

Act on the Welfare of Workers Who Take Care of Children or Other Family Members Including Child Care and Family Care Leave

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Introduction

The Act on the Welfare of Workers for Child Care Leave (Act No. 76 of 1991, hereinafter “the Act on Child Care Leave”), established in Japan on May 8, 1991, allows workers to take child care leave regardless of sex. Since the act was put into effect on April 1 the following year, any worker with a child, regardless of sex, is permitted to take child care leave by requesting it from his or her employer. In the last 15 years since the act was put into effect, drastic changes have taken place in the social environment as well as in public awareness. It is not necessarily inaccurate to claim that these changes have been promoted by legislation giving both male and female workers the right to take child care leave.

In the last 15 years, substantial revisions have been made to the Act on Child Care Leave with the incorporation of a provision on family care leave as well as a series of important revisions to facilitate a worker’s use of the system. The main reasons for such changes include the persistently declining birthrate, which is one of the decisive factors in legislation, and the aging population problem that has not been alleviated. It can be said that the Child Care Leave System has been revised since we are entering a period with fewer children and a perpetually aging population.¹

Based on the Act on Child Care Leave, later revised to the Act on the Welfare of Workers Who Take Care of Children or Other Family Members Including Child Care and Family Care Leave (hereinafter called “the Act on Child and Family Care Leave”), this paper introduces an outline of the Child Care Leave and Family Care Leave Systems, which establish rights for workers who have children or family members requiring care.

¹ Since the total fertility rate (the number of children given birth to women between the ages of 15 and 49) was recorded at 1.57 in 1989, the lowest figure after the war, it has continued to fall, reaching 1.29 in 2003 and 2004, and further decreasing to 1.25 in 2005. The rate is expected to slightly rise in Fiscal Year 2006.

1. Child Care Leave System

(1) Income Security during the Period of Child Care and Other Leaves

Since its establishment in 1991, the Child Care Leave System has provided both male and female workers with income security for the period up to the day before their child's first birthday. Subsequent to April 1, 2005, however, income security could be extended for up to eighteen months, provided there are circumstances preventing the child from being sent to a child care facility after his or her first birthday.²

The period of leave permitted varies depending on whether or not the child is biological and if it is the father or mother applying. The allotted time is decided based on the Labor Standards Act, which provides working mothers with prenatal (six weeks in principle) and postnatal leave (eight weeks in principle or six weeks when granted permission by a medical professional).³ If a working mother were to take postnatal leave and a child care leave consecutively, the child care leave would continue for a period of ten months (16 months when an extension is granted) under the Child Care Leave System.

On the other hand, a father is entitled to take leave for up to a year (eighteen months when an extension is granted), assuming he takes the entire period available to him prior to the child's first birthday and provided that the child's mother, his wife, is employed. If she is a fulltime housewife, it is assumed that she is "unable to bring up the child in the normal way" for "eight weeks after the birth," the same period allowed for postnatal leave.⁴ The father is thus entitled to take child care leave for that period. It is of course up to the father to choose whether or not to take child care leave, but the act indicates that the wife is deemed in such a health condition that she is unable to devote herself to child care for the period of eight weeks following the birth. For any additional periods, should the wife be able to devote herself to child care in the home, the employer is entitled to exclude the worker (the father in this case) as an exception to those entitled to take child care leave, provided the employer makes a

² This is designed for those who wish to send their children to a child care facility but are unable to do so and for a spouse raising a child who planned to raise the child after the age of one year, but has difficulty doing so on account of death, injury, or illness, etc.

³ See the Labor Standards Act, Article 65.

⁴ See the Act on Child and Family Care Leave, Article 6, Paragraph 1, Item 2, and Ordinance for Enforcement of the Act on Child and Family Care Leave, Article 6, Item 3.

labor-management agreement outlining this condition.⁵ The exclusion made under the labor-management agreement is discussed in the next section.

In reality, it is extremely rare for only the father to take the full available period of leave. This is not only due to the fact that male workers, as regular fulltime employees in a Japanese company, would face various difficulties if they were out of work for nearly a year, but it is also because the Act on Child and Family Care Leave exempts employers from the obligation to pay wages during the period of child care leave, reducing wage security to the low level of 30% of wages received prior to the period of leave, the amount of which is provided by employment insurance (Basic Benefits for Child Care Leave) during the period of leave, with 10% being provided after returning to work (Benefits for Workers Returning from Child Care Leave).⁶ The amount of these benefits increased after enactment of the act and a decision has been made to increase the amount of Benefits for Workers Returning from Child Care Leave, which is provided after returning to work, from the current 10% to 20% starting in October 2007. While employers can discretely provide wages during the period of leave, few companies are inclined to provide such wage security given that the act does not require them to pay wages during the period of leave coupled with the fact that employers often need to hire replacements for the period of leave. When the act was initially put into effect in 1992, however, there were cases where employers paid for the portion of social insurance fees to be borne by the worker during the period of leave, exempting the worker from the burden. This indicates that some employers accepted the burden of paying partial wages for workers on leave. The act underwent several revisions and ever since April 1, 2005, fully exempts both the employer and insured (the worker) from the burden of social insurance fees when child care leave is initiated. The period of exemption has also been extended from a child up to one year old to three years old.

(2) Employers, Workers and Children Falling under the Act

Under the Act on Child Care Leave put into effect on April 1, 1992, companies with 30 fulltime regular employees or less were given a preparatory

⁵ See Ordinance for Enforcement of the Act on Child and Family Care Leave, Article 6, Paragraph 1.

⁶ The period of payment was extended to eighteen months in 2005.

grace period of three years to establish their programs for child care leave and shorter working hours. After April 1, 1995, employers of all companies became obligated to accept all applications made by those who are eligible. Since that time, the range of eligible workers has drastically increased.

In reality, however, the act excluded “day laborers” and “contract workers,”⁷ and many companies also excluded “workers not yet employed continuously for a period of one year,” “workers whose spouse, the parent of the child, is able to care for the child in a normal way”⁸ and “others who are specified in other ordinances of the Labour Ministry (currently the Ministry of Health, Labour and Welfare)”⁹, provided that a labor-management agreement for such conditions was made between the employer and the trade union or representatives representing the majority of workers.

On April 1, 2005, however, certain contract employees also became eligible for child care leave as a result of revisions made to reflect the reality that many of those who were contract employees actually worked for the same employer for a number of years with renewed contracts. To be eligible, applicable contract employees must satisfy two conditions at the time of application for leave: “be continuously employed by the same employer for a period longer than one year” and “expect to be employed subsequent to the child’s first birthday (excluding those who complete the term of work contract and show no evidence of renewal of said contract between the child’s first and second birthday).” “No renewal of contract” does not denote a dismissal and can occur with relative ease due to the lack of legal restrictions on it compared to a dismissal. Consequently, only a limited number of individuals will be able to confirm at the time of application for leave that they will have a renewed contract after

⁷ See the Act on Child Care Leave, Article 2, Paragraph 1, and the current Act on Child and Family Care Leave, Article 2, Paragraph 1, Item 1.

⁸ For example, a spouse who is a full time homemaker.

⁹ The provision stipulates a case in which a child can be fully taken care of by “the worker who is scheduled to terminate the employment contract within one year from the day of application for the child care leave,” “the worker who works only a few days a week, working less than the number of working days defined by the Ministry of Health, Labour and Welfare (two day or less)” or “the person who is a parent of the child in question but who is neither the applicant worker nor its spouse” (for example, the child is adopted by grandparents and one of the grandparents is fit to raise the child, not being under employment and living in the same house). See Ordinance for Enforcement of the Act on Child Care Leave, Article 7, and Public Notice No. 114 of the Ministry of Labour in 1995.

the leave. This revision, therefore, is only considered an expansion of the Child Care Program for those workers who repeatedly renew contracts over a period of several years under a limited term of contract, and future trends must be watched in order to gauge whether or not the number of applicants actually increases.

Adopted children are also included in the program and adoptive parents are eligible for leave in the same manner. A legal parent-child relationship is required and the child must be either biological or adopted. Stepchildren and foster children are not applicable for child care leave and no revision has been made in this regard since the act was originally put into effect. Child adoption is not yet common in Japan and children from a second marriage are not always under a year old, making revisions necessary in this area.

(3) Obstacles to Taking Child Care Leave

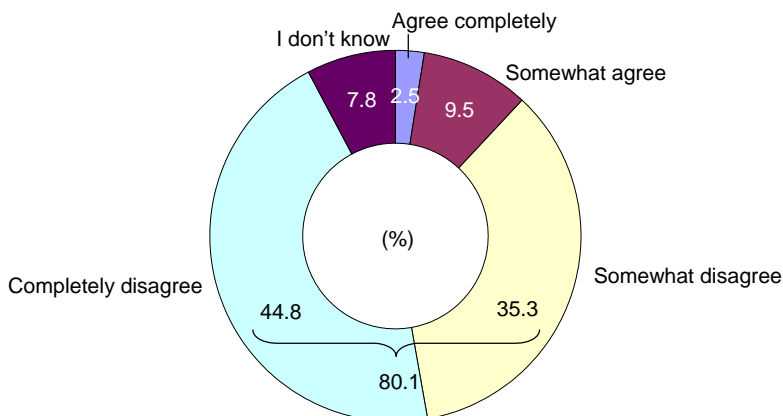
Today, even in Japan more men are interested in being involved in raising their children, but it is not exactly simple for them to actually take child care leave. Figure 1 shows that men are facing stumbling blocks when trying to take child care leave both in the workplace and in society.

It is well-known that many workers are hired in small and medium businesses in Japan. It was small and medium businesses that suffered the greatest damage during the period of long recession after the collapse of the bubble economy in the 1990s.

Even in those circumstances, employers were not allowed to turn down workers' applications for child care leave. Today, there is also a provision that prohibits disadvantageous treatment. Article 10 of the Act on Child and Family Care Leave stipulates, "An employer shall not dismiss or otherwise treat a worker disadvantageously by reason of said worker's making Child Care Leave Application or taking Child Care Leave."

The phrase, "otherwise treat a worker disadvantageously" includes extortive treatment regarding resignation or change of employment contract such as a change of status from fulltime regular to part time employee, involuntary furlough, demotion, wage reductions, unfavorable evaluation for bonus, unfavorable transfer orders, impaired work environment, etc. Examples are provided in the Guidance of Child and Family Care, Part 2-3 (2).

Figure 1. Do you believe that society and your company provide enough support for men to take child care leave?



Source: *White Paper on the National Lifestyle 2003*.

Notes: 1. Based on *Public Opinion Poll on a Gender-equal Society 2000* (The Cabinet Office).

2. The percentage breakdown of replies to the question on men's child care leave, "Do you believe that society and your company provide enough support for men to take child care leave?"

3. 3,404 responses, men and women aged 20 or older nationwide.

While it is easier for large businesses to find replacement workers, small and medium businesses face difficulties when their workers take child care leave. For this reason various subsidies have been established by administrative organizations.

For example, to promote the utilization of child care leave and the Program for Shortening Working Hours in small and medium businesses, the Child Care Subsidy for Small and Medium Businesses is provided by the Prefectural Labor Bureau to employers of small and medium business (with 100 fulltime regular employees or less) upon encountering their first case of a worker taking child care leave or using the Program for Shortening Working Hours.

The Japan Institute of Workers' Evolution¹⁰ has launched a project for a Child and Family Care and Secure Employment Subsidy (subsidy to improve

¹⁰ A judicial foundation, which was established when the Act on Equal Employment Opportunity for Men and Women was put into effect in 1986. Its main purpose is to develop skills and promote the welfare of female workers.

support for both work and housekeeping). This subsidy is subdivided into different courses depending on the type of support provided to the worker by the employer. For example, the employer is given a subsidy under the “Course of Securing Alternative Workforce” when he or she has established labor-management agreements or employment regulations for placing a worker who takes child care leave in the original or equivalent job subsequent to the leave by securing replacement workers for those on child care leave, and when the employer has reinstated the worker in his or her position following the child care leave.

(4) Making the Child Care Leave System More Flexible – the Program for Shortening Working Hours

The Child Care Leave System is not limited to the full-day leave program. The Act on Child and Family Care Leave obliges employers to establish one of the following measures for workers who do not take advantage of the Child Care Leave System (the Act on Child and Family Care Leave, Article 23, Paragraph 1 and Ordinance for Enforcement of the Act on Child and Family Care Leave, Article 34, Paragraph 1): (i) the Program for Shortening Working Hours, (ii) a flextime program, (iii) a program to change start/finish times without altering total daily working hours, (iv) an overtime exemption program, or (v) the provision and management of a child care facility or similar for children under the age of three. The employer is obliged to establish at least one of the above measures for workers with a child under one year of age¹¹ and who does not take advantage of the Child Care Leave System. For those workers raising children between the ages of one and three, the act also stipulates the provision of measures including the Program for Shortening Working Hours or others similar to those provided by the Child Care Leave System (in the later part of Article 23, Paragraph 1). In other words, the employer is free to establish provisions in the employment regulations to make the Child Care Leave System available for workers raising children between the ages of one and three, and said employer should, as a minimum, provide “measures including a program for shortening working hours,” one of the provisions listed above. In other words, he or she must provide the Program for

¹¹ Up to eighteen months old when an extension is granted under the Act on Child and Family Care Leave, Article 5, Paragraph 3.

Shortening Working Hours, an overtime exemption program, flextime program, program to change start/finish times without altering total daily working hours, or a child care facility.

The employer is obliged to make efforts to establish provisions for workers raising a child over the abovementioned age. For workers raising a child of three years old and up, the employer is required to endeavor to provide at least one of the five measures listed above (the Act on Child and Family Care Leave, Article 24, Paragraph 1) until the child is of elementary school age.

Depending on the measures provided by the employer, the worker assuming child care responsibilities has various options to continue working in addition to taking continuous and complete leave by sending the child to a child care facility within the workplace, adjusting start and finish times for work in arrangement with a child care facility or babysitter, or using the Program for Shortening Working Hours. Also, use of a flextime program allows workers to schedule full working days, abbreviated days and days off.

It is a fact that workers bearing the responsibility of child care desperately require numerous options from which they can select according to lifestyle and needs. Also in Japan, many workers wish to continue working even for short hours instead of completely leaving work, as they do not want their skills or professional instincts to diminish or to fall behind on business information. If a child care facility were available in the workplace, it would be extremely convenient for those who desire to return to work, but are unable to, as they cannot find someone to watch their child or a facility where the child can be left. They will also feel a sense of security while they are working if their child is nearby. Substantial benefits are being afforded to workers with the introduction of the provision to oblige employers (to endeavor) to establish different options in addition to the leave program under the Act on Child and Family Care Leave.

There is, however, room for improvement. For the worker with a child of three and older, but prior to elementary school age, the employer is only obliged to make efforts to provide measures. The belief is that shorter working hours become a real requirement for a parent when the child begins attending elementary school. Unlike child care facilities, school children come home at an earlier time. An after-school child care program may be available, but if it is not located within the child's school, it may be unsafe for the child to travel alone to the facility. In light of this circumstance, it would be beneficial to

extend the provision for the Program for Shortening Working Hours in a way that would offer support for workers with a child in elementary school. This is one of the points that must be examined for future revision of the Act on Child and Family Care Leave to improve its usability.

(5) Restrictions on Overtime Work and the Exemption of Late-night Work

In addition to the provisions given to the employer as obligations or requirements to exert effort as described above, there is one additional provision reducing the maximum amount of overtime to a lower level than that of regular workers to ensure that those raising a child are not overwhelmed by the time they must spend at work. The employer is required to satisfy this provision at the request of the worker.

Under Article 17 of the Act on Child and Family Care Leave, at the request of the worker the employer is not allowed to order overtime exceeding 24 hours per month or 150 hours per year to workers caring for a child not yet enrolled in elementary school, provided that the worker meets certain requirements. Since regular workers are allowed to work overtime for a maximum of 360 hours a year, this provision halves the maximum overtime for workers needing time to take care of a child not yet of elementary school age.

The specific requirements refer to a worker being continuously employed under the same employer for more than one year, a spouse who is the child's parent, but not fully engaged in child care,¹² and no rational reason for refusing such a request.¹³

¹² A worker is deemed ineligible to apply for a limitation of overtime under Article 17 of the Act on Child and Family Care Leave if the spouse meets all of the following conditions:

- (1) He or she does not work and is engaged in child care, or works for two days or less per week and "is not in employment" (Ordinance for Enforcement of the Act on Child and Family Care Leave, Article 31-2, Item 1).
- (2) He or she is not injured or sick nor has any physical or mental disabilities (Ordinance for Enforcement, Article 31-2, Item 2).
- (3) It is not in the period of six weeks before (14 weeks before in the case of multiple gestation) or eight weeks after childbirth (Ordinance for Enforcement, Article 31-2, Item 3).
- (4) He or she is a spouse living in the same house as the child (Ordinance for Enforcement, Article 31-2, Item 4).

¹³ The worker applying for a limitation on overtime

- (1) works for two days or less per week, or
- (2) is a parent of the child but the worker or anyone other than the spouse of the

There are other provisions that can be employed by workers with a child including the exemption of late-night work (10 pm to 5 am). Under Article 19 of the Act on Child and Family Care Leave, at the request of the worker the employer is not permitted to require late-night work of workers caring for a child not yet of elementary school age. Certain eligibility requirements exist for this provision. As with the exemption of overtime work, the worker must be employed under the same employer for more than one year. Workers are not eligible, however, to apply for an exemption of late-night work from their employer under this provision if there is another member of the family who is able to take care of the child and who lives in the same house during the time of night that falls under late-night work.¹⁴ Also, workers are not eligible to apply for an exemption of late-night work if they are scheduled to work for two days or less per week and the given work consists entirely of late-night work (the Act on Child and Family Care Leave, Article 19, Paragraph 1, Item 3, and Ordinance for Enforcement of the Act on Child and Family Care Leave, Article 31-12).

When applying for the exemption, workers must specify the start and finish dates for the period during which they request an exemption of late-night work, and the period must fall between one and six months. The worker must specify

worker meets all the criteria listed in Note 12. In this case, the worker is deemed to have “a reasonable reason for the request not being granted” (the Act on Child and Family Care Leave, Article 17, Paragraph 1, Item 3) (Ordinance for Enforcement of the Act on Child and Family Care Leave, Article 31-3). This applies, for example, when a child who is adopted by a parent of the biological parent (grandfather or grandmother) and when the grandfather or grandmother meets all the criteria listed in Note 12.

¹⁴ “A worker who has a person specified by Ordinance of the Ministry of Health, Labour and Welfare, such as a Family Member who is living in the same household with said child and can normally take care of said child during Late-Night pertaining to said request” (the Act on Child and Family Care Leave, Article 19, Paragraph 1, Item 2) He or she must be a family member living in the same house aged 16 years or older (defined in reference to the age for completing a compulsory education) and should meet all the following criteria (Ordinance for Enforcement of the Act on Child and Family Care Leave, Article 31-11):

- (1) He or she does not work at night (10 pm to 5 am) (including those who work three late-nights or less a month).
- (2) He or she does not have any difficulty raising the child such as an injury, sickness, etc.
- (3) It is not in the period of six weeks before (14 weeks before in the case of multiple gestation) or eight weeks after childbirth.

the start and finish dates and apply for the exemption one month prior to the start date of the exemption period (the Act on Child and Family Care Leave, Article 19, Paragraph 2). No restriction is given for the number of applications for exemption, and therefore, it is possible to apply for a period of six months every six months until the child is enrolled in elementary school.

In principle, the employer is required to accept the application of any worker meeting the aforementioned conditions, however, employers can refuse the application on the grounds that it “would impede normal business operations” (the Act on Child and Family Care Leave, Article 19, Paragraph 1).

The two abovementioned measures, applying for a limitation on overtime work or for an exemption from late-night work, were established in relation to the 1998 revision of the Act on Equal Employment Opportunity for Men and Women in order to close the gap between men and women with regards to their treatment at work and alongside a revision of the Labor Standards Act, which removed all provisions concerning the protection of women excluding the section on pregnancy and childbirth. When these revisions were made, they eliminated the provision establishing a lower maximum number of overtime hours for women as compared to men and the provision that banned late-night work for women. Debate continued until the very end, however, as to whether or not these provisions should be made available to workers raising a small child or caring for a family member. Today, the system has been changed to provide a limitation on overtime and an exemption of late-night work regardless of sex.

It appears that an exemption of late-night work has a positive effect on workers raising small children. Avoiding late-night work is a very important factor for workers with no other family member available to take care of their children.¹⁵ On the other hand, the nature of limiting overtime work is somewhat different. One of the options for the Program for Shortening Working Hours, which the employer is obligated to establish, is the exemption of overtime work. For workers raising a child, this option is often better than a program establishing a lower maximum number of overtime hours, provided this is the option selected and established by the employer. Since the employer is obliged only to endeavor to establish this option for workers with a child of three years

¹⁵ The question still remains for workers with no family members to take care of their elementary school age children during late-night hours.

and older, but prior to elementary school age, similar results may be achieved by limiting overtime under Article 17 of the Act on Child and Family Care Leave, which covers a long period of time leading up to a child's enrollment in elementary school. What is most important for workers raising a child is to return home at a fixed time each day and to maintain and continue a fixed schedule for their daily lives. Despite the care option a worker selects for his or her child, be it sending and picking a child up from a child care facility or hiring a babysitter, it is important to finish work at a fixed time in order carry out daily life with efficiency. Thus, workers will probably select to ensure no overtime, despite it being limited to 150 hours a year, instead of opting for work conditions where workers can be required to put in overtime at any time. Consequently, the provision of Article 17 for Limitations on Overtime Work is still being questioned in terms of satisfying workers' needs.

(6) Nursing Leave Program

Under the Act on Child and Family Care Leave put into effect in 2004, an employer is obligated to provide workers with children under elementary school age with nursing leave for five working days per fiscal year when the child requires nursing care in the event of injury or sickness (Article 16-2). Typically, the parent would use annual paid holidays to take leave to handle such situations, but small children frequently become ill and many child care facilities ask parents to pick up sick children because they are unable to take responsibility for watching them and because they may infect other children. Children are affected by many different diseases in the process of acquiring various types of immunity at the age when they begin attending child care facilities and preschools. During this period, a number of mothers give up in their attempt to continue working.

To support such parents, the Nursing Leave Program is exceedingly important. After consuming all annual paid leave for the fiscal year, workers are given an additional five days off under this program. In some situations, this program could provide a great assistance.

An employer is not allowed to refuse an application for nursing leave made workers meeting the requirements (Article 16-3).

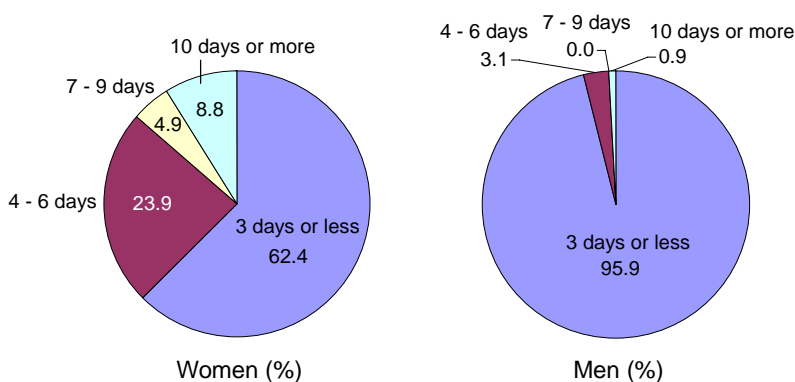
Although the Nursing Leave Program is defined in the provision as described above, it is still a young provision and it is difficult to grasp what types of programs are actually being established by businesses and to what extent the

program is being utilized. In this paper, the situation of the Nursing Leave Program is estimated using statistical information.

The charts listed below show data from the 2005 Basic Survey on Women's Employment by the Ministry of Health, Labour and Welfare. Since 2004, when the Nursing Leave Program was defined in the Act on Child and Family Care Leave, there has been a substantial increase in the number of companies that established the Nursing Leave Program (Figure 3). This indicates that more women take nursing leave than men, and that the vast majority of individuals, regardless of sex, take nursing leave for "less than three days." Some individuals take "more than ten days," indicating that certain companies offer a program of more than ten days of nursing leave in a fiscal year (all in Figure 2). In fact, most companies (91.6%) limit the leave to five days as it is defined by the act (Table 2), but some companies (8.6%) provide security for more than six days. Although some 90% of companies (87.2% to be exact) define eligible children as those of the age "before commencement of elementary school" as defined in the Act on Child and Family Care Leave, there are a few companies (9.6%) that accept children "already enrolled in elementary school" (Table 1).

In any case, nursing leave for children necessary beyond any shadow of a doubt and the time has come to examine whether or not the five-working-day provision is sufficient and whether it should be limited to children under elementary school age.

Figure 2. Duration of Child Nursing Leave



Source: The Ministry of Health, Labour and Welfare, *The 2005 Basic Survey on Women's Employment*.

Table 1. Companies with/without the provision and maximum duration (partial excerpt)

(%)

	Total	With the provision	(With the provision)					Without the provision	Unknown
			Before elementary school	First half of elementary school (up to 3rd grade or 9 years old)	4th grade to the end of elementary school (or up to 12 years old)	Including after elementary school	Other		
[Total]	100.0 《100.0》	33.8 《26.5》 (100.0)	(87.2)	(1.4)	(1.7)	(9.6)	(0.0)	(0.1)	66.2 《73.2》 0.0 《0.3》
[Company size]									
500 or more employees	100.0 《100.0》	91.3 《59.7》 (100.0)	(87.3)	(1.3)	(2.8)	(8.6)	(—)	(—)	8.7 《40.3》 — 《—》
100 to 499 employees	100.0 《100.0》	70.4 《39.8》 (100.0)	(91.4)	(0.9)	(1.2)	(6.3)	(0.0)	(0.1)	29.6 《60.1》 — 《0.0》
30 to 99 employees	100.0 《100.0》	47.9 《32.9》 (100.0)	(89.6)	(0.4)	(1.6)	(7.9)	(0.1)	(0.3)	52.1 《67.1》 0.1 《0.0》
5 to 29 employees	100.0 《100.0》	29.8 《25.2》 (100.0)	(86.2)	(1.7)	(1.7)	(10.3)	(0.0)	(—)	70.2 《74.5》 — 《0.3》
30 or more employees (overlapped)	100.0 《100.0》	52.7 《34.4》 (100.0)	(47.5)	(0.3)	(0.8)	(4.0)	(0.0)	(0.1)	47.2 《65.6》 0.0 《0.0》

Number of companies = 100.0%

Source: The Ministry of Health, Labour and Welfare, *The 2005 Basic Survey on Women's Employment*.

Note: 1. The number in 《 》 indicates data from the 2004 survey.

2. In the 2004 survey, there was no question regarding the presence or absence of the provision, but there were questions addressing the presence or absence of the program (including the practice and use of expired annual paid leave, etc.).

Table 2. Companies with a limited number of days for the Child Nursing Leave Program

(%)

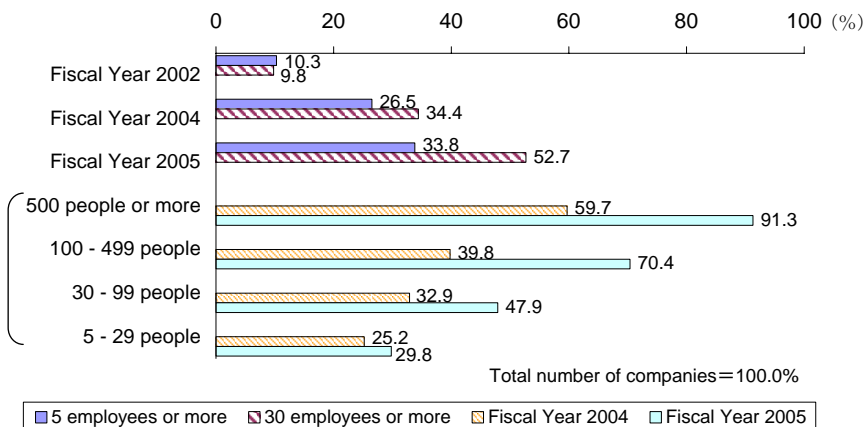
	Gross total	With limitation														
		Total	Per worker							Per child						
			Subtotal	5 days	6 - 9 days	10 days	11 - 20 days	21 days or more	Other	Subtotal	5 days	6 - 9 days	10 days	11 - 20 days	21 days or more	Others
[Gross total]	100.0	90.4 (100.0)	(65.2) (100.0)	(91.6)	(2.5)	(1.6)	(2.2)	(2.0)	(0.0)	(30.3) (100.0)	(90.3)	(0.1)	(1.1)	(2.4)	(6.1)	(—)
[Company size]																
30 or more employees	100.0	93.1 (100.0)	(62.7) (100.0)	(95.5)	(1.9)	(0.9)	(1.0)	(0.6)	(0.1)	(31.6) (100.0)	(91.3)	(0.3)	(1.4)	(1.3)	(5.6)	(—)

	Gross total	With limitation									No limitation	Not known
		Total	Other									
			Subtotal	5 days	6 - 9 days	10 days	11 - 20 days	21 days or more	Other			
[Gross total]	100.0	90.4 (100.0)	(4.5) (100.0)	(81.1)	(2.2)	(3.1)	(8.5)	(5.0)	(0.1)	9.5	0.0	
[Company size]												
30 or more employees	100.0	93.1 (100.0)	(5.7) (100.0)	(69.9)	(6.2)	(8.9)	(4.0)	(10.9)	(0.2)	6.8	0.1	

Companies with the Child Nursing Leave Program = 100%

Source: The Ministry of Health, Labour and Welfare, *The 2005 Basic Survey on Women's Employment*.

Figure 3. Companies with the Child Nursing Leave Program



Source: The Ministry of Health, Labour and Welfare, *The 2005 Basic Survey on Women's Employment*.

Note: The figures for FY 2002 and 2004 indicate the percentage of companies "with the program."

2. Family Care Leave Programs

The Family Care Leave Program was not included in the Act on the Welfare of Workers for Child Care Leave when it was established in 1991. When the Act on the Welfare of Workers for Child Care Leave was drastically revised on June 5, 1995, the Family Care Leave Program was included in the act. It was provisionally called the Act on the Welfare of Workers Who Take Care of Children or Other Family Members Including Child Care Leave between October 1, 1995, when it was partially put into effect, until March 31, 1999, when it was renamed to the current Act on the Welfare of Workers Who Take Care of Children or Other Family Members Including Child Care and Family Care Leave (hereinafter "the Act on Child and Family Care Leave") and all provisions were put into effect.

The Japanese society is rapidly becoming a super aging society. This situational change has made putting into effect the Act on Long-term Care Insurance (April 2000) for taking care of the elderly a necessity. It can be argued that the Long-term Care Insurance system is an institutionalized insurance system for care giving that clearly defines the right of every individual who requires care to receive public care. On the other hand, there

are a number of workers who personally wish to care for an elderly individual in need such as a parent or spouse's parent, or who wish to tend to the elderly individual toward the end of his or her life. The Family Care Leave System was established to meet this need.

There are differences in nature between child care and family care, though the corresponding leave systems have been incorporated through legislation into a single act. Child care is generally associated with the expectation of a child's growth and a reduction in burden borne by the caregiver (typically a parent), while family care is required for those tending to persons approaching the end of their lives, and has a wide variety of burdens associated therein. For both employers and workers, however, it is a long-term leave of the same nature from the perspective that it is for the purpose of providing care for one's family. Under the Act on Child and Family Care Leave, the Family Care Leave System was established with consideration to matters distinctive of the Child Care Leave System.

(1) Outline of the Family Care Leave System

Workers who are continuously employed by the same employer for over one year are eligible to apply and take advantage of family care leave. The duration is limited to 93 days (three months) for each family member requiring care (the Act on Child and Family Care Leave, Article 11, Paragraph 1, Item 2 and Article 11, Paragraph 2). At the time of the act's establishment, it was not possible to divide this period, but that has since been amended.

The period of family care leave is three months or shorter due to a debate that occurred at the time of its establishment. The care of an elderly family member was traditionally the responsibility of a specific family member, such as the wife of the first-born son or the first-born daughter, putting a heavy burden on these particular individuals. There has been debate as to whether it is irrational to give long-term leave to the family member responsible for providing care, since a long-term absence from work could potentially thwart the individual's return.

It is not hard to visualize how different family care is from child care, which consists of holding and washing a baby and changing diapers. An elderly requiring care is a heavy adult, and it is hard work simply moving the person for the purpose of bathing or using the restroom. Despite the fact that it is family, it is only natural that there be a limit to the amount of time one

person can bear the burden.

The Act on Long-term Care Insurance (put into effect in 2000) clearly stipulates the participation of external care professionals for elderly care, which was traditionally the responsibility of a family member. The practice of using external care professionals has become popular and widely recognized, and the concept that care should be the responsibility of the family is gradually changing. Consequently, no change has been made for the period of family care leave since the Act on Child and Family Care Leave was put into effect.

Family care leave can be provided to a spouse, father, mother, child, father and mother of the spouse, as well as other dependent family members who live in the same house including a grandfather, grandmother, brother, sister and grandchild (the Act on Child and Family Care Leave, Article 2, Item 4). The spouse includes a common-law spouse (a person in a relationship with the worker where the marital relationship is *de facto*, though a marriage has not been registered).

When a family member meeting these conditions becomes injured, sick or physically or mentally disabled to the extent where he or she requires fulltime care for a period greater than two weeks (the Act on Child and Family Care Leave, Article 2, Item 3, and Ordinance for Enforcement of the Act on Child and Family Care Leave, Article 1), it is deemed that the person is in need of care and the worker in question is eligible to take family care leave.

In terms of the eligibility requirements for workers to apply for family care leave, a worker is generally eligible without restriction when he or she is hired without a specific term of contract (i.e. a regular fulltime employee). After the 2004 revision, contract workers are also eligible for family care leave in addition to child care leave (the Act on Child and Family Care Leave, Article 11, Paragraph 1, Items 1 and 2). To be specific, the worker must meet the following two conditions: be employed under the same employer for more than one year and expect to remain employed after the 93 day period following the scheduled start date of family care leave. Just as in the case of child care leave, it is not easy for contract employees to meet the condition, “likely to remain employed.”

The employer shall not refuse Family Care Leave Applications filed by workers meeting these conditions (the Act on Child and Family Care Leave, Article 12). Furthermore, the employer shall not dismiss or otherwise treat workers disadvantageously by reason of the application for or utilization of

Family Care Leave (the Act on Child and Family Care Leave, Articles 10 and 16).

(2) Alternative Options to Leave

The Family Care Leave System can be used flexibly as well. The provisions of child care leave are used to limit overtime and apply for an exemption from late-night work (the Act on Child and Family Care Leave, Articles 17, 18, 19 and 20). The maximum overtime is identical to child care leave at 24 hours a month and 150 hours a year.

The employer is required to take one of the following measures for workers who need to care for a family member in need and who are eligible for family care leave: (i) the Program for Shortening Working Hours, (ii) a flextime program, (iii) a program to change start/finish times for work, and (iv) a subsidy or similar program for family care costs.

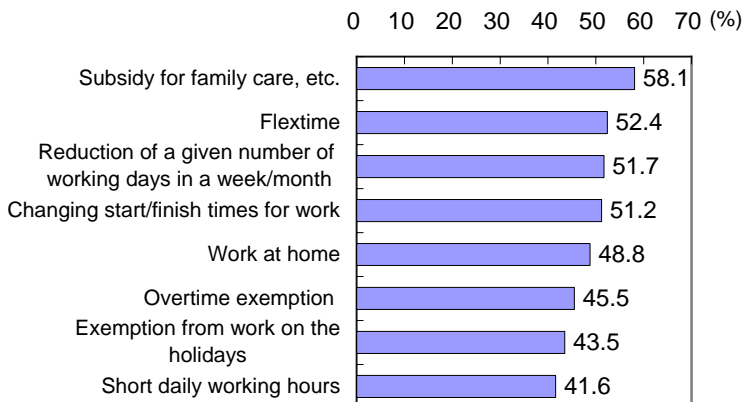
While there is an optional “program to prohibit working beyond given work hours” under the Child Care Leave System, this option is not found in the Family Care Leave System. According to the Ministry of Health, Labour and Welfare, this is because no other provisions are available for workers taking care of an eligible family member even if there is a provision allowing them to eliminate overtime.¹⁶ In reference to child care, while workers can conveniently leave work at a fixed time in collaboration with child care facilities, family care has no such collaborative system.

According to the “Situations of Working Women in 2005” published by the Ministry of Health, Labour and Welfare, the most popular “Family care program provided by a company that is not currently used but that will be used if possible” (individuals with family care experience, multiple answers allowed) is the “subsidy for family care cost” (58.1%) (See Figure 4).

Naturally, many individuals would like to sample other programs, especially those with high percentages. According to the statistics for those with family care experience who took advantage of the system, the “subsidy for family care costs” was used by only a small percentage of individuals (1.0%) (Figure 5).

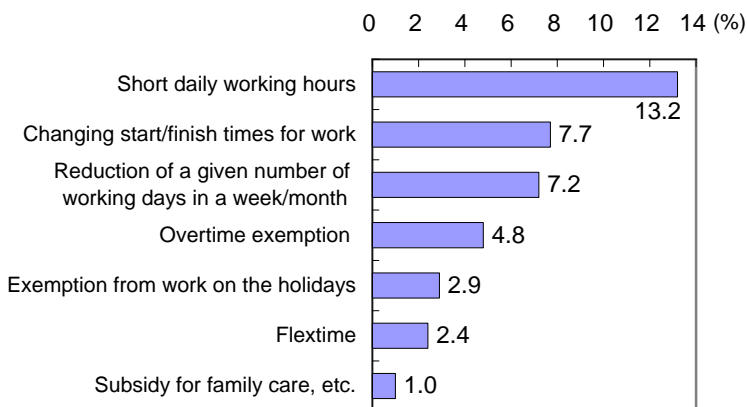
¹⁶ Interpretative Communication, 5 (1) d.

Figure 4. Family care program provided by a company that is not currently used but that will be used if possible (workers with family care experience, multiple answers allowed)



Source: The Japan Institute of Labour, *Survey on Managing both Child/Family Care and Work* (2003).

Figure 5. Company family care programs used by workers (workers with family care experience)



Source: The Japan Institute of Labour, *Survey on Managing both Child/Family Care and Work* (2003).

It is possible that the “subsidy for family care cost” is often excluded from the programs made available by companies. If only a few companies are offering a program in such demand, the issue must be examined when the act

is revised in future.

Looking the situation from a different angle, one can also say that worthy progress is being made toward “socialization of the care system.” In all probability, far more individuals now feel that if the cost were reduced, they would rely on professionals to ease the physical burden of daily care and take care of a family member in need mainly by talking to them for emotional support and providing a meaningful existence. From this perspective, the two above sets of data are of extreme interest.

3. Gender Equality and the Act on Child and Family Care Leave: Prospects

As described above, women have always been the primary family caregiver. Although a similar situation can occur with child care, family care often requires that women take care of their parents as well as their father/mother-in-laws, and the relationship between caregiver and family member in need is not always a good one. As a practical issue, there was thus an undoubtedly strong need for male workers to also be eligible for family care leave to care for their parents.

According to the 2002 Basic Survey on Women’s Employment, published by the Ministry of Health, Labour and Welfare, only 0.05% of all workers took family care leave and of those 66.2% were women and 33.8% were men. Compared to child care leave where 90% were women,¹⁷ a large percentage of men are taking family care leave. Although child care is still a “woman’s job,” visible signs of change are occurring with family care. It may only be a small step, but it is a giant leap forward in achieving a gender equal society.

On the other hand, the Child Care Leave System was clearly established as part of the measures to reverse the declining birthrate following the “1.57 shock”¹⁸ in 1990. Nevertheless, the total fertility rate did not increase until at least 2005. The number of individuals taking child care leave, however, increased due to a rise in the number of female workers who take child care leave. In other words, society now takes it for granted that working mothers have the right to take child care leave, but childcare is still considered a

¹⁷ According to the 2004 Basic Survey on Women’s Employment, 0.56% of men (with spouses giving birth to a child) and 70.6% of women took child care leave.

¹⁸ See note 1.

woman's a job. Although child care leave can be taken until a child is eighteen months old by receiving an extension of the measure, women are lucky if they are able to take advantage of the Program for Shortening Working Hours, and in general they are racing against the clock running between their workplace, a child care facility and home. That is the main role of a working mother. It is doubtful the birthrate will increase under such conditions. It is only natural for working mothers to want a quick end to such hard work (child care) and for the prospect of such hard work to deter them from having children in the first place.

It is difficult to know how or what changes to make to reverse the declining birthrate and to facilitate a society for doing so. In any case, the one-sided burden of child care placed on women must be alleviated as much as possible. To an extent, this is related to the employment format of male workers and the issue of organizing the work environment to include a social security system that allows single mothers and single parents to continue working while raising children.

As part of the Family Policy Act, the Act for Measures to Support the Development of the Next Generation was recently established in 2003, and requires companies with 301 employees or more to establish private sector employer action plans.¹⁹ Under this Act, employers are obliged to clarify their action plans and whether they implement them. Their plans should include actions to improve the number of both men and women taking child care leave.²⁰ While achieving the targeted achievement ratio is improbable, the Act on Child and Family Care Leave is expected to provide more significant effects coupled with the Act for Measures to Support the Development of the Next Generation. It is uncertain, however, whether or not Japan will be able to reverse the declining birthrate and establish a “work-life balance” in the future.

Reference

Cabinet Office. 2003. *Kokumin Seikatsu Hakusho* [White Paper on the national lifestyle 2003].

¹⁹ The Act for Measures to Support the Development of the Next Generation, Article 12.

²⁰ An official certification is given to companies meeting certain criteria after implementing a general action plan by achieving a rate of 70% of women and at least one male worker taking child care leave, etc. The official certification can be used in company advertisements to improve the company image.

The Japan Institute of Labour. 2003. *Ikuji ya Kaigo to Shigoto no Ryoritsu ni kansuru Chosa* [Survey on managing both child/family care and work].

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* English translation of Act on the Welfare of Workers Who Take Care of Children or Other Family Members Including Child Care and Family Care Leave:

<http://www.cas.go.jp/jp/seisaku/hourei/data/wwt.pdf>