LONG-TERM EMPLOYMENT IN JAPAN

A case study for comparative employment law in Thailand

Abstract

This paper argues that the persistence of Japan's long-term employment system is a legal phenomenon. Japanese law withholds legal effect from unjustified dismissal while granting employers broad internal flexibility, making retention rational for both parties. Thailand pursues the same goal by combining severance pay with a strict and conservative reading of unfair dismissal, yet grants employers no comparable internal flexibility. The result is avoidance rather than security. Employers decline to hire regular employee, turning instead to fixed-term contracts and outsourcing. The comparison shows that job security depends less on the severity of dismissal restrictions than on whether the law leaves employers a workable alternative to dismissal.

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Long-term employment in Japan: A case study for comparative employment law in Thailand

1. Introduction

For the better part of three decades, the Japanese long-term employment system has been described in the comparative literature in the language of terminal decline. The collapse of the asset bubble at the beginning of the 1990s, the Asian financial crisis of 1997–98, the bursting of the dot-com bubble, and the global financial crisis of 2008 were each, in turn, treated as the shock that would finally dislodge the postwar bargain under which a Japanese worker entered a large firm upon graduation and remained there until mandatory retirement.[1] Deregulation of employment placement services in 1997 and of worker dispatching in 1999, together with unemployment reaching 5.4 percent in 2002—the highest level recorded between the era of rapid growth and the present—were read as the arrival of a genuinely fluid Japanese labor market.[2]

That prediction has not been borne out. Average tenure has not contracted but lengthened; between eighty and ninety percent of large and medium-sized corporations continue to state a policy of maintaining stable long-term employment for as many regular employees as possible; and popular support for lifetime employment, far from eroding, has grown—most sharply among the very cohort of young men once thought to have abandoned it.[3] Unemployment stood at 2.8 percent in 2017, a figure that Araki attributes in part to the social norm of respect for employment security.[4] The system has narrowed. It has not collapsed.

This paper is concerned with why. Its central claim is that the survival of long-term employment in Japan cannot be explained by managerial preference, cultural disposition, or economic path dependence alone, and that the legal order does substantial and underappreciated work in sustaining it. Two propositions from the Japanese literature frame the enquiry. The first is Takahashi's: that important parts of Japan's current labor legislation are constructed on the premise of the Japanese-style employment system, and that this legislation has in turn promoted the spread of the system it presupposes.[5] The second is Araki's: that employment security remains a cornerstone of the Japanese employment system, but that the security is not absolute, resting instead on a legal framework that is "rather flexible" in weighing the circumstances of each dismissal.[6] Read together, these propositions describe a legal order that does not so much prohibit the

[1] Koji Takahashi, "The Future of the Japanese-style Employment System: Continued Long-term Employment and the Challenges It Faces," *Japan Labor Issues* 2, no. 6 (April–May 2018): 7.
[2] Koji Takahashi, "Long-term Employment as a Social Norm: An Analysis of the JILPT 'Survey on Working Life' (1999–2015)," *Japan Labor Issues* 3, no. 19 (November 2019): 16.
[3] Makoto Fujimoto, "Will the Japanese Long-Term Employment System Continue to be Maintained?," *Japan Labor Issues* 8, no. 47 (Spring 2024): 57, 59; Takahashi, "Long-term Employment as a Social Norm," 13, 15.
[4] Takashi Araki, "Labor and Employment Law in Japan: Changing Traditional Model," *Shinshū Daigaku Keihō Ronshū* [Shinshu Economics and Law Review], no. 5 (2018): 5–6.
[5] Takahashi, "The Future of the Japanese-style Employment System," 6.
[6] Araki, "Labor and Employment Law in Japan," 5.

ending of employment as make its continuation the rational and expected course for both parties.

Thailand has pursued the same objective by no less demanding means — graduated severance, notice pay, and an unfair dismissal jurisdiction strictly construed — but without any counterpart to the Japanese employer's authority over transfer, assignment, and job content. Restricted at the exit and constrained in the interior, employers respond by avoiding the protected relationship altogether, turning to fixed-term contracts and outsourcing. The divergence is not one of ambition but of architecture, and it produces the paradox this paper seeks to explain: the jurisdiction that regulates dismissal more rigidly delivers the less stable workforce.

1.1 The Three Pillars, and What "Long-Term Employment" Means

Japanese labor and employment relations have conventionally been characterized by three interlocking features: lifetime or long-term employment; seniority-based wages and human resource management; and enterprise unionism.[7] The three are not independent variables. As Araki demonstrates, each is intelligible only as a function of the others, and all three continue to explain significant parts of the contemporary system even as each undergoes change.[8] Because the legal argument of this paper turns on that interlock, the definitional groundwork must be laid with some care.

Terminological precision is necessary at the outset, because the English phrase "long-term employment" invites a measurement error. The term does not refer to length of service treated as a continuous variable. It refers to a normatively structured expectation: that a person hired as a new graduate will continue working for the same company until mandatory retirement—that is, for the whole of his or her working life.[9] Long tenure is evidence of the system; it is not the system itself. A worker who happens to remain with one employer for twenty years because no better option presented itself is not, in the relevant sense, a long-term employee. A worker hired *on the understanding* that the relationship will run to retirement is.

The decisive structural feature, and the one with the greatest doctrinal consequence, is that the Japanese regular worker is not hired for a specific job. Araki puts the point with precision: regular workers experience periodic transfers and changes in assigned work "because they are not hired for a specific job but hired as a member of the corporate community without job specification."[10] Employment is *membership* rather than the performance of a defined function. From that premise the second pillar follows directly. Because the worker is not engaged for a particular job, remuneration cannot be determined by the job performed; it is determined instead by the worker's attributes—age, length of service, and ability to perform tasks—and because ability is difficult to evaluate

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[7] Ibid., 1.
[8] Ibid., 1–2.
[9] Shingou Ikeda, Kota Tagami, and Kazufumi Sakai, "The Future of the Japanese Long-Term Employment Society: The Consequences of Post-Industrialization and Increase of Unmarried Workers," *Japan Labor Issues* 6, no. 37 (March–April 2022): 40 n1; Araki, "Labor and Employment Law in Japan," 2.
[10] Araki, "Labor and Employment Law in Japan," 1.

objectively, assessment gravitates toward seniority.[11] Wages in Japan, as Araki summarizes, are paid not to a job but to a person.[12]

The Japanese-style employment system may accordingly be defined, following JILPT's formulation, as a system of employment and labor aiming at the long-term livelihood security and skills development of its members—members being, for practical purposes, regular employees—as typically found in large corporations and manufacturing companies since the era of high economic growth from the 1960s to the early 1970s.[13]

The system is bounded in two directions. Horizontally, the workforce is divided between 1) regular workers, who hold indefinite-term contracts, work full time, and are directly hired, and 2) non-regular workers—fixed-term, part-time, and dispatched—roughly three-quarters of whom are engaged on fixed-term contracts, typically for narrower and simpler work, ordinarily exempt from wide-ranging transfer, and paid hourly and less.[14] Long-term employment is a regular-worker institution; the question of its viability does not arise in respect of non-regular worker, and where such workers do in fact remain with one employer for decades that is a derivative rather than a core phenomenon.[15] Vertically, many small and medium-sized enterprises neither recruit new graduates nor operate a mandatory retirement age, so that mid-career hiring and separation are ordinary among them.[16] Historically the practice was also gendered: women were not expected to serve long term in the same manner even when they held regular status.[17] The system's proper referent is thus the regular employee—paradigmatically male—of a large enterprise, a fact that shapes both the doctrine built around the institution and the critique to which that doctrine is now subject.

Enterprise unionism, notably, was never legally mandated. The Labor Union Act permits industrial, craft, and general unions alike, yet as of 2015 some 93.5 percent of all Japanese unions were enterprise-based and accounted for 88.7 percent of all organized workers.[18] Araki's explanation of that persistence is important for the present study because it is functional rather than cultural.[19] Within a highly developed internal labor market, where regular workers are transferred within the firm, trained in house, and remunerated according to service and assessed ability, industry- or national-level bargaining "made little sense," and enterprise-level bargaining was simply the most efficient mechanism for responding to the needs of both employers and regular workers.[20] The same reasoning explains why enterprise unions have generally confined membership to regular workers:

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[11] Ibid., 1–2.
[12] Ibid., 6.
[13] Takahashi, "The Future of the Japanese-style Employment System," 7, summarizing the definition adopted in Japan Institute for Labour Policy and Training [hereinafter JILPT], *Nihonteki koyō shisutemu no yukue* [The Future of the Japanese-style Employment System], JILPT Project Research Series no. 4 (Tokyo: JILPT, 2017).
[14] Araki, "Labor and Employment Law in Japan," 2–3.
[15] Ikeda, Tagami, and Sakai, "The Future of the Japanese Long-Term Employment Society," 25.
[16] Ibid.
[17] Ibid.; see Sachiko Imada, "Joshi rōdō to shūgyō keizoku" [Female Labour and Job Retention], *Japanese Journal of Labour Studies* 38, no. 5 (1996): 37–48; Takeshi Inagami, *Posuto-kōgyōka to kigyō shakai* [Post-industrialization and Corporate Society] (Kyoto: Minerva Shobo, 2005).
[18] Araki, "Labor and Employment Law in Japan," 2, 13.
[19] Ibid.
[20] Ibid., 13–14.

the interests of the two groups diverge and sometimes conflict, and—as Araki candidly notes—the employment security and superior conditions of regular workers have often been sustained by the contingent employment of non-regular workers.[21] The three pillars, in other words, are mutually supporting, and the price of the arrangement has been borne at its periphery.

The functional justification originally advanced was compatibility with manufacturing. Long-term development of human resources suited an economy driven by manufacturing, where firm-specific skills accumulated through on-the-job training over long horizons yielded returns the employer could capture.[22] That justification matters here precisely because it is the premise now under pressure. Employment in manufacturing has been falling while employment in tertiary industries has risen.[23] If the system's original economic rationale was sectoral, its persistence across a post-industrial economy requires a different explanation.

1.2 Historical Origins and Contemporary Evidence

The system took its recognizable from during Japan's postwar period of rapid economic growth, conventionally dated 1955–73, when major corporations adopted long-term employment, seniority-based personnel management, and enterprise-based unions.[24] Its existence was highlighted in the work of James C. Abegglen and in OECD reporting, and was subsequently elaborated and crystallized as a concept by scholars including Ronald P. Dore and Masahiko Aoki.[25] The OECD's 1973 review treated the employment system and long-term employment practice as a driving force behind Japan's rapid growth, and Ezra Vogel's *Japan as Number One* (1979) likewise identified these attributes as the principal pillars of Japanese economic success.[26] The resulting configuration has been characterized as a "corporate community," resting on the generous livelihood security the system extended principally to male workers.[27]

The claim that Japan remains a long-term employment society is not impressionistic. It is supported by consistent international and domestic data across three decades.

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[21] Ibid., 12.

[22] Ikeda, Tagami, and Sakai, "The Future of the Japanese Long-Term Employment Society," 22, citing Kazuo Koike, *Shigoto no keizaigaku* [The Economics of Work] (Tokyo: Toyo Keizai, 1999).

[23] Ibid., 22–23.

[24] Takahashi, "Long-term Employment as a Social Norm," 12.

[25] Takahashi, "The Future of the Japanese-style Employment System," 6.

[26] Organisation for Economic Co-operation and Development, *Manpower Policy in Japan*, OECD Reviews of Manpower and Social Policies 11 (Paris: OECD, 1973); Ezra Vogel, *Japan as Number One: Lessons for America* (Cambridge, MA: Harvard University Press, 1979). Both are discussed in Ikeda, Tagami, and Sakai, "The Future of the Japanese Long-Term Employment Society," 40n1.

[27] Ikeda, Tagami, and Sakai, "The Future of the Japanese Long-Term Employment Society," 41n1, citing Hiroshi Hazama, *Keizai taikoku o tsukuriageta shisō* (Tokyo: Bunshindo, 1996), and Inagami, *Posuto-kōgyōka to kigyō shakai*.

1.2.1 Comparative tenure distribution

Around the middle of the last decade, the proportion of Japanese employees with less than five years' continuous service stood in the thirty-per-cent range—34.6 percent on one measure and 35.1 percent on another—lower than in most comparator countries, while the proportion with ten years or more was 44.5 to 44.7 percent.[28] The most recent comparison shows the ratio of workers continuously employed for ten years or more at 46.8 percent, second only to Italy at 48.6 percent; only four countries other than Japan exceed forty percent.[29] The contrast with the United States is stark: 24.3 percent of American workers had been with their employer for less than a year and 10.8 percent for twenty years or more, against 22.6 percent of Japanese workers in the twenty-plus category.[30]

1.2.2 Average tenure and its trajectory

According to the Ministry of Health, Labor and Welfare's *Basic Survey on Wage Structure*, average tenure stood at 11.9 years in 2016 and 12.3 years in 2022—an increase of 0.4 years.[31] Critically, tenure rose across *every* disaggregation: for men and for women, and at every corporate scale.[32] Whatever the direction of managerial rhetoric, the observed tendency to remain with a single employer has intensified rather than weakened.

1.2.3 Concentration

Average tenure varies systematically along the two attributes that define the system's scope. Male workers averaged 13.7 years against 9.8 for women in 2022; employees of firms with 1,000 or more employees averaged 13.9 years against 11.1 at firms with 10–99 employees; and men in the largest firms averaged 15.8 years.[33] The internationally distinctive Japanese pattern is pronounced *particularly* among male workers in large corporations.[34] This is the empirical footprint of a bounded institution, and it corroborates the definitional point made above.

1.2.4 Individual careers

A nationwide JILPT survey conducted in November and December 2019—targeting 12,000 men and women aged 25 to 64 by stratified two-stage sampling, yielding 5,977 valid responses at a 49.8 percent response rate—permits a finer-grained view.[35] Among respondents whose first job was regular employment, roughly 35 to 45 percent were still with that first employer in the large-enterprise segments of mining, construction and

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[28] Makoto Fujimoto, "What is Japanese Long-Term Employment System? Has it Vanished?," *Japan Labor Issues* 1, no. 1 (September 2017): 22 (34.6 and 44.5 percent); JILPT, *Labor Situation in Japan and Its Analysis: General Overview 2015/2016* (Tokyo: JILPT, 2016), 74 (35.1 and 44.7 percent).
[29] Fujimoto, "Will the Japanese Long-Term Employment System Continue to be Maintained?," 57.
[30] Ibid., 57 tbl.1.
[31] Ibid.; Fujimoto, "What is Japanese Long-Term Employment System?," 22. The *Labor Situation* overview reports 12.1 years on the basis of the 2014 survey: JILPT, *Labor Situation in Japan*, 74.
[32] Fujimoto, "Will the Japanese Long-Term Employment System Continue to be Maintained?," 57.
[33] Ibid., 58 tbl.2.
[34] Ibid., 57.
[35] Ikeda, Tagami, and Sakai, "The Future of the Japanese Long-Term Employment Society," 27.

manufacturing; finance and insurance, real estate and goods rental and leasing; and transport and postal activities, information and communications.[36] Two large *non*-manufacturing sectors thus display continuity patterns resembling those of the secondary industries, which suggests that post-industrialization alone does not dissolve the practice.[37]

Even where mobility is common, it is bounded by age. Among job changers aged 35 to 59, the median age of entry into current employment was 35 or younger in every sector except finance and insurance, and fewer than a quarter had entered after 40.[38] The "fluidity" of the fluid sector consists of a weak tendency to remain in the first job combined with a tendency to become fixed after several changes in youth and middle age.[39] Fluidity is a life-stage phenomenon nested inside a long-term employment society, not an alternative to it.

1.2.5 The quality differential

Nor is mobility economically rewarded. Annual personal income is consistently higher in the long-term employment sector, and the long-term employment type retains its income advantage regardless of whether the worker's career consists of continuation in a first job or of job changes.[40] Wages fall as the distance in job content between previous and current position widens, whereas a change merely within the same occupation or industry has no comparable effect.[41] The authors accordingly characterize observed fluidity as "circulating" rather than "spiral": movement within similar economic positions rather than upward mobility.[42]

1.2.6 Normative support

In the 2015 wave of JILPT's "Survey on Working Life," 87.9 percent of respondents evaluated lifetime employment positively, and support has grown across all age groups and both sexes—most sharply among men and the young, precisely the groups whose support was originally lowest.[43] Among men aged 34 and under, preference for working long term at one company and gradually reaching a managerial position rose from 14.1 percent before 2004 to 25.2 percent from 2007 onward, while preference for building expertise by moving between companies fell from 21.1 to 15.6 percent.[44] Keidanren and Rengo alike treat lifetime employment as desirable.[45] Takahashi's conclusion—that long-term employment is firmly established as a *social norm* in contemporary Japan—is the empirical foundation on which the legal argument of this paper rests.[46]

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[36] Ibid., 30.
[37] Ibid., 32, 40.
[38] Ibid., 31.
[39] Ibid.
[40] Ibid., 36.
[41] Ibid., 39 tbl.4.
[42] Ibid., 37.
[43] Takahashi, "Long-term Employment as a Social Norm," 13.
[44] Ibid., 15.
[45] Takahashi, "The Future of the Japanese-style Employment System," 10.
[46] Takahashi, "Long-term Employment as a Social Norm," 17.

1.3 The Institutional Logic

Why does the system reproduce itself? The conventional account identifies two aims: guaranteeing the long-term livelihoods of regular employees and developing their skills over the long term.[47] Livelihood guarantee is achieved through two mechanisms—stable employment governed by normative frameworks under which new graduates and young mid-career recruits are to be continuously employed until mandatory retirement, and seniority-based pay calibrated to life-cycle expenses.[48]

The mutual incentive structure is straightforward. Because firms recruit predominantly from new school graduates without prior work experience, hiring turns on trainability rather than demonstrated skill, and pay structures are built on the assumption that ability accumulates inside the firm.[49] The employer must recoup its training investment and therefore wishes the trained employee to remain; the employee, facing a wage curve and retirement benefits that reward continuous service, wishes to stay.[50]

Araki's analysis of the wage system sharpens this into something closer to a legal mechanism, and it is central to the argument of this paper. Under the *shokunō shikaku seido*, or skill-based grade system, wages attach to the person's assessed grade rather than to the job, with the consequence that a worker transferred internally to different work retains the same basic wage. That feature, Araki observes, "has enabled internal and functional flexibility through transfers in the Japanese employment relations."[51] Length of service nonetheless remains among the most important determinants of pay, producing a steep wage profile for regular workers[52]—including, unusually by international standards, for regular blue-collar workers—against a flat profile for non-regular workers.[53] The distributive consequence is a deferred wage: younger workers are underpaid relative to productivity and effectively invest in the firm, recovering the balance through overpayment at senior levels. That structure, in Araki's words, has given workers "a strong disincentive to change employers."[54] Regular workers' wages are set by the internal labor market; non-regular workers' wages respond to the external one.[55]

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[47] Fujimoto, "Will the Japanese Long-Term Employment System Continue to be Maintained?," 58, drawing on Takeshi Inagami, "Nihon no sangyō shakai to rōdō" [Japanese Industrial Society and Labour], in *Kōza shakaigaku 6: Rōdō*, ed. Takeshi Inagami and Takashi Kawakita (Tokyo: University of Tokyo Press, 1999).
[48] Ibid.
[49] Ibid.; JILPT, *Labor Situation in Japan*, 75.
[50] JILPT, *Labor Situation in Japan*, 75; Fujimoto, "Will the Japanese Long-Term Employment System Continue to be Maintained?," 58–59.
[51] Araki, "Labor and Employment Law in Japan," 6–7.
[52] Araki's conclusion still holds true today, as recent data confirm, Ministry of Health, Labour and Welfare, "Kinzoku nensū kaikyū-betsu ni mita chingin" [Wages by length-of-service class], in *Reiwa 6-nen chingin kōzō kihon tōkei chōsa: Kekka no gaikyō* [2024 Basic Survey on Wage Structure: Summary of results] (Tokyo: Ministry of Health, Labour and Welfare, 2025), https://www.mhlw.go.jp/toukei/itiran/roudou/chingin/kouzou/z2024/dl/07.pdf.
[53] Araki, "Labor and Employment Law in Japan," 6–7 citing Ministry of Health, Labour and Welfare, *Basic Survey on Wage Structure* (2011).
[54] Ibid., 8.
[55] Ibid.

Two implications follow. First, the wage system does not merely accompany employment security; it manufactures both the employer's capacity to redeploy labor without renegotiating pay and the employee's economic reason not to leave. Second, an employer who can transfer, reassign, and retrain a redundant worker at constant wage has an alternative to dismissal that employers in job-contract systems frequently lack.

The second function of long-term employment is social. It operates not only as a human-resources technology but as a *safety net*—part of the livelihood security system, and hence a social institution rather than merely a managerial one.[56] Employment security in this sense underwrites life planning: marriage, childbirth, and child-rearing. Conversely, the destabilization of youth employment since the 1990s has been linked to delayed and foregone marriage and to falling birth rates.[57] Here law enters visibly. The Childcare Leave Act of 1991 and the Childcare and Family Care Leave Act of 1995 obliged employers to grant leave and protected workers against job loss occasioned by family responsibilities; the employment thereby protected is employment as a *safety net*, not the continuation of a productive relationship.[58] Where employment functions as social security, the legal system will not readily permit its termination.

1.4 Contraction Without Collapse

Intellectual honesty requires acknowledging what has changed, since the claim advanced here is not that the system is undisturbed.

The *scope* has contracted measurably. Non-regular workers rose from 20.2 percent of the workforce in 1990 to 38 percent in 2016, which means, as Araki calculates, that the reach of the long-term employment practice fell from roughly 80 percent to 62 percent.[59] Typical lifetime employment, in which a worker hired at one firm never leaves before retirement, "is not common any longer"; lateral mobility among the younger generation is unremarkable, and even in the 1990s some 70 percent of junior high school graduates, 50 percent of high school graduates, and 30 percent of university graduates left their first job within three years.[60] In large firms, senior workers are frequently farmed out through *shukkō* to subsidiaries and affiliates before mandatory retirement.[61]

The complementary institutions have weakened. Age-wage and tenure-wage profiles have flattened, the benefits of deferred compensation have declined, and 40.4 percent of companies revised their wage systems between 2019 and 2021, typically to strengthen components tied to job content, ability, or results rather than to age or service.[62] Promotion

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[56] Ikeda, Tagami, and Sakai, "The Future of the Japanese Long-Term Employment Society," 24.
[57] Ibid., 23, citing Nobuko Nagase, "Jakunen-sō no koyō no hi-seiki-ka to kekkon kōdō" [Marriage Timing and the Effect of Increase in Non-Standard Employment among the Youth in Japan], *Journal of Population Problems* 58, no. 2 (2002): 22–35.
[58] Ibid., 24.
[59] Araki, "Labor and Employment Law in Japan," 3 & fig.1.
[60] Ibid., 3, citing Yuji Genda, "Youth Employment and Parasite Singles," *Japan Labor Bulletin* 39, no. 3 (2000): 5.
[61] Ibid.
[62] Fujimoto, "Will the Japanese Long-Term Employment System Continue to be Maintained?," 59–60; Ministry of Health, Labour and Welfare, *General Survey on Working Conditions* (2022); see also Ikeda, Tagami, and

prospects have narrowed correspondingly. Among university-educated employees, the proportion serving as section managers in their early forties fell from 32.3 percent in 1990 to 16.5 percent in 2021.[63] Firms have developed exit mechanisms at the upper age margins—*shukkō, tenseki* (transfer without retention of the original employment relationship), solicitation for voluntary early retirement (*sōki taishoku boshū*), and the increasingly common *yakushoku-teinen seido*, under which managerial personnel vacate their posts at 55 or 58.[64] Union density has fallen to 17.1 percent, leaving more than four-fifths of workers outside any collective agreement.[65]

Araki nonetheless cautions against two symmetrical errors, and both bear directly on this paper. The first myth holds that lifetime employment has vanished and that some seventy percent of Japanese workers are consequently exposed to arbitrary termination; in fact two-thirds of the workforce retain regular status, and their termination is governed by the prohibition of abusive dismissal.[66] The second myth runs the other way—that Japanese law makes it "almost impossible" to dismiss a regular worker—which Araki describes as a gross exaggeration.[67] In 2012, more than 50,000 dismissal-related disputes reached administrative offices and roughly 5,000 were filed with consultation services, labor tribunals, and courts; of 963 cases filed in the ordinary courts, only 343 proceeded to judgment, and of those, 166 were held abusive and 177 not.[68] Dismissal in Japan is neither free nor foreclosed. It is conditional.

Two countervailing forces, meanwhile, push toward longer tenure. The first is demographic: the working-age population peaked at 87.26 million in 1995 and stood at 74.5 million in 2021, with a further decline of nearly fifteen million projected by 2040, making retention a competitive necessity.[69] The second is legislative. Amendments to the Act on Stabilization of Employment of Elderly Persons obliged firms from April 2006 to secure employment opportunities for workers past 60 up to the pensionable age and, as of 2024, up to 65 for all who wish to remain.[70] Compliance is near-universal—99.9 percent of firms with 21 or more employees have implemented one of the three permitted measures—and between June 2021 and May 2022, 87.1 percent of some 380,000 workers reaching 60 continued with their previous employer.[71] That is a direct demonstration that a legal rule, deliberately designed, extended the tenure of hundreds of thousands of workers within a single year.

Sakai, "The Future of the Japanese Long-Term Employment Society," 36, citing Daiji Kawaguchi, ed., *Nihon no rōdō shijō: Keizai-gakusha no shiten* (Tokyo: Yuhikaku, 2017).

[63] Fujimoto, "Will the Japanese Long-Term Employment System Continue to be Maintained?," 59.

[64] Ibid., 59, 62; JILPT, *Labor Situation in Japan*, 75; Araki, "Labor and Employment Law in Japan," 3.

[65] Araki, "Labor and Employment Law in Japan," 12, 21, citing Ministry of Health, Labour and Welfare, *2017 Labor Union Basic Survey*.

[66] Ibid., 4.

[67] Ibid., quoting "Abe's Missing Arrow," editorial, *Financial Times*, October 7, 2013.

[68] Ibid., 5, citing Kazuo Sugeno and Keiichi Yamakoshi, "Dismissals in Japan, Part One: How Strict Is Japanese Law on Employers?," *Japan Labor Review* 11, no. 2 (2014): 83, 91–92.

[69] Fujimoto, "Will the Japanese Long-Term Employment System Continue to be Maintained?," 61.

[70] Ibid.; JILPT, *Labor Situation in Japan*, 76.

[71] Fujimoto, "Will the Japanese Long-Term Employment System Continue to be Maintained?," 61, citing Ministry of Health, Labour and Welfare, "Age of the 100-Year Life: Current State of Employment Measures for the Elderly" (2023).

1.5 The Conditions of Survival

The system's original rationale has weakened, its seniority incentives have flattened, and its demographic base has narrowed. Yet it persists. This paper offers no prediction about the system's future, and takes no position on whether long-term employment is now fading. Its concern is narrower: *what has allowed the system to work for so long, and what Thailand might learn from Japanese legal design in seeking to deliver greater job security.*

The argument can be put as a hypothesis. Japanese law does not compensate abusive dismissed workers. It refuses to give their unfair dismissal legal effect. At the same time, it leaves employers enough room to manage the workforce by other means that keeping a worker remains a realistic commercial choice. Job security in Japan is bought with managerial discretion, and the two are parts of one bargain rather than opposing values.

Framed this way, the question is not what the law of dismissal says but what makes a strict dismissal rule workable. Two issues follow.

The first is the test. Article 16 sets a standard rather than a rule, and in economic dismissal cases the courts have developed a four-part test asking, among other things, whether the employer tried the alternatives to dismissal first. This means the test is only as strict as those alternatives allow. The question is therefore what alternatives a legal system actually puts within the employer's reach.

The second is who pays for them. An alternative that exists in law but ruins the employer who uses it is not an alternative at all. Japanese law addresses this directly. The state subsidizes wages during suspension of operations, so that the cost of keeping workers through a downturn is shared rather than borne by the employer alone.

Thailand supplies the test case, and the comparison is instructive because the two systems ask employers almost the same question. Thai law is no more lenient. Severance rising with length of service, payment in lieu of notice, and an unfair dismissal jurisdiction under section 49 of the Labor Court Act read strictly. The Thai courts likewise ask whether the employer had a genuine need to reduce cost and whether it considered lighter measures first. What differs is what an employer can do in answer. Suspension of operations under Thai law carries no subsidy and so is rarely usable in a downturn. Work rules cannot be varied downward without consent. Employees cannot be moved to new duties without consent. Blocked at the exit and blocked inside, employers do not keep workers. They avoid hiring them on protected terms at all, turning to fixed-term contracts and to outsourcing, which removes both the dismissal risk and the severance cost together.

This yields the paper's central claim: employment stability depends less on how strictly the law limits dismissal than on whether the law leaves employers a workable alternative to it. Tightening the exit while leaving the interior rigid does not produce secure jobs. It drives employers out of the protected relationship altogether, so that the regime governs an ever-smaller share of the workforce it was designed to serve.

The rest of the paper tests this claim. Part 2 examines Japanese law on abusive dismissal, concentrating on the two limbs of the economic dismissal test that bear on managerial latitude: the necessity of reducing the workforce, and the efforts required to avoid dismissal. Part 3 turns to fixed-term contracts in Japan, where the same doctrine is used to prevent evasion. Parts 4 and 5 set out the corresponding Thai law, first on unfair dismissal and then on fixed-term contracts and outsourcing. Part 6 compares the two, isolating the structural difference identified above and asking which features of the Japanese configuration could be separated from the setting that produced them. The paper closes with the implications for Thai labor law reform.

2. The Japanese Legal Framework Governing Abusive Dismissal

The Japanese law of dismissal did not begin from a position of employee protection. Its starting point was the Civil Code of 1896, which conferred on either party to an employment contract of indefinite duration the right to terminate at will on two weeks' notice.[72] The Code thereby guaranteed the employer a freedom of dismissal, and for several decades that freedom stood substantially unqualified.[73]

The post-war reforms modified the position only at its margins. The Labor Union Act, in its 1945 and 1949 iterations, prohibited the dismissal of union members as an unfair labor practice, but this was a targeted protection directed at freedom of association rather than a general restraint on termination. The Labor Standards Act of 1947, which might have been the vehicle for a broader reform, preserved the Civil Code's freedom of dismissal intact and confined itself to strengthening the notice requirement.[74] As late as the mid-twentieth century, therefore, Japanese statute law contained no general provision regulating unfair or abusive dismissal.

What filled that gap was judicial rather than legislative. From the 1950s the lower courts began to invalidate dismissals by recourse to the general principle in the Civil Code prohibiting the abuse of rights — a technique of considerable significance, since it required no new statutory foundation but only the application of an existing civil-law doctrine to the employer's contractual power. A body of such decisions accumulated, some going so far as to hold that a dismissal without appropriate reasons was invalid.[75] The Supreme Court endorsed that interpretation in two decisions handed down between 1975 and 1977, holding that a dismissal lacking objective and appropriate reasons is void as an abuse of right.[76] According to *Nihon Shokuen Seizō* case, the Court held that if dismissal is found to be without any rational reason and not to be permissible with regard to the common sense of society, such dismissal is void because of abuse of the employer's right of dismissal.[77] In addition, in *Kochi Hoso* case, the company dismissed a news announcer who overslept and missed his 10 minutes news program twice within two weeks. In this case, the Court held that even where there is a ground of dismissal, the employer is not necessarily entitled to dismiss the worker for that ground. In such a case, the dismissal is invalid because of the abuse of the employer's right to dismiss where it is

[72] Sugeno and Yamakoshi, "Dismissals in Japan, Part One: How Strict Is Japanese Law on Employers?," 84.
[73] Ibid.
[74] Ibid.
[75] Ibid.
[76] Ibid.; *also see* Tadashi A. Hanami et al., *Labour Law in Japan*, 3rd ed. (Alphen aan den Rijn: Wolters Kluwer, 2025), *141–42;* Kenji Arita, "Legal Regulation of Dismissal in Japan," *King's Law Journal* 33, no. 2 (2022): 234.
[77] *Nihon Shokuen Seizō* Case, Supreme Court of Japan, Second Petty Bench, April 25, 1975, 29 Minshū (no. 4) 456.

regarded to be considerably unreasonable in the circumstances of the case with regard to social justice.[78]

The subsequent history is one of codification rather than of substantive change, and it proceeded in two stages. The Labor Standards Act was amended in 2003 to incorporate the case-law rule established by the Supreme Court, inserting it as Article 18-2. When the Labor Contract Act was enacted in 2007, the rule was transferred from the Labor Standards Act into the new statute, where it now appears as Article 16.[79]

Article 16 of the Labor Contract Act provides that:

> A dismissal shall, if it lacks objectively reasonable grounds and is not considered to be appropriate in general societal terms, to treated as an abuse of right and be invalid.[80]

The Labor Contract Act contains no provision addressing redundancy specifically, whether substantively or procedurally. Article 16 states the general prohibition on abusive dismissal and no more, with the consequence that the question whether a particular redundancy constitutes an abuse of the right to dismiss has been left entirely to the courts. From the latter half of the 1970s they have answered it by reference to four criteria to be considered for deciding the abusiveness of economic dismissals as follows:[81]

(a) the economic necessity of reducing the workforce;
(b) the efforts made to avoid dismissal in achieving that reduction;
(c) the fairness of the selection of the employees to be dismissed, assessed by reference to objective criteria; and
(d) the extent and manner of the consultation undertaken with labor in carrying out the redundancy.

Arita observes that these four criteria reflect the practices by which large Japanese firms have in fact adjusted their workforces.[82] He also further pointed out that the courts drew the criteria from European legislation on unfair dismissal.[83] Therefore, we should not treat the four criteria as a distinctively Japanese phenomenon. Rather, they are better understood as a local articulation of a standard common to many jurisdictions and approaching the status of an international norm.[84]

This paper confines its discussion to criteria (a) and (b), which are the criteria that bear on the latitude available to the Japanese courts in assessing the abusiveness of economic dismissals.

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[78] *Shioda v. Kōchi Hōsō Co.* (Kōchi Hōsō Case), Supreme Court of Japan, Second Petty Bench, January 31, 1977, 268 Rōdō Hanrei 17.
[79] Sugeno and Yamakoshi, "Dismissals in Japan, Part One: How Strict Is Japanese Law on Employers?," 84; Hanami et al., *Labour Law in Japan,* 142.
[80] Labor Contracts Act, Act No. 128 of 2007, art. 16 (Japan).
[81] Sugeno and Yamakoshi, "Dismissals in Japan, Part One: How Strict Is Japanese Law on Employers?," 87.
[82] Arita, "Legal Regulation of Dismissal," 239 citing Kazuo Sugeno, *Japanese Employment and Labor Law*, trans. Leo Kanowitz (Durham, NC: Carolina Academic Press, 2002), 487 and Takashi Araki, "Flexibility in Japanese Employment Relations," in *Japanese Commercial Law in an Era of Internationalization*, ed. Hiroshi Oda (London: Graham & Trotman, 1994), 198.
[83] Arita, "Legal Regulation of Dismissal," 239 citing Satoshi Nishitani, "Seiri Kaiko o Meguru Hōteki Mondai ni tsuite" [Some issues concerning dismissal for redundancy], *Chūō Rōdō Jihō* 956 (1999): 7–8.
[84] Arita, "Legal Regulation of Dismissal," 239.

2.1 Economic Necessity of Reducing the Workforce

As to this criterion, the courts do not ask whether there was a need to dismiss employees for redundancy. Instead, they ask whether there was a need to reduce the workforce. The distinction rests on the premise that dismissal for redundancy is one among several measures by which a workforce may be adjusted, and that the necessity of an adjustment is a different question from the necessity of achieving it through dismissal.[85]

Applied in this form, the courts have accepted a broad range of circumstances as constituting a need for workforce reduction, including reductions undertaken to forestall serious business difficulties anticipated in the near future rather than to respond to difficulties already sustained.[86] The governing standard is one of commercial reasonableness—where the court considers that a reasonable employer facing comparable business conditions would have been justified in carrying out the reduction, the criterion is satisfied.[87]

According to the existing rulings, one could say that the courts have consistently maintained their scrutiny of abusive dismissal for redundancy while adapting its application to changing commercial conditions, including intensifying competition and emerging patterns of corporate reorganization.[88]

Of the various measures available for adjusting a workforce, two measures are of particular significance for this paper, since they correspond to the alternatives examined below in the Thai context—the temporary suspension of business operations and the variation of conditions of employment. The legal treatment of each under Japanese law is set out below.

2.1.1 Temporary Suspension of Business Operations

In response to the oil crisis of the 1970s, the government introduced a number of legal provisions designed to protect workers against dismissal for economic reasons.[89] In 1974 it replaced the Unemployment Insurance System with the Employment Insurance Act, which established the Employment Adjustment Grant Scheme. The scheme was subsequently incorporated into the Employment Stabilization Fund System, created in

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[85] Arita, "Legal Regulation of Dismissal," 237.

[86] *Tōyō Sanso* Case, Tokyo High Court, October 29, 1979, 330 Rōdō Hanrei 71 (The employer, a manufacturer of industrial gases, had accumulated losses exceeding ¥400 million in the second half of 1969, attributable principally to its acetylene division, which faced intensifying competition among producers, falling prices following the introduction of petroleum-based cutting gas, and low productivity. The Tokyo High Court accepted that the closure of that division rested on an unavoidable necessity for the rational operation of the enterprise and did not require the employer to demonstrate that the undertaking as a whole was in jeopardy. What sufficed was that a division of the business had become structurally unprofitable in the face of market conditions the employer could not control. The criterion is thus directed at the commercial reasonableness of the reduction rather than at the imminence of insolvency, and it accommodates reductions undertaken to forestall serious difficulties in prospect as readily as those responding to difficulties already sustained).

[87] Arita, "Legal Regulation of Dismissal in Japan," 237 citing Kazuo Sugeno, *Japanese Employment and Labor Law*, 487.

[88] Arita," Legal Regulation of Dismissal," 239 citing Kazuo Sugeno, *Rōdōhō* [Labour Law], 12th ed. (Tokyo: Kōbundō, 2019), 798.

[89] Hanami et al., *Labour Law in Japan*, 146.

1977, whose purpose is to assist workers at risk of redundancy by providing grants to employers that adopt measures to prevent dismissals for economic reasons.[90]

The Employment Stabilization Fund System comprises two components—the Employment Stabilization Service and the Employment Stabilization Fund. The Service is directed at preventing unemployment, correcting imbalances in the employment situation, increasing employment opportunities, and stabilizing employment. The Fund exists to supply the resources necessary for the effective operation of the Service. Among the measures falling within the Service is the provision of such subsidies and assistance as are necessary to employers who, having been compelled to curtail business activity by reason of economic fluctuation, changes in industrial structure, or other economic causes, place workers on leave from work or take other measures necessary to secure the stability of workers' employment.[91]

The Employment Adjustment Grant (雇用調整助成金, *koyō chōsei joseikin*) is the characteristic grant made under the Service. It is available to employers in industries designated by the Minister of Health, Labor and Welfare where the employer has been compelled to reduce business activity abruptly at its place of business by reason of economic fluctuation, changes in industrial structure, or other economic causes, and where it responds by suspending work while continuing to pay wages, by providing education or training, or by seconding employees to another undertaking.[92]

The grant reimburses the employer for a fixed proportion of the sums paid to workers by way of wages during periods of suspension, education and training, or secondment undertaken in order to maintain employment.[93] The subsidy thus makes suspension economically feasible where it would otherwise not be. The cost of preserving the employment relationship through a downturn is borne in part by the state rather than falling wholly on the employer, with the result that the employer can survive the period of contraction without dismissals, and the employee retains both remuneration and employment.

2.1.2 Variation of Conditions of Employment

The adjustment of conditions of employment constitutes a further means of maintaining employment. Under Japanese law, conditions of employment are established at three levels: the collective agreement, the work rules, and the contract of employment.

The collective agreement is concluded under Article 14 of the Labor Union Act, which requires that it be agreed collectively between the union and the employer. Modification likewise requires the agreement of both parties. This principle is common to most other jurisdictions.[94]

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[90] Ibid., 147; Arita, "Legal Regulation of Dismissal," 240; Takashi Araki, "Corporate Governance Reforms and Labor and Employment Relations in Japan: Whither Japan's Practice-Dependent Stakeholder Model?," *University of Tokyo Journal of Law and Politics* 1 (2004): 64.
[91] Employment Insurance Act, Act No. 116 of 1974, art. 62, para. 1, item (i) (Japan).
[92] Ordinance for Enforcement of the Employment Insurance Act, art. 102-3.
[93] Arita, "Legal Regulation of Dismissal," 240.
[94] Labor Union Act, Act No. 174 of 1949, art. 14 (Japan).

The second level is that of the work rules (就業規則, *shūgyō kisoku*). The work rules are a body of regulations promulgated by the employer for the purpose of establishing uniform rules and conditions of employment at the workplace. Before the enactment of the present Labor Contract Act, an employer modifying the work rules was required to seek the opinion of the majority representative at the workplace, but the representative's consent was not required.[95] Even where the majority representative opposed the content of the rules, the employer could submit them to the Labor Standards Inspection Office accompanied by the dissenting opinion, and the submission would be accepted. In this sense the employer was able to establish and modify the work rules unilaterally.[96]

The Supreme Court has established a distinctive rule governing the unfavorable adjustment of working conditions effected through modification of the work rules. An unfavorable modification binds all workers, including those who opposed it, provided the modification is regarded as reasonable.[97] Notwithstanding sustained criticism to the effect that no legal foundation existed for recognizing such a binding effect, the Court has adhered to the principle and has repeatedly reaffirmed its position.[98]

The position was subsequently placed on a statutory footing by the Labor Contract Act. Article 9 provides:

> An employer may not, by changing the work rules, alter the working conditions constituting the content of a labor contract to the disadvantage of a worker without agreeing with the worker, except in the case provided for in the following Article.[99]

Article 10 of the same Act further provides that:

> Where an employer alters working conditions by changing the work rules, and the changed work rules are made known to the workers, and the change is reasonable in light of the extent of the disadvantage to be incurred by the workers, the necessity of altering the working conditions, the appropriateness of the content of the changed work rules, the status of negotiations with a labor union or the like, and other circumstances relating to the change, the working conditions constituting the content of the labor contract shall be as provided by the changed work rules. This does not apply to any part which the worker and the employer agreed in the labor contract would not be altered by a change to the work rules, except where Article 12 applies.[100]

Regarding individual employment contract, the flexibility with which working conditions may be modified rests in large part on the fact that the employment contract does not fix the terms of the engagement, and in particular does not fix the place or type of work.[101] Japanese law does require that the place and type of work be stated in the contract of

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[95] Takashi Araki, "Changing Employment Practices, Corporate Governance, and the Role of Labor Law in Japan," *Comparative Labor Law & Policy Journal* 28, no. 2 (2007): 256.
[96] Ibid.
[97] *Tokuji Yoshikawa v. Shūhoku Bus Co.* (Shūhoku Bus Case), Supreme Court of Japan, Grand Bench, December 25, 1968, 22 Minshū 3459.
[98] Takashi Araki, "Changing Employment Practices, Corporate Governance, and the Role of Labor Law in Japan," 257.
[99] Labor Contracts Act, Act No. 128 of 2007, art. 9 (Japan).
[100] Labor Contracts Act, Act No. 128 of 2007, art. 10 (Japan).
[101] Araki, "Changing Employment Practices, Corporate Governance, and the Role of Labor Law in Japan," 256.

employment.[102] That statement, however, is not construed as a specification of working conditions incapable of alteration without the employee's consent. In drafting terms and agreements, employers ordinarily reserve the right to order transfers entailing changes to the place or type of work where business necessity requires, with the result that the employer may unilaterally direct such a change without obtaining the employee's consent.[103] These orders remain subject to judicial review for abuse of the right to modify. Because these modifications constitute an important means of avoiding dismissals for economic reasons, the courts are generally reluctant to invalidate them.[104]

2.2 Efforts Made to Avoid Dismissal

This criterion is generally regarded as the most important of the four. The reason lies in the character of redundancy itself: the dismissal is not attributable to any fault on the employee's part, and an employer that places the employee at a disadvantage for reasons of its own is accordingly expected to make reasonable efforts both to avoid the dismissal and to mitigate its consequences.[105]

What those efforts require is not fixed. The measures an employer must take are assessed by reference to the scale and nature of the business, the urgency of the situation, and the purpose of the reduction.[106]

The author therefore would like to draw attention to efforts made to avoid dismissal by redeployment within the undertakings and transfer to a new employer.

2.2.1 Redeployment within the Undertakings

Araki observes that regular workers undergo periodic transfers and changes in assigned duties because they are engaged not for a specific job but as members of the corporate community, without job specification.[107] This arrangement is feasible both legally and practically. As explained above, the contract of employment in Japan often does not fix the terms of the engagement, and in particular does not fix the place or type of work. Employers ordinarily reserve the right to order transfers entailing changes to the place or type of work where business necessity requires, with the result that the employer may unilaterally direct such a change without obtaining the employee's consent.[108]

The practical dimension follows from the same premise. Because the employee is engaged as a member of the enterprise rather than as the performer of a particular function, training extends across a range of roles in the ordinary course of a career structured around periodic rotation, and it is common for workers in Japanese undertakings to be transferred within the company and to receive in-house education and on-the-job training.[109] Redeployment (配置転換, *haichi tenkan*) is therefore straightforward

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[102] Ibid.
[103] Ibid.
[104] Ibid.
[105] Arita, "Legal Regulation of Dismissal," 239.
[106] Ibid.
[107] Araki, "Labor and Employment Law in Japan," 5.
[108] Araki, "Changing Employment Practices, Corporate Governance, and the Role of Labor Law in Japan," 256.
[109] Araki, "Labor and Employment Law in Japan," 13.

in practice. When a given position ceases to be viable, the workforce is already equipped to absorb the change. This is what allows the Japanese courts to treat redeployment as a genuine precondition of dismissal.

2.2.2 Transfer to a New Employer

Although life-long employment is the standard practice in Japan, Japanese law is very outstanding in terms of accommodating job transfer. There are many interesting programs offering assistance and make it very easy when transferring employee to the new employer. Two legal provisions worth mentioning are:

1) Integrated Three-Pronged Labor Market Reform（三位一体の労働市場改革）(aka new trinity reform)

This 'new trinity reform' comprises three components: reskilling and upskilling, inter-company mobility, and job-based employment. The first is directed at equipping workers with new skills or updating existing ones, with the twofold aim of improving their employability and competitiveness in the labor market and enabling employers to secure workers possessing the skills they require.[110] Provision to date has consisted principally of on-the-job training and company-sponsored programs in which employees attend training selected by their employers.[111] The reform proposes to reorient government funding away from that model, from the present allocation of 75% to employer-initiated training and 25% to individually chosen training, to more than half directed to individually chosen training within five years, thereby permitting workers to select their own training. This would also extend opportunities to unemployed workers seeking positions, by furnishing employable and transferable skills.[112]

Alongside the expansion of individually chosen training, the reform proposes to establish new certification systems for information technology skills; to remove disincentives to job mobility, including the disadvantages under the unemployment benefit scheme attaching to workers who resign shortly after undertaking training; to provide advisory services supporting workers through such transitions; to promote secondary employment as a means of skills development; and to work with universities towards increasing the number of graduates with specialized skills capable of contributing immediately.[113]

The second component, inter-company mobility, is directed not only at increasing the number of workers possessing highly employable skills but also at facilitating their movement into industries and positions where demand is growing rapidly.[114] Among the measures under discussion is reform of the unemployment and retirement benefit systems. Policymakers have concentrated on relaxing the conditions governing receipt of unemployment benefit, in particular by removing the distinction drawn between workers who are dismissed and workers who resign. Under the present arrangements the former

[110] Fangmiao Zou, "The 'New Trinity' Reform of Labour Markets in Japan," *Asia Pacific Business Review* 30, no. 3 (2024): 579.
[111] Ibid.
[112] Ibid.
[113] Ibid.
[114] Ibid.

receive benefit immediately, whereas the latter must wait two to three months. A further proposal under discussion is the abolition of the retirement taxation arrangements that favor workers who have remained with a single employer for twenty years or more, together with the expansion of portable pension schemes in place of company-specific plans.[115]

2) Act on Comprehensive Promotion of Labor Measures and Stabilization of Employment of Workers and Enrichment of Their Working Lives (労働施策総合推進法)

The Act applies when an employer reduces its workforce by thirty or more workers within a period of one month for economic reasons. In such circumstances the employer must prepare a program to assist the affected workers in finding new employment, which requires the approval of the chief of the Public Employment Security Office.[116] Where the program is inadequate for that purpose, the chief may require its modification. In preparing the program the employer must seek the opinion of the trade union organized by a majority of the workers at the establishment concerned or, where no such union exists, of a person representing a majority of the workers.[117]

The Act further provides for grants and financial support to employers assisting displaced workers into new employment under an approved program.[118] The Labor Mobility Assistance Grant (労働移動支援助成金, *rōdō idō shien joseikin*) may be paid to an approved employer that, pursuant to a program approved with the agreement of a trade union, grants paid leave to workers listed in the program so that they may seek new employment before leaving the undertaking, or provides vocational training during that leave.[119]

These measures were introduced by the 2001 amendments to the Employment Measures Act,[120] and signal a shift in the government's policy priority from the maintenance of employment towards labor mobility unaccompanied by unemployment. The purpose of

[115] Ibid.
[116] Act on Comprehensive Promotion of Labor Measures and Stabilization of Employment of Workers and Enrichment of Their Working Lives, Act No. 132 of 1966, arts. 24–25 (Japan) [hereinafter Labor Measures Comprehensive Promotion Act].
[117] Labor Measures Comprehensive Promotion Act, art. 24; Ordinance for Enforcement of the Act on Comprehensive Promotion of Labor Measures and Stabilization of Employment of Workers and Enrichment of Their Working Lives, Ministry of Labor Ordinance No. 23 of 1966, arts. 7-2, 7-3, 7-4 (Japan) [hereinafter Labor Measures Ordinance].
[118] Labor Measures Comprehensive Promotion Act, art. 26.
[119] Ordinance for Enforcement of the Employment Insurance Act, art. 102-5(2); The Labor Mobility Support Subsidy supports employers whose workers *are* leaving and who assist them into new employment. This is different from the Employment Adjustment Grant mentioned in 2.1.1. The two limbs express opposite policies — retention on one hand, managed transition on the other. This labor mobility support is for job-search leave.
[120] Arita, "Legal Regulation of Dismissal," 241 citing Noboru Yamashita, "Koyō Taisaku Kanren Hō Kaisei no Mondaiten to Kadai" [Problems to be solved concerning the amendment of laws relating to employment measures], *Nihon Rōdōhō Gakkaishi* [Journal of Labour Law] 98 (2001): 241.

the program the employer must prepare is not to preserve the employment relationship but to assist workers into new positions.[121]

2.3 Joint Consultation

In addition to the legal framework discussed above, a point of considerable interest is that the Japanese practice of pursuing milder alternatives to redundancy did not originate merely in the law of dismissal. It arose instead from the deliberate efforts of labor and management to achieve the necessary reduction in labor costs while minimizing the sacrifice of employment.[122] The pattern is visible across successive episodes of economic disruption. Following the oil crisis of 1973 and the inflation that accompanied it, unions and management in numerous industries developed responses through joint consultation designed to preserve employment. The suspension of new recruitment, diminution of working hours, transfer, temporary layoffs, redeployment across establishments, and the solicitation of voluntary retirement in place of compulsory dismissal.[123] The same pattern recurred during the global recession that began in 2008 and again in the economic dislocation following the Great East Japan Earthquake of 2011, when the parties once more arrived at moderate accommodations and confined dismissals to what could not be avoided.[124]

3. The Japanese Legal Framework Governing Fixed-term Contracts

The problem of fixed-term employment has been examined at length in the Japanese literature, and Takeuchi-Okuno identified more than a decade ago both the expanding use of the form and the successive attempts to regulate it.[125] The Labor Contracts Act contains no provision treating the expiry of a fixed-term contract without renewal as a dismissal.

That formal position has not, however, determined how the Japanese courts decide actual cases. The Supreme Court, in two decisions, developed rules governing non-renewal for the express purpose of discouraging employers from deploying fixed-term contracts to circumvent the law of dismissal.[126] That case law was subsequently codified. Article 19 was inserted into the Labor Contracts Act by Act No. 56 of 10 August 2012, and provides:

> If, by the expiration date of the contract term of a fixed-term labor contract which falls under any of the following items, a worker applies for a renewal of the said fixed-term labor contract, or if a worker applies for the conclusion of another fixed-term labor contract without delay after the said contract term expires, and the employer's refusal to accept the said application lacks objectively reasonable grounds and is not found to be appropriate in general societal

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[121] Arita, "Legal Regulation of Dismissal," 241.

[122] Kazuo Sugeno and Keiichi Yamakoshi, "Dismissals in Japan, Part Two: How Frequently Do Employers Dismiss Employees?," *Japan Labor Review* 11, no. 4 (2014): 122.

[123] Ibid.

[124] Ibid.

[125] Hisashi Takeuchi-Okuno, "The Regulation of Fixed-Term Employment in Japan," in *Labor Policy on Fixed-Term Employment Contracts*, JILPT Report no. 9 (Tokyo: Japan Institute for Labour Policy and Training, 2010), 69–83, https://www.jil.go.jp/english/reports/documents/jilpt-reports/no.9_japan.pdf.

[126] *Maeda v. Toshiba Co.* (Toshiba Yanagi-chō Kōjō Case), Supreme Court of Japan, July 22, 1974, 28 Minshū 927; *Hirata v. Hitachi Medico Co.* (Hitachi Medico Case), Supreme Court of Japan, December 4, 1986, 486 Rōdō Hanrei 6.

> terms, it is deemed that the employer accepts the said application with the same labor conditions as the contents of the prior fixed-term labor contract:
>
> (i) the said fixed-term labor contract has been repeatedly renewed in the past, and it is found that terminating the said fixed-term labor contract by not renewing it when the contract term expires is, in general social terms, equivalent to terminating a labor contract without a fixed term by expressing the intention to fire a worker who has concluded the said labor contract without a fixed term;
>
> (ii) it is found that there are reasonable grounds upon which the said worker expects the said fixed-term labor contract to be renewed when the said fixed-term labor contract expires.[127]

The provision does not convert the fixed-term contract into one of indefinite duration, nor does it recharacterize non-renewal as dismissal. It operates instead by transposing the standard of review. The employer's refusal to renew is assessed against the same test of objective reasonableness and general social appropriateness that governs dismissal under Article 16. Where the refusal fails that test, the consequence is not damages but deemed acceptance. The contract is then treated as renewed on the previous terms. The employer's formal freedom to decline to contract afresh is thus preserved in name while being subjected in substance to the constraints of the dismissal regime.

The two gateways in the provision reflect the two situations in which that transposition is thought justified. The first is functional equivalence—where renewal has occurred repeatedly, the relationship has come to resemble indefinite employment in all but form, and non-renewal is treated accordingly. The second is reasonable expectation—where the employer's conduct, representations, or renewal practice have generated a legitimate expectation of continuation, the employee's reliance is protected irrespective of the number of renewals.

Arita has characterized the position in these terms by drawing an analogy with the law of dismissal — specifically the doctrine of abusive dismissal — these rules impose legal restrictions on the employer's refusal to renew, resting either on the inference of a tacit agreement between the parties or on the worker's reasonable expectation of continued employment.[128] Measured against its purpose of preventing evasion of the dismissal regime, the Japanese framework functions reasonably well, though the reasoning by which the courts reach their conclusions is frequently opaque, particularly in the assessment of what expectations are reasonable in a given employment context.[129]

These legal measures are directed at preventing employers from deploying the fixed-term contract as a means of escaping the constraints that the law of dismissal would otherwise impose. Within that field they operate with some effect. It would be mistaken, however, to infer that Japanese law places fixed-term employees on an equal footing with regular employees. Outside the specific context of evasion, the protection afforded to fixed-term employees remains materially weaker, and the courts have said so expressly.[130]

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[127] Labor Contracts Act, Act No. 128 of 2007, art. 19 (Japan), as inserted by Act No. 56 of 2012.
[128] Arita, "Legal Regulation of Dismissal," 232.
[129] Ibid.; Fumito Komiya, "The Law of Dismissal: A Comparative Study (1)," *Hōgaku Kenkyū* [Hokkai-Gakuen Law Journal] 29 (1993): 448.
[130] Arita, "Legal Regulation of Dismissal," 238.

The point emerges most clearly in cases of economic redundancy, where the question arises whether an employer may properly dispense with irregular workers — part-time employees, fixed-term contract workers, and dispatch workers — before its regular workforce. The courts have held that where the relationship with the undertaking is genuinely temporary in character, terminating irregular workers first is reasonable and valid.[131]

The two propositions must therefore be held together. The Supreme Court has extended the doctrine of abusive dismissal by analogy to refusals to renew where the employee had a reasonable expectation of continued employment, but has at the same time held that the standard governing such refusals may reasonably differ from that governing the dismissal of a regular employee.[132] The former concerns employment relationships founded on short contracts for fixed periods, concluded under comparatively simple recruitment procedures; the latter concerns contracts of indefinite duration entered into with an expectation of long-term employment. That difference in the character of the engagement justifies a difference in the intensity of review. On that footing, the Court found it reasonable that the employer had refused to renew the fixed-term contracts of irregular workers without first inviting regular employees to take voluntary retirement.[133]

4. The Thai Legal Framework Governing Unfair Dismissal

Thai law did not originally recognize dismissal as a subject of substantive review. Under the Civil and Commercial Code, the employer's power to terminate an employment contract was constrained only by the requirement of advance notice.[134] Provided that requirement was satisfied, the employer's reasons were its own affair; the law regulated the manner of ending the relationship, not the justification for doing so.[135] Termination was, in the strict sense, a contractual liberty.

That position changed with the enactment of the Act on Establishment of Labor Courts and Labor Court Procedure B.E. 2522 (1979). The reform is easily understated, because the substantive innovation occupies a single provision within what is otherwise a procedural statute. Section 49 provides:

> In the trial of a case of dismissal of an employee, if the Labor Court is of the opinion that the dismissal of the employee is not fair to him, the Labor Court may order the employer to reinstate the employee at the rate of wages prevailing at the time of dismissal. If the Labor Court is of the opinion that the employee and the employer can no longer work together, the Labor Court shall fix the amount of damages to be paid by the employer instead, taking into consideration the age of the employee, the period of work, hardship suffered by the employee upon dismissal, the cause of dismissal, and the compensation to which the employee is entitled.[136]

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[131] Ibid.
[132] Ibid.
[133] Arita, "Legal Regulation of Dismissal," 239 citing *Hirata v. Hitachi Medico Co.* (Hitachi Medico Case), Supreme Court of Japan, December 4, 1986, 486 Rōdō Hanrei 6; Satoshi Nishitani, *Rōdōhō* [Labour Law], 3rd ed. (Tokyo: Nihon Hyōronsha, 2020), 495.
[134] Civil and Commercial Code B.E. 2468 (1925) § 582 (Thail.).
[135] Pongratana Kluerklin, *Labor Law for Human Resources Management*, 11th ed. (Bangkok: Nititham, 2018), 707.
[136] Act on Establishment of Labor Courts and Labor Court Procedure B.E. 2522 (1979), § 49 (Thail.).

Three features of the provision govern everything that follows. First, it supplies no definition of unfairness and no criteria for identifying it, leaving the concept to be given content entirely by the Labor Courts. Second, its primary remedy is reinstatement, with damages available only when the court concludes that the relationship cannot be continued. Third, the enumerated factors bear on the *quantum* of damage rather than on the anterior question of whether the dismissal was unfair.

The consequence is a delegation of extraordinary breadth. Four decades of case law have been required to give this provision operative meaning, and that jurisprudence — rather than the statutory text — is the proper object of study.

The Supreme Court's decisions now support a settled two-stage analysis. The court asks first whether the dismissal was substantively fair: whether the circumstances genuinely required termination, and whether some lighter measure was available by which the employer might have addressed the situation without dismissing the employee. Only if that threshold is crossed does the court proceed to the second stage, procedural fairness, asking whether the dismissal was carried out through a proper process. The stages are cumulative rather than alternative. A dismissal supported by adequate substantive grounds may nonetheless be held unfair where the procedure adopted was defective.[137]

The structure will be familiar to the comparative reader, and the resemblance to the Japanese four-factor test governing economic dismissal is close enough to warrant caution. In both jurisdictions the employer must establish necessity, demonstrate that alternatives to dismissal were explored, and observe fair procedure. The divergence lies not in the architecture of the test, but in what each legal system makes available to an employer attempting to satisfy it.

4.1 Substantive Fairness

4.1.1 Economic Dismissal and the Profitability Threshold

At the first stage, the court asks whether the asserted reason is both genuine and sufficiently serious to warrant termination. Genuineness is straightforward. It is a matter of evidence and testimony, and an employer with accounts and witnesses can establish it. Seriousness is another matter entirely. Where employees are dismissed for economic reasons, the employer's object is ordinarily to reduce cost and improve organizational efficiency, and the question of how grave the position must be before that object justifies dismissal is one that the statute does not answer. It therefore falls to be answered by judicial discretion, and the exercise of that discretion determines how far the court may properly enter upon matters of business management.

The answer that emerges from the existing cases is that the court will enter upon them a considerable distance. The dominant criterion has been profitability. The decisions establish that dismissal must be preceded by significant loss, and that an employer which remains profitable — regardless of how sharply its profits have contracted — cannot invoke economic necessity.

In Supreme Court Decision No. 2635/2544 (2001), the employer's annual profit fell from twelve million baht to five million. The court held that a decline in profit of that magnitude

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[137] Kluerklin, *Labor Law for Human Resources Management*, 742-44.

did not justify dismissal, and the dismissal was accordingly unfair.[138] Supreme Court Decision No. 7083/2548 (2005) confirmed that same approach, holding that even a substantial reduction in profit relative to previous years does not supply a ground for dismissal.[139] The principle, stated plainly, is that reduced profit is not loss, and only loss engages the employer's freedom to reduce headcount.

Nor does proof of loss itself dispose of the question. The courts have reserved to themselves a further inquiry into whether the loss is ordinary and foreseeable for the business in question, and whether the enterprise can continue notwithstanding it. In Supreme Court Decision No. 4038–4039/2545 (2002), the employer established aggregate losses of some forty million baht over the period of 1995 to 1999. The court nevertheless held the dismissals unfair, comparing the losses against registered capital exceeding 208 million baht and observing that insurance companies commonly fail to return a profit during their first six years of operation; losses of that order did not demonstrate that the business would be unable to continue.[140] Supreme Court Decisions No. 3933/2546 (2003) and No. 1850/2547 (2004) provide similar rulings: absent loss of a severity indicating that the enterprise will be unable to operate in future, dismissal is unfair even where the business is returning no profit at all.[141]

The threshold, in short, is not unprofitability but something closer to jeopardy — a loss grave enough to place the continuation of the undertaking in doubt.

4.1.2 Pandemic Cases: Continuity Under Pressure

The courts have maintained this position through the economic disruption of the COVID-19 pandemic, which offered as favorable an occasion for relaxation as any employer could construct.

In Court of Appeal for Specialized Cases Decision No. 1425/2567 (2024), the employer had restructured its organization in response to pandemic conditions. The court accepted both the reality of the crisis and the fact that the employer's profits had fallen substantially. It nonetheless concluded that the business remained capable of continuing operations in future, and that no serious need to dismiss had therefore arisen. The dismissals were unfair.[142]

Dismissals during the same period have been upheld, but only where the employer's position was materially graver. In Supreme Court Decision No. 3119–3135/2567 (2024) the court examined the undertaking's overall performance rather than the results of the particular unit in which the dismissed employees worked. Losses had accumulated across each of the five years from 2016 to 2020, amounting to 0.5, 2.5, 4.9, 7.3 and 5.5 percent of total sales respectively, with the final year coinciding with the onset of the pandemic and a significant contraction in sales.[143] The court held that in those

[138] Supreme Court (Dika) Decision No. 2635/2544 (2001) (Thail.).
[139] Supreme Court (Dika) Decision No. 7083/2548 (2005) (Thail.).
[140] Supreme Court (Dika) Decision No. 4038–4039/2545 (2002) (Thail.).
[141] Supreme Court (Dika) Decision No. 3933/2546 (2003) (Thail.); Supreme Court (Dika) Decision No. 1850/2547 (2004) (Thail.).
[142] Court of Appeal for Specialized Cases Decision No. 1425/2567 (2024) (Thail.).
[143] Supreme Court (Dika) Decision No. 3119–3135/2567 (2024) (Thail.).

circumstances the employer was entitled to exercise a degree of flexibility in managing the business so as to improve performance and sustain the undertaking as a whole, and the dismissals were lawful.

The reference to managerial flexibility is notable and deserves to be watched, but it should not be read as a departure. The unit in which the dismissed employees worked remained profitable, and the court's willingness to look past that fact to the consolidated position is a meaningful refinement. Yet the operative reasoning remains continuous with the earlier cases: the dismissal was justified because losses had accumulated over a period of years, not because the employer had made a defensible commercial judgment about how the enterprise should be organized. The court's own performance-based assessment, not the employer's, remained determinative.

4.1.3 Dismissal as a Measure of Last Resort

The assessment of substantive fairness does not end with an inquiry into whether the undertaking has sustained losses of the magnitude described above. Even where the employer's financial distress is genuine and documented, the court will proceed to a second question: whether the employer exhausted the alternative measures reasonably available to it before resorting to termination.[144] Economic loss, in other words, establishes only the occasion for restructuring. It does not of itself justify the particular form that the restructuring took.

This requirement reflects a proportionality principle, similar to the Japanese legal framework. Termination extinguishes the employment relationship permanently and transfers the entire burden of the employer's commercial misfortune onto the employee. Where a less drastic measure would have achieved a comparable saving, the employer's election of dismissal cannot be characterized as necessary, and the dismissal is accordingly liable to be found unfair notwithstanding the reality of the loss.

The alternatives that the employer is expected to have canvassed fall into two broad categories. The first concerns non-labor expenditure. The employer is expected to demonstrate that it examined reductions in overheads, capital expenditure, executive remuneration, dividend distributions, and comparable outlays before treating the wage cost as the appropriate site of adjustment. The second concerns the manner in which labor costs themselves are reduced. Even where a reduction in personnel expenditure is genuinely unavoidable, the employer must show that it considered whether that reduction could be achieved by means short of severing the employment relationship.

The two mechanisms most commonly deployed to reduce personnel expenditure while preserving the employment relationship are, first, temporary suspension of business operation corresponding reduction in remuneration, and second, variation of employment conditions and employee benefits. Each is examined in turn, with attention to the legal architecture that governs it and to the practical limits that architecture imposes.

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[144] Ibid.

4.1.3.1 Temporary Suspension of Operations and Reduced Remuneration

The principal statutory vehicle for this measure is Section 75 of the Thai Labor Protection Act, which provides that

> *where it is necessary for an employer to suspend business operations, in whole or in part, temporarily, for any cause other than force majeure, the employer shall pay the employee not less than seventy-five percent of the wages payable on a working day received by the employee prior to the suspension, throughout the period during which the employer does not require the employee to work; and shall give written notice to the employee and to the labor inspector not less than three working days before the suspension takes effect.*[145]

Three features of the provision deserve emphasis.

First, Section 75 preserves the employment relationship. The measure is a suspension of the obligation to perform work, not a termination; seniority continues to accrue, and the employee's statutory entitlements are calculated by reference to a continuous period of service. The provision therefore operates precisely as the "last resort" doctrine contemplates. It permits the employer to reduce its immediate wage outlay while leaving the relationship intact against a recovery in economic conditions.

Second, the seventy-five percent entitlement operates as the default consequence of an employer-initiated suspension, but it is not an absolute floor beyond the reach of agreement. Employer and employee may agree that the employee will take leave without pay, and such an arrangement is valid where the employee's consent is genuine. The doctrinal route by which this operates is that consensual leave is not a suspension of operations imposed by the employer within the meaning of Section 75 at all; the employee is absent by agreement, and the statutory obligation is not engaged. What the employer cannot do is impose the arrangement unilaterally. Where the employer declares a period of unpaid leave without securing the employee's consent, the courts have held the purported arrangement unenforceable, and the employee retains an accrued claim to the wage entitlement for the period concerned.[146] The practical consequence is that this route is available far less often than its formal availability suggests. An employee asked to forgo remuneration entirely, in circumstances where the statutory alternative guarantees three-quarters of wages, has little incentive to agree, and consent is correspondingly difficult to obtain. The position is different in conditions of extraordinary crisis. For example, during the COVID-19 pandemic a considerable number of undertakings did secure agreement to unpaid leave.[147] Employees in that period weighed the survival of the business, and with it their continued employment, against the sacrifice of immediate income; but many also had reason to prefer absence to attendance, whether because of the risk of infection at the workplace, the closure of schools and childcare, or the practical difficulties of travel under the restrictions then in force.[148] Outside such circumstances, however, consent is unlikely to obtain, and in the ordinary case the employer that suspends operations bears the full seventy-five percent liability.

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[145] Labor Protection Act B.E. 2541 (1998), § 75 (Thail.).

[146] Court of Appeal for Specialized Cases Decision No. 2443/2566 and 538/2566 (2023) (Thail.).

[147] Examples include Centara Hotel and Resorts, Thai Airways, Thai Airasia, and Bangkok Post.

[148] See, for example, Fair Labor Association, "Hong Seng Knitting," https://www.fairlabor.org/reports/hong-seng-knitting/, accessed 10 August 2026.

Third, and critically for present purposes, the seventy-five percent obligation is waived only where the suspension is attributable to *force majeure*. The scope of that exception determines the practical utility of the provision, and it is here that the Thai scheme is at its least satisfactory.

According to the Ministerial Regulation issued under the Social Security Act governing unemployment benefits, it provides that:

> *"Force majeure"* means fire, windstorm, flood, or geological disaster, as well as other perils arising from nature, which affect the public and are of such severity that the insured person is unable to work or the employer is unable to carry on business as normal.[149]

and, as subsequently extended:

> *"Force majeure"* shall also include perils arising from the spread of a dangerous communicable disease under the law on communicable diseases, which affect the public and are of such severity that the insured person is unable to work or the employer is unable to carry on business as normal.[150]

The enumeration is instructive. Fire, windstorm, flood, seismic catastrophe, and other natural events affecting the public at large, together with epidemics of dangerous communicable disease. What unites these categories is that each is an exogenous physical event that renders performance impossible, as distinct from an economic condition that renders performance unprofitable. According to the legal provision, economic downturn falls outside the exception, an employer that suspends operations because there is insufficient work to sustain production, or because continued trading has ceased to be commercially viable, is in neither case prevented from operating; it has simply concluded that operating is no longer worthwhile. The suspension is accordingly not attributable to *force majeure*, and the employer must bear the seventy-five percent obligation from its own resources.

Therefore, Section 75 is best understood as a provision designed for a different class of interruption. Its architecture presupposes a suspension that is short in duration and followed by a resumption of normal operations: a fire or flood that damages the premises, a plant breakdown, a disruption to supply that will resolve itself. In those circumstances the seventy-five percent obligation is a rational allocation of risk. The interruption is finite, the employer's revenue-earning capacity is intact and will shortly be restored, and requiring the employer to carry the workforce through the gap preserves a relationship that both parties expect to continue. Economic contraction, however, has none of these features. The interruption is of indefinite duration, the employer's revenue-earning capacity is itself what has been impaired, and there is no assured point of resumption against which the cost of retention can be measured. An employer invoking Section 75 in such conditions is required to disburse three-quarters of its wage bill while generating no

[149] Ministerial Regulation on the Receipt of Unemployment Benefits in Cases of Force Majeure B.E. 2560 (2017). https://www.ratchakitcha.soc.go.th/DATA/PDF/2560/A/007/7.PDF.
[150] Ministerial Regulation on the Receipt of Unemployment Benefits in Cases of Force Majeure Arising from the Spread of a Dangerous Communicable Disease under the Law on Communicable Diseases B.E. 2563 (2020) https://www.ratchakitcha.soc.go.th/DATA/PDF/2563/A/029/T_0008.PDF.

output, for a period it cannot forecast, out of resources that have already been depleted. The provision was not built for that situation, and it does not function well in it.

4.1.3.2 Variation of Conditions of Employment and Benefits

Where temporary suspension is not a workable response, the question becomes whether the employer may instead reduce its labor costs by varying the conditions on which the workforce is employed. Similar to Japan, Thai law regulates conditions of employment and benefits at three levels, and the employer's freedom of action differs at each.

At the highest level stands the "agreement on conditions of employment" (CBA) concluded between the employer and the union under the Labor Relations Act. Below it sits the "work rules" that the employer is required to promulgate under Section 108 of the Labor Protection Act. At the third level lies the terms of the individual contract of employment. Where the employee consents, variation at any of these levels is unproblematic; the difficulty that concerns the present inquiry arises precisely where consent is withheld. The question is therefore how far, if at all, an employer may adjust conditions of employment unilaterally in response to economic distress.

Regarding CBA, Section 20 of the Labor Relations Act provides:

> Once an agreement on conditions of employment has taken effect, the employer is prohibited from concluding a contract of employment with an employee on terms conflicting with that agreement, unless the contract is more favorable to the employee.[151]

The position at this level is therefore straightforward. A collective agreement cannot be varied by unilateral act of the employer, and variation to the employee's detriment cannot be achieved indirectly through individual contracting. Alteration requires recourse to the demand-and-negotiation procedure prescribed by Section 13 and 15 of the Act.[152]

Regarding the work rules, Section 108 of the Labor Protection Act requires an employer with ten employees and above to establish work rules in Thai containing the specified particulars. In principle the work rules are an instrument of managerial promulgation rather than a bargain. They are announced by the employer, not negotiated with the workforce, and it might be supposed that they carry no contractual force and may be amended by the employer as it thinks appropriate.

That supposition is displaced by the Labor Relations Act, which provides:

> Where it is in doubt whether an agreement on conditions of employment exists at an establishment, the work rules that the employer is required to establish under the law on labor protection shall be deemed to be an agreement on conditions of employment for the purposes of this Act.[153]

The effect of this deeming provision is considerable. In the many establishments where no collective agreement has been concluded — which is to say in the great majority of Thai workplaces, given low union density[154] — the work rules are elevated by operation of law

[151] Labor Relations Act B.E. 2518 (1975), § 20 (Thail.).
[152] Labor Relations Act B.E. 2518 (1975), §§ 13, 15 (Thail.).
[153] Labor Relations Act B.E. 2518 (1975), § 10 (Thail.).
[154] For statistics on number of trade union in Thailand, please see, Department of Labour Protection and Welfare, https://relation.labour.go.th/attachments/category/217/20260804143212023_0001.pdf.

into an agreement on conditions of employment. An instrument that the employer drafted and announced unilaterally thereby acquires the status of a negotiated bargain, and with it the protection of Section 20. The consequence is that the employer cannot amend its own work rules to the employees' detriment without their consent.

This position is confirmed by the Supreme Court in Decision Nos. 8396–8399/2550, where the court held that the work rules that an employer establishes pursuant to the law on labor protection constitute an agreement on conditions of employment under the Labor Relations Act.[155] Accordingly, if the employer wished to amend, alter, or revoke the work rules, the employer was required to obtain the employees' consent. Failing to comply with the procedural steps prescribed by that Act, no alteration could be made. Therefore, the employer in this case amended the work rules without employees' consent, the amendment was unlawful and created no binding effect.

The decision of this abovementioned case establishes the practical position with clarity. The employer's formal power to amend work rules unilaterally survives, but its exercise is confined to amendments that are neutral or favorable to the workforce. Any amendment that operates to the employees' detriment — which is to say any amendment capable of reducing labor costs — falls outside that power and requires either consent or recourse to the collective demand procedure under Section 13. Since the deeming effect of Section 10 operates in every establishment where no collective agreement exists, the restriction applies across the great majority of Thai workplaces. The theoretical distinction between work rules and collective agreements thus yields no practical latitude in the situation under consideration.

Lastly, the individual contract. At the third level, the contract of employment fixes the individual employee's remuneration, working conditions, and benefits, which may not fall below the standard set by the work rules or any applicable collective agreement. Here the governing principle is one of ordinary contract law: the employer may not unilaterally alter the terms agreed. An employer that reduces wages, withdraws an allowance, or curtails a contractual benefit without the employee's assent is in breach of contract, and the employee may sue to compel performance in accordance with the agreed terms.[156] Economic adversity affords no exception; the employer must obtain the employee's consent before effecting any variation.

4.2 Procedural Fairness

Once the substantive element is established, the court turns to the fairness of the process by which the dismissal was effected. Several matters fall for consideration at this stage. The first is whether the employer made genuine efforts to redeploy the employee — whether to another department or position within the undertaking or, where internal redeployment proved impossible, to a new employer. The second concerns the propriety of the termination process itself, the criteria by which employees were selected for dismissal and the manner in which the dismissals were carried out. The present analysis is only confined to the first of these.

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[155] Supreme Court (Dika) Decision No. 8396–8399/2550 (2007) (Thail.).
[156] Supreme Court (Dika) Decision Nos. 6629/2541(1998), 3456/2545(2002) (Thail.).

4.2.1 Redeployment Within the Undertaking

Where it is no longer possible for the employee to continue in the existing role, the employer must demonstrate that it made efforts to redeploy the employee elsewhere within the organization. Two distinct questions arise, whether such redeployment is legally available to the employer, and whether it is practically achievable.

4.2.1.1 Legal availability

As set out above, a variation of the conditions of employment — including the employee's position and remuneration — requires the employee's consent. It follows that an employer cannot reassign an employee to a role differing from that agreed in the contract of employment without obtaining that consent. The difficulty this creates is acute where the available vacancy is not equivalent to the original position, whether in remuneration or in the nature and difficulty of the work. The courts have made clear that an employer may not unilaterally transfer an employee to a position it considers appropriate; an employer that does so, even under financial compulsion, is in breach of contract, and the employee may sue accordingly.[157]

The result is a doctrinal tension of the same character as that identified in the previous part of the paper. The court's inquiry into procedural fairness asks whether the employer attempted redeployment, while the substantive law denies the employer any power to effect redeployment on its own initiative.

4.2.1.2 Practical feasibility

Even where the employee consents, redeployment may not be achievable, and here the contrast with Japanese practice is instructive. While the Japanese employment relationship is characterized by membership rather than by task, Thai practice rests on a different premise. The employee is engaged to perform a specified function, and the employment relationship is organized around that function rather than around membership of the enterprise. Cross-training is not common, and an employee whose position becomes redundant will frequently lack the skills or experience to occupy any other role in the organization. The redeployment obligation is therefore imported into this framework that has not been structured to support it. An employer may be entirely willing to redeploy, and the employee entirely willing to be redeployed, and the transfer remains impossible for want of any position the employee is equipped to fill.

4.2.2 Transfer to a New Employer

Transfer to a different employer represents a further avenue of workforce management. Section 577 of the Civil and Commercial Code provides that the employer may transfer its rights to a third person with the employee's consent.[158]

[157]Supreme Court (Dika) Decision No. 7238-7239/2544 (2001) (Thail.).
[158] Civil and Commercial Code B.E. 2468 (1925), § 577 (Thai.).

An employer may accordingly transfer an employee to another employer, provided the employee consents. The decision rests with the employee. Should the employee decline and the original position no longer exist, the employment is terminated and the entitlement to severance pay arises in the ordinary way.[159] Should the employee accept the transfer, no severance pay falls due, the relationship having been continued (although with a new employer) rather than severed.[160]

This provision supplies a clear incentive to the transferring employer. Because a successful transfer extinguishes what would otherwise be a substantial severance liability, an employer that can no longer sustain its workforce has good reason to expend real effort in locating alternative employment for its staff. The difficulty is that the incentive operates on one side of the transaction only.

The transferee employer receives no corresponding inducement. Although the transferee does not succeed to the rights and obligations of the transferor, and although the employee must conclude a new contract with the transferee, the legislation is silent as to the treatment of accrued service. The question is whether the transferee's service computation begins afresh or continues from the commencement of the original employment. In Supreme Court Decision No. 547-548/2530, the courts have held in the absence of agreement service is treated as continuous from the original engagement.[161]

On its face this rule affords the employee complete protection. Having forgone severance pay from the original employer, the employee retains the accrued service on which any future severance entitlement will be calculated. Its practical effect, however, is to deter the very transfers it presupposes. A transferee employer that assumes the employee's full accrued service assumes a contingent severance liability referable to years of service from which it derived no benefit — a liability that may substantially exceed the value of the labor acquired. Rational transferees will decline, or will insist on an agreement resetting the computation, which the employee is less likely to accept. Transfers of this kind are therefore likely to occur only where the two undertakings are related, as between parent and subsidiary or among companies under common control, and the transferee is willing to absorb the liability in order to relieve an affiliate of its severance obligations. Where the undertakings are unconnected, the transaction is difficult to imagine.

The problem illustrated here is only the legal barrier to transferring an employee to a new employer. A further difficulty lies in the limits of workers' skills. As noted above, Thai employees tend to be hired for a specific task rather than trained across several. Thailand has a levy-grant training mandate under the law, yet cross-functional deployability still doesn't materialize.[162] The duty is quantitative (a headcount percentage), not directed at

[159] Supreme Court (Dika) Decision No. 1766-1771/2544 (2001) (Thail.).

[160] Supreme Court (Dika) Decision No. 10045/2556 (2013) (Thail.).

[161] Supreme Court (Dika) Decision No. 547-548/2530 (1987) (Thail.); Kluerklin, *Labor Law for Human Resources Management*, 582.

[162] The Skill Development Promotion Act B.E. 2545 (2002), §§ 29–30, requires establishments with 100 or more employees to provide skill training to at least 50 percent of their workforce each year; those that fall short must contribute to the Skill Development Fund instead.

building the transferable skills that redeployment requires, and it can be discharged by paying the levy. Therefore, even where consent is given, the transfer may be impracticable.

5. The Thai Legal Framework Governing Fixed-Term Contracts and Outsourcing

5.1 Fixed-Term Contracts

Thai legislation addresses the fixed-term contract of employment in only two provisions, both of which operate to relieve the employer of an obligation that would otherwise attach on termination. Neither regulates the use of the fixed-term form itself.

The first is Section 17 of the Labor Protection Act, under which a contract of employment concluded for a definite period terminates on the expiry of that period without any requirement of advance notice.[163] The second is Section 118, which relieves the employer of the obligation to pay severance where the employment was for a definite period of the three specific categories and terminates on its expiry.[164]

The structure of the provision is therefore best understood that Thai law does not prohibit the use of fixed-term contracts for any category of work, nor does it restrict the number of times such a contract may be renewed; successive renewals do not, by operation of law, convert the arrangement into a contract of indefinite duration. What the law does is withhold the severance exemption from fixed-term contracts falling outside the three enumerated categories. An employer may freely engage employees on fixed terms for ordinary, continuing work forming part of its regular undertaking, but on the expiry of such a contract without renewal, it must pay severance.

This distinction — between regulating the fixed-term contract and regulating only its severance consequence — accounts for the pattern of use observable in practice, and it is worth setting that pattern against the position under comparable systems. Many jurisdictions confine fixed-term contracting to work that is objectively temporary and provide that renewal beyond a specified number of terms or aggregate duration converts the relationship into one of indefinite duration. Thai law contains no equivalent mechanism. The fixed-term contract may accordingly be used for work of an entirely permanent character and renewed indefinitely without altering its legal nature.

The attraction of the form is evident when it is read against the law of unfair dismissal examined above. Where employment is of indefinite duration, an employer wishing to reduce its workforce must satisfy the substantive and procedural requirements previously discussed. Where employment is for a fixed term, none of this arises. The contract simply expires. There is no dismissal to be characterized as unfair, and the employer's decision

[163] Labor Protection Act B.E. 2541 (1998), § 17 (Thail.).

[164] Labor Protection Act B.E. 2541 (1998), § 118 (Thail.). (The severance exemption under Section 118 applies only where the employment falls within one of three enumerated categories: work forming part of a special project outside the employer's ordinary course of business or trade, having a definite commencement and completion; work of a temporary nature with a definite point of completion; or seasonal work performed in the relevant season. The work must in addition be completed within two years, and the parties must have concluded a written contract at the outset of the employment.)

not to renew is, on the orthodox analysis, not a decision to terminate at all but a decision to decline to renew the contract. The fixed-term contract thus functions as a lawful means of achieving what the unfair dismissal regime would otherwise constrain, and the strictness of that regime is itself a substantial part of what drives employers towards the fixed-term form.

The countervailing consideration is the severance regime. Section 118 requires severance to be paid to any employee who has completed 120 days of continuous service, and where an employee has been engaged under a succession of fixed-term contracts, the aggregate of those contracts is taken into account in computing the period of service.[165] The consequence is that an employer that declines to renew a long-serving employee's contract avoids the risk of an unfair dismissal claim but does not avoid the severance liability, which will have accrued by reference to the entire period of engagement. In practice this operates as a moderating influence. Employers continue to renew rather than to replace, since the cost of dispensing with an established employee and engaging a new one is precisely the severance sum that renewal defers. The severance regime thus does some of the work that a conversion rule would do in other systems, though it does so indirectly and only in relation to cost.

5.2 Outsourcing

Outsourcing has become the more attractive solution, and its attraction lies in the fact that it addresses both of the constraints just described.

The practice is regulated by Section 11/1 of the Labor Protection Act, which provides:

> Where an entrepreneur assigns any person to procure workers to perform work that forms part of the production process or business under the entrepreneur's responsibility, and that person is not an employment agency, and regardless of who supervises or pays the wages, the entrepreneur is deemed to be the employer of those workers.
>
> The entrepreneur must further ensure that workers receive fair benefits and welfare without discrimination as compared with employees with the employment contract who perform work of the same nature.

The provision is protective in intent and effective within its scope. During the currency of the arrangement, the deeming rule permits the worker to proceed against the user undertaking as employer alongside the contractual employer(service provider). Where the service provider fails to pay wages, statutory holiday pay, or overtime, the worker may bring proceedings in the Labor Court against both, and the user undertaking is answerable jointly.

The protection does not, however, extend to termination, and it is this asymmetry that determines the provision's practical significance. When the user undertaking no longer requires the labor, it does not dismiss anyone; it terminates its commercial contract with the service provider. That termination is governed by the law of contract as between two commercial parties and gives rise to no employment claim whatever. There is no dismissal capable of being characterized as unfair, and no severance obligation arises, since the employment relationship with the service provider subsists. Nor does the service provider necessarily need to dismiss the workers concerned. Its business consists in the

[165] Supreme Court (Dika) Decision No. 3116/2544 (2001) (Thail.).

deployment of labor across a portfolio of client undertakings, and workers displaced from one assignment may in principle be redeployed to another. The workers' employment security is accordingly determined not by the undertaking for which they in fact work, but by the service provider's continuing ability to place them elsewhere.

The result is that outsourcing achieves what the fixed-term contract achieves, and more. The fixed-term contract eliminates the unfair dismissal risk while leaving the severance liability intact; outsourcing eliminates both and does so without any temporal limit on the arrangement. A user undertaking may engage outsourced labor indefinitely for work forming part of its core production process, take the benefit of that labor for years, and disengage at will at the cost only of whatever notice its commercial contract stipulates. That Section 11/1 deems the user an employer for purposes of pays and welfare while leaving it free of employer obligations on termination is the central weakness of the provision, and it explains the marked growth in the use of outsourced labor in recent decades in Thailand.

6. Comparative Assessment and Implications for Thai Reform

6.1 A Common Architecture

The two systems ask employers the same questions. In Japan, an economic dismissal is tested against four criteria: whether the workforce needed to be reduced, whether the employer tried to avoid dismissal, whether those selected were chosen fairly, and whether labor was properly consulted. In Thailand, the Labor Courts ask first whether the circumstances genuinely required termination and whether a lighter measure was available, and then whether the process was fair. Strip away the differences in vocabulary and the tests are close to identical. Both require necessity, both require that alternatives be tried, and both require fair procedure.

The remedies also point the same way. Article 16 of the Japanese Labor Contracts Act makes an abusive dismissal invalid rather than compensable. Section 49 of the Thai Act on Establishment of Labor Courts and Labor Court Procedure makes reinstatement the primary remedy, with damages available only where the court concludes the parties can no longer work together. Neither system allows an employer simply to buy its way out of the relationship at a fixed price.

If legal design were a matter of how strictly dismissal is regulated, the two jurisdictions should produce similar outcomes. They do not. Japan retains a large regular workforce with tenure that has lengthened rather than contracted. Thailand has seen sustained growth in fixed-term and outsourced arrangements, with the protected regime governing a diminishing share of the workforce it was built to serve. The explanation cannot lie in the severity of the dismissal rule, because on that measure the two systems are comparable. It lies in what each system makes available to an employer trying to satisfy the rule.

6.2 Five Asymmetries

6.2.1 How bad things must be before the employer may act

The first asymmetry arises before the alternatives inquiry is reached. Both systems require the employer to establish necessity, but they set the threshold at very different heights.

The Japanese courts have framed the question narrowly and then answered it generously. They do not ask whether dismissal was necessary; they ask whether a reduction in the workforce was necessary, on the premise that dismissal is only one of several means by which a workforce may be adjusted. The governing standard is commercial reasonableness: if a reasonable employer facing comparable business conditions would have been justified in making the reduction, the criterion is satisfied. Three consequences follow. The employer need not show that the undertaking as a whole is in jeopardy — in *Tōyō Sanso* the closure of a single loss-making division sufficed, the losses being confined to the acetylene operation while the enterprise continued. The employer need not wait for the loss to materialize, since reductions undertaken to forestall serious difficulties anticipated in the near future have been accepted. And the assessment defers substantially to the employer's own commercial judgment, the court asking whether that judgment was reasonable.

The Thai courts have taken the opposite course at each point. The threshold is not commercial reasonableness but demonstrated loss, and demonstrated loss of a particular severity. A fall in profit, regardless of how steep, is not enough: in Decision No. 2635/2544 an annual profit dropping from twelve million baht to five did not justify dismissal, and Decision No. 7083/2548 confirmed that even a substantial reduction relative to previous years supplies no ground. Nor does loss itself dispose of the question. In Decision No. 4038–4039/2545 the employer proved aggregate losses of some forty million baht across five years, and the dismissals were still unfair: the court measured the losses against registered capital exceeding 208 million baht and observed that insurance companies commonly return no profit in their first six years. Decisions No. 3933/2546 and No. 1850/2547 are to the same effect. Absent loss severe enough to indicate that the enterprise will be unable to operate in future, dismissal is unfair even where the business is returning no profit at all.

The pandemic cases confirm the position rather than relaxing it. In Court of Appeal for Specialized Cases Decision No. 1425/2567 the court accepted both the reality of the crisis and a substantial fall in profits, yet held the dismissals unfair because the business remained capable of continuing. Where dismissals were upheld, in Decision No. 3119–3135/2567, losses had accumulated across each of five consecutive years. Even there the reasoning was performance-based rather than deferential: the dismissals were justified because the numbers were bad enough, not because the employer had made a defensible commercial judgment about how the enterprise should be organized.

The practical effect is that a Thai enterprise cannot lawfully restructure while it remains profitable, and may be unable to do so even while making losses, if the courts regard those losses as survivable. Dismissal due to reorganization becomes available only as the undertaking approaches the point at which it can no longer operate. That is difficult to reconcile with how firms actually behave. Restructuring is not a terminal measure adopted when insolvency looms; it is a routine instrument by which enterprises adapt to changing markets, technologies, and demand, and it works best when undertaken before the position deteriorates. Thai doctrine requires that it be deferred until the moment it is least likely to succeed.

Japan, in short, permits an employer to act early, at the level of a division, on a judgment the court will not second-guess. Thailand requires it to act late, at the level of the whole undertaking, on evidence the court will assess for itself.

6.2.2 What the employer may do without consent

This asymmetry concerns the employer's authority over a subsisting relationship. The Japanese employer facing surplus labor has several lawful options that require no individual consent. It may move a worker to different duties, because the contract of employment does not fix the type or place of work in a way the courts treat as immutable. It may do so without renegotiating pay, because the wage attaches to the worker's assessed grade rather than to the job performed. It may vary the work rules to the employees' disadvantage, provided the change is reasonable under Articles 9&10 of the Labor Contracts Act, judged against the extent of the disadvantage, the necessity of the change, the appropriateness of its content, and the state of negotiations with the union. Each of these is available for the employers to act unilaterally.

The Thai employer has none of them. Conditions of employment are fixed at three levels, and at every level the answer to unilateral variation is the same. Collective agreements cannot be varied downward by the employer, by force of section 20 of the Labor Relations Act. Work rules cannot either, because section 10 of the Labor Protection Act deems them to be an agreement on conditions of employment wherever no collective agreement exists, which is to say in most Thai workplaces. Individual contracts cannot be varied without consent as a matter of ordinary contract law. Redeployment to a different position is itself a variation and requires consent for the same reason.

The consequence is a criterion that requires the employer to have tried alternatives while denying it the power to try them. The Thai employer confronting a downturn has no lawful means of adjusting incrementally — no power to trim allowances, defer increments, reduce hours, or reassign staff. It faces an all-or-nothing choice between maintaining the existing cost base and dismissing part of the workforce. Dismissal, paradoxically, is the one adjustment it may make on its own initiative, subject only to review after the event.

6.2.3 Whether the workforce is equipped to absorb the change

The preceding asymmetry concerned the employer's legal authority to redeploy. This one concerns whether redeployment is possible once that authority exists. A power to reassign staff is worth nothing if no employee can perform the role to which he would be reassigned. Both systems make the effort to avoid dismissal a precondition of lawful termination but only the Japanese one has produced a workforce capable of satisfying it.

The Japanese position follows from the membership model. Because the regular employee is engaged as a member of the enterprise rather than as the performer of a defined function, training extends across a range of roles in a career structured around periodic rotation, so that when a position ceases to be viable the workforce is already equipped to absorb the change. *Haichi tenkan* is not a legal fiction the courts require employers to attempt. It is an established practice the law subsequently made mandatory. The same logic extends outward. The Integrated Three-Pronged Labor Market Reform places reskilling first among its components and would redirect the majority of government training expenditure towards individually chosen training, while the Labor Mobility Assistance Grant funds paid leave and vocational training taken before a displaced worker leaves the undertaking. Transfer is thus supported on both sides: the worker arrives with skills the transferee can use, and part of the cost of producing them is publicly borne.

Thailand presents the inverse, and not for want of legal intervention. The Skill Development Promotion Act requires establishments with one hundred or more employees to train at least half their workforce annually or contribute to the Skill Development Fund. The mandate exists; the deployability does not. The duty is quantitative rather than directed — a headcount proportion trained, not a capability built — it specifies no relationship between the training given and the roles a displaced worker might fill, and it may be discharged by payment. An employer may comply in full while producing a workforce no more redeployable than before. The effect compounds the obstacles already identified. Internal redeployment fails both because the employer cannot direct it and because there may be no position the employee is equipped to fill, and a transferee already deterred by the accrued severance liability will be more reluctant still where the labor on offer is narrowly specialized to another firm's processes.

A reform granting employers the power to redeploy without addressing the capacity to be redeployed would create an obligation with no object — the mirror image of the present difficulty, in which the courts demand efforts the law forbids.

6.2.4 Is the government subsidy available

This asymmetry is fiscal, and it is the one most easily overlooked in a doctrinal comparison. Both systems provide for temporary suspension of operations with continued partial payment of wages. The Japanese employer suspending operations pays an allowance under Article 26 of the Labor Standards Act; the Thai employer pays seventy-five percent of wages under section 75 of the Labor Protection Act.

The difference lies in who funds it. In Japan the Employment Adjustment Grant, made under Article 62(1)(i) of the Employment Insurance Act, reimburses the employer for a proportion of wages paid during suspension, training, or secondment, expressly conditioned on preservation of the employment relationship. The statute names economic causes directly: fluctuation in business conditions, changes in industrial structure, and other economic reasons. Suspension therefore remains financially possible for an employer whose revenue has collapsed.

In Thailand no equivalent exists. Public support under the social security scheme attaches only where the suspension is attributable to *force majeure*, and the ministerial definition of that term covers natural disasters and dangerous communicable disease — exogenous events that make performance impossible, not economic conditions that make it unprofitable. An employer that suspends because there is no work must fund three-quarters of its wage bill from resources already depleted, for a period it cannot forecast, while producing nothing. This provision is therefore best understood as a provision built for a different class of interruption such as the fire, the flood, the plant breakdown, where the stoppage is short and resumption assured. In those conditions the seventy-five percent obligation is a rational allocation of risk. In economic contraction it is not an alternative to dismissal but a slower and more expensive route to the same place. The COVID-19 pandemic demonstrated this at scale. Undertakings closed by government order fell within the extended *force majeure* definition and obtained relief; undertakings whose markets had simply disappeared did not, and many chose redundancy or closure instead.

An alternative that ruins the employer who uses it is not an alternative. This is the point at which the Japanese and Thai schemes diverge sharply, and it has nothing to do with culture or employment practice. It is a question of public expenditure.

6.2.5 Whether form is allowed to defeat substance

This final asymmetry concerns the perimeter of the protected relationship. Neither system treats the expiry of a fixed-term contract as a dismissal, and neither has legislated general conversion of repeated fixed-term contracts into indefinite employment as its operative response. But Japanese law does not allow the formal distinction to be dispositive. Article 19 of the Labor Contracts Act, codifying the *yatoidome* case law, applies the dismissal standard to a refusal to renew where renewal has occurred repeatedly or where the worker had reasonable grounds to expect it. The employer’s formal freedom to decline to renew the contract survives in name while being subjected in substance to the constraints of the dismissal regime. The strategy is defeated at precisely the point where it would otherwise become effective.

Thai law asks only what the contract says. Fixed-term contracts may be used for permanent work and renewed without limit, and non-renewal is not a dismissal. The single moderating factor is cost. Severance accrues across the aggregate of successive contracts, so an employer that declines to renew a long-serving worker avoids the unfair dismissal claim but not the severance liability.

Outsourcing removes even that. Section 11/1 of the Labor Protection Act deems the user undertaking an employer for wages and welfare, but the deeming does not extend to termination. When the user no longer needs the labor it terminates a commercial contract, not an employment relationship. There is no dismissal to review and no severance to pay. The provision protects the worker during the arrangement and abandons the worker at its end.

6.3 The Structural Variable

Placed side by side, the five asymmetries describe a single variable. Japanese law restricts the exit tightly but leaves the interior open and funds the most expensive of the interior options from public money. Thai law restricts the exit tightly, closes the interior, funds nothing, and then leaves two doors open at the perimeter through which employers may leave the protected relationship altogether.

Employers respond rationally. Where retention is workable, they retain. Where it is not, and where avoidance is available, they avoid. The result is the paradox this paper set out to explain: the jurisdiction that regulates dismissal more rigidly produces the less stable workforce, because rigidity without accommodation does not create secure employment. It creates fixed-term and outsourced employment.

The proposition may be stated generally. The stability of employment depends less on the severity with which the law restricts dismissal than on whether the law leaves the employer a workable alternative to it, and on whether it closes the routes by which the restriction may be avoided. A system that does the first without the second and third will not deliver security. It will deliver avoidance.

6.4 Which Japanese Features Could be Adopted

If Thailand were to draw on the Japanese configuration, the threshold question is which of its elements can be separated from the institutional setting that produced them.

Some plainly cannot. The employer's power to redeploy without consent rests on the membership model — the worker is engaged as a member of the enterprise rather than to perform a defined function — and that model is itself the product of new-graduate recruitment, long-horizon internal training, and a wage system that pays the person rather than the job. Legislating a Thai employer's power to reassign staff would not reproduce the Japanese result, because Thai workers are hired and trained for particular functions and frequently could not perform another role in the organization. The obligation would exist without the capacity. Similarly, the "status of negotiations" factor in Article 10 presupposes an enterprise union with which to negotiate; in a labor market where union density is low, that factor would be inoperative in most workplaces.

Others can be adopted, because they are legal or fiscal techniques rather than expressions of employment practice.

The interpretation of necessity in reorganization cases

The most readily transferable element of the Japanese configuration is not a statute. Article 16 says nothing about how severe a business's difficulties must be before a reduction becomes necessary; the four-part test, and with it the treatment of necessity, is judicial work product. It requires no enabling legislation, no appropriation, and no institutional precondition — only that a court adopt it.

Three features of the Japanese approach set out in Part 2.1 could be adopted into Thai practice. The framing of the question as whether a reduction was necessary rather than whether dismissal was; the assessment of necessity at the level of a division rather than the enterprise as a whole; and the acceptance of reductions undertaken to forestall difficulties reasonably anticipated. Together these would permit a Thai employer to reorganize while the enterprise remains viable, rather than deferring restructuring to the moment it is least likely to succeed.

Two qualifications are essential. The first is that deference to commercial judgment is not abdication: what changes is the object of review, the reasonableness of a decision rather than the sufficiency of a loss, not its intensity. In Japan the necessity criterion is the least demanding of the four precisely because the avoidance criterion is the most demanding.

The second concerns sequence, and it is the more important. This reform must not be adopted alone. Loosening the threshold while the interior of the Thai relationship remains closed and unfunded would remove the principal constraint on economic dismissal and supply nothing in its place. Received separately, it is deregulation; received with the wage subsidy, the reasonableness standard for varying work rules, and the closure of the fixed-term and outsourcing routes, it is the pivot on which the Japanese bargain turns.

The wage subsidy

Nothing about the Employment Adjustment Grant depends on membership employment, seniority wages, or enterprise unionism. It is a transfer payment conditioned on retention, administered through an employment insurance fund. Thailand already operates a Social Security Fund with the necessary administrative machinery and already pays benefits in the *force majeure* case; extending support to economically caused suspension would require a definitional amendment and an appropriation, not a restructuring of the labor market.

Should the Social Security Fund prove unsuitable, the Employee Welfare Fund offers an alternative vehicle. Its existing purpose is to provide for employees where the employer cannot, and support during suspension of operations is a variation on that function. The choice between the two is a question of administrative convenience; what matters is that the cost of retention through a downturn is shared rather than borne by the employer alone.

A reasonableness standard for varying working conditions

Article 10 of the Labor Contracts Act is a legal test, not a cultural artefact. Thai law could permit unfavorable amendment of work rules where the change is reasonable in light of the disadvantage to employees, the necessity for it, and the process followed — with judicial review of reasonableness supplying the protection that consent now supplies. This would require qualifying the deeming effect of section 10 of the Labor Relations Act, which presently converts an employer-drafted instrument into a negotiated bargain and forecloses the question entirely.

Extending the dismissal standard to fixed-term workers and outsourcing

Article 19 is pure doctrine. A Thai equivalent, applying the unfair dismissal standard to fixed-term workers where a contract has been repeatedly renewed or where the worker had reasonable grounds to expect renewal, requires no institutional precondition at all. The same is true of extending section 11/1 so that the user undertaking's obligations as deemed employer include those arising on termination.

7. Conclusion

This paper began from a paradox. Japanese and Thai law ask employers almost the same question when an economic dismissal is challenged, and both refuse to let an employer purchase its way out of the employment relationship at a fixed price. Yet Japan retains a large regular workforce whose average tenure has lengthened, while in Thailand fixed-term and outsourced arrangements have grown steadily and the protected regime governs a diminishing share of the workforce it was built to serve. The severity of the dismissal rule cannot explain the divergence, because on that measure the two systems are comparable.

The explanation offered in this paper is that job security in Japan is not produced by the strictness of the legal provisions but by what surrounds it. Japanese law restricts the exit tightly, leaves the interior of the relationship open, funds the most expensive of the interior options from public money, and closes the perimeter through which employers might otherwise escape. An employer facing surplus labor may act early and at the level of a division. It may suspend operations with the cost of the wage allowance partly reimbursed under the Employment Adjustment Grant. It may vary work rules where the variation is reasonable, and move workers to different duties without renegotiating pay, across a workforce trained by rotation to absorb such moves. If dismissal ultimately proves unavoidable, public programs assist the transition outward. And should the employer attempt to avoid the regime by relying on the form of a fixed-term contract, the law applies the dismissal standard to the refusal to renew. Retention remains a realistic commercial choice, and employers therefore retain.

Thai law restricts the exit as tightly and does none of the rest. Necessity must be demonstrated by loss severe enough to threaten the undertaking's survival, so that reorganization becomes lawful only when it is least likely to succeed. Work rules, collective agreements, individual contracts, and job assignments are all immune from unilateral variation, so the employer required to attempt alternatives is denied the power to attempt them. Suspension of operations carries a seventy-five percent wage obligation and no subsidy outside *force majeure*, so the alternative that exists on paper is unusable in the downturn for which it would be needed. The workforce is trained to a function rather than to the enterprise, so that even consensual redeployment often has no object. And two doors stand open at the perimeter: the fixed-term contract, which may be used for permanent work and renewed without limit, and outsourcing, under which the law protects the worker throughout the arrangement and abandons him at its end. Confronted with a regime that forbids exit, forecloses adjustment, funds nothing, and leaves avoidance available, employers do not keep workers on protected terms. They decline to engage them on those terms at all.

The stability of employment depends less on the severity with which the law restricts dismissal than on whether the law leaves the employer a workable alternative to it and whether it closes the routes by which the restriction may be avoided. A system that does the first without the second and third does not produce secure employment. It produces avoidance, and the regime governs an ever-smaller share of the workforce.

For Thai reform the lesson is cautious rather than prohibitive. Article 16 cannot be borrowed on its own, but the configuration is not indivisible. Its legal and fiscal techniques can be separated from the employment practices that surround them. The interpretation of necessity, the reasonableness standard for varying work rules, the retention subsidy, and the extension of dismissal review to non-renewal and to outsourcing each require legislation, judicial development, or appropriation — not a restructuring of the labor market. What cannot be legislated is the readiness of the workforce to be moved, and any reform granting powers of redeployment without addressing that capacity will create an obligation with no object.

Sequence matters more than selection. Each measure addresses one asymmetry, and each taken alone reproduces the imbalance it was meant to correct. The Japanese bargain works because security and managerial discretion are traded against one another. A reform delivering one without the other is not a partial version of that bargain but a different arrangement altogether.

Employment law is judged not only by how firmly it holds those it reaches, but by whom it reaches. Thai law protects the workers within the regime rigorously, yet the regime governs a narrowing share of those it was designed to serve. The Japanese experience suggests that this is a matter of legal design rather than of fate, and that is why the comparison is worth making.

Bibliography

Books and Monographs

Hanami, Tadashi A., Fumito Komiya, Ryuichi Yamakawa, and Chikako Kanki. *Labour Law in Japan*. 3rd ed. Alphen aan den Rijn: Wolters Kluwer, 2025.

Hazama, Hiroshi. *Keizai taikoku o tsukuriageta shisō* [The Thought That Built an Economic Superpower]. Tokyo: Bunshindo, 1996.

Inagami, Takeshi. *Posuto-kōgyōka to kigyō shakai* [Post-Industrialization and Corporate Society]. Kyoto: Minerva Shobo, 2005.

Kawaguchi, Daiji, ed. *Nihon no rōdō shijō: Keizai-gakusha no shiten* [The Japanese Labour Market: An Economist's Perspective]. Tokyo: Yuhikaku, 2017.

Kluerklin, Pongratana. *Labor Law for Human Resources Management*. 11th ed. Bangkok: Nititham, 2018.

Koike, Kazuo. *Shigoto no keizaigaku* [The Economics of Work]. Tokyo: Toyo Keizai, 1999.

Nishitani, Satoshi. *Rōdōhō* [Labour Law]. 3rd ed. Tokyo: Nihon Hyōronsha, 2020.

Sugeno, Kazuo. *Japanese Employment and Labor Law*. Translated by Leo Kanowitz. Durham, NC: Carolina Academic Press, 2002.

———. *Rōdōhō* [Labour Law]. 12th ed. Tokyo: Kōbundō, 2019.

Vogel, Ezra F. *Japan as Number One: Lessons for America*. Cambridge, MA: Harvard University Press, 1979.

Chapters in Edited Collections

Araki, Takashi. "Flexibility in Japanese Employment Relations." In *Japanese Commercial Law in an Era of Internationalization*, edited by Hiroshi Oda, London: Graham & Trotman, 1994.

Inagami, Takeshi. "Nihon no sangyō shakai to rōdō" [Japanese Industrial Society and Labour]. In *Kōza shakaigaku 6: Rōdō*, edited by Takeshi Inagami and Takashi Kawakita, Tokyo: University of Tokyo Press, 1999.

Takeuchi-Okuno, Hisashi. "The Regulation of Fixed-Term Employment in Japan." In *Labor Policy on Fixed-Term Employment Contracts*, 69–83. JILPT Report no. 9. Tokyo: Japan Institute for Labour Policy and Training, 2010. https://www.jil.go.jp/english/reports/documents/jilpt-reports/no.9_japan.pdf.

Journal Articles

Araki, Takashi. “Changing Employment Practices, Corporate Governance, and the Role of Labor Law in Japan.” *Comparative Labor Law and Policy Journal* 28, no. 2 (2007): 251-281.

———. “Corporate Governance Reforms and Labor and Employment Relations in Japan: Whither Japan’s Practice-Dependent Stakeholder Model?” *University of Tokyo Journal of Law and Politics* 1 (2004): 45-86.

———. “Labor and Employment Law in Japan: Changing Traditional Model.” *Shinshū Daigaku Keihō Ronshū* [Shinshu Economics and Law Review], no. 5 (2018): 1-22.

Arita, Kenji. “Legal Regulation of Dismissal in Japan.” *King’s Law Journal* 33, no. 2 (2022): 228-247.

Fujimoto, Makoto. “What Is Japanese Long-Term Employment System? Has It Vanished?” *Japan Labor Issues* 1, no. 1 (September 2017): 22-25.

———. “Will the Japanese Long-Term Employment System Continue to Be Maintained?” *Japan Labor Issues* 8, no. 47 (Spring 2024): 57-62.

Genda, Yuji. “Youth Employment and Parasite Singles.” *Japan Labor Bulletin* 39, no. 3 (2000): 5-12.

Ikeda, Shingou, Kota Tagami, and Kazufumi Sakai. “The Future of the Japanese Long-Term Employment Society: The Consequences of Post-Industrialization and Increase of Unmarried Workers.” *Japan Labor Issues* 6, no. 37 (March–April 2022): 21-42.

Imada, Sachiko. “Joshi rōdō to shūgyō keizoku” [Female Labour and Job Retention]. *Japanese Journal of Labour Studies* 38, no. 5 (1996): 37–48.

Komiya, Fumito. “The Law of Dismissal: A Comparative Study (1).” *Hōgaku Kenkyū* [Hokkai-Gakuen Law Journal] 29 (1993).

Nagase, Nobuko. “Jakunen-sō no koyō no hi-seiki-ka to kekkon kōdō” [Marriage Timing and the Effect of the Increase in Non-Standard Employment among Youth in Japan]. *Journal of Population Problems* 58, no. 2 (2002): 22–35.

Nishitani, Satoshi. “Seiri kaiko o meguru hōteki mondai ni tsuite” [Some Issues Concerning Dismissal for Redundancy]. *Chūō Rōdō Jihō* 956 (1999).

Sugeno, Kazuo, and Keiichi Yamakoshi. “Dismissals in Japan, Part One: How Strict Is Japanese Law on Employers?” *Japan Labor Review* 11, no. 2 (2014): 83–92.

———. “Dismissals in Japan, Part Two: How Frequently Do Employers Dismiss Employees?” *Japan Labor Review* 11, no. 4 (2014): 118-137.

Takahashi, Koji. “The Future of the Japanese-Style Employment System: Continued Long-Term Employment and the Challenges It Faces.” *Japan Labor Issues* 2, no. 6 (April–May 2018): 6-15.

———. “Long-Term Employment as a Social Norm: An Analysis of the JILPT ‘Survey on Working Life’ (1999–2015).” *Japan Labor Issues* 3, no. 19 (November 2019): 12-17.

Yamashita, Noboru. “Koyō taisaku kanren hō kaisei no mondaiten to kadai” [Problems to Be Solved Concerning the Amendment of Laws Relating to Employment Measures]. *Nihon Rōdōhō Gakkaishi* [Journal of Labour Law] 98 (2001).

Zou, Fangmiao. “The ‘New Trinity’ Reform of Labour Markets in Japan.” *Asia Pacific Business Review* 30, no. 3 (2024): 577–595.

Institutional Reports, Surveys, and Official Publications

Japan Institute for Labour Policy and Training. *Labor Situation in Japan and Its Analysis: General Overview 2015/2016*. Tokyo: JILPT, 2016.

———. *Nihonteki koyō shisutemu no yukue* [The Future of the Japanese-Style Employment System]. JILPT Project Research Series no. 4. Tokyo: JILPT, 2017.

Ministry of Health, Labor and Welfare. “Age of the 100-Year Life: Current State of Employment Measures for the Elderly.” 2023.

———. *Basic Survey on Wage Structure*. 2011, 2016, 2022, 2024 editions.

———. *General Survey on Working Conditions*. 2022.

———. *Labor Union Basic Survey*. 2017.

Organization for Economic Co-operation and Development. *Manpower Policy in Japan*. OECD Reviews of Manpower and Social Policies 11. Paris: OECD, 1973.

Thailand, Department of Labour Protection and Welfare. Trade union registration statistics. https://relation.labour.go.th/attachments/category/217/20260804143212023_0001.pdf.

Other Sources

Editorial. “Abe’s Missing Arrow.” *Financial Times*, October 7, 2013.

Fair Labor Association. “Hong Seng Knitting.” https://www.fairlabor.org/reports/hong-seng-knitting/.

Legislation — Japan

Act on Comprehensive Promotion of Labor Measures and Stabilization of Employment of Workers and Enrichment of Their Working Lives. Act No. 132 of 1966.

Employment Insurance Act. Act No. 116 of 1974.

Labor Contracts Act. Act No. 128 of 2007.

Labor Union Act. Act No. 174 of 1949.

Ordinance for Enforcement of the Act on Comprehensive Promotion of Labor Measures and Stabilization of Employment of Workers and Enrichment of Their Working Lives. Ministry of Labor Ordinance No. 23 of 1966.

Ordinance for Enforcement of the Employment Insurance Act. Ministry of Labor Ordinance No. 3 of 1975.

Legislation — Thailand

Act on Establishment of Labor Courts and Labor Court Procedure B.E. 2522 (1979).

Civil and Commercial Code B.E. 2468 (1925).

Labor Protection Act B.E. 2541 (1998).

Labor Relations Act B.E. 2518 (1975).

Skill Development Promotion Act B.E. 2545 (2002).

Ministerial Regulation on the Receipt of Unemployment Benefits in Cases of Force Majeure B.E. 2560 (2017). https://www.ratchakitcha.soc.go.th/DATA/PDF/2560/A/007/7.PDF.

Ministerial Regulation on the Receipt of Unemployment Benefits in Cases of Force Majeure Arising from the Spread of a Dangerous Communicable Disease under the Law on Communicable Diseases B.E. 2563 (2020) https://www.ratchakitcha.soc.go.th/DATA/PDF/2563/A/029/T_0008.PDF.

Cases — Japan

Hirata v. Hitachi Medico Co. (Hitachi Medico Case). Supreme Court of Japan, December 4, 1986. 486 Rōdō Hanrei 6.

Maeda v. Toshiba Co. (Toshiba Yanagi-chō Kōjō Case). Supreme Court of Japan, July 22, 1974. 28 Minshū 927.

Nihon Shokuen Seizō Case. Supreme Court of Japan, Second Petty Bench, April 25, 1975. 29 Minshū (no. 4) 456.

Shioda v. Kōchi Hōsō Co. (Kōchi Hōsō Case). Supreme Court of Japan, Second Petty Bench, January 31, 1977. 268 Rōdō Hanrei 17.

Tokuji Yoshikawa v. Shūhoku Bus Co. (Shūhoku Bus Case). Supreme Court of Japan, Grand Bench, December 25, 1968. 22 Minshū 3459.

Tōyō Sanso Case. Tokyo High Court, October 29, 1979. 330 Rōdō Hanrei 71.

Cases — Thailand

Court of Appeal for Specialized Cases Decision No. 538/2566 (2023).

Court of Appeal for Specialized Cases Decision No. 1425/2567 (2024).

Court of Appeal for Specialized Cases Decision No. 2443/2566 (2023).

Supreme Court Decision No. 547–548/2530 (1987).

Supreme Court Decision No. 1766–1771/2544 (2001).

Supreme Court Decision No. 1850/2547 (2004).

Supreme Court Decision No. 2635/2544 (2001).

Supreme Court Decision No. 3116/2544 (2001).

Supreme Court Decision No. 3119–3135/2567 (2024).

Supreme Court Decision No. 3456/2545 (2002).

Supreme Court Decision No. 3933/2546 (2003).

Supreme Court Decision No. 4038–4039/2545 (2002).

Supreme Court Decision No. 6629/2541 (1998).

Supreme Court Decision No. 7083/2548 (2005).

Supreme Court Decision No. 7238–7239/2544 (2001).

Supreme Court Decision No. 8396–8399/2550 (2007).

Supreme Court Decision No. 10045/2556 (2013).