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Regulation or Deregulation of the Labour Market:
Policy Regimes for the Recruitment and Dismissal of
Employees in the Industrialised Countries

Michael Emerson

Internal Paper



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The Directorate-General for Economic and Financial Affairs,
Commission of the European Communities,
200, rue de la Loi
1049 Brussels, Belgium

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The present paper was prepared while the author was a Fellow at the Center for International Affairs of Harvard University, in 1985-86, on leave from the Commission of the European Communities, Brussels. Opinions expressed in this paper are only attributable to the author, and not to any institution to which he is connected. The author is grateful to Professor R. Freeman of Harvard University and Professor P. Weiler of Harvard Law School for useful information on the United States, to Professor K. Sugeno of Harvard Law School similarly for information on Japan, and to G. Nerb of the Commission of the European Communities who was responsible for arranging the survey of European enterprises whose results are exploited in the text. The author is greatly indebted to Susan Young for her assistance.

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ABSTRACT

In recent years there has been increasing interest among economists and policy-makers in the contrast between the comprehensive hiring and firing regulations in Western Europe and Japan and their total absence in the United States. The correlation between these differences and the low and high rates of employment growth of Western Europe and the United States respectively is also often thought to be significant, even if the Japanese case complicates such deductions. The present paper seeks in the first place to fill in for the serious lack of cross-country documentation of these employment regulations. It also sets out results from new surveys of how European employers perceive the impact of these laws. Finally, the paper considers policy options for European countries, the conclusion being that a fairly wide spread of moderate but specific policy reforms appears warranted with a view to helping improve the European employment situation. However, the option of replicating the United States model by total deregulation is rejected.

1. Introduction

The main purpose of this paper is to provide a basis for assessing different policy options that exist in the realm of employment protection regulations and negotiated practices. In particular it is intended to help judge in what respects the policies of West European countries may warrant some reforms with a view to helping achieve a higher level of employment under socially acceptable conditions.

Among labour market regulations that are important for the employment performance of the economy, a large part fall under the colloquial heading of "hiring and firing rules". The main sub-headings here are:

- hiring rules favouring disadvantaged groups
- firing rules:
 - * individual dismissal
 - * collective dismissal
 - * layoff and short-time work
- rules for contracts of limited duration:
 - * temporary work
 - * fixed-term contract
 - * part-time work

There are important interdependencies between these items. Restrictive firing rules create demands for forms of contract that circumvent such rules, for example temporary and fixed-term work contracts. Once a policy orientation of security of job tenure is decided upon, this tends to lead to a more extensive body of regulations so as to limit the use of loop-holes. Employment protection is in this respect similar to trade protection, where the protection of one product leads to the protection of substitutes. This is what makes the difference in employment protection between the United States on the one hand and Europe and Japan on the other hand so categorical. The United States has basically an unregulated hiring and firing system, whereas European and Japanese labour law is comprehensive in these domains. In the absence of any regulation of individual or collective dismissals the United States abstains also from the further regulation of temporary or fixed-term work contracts.

In recent years the subject of these hiring and firing practices has, in economic and political debate, risen from being one of considerable technical obscurity to one of major controversy in relation to employment policy.

The main reason for this seems to lie in the apparent correlation between the differences in the policy regimes in Europe and the United States and these economies' respective employment records. United States employment growth has boomed, whereas Europe's employment has approximately stagnated. United States hiring and firing practices are completely unregulated by public law, whereas those of Europe are heavily regulated. Moreover, Europe's employment protection laws were in many cases accentuated in the early 'seventies, about at the time when the European unemployment problem was beginning to grow. Advocates of deregulation as a policy philosophy have seized upon this important example with enthusiasm. Analysts of the Euroscelerosis syndrome have often dwelt at length on the argument that overregulation of the labour market has made the European economy insufficiently adaptable to changing economic conditions. However, these familiar trans-Atlantic contrasts are too often much oversimplified. This is first of all illustrated by the recent emergence of an important trans-Pacific debate which complicates the trans-Atlantic debate. It is observed that Japan's hiring and firing practices have more in common with those of Europe than those of the United States. Yet Japan has avoided an unemployment problem. It is also argued by business school analysts of the weak competitive position of United States' manufacturing industry that the American tradition of free hiring and firing personnel policies may be part of the problem. By comparison, the Japanese tradition of employment security is associated with heavy investment in personnel training and is rewarded with qualities of loyalty and adaptability on the part of the labour force (see, for example Walton and Lawrence, 1985, Ouchi, 1981 and Thurow, 1985). Secondly, the unregulated regime in the United States is showing increasing evidence of instability in the sense of unpredictable but often very expensive awards by the courts in the case of private litigation over the conditions of dismissal (Flanagan, 1986 and Manes and Rosenbloom, 1985).

Meanwhile, economic theory has also contributed to the debate with attempts to bridge the gulf separating neo-classical, free market advocates and those who observe employment security and economic efficiency often going together. Efficiency wage theory and implicit contract

theory are concerned with reasons why real wage rigidity and employment security may in certain conditions be optimal for both employer and employee (see Akerloff, 1984 and Katz, 1986). Following on from this it has also been argued that where direct or indirect labour costs in the primary labour market are too high to permit a clearing of unemployment from the labour market, the optimal policy may lie in creating less costly employment conditions in a secondary labour market, rather than trying to undermine the wage level and employment security in the primary labour market (see Bulow and Summers). In this latter respect the United States and Japan have more in common, both having important elements of duality in their labour markets. Europe is more clearly the outsider on this account.

The debate over desirable employment protection practices is often conducted in extremely simplified and ideological terms. This is understandable in that the subject matter is complicated for any single country, and formidably so for a representative collection of countries. In addition the subject matter does not easily yield to quantification, unlike wage or social security costs. This weakness in political debate is also extremely unfortunate, because it results in an undue polarisation of positions and confrontation. In fact the subject matter breaks down into large number of eminently negotiable variables. The choice does not have to be between total deregulation on the one hand and the impossibility of dismissals on the other. A very fine graduation of many financial, procedural, and legal dispositions is in fact possible, and observable in the practices of the industrialised countries. It is to be hoped that a better informed debate will lead more easily to a consensus on the most suitable policies.

2. Principles Governing the Economic Impact of Hiring and Firing Regulations

Regulations which raise directly or indirectly the costs of hiring and firing staff may be thought of as having the following six kinds of impact on the behaviour of the enterprise or employee.

- (i) Severance and procedural costs or delays in making dismissals will cause higher employment than otherwise in periods of weak demand, because the enterprise is deterred from reducing its payroll more quickly (see Gavin, 1986).
- (ii) However in normal or good demand conditions, and in the long-run, severance costs and delays will add an element of fixed costs to the wage cost of labour. This fixed cost will have some expected probability of being incurred, depending on the chances of the firm's

finding itself with excess labour at some future time, thus reducing the demand for labour and encouraging capital-for-labour substitution (see Gavin, 1986).

- (iii) Severance costs and procedural constraints will tend to segment the labour market between insiders with protected jobs versus outsiders trying to get jobs. This dampens competitive pressures on the wage level coming from the unemployed and therefore results in less employment than otherwise (see Lindbeck and Snower, 1984).
- (iv) However analyses of labour markets of the implicit contract school would point to employment protection provisions reducing risks for the employee and therefore causing a lower equilibrium wage level, and therefore higher employment (Gavin, 1986).
- (v) The lower probability of dismissal can have an adverse effect on work effort, with reduced possibilities for sanctioning shirking workers. This may also, by contamination, weaken the work effort and cooperation of other workers.
- (vi) However, increased job security is also interpreted in sociological literature as favouring loyalty and dedication of the employee to the interests of the firm (Akerloff, 1984).
- (vii) Employment security will also, through increasing the stability of the labour force, encourage the firm to invest in training and thereby upgrade the productivity of the worker (see Piore, 1986).
- (viii) Employment security may also increase the willingness of workers to accept technological change and internal job mobility and so also upgrade productivity (see Piore, 1986).

Controversy in debate about employment protection regulations is immediately understandable. Argument (i) is directly favourable to employment, argument (ii) is unfavourable. Argument (iii) is unfavourable to employment indirectly though wage effects, whereas argument (iv) is favourable. Argument (v) introduces unfavourable productivity effects but arguments (vi), (vii), and (viii) are favourable to productivity.

All of these arguments are extremely difficult to estimate quantitatively. In some cases, for example those concerning productivity, the importance of the argument will vary greatly between enterprises whose activities rely on team-work, high skills and changing technology; versus enterprises where jobs are simple to learn and to supervise. In the former category of enterprises job security provisions will be relatively more beneficial or less costly than in the second category.

One commendable attempt to formalise and quantify the impact of employment protection provisions is in a paper by Gavin (1986). He has set up a model for testing the employment cost and employment demand effects of severance rules, depending upon the values to be

placed on a number of key variables, including:

- the variability of labour demand (+)
- the trend growth rate of labour demand (-)
- the size of severance payments (+)
- the rate of natural wastage of labour force (retirement and other voluntary quits). (-)

The signs in brackets indicate the direction of impact. Thus a high trend growth of labour demand and high rate of natural wastage lower the probable effective costs of severance provisions. High variability of labour demand and high severance payments raise the probable cost of dismissals. All these variables enter into the equation because what is important in evaluating severance costs is not their simple magnitude (number of months of pay, depending upon length of service), but the expected probability that these costs may be incurred, and the expected probability of other procedural delays in the firm's ability to adjust the labour force to a level corresponding to product demand.

The elasticity of labour demand to wage costs also enters into the equation, notably for estimating employment impacts. Gavin's work has not gone far in relating the actual situation of different economies to the theoretical schema, but this could be done in principle. His sensitivity analysis suggests the possible employment effects to range from the trivial to the substantial.

Two particular points may be underlined at this stage:

- in periods of low demand, wholesale dismantling of employment protection laws might be expected to create more job losses than job creations. However, when demand is low, and expected to remain so in the future, severance costs and delays weigh particularly heavily on the firms' expected labour costs in judging whether to hire new recruits. Therefore, there may be a case, transitionally at least, for measures that retain the acquired rights of existing employees, but impose less heavy constraints on new recruits (ways of doing this are discussed further in the concluding chapter).

- in periods of high demand and buoyant expectations for future growth, employment protection provisions may be perceived by employers to be relatively costless, since voluntary quits would then provide an adequate cushion of flexibility in the size of the payroll. But as the economy moves into a depressed condition the perceived costs of the same laws become, as already suggested, much higher. In this respect the economic consequences of employment protection regulations are similar to unemployment benefits. When the economy is functioning at high activity rates, high levels of employment and social security seem entirely bearable for the economy. However, these features of the system also make the economy vulnerable to a prolonged economic down-turn. Employment protection costs rise in the same way as the social security bill rises. Both further dampen the demand for labour in a vicious circle movement. Such appears to have been the European experience in the period since 1973 (see also Blanchard et al, 1985 and Summers, 1986, and Blanchard and Summers, 1986, on these points.)

3. The Broad Picture in Inter-Country Comparisons

Major differences in regimes for employment protection should show up in the rate of turnover of employment.

One available measure (from OECD, 1985) is the percentage of employees holding their jobs for less than two years. The following rank order has been noted in recent years:

Table 1: Rank order of countries by percentage of employees holding jobs for less than 2 years

1. Italy (1978)	13%
2. Belgium (1978)	18%
3. France (1978)	18%
4. Germany (1978)	19%
Luxembourg (1978)	19%
Japan (1978)	19%
European Community average	19%
7. Ireland (1979)	22%
8. United Kingdom (1979)	24%
9. Denmark (1978)	27%
10. Netherlands (1979)	28%
11. United States (1983)	39%

This measure immediately suggests some convenient rules of thumb. Short job tenure is on average in Europe about the same as in Japan, 19% of employees holding jobs for less than 2

years. In the United States short tenure is twice as frequent, with 39% of jobs held for under two years.

Within Europe, Germany and France find themselves about at the average, with Italy showing markedly fewer short-term jobs. The United Kingdom has more short-term jobs, and is situated together with Denmark and the Netherlands between the European average and the United States.

A second measure (also from OECD, 1985) is the annual turnover rate in the employment of enterprises, as measured by the average of the number of new recruits and separations (retirements, quits and dismissals) per 100 employees. In this case the following rank order emerges for the most recent year available (data is also given for a decade earlier, which indicates the trend):

Table 2: Percentage annual average of new recruits and separations

	<u>Recent data</u>		<u>Earlier data</u>		<u>Change</u>
1. Italy	(1982)	11%	(1971)	28%	-11
2. France	(1982)	14%	(1971)	20%	- 6
3. Sweden	(1984)	18%	(1974)	26%	- 8
4. Japan	(1983)	18%	(1971)	25%	- 7
European Community average		18%		27%	- 9
5. United Kingdom	(1984)	20%	(1971)	30%	-10
6. Germany	(1982)	25%	(1973)	33%	- 8
7. Finland	(1983)	35%	(1972)	38%	- 3
8. United States	(1981)	40%	(1971)	48%	- 8

Although these data concern only manufacturing industries (except for Germany and Finland where they cover the whole economy) a similar story emerges. Job turnover averages 18% per annum in Europe, as in Japan, whereas it is about twice as high in the United States (40%). Within Europe, Italy is again conspicuous for the extremely low degree of labour turnover.

A feature common to all countries, however, is the reduction in the rapidity of labour turnover over the course of the decade covered in the data. For the extent of this reduction, Italy again heads the rank order, followed by the United Kingdom.

Another indicator of the severity or otherwise of policies towards dismissals is found in surveys of unemployed persons which distinguish between various reasons for entering unemployment (dismissal, resignation, new entrants into the labour force, etc.). In the following

data, a low percentage of dismissals suggests relatively severe regulations or practices restraining dismissals, whereas a high percentage suggests a liberal dismissals regime.

Table 3: Percentage of unemployed, 1981, who became so because of dismissal or redundancy

Italy	8%
Greece	37%
France	41%
European Community average	43%
United States	52%
United Kingdom	56%
Netherlands	58%
Denmark	83%

Source: for European countries Eurostat, 1983.

For United States: Bureau of Labor Statistics Monthly Labor Review. The U.S. figure includes 16% on lay-off.

The United States ranks higher than the European Community on average in the extent the unemployed became so because of dismissal, but by a smaller margin than the preceding two indicators of labour market flexibility. (It is possible that the data in Table 3 are not too comparable, the United States unemployed showing a particularly high percentage of re-entrants into the labour market which may be due to the short duration of unemployment benefits. However, cyclical fluctuations in the percentage of dismissals among the unemployed are not very high, ranging in the 'eighties between 50 and 59% in the United States.)

As between European countries, these figures confirm other indicators of the extreme difficulty of making dismissals in Italy; as also the finding of Germany and France in the middle of the European range, with the United Kingdom, the Netherlands and Denmark at the liberal end.

The high dismissals figure for Denmark deserves special note, not only because of its extreme level. Denmark did not participate in the E.C.'s survey of employers, and so is not included in a number of tabulations below. However, the above finding from Eurostat's labour force sample survey is consistent with the view that Denmark's legislation on dismissals is the most liberal in the E.C. It is also the case in the period 1983 to 1985 that Denmark's employment level has grown faster than in any other E.C. country, suggesting a high elasticity of employment to changing economic conditions when the regulation of dismissals is liberal.

As regards Italy's very low dismissals figure, the counterpart is found in the very high percentage (78%) of Italy's unemployed who are first job seekers, compared to 22% for the

European Community on average and 13% for the United States. The high percentage of first job seekers reflects a very acute youth unemployment problem. This illustrates how employment protection law may affect the trade-off of interests between different sections of the Community.

In order to obtain more detailed information on the perceptions of employers as regards the employment impact of these and other regulations, the Commission of the European Communities undertook in 1985 a detailed harmonised survey of 50,000 companies in 9 EC countries (C.E.C., 1986). The results indicated the following rank order of countries according to the importance enterprises attached to "insufficient flexibility in hiring and shedding labour as reason for not employing more staff":

Table 4: Percentage of firms considering insufficient flexibility in hiring and shedding rules to be an important obstacle to employing more staff

1. Italy	83%
2. France	81%
3. Belgium	75%
4. Greece	67%
5. Ireland	68%
European Community average	60%
6. Luxembourg	56%
7. Germany	56%
8. Netherlands	51%
9. United Kingdom	26%

These findings are again broadly consistent with those already reported from labour turnover data. Germany is close to the European average. Italy is the country where the regulatory burden is most widely considered to be an important impediment to employment. The United Kingdom is at the other extreme where only a minority of firms consider hiring and firing regulations to represent an important obstacle to employment. France, Belgium and Greece are also reported by their industrialists to have problematic regulations from the point of view of increasing employment. French regulations were subsequently eased in 1986.

Further use will be made of this survey below on more detailed aspects of hiring and firing regulations, as also of another survey by the International Organisation of Employers (IOE, 1985).

Opinion surveys of this kind are sometimes considered to be of questionable scientific value, especially where they touch on policy issues, as in these cases. The replies may be biased

by the political interests of respondents, so the criticism may go. Some reassurance against this concern, however, is suggested by the fairly good correspondence between the statistics on labour turnover quoted above, and the summary results from the Commission's survey.

4. Rules of Recruitment

It is normally the case that employers are free to decide whom they hire. The regulation of recruitment largely concerns under what conditions, or how they are recruited. However there are some exceptions to the normal freedom over whom to recruit.

The employment of black and Hispanic people and women has been favoured by affirmative action legislation in the United States since 1965, when federal contractors were required by an Executive Order to make "good faith efforts" to employ minorities. Enterprises were required to compare their employment record for these groups with the regional average. Companies with poorer records risked the sanction of being debarred from government contracts. Only 30 such cases are known to have been treated this way, but many more may have been influenced by the threat. 50,000 companies, employing 23 million workers have been affected. Leonard (1985) has conducted research on the difference in employment performance between this group of enterprises and the rest of the economy. His findings were that over the period 1974 to 1980 the growth rate of employment for this group of companies was 3.8% faster for black men, 7.9% faster for black women, 2.8% faster for white women and 12.3% faster for women. For white men, the growth was 1.2% slower. However, in 1986 the Reagan administration decided to amend this legislation, making the target indicators voluntary rather than obligatory. (New York Times, January 11, 1986).

In Europe and Japan there is no comparable legislation, although the relatively unfavourable employment situation of ethnic minorities in several European countries is creating an increasingly similar situation to that of racial minorities in the United States. Anti-discrimination legislation exists in European countries, including the United Kingdom.

Only one European country, Italy, has attempted to regulate precisely whom is to be recruited. The public employment service there implements a law which requires companies seeking to hire workers to follow a rank ordering of candidates determined administratively by the public employment service. This so-called "numerical" system in principle lists candidates by order of merit according to some social criteria, like the size of the person's family

commitments and the length of unemployment spell. The system is widely criticised by employers, and its considerable impracticability has led to its limitation in various ways (jobs requiring special skills are excluded, as are firms with less than 5 employees, the recruitment of up to 10% of workers in large firms, the recruitment of relatives, etc). In 1985, the government decided to allow firms to recruit young people for apprenticeships and otherwise 50% of their needs freely, leaving only the remainder determined by the numerical rank order. These exceptions relax the law, while adding, however, to the complexity of the regulations and administrative practice. The external observer of the Italian labour market may be inclined to regard these remaining constraints in the system as archaic, bureaucratic anomalies, due for scrapping. Since this regulation was introduced, there have been major developments in many other features of the Italian social security system. The case there may have been at some stage for using recruitment regulations of this type an instrument of social policy has surely been greatly weakened.

An issue of concern to more European countries is the performance of public employment offices, and their monopoly status in most countries. The business community is often very critical of the quality of help effectively given by public employment agencies. For example, a recent government survey in Denmark reported that only 10% of vacancies were filled by the public employment service, and that many employers and job seekers had virtually given up using it. Why employment agencies should be a monopoly of the public sector is not evident. In any case the public agencies only enjoy a monopoly in a narrow sense, since a large amount of recruitment is done by other means, for example, direct advertising in the press. In Italy regulations are again more stringent than elsewhere. An employment contract made directly with an individual is subject to annulment by the law if it is not ratified by being put, ex-post, through the mediation of the public agency. Italy, alone with Sweden, prohibits private temporary work agencies (see further below). The demand for temporary labour in Italy has therefore to be channelled through the public agencies, where the procedures mesh with the "numerical" system, described above, of rank-ordered candidates. These provisions have encouraged the expansion of sub-contracting work to small enterprises, including some 1 1/2 million home-workers who can classify themselves as self-employed and escape the various official regulations.

Alone among European countries, the United Kingdom permits licensed private employment agencies to function alongside the public employment services.

In the United States there is no regulation of private employment agencies, or other methods of recruitment. A recent sample survey of manufacturing enterprises showed the following numbers of companies to be using the various means or channels of recruitment indicated:

trade union	16
public employment agencies	77
private employment agencies	78
advertising in media	85
recommendation	84
schools, colleges	171

Employment of handicapped persons. This is the sole category of persons which is generally supported in Europe by affirmative regulations (see Commission of the European Communities, 1985). Germany's employment policies towards handicapped persons may be described as a model case. Enterprises with over 15 employees are required to take on handicapped persons to the extent of a 6% quota. Companies not fulfilling the quota pay a fine of DM 100 per month per head (about 20% of the average wage in manufacturing), and companies more than fulfilling the quota benefit from a subsidy from a fund into which the fines are paid.

The other large European countries also set quotas (France 10%, United Kingdom 3%, Italy 15%). France also has a fine and subsidy system as in Germany. The United Kingdom does not apply financial sanctions, but modulates hiring and firing rules for companies not fulfilling the quota. Italy's quota regime is a simple regulatory requirement.

The smaller European countries have a mix of regimes, some applying quotas some making no quantified requirement.

The Italian policy rules appear to be the most demanding and rigid. The Italian quota of 15% is exceptionally high - a surprisingly high 19% of the population are registered as disabled or handicapped. Less surprisingly, Italy only achieves an actual disabled employment rate of 4.5%, which is about the same as for Germany (4.8% - 1980 figures). The Italian regulation, according to anecdotal information, acts a stimulus to keeping small enterprises just below the maximum size that escapes the regulation. A more flexible regime is to apply fines and

subsidies around the quota as in the German case. In this way the unevenness in local or sectional labour supply and demand conditions for handicapped person can be smoothed out.

The United States has an Executive Order recommending affirmative action in favour of handicapped persons, but there is no compulsion or enforcement, and so the measure may be effectively disregarded.

Table 5: Employment regulations for handicapped person

United States	no obligations
France	10% quota for firms with over 10 employees; fines for underfulfillment, subsidies for recruitment
Germany	6% quota for firms with over 15 employees; fines of DM 150 per month for underfulfillment, subsidies for overfulfillment
United Kingdom	3% quota for firms with over 20 employees; limitations on freedom to hire able-bodied persons for underfulfillment and restrictions on dismissal of handicapped persons
Italy	15% quota for firms with over 35 employees
Belgium	no mandatory quotas
Netherlands	3-7% quota may be prescribed by the Social Insurance Council if firms efforts are judged insufficient
Sweden	no mandatory quotas
Denmark	no mandatory quotas
Norway	no mandatory quotas
Ireland	3% quota, mandatory only in public sector
Greece	7% quota for handicapped persons and war veterans for firms with 100 employees or more

Source: Commission of the European Communities (1983), other national sources.

5. Systems for Individual Dismissals

In Europe the rules of individual dismissal often distinguish between cases involving criminal acts and gross misconduct on the one hand, and cases based on economic conditions such as redundancy and the professional suitability or qualifications of the employee. The former category generally allows summary dismissal without compensation. The latter category

generally involves statutory procedures, periods of notice, and minimum amounts of financial compensation. (See I.R.E., 1984, and E.I.R.R., 1985, 1986.)

The procedures for the dismissals based on economic and professional reasons are often set out in extensive detail.

Procedures differ in many details among European countries. One key issue is how far the employer's prerogative to decide on his employment decisions is reduced by the role of third parties - trade unions, works councils, government or the courts. It is frequent for one or other of these third parties to possess considerable discretionary powers. In the Netherlands the government's labour service must approve the decision. In Germany, Italy and Sweden the works council or trade unions must be consulted. In France this was the case until 1986 when the new government repealed this requirement. In Germany if the works council does not agree, the dismissed employee may take the case to the labour court, where procedures are sometimes very long and drawn out (up to 5 years) during which time the employee must be retained on full pay. This is the normal procedure. However there are cases in which the works council's agreement must be obtained, failing which the employer must go to the labour court. In Italy appeal to the courts is likely to see the judiciary take such a favourable view of the employee's social or family problems that dismissal is commonly judged to be practically impossible. In Sweden the trade union has a legal role in determining in the first instance whether a dismissal is unreasonable: the employer can appeal to the courts against an unfavourable position but will rarely win. Other European countries with onerous dismissals procedures are Portugal, Spain, Norway, Belgium and Ireland.

The Japanese system for "regular" employees is equivalent to these European systems in restraining dismissals. Case-law establishes that dismissal for disciplinary reasons should not be overly severe. For example, in a key case, a news broadcaster for the early morning news twice overslept. He was dismissed but through an appeal to the courts he was reinstated (see *Shioda V. Kochi Broadcasting Co.*, 1977 in Sugeno, 1986). Dismissal for economic reasons has to be very strongly justified (see also under collective redundancies).

The United States, by contrast, has no general legislation governing of dismissals. Traditionally, since the 19th century, employers have been free to terminate contracts of employment "at will" for any reason, subject only to limitations established in the individual's

contract of employment or a collective bargaining agreement. Such contracts and agreements may fix periods of notice and amounts of compensation, but this is not required by law. Recently, however, the courts in many states have been moving away somewhat from the ultra-free firing model, requiring that dismissals be justified on reasonable grounds. A few states still adhere to the 19th century presumption, one state court even affirming in 1956 that an employer can freely fire an employee "for good cause, or bad cause, or no cause at all". However, the trend is against this view. Twenty-nine states recognise exceptions to the at-will doctrine. The number of wrongful termination law suits has increased dramatically in recent years - with 10 fold increases each year. Legal experts consider that this trend will continue as lawyers find such cases easy to prosecute and promise potentially staggering awards. Manes and Rosenbloom of Harvard Law School conclude their detailed study (1985) in the following terms:

"Corporations and businesses facing such large damage claims are looking for wages of limiting their risks in the "Russian roulette" of employee law suits. Legislatures are considering proposals that would change the entire termination at-will presumption. The courts are struggling towards a more precise definition of what constitutes a wrongful termination... this area of law is an muddled and confusing as it is significant... The conclusion seems unavoidable that legislation is required to balance the interests of all concerned".

Flanagan (1986) reports an analysis of 102 cases in Californian courts of wrongful discharge between 1982 and 1986. Three-quarters of the plaintiffs' cases were upheld with awards for general damages averaging \$344,000, and awards for punitive damages \$557,000. Thus the costs of "freedom" to dismiss staff in the United States can be very high compared to statutory provisions in Europe. In fact the United States paradigm of free hiring and firing and non-regulation appears in practice to have become unstable, and ultimately unsustainable. While federal legislation appears highly unlikely for the time being, it is not inconceivable that individual states may provide a clearer and more settled framework for the private sector to follow.

The United Kingdom's regime is worth noting as one which is regulated in order to protect against unfair dismissal but nonetheless gives the employer a considerable prerogative to dismiss redundant or poorly adapted staff, with moderate amounts of financial compensation.

However, neither government or trade union approval is required, and the arbitration and tribunal system for dealing with complaints over unfair dismissal is expeditious and fairly sympathetic to the employer's management concerns. Only one-third of complaints reaching the tribunal stage are upheld, and most cases are disposed of within three months of submission to the courts (see Annex 3 for detail). In 1985 the rules were relaxed by raising the minimum period of service required before the tribunal system for unfair dismissal could be used from 1 to 2 years. Ireland has a tribunal system that appears to be comparable with the British system (in 1983 about one-third of cases heard in Ireland were found in favour of the employee charging unfair dismissal).

6. Rules for Collective Redundancies

As in the case of individual dismissals, the conditions for collective redundancies are regulated in Europe by law. An EC Directive of 1975 stipulates some minimum conditions, such as 30 days of prenotification to be given to workers representatives. EC countries have since adapted their laws as necessary. Similar laws have generally been introduced governing plant closures. (See I.R.E., 1984, and E.I.R.R., 1985, 1986.)

In the United States, by contrast, there is no general law, any legal requirements depending upon the terms of collective bargains (see Harrison, 1984). In 1980 only 15% of collective bargains contained prenotification procedures. In 1981 a Supreme Court decision ruled that a company may close a plant without notification or bargaining with the trade union, unless the collective bargaining contract contains a "preservation of work" clause. In recent years there has been some publicity given to agreements in the automobile and meat-packing sectors in which job-security provisions were granted in exchange for concessions on work practices or pay. However, a survey of such contracts agreed in 1982 suggests that the typical deal saw withdrawal of a planned closure or lay-off against concessions over wage levels rather than commitments to a different system governing job tenure. Moreover, a study by Capelli and McKersie shows that most of these enterprises in fact soon closed down the plants in question.

In Europe the restraints imposed upon management are often analogous to those for individual dismissals. Prenotification delays are added to the specific notice periods owed to individuals as a function of years of service. Trade union consultation is frequently required,

and government authorisation needed in some cases (Netherlands, Greece, Spain, Portugal and, until 1986, France). The effective importance of the intervention of the government is hard to assess. On the one hand the enterprise may see the government's powers of approval or refusal as limiting an important management prerogative. However, the enterprise unable to adjust its labour force to economic necessities will go bankrupt, and the labour ministry will hardly be interested in provoking this. The government's authorisation may, in some cases, amount to little more than registering an event, and putting pressure on the enterprise to show that it considered alternative solutions. In Spain the intervention of the labour ministry amounts more to deliberating on whether dismissals are to be classified as fair or unfair than to preventing dismissals; however, compensation for unfair dismissal is extremely high (see below). In the Netherlands, the government in 1985 decided to limit to four-to-six weeks the maximum time its agencies could take to deliberate on proposed dismissals. In France, too, the government promised in 1985 to shorten delays in which the Administration decides on proposed dismissals (it agreed to 90% of requests in recent years). In 1986 the new government scrapped the need for administrative approval.

In Europe, the cost of compensation to redundant personnel is usually expressed as a function of years of service, but is often a complicated formula. The range for blue collar workers is between 1/2 week's pay per year of service (France), about 1 week (Netherlands, United Kingdom), rising to as much as 4 weeks in Spain. For Germany, Denmark, Norway and Finland the law leaves the amount open to negotiation. Compensation for unfair dismissal is often much higher, 5 months minimum in Italy, 6 months minimum in Belgium, 16-32 months in Sweden and up to 42 months in Spain. The Belgian government in 1985 significantly reduced the scale for compensation awards.

In the United Kingdom the relatively modest cost of redundancies are also 35% subsidised by public funds for enterprises with less than 10 employees. This makes the British regulations the lightest in Europe except perhaps for Denmark and Finland which leave redundancy compensation to be fixed by contract or collective bargain.

In Japan the lifetime employment tradition in large enterprises is buttressed strongly by the requirements of case law decided by the lower courts, although general legislation makes no requirement other than 30 days notice (see Inagami, 1984). Case laws makes it clear that an

extensive set of preconditions have to be met before redundancies can be admitted (see *Toyo Sanso K.K. v. Koji Shimazaki et al*, in Sugeno, 1986). The objective need to make redundancies for economic reasons has been established, and a specific list of alternative courses of action has to be exhausted such as recourse to internal transfer of surplus staff, work-sharing and part-time practices, national wastage through non-replacement of retiring personnel, dismissal of temporary workers and calls for voluntary early retirement. Trade unions have also to be consulted. In practice the possibilities for internal deployment of manpower in large firms and the other techniques are such as to make redundancies a rare event. However, smaller firms make more recourse to these legal possibilities for dismissal. The lump-sum payments made to dismissed staff are very large, but these can be confused with the system of retirement gratuities. On average on retirement a Japanese worker receives about 43 months pay as a gratuity, but 55% of firms have no private pension scheme. A dismissed employee receives a similarly important sum, but this implicitly contains quasi-retirement benefits.

The International Organisation of Employers in 1985 (I.O.E., 1985) reported how each country's employers organisation assessed the severity of the rules restraining the termination of employment contracts.

Table 6: Importance of obstacles to the termination of employment contracts

1. Obstacles are fundamental

France
Germany
Italy
Netherlands
Portugal
Spain

2. Obstacles are serious

Austria
Belgium
Ireland
Norway
Sweden

3. Obstacles are minor

Denmark
Finland

4. Obstacles are insignificant

United Kingdom

According to the Commission's survey in 1985 (C.E.C., 1986) European Community countries assessed the possible employment impact of shorter periods of notice for redundancies and simpler legal procedures in the following rank order:

Table 7: Percentage of firms judging that there would be a positive employment impact from shorter periods of notice for redundancies and simpler legal procedures

1.	Italy	88%
2.	Greece	76%
3.	Belgium	74%
4.	Germany	63%
	European Community average	58%
5.	Luxemburg	54%
6.	France	48%
7.	Netherlands	47%
8.	Ireland	35%
9.	United Kingdom	28%

As regards the question whether a reduction in redundancy payments would have a positive employment impact, the Commission survey (C.E.C., 1986) showed the following rank-order:

Table 8: Percentage of firms considering that a reduction in redundancy payments would have a positive employment impact

1.	Italy	78%
2.	Belgium	63%
3.	Greece	62%
4.	Luxemburg	52%
5.	Germany	46%
	European Community average	42%
6.	Ireland	33%
7.	United Kingdom	23%
8.	France	22%
9.	Netherlands	12%

It is notable that the financial cost of redundancy payments was in all countries considered to be a less important problem than the length of notice periods and the difficulty of legal procedures. This is particularly so in the case of France (indeed, as noted earlier, French compensation payments are among the lowest, but procedures have been onerous).

This general classification accords well with the main regime features described above. The countries in the first category of the I.O.E. survey (France, Germany, Italy, Netherlands, Portugal, Spain) all featured in 1985 the intervention of trade unions, works councils or government in the procedures and authorisation of dismissals (collective or individual or both). At the other end of the scale are countries which have no governmental interference in the decision process and where the amounts of compensation are not determined by law (Denmark, Finland) or are low (United Kingdom).

7. Lay-Offs or Short-Time Working

A lay-off is an arrangement whereby a worker is required to stop working for a temporary period, but without termination of the employment contract. The worker is usually not paid wages by the employer, but receives compensation from public funds. Alternatively employees may be required to work on a short-time basis, for example, two to three days per week. As techniques adjusting labour costs in the light of cyclical demand movements, lay-offs and short-time are in principle more flexible than recruitment and dismissal on and off.

Regimes facilitating total lay-off of personnel are not widespread. The possibility to lay-off workers completely exists only in the United States and Italy among the larger industrialised countries where the practice is widely used. Some smaller European countries also have lay-off arrangements (Belgium, Norway) but short-time working is the more general alternative in Europe (EIRR, 1983). The number of workers laid-off in the United States tended to fluctuate between 1 to 2 million in the period 1960 to 1981, from cyclical peak to trough (BLS, 1983). Laid-off workers benefit from the same compensation as in the case of unemployment.

The only European country to have a somewhat comparable regime is Italy where the CIG (Cassa Integrazione Guadanzi - "complementary integration fund") provides compensation of 80% of prior earnings. The original intention of the CIG was that it allow for cyclical flexibility in the labour costs of industrial employers - thus close to the United States system. However it gradually became a shadow unemployment compensation scheme that offered often indefinite benefits of much higher amount than the official unemployment scheme. For example, in March 1986 it was announced that FIAT was going to reemploy about 6,000 workers who had been laid-off for nearly six years. The CIG has in effect given cost flexibility to employers, but has at the same time frozen a sizeable fraction of the industrial labour force in inactive situations, except that reports of beneficiaries working the black economy are legion. Since the CIG was much expanded in the 1970s labour turnover in industry has dropped by one half (see D'Apice and Del Boza, 1985).

The more common type of regime in Europe is short-time working or "partial unemployment." This is the case in France, Germany, the United Kingdom, Spain and the Benelux countries. Typically the worker is compensated as a percentage of lost earnings at the level of unemployment benefits or somewhat less.

Perceptions of competitive disadvantage suffered by European companies compared with the United States are illustrated by the example of competition between Boeing and Airbus in the aircraft industry. Boeing has in the last decade resorted to some massive lay-offs and recalls in order to respond rapidly to changing demand conditions. Airbus, manufacturing in France, Germany, the United Kingdom and Spain, has much greater difficulty in adjusting to peaks in demand. It has to take a longer-term view of demand prospects in recruiting, and typically is more cautious in taking on extra staff. As a result delivery delays are often twice as long for Airbus, compared to Boeing. (See The Sunday Times, 2 March 1986, "Airbus Flies into Battle.")

Table 9: Lay-off or short-time working regimes

United States	Lay-off regime, compensation as for unemployment.
France	Compensation for reduced working time up to total of 50% of gross hourly earnings, up to 600 hours of reduced time per year.
Germany	Compensation for reduced working time up to 68% of net earnings for up to 24 months; 1/3 of employees must be idle for over 10% of working time.
Italy	Compensation of up to 80% of gross earnings paid by the Cassa Integrazione Guadanzi for up to 40 hours per week, ordinarily for up to a year, but in practice indefinitely in the case of recognized reorganisations. In 1987 government proposes to limit indemnities to 3 years.
United Kingdom	No provisions under public law or social security; only as may be negotiated in collective bargains.
Belgium	Compensation in line with unemployment benefits is paid for up to 4 weeks of lay-off or 3 months of part-time work, on condition that full time working then resumes.
Netherlands	Compensation in line with unemployment benefits is paid for up to 6 weeks for reduced working time.
Sweden	Compensation in line with normal pay for up to 30 days a year, the employer being reimbursed at most for 23 days.
Norway	Compensation in line with unemployment benefits is paid for up to 40 weeks in respect of complete workless days.
Switzerland	Compensation in line with unemployment benefits.
Greece	Compensation of 50% of normal pay for up to 3 months per year.
Spain	Compensation in line with unemployment benefits is paid for up to 18 months in respect of reduced working time.

Source: EIRR, 1983.

8. Temporary Work and Fixed-Term Employment Contracts

Temporary work tends to be of two types:

(i) the supply by specialised temporary work agencies of personnel to another company for short periods, in which the workers are legally employed by the agency;

(ii) direct employment on contract for a short and fixed time duration, such as seasonal jobs in agriculture and tourism.

Trade unions are usually strongly opposed to such practices and often argue that they should be outlawed. They see dangers of competition in the labour market from groups that will have weak market power, of abuse by employers of their market power in relation to unorganised labour, and a way of circumventing employment protection laws. Employers point to the need to assure the supply of labour for seasonal or other irregular demands. Individual countries seem in their policies towards temporary work to typify their broader tendencies on questions of labour market rigidity or flexibility (see Albeda (1985) for a detailed account).

Thus in the United States there is no regulation or licensing requirement at all of temporary work companies or individual employment. The numbers of persons employed in this way increased very fast in the years since 1982 (see Carey and Hazelbaker, 1986). According to Albeda (1985) some 500 private companies compete in supplying temporary workers, amounting 1 1/2 to 3 million people depending upon estimates (2-4% of the work force). Such personnel is covered by general labour law (including the minimum wage) and social security. However, the conditions of employment usually exclude fringe benefits such as holidays, holiday pay, and private pension and health insurance benefits; the latter are of course particularly important in the United States since public health insurance is not generally available. The workers can normally be dismissed without notice, compensation or recourse. The only effective restrictions on temporary work come from collective bargains where for given firms trade unions may negotiate a commitment from the firm that they abstain from this market.

In Japan, the temporary work market provides an important element of duality alongside the lifetime employment system (see Hobara, 1985). About 10% of non-agricultural employees are temporary or day labourers, with twice as many women as men in this category. Temporary employment provides a margin of employment flexibility that enterprises want, and the lifetime employment system obviously cannot provide. The pool of temporary workers tends to be those who have quit other jobs and failed to obtain 'regular' recruitment after graduating from school. Directly employed temporary workers are typically subject to special employment rules, notably allowing for termination. National health and pension coverage is typically provided for, but there may be exemptions from unemployment insurance for daily and seasonal workers. Usually temporary workers are excluded from trade union membership.

European regimes have diverged in the extent of their regulatory restriction of temporary work, although the EC Commission has proposed a directive to assure a degree of harmonisation (this proposed directive remains unpassed).

Table 10: Regulation of private sector temporary work agencies

United States	unregulated
Japan	regulated, restricted to specified activities
France	restricted under licensing system
Germany	restricted under licensing system
Italy	prohibited; law strongly prefers permanent employment contracts
United Kingdom	regulated under licensing system
Belgium	restricted under licensing system
Netherlands	restricted under licensing system
Denmark	restricted under licensing system (only permitted in business and office branches)
Norway	restricted under licensing system (only permitted in business and office branches)
Sweden	prohibited; direct temporary employment severely restricted since 1974.
Switzerland	unregulated
Ireland	regulated under licensing system
Greece	restricted to specific activities

Note: Temporary work companies hire personnel to a third company for limited periods of time. Direct temporary employment involves only employer and employee in a contract of fixed duration.

Source: Albeda (1978).

Italy and Sweden are at the most restrictive end of the regulatory spectrum in Europe. Both countries prohibit private temporary work agencies, and both severely restrict direct employment on the basis of non-permanent contracts. Sweden, however, had freedom of direct temporary employment until 1974 when restrictive legislation was introduced. Both countries apparently have substantial black or grey markets in temporary employment. In Sweden the 1976 "right-to-veto" legislation gave trade unions the power to object to temporary work contracts where "improper practice was taken to be involved" but not necessarily proved (Kennedy, 1984).

A group of other European countries legislated in the period 1970 to 1976 to regulate and restrict temporary work companies quite strictly: Germany, France, Belgium, Netherlands and Denmark. These countries operate licensing systems for such companies imposing not only obvious requirements such as social security coverage but also a variety of restrictions on the type of work or length of contract permitted. Generally trade unions press for total prohibition of temporary employment, and the legislation that has emerged reflects a compromise between the desire of trade unions to prohibit such agencies and that of employers to have freedom to satisfy special employment needs.

In France, the Socialist government in 1982 tightened the regulations governing temporary work, following a rapid expansion of the number of such workers since 1975. The uses of such labour was restricted to specific situations, such as to fill in for absence of a permanent employee. An "insecurity bonus" of 15% had to be paid to staff at the end of the contract. Trade unions were given statutory rights to institute legal proceedings against abusive use of temporary work. As a result it was estimated that a 30% reduction in the number of employees of this type resulted in 1983. In 1986, however, restrictions on temporary work were eased.

In the United Kingdom direct temporary employment (casual labour) has been progressively reduced under legislation adopted in 1975 and 1976 of the Labour government of the day.

The law on fixed-term contracts in Europe tends to be analogous to that set for temporary workers. Typically, regulations define restrictive conditions under which such contracts may be offered (seasonal needs, to replace a permanent employee's temporary absence, etc), and the maximum duration and possibilities for extension of the contract. The 1970s saw in Europe

widespread legislation making these regulations more comprehensive or restrictive. The France governments legislation of 1982 appears to be the last example of the period of tightening regulations. Since then several countries have opened wider opportunities for fixed-term contracts as a way of easing the burden of severe restraints or dismissals. In Germany legislation in 1985 extended the maximum duration of fixed term contracts from 6 to 18 months, also removing the need for any particular justification of such contracts. Spain adopted similar measures already in 1984. Italy in 1984 opened new possibilities to offer fixed term contracts to young people. France in 1986 reversed the restrictions introduced earlier.

Table 11: Regulation fixed-term contracts

United States	unregulated
Japan	permitted, but automatic renewal converts into permanent contract
France	'82 law tightened criteria to jobs only manifestly of a temporary nature; '86 law liberalises, extends duration to 24 months
Germany	'85 law extends (temporarily until 1990) duration from 6 to 18 months, with no justification required
Italy	permitted only for seasonal or exceptional needs
United Kingdom	unregulated, freedom to make fixed-term contracts at will
Netherlands	permitted, but if extended subsequent dismissal requires official permission
Switzerland	unregulated
Sweden	'82 law allows 6 month probationary period, and some special (seasonal) work, including up to 6 months employment in 2 years for peak-load work periods
Finland	permitted only when motivated by temporary nature of work, or traineeship
Norway	illegal, except for naturally limited jobs
Spain	'84 law allows 6 mth - 3 yr contract for new firms
Greece	permitted, but if repeated contract becomes permanent
Portugal	'75 law allows 6 mth to 3 yr contracts upon evidence of temporary nature of work.

Source: I.R.E. and E.I.R.R. (various issues).

The survey of the International Organisation of Employers (I.O.E., 1985) indicated that temporary work regulations were judged as follows:

Table 12: Importance of regulatory constraints of temporary work according to employers' organisations

1. Fundamental Constraints:	Belgium Italy Spain
2. Serious Constraints:	France Germany Netherlands Sweden
3. Minor or Insignificant Constraints:	Austria Denmark Finland Ireland Luxembourg Norway Portugal Switzerland United Kingdom

Source: I.O.E. (1985)

The same survey reported the following opinions as regards regulation of fixed-term contracts:

Table 13: Importance of regulatory constraints of fixed-term employment contracts according to employers' organisations

1. Fundamental Constraints:	Belgium Italy Netherlands
2. Serious Constraints:	France Germany Luxembourg Sweden
3. Minor or Insignificant Constraints:	Austria Denmark Finland Ireland Norway Portugal Spain Switzerland United Kingdom

Among European Community countries, the Commission's survey of 1985 (C.E.C., 1986) indicated the following rank ordering according to the percentage of firms that would expect a positive employment impact from measures facilitating temporary contracts (fixed term, interim work, etc):

Table 14: Percentages of firms expecting a positive employment impact from measures facilitating temporary contracts

1.	Germany	74%
2.	Luxembourg	69%
3.	Italy	63%
4.	Belgium	63%
	European Community average	55%
5.	France	53%
6.	Greece	50%
7.	Ireland	47%
8.	Netherlands	32%
9.	United Kingdom	27%

9. Part-Time Work

The extent of part-time work in the EC on average and in the United States is not, in the aggregate, very different. Some 13 million people were in 1983 working part-time in the EC, compared to 15 million in the United States in 1985. This amounts to 12 and 13% of the labour force respectively. However, the range is quite wide within Europe: 7% in Italy, 9% in France and Germany, 20% in the United Kingdom and even higher in Scandinavia. Japan's labour force includes 6 1/2% of part-time workers, a share that is rising. As Dreze (1986) has shown, a high share of part-time employment tends to in Europe to be associated with high total labour force participation rates. This reflects the widespread preference of second workers in the family to be employed only part-time. There is on both sides of the Atlantic a preponderance of part-time work among women in the 25 to 50 age bracket.

The main difference in the structure of part-time work between the European average and the United States is seen in greater number of young people (three times as many) who work part-time in the United States compared to Europe. In the United States part-time work among high school and university students is widespread and encouraged, whereas in Europe it is much less so. In the United States a little over one quarter of those in the age bracket 16 to 24 years old who are not in full-time labour force have part-time jobs.

The policy regimes for part-time work tend to be quite different as between Europe and the United States.

In Europe the broad thrust of policy has been to provide equality under the law for part and full-time employment (see EIRR, 1985). This principally means assurance of equal basic pay per hour for comparable jobs, equal rights under employment protection law, and the requirement of social security coverage. Social security contributions will normally be proportional to salary, but in some countries the regime is not so neutral or simple. Some countries impose substantial minimum social security contributions (e.g. Belgium) which may mean very heavy taxes on short lengths of working time. Others allow freedom from contributions for work under a certain level. In the United Kingdom this limit is expressed at L35.5 of weekly earnings, which is about one quarter of the average earnings for a full week's work. The United Kingdom also exonerates jobs of under 8 hours per week from the provisions of employment protection law (or 8 to 16 hours if the employee has less than 5 years of service). The Government is proposing currently to extend these thresholds. It is notable that part-time employment benefitting from these provisions has been the main growth element in aggregate employment in the United Kingdom in recent years.

In the United States there is no legislation governing part-time employment. Such jobs are invariably subject to free hiring and firing conditions. Social security contributions are paid at normal percentage rates. More significant is the fact that part-time jobs will often not benefit from fringe benefits such as private medical insurance and private pension coverage. Since social security provides public medical coverage only for very poor or retired people, this is an important effective difference between the primary and secondary labour market. However many female and young part-time workers are covered for private health insurance by family policies subscribed by the main income earner.

Japan's regime is in an intermediary category. Part-time workers do benefit from general social security coverage (including health insurance) as in Europe but there are income ceilings beneath which second family workers do not need to pay social security contributions. Part-time workers often do not benefit from employment protection rules and custom as in the case of regular and life-time jobs. Their basic wages may be below those wages of regular employees. and they will often not receive bonus payments either (see Hobara, 1985).

Table 15: Structure of part-time employment by age and sex in the EC (9) and United States, thousands

	(years)	EC men	(1983) women	total	(years)	US men	(1985) women	total
young	(14-24)	532	1,223	1,755	(16-24)	2,446	2,995	5,441
prime age	(25-49)	568	7,010	7,578	(25-54)	878	5,569	6,447
older	(50+)	935	2,859	3,784	(55+)	1,162	1,715	2,876
Total		2,035	11,092	13,117		4,486	10,279	14,764

Source: Eurostat, Labour Force Sample Survey, 1983. Bureau of Labour Statistics, Employment and Earnings.

10. Summary and Conclusions: Options for Policy Reform in Europe

The first option for consideration is the most radical: total deregulation. This is not a purely theoretical hypothesis. It was for a long time the regime of the United States, although the judiciary is through case decisions now increasingly filling the void left by the absence of federal legislation. Economists and business school writers in the United States who recognise the advantages of employment security for employees and many enterprises often draw the conclusion that the optimal degree of employment security can be introduced through collective bargaining or the simple choice of the enterprise. On the other hand, there are arguments favouring an extension of employment security in industry in the United States beyond what the free market has so far delivered. Moreover, the legal regime for coping with disputes over individual dismissals in the United States appears to be in increasing difficulty, in the absence of general legislation providing a framework for case decisions.

The reason for rejecting a de-regulation option for Europe would not, therefore, be only political. As noted above, employment security provisions generate a number of effects on labour costs, employment and productivity, some favourable and some unfavourable. The net impact seems likely to vary considerably between size of firms and types of activity. Therefore the proposition of blanket deregulation would seem ill-adapted. While, the United States' regime appears on close inspection to be less satisfactory than sometimes suggested, Japan has succeeded in reconciling considerable employment security with little unemployment. Politically, total deregulation in Europe would no doubt create very great conflict and instability in industrial relations. Even in the hypothesis of total deregulation by the state, reasons of

economic efficiency would recommend that a large share of total employment would be governed by security of employment contract. The process of wholesale renegotiation of employment contracts in all enterprises in the economy to make explicit what deregulation had rendered unspecified would be an awesome prospect.

A second approach to reform is to consider amending existing legislation where it appears to be unduly onerous, thus retaining the existing legal framework as the basis. A reasoned evolution of the status quo is proposed. In fact the foregoing survey of the existing law in Europe and Japan shows that there are a very large number of eminently negotiable variables filling the space between, on the one hand, the regime of total deregulation and that, on the other hand, of the most constraining possible set of regulations. A struggle over choosing between total deregulation versus total regulation would be not only conflictual but also unnecessary, given the opportunities for fine graduations in the setting of the policy variables. A selection of these variables may be recalled for illustrative purposes: the length of notice for dismissals, the amount of compensation per year of service, the criteria determining fair versus unfair dismissal, the criteria governing temporary and fixed-term contracts, the role of workers' representatives in procedures leading to redundancies, the extent of exemptions from the standard laws for small enterprises, or for young or elderly workers etc.

Four general principles are proposed for reviewing the optimality of employment protection rules:

- the social and economic qualities of secure employment for a large proportion of employees and enterprises should be reflected in the basic design of the law;
- however, the differences of situation between categories of employees and enterprises should be recognised, so as to avoid excessively rigid constraints either for employees who do not need or want it, or for enterprises who need flexibility in the size of their labour force most;
- it should be possible to sanction the shirking worker by dismissal, subject to legal safeguards against abuse;
- the enterprise should retain the prerogative of judging the requisite size of its labour force and for deciding therefore upon the need for collective redundancies. However, this should be subject to respect of minimum requirements for financial compensation

and procedural delays for consultation with workers' representatives and to assure that alternative courses of action to collective redundancies are fully exploited.

As regards policies on individual dismissals the comparison of national regimes suggests the following points. The sharpest issue is whether the employer has in effect the power to dismiss a person for reasons of his misconduct or poor work performance. In general European law distinguishes between "grave misconduct" and "unsatisfactory work performance". Generally "grave misconduct" covers criminal acts such as theft and bodily violence. In these cases summary dismissal is, to the extent of the author's knowledge, provided for in all European countries. The situation of "unsatisfactory work performance" (laziness, incompetence or lack of appropriate skills) is more varied. European practices range from an apparent even-handedness of the law in some countries (the United Kingdom for example) to the practical impossibility of dismissal in others. The latter kind of regime covers a number of different practices, such as the need to prove incompetence to the courts (Portugal), the policy of the courts to override professional criteria with social criteria (Italy), or the extremely onerous or time-consuming procedures that recourse to the courts entails (Belgium, Germany, Sweden). Excessively protective legal procedures have two economic disadvantages. The small enterprise in particular can be discouraged from taking on staff outside the family where the sanction of dismissal is absent. The working atmosphere and productivity of a team of workers can be adversely affected by the presence in their midst of a worker who does not pull his or her weight.

As regards collective redundancies, the requirements of the EC Directive in this domain seem to be quite justifiable in laying down the basis for a consensus model. Minimum prenotification periods are required, as are consultations with workers' representatives and compensation payments as a function of length of service. More controversial, and going beyond the E.C. Directive, are provisions in which either trade unions or governments retain powers of approval or authorisation. Governments have power of approval in the Netherlands, Spain and Portugal, and powers to defer action in Germany. Management can in these cases claim that a basic prerogative is being denied to them. This is countered in some cases with the argument that the labour ministry intervenes with a light hand, or that the political difficulties for a firm in making redundancies may actually be eased by the approval of the government. The essential point would seem to be whether enterprises, in their recruitment

planning, fear the probability of future constraints on their freedom to adjust their labour force when demand is low. For several European countries surveys suggest that this is the case. In some countries the level of minimum compensation payments is also relatively high and perceived to be so by the enterprises.

As regards lay-off and short-time working arrangements, there seem to be some reasons for preferring the European system of short-time working, rather than the United States system of total lay-offs. While the most effective regime doubtless depends upon the technology of individual industries, short-time working has the advantage of greater equity among workers and less discontinuity of work experience. In Italy the lay-off scheme has come to be abused to the considerable cost of the state budget: very high compensation payments go to many people who for long periods of time find supplementary employment.

Temporary work and fixed-term contract regulations allow for derogations, in Europe and Japan, from the dominant regimes of permanent and secure employment contract. In the United States there are simply no such regulations, because the dominant regime places little or no constraints on individual or collective termination of contract. An important question for European and Japanese policy makers is, therefore, how wide and open these derogations should be. Some countries have made the regulatory restriction on temporary work and fixed-term contracts extraordinarily severe. As noted above, for example, Italy and Sweden prohibit private temporary work agencies, whereas most European countries license such agencies in order to guard against abuse of weak members of the labour force. Other countries limit temporary or fixed-term work contracts very narrowly to certain skills or circumstances. On condition that social security and minimum wage laws are respected for such employees, there would be two advantages in opening up opportunities for employment of this type. First, on the labour supply side, many people who are marginal participants in the labour market (youths, elderly people approaching retirement, second workers in families) are not as interested in long-term security of employment as is a middle-aged principal income earner of a family with dependents. Secondly, on the labour demand side, much of potential employment growth appears to lie in small business and service enterprises which have a stronger economic preference for short-term employees, compared with larger and technologically advanced firms which have a greater need for long-term employees.

Similar considerations apply to the supply and demand for part-time work. The case for assuring that these workers also are covered by social security is strong. However, their need to be covered by the employment protection regime for permanent workers is not so strong, especially if there is here, as is to be suspected, a quite sharp trade off between the volume and security of job creation. For many marginal members of the labour force the buoyancy of job offers is a far more plausible source of effective employment security than the long-term nature of employment contracts for a relatively small number of job opportunities.

As regards rules of recruitment favouring disadvantaged workers, there are in most European countries quotas for handicapped workers, whereas there are no significant policy instruments of this type in the United States. In Europe policy techniques range from simple mandatory quotas, to indicative quotas supported by the taxation of under-performing enterprises and subsidies for those employing more than the quota. The latter policy would seem more efficient, given unevenness in the possibility of different firms to absorb handicapped workers and the distortions seen in attempts to evade mandatory quotas (such as keep a firm below a minimum size). Italy is alone in having some other recruitment regulations in which official employment agencies have a role to saying whom enterprises should select. These administrative processes seem quite archaic and due for scrapping.

The policy strategy for employment protection regulations should not be decided in isolation from the specific objectives of economic policy. In the present European context three wider issues may enter into the picture:

- objectives for the labour force participation rate;
- interdependence in the choice of policy strategies for employment protection on the one hand, and for wage rigidity or flexibility on the other;
- judgements about the acceptability of a certain duality in the labour market in the interests of maximising employment and minimising threats to acquired rights.

As regards the labour participation rate, relaxations in employment regulations that led to increased job creation would also be likely to induce an increased supply of labour, for example among the young, elderly and second income earners in the family. The crucial question therefore is whether the European economy needs a rising labour force participation rate, or whether it should alternatively invest in labour supply reducing measures (early retirement

scheme, etc.) to help achieve a better balance in the labour market. Demographic and social security financing considerations strongly point in favour of increasing the labour force participation rate, without which social security taxes will rise further (thus hurting labour demand), or pensions will have to be cut, or both. Of course, in this case, such policies favouring expanded labour supply should also be accompanied by suitably expansionary macroeconomic policies to assure that demand is adequate.

It is often observed that the United States has flexible hiring and firing rules but not so flexible pay levels, that Japan has considerable rigidity in hiring and firing rules but relative flexible pay levels, whereas Europe is relatively rigid on both accounts. The implied policy choice for a Europe wishing to improve its employment situation is between aiming at either greater flexibility in job tenure or in pay levels, or some compromise mix of the two. There are several reasons favouring the compromise approach. As noted above, a policy of total deregulation of employment protection law would seem to be undesirable on economic efficiency as well as political grounds. On the other hand a policy of total reliance on greater pay flexibility would be very difficult to secure for at least two reasons: first, the strength of institutional rigidities lying behind collective bargaining behaviour and, second, the fact that rigid employment protection laws serve to prevent labour market pressures, notably from the unemployed, from bearing upon wage bargainers. Therefore a complementary approach seems preferable, aiming at moderate and mutually supporting reforms in the direction of both employment protection and pay systems.

As regards the dual labour market question, there are issues here of two kinds. Firstly, there is the possibility, already mentioned, of stimulating a faster growth in the future of short-term and part-time employment if certain changes in employment protection law were implemented. Secondly, there is the issue of whether to acknowledge acquired rights in terms of job security laws of existing job-holders, but to change the rules for new employees. There are several arguments that go in the direction of admitting rather than resisting these types of increased labour market duality.

With a much increased labour supply as well as demand, many of the additions to the labour force would be relatively favourably disposed towards short-term and part-time jobs. This prospect sometimes leads to fears being voiced about creating increased "under classes" in

the labour market. However, for Europe this fear would seem not to be very pertinent in a situation in which immigration from developing countries has been stopped (unlike in the United States), and in which the universality of social security coverage would be maintained (also unlike the United States, where health care is not obtained with low level jobs). Relaxations of constraints on short-term work would, for example, be envisaged especially for young and elderly workers.

Some countries (Germany, Spain) have in recent years reformed their employment protection laws in the direction of allowing firms much more liberal recourse to fixed-term contracts for new recruits. This particular policy move has the quality that the situation of the existing labour force on permanent contracts is not changed, whereas many new recruits may have a different status. The rationale favouring such moves is two-fold. By leaving the existing labour force unaffected, this avoids the risk that a general relaxation of the rules at a time of relatively weak business cycle conditions would cause a flood of dismissals. On the other hand the marginal cost of new employment is reduced since there would be no expected severance costs. While such a development would mean a kind of increased duality, its social acceptability should also be rated relatively favourably since it would help break down the differences of interest between insiders (those currently employed in permanent jobs) and outsiders (those currently unemployed) in the labour market. Indeed, this duality among the employed would seem more preferable than the graver social duality separating the employed from the unemployed.

REFERENCES

- Akerloff, G. 1984. An Economist's Book of Tales. Cambridge University Press, Cambridge.
- Albeda, W., Blanpain, R., Veldcamp, G. 1978. Temporary Work in Modern Society. International Institute for Temporary Work, Kleuwer. Netherlands.
- Blanchard, O., Dornbusch, R., Dreze, J., Giersch, H., Layard, R., and Monti, M. 1985. Employment and Growth in Europe: A Two-Handed Approach. Centre for European Policy Studies, Brussels.
- Blanchard, O., and Summers, L. 1986. Hysteresis and the European Unemployment Problem. Massachusetts Institute of Technology and Harvard University (unpublished).
- Bulow, J., and Summers, L. 1985. A Theory of Dual Labour Markets with Application to Industrial Policy, Discrimination and Keynesian Unemployment. National Bureau of Economic Research Working Paper. Cambridge.
- Bureau of Labor Statistics. 1983. Handbook of Labor Statistics, Bulletin 2175. Washington D.C.
- Cappelli, P., and McKersie, R. 1984. "Labor and the Crisis in Collective Bargaining". In Kochan, T. (ed.), Challenges and Choices Facing American Labor.
- Carey, M., and Hazelbaker, K. 1986. "Employment Growth in the Temporary Help Industry". Bureau of Labor Statistics, Monthly Labor Review. April. Washington D.C.
- Commission of the European Communities (C.E.C.). 1986. "Results of a Survey of Labour Market Flexibility". European Economy, No. 27, July. Brussels.
- Commission of the European Communities (C.E.C.). 1983. The Handicapped and their Employment. Guy Margin, Eurostat. Luxembourg.
- International Organisation of Employers (I.O.E.). 1985. Adapting the Labour Market. Geneva.
- D'Apice, C., and DelBoca, A. 1985. "The Impact of Social Policies on Income Distribution and the Labour Market in Italy". Journal of Social Policy, Vol.14, Part 3, Cambridge.
- Dickens, L., Jones, M., Weekes, B., Hart, M. 1985. Dismissed - A Study of Unfair Dismissal and the Industrial Tribunal System. Basil Blackwell. Oxford.
- Dreze, J. 1986. Work-sharing: Why, How and How Not. Centre for European Policy Studies. Brussels.
- European Industrial Relations Review (E.I.R.R.). 1985, 1986. Successive articles on Termination of Contract in Germany, May 1985, France, June 1985, United Kingdom, July 1985,

- Belgium, October 1985, Netherlands, November 1985, Luxembourg, December 1985, Spain, January 1986, and Portugal, March 1986). London.
- European Industrial Relations Review (E.I.R.R.). 1985a. Part-time Work in 15 Countries. June. London.
- European Industrial Relations Review (E.I.R.R.). 1983. Short-Time Work and Lay-offs in xx Countries. April. London.
- Flanagan, R. 1986. "Labour Market Barriers to Economic Growth". Working Paper to a conference of the Centre for European Policy Studies, Brussels.
- Gavin, M. 1986. Labor Market Rigidities and Unemployment: the Case of Severance Costs. Board of Governors of the Federal Reserve System, International Finance Discussion Paper. Washington D.C.
- Hobara, K. 1985. New Forms and Aspects of Atypical Employment Relations in Japan. National Report, IX World Congress of International Society for Labor Law and Social Sciences. September.
- Harrison, B. 1984. "The International Movement for Prenotification of Plant Closures". Industrial Relations, Vol 23, No 3. University of California, Berkeley.
- Inagami, T. 1984. "Employment Adjustment in Japan". Japan Labor Bulletin, Vol 23, No 7. Tokyo.
- Industrial Relations Europe (I.R.E.). 1984. Terminations in 17 Countries. July. London.
- Katz, L. 1986. Efficiency Wage Theories: A Partial Evaluation. National Bureau of Economic Research, Working Paper. Cambridge.
- Kennedy, T. 1980. European Labor Relations. Lexington Books. Lexington.
- Leonard, J. 1985. "What was Affirmative Action?". American Economic Review.
- Lindbeck, A. and Snower, D. 1984. Involuntary Unemployment as an Insider-Outsider Dilemma. Institute for International Economics, Seminar Paper No 282. Stockholm.
- Manes, C. and Rosenbloom, D. 1985. Terminating at Will Employees: Rethinking the Statutory Approach. Dissertation at Harvard Law School. April. Cambridge.
- Organisation for Economic Cooperation and Development (O.E.C.D.). 1985. Labour Market Flexibility. Paris.

- Ouchi, W. 1981. Theory Z: How American Business can Meet the Japanese Chhallenge. Avon Books. New York.
- Piore, M. 1986. "Labor Market Flexibility". Industrial Relations. (forthcoming). University of California, Berkeley.
- Sugeno, K. 1986. Japanese Labor Law from a Comparative Perspective: Outline and Materials. Unpublished lecture notes. Harvard Law School and Tokyo University.
- Thurow, L. (ed.). 1985. The Management Challenge - Japanese Views. MIT Press. Cambridge.
- Walton, R. and Lawrence, P. 1985. Human Resource Management: Trends and Challenges. Harvard Business School Press. Boston.

Annex 1

Regulations Governing Individual Dismissals

United States	No general law. In absence of contract or collective bargain employer or employee could, in principle, terminate at will without notice or compensation. However, the judiciary increasingly erodes this situation, often inflicting heavy damages on employers in disputed cases.
Japan	30 days notice required. For dismissal for economic reasons see collective redundancies. Discharge as disciplinary punishment possible. For ordinary dismissals courts will nullify if company's action unreasonable or not based on common sense of society.
Germany	Legislation of 1969 and 1972 permits summary dismissal for gross misconduct. Otherwise notice of 2-3 months required, Works Council must be consulted, dismissal must not be "socially unwarranted". Works Council must approve dismissal, if not employer must appeal to Labour Court, pending which employment must continue. Compensation for unfair dismissal 1 month pay per year of service.
France	Legislation permits summary dismissal for gross misconduct. For dismissal for economic reasons employee is entitled to public retraining facilities and minimum financial compensation (as for collective redundancies).
Italy	Industry and trade union agreement of 1965 and legislation of 1966 and 1970 require employer to supply proof of justified reasons; employee may demand meeting with trade union and employer, a hearing before arbitration and appeal to the courts. Compensation for unfair dismissal not less than 5 months pay. Dismissal considered practically impossible except for criminal acts.
United Kingdom	Legislation of 1975 and 1978 protects against unfair dismissal. Employee can appeal to arbitration and tribunal, employer has to show substantive reasons. Notice of 1 week per year of service, compensation 1/2 to 1 1/2 weeks pay per year of service.
Belgium	Legislation of 1966 and 1978 permits summary dismissal for gross misconduct. Otherwise notice of 7 to 56 days for blue-collar workers or 3-15 months for white-collar workers is required (often longer by collective agreement). Appeals to tribunal may lead to compensation for unfair dismissal of at least 6 months pay.
Netherlands	Legislation permits summary dismissal for gross misconduct. Otherwise approval of Labour Office must be obtained, with notice of 1-6 months week per year of service.
Denmark	Notice periods and severance pay is largely left to (legally enforceable) collective agreements.
Sweden	Legislation of 1982 requires notice of 1-6 months, and consultations with trade union if requested. Compensation for unfair dismissal 16-32 months pay.
Finland	Notice periods and severance pay generally set in collective agreements. No legal obligation to pay indemnities other than wages during notice period.

- Norway** Legislation of 1977 requires notice of 2 weeks - 6 months unless otherwise agreed. Consultation with shop steward mandatory. Employee may appeal to the court, normally being retained on full pay meanwhile. Compensation for unfair dismissal according to court decision.
- Ireland** Tribunal system judges complaints of "unfair dismissal," which if funded leads to reinstatement or up to 2 years wages in compensation. In 1983 200 cases were found in favour of employee, 370 cases against.
- Austria** Notice periods of 6 weeks to 5 months. Works Council consent must be obtained. Compensation of 2-3 weeks per year of service. Reinstatement customary in event of unfair dismissal.
- Switzerland** Legal minimum notice periods of 1-3 months usually extended by contract or collective agreement, which also determine severance pay.
- Spain** Dismissals for economic reasons require agreement of Labour Office, which is not given before 30 days, possibly deferred by a further 30 days. Compensation for unfair dismissal up to 42 months pay.
- Greece** Dismissal permitted after written notice and indemnity linked to length of service.
- Portugal** Legislation of 1975 prohibits dismissal without "just cause", which covers gross misconduct, but not professional inability. Employee can appeal to the courts, which will require proof of "just cause".

Annex 2

Regulations Governing Collective Redundancies

United States	No general law. 15% of collective bargains contained advance notification provisions (in 1980).
Japan	Case law establishes extensive preconditions for legally admissible redundancy of regular workers: objective need to reduce labour force, prior recourse to internal staff transfer, natural wastage, work-sharing, dismissal of temporary workers, call for voluntary retirement. Consultation of work force required. Compensation not required by law, but customarily substantial.
Germany	Legislation of 1969 requires prenotification of Labour Office and Works Council of 30 days. Labour Office may extend by a second month. Notice and compensation as for individual dismissals.
France	According to laws of 1964 and 1979, employer must first consult Works Council (which must prepare its opinion within 14 weeks) and then request authorisation of Labour Office (which may defer its decision up to 30 days). Severance pay for hourly personnel, 20 hours wages per year of service minimum. Law of 1986 abolishes role of Labour Office in authorisation and shortens statutory delays.
Italy	Following notification, trade unions may delay by 25-40 days. Collective dismissals considered practically impossible, unions tend to occupy plant until agreement negotiated.
United Kingdom	Legislation of 1975 requires earliest possible notification of Labour Office and consultation with trade unions, minimum period up to 90 days. Compensation of 1/2 to 1 1/2 weeks pay per year of service, depending upon age, with 35% subsidised by public funds for firms with less than 10 employees.
Belgium	Legislation of 1975 requires 30 days, prenotification to Labour Office, which may extend this by 60 days. Works Council must be consulted. Compensation as for individual dismissals.
Netherlands	Legislation of 1976 requires 30 days prenotification of Labour Office. Works Council and trade union have to be consulted. Labour Office must authorise. Compensation according to age and service.
Denmark	Works Council must be informed, and Labour Office given 30 days prenotification. Compensation determined by contracts.
Sweden	Notice of 2-6 months required, with consultation of trade unions, Labour Office and local authorities. Compensation by collective agreement.
Finland	Prior discussions with work force required. No legal obligations to pay compensation.
Norway	Labour Office and shop steward at earliest possible stage. No legal obligations to pay compensation.
Ireland	30 days notice, after employees have been consulted and Labour Office informed. Compensation as for individual dismissals.

- Austria** Discussions with trade unions and Works Council required at least 30 days in advance. Compensation as for individual dismissals.
- Switzerland** No general legislation. Prior notification recommended in a general collective agreement of 1975. Compensation depends mainly on collective agreement.
- Spain** As for individual dismissals, 30 days minimum prenotification; Labour Office authorisation required. Compensation 20 days pay per year of service.
- Greece** Authorisation of Labour Office required for firms with more than 20 employees, and where redundancies exceed 2% of the work force per month. Indemnities legally required.
- Portugal** Prenotification of 60-90 days given to Works Council, trade unions and Labour Office. Authorisation of Labour Office required. Compensation of 1-2 weeks pay per year of service.

Annex 3

Resolution of Disputes Over Individual Dismissals in the United Kingdom - By Arbitration and Tribunal

The British system of resolving disputes over unfair dismissal is of interest in that it appears to have qualities of expedition and even-handedness that are often absent in other countries. The law provides that "every employee shall have the right not to be unfairly dismissed by his employer" (Industrial Relations Act of 1971 and Employment Protection Act of 1978).

In the period 1976 to 1982 about 40,000 cases of contested individual dismissal arose per year on average. The majority of cases are resolved in arbitration, where it often becomes evident how the case should be decided. However about 10,000 cases are heard in the industrial tribunal. About 30% of such cases tend to see the dismissed employee's complaint upheld, with the larger percentage found in favour of the employer.

The law provides that certain grounds for dismissal are automatically illegal (race, sex, marital status). Certain other grounds are automatically unfair (pregnancy, membership of a trade union, trade union activities). Capability, conduct, redundancy and "other substantial reasons" are potentially fair grounds for dismissal, depending upon reasonableness.

The industrial tribunal consists of three persons with a lawyer (in the chair), and representatives of employers and employees. Judgements allow considerable room for managerial prerogative. Thus the high court of appeal has ruled "when a man is dismissed for incapacity or incompetence it is sufficient that the employer honestly believes on reasonable grounds that the man is incapable or incompetent. It is not necessary to prove that he is in fact incapable or incompetent."

In the event of the tribunal judging that dismissal was unfair, basic compensation is awarded of 1/2 to 1 1/2 week's pay per year of service with possible entitlement to a larger amount. Reinstatement is possible but rare (3-5% of cases).

Surveys have been made of the system and of the views of claimants and defendants. Cases are generally heard within three months, and disposed of in a day or less. The system is relatively informal, and claimants often present their own cases. The majority of participants find that the time taken to reach judgements is about right, and have a favourable view of the tribunal system.

As regards the impact of the system on recruitment, brochures of the Department of Employment draw attention to the relatively low success rate of complaints against unfair dismissal, thus seeking to dispel undue fears of small employers over the difficulty of dismissal.

Source: Dickens et al (1985).

Annex 4

Texts from some Japanese Judicial Decision on Dismissals

The following two cases, one concerning an individual dismissal, the other collective redundancies, illustrate the use and content of court decisions in defining the rules of dismissal in Japan. They are extracts from the court decisions, as reproduced by Sugeno (1985).

1. Abuse of Right of Dismissal

Supreme Court Judgement, January 31, 1977, Second Petty Bench (Shioda v. Kochi Broadcasting Co.) 268 Rodo Hanrei 17.

Facts: The Plaintiff had been employed by Defendant company as an announcer. He was committed the following negligence which fall into the reason of discipline prescribed in the Work of Rule of the Company.

1. Plaintiff was working overnight from 6:00 p.m. of February 22nd of 1967 until 10:00 a.m. of the next morning together with a reporter in charge of new manuscript. He overslept until around 6:20 a.m. of 23rd and could not broadcast entirely the regular news program which was due to be done for 10 minutes from 6:00 a.m. (the first failure).

2. He also worked overnight together with another reporter from 7th to 8th of March of the same year and again missed a news program for 5 minutes from 6:00 a.m. in the morning of 8th (the second failure).

3. He failed to report the second failure to his superior and submitted a report with some camouflage when he was requested to report by the director of his section around March 14th and 15th. The Company did not take a disciplinary punishment (discharge) but simply dismissed him taking his future fate in consideration. Plaintiff brought the case to the court asking to confirm his employment status holding that the dismissal is too severe and abuse of right of dismissal. In both of the first and second instances the Courts admitted the Plaintiff's request and declared the dismissed null and void. The Supreme Court sustained the original judgement.

Excerpt of the Court's Opinion

Plaintiff's above described failures in this particular case fall under the reason of (ordinary) dismissal prescribed in the Article 15, No. 3 of the Work Rule of the Company too. However, even when there is a reason of ordinary dismissal the employer is not always permitted to dismiss the employee. The dismissal could be null and void as abuse of the right of dismissal when the the dismissal is extremely unreasonable and not to be admitted to be appropriate based on the common sense of the society depending on the actual situations of the individual case. In this particular case, two failures he had committed were in their nature something to damage the social credit of the Company. The fact that he had overslept and caused the same kind of failure twice in two weeks showed his lack of responsibility as an announcer. Furthermore, he had not admitted his failure in the second case not straight-forward. All these points he is certainly not blameless. However, judging from the facts confirmed by the original instances his failures were not caused by his malice or on purpose but by his negligence, namely oversleeping. It is rather too harsh to blame only Plaintiff since in both cases of his failure the reporters were supposed to wake him up but they also overslept and failed to wake up and to give him the manuscript of the news program. Plaintiff had apologized immediately after his first failure and in the second case he tried to start work as soon as he woke up. In both cases the vacant period of broadcasting was not so long. The Company was not taking a perfect arrangement to secure the early morning new program. His submission of a camouflaged report was partly a result of his misunderstanding of whether the door of the first floor was closed or not and partly a result of his awkwardness because of his repeated mistakes in a short period. Judging from all these points he is not to be strongly blamed. He has committed no failure in

announcement work until this time. His performance has been not particularly bad in the past. The reporter in the case of the second failure was punished only by warning. No announcer was dismissed because of the failure in broadcasting in the past. Plaintiff has finally apologized for the second failure too. Judging from these circumstances to dismiss him is rather too severe and tends to lack in reasonableness. Thus it could possibly be regarded as inappropriate in the common sense of the society. Therefore the judgement of the original instance holding the dismissal of this case as abuse of the right of dismissal and null and void is proper.

2. Dismissal Due to Closing Down of Division

Tokyo High Court Judgment, October 29, 1979 (Toyo Sanso K. K. v. Koji Shimazaki et al.)

30 Rominshu 1002

Facts: The Appellant, having its principal office in Tokyo and business offices and factories in eight locations throughout Japan, is engaged in the business of manufacturing and selling various high pressure gases such as oxygen, acetylene and liquefied petroleum gas. (As of 1970, the amount of capital was 1,520,000,000 Yen, and the number of employees as 532.) The Appellant decided to close down its entire acetylene division and on July 24, 1970 informed all 47 employees of the division, including another 12 other appellees, of its intention to dismiss them. This action is a request for a preliminary injunction for a preserving position filed by the Appellees, 13 employees among the 47, asserting that this dismissal is an abuse of the dismissal power.

Tokyo District Court (April 19, 1976, 255 Rohan 58) granted the Appellees' petition. That is, the first trial held that "in order for the dismissal of the Appellant's employees in a certain division which has been closed down to be considered valid when as, in the instant case, the Appellant asserts unavoidable business necessity; the closing down of the division should be reasonable from a management point of view, as should be the dismissal of the employees, and moreover the dismissal procedures should be generally acceptable to society." The court found that the first condition had been satisfied for the following reasons. In general, even when the management for unavoidable reasons has to close down a specific business division it goes without saying that the employees in the division should hopefully be minimal. Therefore, when the Appellant closed down the acetylene division, it should have tried to avoid dismissal of the employees in the division as much as possible by taking steps such as transferring the employees to the Appellant's other business divisions, or by calling for voluntary retirement among the employees in the division or in the whole company. If the Appellant dismissed all the employees in the division without taking such steps in spite of the fact that it was able to do so, then it can be said that the dismissal was not unavoidable from a business management point of view.

Excerpts From the High Court's Opinion

The judgement of the Tokyo District Court shall be reversed, and the petition of the Appellees shall be dismissed.

In general, an enterprise can freely decide to close down a specific business division, since it is a decision with respect to management policy within its exclusive discretion. This does not directly mean, however, that the enterprise, as an employer, can freely dismiss the employees in the division when it decides to close down the division. In order for the employer's decision dismissing the employees in the division to be justified as being based upon "unavoidable business necessity," the following requirements shall be met and considered sufficient except in unusual circumstances. First, the closing down of the business division must be found to be based upon unavoidable necessity from the viewpoint of reasonable management of the enterprise. Second, the dismissal for the reason of the closing down of a business division should not be arbitrary on the employer's part. Such a dismissal can be held not arbitrary only if there is no room for transferring the employees to identical or similar jobs in the other business divisions in the same or other business locations not far from the original place of business, or if there is no way to avoid a surplus of employees in the whole enterprise even after the execution of the

above-mentioned transfer. Third, the selection of the actual retirees should be based on objective and reasonable criteria.

Annex 5

Conclusions of a Study by (Manes and Rosenbloom of the Harvard Law School) on the United States Legal System for Handling Disputed Individual Dismissals (Excerpts)

"The Current system for handling claims of unfair discharge, if one may call it a system at all, is not working. The courts continue to create more problems than they resolve. Society, as well as employers and employees, has been ill served by the law's response to the problem of unfair discharge. The conclusion seems unavoidable that legislation is required to balance the interests of all concerned.

"Our survey of the current case law leaves little room to doubt that the judicial system does not adequately promote the interests of employers or employees. By its very nature the litigation process is slow, costly, and formal. Some commentators claim that the courts lack the necessary labor expertise and perspective to properly address unfair discharge problems. Clearly courts have been anything but uniform in their decisions, as judges have attempted to combat perceived unfairness by formulating rules which often are both over and under inclusive. Ultimately, these rules are ill tailored to protect either the employees' or employers' interest. Further, handicapped by the limited remedies a judge can adopt, and the erratic manner in which juries allot compensatory and punitive damages, the courts are destabilizing the employment relationship.

"Case by case adjudication has proven to be a poor way of regulating the employment relationship. Already courts have begun to express the fear that their duty to develop a common law of wrongful discharge threatens to render the court a bargaining agent for every employee not protected by statute or collective bargaining agreement.

"The courts themselves recognize the need for legislative action. Although sympathetic to the unfairness that may accompany the dismissal of an at-will employee, many courts nonetheless feel that the legislature is the appropriate agency for effecting a change in policy regarding the employer-employee relationship. In Murphy v. American Home Products Corp., New York's highest court refused to recognize the tort of wrongful discharge. The court reasoned:

Those jurisdictions that have modified the traditional at-will rule appear to have been motivated by conclusions that the freedom of contract underpinnings of the rule have become outdated, that individual employees in the modern work force do not have the bargaining power to negotiate security...and that the rule yields harsh results for those employees who do not enjoy the benefits of express contractual limitations on the power of dismissal. Whether these conclusions are supportable...are issues better left to resolution at the hands of the legislature.

...If the rule of nonliability for termination of at-will employment is to be tempered if should be accomplished through a principaled statutory scheme, adopted after opportunity for public ventilation, rather than in consequence of judicial resolution of the partisan arguments of individual adversarial litigant...

"Similarly, the Connecticut Supreme Court recently noted:

What categories of employment should be given [protection] and what criteria should determine whether there exists good cause for a discharge are questions which the General Assembly may deal with more comprehensively than the courts.

"In view of the erratic and inconsistent judicial development of the law of 'unfair discharge', we believe a better approach to the problem may be found in state legislation. Moreover, there

is more that recommends a legislative approach than simply the failure of courts to provide a comprehensive and effective solution to the wrongful discharge problem. The policy issues that arise are intensely political, and resolution of these issues will not be found merely by referring to the 'brooding omnipresence' of the common law, but rather by informed public discussion. The history of labor regulation in this country has of necessity been a history of balances and trade-offs. It is this 'trading-off' of employer and employee interests that legislatures are uniquely qualified to perform."

Source: Manes and Rosenbloom (1985).

Economic Papers

The following papers have been issued. Copies may be obtained by applying to the address mentioned on the inside front cover.

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- No. 3 A review of the informal economy in the European Community, by Adrian Smith (July 1981).
- No. 4 Problems of interdependence in a multipolar world, by Tommaso Padoa-Schioppa (August 1981).
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