



Unlimited Term Contracts

Universities



Right to an Unlimited Term Contract

無期雇用契約

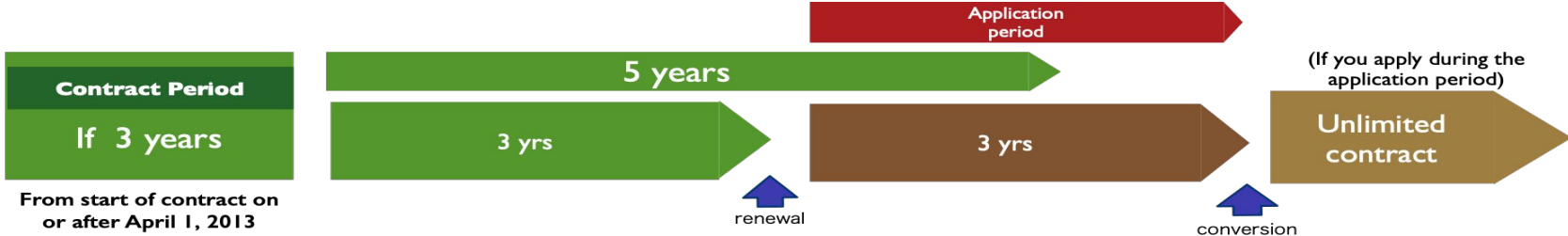
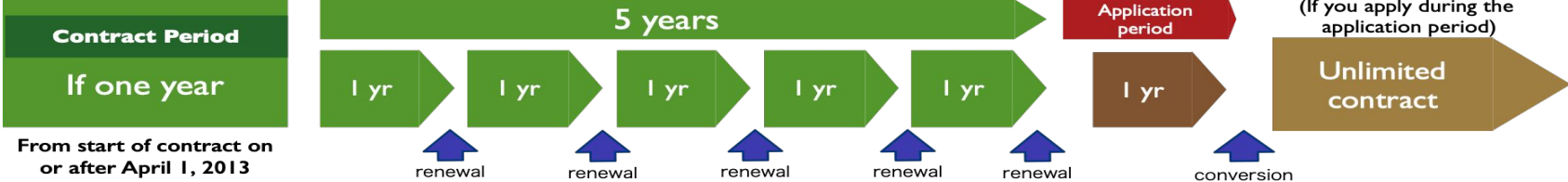
- Conferred by S.18 of the Labor Contracts Law (労働契約法)
- This section was added by amendment in 2013.

Massive upsurge in the hiring of “non-regular” employees since the 1990s

Regular employees usually hired after graduation. Anyone who missed the boat, was liable to being condemned to irregular employment for the rest of their lives.

The measure was introduced to increase job-security for these employees.

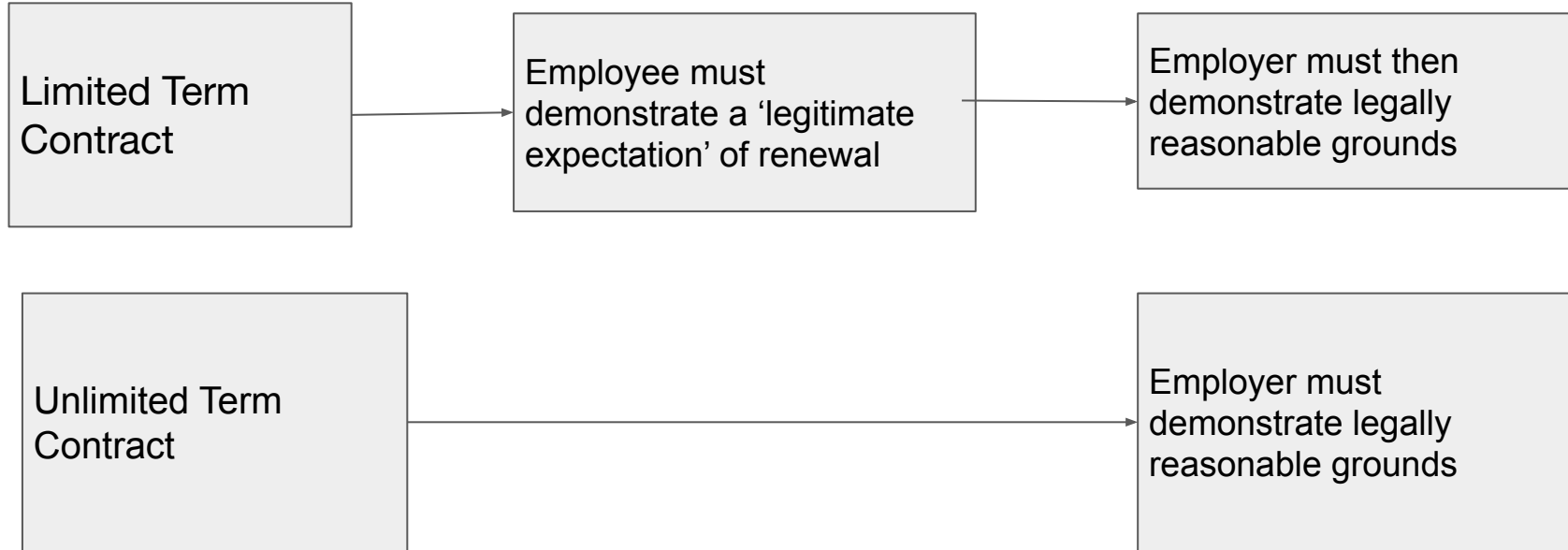
Unlimited Term Contract s.18 LSA



Effects of Unlimited Term Contract

- A new contract will be issued which does not have a termination date on it. Employer cannot reduce salary/conditions in the new contract. (Class reductions are still possible though)?
- Denies the employer the option of just non-renewing you and forces the employer to find “legally reasonable” grounds. This makes it easier for the union to get involved to ensure that fair procedures are being followed.
- Does not change your status to that of a regular employee or guarantee changes in insurance status. Especially in the case of part-time employees.

Effects Of Unlimited Term Contract



Changes in conditions

ECC workers on limited term contracts were able to get pay raises.

ECC said that workers could apply for a UTC but their work regulations for UTC teachers stated that they would not be eligible for pay raises.

Labor Bureau

The Labor Bureau told ECC that this was a clear change in work conditions from before and after the conversion to a UTC. It is unacceptable!

Changes in conditions?

- Most Universities argue that class cuts are still possible after conversion of part timer's to and Unlimited Term Contract. This may be in their work regulations.
- The union has always told employers that they cannot worsen the conditions of our members and this includes koma cuts. However this has not been tested in Court.
- Section 8 of the Labor Contracts Act

A Worker and an Employer may, **by agreement**, change any working conditions that constitute the contents of a labor contract.

Ways of evading the law

- Keeping workers in the dark
- Introduce a break of at least 6 months: “cooling off period”
- Introduce a limit on contract renewals.
- Dismiss workers on grounds that are “legally reasonable” e.g. curriculum change or restructuring on economic grounds.
- Introducing dispatch
- Universities only: “10 year exception”

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Keeping Workers in the Dark

Survey Response	Full Time	Part Time	Total
5 year	4	5	9
10 year	11	2	13
Don't know	25	63	88
Total	40	70	110

- Employees are not told about their eligibility to apply for an unlimited term contract.
- Employees are not properly advised of the implications of a 'ninkisei' contract or even that they are employed on one.

Cooling -off period

- The right to a UTC, is based on 5 years of continuous employment.
- The continuity is broken if there is a 6 month period where there is a non-contractual relationship.
- Many members are asked to take a semester off just before they go over the 5 year mark. This is rarely justified by the employer.

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Introduce a limits on contract renewals

- Employment contract has a clause which limits the amount of contract renewals that can be given.
- This is to avoid a term of continuous of employment that goes over the 5 year or 10 year mark.

Introduce a limit on contract renewals

Renewal Limits Part Timers	
	Part Time
No renewal limit	11
1 time	3
3 times	1
4 times	1
5 times	4
9 times	1
10 times	4
Don't know/ Not Specified	45
Total	70

Renewal Limits Full Time Timers	
Zero Renewal	1
1 time	6
2 times	6
3 times	5
4 times	8
5 times	2
6 times	1
No limit	6
I don't know	6
Total	40

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“Legally Reasonable” Grounds

- The employer can dismiss employees for legally reasonable grounds.
- This also includes people who have an “unlimited term contract”. However, it is much easier to non-renew employees on limited term contracts especially if they are part timers.
- Restructuring: Fair process must be followed. Seeking people to voluntarily retire for example.
- Union can get involved to make sure that the process is fair and no bullying is involved etc

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Recruiting Teachers as Contractors

Independent Contractors are considered like independent tradespeople.

No employment relationship exists between the employer and the worker.

It is highly doubtful for legal reasons that this form of employment is applicable to teachers at a universities or schools.

Example: **Osaka University/ GABA**

Rely on outside companies to send “contractors” who have an employment relationship with the company but not with the host institution.

Example: **Kansai Gaidai University/ SEICO. Interac**

Gyomu Itaku (Unis)

- More universities are relying on Dispatch companies. If **legally dispatched**, if you work for more than 3 years the university should hire directly.
- If using “Gyomu Itaku” (Labor Hire Agreement), the Dispatching law does not apply. You can apply for an unlimited term contract to the dispatch company.
- Ministry of Education has stated that it is improper to use Gyomu Itaku in an educational environment.

UTC and Retirement Age

Government policy is to eventually raise the retirement age to 70

They have passed a preparatory law putting an obligation on employers to “make efforts” to increase their retirement ages. Obligation to “make efforts” only.

Many universities are resisting this change.

They are also trying to avoid the obligation to give a UTC by setting restrictive retirement age for irregular workers who apply for UTC conversion

UTC and Retirement

University A allows certain classes of teacher to retire at 65. However they set in their work regulations that non-regular workers who request a UTC have a retirement age of 60

They may be offered re-hire on a limited term contract from 60-65 (often with worse conditions)

Employee A applies for a UTC at age 62 and it is granted according to s.18 of the LCA

Employer sets retirement age to 60 for UTC holders

The next year the University claims retirement age has come. Offers employee a limited term contract instead

Things to watch for

- A clause in your contract which indicates that your contract is not renewable.
- Introduction of a limit on renewals into either the contract or working regulations
- Change in working regulations to include procedure for conversion to an indefinite contract.
- Plans for curriculum change or other major changes in the way work is organised.

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Ten Year Exception



Those employed as “ninkisei” or those with a research element working at a university may have to wait ten years before they can get an indefinite contract.

10 year exception

- An exception to the '5 year' rule is contained in the *Act on Term of Office of University Teachers. 82 of 1997* or the *Science and Technology Innovation Law*.
- It means that conversion to an Unlimited Term Contract is not necessary if the employment is **10 years or less**. (However universities can still choose to convert before this time if they desire)
- The law allows certain categories of worker to be covered by this exception and there are procedural requirements that should be followed when employing someone this way.

Categories

Act on Term of Office of University Teachers, etc.

(The last amendment : May 27th, 2015 Law No.27)

Article 4

1-1. The position in the education/research institution particularly requiring to secure various human resources due to the characteristics of the field or method of education/research undertaken by the said education/research institution such as advanced, interdisciplinary or comprehensive education/research.

1-2. The position of Assistant Professor.

1-3. The position for education/research during the specific period based on the specific plan the university makes or participated in.

2. The appointer shall reach the agreement with the appointee when appointing the teacher with the term of service following the preceding paragraph.

Procedural Requirements

- **The category and terms of employment must be specified in the contract or working regulations.**
- **They must be explained to the worker.**
- **The worker must agree**

Abuse of Ninki law

- “Upper limits set in order to de facto deprive limited-term workers of their right to switch to an unlimited contract cannot be accepted unconditionally”.
- Labor Ministry
- Many universities are claiming the 10 year exception simply to avoid the conversion . Their reason should be connected to staffing needs in relation to special projects which are reflected in the categories with the understanding and agreement of the employee.

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