Controversial issues surrounding the reform of labor

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The reform of labor is a key subject when talking about the Government’s growth strategies. Labor law deregulation is essential to economic growth, isn’t it? If the fruits of such growth were properly returned to workers, nobody would disagree with that. However, labor law deregulation seems directly connected to reducing workers’ protection. It should come as no surprise, then, that labor unions are, almost instinctively, objecting. Even within the Government itself, the Industry and Competitiveness Council, which insists on reforms, and the more cautious Ministry of Health, Labor and Welfare do not get along well, thus making the reform even less appealing for citizens.

The proposed reform on dismissal and working hours rules, both pivotal to the labor reform, is certainly not trying to change the nature of labor law itself and its aim at protecting subordinate workers. We could rather say that the reform of dismissal rules is nothing more than an attempt to correct the parts in which the legislation has become incompatible with reality. It is necessary to cool down the debate on this point.

The dismissal rules reform currently in discussion is not finalized at liberalizing dismissals as it was mistakenly interpreted by the public. Obviously, wrongful dismissals are inadmissible. However, even if, as sanction towards the employer who realized a wrongful dismissal, the dismissal itself is declared null and void as the law currently provides, there are actually many cases in which the worker receives a certain amount of money and leaves. Therefore, the whole point of introducing a monetary compensation is trying to change the sanction into the payment of a compensation, thus matching it with reality.

However, since we are at it, the mere discussion on the introduction of a compensation is not enough. We have to consider the great change of times revolving around the positioning of employment protection. In order to do that, we need to begin from the recent reinforcement of protective regulations towards non-regular workers. Starting from 2007, a series of legal reforms aimed at improving the treatment of part-time, dispatched and fixed-term workers. On top of that, there is the converting clause to indefinite-term employment, which ensures the right to present a request of conversion to indefinite-term employment to those workers who exceeded 5 years in renewals of a fixed-term employment contract.

If we do not close the gap between regular and non-regular workers, even in case of growth, its fruits will not be redistributed equally. In this sense, also the series of policies aimed at protecting non-regular workers has its reasons. However, it is also necessary to note that, in a context where such disparities are born, employment protection of regular workers is reducing the chances for non-regular workers. In an employment system based on the simultaneous hiring of new graduates and dismissal regulations, the first job has a decisive impact. Those who did not make it and started as non-regular workers, afterwards, have limited chances to become regular workers. The result could be a situation of inefficiency and unfairness between a competent non-regular worker and an incompetent regular worker.

Nonetheless, we cannot be sure that a compulsory addition by the law like the conversion clause will be successful, since regular work means that the company needs strategic human resources whose productivity is expected to increase through training under the premises of employment security. The restrictions on the worker are the price to pay in exchange of employment security and improved skills. If both parties, company and worker, do not agree on the abovementioned conditions, regular work in its true meaning is not realized.

The main objective of the reform on dismissal rules is organizing the premises in order to make it possible to transit from non-regular worker to regular worker within the limited number of jobs in
order to remove the abovementioned situation of inefficiency and unfairness. These premises includes also the reinforcement of policies aimed at increasing employment mobility, such as supporting workers who have been expelled from the company until they find a new job, or ensuring social security until the same moment.

The importance of the abovementioned policies is also to prepare to an age during which, with the progress of information technology, types of business and jobs that are necessary to the economy are going to change greatly and, consequently, it will become necessary also for the labor force to move towards types of business and jobs that are more promising. Along with the big changes in the required abilities, continuous employment within the same company will inevitably become more difficult. It is a fundamental policy challenge that, in these cases, the transfer of workers can proceed smoothly. If we become fossilized on policies aimed at protecting the employment by limiting dismissals as much as possible, we are postponing the handling of new situations.

The compensation system is not a gift to the companies, since we can see it also in countries with strict dismissal rules. However, such a reform will soften the image of the Japanese labor market and will also increase the attractiveness of Japan to foreign investors, which is another objective of the reform of dismissal rules.

The reform of working hours rules, as well, has been heavily criticized, but also greatly misunderstood. The heart of the legislation concerning working hours is the mechanism under which companies are required to pay an extra proportional to the number of overtime hours worked above the legal limit (40 hours a week, 8 hours a day). The extra pay is, at the same time, sanction for the company that imposed overtime work and compensation for the worker burdened with long working hours. Under the latter, working hours rules connect to the wage system. It is necessary, indeed, to put a limit to long working hours through an extra pay proportional to the time. At the same time, it is also necessary to unmask “unpaid overtime work” in violation of the rules.

On the other hand, it is important, for the future of the Japanese economy, a creative way of working that increases the added value. Therefore, it is desirable a way of working that is not restricted by working hours, and the treatment of such labor shall become an incentive towards excellent results. In this sense, the sanction for long working hours is redundant and the compensation proportional to the time is unnecessary. However, pursuant to the law currently in force, even if we try to add an incentive-type treatment, if the subject does not qualify as discretionary worker or management, the element of the compensation proportional to the time will definitely interfere. The current discussion on the reform of working hours rules is an attempt to create a system separating salaries and working hours in a way that is compatible with workers operating under this incentive-type regime.

Obviously, it is important also to protect the worker’s health. However, for an incentive-type regime, it would be ideal a system that ensures rest reflecting as much as possible the worker’s will (annual paid vacation, weekly day off, rest break at work, etc.), not regulating the length of working hours. Also from the historical point of view, the flexibility of working hours rules have increased according to the needs of the world of employment. These reforms, as well, follow the same line. Possible objections to the reform do not regard the introduction of a new system, but the ambit of workers that will fall under its application. Considering also the current issues regarding the management system, it is preferable to set by law the guidelines on eligible subjects and leave the determination of the specific ambit of workers that will fall under its application to agreements between the relevant employers and employees. Since the new system concerns essential contents of the labor contract such as working hours and salary, it goes without saying that the consent of the interested workers is necessary.

The contraction of the working population due to decreasing birthrates and aging, together with the progress of information technology, is increasing more and more the necessity for highly productive workers, whereas the globalization is intensifying the international competition between companies
and between workers. In such a situation, it is inevitable that the rules of the Japanese world of employment, established during the economic boom, are starting to vacillate. Serious amendments will be necessary to the traditional rules regarding hiring, human resources training, salaries, working hours, rights of the employer and employment protection.

Obviously, a certain amount of chaos during the transition period will be inevitable, and safety nets responding to that will be essential. In addition, safety nets developed under a long-term perspective will be of the utmost importance. The Government must develop as soon as possible a support system in order for each worker to acquire enough “employability” (capacity to change jobs) to be able to sell its competences also in a variable industrial structure. Dispatched ad fixed-term labor, as well, are not to be considered abusive employment patterns, but it is even more necessary to perceive them as stepping stones to a better job by accumulating experience in the initial phase of one’s professional life.

The reform of dismissal rules and the reform of working hours rules are nothing more than the prelude to a more complete reform of labor.