The laws and regulations that relate to the topic of this Study Commission are as follows:

• Labor Standards Act

[Clear Indication of Working Conditions]

Article 15. In concluding a labor contract, the Employer shall clearly indicate the Wages, working hours and other working conditions to the Worker. In this case, matters concerning Wages, working hours and other matters stipulated by Ordinance of the Ministry of Health, Labour and Welfare shall be clearly indicated in the manner prescribed by Ordinance of the Ministry of Health, Labour and Welfare.

(The rest is omitted.)

[Advance Notice of Dismissal]

Article 20. In the event that an Employer wishes to dismiss a Worker, the Employer shall provide at least 30 days’ advance notice. An Employer who does not give 30 days’ advance notice shall pay the Worker the Average Wage they would earn in working for a period of not less than 30 days; provided, however, that this shall not apply in the event that the continuance of said Business has become impossible due to natural disaster or other unavoidable reasons, nor when the Worker is dismissed for reasons attributable to the Worker.

(The rest is omitted.)

[Certificate n the Occasion of Retirement]
Article 22. When a Worker on the occasion of retirement requests a certificate stating the period of employment, kind of occupation, position in the Business, Wages, or the reason for retirement (if the reason for retirement is dismissal, including this reason), the Employer shall deliver one without delay.

(2) Employers shall, when a Worker has in the period between being given the advance notice in Article 20, paragraph (1) and the day of retirement, requested a certificate in relation to the reason for said dismissal, issue the certificate without delay; provided, however, that when the Worker retires after the day of receiving advance notice for reasons other than those given for said dismissal, it is not necessary, after said day of retirement, for the Employer to issue said certificate.

(The rest is omitted.)

[Responsibility for Drawing up and Submitting]

Article 89. Employers who continuously employ 10 or more Workers shall draw up rules of employment covering the following items and shall submit those rules of employment to the relevant government agency. In the event that the Employer alters the following items, the same shall apply:

(Item (i) and (ii) are omitted.)

(iii) Matters pertaining to retirement (including grounds for dismissal);

(The rest is omitted.)

*Ordinance for Enforcement of the Labor Standards Act*

Article 5. The working conditions which the employer shall clearly indicate to the worker pursuant to the provision of the first sentence of paragraph (1) of Article 15 of the Act shall be as follows: provided (the rest omitted.).

(Item (i) through (iii) are omitted.)

(iv) Matters concerning retirement (including grounds for dismissal)

(The rest is omitted.)
Labor Contract Act

Article 16. A dismissal shall, if it lacks objectively reasonable grounds and is not considered to be appropriate in general societal terms, be treated as an abuse of right and be invalid.

[2] Is there an obligation for the employer to give reasons for the dismissal?

It is stipulated that an employer shall deliver a certificate stating the reason for dismissal when requested by a worker (Article 22, Paragraphs 1 and 2 of the Labor Standards Act).

[3] If so, is there an obligation on the employer to specify the reasons for dismissal, so that the employee knows exactly why he lost his employment, or is it sufficient, for the employer, to give a general motive pattern like «incompetence»?

We find no provisions that expressly stipulate matters regarding this point in the law. However, the Director of the Labor Standards Bureau of the Ministry of Health, Labor and Welfare, who is responsible for enforcing the Labor Standards Act, issued a circular notice (tsutatsu) which states that the reason for dismissal needs to be specifically stated and that if a worker is dismissed due to an alleged fact that comes under a certain provision of the rules of employment, an employer has to specify the contents of such provision of the rules of employment and the pertinent facts in the certificate. According to this notification, the employer is obliged to specifically indicate the reason for dismissing a worker.

[4] If the employer doesn’t give the real reasons for the dismissal to the employee, can he still invoke them in court?

We find no provisions that expressly stipulate matters regarding this point
in the law, and there are conflicting views regarding whether or not a reason for dismissal that is not stated in the aforementioned certificate may be asserted in a lawsuit.

In the case of a disciplinary dismissal, however, a Supreme Court precedent states that an infringing act cannot serve as grounds for validity of a disciplinary action if the employer was not aware of that act at the time of dismissal unless there were special circumstances.

[5] What is the nature of judicial review on the ground of a dismissal:

➢ Is it a marginal control, ie that the court can not substitute its opinion for that of the employer regarding the advisability of dismissal or is it an unlimited jurisdiction, which means that the judge may substitute its assessment for that of the employer and give the decision that should have been made?

When the validity of the dismissal is argued in the lawsuit, the employer shall plead that the relevant dismissal has objectively reasonable grounds and is considered to be appropriate in general societal terms (see Article 16 of the Labor Contract Act), and the court shall accordingly judge upon the validity of said plea. Thus, it is believed that this will constitute a case for the view that the court can not substitute its opinion for that of the employer regarding the advisability of dismissal as mentioned in the question.

[6] What are the consequences on the employer for not giving reasons or for giving inadequate reasons:

➢ The nullity of the dismissal?
➢ An obligation to continue the contractual relationship (reinstatement)?
➢ Sanctions?
➢ Civil sanctions provided by the law?
➢ Financial sanctions (damages) for a wrongful dismissal?
A sanction under criminal law is possible. In other words, if an employer who rejects or delays delivery of a certificate requested by the worker without a good reason, the employer may be punished by a fine of not more than 300,000 yen (Article 120, Item 1 and Article 22, Paragraph 1 of the Labor Standards Act).