Japanese Employment and Labor Law

Kazuo Sugeno
Dean and Professor of Law, Faculty of Law,
University of Tokyo

Translated by
Leo Kanowitz
Professor Emeritus, University of California
Hastings College of the Law

Carolina Academic Press
Durham, North Carolina

University of Tokyo Press
## CONTENTS

AUTHOR’S PREFACE TO THE SECOND ENGLISH-LANGUAGE EDITION ..... xxxi  
AUTHOR’S PREFACE TO THE FIRST ENGLISH-LANGUAGE EDITION ..... xxxiii  
TRANSLATOR’S NOTE TO THE SECOND ENGLISH LANGUAGE EDITION ..... xxxv  
TRANSLATOR’S NOTE TO THE FIRST ENGLISH LANGUAGE EDITION ..... xxxviii  

BOOK ONE: INTRODUCTION .................................................. 3  

1. Definitions ................................................................. 3  
2. Civil Law Principles and Their Modifications in the Field of  
   Employment Relations .................................................. 3  
   (1) Civil Law Issues in Employment Relations .................... 3  
   (2) Civil Law Amendments Related to Labor Law ............... 4  
3. Development of Labor Law in Japan .................................. 5  
   (1) Pre-World War II .................................................. 5  
   (2) Post-World War II .................................................. 8  
   (1) The Framework of the Post-war Labor Law System .......... 10  
   (2) The Development of Post-War Labor Law ................. 10  

3. The Reorganization of the Post-war Labor Law System .......... 12  

CHAP. TWO: FUNDAMENTAL CONSTITUTIONAL PROVISIONS ............ 15  

1. The Basic Character of Articles 27 and 28 of the Constitution .... 15  
   (1) The Existence and Character of Fundamental Provisions in  
       the Constitution .................................................. 15  
   (2) Articles 27 and 28: Common Aspects and Individual  
       Characteristics ................................................... 15  
2. The Right to Work: Article 27, Paragraph 1 ........................ 16  
   (1) Introduction ..................................................... 16  
   (2) The Right to Work .............................................. 16  
   (3) The Obligation to Work ....................................... 17  
3. Establishment of Labor Standards: Constitution, Article 27, Pars. 2  
   and 3 ................................................................. 17  
   (1) Introduction ..................................................... 17  
   (2) Fixing Labor Conditions Standards by Law ................ 18  
   (3) Prohibiting the Exploitation of Children .................. 18  
4. Article 28: The Right to Organize and to Bargain and Act  
   Collectively ....................................................... 18  
   (1) Introduction ..................................................... 18  
      (a) Basic Purpose (18); Introduction (19); (c) Worker (21)  
   (2) The Right to Organize ....................................... 21  
      (a) Meaning (21); (b) Legal Effects (22)  
   (3) The Right to Bargain Collectively .......................... 23  
      (a) Meaning (23); (b) Legal Effect (24)  
   (4) The Right of Collective Action .............................. 25  
      (a) Meaning (25); (b) Content and Effects of the Dispute  
       Right (25); (c) Content and Effects of the Right to Engage  
       in Union Activities (28)
BOOK TWO: LAW OF THE LABOR MARKET ........................................ 31

CHAP. ONE: INTRODUCTION ............................................... 31
  1. Basic Principles of Legal Regulation .................................. 31
  2. Transitions in Legal Regulation ....................................... 32
     (1) In the Course of Economic Revival (From the end of WWII to Circa 1955) ........................................... 32
     (2) The Start of the Period of Economic Growth (Circa 1958-1965) ............................................. 32
     (3) The Period of High Economic Growth (From Circa 1966 to 1973) .................................................. 33
     (4) Low Growth Conversion Period (1974-Circa 1980) ......... 34
     (5) Responses to Structural Changes in the Labor Market ... 35
     (6) The 1990s Recessions and Employment Policies .......... 36
     (7) Creating Systems for an Aging Society with Fewer Children 36
     (8) Coping with Employment Diversification and Large Scale Employment Adjustments ............. 37

CHAP. TWO: CONTENT OF LAWS ........................................... 40
  1. The System of Intermediaries Between Job Offers and Job Seekers: The Employment Stabilization Law .................. 40
     (1) Historical Development of Legal Regulation .................. 40
     (2) The Basic Concept .............................................. 42
     (3) Common Rules for Employment Security Agencies and Private Entrepreneurs ..................... 43
     (4) Public Employment Stabilization Agencies, including Employment Stabilization Offices .......... 44
     (5) Regulation of Private Employment-Service Enterprises ... 45
     (6) The Prohibition of Labor-Supply Enterprises ............... 47
     (7) Penal Regulations ............................................. 48
  2. Development of Vocational Ability ................................ 48
     (1) Introduction .................................................. 48
     (2) The Basic Policy .............................................. 49
     (3) Measures for Promoting the Development of Vocational Ability Undertaken by Employers and Others .......... 49
     (4) Implementation of State and Prefectural Vocational Training ............................................. 51
     (5) Trade Skill Tests .............................................. 51
  3. Unemployment, etc. Payments ........................................ 51
     (1) Employment Insurance Coverage Scheme ..................... 52
     (2) The Structure of Unemployment, etc. Payments .......... 53
     (3) Payments to General Insured Job-Seekers ................. 54
     (4) Payments to Insured Job-Seekers Other than Those Who are Generally Insured. .......... 57
     (5) Continuous Employment Payments ......................... 57
     (6) Responsibilities for Expenses ................................ 58
  4. Promoting Employment and Preventing Unemployment .......... 59
     (1) The Three Programs For the Stabilization of Employment ............. 59
CONTENTS

(3) Promoting the Employment of Disabled Persons ........ 63
(4) Promotion of Regional Employment Development ........ 66

BOOK THREE: INDIVIDUAL LABOR RELATIONS LAW ............. 74

CHAP. ONE: INTRODUCTION TO INDIVIDUAL LABOR RELATIONS LAW ........ 74
SEC. ONE: MEANING AND CHARACTERISTICS OF THE LABOR CONTRACT ........ 74
  1. The Meaning of Labor Contract ........................... 74
  2. General Characteristics of Labor Contract Relations .......... 75
  3. The Basic Aspects of the Labor Contract .................. 76
     (1) The Relationship Between Furnishing Labor and
          Remuneration Therefor ............................. 76
     (2) The Relationship for Carrying Out Systematic Labor .... 77
     (3) The Relationship Requiring Good Faith and Care ......... 78

SEC. TWO: STRUCTURE, COVERAGE AND EFFECTS OF INDIVIDUAL LABOR
RELATIONS LAW ........................................... 83
  1. The Structure of Individual Labor Relations Law ........... 83
     (1) Labor Protective Laws ............................... 83
     (2) Labor-Contract Case Law ............................. 83
     (3) Collective Agreements and Work Rules ................ 84
     (4) Workplace Labor-Management Agreements ............... 84
     (5) Agreement with Individual Workers ................. 87
  2. Coverage Under the Labor Standards Law ................... 88
     (1) Covered Enterprises ................................ 89
     (2) Exclusions from Coverage ........................... 92
     (3) Application of the Labor Standards Law to Legally Invalid
         Labor Contracts .................................... 93
  3. Covered “Workers” ....................................... 93
     (1) The Issues ....................................... 93
     (2) “Director” or “Worker”? ............................ 94
     (3) Discretionary Suppliers of Work ....................... 95
     (4) Persons with Special Contracts ....................... 95
     (5) Small Subcontractors ................................ 96
  4. Employer ............................................... 96
     (1) Employer Under a Labor Contract ...................... 96
     (2) The Employer as the Principle Responsible Party for a Labor
         Standards Law Violation ............................ 99
  5. The Effects of the Labor Standards Law ..................... 100
     (1) Preemptive Legal Effects ............................ 100
     (2) Requiring Additional Payments ....................... 100
     (3) Penal Provisions .................................. 101
  6. Administrative Supervision of the Labor Standards Law .... 102
     (1) Organization of Supervisory Agencies ................. 102
     (2) The Authority of the Supervisory Agencies ........... 102
     (3) Reporting Violations ................................ 103
     (4) Employer Duties Designed to Effectuate the Labor Standards
         Law .................................................. 103
         (a) The Duty to Make the Laws Known (104); (b) The Duty
             to Prepare a Roster of Workers (104); (c) The Duty to
### SEC. THREE: LEGAL REGULATION AND EFFECTS OF WORK RULES

1. Introduction .............................................. 110
2. The Employer's Duties With Respect to Drawing Up and Changing Work Rules ......................................................... 110
   (1) The Duty to Draw Up and Submit the Rules .................. 110
   (2) Matters to be Covered in Work Rules ....................... 111
   (3) The Duty to Request the Workers' Opinion .................. 113
   (4) The Duty to Make the Work Rules Known to the Workers .......................................................... 114
3. The Effects of Work Rules ................................ 114
   (1) The Supremacy of Laws, Ordinances and Collective Agreements ............................................. 114
   (2) The Preemptive Legal Effects of Work Rules .......... 115
   (3) The Legal Character of Work Rules ......................... 116
   (4) The Binding Effect of Disadvantageous Changes in the Work Rules ............................................... 119
   (5) Judicial Determinations of Reasonableness of Work Rules Changes ................................................. 120
   (6) Clarifying the Case Law Reasonableness Determinations .... 121
   (7) Requisites for the Work Rules' Effects ..................... 125

### CHAP. TWO: LEGAL REGULATION OF THE FORMATION OF LABOR RELATIONS

1. The Basis and Limits of Hiring Freedom ...................... 129
2. The Contents of Hiring Freedom ............................. 131
   (1) Freedom to Determine the Number of People to Hire .. 131
   (2) Freedom With Respect to Methods of Recruitment ...... 131
   (3) Freedom of Choice ........................................ 131
4. The Freedom to Conclude Contracts .......................... 133
5. Freedom to Investigate ....................................... 133

### SEC. TWO: LABOR STANDARDS LAW CONTROL OF LABOR CONTRACT FORMATION

   (1) The Duty to Clearly State the Working Conditions .... 136
   (2) The Right to Cancel the Contract Immediately if it Differs from the Facts ........................................ 138
2. Conclusion of Labor Contracts by Minors ..................... 138

### SEC. THREE: "TENTATIVE DECISION TO HIRE"

1. Identifying the Issues ....................................... 140
2. Establishment of the Labor-Contract Formation Theory .... 140
3. The Legality of a Tentative Hiring Cancellation ............ 142
4. The Tentative-Hiring Relationship ........................... 143
   (1) The Meaning of the Day of Entering the Company ...... 143
   (2) The Tentative Decision and the Obligation of a Clear Working Condition ................................. 144
CONTENTS

(3) Cancellation of a Tentative Hiring Decision and Notice of Dismissal ........................................ 144
5. Administrative Regulation of Tentative-Hiring Cancellations ........ 144

CHAP. THREE: LEGAL REGULATIONS CONCERNING THE DEVELOPMENT OF LABOR RELATIONS ............................................. 146
SEC. ONE: BASIC PRINCIPLES ............................................................................................................... 146
SUBSEC. ONE: GUIDING PRINCIPLES OF LABOR RELATIONS ............................................................ 146
1. The Principles of Working Conditions ............................................................................................ 146
2. Equality in Determining Working Conditions and Observance of Contractual Norms ................. 146
SUBSEC. TWO: THE PROTECTION OF WORKERS' CIVIL LIBERTIES ...................................................... 148
1. The Equal-Treatment Principle ........................................................................................................ 148
   (1) Basic Purpose ............................................................................................................................. 148
   (2) The Meaning of "Working Conditions" and "Discriminatory Treatment" ................................. 148
   (3) Discrimination Based on Nationality .......................................................................................... 148
   (4) Discrimination Based on Creed ............................................................................................... 149
      (a) The Meaning of "Creed" (149); (b) Discrimination Based on Political "Acts" (149); (c) Conflicting Reasons for "Discriminatory Treatment" (149)
   (5) Discrimination Based on "Social Status" ................................................................................. 150
   (6) Results of a Violation of the Equal-Treatment Principle ........................................................ 150
2. Prevention of Unfair Personal Restrictions ...................................................................................... 151
   (1) Prohibition of Forced Labor ..................................................................................................... 151
   (2) Contract Period Limitation ....................................................................................................... 152
   (3) Ban on Predetermined Indemnity ............................................................................................... 153
   (4) Ban on Offsets Against Advances ............................................................................................ 154
   (5) Ban on Compulsory Savings and Restriction of Voluntary Savings ........................................ 155
      (a) The Ban on Compulsory Savings (155); (b) Controlling the Management of Voluntary Savings (155)
3. Elimination of Intermediate Exploitation ....................................................................................... 155
4. Guarantee of the Exercise of Civil Rights ......................................................................................... 156
5. The Protection of Privacy, Health and Safety in Dormitories ............................................................ 157
SUBSEC. THREE: MALE-FEMALE EQUALITY IN EMPLOYMENT ......................................................... 161
1. The Labor Standards Law's Principle of Equal Wages for Males and Females ................................ 161
2. Public-Order Legal Principles Governing Equal Treatment of the Sexes ........................................ 163
3. The Equal Employment Opportunity Law ....................................................................................... 165
   (1) The 1985 Enactment of the Equal Employment Opportunity Law ....................................... 165
   (2) The 1997 Revision of the Equal Employment Opportunity Law ........................................... 167
   (3) The Features of the Law's Revision ........................................................................................... 169
   (4) Recruitment and Hiring ............................................................................................................ 171
CONTENTS

(2) The Meaning of Worker Dispatching .......................... 208
(3) Regulation of Worker-Dispatch Undertakings ................. 209
(4) Covered Work and Dispatch Periods ........................... 210
(5) Worker-Dispatch Contracts ..................................... 211
(6) Measures to Be Taken by Employers of Dispatching
    Undertakings ..................................................... 213
(7) Measures to Be Taken by the Client ........................... 213
(8) The Applicability of Labor Protective Laws .................... 214
(9) Labor Contract Relations ....................................... 214

SEC. FOUR: WAGES ...................................................... 218
SUBSEC. ONE: THE MEANING AND SYSTEM OF WAGES ............. 218
1. The Meaning of "Wage" ........................................... 218
   (1) The Significance of Wage Definitions ....................... 218
   (2) Whether a Payment falls under a "Wage" .................... 218
2. Civil Code Principles Concerning Wages ......................... 220
   (1) Requirements for the Right to Demand Wages .............. 220
   (2) The Right to Claim Wages When Work Performance is
       Impossible ................................................... 220
3. Labor Law Principles Concerning Wages .......................... 221
4. Wage Systems and Patterns ....................................... 222
   (1) Wage Systems .............................................. 222
   (2) Scheduled Wages .......................................... 222
   (3) Wages: Forms of Payment ................................ 223
   (4) Bonuses ...................................................... 224
   (5) Retirement Allowances (Retirement Payments) .............. 225
   (6) Recent Changes in Wage Systems ............................ 227

SUBSEC. TWO: WAGE PROTECTION UNDER THE LABOR STANDARDS LAW . 232
1. Various Principles Concerning the Payment of Wages ........... 232
   (1) The Payment-in-Cash Principle .............................. 232
   (2) The Direct-Payment Principle ................................ 233
       (a) Payment to a Representative (233); (b) Payment to an
           Envoy (233); (c) Assignment of Wage Claims (233); (d) 
           Attachment of Wage Claims (234)
   (3) The Payment-in-Full Principle ............................... 234
       (a) Offsets (235); (b) Corrective Offsets (236); (c) Offsets 
           Consented to by Employees (236); (d) Abandonment of 
           Wage Claims (237)
   (4) The Principle of Paying Wages More than Once a Month on 
       Specified Dates ........................................... 237
2. Allowance for Business Interruptions ............................ 238
   (1) The Purpose ............................................... 238
   (2) "Business Interruption" .................................... 238
   (3) "Reasons Attributable" .................................... 238
3. Guaranteed Payment of Piece-Work Wages .......................... 239

SUBSEC. THREE: MINIMUM WAGES LAW ............................... 242
1. Historical Development .......................................... 242
   (1) Former Provisions of the Labor Standards Law .............. 242
(2) Enactment of the Minimum Wages Law .......................... 242
(3) Major Amendment of the Minimum Wages Law ................. 242

2. Content of the Present System ........................................... 243
(1) Basic Items ............................................................... 243
(2) Methods of Determining Minimum Wages Under the Law 243
(3) Regional Minimum Wages ............................................... 244
(4) New Industries Minimum Wages ....................................... 245
(5) Exclusion from Application of Minimum Wages .................... 246
(6) Minimum Wages: Effects and Enforcement Mechanisms 246

SUBSEC. FOUR: SECURING SATISFACTION OF WAGE CLAIMS ........... 249
1. Compelling Performance Under the Labor Standards Law ........ 249
2. The Grant of Priorities by the Civil and Commercial Codes ....... 249
3. Protection of Wage Claims in Bankruptcy Procedures ............ 251
   (1) Wage Protection in Bankruptcy Procedures .................... 251
   (2) Wage Protection in Company Rehabilitation Proceedings .... 252
   (3) Civil Rehabilitation Procedures and Wages ................... 252
   (4) Commercial Code (Company Reorganization) and Wages .... 253
   (5) Private Adjustments and Wages ................................ 253
4. Security of Wage Payment Law ............................................ 254
   (1) Legislative History .................................................. 254
   (2) The Content of the Law ............................................ 254
      (a) Government Payment of Unpaid Wages (254); (b) Preservative Measures for Employee Savings and Retirement Allowances (255); (c) Interest for Delay in Paying the Wages of Retired Workers (256)

SEC. FIVE: WORKING HOURS AND REST PERIODS ....................... 259

SUBSEC. ONE: PRINCIPLES OF WORKING HOURS AND REST DAYS ........ 259
1. Working-Hours Principles .............................................. 259
   (1) Legal Working Hours in a Week ................................ 259
   (2) Legal Working Hours in a Day .................................. 261
   (3) The Legal Effects of Legal Working Hours .................... 261
   (4) When Work is Performed in More than Two Workplaces ...... 262
2. The Rest-Periods Principle .............................................. 262
   (1) Length and Location of Rest Periods .......................... 262
      (a) Length of Rest Periods (262); (b) The Location of Rest Periods (263)
   (2) The Principle that Rest Periods be Provided “At the Same Time” .............................................. 263
      (3) The Principle of Free Use of Rest Periods .................. 263
      (4) Mine Work Exceptions .......................................... 264
      (5) Exceptions Regarding Rest in Service Industries ......... 265
      (6) Rest Periods that Exceed Statutory Standards ............ 265
3. The Principle of Weekly Rest ........................................... 266
   (1) Historical Development and Present Situation ............... 266
   (2) The Content of the Weekly Rest System Principle ............ 267
      (a) The Meaning of “Per Week” (267); (b) Meaning of
CONTENTS

(3) Modified Weekly-Rest Systems .............................................. 269
(4) Requirements for Changing Rest Days ................................. 269
  (a) Changes Prior to the Original Rest Day (269); (b) Changes on or After the Original Rest Day (270)

4. Exemptions from the Principles of Working Hours, Rest Periods and Rest Days .................................................. 270
  (1) The Purpose of the Exemptions ........................................... 270
  (2) Persons Engaged in Agricultural and Forestry, Animal Husbandry, and Marine Products Enterprises .......... 271
  (3) Supervisors and Managers ............................................... 271
  (4) Guards and Persons Engaged in Intermittent Labor .......... 272

5. The Concept of Working Hours ............................................. 273
  (1) The Definition of Working Hours ...................................... 273
  (2) Discrepancies Between Scheduled and Actual Working Hours .............................................. 274

SUBSEC. TWO: OVERTIME AND REST-DAY WORK ................................ 279

1. Ways of Regulating Overtime and Rest-Day Work ......................... 279
  (1) The Meaning of "Overtime and Rest-Day Work" ...................... 279
  (2) The Circumstances of, and the Revised Law's Approach to, Overtime Work .............................................. 279

2. Overtime and Rest-Day Work Because of Emergencies ...................... 281

3. Overtime and Rest-Day Work Pursuant to an Article 36 Agreement .......... 282
  (1) Legislative Purpose ................................................... 282
  (2) Overtime and Rest-Day Work Agreements (Article 36 Agreements) .............................................. 283
    (a) The Content of the Agreement (283); (b) The Term of the Agreement (286); (c) The Form of the Agreement and Filing (286); (d) The Effects of Concluding and Filing the Agreement (287)
  (3) The Duty of Overtime and Rest-Day Work: Prerequisites .......... 287

4. Increased Wages for Overtime, Rest-Day and Night Work ................ 288
  (1) Introduction ......................................................... 288
  (2) Excluded Wages .................................................... 289
  (3) The Increased Rate for Overlapping Overtime, Rest-Day and Late-Night Work .............................................. 290

SUBSEC. THREE: MAKING MAXIMUM WORKING HOURS FLEXIBLE – AVERAGING WORKING HOURS .............................................. 293

1. Averaging Working Hours Over a One-Month Period ....................... 294
  (1) Introduction ......................................................... 294
  (2) Requirements ....................................................... 294
  (3) Working-Hours Averaging Systems and Overtime Work .......... 295

2. One-Year Working-Hours Averaging Systems ................................ 296
  (1) Meaning ............................................................. 296
  (2) The System's Changes ............................................. 296
  (3) Requirements ....................................................... 297
  (4) Legal Effects ....................................................... 299

3. Averaging Variable Working-Hours in a One-Week Period .................. 300
  (1) Meaning ............................................................. 300
4. Limits on the Coverage of the Working-Hours Averaging System  . 302
   (1) Limits on the Applicability to Expectant and Nursing
       Mothers ........................................... 302
   (2) Considerations Concerning Persons Engaged in Childcare,
       etc. ............................................. 302

SUBSEC. FOUR: FLEXIBLE AND DISCRETIONARY WORKING-HOURS SYSTEMS 305

1. Flex-Time Systems .................................... 305
   (1) Meaning ........................................... 305
   (2) Requirements .................................... 305
   (3) Legal Effects .................................... 306

2. Discretionary-Work Systems .................................. 308
   (1) Purpose and Historical Development ............... 308
   (2) The Conclusive Presumption System's Perspective ... 311
   (3) Specialized-Occupations Discretionary-Work Systems .... 312
       (a) Targeted Occupations (312); (b) Requirements (313)
   (4) Discretionary-Work Systems for Planning Work ...... 313
       (a) Prerequisites (313); (b) Procedural Requirements (314)

SUBSEC. FIVE: ANNUAL PAID-LEAVE  .. 319

1. The Outline of Annual Leave Systems and Their Revision .... 319
   (1) Purpose and International Standards ............... 319
   (2) The Characteristics of Japan's Annual-Leave System .... 319
   (3) Revision of the Annual-Leave System ............... 319

2. Acquisition of a Right to Annual Leave .................. 320
   (1) The Distinction Between the Right to Annual Leave and the
       Right to Designate When It Will be Taken .......... 320
   (2) Conditions that Must Be Satisfied for Acquiring a Right to
       Annual Leave ....................................... 321
       (a) "Employed Continuously for Six Months" (321); (b)
           "Reported For Work on at Least 80% of the Total
           Working Days" (321)
   (3) The Number of Days of Leave ........................ 322
   (4) The Legal Effects of the Right to Annual Leave ....... 324

3. Specification of the Period for Annual Leave ............... 324
   (1) Designating the Leave Period ....................... 324
       (a) The Meaning of "Period" (324); (b) Designation of a
           Specific Period (324); (c) Designation of the Season for
           Annual Leave (326)
   (2) Exercising the Right to Change the Period .......... 326
       (a) Circumstances Under Which the Right to Change the
           Period May be Exercised (326); (b) "Interference With the
           Normal Operation of the Enterprise" (327)
   (3) Scheduled Annual Leaves Under Labor-Management
       Agreements ...................................... 329
(1) The Principle of Free Use of Annual Leave 330
(2) The Deliberate Use of Annual Leave for Labor-Dispute Purposes 331

5. The Disposition of Unused Annual Leave 332
(1) Limitations Periods and Carrying Over Annual Leaves 332
(2) Annual-Leave Buy-Outs by Employers 333

6. The Taking of Annual Leave and Disadvantageous Treatment 333

7. Annual Leaves That are Not Prescribed by Law 334

SEC. SIX: SAFETY AND HEALTH 338
1. The Industrial Safety and Health Law 338
(1) The Reasons for the Law's Enactment 338
(2) Basic Provisions 338
(3) Industrial Accident Prevention Program 340
(4) Safety and Health Management System 340
(5) Measures for Preventing Hazards and Health Impairment of Workers 342
(6) Regulations Concerning Hazardous Machinery and Harmful Substances 343
(7) Measures in Employing Workers 344
(8) Health-Preservation and Health-Promotion Measures 344
(9) Measures Designed to Create a Comfortable Workplace Environment 346
(10) Industrial Safety and Health Improvement Plans 347
(11) Notification of Plans to Establish, etc. Buildings or Machines, etc. 347
(12) Enforcement Mechanisms 347
(13) Penal Sanctions 348

2. Laws Related to the Industrial Safety and Health Law 348

SEC. SEVEN: PROTECTION OF WOMEN AND MINORS 352
SUBSEC. ONE: PROTECTION OF MINORS 352
1. Special Regulations Concerning the Conclusion of Labor Contracts with Minors 352
(1) Minimum Age 352
(2) Minors' Conclusion of Labor Contracts 353

2. Minors' Working Hours 354
(1) Minors Who Have Reached the End of the First March 31st After Reaching 15 Full Years of Age and Are Under 18 Full Years of Age 354
(2) Children Who Have Not Reached the End of the First March 31st After Reaching the Age of 15 355

3. Prohibition of Night Work 355
(1) The Principle 355
(2) Exemptions 356

4. Special Regulations Concerning Minors' Safety and Health 356
(1) Limitations on Engaging in Hazardous and Harmful Duties 356
(2) The Ban on Underground Work 357
CONTENTS

SUBSEC. TWO: PROTECTION OF WOMEN'S MOTHERHOOD CAPACITY 360
1. Changes in Labor Standards Law's Protection of Women 360
2. Elimination of the General Protective Provisions for Women 360
   (1) Eliminating Provisions that had Restricted Overtime and Rest-Day Work and Prohibited Late-Night Work 360
   (2) The Institutional Treatment of the Repeal of Protective Provisions 361
3. The Ban on Work Harmful to Maternal Functions 362
4. Pre-Childbirth and Post-Childbirth Protections 363
   (1) Pre-Childbirth and Post-Childbirth Leaves 363
   (2) Transfer to Light Work 364
   (3) Applicable Limits on Working-Hours Averaging Systems and Overtime, Rest-Day and Night Work Ban, Based on an Expectant or Nursing Mother's Request 364
5. Childcare Time 365
6. Leaves for Women for Whom Work During Menstrual Periods Would be Difficult 365

SEC. EIGHT: WORK ASSISTANCE FOR A SOCIETY WITH A GROWING NUMBER OF ELDERS AND A DECREASING NUMBER OF CHILDREN 368
1. Introduction 368
   (1) The Subjects of Childcare and Nursing-Care Legal Regulation 368
   (2) Enactment of the Childcare Leave Law 368
   (3) Enactment of the Nursing-Care Leave Law 368
   (4) The Childcare and Nursing-Care Leave Law's Coverage and Particular Laws 369
2. Childcare Leaves 369
   (1) Starting Childcare Leave by Requesting It 369
   (2) The End of the Childcare-Leave Period 370
   (3) Prohibited Dismissals 370
   (4) Treatment During the Leave Period 371
   (5) Reducing Working Hours, etc. 371
   (6) Guidelines 372
3. Nursing-Care Leaves 372
   (1) The Right to a Nursing-Care Leave 372
   (2) Prohibition of Dismissals 373
   (3) Reducing Working Hours, etc. 373
   (4) Wages During the Leave Period 373
   (5) Exercising the Right to a Nursing-Care Leave 373

SEC. NINE: WORKERS' ACCIDENT COMPENSATION 377
SUBSEC. ONE: INTRODUCTION 377
1. Basic Character and Distinctive Features of the Workers' Accident Compensation System 377
2. Development of the Workers' Accident Compensation System in Japan 378
   (1) The Workers' Accident Compensation System Under the Labor Standards Law 378
CONTENTS xvii

(a) Medical Compensation (378); b) Compensation for Lost Time (378); (c) Compensation for Discontinuance (378); (d) Compensation for Disabilities (378); (e) Survivors' Compensation (378); (f) Payment of Compensation in Installments (378); (g) Funeral Expenses (378)

(2) Development of the Workers' Accident Compensation Insurance Law (The Present Workers' Accident Compensation System) 379

SUBSEC. TWO: OUTLINE OF WORKERS' ACCIDENT COMPENSATION INSURANCE LAW 382

1. Structure of the Workers' Accident Insurance Law 382

(1) Purpose 382
(2) Administration, Covered Undertakings, Funding 382
(3) Insurance Benefits 383
(4) Labor Welfare Services 383

2. Insurance Benefits for Employment Injuries 384

(1) The Concept of "Employment Injuries" 384
(2) Injuries and Death in the Course of Employment 385
   (a) In the Course of Employment (385); (b) Caused by Duties (385)
(3) "Illnesses Resulting From Employment" 386
(4) Scope of Insurance Benefits 388
   (a) Medical Compensation Benefit (388); (b) Temporary Absence Compensation Benefit (389); (c) Disability Compensation (389); (d) Survivors Compensation Pension (390); (e) Funeral Expenses (391); (f) Injury and Disease Compensation Pension (391); (g) The Compensation Benefit for Nursing Care (391)
(5) Insurance Benefit Procedures 392
(6) Benefit Limits 392
(7) Statute of Limitations 393

3. Insurance Benefits With Respect to Commutation Injuries 394

(1) The Concept of "Commuting Injuries" 394
(2) The Content of Insurance Benefits 395

SUBSEC. THREE: NON-STATUTORY COMPENSATION 400

1. Damage Claims under the Civil Code 400

(1) Permissible Damage Claims 400
(2) The Doctrine of Employer's Duty to Care for Employee Safety and Health 400
(3) The Actual Content of the Duty to Care for Safety 402
(4) Damage Claims Against Third Parties 404
(5) Adjusting Workers' Accident Insurance Benefits and Damages 405

2. Workers' Accident Supplementary Compensation System 408

(1) Meaning 408
(2) Legal Issues 408
SEC. TEN: ENTERPRISE ORDER AND DISCIPLINE ........................................... 412
SUBSEC. ONE: ENTERPRISE ORDER ............................................................ 412
1. Disciplinary Rules (Fukumukiritsu) in Enterprises ................................. 412
   (1) The Content of Disciplinary Rules ..................................................... 412
      (a) Disciplinary Rules in a Narrow Sense (412);
         (b) Rules Governing the Management and Maintenance
             of Enterprise Property (413); (c) Rules Derived From an
             Employee's Position and Status (413)
   (2) The Concept of Disciplinary Rules ................................................... 413
2. Enterprise Order ......................................................................................... 413
   (1) The Concept of Enterprise Order ......................................................... 413
   (2) Employers' Right to Establish and Maintain Enterprise
       Order .......................................................................................................... 414
      (3) The Limits of Employers' Enterprise-Order Right ............................ 415
SUBSEC. TWO: DISCIPLINE ................................................................. 419
1. The Meaning of Disciplinary Measures ................................................. 419
2. The Basis and Limits of the Right to Take Disciplinary
   Measures ...................................................................................................... 419
   (1) The Basis of the Right to Take Disciplinary Measures ...................... 419
   (2) Limitations on The Right to Impose Discipline .................................. 420
3. Types of Disciplinary Measures ............................................................... 421
   (1) Reprimands and Warnings ................................................................... 421
   (2) Wage Decreases .................................................................................... 421
   (3) Suspension ............................................................................................. 422
   (4) Disciplinary Discharge ......................................................................... 423
4. Grounds for Discipline ................................................................................ 424
   (1) Falsification of One's Past Record ....................................................... 424
   (2) Neglecting One's Duties ....................................................................... 425
   (3) Violation of Job-Related Orders ........................................................... 426
   (4) Impeding the Work ................................................................................ 426
   (5) Violation of Workplace Discipline ....................................................... 426
   (6) Violations of Rules and Duties Based on Employee
       Status ......................................................................................................... 428
       (a) Misconduct in One's Private Life (428); (b) Dual Jobs
           (429); (c) Violations of the Duty of Loyalty (430)
5. Requirements for Valid Disciplinary Punishments .................................. 430
   (1) Various Principles Analogous to Those in the Criminal
       Law ............................................................................................................. 430
   (2) The Equal-Treatment Principle ............................................................. 431
   (3) The Propriety Principle ......................................................................... 431
   (4) Fair Procedures ..................................................................................... 432
SEC. ELEVEN: PERSONNEL ADMINISTRATION .............................................. 435
SUBSEC. ONE: EDUCATION AND TRAINING ............................................... 435
1. Education and Training Within the Enterprise ........................................... 435
   (1) Types of Education and Training ......................................................... 435
   (2) The Modern Importance of Education and Training ......................... 435
CONTENTS

SUBSEC. TWO: PROMOTIONS, UPGRADES AND DEMOTIONS ................................. 438
  1. Promotions ........................................................................................................... 438
     (1) Meaning of “Promotion” ............................................................................. 438
     (2) Legal Regulation of Promotions ................................................................. 438
  2. Upgrading ............................................................................................................. 438
     (1) Upgrading and Advancement Based on Qualifications ......................... 438
     (2) Legal Regulation of Upgrading ................................................................. 439
  3. Demotions ............................................................................................................ 440
     (1) The Meaning of Demotions ....................................................................... 440
     (2) Demotion as a Disciplinary Measure ....................................................... 440
     (3) Demotions in Position and Job Title Based on the Right to Manage Personnel .............................................................................................................. 440
     (4) A Demotion to Lower the Qualifications for a Job Function .................. 441

SUBSEC. THREE: TRANSFERS AND “FARMING OUT” (SHUKKŌ) .................. 443
  1. Transfers .............................................................................................................. 443
     (1) The Meaning of Transfer ........................................................................... 443
     (2) The Basis and Limits of an Employer’s Right to Order a Transfer .......... 443
     (3) Labor-Contract Limitations on Transfer Orders ......................................... 444
        (a) Limitations on Types of Employment (444); (b) Restrictions on Work Locations (445)
     (4) Limitations Based on the Doctrine of the Abusive Exercise of a Right .... 446
  2. “Farming Out” (Shukkō and “Moving Out” (Tenseki) ......................... 447
     (1) The Meaning of “Farming Out” (Shukkō) and “Moving Out” (Tenseki) .. 447
     (2) Requirements for a Right to Farm Out an Employee to Another Company .............................................................................................................. 448
     (3) The Propriety of an Employment-Transfer (Tenseki) Order ................. 449
     (4) Restrictions Stemming from the Doctrine of Abusive Exercise of a Right .... 450
  5. Labor Relations During a Farming-Out to Another Company .................... 450
     (a) Labor Relations After Moving Out to Another Company (452)

SUBSEC. FOUR: SUSPENSION OF EMPLOYMENT ........................................... 455
  1. The Meaning and Types of Suspensions ......................................................... 455
  2. Legal Regulation .................................................................................................. 456
     (1) Injury and Sickness Suspensions ................................................................. 456
     (2) Suspensions Because of a Worker’s Prolonged Absence ....................... 457
     (3) Prosecution Suspensions ............................................................................. 457

CHAP. FOUR: LEGAL REGULATION OF LABOR RELATIONS TERMINATION . 460
SEC. ONE: TERMINATION FOR REASONS OTHER THAN DISMISSAL ............ 460
  1. The Expiration of a Labor Contract for a Fixed Period ............................... 460
  2. Consensual Termination .................................................................................... 460
  3. Resignations ....................................................................................................... 461
CONTENTS

4. Mandatory Retirement Systems .................................................. 462
5. Extinction of a Party ................................................................. 464
   (1) Death of a Party .............................................................. 464
   (2) Extinction of One's Status as a Juridical Person
       (Dissolution) .............................................................. 464
6. Reorganization of Enterprises and Labor Contracts ...................... 465
   (1) Merger of Companies and Labor Contracts ......................... 465
   (2) Transfer of Business and Labor Contract ......................... 465
       (a) Division of Company and Labor Contract (466)

SEC. TWO: DISMISSAL .................................................................... 473
1. Dismissals Under Contracts for a Fixed Period .......................... 473
2. Dismissals Under Contracts Without a Fixed Period .................. 473
   (1) Civil Code Principles ...................................................... 473
   (2) Regulation by the Labor Standards Law ............................ 474
       (a) Restrictions on Dismissals During Periods of
           Maternity Leaves and Medical Treatment of Work-
           Related Injuries (474); (b) Notice of Dismissal (476); (c)
           The Prohibition of Discriminatory Treatment (477)
   (3) Regulation by the Trade Union Law .................................. 479
   (4) Regulation by Collective Agreements ............................... 479
   (5) Regulation by the Doctrine of Abusive Dismissal ............... 479
       (a) Establishment of the Doctrine of Abusive Dismissal by
           Case Law (479); (b) Reasonable Grounds for Dismissal (480);
           (c) The Significance of Specifying Dismissal Grounds in
               Work Rules (482); (d) Invalidity of Abusive Dismissal (482);
           (e) Wages During the Dismissal Period (483); (f) Deduction
               of Interim Earnings from Back Pay (483); (f) Applicability
               of Dismissal Restrictions to Disciplinary Discharges (485); (g)
               Abusive Dismissal and Torts (486); (h) Dismissals as a Means
               of Employment Adjustment (486)
   (6) Conditional Dismissals to Change Working Conditions ........ 489

BOOK FOUR: COLLECTIVE LABOR RELATIONS LAW ....................... 494
CHAP. ONE: FORMATION AND MANAGEMENT OF UNIONS ............... 494
SEC. ONE: INTRODUCTION ............................................................ 494
1. Legal Policies Concerning Unions .......................................... 494
   (1) Prohibition .................................................................... 494
   (2) Legal Approval (Non-Intervention) .................................. 495
   (3) Assistance and Encouragement ....................................... 495
   (4) Contemporary Regulation .............................................. 495
2. The Employee Representation System ..................................... 495
3. A Survey of Current Law Concerning Labor Unions .................. 496
4. Forms and Varieties of Trade Unions .................................... 497
   (1) Types Based on the Scope of the Membership .................. 497
       (a) Craft Unions (497); (b) Industrial Unions (498); (c)
           General Unions (498); (d) Enterprise Unions (498); (e)
           Regional General Unions (499)
(2) Types Depending on Individual or Group Membership ........................ 500
   (a) Unit Union (Unions Composed of Individuals Only) (500); (b) Federated Unions (500);
   (c) Mixed Organizations (500)
(3) National Labor Organizations .................................................. 500
(4) The General Condition of Japan's Organized Workers .................. 501

SEC. TWO: UNIONS: THE CONCEPT AND NECESSARY CONDITIONS ............ 503
1. The Concept of a Union Under Current Law .................................. 503
2. Requirements for a “Statutorily Qualified Union” .......................... 505
   (1) Membership ................................................................. 505
      (a) “Workers” (505); (b) “Predominantly” (507)
   (2) Independence ............................................................. 507
      (a) “Autonomously” (507); (b) Exclusion of Managerial Employees from Membership; Non-Receipt of Financial Assistance from the Employer (508)
   (3) Purpose ........................................................................ 509
   (4) Character as an Organization ............................................. 510
   (5) The Union Constitution: Requirements ................................. 510
3. Certification of a Union's Qualifications ....................................... 511

SEC. THREE: THE ORGANIZATION AND MANAGEMENT OF UNIONS ............ 515
1. Legal Regulation of Union Autonomy ........................................... 515
   (1) Control under Property Law ............................................... 515
   (2) The Legal Principle of Union Democracy ............................... 516
2. Acquisition and Loss of Membership Status .................................. 516
   (1) Admission .................................................................. 516
   (2) Resignation .................................................................. 517
   (3) Expulsion .................................................................... 518
3. Union Shop .............................................................................. 518
   (1) Meaning of the Union Shop ............................................... 518
   (2) The Validity of Union Shop Agreements ............................... 519
   (3) The Effective Scope of a Union Shop Agreement ................. 520
   (4) Effects of Dismissals Based on Union Shop Agreements ......... 521
   (5) Effects of a Union Shop Dismissal Following an Invalid Expulsion from the Union .................................................. 521
4. The Internal Organization of the Union ......................................... 522
   (1) Types of Offices ............................................................ 522
   (2) Legal Issues .................................................................. 523
      (a) The Scope of the Acts within a Union's Authority (523); (b) Representing the Union and Managing its Business (523); (c) The Union's External Responsibilities (524); (d) Internal Responsibilities of Union Officers (524); (e) Effects of a Decision that the Union Constitution has Been Violated (524); (f) Nominating Candidates for Union Office (525)
5. Union Assistance Arrangements .................................................. 526
   (1) Maintaining Employee Status While Occupying Full-Time Union Office .................................................. 526
(2) Checkoff .................................................. 526
(3) Time Off for Union Business ......................... 527
(4) Furnishing Office Space .............................. 527
6. Union Finances ......................................... 529
   (1) Scope of the Obligation to Pay Union Dues ...... 529
   (2) The Scope of a Union's Legitimate Expenditures 530
   (3) Forms of Ownership of Union Property .......... 531
   (4) Limitations on the Diversion of Welfare Funds 532
7. Discipline by the Union ................................ 533
   (1) Identifying the Issues .............................. 533
   (2) The Basis of the Union's Right to Discipline its Members 533
   (3) Disciplinary Matters .............................. 533
      (a) Relationship to Union Members' Political Freedom (533); (b) Relationship to Union Members' Free-Speech Rights (534); (c) Opposition to Union Policies and Decisions (535); (d) Obstructing Collective Bargaining (536); (e) Non-existence of a Member's Duty to Obey a Union's Illegal Directive (536)
   (4) The Content of Union Discipline ................... 536
   (5) Union Disciplinary Procedures .................... 537
SEC. FOUR: REORGANIZATION OR EXTINCTION OF UNIONS .......... 541
1. Dissolution .............................................. 541
   Reasons for Dissolution ............................. 541
   Reversion of Remaining Assets ...................... 541
2. Organizational Changes ................................ 542
   (1) Terms and Procedures for Organizational Change .... 542
      (a) Changes in the Scope of Its Membership (542); (b) Reorganization: From "Unit Union" to Federation (542); (c) Reorganization: From Federation to Unit Union (542); (d) Entry of a Unit Union into a Federation (542); (e) Secession of a Unit Union from a Federation (542); (f) Reorganization: From a Unit Union to an Enterprise-Based Local Union (543)
   (2) Effects of Organizational Changes ................ 543
3. Schism .................................................. 543
   (1) The Propriety of Introducing the Concept of "Schism" .. 543
   (2) Schism Within Local Unions That Are Part of Unit Unions 545
4. Amalgamation .......................................... 546
CHAP. TWO: COLLECTIVE BARGAINING .......................... 548
SEC. ONE: INTRODUCTION ................................ 548
1. The Functions of Collective Bargaining .............. 548
   (1) The Practical Meaning of Collective Bargaining .... 548
   (2) The Concept of Collective Bargaining Under Current Law 549
2. The Legal Treatment of Collective Bargaining ........ 550
3. The Various Forms of Collective Bargaining .......... 551
CONTENTS

(1) Typical Patterns ................................. 551
   (a) Industry-Wide Bargaining (551); (b) Enterprise-Based Bargaining (551); (c) Workplace Bargaining (552)
(2) Intermediate Forms Between Enterprise-Based Bargaining and Industry-Wide Bargaining .............. 552
   (a) Participation in Enterprise Bargaining by Officials of an Industrial Federation (552); (b) "Joint Signature" Bargaining (552); (c) "Group Bargaining" (552); (d) Industrial Union Bargaining with Individual Employers ("Taikakusen" Bargaining) (553)

4. Labor-Management Consultation Systems ....................... 553
   (1) Forms of Labor-Management Negotiations Other than Collective Bargaining .................. 553
   (2) The Features and Status of Labor-Management Consultation Systems ..................... 554
   (3) The Legal Status of Labor-Management Consultation Systems .......................... 555

SEC. TWO: COLLECTIVE BARGAINING: PARTIES, SUBJECTS AND PROCEDURES ........................................ 557

1. The Parties to Collective Bargaining ......................... 557
   (1) Parties and Negotiators in Collective Bargaining ........ 557
   (2) Union Parties to Collective Bargaining ..................... 557
      (a) Parent Organizations (557); (b) The "Basic Unit" Union (558); (c) Branch Unions (559); (d) Workplace Organizations (560); (e) Unorganized Groups of Workers (Dispute Groups) (560)
   (3) Employer Parties to Collective Bargaining ................. 560
      (a) Employer Associations (560); (b) Individual Employers (561)
   (4) Union Negotiators in Collective Bargaining ............... 561
      (a) Members of a Union's Negotiating Team (561); (b) Clauses Prohibiting Delegation of Negotiating Authority (562)
   (5) The Employer's Negotiating Team .......................... 563

2. The Subjects of Collective Bargaining ...................... 563
   (1) Introduction ..................................... 563
   (2) Individual Issues ................................ 564
      (a) Working Conditions and Other Treatment (564); (b) Subjects Concerning Personnel Matters (565); (c) Matters Concerning Management and Production (565); (d) Subjects Concerning the Management of the Collective Bargaining Relationship (565)

   (1) Basic Content of an Employer's Bargaining Duty ........ 566
      (a) Duty to Bargain in Good Faith (566); (b) The Duty of Employers to Provide Notice of Changes in Working
Conditions (568); (c) Collective Bargaining During Dispute Acts (568)

(2) The Opening Procedures in Collective Bargaining ........... 568
   (a) Clarifying the Parties, Negotiators and Bargaining Subjects (568); (b) Setting the Date, Place and Time for Negotiations (569); (c) Preliminary Negotiations (569); (d) Preliminary Procedures for Union-Employer Discussions (569)

(3) Modes of Collective Bargaining ...................................... 569

SEC. THREE: REMEDIES FOR REFUSALS TO BARGAIN .............. 573
1. Labor Commission Remedies ................................. 573
   (1) Unfair Labor Practice Complaints ......................... 573
   (2) An Application for Conciliation ......................... 573
2. Judicial Remedies ..................................................... 573
   (1) Confirming Legal Status to Demand Collective Bargaining 573
   (2) Damage Claims ................................................. 575

CHAP. THREE: THE COLLECTIVE AGREEMENT ......................... 578
SEC. ONE: INTRODUCTION: LEGAL TREATMENT OF THE COLLECTIVE AGREEMENT ............................................. 578
1. The Meaning, Function and Legal Treatment of Collective Agreements ........................................... 578
   (1) The Meaning of Collective Agreements .................... 578
   (2) The Function of Collective Agreements ................... 579
   (3) Patterns of Legal Treatment of the Collective Agreement 579
3. The Legal Nature of Collective Agreements ......................... 580
   (1) The "Legal Norm" Theory .................................... 580
   (2) Contract Theory .............................................. 581

SEC. TWO: REQUIREMENTS FOR FORMING A COLLECTIVE AGREEMENT .. 583
1. The Parties .............................................................. 583
   (1) "A Trade Union" .............................................. 583
      (a) A Union That is Insufficiently Independent (583); (b) Parent Organizations (583); (c) Branches and Chapters (583); (d) Workplace Agreements (584); (e) Strike Groups (584)
   (2) "An Employer or an Employers' Organization" ............. 584
2. The Content of Agreements ............................................. 585
3. Formalities of Agreements ............................................. 585
   (1) The Written Document ....................................... 585
   (2) Signature or Name Affixed with Seal ....................... 586

SEC. THREE: EFFECTS OF COLLECTIVE AGREEMENTS .................. 588
1. The Structure of Collective Agreement Effects .................. 588
2. Normative Effects .................................................... 588
   (1) The Content of the Normative Effects .................... 588
   (2) Collective Bargaining versus Individual Bargaining .... 589
   (3) The Normative Effect of Matters that are Disadvantageous to Union Members ......................... 590
CONTENTS  xxv

(4) The Extent of the Normative Effect ................................. 593
(5) Persons Covered by the Normative Effect ....................... 594

3. Contract-Obligation Effects ...................................... 595
   (1) Introduction ...................................................... 595
       (a) A Summary of the Contract-Obligation Part (595); (b)
           The Character of the Contract-Obligation Effect (595)
   (2) Implementation Duties ......................................... 595
   (3) Peace Obligation and Peace Clauses .......................... 597
       (a) The Concept (597); (b) Effects of a Violation of the
           Duty (598)

SEC. FOUR: EXTENDING THE EFFECTS OF COLLECTIVE AGREEMENTS (GENERAL
BINDING EFFECT) ...................................................... 602
1. General Binding Effect in a Workplace Unit ...................... 602
   (1) The Purpose of the System .................................... 602
   (2) Requirements for Extension ................................... 603
       (a) "In a Particular Factory or Workplace" (603); (b)
           "Workers of the Same Kind Regularly Employed" (603);
           (c) "When Three-Fourths or More of the Workers Come
               under the Application of a Particular Collective
               Agreement" (604)
   (3) The Effects of Extension ...................................... 604
   (4) Extension When Minority Workers Form a Union ............... 605

2. General Binding Effect in a Locality ............................ 606
   (1) Purpose and Historical Development ......................... 606
   (2) Requirements .................................................... 606
   (3) Effects .......................................................... 607

SEC. FIVE: TERMINATION OF COLLECTIVE AGREEMENTS ................. 609
1. Reasons for Termination of a Collective Agreement .............. 609
   (1) Expiration of Term of Agreements ............................ 609
   (2) Termination and Cancellation ................................ 610
   (3) Achievement of the Agreement's Objectives ................ 611
   (4) A Change in the Parties ....................................... 611
       (a) Employers (611); (b) Unions (612)
   (5) The Formation of Inconsistent Collective Agreements ...... 612

2. Union-Management Relations Following the Termination of a
   Collective Agreement ............................................... 612
   (1) The Contract-Obligation Part ................................. 613
   (2) The Normative Part ............................................. 613

CHAP. FOUR: COLLECTIVE ACTION .................................... 616
SEC. ONE: LEGAL PROTECTION OF COLLECTIVE ACTION ............... 616
1. Legal Protection of Collective Action: Introduction ............. 616
2. Legal Protection of Dispute Acts ................................ 617
   (1) Exemption from Criminal Liability .......................... 617
   (2) Exemption from Civil Liability ............................... 618
   (3) Protection Against Disadvantageous Treatment ............... 619
3. Legal Protection of Union Activity ................................ 619
CONTENTS

(1) Nature of the Legal Protection .......................... 619
(2) Differences in the Legal Protection of Dispute Acts .... 620
(3) Distinctions Between “Dispute Acts” and “Union
   Activities” ............................................... 621

SEC. TWO: THE PROPRIETY (SEITÖSEI) OF COLLECTIVE ACTION .... 623

1. The Meaning of “Propriety” (Seitösei) ....................... 623
2. The Propriety of Dispute Acts ............................... 624
   (1) Propriety Depending on the Parties to the Dispute Act .. 625
   (2) Propriety Depending on Objectives ....................... 625
      (a) General Standards (625); (b) Political Strikes (626); (c) 
         Sympathy Strikes (626); (d) Strikes Over Demands 
         Concerning Management, Production and Personnel 
         (627)
   (3) Propriety of the Dispute Act Depending on Its Timing and 
       Compliance with Procedures ........................... 629
      (a) Dispute Acts Undertaken Without Prior Bargaining 
       (629); (b) Dispute Acts Not Preceded by Notice (629); (c) 
       Dispute Acts that Violate the Peace Obligation and Peace 
       Clauses (630)
   (4) Propriety Depending on the Means and Circumstances of the 
       Dispute Act ............................................. 630
      (a) General Criteria (630); (b) Picketing (632); (c) 
      Occupation of the Workplace (634)

3. The Propriety of Collective Action Other than Dispute Acts (i.e. Union 
   Activity) .................................................. 635
   (1) Propriety Depending on the Parties Engaged in Union 
       Activity ................................................ 636
   (2) Propriety Depending on the Objectives of Union Activity 636
   (3) Propriety Depending on the Means Employed for Union 
       Activity ................................................ 637
      (a) General Criteria (637); (b) Wearing Ribbons, 
      Armbands, Badges and Headbands (639); (c) Posting 
      Handbills (640); (d) Distribution of Handbills (643)
   (4) Propriety in Demanding Collective Bargaining and of Speech 
       and Conduct in Bargaining .............................. 644

SEC. THREE: WHO IS LIABLE FOR IMPROPER DISPUTE ACTS? ............ 649

1. Who is Liable for Damages? ................................... 649
   (1) The Existence of Individual Liability ................. 649
   (2) The Location and Content of Individual Liability ..... 650
   (3) Components of Organizational Liability ............... 650
   (4) The Relationship Between Organizational and Individual 
       Liability ............................................... 651

2. Employer Disciplinary Action ................................ 651
   (1) The Propriety of Disciplinary Action Against Employees who 
       Engage in Improper Collective Action ............... 651
   (2) Liability of Union Leaders to Discipline for Organizing
SEC. FOUR: DISPUTE ACTS AND WAGES .................................................. 655
1. Wages of Dispute Act Participants .............................................. 655
   (1) The “No Work-No Pay” Principle ........................................ 655
   (2) Wage Items that are Not Subject to Wage Cuts ...................... 655
   (3) The Propriety of Wage Cuts in Bonuses ............................... 656
   (4) Slowdowns and Wage Cuts ............................................... 657
2. Wages of Those Who Do Not Participate in Dispute Acts .............. 658
   (1) “Partial Strikes,” “Limited Strikes” and Wages ...................... 658
   (2) “Partial Strikes,” “Limited Strikes,” and Business-Interruption
        Allowances .............................................................. 659
SEC. FIVE: EMPLOYERS’ COUNTERVAILING MEASURES ..................... 662
1. Continuation of Operations .................................................... 662
   (1) Freedom to Conduct Operations ....................................... 662
   (2) Scab-Prohibition Agreements ......................................... 662
2. Lockouts ............................................................................ 663
   (1) Identifying the Issues ................................................... 663
   (2) The Right to Lockout .................................................... 663
   (3) Lockout Prerequisites .................................................. 664
   (4) Parties Subject to a Lockout .......................................... 665
CHAP. FIVE: LABOR COMMISSION REGULATION OF LABOR RELATIONS .. 667
SEC. ONE: THE LABOR COMMISSIONS .............................................. 668
1. Description of the Labor Commissions ..................................... 668
2. The Structure of the Labor Commissions ................................ 669
   (1) Tri-Partite Structure and Number of Members ..................... 669
   (2) Appointment of Members .............................................. 670
   (3) Term of Office, Remuneration, Security of Status ............... 671
   (4) The Executive Office .................................................. 672
3. The Authority of the Labor Commissions ................................ 672
   (1) Examination of Union Qualification to Participate in
        Commission Proceedings ............................................. 672
   (2) Investigating and Remediying Unfair Labor Practices ........... 673
   (3) The Adjustment of Labor Disputes ................................... 673
   (4) Decisions to Extend the Application of a Collective
        Agreement ..................................................................... 673
   (5) Authority to Compel Submission of Reports and
        Documents ...................................................................... 673
4. The Features of the Labor Commission System ......................... 675
SEC. TWO: ADJUSTMENT OF LABOR DISPUTES ................................ 679
1. Introduction ....................................................................... 679
   (1) The Meaning of Dispute Adjustment .................................. 679
   (2) Independent and Statutory Dispute Adjustment .................... 679
   (3) Forms of Dispute Adjustment Procedures .......................... 679
2. Adjustment Procedures Under the Labor Relations Adjustment Law ........................................................................ 680
   (1) Introduction .................................................................. 680
       (a) The Principle of Voluntary Settlements (681);
(b) Matters Subject to Adjustment (681); (c) Public Welfare Undertakings (682); (e) Jurisdiction (683)

(2) Adjustment Procedures for Labor Disputes ............... 683
   (a) Conciliation (683); (b) Mediation (684)

(c) Arbitration ............................................................... 686

SEC. THREE: REMEDYING UNFAIR LABOR PRACTICES .................................................... 689

SUBSEC. ONE: INTRODUCTION .................................................... 689
   1. The Meaning of the Unfair Labor Practice Remedial System .... 689
   2. Historical Development of the Unfair Labor Practice Remedial System ........................................... 689
      (1) The System Under the Former Trade Union Law .... 689
      (2) Changing to the Present System ..................... 690
   3. Purposes of the Unfair Labor Practices Remedial System – and Relationship to Article 28 of the Constitution .... 691
   4. Characteristics of the Unfair Labor Practices Remedial System ... 692
      (1) Characteristics of Prohibited Acts .................. 692
      (2) Characteristics of the Remedial Machinery and Procedures .............................................................. 693
   5. Special Characteristics of the Japanese Unfair Labor Practice Remedial System ............................................. 693

SUBSEC. TWO: ELEMENTS OF AN UNFAIR LABOR PRACTICE ........................................... 696
   1. Introduction ............................................................... 696
   (1) Types of Acts Prohibited as Unfair Labor Practices ..... 696
   (2) The Relationship Between Different Types of Unfair Labor Practices ................................................. 696
   (3) The Concept of the Employer .................................... 697
   2. Disadvantageous Treatment ...................................... 700
      (1) “Unions” ............................................................... 701
      (2) “By Reason of Such Worker's Being a Member of a Union” 701
      (3) “By Reason of Such Worker's Having Tried to Join or Organize a Trade Union.” .................... 701
      (4) “Proper Acts of a Trade Union” .................................. 702
         (a) Individual Acts or Union Acts? (702); (b) Types of Activities (702); (c) Propriety (703)
      (5) “By Reason Of” ...................................................... 703
         (a) The Intent Requirement for an Unfair Labor Practice (703)
         (6) Disadvantageous Treatment .................................. 706
         (7) Yellow-Dog Contracts ........................................... 708
   3. Refusals to Bargain ..................................................... 708
      (1) Introduction ........................................................... 708
      (2) The Types of “Refusals to Bargain”: A General View .. 709
   4. Domination or Interference ...................................... 710
      (1) Introduction ........................................................... 710
      (2) Imputing Domination or Interference to the Employer . 710
      (3) The Intent to Dominate or Interfere .................... 711
(4) Modes of Domination or Interference .......................... 712
(a) Introduction (712); (b) “Domination and Interference”
and the Expression of Employer Opinions (713); (c)
Domination and Interference in Light of the
Management Right to Control its Facilities (714)

(5) Financial Support .............................................. 716

5. Unfair Labor Practices that Fall Under Two or More Categories at a
Time ................................................................. 716
(1) Massive Discrimination in Performance Evaluations of Union
Members ......................................................... 716
(2) Unfair Labor Practices and Cutting Wages Because of Dispute
Acts ................................................................. 718
(3) Can the Discharge of All Union Members Upon a Company's
Dissolution Be an Unfair Labor Practice? ..................... 719
(4) Collective Agreements and Unfair Labor
Practices ......................................................... 720
(5) Bargaining with Coexisting Unions and Unfair Labor
Practices ......................................................... 721

SUBSEC. THREE: REMEDIAL PROCEDURES FOR UNFAIR LABOR PRACTICES . 727

1. Introduction ..................................................... 727

(1) Basic Characteristics ........................................ 727
(2) The Basic Procedural Framework ......................... 727
(3) Labor Commission Initiative and Limitations Thereon .... 727

2. Examination Procedures in the Local Labor Commissions ...... 728

(1) Jurisdiction ..................................................... 728
(2) The Complaint .................................................. 729
(a) The Form of the Complaint (729); (b) The
Complainant (729); (c) The Respondent (730); (d) Time
for Filing a Complaint (731); (e) Withdrawal of a
Complaint (732)

(3) Examinations ................................................... 733
(a) Meaning and Structure of Examinations (733); (b)
Investigations (733); (c) Dismissal of a Complaint (734);
(d) The Hearing (734); (e) Settlement (736); (4) The
Deliberation by the Public Members (737)

(5) Orders .......................................................... 737
(a) Procedures Related to Orders (737); (b) The Labor
Commission's Discretionary Authority (738); (c)
Limitations on Remedial Orders (738); (d) The Need for
Relief (742); (e) The Effects of an Order (744)

3. Administrative Review Procedures ................................ 745

(1) Introduction ..................................................... 745
(2) The Request for Administrative Review ...................... 745
(a) Time for Making the Request (745); (b) Persons
Authorized to Make the Request (745); (c) Request
Procedures (745)

(3) Rejection of the Request ...................................... 746
(4) Recommendation of Compliance with the Original Order  746
(5) The Scope of Review ................................. 746
(6) Review Procedures ......................... 747
(7) Orders in Review Proceedings ................... 747

4. Judicial Proceedings to Review an Order ...................... 748
   (1) Appeals to Cancel an Order ..................... 748
      (a) Time Within Which the Appeal Must be Filed (748);
      (b) The Effects on an Order of Filing an Appeal (748);
      (c) The Parties (748)
   (2) Emergency Orders ............................... 749
      (a) Meaning (749); (b) The Purpose of the System (749);
      (c) Requirements (750); (d) Procedures (751); (e) Fines for
      Violating an Emergency Order (751)
   (3) The Scope of the Hearing ....................... 751
   (4) The Judgment and its Aftermath ................. 753
      (a) Judgments Granting Cancellation (753);
      (b) Where the Appeal Has Been Dismissed ........ 754
   (5) Settlement ........................................ 754

SUBSEC. FOUR: JUDICIAL REMEDIES FOR UNFAIR LABOR PRACTICES .. 761

1. The Private Law Effects of the Prohibition of Unfair Labor
   Practices ............................................. 761
   (1) Identifying the Issues ......................... 761
   (2) The Unique Character of the Provisions Prohibiting Unfair
   Labor Practices ..................................... 761

2. The Content of the Judicial Remedies ....................... 762
   (1) Claims Based on the Public Policy Established by Article
       28 of the Constitution ......................... 762
   (2) Claims Based on the Union's Bargaining Status .......... 762

3. The Independence of Judicial Remedies .................. 762
   (1) The Scope of Acts Subject to a Remedy ............. 763
   (2) The Content of the Remedy ..................... 763

BIBLIOGRAPHY ........................................... 766
INDEX ..................................................... 768