VII Systems and Practices Related to Hiring and Termination of Employment in Japanese Companies, and Individual Labor-related Disputes —from the "Fact-finding Survey on Employee Hiring and Firing"

I The Increase in Individual Labor-related Disputes and Labor Contract Legislation

In a climate of diversifying employment formats, workers' labor conditions have come to be decided or changed on an individual basis in Japan in recent years, and individual labor disputes have been tending to increase. Besides courts of law, means of resolving disputes have been progressively enhanced in procedural terms. For example, a system for settling individual labor disputes under the Act on Promoting the Resolution of Individual Labor-Related Disputes started in 2001, while a system of labor tribunals based on the Labor Tribunal Act has been in operation since 2006. However, since there was no law that prescribed civil rules on labor contracts in order to resolve such disputes, the Labor Contract Act came into force in March 2008. With this, basic rules on labor contracts were established.

The system of resolving individual labor disputes helps to prevent problems from arising between individual workers and employers in relation to labor conditions, workplace environments, etc., or to resolve them quickly when they do occur. It consists of three methods – "general labor consultation", "advice or guidance" from the Directors of Labour Bureaus, and "mediation" by a Dispute Coordinating Committee.[1]

In the labor tribunal system, a labor tribunal consisting of one judge and two members with specialized knowledge and experience of labor relations examines individual labor disputes in a maximum of three sessions, in principle. It then attempts conciliation as appropriate, and when a settlement cannot be reached through conciliation, holds a labor tribunal in an attempt to resolve the dispute flexibly according to the circumstances of the case. If either of the parties raises an objection to the labor tribunal, the tribunal's decision ceases to be valid, and the case is taken to court proceedings.

In this way, specialized administrative and judicial procedures and services for resolving individual labor disputes appear to have been developed with the enactment of the Act on Promoting the Resolution of Individual Labor-related Disputes and the Labor Tribunal Act. Once a year, the Ministry of Health, Labour and Welfare reports on the "Status of Implementation of the Individual Labor Dispute Resolution System". In this, as well as describing the state of use of these systems, it also shows, as reference values, the numbers of newly filed labor-related normal civil litigation cases and labor tribunal cases. These are summarized in Table VII-1. According to this, newly filed labor-related normal civil litigation cases are in an increasing trend, rising to the 3,000 case level since 2009. Labor tribunal cases have also been on the increase since their launch in 2006. Since the launch of the individual labor-related dispute resolution system, moreover, cases of general labor consultation (specifically, individual labor dispute consultation in civil cases),[2] requests for advice or guidance and requests for mediation have all been in an increasing trend.

1 Specifically, "general labor consultation" involves general labor consultation sections set up in Prefectural Labour Bureaus, etc., where specialist counselors respond to consultation on labor problems in one-stop fashion. "Advice or guidance" is a system whereby the Director of the Prefectural Labour Bureau encourages individual labor dispute parties in civil law to settle disputes independently, by suggesting directions for resolution to both parties. "Mediation," finally, is a system seeking resolution of disputes whereby lawyers, university professors and other members of the Dispute Coordinating Committee who are experts in labor problems mediate between the parties and encourage dialog, and, when requested by both parties, presenting concrete mediation proposals to be adopted by both.

2 "Individual labor disputes in civil cases" are disputes between individual workers and employers on working conditions and other labor-related matters (excluding those pertaining to violations of the Labor Standards Act, etc).

According to the most recent "FY2013 Status of Implementation of the Individual Labor Dispute Resolution System", cases of general labor consultation exceeded one million for the sixth straight year, and although more or less on a par, still remain at a high level. Specifically, there were 1,050,042 cases of general labor consultation in the most recent year (2013), of which individual labor dispute consultation in civil cases accounted for 245,783 cases. These break down into 59,197 cases (19.7%) of "Bullying and harassment", the largest single type, followed by "Dismissal" with 43,956 cases (14.6%) and "Voluntary termination" with 33,049 cases (11.0%), among others.[3]

Table VII-2 shows a breakdown of individual labor dispute consultation in civil cases since the launch of the system. In terms of the different types of consultation (lower figures in the table), the ratios of "Dismissal" and "Worsening labor conditions" have been decreasing while those for "Bullying and harassment", "Voluntary termination" and others have been rising in recent years. In terms of numbers of cases (top figure), we find that "Bullying and harassment", "Voluntary termination", "Involuntary termination" and "Forced termination", among others, are generally in an increasing trend.[4]

In the foregoing, we have confirmed that individual labor-related disputes have been tending to increase in recent years. As stated earlier, this led to the enactment of the Labor Contract Act and its enforcement in 2008. Originally, in Japan's postwar labor legislation, the Labor Standards Act established various mandatory norms as minimum standards for labor conditions, but other matters had been entrusted to the legal principle of contracts in the Civil Code. According to Sugeno (2013), "In their judgments on labor-related civil cases, courts amended the legal principles in the Civil Code to form a principle of contracts (legal rules) unique to labor relations, in view of the need for protection in labor relations".

Thus, of the case law principle created by the courts, the Labor Contract Act legislated on the principle of abuse of dismissal rights, the validity of rules of employment, the principle of abuse of disciplinary authority, the principle of abuse of the right to order secondment, and the obligation to consider safety (health), among others. Article 1 of the Labor Contract Act reads as follows.

"Article 1 The purpose of this Act is to contribute to achieving stability in individual labor relationships, while ensuring the protection of workers, through facilitating reasonable determination of or changes to working conditions, by providing for the principle of agreement, under which a labor contract shall be established or changed by agreement through voluntary negotiation between a worker and an employer, and other basic matters concerning labor contracts".

In other words, the purpose of the Labor Contract Act is to protect workers and prevent individual labor-related disputes by stipulating basic matters relevant to labor contracts.

In the following, the results of the JILPT "Fact-finding Survey on Employee Hiring and Firing" pertaining to hiring, disciplinary systems and dismissal will be introduced. This will serve to clarify systems and practices in Japanese companies, levels of development in terms of rules and procedures, characteristics of human resource management, and the facts of labor disputes.

3 The majority of persons seeking consultation are workers (including jobseekers), accounting for 199,123 cases (81.0%). The working formats of workers involved in disputes are "full employees" in 97,573 cases (39.7%), "part-timers and *arubaito*" in 40,604 cases (16.5%), "fixed-term contract employees" in 26,696 cases (10.9%), and "agency workers" in 10,031 cases (4.1%).

4 For an analysis of cases of mediation by Labour Bureaus related to termination of employment in Japan, see JILPT, ed. (2012).

Table VII-1 Implementation Status of the Individual Labor Dispute Resolution System (Unit = Cases)

Year	Individual Labor Dispute Resolution System				Newly filed labor-related normal civil litigation cases	Newly filed labor tribunal cases
	General labor consultation	Of which, individual labor dispute consultation in civil cases	Requests for advice or guidance	Requests for mediation		
2002	625,572	103,194	2,332	3,036	2,321	-
2003	734,257	140,822	4,377	5,352	2,433	-
2004	823,864	160,166	5,287	6,014	2,519	-
2005	907,869	176,429	6,369	6,888	2,446	-
2006	946,012	187,387	5,761	6,924	2,035	1,055
2007	997,237	197,904	6,652	7,146	2,246	1,494
2008	1,075,021	236,993	7,592	8,457	2,441	2,052
2009	1,141,006	247,302	7,778	7,821	3,218	3,468
2010	1,130,234	246,907	7,692	6,390	3,127	3,375
2011	1,109,454	256,343	9,590	6,510	3,170	3,586
2012	1,067,210	254,719	10,363	6,047	3,358	3,719
2013	1,050,042	245,783	10,024	5,712	3,209	3,678

Source: Compiled from each year's edition of "Status of Implementation of the Individual Labor Dispute Resolution System". Newly filed labor-related normal civil litigation cases and newly filed labor tribunal cases are based on a Supreme Court survey (provisional figures). Figures for labor tribunal cases in 2006 are aggregated from March 2006 to February 2007.

Table VII-2 Breakdown of Individual Labor Dispute Consultation In Civil Cases (Top Figure = Cases, Bottom Figure = %)

Year	Total number of all cases	Dismissal	Forced termination	Involuntary termination	Withdrawal of job offer	Voluntary termination	Secondment or redeployment	Reduced labor conditions	Other labor conditions	Bullying and harassment	Employment management, etc.	Recruitment, hiring	Others
2002	113,422	32,454	2,114	7,137	800	0	3,550	18,699	19,098	6,627	2,133	1,492	19,318
	100.0	28.6	1.9	6.3	0.7	0.0	3.1	16.5	16.8	5.8	1.9	1.3	17.0
2003	158,378	47,177	4,270	10,744	1060	5540	5,451	25,070	19,837	11,697	1,958	2,296	23,278
	100.0	29.8	2.7	6.8	0.7	3.5	3.4	15.8	12.5	7.4	1.2	1.4	14.7
2004	180,907	49,031	5,242	12,614	1233	9378	5,997	28,887	20,022	14,665	2,736	3,045	28,057
	100.0	27.1	2.9	7.0	0.7	5.2	3.3	16.0	11.1	8.1	1.5	1.7	15.5
2005	200,616	52,385	5,877	14,425	1621	11562	6,818	28,062	22,173	17,859	3,424	3,084	33,326
	100.0	26.1	2.9	7.2	0.8	5.8	3.4	14.0	11.1	8.9	1.7	1.5	16.6
2006	214,204	51,028	6,719	15,738	1529	14521	7,276	27,312	23,558	22,153	3,303	3,749	37,318
	100.0	23.8	3.1	7.3	0.7	6.8	3.4	12.8	10.9	10.3	1.5	1.8	17.4
2007	226,460	51,749	7,886	17,410	1555	15746	8,188	28,235	25,203	28,335	3,888	3,255	35,010
	100.0	22.9	3.5	7.7	0.7	7.0	3.6	12.5	11.1	12.5	1.7	1.4	15.5
2008	268,401	67,230	12,797	22,433	2007	16533	9,262	35,194	27,086	32,242	4,098	3,433	36,086
	100.0	25.0	4.8	8.4	0.7	6.2	3.5	13.1	10.1	12.0	1.5	1.3	13.4
2009	281,901	69,121	13,610	26,514	1933	16632	9,790	38,131	27,765	35,759	3,877	3,139	35,630
	100.0	24.5	4.8	9.4	0.7	5.9	3.5	13.5	9.8	12.7	1.4	1.1	12.6
2010	283,141	60,118	13,892	25,902	1861	20265	9,051	37,210	29,488	39,405	4,834	3,108	38,007
	100.0	21.2	4.9	9.1	0.7	7.2	3.2	13.1	10.4	13.9	1.7	1.1	13.4
2011	305,124	57,785	13,675	26,828	2010	25966	9,946	36,849	37,575	45,939	5,361	3,180	40,010
	100.0	18.9	4.5	8.8	0.7	8.5	3.3	12.1	12.3	15.1	1.8	1.0	13.1
2012	304,058	51,515	13,432	25,838	1896	29763	9,783	33,955	37,842	51,670	6,136	3,322	38,906
	100.0	16.9	4.4	8.5	0.6	9.8	3.2	11.2	12.4	17.0	2.0	1.1	12.8
2013	300,113	43,956	12,780	25,041	1813	33049	9,748	30,067	37,811	59,197	5,928	3,025	37,698
	100.0	14.6	4.3	8.3	0.6	11.0	3.2	10.0	12.6	19.7	2.0	1.0	12.6

Source: "FY2013 Status of Implementation of the Individual Labor Dispute Resolution System". The top figure in each year is the number of cases, the bottom figure is the ratio of all consultation cases (total number of all cases). The bottom figures may not add up 100% due to rounding off. The total number of all cases includes all cases brought for consultation even if several cases were dealt with in a single consultation.

II. "Fact-finding Survey on Employee Hiring and Firing"

Individual labor-related disputes have been tending to increase in recent years, amid increasingly individual-oriented and diverse human resource management by companies, as well as a diversification of workers' employment formats and work attitudes. Against this background, the Labor Contract Act was enacted in Japanese legislation, in a form that clarified case law principles with a view to preventing individual labor disputes. In the following, the results of the "Fact-finding Survey on Employee Hiring and Firing" will be introduced. This was a questionnaire survey of companies conducted by JILPT to grasp the realities of human resource management in Japanese companies and the situation of disputes. The questions in the survey mainly concerned the conclusion and termination of labor contracts, but in this paper, these will be narrowed down to hiring, discipline and dismissal. Here, it should be noted that the question topics in this survey were nearly all aimed at regular employees (employment with no fixed term).

The survey was conducted between October 11th and 26th, 2012. The survey method was based on postal distribution and return of questionnaires. Questionnaires were sent to 20,000 private companies (excluding agriculture, forestry and fishery businesses) nationwide employing 50 full-time workers or more. Companies were selected by stratified random sampling from a private company database, based on industry and number of employees, in line with the distribution in the "Economic Census (2009 Economic Census for Business Frame)" published by the Statistics Bureau, Ministry of Internal Affairs and Communications. Valid responses were received from 5,964 respondents (valid response rate: 29.8%).[5]

Section 1 Systems and practices related to hiring

Section 1 will summarize the system of (mainly) new graduate hiring characteristic of Japanese companies and examine how Japanese companies deal with job offers and probationary periods. In particular, this section will confirm how many companies withdraw job offers and decide not to hire following a probationary period.

1. Hiring, job offers

In Japan, the custom of hiring new graduates en masse is well established among larger corporations, while on the other hand, relatively young companies and SMEs are thought to focus more on mid-career hiring, as they have difficulty in regularly hiring new graduates. In the survey, respondents were asked about new graduate hiring and mid-career hiring over the last 5 years. According to the replies, 65.0% of companies carry out new graduate hiring and 84.6% engage in mid-career hiring. Viewing the use or lack of new graduate hiring based on the scale of regular employees, the ratio of "New graduate hiring" decreases in proportion to company scale, registering 58.8% in companies with "Fewer than 100 employees". In other words, the larger the company, the greater the focus on hiring of new graduates (Table VII-3).

In Japanese companies, when hiring new graduates, in the case of university graduates for example, the normal practice is for students to start applying for jobs in their 3rd to 4th years and to receive notification of hiring decisions any time from the beginning of the 4th year, then for official notification of job offers to be issued in writing that October. As well as sending job offers to new graduates, companies normally require them to submit written pledges in acceptance of the job offer, amongst other procedures.

In the survey, companies were asked what procedures they follow when making job offers to new graduates. According to the replies, the most common procedure when making job offers to new graduates was "Issue a written job offer" with 84.1%, followed by "Have the candidate submit a written pledge" (64.1%) and "Exchange labor contracts specifying the date when employment starts" (20.3%). Only a few

5 For details of the survey, see JILPT (2014).

Table VII-3 New Graduate Hiring and Mid-career Hiring over the Last 5 Years (Unit = %)

	n	New graduate hiring			Mid-career hiring		
		Yes	No	No response	Yes	No	No response
Total	5964	65.0	21.1	13.9	84.6	7.0	8.4
(Scale of regular employees)							
Fewer than 100	3828	58.8	25.8	15.4	86.2	6.7	7.1
100-299	1466	81.2	13.4	5.4	87.6	7.3	5.1
300-999	360	85.3	12.2	2.5	84.7	10.8	4.4
1,000 or more	76	96.1	3.9	0.0	93.4	6.6	0.0

(4.2%) replied "Only make verbal offers, do not particularly communicate in writing". Seen by scale of regular employees, the ratios of "Issue a written job offer" and "Have the candidate submit a written pledge" are higher when the scale is larger, while the ratios of "Exchange labor contracts specifying the date when employment starts" and "Only make verbal offers, do not particularly communicate in writing" tend to be higher when the scale is smaller (Table VII-4). It would appear, then, that the larger the company, the more likely it is to communicate in writing, including written job offers and pledges.

2. Refusal of job offer

In principle, workers in Japan are free to unilaterally reject job offers (refusal of job offer or refusal of hiring), provided they give two weeks' notice, as the equivalent to terminating a labor contract with no fixed term.[6] When companies were asked whether they had experienced refusal of job offers from new graduates they planned to hire, 3.8% replied that refusal of hiring occurs "Frequently", 38.3% "Occasionally", 29.5% "Rarely" and 26.6% "Never". The ratio of job refusals (the total of "Frequently" and "Occasionally") was 42.1%. Viewed by scale of regular employees, the ratio of job refusals rises as the

Table VII-4 Procedures When Making Job Offers to New Graduates (Unit = %, Multiple Response)

	n	Exchange labor contracts specifying date when employment starts	Issue a written job offer	Have the candidate submit a written pledge	Only make verbal offers, do not particularly communicate in writing	No response
Total	3876	20.3	84.1	64.1	4.2	1.5
(Scale of regular employees)						
Fewer than 100	2249	22.9	82.3	58.7	5.6	1.7
100-299	1190	17.1	85.5	70.9	2.3	1.2
300-999	307	16.6	90.2	75.9	1.6	1.0
1,000 or more	73	12.3	91.8	80.8	1.4	1.4

* Aggregated from companies that hire new graduates.

6 However, one argument holds that liability for damages would be permissible if this ran markedly counter to the rule of good faith (Araki p.314).

scale increases (Table VII-5). The ratio of candidates refusing job offers is thought to be higher in larger companies because these have greater potential for making job offers to more candidates in the first place.

Meanwhile, when asked about their withdrawal of job offers in the last 5 years, only 3.5% of companies replied that they had withdrawn job offers. By scale of regular employees, the ratio answering "Yes" was only 2.5% in companies with "Fewer than 100 employees", but somewhat higher at 12.3% in those with "1,000 employees or more" (Table VII-6).

Companies that had withdrawn job offers were then asked why they had done so, with the results shown in Figure VII-7. According to this, the most common reason was "Candidate's circumstances" (e.g. failure to graduate) with 51.9%, followed by "Candidate's misconduct" (15.6%), "Worsening business situation" (14.1%), "Candidate's health reasons" (11.9%), and "Candidate's falsification of CV or other information" (8.1%), among others. While half of the companies sited the candidate's circumstances, this reveals that about 10% of withdrawn job offers result from "Worsening business situation" and other issues on the company's side.

In the survey, companies that had withdrawn job offers were asked whether any problems had arisen with candidates as a result of doing so. Only 4.4% responded that they had had problems after withdrawing job offers. If the reasons for withdrawing job offers are divided into worsening business situation and other reasons, 21.1% of companies that withdrew job offers due to a worsening business situation say they had had problems with the candidate as a result. Since withdrawal of job offers by companies is rare in the first place, the ratio experiencing problems would of course be even smaller. Nevertheless, the suggestion is that when job offers are withdrawn due to a worsening business situation or other circumstances on the company's side, problems are prone to occur (Table VII-8).

Table VII-5 Refusals of Job Offers by Successful Candidates (Unit = %)

	n	Frequently	Occasionally	Rarely	Never	No response	Frequently + Occasionally
Total	3876	3.8	38.3	29.5	26.6	1.7	42.1
(Scale of regular employees)							
Fewer than 100	2249	2.7	31.7	30.3	33.3	2.1	34.4
100-299	1190	4.1	44.2	30.3	20.3	1.0	48.3
300-999	307	10.4	57.0	21.5	9.4	1.6	67.4
1,000 or more	73	11.0	57.5	30.1	0.0	1.4	68.5

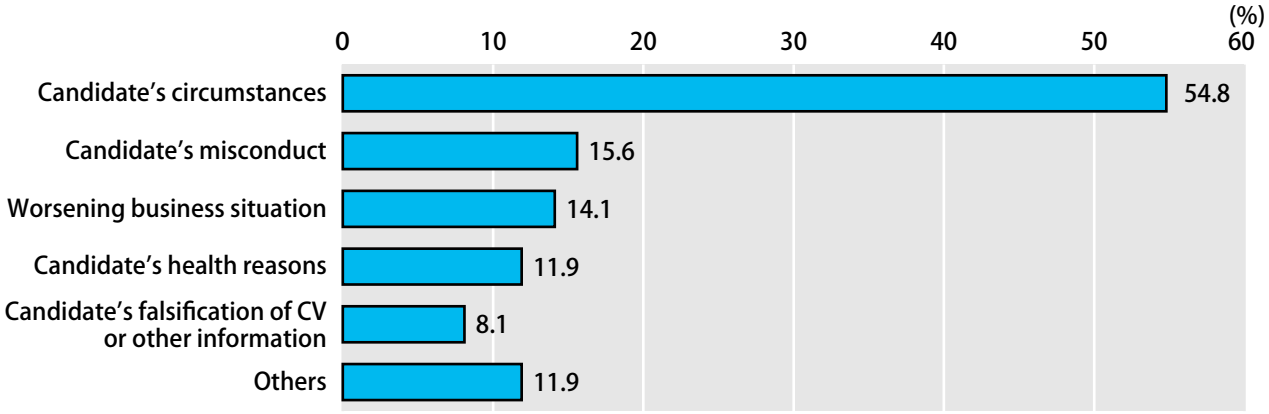
* Aggregated from companies that hire new graduates. "Frequently + Occasionally" is the total of "Frequently" and "Occasionally".

Table VII-6 Withdrawals of Job Offers by Companies over the Last 5 Years (Unit = %)

	n	Yes	No	No response
Total	3876	3.5	93.2	3.4
(Scale of regular employees)				
Fewer than 100	2249	2.5	93.9	3.6
100-299	1190	3.8	93.1	3.1
300-999	307	7.2	90.6	2.3
1,000 or more	73	12.3	82.2	5.5

* Aggregated from companies that hire new graduates.

Figure VII-7 Reasons for Withdrawing Job Offers (Unit = %, Multiple Response)



* Aggregated from companies that had withdrawn job offers in the last 5 years (replied "Yes").

Table VII-8 Problems with Candidates Due to Withdrawal of Job Offers over the Last 5 Years (Unit = %)

	n	Yes	No	No response
Total	135	4.4	94.8	0.7
(Reason for withdrawing job offer)				
Worsening business situation	19	21.1	78.9	0.0
Others	112	0.9	99.1	0.0

* Aggregated from companies that had withdrawn job offers in the last 5 years (replied "Yes").

3. Probation and fixed-term probationary contracts

Companies normally set a probationary period when hiring regular employees. Under this system, workers to be hired as regular employees will first go through a fixed probationary period after the joining a company, during which their personality and abilities will assessed and a decision made whether to fully hire. The probationary period system seems to have spread broadly throughout Japanese companies. In recent years, however, some have reportedly adopted the method of hiring workers initially under fixed-term contracts, in order to judge their abilities, etc., before fully hiring them as regular employees.

In the following, by comparing normal "Probation" with "Fixed-term probationary contracts", the realities of fixed-term contract hiring seen in recent years will be introduced at the same time (below, probationary periods of regular employees will be abbreviated to "Probation" and probation under fixed-term contract employment to "Fixed-term probationary contracts").

Firstly, in terms of normal "Probation", companies in this survey were asked whether they set probationary periods when hiring regular employees. They were also asked whether they employed under fixed-term probationary contracts when hiring regular employees.[7] The two are compared in Table VII-9. While 86.9% of

7 It should be noted that, for "probation", respondents were asked whether they ever set probationary periods for employees they had hired, while for "fixed-term probationary contracts", they were asked about the situation over the last five years. Moreover, there were three response options for "fixed-term probationary contracts", namely "Yes", "No, but wish to consider in future" and "No", but in the aggregation in this paper, the latter two ("No, but wish to consider in future" and "No") are totaled and expressed as "No".

companies replied that they did have a system of "Probation", only 25.1% said they employed under "Fixed-term probationary contracts". In other words, most of the responding companies (just under 90%) have systems of "Probation". Conversely, only about 20% offer fixed-term probationary contracts.

Viewed by industry, the ratio of respondents that have systems of "Probation" is around 80% in all industries, showing that setting a probationary period is a widespread practice throughout Japanese industry. Conversely, viewing "Fixed-term probationary contracts" by industry, the ratio of "Yes" replies is highest in the information and communications industry with 30.9%, and is around 20% in other industries. Although the ratios of "Fixed-term probationary contracts" are low, we see that these exist to quite a consistent level in all industries. Viewing this by scale of regular employees, the ratios of both "Probation" and "Fixed-term probationary contracts" are higher as the scale of the company increases.

In the survey, companies were also asked about the length of probationary periods for regular employees (both for graduate hiring and mid-career hiring) and the time taken until a worker hired on a fixed-term probationary contracts is fully hired as a regular employee. Comparing the length of time until full hiring, the ratio of "3 months or less" (total of "About 1 month", "About 2 months" and "About 3 months") accounted for 80% of "Probation" in cases of both new graduate hiring and mid-career hiring, and 38.4% of "Fixed-term probationary contracts". Conversely, the ratio of "6 months or more" (total of "About 6 months", "About 7 months - 1 year" and "More than 1 year") was just under 20% for "Probation" in both new graduate hiring and mid-career hiring, but 60.5% for "Fixed-term probationary contracts". In particular, the ratio of "More than 1 year" was a mere 0.1% and 0.3%, respectively, for "Probation" in new graduate hiring and mid-career hiring, while for "Fixed-term probationary contracts" it was much higher at 24.6% (Table VII-10). This shows that, compared to "Probation", the length of time until full hiring tends to be longer for "Fixed-term probationary contracts".

Table VII-9 Probation and Employment under Fixed-term Probationary Contracts (Unit = %)

	n	Probation			Employment under fixed-term probationary contracts		
		Yes	No	No response	Yes	No	No response
Total	5964	86.9	12.1	1.0	25.1	68.9	6.0
(Industry)							
Construction	422	88.9	10.4	0.7	20.9	73.2	5.9
Manufacturing	1516	89.9	9.8	0.3	26.5	68.6	4.9
Information and communication	194	88.7	11.3	0.0	30.9	64.5	4.6
Transport and postal activities	556	87.8	10.4	1.8	24.5	67.8	7.7
Wholesale and retail trade	1033	87.7	11.6	0.7	22.6	71.2	6.3
Finance and insurance	50	80.0	20.0	0.0	16.0	84.0	0.0
Real estate and goods rental and leasing	59	84.7	15.3	0.0	25.4	72.9	1.7
Services	1786	84.2	14.4	1.3	26.4	67.9	5.7
Others	149	77.9	16.8	5.4	18.1	71.8	10.1
(Scale of regular employees)							
Fewer than 100	3828	85.9	13.1	1.0	23.1	70.8	6.2
100-299	1466	89.4	9.7	1.0	29.3	66.0	4.8
300-999	360	90.0	9.7	0.3	29.2	67.0	3.9
1,000 or more	76	92.1	7.9	0.0	35.5	61.8	2.6

Table VII-10 Comparison between Probation for Regular Employees and Workers Hired on Fixed-term Probationary Contracts in the Length of Time until Full Hiring (Unit = %)

		n	Time until full hiring								3 months or less / Total	6 months or more / Total
			About 1 month	About 2 months	About 3 months	About 4 months	About 5 months	About 6 months	About 7 months - 1 year	More than 1 year		
Probation	Hired as new graduate	3939	4.7	8.4	66.1	0.9	0.2	18.3	1.4	0.1	79.2	19.8
	Hired mid-career	4688	6.2	8.3	65.7	0.7	0.1	16.5	2.1	0.3	80.3	18.9
Fixed-term probationary contracts		1285	2.9	5.4	30.0	0.7	0.5	17.9	18.0	24.6	38.4	60.5

* Cases when hired as new graduates are aggregated from companies except those with no new graduate hiring and those not responding. Cases when hired mid-career are aggregated from companies except those with no mid-career hiring and those not responding. Cases of fixed-term probationary contracts are aggregated from companies except those not responding. "3 months or less / total" is the total of "About 1 month", "About 2 months" and "About 3 months". "6 months or more / total" is the total of "About 6 months", "About 7 months - 1 year" and "More than 1 year".

In both "Probation" and "Fixed-term probationary contracts", companies were asked whether they ever terminated employment without reaching full hiring. The results are summarized in Table VII-11. According to this, the ratio of "Sometimes do not fully hire, including cases in the last 5 years" was 12.2% for "Probation" but 20.4% for "Fixed-term probationary contracts". In other words, decisions not to hire had been made more frequently in cases of "Fixed-term probationary contracts" over the last 5 years. The ratio of "Never decide not to fully hire" was 33.1% for "Probation" and 16.6% for "Fixed-term probationary contracts", showing the latter to be lower. It appears that probationary periods are intended to be applied more rigorously in cases of "Fixed-term probationary contracts".

Now, viewing the ratios of "Sometimes do not fully hire" (the total of "Sometimes do not fully hire, including cases in the last 5 years" and "Sometimes do not fully hire, but no cases in the last 5 years") by industry, for "Probation", the ratio is high in "Real estate and goods rental and leasing", "Services" and "Transport and postal activities", among others. For "Fixed-term probationary contracts", the ratio is high in "Real estate and goods rental and leasing" and "Transport and postal activities", among others. The ratio of "Sometimes do not fully hire, including cases in the last 5 years" is highest in "Real estate and goods rental and leasing", for both "Probation" and "Fixed-term probationary contracts". Industries where decisions not to hire are made seem to be similar for both "Probation" and "Fixed-term probationary contracts". In these industries, there is an apparent tendency to use the probationary period as a means if judging ability and other employee attributes.

Next, viewed by scale of regular employees, the ratio of "Sometimes do not fully hire" tends to be larger as the corporate scale increases. The ratio of "Sometimes do not fully hire, including cases in the last 5 years" is highest in cases of "1,000 employees or more", for both "Probation" and "Fixed-term probationary contracts".

So, how do companies that set and apply normal "Probation" make decisions not to hire in cases of "Fixed-term probationary contracts" ? Figure VII-12 shows whether companies fully hire workers on "Fixed-term probationary contracts" depending on whether they fully hire in cases of "Probation". According to this, a relatively large 69.9% of companies that practice "Probation" and "Sometimes do not fully hire, including cases in the last 5 years" also "Sometimes do not fully hire, including cases in the last 5 years" in cases of "Fixed-term probationary contracts". Similarly, a relatively large 58.0% of companies that practice "Probation" but "Never decide not to fully hire" also "Never decide not to fully hire" in cases of "Fixed-term probationary contracts". In

other words, companies that practice "Probation" and have made decisions not to hire in the last 5 years also tend to make decisions not to hire in cases of "Fixed-term probationary contracts". Conversely, 13.6% of companies that practice "Probation" but "Never decide not to fully hire" have made decisions not to hire when using "Fixed-term probationary contracts", while more than half do not consider decisions not to hire from the company's side.

In other words, companies that have actually made decisions not to hire even operate normal "Probation" rigorously, since they recognize the importance of ascertaining ability during the probationary period. As such, they appear prone to make decisions not to hire in cases of "Fixed-term probationary contracts" as well. Conversely, of companies that do not make decisions not to hire once an employee has been hired under normal "Probation", more than half appear not to consider decisions not to hire even in cases of "Fixed-term probationary contracts". However, even among companies that do not make decisions not to hire in normal "Probation", about 10% appear to have made decisions not to hire in cases of "Fixed-term probationary contracts", and so compared to normal "Probation", the suggestion is that probationary periods may be applied more rigorously in cases of "Fixed-term probationary contracts".

Figure VII-13 compares "Probation" and "Fixed-term probationary contracts" in terms of the reasons for judgment when deciding against full hiring. According to this, hardly any difference between the two is seen in ratios of "Absenteeism", "Behavior" and "State of health", but the ratio for "Work-related knowledge and ability" is 72.8% for "Probation" and

Table VII-11 Termination of Employment without Full Hiring at the End of the Probationary Period (Unit = %)

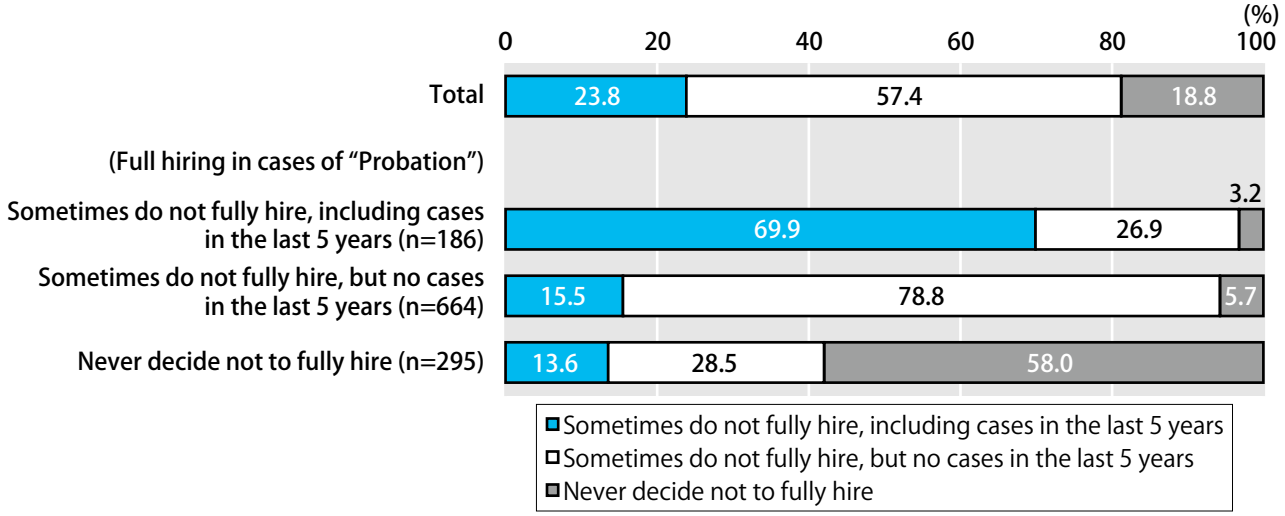
	Probation for regular employees						Fixed-term probationary contracts					
	n	Sometimes do not fully hire, including cases in the last 5 years	Sometimes do not fully hire, but no cases in the last 5 years	Never decide not to fully hire	No response	Sometimes do not fully hire	n	Sometimes do not fully hire, including cases in the last 5 years	Sometimes do not fully hire, but no cases in the last 5 years	Never decide not to fully hire	No response	Sometimes do not fully hire
Total	5183	12.2	50.9	33.1	3.8	63.1	1498	20.4	48.7	16.6	14.4	69.1
(Industry)												
Construction	375	9.1	48.3	39.7	2.9	57.4	88	19.3	47.7	19.3	13.6	67.0
Manufacturing	1363	13.0	50.8	32.8	3.4	63.8	402	19.9	51.0	16.7	12.4	70.9
Information and communication	172	8.1	55.8	33.1	2.9	63.9	60	8.3	53.3	18.3	20.0	61.6
Transport and postal activities	488	11.5	54.5	29.3	4.7	66.0	136	19.9	52.2	11.8	16.2	72.1
Wholesale and retail trade	906	12.1	48.9	35.4	3.5	61.0	233	18.9	47.6	15.9	17.6	66.5
Finance and insurance	40	7.5	50.0	40.0	2.5	57.5	8	25.0	25.0	12.5	37.5	50.0
Real estate and goods rental and leasing	50	22.0	48.0	30.0	0.0	70.0	15	40.0	40.0	20.0	0.0	80.0
Services	1504	12.6	52.6	30.1	4.7	65.2	471	21.4	48.6	17.0	13.0	70.0
Others	116	12.1	39.7	47.4	0.9	51.8	27	25.9	29.6	22.2	22.2	55.5
(Scale of regular employees)												
Fewer than 100	3289	12.2	50.4	33.4	4.1	62.6	883	19.5	48.8	16.2	15.5	68.3
100-299	1310	12.6	51.5	33.1	2.8	64.1	429	20.5	49.9	17.7	11.9	70.4
300-999	324	11.7	54.6	29.9	3.7	66.3	105	21.9	53.3	11.4	13.3	75.2
1,000 or more	70	21.4	58.6	18.6	1.4	80.0	27	40.7	44.4	7.4	7.4	85.1

* "Probation for regular employees" is aggregated from companies that say they set a probationary period when hiring employees. "Fixed-term probationary contracts" is aggregated from companies that say they practice fixed-term hiring for probationary purposes.

84.2% for "Fixed-term probationary contracts", showing the latter to be higher. Compared to normal "Probation", "Work-related knowledge and ability" appears to receive greater emphasis as a reason for judgment when terminating employment under "Fixed-term probationary contracts".

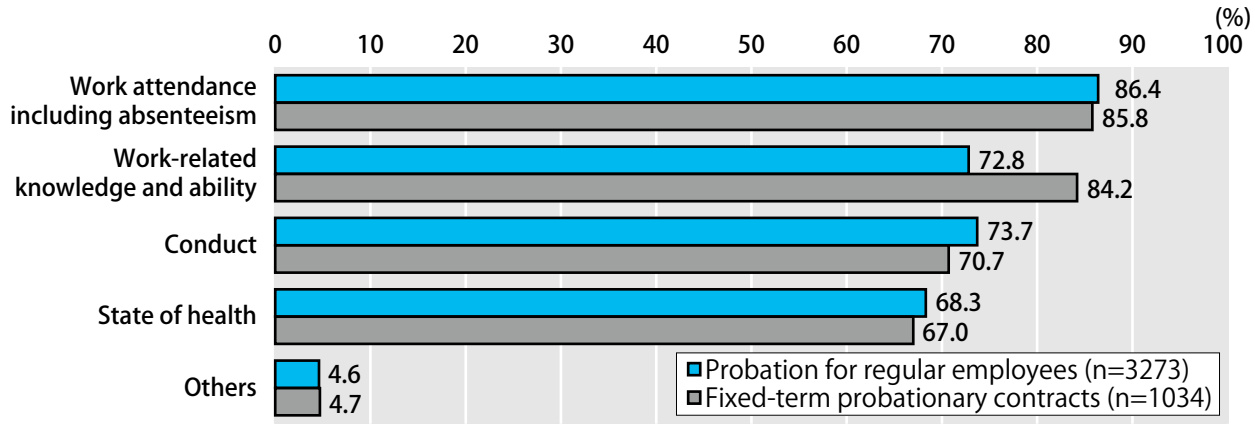
In the survey, companies replying that they "Sometimes do not fully hire, including cases in the last 5 years" in either "Probation" or "Fixed-term probationary contracts" were asked whether any problems had arisen with employees when deciding against full hiring. According to this, the ratio of positive ("Yes") replies was 6.3% for "Probation" and 3.0% for "Fixed-term probationary contracts", thus remaining at a low level for both (Figure VII-14).

Figure VII-12 Termination of Employment without Full Hiring for Employees Hired under Fixed-term Probationary Contracts



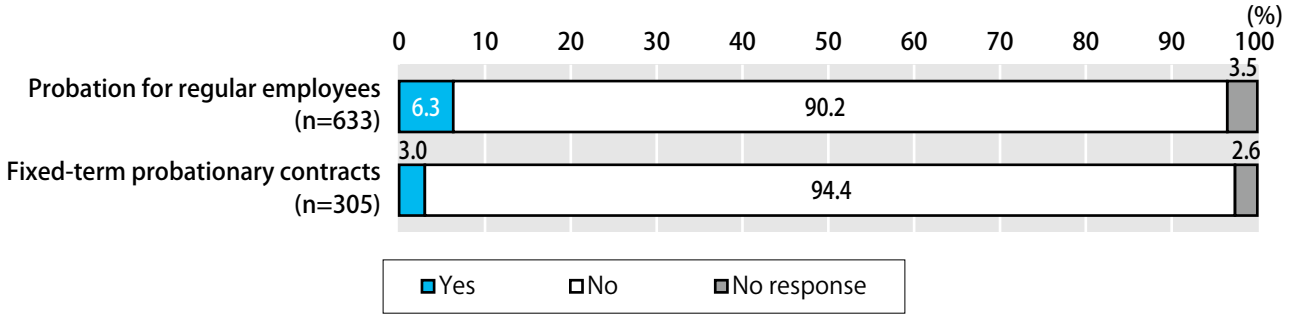
* Aggregated from all except "No response".

Figure VII-13 Reasons for Judgment When Deciding against Full Hiring (Unit = %, Multiple Response)



* In cases of probation for regular employees and employees under fixed-term probationary contracts, aggregated from companies that "Sometimes do not fully hire, including cases in the last 5 years" and "Sometimes do not fully hire, but no cases in the last 5 years".

Figure VII-14 Timing of Notification to the Employee When Terminating Employment



* Aggregated from companies that replied "Sometimes do not fully hire, including cases in the last 5 years" in cases of probation for regular employees and fixed-term probationary contracts, respectively.

Section 2 Systems and practices of employee discipline

In Section 2, after confirming the status of provisions on disciplinary action, we will examine how disciplinary procedures are carried out. Details of disciplinary action carried out over the last 5 years will also be given, as well as disputes and methods of resolving them.

1. Status of provisions on disciplinary action

Companies sometimes carry out disciplinary action as a sanction against breaches of discipline or violations of order, for the maintenance of employee discipline and corporate order. Disciplinary action is generally systemized in forms such as reprimands or warnings, submission of written apologies, pay cuts, suspension from work, guided dismissal and disciplinary dismissal.[8] Sugeno (2013) asserts that "Disciplinary action is a special punishment quite distinct from normal means of dealing with violators of corporate order that are available to the employer based on labor contracts (normal dismissal, redeployment, claims for damages, lower assessment in bonuses, pay raises and promotions, etc.)", and therefore that "If the employer utilizes such a special disciplinary sanction, the grounds for it and means of implementing it should be stated expressly in the rules of employment, and it should be established as a contract-related norm". The fact that these are required to be made clear as relatively necessary matters for specification in Article 89 (ix) of the Labor Standards Act (matters that must be stated in the rules of employment without fail when implementing them as systematically) is also assumed to be for this purpose.

Table VII-15 shows the status of provisions on disciplinary action. According to this, 94.6% of

8 "Reprimand" normally means a future warning together with a written apology submitted by the employee. By contrast, "admonition" is a warning not involving submission of a written apology. Neither imposes any substantial disadvantage on the employee, but both are sometimes considered as negative factors when assessing eligibility for pay raises, bonus payments, promotions, etc. "Pay cut" means that a fixed sum is deducted from the wage the worker should normally receive for labor services actually rendered. Pay cuts are governed by Article 91 of the Labor Standards Act, which states "the amount of decrease for a single occasion shall not exceed 50 percent of the daily average wage, and the total amount of decrease shall not exceed 10 percent of the total wages for a single pay period". "Demotion", meaning a reduction in managerial position, rank, professional qualification, etc., is sometimes applied as a disciplinary action. "Suspension from work" means that the worker is banned from attending work for a certain period although the labor contract remains valid, as a sanction against a breach of discipline. During a suspension, wages are generally not paid and the period of the suspension is not added to the worker's service record. "Disciplinary dismissal" is dismissal based on disciplinary action. Normally, dismissal is immediate with no notice given or allowances paid, while all or part of the severance pay may be withheld. A characteristic common to disciplinary dismissal is the fact that the word "disciplinary" is used to indicate that the dismissal results from a sanction, presenting the worker with the disadvantage of a serious obstacle to finding re-employment. Some companies use "guided dismissal" as disciplinary action slightly watered down from disciplinary dismissal. This is sometimes known as "guided resignation", where the worker is advised to submit a resignation letter or request. In these cases, severance pay may be partly or wholly withheld, or paid in accordance with normal voluntary termination (Sugeno (2013) p.490).

companies have provisions on disciplinary action ("Yes" replies). In other words, most companies have provisions on disciplinary action. By scale of regular employees, all companies with "1,000 employees or more" have set provisions.

Companies that have provisions ("Yes" replies) were asked the format of these provisions, to which 98.1% replied that they were provided in "rules of employment" (Table VII-16).

Table VII-17 shows the content of provisions on disciplinary action. According to this, the most common type is "Provisions that disciplinary action shall be taken when necessary" with a ratio of 75.7%, followed by "Types of disciplinary action" (69.9%)

Table VII-15 Status of Provisions on Disciplinary Action (Unit = %)

	n	Yes	No	No response
Total	5964	94.6	4.4	1.0
(Scale of regular employees)				
Fewer than 100	3828	93.5	5.5	0.9
100-299	1466	97.6	1.9	0.5
300-999	360	97.5	1.9	0.6
1,000 or more	76	100.0	0.0	0.0

Table VII-16 Format of Provisions on Disciplinary Action (Unit = %, Multiple Response)

	n	Rules of employment	Labor agreement	Other internal regulations	Others	No response
Total	5644	98.1	6.4	9.1	0.4	0.4
(Scale of regular employees)						
Fewer than 100	3580	98.2	4.6	7.7	0.3	0.3
100-299	1431	98.1	7.1	10.1	0.3	0.6
300-999	351	97.2	17.7	17.9	1.1	0.6
1,000 or more	76	98.7	22.4	19.7	1.3	0.0

* Aggregated from companies that have provisions on disciplinary action ("Yes" replies).

Table VII-17 Content of Provisions on Disciplinary Action (Unit = %, Multiple Response)

	n	Provisions that disciplinary action shall be taken when necessary	Types of disciplinary action	Grounds for discipline	Grounds for each type of disciplinary action	Disciplinary procedures	Others	No response
Total	5644	75.7	69.9	61.9	45.6	35.2	0.9	13.2
(Scale of regular employees)								
Fewer than 100	3580	75.1	65.8	59.8	41.3	30.7	1.0	13.5
100-299	1431	76.4	77.0	65.7	52.6	42.0	0.7	12.7
300-999	351	83.2	84.9	72.6	60.7	53.0	0.9	9.1
1,000 or more	76	81.6	86.8	64.5	67.1	59.2	1.3	11.8

* Aggregated from companies that have provisions on disciplinary action ("Yes" replies).

and "Grounds for discipline" (61.9%), among others. Viewing these by scale of regular employees, the ratios of "Types of disciplinary action", "Grounds for each type of disciplinary action" and "Disciplinary procedures", among others, are higher as the corporate scale increases.

Viewing ratios of companies replying that they use each system of disciplinary action ("Yes" replies), the highest ratio was scored by "Disciplinary dismissal" with 84.5%, followed by "Cautions, warnings and reprimands" (79.2%), "Submission of written apology" (78.0%), "Suspension from work" (72.6%), "Temporary pay cuts" (72.2%), "Guided dismissal" (60.8%) and "Demotions and downgrading" (60.7%), in that order. By scale of regular employees, ratios of "Yes" replies generally decrease in all types of disciplinary action as the corporate scale grows smaller (Table VII-18).

Companies that deploy each type of disciplinary action were asked about their procedures for disciplinary action. Here, "Disclose the reason" scored around 80% in all types of disciplinary action, followed by "Give the employee an opportunity to explain" with around 70% and "Explain to or consult with employees' representatives" with just under 20%. Moreover, the ratio of "Companies offering

Table VII-18 Ratios of Companies Using Each Type of Disciplinary Action (Unit = %)

	n	(1) Cautions, warnings and reprimands	(2) Submission of written apology	(3) Suspension from work	(4) Temporary pay cuts	(5) Demotions and downgrading	(6) Guided dismissal	(7) Disciplinary dismissal
Total	5964	79.2	78.0	72.6	72.2	60.7	60.8	84.5
(Scale of regular employees)								
Fewer than 100	3828	76.0	75.3	68.0	67.6	55.3	55.3	82.0
100-299	1466	86.0	84.2	81.8	81.3	71.4	70.8	90.2
300-999	360	90.3	82.8	88.9	89.4	77.5	78.6	93.3
1,000 or more	76	98.7	85.5	97.4	100.0	86.8	88.2	100.0

Table VII-19 Procedures for Disciplinary Action (Unit = %, Multiple Response)

	n	Disclose the reason	Give the employee an opportunity to explain	Explain to or consult with employees' representatives	Explain to or consult with labor relations body	Explain to or consult with labor union	None of the procedures on the left	No response	Companies offering explanation or consultation
(1) Cautions, warnings and reprimands	4726	81.3	71.4	15.0	7.2	9.2	4.1	3.6	24.1
(2) Submission of written apology	4649	79.6	71.5	14.8	7.0	8.8	4.7	3.7	23.4
(3) Suspension from work	4329	81.5	72.2	17.4	8.5	11.5	4.2	3.6	28.6
(4) Temporary pay cuts	4306	81.2	72.3	17.2	8.5	11.2	4.2	3.8	28.1
(5) Demotions and downgrading	3623	82.7	73.7	18.2	8.7	11.7	3.3	3.2	29.5
(6) Guided dismissal	3624	83.6	75.4	20.2	10.2	13.1	3.1	2.7	32.9
(7) Disciplinary dismissal	5039	81.5	71.2	19.2	9.4	11.9	4.5	3.6	31.3

* Aggregated from companies replying "Yes" to various types of disciplinary action. Here, "Companies offering explanation or consultation" are those that selected one of "Explain to or consult with employees' representatives", "Explain to or consult with labor relations body" or "Explain to or consult with labor union".

explanation or consultation" (companies that selected one of "Explain to or consult with employees' representatives", "Explain to or consult with labor relations body" or "Explain to or consult with labor union") was around 20-30% for all systems of disciplinary action. The ratio of "Companies offering explanation or consultation" tends to increase as the disciplinary action grows in severity, "Guided dismissal" registering 32.9% and "Disciplinary dismissal" 31.3% (Table VII-19).

2. Implementation of disciplinary action and disputes

As disciplinary action implemented over the last 5 years, 42.3% of the survey target companies cite "Submission of written apology", followed by "Cautions, warnings and reprimands" (33.3%), "Temporary pay cuts" (19.0%), "Demotions and downgrading" (14.9%), "Disciplinary dismissal" (13.2%) and "Suspension from work" (12.3%), among others. "Do not undertake any disciplinary action" accounted for 39.0%. Seen by scale of regular employees, the ratios for all types of disciplinary action rise as the corporate scale increases. In companies on a scale of "1,000 employees or more", in particular, "Cautions, warnings and reprimands" scored 89.5%, "Submission of written apology" 76.3%, "Temporary pay cuts" 65.8%, "Suspension from work" 63.2%, and "Disciplinary dismissal" and "Demotions and downgrading" each 56.6%, among others (Table VII-20).

In the survey, companies that implemented disciplinary action were asked about disputes with employees who had been subject to disciplinary action over the last 5 years. According to this, 8.6% of companies replied that disputes had arisen ("Yes" replies). Viewing these in terms of the type of disciplinary action implemented,[9] the ratio of "Yes" replies was 17.0% in "Companies implementing disciplinary dismissal and guided dismissal" but only 4.2% in "Companies implementing other disciplinary action" (Table VII-21). This reveals that disputes are more prone to occur in cases of disciplinary action involving dismissal.

Companies that had experienced disputes with employees were asked about the situation of dispute resolution. The most common reply was "Resolved through dialog with the individual" with a ratio of 48.1%, followed by "Resolved in a court of law" (18.3%), "Resolved through an external dispute resolution body" (15.9%), and "Resolved through the labor tribunal system" (13.6%), among others. Viewing this by content of the disciplinary action, the ratios of "Resolved in a court of law (including reconciliation)", "Resolved through an external dispute resolution body" and "Resolved through the labor tribunal system" were higher in "Companies implementing disciplinary dismissal and guided dismissal" than in "Companies implementing other disciplinary action" (Table VII-22). This suggests that, in disciplinary action involving dismissal, resolution within the company (direct dialog with the individual, resolution through a labor union, etc.) is difficult, and there is a higher likelihood of cases being entrusted to an external body (court of law, labor tribunal system, external dispute resolution body, etc.).

9 To see the difference between more serious types of disciplinary action (i.e. disciplinary dismissal and guided dismissal) and other disciplinary action, separate variables were created for companies that implemented either disciplinary dismissal or guided dismissal (abbreviated below to "Companies implementing disciplinary dismissal and guided dismissal" and those implementing other types of disciplinary action (one of "Cautions, warnings and reprimands", "Submission of written apology", "Suspension from work", "Temporary pay cuts" and "Demotions and downgrading") (abbreviated below to "Companies implementing other disciplinary action").

Table VII-20 Disciplinary Action Implemented over the last 5 years (Unit = %, Multiple Response)

	n	Cautions, warnings and reprimands	Submission of written apology	Suspension from work	Temporary pay cuts	Demotions and downgrading	Guided dismissal	Disciplinary dismissal	Do not undertake any disciplinary action	No response
Total	5964	33.3	42.3	12.3	19.0	14.9	9.4	13.2	39.0	3.3
(Scale of regular employees)										
Fewer than 100	3828	27.0	37.2	8.0	13.8	10.6	6.8	10.2	44.9	3.7
100-299	1466	41.3	50.9	16.1	25.4	20.5	11.1	14.8	31.1	2.0
300-999	360	60.8	57.8	33.3	42.8	32.5	24.4	30.6	15.0	3.1
1,000 or more	76	89.5	76.3	63.2	65.8	56.6	47.4	56.6	0.0	1.3

Table VII-21 Disputes with Employees Subject to Disciplinary Action over the Last 5 Years (Unit = %)

	n	Yes	No	No response
Total	3441	8.6	89.4	2.0
(Content of disciplinary action)				
Companies implementing disciplinary dismissal and guided dismissal	1169	17.0	81.1	1.9
Companies implementing other disciplinary action	2272	4.2	93.7	2.1

* Aggregated from companies that had implemented disciplinary action the previous 5 years (one of "Cautions, warnings and reprimands", "Submission of written apology", "Suspension from work", "Temporary pay cuts", "Demotions and downgrading", "Guided dismissal" and "Disciplinary dismissal").

Table VII-22 Status of Resolution of Disputes with Employees Subject to Disciplinary Action (Unit = %, Multiple Response)

	n	Resolved through dialog with the individual	Chose resolution through dialog with labor union	Resolved through internal complaints processing body	Resolved through an external dispute resolution body	Resolved through the labor tribunal system	Resolved in a court of law (including reconciliation)	Others	Unresolved (employee stopped working)	No response
Total	295	48.1	6.4	4.7	15.7	13.6	18.3	1.0	5.1	4.1
(Whether disciplinary action is implemented)										
Companies implementing disciplinary dismissal and guided dismissal	199	43.2	3.0	2.5	17.1	16.1	23.6	1.5	6.5	3.0
Companies implementing other disciplinary action	96	58.3	13.5	9.4	13.5	8.3	7.3	0.0	2.1	6.3

* Aggregated from companies that had had disputes with employees subject to disciplinary action over the previous 5 years.

Section 3 Dismissal

In Section 3, after confirming the status of legislation and case law principles concerning dismissal in Japan, the implementation status of dismissal and involuntary termination will be examined. The state of implementation in terms of procedures by companies implementing dismissal will also be enumerated, divided into normal dismissal and dismissal for the purposes of reorganization ("economic dismissal"). The situation of disputes related to dismissal will also be examined.

1. Dismissal and involuntary termination

"Dismissal" refers to termination of a labor contract by the employer. In Japan, the Civil Code gives employers "freedom to dismiss", meaning that they can dismiss workers at any time provided they give two weeks advance notice [Civil Code Article 627 paragraph 1 (Offer to Terminate Employment with Indefinite Term)]. As legal provisions that restrict the dismissal of workers, besides Article 20 of the Labor Standards Act (Advance Notice of Dismissal), Article 19 of the same Act (Restrictions on Dismissal of Workers) provides for restrictions on the dismissal of workers during a period of absence resulting from industrial accidents, or before and after childbirth. In other words, as far as the letter of the law is concerned, the content of regulations would appear close to freedom to dismissal. From the employers' point of view, however, dismissal has long been seen as difficult in Japan. One cause of this is a growing perception of rules restricting dismissal of workers based on case law that has been built up by the courts through an accumulation of legal precedents (namely the principle of abuse of dismissal rights and the four requirements for economic dismissal).

In Japan, this principle on the abuse of dismissal rights was codified in the 2003 Amendment of the Labor Standards Act and the enactment of the Labor Contract Act in 2007.[10] Article 16 of the Labor Contract Act states that "A dismissal shall, if it lacks objectively reasonable grounds and is not considered to be appropriate in general societal terms, be treated as an abuse of right and be invalid".

To explain the case law principle on dismissal in brief, according to Sugeno (2013), "objectively reasonable grounds" in the legal principle of abuse of dismissal rights can be broadly divided into four categories. Namely, (1) the worker's incompetence, or lack or loss of the skills or qualifications required for his or her job, (2) the worker's breach of disciplinary rules, (3) reasons based on business necessity, and (4) a dismissal request by a union based on a union shop agreement.[11] But even when these "objectively reasonable grounds" are recognized, if a given dismissal "cannot be endorsed as appropriate in general societal terms" (the requirement of appropriateness), "courts generally recognize the appropriateness of dismissal only when the grounds for dismissal have reached a severe level, there are no other means of avoiding dismissal, and there are hardly any extenuating circumstances on the worker's part".

Meanwhile, the legal principle of economic dismissal has been built up through an accumulation of legal precedents when the 1st oil crisis in 1973 caused large-scale employment adjustments after long-term employment had become established in the era of high-level growth. For economic dismissal to be valid, four requirements are construed as necessary. These "four requirements for economic dismissal" are (1) the necessity of reducing the number of employees, (2) the employer's fulfillment of the obligation to endeavor to avoid dismissal (i.e. that, even after exhausting other measures for personnel reduction including redeployment, secondment and voluntary termination, there is still a need to resort to economic dismissal), (3) the

10 This provision was originally drafted by the Labour Conditions Subcommittee of the Labour Policy Council, Ministry of Health, Labour and Welfare, to be incorporated in the 2003 Amendment of the Labor Standards Act (former Labor Standards Act, Article 18–2). Later, with the enactment of the Labor Contract Act in 2007, it was transferred to Article 16 of the Act.

11 See Sugeno (2013) pp.556-449.

selection of persons to be dismissed must be based on objective standards, and (4) the procedures for dismissal including explanation and consultation must be based on objective standards.[12]

Legislation on the legal principle of economic dismissal was postponed with the 2007 enactment of the Labor Contract Act. Of course, it has been pointed out that "it is difficult for ordinary workers as well as owners of small and medium-sized enterprises, foreign-capital companies and others to be aware of the existence and content" of the legal principle of abuse of dismissal rights itself,[13] and it has been said that there is a difference in levels of awareness of the principle of legal precedent depending on corporate scale.

In the following, the situation of dismissal in Japan (except disciplinary dismissal) will be introduced in terms of both provisions and procedures. Meanwhile, as an issue associated with dismissal, involuntary termination will also be dealt with. Involuntary termination is an act whereby the employer recommends that a worker resigns, or recommends that the worker accepts an application for agreed termination. If based on agreed termination, involuntary termination is not dismissal, and is therefore not subject to regulations of dismissal under the Labor Standards Act or to provisions on the abuse of dismissal rights. Even if for purposes of staff reorganization, the four requirements for economic dismissal need not be satisfied [14] (for example, offering voluntary termination in the case of economic dismissal).[15] Particularly in the case of economic dismissal, mentioned above, offering voluntary termination is included in the fulfillment of efforts to avoid dismissal, and is therefore important in terms of examining the situation of procedures.

2. Status of provisions on dismissal

Grounds for dismissal, like grounds for disciplinary action, are normally listed in the rules of employment. The 2003 Amendment of the Labor Standards Act provides that "grounds for dismissal" must be specified in the rules of employment as mandatory matters for inclusion (matters that must be stated in rules of employment without fail), obliging companies to clearly specify grounds for dismissal in advance (Labor Standards Act, Article 89 (iii)).

In the survey, 78.3% of companies replied that they "Have specified" procedures when dismissing employees, and 17.0% that they "Do not particularly specify, but handle case by case", among others. Viewing this by scale of regular employees, the ratio of "Have specified" rises as the corporate scale increases. Companies that "Have specified" dismissal procedures were then asked where these procedures are specified, 97.9% responding "In the rules of employment". In other words, most companies that have specified dismissal procedures specify them in their rules of employment. By presence or lack of a labor union, 22.1% of companies with a labor union specify dismissal procedures through labor agreements (Table VII-24).

12 According to Araki (2013) pp.282-288, the legal principle of economic dismissal was until relatively recently understood to invalidate dismissals that fail to satisfy the "four requirements" (the "four requirements theory"), but recent court cases have come to adopt a position in which it is perceived as a typology of the main elements for judging whether there has been an abuse of rights (the four elements theory).

13 Sugeno (2013) p.557.

14 According to Sugeno (2013) pp.530-532, however, semi-coercive or persistent acts of involuntary termination in a manner that deviates from social appropriateness could constitute an illegal act and give rise to liability for damages towards the worker in question.

15 Koike (2012) says that dismissal involves the important issues of how many workers to dismiss and who to dismiss, and that the latter (selection of personnel) is particularly pivotal, but that because there are no good standards for selection in reality and "nominated dismissal" by the management would inevitably be arbitrary, the only remaining option is "offering voluntary termination". And since voluntary termination also includes "shoulder tapping" (pressuring an employee to resign), it has been pointed out that this is also "dismissal at the company's convenience" (however, he also asserts that "voluntary termination by shoulder tapping" is weaker in terms of selection by the management than nominated dismissal).

Table VII-23 Status of Provisions on Procedures When Dismissing Employees (Unit = %)

	n	Have specified	Not specified in writing but customary practice	Do not particularly specify, but handle case by case	No response
Total	5964	78.3	3.4	17.0	1.4
(Scale of regular employees)					
Fewer than 100	3828	76.8	3.2	18.7	1.3
100-299	1466	81.9	4.0	13.0	1.1
300-999	360	81.4	3.9	13.6	1.1
1,000 or more	76	85.5	3.9	10.5	0.0

Table VII-24 Format of Provisions on Dismissal Procedures (Unit = %, Multiple Response)

	n	Rules of employment	Labor agreement	Other internal regulations	Others	No response
Total	4,668	97.9	7.2	6.2	0.3	0.4
(Scale of regular employees)						
Fewer than 100	2,938	98.1	5.3	5.5	0.3	0.4
100-299	1,201	98.1	7.8	7.1	0.3	0.4
300-999	293	96.9	21.2	8.9	0.7	0.7
1,000 or more	65	95.4	26.2	6.2	0.0	0.0
(Whether labor union exists)						
Yes	1,107	96.9	22.1	6.9	0.4	0.8
No	3,446	98.3	2.4	5.9	0.3	0.3

* Aggregated from companies that "Have specified" dismissal procedures.

3. Involuntary termination and dismissal

In Japan today, how is dismissal carried out, and what sort of procedures are used? Let us first look at involuntary termination (Table VII-25). In the survey, companies were asked whether they had imposed involuntary termination on any regular employee in the last 5 years. They were not asked the reasons or context lying behind the involuntary termination. According to the results, 16.6% of companies had imposed involuntary termination on individual regular employees ("Yes" replies). Viewing this by scale of regular employees, "Yes" replies increased in proportion to corporate scale. Viewed by change in sales turnover in the last 5 years (as a way of assessing in terms of corporate performance),[16] the ratio is higher in companies whose sales turnover has "Decreased". Hardly any difference in the ratio is seen based on whether companies have a labor union or not.

Next, the implementation status of dismissal is as shown in Table VII-26. In the survey, companies were asked whether they had dismissed regular employees (except disciplinary dismissal) in the last five years. According to the results, 16.2% of companies had implemented "Normal dismissal" and 8.7% "Economic dismissal". By scale of regular employees, the ratio of normal dismissal rises as the

16 In this survey, companies were asked to give their last 5 years' sales turnover, profit margins and other details on a 5-stage ordinal scale, as a question to show corporate performance. It should be noted that this is only based on a subjective judgement.

corporate scale increases. On the other hand, no difference based on corporate scale is seen in cases of economic dismissal. In terms of changes in sales turnover in the last 5 years, the ratio of economic dismissal was 5.6% and 5.1%, respectively, in companies where sales turnover "Increased" and "Stayed about the same", but was more than double (13.0%) for those whose sales turnover had "Decreased". However, no difference is seen in the implementation ratios of normal dismissal based on changes in sales turnover. In terms of whether they have a labor union or not, companies with labor unions had lower ratios of both normal dismissal and economic dismissal.

Table VII-25 Involuntary Termination Imposed on Individual Regular Employees over the Last 5 Years (Unit = %)

	n	Yes	No
Total	5892	16.6	83.4
(Scale of regular employees)			
Fewer than 100	3785	15.5	84.5
100-299	1453	17.6	82.4
300-999	356	23.3	76.7
1,000 or more	75	30.7	69.3
(Change in sales turnover in the last 5 years)			
Increased	1865	12.2	87.8
Stayed about the same	1123	14.3	85.7
Decreased	2494	21.1	78.9
(Whether labor union exists)			
Yes	1295	15.8	84.2
No	4448	16.8	83.2

* Aggregated from all except "No response".

Table VII-26 Regular Employees Dismissed over the Last 5 Years (Unit = %, Multiple Response)

	n	Normal dismissal	Economic dismissal	No dismissal
Total	5879	16.2	8.7	79.0
(Scale of regular employees)				
Fewer than 100	3769	15.2	8.9	79.6
100-299	1453	17.1	7.9	78.7
300-999	356	21.9	9.0	74.4
1,000 or more	75	30.7	8.0	69.3
(Change in sales turnover in the last 5 years)				
Increased	1867	16.7	5.6	80.8
Stayed about the same	1117	15.0	5.1	83.0
Decreased	2483	17.3	13.0	74.7
(Whether labor union exists)				
Yes	1297	13.0	6.4	83.3
No	4428	17.2	9.2	77.8

*Aggregated from all except "No response".

4. Status of consultation on dismissal with labor unions, etc., and length of dismissal notice

One of the four requirements for economic dismissal is the appropriateness of dismissal procedures. Here, labor-management consultation is an important element in helping to provide information and explanations to employees. In this connection, Table VII-27 shows the status of consultation with labor unions, etc., for both normal dismissal and economic dismissal. According to this, 65.1% of companies "Did not particularly engage in consultation" in cases of normal dismissal, but in cases of economic dismissal this ratio was 54.6%. In other words, the proportion of companies carrying out some kind of consultation was higher in cases of economic dismissal.

In terms of whether or not labor unions or labor-management consultation bodies exist, the ratio of "Did not particularly engage in consultation" was highest in "Companies that have neither" for both normal dismissal and economic dismissal, followed by "Labor-management consultation body only", "Labor union only" and "Both labor union and labor-management consultation body" in descending order.

Looking specifically at economic dismissal, of companies replying "Both labor union and labor-management consultation body", 80.4% say they "Consulted with labor union". Of those replying "Labor union only", 63.2% "Consulted with labor union", while 31.6% "Consulted with selected employee representatives". Of those replying "Labor-management consultation body only", 41.3% "Did not particularly engage in consultation", but 38.4% "Consulted with selected employee representatives". Even when there is a labor-management consultation body, a large proportion of companies "Consulted with selected employee representatives". As for "Companies that have neither" a labor union nor a labor-management consultation body, 72.4% say they "Did not particularly engage in consultation".

So, how much notice do companies give employees before dismissing them? Article 20 paragraph 1 of the Labor Standards Act states that, if an employer wishes to dismiss a worker, the employer must provide at least 30 days advance notice (an employer who does not give 30 days advance notice must pay the average wages for a period of not less than 30 days). According to Table VII-28, the highest ratio in cases of normal dismissal is 51.2% for "About 1 month". The most common reply in cases of economic dismissal is also "About 1 month" with 38.7%. Although it is not known whether an advance notice allowance is payable in such cases, the period of notice for both normal dismissal and economic dismissal appears to focus on

Table VII-27 Status of Consultation with Labor Unions, etc., When Dismissing Employees (Unit = %, Multiple Response)

	Normal dismissal					Economic dismissal				
	n	Consulted with labor union	Consulted with labor-management consultation body	Consulted with selected employee representatives	Did not particularly engage in consultation	n	Consulted with labor union	Consulted with labor-management consultation body	Consulted with selected employee representatives	Did not particularly engage in consultation
Total	820	19.8	4.1	16.2	65.1	438	24.4	9.1	21.7	54.6
(Whether labor unions or labor-management consultation bodies exist)										
Both labor union and labor-management consultation body	109	68.8	11.0	8.3	26.6	56	80.4	16.1	7.1	12.5
Labor union only	42	35.7	0.0	16.7	52.4	19	63.2	5.3	31.6	21.1
Labor-management consultation body only	242	14.0	5.4	28.1	59.9	109	22.9	13.8	38.5	41.3
Companies that have neither	399	8.8	2.3	10.8	79.7	232	9.5	5.6	16.8	72.4

* For normal dismissal, aggregated from all companies that had "Carried out normal dismissals" over the last 5 years, except "No response". For economic dismissal, aggregated from all companies that had "Carried out economic dismissals" over the last 5 years, except "No response".

Table VII-28 Length of Dismissal Notice (Unit = %)

	n	1 week or less	About 1-2 weeks	About 3 weeks	About 1 month	About 1-2 months	About 3-4 months	About 5-6 months	More than 6 months	1 month or less	More than 1 month
Normal dismissal	884	10.5	5.3	3.3	51.2	24.1	3.8	0.6	1.1	70.4	29.6
Economic dismissal	457	1.8	0.4	0.7	38.7	38.1	14.9	1.3	4.2	41.6	58.4

* For normal dismissal, aggregated from all companies that had "Carried out normal dismissals" over the last 5 years, except "No response". For economic dismissal, aggregated from all companies that had "Carried out economic dismissals" over the last 5 years, except "No response". Here, "1 month or less" is the total of "1 week or less", "About 1-2 weeks", "About 3 weeks" and "About 1 month". "More than 1 month" is the total of "About 1-2 months", "About 3-4 months", "About 5-6 months" and "More than 6 months".

"About 1 month". The proportion of companies replying "More than 1 month" (the total of "About 1-2 months", "About 3-4 months", "About 5-6 months" and "More than 6 months") suggests that longer periods of notice are given for economic dismissal than for normal dismissal.

5. Dismissal avoidance measures in normal dismissal

Next, what kind of reasons lead to normal dismissal, and what kind of process does it follow (measures before resorting to dismissal)? Table VII-29 summarizes the reasons for normal dismissal.

The most commonly cited reason for normal dismissal was "Employee misconduct" with 42.7%, followed by "Lack of skills needed for work", "Disruption of workplace discipline" and "Frequent unauthorized absences", among others. By scale of regular employees, the ratios of companies citing reasons of "Employee misconduct" and "Expiration of leave" increase in proportion to corporate scale. Conversely, the ratios of companies citing reasons of "Lack of skills needed for work" increase in inverse proportion to corporate scale.[17] "Disruption of workplace discipline" scores around 30% in all corporate scales.

In terms of different periods of advance notice for normal dismissal,[18] only in the case of "Employee misconduct" does dismissal notice of "About 3 weeks" account for a higher proportion than "More than 1 month". This suggests that the length of time until dismissal is shorter when cases of "Employee misconduct" arise.

In the survey, companies were asked what measures they take before resorting to normal dismissal. Table VII-30 shows whether companies give consideration to prospects of future improvement (warnings, Give opportunities for correction) when a case applicable to normal dismissal arises. This question included the option "Carried out involuntary termination". The purpose of this was to confirm whether measures to switch to voluntary termination (agreed termination) rather than normal dismissal are taken (in this, involuntary termination could also be seen as a dismissal avoidance measure).

According to this, the most commonly cited measure was "Warnings" with a ratio of 58.0%, followed by "Give opportunities for correction" (46.0%), "Carried out involuntary termination" (45.0%), and "Consider redeployment to another

17 This is because the ratio of normal dismissal on grounds of "Lack of skills needed for work" decreases as the corporate scale increases. According to Morishima and Ouchi (2013), dismissing workers because of a lack of skills is difficult in terms of judicial precedent. Behind this, they say, lies the assumption that Japanese companies hire and give vocational training to persons without professional experience (new graduates), causing the courts to view a lack of skills as a possible error in selection or training on the part of the company (in other words, some of the responsibility lies with the company).

18 Here, the aim is to highlight the difference between shorter lengths of dismissal notice, and so the period of notice for normal dismissal is divided into two groups, namely "About 3 weeks" (the total of "1 week or less", "About 1-2 weeks" and "About 3 weeks") and "More than 1 month" (the total of "About 1 month", "About 1-2 months", "About 3-4 months", "About 5-6 months" and "More than 6 months").

Table VII-29 Reasons for Implementing Normal Dismissal (Unit = %, Multiple Response)

	n	Employee misconduct	Frequent unauthorized absences	Disruption of workplace discipline	Lack of skills needed for work	Expiration of leave	Health problems	Others
Total	689	42.7	20.8	33.2	38.8	12.0	16.8	5.5
(Scale of regular employees)								
Fewer than 100	403	39.0	19.6	34.5	44.4	6.7	16.9	6.5
100-299	184	44.6	24.5	30.4	32.6	14.1	19.6	6.0
300 or more	83	53.0	19.3	32.5	24.1	33.7	10.8	1.2
(Notice period for normal dismissal)								
About 3 weeks	132	58.3	11.4	33.3	32.6	4.5	8.3	3.8
More than 1 month	519	38.7	22.9	33.7	41.2	14.1	19.3	5.4

* Aggregated from all companies that had "Carried out normal dismissal" except "No response". In the period of notice for normal dismissal, "About 3 weeks" is the total of "1 week or less", "About 1-2 weeks" and "About 3 weeks". "More than 1 month ago" is the total of "About 1 month", "About 1-2 months", "About 3-4 months", "About 5-6 months" and "More than 6 months".

Table VII-30 Measures Taken before Normal Dismissal (Unit = %, Multiple Response)

	n	Warnings	Give opportunities for correction	Consider redeployment to another department	Carried out involuntary termination	Others	None of these measures	Companies giving opportunities for improvement
Total	816	58.0	46.0	23.9	45.0	6.0	6.7	71.9
(Scale of regular employees)								
Fewer than 100	493	56.8	44.6	21.5	49.3	5.9	5.3	69.6
100-299	215	63.3	48.4	27.4	37.7	4.7	8.4	76.3
300 or more	86	57.0	45.3	30.2	38.4	9.3	9.3	76.7
(Labor-management consultation in cases of normal dismissal)								
Did not particularly engage in consultation	475	55.2	43.4	22.1	45.3	5.5	7.8	68.2
Engaged in some kind of consultation	244	63.9	52.5	23.8	45.9	7.0	6.1	77.9
(Reason for implementing normal dismissal)								
Employee misconduct	271	64.2	45.4	18.1	41.7	5.2	10.7	70.5
Frequent unauthorized absences	136	77.9	62.5	29.4	33.8	2.2	3.7	90.4
Disruption of workplace discipline	219	72.6	58.9	26.0	46.6	4.1	3.2	79.5
Lack of skills needed for work	261	65.1	61.3	33.3	47.9	3.1	1.5	83.9
Expiration of leave	79	54.4	41.8	38.0	31.6	7.6	7.6	78.5
Health problems	111	58.6	51.4	38.7	52.3	6.3	5.4	75.7

* Aggregated from all companies that had "Carried out normal dismissal" except "No response". Here, "Companies giving opportunities for improvement" are companies that selected at least one of "Warnings", "Give opportunities for correction" and "Consider redeployment to another department".

department" (23.9%), among others. In other words, about 40% of companies carry out involuntary termination when dismissing staff.

Here, on aggregating companies that selected one of "Warnings", "Give opportunities for correction" and "Consider redeployment to another department" as "Companies giving opportunities for improvement", the ratio was 71.9%. In other words, more than 70% of all companies give some kind of opportunity for improvement.

Seen by scale of regular employees, the ratio of "Consider redeployment to another department" and others generally rises as the corporate scale increases. This must mean that larger corporations have more options for changing sites of redeployment. In terms of whether labor-management consultation is carried out in cases of normal dismissal, companies that "Engaged in some kind of consultation" had higher ratios of "Warnings" and "Give opportunities for correction" than those that "Did not particularly engage in consultation".

By reason for carrying out normal dismissal, the ratio of Companies giving opportunities for improvement was higher in the cases of "Frequent unauthorized absences" and "Lack of skills needed for work".

6. Dismissal avoidance measures in economic dismissal

Meanwhile, Table VII-31 shows dismissal avoidance measures taken in cases of economic dismissal. According to this, the most common measure was "Reduce new graduate hiring" with 45.6%, followed by "Reduce or scrap unprofitable departments, close business sites" (43.3%), "Redeployment" (42.9%) and "Offer voluntary termination (including preferential treatment for early termination)" (29.7%), among others. Companies stating that they "Take no dismissal avoidance measures" accounted for a mere 7.6%. This reveals that most companies consider themselves to have taken dismissal avoidance measures.

By scale of regular employees, the proportion of companies citing dismissal avoidance measures of "Redeployment", "Offer voluntary termination", "Restrict overtime", "Do not renew contracts of non-regular employees" and "Do not renew contracts of agency workers and contract workers" increases in proportion to corporate scale. In terms of changes in sales turnover, the ratios of "Reduce wage increases", "Reduce new hiring", "Temporary closure", "Wage cuts", "Reduce or scrap unprofitable departments, close business sites", "Cut bonuses" and "Offer voluntary termination", among others, were higher in companies where sales turnover has "Decreased" than in those where it has "Increased or stayed level".

In terms of whether a labor union exists, the ratios of "Offer voluntary termination", "Cut bonuses", "Do not renew contracts of non-regular employees", "Do not renew contracts of agency workers and contract workers", "Reduce new hiring" and "Reduce or scrap unprofitable departments, close business sites", among others, are higher in companies with labor unions than in those without. Companies with labor unions appear to tend to "Offer voluntary termination".

Meanwhile, in terms of whether labor-management consultation is carried out in cases of economic dismissal, companies that "Engaged in some kind of consultation" had a 33.2 point advantage in the ratio of "Offer voluntary termination" compared to companies that "Did not particularly engage in consultation". Besides this, their ratios of "Reduce new hiring", "Cut bonuses", "Do not renew contracts of agency workers and contract workers", "Temporary closure", "Reduce or scrap unprofitable departments, close business sites" and "Do not renew contracts of non-regular employees" were also higher.

Next, Table VII-32 shows special measures taken for personnel targeted by economic dismissal. According to this, "Increase severance pay" accounted for the highest ratio with 34.3%, followed by "Mediate in re-employment", "Special leave before termination" and "Entrust to job introduction agency", among others. Companies that "Do not implement any measures" accounted for 24.7%.

Viewing this by scale of regular employees, the ratios of companies undertaking "Mediate in re-employment" and "Entrust to job introduction agency" increased in proportion to corporate scale. The ratio of companies that "Do not implement any

measures" was generally in inverse proportion to corporate scale. This reveals that there are differences depending on corporate scale. In terms of changes in sales turnover, the ratio of "Increase severance pay" was higher in companies whose sales turnover "Decreased" compared those in which it "Increased or stayed level".

In terms of whether a labor union exists, companies with labor unions responded with higher ratios of "Increase severance pay", "Entrust to job introduction agency" and "Mediate in re-employment" than those without labor unions. This suggests a trend for labor unions to focus energy in negotiating conditions such as increases in severance pay and mediation in re-employment.

Next, as to whether companies engage in labor-management consultation in cases of economic dismissal, companies that "Engaged in some kind of consultation" had higher ratios of "Increase severance pay", "Mediate in re-employment" and "Entrust to job introduction agency", among others, than those that "Did not particularly engage in consultation". On the other hand, companies that "Did not particularly engage in consultation" had a higher ratio of "Took no measures".

In terms of whether voluntary termination is offered, companies that offer voluntary termination ("Yes" replies) scored higher ratios of "Increase severance pay", "Entrust to job introduction agency" and "Mediate in re-employment" than those that do not offer voluntary termination (the former had particularly high ratios of "Increase severance pay").

Table VII-33 shows the level of increases by companies that "Increase severance pay". As the table shows, the most common response was "Add the equivalent of about six months' wages" with 26.6%, followed by "Add the equivalent of a few months' wages" and "Guarantee levels of severance

Table VII-31 Dismissal Avoidance Measures before Resorting to Economic Dismissal (Unit = %, Multiple Response)

	n	Reduce new hiring	Redeployment	Secondment, transfers	Cut bonuses	Reduce wage increases	Wage cuts	Temporary closure	Restrict overtime	Reduce or scrap unprofitable departments, close business sites	Do not renew contracts of non-regular employees	Do not renew contracts of agency workers and contract workers	Offer voluntary termination (including preferential treatment for early termination)	Others	Take no dismissal avoidance measures
Total	434	45.6	42.9	13.4	26.7	26.3	26.5	24.9	28.1	43.3	25.1	20.0	29.7	2.8	7.6
(Scale of regular employees)															
Fewer than 100	289	45.0	35.3	11.1	27.0	27.0	28.7	23.9	27.0	41.5	20.1	17.0	24.6	2.8	10.0
100-299	101	50.5	52.5	18.8	27.7	26.7	21.8	28.7	29.7	48.5	34.7	25.7	36.6	3.0	3.0
300 or more	29	48.3	75.9	20.7	27.6	24.1	13.8	20.7	34.5	51.7	44.8	34.5	62.1	3.4	0.0
(Change in sales turnover in the last 5 years)															
Increased or stayed about the same	125	39.2	48.0	15.2	22.4	18.4	20.0	19.2	24.8	38.4	24.8	20.8	25.6	4.0	8.8
Decreased	290	50.0	40.7	13.4	29.7	30.3	28.6	27.9	30.3	46.6	25.2	19.7	32.1	2.4	6.6
(Whether labor union exists)															
Yes	72	55.6	50.0	13.9	45.8	33.3	33.3	30.6	27.8	52.8	40.3	30.6	56.9	2.8	2.8
No	347	44.7	40.9	13.5	23.1	25.4	24.5	23.9	28.8	42.1	21.9	18.2	24.5	2.9	8.6
(Labor-management consultation in cases of economic dismissal)															
Did not particularly engage in consultation	211	42.2	40.8	11.8	22.3	26.1	28.0	20.9	27.5	41.2	22.3	14.7	15.6	3.3	7.6
Engaged in some kind of consultation	180	55.6	44.4	15.6	36.1	28.3	27.2	32.2	31.1	50.6	30.0	26.7	48.9	2.8	4.4

* Aggregated from all companies that "Carried out economic dismissal" except "No response".

pay upon mandatory retirement", among others.[19]

Viewing "Add the equivalent of at least six months' wages" (the total of "Add the equivalent of about six months' wages", "Add the equivalent of about a year's wages", "Add the equivalent of 2-3 years' wages" and "More than that") by scale of regular employees, the ratio was highest in companies with "300 employees or more". In terms of changes in sales turnover, the ratio of "Add the equivalent of at least six months' wages" was lower in companies whose sales turnover "Decreased" compared to those in which it "Increased or stayed level". Levels of increase appear to differ depending on corporate performance.

Meanwhile, in terms of whether a labor union exists, companies with a labor union had a higher ratio of "Add the equivalent of at least six months' wages" than those without one. As for engagement in labor-management consultation in cases of economic dismissal, similarly, companies that "Engaged in some kind of consultation" had a higher ratio in this item than those that "Did not particularly engage in consultation". Finally, in terms of whether voluntary termination is offered, the ratio was higher in companies that "Offer voluntary termination" than in those that "Do not offer voluntary termination".

Table VII-32 Special Measures for Personnel Targeted by Economic Dismissal (Unit = %, Multiple Response)

	n	Increase severance pay	Special leave before termination	Mediate in re-employment	Entrust to job introduction agency	Others	Take none of these measures
Total	443	39.5	21.9	28.0	8.1	5.2	28.4
(Scale of regular employees)							
Fewer than 100	298	36.2	22.5	27.2	5.7	5.7	30.2
100-299	102	51.0	21.6	28.4	10.8	4.9	20.6
300 or more	28	46.4	21.4	42.9	28.6	0.0	25.0
(Changes in sales turnover in the last 5 years)							
Increased or stayed about the same	128	35.2	21.9	28.9	9.4	5.5	34.4
Decreased	296	41.6	22.6	27.4	8.1	5.1	26.0
(Whether labor union exists)							
Yes	74	59.5	20.3	32.4	18.9	1.4	17.6
No	354	36.2	22.3	27.4	6.2	5.9	29.9
(Labor-management consultation in cases of economic dismissal)							
Engaged in some kind of consultation	187	52.4	24.6	34.2	11.8	4.3	17.1
Did not particularly engage in consultation	211	29.9	19.4	22.3	4.7	6.6	36.0
(Whether voluntary termination is offered)							
No	299	28.1	21.4	23.7	4.0	5.4	35.8
Yes	128	66.4	22.7	35.9	18.0	4.7	11.7

* Aggregated from all companies that "Carried out economic dismissal" except "No response".

19 Although "Add the equivalent of a few months' wages" was not included in the questionnaire options, it was later added to the options by after-coding from data entered freely under "Others".

Table VII-33 Levels of Increased Severance Pay in Measures for Economic Dismissal (Unit = %)

	n	Guarantee levels of severance pay upon mandatory retirement	Add the equivalent of a few months' wages	Add the equivalent of about six months' wages	Add the equivalent of about a year's wages	Add the equivalent of 2-3 years' wages	More than that	Others	Add the equivalent of at least six months' wages
Total	169	13.0	21.9	26.6	11.8	4.1	0.0	22.5	42.6
(Scale of regular employees)									
Fewer than 100	105	15.2	28.6	18.1	13.3	2.9	0.0	21.9	34.3
100-299	49	12.2	8.2	42.9	4.1	4.1	0.0	28.6	51.0
300 or more	13	0.0	23.1	30.8	30.8	15.4	0.0	0.0	76.9
(Changes in sales turnover in the last 5 years)									
Increased or stayed about the same	44	13.6	15.9	27.3	15.9	6.8	0.0	20.5	50.0
Decreased	118	12.7	23.7	27.1	10.2	3.4	0.0	22.9	40.7
(Whether labor union exists)									
Yes	43	14.0	18.6	27.9	16.3	7.0	0.0	16.3	51.2
No	123	13.0	22.8	26.0	10.6	3.3	0.0	24.4	39.8
(Labor-management consultation in cases of economic dismissal)									
Engaged in some kind of consultation	96	13.5	20.8	27.1	13.5	7.3	0.0	17.7	47.9
Did not particularly engage in consultation	60	11.7	26.7	26.7	8.3	0.0	0.0	26.7	35.0
(Whether voluntary termination is offered)									
No	80	18.8	25.0	22.5	6.3	1.3	0.0	26.3	30.0
Yes	83	6.0	19.3	32.5	18.1	7.2	0.0	16.9	57.8

* Aggregated from all companies that increased severance pay for personnel targeted by economic dismissal personnel targeted by economic dismissal, except "No response". "Add the equivalent of at least six months' wages" is the total of "Add the equivalent of about six months' wages", "Add the equivalent of about a year's wages", "Add the equivalent of 2-3 years' wages" and "More than that".

7. Dismissal procedures and status of dismissal disputes and resolutions

Table VII-34 shows procedures followed by companies when dismissing employees. For both normal dismissal and economic dismissal, the procedures most commonly cited by companies were "Indicating the reason for dismissal" and "Indicating the date of dismissal" with around 80%, followed by "Hearing opinions from the employees themselves" and "Indicating the amount and date of payment of severance pay", among others. Comparing the two types of dismissal, procedures such as "Indicating the standards for selecting personnel to be dismissed", "Indicating the amount and date of payment of severance pay", "Indicating the date of dismissal" and "Consulting and building consensus with labor unions, etc." had a higher ratio of implementation in economic dismissal than in normal dismissal.

Now, let us look at normal dismissal and economic dismissal in terms of engagement in labor-management consultation. Firstly, in the case of normal dismissal, companies that "Engaged in some kind of consultation" had higher ratios of "Consulting and building consensus with labor unions, etc.", "Indicating the standards for selecting personnel to be dismissed" and "Hearing opinions from the employees themselves", among others, than those that "Did not particularly engage in consultation". In cases of economic dismissal, too, companies that "Engaged in some kind of consultation" had higher ratios of "Consulting and building consensus with labor unions, etc.", "Indicating the amount and date

of payment of severance pay", "Indicating the standards for selecting personnel to be dismissed" and "Hearing opinions from the employees themselves", etc., than those that "Did not particularly engage in consultation". This suggests that engaging in consultation raises the implementation ratio of providing information and giving explanations, such as standards for selecting personnel to be dismissed and hearing opinions from the employees themselves.

In this survey, companies were asked whether they had had disputes with dismissed employees in cases of normal dismissal and economic dismissal, respectively. According to this, 16.1% of companies had had disputes with dismissed employees ("Yes" replies) in cases of normal dismissal and 11.4% in economic dismissal, showing a slightly higher ratio for the former [20] (Figure VII-35). This means that, in both normal dismissal and economic dismissal, about 10% of the implementing companies experience disputes.

Companies that had had disputes with dismissed employees were asked about the status of dispute resolution, with the results shown in Table VII-36. In normal dismissal, "Resolved through dialog with the employee" polled the highest ratio with 45.5%, followed by "Resolved through an external dispute resolution body", "Resolved in a court of law" and "Resolved through the labor tribunal system", among others. In economic dismissal, again, the highest ratio was "Resolved through dialog with the employee" with 53.8%, followed by "Resolved in a court of law",

Table VII-34 Procedures When Dismissing Employees (Unit = %, Multiple Response)

		n	Indicating the reason for dismissal	Indicating the date of dismissal	Indicating the amount and date of payment of severance pay	Indicating the standards for selecting personnel to be dismissed	Hearing opinions from the employees themselves	Paying an advance notice allowance	Consulting and building consensus with labor unions, etc.	Others	Follow none of these procedures
Normal dismissal	Total	881	88.5	81.4	40.9	14.3	58.6	37.7	9.0	1.2	0.9
	(Labor-management consultation in cases of economic dismissal)										
	Did not particularly engage in consultation	528	88.4	83.3	39.0	9.5	55.7	37.3	0.2	0.9	1.3
	Engaged in some kind of consultation	280	89.6	80.0	45.4	24.6	65.7	38.6	27.9	1.8	0.0
Economic dismissal	Total	453	89.4	89.4	52.3	33.1	55.6	32.0	13.7	0.9	0.4
	(Labor-management consultation in cases of economic dismissal)										
	Did not particularly engage in consultation	233	91.0	89.3	43.8	26.6	51.5	31.8	0.0	1.3	0.4
	Engaged in some kind of consultation	194	88.7	91.2	66.0	42.8	61.3	30.4	32.0	0.5	0.0

* For normal dismissal, aggregated from all companies that had "Carried out normal dismissals" over the last 5 years, except "No response". For economic dismissal, aggregated from all companies that had "Carried out economic dismissals" over the last 5 years, except "No response".

20 In the survey, companies that had consulted with labor unions when implementing normal dismissal and economic dismissal were asked whether this had led to disputes with the labor union. According to this, the ratio of companies experiencing disputes after consulting with the labor union ("Yes" replies) was 10.5% for normal dismissal and 14.3% for economic dismissal, showing a slightly higher probability that economic dismissal will result in disputes. In any case, this means that, in both normal dismissal and economic dismissal, about 10% of the implementing companies even experience disputes in collective labor relations.

"Resolved through an external dispute resolution body" and "Resolved in a labor tribunal", among others. Although some companies resolved disputes in a court of law, a certain proportion did so through an external dispute resolution body, and the labor tribunal system is also being used. In cases of dismissal, it appears that resolution through dialog with the employee can sometimes be difficult because the path to continuity of employment is cut off, and in these cases the dispute becomes externalized toward resolution by external bodies.

In the survey, companies were asked about special measures for dispute resolution. According to this, for both normal dismissal and economic dismissal, the highest ratio was "Payment of settlement money" (49.2% and 63.0%, respectively). Besides this, in normal dismissal, about 20% (20.3%) of companies cited "Change in the reason for termination". Companies that "Do not take any measures" accounted for 25.2% in normal dismissal and 17.3% in economic dismissal (Table VII-37).

Figure VII-35 Disputes with Dismissed Employees

* For normal dismissal, aggregated from all companies that had "Carried out normal dismissals". For economic dismissal, aggregated from all companies that had "Carried out economic dismissals".

Table VII-36 Status of Dispute Resolution with Employees over Dismissal (Unit = %, Multiple Response)

	n	Resolved through dialog with the employee	Resolved through dialog with the labor union	Resolved through internal complaints processing body	Resolved through an external dispute resolution body (local Labour Bureau, etc.)	Resolved through the labor tribunal system	Resolved in a court of law (including reconciliation)	Others	Unresolved
Normal dismissal	138	47.1	0.7	2.2	23.2	10.9	18.8	0.7	7.2
Economic dismissal	49	57.1	0.0	6.1	22.4	8.2	24.5	0.0	0.0

* For normal dismissal, aggregated from all companies that had "Carried out normal dismissals" and had had disputes with dismissed employees ("Yes" replies), except "No response". For economic dismissal, aggregated from all companies that had "Carried out economic dismissals" and had had disputes with dismissed employees ("Yes" replies), except "No response".

Table VII-37 Special Measures for Resolution with Employees Related to Dismissal (Unit = %, Multiple Response)

	n	Payment of settlement money	Change of reason for termination	Revocation of dismissal (reinstatement, etc.)	Others	Do not take any of these measures
Normal dismissal	128	49.2	22.7	5.5	5.5	28.1
Economic dismissal	46	63.0	10.9	6.5	4.3	19.6

* For normal dismissal, aggregated from all companies that had "Carried out normal dismissals" and had had disputes with dismissed employees ("Yes" replies), except "No response". For economic dismissal, aggregated from all companies that had "Carried out economic dismissals" and had had disputes with dismissed employees ("Yes" replies), except "No response".

III Conclusion

This paper has introduced survey results from JILPT's "Fact-finding Survey on Employee Hiring and Firing", with particular focus on hiring, discipline and dismissal.

In Section 1, we have confirmed the degree to which Japanese companies withdraw job offers and make decisions not to hire during probationary periods, in particular, with focus on their hiring of new graduates. Japanese companies hardly ever withdraw job offers, and disputes with prospective employees after withdrawing job offers are rare. However, problems are prone to occur when companies withdraw job offers for their own business reasons. Meanwhile, decisions not to hire prospective employees during probationary periods have been at a low level (about 10%) over the last 5 years. But this rises to around 20% in the case of fixed-term probationary contracts, a growing phenomenon in recent years, and there are now signs of probationary periods being applied more rigorously.

In Section 2, we first confirmed the situation of provisions on disciplinary action, then examined how procedures for disciplinary action are being applied. According to this, most companies provide for disciplinary action in their rules of employment. As procedures for applying the various types of disciplinary action, 80% of companies disclosed reasons for the action while 70% gave employees opportunities to explain. Around 20-30% of companies engaged in explanations and consultation with labor unions and others when taking disciplinary action. As the type of action enters more severe areas such as disciplinary dismissal, the frequency of explanation and consultation with labor unions, etc., appears to increase slightly. As for types of disciplinary action implemented over the last 5 years, "Submission of written apology" and "Cautions, warnings and reprimands" were applied more frequently than other types. "Disciplinary dismissal", the most severe disciplinary action, was applied by 13.2% of companies and "Guided dismissal" by 9.4%. On disputes with employees targeted by disciplinary action, 17.0% of companies that implemented disciplinary dismissal and guided dismissal had experienced such disputes. Of the types of action, those related to dismissal, in particular, prove particularly prone to cause disputes. Another characteristic is that external bodies (courts, labor tribunal system, external dispute resolution bodies) are frequently involved in resolving disputes related to companies that implement disciplinary dismissal and guided dismissal.

In Section 3, we addressed the problems of involuntary termination and dismissal (normal dismissal and economic dismissal). The aggregated results show that, in cases of normal dismissal, most companies engage in measures to avoid dismissal. About 70% of companies give some kind of opportunity for improvement (warnings, opportunities for correction, consideration of redeployment to other departments), and about 40% practice involuntary termination. In economic dismissal, too, most companies attempt dismissal avoidance measures. In companies with labor unions and companies that have

engaged in labor-management consultation, dismissal avoidance measures in cases of economic dismissal most often involve offering voluntary termination. Companies that offer voluntary termination are more likely to increase severance pay, mediate in re-employment, or entrust cases to job introduction agencies. As for labor-management consultation concerning dismissal, 65.1% of companies implemented normal dismissal and 54.6% economic dismissal without labor-management consultation. This trend was particularly conspicuous in companies that have neither a labor union nor a labor-management consultation body. Organized support provided by labor unions and the like appears to be important as an outlet for workers' voices.

Generally speaking, moreover, problems related to dismissal (disciplinary dismissal, normal dismissal, economic dismissal) are prone to develop into individual labor-related disputes. In such cases, there appears to be a tendency to entrust resolution to external bodies (courts, external dispute resolution bodies, the labor tribunal system, etc.). In cases of dismissal, there may be difficulty in persuading the person concerned, due to the need for continuity of employment. In such cases, 49.2% of companies pay settlement money for normal dismissal and 63.0% for economic dismissal. Although the survey does not clarify the ins and outs of these payments or the amounts paid, it is clear that a method of resolution involving money does exist.

Finally, let us enumerate the problems with this survey. At the beginning of this paper, we stated that individual labor-related disputes are in an increasing trend. Even in this paper, it has become clear that disputes can easily arise, particularly in problems related to dismissal. However, although this survey has mainly investigated the procedures of companies that have actually implemented dismissals, it has been harder to grasp more intricate information on the number and attributes of dismissed employees, how reasonable the grounds for dismissal were, or how hard companies tried to implement dismissal avoidance measures or procedures. On this subject, it is thought necessary to assess the current situation by enhancing the survey method and gathering individual case studies in future. Moreover, this survey has confirmed the existence of companies that adopt methods such as encouraging involuntary termination, offering voluntary termination and other forms of firing (agreed termination) rather than dismissal in the preliminary stages before dismissal. As well as ascertaining the realities of involuntary termination, in cases of both economic dismissal and normal dismissal, studies aimed at building consensus between labor and management on involuntary termination, dismissal and employment adjustment will be needed in future.

References

(all in Japanese)

Takashi Araki (2013) *Labor Law (2nd Edition)*, Yuhikaku

Kazuo Koike (2012) *The Worker's Voice in Manufacturing High Quality Products : A Historical Study*, Nikkei Publishing, Inc.

Kazuo Sugeno (2013) *Labor Law (10th Edition)*, Kobunsha

Motohiro Morishima and Shinya Ouchi (2013) *Interaction of Law and Human Resources – Aiming for a New Fusion*, Yuhikaku

JILPT, ed. (2012) *Termination of Employment in Japan*, JILPT

JILPT (2014) "Fact-finding Survey on Employee Hiring and Firing", Labor Situation in Japan