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The Meaning and Issues of the Amendment Act of Temporary Work Business

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I. Introduction

The Amendment Bill of Act of Temporary Work Business (if any, hereinafter "the Bill") passed the upper house on the 30th of June, 1999. The Bill was promulgated as the 84th Act of the year of 1999, and was enforced from December 1, 1999¹⁾ (hereinafter, "the Amendment Act"). Thirteen years have passed since The Act of Temporary Work Business had first been enforced. This will be the turning point for the Act itself.

This amendment broadens the jobs permitted to temporary work agencies from 26 to almost all (*negative listing*), and this will expand the temporary job market greatly. On the other hand, it is concerned whether the expansion could be minimal because the duration clients can receive temporary work services is limited to one year²⁾.

This paper reviews and focuses these points of the Amendment Act. Although

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- 1) The amended official notice from the Ministry of Labor includes a provision that allows *temporary to permanent arrangement*. By this amendment notification, temporary work businesses can assign temporary workers to client companies expecting that after a certain period of temporary employment those temporary workers will possibly be hired as regular employees of the clients. This provision will be enforced from December 1st, 2000. As for the benefit of temp to perm, *see* Keiko Fujikawa, *Temporary Work Business: The Reality and Future - Focusing on the Joint Employer Doctrine in the United States*, KIKAN RODOHO 186 at 187-189 (1998).
- 2) The market of temporary help business is still inconsiderable at present. The annual turnover of the business in fiscal year 1997 was approximately 1.3 trillion yen, which recorded highest ever, yet equaled only to 0.09% of the total turnover of all the industries in the country. The number of temporary workers was 340,000, and the proportion of the total employed was only 0.63%. Reference: The Ministry of Labor, *The Report of Temporary Work Business*; The Agency of Administrative Affairs, *The Labor Force Survey*; The Ministry of Finance, *The Statistical Survey of Corporations*.

the Amendment Act has heaps of issues³⁾, it is beyond the scope of this paper to argue all of them.

Chapter II shows the summary of the survey of temporary work businesses and workers in Osaka conducted in December 1998⁴⁾, to grasp the present situations of temporary work business and temporary workers. In Chapter III, we discuss the crucial points of the Amendment Act, i.e., the negative listing of temporary work businesses, and the limitation on the duration which client companies can receive temporary work.

II. The Present Situation of Temporary Work ----- The Summary of the Survey of Temporary Work Businesses and Workers in Osaka

A. How the Survey was Conducted

- a. Temporary Work Agencies: 1320 establishments in Osaka Prefecture
- b. Clients
 - i. Companies which receive temporary workers from the establishments of a: 1320 establishments
 - ii. Companies which have recognized that they received temporary workers in another survey: 1000 establishments
- Total of i and ii: 2320 establishments
- c. Temporary Workers
 - i. Workers who are employed by the establishments of a: 1320 workers
 - ii. Workers who work for the establishments of b-ii: 1000 workers
- Total of i and ii: 2320 workers
- d. Procedure
 - Sending out the survey by mail
- e. When It was Conducted
 - December, 1998

B. The Summary of the Survey⁵⁾

a. Temporary Work Agencies

- 3) See, e.g., Noriaki Kojima, *Temporary Work Business and Deregulation*, 48 HANAI HOGAKU 6 at 1 (1999), and also, *Need More Discussion on the Amendment Act of Temporary Work Business*, 144 JINZAI BUSINESS at 6 (1999).
- 4) In this survey we made a questionnaire, analyzed results, and wrote the report. For more details, see, LABOR POLICY DEPARTMENT OF OSAKA PREFECTURE, *Report of Temporary Work Business and Working Conditions of Temporary Workers* (1999).
- 5) Mostly based upon the report (*supra* note 4), in some part added for this paper.

Temporary work agencies are divided into two categories. One is the general temporary work business (hereinafter "general temp" or "general temps") which needs a license from the Minister of Labor, and the other is the specified temporary work business (hereinafter "specified temp" or "specified temps") which only needs a registration. In the general temp, people enroll with agencies to be assigned to work for client companies with the employment contract of the duration of temporary work. On the other hand, the specified temp agencies hire workers as their own employees and assign them to work for client companies. The number of the former type of establishments is 438 and that of the latter type is 1119 in Osaka. As to the respondents, the number of the general temp is 183, while that of the specified temp is 140. This means that the response rate is higher in the general temps than the specified temps.

The medians of the employed workers in the specified temps and the enrollees of the general temps are 14 and 325 respectively, and the rate of the workers who are assigned to client companies are 45.0% and 14.0% respectively.

The number of workers of the general temps has been increasing, and also expected to increase in the future.

As to the number of client companies, 43.6% of the specified temps answered "only one client" and 53.6% said "no change in these three years." From this, it can be inferred that the specified temps have a tendency not only to specify their workers, but to specify their clients.

OA equipment operation is the most requested job in the general temps, while software development is the most requested in the specified temps.

Sales or general office work is the temporary jobs the general temps expect to do in the future. The specified temps do not anticipate in expanding the jobs they handle.

The term of temporary employment is shorter in the general temps, e.g., 82.6% are less than one year, while 37.9% of the specified temps are more than one year.

To the question whether some temporary workers have been hired by client companies, more than half of the general temps answered positively, while almost two thirds of the specified temps answered negatively.

As to the cancellation of the contract during the term, 10.2% of the general temps answered they have cancelled from their side, 35.7% said they have been cancelled by their client companies, and 53.8% answered they have been cancelled by their temporary workers. The number of grievances they receive is less than one per worker per year.

b. Client Companies

This survey analyzes how client companies evaluate the temporary work business, and what are the issues inherent in the business or the future trend. The questions are made on what they expect in the temporary work business in the future, what kind of grievance system they have, and how is the situation of the contract cancellation.

The number of the respondents is 451, 26.6% of the clients are categorized into the manufacturing industry, and 20.4% into the service industry excluding information service.

41.9% predict that the number of their regular workers will somewhat decrease, while 33.7% expect the number of temporary workers they use will somewhat increase.

57.6% evaluate the temporary work business very highly, and approximately 90% evaluate the business positively. On the other hand, 39.0% complain the agencies charge too high for the fee.

About two thirds of the respondents answered they have received no grievance. Even for the respondents who answered positively, the number of grievances was as small as one per worker per year. More than half of grievances are about the relationship with coworkers or bosses at assigned establishments. Most grievances are solved according to the client respondents.

As to the cancellation of the contract, 29.3% answered "yes." The reasons why they cancelled are, for example, the work skill of the temporary worker was not satisfactory (44.7%), or the attitude was poor (34.8%). 67.4% give a notice in advance of the cancellation. 12.9% answered they have been cancelled by temporary work agencies, and in such a case 51.7% have concluded a contract with another agency.

As to what they expect about legislation or policy, 48.3% said "expansion of the jobs permitted to the temporary work business," specifically "general office work" (31.3%) and "sales" (15.3%) are strong in demand.

It can be inferred that client companies are not really satisfied with the skill or knowledge of temporary workers because about half of the respondents request that the skill level of temporary workers be raised.

c. Temporary Workers

This survey focuses on what kind of ideas temporary workers have about the contract term. The results show several aspects which have never been clarified before.

In total 403 temporary workers responded to the survey, 86 men and 317 women. Temporary workers can be divided into two categories, workers who are regular employees of the general or the specified temp agencies (hereinafter "regular temp" or "regular temps"), and workers who are employed for the contract term of temporary employment after enrolling in the general temp agencies (hereinafter "enrolled temp" or "enrolled temps"). Of 403, 156 workers were regular temps and 245 were enrolled temps (2 were unknown). As to age groups, the biggest group was the one between 25 and 29 showing 155 in number (38.5%), the second was the age group between 30 and 34 (21.8%), and the third was the group between 40 and 49 (11.4%).

The most common contract term was between 6 months and 1 year in total (35.0%) and for regular temps (41.7%). The contract term of longer than 1 year was the second biggest for regular temps (37.8%). As for enrolled temps, the term between 3 months and 6 months showed biggest in number (34.3%) followed by the term between 6 months and 1 year (30.6%).

As to the actual duration the temporary workers have worked for the present client, the survey shows "longer than 3 years" biggest in number in total (25.6%) and for regular temps (48.1%), while "1 year or longer" was biggest for enrolled temps (54.7%).

Over 60 % of the temporary workers prefer to work for one client with a long-term contract (64.0%). About two thirds of the workers answered they preferred to work for one client for longer than 1 year. Specifically 35.0% prefer "longer than 3 years," 21.3% prefer "between 1 and 2 years." From these results, it can be inferred that most temporary workers want to work for longer duration for one client than their actual duration.

As to whether their contracts have been cancelled before the expiration date, over 90% said "no." 9.4% of workers have quit during the term and 7.2% have been terminated by the clients.

Over half think positively about being hired by the clients, overwhelming negative answers.

III. The Crucial Points of the Amendment Act

A. Negative Listing

Article 4(1) of the Amendment Act stipulates that no one shall be allowed to engage in temporary work business on the following jobs: i) port labor; ii) construction; iii) security guard, and iv) the jobs provided by a government

ordinance as those not suitable to be assigned to temporary workers in order to maintain the properness of such businesses. These are called excluded jobs of the Amendment Act.

The Act before the amendment had similar provisions by listing available jobs to be engaged in as temporary work business. That was *positive listing*. Only the jobs considered as those which need to be done by temporary work business were allowed to be engaged in. On the contrary, the method which the Amendment Act introduces is called *negative listing*. This is one of the main features of the amendment.

Article 4 of the Amendment Act Supplementary Provisions also states that no one shall be engaged in temporary work business for the time being on the jobs relating to manufacturing, and furthermore provided by a Labor Ministry order as those which may affect the security of the temporary workers' working conditions or the fairness of the labor force. This does not necessarily mean that the jobs relating to manufacturing are considered as those not suitable to be assigned to temporary workers in order to maintain the properness of such businesses. It rather means that doing temporary work business on the jobs relating to manufacturing is prohibited for the time being⁶⁾.

The Amendment Act did not make much revision on the excluded jobs of the original Act. The only change was that the security guard is now prohibited by the Amendment Act, which was used to be prohibited by a government ordinance. Thus, it is an erroneous idea to try to freely broaden the excluded jobs by a government ordinance. Since the original Act provided that the security job is the only job considered by a government ordinance as what was not suitable to be assigned to temporary workers in order to maintain the fairness of such businesses, it seems not appropriate to change the rule. In any case, the government should clearly show the reason why such a job must be included in the excluded jobs, if the government expands them⁷⁾.

Incidentally, as to fee-charging employment agencies, the jobs permitted to be handled were negatively listed by the amendment of the Employment Security Act, and consequently expanded to all the jobs to be handled except i) port labor, ii)

6) Times have changed. Manufacturing processes have been computerized as well as many other fields. This means it is not quite wise to prohibit doing temporary work business for manufacturing jobs. The amended ordinance allows only child or family leave substitutes for manufacturing. But this is nothing different from the previous treatment.

7) See, Committee of Regulatory Reform, Administrative Reform Promotion Headquarters, *Issues on Regulatory Reform* (July 30, 1999).

construction, and iii) other jobs provided by an ordinance as those that may affect the security of employees if they are placed by fee-charging employment agencies (Employment Security Act Amendment 32(11)). Thus, it will not be acceptable to avoid competition by allotting demonstration jobs to temporary work business and mannequin jobs to employment agencies⁸⁾. So far fee-charging employment agencies have handled a temporary type of employment such as house-keeping or table serving jobs, which could be categorized in the jobs of temporary work business. For these jobs, it would be more appropriate if they were handled through temporary work business. These jobs should have been taken care of through temporary work business instead of being permitted to be handled by employment agencies, but it had not been possible because of the prohibition of labor supply business (Article 44 of the Employment Security Act).

But yet, it would be baffling and unnecessary to provide by an act which jobs were suitable to be treated as those handled by temporary work businesses, or by employment agencies. It is labor market to make such a decision. It will raise the quality of the market by having both businesses competing against each other. Negative listing is a must for labor market to become an animated competitive market⁹⁾, and it will harmonize both businesses. What we mean here is the possibility of *transition from temporary employment to permanent employment*¹⁰⁾.

At present, it is virtually prohibited to engage in temporary work business aiming at job search or placement. This is because for a business to do both businesses, it must meet the qualification "it shall not do temporary work business to place job applicants with client companies." Nevertheless, in case that temporary workers wish to be hired by client companies as their regular employees, it would be more feasible if temporary work agencies could support such a request. To make this type of arrangement possible, the above mentioned qualification has to be abolished, and moreover temporary work agencies should be allowed to charge a placement fee to their clients.

B. Limitation on the Duration of Temporary Work

We here analyze another main feature of the Amendment Act. It lays down that

- 8) The difference between *demonstration* and *mannequin* is not very clear. For example, *demonstration jobs for temporary work businesses* are to give explanations at automobile shows or expositions, while *mannequin jobs for fee-charging employment agencies* to give explanations at Kimono exhibitions.
- 9) See, Noriaki Kojima, Labor Market Regulation, REFORM OF SOCIAL REGULATION (NIHON KEIZAI SHINBUN-SHA, Feb. 2000).
- 10) *Supra* note 1.

client companies may not receive the service of temporary work business for more than one year for the same job at the same establishment with some exception (Article 40-2(1)), and that when clients continue to receive the service for more than one year for the same job at the same establishment, they are required to make an effort to hire the temporary workers without delay, who meet the following requirements: i) he/she has informed to the client company before the expiration of the one year period that they wish to be, hired by the client and to perform the same job and ii) he/she has terminated the contract with the temporary work agency within seven days after the one year period (Article 40-3).

It has been admitted by an administrative guidance that general temporary work agencies may renew a service contract with client companies up to three years albeit the Act has originally limited the contract term only for one year. The limit, however, has never been imposed upon specified temporary work agencies whose workers are all regular employees of their own. Even for general temps, it has no limitation of term when they provide service for the jobs of "janitors of buildings," "drivers, inspectors, or maintenance persons of building facilities," "maintenance persons of parking lots and the like," and "sales persons of telemarketing." It can be seen in the survey of Osaka prefecture, many temporary workers have continuously worked for the same client over three years (25.6% in total, 48.1% for regular temps and 25.6% for enrolled temps).

The Amendment Act will not give any change to the originally permitted jobs, while it shall impose the different limitation of contract term on newly permitted jobs.

So, to clarify, there are two distinctions between the original Act and the Amendment Act. One is to limit the duration to one (1) year for which client companies can receive the service of temporary work business (they used to be able to receive the service with no limitation of the duration by shuffling different temporary agencies or workers). The second is that this limitation shall be imposed even to the workers who are the regular employees of temporary agencies.

More concretely, it is defined by a reply by the Minister of Labor what Article 40-2(1) means as follows¹¹⁾. First, the limitation shall be applied when a temporary worker is assigned to perform two or more jobs including a newly permitted job. Second, the job which is performed by the smallest unit of each organization, e.g., a group or a unit shall be construed and enforced as "the same job." Third, to be

11) It is questionable if it is adequate to limit the duration when the main job falls into the list of the originally permitted jobs, and to apply to such a case that clients need temporary help only around the ends of the months not through the months.

construed as "not receiving the service for more than one year," clients need to wait for three months or so before they resume receiving the service of temporary work business (cooling-off period).

The purpose of the limitation is to prevent temporary workers from substituting for regular employees. As for temporary workers, they prefer to work for a longer period at the same client according to the survey of Osaka Prefecture.

Table 1 shows the breakdowns of the expected duration temporary workers want to work for. It explicitly shows they prefer to work for a longer period at the same client. Figure 1 explains that workers who have presently worked longer prefer to work longer. We suggest that the Act meet the request of temporary workers, since it is enacted in the interest of temporary workers.

To take an example, the jobs with high specialty such as sales or marketing may be included in the positive list in the original Act. Or, it could be judicious if it allows an exception in case temporary workers wish to work as a temporary worker for more than one year at the same client in the future¹²⁾. Table 2 shows which working style temporary workers prefer (see also figure 2 and 3).

Table 1 How Long Do you Want to Work at Same Client ?

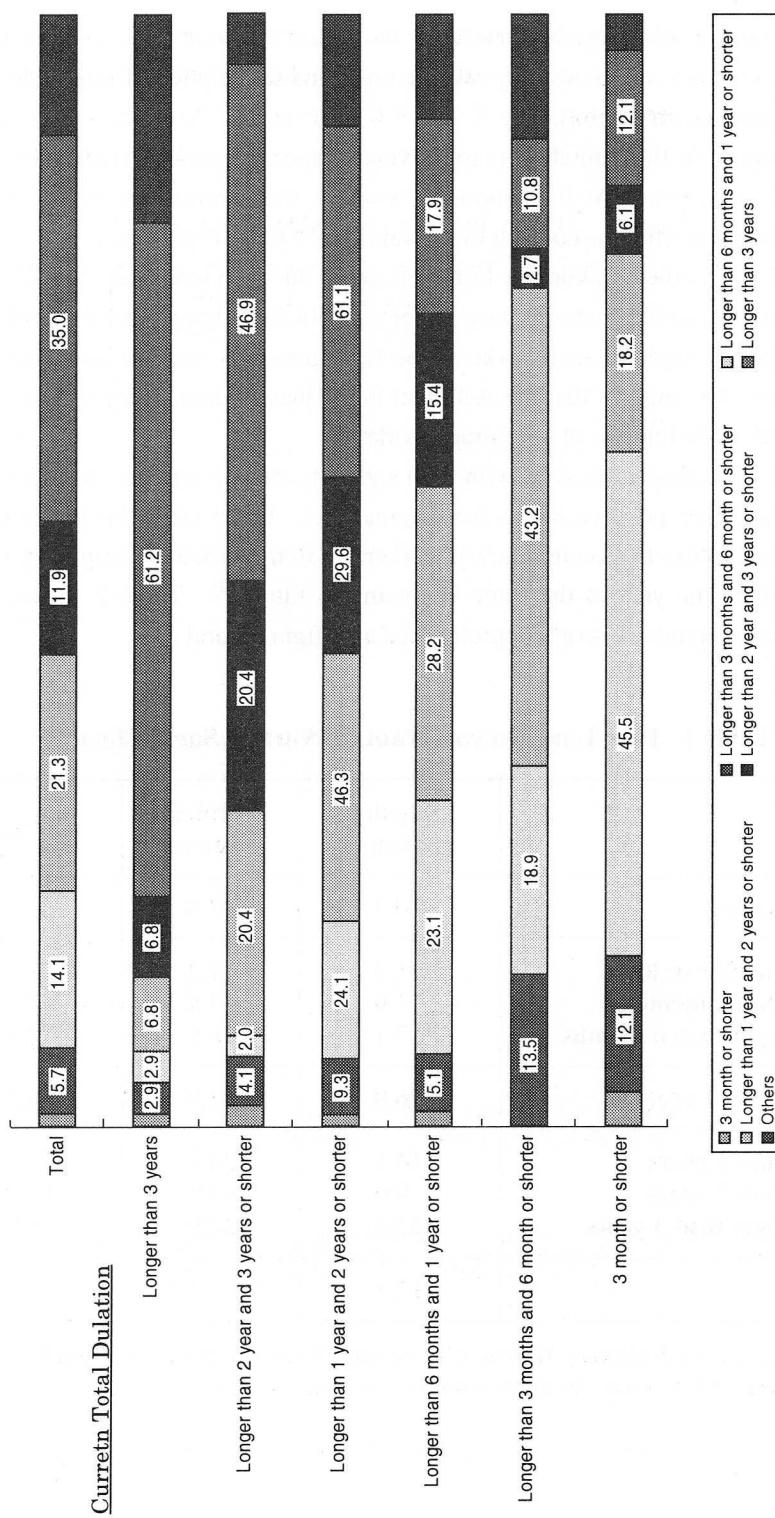
(%)

	Regular Temp	Enrolled Temp	Total
1 year or less	10.3	27.8	21.1
3 months or less	1.3	1.2	1.2
3 thru 6 months	1.9	7.8	5.7
longer than 6 months	7.1	18.8	14.1
longer than 1 year	76.9	62.9	68.2
1 thru 2 years	14.1	26.1	21.3
2 thru 3 years	9.0	13.9	11.9
longer than 3 years	53.8	22.9	35.0
others	12.8	9.4	10.7

Resource: Osaka Prefecture, Report of Temporary Work Business and Working Conditions of Temporary Workers (1998) recalculated in part.

12) *Supra* note 7.

Figure 1 How Long Do You Want To Work At Same Client? (by current duration)



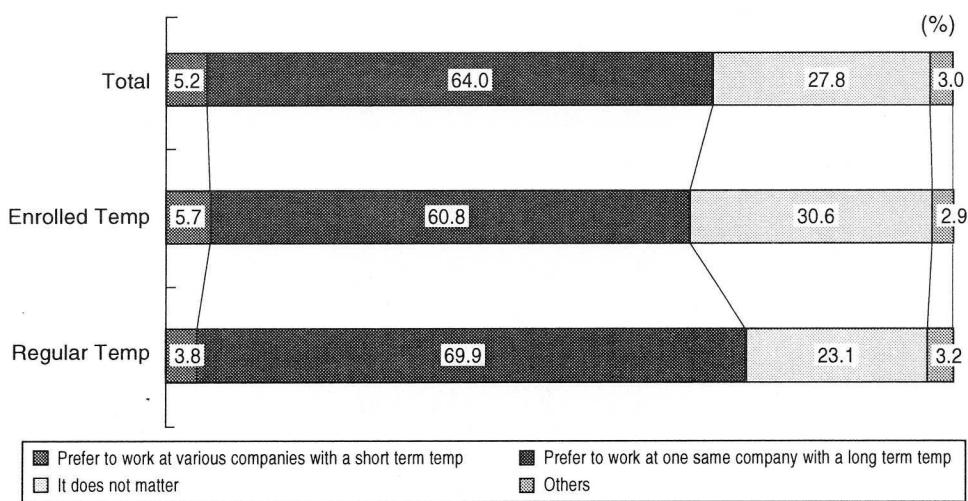
The concept of “temporary work business” should not be limited only to “temporary work,” but can be extended to include “long term temps.” The Amendment act seems too formalistic and bureaucratic to work out well in an active labor market¹³⁾.

Table 2 Which Working Style Do You Prefer ? (%)

	Temporary Employee	Regular Employee	Others
Workers who prefer to work as a short term temp at various companies	2.2	2.2	0.7
Workers who prefer to work as a long term temp at one company	24.8	30.5	8.7
Does not matter	11.4	10.7	5.7
Others	1.2	1.2	0.5

Resource: Osaka Prefecture, Report of Temporary Work Business and Working Conditions of Temporary Workers (1998) recalculated in part.

Figure 2 Which Do You Prefer Short or Long Term Temp ? (%)



13) The problem inheres in the principle that the temporary work system should be viewed as a measure used to supplement the casual and temporary manpower needs.

Figure 3 Which Do You Prefer Temporary or Regular Job ?