Deregulation Policy of Labour Laws in Japan

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Introduction

Japan has achieved economic growth under the strong administrative guidance. It actually has controlled economic activities of enterprises which has made the domestic market closed. So foreign companies found difficulties to enter into Japan because the administrative guidance built non-tariff barrier. And from 1980's Japan was criticised against export-oriented industrial policy which also maintained its closed domestic market. Namely Japan has a problem how to confront with international competition arising from globalization of economy. These problems began to get into an argument with deregulation of industrial policy. Especially after the burst of the bubble economy in 1990's, deregulation of industrial policy is thought to be one of the best ways to achieve structural adjustment and to recover economic recession.

What is the role of labour laws to respond to these economic problems ? In order to tackle these problems labour laws on labour market are being amended to make rigid regulations soft and flexible. But meanwhile, the other parts of labour laws are rather amended to make the regulations harder from the viewpoint of protection of the weak. Namely all Acts in the field of labour laws are not deregulated. The sphere of deregulation is selective. So we will examine recent amendments on labour laws in the folowing sections[1].

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1 Amendments in the field of labour market

(a) Deregulation of Workers Recruitment

There are some regulations under the Employment Security Act in 1947 concerning methods of recruitment. In principle, employers can use public employment placement service free of charge to recruit workers. Schools and qualified labour union may also provide free employment placement by notification to or permission of the Labour Minister.

Private placement was possible by the permission of the Labour Minister for only 29 occupations such as nurses, housekeepers, cooks, models, designers, artists, doctors, interpreters and so forth because labour supply agencies were strictly prohibited. In the past private employment agencies were often reported to press forced labour and intermediate exploitation to poor and weak workers. This raised to a need for regulation on employment exchange service when the Employment Security Bill was introduced to the Assembly after the Second World War.

But the situation of labour market has undergone big changes after the rapid economic growth period. About 20 percent of job–seekers only can find works through the Public Employment Services. It helps to find employment mainly for manual or un– or semi–skilled workers. It does not satisfactorily function for professional or managerial or technical labourers. Some of them began to change their jobs in order to promote their careers as specialists. Especially younger generations have tendency to change their jobs though they can enjoy long–time employment system. And middle or old workers occupying managerial posts are rationalized just after the burst of the bubble economy. They have troubles to find employment at the Public Employment Services. They rather want to find employment with charges at private employment agencies. But under the strict control of the Act, private employment agencies have only limited competency to answer their demands.

The amendment of Employment Security Act was put into effect from 1 April, 1997. There are two amended measures to allow private companies to participate employment placement services. One is the shift from "positive list" system to "negative list" system which abolishes general prohibition and lists prohibited work. So from April 1, 1997 private placement is permitted by the Labour Minister except for the following six types of works.

① office work within one year after starting employment for new graduates
② sales work within one year after starting employment for new graduates
③ service industry work, security work, agriculture, forestry and fishery, communications and transportation
④ skilled work in the manufacturing sector
⑤ work in the building and mining industry
⑥ work in labour management

Under the amendment office or sales workers can be recruited through the private placement agencies except those within one year after new graduates.

Another is the deregulation of the maximum charges paid from the client company to the private placement agency. As a registration fee 540 yen was paid to the placement agency respectively by the worker and the client company. And when the placement was successful, the charge could be fixed in maximum as 10.1 percent of the placed worker's wages paid for six months. But this rate was low for the placement of professionals. So the extra fees permitted by the Labour Minister can be added to 10.1 percent of wages as those for consulting, counseling and seeking proper works based on individual request.

The amendment of the Employment Security Act is trying to make external labour market flexible and new businesses on extensive scales. The new amendment is now discussed to liberalize, in principle, to make private employment exchange services[2)]. The reason behind these is to give many chances to find employment through both public and private employment services in conformity with the stipulations in ILO Convention No.181.

(b) Deregulation of Worker Dispatching Businesses

The Manpower Dispatching Business Act came into force on July 1, 1986 under the policy that the manpower supply business should be legalized and subject to certain conditions and regulations to protect dispatched workers. The dispatched workers are defined as those employed by the dispatching agency, which is the contractual employer, but works in the client company under the direction of the client company. Therefore the dispatching agency is different from the labour supply prohibited under the Employment

2) New bill will be discussed in the Diet held in Spring of 1999.

Security Act. There are two types of dispatching agency. One is the specific manpower dispatching agency, and another is the general manpower dispatching agency. In the former type, the dispatching agency must report its commencement of business to the Labour Minister and the dispatched workers are composed of solely regularly employed workers at the agency. In the latter type, the agency must get an operating license from the Labour Minister, and the workers must be registered as dispatched employees at the agency in advance, and then be dispatched to a client company in compliance with the request of the client company. Therefore, the labour contract is usually temporary in the latter type of business.

At first 16 types of works only were allowed by the Cabinet Order because under the consent of the Diet this Act did not generally legalize this type of business but allowed it as an exception limited to special businesses. These businesses were allowed under the principle that they required professional knowledge, skill and experience such as computer programming, or a special kind of labour management such as cleaning of buildings. But the number of registered workers increased from 140,000 in 1986 to 860,000 in 1998.

From the business point of view, the sphere of businesses should be extended in order to make Japanese employment practice more flexible. 10 new types of businesses were allowed on December 10, 1996. In total, 26 types of businesses are permitted under the present regulation.

Another point of deregulation was introduced to this Act. Dispatched workers are allowed to replace workers on maternity leave or on leave to care for children or elderly relatives in every type of business apart from port tranport services, construction work and security guard work. The period of work is limited to one year or the maximum length of time for those on care leave for children or elder relatives. And workers older than 60 and under 65 years can be dispatched in every types of businesses except port transport services, cnstruction work and security guard work. The period is restricted to one year and the dispatch contract cannot be renewed. The purpose of this deregulation is to secure employment to elder persons above 60 and under 65 years because the eligible age for the pension is to be raised gradually from 60 to 65 years.

Recently the draft of drastic amendment is issued by Central Employment Security Council organized by the Labour Ministry. The draft proposes to adopt negative list

system which legalizes generally worker dispatching business and lists prohibited businesses exceptionally. This draft would have function to increase atypical workers paid lower wages than regular workers. It is supported by the public and employer members of the Council, but the worker members criticize the draft because they cannot accept liberalization of worker dispatching business. Even under the present Act, there are many troubles on deliquent payment of wages, unpaid employment insurance contribution, abused dismissals by dispatching agency and etc. But the Bill based on the draft was issued to the Diet on December 1998. It is now discussed in the Assembly.

(3) Deregulation of the Labour Standards Act

Important provisions of the Labour Standards Act were proposed to be amended under the deregulation policy of the Labour Ministry[3]. These proposals were enacted on 25 September, 1998.

(a) Period of labour contract

A labour contract may be concluded for a definite or an indefinite term. Article 14 prohibited to fix a term of more than one year, except where the labour contract shall terminate upon completion of a specific project, such as construction of a dam. This provision has a policy to prevent negative effects caused by binding a worker for a long year. But recently negative effects can be found a little. Rather longer period of labour contract is needed to complete some works such as research projects. So under the amendment provisions, the maximum period will be extended to three years, but will be limited only to the employment of workers with highly professional knowledge, skill or experience and elder workers above 60 years.

In the former case the labour contract is limited for two cases ; one is concluded only in the workplace suffering from shortage of manpower for developing new products and new technology, and another is the work for beginning, converting, extending, reducing, and abolishing undertakings which will be completed for a certain period. This

3) The amendment of the Labour Standards Act in 1998 is the most comprehensive one since its enactment. In the addition to the topics in this paper the followings are amended ; specification of working conditions, notice of reasons for termination of labour contract, annual paid holiday, level up of minimum age for labour, labour dispute resolution system where the Labour Standards Office can give advice or instruction to the concerned parties.

amendment is supported under the consensus of both employee and employer side as there are so limited cases to deregulate maximum period of labour contract. This is a partial deregulation for highly specialists whose period of labour contract is limited to 3 years.

In the latter case there is no limitation of jobs in the case of labour contracts with elder workers. The purpose is to secure employment opportunities for elder workers over 60 years old after their mandatory retirement.

(b) Working Hour Regulation on Discretionary Work

The Labour Standards Act has adopted a discretionary work system since April 1, 1988 to give discretionary power to decide how to offer services to some kinds of workers. This amendment has a purpose to expand the sphere of discretionay work system. This is one of deregulation policies in the field of labour.

Under this system, employees engaging in highly specialized and discretionary work such as research and development are deemed to have worked for a certain number of hours as set forth in the collective agreement in spite of their actual working hours. Due to the nature of such employee's duties, it is difficult for an employer to indicate the means of accomplishment and to allocate working hours. Thus the employees have a wide discretionary power to decide the method of accomplishment and the allocation of working hours.

At present, the discretionary work system covers employees involved in research and development of new products and techniques, analysis and planning on information–management systems, gathering of materials and editing, designing, and the occupation of producer and director. The sphere of discretionary work system is stipulated by Ministrial Order. From April 1997, the following six types of workers are included in the category of discretionary work ; high level architect, patent attorney, real estate appraiser, lawyer, chartered accountant and copywriter. Totally 11 occupations are eligible for the discretionary work system.

Under the amendment provisions in 1998, new categories of works are extended for the discretionary work scheme. The new one is the occupation of planning, researching and analying operations which shall be decided as the discretionary work by the consent of all members at a labour–management committee to be established within the company.

This aims to extend discretionary work into a part of occupations in the administration division in the main establishment. National center of labour unions (Rengo) objects the bill because the discretionay work system shall prolong the actual working hours spent at the company and cut the time the workers will spend with their families. So Rengo contends that this system should be limited to workers who have real decision–making powers, and that the attempt to expand its sphere of application to new occupation is dangerous, as it may increase the number of occupations immune to working hour regulation. On the other hand, Nikkeiren (Japanese Employers' Association) maintains that this system should be extended to jobs such as planner of business strategy, sales, finance and so forth because the employers can save labour costs.

It is now considered how to make regulations in details on the sphere of application which will be effective from April 1, 2000.

(c) Flexibility of Working Hour Regulation

There are five types of flexible work hour system which allow an unequal distribution of normal working hours per day or per week.

In the first type of flexible working hour system, an employee can work for more than 8 hours on a special day, or 40 hours in a special week, if the average number of working hours for one month does not exceed 40 hours in a week. In this case an employer must stipulates in the rules of employment or the equivalent that the average working hours per week for a fixed period of no more than one month will not exceed maximum working hours. The amendment of this Act in 1998 provides that a labour–management agreement can introduce flexible working hours for one month in addition to the rules of employment.

The second type applies over a period not exceeding three months. This system is effective in industries with frequent shifts between busy and slack seasons. The weekly working hours cannot exceed an average of 40 hours under the labour management agreement stipulated in advance between the majority union or the representative of majority employees and the employer. The daily maximum limit shall be set at 10 hours per day and 52 hours per week.

As the third type, the average work hours system with the maximum period of one year is introduced on the basis of labour–management agreement. The agreement must

stipulate the workers covered and fix daily working hours and holidays. The maximum work hours were less than 9 hours per day and 48 hours per week. But the amendment in 1998 sets maximum hours at 10 hours per day and 52 hours per week and that rest days shall be set every 6 working days at its maximum except in a busy period stipulated in the labour–management agreement. And the maximum working days should be limited to 280 days. As a result the third and second type is integrated under the same provision of the Labour Standards Act. This introduces more flexible working hour system. But the Notification of the Labour Ministry stipulates that the upper limit of overtime work should be set at less hours in the third type than normal work hour system and the first and second type of flexible work hour[4]. In this case the degree of regulation is strengthened on the upper limit hours of overtime work.

As the fourth, in certain categories (e.g. retail sales, hotels and restaurants), small enterprises employing less than 30 employees may extend the daily maximum up to ten hours within a 40 hour work upon the conclusion of a labour–management agreement.

The fifth flexitime system allows workers to decide the commencement and termination of working hours within the rules of employment and a labour–management agreement to stipulate the framework of the system. The agreement must stipulate the scope of employees involved, the period of average work hour in less than one month, and the total hours of work during the period.

(d) Rest Periods

Employees who have worked more than 6 hours are entitled to rest periods totalling 45 minites. At least one hour must be granted to those who have worked more than 8 hours. The rest periods must be given to all employees at the same time. The reasons are to ensure an effective rest periods to the workers and to supervise rest periods easily exercised by the Labour Standards Inspector.

Permission to grant rest periods on an alternating basis may be obtained from the Chief of the Prefectural Labour Standards Office under Article 34 of the Labour Standards Act. This permission can be got in the follwing cases.

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4) In the case of flexible work hour system for one year the upper limit of overtime work is as follows : 14 hours per one week, 25 hours per two weeks, 40 hours per three weeks, 42 hours per one month, 75 hours per two months, 110 hours per three months, 320 hours per one year.

① where the workers are working at shift work system,
② where there is necessity to prevent dangers,
③ where the operation requires different rest periods even at the same workplace,
④ where alternating rest periods are necessary if the workers are divided into two groups.

The amendment in 1998 stipulates that rest periods on an alternating basis can be introduced under a labour–management agreement. It shall delete the permission from the Chief of the Prefectural Labour Standards Office. The consent of both labour and management only can decide how rest periods may be obtained on an alternative basis. This is one example of deregulation on working conditions.

(e) Overtime Work and Work on Holidays

Overtime work or work on holidays is allowed under two conditions. One is the conclusion of an agreement with the majority union or with the representative of the majority of the employees in the absence of the majority union. The other is submission of the agreement to the Labour Standards Office. The agreement should specify matters such as the business reasons for which it will be necessary to require overtime work and work on holidays, the type of overtime work permitted and the hours of overtime work permitted. There is no limit to the hours of overtime work and work on holidays except a maximum of two hours per day in the case of underground labour or jobs injurious to health. But the Labour Ministry has issued administrative guidelines on the maximum hours of overtime work in order to reduce the total working hours.

The Labour Ministry guideline on maximum overtime work is as follows ; 15 hour per week, 27 hours per two weeks, 43 hours per four weeks, 45 hours per one month, 81 hours per two months, 120 hours per three months and 360 hours per year. This guideline has no legal force. An employer should not be punished even if he would violate the guideline. But the amendment in 1998 provides that the upper limit standard should be given legal standing under a ministerial notification for the Chief Labour Standards Office to give advice and instruction to those violating it. This gives stronger power to the Labour Standards Office to enforce the limit of overtime work than before. Regulation policy, in the contray, is adopted in this field because the Labour Ministry thinks it important to reduce annual working hours in order to harmonize family and work life.

And as another reason behind this Japan is demanded to keep fair trade by reducing working hours by other countries, especially USA.

3 Legal Development of Equal Employment

Since International Women's Year in 1975 and the ratification of the Convention concerning the Elimination of All Forms of Discrimination against Women in 1979, many steps have been taken by the Labour Ministry to promote equality in employment between both sexes. The important action was the enactment of Equal Employment Opportunities Act (hereinafter referred as EEOA) in 1985. About ten years have passed after this Act was effective. So recently important legislative developments have been shown by the Labour Ministry. Namely the amendment of EEOA and other related provisions of the Labour Standards Act was enacted in June 1997 and was effective from April 1, 1999. And Child Care and Family Care Leave Act (hereinafter referred as CCFCA) was enacted in 1995 and was effective from April 1, 1999. These Acts have two purposes ; one is to prohibit sexual discrimination, the other to harmonize work and family life. For the purposes regulation on these Acts was rather strengthened. But also we can find some deregulations of overtime, holiday and night work by women under the amendment of the Labour Standards Act in 1997.

Under EEOA of 1985, the employer has a duty to endeavor to give equal opportunities to women when recruiting and hiring workers, and with regard to job assignment and promotion. "Duty to endeavor" has brought only moral duty to the employer without legal sanction against the violation of the Act. At the very most this has provided the basis for administrative guidance. But the amendment of EEOA stipulates that the employer shall be prohibited to discriminate against women with regard to recruitment, hiring, job assignment and promotion. This provision nullifys the labour contract which violates it and the employer who violates it may be claimed damages in tort suits. But it does not carry criminal punishments.

The employer shall not discriminate between both sexes as regards vocational training, fringe benefits such as loans for building or purchasing a house or children education, and mandatory retirement or dismissal. These provisions has not been changed under the amendment of EEOA.

The Act provides for administrative guidance and mediation procedure as the

machinery for enforcing the employer's duty. Employers are obliged to endeavour voluntarily to resolve complaints by referring them to the grievance machinery in their own companies composed of representatives of labour and management. The Directer of Prefectural Women's and Young Workers' Office (local agency of the Labour Ministry) is empowered to give assistance in the resolution of disputes on sex discrimination. The Director shall refer disputes to mediation by the Equal Opportunity Mediation Commission composed of three members appointed by the Labour Ministry from among "people of learning and experience", if both parties agree to the referral. But this mediation procedure is not almost utilized because it is difficult to obtain both parties' consent for the referral and the settlement proposal by the Commssion has no binding effect to both parties. Therefore the amendment of EEOA provides that the Commssion shall be involved on the request of one party concerned. And it introduces a new sanction of publicizing the name of a non-complying company.

There have no provisions to prohibit sexual harassment under EEOA before. Therefore women suffering from sexual harassment must claim damages in torts suits on Article 709[5] or 715[6] of the Civil Code or under the infringement of employer's duties to provide comfortable conditions to women under Article 415[7] of the Civil Code. We can find above 30 labour cases on sexual harassment which almost ended a victory for women. The courts found the employer's liability in torts on the ground that the employer infringed human dignity and sexual freedom of female employees. The amendment of EEOA introduces a new provision that the employers shall endeavour to prevent sexual harassment in the workplace. The administrative guidance is laid down for the employer to take care of employment management in order to prevent sexual harassment.

As above-mentioned, employment equality between both sexes is being fairly

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5) Art. 709 of the Civil Code : A person who intentionally or negligently violates the rights of another is obliged to compensate for damages arising therefrom.

6) Art. 715 of the Civil Code : Section 1. A person who employs another person for a certain undertaking is liable for damages caused by such employees to third person in the selection of the employees and in the supervision over the undertaking, or unless the damages would have arisen even if due care had been exercised.
Section 2. A person who supervises the undertaking on behalf of the employer is also subject to the responsibility of the preceding paragraph.
Section 3. The provision of the preceding two paragraphs shall not prevent an employer or supervisor from exercising his right to reimbursement from the employees.

7) Art. 415 of the Civil Code : If an obligor fails to perform in accordance with the main sense of the obligation-duty, the obligee may demand compensation for damages ; the same shall apply in the cases where performance becomes impossible for any reason imputable to the obligor.

promoted through the recent legislative development. But there are adavantageous provisions on female workers in the Labour Standards Act. These provisions must be abolished in order to attain equality in working conditions. So regulations on overtime, night and holiday work for female workers was abolished from April 1, 1999 in exchange for the strengthening of EEOA. Female workers are applied the same provisions on overtime, night and holiday work with male workers[8]. This is a deregulation of the Labour Standards Act on female workers. As a result, the employer will apply the same work systems which are used for men to women. So women workers are afraid of longtime works which will deprive them of job opportunities because they continue to do house work including child care and nursing care.

CCFCA prohibits a night work to man and women workers responsible for child care or family care under their requests from April 1, 1999. There are some conditions as follows to apply night work exemption. ① A child must not be in primary school. ② Family member (it means spouse of the worker, parents, child, parents of spouse, grand parents, siblings and grandchild dependent of the worker) must have necessity to be cared for more than two weeks. Only female worker requesting a night work exemption can designate the period of the exemption before one month. The request can be allowed multiple times. This exemption comes from the policy to harmonize work and family life. Three years later it will be amended that not only female workers but also male workers responsible for child and family care can request to exempt night work.

Conclusion

Deregulation of labour laws is mainly targetting into the field of individual labour contract and labour market in Japan. Collective labour relations are not discussed in regard to the deregulation. Because there are few direct regulation of the government on collective labour relations. Though Trade Unions Act was enacted, it has have only the basic framework for collective labour relations. So it has the flexible structure to keep freedom of association, collective bargaining, and the right to srike. Enterprise–wise

8) In the case of female workers overtime works were limited in the following ; 6 hours per one week and 150 hours per one year for female workers engaged in manufacturing, mining, construction, transport and freight traffic industry, 12 hours per one week and 150 hours per one year for those engaged in health and sanitation, recreation industry, 36 hours per one week and 150 hours per one year for those engaged in forestry, commerce, banking and insurance, cinema and drama, communication, education ans research, cleaning and slaughter industry.

unions and joint consultation councils have been voluntarily based, not depending upon statutory regulations. Namely "industrial autonomy" has been established through collective bargaining and joint consultation between labour and management. Therefore the government has have a little interventional role in establishing industrial relations. Now in Japan there is no discussion on the deregulation of collective labour relations. But union density is declining from 30.8% in 1980 to 22.4 % in 1998. This is the sign that the sphere of industrial autonomy is becoming smaller and the function of collective bargaining is weakened. On the contrary, individual labour contract is of importance to regulate working conditions.

How does the deregulation of individual labour law and labour market have influences on employment practices ? Are these influences useful to structural adjustment for recovering economic recession ? Do new businesses increase in number ? Long–time employment has been a big feature which maintains stable employment in Japan. Even in economic recession employment security has been kept through flexible deployment of employees or flexible working conditions in an enterprise. Dismissal including economic dismissal is thought to be the last resort. Namely employment security can be possible under the flexibility in internal labour market such as flexible working hours and abolishment of female workers regulations.

The fluidification of employment may come from either voluntary choice of worker or convenience of the company. Recently young workers want to have freedom to change jobs for grade–up of their careers. Middle or old workers are sometimes retrenched or laid off owing to bankruptcy. And unemployment rate stood at 4.8 percent in March 1999. The unemployment rate for those aged 15 to 24 was 9.1 percent and for those 60 and 64 was 12.1 percent. This is the highest figure since 1953 which suggests that the employment situation is rapidly worse.

As a result, long–time employment pratice will be weaker than before, but will not disappear because only core regular workers will enjoy long–time employment based on seniority cum merit management system. There will increase atypical workers such as parttime and dispatched workers especially in banking, insurance, wholesale, retail and catering businesses who need an employment fluidication policy to be able to find new employments easily at external labour market. Private employment agencies and dispatching businesses are necessary for this purpose. The workers holding high

technology and special knowledge can enjoy better working conditions under individualized labour contract. But in general atypical workers have received worse working conditions than core regular workers. So we must give utmost protection to the atypical workers concerned who will be treated discriminatorily.

As the last point we must make mention of international pressure to request fair trade to Japan. Japan shall avoid ctiticism that it exports cheap goods in large quantities made by low labour costs. For the purpose Japan must show labour policy to keep fair and international labour standards, especially ILO Conventions. ILO Convention No. 181 urges to make labour market flexible. On the other hand UN Convention to eliminate discrimination against women presses to strengthen the regulations of EEOA.

As the above–mentioned all the labour acts are not deregulated in Japan. There shall be fair balance between regulation and deregulation of labour law acts. Regulation is necessary to protect weak workers who need direct state intervention. On the other hand, there are some workers demanding deregulation of labour law acts who have bargaining powers individually to decide working conditions. There shall be labour acts treating two kinds of workers parties differently.

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