

No.9 Formation of Employment Relationship (text 123-134)

1 Freedom of Employment

1.1 Freedom of Choice

- Legally stipulated restrictions
 - Articles 5 and 7 of Equal Opportunity Law
 - Article 10 of Employment Promotion Law, and Article 1-3, paragraph (1) of Ordinance for Enforcement of the same Law
 - Articles 3 and 6 of Disabled Persons Fundamental Law, and Article 37 and infra Article 43
 - Article 7, item (i) of Labor Union Law?
- In case there's no legally stipulated restriction?
 - Discriminatory recruitment on account of thought/belief
#9
 - And other discriminatory recruitment on account of sexual orientation, appearance, etc.?

RESEARCH In Japan, a wide range of freedom of employment is approved for the employer, and discriminatory recruitment on account of thought and belief is interpreted not to be against the laws. Are such interpretation and legislative measures appropriate?

1.2 Freedom of Research

- Perspective of precedent
#9
- Action guideline of Ministry of Health, Labour and Welfare (Dec. 20, 2000)

1.3 Freedom of Conclusion of Contract

- Principle of the freedom of contract (principle of private autonomy)
- Its exception

2 Tentative Job Offer, Job Offer, Trial

2.1 Tentative Job Offer

- Legitimacy of cancellation of a job offer
 - * Legal disposition of a tentative job offer?
 - Contracting-process theory
 - Reservation theory
 - Labor-contract establishment theory

#10

*What are specific situations for a tentative job offer to be approved?

○Legal bearing during a tentative job-offer period

*Is a prospective employee (i.e., person being tentatively offered a job) obliged to participate in study training?

2.2 Job Offer

○Legal disposition of a job offer

2.3 Trial Period

○Gist and legal disposition of a trial period

#11

○Effective contract and a trial period

#86

3 Manifestation of Work Conditions

○Duty of manifestation of work conditions (Article 15, paragraph (1) of Labor Standards Law, and Article 5 of Ordinance for Enforcement of Labor Standards Law)

*Meaning of Article 4, paragraph (2) of Labor Contract Law?

○Immediate dismissal and travel expense for returning home when different from reality (Article 15, paragraphs (2) and (3) of Labor Standards Law)

