

No.14 Protection of Workers' Human Rights (1)—Workers' Charter, Sexual Discrimination (text 185-204)

1 Workers' Charter

1.1 Ban on Unjustified Physical Restraint

- Ban on forced labor (Art. 5 of Labor Standards Law)
- Limit on period of contract (Art. 14 of Labor Standards Law)
- Ban on forfeit and predetermination of damages (Art. 16 of Labor Standards Law)
 - *Is a stipulation on the refund of expenses for study abroad or an in-service training against this Article of the Law?
#13 and other
- Ban on offsetting a loan against a debt (Art.17 of Labor Standards Law)
- Ban on compulsory savings, and the control over voluntary management of savings (Art. 18 of Labor Standards Law)
- Freedom of private life in a boarding house and such (infra Art. 94 of Labor Standards Law)

1.2 Abatement of Intermediary Exploitation

- Ban on intermediary exploitation by the third party (Art. 6 of Labor Standards Law)
 - Cf. Control over job placement business and worker-furnishing businesses (Employment Security Law)

1.3 Protection of Civil Rights

- Protection of civil rights during working hours (Art. 7 of Labor Standards Law)
 - *Is it lawful to discharge an employee on the ground that the said person assumed a public office (member of a municipal assembly) without obtaining the company's approval?
#15 and such

2 Employment Discrimination

2.1 State of Laws Surrounding Employment Discrimination

- Situation of U.S. and Europe
- Situation of Japan
 - Art. 3 and 4 of Labor Standards Law
 - Equal Employment Opportunity Law for Men and Women
 - Part-time Work Law
 - Employment Measures Law
 - Art. 7, item (i) of Labor Union Law

2.2 Principles of Equal Treatment (Art. 3 of Labor Standards Law)

○Ban on discrimination on the ground of nationality, belief, social position

*Is this Article applicable to the deed of employment (rejection)?

#9

○Burden of proof and judicial redress

2.3 Ban on Wage Disparity Between the Sexes (Art. 4 of Labor Standards Law)

2.3.1 Important Matters

○“Wage discrimination”

*What about discrimination in elevation of status under a vocational- qualification system in which qualification and wages are directly linked together?

#31 and others

○Discrimination “on the ground of being a woman”

*Is it against this Article of the Law to pay a family allowance only to men?

#30

*Is a treatment based on a sex-neutral standard against this Article of the Law?

○Relation with the principle of equal pay for equal (value) jobs

2.3.2 Burden of Proof and Judicial Redress

○Allocation of burden of proof

○Existence of the right to make a claim for differential wages

○Extent of indemnity (finding of damages)

2.4 Discrimination Based on Gender (Equal Employment Opportunity Law for Men and Women, and other)

○Discrimination in recruitment and employment (Art .5 of Equal Employment Opportunity Law)

○Discrimination in placement, promotion and retirement (Art. 6 of Equal Employment Opportunity Law)

○System of separate course by sex, and employment system separated by course

•System of separate course by sex

*Was the system of separate course by sex lawful before that was judged illegal under Equal Employment Opportunity Law (enforced in April 1999)?

*After April 1999, is it illegal to maintain treatment differentials as before (taking no corrective actions)?

•Employment system separated by course

○Indirect discrimination (Art. 7 of Equal Employment Opportunity Law)

•“Indirect discrimination” to be prohibited (Art. 2 of Ordinance for Enforcement of

Equal Employment Opportunity Law)

• “Reasonable grounds”

○ Disadvantageous treatment on the ground of marriage, pregnancy and childbirth
(Art. 9 of Equal Employment Opportunity Law)

RESEARCH Attributable to the revision of Equal Employment Opportunity Law for Men and Women in 2006, the indirect discrimination has come to be legally prohibited to a limited extent in Japan. Are the course of action and method of this kind of measures appropriate?

