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What Does Financial Institution Termination of Employment Mean in Terms of Labor Law?

Article	Abstract
<u>Author</u> Suwinto Johan ^{1*} , Luo Yuan Yuan ² . ¹ Universitas President, Cikarang, Bekasi, Indonesia. ² China-ASEAN Legal Research Center, Southwest University of Political Science and Law, Yubei, Chongqing, People's Republic of China <u>Coresponding Author:</u> *Suwinto Johan, <i>Email:</i> <i>suwintojohan@gmail.com</i>	Termination of employment or layoffs hits workers' psychological condition hard. Layoffs commonly occur and have raised concern in global community, especially in the financial industry. Various factors trigger layoffs, including actions from banks and the Covid-19 pandemic. In that era, banks faces risk such as triggering a decrease in financing, non performing loan and etc. This study discusses layoffs that occur in financial institutions using a normative juridical method. Primary data, secondary data and other data were collected and analyzed, which results showed that layoffs mostly occur following the declines in company performance and transactions occurring from corporate actions. The labor law guarantees workers under fixed-term employment contract to be entitled to the remaining term of his work agreement when layoffs occur. However, if the work contract is not extended, no compensation will be given. This
Data: Received: Mar 21, 2022; Accepted: Jun 16, 2023; Published: Jun 28, 2023.	scheme distinguishes permanent workers from contract workers. Keywords: Financialn institutions; labor; termination of employment (layoffs).
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INTRODUCTION

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Between 2016-2017, Bank Danamon laid off more than 10,000 workers, most of whom were offered early retirement.¹ On the other side, Citibank workers then held a protest around Indonesia Stock Exchange are demanding the fulfillment of their rights as they were being threatened with layoffs. Citibank sold its consumer business unit to UOB Bank in 2022 which resulted in labor efficiency program that affected thousands of workers.² In 2020, PT. Indosat, Tbk laid off 677 workers following a business reorganization. A total of 92% of the 677 workers agreed to the

Anggara Pernando, "Serikat Pekerja Danamon : Hentikan PHK Massal - Finansial Bisnis," Bisnis Indonesia, 2017.

Agustina Melani, "Pegawai Citibank Demo Di Kawasan BEI, Tuntut Manajemen Tunaikan Kewajiban - News Liputan6," Liputan6.Com, 2022.

layoff compensation. The compensation was worth of 70 months of salary, while workers who had worked lesser than 1 year obtained 14 months of salary. There were 57 workers who refused to be laid off. ³

The rapid advancement of technology can completely replace the role of bank tellers and customer service agents in banks. These two positions are predicted to be eliminated in the next two years, as happened in the Europe.⁴ The government also have made a plan to replace some positions of civil servants with robots in order to reduce the state budget.⁵

Studies on layoffs, especially in the financial industry, are still limited. This study discusses layoffs that have occurred and will occur in the financial industry following the advancement of technology. Many jobs will be replaced by robots in the industrial revolution era 4.0. This study provides broader insights that technology advancement will be followed by layoffs.

Workers expect to have long-term contract with companies. During the first days, new workers are delighted knowing that they are hired but they are also worried about layoffs.⁶ The labor law protects workers from arbitrary actions by companies and to establish a balance between employers and workers.⁷

Regarding labor, it is contained in the 1945 Constitution of the Republic of Indonesia in Article Article 27 paragraph (2) which says "Every citizen has the right to work and livelihood that is appropriate for humanity". Workers are residents who are in working age. According to Law No. 13 of 2003 Chapter I Article 1 paragraph 2 states that labor is anyone who is able to do work to produce goods or services both to meet their own needs and for the community.⁸⁹

Based on Article 154 A, Law no. 11 of 2020 concerning Job Creation (UU Cipta Kerja), corporate actions that can result in layoffs include mergers, takeovers, consolidations and separations. Workers' rights are regulated in Government Regulation Number 35 of 2021.¹⁰ Layoffs can also occur when a party breaks the employment agreement ¹¹ based on the agreement.¹² Workers and

³ Monica Wareza, "57 Karyawan Indosat Tolak PHK, Apa Alasannya?," CNBC Indonesia, 2021.

⁴ Lidya Julita Sembiring, "Ada 'Kiamat' Teller Dan CS, Bank Bakal PHK?," CNBC Indonesia, 2021.

⁵ (Sembiring, 2021b)

⁶ Yuliana Widyantari, Susana Prapunoto, and A. Ign. Kristijanto, "Pengaruh Kecemasan Menghadapi Pemutusan Hubungan Kerja Terhadap Motivasi Kerja Karyawan PT X Di Kota Salatiga," *Jupiis: Jurnal Pendidikan Ilmu-Ilmu Sosial* 12, no. 2 (2020): 354–61, https://doi.org/10.24114/jupiis.v12i2.17313.

 ⁷ Zahrotul Jannah, "Pelaksanaan Pemutusan Hubungan Kerja Menurut Undang Undang No. 13 Tahun 2003 Tentang Ketenagakerjaan," *Dinamika Jurnal Ilmiah Ilmu Hukum* 25, no. 12 (2019): 1–7.

⁸ Herlina Sulaiman, "Legal Review of the Implementation of Work Safety and Health Atpt Multi Nabatimaleo Unit, Pohuwato District," *Jurnal Hukum Volkgeist* 3, no. 2 (April 10, 2019): 147–51, https://doi.org/10.35326/ VOLKGEIST.V3I2.126; Also refers to Hariyanto Hariyanto, "Risk-Based Business License and Problems Arising After The Job Creation ACT," *Jurnal IUS Kajian Hukum Dan Keadilan* 10, no. 2 (August 23, 2022): 354–66, https://doi.org/10.29303/IUS.V10I2.1082.Health and Safety. EHS is a policy applied by PT Multi Nabati Unit Maleo in providing protection for the safety and health of its workers. EHS is a direct handle or the first handle if there is an accident and also work to make preventive efforts to prevent accidents. In addition, the company develops the health and work safety management system (SMK3 & amp; L

⁹ Herlina Sulaimana, "Legal Review of the Implementation of Work Safety and Health Atpt Multi Nabatimaleo Unit, Pohuwato District," *Jurnal Hukum Volkgeist* 3, no. 2 (2019): 147–51.

¹⁰ Abdul Hadi and Dadan Herdiana, "Perlindungan Hukum Terhadap Pekerja Dalam Terjadi Pemutusan Hubungan Kerja (PHK) Akibat Corporate Action Ditinjau Dari Undang Undang No. 11 Tahun 2020 Tentang Cipta Kerja (Cluster Ketenagakerjaan)," *Rechtsregel* 4, no. 2 (2021): 189–202.

¹¹ Berliana Destrie Aisha, "Pemutusan Hubungan Kerja Yang Didasarkan Pada Pelanggaran Perjanjian Kerja Bersama," *Jurist-Diction* 2, no. 1 (2019): 63–76, https://doi.org/10.20473/jd.v2i1.12098.

¹² Suwinto Johan, "Knowing Company Secrets Through Employee Posts on Social Media," *Diponegoro Law Review* 6, no. 2 (2021): 203–16, https://doi.org/10.14710/dilrev.6.2.2021.203-216.

employers are obliged to sign employment agreement.¹³ Layoffs due to violations should undergo a bipartite process, mediation and conciliation. If no agreement is achieved, a company may file a lawsuit at the Industrial Relations Court to terminate the employment. The company still has to pay severance pay.¹⁴

The Article 156 paragraph 1 of Law no. 13 of 2003 concerning Labor Law requires companies that lay off workers to pay severance pay, bonus and compensation for entitlements. In layoffs due to acquisition, workers have the right whether to accept the termination as stipulated in Article 163 of the Labor Law. If workers refused to extend the employment contract, they are entitled to 1x severance pay, 1x bonus and compensation money. On the other hand, if w company decides to lay off its workers, the company is required to pay twice severance pay.¹⁵ On the contrary, the Job Creation Law stipulates that layoffs due to company efficiency frees companies from the obligation to pay twice severance pay.¹⁶ Likewise, workers or laborers as citizens also have an equal position in the law, the right to get a decent living, the right to get a job, to gather in an organization, to express opinions, and to have the right to form or become a member of a trade / labor union.¹⁷ Unions will be one of the plagues of workers in negotiating with employers. This epidemic will provide a middle ground between the interests of workers and the company.

The merger of three Islamic banks into Bank Syariah Indonesia (BSI) or Indonesian Islamic Bank (BSI) adopted a no-layoffs policy that would affect the efficiency of the bank. BSI has made business projection for the future.¹⁸ Workers were given the right to choose to whether to continue working or quit and not participate in this merger process.¹⁹ In merger transactions, layoffs policy is often preferred.²⁰

The Covid-19 pandemic has increased the number of laid workers to 1.2 million workers.²¹ During the pandemic, companies preferred prioritizing the stability of their business. Thus, companies had to lay off their workers in order to sustain because the expense of workers' pay was considered too much to handle.²² Layoffs also follow the decrease in profit or revenue ²³. The

¹³ (Johan, 2022)

¹⁴ Sonhaji Sonhaji, "Analisis Yuridis Pemutusan Hubungan Kerja Akibat Kesalahan Berat Pekerja," *Administrative Law and Governance Journal* 2, no. 1 (2019): 60–78, https://doi.org/10.14710/alj.v2i1.60-78.

¹⁵ N W E Hariyastini and I W Windia, "Tanggung Jawab Pihak Bank Terhadap Karyawan Saat Bank Melakukan Akuisisi," *Kertha Semaya: Journal Ilmu Hukum* 1, no. 1 (2018): 1–5.

¹⁶ Agung Prasetyo Wibowo and Amad Sudiro, "Perlindungan Hukum Terhadap Pekerja Dalam Pemutusan Hubungan Kerja (PHK) Dengan Alasan Efisiensi Akibat Pandemi Covid-19," *To - Ra* 7, no. April (2021): 135–52.

¹⁷ Suardi Rais, "Problematics of Law Enforcement of Union Busting Criminal Action in Gorontalo Province," Jurnal Hukum Volkgeist 4, no. 2 (2020): 148–57.

¹⁸ Alif Ulfa, "Dampak Penggabungan Tiga Bank Syariah Di Indonesia," *Jurnal Ilmiah Ekonomi Islam* 7, no. 2 (2021): 1101–6, https://doi.org/10.29040/jiei.v7i2.2680.

¹⁹ Muhmmad Rauuf Ramadan, "Merger Bank Syariah Dan Pengembangan UMKM Di Indonesia," Jurnal Syntax Transformation 2, no. 6 (2021): 830–42.

²⁰ Elsya Meida Arif and Reza Setiawan, "Efektifitas Merger Pada Bank OCBC NISP Ditinjau Dari Modal Kerja, Arus Kas Operasi Dan Laba Operasional," *Jurnal Akuntansi FE-UB* 15, no. 1 (2021): 48.

²¹ Alfany Arga Alil Fiqri et al., "Peluang Dan Tantangan Merger Bank Syariah Milik Negara Di Indonesia Pada Masa Pandemi Covid-19," *El Dinar* 9, no. 1 (2021): 1–18, https://doi.org/10.18860/ed.v9i1.11315.

²² I Komang Edy Dharma Saputra, "Analisis Hukum Pemutusan Hubungan Kerja Pada Masa Pandemi Covid-19," Jurnal Ilmiah Raad Kerta 4, no. 2 (2021): 62–76.

²³ Neng Yayu Padaniah and Haryono, "Perspektif Sosiologi Ekonomi Dalam Pemutusan Hubungan Kerja Karyawan Perusahaan Di Masa Pandemi Covid-19," *Jurnal Ekonomi Dan Manajemen* 1, no. 1 (2021): 1–14.

negative impact of company merger is reduction of the number of workers due to organizational revitalization.²⁴ Layoffs should be the last resort to company problems.²⁵

This current study aimed to answer several research questions on the reasons of layoffs in financial institutions, workers' rights for getting laid off by financial institutions, and the settlement of layoffs for workers on probation based on the Law no. 13 of 2003 concerning Labor Law.

Thus, this research question are What causes a financial institution to close its doors? What are the rights of employees who are terminated unilaterally by a financial institution according to the regulations? And how is the 2003 Labor Law No. 13 being used to settle worker rights?

RESEARCH METHODS

This study examined the phenomena based on legal principles and norms related to termination of employmentfrom the perspectives of worker and the company. This study focuses on discussing the layoffs in financial institutions. A normative juridical method used in this study is illustrated in Figure 1.²⁶ Primary, secondary and other supporting data were regarded in this study.²⁷

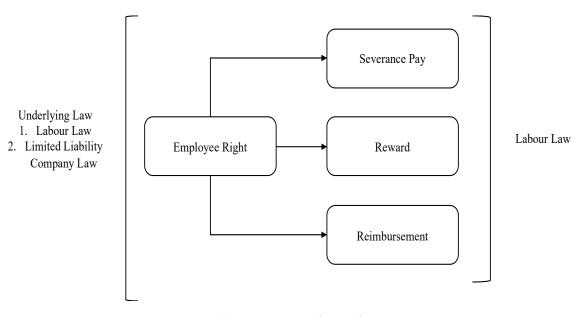


Figure 1: Layof Employee

Source: Research Results

Primary data were relevant laws and regulations including the 1945 Constitution of the Republic of Indonesia. Meanwhile, secondary data were academic manuscripts in the forms of

²⁴ Yudha Ramelan and Dwinanto Prakoso, "Peranan Lembaga Merger Sebagai Instrumen Resolusi Bank (Konsep Dan Implikasinya Pada Bank Dalam Penyelamatan)," *Jurnal Bina Mulia Hukum* 4, no. 2 (2020): 326–46, https:// doi.org/10.23920/jbmh.v4i2.270.

²⁵ Siti Zulaichah, "Pemutusan Hubungan Kerja Sepihak Ditinjau Dari Hukum Ketenagakerjaan Dan Hukum Islam," *Journal of Islamic Business Law* 3, no. 4 (2019): 1–12.

²⁶ Suwinto Johan and Ariawan Ariawan, "Information-Conneted Approach in Identifying Capital Market Crime at Information Technology Era," *Proceedings of the International Conference on Economics, Business, Social, and Humanities (ICEBSH 2021)* 570, no. Icebsh (2021): 217–21, https://doi.org/10.2991/assehr.k.210805.035.

²⁷ Mahmud Peter Marzuki, *Penelitian Hukum: Edisi Revisi*, Revisi (Jakarta: Kencana Prenada Media Grup, 2017).

journals, seminar proceedings or conferences. Other supporting data were also collected, including news on the internet from trustworthy websites.²⁸

ANALYSIS AND DISCUSSION

Causes a financial institution to close its doors

Many corporate action transactions have been processed by Indonesian financial institutions. Corporate action transactions such as mergers, takeovers and consolidations often occur in financial industry which definitions are explained in Law Number 40 of 2007 concerning Companies (Corporate Law).

The acquired financial institutions are often poor-performing financial institutions. Acquiring companies acquire other companies to be re-developed. Poor company performance can be caused by worker-related factor. Workers who are deemed incompetent or non-complying will be laid off during the corporate action. This layoff process can be carried out in two stages; at the time of the takeover transaction where workers can choose whether to extend the contract or after the offer period where the company can lay off workers through a layoff scheme based on the Labor Law.

The employment termination was also carried out as a result of the employees' and the new shareholders' differing cultural perspectives. There are also old shareholders who invite retired employees to join them in young businesses. Older workers will feel more at ease around older shareholders than they will around newer stockholders. This benefits both parties equally. The performance of the company will suffer if there is friction between the previous workers and the new stockholders. The reason of termination is explain in figure 2.

Another reason is the efficiency plan. Financial institutions were impacted by the Covid-19 pandemic. The decline in financial performance can be a reason for a financial institution to lay off its workers. In addition, within an efficiency plan, the adoption of advanced technology can be a valid reason of company layoffs.

There were a lot of layoffs during the 2023 economic crisis. This was brought on by a decline in economic performance, which led to job terminations by the employer. To reduce expenses and retain performance, this is done.

First, the business will lighten the load on employees by cutting labor expenses like overtime and bonuses. If good performance is not achieved, the business will cut labor costs by lowering employee compensation up till termination of employment.

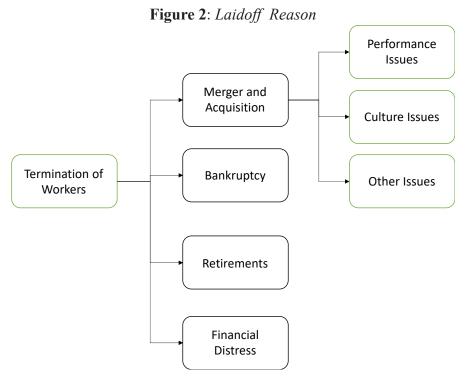
Companies need to report to regulators about planned layoffs. Companies have to provide valid explanation of the layoff to all stakeholders openly. This explanation is intended to prevent negative news from occurring about the company.

Workers will receive a layoff decision if the company has fulfilled the layoff compensation as regulated in the Labor Law. Workers do not have the right to refuse layoffs if the companies fulfill workers' rights. Workers can file an objection to layoffs only when the compensation given deviates from the legal requirement. Refusing to be laid off will not bring any positive effect for

²⁸ Suwinto Johan and Ariawan Ariawan, "Juridicial Overview Of The Syndication Financing Agreement Between Customers And Financial Institutions," *Kanun Jurnal Ilmu Hukum* 23, no. 3 (2021): 445–58, https://doi. org/10.24815/kanun.v23i3.21920.

workers because layoffs are the last resort in employer-worker relationship. The settlement of this relationship may form part of an worker's retirement.

Regulations now permit employers to terminate employment as a result of corporate actions like mergers and acquisitions that are effective owing to the company's operation. Special circumstances, as the Covid-19 epidemic, have not, however, been covered by rules. Therefore, the government must include a clause for force majeure that allows employers to fire employees without violating their rights.



Source: Research Results

The duty of the government to protect businesses and employees. Additionally, the government must set up a social security system for workers who have been laid off. This has existed throughout the pandemic. To deal with a repeat of the situation, a systematic rule has not yet been implemented.

Social issues will result from employment termination. Social upheaval will result from industry-wide mass layoffs. During the 1998 economic crisis, Indonesia went through this. Both the number of employees who have been terminated from their jobs and the grounds for doing so are unregulated.

Many businesses were under pressure to perform financially during the Covid-19 pandemic, so they let people go. Additionally, many businesses were sold by their shareholders and acquired by new shareholders, which led to layoffs. Impact on nation's economics from layoffs is explain in figure 3.

The performance of a nation will be greatly impacted by employment termination since workers' taxes will be less. In addition, the enormous number of unemployed individuals had an impact on the entire nation's economic operations. Other social issues will arise because of unemployment. in order for the government to pay attention to the success of the business and the choice to fire employees.

This is seen in the government's efforts to ensure that the economy can function and that the underprivileged may receive social services during the Covid-19 pandemic. This is done to lessen the possibility of social disturbance.

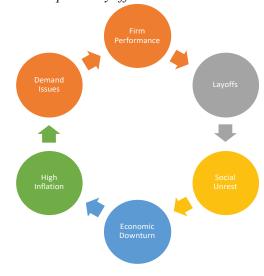
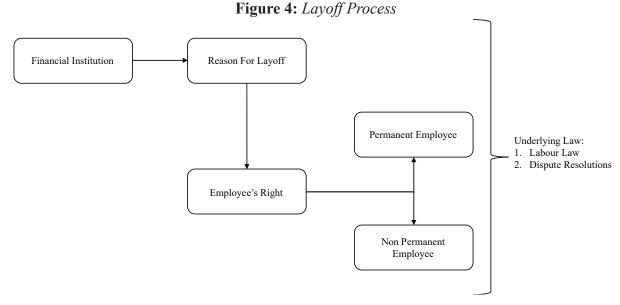


Figure 3: Impact Layoffs on Nation Economics

Source: Research Results

The rights of laid off workers according to Regulations

Workers who are laid off still have rights as stipulated in the Labor Law, including the rights of receiving severance pay, bonus and compensation. Severance pay and bonus are regulated in the Labor Law based on the worker's tenure at the company. The period of service is calculated from the day workers were appointed as permanent workers.



Source: Research Results

Compensation money includes compensation for the remaining leave entitlements, medical fees and other rights as presented in Figure 4. The amount of compensation is not regulated in the regulations, but the basis of its calculation is based on the employment agreement and the salary or wages earned. The calculation layoff package is similar to the retirement scheme. This severance pay formula has a maximum limit as specified in the Labor Law with an indefinite term of service.

Employee rights will appear, if the employee has been appointed as an employee. Termination rights exist that arise after a period of work exceeding three years. One of them is severance pay. Newly employed employees do not have severance pay rights. New employees only get company award rights and other rights such as reimbursement rights.

Even if an employee's employment is terminated, they will still be entitled to certain rights. Depending on the reasons for the termination, the employee's rights may change. Employees who are let go because they are retiring will receive more money than those let go because they broke company rules. All of this has been governed by corporate policies and labor legislation.

The 2003 Labor Law No. 13 being used to settle worker rights

Workers who get laid off during their probation will not get severance pay. Instead, they will obtain their right to the remaining contract period. Workers who fail to pass the probation will receive their rights until the term finishes. These points should be made clear in the employment agreement.

During the probation, workers are given their rights as specified in the probation agreement. Workers do not have the rights as stipulated in the work agreement for an indefinite time. They will not receive severance pay, there company will terminate contract workers first when efficiency occurs.

The employee won't get any severance compensation as long as they haven't been made a permanent employee. This is in conformity with the Labor Law's regulations. According to the agreement, the employer has the right to fire the employee at the conclusion of the contract or in the middle of it. If a contract is terminated in the middle of its term, the employer is required to pay the employee's wages for the remaining time.

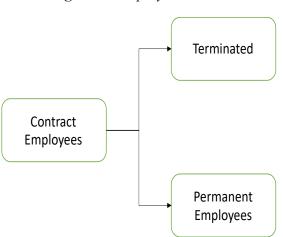


Figure 5: Employess Status

Source: Research Results

Employees who have worked for a year are entitled to one month's pay under the new Job Creation Law. This holds true for multiples or the years that follow. so that employees will automatically receive the appropriate amount of remuneration based on their length of service. However, the Job Creation Law permits contract extensions for work that is not permanent of up to five years as explain in figure 5. Only contract employees remaining under contract are eligible for this payment; permanent employees are not. Permanently employed employees will have their own remuneration value. The computation of a worker's permanent status is not specified in this rule, nor is it stated whether it begins when the worker begins working or when the worker is appointed as a permanent employee.

One of the key points that the parties must agree on is the computation of the working period. due to employees who have been employed for five years. The individual is then appointed as a permanent worker. Then, in accordance with the Job Creation Law, all of the employee's rights as a contract worker will be honored. Workers will adhere to the rules for permanent employees. Years of service will be taken into account, which will result in the removal of the worker's rights during the term of the contract because the calculation for permanent employees' rights will be different.

The rights of those who have been appointed permanently and those who are currently on probation are separated by this. Employees in the contract period do not get paid if their contract is terminated, in addition to during the probationary period. For contract workers, the phrase "termination of the contract" rather than "termination of employment" is understood.

Only if the contract is canceled in the midst of the contract period will employees with probationary periods and those with specific term employment agreements be paid for the remaining time under the contract. By firing contract workers rather than long-term employees, the organization will complete the task quickly and effectively. This seeks to cut back on termination and operational costs. By not extending the employee's employment contract during merger and acquisition deals, the corporation will also save money.

The community has to be made aware of the employment termination process by the government. Many employees lack sufficient understanding in this area. Additionally, the government must specify particular conditions for dismissal, such as occurrences related to the COVID-19 pandemic or bankruptcies.

CONCLUSION

Termination of employment (layoff) based on legal principles and norms can be a choice when a company needs to make efficiency and take corporate actions. The most common corporate actions that cause layoffs include mergers, mergers, separations, takeovers and consolidations. In addition to corporate actions, efficiency can be a basis for applying for layoffs. If a layoff occurs, a company is obliged to fulfill workers' rights as stipulated in the Labor Law. Workers within the probation period will not receive severance pay. Regardless of the reasons for termination that were mutually agreed upon, employees who have had their employment ended still have rights. Due to causes for termination of employment, such as loss, workers' rights won't be lost. Workers must also protect their rights based on the number of years of service and their employment position as stated in Labor Law No. 13/2003 and Job Creation Law. Permanent employees and contract employees receive varying levels of salary based on the agreement. This study only qualitatively

discussed the cases of financial institutions. Future researchers are recommended to expand this study by linking it with other industries. Future researchers can also conduct surveys to business actors in the financial industry and related financial authorities. It is possible to conduct research that considers the needs of both workers and employers. Although there is a close relationship between employees and businesses, both parties have unique interests. Due to the disparity in perception, this business relationship may be the subject of research. Additionally, the contribution value of research involving independent parties, such as the government, will differ. Judges at industrial tribunals will also be able to paint a clearer picture in addition to the government.

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