

## Labor Relations in Japan

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### 1. Introduction

- Union participation since 1974
  - Japan National Railway Union (Kokuro), 1974-1975
  - Japan Teachers Union (Nikkyoso), 1976-1989
  - EWA (KyoikuGodo) and National Trade Union Council (Zenrokyo) 1989-
- I will focus on individual labor relations, and group labor relations, union.

### 2. Entering into Employment - Hiring: Labor Contract – Stage 1

- Labor contracts exclude self-employed, entrepreneurs.
- Contract of sale and purchase of labor power commodity
- Contracts show the working conditions:
  - (1) Working conditions proper
    - working time – 8hours a day
    - work place – Osaka
    - holidays – days off, annual leave, sick leave, maternity leave, child care leave
    - wages – basic payment, overtime allowance, retirement allowance
    - etc,
  - (2) Insurance – fringe benefits
    - Health insurance, 健康保険 *kenko hoken*
      - contribution is shared by employer and employee (work related health insurance)
    - Pension scheme, 年金 *nenkin*
      - ditto
      - \* full-timers and part-timers whose working hours are more than 3/4 of full-timers are obligated to join above insurances
    - Unemployment insurance, 雇用保険 *koyo hoken*
      - worker's contribution is 0.6% of her/his monthly salary
      - \* full-timers and part-timers whose working hour are more than 20 hours a week are obligated to join this insurances

– case study 1, Kandai

Industrial accident and illness insurance 労災保険 *rosai hoken*

all employees are covered by this insurance and employers pay all contribution (Workers' Accident Compensation Insurance Act, *rosai-hoken-hou*)

## 2-1 Classification of employment contract

### (1) Duration

#### ① Limited term contract:

- It must be less than 3 years (exception for doctors, lawyers etc.) by Labor Standards Act, 労働基準法 *rodo kijun hou*
- common contract: one year contract with renewal limitation such as 3 times
- becomes permanent when the term expires and the employee continues to work without any objection including making a new contract from the employer ( Civil Code § 628, 民法 *minpou*)

– case study 2, Geos

#### ② Permanent contract:

- must not conflict with age of retirement, such as 60 or 65
- regarded as lifetime employment only in the case of public servants and big company employees.
- Most Japanese workers are not covered by permanent contracts.

### (2) Type

#### ① Verbal contract:

- Normal in a permanent contract situation, and give an employee a *jirei*, appointment paper
- In a temporary contract situation it tends to become a permanent, see the case of Gios mentioned above.
- In some case, *jirei*, appointment is not considered as a rollover contract but as same as a limited term contract.

– case study 3, Daikei

#### ② Written contract:

- duration of contract is mutually agreed

Its renewability must be shown when it is made – Notification 357 of Ministry of Labor

(3) Who makes contract: person

- ① Direct
- ② Indirect: dispatch, sub-contract

2-2 Non-contract: Special local public servant - ALT

- ALT cannot make a mutual contract with a city – district court precedents
- *Ninyo*, a kind of appointment instead of contract: in the *ninyo* system, it is not renewed but a new *ninyo* is made every time so that ALTs can have no expectation of renewal.

3. During the Term of Employment: working conditions – Stage 2

- Working conditions: conditions under which an employer consumes labor power commodity are stipulated in a contract

(1) Determination of working conditions

- ① individual – contract
- ② group – rules of employment, work rules, 就業規則 *syugyo kisoku*
  - Working conditions are standardized and uniform in the capitalist mode of production such as in a factory so that *syugyo kisoku* is more efficient than an individual contract.
  - Group contract, *syugyo kisoku*, take precedence over individual contracts (Labor Standards Act § 93 労働基準法 *rodo kijun hou*, Labor Contract Act § 12 労働契約法 *rodo keiyaku hou*)
  - case study 4, Chutan –pay scale
  - case study 5, Hirosaki – retirement allowance
  - \* Exception - Principle of advantage:
    - in case individual contract is better or more beneficial than group one, it takes precedence over group.
- ③ Union contract negotiated agreement, collective agreement
  - The rules of employment, *syugyo kisoku*, shall not infringe any laws and regulations or any collective agreement applicable to the workplace concerned (Labor Standards Act § 92 労働基準法 *rodo kijun hou*)

## (2) Change of working conditions

### ① Tenured , Full-timer

- mutual agreement is required (Labor Contract Act § 8, 労働契約法 *rodo keiyaku hou*) or work rule (Labor Contract Act § 10, 労働契約法 *rodo keiyaku hou*)

### ② part-timers with limited term of contract – basically impossible within the duration of contract. Exception – in case of improvement

## (3) Other important matter

- Employers are obligated to pay attention to safety of work place, mentally and physically – Industrial Safety and Health Law, Workers' Accident Compensation Insurance Act, 労災保険法 *rosai hoken hou*
- \* Practical results: physical check-up, annual leave and so on

## 4. Ending Employment: resignation, termination, dismissal – Stage 3

### 4-1. How to end employment?

#### (1) Tenured, Full-timer

##### ① Age of retirement

##### ② Dismissal

###### a) Legitimate reason

Personal reason – fraud, harassment, fake CV, etc

Restructuring – 4 factors are required: Necessity (why), other means (not dismissal), criteria (whom), procedure (negotiation)

– case study 6 – Kinran or JAL

###### b) Unfair dismissal

Illegal dismissal: workmen's accident, maternity leave, nationality, trade union membership, gender, child care, report illegal matters to authorities, (age)

Without legitimate reason: court precedents

c.f. “at-will employment doctrine” Take it or leave!

– case study 7- Yuhigaoka

#### (2) Part-timer with limited term of contract

##### ① Dismissal within term of contract

Strict reason for dismissal required (Labor Contract Act § 17, 労働契約法 *rodo keiyaku hou*)

② Non-renewal of contract is divided into two categories.

a) Termination

- Based on contract: it explicitly shows the expiration of contract even though it must meet Notification 357 of renewability.
- If it is the first contract, expectation for renewal rarely exists.

b) Dismissal

- Legitimate reason is required if it is regarded as dismissal
- Elements considered as dismissal:
  - Number of renewal
  - Employer's words at the start of employment
  - History at the work place: cases, behavior, custom
- Expectation takes precedence over formality, though there is no law which stipulates these elements

— case studies 8 – Hitachi-Medico, Hotoku, Ohka, Rikkyo-Women, Asian University, etc.

4-2. Resignation void

- Mistake
- Fraud and Duress

5. Union

5-1 Role of union

- It can help you at every stage.

How to take action when you feel wronged by employers or boss?

Stage 1 – no discrimination against a union member is permitted.

— case study 9 - Seizankai

Stage 2 – negotiation proper

— case studies 10 – ALTs in Ashiya, Kobe etc. Kwangaku

Stage 3 – take advantage of Labor Union Act § 7 労働組合法 *rodo kumiai hou*

— unfair labor practices are not permitted

- a) to discharge or otherwise treat in a disadvantageous manner a worker by reason of such worker's being a member of a labor union

- b) to refuse to bargain collectively
- c) to control or interfere with the formation or management of a labor union
- ONLY Labor Union have right of organization, right of negotiation and right of strike (action collectively) – The Constitution of Japan § 28 日本国憲法 *kenpou*
- An employer is not an individual but an organ so that an employee needs an organization to deal with on equal basis.
- Employers try to violate contracts with employees due to the profit motive under competition, so that employees have to stop it in unity.
- An employee should watch that an employer does not excessively consume her/his labor power commodity, and insist an employer must get herself/himself back home who makes the labor power commodity which can be sold next day properly.
- Unions definitely support these workers.

#### 5-2. Types of union

- ① In-house union, company union, yellow dog union, 組合 *kumiai*  
 majority in Japan, not helpful in emergency,  
 part-timers are excluded by its constitution  
 leaders sometimes become managers based on their cooperative character with employers
- ② Real Union 労働組合 *rodo kumiai*  
 minority in Japan, small membership, high union dues, militant, experienced in dealing with labor problems,  
 focusing on contingent workers, non-Japanese, minority,

#### 6. Closing

Further information available at [www.ewaosaka.org](http://www.ewaosaka.org)