

# LABOUR LAW IN JAPAN

SECOND EDITION

TADASHI A. HANAMI  
FUMITO KOMIYA  
RYUICHI YAMAKAWA



Wolters Kluwer

# **Labour Law in Japan**

**Second Edition**

**Tadashi A. Hanami  
Fumito Komiya  
Ryuichi Yamakawa**

This book was originally published as a monograph in the International  
Encyclopaedia of Laws/Labour Law and Industrial Relations.

General Editors: Roger Blanpain, Frank Hendrickx



**Wolters Kluwer**

*Published by:*

Kluwer Law International  
PO Box 316  
2400 AH Alphen aan den Rijn  
The Netherlands  
Website: [www.wklawbusiness.com](http://www.wklawbusiness.com)

*Sold and distributed in North, Central and South America by:*

Aspen Publishers, Inc.  
7201 McKinney Circle  
Frederick, MD 21704  
United States of America  
Email: [customer.service@aspenpublishers.com](mailto:customer.service@aspenpublishers.com)

*Sold and distributed in all other countries by:*

Turpin Distribution Services Ltd.  
Stratton Business Park  
Pegasus Drive, Biggleswade  
Bedfordshire SG18 8TQ  
United Kingdom  
Email: [kluwerlaw@turpin-distribution.com](mailto:kluwerlaw@turpin-distribution.com)

**DISCLAIMER:** The material in this volume is in the nature of general comment only. It is not offered as advice on any particular matter and should not be taken as such. The editor and the contributing authors expressly disclaim all liability to any person with regard to anything done or omitted to be done, and with respect to the consequences of anything done or omitted to be done wholly or partly in reliance upon the whole or any part of the contents of this volume. No reader should act or refrain from acting on the basis of any matter contained in this volume without first obtaining professional advice regarding the particular facts and circumstances at issue. Any and all opinions expressed herein are those of the particular author and are not necessarily those of the editor or publisher of this volume.

*Printed on acid-free paper*

ISBN 978-90-411-6067-6

This title is available on [www.kluwerlawonline.com](http://www.kluwerlawonline.com)

© 2015, Kluwer Law International BV, The Netherlands

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without written permission from the publisher.

Permission to use this content must be obtained from the copyright owner. Please apply to: Permissions Department, Wolters Kluwer Legal, 76 Ninth Avenue, 7th Floor, New York, NY 10011-5201, USA. Email: [permissions@kluwerlaw.com](mailto:permissions@kluwerlaw.com)

Printed and Bound by CPI Group (UK) Ltd, Croydon, CR0 4YY.

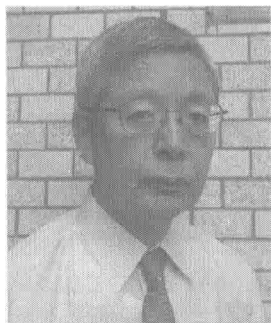
## The Authors



Prof. Dr Tadashi A. Hanami was born on 15 February 1930. He became a Bachelor of Law in 1953 and a Doctor of Law in 1962, at Tokyo University. From 1959 to 1962 he was Humboldt Research Fellow at the University of Cologne in West Germany, and from 1964 to 1965 Fulbright Research Scholar at Cornell University in the USA. From 1953 to 1958 he was a Research Fellow at Tokyo University and from 1958 to 1983 a Research Officer in the Japan Institute of Labour (JIL). Since 1966 he has been Professor of Law, from 1979 to 1982 Dean of Law School at Sophia University in Tokyo and from 1968 to 1979 a Public

Commissioner on the Tokyo Metropolitan Labour Relations Commission. He was a visiting professor at the Catholic University of Leuven, Belgium where he was awarded the Doctor *honoris causa* in 1985 and a visiting professor at the Harvard Law School in 1984–1985 and 1990. Since 1988 he has been Chairman of the Central Labour Standards Council in Tokyo. He has been a Public Commissioner since 1992 and Chairman of the Central Labour Relations Commission since 1998. He was served as President of the International Industrial Relations Association in 1998–2000 term. He was also appointed Research Director General in 1996 and President of the JIL in 2001. Since 1999 he has been Professor Emeritus of Sophia University. In 2004 he joined Matsuo & Kosugi and has been practising law as Of Counsel. In 2004 he was decorated with the Order of the Rising Sun Gold and Silver Star. He is the author of a number of books in Japanese and English on labour law and industrial relations.

## The Authors



Prof. Dr F. Komiya was born on 15 July 1948. He became a Bachelor of Law in 1972, a Master of Law in 1978 and a Doctor of Law in 1992, at Hokkaido University. He was also awarded a Master's Degree (LL.M.) from the University of California (Berkeley) in 1984 and a Ph.D. from the University of London (LSE) in 1997. He was Professor of Law at Hokkaigakuen University at Sapporo, Hokkaido from 1997 to 2011. Since 2011 he has been Professor of Law at Senshu University, Tokyo. He was a visiting scholar at the University of California (Berkeley) in 1984 and at the University of Michigan in 1987, a visiting professor at the Catholic University of Leuven in Belgium during 1995–1996, and an overseas fellow at Churchill College, Cambridge University in 2009. He was a commissioner of the Civil Service Commission, Hokkaido Prefectural Government between 1998 and 2008; the chairperson of the regional conciliation committee of the Central Labour Commission (chairperson 2006–2008). He is presently the chairperson of the Hokkaido Regional Labour Council, the Ministry of HealthWelfare as well as of the Hokkaido Local Government Labour Council and also a conciliator of individual labour disputes, Hokkaido Labour Bureau. He is the author of several books in Japanese and a number of articles in Japanese and English on labour law.



Prof. Dr Ryuichi Yamakawa was born on 29 November 1958. He became a Bachelor of Law in 1982 at Tokyo University. He then became a research fellow at the Faculty of Law of Tokyo University. After the fellowship he became a trainee at the Institute of Judicial Research and Training. In 1987 he became an attorney at law and an associate professor at Musashi University, Tokyo, Japan. He received a degree of LL.M. from the University of Washington, Seattle, the United States in 1991, as well as Ph.D. (Law) from Tokyo University in 2000. He moved

to Tsukuba University, Tokyo, Japan in 1995 and then to Keio University, Tokyo Japan, in 2004. Since 2013 he has been a professor of law at Tokyo University, Faculty of Law. In the meantime he taught at Goethe University Frankfurt am Main, Germany, as a visiting professor of law in 1995. He has been a member of the Labour Policy Council since 2005. In addition, he was a public member of the Central Labour Relations Commission in Japan from 2002 to 2010. Since 2013 he again became a public member of the Commission, and has served there since then. He has written a number of books in Japanese as well as articles in English regarding labour and employment law.

# Table of Contents

The Authors	3
List of Abbreviations	13
General Introduction	15
Chapter 1. General Background	15
§1. GEOGRAPHY AND POPULATION	15
§2. THE POLITICAL SYSTEM	16
§3. THE ECONOMY	19
§4. LABOUR FORCE	21
§5. WAGE DISPARITY	27
§6. SOCIAL AND CULTURAL VALUES	29
Chapter 2. Definitions and Notions	32
§1. SOCIAL SECURITY LAW	32
§2. LABOUR LAW	35
I. Individual Labour Law	37
II. Collective Labour Law	38
III. Labour Market Law	38
IV. Legal Nature	39
Chapter 3. Historical Background	41
§1. PRE-WORLD WAR II	41
§2. POST-WORLD WAR II	43
I. Enactment of Labour Laws	43
	5

## Table of Contents

II. The Formation of Enterprise Unionism	45
III. The Function of Enterprise Unions	46
IV. Industrial Unions and National Centres	47
V. History of Labour Politics and National Centres	48
 Chapter 4. Management Style and Employment Practices	 50
§1. LIFETIME EMPLOYMENT PRACTICE AS A POLICY AND STRATEGY	50
§2. RECENT CHANGES AND DEVELOPMENTS	51
 Chapter 5. The Role of the Government	 53
§1. THE AUTONOMY OF THE SOCIAL PARTNERS	53
§2. GOVERNMENT INSTITUTIONS	54
I. The Ministry of Health, Labour and Welfare	54
II. Labour Inspection	54
III. The Labour Relations Commissions	54
IV. The Prefectural Bureaus of Labour Affairs	55
 Chapter 6. Sources of Labour Law	 56
§1. THE CONSTITUTION	56
§2. LEGISLATION	56
§3. ADMINISTRATIVE INTERPRETATION	57
§4. GUIDELINES	57
§5. COLLECTIVE AGREEMENTS	57
§6. WORK RULES ( <i>SHUGYO-KISOKU</i> )	58
§7. LABOUR RELATIONS PRACTICE	61
§8. CASES AND LEGAL THEORIES	61
§9. INTERNATIONAL SOURCES	62
 Part I. The Individual Employment Relationship	 63
Chapter 1. Formation of the Relationship	63
§1. THE MEANS OF RECRUITMENT AND HIRING	63

## Table of Contents

§2. THE DIFFERENT CATEGORIES OF EMPLOYEES	66
I. Blue-collar Employees and White-collar Employees	66
II. Regular Employees and Non-regular Employees	66
III. Full-time Employees and Part-time Employees	67
IV. Temporary Workers and Permanent Workers	69
V. Private Employees and Public Employees	70
VI. Contract Workers	71
VII. Dispatched Workers	72
VIII. Home Workers	77
§3. REGULATIONS CONCERNING THE CONCLUSION OF INDIVIDUAL CONTRACTS	78
§4. CONCLUSION OF THE EMPLOYMENT CONTRACT AND THE PROBATION PERIOD	80
I. Tentative Decision of Employment ( <i>Naitei</i> )	80
II. Probationary Period ( <i>Shiyo kikan</i> )	81
§5. CONTRACTUAL CAPACITY AND RESTRICTIONS ON EMPLOYMENT	82
I. Minors	82
II. Women	82
III. Foreign Workers	82
Chapter 2. Rights and Duties of the Parties during Employment	87
§1. EMPLOYEES' DUTIES	87
I. The Duty to Work under the Employer's Orders	87
II. The Duty of Good Faith and Observation of Workplace Discipline	91
A. The Duty Not to Misappropriate or Damage the Employer's Property	92
B. The Duty Not to Damage the Employer's Credit and Reputation	92
C. The Duty to Respect Professional Secrets	94
D. The Duty Not to Engage in Competitive Work or Business	94
§2. EMPLOYER'S DUTIES	95
I. The Duty to Provide Work	95
II. The Duty to Care for Employees' Safety and Health	95
III. The Duty to Care for Employees' Interests Other than Safety and Health	98
IV. The Duty Not to Infringe upon Employees' Personal Rights	98
V. The Duty to Provide Decent Working Conditions	98
VI. The Duty to Draw up the <i>Shugyo-kisoku</i>	99
VII. Employer's Obligations at the End of the Labour Contract	99
Chapter 3. Hours of Work, Overtime and Holidays	101
§1. HOURS OF WORK	101



## Table of Contents

§2. FLEXIBLE ARRANGEMENTS OF WORKING HOURS	103
§3. HOLIDAYS	105
§4. OVERTIME	105
§5. EMPLOYEES EXEMPTED FROM REGULATIONS ON WORKING HOURS, ETC.	106
§6. NIGHT WORK	106
§7. ANNUAL PAID HOLIDAYS	107
Chapter 4. Remuneration and Benefits	109
§1. PAY SYSTEMS	109
§2. THE NOTION OF WAGES	112
§3. THE NOTION OF AVERAGE WAGE	112
§4. CIVIL CODE PROVISIONS CONCERNING WAGES	113
§5. REGULATIONS CONCERNING THE PAYMENT OF WAGES	114
§6. RETIREMENT ALLOWANCE	115
§7. BONUSES	116
§8. MINIMUM WAGES	116
§9. GUARANTEE OF PAYMENT ON THE EMPLOYER'S INSOLVENCY	117
§10. REMUNERATION DURING TIME-OFF	119
I. Suspension Allowances	119
II. Accidents at Work and Occupational Diseases	119
III. Leave of Absence	120
§11. SUSPENSION PERIOD	121
Chapter 5. The Termination of Employment	123
§1. JOB SECURITY IN GENERAL	123
§2. ENDING THE CONTRACT OTHER THAN BY DISMISSAL	124
I. Extinction of a Party	124
II. The Expiry of a Fixed-term Contract	124

## Table of Contents

III. The Occurrence of Events Agreed to as Causes of Termination	127
IV. Termination by Agreement	128
V. Resignation	128
§3. STATUTORY REGULATION	129
I. Notice of Dismissal	129
II. Other Statutory Regulation	130
§4. REGULATION THROUGH WORK RULES ( <i>SHUGYO-KISOKU</i> ) AND COLLECTIVE AGREEMENTS	131
§5. DOCTRINE OF ABUSIVE DISMISSAL	132
I. Regulation	132
A. Basic Rules	132
B. Just Cause	134
C. Dismissal for Economic Reasons	134
II. Remedial Rules	135
§6. NOTICE REQUIREMENT FOR WORKFORCE REDUCTION	136
§7. MEASURES FOR EMPLOYMENT STABILIZATION	137
§8. REGULATIONS REGARDING THE END OF THE CONTRACT	138
§9. MERGER AND SPLIT OF COMPANY AND TRANSFER OF BUSINESS	139
§10. UNEMPLOYMENT BENEFITS	142
Chapter 6. Protection of Certain Categories of Worker and Protection against Discrimination in Employment	144
§1. PROTECTION OF ADULT FEMALES	144
§2. PROTECTION OF MINORS	145
§3. PROTECTION OF ELDERLY WORKERS	145
§4. PROTECTION OF DISABLED WORKERS	146
§5. DISCRIMINATION AND EQUALITY	146
§6. EQUALITY OF MALES AND FEMALES IN EMPLOYMENT	148
I. Equal Payment for Males and Females	148
II. Equal Treatment of Males and Females	149
III. Equal Employment Opportunity Law	150
IV. Non-discrimination against Non-regular Employees	152

## Table of Contents

Chapter 7. Covenants of Non-competition/Inventions by Employees	156
§1. COVENANTS OF NON-COMPETITION	156
§2. INVENTIONS BY EMPLOYEES	157
Part II. Collective Labour Relations	159
Chapter 1. Trade Union Rights	159
§1. CONSTITUTIONAL RIGHTS	159
§2. THE CONCEPT OF TRADE UNIONS	161
§3. UNION MEMBERSHIP	164
§4. DISCIPLINARY POWER OF UNIONS	166
Chapter 2. The Trade Unions and Employers' Associations	169
§1. THE TRADE UNIONS	169
§2. THE EMPLOYERS' ASSOCIATIONS	171
Chapter 3. The Workers' Participation in the Enterprise	172
§1. DIFFERENT FORMS OF WORKING PARTICIPATION	172
§2. EMPLOYEES' REPRESENTATIVE SYSTEM ( <i>JUGYOIN DAIHYO SEI</i> )	172
§3. JOINT LABOUR-MANAGEMENT CONSULTATION SYSTEM ( <i>ROSHI KYOGI SEI</i> )	173
Chapter 4. Collective Bargaining	177
§1. INTRODUCTION	177
§2. PARTIES TO COLLECTIVE BARGAINING	177
§3. SUBJECTS, FORMS AND PROCEDURES OF COLLECTIVE BARGAINING	178
§4. REMEDIES	179
Chapter 5. The Collective Agreement	181

## Table of Contents

§1. THE SIGNIFICANCE OF THE COLLECTIVE AGREEMENT	181
§2. FORMATION OF THE COLLECTIVE AGREEMENT	181
§3. LEGAL EFFECT OF THE COLLECTIVE AGREEMENT	182
I. The Contents of the Collective Agreement	182
II. Normative Effect	183
III. General Binding Effect	184
IV. Contract Obligation Effects	187
V. Peace Obligation	188
§4. TERMINATION OF COLLECTIVE AGREEMENTS	188
Chapter 6. Dispute Acts	190
§1. THE NOTION OF DISPUTE ACTS	190
§2. PROPER DISPUTE ACTS	190
I. Acts by <i>Bona Fide</i> Unions	191
II. The Purpose of the Dispute Acts	191
III. Proper Ways of Dispute Acts	192
IV. Proper Dispute Acts	192
§3. DIFFERENT TYPES OF DISPUTE ACTS	193
I. Strikes	193
II. Picketing	194
III. Occupation of Workplace or Facilities and Boycotts	195
IV. Pasting Posters, Wearing Ribbons, etc.	195
§4. LEGAL EFFECTS OF DISPUTE ACTS	197
I. Civil Indemnity	197
II. Criminal Indemnity	199
III. Dispute Acts and Wages	199
§5. LOCK-OUTS	201
§6. RESTRICTION AND PROHIBITION OF DISPUTE ACTS	202
I. Prohibition of Dispute Acts which Endanger Human Life	202
II. Restriction of Dispute Acts in Public Welfare Work	203
III. Emergency Adjustment and Dispute Acts	203
IV. Prohibition of Dispute Acts in the Public Sector	203
Chapter 7. Unfair Labour Practices and Administrative Relief	205
§1. THE UNFAIR LABOUR PRACTICE SYSTEM	205

## Table of Contents

§2. THE CONCEPT OF AN 'EMPLOYER' UNDER THE UNFAIR LABOUR PRACTICES SYSTEM	205
§3. INTENT FOR AN UNFAIR LABOUR PRACTICE	208
§4. DIFFERENT TYPES OF UNFAIR LABOUR PRACTICE	209
I. Disadvantageous Treatment	209
II. Conclusion of 'Yellow Dog' Contracts	209
III. Refusal to Engage in Collective Bargaining	209
IV. Control or Interference	210
§5. EXISTENCE OF PLURAL UNIONS AND UNFAIR LABOUR PRACTICE	212
§6. THE LABOUR RELATIONS COMMISSIONS	213
§7. ADMINISTRATIVE REMEDIES AND JUDICIAL REMEDIES	215
Chapter 8. Settlement of Labour Disputes	217
§1. CATEGORIES OF INDUSTRIAL DISPUTE	217
§2. ROLE OF THE COURTS	218
§3. ALTERNATIVE RESOLUTION OF INDIVIDUAL DISPUTES	219
I. Background	219
II. ADR Systems – Administrative in Nature	220
III. ADR Systems – Judicial in Nature	221
A. Participation of Labour and Management Experts in the Proceedings	223
B. Ruling	224
C. Duration of the Proceedings	229
IV. Resolution System inside Workplaces	233
§4. SETTLEMENT OF COLLECTIVE DISPUTES	234
Selected Bibliography	237
Table of Statutes	245
Index	247

# **Labour Law in Japan**

**Second Edition**

**Tadashi A. Hanami  
Fumito Komiya  
Ryuichi Yamakawa**

This book was originally published as a monograph in the International  
Encyclopaedia of Laws/Labour Law and Industrial Relations.

General Editors: Roger Blanpain, Frank Hendrickx



**Wolters Kluwer**



## The Authors

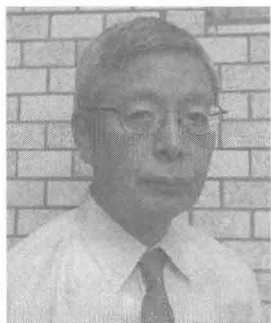


Prof. Dr Tadashi A. Hanami was born on 15 February 1930. He became a Bachelor of Law in 1953 and a Doctor of Law in 1962, at Tokyo University. From 1959 to 1962 he was Humboldt Research Fellow at the University of Cologne in West Germany, and from 1964 to 1965 Fulbright Research Scholar at Cornell University in the USA. From 1953 to 1958 he was a Research Fellow at Tokyo University and from 1958 to 1983 a Research Officer in the Japan Institute of Labour (JIL). Since 1966 he has been Professor of Law, from 1979 to 1982 Dean of Law School at Sophia University in Tokyo and from 1968 to 1979 a Public

Commissioner on the Tokyo Metropolitan Labour Relations Commission. He was a visiting professor at the Catholic University of Leuven, Belgium where he was awarded the Doctor *honoris causa* in 1985 and a visiting professor at the Harvard Law School in 1984–1985 and 1990. Since 1988 he has been Chairman of the Central Labour Standards Council in Tokyo. He has been a Public Commissioner since 1992 and Chairman of the Central Labour Relations Commission since 1998. He was served as President of the International Industrial Relations Association in 1998–2000 term. He was also appointed Research Director General in 1996 and President of the JIL in 2001. Since 1999 he has been Professor Emeritus of Sophia University. In 2004 he joined Matsuo & Kosugi and has been practising law as Of Counsel. In 2004 he was decorated with the Order of the Rising Sun Gold and Silver Star. He is the author of a number of books in Japanese and English on labour law and industrial relations.



## The Authors



Prof. Dr F. Komiya was born on 15 July 1948. He became a Bachelor of Law in 1972, a Master of Law in 1978 and a Doctor of Law in 1992, at Hokkaido University. He was also awarded a Master's Degree (LL.M.) from the University of California (Berkeley) in 1984 and a Ph.D. from the University of London (LSE) in 1997. He was Professor of Law at Hokkaigakuen University at Sapporo, Hokkaido from 1997 to 2011. Since 2011 he has been Professor of Law at Senshu University, Tokyo. He was a visiting scholar at the University of California (Berkeley) in 1984 and at the University of Michigan in 1987, a visiting professor at the Catholic University of Leuven in Belgium during 1995–1996, and an overseas fellow at Churchill College, Cambridge University in 2009. He was a commissioner of the Civil Service Commission, Hokkaido Prefectural Government between 1998 and 2008; the chairperson of the regional conciliation committee of the Central Labour Commission (chairperson 2006–2008). He is presently the chairperson of the Hokkaido Regional Labour Council, the Ministry of HealthWelfare as well as of the Hokkaido Local Government Labour Council and also a conciliator of individual labour disputes, Hokkaido Labour Bureau. He is the author of several books in Japanese and a number of articles in Japanese and English on labour law.



Prof. Dr Ryuichi Yamakawa was born on 29 November 1958. He became a Bachelor of Law in 1982 at Tokyo University. He then became a research fellow at the Faculty of Law of Tokyo University. After the fellowship he became a trainee at the Institute of Judicial Research and Training. In 1987 he became an attorney at law and an associate professor at Musashi University, Tokyo, Japan. He received a degree of LL.M. from the University of Washington, Seattle, the United States in 1991, as well as Ph.D. (Law) from Tokyo University in 2000. He moved to Tsukuba University, Tokyo, Japan in 1995 and then to Keio University, Tokyo Japan, in 2004. Since 2013 he has been a professor of law at Tokyo University, Faculty of Law. In the meantime he taught at Goethe University Frankfurt am Main, Germany, as a visiting professor of law in 1995. He has been a member of the Labour Policy Council since 2005. In addition, he was a public member of the Central Labour Relations Commission in Japan from 2002 to 2010. Since 2013 he again became a public member of the Commission, and has served there since then. He has written a number of books in Japanese as well as articles in English regarding labour and employment law.