5

Telework in Japan

A Game Changer for the Employment System and Labor Law Policy

Takashi Araki

5.1 INTRODUCTION

This chapter examines how teleworking is changing traditional employment practices, and what legal issues it is raising, taking Japan as an example. It will also consider the possibility that telework could act as a game changer for future labor laws that realize the well-being of individual workers with diverse circumstances, considering new legislative developments in some foreign countries.

Remote work is commonly referred to and discussed as telework in Japan. Although not strictly defined, remote work broadly refers to performing work away from the workplace, while telework denotes work using information and communication technology (ICT). Telework in Japan encompasses three forms: work from home, satellite office work, and mobile work[1].

Since the 1990s, the Japanese government has implemented policies to promote telework[2]. However, until the COVID-19 pandemic, telework had not gained widespread acceptance in Japan. This limited adoption seems to stem from the characteristics of the Japanese employment system, which emphasizes teamwork-oriented work styles. Yet, with the outbreak of COVID-19 in 2020, the government declared a state of emergency, prohibiting workers from coming to work. As a result, even companies that had not introduced telework were forced to adopt it, and many workers were compelled to experience telework for the first time. Japanese employment relationships, which both companies and workers had believed could only function well with face-to-face collective working relationships, have experienced

[1] Kōsei Rōdō Shō [Ministry of Health, Labour and Welfare], 2021. www.mhlw.go.jp/content/000759469.pdf.

[2] Rōdō Seisaku Kenkyu Kenshu Kikō [Japan Institute for Labour Policy and Training], 2021. Sato, Koji, 2001, 153 suggests that Japan's telework efforts began in the 1980s to address the concentration in Tokyo, but that it was not until the 1990s, after the rapid development of information and communication technologies such as the internet, that telework really began to take off.

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that with the development of ICT, telework can also function well if the appropriate systems and infrastructure are in place. Additionally, it has become increasingly recognized that telework requires different job and personnel management systems compared to those used in traditional workplaces. Moreover, telework has opened up the possibility of work styles that allow for a better work–life balance, which was previously considered unattainable.

After the COVID-19 pandemic subsided, Japan's proportion of companies implementing telework slightly decreased. However, many companies have shifted to a hybrid work arrangement, such as two days of telework and three days of in-office work per week, thereby accepting telework as a viable work style. In other words, telework has begun to take root as a normal way of working, rather than a special, exceptional one. In this way, telework has the potential to become a game changer, significantly altering Japan's traditional employment system, which has long been considered resistant to change.

As telework becomes a more common way of working, some countries are developing legislative policies that require employers to accept, in principle, workers' wishes to work flexibly, including telework (e.g., the Netherlands, the UK, and Australia). While there have already been legal systems that require employers to provide reasonable accommodations or special arrangements for specific workers, such as those with disabilities or family responsibilities, the flexible working laws in these countries now demand that telework and other flexible work options be made available to all workers, not just specific groups.

Telework is thus making us realize that a legal framework allowing workers to choose their preferred working style is necessary to achieve the well-being of an increasingly diverse workforce. In this sense, telework or remote work may be a game changer for labor law policies in many countries, prompting the need to envision new labor laws that provide individualized support focusing on diverse circumstances in addition to traditional labor laws that offer universal protection.

5.2 Japan's Teamwork-Oriented Employment Practices, Membership-Based Employment, and Telework

The Japanese government established the Telework Promotion Council in 1996 and compiled its report in November. Since the beginning of this century, the spread of telework has always been a policy issue. However, telework has struggled to gain traction. One of the reasons lies in Japan's unique employment practices. Specifically, Japanese office workers traditionally form teams by arranging their desks face-to-face within their respective sections, creating a work environment known as the "large-room principle." This practice emphasizes teamwork, where everyone shares how their colleagues are doing their work and mutually helps each other. If one's work was finished and the colleague or supervisor next to him or her continued to work, leaving the office alone was considered a lack of loyalty to the

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team. There was a tendency to equate long hours spent at the company with contributions to the team and the organization. As a result, subordinates spent time sitting at their desks without work until their supervisors went home, resulting in unproductive long work hours[3].

This employment practice is closely linked to Japan's unique "membership-based employment" system. Under the well-known lifetime employment, Japanese workers agree to become employees of a particular company but do not agree on the specific job they will perform at that company. In other words, job descriptions are not specified in the employment contract. The employment contract is merely a contract to acquire a position as a company member. In contrast to the "job-based employment" prevalent in Western countries, where job descriptions are clearly defined, this Japanese employment practice is referred to as "membership-based employment" by Keiichiro Hamaguchi[4]. Since workers are employed as members of the company rather than for a specific job, even if a particular job is eliminated, they are reassigned to other departments, thus maintaining their employment. This has made the Japanese job security system known as Lifetime Employment possible.

Since workers' job descriptions are not clearly defined in the contract, even if they finish the task currently assigned, it does not mean they have no problem going home immediately. All the work assigned to the team can be one's task. Under such teamwork-oriented employment practices, telework, in which workers work individually at home, was considered impossible to work productively, and the introduction of telework has not progressed.

However, the COVID-19 pandemic prohibited commuting to the office and forced Japanese companies to adopt telework. The percentage of companies that had introduced telework rose dramatically from 9.3% in 2013 and 20.2% in 2019 to 47.5% in 2020 and 51.9% in 2021. Although this figure slightly decreased to 51.7% in 2022 and 49.9% in 2023, a high adoption rate of around 50% continues[5].

It should be noted that these figures represent the percentage of companies that have introduced telework, not the number of teleworkers. According to the government survey, the percentage of employed teleworkers nationwide was 14.8% in 2019, before the pandemic, and 19.1% in the Tokyo metropolitan area. By 2021, these figures had increased to 27% nationwide and 42.3% in the Tokyo metropolitan area. After the pandemic, in 2023, the figures slightly decreased to 24.8% nationwide and 38.1% in the Tokyo metropolitan area. Notably, a significant trend is toward

[3] Sōmu Shō [Ministry of Internal Affairs and Communications], 2021a points out the following: "In Japan, the seniority system is still maintained, so when middle-aged and older managers come to work, younger employees are forced to go to work, which tends to create a sympathetic pressure to come to work in vain. In addition, face-to-faceism is ingrained among middle-aged and older workers, who tend to view time spent present in the workplace as working hours and value those who work longer hours."

[4] Hamaguchi, Keiichiro, 2009, 2021.

[5] Sōmu Shō [Ministry of Internal Affairs and Communications], 2024.

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expanding hybrid work, combining office work and telework. The percentage of hybrid work (those engaged in telework 1–4 days per week) rose from 40.7% in 2019 to 82.1% in 2023, nearly doubling[6].

5.3 PROMOTION OF TELEWORK AND ITS IMPACT ON THE EMPLOYMENT SYSTEM

Why has the Japanese government sought to introduce telework, which has been incompatible with the Japanese employment system since the end of the last century? In government discussions during the 1990s, various benefits of telework were highlighted. For companies, teleworking at home or in satellite offices can improve productivity and creativity because it provides a work environment suitable for tasks that require concentration; if teleworkers can use mobile terminals and other devices to communicate from outside the office, it will reduce travel time, improve sales performance, and increase customer satisfaction. For workers, telework was expected to allow for a more relaxed lifestyle and make it easier to balance family responsibilities, such as childcare and caregiving, with work. For society, telework was anticipated to eliminate commuting and travel, contributing to environmental protection and serving as an effective tool for maintaining corporate and socioeconomic activities during disasters[7,8].

In the 1990s and early 2000s, the primary focus in Japan was on satellite office-based telework. However, during the COVID-19 pandemic, the development and widespread adoption of web conferencing tools like Zoom, Webex, and Teams led to an explosive increase in home-based telework, which became the central topic in discussions about telework.

The recommendations compiled by "Task Force on the Future of Telework in the Post-Corona Era" in the Ministry of Internal Affairs and Communications (MIC) in August 2021 were subtitled "Aiming for the Well-Being of Individuals, Companies, and Society as a Whole." The task force's recommendations highlighted five characteristics of the "Japanese-style telework": (1) contributing to solving Japan's various social issues, (2) promoting the active use of ICT tools, BPR (Business process reengineering), and DX triggered by telework, (3) consideration of socialization, (4) devising ways to bridge the generational gap, and (5) improving well-being.

[6] Kokudo Kōtsu Shō [Ministry of Land, Infrastructure, Transport and Tourism], 2024.

[7] Description of telework circa 1998 by the Department of Posts and Telecommunications. www.soumu.go.jp/main_sosiki/joho_tsusin/whatsnew/telework9906.html

[8] Incidentally, the Clinton administration of the United States, which developed the Information Superhighway (officially called NII, National Information Infrastructure) at the same time, cited similar reasons for promoting telework: (1) administrative reform; (2) improvement of citizen services; (3) increased motivation of employees (employment of the physically disabled and single mothers); (4) energy conservation; (5) elimination of air pollution and response to global warming; and (6) alleviation of traffic congestion. See Sato, Koji, 2001, 169.

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These are closely related to the transformation of Japan's employment system. The advisory board established in the MIC to implement these recommendations examines the effects of introducing "Japanese-style telework" on Japan's employment system[9]. Regarding the issues of population aging and decline, telework is expected to support the continuous securing of labor by enabling flexible work styles not constrained by time or location. Telework can also enhance individual well-being by freeing workers from long commutes and crowded trains. As for the seniority-based employment system, introducing telework for middle-aged and senior management can eliminate unnecessary peer pressure on subordinates to come to the office. Furthermore, teleworking makes it possible to shift from analog work styles, characterized by face-to-face interactions, stamping documents, and printed papers, to new work modes with business process re-engineering and DX.

On the other hand, the advisory board pointed out that potential problems arising from the introduction of telework could be appropriately addressed. Regarding the relationship between telework and Japan's "membership-based employment" system, which emphasizes shared information and unity, the board noted that this can be maintained through the thorough use of ICT tools. Regarding the relationship with the practice of hiring new graduates with no work experience en masse on April 1 of each year, which is a characteristic of the Japanese employment system, the board emphasized the importance of face-to-face socialization during the training period.

In this way, the government's recommendations actively seek to transform aspects of Japan's employment relations that need revision through the introduction of telework while suggesting a gradual approach for areas where sudden changes might cause problems in Japanese society. This dual approach is why these recommendations are called "Japanese-style telework."

In any event, telework has the potential to become a game changer, bringing significant changes to Japan's employment system. The following section will analyze these changes from a legal perspective and examine the new legal challenges that arise, considering a comparative law viewpoint.

5.4 LEGAL ANALYSIS OF CHANGES IN THE EMPLOYMENT SYSTEM DUE TO TELEWORK

Telework is a labor-providing relationship that differs in many respects from the traditional employment relationship. If teleworking becomes widespread as a usual way of working rather than a special way of working, it may change the nature of the employment relationship.

[9] Sōmu Shō [Ministry of Internal Affairs and Communications]. 2021b. Available at www.soumu.go.jp/main_content/000779401.pdf

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5.4.1 *Self-Determination of Where and When to Work*

First, telework involves work performed away from the workplace, beyond the direct supervision and command of the employer. This could signify a work style free from the essential characteristic of employment relationships – subordination – which involves working under the employer's direction and orders, with fixed work hours and locations. Consequently, if workers can freely choose and decide when and where they work (working anytime, anywhere)[10], their work may be classified not as employment but as independent self-employment (self-employed telework).

However, with the advancement of ICT, monitoring workers even during telework is technically possible. Therefore, even if teleworkers are allowed to work outside the direct supervision of the employer, they would still be considered employees if they are subject to the employer's overall direction and control, such as being subject to disciplinary action. Under the current Japanese labor law system, even those who can make their own discretionary decisions regarding working hours and work location are not denied worker status (discretionary work scheme under Articles 38-3 and 38-4 of the Labor Standards Act). Teleworkers who are not given such complete discretion would, of course, be considered workers.

However, a significant legal issue arises in determining how to count hours worked during telework. If employers are strictly required to monitor working hours, they may impose more stringent and stressful conditions on teleworkers, such as requiring them to keep their computer cameras on at all times or frequently requiring online communication. This could lead to a work environment that is more restrictive than working within the company. Apart from the general regulations on working hours prohibiting exceeding statutory maximum hours (8 hours per day, 40 hours per week), the Labor Standards Act provides special working hour regulations, such as a presumed working hour system[11] for off-site work (Art. 38-2, LSA), a presumed working hour system for discretionary work (Art. 38-3 and 38-4, LSA), and exemptions for supervisory employees (Art. 41 No.2, LSA).

The government's Telework Guidelines suggest that telework can be implemented under any of these systems. As mentioned above, applying the general working hour regulations would impose an obligation on employers to objectively calculate working hours, and whether this makes telework a desirable work style for workers requires careful consideration. Telework encompasses a variety of forms, ranging from tasks like call center work performed at home, where actual working

[10] Joint ILO-Eurofound report, 2017.

[11] The presumed working hour system presumes the hours worked to be those stipulated in the labor-management agreement or labor-management committee resolution, rather than the actual hours worked. For instance, if the labor-management agreement specifies an eight-hour workday, then eight hours are presumed, regardless of whether the actual hours worked were six or ten. As to the details of the Japan's presumed working hour system, see Araki, Takashi, 2015.

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hour management is appropriate, to types where workers intermittently care for family members while working. Therefore, it is worth thoroughly considering the introduction of new working hour regulations tailored to telework, distinct from the general actual working hour regulations, to accommodate the diverse nature of telework[12].

5.4.2 *Home as the Workplace*

Second, in the case of working from home, the home becomes the workplace. This has both positive and negative aspects for workers. On the positive side, it eliminates the need for commuting[13]. Additionally, for workers with childcare or nursing care responsibilities, telework is welcomed as a work style that facilitates a better work–life balance. It will also lead to greater employment opportunities for women, the elderly, disabled people, and others with difficulties to work outside. In Japan, employers have broad authority to transfer employees, often requiring relocation every two to three years, including to distant locations. However, telework has begun to allow employees to perform their duties through telework, even working from home, without having to relocate, marking a significant change in Japan's personnel management practices.

On the other hand, however, the fact that the private space of the home becomes the workplace also introduces various issues. For instance, turning on the camera during web meetings exposes private spaces and raises concerns about privacy protection. In addition, the traditional work–life balance discussion has been based on the separation of work and private life, but in the case of telework, these boundaries can become blurred, leading to a fusion of work and private life. Addressing how to manage such a state of work presents a new challenge.

5.4.2.1 Ensuring Health and Safety

Ensuring health and safety in telework is also a critical issue. Since telework is conducted outside the direct supervision of the employer, there is a risk of workers engaging in prolonged work hours or irregular work patterns, leading to health

[12] Since the requirements for applying the presumed working hour systems to work outside the workplace or discretionary work are strict, many teleworkers do not meet these criteria. For example, the presumed system for off-site work can only be applied when it is difficult to calculate working hours, but it is not always difficult to calculate the working hours of telework. The presumed system for discretionary work requires that the employer gives no instructions regarding the allocation of working hours, leaving it entirely to the worker's discretion. However, there are many cases of telework that do not satisfy this requirement.

[13] In particular, workers would benefit greatly from being freed from long, crowded train rides to work, as is the case in the Tokyo area.

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deterioration or mental health issues. As a general rule, occupational health and safety regulations also apply to telework. Therefore, employers must implement the following health measures for teleworkers, as required for all workers: establishing a system for health consultations (Art. 13-3, Industrial Safety and Health Act), providing safety and health education upon hiring or when changing work duties (Art. 59), conducting necessary health examinations and taking actions based on the results (Art. 66 to 66-7), providing medical interviews and taking actions based on the results for long-hour workers (Art. 66-8 to 66-9), monitoring working hours for the purpose of medical interviews (Art. 66-8-3), calculating overtime and holiday work hours for medical interviews and providing this information to the industrial physician (Art. 52-2, Industrial Safety and Health Implementing Regulations), conducting stress checks and taking actions based on the results (Art. 66-10, the Industrial Safety and Health Act), and providing health education, health consultations, and other measures to maintain and improve workers' health (Article 69). Safety and health education is critical when transitioning from workplace-based employment to telework.

Moreover, when working from home, the absence of supervisors and colleagues makes it difficult to detect changes in the worker's physical or mental condition. To address this, the Telework Guidelines suggest using tools like the "Checklist for Ensuring the Safety and Health of Teleworkers (For Employers)" and implementing measures to enhance the health consultation system and communication.

The Industrial Safety and Health Act imposes detailed regulations regarding the maintenance of work environments. However, in the case of telework, it is not appropriate for administrative oversight to directly extend into the private domain of an employee's home. Therefore, the Telework Guidelines specify that while health and safety regulations applicable to workplaces do not apply to home-based work, employers are expected to provide education and advice to teleworkers to ensure that their work environment is equivalent to the health standards of a typical workplace. A checklist titled "Checklist for Verifying Work Environment When Teleworking at Home (For Workers)" is provided, and teleworkers are encouraged to use it to report on their home work environment. The guidelines encourage cooperation between labor and management to improve the work environment if necessary.

If a work-related accident or disease occurs due to teleworking, workers' compensation insurance benefits are provided under the labor insurance compensation system, with the employer bearing all the insurance premiums. However, incidents caused by non-work-related activities, such as private acts, are not covered, making this determination crucial. In Japan, deaths from overwork (*Karoshi*) and suicides due to mental stress caused by overwork (*Karo-jisatsu*) are significant issues within the realm of work-related accidents. To determine work-relatedness, if overtime exceeding 40 hours per week exceeds 100 hours in a month or averages more than 80 hours over several months, the onset of the illness is recognized as strongly related

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to the work, and the worker is certified as having a work-related injury. In this regard, monitoring the status of working hours[14] in telework is critical.

5.4.2.2 Right to Disconnect

The development of ITC puts teleworkers in a position where they can receive work-related instructions from their employer or supervisor at any time. This issue is particularly pronounced in telework. As a result, the "right to disconnect" has been discussed in many countries. The introduction of explicit provisions for the right to disconnect through the 2016 Labor Code amendment in France and the European Parliament's draft Directive on the right to disconnect, published in January 2021, has drawn attention in Japan as well[15].

Currently, Japan does not have regulations concerning the right to disconnect. The existing Guidelines merely suggest establishing voluntary rules to limit the sending of emails by managers or supervisors. However, since workers are not obligated to respond to work outside of their prescribed working hours, any disadvantageous treatment (such as disciplinary action) or dismissal for not immediately responding to emails after hours could be protected under the current laws prohibiting the abuse of disciplinary power (Art. 15, the Labor Contract Act) and the abuse of dismissal rights (Art. 16, the Labor Contract Act). In many countries, the implementation of the right to disconnect is often left to negotiations between labor and management. It is worth considering mandating such labor-management discussions in Japan as well.

5.4.3 *From Collective and Organized Work to Individual Work*

Third, telework, particularly when working alone from home, has forced a significant change in the perception of employment relations for Japanese labor and management, who have traditionally assumed that work is carried out collectively within the organization of a company.

There were concerns that Japan's team-oriented collective work system would not function in a telework environment, leading to a significant decline in productivity. Indeed, when telework was suddenly imposed during the COVID-19 pandemic,

[14] Even if a presumed working hour system (off-site work system or discretionary work system) is adopted, it is still necessary to monitor the status of working hours.

[15] According to Yamamoto, Yota, 2023, 485, legislative policies on the right to disconnect in foreign countries can be categorized into three: (1) prohibition of disadvantageous treatment for exercising or attempting to exercise the right to be disconnected, (2) clarification or restriction of the time during which employers can access workers, and (3) implementation of measures to ensure (more specifically, the implementation of mandatory labor-management negotiations).

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without adequate ICT infrastructure, productivity naturally decreased. However, as the technological infrastructure has been developed, it became clear that contrary to expectations, it is possible to work quite efficiently by devising work styles compatible with the telework environment. In other words, it has become clear that Japan's employment management has simply not been prepared for individual, proactive ways of working.

Working at home has advantages for workers in that it allows them to work freely without having to conform to the workplace order, and it allows them to work free from stress and harassment caused by contact with other people. On the other hand, it can also lead to stress from working in isolation and concerns about whether employers will properly evaluate telework done in isolation. Additionally, in Japan's employment system, where education and training are typically provided through on-the-job training, telework could lead to a loss of such opportunities. Addressing these issues is also necessary.

The Guidelines, therefore, recommend that, regarding the issue of isolation, efforts be made to promote communication, such as introducing software that allows employees to communicate in the same manner as in the workplace. Regarding personnel evaluations, the Guidelines recommend that specific evaluation criteria be specified in advance and that flexible opportunities should be provided for labor and management to share a common understanding of the status of achievement of the criteria, as necessary. Regarding education and training, the report mentions online human resource development.

Now that the COVID-19 pandemic has subsided, many companies have adopted hybrid work models, such as working two days in the office and three days remotely per week, instead of complete telework. This can be seen as a practical approach to leveraging the benefits of telework while overcoming its challenges.

5.5 THE RIGHT TO ORDER TELEWORK AND THE RIGHT TO REQUEST TELEWORK

As described above, telework is a new form of work that brings advantages and certain disadvantages to both labor and management. This raises legal questions: Can an employer unilaterally order telework, and can an employee demand to work via telework? The EU's Framework Agreement on Telework (2002) emphasizes that telework should be voluntary for both parties. There are currently no laws or regulations on this issue in Japan, so it is left to interpretative discussions, but basically, the same idea prevails.

5.5.1 *Employer's Right to Order Telework*

Can an employer unilaterally order a worker to telework without the worker's consent? This should be considered separately for normal times and emergencies.

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5.5.1.1 Normal Times

If a worker does not voluntarily consent to telework, there must be a contractual basis in the employment contract to order telework unilaterally. When the rules of employment[16] establish the authority to order telework work as a reasonable system, this could be the contractual basis. Japanese employers generally establish the right to order transfer (the right to change the workplace as needed for business) in the rules of employment. Under membership-based employment, the transfer provision in the rules of employment is considered reasonable and becomes the contract content. Thus, the issue arises whether telework can be ordered by exercising transfer authority. Some scholars support this interpretation[17]. However, telework differs in quality from regular transfers because telework involves using the worker's home as the workplace. Therefore, with reference to discussions in Germany and France, a growing view among Japanese scholars holds that telework should not be ordered under transfer authority. In Germany, home-based work is seen as an intrusion on the inviolability of the home (Art. 13, the Basic Law) as a specific provision of general personal rights (Art. 2(1) and Art. 1(1), the Basic Law), and employers cannot unilaterally order it without the employee's consent. In France, the right to respect for private life (Art. 9, the Civil Code) and the right to refuse home-based work under the Labor Code (L1222–9 III, Labor Code) allow employees to reject such work. Similarly, under Japanese law, a prominent view argues that based on the protection of private life (Art. 13, the Constitution) and the inviolability of the home (Art. 35, the Constitution), employers cannot unilaterally order telework without balancing it against the disadvantages to private life[18].

5.5.1.2 Emergencies

In contrast to the normal times described above, Germany and France have introduced legislation that allows workers to work from home without individual consent in crises such as the threat of infectious diseases like COVID-19[19]. It is, however, not clear what exactly constitutes a crisis. In addition to cases of infectious diseases, there is also the question of whether telework can be ordered, for example,

[16] Rules of employment (shugyo kisoku) are rules concerning working conditions and workplace discipline that are uniformly applied to all workers at a workplace. Employers who employ ten or more workers at a workplace must draw up rules of employment (Art. 89, Labor Standards Act). If the rules of employment are made known to workers and their contents are reasonable, the working conditions stipulated in the rules of employment become the content of the employment contract (Art. 7, Labor Contract Act).

[17] Tsuchida, Michio, 2021; Ishizaki, Yukiko, 2021. However, these scholars also emphasize that the abuse of the right to order should be strictly scrutinized.

[18] Kono, Natsuki, 2020, 83; Hosokawa, Ryo, 2021, 31; Yamamoto, Yota, 2023, 479.

[19] German Law for the Prevention of Infectious Diseases (Infektionsschutzgesetz), article 28b, paragraph 4, sentence 2; French Labor Code, L.1222-11. See Yamamoto, Yota, 2023, 480.

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for the continuation of official duties of public servants or public works projects when office work is not possible. Article 33 of the Japanese Labor Standards Act permits overtime work when it is temporarily necessary due to a disaster or other unavoidable circumstances. One of the advantages of telework is that it allows work to continue even in emergencies like disasters or other unavoidable circumstances. However, the discussion has not fully considered whether or not telework obligations can be imposed on workers. This point should be discussed further in the future.

5.5.2 *Workers' Right to Request Telework: As an Option for Flexible Working*

On the other hand, do workers have the right to request telework? The EU Framework Agreement on Telework, European national laws, and Japanese Telework Guidelines all state that telework is left to labor-management autonomy. Therefore, unless such a right is established in the employment contract, it is generally understood that employees cannot claim telework as a right. However, during the COVID-19 pandemic, individuals with underlying health conditions might be able to request telework as a form of "reasonable accommodation," similar to what is provided to individuals with disabilities. In such cases, it is also a question of whether allowing telework imposes an undue hardship on the employer[20].

Recently, some countries have begun developing legislative policies broadly recognizing the right to request flexible working arrangements. In the Netherlands, the Flexible Work Act, which came into force in 2016, grants workers who have been employed for twenty-six weeks the right to request a change to flexible working arrangements, and employers must grant such requests unless the refusal is justified. One of these flexible working arrangements includes remote work[21]. In the UK, a recent legal amendment has allowed employees to request flexible working (including working from home) from their first day of employment, removing the previous requirement of twenty-six weeks of continuous employment[22]. When such a request is made, employers must deal with the request in a "reasonable manner," such as assessing the advantages and disadvantages of the application, discussing possible alternatives, and offering an appeal process. If an employer does not handle a request reasonably, the employee can take the case to an employment tribunal[23].

In Japan, workers with childcare and nursing care responsibilities are guaranteed the right to shift to part-time work (Art. 23, the Child Care and Family Care Leave Act). In addition, disabled workers can request flexible work as part of reasonable

[20] Ishizaki, Yukiko, 2021, 23–24; Yamamoto, Yota, 2023, 476.
[21] Waddington, Lisa and Bell, Mark, 2021, 522.
[22] Explanation Notes, Employment Relations (Flexible Working) Act 2023. www.legislation.gov.uk/ukpga/2023/33/pdfs/ukpgaen_20230033_en.pdf
[23] Flexible Working: www.gov.uk/flexible-working

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accommodation (Art. 36-3, Persons with Disabilities Employment Promotion Act). However, legislation in the Netherlands and the UK allows flexible work for all workers, not just those with childcare and nursing care responsibilities or those with disabilities. The right to request conversion to remote work and part-time work as a form of flexible work is noteworthy. This kind of legislative policy should be fully considered in Japanese law.

5.6 CONCLUSION: TELEWORK AS A GAME CHANGER IN LABOR LAW POLICY

5.6.1 *Reconsideration of Traditional Labor Law*

Although the Japanese economy remains stagnant, it is still the fourth largest economy in the world in terms of GDP, after the United States, China, and Germany. However, according to the results of the OECD's evaluation of the well-being of each country using the Better Life Index, Japan ranks 12th from the bottom out of 38 countries. In particular, the work–life balance index is among the lowest in the world[24].

It has been pointed out that the Japanese labor market lacks the freedom to choose one's job, to choose one's working hours and working style, and to choose where to work[25]. If the lack of freedom of self-determination in the labor market is one reason for the low level of well-being among the Japanese, then the concept of labor law policy needs to be fundamentally reconsidered.

Traditional labor laws, not just in Japan but also in other countries, have viewed workers as a collective group and have established systems to protect that group as a whole. Labor protection laws establishing minimum working conditions, such as minimum wages and maximum working hours, belong to the individual labor relations law, but the protective norms are set as norms that are applied uniformly to all workers in principle. The norms are set at the most centralized national level. In other words, the protective norms envisioned by labor protection laws have been norms with content deemed appropriate for all workers. It lacked, or at least was extremely weak in, the perspective of protecting individual workers from the diverse, individualized difficulties they face in continuing their employment.

Labor protective laws merely set the floor for minimum working conditions. Traditional labor law has assumed that higher working conditions than the minimum would be achieved through collective bargaining by labor unions, which could negotiate on an equal footing with employers.

Thus, traditional labor law has approached the content of protective standards and improving working conditions from a collective perspective. However, as

[24] Suzuki, Kyoko, 2020; OECD, 2020.
[25] Kamuro, Ayami, 2017.

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workers have diversified, along with their values and working styles, it has become unrealistic to assume protective standards universally applicable to all workers. Furthermore, unionization rates are declining globally. In Japan, the union density in 2024 is 16.1%[26]. As a result, most workers are left to negotiate better working conditions on their own, which is exceedingly difficult[27].

Traditional labor laws protecting workers from a collective perspective will undoubtedly remain important. However, they alone are insufficient to ensure the well-being of individual workers. New mode labor laws that focus on individual workers' diversified needs and support how they want to work are needed. In other words, in addition to labor laws based on universal protection, there is a need to conceive of labor laws from the perspective of individualized support.

Workers in Japan who were forced to work from home due to the COVID-19 pandemic experienced, for the first time, a working style different from the traditional model of working long hours in an office alongside colleagues. They have also realized that being able to choose to work the way they want to work, while maintaining a work–life balance and taking advantage of the development of ICT, will improve their well-being. The recognition of the importance of choosing one's preferred way of working through telework is likely an experience shared by many countries beyond Japan.

In fact, as discussed below, legal systems that recognize the right or opportunity of workers to request flexible working arrangements, including telework, have been introduced in several countries. However, many countries, including Japan, have already adopted a system that requires employers to accommodate a working style requested by individual workers, depending on their circumstances. The following section examines the similarities and differences between existing legal systems and the right to request telework.

5.6.2 *Three Approaches to Realize Work Styles That Respond to the Actual Circumstances of Individual Workers and the Impact of Telework*

There are at least three types of approaches that require employers to respond to the diverse circumstances of individual workers and provide individualized support to workers. The first approach is to demand "reasonable accommodation" as long as it does not impose an undue hardship on the employer. The demand for reasonable

[26] In particular, more than 90% of Japanese labor unions are company-based, and collective bargaining occurs at the company level rather than at the sector or industry level. As a result, unlike in European countries where the coverage of collective bargaining agreements is high, even though the unionization rate is low, in Japan, the union density is almost identical to the coverage rate of collective bargaining agreements. See, Araki, Takashi, 2019, 375.

[27] In countries like the United States, where there is an active labor market and job changes are common, improving working conditions by changing jobs is possible. In Japan, however, where stable employment at a single company is common and the job market is less dynamic, improving working conditions by changing jobs is not easy.

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accommodation originates in the prohibition of religious discrimination under Title VII of the Civil Rights Act of 1964 in the United States. The question arose as to whether it constituted religious discrimination to treat adversely a person who believed in a religion that prohibited work on the Sabbath on the basis of that belief. The 1972 amendments to the Act defined religious discrimination as the failure to provide reasonable accommodation for religious observance and practice to the extent that it does not constitute undue hardship[28]. The requirement for reasonable accommodation has since been adopted in the United States for people with disabilities under the Rehabilitation Act of 1973 and the Americans with the Disabilities Act of 1990, and Europe under the 2000 Equal Treatment Framework Directive (2000/78/EC). In Japan, it was adopted in the 2013 Act on Employment Promotion of Persons with Disabilities.

The second approach is found in various countries' work–life balance laws that grant workers with caregiving responsibilities the right to choose flexible work arrangements that enable work–life balance. In the EU, under the Work-life balance Directive (2019/1158/EU) adopted in 2019, all Member States must "take the necessary measures to ensure that workers with children up to a specified age, which shall be at least eight years, and carers, have the right to request flexible working arrangements for caring purposes. The duration of such flexible working arrangements may be subject to a reasonable limitation" (Art. 9, Para. 1). The "flexible working arrangement" in the Directive means the possibility for workers to adjust their working patterns, including through the use of remote working arrangements, flexible working schedules, or reduced working hours (Art. 3 Para 1 (f)). In Japan, Article 23 of the Child Care and Family Care Leave Act gives childcarers the right to convert full-time to part-time work. However, the right to request telework is not mentioned.

The third approach, unlike the aforementioned two approaches aimed at workers with specific statutory grounds (such as disability or caregiving responsibilities), does not limit the scope of eligible individuals and instead grants all workers the right to request flexible working arrangements of their choice. As we observed in Section 5.2, this approach has already been implemented in countries such as the UK, the Netherlands, and Australia. One typical example of such flexible working arrangements is telework or remote work. As telework has become a standard mode of working rather than an exceptional one, the desire to choose telework is no longer limited to workers with disabilities or caregiving responsibilities. In other words, the normalization of telework may have driven the need for the third approach, which seeks to allow all workers to choose diverse working arrangements that suit their individual circumstances.

Traditional labor protection laws establishing universal protection norms for all workers, such as minimum wages and maximum working hours, and collective

[28] See Rothstein, Mark A. et al., 2014, 656.

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labor relations laws that strengthen bargaining power through collective negotiations, will continue to be necessary. However, these traditional approaches alone are insufficient to ensure the well-being of workers, who are increasingly diverse and facing various challenges. The widespread adoption of telework, a new working mode, has highlighted the need for a new approach to labor law that allows individual workers to choose the working arrangements that suit them, thereby enhancing their well-being.

We have entered a new era. In addition to traditional labor laws that ensure universal protection, we must conceive of labor laws that provide workers with new, individualized support focusing on concrete, diverse circumstances. In this sense, telework may not only be a game changer for the Japanese employment system but also for labor law policies in all countries.

REFERENCES

Araki, Takashi. 2015. "Working hour regulation and its reform in Japan", in Zbigniew Hajn and Dagmara Skupien, eds., *Przyszlosc Prawa Pracy: Liber Amicorum w piecdziesieciolecie pracy naukowej profesora Michala Sewerynskiego [The Future of Labor Law: Liber Amicorum in Fifty Years of Scientific Work of Professor Michal Sewerynski]*, Wydawnictwo Uniwersytetu Lodzkiego, 655–673.

2019. "Japan", in Ulla Liukkunen eds., *Collective Bargaining in Labour Law Regimes*, Springer, 375.

Hamaguchi, Keiichiro. 2009. *Atarashii Rōdō Shakai: Koyō Shisutemu no Saikōchiku he [New Labor Society: Toward the Reconstruction of the Employment System]*, Iwanami Shoten.

2021. *Jobu-gata Koyō Shakai toha Nani ka: Seishain Taisei no Mujun to Tenkan [What Is a Job-based Employment Society: Contradiction and Conversion of the Regular Employee System]*, Iwanami Shoten.

Hosokawa, Ryo. 2021. "Shingata Korona Uirusu-ka niokeru Telework no Fukyu to sono Kadai [The diffusion of telework and its issues in the new coronavirus disaster]," *Rōdō Hōritsu Junpō*, 1975+76: 31.

Ishizaki, Yukiko. 2021. "Koyō-gata Telework ni kakaru Rōdō Hō jōno Kadai [Labor law issues related to employment-type telework]," *Kikan Rōdō-hō*, 274: 22.

Joint ILO-Eurofound report, 2017. *Working Anytime, Anywhere: The Effects on the World of Work*, Eurofound, ILO.

Kamuro, Ayami. 2017. "Establishment of 'self-determination' in employment and labor," in Naohiko Jinno et al., eds., *'Wakachi-ai' Shakai no Kōsō [The Idea of a 'Sharing' Society]*, Iwanami Shoten, 25.

Kokudo Kōtsu Shō [Ministry of Land, Infrastructure, Transport and Tourism]. 2024. "2023nen-do Telework Jinkō Jittai Chōsa [FY2023 telework population survey]" (available online).

Kōno, Natsuki. 2020. "Telework to Rōdōsha no Shiseikatsu no Hogo [Telework and protection of workers' private lives]," *Hōritsu Jihō*, 92: 12: 83.

Kōsei Rōdō Shō [Ministry of Health, Labour and Welfare]. 2021. "Telework no Tekisetsu na Dōnyu oyobi Jisshi no Suishin no tameno Gaidorain [Guidelines for promotion of appropriate introduction and implementation of telework]" (available online).

OECD. 2020, *Better Life Initiative: Measuring Well-Being and Progress*, OECD.

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Rōdō Seisaku Kenkyu Kenshu Kikō [Japan Institute for Labour Policy and Training]. 2021. Telework: Korona-ka ni okeru Sei-Rō-Shi no Torikumi [Telework: government, labour and management initiatives in the corona disaster] Japan Institute for Labour Policy and Training.

Rothstein, Mark A et al. 2014. *Employment Law*, Vol. 1, 5th ed, Thomson Reuters.

Satō, Koji. 2001. "Telework Suishin no tameno Koteki Siensaku: Nichi-Bei-Ou no Seisaku Hikaku [Public support measures for telework promotion: a comparison of policies in Japan, the US, and Europe]" *Shoukei Ronso*, 36(3): 153.

Sōmu Shō [Ministry of Internal Affairs and Communications]. 2021. "Posuto Korona Jidai ni okeru Telework no arikata Kentō Tasuku-fōsu Teigen-sho [Proposal by the Task Force to study telework in the 'post-corona' era]" (available online).

2024. "Tsushin Riyō Dōkō Chōsa 2023 [Telecommunications usage trends survey 2023]" (available online).

2021. "' Posuto Korona' Jidai ni okeru Telework Teichaku Adobaizari-bōdo [Advisory board for establishing telework in the 'post-corona' era]," First Meeting of the Secretariat's Briefing Material (available online).

Suzuki, Kyoko. 2020. "Naze Well-being wo 'Shiawase' to yakusu no deha tarinai noka? [Why is translating well-being as 'happiness' not enough?]" JILPT Research Eye No. 79 (available online).

Tsuchida, Michio. 2021. "Shingata Korona Kiki to Rōdō Hō, Koyōshakai (1) [COVID-19 crisis, labor law, and employment society (1)]," *Hōritsu Jihō*, 73(5): 41.

Waddington, Lisa and Bell, Mark 2021. "The right to request flexible working arrangements under the Work-life Balance Directive – A comparative perspective" *European Labour Law Journal*, 12(4): 508.

Yamamoto, Yota. 2023. "Koyō-gata Telework no Hō to Seisaku wo meguru Kokusai Hikaku [International comparison on the law and policy of employment-type telework]" in Yoshimi Kikuchi et al., eds., *Hataraku Shakai no Hen-yō to Seikatsu Hoshō no Hō [Changes of Work Society and Law on Life Security]*, Junpō Sha, 475.

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