations related to care in Japan are not concentrated in Q1 but are expanding in Q2 as care workers (e.g., those employed at medical and welfare facilities). It is also noteworthy that the growth in employment within the lowest occupational quintile has been constrained without a concomitant rise in the unemployment rate. In the context of confirming occupational upgrading, the relationship with unemployment is a salient point that requires verification. For instance, if the expansion of low-end service jobs is being restrained at the cost of early retirement among the elderly or youth unemployment, as was observed in Germany during the 1980s, then it would become an upgrade accompanied by exclusion (Esping-Andersen 1999; Oesch 2013). In this regard, Japan's unemployment rate remained at a low level throughout the analysis period.[11] This finding is consistent with the upgrading observed in Denmark and Switzerland since the late 1990s (Oesch 2013).

In the top-end occupations of Q5, there is an expansion of IT-related professional occupations and high-level clerical occupations, which is consistent with the SBTC theory and the routinization hypothesis. Specifically, in Q5, as predicted by Hypothesis 2, the increase in contribution from women has a greater impact than the increase from men. The increasing prevalence of educational attainment among women, coupled with their growing participation in the labor force, has resulted in a notable rise in the proportion of women engaged in occupations that demand high-level skills.

Contrary to the predictions made in Hypothesis 1, among the five categories, it is Q4, rather than Q5, which exhibits the most significant expansion. This expansion is largely attributed to the impact of institutional changes accompanying an aging Japanese society. The implementation of the revised Long-Term Care Insurance Act in 2000 prompted the systematic establishment of elderly care services, consequently leading to a substantial growth in various professional and service occupations within Q4, including care workers in Q2. This expansion has resulted in the creation of numerous employment opportunities, particularly for women.

Since the turn of this century, in the US and UK, the job polarization hypothesis has become dominant based on the routinization hypothesis, which focuses on the substitutability of tasks with computer technology. The present study also corroborates findings consistent with the routinization hypothesis, based on the characteristics of jobs that increase and decrease. While technological change is a contributing factor, it is not the sole influence on changes in occupational structures across nations. In Europe, the influx of immigrants and their skill sets have led to differences in the direction of occupational structure change (Oesch 2013). As previously mentioned, in Japan, the transition of elderly care to publicly subsidized services has resulted in a significant change since the late 2000s. Consequently, in accordance with this change, there has been a considerable augmentation of related jobs within the occupational hierarchy. The demand for elderly care is expected to increase further in the future. In order to ensure the future enhancement of employment opportunities, the implementation of policies that promote the expansion of occupations related to healthcare and insurance services within the upper tiers of the occupational hierarchy is necessary. Concurrently, as the SBTC theory elucidates, the race between education and technological change is ongoing. Consequently, it has become crucial to bolster public support for education and vocational training to enhance the overall skill levels of the labor force.

Finally, a future research challenge for this study is outlined. In occupations where there has been an increase in the share, a considerable proportion of the labor force is engaged in non-regular forms of employment. If non-standard working arrangements are expanding not only in low-end service occupations but across a broad range of occupations, then the impact of technological change on the labor market may extend beyond the polarization or upgrading of occupational structures discussed by the SBTC theory and the routinization hypothesis, with the potential to affect how people work as well. A thorough analysis is imperative to elucidate the intricacies of the occupational changes as depicted by this study, including the aforementioned issue.

This paper is a translation of Sano (2024), "Shokugyo kozo no 'nikyokuka kasetsu' no kento: 'Shugyo Kozo Kihon Chosa' no bunseki kara mita 21-seiki no nihon no rodo shijo [Examination of the Occupational Polarization Hypothesis: Analysis on the Japanese Labor Market in 21st Century Based on the *Employment Status Survey* Data]," published in *Japanese Sociological Review (Shakaigaku Hyoron)*, Vol. 75, No. 2/2024 with additions and amendments that align with the gist of *Japan Labor Issues*. The paper is based in part on research supported by a JSPS KAKENHI (Grant No. 23KJ2072). The microdata from the *Employment Status Survey* for on-site facilities was provided by the National Statics Center in accordance with Article 33 of the Statistics Act. In writing the paper, the author drew on theoretical implications from the discussions with Shimon Kazama that took place during the author's time at the Graduate School of Education at Kyoto University. In addition, Hachiro Iwai, Ryota Mugiyama, the participants of the 94th and 95th Annual Meetings of the Japan Sociological Society, and the peer reviewers of the journal also provided invaluable comments and feedback. The author would like to express her gratitude by acknowledging them on this occasion.

Notes

1. The *Employment Status Survey* reveals an increase in the employment rate of women (aged 18–69, excluding students) from 62.3% in 2007 to 68.9% in 2017.
2. The Varieties of Capitalism (VoC) theory is a theoretical framework that categorizes the institutional complementarities of capitalism based on the coordination patterns between firms and stakeholders. These two forms of capitalism are delineated as the coordinated market economy (CME) and the liberal market economy (LME). In German-speaking countries, which represent CME countries, extensive vocational training systems or nationwide minimum wage and trade union systems are well-designed. In comparison with the less regulated LME countries of the Anglo-Saxon world, they demonstrate a higher degree of equality in the distribution of skills as well as in the remuneration received for those skills. Japan is classified as a CME (Hall and Soskice 2001).
3. The OECD indicators of the strictness of employment protection legislation during the present study period reveal that employment

protections for regular workers remained at 1.37 points, while for non-regular workers it stood at 0.88 points from 2007 to 2013 and has maintained 1.00 points from the year 2014 onwards (OECD 2023b).

4. Sano (2023) employed the same dataset as the present study to conduct an analysis of three distinct working hour patterns: no limitations, 20 hours or more, and 30 hours or more. The study then compares occupational ranks created based on average hourly earnings for specific occupational unit groups. According to Sano, the rank correlation among the three patterns is high, with a minimum of 0.98. Given that the employment share of the 13 occupations where ranks changed by 20 or more is minimal, the impact on the results of the analysis is negligible. The changes in the five categories are as follows: among those with no limitations on working hours, Q1 decreases by 2.24 percentage points, Q2 decreases by 0.20 percentage points, and Q3 decreases by 2.27 percentage points; meanwhile, Q4 increases by 2.77 percentage points, and Q5 increases by 1.94 percentage points. For a duration of 30 hours or more, a decline of 0.66 percentage points is observed in Q1, 0.72 percentage points in Q2, and 2.83 percentage points in Q3. Conversely, an increase of 2.70 percentage points is noted in Q4 and 1.51 percentage points in Q5. In all cases, the trend is similar to that demonstrated in Figure 1.
5. To examine differences in the results of the analysis based on the presence or absence of control variables other than the occupational unit groups, multiple regression analysis was conducted using five models with hourly earnings as the dependent variable (see Table 6). A comparison of occupational ranks based on regression coefficient magnitude reveals a high correlation coefficient of 0.967 or higher. The five-category classification, which is derived from the occupational rank based on Model (5), is utilized in the analysis. The following changes are observed in the five categories: a 1.38 percentage point decrease in Q1, a 0.70 percentage point decrease in Q2, and a 2.10 percentage point decrease in Q3; in contrast, a 2.46 percentage point increase in Q4, and a 1.73 percentage point increase in Q5. A comparison of the decrease points for Q1 and Q2 with the increase points for Q4 and Q5, as shown in Figure 1, indicates a slight increase. Nevertheless, the trend of change remains comparable. The average hourly earnings utilized in the present study correspond to the same value as the earnings estimate obtained from the OLS (ordinary least squares) regression of Model (1).

Table 6. Rank correlation in occupational ranking based on the five regression models with hourly earnings as the dependent variable, along with the adjusted R-squared values for each model

	(1)	(2)	(3)	(4)	(5)	Adjusted R^2
(1): Occupation only		0.997	0.995	0.968	0.993	(1) 0.280
(2): (1) + Age + Age squared	0.997		0.998	0.967	0.994	(2) 0.329
(3): (2) + Sex	0.995	0.998		0.969	0.997	(3) 0.349
(4): (3) + non-regular employment dummy variable	0.968	0.967	0.969		0.970	(4) 0.416
(5): (4) + Firm size (eight categories)	0.993	0.994	0.997	0.970		(5) 0.468

6. Empirical analyses of European countries after the year 2000 have confirmed a similar trend (see Goos and Manning 2007; Oesch 2013; Oesch and Piccitto 2019).
7. The clerical occupations encompassed by the occupational unit groups are as follows: “General affairs and human affairs workers;” “Reception and guidance clerical workers,” “Telephone receptionists,” “Comprehensive clerical workers,” “Accountancy clerks,” “Production-related clerical workers,” “Sales clerical workers,” and “Other general clerical workers.”
8. According to Komatsu and Mugiyama (2021), who developed task indicators that distinguish between routine and non-routine characteristics based on the Japanese O-NET and presented scores for seven clerical jobs at the occupational unit group level included in the *Population Census*, the scores for non-routine tasks in the top three growing clerical jobs as shown in this paper are all positive. Among the seven clerical jobs, “Other general clerical workers” demonstrate the highest score for the “non-routine analytical” tasks, while “Sales clerical workers” exhibit the highest score for the “non-routine interactive” tasks. The non-routine task score for “Comprehensive clerical workers,” who exhibit the most significant decline in this paper, is negative.
9. Among the 12 occupations examined, excluding “Sales clerical workers,” “Software creators,” and “Production-related clerical workers,” the percentage of non-regular workers increased at the two time points. The most substantial increase is evident in “Other carrying, cleaning, packaging and related workers,” which increased from 61.6% in 2007 to 76.6% in 2017, marking an increase of 14.9 percentage points. This is followed by a rise in the percentage of “Childcare workers,” which increased from 32.0% in 2007 to 37.0% in 2017, marking a 5.0 percentage point rise.
10. At the time of 2017, the percentage of men in Q5 was 74.0%, while the percentage of men in Q4 was 58.6%.
11. The unemployment rate in Japan stood at 3.8% in 2007 and 2.8% in 2017. The long-term unemployment rate, defined as the share of the working-age population that has been unemployed for 12 months or more, was 1.2% in 2007 and 1.0% in 2017. Consequently, both rates maintained their position at low levels (OECD 2023a).

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Non-Compete Clauses and Restrictions on Labor Mobility in Japan

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While labor mobility is promoted through support for proactive career development among workers, employers often use non-compete clauses on workers to protect their competitive interests and prevent the outflow of talented human resources. Post-employment non-compete clauses prohibit departing workers from working for a competitor, which restricts the employees' freedom of occupation (Article 22, paragraph (1) of the Constitution). In court precedents, the validity of non-compete clauses is often contested, and the courts tend to scrutinize these clauses strictly by examining the specific details of the non-compete obligations on a case-by-case basis. However, in principle, every worker has the freedom to choose their occupation after leaving a job. In particular, under job-based employment system (*job-gata koyō*) some individuals may seek to build their career by taking up similar positions after changing jobs and making use of the skills and abilities they acquired in the course of performing their work. The non-compete clauses arise from the employer's initiatives and have a significant impact on the career development of workers. From the perspective of preventing disputes arising from non-compete covenants, employers should ensure that workers are adequately informed of the scope and content of such obligations before seeking subsequent employment. Non-compete clauses are subject to the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade (Antimonopoly Act) for the purpose of promoting fair and free competition in the acquisition of human resources, but this Act has different legal objectives from labor law, and the requirements and effects of a breach of non-compete clauses also differ. Non-compete clauses on freelancers are excluded from the regulation under labor law and regulated under the Antimonopoly Act as these clauses may impede fair competition. In light of the freedom to choose one's occupation, future consideration should be given to non-compete clauses from the perspective of improving the working environment for freelancers.

I. Introduction

1. Promotion of labor mobility

In recent years, discussions on the shift to job-based employment system (*job-gata koyō*, an employment system in which the employment relationship is structured around clearly defined job descriptions, with remuneration determined by the duties and responsibilities of the position.) and the promotion of multiple job holding, including portfolio-style careers, have been accompanied by policy efforts to promote labor mobility toward growth sectors. According to the *Analysis of the Labour Economy 2022*,[1] although there is no notable overall increase in labor mobility, mobility involving career changes across industries or occupations appears to be rising among highly educated individuals. Additionally, as workers gain more work experience, they tend to move into jobs similar to those they perceive to be suitable to them based on their experience. In the case of specialist jobs, there is a pronounced tendency for workers to move within the same or closely related jobs. The basic principle prescribed in Article 3, paragraph (1) of the Act on Comprehensively Advancing Labor Measures, and Stabilizing the Employment of Workers, and Enriching Workers' Vocational Lives, which sets out the basic policy for labor market policies, states that: "Due consideration must be given to ensuring the employment security throughout workers' entire vocational lives by helping them make appropriate plans for their vocational lives and by effectively taking measures such as helping them develop and improve the abilities required to realize such plans and facilitating them in smoothly finding new employment in the case of job changes." Taking this principle into account, in terms of labor market policies as well, a challenge lies in whether fluid labor mobility can be achieved through workers' autonomous choices when they seek to change jobs or engage in secondary jobs by leveraging their work experience.

2. Restriction on labor mobility by non-compete clauses

In the first place, workers during their employment are obligated to act in accordance with the principle of good faith and avoid unjustly infringing upon the legitimate interests of their employers (Article 3, paragraph (4) of the Labor Contracts Act). This includes the obligation not to compete. The model work rules established by the Ministry of Health, Labour and Welfare (MHLW) indicate that workers are free to engage in multiple job holding in principle, while allowing a company to prohibit workers from engaging in competing activities if the competition is against the interests of the company (Chapter 14, Article 70, paragraph (2), model work rules by MHLW).

In addition, employers may impose a post-employment non-compete clause on their employees in order to protect their competitive interests or prevent the outflow of talented human resources. In other words, this clause restricts an employee from working for a competing company or operating a competing business after their employment is terminated if such competing activity harms or is likely to harm the employer's legitimate interests.[2] However, such a clause restricts workers' occupational activities and thus raises issues in relation to the freedom to choose occupation guaranteed under Article 22, paragraph (1) of the Constitution.

In addition, as companies increasingly seek highly skilled personnel through experienced hiring (*chuto saiyo*) and as more workers pursue similar positions after job changes, restrictions on moving to competing companies may hinder fluid labor mobility and innovation. Workers may also decide on a prospective employer before leaving their current company. Consequently, when imposing post-employment non-compete clauses, it may be necessary to adopt an approach that enhances legal and practical predictability. Accordingly, this paper provides a legal analysis of non-compete clauses, taking into account the current debates and recent developments on the subject.

II. Non-compete clauses and the freedom to choose one's occupation

1. Classification of disputes over non-compete clauses

Courts have tended to uphold relatively broad non-compete clauses on the ground that such restrictions are necessary to protect the employer's legitimate competitive interests, even where an employer permits its employees to hold multiple jobs during employment.[3] Specifically, the following acts have been treated as constituting a breach of the non-compete clause: working for a competing company, establishing or preparing to establish a competing business, conferring benefits on a competitor, or poaching the employer's personnel. Such a breach has given rise to disputes concerning the legality of disciplinary measures, employee dismissal, the non-payment or reduction of retirement benefit, or the employer's right to claim damages.[4]

Even recently, courts have continued to address disputes arising from employee conduct that blurs the boundary between permissible outside work and competitive activity. In one case, a former employee's act of accepting work from another company while still employed—work performed for a competitor to which the employee intended to move to—was held to constitute a breach of the non-compete clause, and the employer's claim for damages was partially upheld.[5] In another case, the court sustained the employer's claims for damages not only against a former employee who established a competing company during employment and engaged in acts such as poaching customers or employees, but also against the competing company itself under Article 350 of the Companies Act.[6]

On the other hand, for a post-employment non-compete obligation, an explicit legal basis is required because, as will be discussed in Section III, this obligation imposes a strong restriction on employees' freedom to choose their occupation despite the termination of the labor contract. In many court cases, the explicit legal basis for the non-compete obligation is found in a non-compete obligation binding the employee under work rules or written pledges, and the courts tend to interpret such obligations strictly when their validity is challenged.[7] Furthermore, the breach of the non-compete clause that is found to be valid may result in the reduction or non-payment of retirement benefit, or the employer's claims for damages, payment of penalty, or injunction against competing activities, among others. Thus, the non-compete clause has a significant impact on the employee who breached it.

In addition, even in cases where there is no contractual legal basis, an employer may seek an injunction against its former employee if the employee engages in the improper disclosure of trade secrets defined in Article 2, paragraph (6) of the Unfair Competition Prevention Act, which constitutes unfair competition under paragraph (1), item (vii) of the same Article.[8] Furthermore, in cases where a former employee engages in illegal competing activities that exceed the boundaries of fair competition as judged in light of social norms, such conduct may constitute a tort and may be subject to the employer's claim for damages under Article 709 of the Civil Code.[9] Specifically, these cases include instances where an employee took customer information cards and used them for a new employer,[10] or where the employee breached the employer's trust and acted against the employer's interests, poached employees and left the company to operate a competing business without conducting an adequate handover.[11] Thus, a series of acts committed by an employee during and after termination of employment may be evaluated as constituting illegal competing activities.

2. Freedom to choose one's occupation and clarification of non-compete clauses

The damage that the employer could suffer due to its employees working for its competitor may not be fully prevented by the confidentiality obligation under the Unfair Competition Prevention Act or as a contractual obligation alone. There is a court ruling holding that it is reasonable for an employer to impose the non-compete obligation, in addition to the confidentiality obligation, to prevent employees from using information or know-how acquired during employment, after they move to the competitor.[12] However, the post-employment non-

compete clauses restrict the employment of workers and thereby restricts their freedom to choose their occupation (Article 22, paragraph (1) of the Constitution).[13] As discussed below (Section IV), courts tend to strictly review the validity of non-compete clauses, taking into account the potential restriction on an employee's freedom to choose their occupation. If the specific types of competing activities of workers that constitute acts harmful to the employer's interests and the consequences of the breach of non-compete clauses are clearly defined between labor and management beforehand, and this will enhance predictability for workers.

To prevent disputes over competing activities of workers and ensuring their freedom to choose one's occupation, discussions are underway toward clarifying the permissible scope of post-employment non-compete clauses. *The 1993 Report by the Study Group on the Labor Standards Act* concluded that legislation should specify the procedures for imposing such restrictions on workers, including explicit written terms regarding duration, scope, and related obligations. The *2005 Report by the Study Group on the Labor Contracts Law System* noted that balance should be achieved between the necessity to impose non-compete clauses and the interests of workers that could be affected by such clauses. The report also stated that it is appropriate to require employers to clearly specify business category, job category, period, and other matters subject to the non-compete clauses, and to encourage them, to make these matters clear in writing to workers upon termination of employment by guidelines or anything similar. Discussions on clarification are also underway in the 2024 Working Group on Work Styles and Investment in People under the Council for Promotion of Regulatory Reform.

In this regard, workers should fundamentally be free to choose their post-employment occupation. Therefore, it is essential to avoid overly restricting their competing activities by explicitly stipulating the requirements for the validity of non-competition clauses. For example, individuals who have worked in the same job for many years or who have built their career by specializing in specific duties may, after termination of employment, choose to engage in work that is similar to their previous work by leveraging the knowledge and experience they gained in the previous work. Restricting such choice by workers on the grounds of non-compete clauses would be more likely to affect their potential of proactive career development and unduly restrict their freedom to choose their occupation.

III. Legal basis of post-employment non-compete obligations

1. Issues concerning the legal basis of the obligations

(1) Work rules

It is considered that an explicit legal basis is required for the post-employment non-compete obligation, and academic opinions are divided depending on whether an individual agreement between employer and worker is necessary in light of the risk of restricting the employee's freedom to choose their occupation,[14] or work rules can sufficiently serve as such legal basis. In addition, among those who support the latter view, there is debate over whether a post-employment non-compete clause in the work rules can be regarded as "working conditions" that constitute the content of a labor contract under Article 7 of the Labor Contracts Act. The prevailing view emphasizes the relevance with a labor contract and recognizes a non-compete clause in the work rules as "working conditions," considering it to be appropriate to strictly examine the reasonableness of work rules containing such clauses.[15] However, some raise a doubt about whether workers should be bound by a clause that they were unaware of, because this strongly restricts their freedom to choose their occupation.[16] Furthermore, even if individual agreements are not required, there is room for discussion on whether it is sufficient just to make the work rules known to employees.

(2) Court rulings on individual agreements

Next, when an individual agreement serves as the legal basis for the non-compete obligation, the issue arises

as to how the requirements for such agreement should be interpreted. In this regard, there are precedent in which the court approved the validity of an individual agreement if the worker was able to recognize the non-compete clause in the agreement or easily understand the clause by reading the agreement.[17] On the other hand, in a case in which whether the worker was imposed to reach an agreement was an issue, the court held that the worker cannot be found to have prepared the written pledge at their own free will because the worker would not be able to receive a necessary form for claiming retirement benefit without signing the pledge.[18] In another case in which workers, while being suspected of attempting to move to a competing company, were individually summoned by their employer, and they submitted a written pledge on the non-compete obligation during the inquiries about the reasons for leaving the company, the court held that it is highly doubtful that the workers' written pledges can be regarded as their voluntary agreement to the non-compete obligation because they were compelled to prepare and submit a written pledge against their will under the circumstances where it was difficult to refuse to submit.[19]

Accordingly, with respect to post-employment non-compete obligations, there are situations in which workers have no choice but to accept an individual agreement of non-compete clauses due to the employer's superior bargaining power, and in some cases, it is inappropriate to find that the worker's agreement has been validly formed.

(3) Worker's freely given consent

Considering the unique characteristics of labor contracts, such as heteronomous work (*fremdbestimmte Arbeit*) and information disparity, it is important to determine whether the non-compete clause was agreed upon as an individual agreement through voluntary negotiations between employer and worker, even if it pertains to the obligation not to compete after termination of employment. Regarding this point, some scholars argue that the requirement of the "worker's freely given consent" (voluntariness review approach) applies to all changes in working conditions, and point out the possibility of the invalidity of non-compete clauses established as individual agreements between employer and employee based on this approach.[20] Since the Labor Contracts Act establishes the principle of agreement between employer and worker as a basic principle of labor contracts (Article 3, paragraph (1)), the "worker's freely given consent" is subject to procedural review centered on the employer's duty to explain and provide information. Thus, the key issue is whether the employer provided the worker with sufficient information to enable the worker to consider and judge the details of the non-compete clause. In addition, even if the worker's consent is deemed to be freely given, there may be room for regulating the details of the non-compete clause if it imposes an excessive restriction on the worker's choice of occupation.[21]

On the other hand, given that a post-employment non-compete obligation has been subject to strict validity review, there is a view that is opposed to adopting the freely given consent at the stage of forming an agreement on the obligation.[22] As discussed later, many cases have focused on the reasonableness of a non-compete obligation imposed on an employee, whether under work rules or by individual agreement, and those that excessively restrict the worker's freedom to choose their occupation have been held to be contrary to public policy and therefore void (Article 90 of the Civil Code). Yet, the post-employment non-compete obligation are initiated by employers. Accordingly, grounded in the principle of mutual agreement between employer and worker, it is essential that employers provide workers—especially those wishing to engage in work similar to their previous work— with sufficient information regarding the non-compete obligation.

(4) Timing of individual agreements

The details of the non-compete obligation are considered to be subject to the employer's duty to promote workers' understanding and ensure documentation whenever possible as prescribed in Article 4 of the Labor Contracts Act.[23]An agreement between employer and worker may be reached on occasions such as upon hiring, or upon or after termination of employment. The *2005 Report by the Study Group on the Labor Contracts Law*

System stated that it is appropriate to encourage employers, by guidelines or similar measure, to make explicit in writing the details of the non-compete obligation upon termination of employment.

In this point, a court ruling noted that careful consideration is necessary regarding the worker's agreement not to seek employment with a competitor, which was made by means of a written pledge at the time of concluding an employment contract, and denied the validity of the agreement on the non-compete obligation due to the unclear definition of the scope of restriction on the worker's freedom to choose their occupation.[24] Conversely, some cases are based on non-compete clauses in pledges signed when the employment contract was concluded. For example, in the *Japan Industrial Partners* case,[25] even though the employee refused to agree to the non-compete obligation at the time of termination of employment, the court relied on their agreement in the written pledge executed at the time of hiring. In this case, in the process of judging the validity of the worker's agreement, the court held that the scope of restriction was not unreasonably broad because the scope of competing activities had been explained to the worker before termination of employment. Considering these points, what matters would be whether the scope of competing activities subject to the non-compete obligation is clearly defined, rather than when an individual agreement has been reached. In particular, in cases where a worker notifies the employer of their intention to resign before finding a new job, there is a possibility that the non-compete obligation may unduly restrict the worker's freedom to choose their occupation unless the scope of the obligation is clearly defined before the employee finds a new job.

Meanwhile, if an employee reaches an agreement on the non-compete obligation after leaving the company, the question arises as to how such agreement should be interpreted, because the person is no longer an employee after the termination of the labor contract. Concerning this point, in the *REI Former Employee* case,[26] the court held that when the individually agreed non-compete clause was concluded after termination of employment, the parties were no longer in the relationship between employer and worker, and thus, there were no longer situated in the employer-employee relationship. Accordingly, there were no circumstances where the former employee's ability to decide freely was impaired by an imbalance in bargaining position decision on their free will due to the difference in the footing. Some argue that if an employee reaches an agreement on the non-compete obligation after deciding to leave the company, their free will in making a decision may be guaranteed to some extent.[27] However, even if an agreement concluded after termination of employment is found to be valid, it should nevertheless be subject to a reasonableness review to the extent that it imposes an excessive restriction on the employee's freedom to choose their occupation.

IV. Reasonableness of non-compete clauses

1. Reasonableness review

(1) Current status of discussions

The reasonableness of non-competition clauses is likely to be subject to strict review, in consideration of the worker's freedom to choose occupation. In the precedent-setting *Foseco Japan Limited* case (in which a company sought an order of provisional disposition against its former employees' competing activities),[28] the court stated that "in determining the reasonable scope of restriction on competing activities, it is necessary to carefully consider matters such as the period and geographical scope of the restriction, the scope of the job category subject to the restriction, and the availability of compensation, based on the following three viewpoints: the advantage for the obligee (protection of the company's trade secrets), the disadvantage for the obligors (the former employees' difficulty in changing jobs or finding new employment), and harm to social interest (risk of monopoly and concentration and the resulting harm to general consumers)."

Recent court rulings[29] reviewed the validity of the agreement in dispute between employer and worker by comprehensively considering factors such as (i) the purpose of protecting the employer's legitimate interests, (ii)

the employee's status, (iii) the scope of the job, period, and geographical area subject to the non-compete clause, and (iv) the availability of compensatory measures. The agreement, which is not reasonable, was judged to be against public policy and therefore void (Article 90 of the Civil Code) (reasonable interpretation theory). In addition, there is a position that argues that the prohibition of competing activities should be limited to the minimum necessary level, considering that such prohibition could restrict the worker's freedom to choose their occupation after termination of employment.[30] According to this position, the employer is required to take measures to sufficiently compensate for the disadvantage that the worker would suffer from the prohibition of competing activities.

There is another view that distinguishes between cases where the non-compete clause is intended to protect the employer's business interests under the Unfair Competition Prevention Act and cases where there is no such intention; in the latter cases, the prohibition of competing activities must be limited to the minimum necessary level with sufficient compensatory measures available (theory of distinction between the legal basis and the requirements).[31] In academic literature, there is also a view that even when the restriction on an employee's competing activities is not intended to protect the employer's trade secrets, the validity of the individually agreed non-compete clause may be recognized if appropriate compensation for the restriction is provided through substantial negotiations between employer and worker.[32]

In addition, there are court decisions that apply a reasonably narrow interpretation to the scope of the non-compete obligation, treating it as valid to the extent that, as so limited, it does not contravene public policy.[33] There is also an academic opinion that agrees to the limited interpretation of clauses defined in general or abstract terms.[34] However, there is a view that points out that such interpretation could allow employers to impose excessive non-compete obligations, thereby discouraging employees from competing activities after termination of employment and unduly restricting their freedom to choose occupation.[35]

(2) Specific determinations on reasonableness

In a court ruling, it is determined that even if the employee was involved in the core operations of the employer, the non-compete clause is unreasonable and against public policy and therefore void if the clause imposes too broad a restriction that prohibits such employee from "working for another company engaged in the business that falls under the category of the employer's business or from running such business," without any geographical limitations, for a period of as long as five years, and without adequate compensatory measures.[36]

Conversely, in one case, the court upheld an individually agreed non-compete clause set forth in a written pledge, which prohibited a former COO from establishing a competing business or joining a competitor for three years after termination. The employee had held a position equivalent to that of a corporate representative at a company conducting business nationwide.[37] In this case, the court took into consideration the fact that as a compensatory measure, the person received payment exceeding the amount calculated under the retirement benefit regulations at the time of resignation. There is also an academic opinion that regards compensatory measures as an essential requirement.[38]

On the other hand, in cases where the scope of the non-compete obligation is limited to acts of customer poaching, some argue that the restriction on the employee's freedom to choose their occupation is minimal, and therefore the obligation remains reasonable even without compensatory measures.[39] Thus, the extent of the restriction on the employee's freedom of choice of occupation may influence the determination of whether compensatory measures are required.

2. Recent trends

(1) Job-based employment system and non-compete clauses

For example, if a worker employed under the job-based employment system engages in the same job category

after changing employers, does the former employer have a legitimate interest in preventing the disclosure of know-how acquired in the course of that employment? In principle, an employer's interest in preventing the use or disclosure of know-how that a worker has developed through their own ability and effort is not deemed legitimate, nor is the objective of preventing the outflow of human resources.[40] In a court case regarding a post-employment non-compete clause imposed by a company that dispatches and introduces system engineers to other companies, on its employee who worked as a system engineer (whose job included system design, development, and testing), the court held that the purpose and interest of imposing such a non-compete clause were unclear because the company cannot be found to possess any unique know-how in system development, system operations, or related fields.[41]

On the other hand, the employer is found to have the legitimate interest in imposing a non-compete clause if the employer possesses secrets that do not fall within the scope of trade secrets under the Unfair Competition Prevention Act but that deserve to be protected,[42] or the employer intends to prevent the risk of disclosure of important information on technology or business by imposing the non-compete obligation on its employees in addition to the confidentiality obligation.[43] Examples of such cases include where the knowledge that the employee acquired in the company is highly confidential and the employee has been provided with special training using know-how developed by the company for the purpose of enabling its employees to acquire skills,[44] or where the purpose of the non-compete clause is to maintain technical secrets or know-how in product development.[45] Even in the case of job-based employment system, whether the employer has legitimate interests would be interpreted in the same manner. However, even if the necessity to protect the employer's interests is recognized, if the non-compete obligation is imposed for a long period, without any geographical limitations, to prohibit a broad scope of activities, and no compensatory measures are taken, the obligation may be deemed to be against public policy.[46]

Furthermore, if the scope of the non-compete clause is broad, it may prevent employees from utilizing the knowledge and experience they acquired in their previous work to engage in similar work, thereby imposing significant restrictions on their freedom to choose their occupation. For example, a non-compete clause that is not limited to the job category associated with the technology related to the employer's proprietary know-how is evaluated as being broad in scope and this can be the factors for denying the reasonableness of the clause.[47] Similarly, even if the period of the non-compete clause is relatively short (six months), if the scope of activities prohibited by the clause is not specifically limited but only defined as activities performed within Japan, such clause imposes significant restrictions on the employees.[48]

On the other hand, in a case involving a non-compete clause prohibiting an employee, an investment professional, from joining a company that is deemed to be in a "competing or similar business" for one year after termination of employment, the restriction under the clause was not found to be unreasonably broad and so unclear as to render the clause invalid because the employer explained the scope of competitors (companies engaged in private equity buyout funds) before termination of employment.[49] Considering these points, employers are required to clearly define the scope and period of non-compete clauses and make these matters clear to employees. However, even if non-compete clauses are limited in scope, sufficient compensatory measures should be provided, given that such clauses can significantly impact employees seeking to build their careers, such as those in job-based employment system.

(2) Wages and compensatory measures

When a non-compete clause is imposed on workers with high levels of expertise or skills, could high pay, for example, be evaluated as a compensatory measure and serve as an element supporting the reasonableness of the clause? In a case where an employee, who was an investment professional, was paid an annual base salary and performance-based salary totaling over 12 million yen,[50] the court held that such payment may be taken into

consideration, but there is no evidence to find that the amount paid to the employee was particularly high compared to the amounts paid to others in the same job, and therefore the payment of such salaries could not be immediately determined to be sufficient compensation. In other words, if the amount paid to the employee is found to be higher than the amounts paid to others in the same job, there may be room for such payment to be approved as a compensatory measure associated with the non-compete obligation. However, considering the worker's freedom to choose their occupation, if it is not made clear to the employee that the payment of high salary has the nature of a compensatory measure associated with the non-compete obligation, such payment should not be evaluated as a compensatory measure.

Next, regarding whether retirement benefit can be considered as a compensatory measure, it is generally understood that retirement benefit has the meaning of compensation for labor during employment and does not possess the nature of a compensatory measure for a non-compete obligation.[51] Similarly, in academic opinion, the idea of considering the payment of retirement benefit as compensation is generally rejected,[52] and it is also argued that other monetary payment with the nature of compensation must be offered.[53] On the other hand, there is a view that the non-payment of all or part of retirement benefit can be interpreted as a negative form of institutional compensation,[54] and according to this view, the non-payment of retirement benefit due to a breach of the non-compete clause is permissible as long as it is explicitly stated in advance.[55] In a court case in which an employee who was subject to the early retirement program was granted preferential treatment totaling over 30 million yen, including a premium retirement benefit in addition to a regular retirement benefit, the court held that the premium retirement benefit had the nature of a compensatory measure for the non-compete clause.[56] In this respect, there is a view that points out that the premium payment was offered as part of a personnel reduction scheme and that it is questionable whether the extra payment that is available to all applicants can be considered as a compensatory measure for the non-compete obligation.[57] A retirement benefit should generally not be regarded as a compensatory measure due to its nature but a premium retirement benefit might be recognized as having the nature of a compensatory measure as an exception if the employer has clearly stated in advance that it has such nature.

Additionally, in connection with early retirement programs, there are court rulings stating that if a company grants departing employees an additional retirement benefit separately from a regular retirement benefit on condition that they would not join a competing company, such treatment is more favorable to employees than regular retirement and it is not detrimental to their freedom to choose occupation.[58] It is true that employees have the option to apply for the early retirement program, and if they choose to join a competing company, they simply need not utilize the program. However, an additional retirement benefit can be regarded as having the nature of a compensatory measure in that employees are restricted from engaging in competing activities in exchange for such retirement benefit, and therefore, employers should make this point clear in advance and inform employees beforehand that they would be required to return the additional retirement benefit if they find employment at competing companies. Furthermore, there is a case in which an employee's competing activity performed while being clearly aware of such additional retirement benefit program was found to constitute fraudulent conduct in breach of the duty to notify the employer under the principle of good faith, which led to upholding the employer's claim for damages due to a tort.[59] From the perspective of preventing disputes, it is therefore necessary to make clear the nature of additional retirement benefit as a compensatory measure associated with the non-competition clause.

3. Effects of a breach of the non-compete clause

(1) Freedom to choose occupation and effects of a breach

Among the effects of a breach of a non-compete clause, an injunction against competing activities directly restricts the employee's freedom to choose their occupation. In a court case,[60] in light of the purpose of Article

3, paragraph (1) of the Unfair Competition Prevention Act (Right to Claim for an Injunction), the court held that granting an injunction is not justifiable where there is no risk of harm to the employer's business interests through unfair competition; thus the availability of injunctive relief requires either existing harm or a demonstrable likelihood of such harm. In another case, the court granted an injunction against a former employee's business activities including advertisement and solicitation, to be performed by creating a website and blog and publishing them on the internet for a period of three years, as claimed by the employer, a company operating a voice training school, in order to protect its know-how, which is found to be unique and useful.[61]

In this respect, there is an academic opinion that, compared to claims for an injunction, claims for damages or for reduction of retirement benefit cause a smaller conflict with the freedom of choice of occupation, and that whether to uphold these claims should be determined by considering the effects of the breach of the non-competition clause.[62] For example, in the *Yamada Denki* case,[63] the company claimed a 50% reduction in retirement benefit and payment of penalty equivalent to six months' salary for the period immediately prior to resignation on the grounds that the former employee's breach of the non-compete clause was executed at the time of resignation. The court held that the 50% reduction in retirement benefit was not unreasonable and that the penalty should be paid up to an amount equivalent to one month's salary.

(2) Reduction or non-payment of retirement benefit

A system that reduces retirement benefit by half for former employees who join a competing company in breach of the non-compete clause cannot be deemed to be an unreasonable measure.[64] However, in the *Chubu Nippon Advertising* case,[65] the court denied the non-payment of retirement benefit in full amount on the grounds of the employee's competing activity, in accordance with the non-payment clause providing that "retirement benefit shall not be paid if the employee joins a competing company within six months of resignation." In this case, the court held that such a non-payment clause is permissible only where the employee's conduct constitutes a material breach of trust sufficient to deprive the employee of the retirement benefit, which represents compensation for past services. Subsequent court cases tend to determine whether non-payment of retirement benefit should be permitted depending on whether the employee's breach of the non-compete clause constitutes conduct in egregious bad faith that it negates the employee's prior contributions in service, considering the circumstances of the the breach.[66] In practice, conduct such as using the employer's proprietary information or materials at a competing company after termination of employment or taking them outside the employer company are assessed as a serious breach of the non-compete clause and are deemed acts of egregious bad faith that significantly reduce the employee's contributions in service.[67] In addition, an academic opinion suggests that if a serious breach of trust is found in the employee's competing conduct in light of how the employee engaged in such conduct and how it harmed the employer, the employee's claim for retirement benefit could exceptionally be deemed to be an abuse of rights.[68]

As shown above, since retirement benefit also serves as compensation for labor performed during employment, it is interpreted that principally, an employee's post-employment competing activity cannot automatically be recognized as grounds for reducing or refusing payment of retirement benefit. However, considering that retirement benefit also has a compensatory nature for the employee's past contributions, if a series of acts by an employee, such as taking documents outside the company while still being employed in preparation for post-employment competing activity, are evaluated as serious bad faith, a reduction or refusal of payment of retirement benefit may be exceptionally approved even when retirement benefit does not have a compensatory nature.

V. Regulation under the Antimonopoly Act

1. Relationship with the post-employment non-compete clause

In recent years, post-employment competition has been discussed in relation to regulation under the Antimonopoly Act from the perspective of ensuring fair and free competition in securing human resources.[69] The *2018 Report of the Study Group on Human Resource and Competition Policy* of the Fair Trade Commission (hereinafter referred to as the *Report*)[70] addresses situations where a contracting party (client) imposes a non-compete obligation on a service provider. As will be discussed in section 2 below, the *Report* targets competition among freelancers for acquiring clients, but it also contemplates cases where the service provider is deemed to be an employee. According to this, in areas regulated by labor law, the Antimonopoly Act does not apply in principle even when its applicability may become an issue; but there are exceptional cases where it may apply. The *Report* stated that a post-employment non-compete obligation may be subject to the Antimonopoly Act as an issue arising after the termination of a labor contract.[71] Regarding the effects of a breach of a non-compete clause, the Antimonopoly Act provides measures such as eliminating the act in violation of the provision against the breaching party (Article 7 of the Act), surcharges (Article 7-2, etc. of the Act), and claims for damages (Article 25 of the Act) to restore a fair and free competitive order. As mentioned earlier, post-employment non-compete obligations are often grounded in clauses existing prior to the termination of the labor contract and are subject to labor law. Even if the applicability of the Antimonopoly Act is affirmed on the grounds that the labor contract has terminated, it is conceivable that the regulations under both labor law and the Antimonopoly Act may apply. Regarding the relationship between the two, an academic opinion points out that since the regulations under the Antimonopoly Act apply to post-employment non-compete obligations from the perspective of promoting fair and free competition in the market, the differences in the purposes and objectives of the two laws are reflected in their application.[72] Another view holds that imposing and enforcing non-compete obligations that are lawful under labor law do not raise issues under the Antimonopoly Act, and that only those restrictions that are not lawful under labor law may be subject to the Antimonopoly Act.[73] Thus, scholarly opinions on this issue remain divided.

Regarding the assessment of illegality, the *Report* states that a non-compete clause may be an issue under the Antimonopoly Act from the following three perspectives. (i) Substantial restraint of competition in a particular field of trade (Article 2, paragraph (5) of the Antimonopoly Act): a client's conduct restricts service providers (including workers who left employment) from the provision of services to other clients, preventing other clients from securing necessary service providers, thereby making it difficult for them to enter the market for goods or services. (ii) Unfairness of competitive means (Items 14, Designation of Unfair Trade Practices): a client describes the content of a non-compete obligation in a manner that differs from the actual content or does not sufficiently clarify the obligation in advance, and service providers accept the obligation under such circumstances. (iii) Abuse of a superior bargaining position (Article 2, paragraph (9), item (v) of the Antimonopoly Act): the non-compete obligations imposed by a client (employer) who has a superior bargaining position are deemed to impose an unreasonable disadvantage on service providers.

In assessing illegality under the Antimonopoly Act, the factors for consideration in relation to post-employment non-compete clauses under labor law (the legitimate purpose of restricting competing activities, the status of the worker, the reasonableness of the scope of the non-compete clause, and the availability of compensatory measures) may be relevant. However, even when these factors are applied, analysis is conducted based on a viewpoint that differs from the reasonableness review theory under labor law as it is aimed at ensuring fair and free competition in the talent acquisition market. Although there are no court cases where post-employment non-compete clauses are related to Antimonopoly Act, an academic opinion suggests that such clauses may raise issues under Antimonopoly Act if they affect competition between clients (the former employer

and the new employer) in the talent acquisition market.[74] In addition, regarding whether post-employment non-compete clauses have an effect of reducing free competition, it is interpreted that this issue should be determined by defining the market and taking into consideration the market share of the party engaging in anticompetitive conduct and the importance of the excluded parties in competition.[75] From the perspective of labor law, however, reasonableness is assessed on the legal foundation of the three viewpoints: the advantage for the employer, the disadvantage for the employee, and social interests.[76] In particular, the approach differs in that strict review is conducted with a focus on balancing the interests of employers and employees and considering the employee's freedom to choose their occupation.

According to the *Report*, coordinated arrangements among multiple clients (employers) to restrict job transfers or job switching by service providers may fall under Article 2, paragraph (6) of the Antimonopoly Act. Such arrangements limit service providers' ability to change the parties to which they provide their services, and thereby impede or prevent competition for talent among clients (employers) in the talent acquisition market. Even if such arrangements are in place, employees subject to these restrictions often have little opportunities to become aware of them. Nevertheless, the arrangements could still be understood as constraining workers' freedom to choose their occupation under Article 22, paragraph (1) of the Constitution. If employees are unable to transfer to competing companies due to the restrictions imposed by such arrangements, a further question arises as to what claims they may assert. This issue should be addressed in future studies.

2. Freelance and competition

In recent years, growing attention has been paid to whether non-compete clauses unduly impede fluid labor mobility, limit opportunities for the effective use of skills, and hinder productivity gains, particularly in the context of freelancers. A government study has been conducted to clarify the actual conditions surrounding these practices.[77] According to this study some non-compete clauses restrict or prohibit freelancers from entering into new transactions with competitors once their engagement with a client has ended. The study also finds that, in such cases, freelancers receive wage premiums that remain even after controlling for individual attributes (age, gender, education, employment status, etc.) as well as industry or occupation. On this basis, the study suggests the importance of negotiating wages in combination with non-compete obligations during the contract negotiation process.

In this respect, the *Guidelines for Secure Working Conditions for Freelancers* published in 2021 stated that non-compete obligations may constitute an abuse of a superior bargaining position (Article 2, paragraph (9), item (v) of the Antimonopoly Act). Specifically, this refers to situations where a contracting entity with a superior bargaining position imposes non-compete obligations on a freelancer one-sidedly beyond what is reasonably necessary, and the freelancer is compelled to accept such obligations due to concerns about the impact of their refusal on future transactions. According to the *Report* mentioned above, whether non-compete obligations constitute such abuse is determined by considering matters such as whether the content and period of the obligation are excessive in light of its purpose, the extent of the disadvantage imposed on the service provider, the availability and level of compensatory measures, the decision-making method, including sufficient consultation with the transaction counterparty, and comparison with the terms of trade imposed on other counterparties, as well as the general circumstances of non-compete obligations. In other words, non-compete obligations imposed on freelancers generally fall outside the scope of labor law and are determined at the parties' discretion. Nevertheless, such clauses may be subject to scrutiny under competition law if they constitute an abuse of superior bargaining power and result in the restraint of fair market competition. However, even though freelancers are different from employees, they have the freedom to choose their occupation, and there remains room for the application of reasonableness review.[78] Considering the purpose of the Act on Improvement of Transactions between Freelancers and Undertakings (Act on Ensuring Proper Transactions Involving Specified

Entrusted Business Operators) (Article 1), and from the perspective of improving working environment, it will be necessary to further examine how the freedom of choice of occupation, guaranteed under Article 22, paragraph (1) of the Constitution, which holds a higher legal value, should be evaluated.

VI. Conclusion

Under the circumstances where fluid labor mobility and workers' proactive career development are increasingly expected, employers may impose non-compete obligations on workers to protect trade secrets and to prevent the outflow of valuable human capital. In particular, post-employment non-compete clauses have a significant impact on workers' freedom to choose their occupation (Article 22, paragraph (1) of the Constitution). In judicial decisions, courts examined whether employers really genuinely require restrictions on competitive activities and whether such restrictions are reasonable. Even for freelancers, post-termination non-compete clauses operate as constraints on their freedom to choose business activities. Although such clauses are subject to scrutiny under the Antimonopoly Act insofar as they may impede fair and open competition in the market for human capital, the legislative purposes of labor law and antimonopoly law diverge. Correspondingly, both the substantive requirements for enforcement and the legal consequences of breach differ under these regimes.

Furthermore, since post-employment non-compete obligations arise from the employer's initiative, employers must provide employees with sufficient information about the details of such obligations when employees consider engaging in work similar to their previous employment. Traditionally, in consideration of the impact on the freedom of choice of occupation, the validity of such obligations has been examined on a case-by-case basis and tended to be handled as post-employment disputes. In principle, employees would be free to change jobs if they are not bound by a non-compete obligation binding the employee under work rules or by individual agreement. If an employer finds it necessary to impose non-compete obligations, a clear and well-defined mechanism should be established to specify the scope and content of such obligations, with due regard to their potential impact on employees' career development.

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Notes

1. Ministry of Health, Labour and Welfare (MHLW), "Section II, Chapter 2: Trends in Labour Mobility in Japan," in *Analysis of the Labour Economy 2022*: *Challenges in Promoting Labour Mobility through Support for Workers' Proactive Career Development* 139–177 (Tokyo: MHLW, 2023).
2. Michio Tsuchida, *Rodo keiyaku ho* [Labor Contracts Act], 2nd ed. (Tokyo: Yuhikaku, 2016), 710; Daisuke Yokochi, "Jugyo-in to no kyogyo hishi gimu to ni kansuru shoron-ten ni tsuite (jyo) (ge)" [Issues concerning non-compete obligations of employees (parts 1 and 2)], *Hanrei Times*, no.1387, (2013): 5, and Fumiko Obata, "Taishoku shita rodo-sha no kyogyo kisei" [Regulation on competing activities of workers after termination of employment], *Monthly Jurist*, 1066, (1995): 119.
3. The *e-Life* case, Tokyo District Court (Feb. 28, 2013) 1074 *Rohan* 47 ; The *Kyoritsu Bussan* case, Tokyo District Court (May 28, 1999) 1727 *Hanrei Jiho* 108.
4. The *Japan Convention Services Inc.* case, Osaka High Court (May 29, 1998) 745 *Rohan* 42 (disciplinary action); The *e-Life* case, *supra* note 3 (non-payment of retirement benefit); The *Rakuson*, etc. case, Tokyo District Court (Feb. 25, 1991) 588 *Rohan* 74 (claim for damages); The *Staff-mate Minami Kyushu and Andwork* case, Miyazaki district court, Miyakonojo Branch (April 16, 2021) 1260 *Rohan* 34 (claim for damages).
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6. The *Z Company* case, Nagoya District Court (Sept. 28, 2023) 2535 *Rokeisoku* 13.
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8. The *Tokyo Legal Mind K. K.* case, Tokyo District Court (Oct. 16, 1995) 690 *Rohan* 75; The *Iwaki Glass Co. Ltd., etc*. case, Osaka District Court (Dec. 22, 1998) 30-4 *Chiteki Saishū* 1000.
9. The *Success, etc. (Sankei Tech)* case, Supreme Court (Mar. 25, 2010)1005 *Rohan* 5.
10. The *Kotobuki* case, Yokohama District Court (Mar. 27, 2008) 1000 *Rohan* 17.

11. The *Net Dream* case, Osaka District Court (Dec. 10, 2015) *Journal of Labor Cases*, no.49: 40.
12. The *Japan Industrial Partners, Inc.* case, Tokyo District Court (Nov. 30, 2023) 2543 *Rokeisoku* 3.
13. The *Total Service Co. Ltd.* case, Tokyo District Court (Nov. 18, 2008) 980 *Rohan* 56; The *Harima Shokusan* case, Osaka District Court (Mar. 14, 2017) 65 *Journal of Labor Cases*, no.65: 46.
14. Satoshi Nishitani, *Rodoho* [Labor law], 3rd ed. (Tokyo: Nihon Hyoronsha, 2020), 216.
15. Takashi Araki, Kazuo Sugeno, and Ryuichi Yamakawa, *Shosetsu Rodo Keiyaku Ho* [Exposition of the Labour Contracts Act], 2nd ed. (Tokyo: Yuhikaku, 2014), 111; Tsuchida, *supra* note 2, 710; Takashi Araki, *Rodo ho* [Labor and employment law], 5th ed. (Tokyo: Yuhikaku, 2022), 421.
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17. The *Legend K.K.* case, Fukuoka District Court, Kokura Branch (Jun. 17, 2020) 1241 *Rohan* 79; The *REI former employee* case, Tokyo District Court (May 13, 2022) 1278 *Rohan* 20. The court examined the validity of the non-compete clause and found it to be contrary to public policy and therefore void under Article 90 of the Civil Code.
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19. The *Jacpa Corporation* case, Osaka District Court (Sept. 22, 2000) 794 *Rohan* 37.
20. The author discusses the factors for consideration with reference to the *Yamanashi Kenmin Shinyo Kumiai* case. Michio Tsuchida, "Koen furiransu no hoteki hogo/Taishoku go no kyogyo hishi gimu to shuhi gimu o meguru mondai (ge) : Furiransu no rodosha-sei/Dokusen kinshi ho no tekiyo o fukumete" [Legal protection for freelancers: Issues associated with the post-employment non-compete obligation and confidentiality obligation (part 2): Freelancers' status as workers: Including the application of the Antimonopoly Act], *Chuo rodo jiho*, no.1299 (Mar. 2023): 4–26 ; The *Yamanashi Kenmin Shinyo Kumiai* case, Supreme Court (Feb. 19, 2016) 70-2 *Minshu* 123.
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23. Araki, Sugeno, and Yamakawa, *supra* note 15, 286.
24. The *Patent Firm A* case, Osaka District Court (Oct. 5, 2006) 927 *Rohan* 23.
25. *Supra* note 12.
26. *Supra* note 17.
27. Takahiro Fujiwara, "Kyogyo hishi gimu ihan ni motozuku kaisha kara no songai baisho seikyu no kahi: REI moto jugyo-in jiken" [Legitimacy of an employer's claim for damages based on breach of a non-compete obligation: The *REI former employee* case], *Journal of Management Lawyers Council*, no. 219, (2024): 50.
28. The *Foseco Japan Limited* case, Nara District Court (Oct. 23, 1975) 624 *Hanrei Jiho* 78.
29. The *Metlife ALICO* case, Tokyo High Court (Jun. 13, 2012), *Journal of Labor Cases*, no.8: 9; The *Daiichi Shigyo* case, Tokyo District Court (Jan. 15, 2016) 2276 *Rokeisoku* 12.
30. The *Tokyo Kamotsu sha* case, Tokyo District Court (Dec. 18, 2000) 807 *Rohan* 32; The *Kanto Kogyo* case, Tokyo District Court (Mar. 13, 2012) 2144 *Rokeisoku* 23.
31. The *Tokyo Legal Mind K.K.* case, *supra* note 8.
32. Shimpei, Ishida. "Eigyo himitsu hogo to taishoku go no kyogyo hishi gimu" [Protection of trade secrets and post-employment non-compete clauses], *Japan Labor Law Association Journal*, no.132 (2019): 34.
33. The *Mita Engineering* case, Tokyo Hight Court (Apr. 27, 2010) 1005 *Rohan* 21; The *Legend K.K.* case, Fukuoka High Court (Nov. 11, 2020) 1241 *Rohan* 70 (The court held that the change of the employer and business activities by the employee are not included in the scope of the non-compete clause.)
34. Toru Ueda, "America New York shuho ni okeru kyogyo hishi tokuyaku ni motozuku kenri kyusai ron" [Remedies based on restrictive covenants under New York State law in the United States], *Journal of Law, Politics, and Sociology* 95, no.7 (2022): 1–81. https://koara.lib.keio.ac.jp/xoonips/modules/xoonips/detail.php?koar_id=AN00224504-20220728-0001.
35. Tsuchida, *supra* note 2, 713; Araki, *supra* note 15, 327.
36. The *Iwaki Glass Co. Ltd., etc.* case, *supra* note 8, for other cases in which the non-compete clauses were found to be unreasonable, see The *Kiyou System* case, Osaka District Court (Jun. 19, 2000) 791 *Rohan* 8; The *American Life Insurance Company (ALICO)* case, Tokyo District Court (Jan. 13, 2012) 1041 *Rohan* 82; The *Soiku* case, Tokyo District Court (Jun. 16, 2023) *Journal of Labor Cases*, no.143: 48.
37. The *Leifras* case, Tokyo District court (Jan. 17, 2012), [LEX/DB No.25491225]. For other cases in which the reasonableness of the non-compete clause was affirmed, see the *Yamada Denki Co. Ltd.* case, Tokyo District Court (Apr. 24, 2007) 942 *Rohan* 39, the *Daiohs Services* case, Tokyo District Court (Aug. 30, 2002) 838 *Rohan* 32; the *Powerful Voice* case, Tokyo District Court (Oct. 27, 2010) 2105 *Hanrei Jiho* 136.
38. Tsuchida, *supra* note 2, 712; Nishitani, *supra* note 14, 218.
39. The *Daiohs Services* case, *supra* note 37; The *Soiku* case, *supra* note 36.
40. The *American Life Insurance Company (ALICO)* case, *supra* note 36. For other cases, the *Artnature Trade Secret (Customer List)* case,

Tokyo District Court (Feb. 23, 2005), 902 *Rohan* 106.

41. The *REI former employee* case, *supra* note 17.
42. The *Total Service Co. Ltd.* case, *supra* note 13.
43. The *Yamada Denki Co. Ltd.* case, *supra* note 37; The *Dance Music Record* case, Tokyo District Court (Nov. 26, 2008) 2040 *Hanrei Jiho* 126.
44. The *Asahipretec* case, Fukuoka District Court (Oct. 5, 2007) 1269 *Hanrei Times* 197.
45. The *Daiichi Shigyo* case, *supra* note 29.
46. The *Digital Power Station* case, Tokyo District Court (Dec. 19, 2016), *Journal of Labor Cases*, no.61: 21.
47. The *Iwaki Glass Co. Ltd., etc.* case, *supra* note 8.
48. The *Soiku* case, *supra* note 36.
49. The *Japan Industrial Partners* case, *supra* note 12.
50. The *Japan Industrial Partners* case, *supra* note 12.
51. The *Iwaki Glass Co. Ltd., etc.* case, *supra* note 8.
52. Tsuchida, *supra* note 2, 716.
53. Tetsu Yamada, "Dogyo tasha ni tenshoku shita moto-jugyoin ni taisuru taishoku kasan-kin no henkan seikyu ga mitome rareta rei: Nomura Shoken moto-jugyoin jiken" [A case where a claim for restitution of additional amount of retirement benefit was upheld against a former employee who had transferred to a competitor: The *Former Employee of Nomura Securities Co. Ltd.* case], *Quarterly Labor Law*, no.259 (Winter 2017): 190.
54. Susumu Noda, "Rodo-ryoku ido to kyogyo hishi gimu" [Labor mobility and non-compete obligation], *Quarterly Labor Law*, no.160 (Summer 1991): 57.
55. The *Leifras* case, *supra* note 37. In this case, since the retirement benefit provisions in work rules stipulate that the return of retirement benefit shall be required only if the fact that an employee's conduct during employment that constitutes grounds for disciplinary action is revealed after termination of employment, the court held that even if such conduct occurs after termination of employment, the retirement benefit already granted cannot be deemed unjust enrichment; and it cannot be interpreted that the employee who received it would be obligated to return it to the employer.
56. The *Daiichi Shigyo* case, *supra* note 29. In this case, there were no provisions on the return of retirement benefit, and based on the grounds for excluding employees from application of the early retirement program—specifically, that a breach of the non-compete clause constituted a disciplinary violation under work rules, the court held that the additional payment granted as preferential treatment under the early retirement program, lacked a legal foundation. It therefore upheld the employer's claim for restitution.
57. Hideyuki Morito, "Kyogyo hishi gimu ihan ni yoru taishoku-kin henkan seikyu to soki taishoku yugu seido: The *Daiichi Shigyo* jiken" [Claims for restitution of retirement benefit arising from breach of the non-compete clause, and early retirement incentive programs: The *Daiichi Shigyo* case], 1493 *Monthly Jurist* 5.
58. The *Fujitsu Limited (additional amount of retirement benefit)* case, Tokyo District Court (Oct. 3, 2005) 907 *Rohan* 16; The *Former Employee of Nomura Securities Co. Ltd.* case, Tokyo District Court (Mar. 31, 2016) 1144 *Rohan* 37.
59. Kyoto District Court (May 29, 2017) 1464 *Hanrei Times* 162, titled "A case where a claim for damages in an amount equivalent to the early-retirement retirement benefit was permissible on the ground that accepting the retirement benefit—granted under a early retirement program conditioned on compliance with a post-employment non-compete clause—constituted fraud by omission (a tort), notwithstanding that the validity of the non-compete clause itself was recognized." In this case, the court considered that the premium retirement benefit granted as a compensatory measure for early retirement exceeded "two years" amount of the employee's annual salary and that the employer claimed damages equivalent to that premium amount.
60. The *Tokyo Legal Mind K. K.* case, *supra* note 8. In this case, the claim for an injunction was dismissed.
61. The *Powerful Voice* case, *supra* note 37.
62. Araki, *supra* note15, 327.
63. *Supra* note 37.
64. The *Sankosha* case, Supreme Court (Aug. 9, 1978) 958 *Rokeisoku* 25.
65. The *Chubu Nippon Advertising* case, Nagoya High Court (Aug. 31, 1990) 569 *Rohan* 37.
66. The *Can System Co. Ltd.* case, Tokyo District Court (Oct. 28, 2009) 997 *Rohan* 55; The *Metlife ALICO* case, *supra* note 29; The *Japan Industrial Partners* case, *supra* note 12. The court upheld the employer's claim for partial reduction of performance-based retirement benefit.
67. The *Japan Industrial Partners* case, *supra* note 12.
68. Michio Tsuchida, "Rodo shijo no ryudo-ka o meguru horitsu mondai (jo)" [Legal issues concerning mobility in the labor market (part 1)], *Monthly Jurist*, no.1040 (March 1994): 58.
69. Michio Tsuchida, "Jinzai kakutoku shijo ni okeru rodo-ho to kyoso-ho no kino" [Functions of labor law and competition law in the talent acquisition market], *Montyly Jurist* no.1523: 48, Masako Wakui, "Kyogyo/tenshoku/dokuritsu kaigyo o samatageru koi to kyoso seisaku: Kyogyo hishi gimu o meguru rodo-ho to dokkin-ho no kosaku" [Restrictions on competitive activities, job mobility, and new business formation, and competition policy: The intersection of labor law and competition policy in the regulation of non-compete clauses], *NBL*, no.1157 (November 2019); Eri Matsumoto, Michio Tsuchida, and Shingo Seryo, "Taishoku go no kyogo hishi gimu to rodoho/dokusen kinshi ho: Rodoho to kyoso ho no Kosaku" [Post-employment non-compete obligations, labor law and the Antimonopoly

Act: Intersection of labor law and competition law], *Quarterly Labor Law*, no. 274, (Autumn 2021): 78.

70. Japan Fair Trade Commission, *Human Resource Mobility and Competition Policy*, 9 ff., https://www.jftc.go.jp/cprc/conference/index_files/180215jinzai01.pdf (last accessed Sept. 30, 2024). https://www.jftc.go.jp/en/pressreleases/yearly-2018/February/180215_files/180215_3.pdf. [English]
71. Naoko Kono, "Dokusen kinshi ho to rodo ho" [The Antimonopoly Act and, labor and employment law], in *Kigyo homu to rodo-ho* [Corporate legal affairs and labor and employment law], edited by Michio Tsuchida and compiled by the Study Group on Corporate Legal Affairs and Labor and Employment Law (Tokyo: Shojihomu, 2019), 270.
72. Matsumoto, Tsuchida, and Seryo, *supra* note 69, 92.
73. Wakui, *supra* note 69, 8.
74. Michio Tsuchida, "Koen furiransu no hoteki hogo/Taishoku go no kyogyo hishi gimu to shuhi gimu o meguru mondai (jyo): Furiransu no rodosha-sei/Dokusen kinshi ho no tekiyo o fukumete" [Legal protection for freelancers: Issues associated with the post-employment non-compete obligation and confidentiality obligation (part 1): Freelancers' status as workers: Including the application of the Antimonopoly Act], *Chuo Rodo Jiho*, no.1296 (December 2022): 4–19.
75. Wakui, *supra* note 69, 12.
76. The *Foseko Japan Limited.* case, *supra* note 28.
77. "Nihon no furiransu ni tsuite: Sono kibo ya tokucho, kyogyo hishi gimu no jokyo ya eikyo no bunseki. Seisaku kadai bunseki shirizu 17" [Freelancers in Japan: Analysis of the number and characteristics of freelancers, and the status and impact of non-compete clauses. Policy issue analysis series 17], Director General for Economic Research, Cabinet Office, last accessed September 30, 2024, https://www5.cao.go.jp/keizai3/2019/07seisakukadai17-0.pdf.
78. The *MetLife ALICO* case, *supra* note 29. In this case, in determining the validity of the non-compete obligation imposed on the former executive officer, the court conducted a reasonableness review while considering the officer's freedom to choose their occupation. In another court case, the court held that the non-compete obligation imposed on the former representative director to be reasonable, emphasizing that caution must be exercised in determining whether the content of such an obligation violates public policy and is therefore void. The *Bell System 24* case (Tokyo District Court (May 19, 2009) 1314 *Hanrei Times* 218, a case where an agreement etc., imposing post-employment non-compete obligations and similar duties on a former representative director, was deemed not contrary to public policy and thus valid.)

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Key topic

Raising the Importance of Developing "Career Ladders" for Jobs Supporting Social Infrastructure in Areas such as Medical and Welfare, Transportation, and Hospitality: MHLW's White Paper on the Labor Economy 2025

The White Paper on the Labor Economy 2025, published by the Ministry of Health, Labour and Welfare (MHLW) in September 2025, featured the theme "Toward Sustainable Economic Growth under Labor Supply Constraints." The white paper pointed out that in order to realize sustainable economic growth amid constraints on labor supply, the most important thing is to promote labor productivity. In addition, mentioning the low wage levels and the failure to sufficiently reflect the accumulation of skills and experiences in wages for jobs supporting social infrastructure in areas such as medical and welfare, transportation, and hospitality compared with other jobs, the white paper also raised the importance of developing career ladders for those jobs. We will describe the key points of the white paper, focusing particularly on Part II which reports on the analysis results.

I. Challenges for sustainable economic growth

1. Trend in the GDP (Gross Domestic Product) growth rate and labor supply

(1) Japan is at the bottom of major countries in terms of the real GDP growth rate in the past 40 years

At the beginning, the white paper looked at the real GDP growth rates of six countries—Japan, the United States, the United Kingdom, Germany, France, and Italy (hereinafter the "major countries")—over the past 40 years or so since 1980. Japan's growth rate is lower than that of the United States and the United Kingdom but is similar to the growth rates of France and Germany.

As for the decade-by-decade trend in the real GDP growth rate, Japan's growth rate in the 1980s came to 4.5%, the highest of the major countries, against the backdrop of robust consumption demand, vigorous capital investment, and export expansion. However, in the 1990s and 2000s, Japan's growth rate was the lowest of the major countries, as it was affected by the collapse of the economic bubble. Since the 2010s, there has been no significant difference between Japan's growth rate and that of Germany and France.

(2) The working age population is projected to decline despite the increasing female labor supply

Regarding the trend in labor supply in Japan, the supply continued to decrease moderately in the 1990s and later, but since 2021, it has stayed almost flat. By gender, male labor supply has remained on a downtrend since the 1990s, while female labor supply has been trending upward since the 2010s. Referring to this trend, the white paper mentioned that "labor participation by women supported by the promotion of working style reforms and the spread of diverse working styles has had positive effects on labor supply."

As for future projections of the working age population over the period until 2040, an uptrend is expected for the United States and the United Kingdom, while a downtrend is forecast for Japan, Germany, France, and Italy.

(3) Toward achieving sustainable economic growth by promoting labor productivity improvement

Given that the constraints on labor supply are

expected to continue, the white paper pointed out the need to pay attention to factors other than labor supply in order to achieve sustainable economic growth.

Change in the GDP growth rate can be explained by change in labor supply and change in real labor productivity. Therefore, the white paper broke down the GDP growth rate into these two factors and identified their contributions to change in the real GDP growth rate.

In the 1980s, an increase in labor supply contributed to a rise in the real GDP growth rate, but an increase in real labor productivity was larger than the increase in labor supply and contributed more to the real GDP growth rate. However, in the 1990s and later, the contribution of real labor productivity declined, resulting in a slowdown in the real GDP growth rate.

In light of the above analysis, the white paper argued that on the premise of maintaining labor supply to the maximum possible extent, "the most important thing in achieving sustainable economic growth is to promote labor productivity improvement."

2. Challenges and measures for improving labor productivity

(1) The contribution of ICT investment in Japan is lower than in the United States but it is on par with that of the United Kingdom and Germany

The white paper broke down the rate of increase in nominal labor productivity into the following factors and made international comparisons of factor-by-factor contribution: "the composition ratios of workers," which refers to the shares of workers classified by skill; "intangible asset investments," including research and development expenditure, human resource investment, and software investment; "ICT investments," mainly investments in PC and other hardware; "non-ICT investments," including investments in buildings, machinery, and ancillary equipment; and "others," including investments for technological innovation and social structure reforms.

The contribution of non-ICT investments in Japan is higher than that of the United States, the United Kingdom, and Germany. The contribution of the composition ratios of workers in Japan is lower than in the United Kingdom but is comparable to that of the United States and Germany. The contribution of ICT investments in Japan is lower than in the United States but is on par with that of the United Kingdom and Germany.

In light of the above, the white paper cited a view presuming that companies' utilization of ICT assets has remained inefficient in Japan for reasons such as that they have continued to use proprietary IT equipment in order to avoid reorganization and additional costs associated with employee training related to ICT skills.

(2) Behind the low contribution of intangible asset investments are delays in software investment

On the other hand, the contribution of intangible asset investments in Japan is low compared with that of the United States, the United Kingdom, and Germany and was almost zero in the 2010s.

In order to identify the trend concerning intangible assets in more detail, the white paper classified intangible assets as follows: "information technology assets," such as software investment and databases; "innovative assets," including research and development, copyrights, and design; and "economic competitiveness," such as brands, company-specific human resources, and reorganization cost.

An analysis based on this classification shows that the ratios of innovative assets and information technology assets to GDP in Japan are comparable to that of in the United States, the United Kingdom, and Germany. However, with respect to software-related capital stocks, which make up a large portion of information technology assets, the growth rate in the non-manufacturing sector in Japan is sluggish compared with the United States, the United Kingdom, and Germany, so the white paper pointed out that "the challenge is the delay in software investment, which constitutes the core of AI investment in the non-manufacturing industry."

II. Toward securing workers engaging in jobs supporting social infrastructure

1. Current state of labor shortages facing jobs that support social infrastructure

(1) Social infrastructure-related jobs account for 35% of all workers

The white paper assumed the presence of the following three categories of jobs supporting social infrastructure, which face labor shortages and which require stable retention of workers: "jobs critical to human life," "jobs related to logistics and infrastructure," and "jobs related to everyday life." Those jobs were classified into the "medical, health care, and welfare group," the "security, transportation, and construction group," and the "hospitality, sales, and food service group" (hereinafter the "three groups"). Defining those jobs as social infrastructure-related jobs, the white paper confirmed the current status and characteristics of the jobs.

Of all workers in Japan, social infrastructure-related jobs accounted for around 35%, representing the total sum of the shares of around 11% for the medical, healthcare, and welfare group, around 12% for the security, transportation, and construction group, and around 12% for the hospitality, sales, and food service group.

Between 2015 and 2024, while the number of workers engaging in non-social infrastructure-related jobs increased by 3.22 million people, the number of workers engaging in social infrastructure-related jobs rose by only 580,000 people. In view of that trend, the white paper observed as follows: "While the overall number of workers has been increasing, the increase in the number of workers engaging in social infrastructure-related jobs has been moderate, indicating that it has been more difficult to secure workers for such jobs compared with non-social infrastructure-related jobs."

(2) Female participation in social infrastructure-related jobs is relatively lagging

By gender, regarding non-social infrastructure-related jobs, the numbers of both male and female workers are trending upward, with the increase in female workers particularly pronounced. With respect to social infrastructure jobs, although the number of female workers is increasing, the number of male workers is decreasing moderately. However, the increase in female workers is not so pronounced as in the case of non-social infrastructure jobs. The white paper pointed out the effects of this trend on the sluggish growth in the number of social infrastructure-related jobs as follows: "While the number of female workers is increasing on the whole, female participation in social infrastructure-related jobs is relatively lagging."

2. Characteristics of jobs supporting social infrastructure

(1) Both wages and bonuses are lower than those of non-social infrastructure-related jobs

The average salary paid regularly in the form of cash is around 320,000 yen for social infrastructure-related jobs, lower than the average of around 360,000 yen for non-social infrastructure-related jobs. On a group-by-group basis, the average is around 330,000 yen for each of the medical, health care, and welfare group and the security, transportation, and construction group and around 270,000 yen for the hospitality, sales, and food service group.

There are also differences in annual bonuses and other extraordinary compensation. The average for social infrastructure-related jobs is only around 570,000 yen, much lower than the average of around 1.07 million yen for non-social infrastructure-related jobs.

As for annual income, there is a gap of more than 1 million yen, with the average at around 5.41 million yen for non-social infrastructure-related jobs and at around 4.36 million yen for social infrastructure-related jobs.

(2) The distribution of wages for social infrastructure-related jobs is not extending to the high income group

Moreover, given the possibility that on an average basis, the wage level may be pushed up by some high-income workers, the white paper paid attention to the distribution of wages. Regarding administrative

jobs, for which the labor shortage is relatively not acute, the wage distribution extends further into the high-income group than in the case of social infrastructure-related jobs. As factors behind that trend, the white paper cited "administrative jobs encompass a wide range of job tasks and operate under a system whereby wages rise with the accumulation of skills and experiences."

The white paper went on to mention the following points: "the distribution of monthly wages for administrative jobs is disproportionately skewed toward the high-income side because of the presence of a certain number of people who earn high income depending on experience and other factors, but on the other hand, the distribution for social infrastructure-related jobs does not extend to the high-income group"; and "this difference may reflect the effects of the presence or absence of 'career ladders' that gradually improve worker treatment in accordance with the accumulation of skills and experiences and differences in the management thereof."

Among other characteristics of social infrastructure-related jobs cited by the white paper are long working hours, lagging use of telework, and the tendency among workers to feel satisfaction from the job-related values such as "public service and social contribution," "good interpersonal relationships," "sense of achievement," and "autonomy."

3. Toward securing workers for jobs supporting social infrastructure

(1) Wage growth for social infrastructure-related jobs is limited relative to the accumulation of experience

Next, the white paper conducted a study on the development of a system for long-term career support. A comparison of wage curves between "social-infrastructure-related jobs" and "non–social-infrastructure-related jobs" shows that wage curve rises from young adulthood through ages from 55 to 59 years old and forms a mountain-like shape for non-social infrastructure-related jobs. Regarding this trend, the white paper asserted as follows: "If age is regarded as a proxy variable for skills and experiences, the (wage) structure is such that the accumulation of skills and experiences associated with the advance of age leads to labor productivity improvement, which in turn results in higher wages."

On the other hand, regarding social infrastructure-related jobs, although the wage level tends to rise with the advance of age, the slope of the wage curve is moderate, which means that the wage growth is limited relative to the accumulation of experiences. On a group-by-group basis, wage growth associated with the advance of age is observed to some degree for the medical, health care, and welfare group, but such wage growth is relatively small for the security, transportation, and construction group and the hospitality, sales, and food service group.

Further analysis of wage curves by educational attainment shows that the wage curve tends to form a so-called mountain-shape curve for administrative jobs with university graduates or higher, with wages rising with the advance of age. However, for social infrastructure-related jobs with university degrees or higher, wage growth is moderate compared with administrative jobs, meaning that wage growth associated with the advance of age is limited.

As for high school graduates, on the whole, the wage level remains lower for jobs in the medical, health care, and welfare group and hospitality, sales, and food service group than for administrative jobs. For jobs in the security, transportation, and construction group, the wage level is higher than for administrative jobs in the period of younger ages, but the wage growth becomes moderate in the period of age from the latter 40s upward, with the wage level falling below the level for administrative jobs in the period of age from the early 50s upward.

(2) The tendency to fail to reflect the accumulation of skills and experiences in wages is more pronounced when looked at by educational attainment

In view of the above statistics, the white paper pointed out that with respect to social infrastructure-related jobs, the wage structure is such that the accumulation of skills and experiences is not sufficiently reflected in wages and that this tendency becomes more pronounced if the wage curve is

looked at by educational attainment. In order to ensure that workers can work in the long term with a sense of security, the white paper stated, promoting the development of a system whereby wages gradually rise in accordance with the accumulation of skills and experiences, that is, a career ladder, with respect to social infrastructure-related jobs as well, is important for securing and training workers in the long-term.

III. Employment management adapted to changes in the relationship between companies and workers and in workers' attitudes

1. Change in the relationship between companies and workers

(1) The mid-career job market has expanded, with the number of workers who have obtained a job there surpassing 80 million people

The white paper conducted an analysis regarding three factors—(i) change in the relationship between companies and workers, (ii) change in workers' attitudes, and (iii) employment management that encourages continued employment—in order to consider how employment management should be adapted to changes in the relationship between companies and workers and in workers' attitudes.

Regarding change in the relationship between companies and workers, the white paper focused attention on the trends in the labor market, mainly the mid-career job market. Looking at recruitment trends, the number of new job openings offered at *Hello Work* public employment support offices have been on an uptrend on the whole despite being affected by economic cycles. As the number of private employment agencies has risen since the 1990s, the white paper pointed out that "the mid-career job market has expanded." In line with the expansion of the mid-career job market, the number of workers who have obtained a job there has been trending upward, increasing from around 60 million people in 1991 to more than 80 million people in 2023.

The white paper also conducted an analysis focusing on seniority-based wages. The wage curve for workers who continued to work for the same company after graduation, defined as *haenuki* employees shows that such employees are subject to a seniority-based wage system, which means that their wages rise with the advance of age and an increase in the number of years of service. Even so, over the long term, the wage curve has become flatter since 1993.

Although the share of *haenuki* employees in the workforce increased in the age group between 25 and 34 years old, it showed a long-term downward trend in the age groups between 35 and 44 years old and between 45 and 54 years old.

2. Change in workers' attitudes

(1) Values changed, leaning toward placing emphasis on the work-leisure balance

The white paper examined the relationship between work and leisure based on the Survey of Japanese Value Orientations, conducted by the NHK Broadcasting Culture Research Institute, and found that the share of people who "enjoy leisure sometimes but are oriented more towards work" declined from 36% in 1973 to 21% in 1993 and to 19% in 2018. On the other hand, the share of people who "are oriented equally to leisure and work" rose from 21% in 1973 to 38% in 2018.

In light of those changes, the white paper pointed out that "as the relative importance of leisure has grown, values are changing, leaning more toward placing emphasis on the work-leisure balance" and went on to assert as follows: "Those changes in workers' attitudes reflect the diversification of values associated with the variety of life events, so in accordance with changes in their attitudes, it is necessary to conduct employment management so as to enable employees to work in ways adapted to their respective life events."

(2) The percentage of workers who consider it to be desirable to develop a career through job changes is high among those who are in their 20s and 30s

The white paper also conducted an analysis regarding differences in workers' attitudes across

generations based on a questionnaire survey conducted by the Japan Institute for Labour Policy and Training (JILPT) in 2025.

Concerning wishes as to whether to continue working for the current employer, in all age groups, more respondents chose the reply, "It is desirable to continue working for the current employer for a long period of time," than the reply, "It is desirable to develop a career through job changes." However, among respondents who are in their 20s and 30s, the percentage of those who chose the reply, "It is desirable to develop a career through job changes," was higher among those who belong to other age groups.

Regarding work values, interest in worker treatment is higher among younger workers, with the tendency to place emphasis on the wage level pronounced among those who are in their 20s and 30s. As for working styles, the tendency to place emphasis on "time performance" which refers to time efficiency, was observed among those who are in their 30s.

(3) Well-developed training programs and diverse opportunities for experience at the current employer are among the reasons cited by younger age groups for deciding against job changes

An examination of the reasons for continuing employment with one's current employer shows that, among younger age groups, relatively high proportions cite factors such as "Can improve skills because of well-developed education and training programs," "Can accumulate experience because of job rotations," "Can engage in autonomous career building because of a program to allow workers to apply for preferred positions."

Looking at the status of voluntary skill development by age group, the percentage of workers who chose the reply, "Not engaging in skill development," is lower in younger age groups. The percentage of workers who are engaged in acquiring, "Work-related expert knowledge (excluding AI and IT-related knowledge)," or "Knowledge necessary for obtaining work-related qualifications," is higher among those who belong to younger age groups.

Based on the above results, the white paper mentioned the following points: "It has become clear that in younger age groups, the wish to continue working for the same employer is relatively low, there is a tendency to place greater emphasis on the wage level than on the specifics of the job, and interest in self-growth is high," and "Among those who are in their 30s, there is a preference for working styles that place emphasis on efficiency."

On this basis, regarding companies' measures to encourage continued employment of young and middle-aged employees over the long term, the white paper noted that "in addition to improving treatment, it is necessary to develop a system to enhance work efficiency and promote appropriate skill development."

3. Employment management that encourages continued employment

(1) A comfortable workplace environment encourages continued employment among workers

Based on the questionnaire survey by the JILPT, the white paper conducted an analysis to examine the specific image of employment management that enables employees to work in ways adapted to change in workers' attitudes and to life events amid labor shortages.

According to the analysis, regarding workers' perceptions of their workplace environment, around 28% chose the reply, "Comfortable to work in," around 56% selected "More or less comfortable to work in," and around 16% opted for "Uncomfortable to work in."

Based on their perception of the workplace, workers were divided into three groups—the "comfortable to work in" group, the "more or less comfortable to work in" group, and the "uncomfortable to work in" group—and the percentage of workers who consider it to be desirable to work for the current employer for a long period of time in each of the three groups was calculated. The percentage came to around 88% in the "comfortable to work in" group, around 72% in the "more or less comfortable to work in" group, and around 39% in the "uncomfortable to work in" group. The white

paper pointed out: "A comfortable workplace environment is necessary in order to encourage employees to stay at the company."

(2) Among the factors that make the workplace uncomfortable to work in are a chronic labor shortage and a lack of coworkers with whom to consult

Regarding the factors that make the workplace comfortable to work in, around 61% of workers in "the comfortable to work in" group and "more or less comfortable to work in" group cited, "The small amount of overtime hours," while around 50% cited, "A flexible paid leave system introduced and promoted."

As for the factors that make the workplace uncomfortable to work in (multiple choices allowed), around 68% of workers in the "uncomfortable to work in" group chose "Chronic labor shortage," and the white paper pointed out that the finding "suggests the need to promote countermeasures against labor shortages and the development of a comfortable workplace in parallel."

In addition, the white paper argued that management problems, such as "A lack of co-workers with whom to consult on work issues," "A lack of information from management on matters related to work style reforms," and "A lack of thorough efforts to provide guidance and advice related to long working hours," are also factors that make the workplace uncomfortable.

From the above analysis, the white paper concluded that "it is important to develop a comfortable workplace environment in order to strengthen the wish to keep working." It also pointed out as follows: "While the small amount of overtime work and the presence of a flexible paid leave system make workers feel comfortable to work, they feel that an environment where there is a labor shortage or where there is no coworker to consult with on work issues is uncomfortable to work in."

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Article

An Approach that Facilitates a Connection between the Psychology of the Unemployed and the Social System: What We Can Learn from a Book Entitled "The Psychology of Unemployment"

KAYANO Jun

I. Introduction

In March 2025, the author published a book in the research series entitled "The psychology of unemployment: Transitioning from job loss to re-employment." This book presents a systematic examination of the psychological challenges faced by the unemployed and their path to re-employment. The objective of this article is to elucidate the issues identified and the key concepts that are woven throughout the book, thereby offering the readers a comprehensive overview of the entire subject matter.

The aforementioned challenges can be characterized as falling into two categories. The initial challenge pertains to the restoration of workers' self-reliance, which has been undermined by job loss. Subsequently, addressing power imbalance in the employment relationship as a social systemic challenge is imperative, as it is a fundamental issue that underlies the problem.

In this book, the term "self-reliance" is based on a concept of "personal control" used in psychology, and it encompasses a broader concept. A sense of personal control is defined as an individual's belief that they can change their life through their own abilities. Self-reliance refers to a mindset in which workers do not evade challenges, such as job loss, but rather proactively seek solutions to these challenges. The behavioral consequence of this attitude is economic self-support, defined as "working and earning one's own income to provide for living expenses" (p. 55). In a capitalist economy based on wage labor, the realization of economic self-support strengthens workers' sense of personal control, which leads to a virtuous cycle that enhances self-reliance further.

According to psychologists, job loss is defined as "a life event that removes paid employment from an individual involuntarily" (Latack et al. 1995, p. 313). In this context, the term "involuntarily" is defined as "in a way that is not willing, intentional, or by choice."[1] Alternatively stated, the emphasis of psychological research has been on the ways in which job loss deprives workers of their sense of personal control, or the belief that individuals have the ability to control their employment situation. In the field of psychology, involuntary termination of employment is referred to as "job loss," while the subsequent state of being unemployed is distinguished as "unemployment" (See Introduction, "The psychology of unemployment: An overview of research areas.")

The final chapter of the book, "A psychological approach to the issues of unemployment: 16 recommendations and a vision for the future" presents 16 specific recommendations. Among these, No. 15 and No. 16 are of particular significance, as they represent the principal arguments that the authors place the utmost emphasis on.

In Recommendation No. 15, it is suggested that "re-employment" is an effective measure of mitigating the psychological impact of job loss to a certain extent, as evidenced by meta-analyses conducted by McKee-Ryan et al. (2005); and Paul and Moser (2009). It also underscores that, in order to realize such re-employment, a consideration of the structural assumption of asymmetric power[2] relationships between employers (as "the hiring

side") and employees (as "those being hired") is imperative. Unemployment and re-employment can be regarded as phases in a continuous cycle of "construction, deconstruction (dissolution), and reconstruction" of the employment relationship. The judgments and decisions made at each phase are thereby invariably influenced by the power dynamics between the two sides.

In accordance with the aforementioned structural assumption, Recommendation No. 16 suggests that workers adopt a "mindset of job search" (JILPT 2019) guided by a "cyclical self-regulatory model of job search process quality" (Van Hooft et al. 2013) as a strategy for proactively building employment relationships while maintaining and restoring self-reliance. The foundation of this model is rooted in the concept of "self-regulation," which is defined as the process of consciously adjusting one's emotions, thoughts, and behaviors to achieve objectives through flexible choices and modifications according to the situation.

The mindset of job search focuses on workers to repeat a GPDR cycle, i.e., (1) setting a goal (**G**oal), (2) making a plan (**P**lan), (3) doing it (**D**o), and (4) reflecting on the results (**R**eflection) while prioritizing their own desires and needs.

Through this iterative practice, workers are expected to proactively seek the equilibrium point between their willingness to supply labor and employers' demand for labor through trial and error, flexibly adjusting their work styles as needed in order to increase their ability to respond to employers' demand for labor.

II. Standpoint from labor psychology

An examination of labor issues necessitates the consideration of the inherent structural factors in the social system, which include markets, organizations, and institutions, even if a situation initially appears to be a psychological problem of an individual worker (Genda 2017).

Psychologists, in general, tend to focus more on psychological problems, including experiences of subjective distress or helplessness, that are brought on by job loss. It is evident that these aspects are more likely to manifest in the behaviors of the unemployed and are easier for them to verbalize. In contrast, structural factors including markets, organizations, and institutions are less visible and less likely to be recognized by individuals themselves when compared to psychological problems. For this reason, considering labor issues from a psychological standpoint—that is a raison d'être of labor psychology—is even more significant when examining psychological problems in relation to these structural factors. This is because it is possible to show a roadmap that leads to solving workers' psychological problems from the social system side as well.

During the Great Depression of the 1930s, psychologists began to view unemployment not merely as an economic hardship, but also as a social phenomenon that undermines workers' identities and social connections. Consequently, they initiated an exploration of its social-psychological aspects. Chapter 1, "Progress and contemporary viewpoints in research on the psychology of unemployment" outlines the process of succession and development from the initial formation of problem awareness to the modern psychology of unemployment, employing research from these nascent periods as a point of departure.

Given the assumption that the high rate of unemployment resulted from the irresistible circumstances of the Great Depression, which was a period of severe economic downturn, these studies focused on descriptively tracking the psychological and behavioral responses exhibited by workers and their families. Behind this is the fact that a standpoint viewing unemployment as a consequence of macro-economic factors, such as changes in industrial structure and business cycles, rather than as problems of individual workers, such as laziness or lack of ability, had already emerged at the beginning of the 20th century.

In his book, *Unemployment: A Problem of Industry*, economist Beveridge systematically organized this standpoint, identifying macro-economic factors as the cause of the reserve of labor

(Beveridge 1909). He argued that since these factors determine employment, it would be erroneous to attribute unemployment solely to the responsibility of the individual workers. This position has had a significant influence on subsequent social science research and government unemployment policies, thereby establishing a more comprehensive, structural approach to addressing the issues of unemployment (Garraty 1978).

During the Great Depression of the 1930s, the standpoint from economics became the theoretical foundation for psychologists to view unemployment as a social system problem. In addition to the immediate psychological distress of depression or anxiety that occurs after becoming unemployed, psychologists identified a sense of helplessness associated with long-term unemployment—the feeling that "one cannot change the situation on one's own"—as particularly problematic (Eisenberg and Lazarsfeld 1938). The state of helplessness can be considered the antithesis of self-reliance. The more helpless a worker feels, the less self-reliant he or she becomes, and thus their willingness to seek a job is severely impaired. Consequently, their chances of finding re-employment become more remote. These findings provided the theoretical foundation for the promotion of policy approaches, including the government's job creation measures and the expansion of unemployment insurance programs.

In particular, psychologist Jahoda and sociologist Bakke were groundbreaking in their view that the sense of helplessness experienced by the unemployed is not merely an individual psychological problem, but rather a manifestation of structural factors inherent to the capitalist economy. Their standpoint asserts that the efforts of individual workers alone are insufficient to overcome a sense of helplessness, and that it can only be fundamentally resolved if accompanied by a redesign of the institutional and social environment surrounding employment.

The psychology of unemployment has evolved from a field that studied psychological mechanisms in the individual to one that links the subjective experiences of the unemployed to problems in the social system, thus establishing itself as an academic field that addresses labor issues. This book also adopts this standpoint.

III. Contrasted viewpoints of Jahoda and Bakke on unemployment issues

Jahoda and Bakke held a similar viewpoint on the issue of unemployment, regarding it as a social system problem. As demonstrated in Table 1, they

Table 1. Contrasting viewpoints of Jahoda and Bakke in terms of the issues of unemployment

Viewpoints	Jahoda	Bakke
Attitude toward the economic system	• Critical viewpoint on the capitalist economy	• Unemployment issues can be solved within the framework of a capitalist economy
Main subject of the research	• Sense of helplessness due to unemployment, social isolation, and changes in life circumstances	• Effects of unemployment insurance programs on workers' economic self-support
Root of the issues of unemployment	• Structural problems of the capitalist economy	• Difficulties faced by workers to be economically self-supporting
Basic policy for the solutions	• Providing comprehensive government support, not only for economic problems but also for social-psychological issues	• Providing a sense of psychological security through unemployment insurance benefits and encourage them to continue their re-employment efforts
Influence on the modern psychology	• Research on the negative psychological impacts of job loss and approaches to mitigate them	• Research on job search activities and its support measures

Source: Prepared by the authors based on Jahoda, Lazarsfeld, Zeisel and Fleck (2017); Jahoda (1982); and Bakke (1933).

exhibited contrasting approaches to the maintenance and restoration of self-reliance.

According to Jahoda, the sense of helplessness experienced by workers due to the structural problems of the capitalist economy was a serious issue. Consequently, she advocated for comprehensive government support, encompassing not only economic challenges but also social-psychological issues. In contrast, Bakke underscored the significance of helping workers maintain their willingness to be economically self-supporting through the unemployment insurance programs, founded on the premise of the sustainability of the capitalist economy.

(1) Viewpoint of Jahoda

Following the closure of the sole factory in the Austrian village of Marienthal in 1929, Jahoda, along with her colleagues, organized a research team to conduct a thorough meticulous study on the social-psychological impacts of job loss (Jahoda et al. 2017).

The vast majority of families in the village were affected by unemployment, which resulted in severe economic hardship due to the loss of their primary industry. The team conducted a multifaceted field study, which included the analysis of household financial records, the collection of data through a time-of-day survey (which incorporated the measurement of walking speed), and home visits. The study indicated the process by which unemployment leads to a deprivation of activities and a sense of time, resulting in apathy and a loss of hope among residents.

Jahoda et al. emphasized that these changes were not due to individual workers' laziness or lack of effort, but rather due to a structural factor, namely the loss of employment opportunities across entire regions. They posited that the factory closure caused by the Great Depression could not be overcome through individual willpower or effort alone, and this resulted in a sense of helplessness among workers that "one cannot change the situation on one's own."

In this survey, Jahoda and her colleagues characterized workers' sense of helplessness, that is, the process of declining self-reliance. They argued that the root of the issues lies not with individual workers, but rather with the capitalist economic system, which creates instability in employment opportunities.

In the aftermath of the war, Jahoda advanced this finding and proposed the "latent deprivation model" (Jahoda 1979). She argued that employment possesses latent functions, such as (1) structuring habitual time, (2) expanding social contacts, (3) sharing common goals and efforts, (4) constructing personal identity or status, and (5) enforcing regular activities, in addition to its manifest function of earning wage income. (See Chapter 2, "The theories of the psychology of unemployment.")

According to her, these functions are in response to fundamental human needs, and the experience of job loss deprives people of these functions simultaneously, causing significant psychological and social harm. Consequently, she contended that in order to mitigate the impact of job loss, it is imperative to provide comprehensive government support that addresses not only the economic aspects but also the social-psychological aspects.

(2) Viewpoint of Bakke

During the same period as Jahoda et al., Bakke studied the psychology of the unemployed and conducted field studies in Greenwich, UK (Bakke 1933), and New Haven, USA (Bakke 1940).

His research in Greenwich focused on the effects of the unemployment insurance programs on workers' economic self-support. By taking up residence in the homes of working-class families and observing their daily lives, Bakke sought to reveal the economic hardship and psychological pressure faced by the unemployed.

Bakke emphasized a decline in self-reliance, that is, the perception that one cannot rebuild their life through their own abilities, as a hindering factor of re-employment. Although there is some overlap with Jahoda's findings, he believed that even if self-reliance is temporarily impaired by job loss, workers inherently possess the willingness for economic self-support. He further posited that this self-reliance is

shaped by the culture and values of the society to which the individual belongs.

Bakke's viewpoint on unemployment insurance programs, which are funded by contributions from labor and management, encompasses more than mere relief measures. He characterized it as an institutional framework that furnishes workers with a psychological foundation to maintain their economic self-support and encourage them to be proactive toward re-employment.

He identified unemployment as a structural limitation inherent to the capitalist economy, yet he proposed that the system could be sustained through institutional means, such as unemployment insurance, which would complement its inherent limitations.

Jahoda and Bakke held a similar perspective on unemployment, regarding it as a problem stemming from structural factors within the capitalist economic system. There was, however, a significant discrepancy in the direction of their responses. In a capitalist economy, employment instability is a persistent structural risk. One of the serious consequences is unemployment. In this regard, Jahoda emphasized the negative impacts of job loss on workers' self-reliance, specifically their sense of helplessness from "not being able to change the situation on one's own."

Conversely, Bakke advanced the notion that for a capitalist economy to be sustainable, it is imperative for workers to maintain their self-reliance, particularly their economic self-support. He further argued that institutional support is pivotal in achieving this, as self-reliance is socially shaped by the social system.

In contrast to the approaches of Jahoda and Bakke, modern psychology rarely makes direct reference to the economic system. Notwithstanding, the aforementioned viewpoints continue to exert a substantial influence on research on the psychology of unemployment.

As indicated in Table 2, two psychological stages of unemployment are currently being studied in parallel. One of these stages is "a stage of experiencing negative psychological impacts due to job loss." This approach aligns with the line of research initiated by Jahoda, which focused on psychological problems such as depression, anxiety, and reduced self-esteem. Presently, there are proactive studies underway to examine measures that could mitigate these impacts.

The other stage is defined as "a stage in the process of realizing re-employment through job search activity." This approach represents an evolution of Bakke's concept, with a focus on fostering workers' self-reliance. Specifically, the

Table 2. Two different psychological stages in research on the psychology of unemployment

Components of the research / Process of transitioning from job loss to re-employment	A stage of experiencing negative psychological impacts due to job loss	A stage in the process of realizing re-employment through job search activity
Main theory	(latent deprivation model) Coping behavior theory	Self-regulation theory
Motivation	Mitigation of stress	Achieving the goal of getting a job
Viewing job loss as	An involuntary event	Dissolution of the employment relationship
Viewing re-employment as	Problem-focused coping	Reconstruction of a proactive employment relationship
Viewing the behavior as	Coping behavior	Goal-achieving behavior
Image of the unemployed	Passive	Active

incorporation of self-regulation theory has led to the development of studies aimed at assisting job seekers in proactively and voluntarily continuing their job search until they attain re-employment.

In research on the modern psychology of unemployment, these two stages are evolving in a manner that is separate from each other. Moreover, the primary focus of both is on the psychological processes of individual workers. Consequently, the structural factors inherent in the social system that influence these processes have not been adequately considered. The viewpoints on the social system that both Jahoda and Bakke emphasized appear to have been overlooked in research on the modern psychology of unemployment.

IV. Why do structural factors matter?

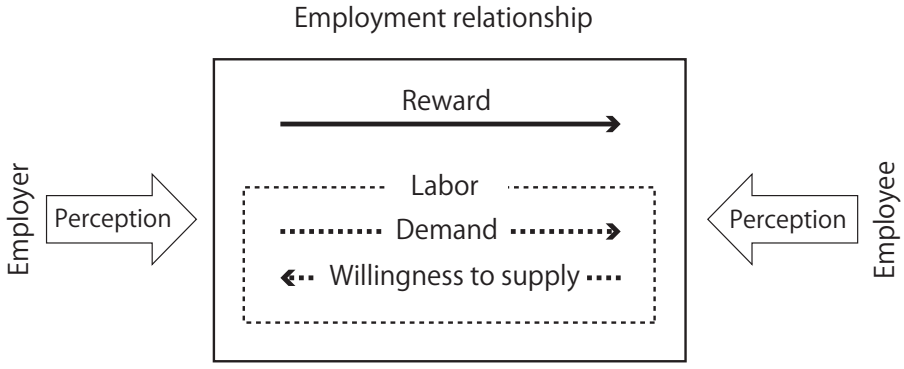
Primary focus of this book is on how employers and employees, through their respective positions, perceive the employment relationship as a framework that links two distinct psychological stages in research on the psychology of unemployment. Referring to the framework delineated in Figure 1, the authors examine the structural factors inherent in the construction, deconstruction (dissolution), and reconstruction of the employment relationships that affect employees' psychology. The crux of the issue lies in a fundamental power asymmetry existing between the two sides, wherein the capital-owning employer maintains a more advantageous position (JILPT 2024).

Employers utilize capital to develop and operate businesses, thereby creating demand for labor. They are in a position to pay compensation in exchange. In contrast, employees generally possess no capital other than their own labor power and are able to earn compensation by providing labor. Within this structure of the employment relationship, a power imbalance exists as follows.

They conduct business based on their capital and possess broad decision-making authority regarding the setting of working conditions (such as wages and working hours) and employment adjustments (such as hiring and dismissals) based on management judgment. Conversely, employees primarily have the option of whether or not to provide labor, which places them in a relatively weaker position than employers in establishing and maintaining employment relationships as well as negotiating working conditions.

This imbalance in the power relationship becomes particularly evident during the phases of job loss and re-employment. This is due to the fact that the dissolution of the employment relationship and the possibility of re-employment are significantly influenced by the employer's business decisions. Against the backdrop of this structural imbalance, what psychologists identify as "involuntary job loss" arises.

The measure proposed in this book is for employees to strategically manage their willingness



Source: Prepared by the authors based on Fryer and Payne (1986).

Figure 1. Perception of the employment relationship

to supply labor through self-regulation. In this context, the term "self-regulation" does not merely denote the maintenance of motivation or the promotion of continuous effort.

As demonstrated in Figure 1, employers exert control over labor demand through compensation and other systems of treatment, thereby possessing institutional mechanisms to influence employees' willingness to supply labor. Conversely, individual employees possess limited means to directly influence employers' labor demand or treatment systems. Therefore, adjusting their own willingness to supply labor becomes the only effective means to counteract this asymmetry of power.

In summary, it is imperative for employees to continuously monitor their own willingness to supply labor, read changes in employers' labor demand and treatment, and strategically manage their labor based on the framework of the employment relationship. The GPDR cycle of "Goal, Plan, Do, and Reflection," which is introduced at the beginning of this article, is one method of achieving such self-regulation. By repeatedly undergoing this process, employees can assess employers' labor demand and proactively adjust their own willingness to supply labor.

The details of the approach centering on self-regulation are explained in Chapter 3, "Research on job search" and Chapter 4, "Research on job search interventions" for the theoretical aspect, and in Chapter 5, "Development of a training program for job search with perseverance and resilience," which summarizes the development of an online re-employment support program and its effectiveness evaluation, for the practical aspect. In addition, Chapter 6, "Technology and job search activities," explores the potential for self-regulation support in job search activities through the utilization of ICT from a psychological perspective.

V. The behavior derived from the social system: The case of the "47 *ronin*"

Finally, we will explore the necessity for psychologists to focus on structural factors, i.e., social system, when considering the psychology of the unemployed, using the historical incident of the revenge of the 47 *ronin* (masterless samurai) of Ako[3] as a relevant example.

The revenge of the 47 *ronin* of Ako is frequently interpreted in terms of individual psychological motivations such as "loyalty" and a "desire for vengeance." It is evident that the strong emotion of avenging the dishonor of their lord served as the primary catalyst for their behaviors. It is imperative to note that this emotion was subsequently transformed into behaviors that were justified and praised by the social system, namely, the principles of loyalty and honor within Bushido, the status hierarchy between lords and retainers, and the Confucian values that shaped public opinion (Fujita 1990).

From this incident, it can be deduced that comprehending the psychological mechanisms underlying emotions is inadequate for a comprehensive elucidation of human behavior. While the desire for revenge is encouraged if it is perceived by societal norms as a "righteous behavior with *taigi-meibun*, that is, the great principle of duties and loyalty entails the fulfillment of obligations intrinsic to an individual's designated role or status, it is suppressed if regarded as an "unforgivable act of vengeance driven by personal grudges." Consequently, psychological support must encompass not only direct assistance with emotional issues but also a critical perspective that examines the institutions and norms that assign social meaning to those emotions.

As previously mentioned, two viewpoints exist in the field of labor psychology regarding this issue. Firstly, Jahoda identified an incompatibility between a sense of helplessness stemming from long-term unfulfillment of basic human needs and the social system, which she deemed as problematic. She posited that a modification in the social structure itself is imperative to address this problem. This position identifies flaws in the societal framework based on the fundamental nature of human psychology.

Secondly, according to Bakke, workers' sense of self-reliance is shaped by institutions and codes of

conduct. He posited that overcoming the sense of helplessness stemming from the loss of self-reliance requires improving the institutions and practices within the existing social system. This viewpoint accentuates the reciprocal interaction between human psychology and social systems, thereby emphasizing the necessity of adjusting a balance between the two. The two positions are contrasted: the former aims for structural transformation, while the latter is oriented toward gradual improvement.

To elucidate the distinction between these two viewpoints, an examination of the case of the "47 *ronin*" would be beneficial. According to Jahoda's point of view, the social system should be modified to align with the principles of human psychology. This is a human-centered approach. From this viewpoint, the "desire for vengeance" exhibited by the 47 *ronin* is regarded as a natural human emotion; therefore, the social system that suppresses it needs to be reformed.

In contrast, from Bakke's viewpoint, the "desire for vengeance" could be regarded as shaped by societal institutions and values. Thus, the incident could be interpreted as a consequence of shortcomings in the social system. Therefore, this viewpoint emphasizes the importance of implementing incremental improvements to the existing social system to transform the desire for vengeance and channel its expression into socially acceptable behavior.

VI. Mutual complementation of psychological support and institutional reform

When exploring the psychological dimensions of the unemployed, it is insufficient to focus solely on psychological phenomena such as a sense of helplessness or psychological distress. A comprehensive examination of the underlying structural factors inherent in employment systems, labor practices, and social norms reveals practical support measures. In view of these factors, it is imperative that two fundamental pillars function in a complementary manner: firstly, the provision of psychological care and job search interventions by support-providing bodies, and secondly, the undertaking of institutional reorganization and restructuring by policymakers.

By promoting psychological support and social system reform as complementary strategies concurrently, the unemployed are enabled to proactively address the current challenges and maintain or restore their self-reliance. This approach would also facilitate essential and strategic responses to correct structural power imbalances with employers. The validation of these hypotheses necessitates empirical research and social experiments in real-world settings. If the maintenance and restoration of self-reliance among the unemployed and the reorganization and restructuring of social systems could function in a manner that is mutually complementary, it is likely that this will result in the sound development of the social system as a whole, including employment relationships.

This article is a translation of the author's article that was previously posted on the website of the JILPT: https://www.jil.go.jp/researcheye/bn/087_250604.html.

Notes

1. *Cambridge Dictionary*, under "involuntary." https://dictionary.cambridge.org/dictionary/english/involuntarily (last accessed on Dec. 12, 2024).
2. The term "power" in this context refers to the concept of "social power" as defined in the field of psychology. This is the ability to influence the behaviors and thoughts of others, even in circumstances where those individuals are exhibiting resistance, caused by multiple factors (*APA Dictionary of Psychology* 2007). These factors are as follows: (1) reward power, (2) coercive power, (3) legitimate power, (4) referent power, (5) expert power, and (6) informational power.
3. The incident began in March 1701, during the Edo period. Asano Takuminokami, the lord of the Ako Domain, drew his sword in an attempt to kill Kira Kozukenosuke at Edo Castle. Asano was compelled to commit *seppuku*, or ritual suicide, on the same day. Consequently, his fiefdom was forfeited, and the Ako Domain of the Asano family was dissolved. In the aftermath of the lord's death, the vassals dispersed. In 1702, however, the group underwent a reorganization under the leadership of Oishi Kuranosuke. Late at night on December 14 of that year, the 47 *ronin* of Ako initiated a raid on Kira's mansion and successfully beheaded him. The following day, they voluntarily presented themselves to the authorities. In February 1703, the 46 *ronin* committed *seppuku* by order of the Tokugawa shogunate. Their behaviors were later passed down

as "*Chushingura*," or "Treasury of the 47 Loyal Retainers," which became a symbol of loyalty.

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Commentary

Application of the Deemed Working Time System for Work Outside of the Workplace

The *Globe Cooperative Association* Case
Supreme Court (April 16, 2024) 1309 *Rodo Hanrei* 5

IKEZOE Hirokuni

I. Facts

In September 2016, Appellee X was employed by Appellant Y, a licensed supervising organization for foreign technical intern trainees, serving as a technical intern training coordinator until his resignation on October 31, 2018.

In this case, X has filed claims against Y for the payment of wages pertaining to overtime, statutory days off, and late-night work. Y argues that certain work performed by X outside of the workplace (hereinafter referred to as the "Work") fall under the category of work for which "it is difficult to calculate those working hours" as provided in Article 38-2, paragraph (1) of the Labor Standards Act (hereinafter referred to as the "LSA Provision"). Accordingly, Y argued that the hours worked by X should be deemed to be prescribed working hours.[1]

During the period of X's employment with Y, X was responsible for conducting on-site guidance visits to the technical intern training implementing organizations located in the Kyushu region, more than twice a month, and also engaged in work for foreign trainees, such as picking-up and seeing-off at the time of their arrival in, and departure from Japan, providing them with guidance on daily living, and serving as an interpreter for them when they got into unexpected trouble. With regard to the Work, X managed the scheduling process directly, including making appointments to visit the implementing organizations. Furthermore, although Y provided X with a mobile phone, X neither received specific instructions from Y nor submitted reports on an as-needed basis via the device.

Notwithstanding X's contractual working hours were stipulated as 9:00 a.m. to 6:00 p.m. with a one-hour break from noon, in reality, X took breaks at his own discretion depending on workdays. Furthermore, X was exempt from Y's time card-based management of working hours and could travel directly to and from client sites based on his own judgment. Nevertheless, at the end of each month, X submitted daily work reports to Y, detailing the start and end times of his work, break times, visit locations and times, and general work content for each working day, all of which were subject to Y's review and verification.

Given these facts, the court of prior instance (Fukuoka High Court [November 10, 2022]) partially granted X's claim for payment of wages among the claims filed in this case, holding that the accuracy of X's daily work reports was assured to a certain extent.

II. Judgment

According to the facts mentioned above, the Work covered a wide range of duties, including not only conducting on-site guidance visits to the implementing organizations, but also picking up and seeing off foreign trainees, providing guidance on daily living, and serving as an interpreter on the occasion of unexpected trouble. Furthermore, with regard to the Work, X managed the scheduling process directly, including making appointments to

visit the training implementing organizations, and hence, X was allowed to take a break at times different from the prescribed break time and could choose to go directly to and from client sites based on his own judgment, and X did not receive specific instructions from Y or make reports to Y on an as needed basis.

Under such circumstances, in consideration of matters such as the nature, content, manner, and situation of performance of the work, and the method, content, manner, and situation of communication of instructions and reports on the work, it is difficult to immediately say that it was easy for Y to specifically understand the situation of Appellee X's work outside of the workplace, even though the implementing organizations at which X was assigned to conduct training as well as the frequency of visiting these organizations on a monthly basis were designated.

Nevertheless, with regard to the daily work reports submitted by X to Y, the court of prior instance evaluated that their accuracy was assured, pointing out that [i] it was possible for Y to confirm with the implementing organizations concerning the content of the daily work reports, and [ii] in some cases, Y paid allowances for overtime work by calculating the hours worked overtime on condition that the daily work reports were accurate, and in conclusion, the court of prior instance denied the applicability of the LSA Provision to the Work.

However, the point mentioned in [i] above demonstrates merely in general terms that Y could take such measures as making inquiries to the other party involved in X's work, and it is uncertain in specific terms whether the approach of conducting confirmation with the implementing organizations is actually possible and effective. Regarding the point mentioned in [ii] above, Y argues that it paid allowances for overtime work to X without applying the LSA Provision only when Y was able to ascertain X's working hours based on evidence available other than the content of X's daily work reports. Unless the acceptability of this argument is examined, it cannot be said that Y regarded the accuracy of the daily work reports as a precondition, nor can it be evaluated that the accuracy of the daily work reports was objectively assured only based on the fact that Y paid allowances for overtime work in certain cases.

According to the above, it must be said that the court of prior instance determined that the Work does not fall under the case where "it is difficult to calculate those working hours" as referred to in the LSA Provision, without fully examining the specific circumstances concerning whether the accuracy of X's daily work reports was assured, but solely by placing emphasis on X's reporting by means of the daily work reports, and that such determination by the court of prior instance is unlawful due to the erroneous interpretation and application of the LSA Provision.

As such, the above-mentioned determination by the court of prior instance contains a violation of law or regulation that has clearly influenced the judgment, and the part of the judgment in prior instance concerning X's claims, which is against Y, should inevitably be reversed. For the reversed part of the judgment in prior instance, the case is remanded to the court of prior instance to have it further examine matters including whether the Work falls under the case where "it is difficult to calculate those working hours" as referred to in the LSA Provision.

III. Commentary

(1) Significance of this judgment

This is a case in which the Supreme Court made a fact-specific determination and reversed the judgment in prior instance to remand the case to the High Court. It is noteworthy as the second judgment of the Supreme Court that addressed the applicability of the deemed working time system for work outside of the workplace. In particular, while the precedent judgment on the *Hankyu Travel Support* (Temporary Tour Conductors No. 2) case, Supreme Court, Second Petty Bench [Jan. 24, 2014] 1088 *Rodo Hanrei* 5) dismissed the final appeal, the judgment in the present case is significant in that it discussed what situation should be demonstrated to prove the difficulty in calculating deemed working time when an employee engaged in work outside of the workplace.

In addition, it has been a considerable period of time since the diversity of employment forms began to be argued in practical and labor policy terms. The Supreme Court's decision in the present case regarding the applicability of the LSA Provision to employees who engage in work away from the workplace (such as sales personnel who always or frequently work outside of the office) will provide valuable input for considering the optimal application of the deemed working time system for labor by those who work from home, which has become a more common working styles since the onset of the COVID-19 pandemic, and for developing a legal system for deemed working time in line with changes in working styles.[2]

(2) Difficulty in calculating working hours

What situation specifically constitutes the case where "it is difficult to calculate those working hours" as provided in Article 38-2, paragraph (1) of the LSA, which was disputed in this litigation?

The administrative authorities interpret that because this Provision concerns work outside of the workplace, it refers to the "case where it is difficult to calculate a employee's working hours due to the employer's insufficient direction and supervision. Legal scholars further elaborate on this, such as the "case where the employer is unable to exercise the sufficient direction and supervision of the employee to the level that can adequately grasp working hours due to the nature of the employee's work," or the "case where it is objectively difficult for the employer, despite its reasonable effort, to ascertain the employee's working status to a degree that can be calculated." These perspectives suggest that the determination hinges on the concrete extent of the employer's actual direction and supervision over the employees working outside of the workplace.

In the *Hankyu Travel Support* Case, the Supreme Court examined the facts found in the case in light of the "nature, content, manner, and situation of performance of the work, and the method, content, manner, and situation of communication of instructions and reports on the work between the employer and the employee," and thereby derived a conclusion. The Supreme Court followed this approach in the present case. It seems that the Supreme Court, while bearing in mind the qualitative nature of the work, presumed from the facts the dynamic aspects of the work, that is, how the work was performed and the communication and reporting were conducted, with a view to identifying whether the employer is found to have exercised the direction and supervision of the employee, or in other words, whether the situation falls under the case where "it is difficult to calculate those working hours." Therefore, the determination on this issue should inevitably be made on a case-by-case basis, relying on the facts found in terms of the manner of performance and other dynamic aspects of the work.

Having said that, the value of the *Hankyu Travel Support* Case as a precedent is reflected in the Supreme Court judgment in the present case. In its ruling, the Supreme Court stated that "the court of prior instance determined that the Work does not fall under the case where 'it is difficult to calculate those working hours,' without sufficiently examining the specific circumstances concerning whether the accuracy of X's daily work reports was assured, but only by placing emphasis on X's reporting by means of the daily work reports." Consequently, the actual nature of an employee's engagement in work—rather than the presumptive expectations of their role—is the determinative factor in assessing the extent of an employer's direction and supervision. This assessment, in turn, dictates whether the circumstances satisfy the legal criteria for being "difficult to calculate working hours."

Focusing on the nature of the work performed, a clear distinction arises when comparing this case with the *Hankyu Travel Support* Case. In that precedent, the employee, a tour conductor, was ordered to follow the pre-established tour itinerary and other details of work predetermined by the employer, exercising discretion only when addressing unforeseen contingencies during the tour. In contrast, the Appellee X in the present case, a technical intern training coordinator for foreign trainees, engaged in a far broader scope of duties—ranging from periodical on-site guidance to daily life counseling,

trouble shooting and interpreting for foreign trainees—while maintaining direct control over their own work schedule. These substantive differences in the prescribed work may have influenced the court's legal decision regarding the degree of the employer's direction and supervision, particularly concerning the challenges of calculating actual working hours.

Meanwhile, with the current development of Information and Communication Technologies (ICT) equipment, how the employee actually uses such equipment in performing his/her work may possibly influence the court's legal decision regarding the difficulty in calculating working hours (for the case in which the court partially determined that the situation in dispute does not fall under the case where "it is difficult to calculate those working hours" due to the manner of using ICT equipment in performing work, see the *Celltrion Healthcare Japan* Case, Tokyo High Court [November 16, 2022] 1288 *Rodo Hanrei* 81).

Notes

1. Article 38-2 of the Labor Standards Act:
   (1) If a worker engages in work outside of the workplace during all or part of their working hours and it is difficult to calculate those working hours, the number of hours worked is deemed to be the prescribed working hours; provided, however, that if it would normally be necessary to work in excess of the prescribed working hours in order to carry out that work, the worker is deemed to have worked for the number of hours that would normally be necessary to carry out that work, pursuant to the provisions of Order of the Ministry of Health, Labour and Welfare.
   (2) In a case referred to in the proviso of the preceding paragraph, if the employer has concluded a written agreement concerning the work in question with the labor union that is organized by a majority of the workers at that workplace, if there is one, or with a person representing a majority of the workers at that workplace, if there is no such union, the number of hours specified in that agreement is used as the number of hours that would normally be necessary to carry out the work referred to in the proviso to that paragraph.
   (3) An employer must file the agreement referred to in the preceding paragraph with the relevant government agency pursuant to the provisions of Order of the Ministry of Health, Labour and Welfare.*
   *Please note that the English translations of paragraphs (1) through (3) above are quotations from the Japanese Law Translation Database System, which is operated by the Ministry of Justice (https://www.japaneselawtranslation.go.jp/en/).
   Note by the author: If the number of deemed working hours prescribed by the employer exceeds the number of statutory working hours per day (eight hours) or if work on a statutory day off per week is expected, the employer is required to conclude a labor-management agreement with the person representing a majority of the employees at the workplace regarding work in excess of statutory working hours (overtime work) and work on statutory days off, and notify the Director of the Labor Standards Inspection Office of this agreement. If such agreement exists, the employer must pay premium wages for overtime work and work on days off. Even if such overtime work and work on days off is not expected, the employer has the obligation to pay premium wages to employees who have actually engaged in work overtime or on days off. The employer must also pay premium wages to employees who have engaged in work during the period between 10:00 p.m. and 5:00 a.m. (late-night work).
2. According to the Summary Report of the "General Survey on Working Conditions" 2024 (released on December 25, 2024), the proportion of companies that adopt the deemed working hours system for work outside of the workplace under Article 38-2 of the LSA is 13.3%, and the employees covered by this system account for 7.6%.

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Termination of Employment Relationships in Japan

IKEZOE Hirokuni

This article provides an outline of the main reasons for the termination of employment relationships in Japan from a legal perspective, focusing on resignation, termination of employment contracts by mutual consent, dismissal, non-renewal of fixed-term contracts, and the mandatory retirement age system.

I. Resignation

"Resignation" refers to an employee's unilateral notification to their employer of the termination of an employment contract. It is regulated by the Civil Code rather than by the regulations of labor law.

According to Article 627 of the Civil Code, when the employment contract does not specify the term of employment, the termination of employment shall take effect when two weeks have passed from the day on which either party to the contract notifies the other party of the intention to terminate (Civil Code, art. 627(1)). The employer is not permitted to extend the notice period to a period longer than two weeks, due to the provisions of the Labor Standards Act (art. 5, Prohibition of Forced Labor) and the freedom to choose an occupation (Constitution, art. 22). Systems under which a company's approval is required for an employee's resignation also have no legal force as they restrict the freedom of employees to resign (e.g., *Takano Meriyasu* case, Tokyo District Court, Oct. 29, 1976; 841 *Hanrei Jiho* 102). On the other hand, although rare, there is a case where an employee who has resigned may face liability to provide damages to his/her employer (such as when the employee has resigned suddenly [four days after starting work at the employing company]; *K's International* case, Tokyo District Court, Sept. 30, 1992; 616 *Rodo Hanrei* 10).

In the event that remuneration is specified with reference to a time period, it is possible for the employer to give a notice of termination of the employment contract with respect to the next time period or later, provided that the notice is given within the first half of the current period (Civil Code, art. 627(2)). Moreover, when remuneration is specified with reference to a period of six months or more, the employer must give such notice at least three months before the termination of employment (para. 3). In the case of employees who receive annual salaries, the regulations set out in paragraphs 2 and 3 of that Article may be excessively restrictive at the time of resignation. Therefore, termination notifications made by employees to their employers are subject to the general principle of two weeks' notice as set out in paragraph 1 of that Article.

On the other hand, in the case of fixed-term employment contracts, the general principle is for the contract to terminate when the term of employment expires. When a fixed-term contract has been implicitly renewed by the parties concerned after the expiration of the original period of the contract, from the point of renewal onward, the employee may terminate the contract with two weeks' notice (art. 629(1)).

Article 14 of the Labor Standards Act prescribes the maximum length of contract periods as three years as a general rule, and five years for contracts concluded with (a) employees with expert knowledge, and (b) employees aged 60 or older. However, Article

137 of the Labor Standards Act stipulates that, with respect to the contracts pertaining to the completion of a certain business lasting more than one year and to the contract categorized as (a) and (b) above, employees may resign by notifying their employer at any point after one year has passed, thereby guaranteeing the employees' right to resign.

The Civil Code addresses relatively long contract periods by specifying that, where the contract period is for a long period, such as over five years, the parties concerned may terminate the contract after five years have passed (article 626(1)). In such cases, a termination notification must be made by the employer three months in advance or by the employee two weeks in advance, respectively (para. 2).

II. Termination of employment contracts by mutual consent

"Termination of an employment contract by mutual consent" refers to a mutual consent by an employee and their employer to terminate the employment contract. Such an agreement normally takes effect once the employee has manifested to the employer their intention to resign from the company and the employer—in particular, a person with the authority to approve the resignation—manifests their approval of the resignation (*Okuma Machinery Works* case, Supreme Court, Third Petty Bench, Sept. 18, 1987; 504 *Rodo Hanrei* 6; the person of authority in this case was the head of the personnel department). However, termination of an employment contract by mutual consent is recognized as having taken effect even in such a case where the proprietor of the company by which the employee was originally employed has established a temporary staffing agency and an agreement has been formed that the employee will thereafter work under an employment contract with that temporary staffing agency (e.g., *Nikken Sekkei Ltd.* case, Osaka District Court, Feb. 18, 2005; 897 *Rodo Hanrei* 91). In contrast, even where the employee is working on the establishment that they will resign—and hand over their duties while preparing to leave the company for a new job—termination of the contract by mutual consent cannot be said to have taken effect if no official written confirmation of the resignation has been exchanged (*FreeBit* case, Tokyo District Court, Feb. 28, 2007; 948 *Rodo Hanrei* 90). In other words, for termination by mutual consent to be recognized, a substantive meeting of the minds between the employee and the employer needs to be established based on the totality of the circumstances.

III. Precedents related to resignation and termination of contracts by mutual consent

A. Lack or error of manifestation of intention

An employee's manifestation of intention to resign must be the employee's true intention. In the eyes of the law, cases where it is not the employee's real intention are managed under the Civil Code as issues of mental reservation (concealment of true intention), mistakes, or duress.

"Mental reservation" (concealment of true intention) refers to cases such as cases where an employee submits a letter of resignation despite having no intention to resign from the company, and the employer is aware that the employee in fact has no intention to resign from the company (*Showa Women's University* case, Tokyo District Court, Feb. 6, 1992; 610 *Rodo Hanrei* 72). Such manifestation of intention is null and void (Civil Code, proviso to art. 93(1)).

"Mistakes" refers to cases in which, for instance, an employee has submitted a letter of resignation because they wrongly assumed that they would be dismissed and were attempting to avoid that dismissal, but there was in fact no possibility of them being dismissed (e.g., *Showa Electric Wire and Cable* case, Yokohama District Court, Kawasaki Branch, May 28, 2004; 878 *Rodo Hanrei* 40). Such manifestation of intention may be revoked (Civil Code, art. 95(1)).

"Duress" refers to cases in which, for example, an employee has been compelled to resign as the employer has hinted that the employee will be subject to disciplinary action or disadvantageous treatment (e.g., *Nishimura* case, Osaka District Court, Oct. 17, 1986; 486 *Rodo Hanrei* 83). Such manifestation of

intention may be revoked (Civil Code, art. 96(1)).

B. Encouragement to resign

There are some cases in which an employer may encourage an employee to resign, but it is illegal to repeatedly and persistently recommend to an employee that the employee resign in such a way that they are almost obliged to, and the person who encouraged the resignation and the employer may be liable to pay damages (*Shimonoseki Commercial High School* case, Supreme Court, First Petty Bench, Jul. 10, 1980; 345 *Rodo Hanrei* 20).

Using grounds such as gender or union activities as the basis for encouraging a resignation is, of course, illegal, as it is in violation of the Act on Equal Opportunity and Treatment between Men and Women in Employment (Equal Employment Opportunity Act) or the Labor Union Act. It is also illegal to set different eligibility ages for men and women when encouraging resignation (*Tottori Prefectural Teaching Staff* case, Tottori District Court, Dec. 4, 1986; 486 *Rodo Hanrei* 53). Encouraging or coercing a woman to resign on the grounds of pregnancy also renders the company liable to pay damages, given that it is illegal behavior in violation of the objectives of the Equal Employment Opportunity Act (*Imagawa Gakuen Konomi Kindergarten* case, Osaka District Court, Sakai Branch, Mar. 13, 2002; 828 *Rodo Hanrei* 59). Furthermore, going beyond encouraging and thereby coercing an employee to resign is, of course, an illegal act. This includes such cases as coercing an employee to resign in a way that constitutes defamation of character, due to the use of particularly derogatory expressions in a public setting (*Tokyo Women's Medical University [Coerced Resignation]* case, Tokyo District Court, Jul. 15, 2003; 865 *Rodo Hanrei* 57), or hinting at disciplinary dismissal such that an employee is pressured to choose between resigning of their own accord or putting up with being demoted, taking a pay cut, or being transferred to a different position (*Gunma-cho [Coerced Resignation]* case, Maebashi District Court, Nov. 26, 2004; 887 *Rodo Hanrei* 84).

C. Early retirement (incentive) systems

Systems to encourage retirement earlier than the normal mandatory retirement age by incorporating more financially favorable treatment are known as "early retirement incentive systems." among other such names.

As early retirement incentive systems are temporary measures for employment adjustment, they are not specifically applied unless an employee fulfils certain qualification requirements and applies for the system within a certain period, or unless the system applies automatically. However, even for employees not originally eligible due to their age, the system may apply if the employment regulations (or contract) provide for its application mutatis mutandis to other age groups (*Asahi Advertising* case, Osaka High Court, Apr. 27, 1999; 774 *Rodo Hanrei* 83).

IV. Dismissal

Dismissal is an employer's manifestation to an employee of their intention to terminate the employment contract. Unlike resignation or termination of an employment contract by mutual consent, it allows the employer to dissolve the employment relationship through a unilateral declaration of intent. Therefore, the Labor Standards Act and Labor Contracts Act contain provisions designed to protect employees.

A. General

The Labor Standards Act prohibits dismissals during periods of absence from work due to injury or illness suffered in the course of employment and within 30 days thereafter, and during periods of absence from work by women before and after childbirth and within 30 days thereafter (art. 19). However, it does not prohibit dismissal as such. Furthermore, statutes prohibit discriminatory or retaliatory dismissals on specific grounds, such as gender or union activities (such statutes include the Labor Standards Act (art. 3 and art. 104(2)), the Equal Employment Opportunity Act (art. 6, item 4, and art. 9), the Act on Childcare Leave, Caregiver Leave, and Other Measures for the Welfare of

Workers Caring for Children or Other Family Members (art. 10 and 16), and the Labor Union Act (art. 7).

On the other hand, dismissals in general, such as dismissals on the grounds of lack of ability or incapacity to perform work duties, have essentially been regulated by the case law called the "abuse of the right to dismiss" theory (*kaiko ken ranyo hori*). This theory, which is for screening and restricting an employer's exercise of the right to dismiss an employee (manifestation of the intention to dismiss an employee), was established by Supreme Court rulings in the mid-1970s (*Nihon Shokuen Seizo Co.* case, Supreme Court, Second Petty Bench, Apr. 25, 1975; 29 *Minshu* [Supreme Court civil cases reports] 456; and *Kochi Hoso Co.* case, Supreme Court, Second Petty Bench, Jan. 31, 1977; 268 *Rodo Hanrei* 17).

The Supreme Court formulated the doctrine of "abusive of the right to dismissal" theory, stating that "the exercise of an employer's right of dismissal shall be null and void as an abuse of right if it lacks objectively reasonable grounds and cannot be deemed appropriate by general societal terms" (*Nihon Shokuen Seizo Co.* case, 1975). The Supreme Court further presented a specific method for applying this theory, declaring that "even when grounds for ordinary dismissal exist, an employer may not always exercise the right to dismiss; where, under the specific circumstances of the case, the dismissal is significantly unreasonable and cannot be approved as appropriate by general societal terms, the manifestation of the intention to dismiss shall be null and void as an abuse of the right of dismissal" (*Kochi Hoso Co.* case, 1977).

This theory has been put into statutory form under Article 16 of the Labor Contracts Act ("If a dismissal lacks objectively reasonable grounds and is not considered to be appropriate in general societal terms, it is treated as an abuse of rights and is invalid"). The background to this codification was the recognition that, although the theory was regarded as the case law established by the Supreme Court but was not a statutory law and, therefore, lacked clarity for society, despite having served a key role in the regulation of dismissals in Japan (securing employment and ensuring long-term continuous employment). It was also considered necessary to incorporate the theory in the statutory law in order to put a stop to irresponsible dismissals in recession periods.

Legal remedies for a dispute on a dismissal include the determination of invalidation of the dismissal and payment of lost wages (the wages the employee should have earned) during the period of dispute and may also include compensation for damage in some cases. In the event that a dismissal is determined null and void, as a general rule, this would, in legal terms, lead to the reinstatement of the employee, but in reality, the employee is unable to return to their job in many cases. Accordingly, in Japan, the introduction of a financial compensation system for dismissal disputes, similar to those in force in Europe and the United States, is being discussed as a labor policy issue.

B. Collective/Economic dismissals

In Japan, employment adjustment is largely implemented by reducing overtime hours or using other means without dismissing regular employees. Companies have tried as far as possible to avoid dismissing regular employees unless the business is in particularly severe difficulty. This is due to the fact that Japanese companies place importance on long-term continuous employment, and the fact that the "abuse of the right to dismiss" theory mentioned above has made it difficult to actually dismiss employees.

While there are no explicit statutory provisions regarding collective/economic dismissal, a legal theory known as the "collective/economic dismissal" theory (*seiri kaiko hori*) has been formed on the basis of precedents from the lower courts (as pioneering cases: *Omura Nogami* case, Nagasaki District Court Omura Branch, Dec. 24, 1975; 242 *Rodo Hanrei* 14; and *Toyo Sanso* case, Tokyo High Court, Oct. 29, 1979; 30 *Rominshu* [Labor civil cases reports] 1002). This theory was derived from the "abuse of the right to dismiss" theory.

Under the "collective/economic dismissal"

theory, judgments as to whether a collective/economic dismissal is null and void are made by closely examining the facts of each case on the basis of the following "four criteria" regarding the employer's situation and actions.

Whether the employer: (i) had the business necessity to reduce the number of employees; (ii) did its utmost to fulfil its duty to endeavor to avoid dismissal, for instance, by reducing overtime hours, transferring employees within the company or implementing *shukko* (making temporary transfers to another company while maintaining the employment relationship with the original company), suspension of new hiring, temporarily closure, soliciting voluntary resignation, or reducing the number of non-regular employees; (iii) used objective and reasonable standards for selecting the employees to dismiss (for instance, the number of times an employee has been late or absent, their record of conduct infringing on company discipline, or a relatively low financial impact for the employee, such as in the case of an employee without dependents); and (iv) provided sufficient explanation regarding the developments leading up to the collective/economic dismissal and the timing and method by which it would be carried out, etc., and then engaged in discussions with the employees or the labor union, listening to their opinions and making an effort to secure employees' understanding.

This method of judgment, based on the "four criteria," is thought to have been developed on the basis of the employment adjustment practices of Japanese companies. The reason this theory demands concrete grounds for dismissal according to multiple criteria—unlike the case of dismissals in general, which result from factors such as a lack of ability on the part of the employee—is likely because collective/economic dismissals only arise from the financial circumstances of the employer.

V. Non-renewal of a fixed-term contract (employer's refusal to renew a fixed-term contract)

A fixed-term employment contract naturally terminates upon the expiration of its term. But there are also cases in which the contract relationship is continued or repeatedly renewed beyond the agreed term. If a fixed-term contract is renewed repeatedly, the situation may in effect resemble an open-ended contract, but under contract law, it is still a fixed-term contract. Moreover, as it is non-regular employees that are employed under fixed-term contracts, there is a greater tendency for these employees to be the target of employment adjustment, in comparison with regular employees, whose dismissal is strictly restricted under the "abuse of the right to dismiss" theory. Such termination of the employment contract relationship due to the expiration of the contract term is known as *yatoidome* (employer's refusal to renew a fixed-term contract).

There are two main types of fixed-term contract where the employer's refusal to renew the contract is addressed as a problem in the court: (i) cases in which the employee under a fixed-term contract fulfils the same duties and is under the same employment management as employees working under open-ended contracts, and the renewal procedures at the time of the expiry of the contract term have not be conducted appropriately; (ii) cases in which the contract term is clearly defined, and the contract renewal procedures have been appropriately conducted, but the employee has a reason to expect their employment to be continued.

In addressing the employer's refusal to renew fixed-term contracts of non-regular employees, courts have applied the "abuse of the right to dismiss" theory by analogy and declared the refusal to renew contracts on the basis of the expiry of the contract term to be null and void, and have determined that the original contract relationship remains in place (as type (i), *Toshiba Yanagimachi Factory* case, Supreme Court, First Petty Bench, Jul. 22, 1974; 28 *Minshu* 927; as type (ii), *Hitachi Medico* case, Supreme Court, First Petty Bench, Dec. 4, 1986; 486 *Rodo Hanrei* 6). The theory of refusal to renew the fixed-term contract (*yatoidome hori*) is currently codified in Article 19 of the Labor Contracts Act (Consequently, under existing laws and regulations, the theory is no longer applied as an analogy of the "abuse of the

right to dismiss" theory).

There is also the issue of whether it is acceptable to terminate a fixed-term contract before the expiration of the contract term. Article 628 of the Civil Code permits the immediate termination of the contract by either of the parties involved in cases where there are unavoidable reasons. If the unavoidable reasons have arisen due to the negligence of either of the parties, that party shall be liable to the other party for damages. However, it is not necessarily clear from the relevant provisions of the Civil Code as to whether it is possible to terminate a fixed-term contract before the expiration of the contract term if there are no unavoidable reasons for doing so. Therefore, Article 17(1) of the Labor Contracts Act prescribes that, in regard to the termination of a fixed-term contract by an employer, "an Employer may not dismiss an Employee until the expiration of the term of such labor contract, unless there are unavoidable circumstances," clearly restricting the right of the employer to terminate a fixed-term contract during the contract period. Under the Act, "unavoidable circumstances" are interpreted as grave circumstances that may invalidate the specification of the term within the contract. Possible examples of this are difficulty in continuing to operate the business on the part of the employer, and the difficulty to perform work, or severe non-fulfillment of obligations or illegal conduct on the part of the employee.

VI. Mandatory retirement age system

1. Significance of the mandatory retirement age system

In Japan, many companies adopt the mandatory retirement age system under which employees leave employment upon reaching a certain age. The major purposes of this system may include optimizing the composition of the internal labor force of companies and enabling companies to secure a stable workforce, while providing employees with employment security and guaranteeing their seniority-based wages. As factors, such as the declining birthrate and aging population, as well as the declining working population, have necessitated raising the age from which pensions are paid, labor policies have been set out to ensure the establishment of legal provisions that prescribe possible mandatory retirement ages and measures for extending employment after reaching the mandatory retirement age.

2. The legal treatment and actual state of the mandatory retirement age

The Act on Employment Security of Elderly Persons prescribes that employers must not set the mandatory retirement age below 60 years of age (art. 8). This provision is also interpreted as a mandatory rule under private law, so that a mandatory retirement age under 60 is considered null and void. Moreover, the Act makes it an obligation for employers that set a mandatory retirement age under 65 to take measures to secure stable employment for employees until the age of 65 (art. 9). More specifically, there are three measures: (i) raising the mandatory retirement age; (ii) introducing a continued employment system; and (iii) abolishing the mandatory retirement age. These measures are obligations under public law and are not considered mandatory under private law (however, companies that have failed to fulfill these obligations are to be subject to administrative action, such as giving guidance or advice, issuing a recommendation, and publishing the failure to follow the recommendation; art. 10). In the case of above-mentioned measure (ii), current law specifies that continued employment must be offered to all employees, and employers are not permitted to screen those who opt for it. It is also prescribed that, for employers that have an affiliated company, continued employment at such an affiliated company also falls under such a continued employment system as set out in measure (ii). The Act further provides that employers must endeavor to secure stable employment for employees until the age of 70 by taking measures equivalent to those mentioned in (i) to (iii) above (art. 10-2).

3. The legal nature of the mandatory retirement age system and recent forms of disputes

The mandatory retirement age system prescribes

retirement upon reaching a certain age. It is not a provision of an employment contract determining the duration of employment but is considered as a special agreement prescribing the grounds for terminating an employment contract relationship. Because the mandatory retirement age system terminates an employment contract relationship on the basis of age, its legality has been the topic of debate over the years. Among the theories, some argue that the mandatory retirement age violates public policy (Civil Code, art. 90), making it null and void. However, Japan's long-term continuous employment system is centered on the practice of seniority-based positions and wages, and the mandatory retirement age system is generally considered to be reasonable, given its capacity to provide employment security up until a certain age and allow for internal labor force reshuffles. Court rulings have also judged the mandatory retirement age system to be legitimately valid (*RF Radio Nippon* case, Tokyo High Court, Aug. 8, 1996; 701 *Rodo Hanrei* 12).

In recent years, legal disputes have arisen regarding continued employment or re-employment.

In the *Tsuda Electric Meters* case (Supreme Court, First Petty Bench, Nov. 29, 2012; 1064 *Rodo Hanrei* 13), an employee who fulfilled the criteria for the continued employment system was notified of the termination of his contract on the basis of the expiry of his one-year contract period as *shokutaku* (workers re-employed after reaching mandatory retirement). In response, the employee asserted his right to remain in employment beyond that point. By applying the "refusal to renew a fixed-term contract" theory mentioned above, the Supreme Court judged it reasonable to consider that an employment relationship equivalent to re-employment continued to exist.

In the *Toyota Motor* case (Nagoya High Court, Sept. 28, 2016; 1146 *Rodo Hanrei* 22), the court accepted an employee's claim for payment of damages on the basis of an illegal act (tort) by the employer. In this case, as a matter of generality, the court held that offering terms and conditions of employment for re-employment that are markedly lower in comparison with the prior employment is a violation of the objectives of the Act on Employment Security of Elderly Persons (in effect, as the wage level was such that it guaranteed approximately 85% of the pension payment, it was deemed not to be a violation of the objectives of the Act). In addition, the court determined that, although in the case of re-employment, it is permitted to provide work duties that differ from those pursued prior to mandatory retirement, in the event that the work is of a different nature, such as work that entails a completely different type of duties, the re-employment is effectively considered to be regular dismissal and new hiring, lacking substance as continued employment, and therefore that providing such different work duties is not permitted unless there are grounds for justifying regular dismissal, such as lack of competence in the prior job type (in this case, the employee had previously been engaged in clerical work but was offered cleaning work on re-employment). Ultimately, the court approved the payment of damages (consolation money) to the plaintiff employee for the sum of the amount that he would have received if he had been re-employed for one year as a part-time employee. The judgment was reached on the basis that the work offered at the point of re-employment did not qualify as an opportunity for continued employment and was clearly an illegal act against the gist of the objectives of the Act on Employment Security of Elderly Persons, meaning that it constituted both a failure to meet the obligations of the employment contract and an illegal act.

In the *Kyushu Sozai* case (Fukuoka High Court, Sept. 7, 2017; 1167 *Rodo Hanrei* 49), the court held that no reasonable grounds can be found in the employer's proposal to its retired employee to conclude a contract for re-employment as *shokutaku*, which offered a wage that was 75% lower than the amount of salary paid at the time of mandatory retirement by reason of the reduced working hours for employees re-employed after mandatory retirement. The court stated that such proposal is contrary to the objectives of the Act on Employment Security of Elderly Persons and granted the plaintiff's claim for consolation money on the basis of a tort.

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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 are seen mainly in the automotive industry. 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. However, attention should be given to downside risks to the Japanese economy such as price movements and situations in U.S. trade policies. Also, continued attention should be given to the effects of fluctuations in the financial and capital markets. (January 2026) [1]

2. Employment and unemployment

The number of employees in December increased by 460 thousand over the previous year. The unemployment rate, seasonally adjusted, was 2.6%.[2] Active job openings-to-applicants ratio in December, seasonally adjusted, was 1.19.[3] (Figure 1)

3. Wages and working hours

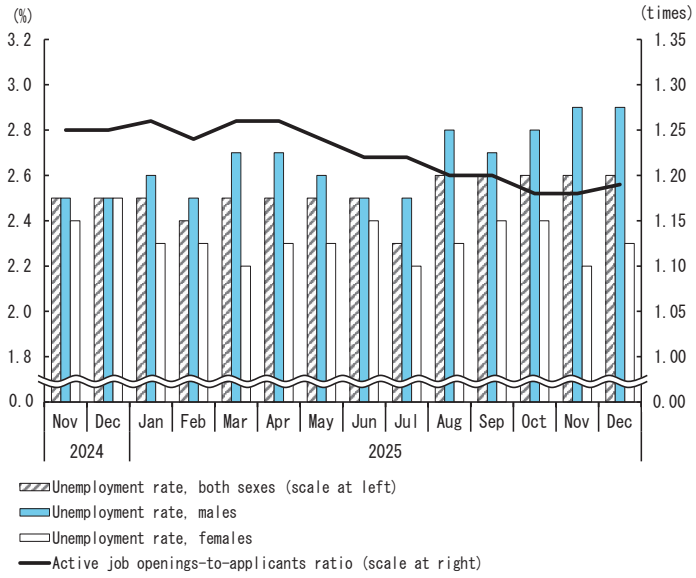
In December, total cash earnings increased by 2.4% year-on-year, while real wages (total cash earnings, realized as consumer price index (total excluding owner-occupied imputed rent)) decreased 0.1%. and real wages (total cash earnings, realized as consumer price index (composite)) increased 0.3%. Total hours worked decreased by 1.6% year-on-year, while scheduled hours worked decreased by 1.6%.[4] (Figure 2)

4. Consumer price index (CPI)

In December, CPI for all items increased by 2.1% year-on-year, the consumer price index for all items less fresh food increased by 2.4%, and CPI for all items less fresh food and energy increased by 2.9%.[5]

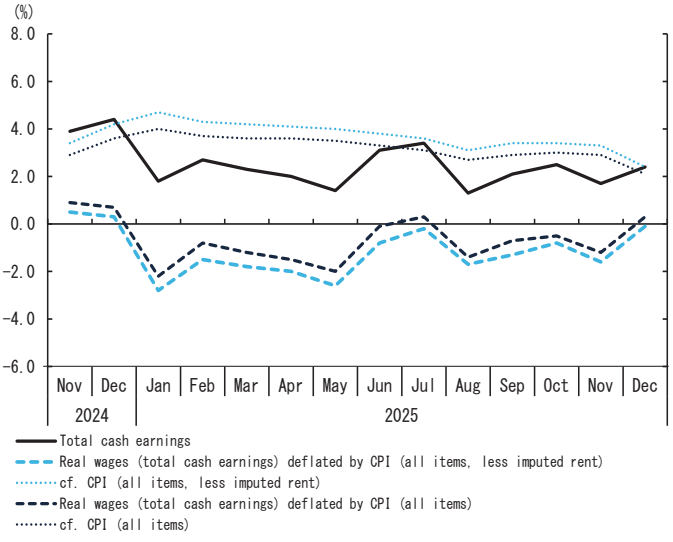
5. Workers' household economy

In December, consumption expenditures by workers' households decreased by 1.3% year-on-year nominally and decreased by 3.6% 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 10, Number 58,

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tentative

●Special Feature on Research Papers (III)

▷ Transformation and Persistence in Japanese Youth Labor Market

▷ Looking Back on 30 Years of Measures to Address the Declining Birthrate

●Research

Article

Law and Policy on Emerging Infectious Diseases and Occupational Health Protection

●Judgments and Orders

Commentary

Is it illegal for an employer to restrict the company housing system to *sogo shoku* (employees on the managerial career track), as this constitutes unlawful discrimination?
The *AGC Green-Tech Co.* Case
Tokyo District Court (May 13, 2024)
1314 *Rodo Hanrei* 5

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