

The Japanese Employment System in the 21st Century: Under Reconstruction

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I. INTRODUCTION

The employment system is considered to be one of the most distinctive features of the Japanese economic model. During the period of economic expansion, the employment system – with a high job stability and low unemployment rate – was praised as one of

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the key factors of Japan's success story. As long as the economy was growing rapidly and Japan had a large young workforce, the employment system worked well. Traditional employment practices were suitable for an expanding economy when companies eagerly invested in training their employees. After the bubble burst in the early 1990s and economic recession left many companies with a huge excess of employees, the employment system came under criticism as one of the obstacles to economic recovery. The merits of the traditional employment practices have been transforming into its demerits under falling economic growth and a rapidly aging population. Since then many have argued for granting more flexibility to employers, including the right to reduce the workforce in times of economic hardship.

Another serious challenge facing the Japanese employment system is related to Japan's aging society. The population decline is likely to create a serious workforce shortage and put pressure on the pension system. While this problem is not limited to Japan, it is probably most drastic in Japan.

After introducing the basic principles of the Japanese traditional employment system, this paper will examine new trends and developments in the Japanese employment system. In addressing the impact of economic factors on the employment system, the paper will analyze the reactions of employers with regard to employment patterns, the changes in the legal framework, as well as the new tendencies in dismissal law. Particular attention will be given to the analysis of the law reforms undertaken by the Japanese government aimed at enabling a transition from the system of job security towards a more liquid labor market. These reforms will be analyzed in the light of socio-economic changes, new developments towards a more diversified and flexible labor market, as well as the social constraints that may present an obstacle to more comprehensive changes in the existing system. In the part dealing with the impact of demographic factors on the employment system, the paper will analyze reforms aimed at remedying problems arising from the shrinking workforce and make an assessment of the efficiency and limitations of those reforms.

The paper will deal with two distinct factors: demographic changes and economic crisis. While the issues related to these two factors are different, they are interconnected and both have a strong impact on the employment system. By adopting this approach the paper takes a risk of lacking coherence and a clear focus, but this approach finds its rationale in the objective of this paper to provide a comprehensive overview of the developments in the Japanese employment system.

II. MAIN FEATURES OF THE TRADITIONAL EMPLOYMENT SYSTEM

Cooperative relations between labor and management have been an essential feature of the Japanese employment system for many decades. This system is based on three main elements: long-term employment, treatment based on seniority and company-based labor unions.¹ It is further reinforced by the cross shareholding system (*mochiai*), the

company-based training system, and social norms. All these elements of the employment system “interact together, acting as a virtuous circle.”² Another essential segment of the traditional model is job security, which is also related to long-term employment.

1. *Long-term Employment*

Long-term employment, in the sense of spending one’s whole career in the same company, is not really unique to Japan, since such patterns exist in many other countries.³ The essence of the Japanese model of long-term employment, however, is not in the numbers, but in its character.

Under the long-term employment system, an employee is recruited directly from school or university and is expected to remain in the company’s employ for the length of his or her career.⁴ In return, he or she can expect not to be fired, except under some extraordinary circumstances.⁵ The basis of this agreement is the commitment of employers to provide secure employment to their employees in return for loyalty and “lifetime” service. The employer can rely on the loyalty of long-term employees and their dedication to hard work in exchange for investment in their training.

The “white cloth” metaphor explains the rationale for the hiring of new graduates and why companies have preference for fresh graduates: “White cloth (i.e. new graduates) can be dyed any color, but a piece of cloth that has already been dyed (i.e. already experienced workers) is difficult to re-dye another color.”⁶ The most important thing for the employers is not what potential recruits can already do, but what they will become able to do.⁷ This kind of attitude represents a serious restraint on job mobility; companies are reluctant to hire young people who have recently graduated, but have failed to find job before the graduation.⁸

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- 1 M. ISHIDA, High Economic Growth and Labor Law: Reciprocal Construction of the Japanese-Style Employment System and Labor Law, in: *Japan Labor Review* VI-3 (2014) 106.
 - 2 R. J. GORDON, Why US wage and employment behaviour differs from that in Britain and Japan, in: *The Economic Journal* 92 (1982) 13, 37.
 - 3 OECD statistics for 2013 show that the average length of service of employees in Germany is 11.7 years, France 12.3, Italy 13.4, the UK 9.7 (OECD Database, Employment by job tenure intervals), while in Japan the average length of service of regular employees is 11.9 years (Basic Survey on Wage Structure 2013, MHLW).
 - 4 Companies usually hire new employees to start working in April, which corresponds with the academic year in Japan which runs from April to March.
 - 5 J. C. ABEGGLEN / G. STALK JR., *Kaisha – the Japanese Corporation* (Tōkyō 1985) 183–188, 191–192, 194–206; see also T. ARAKI, Changing Employment Practices, Corporate Governance, and the Role of Labor Law in Japan, in: *Comparative Labor Law and Policy Journal* 28 (2007) 251, 252; R. GILSON / M. ROE, Lifetime Employment: Labor Peace and the Evolution of Japanese Corporate Governance, in: *Columbia Law Review* 99 (1999) 508.
 - 6 H. NAGANO, Trends in Corporate Hiring of Recent Graduates: Focus on Developments since the Global Financial Crisis, in: *Japan Labor Review* 11-2 (2014) 24.
 - 7 *Id.* 24.

Long-term employment in Japan is a complex phenomenon influenced by a number of factors. Economic and political interests may have been the driving force behind the adoption of long-term employment, while social norms played an important role in the process of its smooth integration into the Japanese economic model.⁹ Long-term employment was well accepted by all relevant actors and became one of the key features of the Japanese economic model, because the structure of corporate control and the ubiquitous long-termism of the Japanese economic model were well suited for the long-term employment concept. Government policy as expressed in the legal framework, as well as the courts' attitudes in dismissal cases, provided additional and very important support.

2. Seniority System

As a part of the long-term employment system, the promotion of employees within the hierarchy of the company, and the question of employees' wages, have been traditionally based on the principles of seniority and merit (*nenkō chingin*).¹⁰ Under this system, wages are based on a worker's rank, while the ranking itself to a great extent depends on the length of service rather than on the job performed. New employees normally start with a low salary with the expectation of regular increases over the course of their careers. The employees with the longest time in service are also given preferential treatment with respect to other important issues, such as promotions and job rotation.

The seniority system promotes greater loyalty from employees and provides strong incentives to workers at all ages to remain with their first company¹¹. This system undermines the possible ambitions of the young employees to change companies before they reach the age at which their salary exceeds the value of their productivity.¹² Meanwhile, elderly workers also have no incentive to change companies, since another company usually would not offer the same amount of wages.

As a part of this system, Japanese companies usually set a mandatory retirement age, which is legally valid if it is set at 60 or higher.¹³

8 Many students in such a situation intentionally fail to obtain the required number of credits for graduation, extending their studies for another year with the hope of finding a job before they graduate. Such a practice may be unique to Japan.

9 Č. PEJOVIĆ, Changes in Long-term Employment and Their Impact on the Japanese Economic Model: Challenges and Dilemmas, in: *J. Japan. L.* 37 (2014) 51, 55.

10 Sometimes only the first component of the term *nenkō* is used as reference to the seniority wage system, because the Chinese characters used in this term may serve to indicate its meaning: *nen*=seniority and *kō*=merits. In fact, *nenkō* tends to mean "merits of long service".

11 It is important to note that the wage system of non-standard employees is very different. While standard employees are paid a monthly salary which incorporates the element of seniority, non-standard employees are paid on an hourly wage basis unaffected by the seniority factor, but influenced by the external labor market.

12 T. HATTA, Assessing Japan's Growth Strategy: Breaking apart "bedrock"-like regulations with the establishment of special economic zones, in: *Nihon Keizai Shimbun*, 19 June 2013.

13 Article 8 of the Law Concerning Stabilization of Older Persons (*Kō-nenrei-sha tō no koyō no antei ni kansuru hōritsu*) [law no. 68/1981].

3. *Labor Unions*

In Japan over 90% of labor unions are established within an individual enterprise. Labor unions bargain collectively with a single employer, so that collective agreements are concluded at the enterprise level. Much like many other elements of the Japanese economic model, company-based unionism is closely related to the long-term employment system.

Company-based labor unions have played the key role in the creation and maintenance of the present employment system. The long-term employment system was initially created on the basis of negotiations between labor unions and employers in an attempt to find a solution to the problems related to labor unrest that appeared in the aftermath of the Second World War. In a labor market where employees tend to stay at the same company, company-based unionism has clear advantages over industry-based unionism, as it represents the most suitable mechanism for meeting the expectations of employees who develop their working careers in a particular company.¹⁴ Labor unions normally limit their membership to regular workers, because there may be differences and even conflicts between the interests of regular and non-regular workers.

Adversarial labor relations instigated by radical left activists in the aftermath of the World War II have been gradually replaced by cooperation, as labor unions have promoted cooperative arrangements and consultations with employers. In times of crises labor related issues are typically resolved through negotiations between labor unions and employers. When there is the need to reduce the number of employees, labor unions and management enter into negotiations on the ways to achieve this objective. Before resorting to dismissal, the management typically prepares a voluntary retirement program package which includes appropriate compensation. According to the Hiring and Termination Survey (2012) conducted by the Japan Institute for Labour Policy and Training (JILPT), labor and management reached agreements in 84.1% of the negotiations.¹⁵

Presently the main aims of the labor unions include job security, increased wages and improved working conditions, while they are less concerned with ideology and a wider role in society. The practice of pursuing negotiated solutions is the result of the deliberate efforts of labor and management to achieve necessary reductions of labor costs while minimizing employment cuts and reducing potential labor disputes. As a result the number of strikes and labor disputes has steadily declined.¹⁶ However, membership of labor unions has also been in decline.¹⁷

14 T. ARAKI, Changing Employment Practices, Corporate Governance, and the Role of Labor Law in Japan, in: *Comparative Labor Law and Policy Journal* 28 (2007) 251, 261.

15 K. SUGENO/K. YAMAKOSHI, Dismissals in Japan Part Two: How Frequently Do Employers Dismiss Employees?, in: *Japan Labor Review* 11-4 (2014) 121. According to another report published by the JIPLT, in 80.4% of economic dismissals cases labor unions were consulted by management: <http://www.jil.go.jp/english/lj/detailed/2014-2015/all.pdf>.

16 H. NAKAKUBO, Industrial Action and Liability in Japan: A Legal Overview, in: *Japan Labor Review* 12-2 (2015) 86.

4. *Safety of Employment*

Strictly speaking, the long-term employment system is not really a “system” but a practice, since it is not based on any particular law, but on informal norms and practice. Long-term employment does not mean a formal obligation of the company not to dismiss its employees, nor does it mean that the company does not dismiss employees. Long-term employment should be understood in the sense that the company will not resort to layoffs unless it is in deep economic crisis and layoffs are necessary to keep the company afloat and prevent bankruptcy.¹⁸

The legal framework that developed during the period of creation of long-term employment was arguably based on the government policy that encouraged long-term employment. Another source of important support came from the Japanese courts. Despite statutory provisions that permit dismissal, in the 1950s the courts developed the doctrine of abusive dismissal, preventing the employers from “abusing the right to dismiss”, which gave the employees strong protection against dismissal.¹⁹ By relying on the abuse of rights doctrine, the courts held that dismissals that are not “objectively reasonable and socially appropriate” constitute an abuse of right and are therefore void.²⁰

A typical view of the Japanese courts that clearly emphasizes the need to protect job security is expressed in the Supreme Court judgment stating that “even when an employer exercises its right of dismissal, the dismissal will be void as an abuse of the right if it is not based on objectively reasonable grounds and cannot receive social approval as a proper act.”²¹ Courts have strictly construed this standard in favor of employees even in cases where layoffs are motivated by economic necessity.²²

The Japanese courts have been traditionally conservative in applying the abuse of right doctrine only “in exceptional cases where no other alternative could bring a fair solution of dispute.”²³ It can be argued that the courts’ reliance on the “abuse of right”

17 H. FUJIMURA, Japan’s Labor Unions: Past, Present, Future, in: *Japan Labor Review* 9-1 (2012) 6.

18 L. WOLFF, The Death of Lifelong Employment in Japan?, in: Nottage/Wolff/Anderson (eds.), *Corporate Governance in the 21st Century: Japan’s Gradual Transformation* (Cheltenham 2008) 53, 77.

19 Nagoya District Court, 4 December 1951 (*Sube v. Kariya Seikatsu Kyōdō Kumiai*), in: 2-5 Rōminshū 578, 579, quoted in T. FUKUI, Labor Management Relations and the Law, in: *Law in Japan* 3-4 (1973); Tōkyō District Court, 8 May 1950 (*Iwata v. Tōkyō Seimei Hoken Sōgo Gaisha*), 1-2 Rōminshū 230, 235-36.

20 The Supreme Court, 31 January 1977 (*Shioda v. Kōchi Hōsō K.K.*), in: Rōdō Hanrei 268 (1977) 17. Quoted in: G. P. MCALINN, Employment and Labor, in: McAlinn (ed.), *Japanese Business Law* (Alphen aan den Rijn, 2007) 403, 433.

21 The Supreme Court, 25 April 1975 (*Ichikawa v. Nihon Shōken Seizō*), Minshū 29 (1975) 456.

22 H. NAKAKUBO, The 2003 Revision of the Labor Standards Law: Fixed-term Contracts, Dismissal and Discretionary-work Schemes, in: *Japan Labor Review* 1-2 (2004) 4, 14.

23 K. SONO/Y. FUJIOKA, The Role of the Abuse of Right Doctrine in Japan, in: *Louisiana Law Review* (1975) 1037, 1044.

principle in labor disputes has been an exception and can be attributed the judicial “activism” aimed at achieving social stability.²⁴ Another area where the courts have taken a similar protective attitude is in the landlord-tenant area.²⁵ In both cases the courts have been most likely guided by the rationale of protecting a weaker party. On the other hand, the courts are less likely to resort to the use of the “abuse of right” doctrine in civil law contracts, where the parties have relative freedom and opportunity to protect their interests by contract.

In a number of cases the courts have defined criteria that serve as the basis for assessing whether layoffs are appropriate.²⁶ For example, the Tōkyō District Court stated: “An employer may only validly discharge an employee in circumstances where there is just cause for the dismissal, based on the common sense of society...”²⁷ The key phrases in this sentence are “the common sense of society” and “just cause”; their meaning is ultimately determined by the courts. The requirement of “just cause” is robustly defined so that it is very difficult to satisfy it “leading to a *de facto* system of permanent employment”.²⁸

Japanese courts have developed different standards for different types of dismissals. A distinction is made between economic (“collective”) dismissals where the reason for dismissal is related to economic hardship of the company, and dismissals for personal reasons, where the reason for dismissal is related to the poor performance or behavior of a worker.

When the termination of employment is based on the economic reasons of the employer, the courts have taken a restrictive view in deciding what constitutes just cause. Economic dismissals must satisfy four requirements:

1. There must be an economic necessity to reduce the workforce to keep the employer in operation from a business standpoint. The courts tend to leave to the employer to decide the need for adjusting the number of employees, but will examine whether the reasoning used by employers is logically consistent;²⁹
2. There must be good faith efforts by the employer to avoid dismissals. This may include measures such as reducing executive compensation, cutting work hours, wages, or bonuses, or establishing a voluntary early retirement program;

24 D. FOOTE, *Judicial Creation of Norms in Japanese Labor Law: Activism in the Service of Stability*, in: *UCLA Law Review* 43 (1996) 635, 686.

25 *Id.* 691. The Act on Land and Building Leases, 1991 has a positive requirement that the landlord have good reasons to terminate or refuse to renew a contract, which is not the case with dismissals.

26 K. SUGENO, *Japanese Labor and Employment Law* (Durham, NC, 2002) 480.

27 Tōkyō District Court, *supra* note 20.

28 MCALINN *supra* note 20, 432.

29 R. KAMBAYASHI, *Dismissal Regulation in Japan*, in: Hamada/ Otsuka/Ranis/Togo (eds.), *Miraculous Growth and Stagnation in Post-War Japan* (London, 2011) 74.

3. The employer should base the decision on reasonable criteria in selecting employees to be discharged. This may include consideration of their salary, benefits, age and other factors; and
4. The employer must make reasonable efforts to explain to, and obtain the consent of, the trade union and the workers directly affected regarding the dismissals. The employees must have the situation sufficiently explained to them in advance.³⁰

In cases of dismissal for personal reasons, the court decisions do not easily recognize the validity of dismissals merely because of lack of skills, insufficient performance, inappropriate attitude, or lack of aptitude. Such decisions also make a careful judgment on issues such as whether these are severe in degree, whether opportunities for improvement were given, and whether there are any prospects of improvement.³¹

Disciplinary dismissal is more onerous to the worker than ordinary dismissal, because according to the work rules of most companies a worker dismissed in this way will lose their retirement allowance; this amount can be quite large and its loss can have serious consequences for the worker and their family. Besides, such a worker will face serious obstacles in finding new employment. That is why the courts take a more rigorous approach when applying the abuse of right principle to disciplinary dismissal cases. Generally, a breach of work discipline must reach a level justifying removal from the labor relationship as a sanction, and it should be above the threshold for ordinary dismissal. Valid grounds for disciplinary dismissal may include various types of misconduct, such as neglect of duties, violation of a work order, violations of an employer's job-related orders, including transfer, overtime or holiday work orders, falsification of personal history, or delinquency in private life which harms the company's reputation. Japanese courts have often been hostile to those employees who disturbed the enterprise order.³²

Terminating regular employees in Japan is always a difficult issue, due to the restrictive regulatory environment and the attitude of the courts. Despite new trends and the reduced certainty of long-term employment, the courts have maintained their restrictive attitude in interpreting "just cause" for the termination of employment; the courts will resort to dismissal only where, in the circumstances, there are no other means of avoiding it.

30 NAKAKUBO *supra* note 22, 14.

31 *Shioda v. Kōchi Hosō Co.* (*supra* note 20) is the famous case involving a radio announcer at Kōchi Broadcasting's news station who overslept his radio news spot twice in two weeks causing trouble to the radio program. As consequence of this misconduct he was fired by the radio station. The Supreme court found that the dismissal of was overly harsh and lacked social legitimacy in consideration of all circumstances of the case and that "the employer may not always discharge workers even when there exists a fact that constitutes reason for dismissal stipulated under work rules."

32 In *The Hitachi Ltd.* case the court held that dismissal on the ground of refusal of overtime was valid (the Supreme Court, 28 November 1991, in: Rōdō Hanrei 594 (1991) 7). In *Tōa Paint* Case the court held that dismissal on ground of refusal to transfer to another city was valid (the Supreme Court, 14 July 1986, in: Rōdō Hanrei 477 (1986) 6).

With respect to employees on fixed-term contracts, the courts have followed the general attitude regarding long-term contracts. When a fixed-term contract has been repeatedly renewed, the employer's refusal to renew the contract for another term is considered as abusive dismissal, because the employee had the reasonable expectation that the contract would be extended, so that the employer must have a just cause for refusing to renew the contract.³³

III. IMPACT OF DEMOGRAPHIC CHANGES

The labor market in Japan is undergoing a dramatic change under the pressure of an aging society and shrinking workforce. The population of the working-age group – defined as those between 15 and 64 years old – increased consistently during the post-war years, reaching its peak at 87.26 million in the 1995 population census. However, since then, it entered a period of decline and has fallen to 81.73 million, according to the 2010 population census, and was expected to continue to fall below 80 million in 2013, below 70 million in 2027, below 50 million in 2051, and eventually drop to 44.18 million by 2060.³⁴ According to UN data, the working age population of Japan is projected to decline continuously from 87.2 million in 1995 to 57.1 million in 2050.³⁵

Japan's population is aging at the fastest pace in the world. This raises a number of serious issues, such as a shrinking workforce. In 2013, there were 1.2 million new entrants to the working-age population and 2.2 million retiring older workers. As a result, during this year alone the workforce shrank by 1 million.³⁶

Another serious issue relates to the sustainability of the pension system. Due to the long life expectancy and low fertility rates in Japan, the pyramid-like model is losing its shape. That amplifies economic strains, such as the shrinking number of workers to support the growing ranks of retirees. The ratio of working-age persons to the elderly is predicted to fall from 2.8 in 2010 to 1.3 in 2060.³⁷ The impact of an aging society is obvious, such that the future of the pension system in Japan does not seem bright, particularly for the young Japanese.

Although it is difficult to change the declining trend of Japan's working population, the labor shortage problem can be remedied by employing workers more efficiently.

33 The Supreme Court, 22 July 1974 (*Tōshiba Yanagimachi Factory*), Minshū 28-5 (1974) 927; see also, the Supreme Court, 4 December 1986 (*Hirata v. Hitachi Medico Co.*), in: Rōdō Hanrei 486 (1986) 6.

34 National Institute of Population and Social Security Research, Population Projections for Japan (January 2012): 2011 to 2060: http://www.ipss.go.jp/site-ad/index_english/esuikei/ppfj2012.pdf.

35 <http://www.un.org/esa/population/publications/migration/japan.pdf>.

36 H. MIYAMOTO, Japan must work hard to solve labour crisis, in: East Asia Forum, 5 August 2014: <http://www.eastasiaforum.org/2014/08/05/japan-must-work-hard-to-solve-labour-crisis>

37 http://www.ipss.go.jp/site-ad/index_english/esuikei/ppfj2012.pdf

Possible remedies include creating better opportunities for the employment of older employees, foreigners, and women. Such changes may also require a greater diversification of the employment system, since different working profiles need different rules of employment.

1. Older Employees

Japanese people enjoy the world's highest life-expectancy rate, and compared with the past, the older generations are physically more capable of working beyond the retirement age. Considering the capabilities of the elderly, and their desire to work more flexibly, establishing working conditions to meet their needs may be necessary. One option may be to introduce a system which would allow employees to continue to work beyond retirement age.

One of the essential segments of the Japanese system of long-term employment is the mandatory retirement age under which employees are provided with employment security. This age is set by the rules of the firms, and not by the law. It was set at the age of 55 until the early 1970s and was raised to 60 in 1990s.

It may be argued that the system of mandatory retirement age represents an overt discrimination on the basis of age.³⁸ However, this system is considered legal under Japanese law as age discrimination is not prohibited in Japan.³⁹

Japan's approach can be properly understood only in the context of the distinction between regular and non-regular employees: the mandatory retirement age applies primarily to regular employees. This approach follows the nature of the seniority system in which age represents an important factor in determining wages and promotions so that age-based measures are not considered to be illegal in such a system. Under this system, the employer pays less than the employee's contribution to the firm when employees are young and pays more when they are old. So, in order to make this system sustainable, the mandatory age retirement is necessary.⁴⁰

With the continuing and accelerating trend of aging society syndrome, the government has realized that further extending the mandatory retirement age was inevitable. In order to address this issue a mandatory retirement age below the age of 60 was prohibited by the Law Concerning Stabilization of Older Persons adopted in 1994. This legisla-

38 For example, the mandatory retirement age would be prohibited under the US Age Discrimination in Employment Act of 1967, as amended in 1978, 1986, and 1991.

39 Article 14 of the Japanese Constitution prohibits discrimination based on race, creed, sex, social status of family origin, without mentioning age. Article 3 of Japan's Labor Standards Act also omits age discrimination. One exception is found in the Revision of the Employment Measures Act, 2007 which imposed a duty on employers to give equal opportunities in recruitment and hiring regardless of age. This law was aimed at protecting older people who faced difficulties in getting jobs because of their age.

40 E. LAZEAR, Why is There Mandatory Retirement? In: *The Journal of Political Economy* 87-6 (1979) 1261.

tion proved to be successful with a large majority of the companies extending the mandatory retirement age to 60 by the end of 1990s.

The government adopted a new policy, through revisions to the Law Concerning Stabilization of Older Persons in 2004, to make it compulsory for firms to extend the mandatory retirement age to 60 and to link the pensionable age to the retirement age. Under this law, employers were obliged to introduce a system to continue employment up to the pension eligibility age. After receiving their lump-sum retirement allowances, an employee is rehired as a kind of non-regular employee. The purpose of this revision was to promote the employment of elderly persons through comprehensive measures related to retirement age and to enable them to earn higher income in the period after their mandatory retirement age. The Law Concerning Stabilization of Older Persons provided for three options: (i) extension of the mandatory retirement age; (ii) re-employment of the person who reached mandatory retirement age (usually 60) until that person reaches 65; (iii) abolishing the mandatory retirement age. Among these three options, the second has been most widely used. Under this option the employees are re-employed typically on the basis of a fixed one year contract with wages substantially lower than before the retirement. This measure, in fact, extended the retirement age, so that the mandatory requirement was transformed into retirement from regular employment while the employees were allowed to continue employment, but under new conditions.

2. *Foreigners*

One possible solution for Japan is to accept more foreign workers. If Japan wishes to keep the size of its population at the level registered in 2005, the country would need 17 million net immigrants by the year 2050, or an average of 381,000 immigrants per year between 2005 and 2050. By 2050, these immigrants and their descendants would total 22.5 million and comprise 17.7 per cent of the total population of the country.⁴¹

Despite facing an imminent labor shortage as its population ages, Japan has been reluctant to open itself up to foreign workers. According to the Statistics Bureau, in 2014 there were 2,121,831 foreigners living in Japan.⁴² This is slightly above 1.5% of Japan's population, and far less than in most developed nations. As an illustration, in France there are 11.8 million people with an immigrant background representing 19% of the country's population, while in Germany that number is 16.3 million people accounting for around 20% of population.

There was an experiment with encouraging the Japanese diaspora (*nikkei-jin*) from Latin America, mainly Brazil and Peru, to come and work in Japan in the time of the bubble. However, those people who came from a different culture, despite their Japanese ancestors, have found it difficult to integrate into Japanese society. After the bubble burst and during the recession that followed the Japanese government offered financial

41 <http://www.un.org/esa/population/publications/migration/japan.pdf>.

42 Japan Statistical Yearbook 2016: <http://www.stat.go.jp/english/data/nenkan/1431-02.htm>.

incentives to those people to return to their countries under the “pay-to-go” policy.⁴³ After this failed experiment it may be even more difficult to open the labor market to foreign workers.

The government has taken several measures aimed at allowing a greater number of foreigners to come and work in Japan, particularly in the case of foreigners who possess specific skills. The government policy to promote greater acceptance of foreigners is a positive move, but it is far from sufficient. In order to achieve the expected objectives, skills will have to be combined with numbers.

3. *Women*

Combining skills with numbers may be done without necessarily importing a foreign workforce by relying on an important asset available at home – women. Raising female employment rates is an essential factor in addressing the labor shortage problem.⁴⁴

The gap in labor force participation rates between females and males in Japan is much larger than that in the US and European countries. The labor force participation rate of women aged between 15 and 64 was 65% in 2015, which is about 20% lower than that of men. According to the World Economic Forum’s Global Gender Gap Report 2015, out of 145 countries Japan is ranked 101, the last among developed countries.⁴⁵ According to this report, there is a huge gap between the level of education of Japanese women and their participation in the workforce. In the matter of literacy Japanese women are top ranked, while in workforce participation they are ranked at 82nd place. A particularly poor ranking is that of the proportion of women as senior officials and managers: Japan is ranked 116.

The participation of women in the labor market is closely associated with traditional family patterns and employment practices. The typical pattern is that the husband works full time while the wife stays at home to look after the family. After the children reach school age, many women decide to re-enter the labor market, creating in this way an “M”-shaped pattern of labor market participation. Those women who return to the workplace after a period of childrearing usually enter non-regular categories of employment, as part-time workers or under a fixed contract, receiving lower benefits than regular employees.

The position of women in Japanese society is undergoing gradual but significant changes. While the gender gap reports still rank the position of women in Japanese soci-

43 C. MASTERS. Japan to immigrants: Thanks, But You Can Go Home Now, in: Time Magazine, 20 April 2009.

44 It is estimated that raising the participation rate to equal men could boost Japan’s GDP by 15 percent and provide some 8 million more workers for Japan’s ageing economy: H. MACNAUGHTAN, Abe’s womenomics needs to include men too, in: East Asia Forum, 28 January 2015

45 It is interesting to note another gap: Japanese women are ranked number 1 when it comes to enrolment in secondary education, and number 106 in enrolment in tertiary education.

ety as low, relying on numbers may be misleading. Nowadays women in Japan have a much greater variety of options than in the past. While most women continue to work as non-standard employees, an increasing number of women pursue professional careers similar to men. And many women have changed their own attitudes. In the past women did not have much choice and had to marry.⁴⁶ Now many women decide not to marry early, or not at all.

The main obstacles to the greater participation of women in workforce and their failure to climb to leadership positions are the implicit constraints imposed by the existing corporate culture and practices.⁴⁷ Until those invisible impediments change, the government's statements and gender-equality policies will only have a limited effect.

IV. IMPACT OF ECONOMIC CRISIS

Problems related to the employment system came to the surface during the economic recession in Japan. After the bubble economy burst, the Japanese economic model has undergone significant changes. The main banking system has virtually disappeared, cross shareholding has reduced, while foreign shareholding has significantly increased. With regard to the employment system, it became evident that Japanese corporations can no longer maintain the long-term employment and seniority-based wage systems.⁴⁸ Long-term employment and seniority made economic sense in the period of steady growth, but they are not sustainable when companies enter recession and over-employment becomes a serious problem. This creates the problem of finding positions for older employees, which in turn creates another problem related to a reduction in the hiring of young employees, which is an essential element of the long-term employment system. Under such circumstances, traditional employment practices were transformed from an advantage into a burden that may contribute to the hardships and even the collapse of a firm.

The Japanese labor market has also been adversely affected by a number of demographic, macro-economic, and structural pressures, which have forced many companies to revise their traditional employment practices.

1. Changes in the Classification of Employees

Faced with the strong protection against the dismissal of employees, in the situation where the number of redundant workers became a serious problem for many companies,

46 A woman who would not marry by the age of 25 was once called "Christmas Cake", as no one would like to 'buy' her once she is 26. This saying has become a part of the past.

47 H. MACNAUGHTAN, *Womenomics for Japan: Is the Abe's Policy for Gendered Employment Viable in an Era of Precarity?*, in: *Asia-Pacific Journal* 13-1 (2015).

48 T. ARAKI, *A Comparative Analysis: Corporate Governance and Labor and Employment Relations in Japan*, in: *Comparative Labor Law and Policy Journal* 22 (2000) 67, 92.

the employment system has developed functional flexibility in the internal labor market. Many companies resorted to a combination of various measures aimed at relieving companies from the pressures of economic hardship. Some employers have transferred redundant employees to other sections in the same company, or to other related companies. Other employers have adjusted the terms and conditions of employment. Changes to working time and a reduction of overtime hours play a “buffer” role in times of hardship.

This internal flexibility was made possible by the practice of drafting employment contracts which do not specify the terms and conditions of employment, including the place and type of employment. Employers exploited this ambiguity by unilaterally making decisions relating to job rotation, the transfer of employees to other jobs within the company, temporary external transfers to other companies (“farming out”), and overtime assignments based on business necessity. The courts have recognized the discretion of employers with regard to these kinds of decisions.⁴⁹ The courts consider such flexible deployment of employees to be legal under certain conditions.⁵⁰ The courts typically rely on the reasonableness test by measuring the disadvantages to the worker caused by the changing of working conditions against the business necessity for the employer to make such decisions. Such an attitude can be construed as correct in light of the fact that regular employees are not hired for specific jobs. They are valuable assets to be developed and utilized flexibly by the employer, as the “white cloth” metaphor suggests. This kind of interpretation has provided employers with flexibility in transferring redundant employees to other jobs where their services are more needed, enhancing in this way the efficient use of employees. This kind of internal mobility against the background of employment security represents a substitute for external mobility.⁵¹

49 FOOTE, *supra* note 23, 638, ARAKI, *supra* note 14, 256, MCALINN, *supra* note 20, 435; the Supreme Court, 25 December 1968 (*Yoshikawa v. Shuhoku Bus Co.*), Minshū 22, 3459, Tōkyō District Court, 13 April 1995 (*Nagai v. Aerotransport (The Scandanavian Airlines Services)*), in: Hanrei Jihō 1526 (1995) 35, the Supreme Court, 7 September 2000 (*Michinoku Ginkō*), Minshū 54 (2000) 2075.

50 The *Tōa Paint Case* (*supra* note 32) may serve as illustration. In this case, a worker rejected a relocation order to another city on account of family circumstances. As a consequence, this worker was subjected to disciplinary dismissal. The court held that both the relocation order and the disciplinary dismissal were valid. An employer may decide a worker’s working location at its own discretion, in accordance with business needs. The transfer order would not constitute an abuse of rights unless: there was no necessity on business grounds, it was ordered for other improper motives or objectives, or there were exceptional circumstances, such as that the worker was made to suffer a disadvantage markedly exceeding the degree that should normally be tolerated. The existence of necessity on business grounds should be endorsed, as long as elements that contribute to the reasonable operation of the company can be acknowledged, such as the correct deployment of the labor force, or enhancing the efficiency of work. The court held that the necessity on business grounds existed in this case, and in consideration of the family situation, the disadvantage in family life caused by the transfer was deemed to be of a degree that should normally be tolerated in connection with transfers.

51 T. ARAKI, *Accommodating Terms and Conditions of Employment to Changing Circumstances: A comparative Analysis of Quantitative and Qualitative Flexibility in the United*

Another widely used practice is hiring employees on fixed-term contracts. The employer can then decide, with relative freedom, not to renew the contract.⁵² The system of fixed-term employment played a crucial role in preserving long-term employment, because the existence of such a non-regular workforce served as shock-absorber. It is common practice to terminate contracts of non-regular workers before dismissing regular workers. During an economic downturn firms may simply decide not to renew the contract upon its termination. The management needs freedom to adjust their workforce and the employment of non-regular employees, with the option of not renewing their contracts upon expiration, has allowed such flexibility.

The main change in the employment system in the last two decades has been the increase in non-regular employees.⁵³ Various measures adopted by employers had as a result substantial changes in the classification of employees. An employer may employ different types of employees, including regular employees, fixed-term employees, part-time employees, “dispatch” employees, and employees seconded from affiliated companies. The practice of reducing the number of regular employees without explicit layoffs allowed companies to argue that they preserve the long-term employment system. Despite such claims, most employees in Japan now feel less secure in their status than before.

2. *Changes in the Wage and Evaluation Systems*

In times of economic growth the seniority system was suitable for firms, which typically had a pyramid-like age structure of employees. However, with the aging society this system is not sustainable, particularly in companies where the number of elderly workers surpasses that of young workers. Besides, it also adversely affects workforce mobility because it creates an incentive to block the entry of experienced employees from other companies.

Since the 1970s Japanese firms have been gradually revising the traditional practice of seniority-based promotion and remuneration with increasing importance been given to individual performance and ability. Many companies have established a system of

States, Germany and Japan, in: Engels/Weiss (eds.), *Labour Law and Industrial Relations at the Turn of the Century*, Liber Amicorum in Honour of Prof. Dr. Roger Blanpain (Alphen aan den Rijn, 1998) 509.

52 The key characteristic of part-time employment in Japan is the fact that the employee is not a regular employee, regardless of the number of working hours. Part-time employees are often hired on a fixed term contract and they are disposable according to the fluctuation of business. The same is true of other fixed-term employees (often called “*kikan-jūgyōin*” or “*keiyaku-shain*”) who may work full time but are certainly non-regular workers.

53 According to the Ministry of Health, Labor and Welfare (MHLW) figures, there were 34.18 million regular employees in Japan at the end of 2007 (average for October–December), while non-regular employees numbered 17.38 million, or 33.7% of the total. See, www.mhlw.go.jp. The number of non-regular employees has continued to increase and in 2014 it reached 19.62 million or 37.4% (Labor Situation in Japan and Its Analysis General Overview 2015/2016, 44).

grade classification (*shokunō shikaku*), under which the employees are classified according to their ability and performance. This system means that the evaluation of employees is made on the basis of individual business results and performance, which affects both wages and the promotion of employees. This was an attempt to overcome the traditional seniority-based wages. Then, in the 1990s many employers adopted a new system called “*seikashugi*” based on performance standards; this is a result-oriented wage system, focusing on specific achievements rather than the potential ability of the employees.

Presently most firms have introduced merit-based pay in the context of long-term employment.⁵⁴ However, there is a concern that the introduction of merit-based payment and promotion may adversely affect teamwork in the work place. Competition among workers may lead to reluctance on the part of senior employees to share knowledge with younger ones, whom they may see as competitors for promotions.⁵⁵

Despite recent trends, the seniority-based system will probably continue to play a role as long as the company continues to be seen as community, though some modifications may be made. The core issue is how to enhance employees’ motivation by performance evaluation while avoiding possible adverse effects.

3. *Recent Trends in Dismissal Law*

As a consequence of the recession that followed the burst bubble, in the 1990s many companies decided to lay off a large number of regular employees in a process of “restructuring” (*risutorā*). In fact, this term has acquired in Japan a very different meaning from the original and is widely understood as a reduction of the number of employees, rather than the reorganization of a company. In order to avoid the risk of litigation with employees, the company would offer to the employees “voluntary” termination, by promising generous retirement benefits and implying that working conditions may worsen for those remaining in the company.

Possibly influenced by the increased number of dismissals in the post-bubble period, some Japanese courts rendered decisions that deviated from the well-established practice and interpretation of the rules governing economic dismissals. The Tōkyō District Court has rendered a number of decisions that allowed dismissals for economic reasons. In the Westminster Bank case, this Court held that the evaluation of whether a dismissal is abusive must be based on all the circumstances in each case.⁵⁶ According to the Court, the requirements that were previously adopted as the basis for such an evaluation do not represent requirements in the strict sense but merely factors that should be considered.

54 G. JACKSON, *Employment Adjustment and Distributional Conflict*, in: Aoki/Jackson/Miyajima (eds.), *Corporate Governance in Japan: Institutional Change and Organizational Diversity* (Oxford, 2007) 282, 298.

55 For a detailed criticism of the merit system, see, S. TATSUMICHI/M. MORISHIMA, *Seikashugi from an Employee Perspective*, in: *Japan Labor Review* 4-2 (2007) 79.

56 Tōkyō District Court, 21 January 2000 (*Yasuda v. National Westminster Bank, Ltd.*), in: *Rōdō Hanrei* 782 (2000) 23.

The Court held that layoffs based on the employer's business-judgment rule should be upheld, regardless of the existence or otherwise of financial crisis. Hence, even if one of the "four factors" is not met, the economic dismissal can still be held to be legally valid by taking other relevant factors into consideration, so that, in fact, the "four requirements" have been transformed into "four factors". This change from "four requirements" to "four factors" is based on case law and so far it has not been incorporated in the statute law.

The Tōkyō District Court decisions failed to reverse the dominant attitude of the Japanese courts. Nevertheless, they may serve as an indication that the stance of the Japanese courts is not as firm as before and may eventually change in the future. As the notion of long-term employment declines and labor mobility increases, the courts are becoming more willing to accept the employer's grounds for dismissal as valid. Sugeno and Yamakoshi argue that the dismissal law is neither too hard nor too soft on the employers, raising doubts about the traditional view of the excessive protection employees have under the Japanese law.⁵⁷ The argument of these highly-regarded authors is supported by a number of recent cases.⁵⁸ While this lies in the domain of speculation, and as such it does not carry much weight, based on the reasoning of the courts in some recent cases, it is very likely that the outcome in cases such as *Kōchi Hōsō*⁵⁹ would be very different if brought to the court now.

4. Legal Reforms Regarding Protection of Employees

The government has taken several actions to protect long-term employment. The Labor Standards Act (LSA) was revised in 2003 and the new revised law came into effect in 2004. This revision mainly affects fixed-term contracts, dismissals, and discretionary work schemes.⁶⁰

In Japan, law reforms often follow case law, and this is confirmed by this revision of the LSA, which codified the case law on abusive dismissals. One of the key provisions of this revision is Article 18-2 which reads: "A dismissal is invalid and the right to dismiss has been abused when it lacks objective, rational grounds and cannot be considered to be appropriate in general societal terms." This provision is clearly based on the "abuse of right" doctrine. In fact, it just recognized the existing case law based on this doctrine.⁶¹

57 K. SUGENO/K. YAMAKOSHI, Dismissals in Japan: How Strict Is Japanese Law on Employers?, in: *Japan Labor Review* 11-2 (2014) 83. The authors of this paper argue that Japanese law is not as strict regarding dismissals as it used to be.

58 In *Ono Lease Case* (the Supreme Court, 25 May 2010), a worker with the status of manager was dismissed for having a poor work attitude caused by a drinking problem and leading to complaints by other workers and clients. The court held that the dismissal was valid because misconduct by the worker disturbed the order of workplace, and the prospects that the worker would improve his attitude were poor.

59 See *supra* note 20.

60 See, NAKAKUBO, *supra* note 22, 4.

In 2007 another important statute was enacted, the Labor Contract Act (LCA).⁶² The main reason for enacting this statute was the rise in importance of individual labor contracts, as well as the increase in labor disputes. This statute fills the gap by specifically defining the principles governing labor relations which were previously based on judicial precedents only, including the prohibition of the abusive exercise of the employers' rights. Article 18-2 of the revised LSA was incorporated into Article 16 of the new LCA, 2007.⁶³ The law does not specify the meaning of the word "appropriate", which can be interpreted in different ways, leaving the interpretation in the hands of the judge.

The most recent amendment of the LCA was enacted in 2012 which has come into effect on 1 April 2013. One of the most important changes relates to fixed term contracts which are renewed for successive periods. Article 19 has codified the doctrine on termination of employment court which has been developed by the courts, particularly the *Tōshiba Yanagimachi Factory* and *Hirata v. Hitachi Medico Co.* cases.⁶⁴

Another important development is that under the revised law, a fixed-term employment contract can be transformed into a contract with indefinite term at the request of the employee provided that the contract has been renewed without interruption for a period longer than five years. Japanese companies could increase flexibility by initially hiring employees on the basis of fixed contracts of up to three years (in some cases five years).⁶⁵ Amendments to the LCA offer all fixed term employees who have been employed for the period of at least five years the opportunity to apply for indefinite employment contract (Article 18). In that case, the employer could terminate such employment contract only under criteria for termination of permanent employment contract. In fact, employers are given two choices; they can either continue to employ the worker by offering a permanent position or terminate employment at the end of the contract period. By closing the way for employers to continue to employ workers by renewing fixed-term contracts, the new law may be able to prevent the abuse of fixed-term contracts.

Article 18 of the LCA 2013 is a controversial measure in the Japanese context. Fixed-term employees will not become full-fledged regular employees even after their contract has been turned into one for an indefinite period. While their conditions might be improved to an intermediate status, the employer may simply replace these workers after their 5-year contract; in this way the employer can circumvent the risk of having to employ those workers on a permanent basis.

61 *Id.* p.14.

62 http://www.jil.go.jp/english/laborinfo/library/documents/llj_law17.pdf.

63 Text of Article 16 of the LCA is exactly same as the former Article 18-2 of the LSA. There are various translations of this text into English, but the Japanese text is the same and no change was intended.

64 *Supra* note 33.

65 Article 14 of the LSA prohibits fixed term contracts for periods longer than three years, or longer than five years for persons over 60 or for highly-specialized jobs.

In 2007, the Part-time Work Act was revised. The major change was the introduction of the non-discrimination rule of part-time employees as a mandatory norm.⁶⁶ However, this norm applies only to those part-time workers whose contents of work and the responsibilities involved are the same as those of regular workers and who have concluded labor contracts without fixed terms. As consequence, the effect of this law is very limited, because only 1.3% of part-time employees are protected by this norm.⁶⁷ Having a law with such limited effect does not make much sense, so it is obvious that a change is needed here.

In 2015, the Worker Dispatch Law was also revised. According to the revised text, the time limitation of the use of dispatch workers was abandoned which now enables employers to use dispatch workers as long as they wish. This legislation has been criticized by labor unions as directed against the interests of this kind of employees, basically depriving them of a chance to become regular employees.⁶⁸

V. GOVERNMENT POLICY

After the bubble burst in early 1990s, the government has made efforts aimed at economic restructuring. The government is trying to revitalize the economy, and legal reform of the employment system is among the top priorities. The wave of reforms known as “Abenomics” relies on the strategy of the “three arrows.”⁶⁹ The first two arrows related to fiscal and monetary stimuli and were rather successful in hitting their targets. The third, aiming at structural reforms to the economic system, is widely considered to be the crucial part of Abenomics. Reforms to corporate governance and the employment system are among the top priorities.

In June 2013 the Japanese government unveiled its “third arrow” strategy named “Japan Revitalization Strategy – Japan is Back”.⁷⁰ An important part of this strategy is aimed at reforming the employment system. The objective of the employment system reforms is to enable a transition from the system of protection of employment towards a more liquid labor market with greater workforce mobility.⁷¹

66 For more details, see M. MOROZUMI, Balanced Treatment and Bans on Discrimination – Significance and Issues of the Revised Part-time Work, in: Japan Labor Review 6-2 (2009) 39.

67 MINISTRY OF HEALTH, LABOR AND WELFARE, *Heisei 23-nen Pāto-taimu rōdō-sha sōgo jittai chōsa* [Survey on Actual Situation of Part-Time Workers in 2011]: <http://www.mhlw.go.jp/toukei/list132-23b.html>.

68 “Statement Regarding Cabinet Approval of the Proposed Amendments to the Worker Dispatch Law”: <http://www.jtuc-rengo.org/updates/index.cgi?mode=view&no=360&dir=2015/03>.

69 The “three arrows” strategy borrows the image from a popular Japanese folk tale that teaches that three sticks together are harder to break than one.

70 http://www.kantei.go.jp/jp/singi/keizaisaisei/pdf/en_saikou_jpn_hon.pdf.

71 Y. SHIMADA, Labor Mobility and Employment Policy, in: Japan Labor Review 12-2 (2015) 49.

One of the main measures was deregulation aimed at reducing the number of regulations governing business activities. Deregulation activities have expanded to include some elements of labor law.⁷² One of the testing grounds for a new approach towards employment (de)regulation is (or – more precisely – was supposed to be) Special Economic Zones (SEZ).

In order to promote workforce mobility the government considered shifting policies to support labor movement, including support for ability development. Part of this policy is the support for already existing practices, including rewriting work rules and employment contracts to permit “varied types of regular employment”, with particular attention being given to the limited type of regular employment.⁷³

The government was also active in trying to remedy demography-related problems. It took action in different areas, trying to promote the more efficient use of older employees and women, and also opening more possibilities for foreigners.

Below is a more detailed account of the above-mentioned issues providing some insights on the policy and actions taken by the Japanese government.

1. *Special Economic Zones*

Being constrained by the existing labor law, the government was considering creating special zones where labor law would not apply.⁷⁴ The main objectives were to make Japanese companies more competitive and to attract investors. As part of the implementation of this project, legislation was passed in December 2013; on the basis of this legislation six geographic areas were designated as special zones on 28 March 2014.⁷⁵ The original idea was to relax, substantially, dismissal law inside some of the special zones, so that if the employee and employer agree in advance on what would be valid causes for dismissals, the standard of “just cause” would not be relevant and such a dismissal would always be permitted. The idea was to grant employers greater flexibility regarding dismissals than in the rest of Japan. This is why this project has been dubbed the “Special Dismissal Zone” (*kaiko tokku*) by the media.⁷⁶

Due to strong opposition, however, Prime Minister Abe’s proposal for special economic zones with their own employment rules was scrapped by the Ministry of Health, Labor and Welfare (MHLW). Minister Norihisa Tamura argued that no civilized country

72 S. NODA, *Kisei kanwa seisaku to rōdō keiyaku-ron* [Deregulation policies and labor contract theory], in: *Hōritsu Jihō* 87-2 (2015) 4.

73 S. NORTH, Limited Regular Employment and the Reform of Japan’s Division of Labor, in: *The Asia-Pacific Journal* 12-15-1 (2014).

74 On the relation between special zones and labor contracts, see, S. NODA, *Koyō tokku to rōdō keiyaku* [Employment zones and labor contract], in: *Hōritsu Jihō* 87 (2015) 48.

75 Designated cities include the Tōkyō and Ōsaka metropolitan areas, Okinawa prefecture, Fukuoka, Yabu and Nigata cities

76 H. OKUNIKI, The Special Dismissal Zone: where legal protections no longer apply, in: *Japan Times*, 7 October 2013.

has two sets of employment rules, and that easing employment regulations in limited areas runs counter to the Constitution's guarantee of equality before the law.⁷⁷ The proposal also came under criticism from opposition parties in the Fukuoka municipal assembly, which claimed that the proposal would "use and throw away our youth."⁷⁸ In an interview with *The Financial Times*, Prime Minister Abe eventually conceded that a relaxing of Japan's stringent job protections "would not be part of any forthcoming policy package."⁷⁹ Instead, only an advice center on employment issues, named "Employment Consultation Center", was set up in Fukuoka. The government undertook to make special guidelines to clarify the legal rules of employment contracts, but they are not supposed to change the existing rules.⁸⁰

The fact that a minister opposed and was able to block the policy of a prime minister may sound puzzling to outsiders. The outcome may be surprising for those who are not familiar with the process of adopting labor law legislation in Japan; for those who know how this process works, the outcome was expected. Under the existing administrative system, the issues related to labor policy, including legislation drafts, are discussed at a tripartite advisory council (*shingikai*) established by the MHLW which involves representatives of the labor unions and the employers, as well as independent experts; this represents an institutionalized form of participation of various interest groups. On the other hand, the prime minister relies on his advisory panels, which include business executives and academics, in implementing regulatory reforms with the principal objective being deregulation. Based on some statements of the parties involved, it can be concluded that there is tension between the Prime Minister and his advisory councils and the MHLW. It seems that Prime Minister Abe, via his special task force for deregulation, attempted to interfere and preempt the process that was under way in the MHLW, and the MHLW found the idea of relaxing dismissal law in SEZs particularly troubling.

Although there is no requirement for consensus in the advisory councils regarding new legislation, it is very rare for any legislation to go forward without such consensus.⁸¹ The proposal for legislation that would allow relaxation of the requirements for dismissals was certainly not "any legislation", so the outcome of this story was easy to predict. While easing some of employment regulations in SEZs may be acceptable, of-

77 *Senryaku tokku, kisei kuzusazu kōseishō 'koyō wa zenkoku ichiritsu* [No Regulatory Loosening in Strategic Economic Zones. Ministry of Health, Labour and Welfare Says Employment Rules Will Be Uniform.], in: *Nihon Keizai Shinbun*, 19 October 2013.

78 Y. MATSUO/J. YAMAZAKI, Japan's special zone scheme: Third time lucky?, in: *Nikkei Asian Review*, 20 May 2014.

79 <http://www.ft.com/intl/cms/s/0/155852e6-2cf7-11e3-8281-00144feab7de.html#axzz2vTioBoYX>.

80 As part of its activities, the Employment Consultation Center has published a booklet in English on Japanese labor laws: http://fukuoka-ecc.jp/userdata/Key_Points_of_Labor_Related_Laws.pdf

81 FOOTE, *supra* note 24, 706.

fering a zone of “free dismissal” to attract new businesses was rather controversial, from both the procedural and the substantive perspectives.

Notwithstanding these procedural reasons, the Japanese bureaucracy’s agenda is often guided, or at least justified, by moral principles and care for the good of the nation. It should be noted that the MHLW also administers welfare and the efforts to boost the falling birthrate. The lower income and poor career prospects of non-regular workers inhibit marriage, birthrates, and consumption. The National Fertility Survey demonstrates that the increased percentage of non-regular employees is correlated with marriage at an older age.⁸² Relaxing dismissal requirements for dismissals in SEZs would be in clear contrast to the MHLW policy aimed at preventing the further falling of the fertility rate; this might have been one of the reasons for the opposition to Prime Minister Abe’s plans to relax rules on dismissals in SEZs.

2. *Limited Regular Employment as an Alternative*

The problem with the traditional Japanese employment system is that it provides only two options: regular workers and non-regular workers. Regular and non-regular workers have different status with regard to wages, promotions, pay rises, bonuses, severance pay, job security, and social perception. Non-regular workers are at a considerable disadvantage, even if they are conducting the same work as regular workers. The employment security and better working conditions of regular workers are often sustained at the expense of non-regular workers, as the latter can serve as cushions in economically hard times. It is common practice to terminate contracts of non-regular workers before dismissing regular workers. On the other hand, regular employees also have no limit to the scope or location of their work duties and they are obliged to accept future transfers to different workplaces, changes of job duties, and overtime. Current employment security relies on internal flexibility which includes the flexible adjustment of working conditions and the flexible deployment of workers. Of course, this may impose various inconveniences on regular workers. Many regular workers may regard such inconveniences as unacceptable and may prefer conditions of employment which would allow them greater freedom, even at the expense of weaker guarantees regarding their status.

In order to bridge the gap between regular and non-regular employees, one aspect of the employment reforms is to promote the expansion of limited regular employment (*gentei seishain*) as a new type of employment contract, as an intermediate layer between regular and non-regular employment. This is a proposal to formally introduce a new category of regular employees with weaker guarantees and fewer obligations. Common examples include employment limited by location (limited to one location, no

82 Attitudes toward Marriage and Family among Japanese Singles – The Fourteenth Japanese National Fertility Survey in 2010: http://www.ipss.go.jp/site-ad/index_english/nfs14/Nfs14_Singles_Eng.pdf; see also, K. MIYOSHI, The Labor Market and Marriage Decisions in Japan, in: Japan Labor Review 11-4 (2014) 52.

transfers), by job (duties are limited), and by hours of work (no or low overtime). Employees under this contract “would accept less employment protection than regular workers but would receive higher wages than non-regular workers.”⁸³ Even if their work is limited in some respects, limited regular employees should enjoy all or most employment protections.

Limited regular employment offers a number of advantages for both the employers and the non-regular employees. By having this type of employees the firms may reduce costs and enhance its flexibility. From the perspective of non-regular employees, limited regular employment has obvious advantages, because the longer they remain in their non-regular jobs, the harder it becomes to ever get a regular one; this new type of employment provides an opportunity for appointment as a limited regular employee. For many women this type of employment may be even more attractive than regular employment.

One of the goals of this strategy is to create a more diversified labor framework (which is in the interest of employers, workers, and the nation); this offers a route to reducing employer costs, enable labor mobility, raise productivity, accommodate women’s career aspirations, and promote a better work-life balance. The interests of employers often do not necessarily match those of the workers. Limited regular employment may satisfy both sides. Long working hours are common among regular employees, and families in which both parents work may have different needs: they may prefer less overtime and no job relocation, even if that means less job security.

There are no legal constraints on implementing limited regular employment. In fact, many larger firms have already introduced some form of limited regular employment. According to a report by MHLW, around 50% of larger companies with 300 or more employees have adopted some type of limited regular employment, and about 40% of them are regular employees with restricted place of employment.⁸⁴

The model is seen as a way to introduce flexibility and mobility in the labor market. This may lead to the improvement of the status of non-regular employees by encouraging their employment as limited regular employees, but it may also lead to the easing of regulations on dismissals. According to Shimada, while limited regular employment would not be introduced in order to make dismissals easy, the manner of applying the abuse of right principle to this category of employees would change.⁸⁵ There are concerns that this may also lead to a reduction of regular employees’ employment protection.

Limited regular employment may play an important role in creating greater flexibility and bridging the gap between regular and non-regular employees. This may indirect-

83 R. S. JONES/S. URASAWA, Labour Market Reforms in Japan to Improve Growth and Equity, in: OECD Report (2011) 18, available at: http://www.oecd-ilibrary.org/economics/labour-market-reforms-in-japan-to-improve-growth-and-equity_5kg58z6p1v9q-en.

84 Regular Employees under Diverse Formats, MHLW Report, April 2011.

85 Y. SHIMADA, Labor Mobility and Employment Policy, in: Japan Labor Review 12-2 (2015) 49.

ly contribute to slowing the population decline by encouraging more young people to marry earlier and have children. The lower income, instability of employment and poor career prospects of these non-regular workers inhibit marriage, birthrates, and consumption. The National Fertility Survey demonstrates that the increased percentage of non-regular employees is correlated with marriage at an older age and accelerates Japan's demographic decline.⁸⁶ Limited regular employment may alleviate this problem, at least to some extent.

Limited regular employment could also facilitate the greater participation of women in the workforce.⁸⁷ There is a perception that most limited regulars will be women, and that this category will constitute another form of indirect discrimination of women.⁸⁸ Despite such criticism, this type of employment would be welcomed by many women, and it can also play an important role in reducing the labor shortage problem. What is most important is what women really want, and not what others think they should want. Of course, women may wish for different things, and that is why they should be offered various options.

3. *Demography-related Policy*

The Japan Revitalization Strategy, amended on June 24, 2014, provides for the new measures aimed at remedying the shrinking workforce by promoting increased participation of women, elderly persons, foreigners, and other "underrepresented groups".⁸⁹

a) *Older Employees*

The government measures related to the employment of elderly persons have so far achieved positive results, so that now the rate of employment of elderly employees in Japan is higher than in most developed countries.⁹⁰ The Law Concerning Stabilization of Older Persons was amended in 2012 by imposing on the employers a duty to employ all willing employees under the condition that they are in good health. This law prohibited the employer from setting criteria for re-employment and they are required to re-employ all employees who want to be re-employed.

The main objective of this policy was securing income for elderly employees, but it may also have other positive effects. Greater flexibility, based on ability and performance as criteria, may enhance greater participation of elderly employees, which would also be to the benefit of firms. Promoting the labor force participation of the elderly

86 Attitudes toward Marriage and Family among Japanese Singles, *supra* note 82; see also, MIYOSHI, *supra* note 82, 52.

87 SHIMADA, *supra* note 85, 57-58.

88 NORTH, *supra* note 73.

89 <http://www.kantei.go.jp/jp/singi/keizaisaisei/pdf/honbunEN.pdf>

90 The male employment rate of employees between 60 and 64 in Japan reached 78.9% in 2015. In comparison, in the US that rate is 60.5%, the UK 58.7%, Germany 61.7%, Italy 36.5%, and France 26.4%.

would not only contribute to solving the labor shortage problem, but would also provide some relief in the face of the increasing social security burden.

b) Foreigners

In 2012 the Japanese Government adopted the policy of preferential immigration treatment for highly skilled foreign professionals. The Japan Revitalization Strategy includes the promotion of employment of highly-skilled foreign professionals, as well as a number of programs that would provide more opportunities for foreigners in specified areas. So far results have been below expectations. According to the Ministry of Justice, in the first 20 months after implementation, the government had issued a total of 900 visas to highly-skilled professionals, averaging approximately 50 visas per month, which was far short of the target.⁹¹

Another way to increase the number of foreign workers is through the bilateral agreements that Japan has signed with some Asian countries, such as Indonesia, the Philippines and Vietnam, mainly focusing on nurses and certified care workers. The problem with this program is the requirement to pass the national examinations that allow the workers from these countries to stay in Japan for long periods. The Japanese language is a serious obstacle and only a small number of candidates were able to pass this exam. This means that most of those entering Japan under these bilateral agreements will not be able to remain in Japan on a long-term basis.

c) Women

Prime Minister Abe announced that his government will promote “womenomics” as a policy, making a number of promises aimed at giving women access to equal participation in the economy. One of these promises is the pledge to appoint women to 30% of senior management positions in governmental agencies and to encourage Japanese corporations to have women in 30% of top managerial positions by 2020. In August 2015 the Diet passed the Act of Promotion of Women’s Participation and Advancement in the Workplace, requiring that such targets be set in companies with 300 employees or more. However, the legislation only requires that targets be set, not met, which creates serious doubts regarding enforcement. Nevertheless, the new law, together with other measures and initiatives, may significantly improve the situation of women.

The low rate of female workforce participation during child-rearing age is caused by institutional problems, such as shortages of childcare facilities. Hence, Japan should increase female labor force participation by providing a more accessible workplace environment. The government pledged to help working mothers by increasing the number of nursing schools and extending maternity leave, which represents a step in the right direction.

91 D. GREEN, Japan’s Highly Skilled Foreign Professional Visa: an early assessment, in: *Meiji Journal of Political Science and Economics (MJPSE)* 3 (2014) 11.

VI. FURTHER DIRECTIONS

The crucial question that Japan faces is how to establish a proper balance between the need to preserve the social stability that long-term employment provided, and yet ensure a flexibility to the labor market that can contribute to a more efficient economic model. This is a tough choice. The failure to adopt bolder reforms may mean a further economic decline, and adopting radical reforms may undermine the Japanese economic model and have serious social implications.⁹²

The reform of the employment system as a part of the structural reforms may not be easy.⁹³ The issue here is not just a matter of which way would be economically more efficient. The existing employment system has become an integral part of Japanese society. Its existence is not tied merely to economic factors. That is why the eventual dissolution or possible changes to this system are not dependent only on economic considerations. The failure of the SEZ plans demonstrated the value the Japanese attach to the protection of employment, and the extent of opposition towards reforms aiming at a relaxation of dismissal standards.

The fact that long-term employment became deeply embedded in Japanese society increases its persistence and impedes reforms. Even though a more flexible labor market might contribute to the better financial performance of firms, the social constraints present a serious hindrance. At this stage, the government may not be prepared to take the risk of undertaking radical reforms that could undermine the existing employment system. Instead, it is more likely to see some reforms of limited scope aimed at adjusting to the new developments in demography and the economy.

Based on the recent developments it is possible to identify several possible directions in which labor law may develop in the upcoming years. Some of them are discussed here below.

1. Dismissal Law May Change?

Japan needs changes in its employment system. Firms need substantial flexibility when they perform poorly and sales of their products decline. As a matter of principle, employers should be allowed to increase or reduce their workforce in accordance with their needs. In order to adjust to changing circumstances, reduced internal flexibility must be compensated for by external flexibility through the relaxation of dismissal regulations. The traditional Japanese employment system relied on internal flexibility supported by job security and limited external flexibility. Under the changed circumstances, a new balance between the two types of flexibility needs to be struck.

The tendency towards less-stable employment has not been accompanied by more flexible legal standards of termination. Currently, employers must overcome several

92 PEJOVIĆ, *supra* note 9, 73.

93 “The Thicket of Reform”, *Economist*, 16 November (2013): www.economist.com/news/asia/21589876-though-appearing-committed-big-structural-change-prime-minister.

high hurdles before they can dismiss an employee. While some erosion in long-term employment is likely, that erosion will probably be the result of economic pressures, rather than a change in the applicable legal standards. As a matter of principle, once firmly established, legal standards are not easy to revise, despite changes in the economic sphere. A change in the legal standards is even more difficult when those standards are strongly entrenched in the existing public policy considerations.

While substantial changes of the legislation towards relaxing dismissal conditions are unlikely to happen at the moment, changes in judicial attitudes are already visible. As layoffs and unemployment are not so exceptional anymore, the courts have become less sympathetic to dismissed employees than before.⁹⁴ The potential for change lies in the vagueness of the existing standards related to dismissals, leaving broad scope for interpretation.⁹⁵ Courts may play a role in revising the law by interpreting “common sense” differently or giving it different content. The abusive dismissal theory or the “just cause” standard is flexible enough to allow interpretations that may fit the need for greater liquidity in the labor market, if necessary.

Deregulation policy, aimed at greater economic efficiency, promoted by the government may also have an impact on the courts’ interpretation.⁹⁶ The change in the attitudes of the courts contains the potential for change in dismissal law. This assertion finds support in the fact that the legal framework on dismissals originally was a product of case law and became a part of statutory law only at a later stage.

The main issue is not necessarily that regulations regarding employee dismissal are too rigid. The more serious issue is that outcomes from dismissal cases are hard to predict. The courts have a wide discretion in determining what is to be considered “just cause” and that is where the problem of predictability lies. Sometimes it is very difficult to identify the borderline as to which dismissals would qualify as lawful and which would not. As long as “just cause” is required for dismissals, it is inevitable that the outcome is hard to predict.

The latest development is the government proposal to make it possible for a court to terminate an employment relationship, even when the dismissal in question was null and void, on the condition that the employer pays financial compensation to the employee (*kaiko no kinsen-kaiketsu*). This proposal is bound to lead to conflicting views between labor unions which oppose this proposal, and employers which would welcome it.⁹⁷

2. *Back to the Future?*

While employers favor greater flexibility regarding dismissals, they may not support an increase in workers’ mobility. In fact, the low workforce mobility is partly the result of

94 SUGENO/YAMAKOSHI, *supra* note 14, 83. The authors of this paper argue that Japanese law is not as strict regarding dismissals as it used to be.

95 JONES/URASAWA, *supra* note 83, 134.

96 NODA, *supra* note 72, 6.

the attitudes of many Japanese companies which, instead of encouraging mobility for regular employees, have preferred to increase the number of non-regular employees in order to achieve greater flexibility. Many large firms have reduced their intake of new regular workers in favor of increasing numbers of fixed-term workers who can be laid off in times of crisis. By keeping the number of regular employees at a low level and by hiring non-regular employees in accordance with actual needs, companies are able to maintain flexibility and avoid the burdens of over-employment. Some of the work previously assigned to regular employees were shifted to non-regular ones.

The increased reliance on non-regular workers also creates some problems for the employers. Non-regular employees receive less in-job training, leading to lower productivity. Taking into consideration that labor law prohibits discrimination related to wages,⁹⁸ many firms may prefer to employ regular employees in the future. According to the Analysis of the Labour Economy 2013 prepared by the MHLW, the percentage of companies planning to increase their ratio of regular employees in the future exceeds that of companies planning to increase their ratio of non-regular employees.⁹⁹ This may reflect a departure from the view that was present in the aftermath of the economic crash (that the best way to flexibility is to rely on non-regular workers), which was focused on reducing costs at the expense of the quality of performance. The firms may consider that they have sufficiently reduced regular employees since the 1990s and that now it is the time to accept more regular employees in light of the recent signs of economic recovery.¹⁰⁰

Another potential reason is that Japan is already facing a labor shortage and many companies have realized that they are running short of core employees from younger generations. As the number of regular employees has been reduced and they become older over time, it was logical to expect that at a certain point the companies would have to reconsider the further erosion of their core employees. This MHLW analysis indicates that such a point may have been reached. In fact, the most recent statistics confirm that such a trend has already started in practice.¹⁰¹ Notwithstanding these figures, it may be too early to draw conclusions on the basis of these recent tendencies.

97 *Futō kaiko no kinsen kaiketsu keiei to rōso de sanpi, kisei kaikaku kaigi tōshin* [Pros and cons of the payment of financial compensation in cases of unfair dismissal, the approval and disapproval of the management and labor unions, regulatory reform report], in: Sankei Shinbun, 16 June 2015: <http://www.sankei.com/politics/news/150616/plt1506160039-n1.html>.

98 The amendment of the Part-Time Employment Act, adopted in 2014, prohibits discrimination against part-time employees in terms of wages, education and training when those employees perform duties which are the same as those of regular employees and to whom the same personnel system applies.

99 <http://www.mhlw.go.jp/english/wp/l-economy/2013/dl/01.pdf>.

100 The statistics show that the increase in non-regular employees stopped in 2015 and remained at the same level as in 2014: 37.4%. The figure for March 2016 shows a reverse trend: the number of non-regular employees stood at 37.2% (The Labour Force Survey, March 2016).

101 The newest figures published by the Japan Institute for Labour Policy and Training (JILT) show that the number of regular employees has increased from 32,810,000 (62.1%) in Octo-

With regard to mobility, the mobility rate is not as low as widely believed. According to government statistics, the Japanese labor market has already achieved substantial mobility.¹⁰² Reduced job security and increased workforce mobility may be signs of changes that are under way. Even if employers consider increasing the ratio of regular employees, this will not mean a return to the past.

3. *Dealing with the Demographic Factor*

a) *Older Employees*

As the aging problem is becoming more serious, it attracts greater attention to the relevant factors. In Japan there is already a discussion on extending the pensionable age from 65 to 68.¹⁰³ Another option is prohibiting age discrimination. Regarding the latter, abolishing the mandatory retirement age (one of the options adopted by the Law Concerning Stabilization of Older Persons 2004) may be a sign of such an attitude. The revision of this law, adopted in 2012, further enhanced the opportunities available to older employees. By offering opportunities to older persons to work beyond retirement age, if they wish to do so, these new tendencies may eventually lead to the realization of the concept of “lifetime employment” in its literal sense.

One possible obstacle to an extension of the mandatory retirement age or its abolition is the long term employment system. Firms may find adopting this model very difficult (expensive), unless the government agrees to support it with subsidies. Such changes would require a comprehensive reform of the employment system, which would further undermine the present system that is based on long term employment. This is not likely to happen in the foreseeable future, as the large majority of regular employees would oppose such drastic change, and many firms would oppose it too.

b) *Foreigners*

Immigration would likely bring economic benefits, given the labor shortage Japan faces. On the other hand, there are concerns about the possible impact a large number of immigrants would have on Japanese society. While Japanese society may become more open to the prospect of immigration, this is a delicate issue and Japan should take a cautious approach. The number of foreigners entering the labor market in Japan is likely to increase, but it is hard to expect a significant increase in their number. At best, foreigners may serve as a supplement to other measures aimed at remedying the problem of the shrinking workforce.

ber – December 2014 to 33,140,000 (62.9%) in April-June 2015. In the same period the number of non-regular employees has been reduced from 20,030,000 (37.9%) to 19,530,000 (37.1%): <http://www.jil.go.jp/english/estatis/eshuyo/201511/e0203.html>.

102 The Survey on Employment Trends conducted by MHLW shows that 6,730,000 workers left their employment during 2012, which represents 14.8% of the total number of workers.

103 In 2012, the government established the Council for the Total Reform of Social Security and Government Financial Systems, which has already raised the possibility of extending the pensionable age.

c) *Women*

Serious doubts regarding the actual effects of the Japanese version of “womenomics” lie in the fact that behind these formally adopted measures is the view that “allocates productive roles to men and reproductive roles to women”¹⁰⁴. As a matter of principle, gender equality should be treated as a universal right, rather than as a response to economic or demographic problems; without such an approach, real gender equality cannot be achieved despite any legal measures taken.¹⁰⁵ While there is now a broad acceptance that Japan’s economy needs women in the workforce, institutional models and social norms still need to catch up. A woman’s participation in the workforce can be enhanced by an appropriate social infrastructure that would allow women to replace their traditional role of housewives by playing a more active role in the economy.

d) *Robots*

In order to replace employees, Japan is increasingly resorting to automation and robots for handling various processes in industry. This is a way to deal with both the shrinking workforce and production costs.¹⁰⁶ However, this issue is outside the scope of this paper, since labor law is not applicable to robots – no strikes, disputes about wages, trade unions, or dismissal-related issues arise here. There can be maintenance and liability issues, but those issues lie outside the scope of labor law.

VII. CONCLUSION

The Japanese economy faces serious challenges. Economic recession, rising unemployment and an aging population are only some of the problems that may affect its future. The challenges Japan is facing are universal, but the manner in which these challenges are dealt with differs from nation to nation.

The Japanese labor market has been adversely affected by a number of demographic, macro-economic, and structural pressures, which were gradually changing traditional Japanese employment practices. The economic pressures and demographic changes have forced changes in traditional employment practices. Over the last two decades, the stagnation of the Japanese economy, the ageing population, and changes in the international economic environment have led to reforms to many Japanese institutions, including the employment system.

Japan has been slow in making changes to its employment model. Long-term employment has not disappeared, despite some predictions, but there are significant chang-

104 MACNAUGHTAN, *supra* note 47.

105 S. ASSMANN, Gender Equality in Japan: The Equal Employment Opportunity Law, in: *Asia-Pacific Journal* 12-2 (2014).

106 An example is the ASIMO multi-functional robot developed by Honda: <https://en.wikipedia.org/wiki/ASIMO>.

es with respect to some elements of long-term employment practices. Many companies have resorted to reducing their core workforce and are relying more heavily on non-regular employees. The old model of "lifetime employment" continues to be eroded, causing many Japanese to be concerned for their jobs, especially those workers lacking the skills and education that are in high demand.

Its aging society poses another, very serious challenge for Japan. This process has adverse effects on the labor market, creating an increasingly serious problem of a shrinking workforce. The government has been active in trying to remedy the demography-related problems. It has taken action in different areas, trying to promote the more efficient use of older employees and women, and also opening more possibilities for foreigners.

The reform of the employment system as a part of the structural reforms may not be easy.¹⁰⁷ The existing employment system has become an integral part of Japanese society and its economic model. However, its existence is not tied merely to economic factors. At the moment, social constraints pose a serious obstacle to eventual radical changes in the existing system. The government may not be ready to take the risk of radical reforms that could undermine the existing employment system. Instead, it is more likely to bring about some reforms of limited scope aimed at adjusting to the new developments in demography and the economy.

Japan has made some steps in the right direction by undertaking several reforms aimed at creating a more flexible labor market and at remedying problems arising from its shrinking workforce. Some of the proposed reforms, such as those related to the promotion of limited regular employment, may have a positive effect not only by bridging the gap between regular and non-regular employees, but also by contributing to remedying some of the problems related to the shrinking workforce.

Experience with implementing legal reforms in the employment system area has demonstrated that law can be used as an efficient tool for enforcing government policies and can guide changes in the desired direction, but sometimes the law shows its limitations. So far the legal reforms have achieved mixed results and they face various kinds of obstacles. Some of them cannot be removed by legal action, and changing traditional attitudes that create invisible impediments which cannot be broken down by the introduction of new laws is particularly difficult. This might be the biggest challenge for Japan.

SUMMARY

The main objective of this paper is to provide a comprehensive overview of the recent developments in the Japanese employment system. The paper deals with two distinct factors: eco-

107 The Thicket of Reform, Economist, November 16, 2013: www.economist.com/news/asia/21589876-though-appearing-committed-big-structural-change-prime-minister.

conomic and demographic. In addressing the impact of economic factors on the employment system, the paper analyzes the reactions of employers with regard to employment patterns, the changes in the legal framework, as well as the new tendencies in dismissal law. Particular attention is given to the analysis of the law reforms undertaken by the Japanese government aimed at enabling a transition from the system of job security towards a more liquid labor market. These reforms are analyzed in the light of the socio-economic changes, new developments towards a more diversified and flexible labor market, as well as the social constraints that may present an obstacle to more comprehensive changes in the existing system. In the part dealing with the impact of demographic factors on the employment system, the paper analyzes reforms aimed at remedying problems arising from the shrinking workforce. In particular, the paper introduces reforms aimed at promoting a greater participation in the labor workforce by the older employees, foreigners and women. The paper then makes assessment of efficiency and limitations of those reforms. One common point to legal reforms dealing with economic and demographic factors is that in both cases the implementation of legal reforms has demonstrated that sometimes the law can be used as efficient tool in enforcing the government policies and can guide changes in the desired direction, while in some cases the law has shown its limitations.

ZUSAMMENFASSUNG

Der Beitrag gibt einen Überblick über die aktuellen Entwicklungen in der Beschäftigungspraxis in Japan und greift dabei zwei Aspekte auf: die ökonomische und die demographische Entwicklung. Mit Blick auf die ökonomische Entwicklung analysiert der Beitrag die Einstellungspraxis japanischer Arbeitgeber, Änderungen des rechtlichen Rahmens und insbesondere neuere Entwicklungen im Kündigungsrecht. Ein Schwerpunkt der Analyse liegt dabei auf den Reformen der japanischen Regierung, die der Transformation von einem Modell, das vor allem durch Arbeitsplatzsicherheit gekennzeichnet war, hin zu einem, in dessen Mittelpunkt ein aktiver (unternehmensexterner) Arbeitsmarkt steht. Diese Reformen werden mit Blick auf die sozio-ökonomischen Veränderungen und die gesellschaftspolitischen Widerstände diskutiert, die tiefgreifenden Veränderungen im Wege stehen könnten. Bezüglich der Auswirkungen der demographische Entwicklung auf die Beschäftigung setzt sich der Beitrag mit den rechtlichen Reformen auseinander, mit denen die japanische Regierung den Wirkungen zu begegnen versucht, die aus dem Rückgang der erwerbstätigen Bevölkerung resultieren. Das Augenmerk liegt dabei vor allem auf denjenigen Reformen, die auf die Einbindung von älteren Arbeitnehmern, Ausländern und Frauen zielen. Eine abschließende Bewertung der Reformen zeigt, dass sowohl bezüglich der ökonomischen als auch der demographischen Entwicklung legislatorischen Maßnahmen ein effizientes Mittel der staatlichen Politik sein können, dass dies aber nicht durchgängig für alle Bereiche gilt.

(Die Redaktion)