

National Labour Law Profile: Japan

Contributed by Liliane Jung.

General Legal Framework

[Japan's constitution](#) founded on democratic principles was promulgated on 3 November 1946 and came into force 3 May 1947. It is considered the supreme law of the nation and the Emperor as well as the legislative, executive and judicial powers must respect and uphold it (Art. 99 of the Constitution). According to this constitution, the Emperor has only a symbolic and formal function. The constitution also establishes the separation of powers and the fundamental human rights.

The legislative power is vested in the Diet (KOKKAI), which consists of two houses, the House of Councillors (Sangiin) and the House of Representatives (Shugiin). As a general rule, a bill becomes a law merely by passing both houses. If a bill has passed the House of Representatives but is defeated in the House of Councillors, it can become law if passed a second time in the House of Representatives with two-thirds of all members present. With 480 representatives, the House of Representatives has also the larger number of members compared to the House of Councillors (252). However, both houses are popularly elected. As Japan is divided into prefectures, the membership is largely based on proportional representation from prefectural districts. Only half of the members who belong to the House of Councillors are elected from the nation at large. The members of both houses also have limited terms of office. Members of the House of Councillors are elected to six year terms, and members of the House of Representatives serve four year terms. The House of Representatives may also be dissolved at any time by the government.

The executive power is made up of the Cabinet, which is headed by the Prime Minister. It submits bills to the Diet and exercises control over administrative branches. The Prime Minister is designated by the Diet and must, like the majority of the appointed Ministers, be from among the Diet's ranks. The Cabinet's members do not have constitutionally limited terms of office but must resign at the request of the Diet.

The Supreme Court (Saiko Saibansho) and a number of inferior courts are vested with the judicial power. All judges are granted complete independence in decision making. The Supreme Court has the rule making power and is considered court of last resort, that determines the constitutionality of any law, order and regulation. It is made up of 14 judges who are designated by the Cabinet and a Chief Judge. The latter is appointed by the Emperor who must follow the Cabinet's designation. Each of the inferior courts are under the control of the Supreme Court which nominates as well the candidates for the post of judge.

Labour Law

Fundamental labour standards are granted in the Constitution. Those are:

- the right and the obligation to work (Art. 27 para.1)
- a ban on child labour (Art. 27 para. 3) and

the freedom of workers' association - the worker's right to organize, to bargain and to act collectively (Art. 28).

Concerning individual labour law, it is stipulated that wages, hours, rest and other working conditions be fixed by law (Art. 27 para. 2).

Japanese labour law is established within this constitutional framework. It is elaborated by acts, ordinances, collective agreements and work rules. The Civil Code adopted on 27 April 1896 gives a basic definition of employment contracts. Labour laws must additionally meet constitutional demands by setting minimum labour standards. There are three major labour laws, namely:

the Labour Standards Law (LSL),
the Trade Union Law (TUL) and
the Labour Relations Adjustment Law (LRAL).

The LSL regulates firstly working conditions and secondly the workplace safety and hygiene. The TUL guarantees the worker's right to organize and to bargain collectively, whereas labour management adjustments and means of dispute settlement are specified in the LRAL. The LSL was adopted on 7 April 1947 and last amended 30 September 1998. The TUL was adopted on 1 June 1949 and last amended 12 November 1993. The LRAL was adopted on 27 September 1946 and last amended 14 June 1988.

The acts apply to Japanese employees of the private sector, with the exception of seafarers, and may also include foreign workers possessing a visa with a work permit. Concerning those employees who work in public owned enterprises, only the LSL is applicable. Labour relations of public employees are governed mainly by special provisions according to the relevant category. Labour legislation is often supplemented by ordinances, which are issued by the Ministry of Health, Labour and Welfare (prior to 6 January 2001, this role had been fulfilled by the Ministry of Labour) and the appropriate Labour Relations Commission. The latter body consists of representatives coming equally from the workers' and employers' ranks as well as from the general public. Labour legislation also tends to be rather abstract and therefore often needs to be interpreted by ordinary courts, since there are no special labour courts in Japan, and by the Labour Relations Commission.

The second strongest legal norm is the collective agreement, which, in practice, part is, for the most, enterprise based, because it is mainly the enterprise trade union and the respective employer who draw up agreements. Collective agreements affect primarily those workers of the firm who are trade union members. According to custom, they tend to be put in writing only as far as is legally required. Further provisions of the agreement, which must of course be in line with the law, are often simply agreed to verbally. The written part of the agreements might therefore be simple or vague.

This fact gives more importance to work rules, which stipulate common working conditions at the enterprise level. Any employer with more than 10 employees must draw them up in consultation with the trade union. Work rules must not infringe upon the applying collective agreement. Then, they fix the elements of the labour contracts

within the company, independently of whether the individual worker is trade union member or not. According to the amended Art. 15 of the LSL and its Enforcement Ordinance, contractual matters like wages, working hours and working conditions must be put in writing, when the labour contract is concluded. In practice, vague contract provisions are nevertheless preferred by the parties so as to have the contract always in line with the work rules and the collective agreement.

The texts (in English) of the Labour Standards Law (including amendments until 1995), Trade Union Law and Labour Relations Adjustment Law are available from [NATLEX, the database of national labour, social security and related human rights legislation maintained by the ILO's International Labour Standards Department](#)

Contract of employment

Permanent and fixed term contracts of employment

Japanese employment practice is traditionally founded on lifetime employment. The employee usually remains with one company for his/her entire working life. The employment period is thus not stipulated and the post is assured until mandatory retirement age, which is usually somewhere between 55 and 60 years. Such a regular employee normally does not have special skills when he/she enters but tends to be trained within the company by being rotated between different jobs and departments.

However, this tradition does not meet the needs of all employers and employees. In the year 2000, the regular staff was 74% of all employees and the number is decreasing (Source: Ministry of Public Management, Home Affairs, Posts and Telecommunication; Report on the Special Survey of the Labour Force Survey). Specially skilled workers are often additionally needed or small and medium sized enterprises may, for economic reasons, not entirely ensure lifetime employment. Elderly employees often have the necessity to work after their retirement age, because firstly they are not entitled to receive pension before reaching a certain age and secondly the amount of the pension is often not enough to live on. Other workers also may prefer not to stay with one company.

Fixed term contracts are therefore permitted under the restriction of Art. 14 of the LSL. No objective reason for the limitation is necessary, but the legal period of validity must not be extended. In general, labour contracts of a fixed term must not be longer than one year. In some exceptional cases, the maximum period is three years. Such cases are labour contracts with highly skilled or experienced workers who are necessary for either the development of new products or temporary need of the business. The employment of workers who are at least 60 years can also be limited up to three years.

Equal treatment of fixed term and permanent contractors is not legally mandated. Nevertheless, Art. 2 of the LSL provides for a determination of working conditions by workers and employers on an equal basis. De facto, such determination is strongly influenced by trade unions through collective agreements and work rules, but most of the fixed term contractors are not trade union members and therefore not necessarily covered. Thus, also the unlawful prolongation of the fixed term contract by repeated renewals does not establish an indefinite-term contract as of a regular employee.

Probation

Any labour contract may specify a probation period at the beginning of the employment contract. The probation time is not legally limited. Its renewal is also not prohibited by law. A protection against dismissal is nevertheless assured. After the first 14 days of the probation time, the employer is legally forced to consider the normal notice period of 30 days when giving notice (Art. 21 of the LSL). According to court rulings, the employer's freedom to dismiss is also only merely extended during the probation time.

Special contracts of employment

Temporary work (dispatched work) is governed by the Worker Dispatching Law (WDL) adopted 5 July 1985 and last amended 30 June 1999. In this employment situation, the worker has an employment contract with a worker dispatching agency but works under the direction of a client company which has concluded a dispatching contract with the dispatching agency. The agency may hire the dispatch worker on a permanent basis. However, most workers are only registered at the agency and then employed for a period according to the request of a client company. This latter type of business requires permission from the Ministry of Health, Labour and Welfare.

Dispatched work is prohibited mainly in port transport, construction and guard services (Art. 4 para. 1). In all other cases, the worker can be dispatched but in principle only up to one year (Arts. 35.2 and 40.2 para. 1). Exceeding the one year limitation the client company will be recommended but not forced by the government to hire the temporary worker as its own employee.

The one year limitation does not apply to the following three cases (Art. 40 para. 1 No. 1-3):

the dispatched worker has one of the 26 types of listed special skills
the worker is needed for additional business of a limited duration, or
an employee taking maternity or child care leave needs to be replaced.

Administrative guidance nevertheless advises against but does not prohibits the dispatching of a worker to the same post for longer than three years.

A dispatched worker can report any violation of the WDL to the Ministry of Health, Labour and Welfare (Art. 49). However, his/her legal protection is comparatively weak. For example, there is no obligation to enroll the worker in a social and labour insurance program. Privacy is nonetheless secured considerably in the WDL (Arts. 24-26).

Part-time work is governed by the Part Time Work Law (PTWL) which came into force 18 June 1993. In the year 2000, 14.7% of all employees worked part-time. Most of them (91.8%) were women. The number is increasing (Source: Ministry of Public Management, Home Affairs, Posts and Telecommunication). Part-time workers are defined as workers whose scheduled working hours per week are shorter than those of regular employees in the same workplace (Art. 2). De facto, also quasi part-time workers exist. They are part-time workers only in name and in law but work long

hours. Part-time workers are considered to be non regular workers, like the fixed term contractors. Regular pay hikes, bonus payment and retirement allowances thus actually do not apply to them. However, a protection of part-time workers is intended by the PTWL. Part-time workers' abilities, for example, should be used effectively and working conditions should be balanced with those of regular employees (Art. 3 para.1). This is after all no obligation to the employer who is asked only to *endeavour*. The only obligation laid down in the PTWL applies to the state, *e.g.* the promotion of the part-timers' welfare by the Ministry of Health, Labour and Welfare (Art. 5).

Vocational training contracts concluded by employers and young employees do not exist in Japan. Instead, young employees are hired on the basis of a normal labour contract and then trained on the job.

Suspension

Many enterprise based collective agreements and work rules establish suspension periods. A suspension period is a period, during which the labour contract continues to be in force, but the worker has no duty to work and the employer is partly or even completely released from paying wages.

A worker may be suspended firstly as a form of punishment and secondly while a punishment is decided upon, provided that the worker is prosecuted for a severe crime and the court has not yet decided. In any case, each suspension with a possible wage decrease or even cut needs to be appropriate to the situation. Suspension also often occurs, if the employee is on sick leave, becomes a full-time union official or attends full-time training. The amount of wages to be paid in these cases is determined at the enterprise level with no minimum set by law. However, if the suspension is for reasons attributed to the employer (*e.g.* temporary lay off), the employer must pay an allowance equal to at least 60% of the worker's average wage (Art. 26 of the LSL).

Termination of employment

Termination of a labour contract at the worker's and the employer's initiative is governed by Art. 627 of the Civil Code, under which they are free to terminate the contract. In order to meet the demand of Art. 27 of the Constitution to promote job security as a public matter, the employer's dismissal is limited predominantly by the LSL, court rulings and collective agreements. This restriction applies to unlimited labour contracts as well as to those contracts of a definite period which have continued for longer than the period prescribed by law.

Notice must be given at least 30 days in advance before the dismissal takes effect (Art. 20 of the LSL). The number of days can be reduced, if the employer pays the average wage for each day by which the period is shortened. It is recommended by court rulings but not legally required to give notice in writing. Legal precedent further established the rule, that the dismissal must be based on a reasonable cause. Without reasonable cause any dismissal is regarded as an abuse of the right to dismiss and thus considered null and void. For example, a dismissal for business reasons is allowed, if it satisfies all of the four requirements set by court:

A personnel reduction is based on business necessity.

Every possible measure to avoid layoffs is tried.

The selection of employees to be dismissed is made on an objective and reasonable basis.

The employer consults faithfully with unions or employees.

On the contrary, dismissals on the following grounds or during the following periods are regarded as null and void:

reason of marriage, pregnancy or childbirth (Art. 11 para. 3 of the Act on Equal Opportunity and Treatment between Men and Women in Employment)

requesting child care leave (Art. 7 of the Act Concerning the Welfare of Workers who take Care of Children or Other Family Members)

trade union activities guaranteed by Art. 28 Constitution (Art. 7 of the TUL)

the sex of the worker (Art. 8 para. 1 of the Act on Equal Opportunity and Treatment between Men and Women in Employment)

during the absence of an employee because of work related illness and 30 days thereafter (Art. 19 of the LSL)

during an employee's maternity leave and 30 days thereafter (Art. 19 of the LSL)

Giving notice in advance when dismissing an employee is not obligatory in two exceptional cases laid down in Art. 20 of the LSL:

The continuance of the enterprise has been made impossible by a natural disaster or an equivalent inevitable reason.

The dismissal is for reasons attributable to the worker.

On the employee's request, the employer shall deliver a certificate stating reasons for dismissal without delay (Art. 22 of the LSL). In case of an illegal dismissal, the court orders the continuance of the labour contract and the employee is reinstated. The employee also may claim damages instead. For further details please refer to *Termination of Employment Digest*.

Hours of work

The average working time as stipulated in Article 32 of the LSL is 40 hours per week and 8 hours per day. These limits may be relaxed for a definite period, which is defined by agreement of the employer and the enterprise trade union or, if such union does not exist, a worker representing a majority of workers. There may be different forms of a flexible working time, which are confined by ordinances. In any case, the average working time during the agreed period must not exceed 40 hours per week (Art. 32-4 of the LSL). The employer must also provide at least one rest day per week as well as rest periods during working hours, at least 45 minutes after 6 working hours and one hour after 8 working hours (Arts. 34 and 35 of the LSL). Night work against increased wages is legally permitted but cannot be ordered to those workers who are raising a child and request to be excepted.

Overtime work may also be stipulated by agreement of the employer and the trade union. Increased wages must then be paid within a range of no less than 25% and no more than 50% over the normal wage per working hour (Art. 37 of the LSL). On the numbers of hours worked overtime, there is no statutory limit, except for female workers responsible for the care of children and senior workers who must receive

special protection. The Ministry of Labour, however, is entitled to set a standard limit, by which employers and trade unions shall endeavour to abide. In fact, the number of hours worked overtime is decreasing. In 1998, it decreased to 134 per average worker (source: Labour Situation in Japan 2000, The Japan Institute of Labour).

The exceptional case of a discretionary work scheme applies to legally specified professionals including highly qualified white collar workers. For the application of this scheme, means of accomplishment and allocation of time must be left largely to the discretion of the employee (Art. 38- 4 of the LSL). No overtime premium is paid and the number of working hours is stipulated by the above mentioned agreement regardless of any legal limitation.

Paid leave

Annual leave with pay of the average wages is granted in Art. 39 of the LSL. The worker can claim it, only if he/she reported for work on at least 80% of the total working days. The number of annual leave days is related to the time the worker has already been employed in the enterprise counting only those years, in which the worker reported sufficiently for work. Upwards of 6 months of continuous employment, the worker can claim 10 days of annual leave. In the following two years, one day per year is added. Being employed for at least two and a half years the worker is guaranteed two days added for each additional year of continuous service. However, the total number of annual leave days does not become more than 20 days. Provided that the vacations do not prevent business from operating adequately, they can be taken whenever the employee decides to do so. In Japan, there are also 14 national holidays a year, which are not legally binding for the private sector.

Maternity protection and maternity leave

Maternity protection is regulated by the LSL. During pregnancy and up to one year after childbirth, a ban is put on heavy physical work and on work with dangerous materials (Art. 64-5). Upon request, the expectant or nursing mother has the right to refuse overtime or night time work and may ask for light work as well.

Maternity leave is secured by Art. 65 of the LSL, which does not include any payments during this period. Upon request, a woman is excused from work within 6 weeks up to childbirth and in case of a multiple birth, within 14 weeks up to giving birth. Within 8 weeks after childbirth, there is in principle a ban on work, but the mother may return to work after 6 weeks, if upon her request and a doctor's approval.

Other leave entitlements

The Child Care Leave Act provides for child care leave, which a female as well as a male worker may take in order to care for her/his child who is less than one year old. This right does however not apply to fixed term contractors (Art. 2 No.1). A child care leave benefit is paid according to the Employment Insurance Law (Arts. 61-4 and 61-5). The employee receives a child care leave basic benefit and a re-engagement benefit from employment insurance. Social security premiums for health insurance and welfare pension insurance can be exempted on the worker's request.

The employee is also entitled to leave in order to care for a family member according to the Child Care and Family Care Leave Act. The family member, who might be the spouse, the child, the parents or even the grand-parents, needs to be in a condition requiring continuous care (Art. 2). Such leave must not exceed three months and can, except for certain circumstances, be exercised only once per person (Arts. 15 and 11). The employee does not get any payment during this period.

Sick leave as described under *Suspension* is not ruled by law. It may be established by work rules (Art. 89 par.1 of the LSL). Work rules can also stipulate assistance for injury or illness (Art. 89 para. 8 of the LSL). However, the employee must be given time off to carry out official duties (Art. 7 of the LSL). During menstrual periods, female employees can also request days off (Art. 68 of the LSL).

Minimum age and protection of young workers

The Constitution puts a ban on child labour (Art. 27 para.3). This is elaborated in the LSL. Children under 15 full years must not be employed, except for those working for motion picture production and theatrical performances (Art. 56). Children under age 18 may be employed outside of school hours in light labour that is not be dangerous or harmful. Underground work is also forbidden.

Equality

Discrimination on the basis of race, creed, gender, social status or family origin is banned already by Constitution (Art. 14). This prohibition is elaborated in the LSL (Arts. 3 and 4) and in view of gender also by the Equal Employment Opportunity Act (EEOA). Female and male employees are subject to the same regulations in terms of overtime, night work and rest days. With respect to wages, gender discrimination is prohibited by the LSL (Art. 4). Discriminatory recruitment, hiring, assignment and promotion are inhibited on the basis of the EEOA (Arts. 5 and 6). Any violation may be publicized by the Ministry of Health, Labour and Welfare (Art. 26 of the EEOA). The EEOA also prohibits sexual harassment and its observance must be supervised by the employer (Art. 21 para.1).

Pay issues

The Japanese wage system is highly dependent on the number of years served with the same company, the employee's level of education and the age also being taken into consideration. Wages are defined as any payment to the worker from the employer, including salaries, allowances and bonuses (Art. 11 of the LSL). In fact, the employee's economic situation is often not only determined by the basic wage but also by added allowances, which may be paid according to particular work rules, *e.g.* housing allowance or retirement allowance (Art. 89 paras. 3 and 4 of the LSL). In 1998, the average length of service was 11.6 years and the average monthly contractual basic earning came to 324,700 Yen. The average added annual amount of bonuses and allowances was 1,102,300 Yen. (Source: Ministry of Health, Labour and Welfare "Basic Survey on Wage Structure").

However, a minimum wage is guaranteed to any employee, as stipulated in Art. 28 LSL and the Minimum Wage Act. The minimum amount is not specified in

legislation but set and frequently adjusted by the Ministry of Health, Labour and Welfare in consultation with the Minimum Wage Deliberation Commission. This commission has a national and a local level and is composed of three delegations from among workers, employers and the public.

The payment of wages is additionally safeguarded, in the case of bankruptcy, with priority being given to wage claims in the paying off of debts.

Trade union and employers' association regulation

Trade unions

The freedom of workers' associations is granted in Art. 28 of the Constitution. Trade unions are ruled in the Trade Union Law (TUL) and defined as those organisations, which are formed autonomously and composed mainly of workers for the main purposes of maintaining and improving working conditions and raising the economic status of workers (Art. 2). Legally covered are all workers, except for those either with a supervisory position or working for welfare or political and social movements (Art. 2 paras. 1, 3 and 4). De facto, non-regular workers - temporary and part-time employees - are also mostly not unionized.

The trade union's constitution must inter alia include the members' right to participate in all affairs and prohibit the disqualification for union membership on the basis of race, religion, gender, social status or family origin (Art. 5 - 2). Trade unions meeting all conditions are registered by the Labour Relations Commission and then they gain a legal personality as well as legal protection. This covers protection against unfair labour practices (Art. 7). Any discrimination because of trade union activities is forbidden, and the employer must not have any influence on the trade union's management. The employer is also not entitled to refuse to bargain collectively without proper reason.

In 1999, 1,170,000 workers of the private sector were unionized. The unionization rate has been declining during the last 50 years. In 1997, it was at 22.6 % (Source: The Japan Institute of Labour, *The Labour Situation in Japan 2000*). Over 90% of the unions are formed within the limits of one company. These enterprise unions engage in activities and issues related to their members within the enterprise. However, most of the enterprise unions in the same industry are affiliated to industry federations such as the Confederation of Japan Automobile Workers and the Japanese Electronic and Information Union. Industry federations are generally constituents of the nation-wide Japanese Trade Union Confederation (Rengo). Rengo, which was founded in 1989, absorbed rival national organisations and embraces now unions of the private as well as from the public sector. Its competitor of much smaller size and politically more to the left is the National Confederation of Trade Unions (Zenroren). The industry federations and also the nation-wide confederation are in charge with the discussion and the advice on general policies like wages or working conditions.

Employers' Association

Employers' organisations are not covered by the TUL, even though there are a number which impact on the role of employers. The Japanese Federation of Employers' Associations (Nikkeiren) plays a main role on behalf of employers in industrial

relations. It has no direct part in collective bargaining but sets guidelines to employers and thus actually influences labour issues. It is also the official voice of Japanese employers in the International Labour Organisation (ILO).

Collective Bargaining and Agreements

According to Art. 14 of the TUL, parties to collective bargaining must be, on one side, a trade union and, on the other, either the employer or an employers' association. In practice, collective bargaining is mostly enterprise based. The employer must bargain with the appropriate trade union in good faith (Art. 7 para. 2 of the TUL). According to the Supreme Court's decision, this applies also in favour of a trade union representing dispatched workers, if it wants to bargain with the client company regarding dispatched work related working conditions (668 Rodo Hanrei 11; Sup.Ct. Feb. 28, 1995).

Further regulation of the collective bargaining process may be found in respective enterprise based collective agreements, which often oblige employers to consult the trade union. In Japan, consultation is regarded as a peaceful attempt to reach convergence, whereas collective bargaining is recognized as a confrontation. Often, collective bargaining can barely be distinguished from strike actions. Joint consultation may take place prior to collective bargaining or may replace it in management policies that do not provide for the possibility of bargaining. In some cases, even formal consultative committees are set up.

Wages are traditionally discussed each year in spring during the so called *spring offensive*. Enterprise unions submit claims for pay increases under coordination from Rengo and Zenroren as well as from the industrial federations. The employers respond under the guidance of Nikkeiren. As soon as the major enterprises of influential industries come to an agreement, a pattern is set for medium- and small-sized enterprises. However, circumstances of individual firms are always taken into consideration, because it is the enterprise union's own interest not to damage their own firm.

Written and signed collective agreements may have different terms of validity, but must not exceed three years (Art. 15 of the TUL). Only those agreements in which no term of validity is provided for can be terminated at either party's initiative at any time (Art. 15-3 of the TUL). A collective agreement, which had ended, is basically no longer effective, but the parties may agree that it should remain in force until a new collective agreement is concluded.

All collective agreements apply primarily to those employees who are trade union members. If in one workplace, three-fourths of comparable workers fall under a collective agreement, this agreement applies to all workers of the same kind within the workplace (Art. 17 of the TUL). A collective agreement may have general binding power even in a whole locality, which is actually an exception (Art. 18 of the TUL). This requires that the agreement applies to a particular locality, not only to a firm, and a majority of comparable workers is bound. Further, the Ministry of Health, Labour and Welfare must upon request of either party and pursuant to a resolution of the Labour Relations Commission declare the agreement as binding to all workers of the same kind.

Collective agreements have a normative effect on work rules and labour contracts. Work rules must not infringe upon the collective agreement (Art. 92 of the LSL) and any labour contract's provision that contravenes the standards set by the agreement is null and void (Art. 16 of the TUL). A majority interprets these rules not as the setting of minimum standards but as the establishment of a pattern, which should be followed in every respect.

Collective agreements additionally establish duties and rights to the contractual parties- mostly the employer and the enterprise trade union. The employer has always the obligation of executing what is to be understood as an obligation to provide conditions according to the collective agreement. In many cases, further duties are imposed like the employer's obligation to consult the trade union.

Workers' representation in the enterprise

Within the enterprise, workers are usually represented by an enterprise trade union organized by a majority of the workers. Its members are elected out of the own workers' ranks. The election as well as the term of office is ruled in the trade union's constitution. If such a trade union does not exist, the interest of the workers' majority must be represented by a single worker.

Workers' representation is of considerable importance in the drawing up of work rules, which the employer is obliged to do as soon as 10 or more workers are continuously employed (Art. 89 of the LSL). Before drawing up work rules the employer has to consult the trade union or the representing employee (Art. 90-1 of the LSL). The given statement then needs to be attached, when the employer submits the work rules to the Labour Standards Inspection Office (Art. 90-2 of the LSL).

Strikes and lock outs

Labour disputes

Article 28 of the Constitution guarantees the workers' right to act collectively, which includes labour disputes. Labour disputes are defined in the Labour Relations Adjustment Law (LRAL) as "a disagreement over claims regarding labour relations arising between the parties concerned with labour relations resulting in either the occurrence of acts of dispute or the danger of such occurrence" (Art. 6). For labour disputes, the trade union and its members are liable neither under civil law nor under penal law, as long as they act properly (Arts. 8 and 1 para. 2 of the TUL). This requires firstly that it is a legally registered trade union that acts and secondly that no violence is used (Art.1 para. 2 of the TUL). Legally recognized are the acts of dispute mentioned in Art. 7 of the LRAL, such as strikes, slowdowns and other acts hampering the normal course of work, like the order to all workers to take holiday on the same day or the posting of posters on the establishments premises. Also shutting down the flow of traffic through the gates is a legal form of labour dispute, as long as it is peaceful. All acts must additionally be for a lawful purpose, which is surely the achievement of better working conditions. The workers are paid no wages while striking.

Lock outs

The employer's right to lock out employees is not constitutionally and legally established. However, it is recognized as a right of defence by a majority, but the employer needs to gain first an injunction from the court.

Dispute settlement

Labour disputes can be settled upon request of one or both parties by conciliation, mediation or arbitration. Each form of settlement is strongly influenced by the Labour Relations Commission, a body representing equally workers, employers and the public.

The Labour Relations Commission exists on a prefectural and on a second, national level. On this second level, the Central Labour Relations Commission reviews dispositions of the prefectural commissions but also assumes exclusive jurisdiction in cases of national enterprises (Art. 25 paras. 2 and 3 of the TUL). Members of the prefectural level are appointed as recommended by trade unions and employers' organisations, whereas members of the central commission are appointed by the Ministry of Health, Labour and Welfare.

The most feeble form of settlement is the conciliation by one or more conciliators nominated by the Labour Relations Commission. A conciliator must be a person with experience in the settlement of labour disputes (Art. 11 of the LRAL). He/She acts as an intermediaries between the parties (Art. 13 of the LRAL). In the event of not being able to effect a settlement, the conciliator must withdraw and then report the confidential facts of the case to the Labour Relations Commission (Art. 14 of the LRAL).

Stronger than the conciliation is the mediation, which is carried out by a mediation committee representing workers, employers and the public in equal number. The committee, which is nominated by the Labour Relations Commission's chairperson, has the power to draft a proposal of the settlement (Art. 26 of the LRAL). It can also put pressure on the acceptance of the proposal with the help of the press.

Arbitration is the strongest and actually most rarely chosen form of labour dispute settlement. An arbitration committee from among the members of the Labour Relations Commission is nominated by the commission's chairperson. The arbitration committee meets and listens to other members of the Labour Relations Commission representing employers and workers (Art. 31-5 of the LRAL). It finally takes a decision in writing - known as an arbitration award - which has the same effect as a collective agreement (Art. 34 of the LRAL).

Settlement of individual labour disputes

Labour disputes are settled as labour related civil cases. Settlements are regulated by the Civil Procedure Code from 1890, which was reformed in 1996, effective 1 January 1998, in order to shorten procedures.

The employee files a complaint with the District Court as a court of first instance. Each District Court has jurisdiction over a region which in general corresponds to the given prefecture. Cases at the District Court are presided over by a single judge but may be heard by a panel of three equal judges, if it decides that the gravity of the case warrants it. The losing party in the first instance may appeal (*Koso*) the judgement of the District Court to a High Court. There are 8 High Courts in Japan, each with an own territorial jurisdiction. The court of appeal inquires into the fact and law once more and decides in a panel of three judges. The party dissatisfied with the High Court's judgement may appeal (*Jokoku*) to the Supreme Court as the court of last resort but needs to succeed the procedure of admission first, since the Supreme Court can refuse the appeal in view of a lack of importance. In the Supreme Court, the case is usually heard by the Petty Bench consisting of 5 judges.

A more detailed description of the court procedures is published on-line by [the Supreme Court of Japan](#).

If the employee complains about unfair labour practices, the Labour Relations Commission has jurisdiction (Art. 27 of the TUL). The decision of the Prefectural Labour Relations Commission is upon request reviewed by the Central Labour Relations Commission. Either party then may file an appeal to the court. The reader may refer to the *Termination of Employment Digest*.

Official Gazette

[Japan's Official Gazette](#) named *Kanpo* reports government actions as well as new legislation. Only the index information in Japanese is available on the Internet.

Links

General Information

[Encyclopaedia Britannica](#)

Constitutional Information

[Constitution \(English version\)](#)

[Sangiin \(House of Councillors\)](#)

[Shugiin \(House of Representatives\)](#)

[Saiko Saibansho \(Supreme Court\)](#)

Labour Law Texts

[NATLEX: ILO Database of National Labour Legislation](#)

Government and other relevant organizations

[Prime Minister and his Cabinet](#)

[Ministry of Health, Labour and Welfare](#)

[Rengo \(Japanese Trade Union Confederation\)](#)

[Nikkeiren \(Japanese Federation of Employers' Associations\)](#)

ILO

[ILO Conventions ratified by Japan](#)

[Comments of the ILO Supervisory Bodies on Japan](#)

Selected Publications

Publications in English

The [Japan Institute of Labour, Japanese Working Life Profile: Labour Statistics 2000](#)(Tokyo, 2000).

[Ministry of Labour, White Paper on Labour 2000, \(Tokyo, 2000\)](#)

[Highlights in Japanese Labor Issues, Volume IV, The Japan Institute of Labour, \(Tokyo, 2000\)](#)

[Japanese Economy & Labour Series:](#)

Kazutoshi Koshiro ed., *Volume 6: Fifty Year History of Industry and Labor in Postwar Japan* (Tokyo, 2000).

Taishiro Shirai ed., *Volume 5: Japanese Industrial Relations*, (Tokyo, 2000).

Akira Takanashi ed., *Volume 4: Japanese Employment Practice*, (Tokyo, 1999).

Akira Takanashi ed., *Volume 3: Employment Insurance Law*, (Tokyo, 1998).

Kazuo Koike ed., *Volume 2: Human Resource Management*, (Tokyo, 1997)

Akira Takanashi ed., *Volume 1: Shunto Wage Offensive* (Tokyo, 1996)