

論文摘要

由於社會經濟以及國際情勢的變遷，甚至無預警的採取關廠或歇業之情況屢見不鮮，導致勞工之生存權、工作權遭受到嚴重危害；同時現行的勞動法制保護不足，遂有「大量解僱勞工保護法」之制定。

本篇論文係以「大量解僱勞工保護法」為研究之對象。其論述之焦點集中於大量解僱勞工保護法之法律爭議問題，乃針對現行大量解僱勞工保護法本身之規範內容，係以大量解僱之定義、解僱計畫書及通知義務、協商之時程及方式、提供就業輔導與再僱用優先權利、預警通報義務、以及限制出境之處分為研究之重點。除此之外，本文更藉由他山之石可以攻錯為之論述，比較研究我國與美國、德國、以及日本有關大量解僱保護法制，以供我國參考借鏡。

最後，法律的建構與運用，總是要求能夠越精確、越具體，而盡量避免空洞、歧異與含混為目標，否則喪失穩定性，各種因理解差異的衝突自然增加。本研究發現：其一，我國大量解僱勞工保護法之內容，其定義規範、法條的嚴謹性實在過於簡陋，協商程序過於簡單，且權利義務不明，致使大量解僱勞工保護法之執行與現況產生落差，導致象徵性意味大於實質效用。其二，本研究發現大量解僱事件中之勞工確實相較於一般解僱事件之勞工，受到更多程序及實體性規範之保障。本文認為實應一體地規範於一般性之個別解僱範圍中，以茲給予更周延之勞工保護。

Research of The Protective Act for Mass Redundancy of Employees

Abstract

Because of the transformation of social economy status and international situation, and unnoticed closed-down and shutdown of businesses come up in everyday life, labors' rights to live and work are endangered harshly. In addition, relevant provisions in labor laws are insufficient to protect such workers. For this reason, the 'Protective Act for Mass Redundancy of Employees' was promulgated.

This dissertation focuses mainly on the debates of the 'Protective Act for Mass Redundancy of Employees'. Among the controversies, we especially concentrate on the definition of 'Mass Redundancy', layoff project report and notice obligation, processes and means of negotiation between labor and capital, provisions of employment service and preferential right of re-employment, consulting systems, and disciplinary restrictions of exit permission. Besides, we attempt to acquire some useful experiences from comparative studies in related institutions in US, Germany, Japan and Taiwan.

Eventually, it deserves to be mentioned, the conflicts of misunderstanding and instability may result from the inaccuracy and incoherence of the regulations, and the emptiness and divergence of its goals. Accordingly, we found that, for one thing, its regulations, definitions and precision are far too crude. Furthermore, the consulting procedures are simple and obligations are equivocal, and may lead to a gap between imagination and reality. In this way, the Act will be nothing but a slogan. For another thing, indeed, we found the labors that suffer from mass redundancy receive much more attention than those who are laid off in normal cases. We should point out, however, all should the government do is to focus on not only those who suffer from mass redundancy, but also reach workers in normal cases. Only in this way, labors would be well protected and regulations could be completed.