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Statement regarding the Labour Contract Law Revision Bill
concerning Limited-term Labour Contracts

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1. Introduction

The government has decided to submit the "Bill for Partial Amendment of Labour Contract Law", to the Diet with the aim of enacting it during this Diet session. While this bill aims to achieve a society where limited-term contract workers will be able to continue working without worrying about their jobs, it does not attempt to remove the fundamental causes of the increase of the number of workers on limited-term contracts, and moreover, there is a danger that it might make the position of limited-term contract workers even less stable by legislation. Here we shall state our opinion on this bill from this point of view (that the legislation will make the position of limited-term contract workers even less stable).

A Limited-term labour contract is a form of contract where the employment ends as the contract term expires, although dismissal during the contract term is strictly restricted. Needless to say, you cannot dismiss a worker on an unlimited-term contract without a justifiable reason either. Although the contracted work itself is usually permanent, limited-term contracts, rather than unlimited-term contracts, have become widely used. It is because the employers' motive is to try to evade the legal restriction on dismissal for unlimited-term contracts. In other words, limited-term labour contracts are in reality used by the employers as a measure to get around the legal principle on restriction of dismissal.

As there is no restriction on the use of limited-term contract workers the ratio of limited-term contracts has kept rising, and now many workers are forced to work with anxiety over non-renewal of employment contracts. In order to solve the fundamental problem, it is essential to regulate the conclusion of the limited-term contracts itself (aiming at evading the legal principle on restriction of dismissal). That is, to ban the conclusion of limited-term contracts altogether for work that is permanent, except for special cases where there are objective and reasonable grounds, such as temporary replacement for another worker on leave.

However, the current amendments in the bill do not add any restriction on the conclusion of limited-term contract for permanent work. This is because the bill is based on the idea of evaluating limited-term contracts positively and affirmatively, as something that "*plays a certain role in securing employment opportunities and in adjusting to the variation in the workload*." These amendments will not change the present situation where the limited-term contracts are widely used even though they are for work which is permanent. Therefore, we cannot expect to see the ratio of limited-term contracts go down, and many workers will still have to work with anxiety over their job security, even after this bill is enacted.

This bill, which fails to take measures to remove the fundamental problem facing workers on limited-term contracts, aims to improve the situation by implementing amendments on the following 3 points: 1) The right to switch to an unlimited-term contract,
2) A clear stipulation of the legal principle restricting non-renewals, and

3) A ban on imposing unreasonable working conditions on the basis of the limited-term contract status.

Yet, the bill will not improve the present situation of the limited-term contract workers. On the contrary, it may well make the situation worse.

Therefore, we will point out the problems with the amendments.

2. Regarding the introduction of a system to switch from limited to unlimited-term contracts

This bill stipulates that when a limited-term contracts add up to five or more years, and the limited-term contract worker applies for an unlimited-term contract, the employer is deemed to have approved the application.
This stipulation comes with an explanation that when a limited-term contract was repeatedly renewed exceeding 5 years, the worker concerned obtains the right to request an unlimited-term contract. However, it is not sufficient for the following reasons.

Firstly, five years is too long. For example, in Korea, there is a law stipulating that a limited-term employment contract exceeding 2 years shall be regarded as employment without as an unlimited term contract. Furthermore, the Japanese Labour Standard Law defines the maximum period for a limited-term labour contract as three years. Therefore five years is excessive in when considering this and should be amended at least to three years.
Secondly, just the right to request an unlimited term contract is not sufficient, it is anticipated that this system might not be widely known among workers and therefore not widely used. Also, as a worker is obviously in a weak position compared to the employer, it is not hard to imagine that it may be difficult to even make the request. Therefore, it would be more appropriate to amend the stipulation so that the contract become unlimited after the period.

Additionally, in either case, (either there is a right to request an unlimited term contract, or that the contract becomes an unlimited term contract) it is quite possible that there will be a “side effect” of mass dismissals before the end of the contract term.

Therefore, a stipulation banning non-renewals which aim to avert this law by non-renewing workers at the end of the term for becoming an unlimited term contract worker is necessary. And in order to make this ban effective, that a stipulation be added noting that a non-renewal after four years of limited term contracts shall be presumed as a non-renewal aimed at evading this law.

Finally, the introduction of a so-called “cooling off period” is a big problem. This is a stipulation that when there is a blank period (of 6 months in case of a total contracted term of 1 year or more, or in case of a total contracted term of under one year, of a period equivalent to 1/2 of the term) after the expiration of the previous limited-term contract before the first day of the next limited-term contract, “the contracted term of the limited-term contract expired before the blank period shall not be included in the total contracted period.” This means that as long as there is a cooling off period in between, limited-term contracts may be repeated over an unlimited number of years, for an unlimited time, which presents a loophole to evade conversion to permanent labour contract in the law itself. Also, there is a big danger of “law-evading cooling” becoming widespread, where, for example, the contract is changed to a dispatch contract only for the duration of the cooling off period while the work itself remains the same. Therefore, the stipulation of a “cooling off period” should be removed.

3. On Renewal of Limited-term Labour Contract

There is a stipulation in this bill for the purpose of adopting the principle of the judicial precedents, where the principle of the abuse of dismissal rights was analogically applied to (the non-renewal of) limited-term employment contracts. However, the present stipulation is extremely insufficient for the following reasons.

The principle of the "abuse of dismissal rights" has been analogically applied to the cases of limited-term employment contracts in order to salvage the workers treated as "disposable" with the excuse that their contract term is limited. Even though the nature of their work is permanent, there is no measure to regulate the situation where the limited-term labour contracts are widely used to evade the application of a restriction of dismissal. Considering the background that it has been established as a legal principle to protect workers, the present bill is terribly insufficient as it provides no restriction whatsoever on concluding limited term contracts for work which is permanent.

Even if you set this point aside, there is another problem with the bill as it adds that a request from the worker, without delay or after the expiry of the contract term, as a condition for contract renewal as it adds an extra condition which didn't exist in judicial precedents.

Also, as one of the conditions for contract renewal, the bill stipulates that there should an expectation that the limited term contract will be renewed based on a reasonable reason.

However, the principle of the judicial precedents so far only suggests that a non-renewal is not socially acceptable, "when it is considered reasonable for the worker to expect the employment to continue after the expiry of the contract period." In other words, the only condition demanded is that worker's expectation for contract renewal after the expiry of the contract term should be considered reasonable, and there is no determination about the time of judgment, i.e. "at the time of expiry of the contract period." The bill adds a new extra condition, which didn't exist in the principle of the judicial precedents in the past, in the case where non-renewal is not acceptable and therefore unfair.

Furthermore, this bill introduces a new idea of "total contracted period." In order to prevent any chance of misunderstanding that there is not a reasonable expectation for renewal within the total contracted period, it is essential to state clearly that even when the "total contracted time" does not exceed the maximum, the principle may still apply.

4. The ban on unreasonable working conditions due to the limited-term contract status

Clause 20 of the bill stipulates that the difference in working conditions between those on limited and unlimited term contracts for the same employer must not be considered unreasonable.

It goes on to say that 1) description of the work the workers are engaged in, 2) the level of responsibilities that associated with the work concerned, 3) description of the duties concerned, 4) the range of change of assignment, and other circumstances shall be taken into consideration as factors in judging the unreasonableness.

Discrimination in working conditions based on the form of employment could be invalid/illegal under the general provisions of the Civil Code, but as there is no clear provision banning it, it has led to the misunderstanding that the employers can secure cheap labour as far as it is under a limited-term labour contract. This has led to the increase in limited term contract workers engaged in the same permanent work as unlimited contract workers.

The purpose of adding this new provision was “to contribute to the realization of fair treatment of limited-term contract workers” according to the Labour Policy Council’s report dated December 26, 2011.

This can never be evaluated as “stipulation of equal treatment” in the sense that it permits a difference in working conditions with no clear statement of the principle of equal treatment for equal work. If it is to stipulate “equal treatment,” the principle of equal labour, equal treatment, that “the working conditions which are a part of the labour contract of a worker on a limited-term contract must not be disadvantageous compared to the working conditions of those on an unlimited term contract based solely on the fact of a contract limit” should be clearly stated.

Secondly, this provision may be mistakenly interpreted as that the worker bears the burden of proof regarding the unreasonableness of the difference in working conditions. If this provision is newly established and implemented with the burden of proof on the worker’s side, it would be a step backward from the present state of protection of workers. As mentioned above, by making prohibition of disadvantageous treatment a principle, it would clarify that the burden of proof regarding the reasonableness of the difference in working conditions lies with the employer who attempts to set a difference in working conditions as an exception.

Thirdly, the effect is not clearly defined in cases where it is not considered reasonable to set the difference in working conditions. A provision defining that the difference considered unreasonable “shall be invalid” is necessary. Also, effect under private law should be clarified, as those parts of the contract which were ruled invalid “should be regarded as the same labour contract with the working conditions which is a part of the labour contract of a worker on an unlimited term contrac, except for the term of the labour contract, has been concluded.”