

No.12 Termination of Employment Relationship (1)—Dismissal (text 160-173)

1 Regulation on Dismissal Procedure

1.1 Advance Notice of Dismissal

- Article 627, paragraph (1) of Civil Law Act and Article 20 of Labor Standards Law
 - "Reasons for responsibility laid on the worker" as the exception
 - Validity of dismissal in a breach of advance-notice obligation
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1.2 Restriction on Dismissal in Terms of Time

- Article 19 of Labor Standards Law

1.3 Procedural Restriction Due to Labor Agreement and Such

- Dismissal consultation/ consent agreement

2 Regulation on Grounds for Dismissal

2.1 Restriction by Ordinance

- Ban on discriminatory dismissal
- Ban on dismissal on the ground of legal exercise of right

2.2 Restriction by Work Regulations/Labor Agreement

- Is enumeration of reasons for dismissal a restrictive enumeration? Or, is it an exemplification enumeration?

2.3 Regulation by Precedents

2.3.1 Legal Principles on Abuse of the Right to Dismiss

- Freedom of dismissal (Article 627, paragraph (1) of Civil Law Act)
- Formation of legal principles on abuse of the right to dismiss by precedents
Article 1, paragraph (3) of Civil Law Act→Article 18-2 of Labor Standards Law→
Article 16 of Labor Contract Law
- Rational reasons for dismissal
- Social conformity of dismissal

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RESEARCH Why have Japanese courts made severe judgments on conformity of dismissals? Is that all right?
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2.3.2 Legal Principles on Dismissal due to Economic Conditions

- “4 Requisites” or “4 Factors” for dismissal due to economic conditions
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 - * Burden of proof of 4 Requisites (Factors)?

2.3.3 Legal Principles on Notice of Change and Contract Termination

- Can a “consent in withholding disagreement” be approved?
- Judgment on validity of dismissal when not consented?

2.3.4 Legal Effect of Abuse of the Right to Dismiss

- Invalid dismissal (confirmation of the position under the labor contract)
- Payment of wages for the period of dismissal
- Compensation for damage for the unlawful act

