

# *Japan* Labor Review

**Volume 7, Number 1, Winter 2010**

## **Special Edition**

## **Current Situation of Japan's Benefit Programs**

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Current Situation and Future Direction of Employee Benefits

*Koji Nishikubo*

Various Issues Concerning Labor Legislation Relating to Welfare Benefits

*Takayasu Yanagiya*

Current Situation and Issues of Healthcare for Employees: Based on Analysis of Recent Trend and Cases

*Yasuo Murasugi*

Current Situation and Issues of Retirement Benefit (Corporate Pension) in Japan

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Occurrence Mechanism and Resolution Process of Labor Disputes: Cases of Community Unions (Kyushu Area)

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Youth Career Development Support at School and Career Development: For Cooperation between Career Education and Labor Administration

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Company Size and Childcare Leave: The Problems of Support for Women's Job Continuity

*Shingou Ikeda*

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NEXT ISSUE (Spring 2010)

The spring 2010 issue of the Review will be a special edition devoted to **Current Situation of and Support for Employment of Persons with Disabilities**

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## Introduction

### **Current Situation of Japan's Benefit Programs**

Each developed country has services in which companies provide to the employees called “fringe benefits (benefit programs)” and subjects and contents of benefit programs differ depending on the country. This issue introduces papers which discuss characteristics of Japanese benefit programs for the purpose of developing an understanding of these programs.

#### **Changes in Benefit Programs and their Future Roles (Nishikubo)**

Nishikubo firstly summarized the actual situation of and changes in benefit programs and pointed out the following two points: (i) companies' allocation to benefit programs has been shrinking and (ii) the decreasing trend of expenses related to “housing” which accounted for over half of the non-legal welfare expense for a long time is confirmed and allocations to “medical care/health,” “support for childcare,” etc. are increasing instead. Next, he analyzed the introduction of each benefit program and actual situation of employees' use of benefit programs and the following points were revealed: (i) facility services, one of characteristics of Japanese benefit programs, such as company housing, bachelor apartments and recreation facilities have been shrinking, (ii) measures to directly invest in human resources including health-related measures and support for self-development have attracted attention, (iii) cost reduction by integrated outsourcing services is promoted simultaneously with so called, the “cafeteria plan.” After summarizing above points, he pointed out the following two points as issues of the welfare system: (i) measures for non-regular employees whose quantity and share are increasing in companies are insufficient and (ii) the system is unable to respond to the diversified supply-side of labor market such as female employees who are expected to be core workforce and aged employees accompanied with employment extension. It can be said that the welfare system is required to rebuild reflecting changes in personnel constitution of Japanese companies.

#### **Issue of the Labor Law on Benefit Programs (Yanagiya)**

Yanagiya discussed the benefit programs from the perspective of the labor law. After summarizing that there is a strong point of view that benefit programs are not undertaken by employers as obligation (obligatory duty) under the contract of employment like wages but are originally provided by employers at will as rewards, he examined the following three typical benefit program cases which were fought over in court: (i) disposition of company housing/dormitory accompanied with termination of contract of employment, (ii) employee group life insurance and (iii) grants for training and overseas education. As for company housing/dormitory, the issue was whether or not the Lease Hold Act is applied to the case. In the recent court cases, company housing/dormitory regulations dictating a disposition period which is shorter than the moratorium period of disposition prescribed by the Lease Hold Act have often been applied. Regarding employee group life insurance, disputes had frequently occurred from the early 1990s between family members of a deceased em-

ployee and the company regarding who receives the death payout, especially in the case that the company paid premiums of the death insurance and was the beneficiary of it. At present, that insurance has been switched to the integrated welfare group term insurance and the problems are headed for a successful conclusion. However, there is no definite decision against the case whether or not a company can call for return of expenses when an employee studied abroad at company's own expense and changed the job immediately after returning home.

### Current Situation and Issues of Healthcare for Employees (Murasugi)

Murasugi specifically discussed what measures the companies have taken for health-care for employees. He confirmed that checkup (legal and extra checkup) is third-ranked penetration rate among benefit programs using data of nationwide surveys and then, he introduced specific efforts of Company J. There are following five characteristics: (i) shifting from physical to mental care, (ii) strengthening a check system for overwork which is a source of mental problems, (iii) regular checkup items exceeding legal items with finely-tuned consideration, (iv) the center of effort for prevention of adult disease is being shifted to the health insurance society which is another party in charge of in-house health and medical areas and (v) the division of roles between company and health insurance society is not very clear at present. He pointed out that communications among the nation, employers' associations, labor unions and health insurance societies are essential for companies' future health and medical activities.

### Issues of Corporate Pension (Kashiwazaki and Fukazawa)

Kashiwazaki and Fukazawa summarized corporate pension issues which are important elements of benefit programs. The traditional corporate pensions were mainly defined benefit plans but employees have been allowed to choose defined contribution plans since 2001. A problem of the defined benefit plan is that there is a possibility of the shortage of a reserve and it transfers the risk to successive generations. On the other hand, there are also problems of the defined contribution plan e.g., there is a risk of falling below par if holders fail to manage or holders may not have sufficient management gains. In order to overcome these problems, companies are making efforts to (i) reduce the risk of defined benefit plan, (ii) incorporate the elements of defined contribution plan into defined benefit plan and (iii) incorporate the elements of defined benefit plan into defined contribution plan, but it is unclear whether success or failure of these efforts. They concluded that serious discussions on how to manage corporate pensions should be held in Japan.

Kazuya Ogura

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# Current Situation and Future Direction of Employee Benefits

*Koji Nishikubo*

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Japan's employee benefits are significantly changing under restrictions such as economic globalization and increase in legal welfare expenses accompanying the aging of the population. To begin with, there has been a strong tendency to contract welfare service plans such as "housing," "food service" and "recreational facility," and there has been more budgets allocated to "childcare/family care," "health/medical program" and "self-development" instead. On the other hand, the number of companies promoting outsourcing and introducing cafeteria plans has increased, and prioritized areas for budget allocation and the revenue-sharing system are also changing. Even under these changes, management effects from benefit programs such as job continuity, diligence and emotional commitment of employees are maintained. However, issues and problems, e.g., mismatch of employees' needs and those of employers, failure to adapt to changes in a labor market and failure to respond to new social demands such as work-life balance, have become obvious. Therefore, it is required to develop from a traditional corporate-driven employee benefits into a new program in which both management and labor take part in.

## I. Introduction

The purpose of this paper is to widely confirm the current situation of Japan's employee benefits and its issues and problems using credible data. Taking this situation into consideration, I will examine the future direction of Japan's employee benefits.

It is a common global phenomenon that employee benefits officially become a part of the business activities in the wake of the Industrial Revolution. This is because the development of a large-scale factory industry brought about a separation of family life and work in time and space. Employers had to provide employees with various services such as clothes, food and houses which had been originally provided by family life. They were required to provide boardinghouses, food services, purchasing, bathhouses, uniforms, facilities for leisure and sports, etc. on a timely basis in order to obtain required workers and make business run smoothly maintaining the competitive productivity. There must have been a managerial necessity while implying beneficial, humanistic and familistic management.

After the growth period, the employee benefits would be optimized and developed in stages by pluralistic response to changes in environmental components such as stage of economic development, social security system, worker protection of the administration, workers' standard of living and competitive environment of companies which take responsibility for the employee benefits.

Japan's current employee benefits reached its present form during the period of high economic growth. James C. Abegglen says in his book "The Japanese Factory" that he was

surprised that additional welfare expenditures were more than 20% of cash wage in a Japanese spinning factory. “Company’s facilities, guidance and aid deeply sink into almost all his (employee’s) life.” He introduced the comprehensive “generous” system supporting employee’s life after retirement and his family as one of factors which made a success of Japan’s industrialization in Asia.

Since the collapse of the asset-inflated bubble economy, however, Japan suffered greatly from the effects of the long recession with the progress of globalization. It would appear that it is time to seek a revolutionary change from the traditional way based on livelihood support for food, clothing and housing to a new stage. I would like to discuss a new direction in depth finding out a sign of such change.

## II. Current Situation

### 1. Trend of Welfare Expenditure

We need to see the following three surveys in order to obtain data on Japanese companies’ welfare expenditures; (i) General Survey on Working Conditions conducted by the Ministry of Health, Labour and Welfare: this is a nationwide survey of private companies with 30 or more regular employees, a large-scale survey with 4,416 respondents (collection rate: 82.7%) in the recent report in FY2006 and an excellent representative survey of all Japanese companies. It surveys for general labor costs and we can see the relative position of the welfare expenditures among them. (ii) Survey on Corporate Welfare Expenditures which has been conducted by the Nippon Keidanren (Japan Business Foundation) since 1959: this is a survey of major companies centered on the member companies. The 52<sup>nd</sup> survey with 668 respondents was used this time. There are relatively few reviews of the survey items and the time-series data are kept. The excellent point is to be able to see detailed costs of non-legal welfare expense. (iii) Corporation Statistics conducted by the Ministry of Finance: this survey is used for calculating Gross Domestic Product (GDP), etc. and we can comprehensively obtain financial information of all domestic profit corporations with it. Since welfare expenditures widely include legal welfare expense, non-legal welfare expense, severance cost and commutation cost, etc., the internal situation of the welfare expenditures cannot be analyzed. However, they can be compared with sales amount, operating profit, ordinary profit, added value, etc. There were 29,667 respondents (collection rate: 77.5%) in the survey in FY2008. I would like to see the actual burden of employee benefits on companies with these three surveys.

Table 1 shows breakdowns of labor cost and non-legal welfare expense by company size from General Survey on Working Conditions in FY2006. The total labor cost and cash wage are averages of 462,329 yen and 374,591 yen per month per employee respectively while non-legal welfare expense is 9,555 yen, 2.07% of the total labor cost and 2.55% compared to the cash wage. On the other hand, the legal welfare expense which shows total contribution of employers on social/labor insurance such as employees’ pension insurance

Table 1. Welfare-Related Expenditures

Labor cost items	Total	Composition ratio (%)	Company size				
			1,000 or more employees	100 to 999 employees	300 to 999 employees	100 to 299 employees	30 to 99 employees
Total labor cost	462,329	-	544,071	428,311	477,744	382,702	375,777
Cash wage	374,591	81.0	427,514	353,727	390,662	319,650	316,336
Fixed monthly wage	301,478	65.2	328,241	290,325	314,376	268,135	273,169
Bonus/terminal allowance	73,113	15.8	99,272	63,403	76,287	51,516	43,167
Labor cost other than cash wage	87,738	19.0	116,557	74,583	87,081	63,052	59,440
Legal welfare expense	46,456	10.0	52,813	43,187	47,601	39,114	40,917
Non-legal welfare expense	9,555	2.1	13,670	7,575	8,745	6,496	5,707
Cost for cash wage	989	0.2	1,197	974	1,243	727	634
Cost for retirement benefits	27,517	6.0	44,685	19,752	25,655	14,306	10,524
Education cost	1,541	0.3	2,259	1,300	1,635	991	668
Recruiting cost	994	0.2	1,080	1,082	1,244	932	668
Other labor cost*	685	0.1	853	712	957	486	322
*Other labor cost includes cost for job transfer, in-house newsletters and work clothes (except as otherwise required to wear by the company regulation).							
Non-legal welfare expense items	Total	Composition ratio (%)	1,000 or more	100 to 999	300 to 999	100 to 299	30 to 99
Non-legal welfare expense	9,555	-	13,670	7,575	8,745	6,496	5,707
Cost for housing	4,766	49.9	7,816	3,598	4,742	2,542	1,344
Cost for medical care/health	641	6.7	1,137	360	402	321	260
Cost for food	871	9.1	1,116	723	828	626	699
Cost for culture/sports/recreation	574	6.0	794	420	456	388	461
Contributions to private insurance system	999	10.5	449	1,212	999	1,408	1,611
Additional benefit for industrial accident	216	2.3	158	188	153	221	377
Congratulatory or condolence payments	306	3.2	391	244	249	240	266
Contributions to incentive for property accumulation savings, benefits and funds	238	2.5	344	208	220	197	96
Other non-legal welfare expense*	944	9.9	1,465	622	696	555	593
*Other non-legal welfare expense includes cost for transportation of employees, support for shareholding, contributions to welfare foundation and cost for childcare facilities.							
Company size	Total	Composition ratio (%)	1,000 or more	100 to 999	300 to 999	100 to 299	30 to 99
Legal welfare expense	46,456	-	52,813	43,187	47,601	39,114	40,917
Health insurance expense/care insurance expense	15,746	33.9	17,923	14,608	16,143	13,191	13,883
Welfare pension insurance expense	23,831	51.3	27,377	22,271	24,544	20,173	20,240
Cost for unemployment insurance	4,087	8.8	4,759	3,721	4,156	3,319	3,542
Cost for industrial injury insurance	2,275	4.9	2,208	2,092	2,164	2,026	2,752
Contributions to childcare allowance	317	0.7	363	295	325	268	273
Payment for handicapped persons' employment	62	0.1	82	74	145	10	-
Legal compensation cost	9	0.0	13	10	6	13	0
Payment for coal pension, seaman's insurance expense, etc.	129	0.3	88	117	119	114	227

Note: Created based on Ministry of Health, Labour and Welfare, *General Survey on Working Conditions 2006*.



and health insurance is 46,458 yen, nearly five times the non-legal welfare expense. The expense related to retirement benefit is 27,517 yen, nearly three times as well. Looking at changes from the previous survey in FY2002, non-legal welfare expense drastically decreased, -7.3% compared to the previous one, while legal welfare expense and expense related to retirement benefit increased by 10.8% and 6.4% respectively. Total labor cost and cash wage also increased by 2.9% and 1.9% respectively. It seems the non-legal welfare expense is left behind due to the influence of expanding legal welfare expense and expense related to retirement benefit.

As for breakdowns of non-legal welfare expense, “expense related to housing” is 4,766 yen, 49.9% of total, followed by “contribution to private insurance system” (999 yen, 10.5%) and “expense related to food” (9.1%). Although the construction still places too much emphasis on housing-related expenses, “expense related to housing” substantially decreased, -6.6% compared with the previous survey. This biased construction is obvious in major companies. The expense related to housing is 58.5% in companies with 1,000 or more employees while that is only 23.6% in those with 30 to 99 employees. “Expense related to healthcare service” also significantly decreased, -8.3%, lowering the total cost. By company size, the expense related to non-legal welfare expense of companies with 1,000 or more employees is 2.4 times that of those with 30 to 99 employees, showing a considerable disparity even compared to cash wage (1.4 times as well).

Next, according to Survey on Corporate Welfare Expenditures 2007 (average number of employees: 4,088) (Table 2), non-legal welfare expense is 27,998 yen (monthly average per employee), legal welfare expense is 75,936 yen and expense related to retirement benefit is 71,551 yen. Total cash wage (including bonuses) is 586,008 yen, and non-legal welfare expense, legal welfare expense and expense related to retirement benefit are 4.8%, 13.0% and 12.2% compared to the wage respectively. The real amount of non-legal welfare expense is nearly three times that in above General Survey on Working Conditions and nearly two times compared to the cash wage. It indicates that major companies lavish money on the benefit programs and these additional benefits greatly differ depending on company size. Total of these three expenses is 29.9% of the cash wage. The breakdown of non-legal welfare expense is: “housing” is 13,473 yen, the highest (48.1%), followed by “various livelihood support” 6,294 yen (22.5%), and “healthcare/insurance,” 2,942 yen (10.5%).

It also shows that “housing” decreased by 0.2% compared to the previous year. Instead, “others” greatly increased, +13.2%. Among other expensive items, “culture/sports/recreation” also decreased by 0.8%.

This trend is also confirmed by detailed individual services. Figure 1 shows changes in expenditures to each system and the rate of variability.

Regarding the changes in expenditures, “housing” is -1,450 yen, the greatest amount of reduction, followed by “food service (management of company cafeteria, food ticket, etc.)” (-563 yen) and “management of culture/sports/recreation facilities” (-504 yen). They are all facility services so-called “*hakomono (Facilities type)*” in Japan. Concerning the

Table 2. Welfare-Related Expenditures

	Amount (Yen)	Composition ratio (%)	Yr/Yr (%)	Ratio against cash wage (%)
Total cash wage	586,008 (137)	-	▲ 0.3	100.0
Expense related to welfare (a+b+c)	175,485 (158)	-	▲ 3.3	29.9
Legal welfare expense (a)	75,936 (144)	100.0	▲ 0.7	13.0
Health insurance/care insurance	26,090	34.4	0.2	4.5
Welfare pension insurance	41,227	54.3	1.4	7.0
Unemployment insurance/Industrial injury insurance	7,902	10.4	▲ 14.2	1.3
Contributions to childcare allowance	710	0.9	40.3	0.1
Others	7	0.0	▲ 79.4	0.0
Non-legal welfare expense (b)	27,998 (205)	100.0	▲ 1.2	4.8
Housing	13,473	48.1	▲ 0.2	2.3
Medical care/health	2,942	10.5	▲ 10.7	0.5
Various livelihood support	6,294	22.5	▲ 0.1	1.1
Culture/sports/recreation	2,223	7.9	▲ 0.8	0.4
Congratulatory/condolence, mutual aid, insurance	809	2.9	▲ 12.4	0.1
Welfare foundation	287	1.0	▲ 2.0	0.0
Representative service fee	355	1.3	▲ 6.1	0.1
Others	1,616	5.8	13.2	0.3
Severance cost (c)	71,551 (160)	100.0	▲ 6.6	12.2
Retirement pension	40,875	57.1	▲ 7.7	7.0
Retirement lump sum grants	30,676	42.9	▲ 5.1	5.2

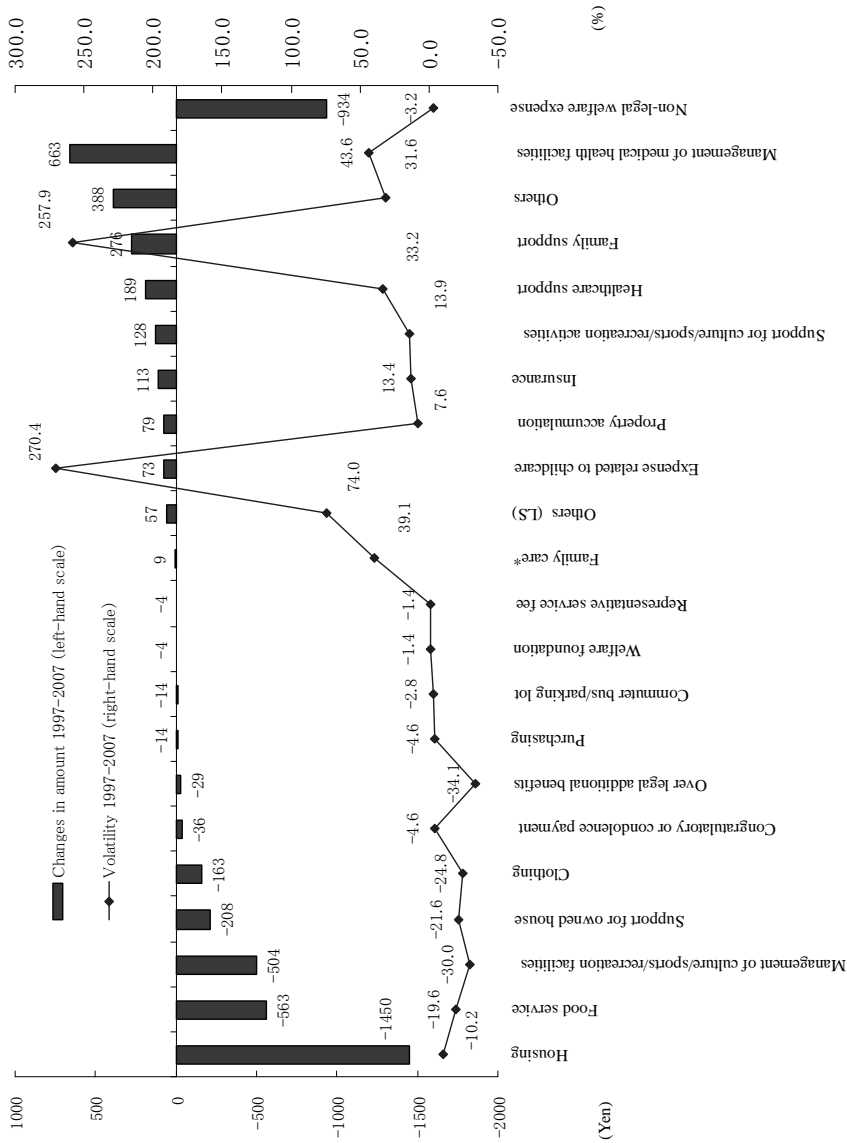
Note: Created based on Nippon Keidanren (Japan Business Foundation), *The 52nd Survey on Corporate Welfare Expenditures 2007* (668 respondents, collection rate: 39.9%). 343 respondents are manufacturers (51.3%) and 410 respondents are companies with 1,000 or more employees (61.4%).

expense related to housing, actual amount of “aid for own home” is -208 yen (the fourth greatest amount), taking a big step backward.

In contrast, “management of healthcare facilities (expenditures of medical offices, labor cost of doctors, etc.) shows the greatest increased amount, +663 yen, followed by “others” (+338 yen), “family support (life planning seminar, orphan’s pension, etc.)” (+275 yen) and “healthcare support (aid for medical examination/hospital expense, non-legal checkup expense, etc.)” (+189 yen). Among items of increased amount, “expense related to childcare” (+270.4%) and “family support” (+257.9%) show significant rates of increase, nearly three times. It is believed that the government focused on these measures with the enforcement of the Act on Advancement of Measures to Support Raising Next-Generation Children.

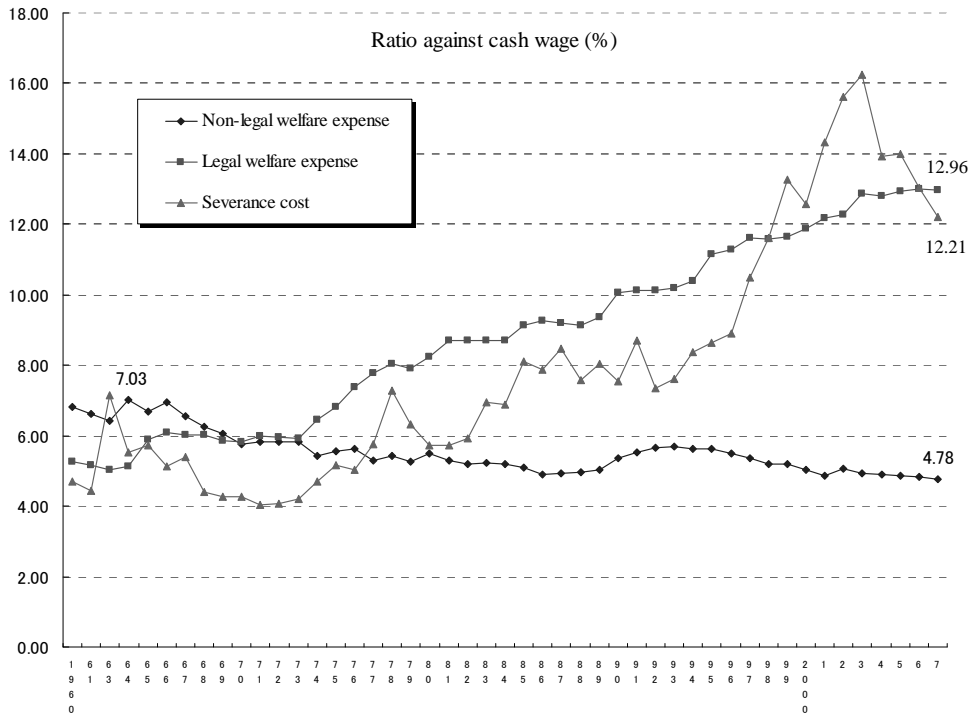
From the fact that the entire non-legal welfare expense decreased by 3.2%, -934 yen, we can see that high-cost facility services such as “housing,” “food service” and “recreation facility” among the internal service portfolio have been reviewed contracting or in order to contract the non-legal welfare expense overall.

Looking at the trend of long-term expenses related to the benefit programs using the



Note: Created based on Nippon Keidanren, *Survey on Corporate Welfare Expenditures, 1997-2007*  
\* Family care shows comparison with 2002.

Figure 1. Changes in Non-Legal Specific Areas (1997-2007 comparison)



Note: Nippon Keidanren, *Survey on Corporate Welfare Expenditures*. Cash wage includes bonuses.

Figure 2. Changes in Welfare-Related Expenditures

result of the survey conducted by the Nippon Keidanren, Figure 2 shows ratios of non-legal welfare expense, legal welfare expense and expense related to retirement benefit compared to cash wage from FY1986 to FY2007. Over the long term, the burden of expense related to retirement benefit on companies has rapidly increased since the 1990s due to changes in the accounting system and the effect of low-interest rate as well as contribution of employers (legal welfare expense) which has continuously increased with the increase in rates of welfare pension insurance and health insurance caused by the country's low birthrate and the aging of the population. Both increased enforceable burdens have been factors putting pressure on the non-legal welfare expense which is a discretionary expenditure. This restrictive environment looks set to continue until the low birthrate and the aging of the population reach a peak. When recalculating with a prediction method of Nagai and Nagano (2003), the burden looks set to continue increasing until the legal welfare expense exceeds 19% of the cash wage in 2025 (currently 12.96%) and the effect would be still stronger. As a result, the non-legal welfare expense would fall below 4% according to the estimation.

Next is a broad range of welfare expenditures' trend from the Corporation Statistics. As mentioned above, we need to pay attention on the point that the welfare expenditures in this survey include commutation cost, payment for retirement allowance, estimated in-kind

wage, etc. as well as legal and non-legal welfare expenses and is the most comprehensive survey compared to foregoing two surveys. Looking at the recent trend with acceptance on this point, the welfare expenditures are still on a decreasing trend (see Table 3). As for not only the actual amount but also the percentage of total labor cost, it once exceeded the level of 12% but decreased to 10.84% in 2007. The percentage of added values also fell below 8%. As shown in Figure 3, Japanese profit corporations have rapidly brought about a recovery in sales since 2003 with increases in added values, labor cost, ordinary profit, etc. However, only the welfare expenditures are still on a decreasing trend. Given that these welfare expenditures include the legal welfare expense which should have increased, it is estimated that the allocation to the non-legal welfare expense has decreased more than this chart. The trend is in contrast with the movement of ordinary profit, i.e., it indicates that corporate governance has drastically shifted its emphasis from the employees to the market. Companies have raised awareness of consideration to the market such as an increase in the rate of dividend and they have gone to great lengths to enhance profitability, which eventually led them to cut down welfare expenditures, especially non-legal welfare expense.

Now we confirmed the trend of employee benefits from the viewpoint of employers' burden of expense on the basis of three surveys.

To conclude, Japanese companies' budget allocation to the benefit programs still shows a contractive tendency as of the end of FY2007. Furthermore, it would appear that it is not a simple contractive process as a total cost deduction but a contrast with changes in an internal institutional structure. Firstly, labor costs or allocation rates within added values decreased even though resources for the allocation to the benefit programs have obviously increased with increases in added values and total labor costs during the period of economic recovery and sales recovery before the financial crisis triggered by Lehman Shock. This was probably caused by the preventive response to continued increase in legal welfare expenses and the cost burden accompanied by the retirement of the baby-boom generation.

Second, the decreasing trend of expenses related to "housing" which accounted for over half of the non-legal welfare expense for a long time is confirmed and allocations to "medical care/health," "support for childcare," "family support," etc. are markedly increasing instead. This may be due to a large cost reduction effect by reviewing expensive housing measures. As a result, total amount of non-legal welfare expense decreases even budget allocations to other areas increase using money squeezed from that cost reduction. Concerning program patterns, the benefit programs are changing from facility ("hako") services such as company housing/bachelor apartment, food service facility and recreation facility to direct services to employees ("hito") such as checkup, support for childcare, self-development and life planning seminar.

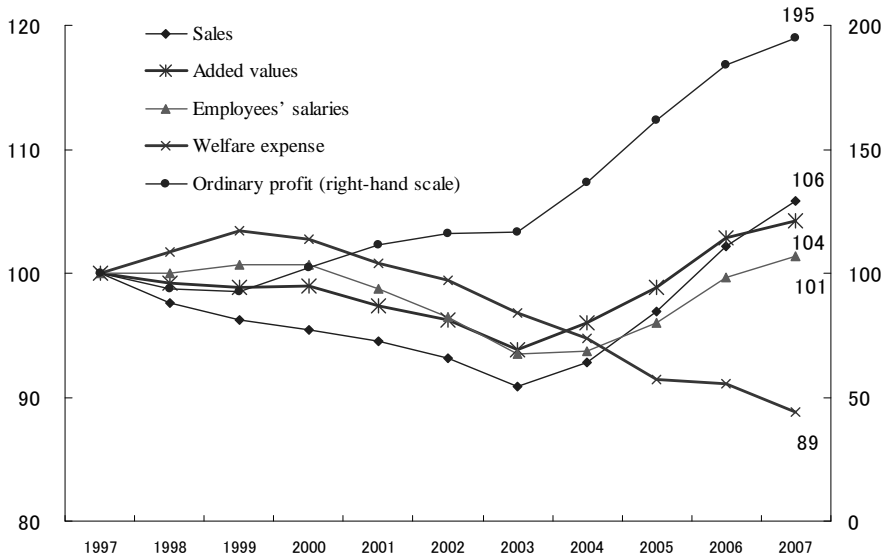
## 2. Development of Employee Benefits and Employees' Use of Benefit Programs

Next is individual introduction of employee benefits and actual situation of employees' use of benefit programs. We have no choice but to depend on private surveys on

Table 3. Changes in Welfare Expenditures (all industries)

Year	Unit: 100 billion yen												
Sales	14,847	14,484	14,674	13,813	13,835	14,350	13,382	13,268	13,347	14,204	15,081	15,664	15,802
Sales cost	11,742	11,418	11,517	10,788	10,764	11,113	10,342	10,225	10,298	10,894	11,658	12,196	12,403
Selling and general administrative expenses	2,750	2,722	2,827	2,772	2,778	2,861	2,744	2,722	2,682	2,874	2,946	2,976	2,904
Sales profit	355	344	331	253	293	377	296	320	367	436	477	493	495
Ordinary profit	263	278	278	212	269	359	282	310	362	447	517	544	535
Added values	2,773	2,697	2,757	2,704	2,675	2,766	2,569	2,579	2,575	2,742	2,812	2,908	2,855
Labor cost	2,023	1,966	2,031	2,034	2,020	2,025	1,929	1,899	1,843	1,915	1,968	2,014	1,981
Directors' salaries	306	290	304	303	300	305	296	289	276	287	281	291	287
Employees' salaries	1,468	1,429	1,469	1,469	1,460	1,466	1,386	1,361	1,333	1,397	1,462	1,492	1,472
Welfare expense	249	247	259	262	259	254	247	249	234	231	225	231	215
Ratio of ordinary profit (%)	94.6	88.7	93.1	123.6	96.2	70.8	87.4	80.4	64.5	51.7	43.5	42.4	40.1
Ratio of added values (%)	9.0	9.1	9.4	9.7	9.7	9.2	9.6	9.7	9.1	8.4	8.0	7.9	7.5
Ratio of labor cost (%)	12.3	12.5	12.7	12.9	12.8	12.5	12.8	13.1	12.7	12.1	11.4	11.4	10.8
Ratio of employees' salaries (%)	16.9	17.3	17.6	17.8	17.7	17.3	17.8	18.3	17.5	16.6	15.4	15.5	14.6

Note: Created based on Ministry of Finance, *Corporation Statistics*.



Note: Created based on Ministry of Finance, *Corporation Statistics*.

Figure 3. Changes in Allocation to Welfare Expenditures (Changes with a score of 100 representing 3-year moving average deviations from 1995 to 1997)

this point. One is a door-to-door survey conducted by the Japan Institute of Life Insurance at triennial intervals since 1980 using stratified sampling by job category/number of employees with population values from the census of establishment conducted by the Ministry of Internal Affairs and Communications. Data to be used this time are from the eighth survey conducted in 2002. Valid samples are 2,014 companies, 1,802 regular employees and 300 non-regular employees. This shall be called “Survey 2002.” Another one is a quantitative survey conducted by a joint research group of Meiji Yasuda Institute of Life and Wellness, Inc. and Research Institute of Employee Benefit in December 2007. The survey was conducted with Internet system basically according to above survey conducted by the Japan Institute of Life Insurance. Valid samples are 1,504 companies, 2,052 regular employees and 920 non-regular employees. This shall be called “Survey 2007.” Actual situations of the employee benefits and employees are analyzed in this paper centered on these two surveys.

Table 4 shows the rate of introduction by service calculated from the company survey and the rate of using individual services calculated by the employee survey in Survey 2002. The rate of using services is calculated by sex and age group and non-regular employees’ average rate of using services is also calculated. There are employee benefits generally introduced by many companies and also there are a lot of different systems introduced by only some companies. The employee benefits are different depending on each company. That is, each company is required to make continued effort how to regard its own programs as a

Table 4. Introduction Rate and Usage of Individual Services

N	Introduction rate (Corporation Statistics)	Rate of experiencing welfare system							
		Regular employees							Non-regular employees
		Total	Male	Female	29 years old or younger	30 to 39 years old	40 to 49 years old	50 years old or older	
	2014	1,802	1,171	630	414	569	426	383	300
Company-owned housing/ bachelor apartment	23.7	7.3	10.2	2.1	4.8	8.3	9.2	6.5	1.0
Leased housing/bachelor apartment	26.0	6.0	8.8	1.0	5.8	6.9	6.8	4.2	0.0
Housing allowance/rent subsidy	54.9	27.2	31.4	19.5	19.6	33.0	28.6	25.8	3.3
In-house financing system for supporting owned house	13.1	3.6	5.3	0.3	0.2	2.3	6.3	6.0	0.7
Checkup (extra checkup of legal one)	71.8	52.1	51.2	53.7	54.6	57.3	48.6	45.4	33.3
Complete medical checkup subsidy from company	29.4	11.4	12.7	8.9	2.9	6.5	17.6	20.6	2.7
Health check for lifestyle- related disease	43.5	19.9	21.0	17.8	5.6	16.5	31.5	27.4	8.7
Mental healthcare	5.2	1.1	1.5	0.3	0.2	1.4	1.6	1.0	1.0
Long-term income security	2.0	0.8	0.9	0.6	0.5	0.9	0.2	1.6	0.0
Dispatch of family-care helper (including cost subsidy)	1.7	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Nursing care/family care leave system	31.6	0.6	0.7	0.3	0.2	0.9	0.2	0.8	0.3
Childcare/babysitter subsidy	1.6	0.2	0.2	0.3	0.2	0.5	0.0	0.0	0.7
Day-care/childcare center (includ- ing leased ones)	0.5	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.3
Childcare leave/short-time work- ing system (extra system of legal one)	27.3	0.9	0.3	2.1	0.5	1.9	0.9	0.0	0.7
Congratulatory/condolence/ disaster payments	92.2	29.1	31.7	24.3	14.7	27.1	35.4	40.2	12.3
Retirement allowance upon sudden death/condolence money system	88.8	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Survivor's/orphan's pension	14.2	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Property accumulation subsidy system	54.1	27.8	27.6	28.3	22.9	27.8	30.0	30.5	2.3
Employee stock ownership system	19.3	12.4	14.3	8.9	7.5	12.1	16.7	13.3	0.3
Stock option	1.2	0.7	0.7	0.6	0.5	0.2	1.6	0.5	0.0
Support for recreation activities	32.0	18.6	19.7	16.5	17.4	18.6	18.5	19.8	8.3
Company-owned leisure facilities	18.1	14.9	16.3	12.2	11.4	14.8	17.6	15.9	4.3
Contractual leisure facilities	30.1	19.4	18.9	20.3	13.0	20.7	23.9	19.1	3.7
Life planning	5.5	0.9	1.1	0.6	0.0	0.5	0.9	2.6	0.0
Money planning lecture	1.9	0.4	0.6	0.2	0.2	0.0	0.5	1.3	0.0
Education system for preparation for retirement	6.1	0.4	0.6	0.2	0.2	0.2	0.0	1.6	0.3
Studying-abroad program for universities/companies	1.9	0.2	0.3	0.0	0.0	0.2	0.0	0.5	0.7
Support for obtaining official certification/correspondence education	25.5	12.3	15.1	7.1	10.1	16.0	12.0	9.9	1.7
Long-term leave for refreshing	8.4	5.0	5.6	3.8	1.9	6.3	5.9	5.5	0.3
Food service facilities such as company cafeteria	15.0	15.5	17.2	12.5	15.9	16.7	14.8	13.6	11.3
Long-term leave system once or more a year	28.3	19.3	18.7	20.3	22.7	16.0	18.3	21.4	8.7
Cafeteria plan	1.2	2.3	2.4	2.2	3.1	3.0	1.4	1.6	1.3
Unknown	1.5	20.2	19.6	21.3	24.4	18.3	18.8	19.6	50.3

Note: Created based on Japan Institute of Life Insurance, *Survey on Companies' Benefit Programs 2003* (surveyed in 2002).



portfolio and optimize according to a purpose. Employees' using behavior also differs depending on sex and age for each program. One of factors is length of service. Employees working longer are more likely to use the programs. That is why women's and young people's rates of using them are low. Of course, many of programs are optional and needless programs are rarely used. The reason why non-regular employees' rate of using is extremely low is because they are highly likely exempt from the employee benefits in general.

In order to understand Japan's current situation of using benefit programs, we need to know outsourcing which changes intermittently and the expansion of cafeteria plan based on the outsourcing.

Regarding cafeteria plan, it did not necessarily become popular after being introduced into Japan for the first time in 1994, as Ishida (1995) pointed out the difficulty of cafeteria plan's penetration in Japan in which medical and tax systems are different from the United States. However, it has rapidly expanded in the process of penetrating integrated outsourcing services since about 2000. The cost reduction by the integrated outsourcing services is promoted simultaneously with the cafeteria plan.

Actual situations of introducing cafeteria plan are shown in Table 5. The introduction rate is 11.1% as of 2007 according to the survey conducted by the Nippon Keidanren.<sup>1</sup> The number of companies introducing it seems to further increase centered on the major company group and it is possible to expand to medium/small companies.

Although currently only about 10% of the non-legal welfare expense is given to the plan as a budget, there is a trend to give density to it in the elementary sense. Looking at employees' selection within the plan, "various livelihood support" accounts for over 60%, followed by "culture/sports/recreation" (about 25%). In contrast to above Survey on Corporate Welfare Expenditures, the budget is rarely used for "housing." This is because measures which require expensive procurement costs such as company housing/bachelor apartment are exempt due to difficulty of introducing the plan (preventing other services from being used, or otherwise). If the introduction of cafeteria plan progresses the budget allocation increases as a result, "de-housing" would progress. In fact, there are many cases that the budget allocation to measures is drastically reviewed including termination of services/measures when introducing the cafeteria plan. It often happens to substantially review the budget for housing in order to squeeze resources for introducing the cafeteria plan.

The option of individual benefit programs will be shifted from companies to employees by the spread of the cafeteria plan. Employees will be freely able to use the program without any program forced by the company within certain budget restrictions. It would make employees happy, but not always good for human resource management. One is that employees' "free choice" is not the best choice. Although benefit programs include many things such as various measures to support employees' long-term life planning and support systems for employee development, the reality is that younger employees cannot be

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<sup>1</sup> "Cafeteria plan" has been added from the survey 2002.

Table 5. Actual Situations of Introducing Cafeteria Plan

	2002	2003	2004	2005	2006	2007
<b>Number of companies introducing cafeteria plan</b>	30	46	52	65	68	74
Introduction rate (%)	4.3	6.4	7.9	10.1	10.7	11.1
<b>Number of samples</b>	700	714	661	645	637	668
<b>Monthly non-legal welfare expense (yen)</b>	32,635	30,189	34,359	35,014	36,212	36,950
Non-legal welfare expense index of companies introducing cafeteria plan*	116	108	122	124	128	130
<b>Monthly budget for the Cafeteria Plan (yen)</b>	2,948	3,485	3,894	3,526	3,833	4,269
Ratio against non-legal welfare expense (%)	9.0	11.5	11.3	10.1	10.6	11.6
<b>Breakdown of monthly budget for the plan: yen (composition ratio)</b>						
<i>Expense related to housing</i>	108 (3.7)	315 (9.0)	381 (9.8)	308 (8.7)	246 (6.4)	270 (6.3)
Housing/company housing/apartment subsidy	83 (2.8)	58 (1.7)	132 (3.4)	171 (4.8)	116 (3.0)	116 (2.7)
Owned house subsidy	25 (0.8)	256 (7.3)	249 (6.4)	137 (3.9)	130 (3.4)	154 (3.6)
<i>Healthcare</i>	20 (0.7)	30 (0.9)	20 (0.5)	29 (0.8)	39 (1.0)	53 (1.2)
<i>Various livelihood support</i>	1991 (67.5)	2275 (65.3)	2567 (65.9)	2352 (66.7)	2893 (75.5)	2748 (64.4)
Food service	951 (32.3)	790 (22.7)	637 (16.4)	582 (16.5)	572 (14.9)	676 (15.8)
Purchasing	157 (5.3)	237 (6.8)	276 (7.1)	252 (7.1)	256 (6.7)	304 (7.1)
Clothing	16 (0.5)	11 (0.3)	7 (0.2)	15 (0.4)	13 (0.3)	22 (0.5)
Insurance	184 (6.2)	308 (8.8)	302 (7.8)	283 (8.0)	274 (7.1)	351 (8.2)
Family care	84 (2.8)	102 (2.9)	89 (2.3)	81 (2.3)	70 (1.8)	94 (2.2)
Child care	139 (4.7)	210 (6.0)	205 (5.3)	198 (5.6)	204 (5.3)	228 (5.3)
Family support	5 (0.2)	54 (1.5)	47 (1.2)	74 (2.1)	47 (1.2)	76 (1.8)
Property accumulation	436 (14.8)	511 (14.7)	967 (24.8)	839 (23.8)	911 (23.8)	972 (22.8)
Subsidies for commutation cost	2 (0.1)	7 (0.2)	4 (0.1)	8 (0.2)	5 (0.1)	5 (0.1)
Others	17 (0.6)	45 (1.3)	35 (0.9)	21 (0.6)	41 (1.1)	20 (0.5)
<i>Culture/sports/recreation</i>	696 (23.6)	824 (23.6)	857 (22.0)	741 (21.0)	880 (23.0)	1089 (25.5)
<i>Others</i>	134 (4.5)	41 (1.2)	69 (1.8)	88 (2.5)	71 (1.9)	110 (2.6)
<b>Introduction rate of welfare representative (estimate)**</b>	48.4	68.2	73.8	69.2	70.1	75.6

Notes: The Nippon Keidanren, *Survey on Corporate Welfare Expenditures*.

\*Reference index of CP-introduced companies with average of all companies.

\*\*Assuming representative expense as 500 yen per month per employee, it was calculated with average representative expense.

expected to have a long-term plan and the person in charge often see it as a problem.

### 3. Verification of Managerial Effect

Japanese companies' expenditures to benefit programs have decreased and the traditional programs centered on "*hakomono* (facility services)" have been drastically changing. What functions do Japanese employee benefits fulfill as a human resource management system? I would also verify this managerial effect on the basis of relatively new recent data.

During the period of rapid economic growth, the employee benefits played a role in Japanese style management model as "generous welfarism" and were positioned as equipment to support a strong loyalty and motivation called "company man" along with lifetime employment and seniority wage system. Does it still have such effect? Or did it lose?

The managerial effect of the program on human resources has been pointed out from the perspective of work motivation. Ota (1994) says, "A secure life is guaranteed by generous benefit programs. They satisfy a low-order desire and a hygiene factor and provide incentives in a passive manner." "The more the number of individuals who are satisfied in the company, the stronger the integration of the company and individuals becomes," Tsuchiya (1979) insists, "various shapes of fringe benefits such as a wide range of welfare measures and use of expense accounts which are generally seen in Japanese companies, especially major companies, increased the number of desires to be satisfied in the company."

It would appear that the benefit programs contributed to the integration of companies and employees, i.e., the making of organizational commitment, by directly supporting the process of employee satisfaction/solving problems taking advantage of characteristics such as benefit in kind. I agree with what the following authors point out on this point: Yashiro (1998) states, "As a result of Japanese style management system, a very strong organizational commitment was made among employees and has supported Japan's economic growth" and Tao (1997) points out, "Japan's economic growth was achieved by procuring a huge amount of organizational commitment for regular employees" based on his study on "company man" which has a strong organizational commitment. Ko (2001) also suggests, "A wide range of generous benefit programs are also one of Japanese companies' characteristics. As symbolized by company housing and various allowances for housing loan, etc., companies are deeply involved with all individual living territories" in the context of building process of "company man" with a strong organizational commitment.

In this paper, I will verify what kind of relationship exists between employees' use of benefit programs, the evaluation, the organizational commitment and particularly low dimensions which have been clarified in the past. I will also verify whether or not such relationship eventually leads to the formation of employee attitudes such as willingness to continue working and willingness to contribute which are tied to managerial effects through the organizational commitment.

There are many preceding studies on the low dimensions of organizational commitment. Representative examples are affective, continuance and normative elements presented

by Allen and Mayer (1990). In this paper, I verified a cause-and-effect relationship between commitment variables measured by using a scale developed by Matsumoto (1999) based on three dimensions, employees' experience of using benefit programs and usage environment (number of programs recognized as available). Samples are 1,228 male and female regular employees aged 25 to 59 years old living in the Tokyo metropolitan district.

The organizational commitment is formed by these samples' experience of using benefit programs in their companies and the recognition of the number of available programs. I will comprehensively verify a series of cause-and-effect relationship between fixation, diligence and willingness to contribute which are formed by that commitment. Covariance structure analysis models were used for the analysis. Final verification results are shown in Figure 4.

Firstly, I extracted 24 evaluation items (multiple answers) in which employees recognize with their experience of using and the provision of usage environment (recognition of the number of available programs) as four evaluating factors, "peer factor," "refresh/WLB factor," "company/work factor" and "life planning factor," by a factor analysis and parameterized. It was found that these evaluating factors have a statistically significant cause-and-effect relationship with all low dimensions of the organizational commitment, affective, continuance and normative elements, i.e., they have an effect on the formation.

In particular, a significant cause-and-effect relationship with affective element was found from all four evaluating factors, i.e., there is the most obvious relationship. Employees in an excellent program environment or using programs many times promote the formation of a high affective commitment. Second, the result shows an effect on the continuance element from three evaluating factors. There is also a certain effect on the formation of this calculating commitment. As for the normative element, only a path from company/work factor shows a significant effect, and only the provision of usage environment (recognition) has an effect on this evaluating factor. Therefore, the relationship with the employee benefits may be poor.

This organizational commitment formed by the use/recognition of benefit programs has a further effect on employee attitude. Concerning affective commitment, a reliable cause-and-effect relationship with all, willingness to contribute, diligence and fixation, is confirmed. That is, when an affective commitment to the company is formed by the experience of using benefit programs or the provision of the programs, it has a positive impact on all employee attitudes, contribution, diligence and fixation. On the other hand, continuance commitment is in contrast affective one. A negative cause-and-effect relationship with willingness to contribute and diligence was extracted while a positive cause-and-effect relationship with fixation was confirmed. It means that although calculative continuance commitment is increased by the employee benefits, it does not motivate the willingness to contribute to the company or the diligence but rather promotes the formation of negative attitude as well as increasing only fixation by bringing awareness of costs for withdrawal from the company. Regarding normative commitment, an effect on either the willingness to

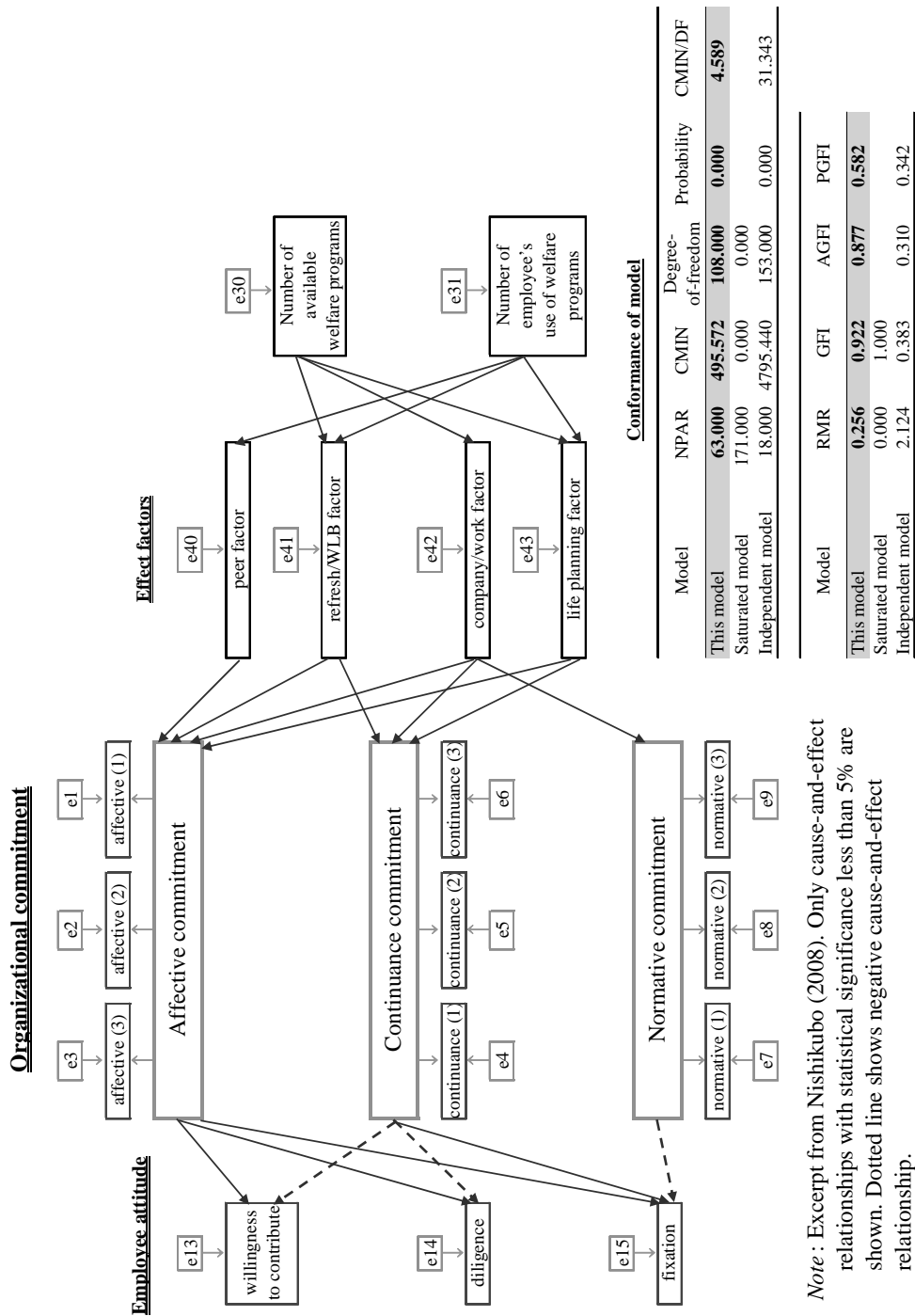


Figure 4. Utilization Experience, Acknowledgment of Benefit Programs and Organizational Commitment

contribute or the diligence could not be confirmed. I could only confirm a negative cause-and-effect relationship with the fixation plan.

From the above result, it was confirmed that Japanese employees increase the commitment to their organizations (companies) with their experience of using benefit programs and the recognition of the programs and especially contribute to the formation of emotional attachment to their companies such as affective commitment. To conclude, with the obtained organizational commitment, employee attitudes such as high fixation, diligence and willingness to contribute are brought to contribute to the formation of human resources which contribute to companies' medium- to long-term competitive advantage. As a whole, the system shows significant changes such as budget squeeze and changes in service contents, but I could confirm that an effect on employees, particularly a psychological effect as symbolized by affective commitment is still obtained.

### **III. Issues**

#### **1. Divergence of Needs between Labor and Management**

Next, issues and problems in which Japan's employee benefits are currently facing should be clarified.

Figure 5 shows answers to questions for companies: "Which area of benefit programs will you focus on?" and for employees: "Which area of benefit programs will you want your company to focus on?"

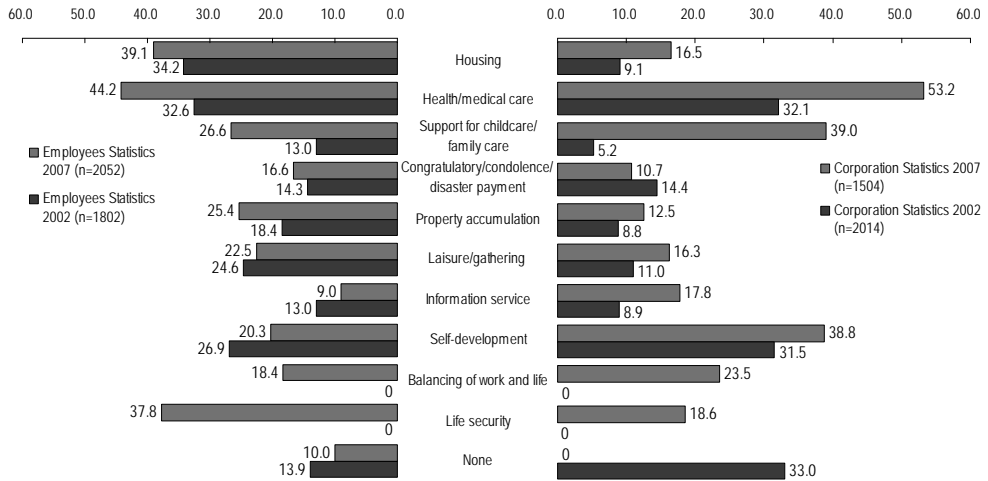
According to the answers, many companies pay attention to "health (medical care)," "support for childcare/family care" and "self-development" as priority areas. Many employees also answered the question as "health (medical care)," i.e., both focus on this area.

However, more than 30% of employees answered the question that they want their company to focus on "housing" in both surveys but the rates of companies who answered that are 9.1% and 16.5% in two surveys respectively. There is a huge gap between labor and management. Such labor-management needs gap phenomenon is seen in not only the case of "housing" but also "life security," "property accumulation" and "leisure/gathering."

The mechanism of generating these gaps is clear. Employee needs never change. Needs from life are stable and do not suddenly change. There has been more interest in "life security (medical care, pension and family care)" amid growing fear of social security facing an aging society and "housing" in which households have a heightened sense of burden. Therefore, these gaps are not generated by employees but changes in companies. In short, companies' policy toward the employee benefits has changed, as confirmed in above trend of welfare expenditures.

The points would include whether or not such gaps can be filled. If companies avoid the adaptation to employee needs, even if it is only a part of them, who would assume the role of this? Employees will be required to make self-help efforts in the area of life security, especially old-age/medical security, as well as housing amid concerns about backward of

## Current Situation and Future Direction of Employee Benefits



Note: Created based on Meiji Yasuda Institute of Life and Wellness, Inc., *Quantitative Survey 2007 by Research Group on the Way of Companies' Benefit Programs in the Depopulating Society* (upper bar) and Japan Institute of Life Insurance, *Survey on Companies' Benefit Programs 2003* (surveyed in 2002)" (lower bar).

Figure 5. Divergence of Priority Areas between Companies and Employees

the social security system.

## 2. Response to Changes in Labor Market—Non-Regular Employees and Women

Another issue is that current employee benefits cannot respond to rapid changes in the labor market.

Firstly, regarding response to increased number of non-regular employees who account for more than 30% of total workers, as is well known, part-time workers have already become core workforce in domestic service and distribution industries. Nevertheless, benefit programs still reflect regular-employees' needs and are premised on their use. Many of companies do not even confirm the contents of needs well and do not allow non-regular employees to use the programs (see Table 6). However, the revised Part-Time Work Act which went effect in April 2008 prohibits discriminatory treatment against "part-time worker equivalent to ordinary workers" on wage determination, implementation of education/training, use of welfare facilities and others are prohibited (Article 8) and obligates employers to give part-time workers the opportunity to use welfare facilities (three facilities: food service facility, lounge and dressing room) which contribute to preservation of health and/or smooth job performance (Article 11). In order to respond to such trend, if companies expect the fixation of excellent personnel and want to obtain a stronger commitment, it would be time to open their mind to further expand the application of the programs as pointed out by Matsuura (2002).

Table 6. Gaps of Using Benefit Programs between Regular and Non-Regular Employees

	Regular employees	Non-regular employees	Gap
<b>Currently available systems</b>			
1. Property accumulation subsidy service	51.8	10.3	41.5
2. Congratulatory/condolence/disaster payments	73.4	32.0	41.4
3. Retirement allowance upon sudden death/condolence money system	46.9	10.0	36.9
4. Housing allowance/rent subsidy	43.4	6.7	36.7
5. Checkup (extra checkup of legal one)	69.6	45.7	23.9
6. Employee stock ownership system	24.9	1.7	23.2
7. Contractual leisure facilities	36.3	14.0	22.3
8. Support for obtaining official certification/correspondence education	24.8	4.0	20.8
9. Health check for lifestyle-related disease	35.5	16.7	18.8
10. Complete medical checkup subsidy from company	30.1	12.3	17.8
<b>Rate of experiencing each system</b>			
1. Property accumulation subsidy service	27.8	2.3	25.5
2. Housing allowance/rent subsidy	27.2	3.3	23.9
3. Checkup (extra checkup of legal one)	52.1	33.3	18.8
4. Congratulatory/condolence/disaster payments	29.1	12.3	16.8
5. Contractual leisure facilities	19.4	3.7	15.7
6. Employee stock ownership system	12.4	0.3	12.1
7. Health check for lifestyle-related disease	19.9	8.7	11.2
8. Company-owned leisure facilities	14.9	4.3	10.6
9. Support for obtaining official certification/correspondence education	12.3	1.7	10.6
10. Long-term leave system once or more a year	19.3	8.7	10.6

Note: Created based on Japan Institute of Life Insurance, *Survey on Companies' Benefit Programs 2003* (surveyed in 2002).

Secondly, it is one of issues in Japan to increase women's labor force participation rate and employment rate in the age of declining population and labor force. Particularly women's long fixation is expected as core employees. However, female employee needs are hardly reflected in the programs and budget allocations up to now and many of women say, "there is no program I really want to use." Surveys of women are also clarifying that the programs do not meet the requirements of women. As shown in Table 4, the gender gap of the rate of utilization experience is large in "housing" and "self-development." As for "housing," it happens due to the fact that there are many cases of using criteria for head of household and moving/transfer experience as criteria for entering company housing. Companies should widely reflect their needs in support for childbirth/childcare, etc. and make the programs easy to use.

#### IV. Future Directions

##### 1. Suggestions from the Reality

I reviewed the current situation of Japan's employee benefits from various perspectives. From these facts, some directions of fundamental changes were confirmed.

Welfare expenditures had consistently increased supported by favorable corporate performance and their lock-step mentality from the high economic growth period to the



bubble period in the early 1990s. According to above Survey on Corporate Welfare Expenditures, welfare expenditures recorded a double-digit increase for eight consecutive years from 1969 to 1976 and showed a year-on-year increase of 10% in 1990, at the late stage of the bubble period. In fact, however, the contractive trend has still continued since the late 1990s.

There are some constrained conditions. One is unexpectedly prolonged recession and another one is full-scale global competition. Under such management environment, it was required to cut down total labor costs. As a matter of fact, flexible and effective use of labor costs was also strongly required. That is, the former is to enhance the interlock between labor costs and a short-term demand fluctuation/performance fluctuation (flexible labor costs) and the latter is to expect contributive returns from the investment in human resources. The recent employee benefits have not been appreciated for either flexibility or effectiveness of using labor costs.

Facing an aging populace with low birthrates, the burden of legal welfare expense on the social security system exceeds 10% of cash wage and is reaching 20%. In effect, the non-legal welfare expense has been regarded as a balancing item for it. Even after 2003 when Japan finally recovered from the recession, the non-legal welfare expense have not shown any sign of favorable turn while positive earnings are being reported one after another. There must be a dire prediction about future burden of the legal welfare expense behind such companies' cautious attitude. Under the severe budget constraint, non-urgent programs deposited in the company have been reviewed and "*hakomono* (facility type services)" which are expensive showing a uncertain cause-and-effect relationship with managerial effects and one of fixed costs, especially "housing" which is Japan's foremost characteristic, the center of the programs and a sacred cow has been deeply cut. Instead, the trend to reflect new needs such as "support for childcare/family care," "health/medical care" and "self-development" has become apparent supported by social demands.

## 2. Future Direction of Evolution

Japans traditional employee benefits which contributed to the high economic growth realized a long fixation and built company loyalty of entire employees by providing a generous support for a wide range of their life such as food, clothing and housing during regular employees' lifetime. This former system is less appreciated now. The causes include expensive initial cost, low asset efficiency, uncertain managerial effect, i.e., cost-effectiveness, changes in the labor market such as increased number of non-standard workers/female workers and high fluidity, and ineffective response to diversified values and lifestyles of employees. That is, companies cannot meet diversified and complicated requirements of stakeholders.

The employee benefits should compensate the weakness on the basis of the current system, be separated into three unique sub-systems which clearly set the purpose and functions and evolve into a new structure consist of those elements.

The first desired direction is “Employee’s creativity enhancement system.” It will be the most important from the viewpoint that companies can secure and strengthen their management foundation. In other words, this direction is to clearly contribute to the existence and growth of companies which take responsibility for the employee benefits and enhance a sustainable competitive advantage as a result. Japan’s domestic companies are facing a large wall of growth constraint; globalization. The BRICS countries including China which became a world factory, India and Brazil are fully competing against each other. In competing with them, Japan is no match for them in two aspects, supply of labor and labor costs. Then, what can secure Japanese companies’ world competitive advantage? There is only one way. Companies are required to have a strong creativity which constantly creates new values for business competition by globalizing themselves and establishing a strong intellectual production system consist of various human resources including foreigners.

As Nishikubo (2004) pointed out, the employee benefits should play a unique role as a system to support the building and encouragement of valued creativity which is a core competence of the company. The employee benefits need to play a role as an “Employee’s creativity enhancement system” in which other management system cannot substitute standing between two conflicting parties, organization and individuals and work and life. It is necessary to obtain a strong commitment and maximize employees’ contribution by stimulating human creativity and extracting latent potential, i.e., by providing complete health-care including mental care for individual employees, a ground for advanced intellectual practices, e.g., self-learning environment and corporate university which bring out and develop the talents, or by organizing a ground for cozy communications between employees and a comfortable and intellectually stimulating working environment. This system should also play a role of supporting childbirth/childcare and family care which make job continuity difficult.

It will be a strategic investment in human resources for companies to establish this creativity enhancement system. The system should be optimized for company’s business model, employee characteristic, personnel strategy, etc. and a flexible response is required aimed at investment efficiency and investment effect. This evolution would be deeply involved in Japanese companies’ existence and growth. At the same time, success of this system would be directly linked with securing and maintaining of employment opportunities.

Second is a direction aiming at “mutual aid/self-help system.” This is an evolution enhancing the function of “welfare program” in which efficiently realizing self-help efforts for employees and their family and mutual aid between employees, and improving the environment. Although this function also existed in the traditional welfare program, it is not initiated by companies any more. Employees sharing workplace are fellows on the same boat trying to overcome a serious aging society with fewer children and a stressful society. Individual employees independently make a strategic life planning and the welfare program as mutual aid/self-help system becomes an infrastructure to realize it. Employees advantageously develop their independent life security and life planning taking advantage of the

characteristic of workplace. The cafeteria plan which is getting popular would be also an effective mechanism to support life planning in response to diversified life styles. Of course, this system should be operated on the basis of employees' and labor union's autonomy on the premise of beneficiary liability to promote employees' autonomous utilization. An insurance-like system is utilized for wealth building for aging, economic preparations for death/injury/illness, childcare, child's education and family care. It is expected that such system functions as a strong bond between employees by realizing and sharing that system. Companies are required to play a role to engage from a complementary position, i.e., making efforts to build an institutional infrastructure, stimulating employees (making employees aware) through phased life planning seminars since they are young and supporting feasible wealth building plan from their youth, preparations for their life security and their self-development/capacity-building.

Third direction can be called "Adaptable system to societal demand." The employee benefits are likely to play a role to build a good long-term relationship between companies and society. As some keywords such as corporate social responsibility (CSR), diversity, family-friendly and development of the next generation have already presented recently, the society has required companies to engage actively in social issues and problems and contribute to the solution of them. At the same time, by meeting such requirement, a mechanism to heighten corporate values is being built through socially responsible investment (SRI), etc. Japan's CSR for working is still far behind compared to that for precedent global environment. However, there are a lot of issues to be solved by using welfare programs such as increasing number of overwork death including suicide, too long working hours of some employees, delay of recruiting female workers, office issues, e.g., sexual harassment and power harassment, and expansion of potential patient with lifestyle-related disease from the perspective of preserving human dignity of employees who are valuable social resources. The employee benefits have a certain possibility to be able to contribute to these issues as a main character or complementary role and are able to respond with a clear sense of purpose. It is time that the employee benefits which were positioned as only internal human resource management system should expand as an open system getting in touch with society.

Above three systems function as sub-systems included in the entire employee benefit system. Since these are different in purpose, standard of value and optimal operation method, separated plans and management are also required. Nevertheless, they have a synergistic relationship to be able to increase the values of each other. Excellent "Adaptable system to societal demand" and "mutual aid/self-help system" would become an attraction to external excellent personnel and, together with "Employee's creativity enhancement system," bring opportunities to obtain strong human resources for the company. Provided that "Employee's creativity enhancement system" realizes a comfortable and exciting workplace and employees can obtain opportunities for playing an active role or self-realization, the employee benefits would play a role as a social public organ.

Basically, employee benefits are independently built by will of labor and management

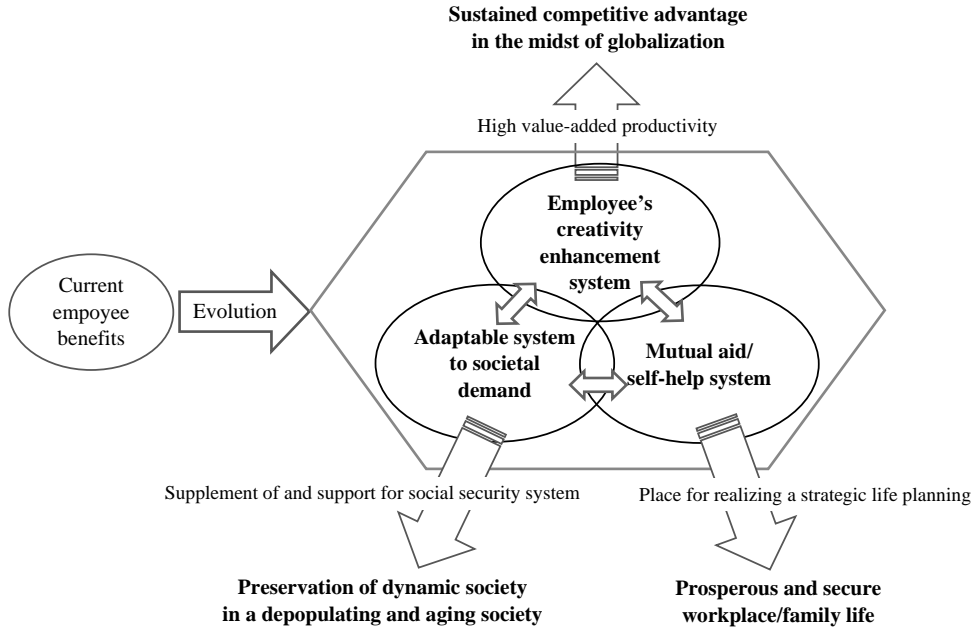


Figure 6. Future Direction of Japan's Employee Benefits

in the company. That is, both company's managerial effect and employees' life effect will be maximized by optimizing it reflecting company's business model, working environment, employee makeup and their needs. In this optimization process, it will be essential that labor and management put heads together and have exhaustive discussions. It is desirable that each company builds an individual system as a result. Three directions presented here would be positioned as fundamental pillars of each company in the future.

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# Various Issues Concerning Labor Legislation Relating to Welfare Benefits

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The main purpose of the paper is to clarify the problems surrounding the legal aspects of welfare benefits and the methods of tackling them, matters which, unlike work hours and wages, have received relatively little attention from the point of view of labor law. It proceeds first by considering how welfare benefits in general are constrained by national legal requirements, by company regulation in the form of Work Rules or Collective Agreements, by the restrictions of individual employment contracts and by limits on discretionary, paternalistic grants. It goes on to consider three specific topics which have given rise to the most disputes and legal precedents, such as company housing and dormitories, collective life insurance schemes, and grants for education and training. It concludes with thoughts on legislative intervention which might be necessary in future.

## I. Introduction

There has hitherto been a good deal of discussion in the literature about particular forms of welfare benefits provided by employers that have given rise to a good number of lawsuits, but very little about the legal status of welfare benefits in general.<sup>1</sup> This reflects the low status given to welfare benefits in labor legislation and in legal discussions of the same, in spite of the functional importance of such benefits in actual practice. These fringe benefits can take a wide variety of forms, and their substance—who offers them and how—can vary greatly over time (see, for example, the recent adoption of the cafeteria system, and the growth of out-sourcing of welfare activities). In this paper I want to look both at the legal problems surrounding welfare benefits in general, and at some specific forms of benefit which have given rise to most legal conflict and have served to establish legal precedents.

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<sup>1</sup> For early examples of exceptions to this trend, Tatsuo Nishii, “Welfare Benefits” in *Salary and Welfare*, the collected works of *Business Law*, 20 vols., ed. Teruhisa Ishii, Toru Ariizumi and Yoshio Kanazawa (Tokyo: Diamond, Inc., 1965), 17:201; Nobuyoshi Shimada, *Company’s House, Welfare and Mutual Benefit*, vol. 20 of *Compendium of Labor Law Practice*, (Tokyo: Sogo Rodo Kenkyujo, 1972); Noriyuki Hikota, “Welfare Benefits, Health and Safety” in *Work Regulations: Their Jurisprudence and Practice*, ed. Tadashi Hanami and Yoshiro Fukase (Tokyo: Japan Institute of Labour, 1980), 423. More recently, Hiroshi Oyama, “Changes in Employment Practice and Company Welfare” in *Changes in Employment Practices and the Law*, ed. Joju Akita (Tokyo: Hosei University Press, 1993), 129; Teruhisa Kunitake, “The Legal Situation Regarding Worker Benefits,” in *The Study of Labor Protection Legislation*, ed. Hiroyoshi, Ito and others (Tokyo: Yuhikaku, 1994), 311; Keiji Sato, “Employee Welfare Measures and the Problem of Guaranteeing Recipient Rights” in *Lectures on Labor Law in the 21st Century*, 8 vols., ed. Japan Labor Law Association (Tokyo: Yuhikaku, 2000), 7:263.

## II. Various Issues Concerning Welfare Benefits in General and Labor Legislation

### 1. The Legal Definition of Welfare Benefits

The usual interpretation of welfare benefits would go somewhat as follows: benefits and services, and the facilities to provide them, offered by the employer as part of a contractual employment relationship, originally on a discretionary, goodwill basis, but sometimes in furtherance of a legal obligation, to workers and their families in order to improve their level of welfare or their work capacity. There is in fact no legal definition of the term in labor legislation, although it is used within laws, and matters relating to it are found in guidelines and exemplary listings.<sup>2</sup> Where the words are used it seems that something like the definition given above is assumed. In statistics of labor costs, it is usual to make a distinction between the legally required expenditures on insurance and pension contributions and expenditures which are at the discretion of the employer.<sup>3</sup> In the discussion which follows I shall be primarily concerned with the latter, discretionary type.

In legal terms, welfare benefits are treated in private law, not as part of the employment contract, but, in the case of contributions for private insurance schemes, for instance, as conforming to the law of gift contracts, in the case of loans for house purchase, etc. to the law of monetary consumer finance contracts, in the case of residence in company housing to the law of usufruct loans or cash rental contracts. As a result of their becoming associated with an employment contract, however, these contractual relationships become regulated through the filter of labor law. From a labor law point of view, it is possible to consider the way in which welfare benefits are constrained by national legal requirements, by company regulation in the form of Work Rules or Collective Agreements, by the restrictions of individual work contracts, and by limits on discretionary, paternalistic grants.

### 2. Welfare Benefits as Subject to Legal Constraints

Welfare benefits resemble wages and work hours as being a part of the conditions for supplying labor, built into employment contracts but the degree to which they receive protective guarantees under labor law is much less than in the case of those other two features. Nevertheless, insofar as they are discretionary goodwill gifts of the employer, there are legal constraints designed to frustrate any arbitrary abuse by the employer, of benefits in general and of certain types of benefit in particular. For example, in articles 16 and 17 of the Labor

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<sup>2</sup> For instance, see Article 6, No. 2 of The Equal Employment Opportunity Act, Article 1 of Ordinance for Enforcement of the act, Administrative Interpretation (October 11, 2006, *Rokoku* No. 614), Article 3 and 11 of Part-Time Work Act and Article 4 of Act for Securing Manpower for Small and Medium-Sized Enterprises.

<sup>3</sup> For instance, Ministry of Health, Labour and Welfare's General Survey on Working Conditions, Nippon Keidanren (Japan Business Federation)'s Survey on Corporate Welfare Expenditures, and Rengo (Japanese Trade Union Confederation)'s Survey on Trends in the Provision of Welfare Benefits.

Standards Act it is forbidden to attach to the provision of loans as a welfare benefit, any such conditions as fixing in advance sums payable to the employer for breach of contract, or indemnity for damages, and forbidding also any offsetting of the sums lent against wages. Likewise Article 18 prevents any system of loans as a welfare benefit from being used as a compulsory savings scheme, and the provisions governing the annual paid holiday (Article 39) can be seen as originating in a concern for welfare benefits. Nevertheless there are some provisions which give rise to doubt as to whether they do become subject to labor law constraints in the same way as other conditions of work. We consider the chief of these below.

(1) Provisions Explicitly Specifying the Employers' Obligations and the Compulsory Minimum Content of Work Rules

The Labor Standards Act (henceforth LSA) lays down a number of rules regarding work conditions beginning with its very first article (See also Articles 2, 3, 13 and 15), but it is open to question whether welfare benefits are included in work conditions as there specified. It is most commonly assumed that they do, that the word "work conditions" includes also welfare benefits in general.<sup>4</sup>

Consequently work conditions would embrace all those contractual relationships generated by welfare benefits that were listed earlier. However, welfare benefits are not specified as one of the work conditions which an employer must clearly state when concluding an employment contract. (Article 15 and the accompanying Ordinance for Enforcement, Article 5.)

That Article 5 of the Ordinance for Enforcement which provides a limiting list of the welfare benefits which must be clearly specified included, until their amendment in 1954, the following two items:

"Rules concerning all those matters which apply to all employees in the establishment," and "Rules concerning dormitory provisions," and it was generally assumed that the first of those would include all welfare benefits. Subsequently it was deemed unnecessary to include these two items in the narrow definition of work conditions and so they were eliminated.<sup>5</sup> Nevertheless, in Work Rules, etc, for welfare benefits which are granted on certain prescribed conditions, if they come under one of the items which are still in the list they will be specified. For example assistance with training would come under "Matters relating to skill training," long service rewards would come under "Matters relating to rewards and punishments." Also, as will be discussed later, among welfare benefits, i.e. money grants,

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<sup>4</sup> Labour Standards Bureau, Ministry of Health, Labour and Welfare, ed. *Revised and New Edition: Labour Standard Act*, 2 vols. (Tokyo: Romugyosei, 2005), 1:63, 67, 75.

<sup>5</sup> Labour Standards Bureau, Ministry of Labour, ed. *Revised Edition: Labour Standard Act*, 2 vols. (Tokyo: Romugyosei Kenkyujo, 1958), 1:163-64. Further, work conditions as specified in the former Article 93 of the Labor Standards Act were transferred to Article 12 of the Labor Contracts Act as implemented in March 2008. As with other provisions regarding work conditions in Labor Contracts Act (Articles 1, 4, 7, 8, 9, 10) it is generally considered that welfare benefits in general are included.



for which the grant conditions are clear so that they can be included in wages, any allowances such as housing or family allowances which are paid regularly at least once a month (Article 24, Part 2 of the LSA), shall be included in the wages which have to be clearly specified in writing. (31 March 1999, *Kihatsu* No. 168) However, there is no obligation to specify any other welfare benefit, nor in the case of such other benefits, does any deviation of actual practice from what is specified justify an immediate breaking off of the employment contract such as is envisaged in Article 15, Part 2 of the LSA (27 November 1948, *Kishu* No. 3514).

There is also a difference between what has to be specified in work conditions according to Article 15 of LSA, and what has to be specified when recruiting for employment. In the latter case there are no limits set to the work conditions which must be specified (Article 5-3, Part 1 of the Employment Security Act and Article 4-2 of Ordinance for Enforcement of the act).

It is a different matter when it comes to what has to be specified in work rules as regulated by LSA Article 89. If a welfare benefit comes under No. 10, “stipulations applicable to all workers at the workplace concerned on matters other than those contained in the preceding items,” it would be conditionally essential to spell it out in Work Rules.<sup>6</sup> In actual practice it seems that this is what is often done, either in the main Work Rules themselves or in some supplementary appendix.<sup>7</sup> However, because welfare benefits are often not specified, even if they are schemes which apply to all workers, if they are not spelled out in Work Rules according to the prescriptions of the LSA, it can often happen that they become an offence under the LSA and if they are only regulated by unapproved rules internal to the company, their legal status may be in doubt. Such cases are quite frequent.

## (2) Welfare Benefits in Relation to Wage Regulation

As argued above, welfare benefits may be deemed to be included in the concept of working conditions, but if one does so, the question arises as to how they are differentiated from wages which are similarly dispensed by the employer. Wages, as a “reward for labor” (Article 11 of the LSA) are regulated in that LSA with respect to modes of payment and expiry terms, and they are the basis for calculating average wages and premiums for overtime and so on. Wages are the subject of the Minimum Wage Act and other labor protective legislations. If welfare benefits were to be included within wages, they would be subject to the same regulations. However, welfare benefits are not something which the employer has a taken-for-granted obligation (a debt) to pay under a contract of employment, they are something which are given as a grace and favor at the discretion of the employer (and have their legal basis in something other than the employment contract (labor supply contract) of

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<sup>6</sup> Labour Standards Bureau, Ministry of Health, Labour and Welfare, ed. *Revised and New Edition: Labour Standard Act*, 2 vols. (Tokyo: Romugyosei, 2005), 2:881.

<sup>7</sup> Article 89, Part 2 was eliminated in the 1998 revision. The limitation on regulations which could be set separately from the basic Work Rules was thus removed.

the Civil Code. Such payments as family allowances and housing allowances which are generally seen as a part of wages, being essentially discretionary grace and favor grants (to be legally treated under the concept of gift contracts) can be included in the notion of welfare benefits. Thus welfare benefits and wages have a different legal basis from each other both in their nature and their origins. However, there is a tendency in administrative interpretations to expand the concept of wages (reward for labor) and to include discretionary welfare payments in the concept of wages, provided the amount and timing of payments is specified in Work Rules or a Collective Agreement. (September 13, 1947, *Hakki* No. 17). The basic thinking is that if the conditions of payment and the amount are clear and payment can be demanded then such payments should be protected just as much as wages. This is not to say that this applies to every payment which meets these conditions. Even though the conditions for payment may be clearly specified, grants to assist in self-directed training, for example, or supplementation of premiums for participation in voluntary life insurance schemes cannot be treated as wages.<sup>8</sup> And, in reverse, hourly or monthly payments such as performance-linked bonuses for which the amount cannot be specified in advance cannot be denied to have the character of wages. What is or is not wages, has to be decided case by case not only with reference to the conditions under which the payment is made but also considering the nature of every payment.<sup>9</sup> The same may be said of other payments which are differentiated both from wages and from welfare benefits such as business expenses—reimbursements for travel or sales expenses. These distinctions among wages, welfare benefits and business expenses have some importance when dealing with such questions as a cut-off in housing allowances during a strike, or the treatment of grants for personal study.

### (3) Regulations Viewed from the Standpoint of Equality of Treatment

Welfare benefits are also affected by regulations concerning equality of treatment. Article 3 of LSA (An employer shall not engage in discriminatory treatment with respect to wages, working hours or other working conditions by reason of the nationality, creed or social status of any worker) is, as already noted, generally considered to apply also to welfare benefits in general. The same applies in other pieces of legislation. The Equal Employment Opportunities Act (Act on Securing, Etc. of Equal Opportunity and Treatment

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<sup>8</sup> The Administrative interpretation holds that the following are welfare benefits not included in wages: (i) Welfare benefits broadly understood (provision of housing or meals), (ii) Provision of facilities for workers' personal enjoyment (bathing or sports facilities), (iii) Benefits whose cost to the employer may vary from worker to worker (Free passes given to employees by railway companies), (iv) Assistance with workers' discretionary expenditures (supplementation of worker contributions to insurance and savings schemes). See Labour Standards Bureau, MHLW, *Revised and New Edition: Labour Standard Act*, 158ff. in note 4.

<sup>9</sup> For examples of a judgment relating the character of wages, see Yoshito Yamamoto, "The Legal Character of Wages," in *Lectures on Modern Labor Act*, 14 vols, ed. Japan Labor Law Association (Tokyo: Sogo Rodo Kenkyujo, 1983), 11:2ff.; Society for Labour Act, University of Tokyo. ed., *Annotation of Labor Standard Act*, 2 vols. (Tokyo: Yuhikaku, 2003), 1:170ff.

between Men and Women in Employment) from the moment of its activation in 1985 included welfare benefits in its purview along with wages and hours of work as “occupying an important place in the concept of working conditions” (former Article 10 of the act).<sup>10</sup> However, hitherto, among the variety of welfare benefits it has been only those which are granted under the clear conditions and have considerable economic value such as cash grants for house purchase which have been specified as not to be subject to discriminatory allocation as between the genders (Article 6 of the act and Article 1 of the Ordinance for Enforcement of the act).<sup>11</sup> Moreover, in this law too, the assumption is that there is a difference between wages and welfare benefits of the sort described above *a propos* administrative interpretations.

However, given the Japanese system of long-tenure employment, all of these provisions, whatever the institutional purpose and the function of the legislation have been made on the assumption that they apply to regular workers. All others—part-time workers, Temporary agency workers, contract workers, self-employed workers with exclusive contracts—have tended to be excluded. However, with the increase in numbers of such workers, the concern with providing decent conditions of work has made the question of welfare benefits for such workers (including those made legally compulsory) a matter of considerable juridical concern. As far as part-time workers are concerned, the so-called Part-time Labor Act (Act on Improvement, etc. of Employment Management for Part-Time Workers) in Article 3 speaks of equal treatment with “ordinary workers” and, as one of the improvements it seeks to make, the amplification of welfare benefits is specifically mentioned. More recently the strengthening of the provisions of that law (Articles 8 and 11 in particular) has come under scrutiny.

### 3. Welfare Benefits in Relation to Work Rules and Collective Agreements

#### (1) The Creation of a Right to Demand a Benefit

It is often the case that welfare benefits are specified in Work Rules and Collective Agreements. In the case of work rules, this is justified by the provisions of Article 89 of the LSA. In the case of Collective Agreements it is a result of the fact that unions have always considered such benefits to be a part of the real wage, and sought to bring them in the scope of the agreement. Where the concrete nature of the benefits is clearly specified in such rules or agreements, they cease to be a matter of discretionary paternalistic benefits and take on a contractual nature which creates the right to demand fulfillment of contract.<sup>12</sup>

<sup>10</sup> March 20, 1986, *Fuhatsu* No. 68, *Shokuhatsu* No. 112 and *Nohatsu* No. 54.

<sup>11</sup> There is a limited list of benefits designed to enhance the welfare of employees: loans and cash payments, cash payments to contribute to workers’ asset build-up and provision of housing. October 11, 2006, *Kojihatsu* No. 011002.

<sup>12</sup> There is a judgment which holds that, in the case of a “sympathy gift (*mimai-kin*)” given in supplement to an award under a workman’s compensation agreement, the amount specified in the Rules only indicated the upper limit of the “gift” to be paid, and so did not constitute grounds for a right to claim that sum. The Fukoku Seimei case (Tokyo District Court, Hachioji Branch Court, November 9,

Nevertheless, even when Work Rules and Collective Agreements are concerned, the degree of legal protection accorded to welfare benefits is low as compared with wages and work hours. This is evident in, for instance, judgments concerning the validity of changes in work rules. The Supreme Court has ruled that changes in important rights and work conditions such as wages and retirement payments should have a “rational basis in a high degree of necessity.” The Supreme Court did not explicitly say whether or not welfare benefits would be included in the category of important rights and work conditions, nor are there relevant precedents yet in lower courts, but given that welfare benefits are in origin discretionary and paternalistic grants, even if they should give rise to a right to demand them, that right is likely to be weakly interpreted.

## (2) Personnel Management and Welfare Benefits

The employee welfare aspect of welfare benefits tends to be emphasized, but there is another aspect, namely the way in which they directly or indirectly serve the objectives of personnel management. They have their origin in the attempt to secure labor supplies in the labor market, and are effective in promoting a sense of belonging and loyalty to the workplace, and to the resolution of dissatisfactions. These effects are recognized in judging the legal status of employers’ personnel decisions. For example, in judging the validity of orders to change job assignments or to move to another establishment, or of changes detrimental to the interests of workers in Work Rules, the nature and value of welfare benefits granted are taken into account as factors mitigating the disvalue incurred.<sup>13</sup>

## 4. Welfare Benefits as Seen in Employment Contracts

The normal situation is for welfare benefits which apply to all employees to be specified in Work Rules or Collective Agreements, but it also happens that the rights to demand welfare benefits are generated by separate agreements with individual employees, or by particular labor relations past practices. Equally, it sometimes happens that the treatment of certain welfare provisions becomes conventionalized within certain firms without being formally written into Work Rules. In such cases, provided the content of such provisions is fully understood by the employees, the right to demand such benefits, is recognized as part of an individual contract of employment, and changes in such intra-firm conventions are interpreted as being tantamount to changes in Work Rules.<sup>14</sup>

Again, welfare benefits are predicated on the existence of an employment contract

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2000, *Rodohanrei* [*Rohan*] 805-95).

<sup>13</sup> For an example of a judgment relating to detrimental changes in Work Rules, see the Daishi Ginko case (Supreme Court, February 28, 1997, *Rohan* 710-12). And for one related to job transfer, the NTT Higashi-Nihon case (Fukushima District Court, Koriyama Branch Court, November 7, 2002, *Rohan* 844-45).

<sup>14</sup> For an example of a change in dormitory regulations, see the Higashi-Nihon Ryokaku Tetsudo (East Japan Railway), Sugunami Ryo (Sugunami Dormitory) case (Tokyo District Court, June 23, 1997, *Rohan* 719-25).

(i.e., having the status of employee). This gives rise to certain problems over benefits arising after employment has been terminated. See later for cases involving the vacation of company housing or employers' demands for repayment of grants and loans.<sup>15</sup>

### 5. Welfare Benefits as Discretionary, Paternalistic Grants

It is possible for welfare benefits to retain the status of discretionary grace-and-favor payments when they are not specified in Work Rules or when, even if they are governed by informal company practices, their content, or the nature of what can be demanded as of right is not fully known to the employees. In such cases the grant of the right to receive the benefit and its nature is left to the discretion of the employer.<sup>16</sup> However, insofar as unfair labor practices and discriminatory practices or deviation from the good-faith principle of labor contracts is not allowed, such discretionary benefits are not differently treated from those for which the right of entitlement is clear.

## III. Various Legal Problems Involving Individual Benefit Types

Some types of welfare benefit frequently give rise to disputes, and to scholarly analysis, and accumulate a goodly number of legal precedents. Owing to limitations of space I shall choose here to concentrate on (i) company housing, (ii) group life insurance arrangements and (iii) assistance for study, including study abroad.<sup>17</sup>

### 1. Problems Arising from the Occupancy of Company Houses or Dormitories

Housing provision takes the form of the employer giving occupancy in houses or dormitories to occupants who fulfill the condition of being his employees. Generally speaking married employees get houses, and dormitories are provided for single people or those who are posted away from home without their families. In either case whether the company is the owner of the housing or merely leasing it is not an issue. Although one does come across the words *shataku* (company houses) and *ryo* (dormitories) here and there in recent legislation, as with *fukurikosei* (welfare benefits) there is no legal definition, and the term is usually understood in the sense in which I have used it above. One can also divide the notion of company housing into two categories "work housing" which are a necessary part of the company organization provided in pursuit of particular important company objectives, and "ordinary company housing" to give employees a stable base, with the intention of improving their welfare, increasing their work efficiency or helping in recruitment. What is

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<sup>15</sup> For a judgment on whether, in deciding on the need for an injunction determining an employee's provisional status, the advantage of being able to use the firm's welfare facilities is taken into account, see also the Chuo Taxi case (Tokushima District Court, June 6, 1997, *Rohan* 727-77).

<sup>16</sup> For an example of a judgement indicating this point concerning one-off gift celebrating an improvement in company results, see the case (Nagoya District Court, April 27, 1973, *Hanta* 298-327).

<sup>17</sup> There are also to be considered problems surrounding, for instance, the legality or otherwise of detrimental changes in a corporate pension system for former employees.

described in Article 94 of LSA as “dormitories attached to the enterprise” may be considered to belong to the first category. What are of interest from the point of view of welfare benefits are the other “ordinary company housing.”<sup>18</sup> In Japan, expenditure on company housing (whether owned or leased) makes up a substantial portion of total expenditure on non-statutory welfare benefits,<sup>19</sup> and has always been seen as an important form of fringe benefit.

Such housing, as with all matters pertaining to the leasing of housing, can generate a good deal of legal problems. Most frequent as a cause of dispute and most central to scholarly discussions has been the question of employers’ orders to vacate company housing on termination of the employment contract and the appropriate grace period in such cases.<sup>20</sup> Notably important has been the issue of the applicability of the provisions of the 1991 Act on Land and Building Lease (hereafter Leasehold Act) or former Building Lease Act before establishing Leasehold Act, and the preceding legislation which it superseded.

Precedents on this issue are concentrated in the period 1945-1955 when the earlier act was in place, and when the shortage of housing was acute. Most of the scholarly work also dates from this period and developed a critical stance towards those judgments. There are a few precedents from more recent times also, and one can discern a change in the arguments used in cases of orders to vacate, perhaps reflecting the easing of the housing situation.

Moreover, whether the housing is company-owned or leased, in the majority of cases, it has become usual for matters to be regulated within the company by a set of rules separate from the Work Rules themselves, or else a specification of rules in a Collective Agreement. Hence legal issues involve decision on the validity of such regulations governing such things as eviction after termination of employment, but in any case the nature of the contract is considered the primary consideration.

#### (1) The Legal Character of the Occupancy Relationship

To deal with these problems it is first necessary to establish the legal character of the occupancy relationship (the contractual relationship on which it is based). If it is a leasing contract, then the Leasehold Act applies and the relationship has the same restrictions as apply generally as stipulated in Articles 28 and 30, namely that requests to vacate cannot be given without good reason, and so any company rules which infringed that principle would be considered invalid. But if the contractual relationship is construed as something other than a leasing contract, there is no protection from the the Leasehold Act. If the contract is a

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<sup>18</sup> For the criteria for deciding whether company housing is or is not “dormitories attached to the enterprises,” see Labour Standards Bureau, MHLW, *Revised and New Edition: Labour Standard Act*, 903ff. in note 6.

<sup>19</sup> It is around 50 %. See surveys in note 3.

<sup>20</sup> For this issue, see also, Takayasu Yanagiya, “The Use of Company Housing, Dormitories and Other Company Facilities and the Termination of Employment Contracts,” *Quarterly Labor Law* 165, (Autumn 1992):32ff.

simple one involving the free provision of the housing by the employer, then there is no need for him to show “good reason” for a request to vacate.

It has generally been considered that which kind of contract it is, has to be evaluated in the light of two elements: for value—whether or not the occupant of company housing pays anything for the privilege of occupation—and specificity—whether or not acquiring the status of employee is a precondition for occupancy.

On this issue the Supreme Court ruled in 1954, that there was no general rule as to whether rent-paying occupancy of company housing was under one type of contract or another; each case had to be decided according to its special circumstances.<sup>21</sup> Later judgments, including those of the Supreme Court, have usually taken the amount of the rent paid as the indicator of “for value” (whether it had the character of a “quid pro quo”).<sup>22</sup> If it is at or close to the going rental rates in the market, that constituted “for value” and all the provisions of the Leasehold Acts should apply. On the other hand, if the rent was a token amount such that the “for value” criterion did not apply, it was from early on suggested that it was the Civil Code’s provisions concerning loan for use contracts that should apply.<sup>23</sup> Subsequently, in a number of judgments including those of the Supreme Court, great weight has been put on the “specificity” criterion and in most cases the occupancy of company housing has been treated as a specific contract lasting only as long as the employment relation lasts.<sup>24</sup>

As against this case-law tendency to treat the amount of rent paid as the deciding criterion, scholarly writings have tended to be critical, particularly as coming from labor law experts.<sup>25</sup> They argue that it is indeed the case that rents are often low, but that is often because they are held down as part of the terms of a Collective Agreement with the union, or because they remain unadjusted at the level set much earlier, or they were held down by previous rent-restricting legislation. Hence they cannot be used as a criterion of “for value” The criterion should be whether the employer is deriving any benefit from the provision of housing, such as improving recruitment or raising worker efficiency. Or it should be seen in the fact that the occupants of the houses or employees in general are offering their labor services and in return the employer is providing housing as, directly or indirectly, a part of the wage he pays for those labor services.

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<sup>21</sup> The Nippon Semento case (Supreme Court, Third Petty Bench, November 16, 1954, *Minshu* 8-11-2047; the Tohoku Denryoku case (Supreme Court, Second Petty Bench, May 13, 1955, *Minshu* 9-6-711); the Musashi Zoki case (Supreme Court, Second Petty Bench, November 16, 1956, *Minshu* 10-11-1453).

<sup>22</sup> The Nippon Semento case and the Tohoku Denryoku case in note 21, and the Kamishima Kagaku Kogyo case (Supreme Court, Third Petty Bench, March 10, 1964, *Hanji* 369-21).

<sup>23</sup> For instance, see the Kawasaki Jukogyo case (Osaka District Court, May 10, 1955, *Hanji* 58-21).

<sup>24</sup> See the Nippon Semento case and the Tohoku Denryoku case in note 21, and Kamishima Kagaku Kogyo case in note 22.

<sup>25</sup> For these arguments, see Yanagiya, “The Use of Company Housing, Dormitories and Other Company Facilities and the Termination of Employment Contracts,” 37 in note 20.

Of these opinions the one to be taken seriously is the notion pointed out a propos of the reasons why rents are low, namely that in the case of long-standing occupancy one should look at the rents in relation to the market at the time occupancy began. As for the notion of basing the decision about “for value” on the grounds that housing provision is part of the wage paid for labor services, it is true that one sometimes treats the employment contract as an “equal price” exchange of wage and labor services, but it is doubtful whether one can properly take the “provision of labor services” beyond the employment contract and extend it to determine the “for value” (payment of “just value” price) of housing occupancy contracts. Surely there is no alternative to making the size of the rental payment the basis of judgment.

## (2) The Termination of Employment Contracts and the Validity of Requests to Vacate

In the majority of precedent judgments, it is held that if, in line with the arguments above, the use of company housing is not an ordinary rental contract, then it follows that the occupancy relation should end as soon as employment ends. Most judgments follow that line.

On the other hand, if the occupancy contract is treated as an ordinary rental contract, the provisions of the Leasehold Act should apply,<sup>26</sup> which means that the question arises as to whether the termination of employment constitutes a “valid reason” for terminating occupancy (Article 28 of the Leasehold Act [Article 1-2 of former Building Lease Act]). The same applies to judgments about the validity of rules which specify the maximum period of occupancy, or set a limit in terms of the occupants’ maximum age, but one should also take into account the fact that in recent judgments the question has been raised of possibly applying the concept of fixed-term leasing contracts [Article 38 of the Leasehold Act]). On this point the tendency has been generally to consider the termination of employment as ending also the occupancy relation, but there remains a difference between those which hold that termination of employment automatically counts as a “valid reason” and those who think one should take into account the particular circumstances both of the occupant and of the employer.<sup>27</sup>

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<sup>26</sup> Most judgments, including those of the Supreme Court, have in fact taken the Leasehold Act as applying.

<sup>27</sup> Judgments between 1945 and 1955 when the shortage of housing was acute, including those of the Supreme Court, typically gave the termination of employment as a “factor which gives very strong weight in favor of the validity of a vacation order, but there are also some which hold that one should also take into account the interests of both employer and tenant such factors as the circumstances of those wanting to enter the vacated accommodation, the difficulty or otherwise of finding alternative accommodation. The Kobe Seikosho case (Supreme Court, First Petty Bench, April 23, 1953, *Minshu* 7-4-408); the Nippon Semento case (Osaka High Court [appeal hearing], April 23, 1954, *Kominshu* 7-3-338; Yokohama District Court, October 28, 1964, *Hanrei Times* [*Hanta*] 170-242). However, there were recently some cases based on the premise of the termination of employment as ending the occupancy relation. For an example of these cases, see Towakai case (Tokyo District Court, May 29, 2000, *Rohan* 795-85).



Next is the question of the period of grace allowed the occupant before vacation of the premises is required. Most of the earlier judgments which treat the lease as coming under Article 27 of the Leasehold Act (Article 3 of former Building Lease Act) and was formerly Article 3 of that act, and make the period six months.<sup>28</sup> More recent judgments, however, have, for instance, considered as valid contracts which lease accommodation up to the point of retirement and so generate an obligation to vacate it on retiring, that is to say upholding clauses in company housing provision rules which require vacation of the premises in less than the period specified in the Leasehold Act.<sup>29</sup>

As for cases in which no payment of rent was involved, there is no fluctuation in the consistency with which judges have ruled that company rules about a grace period are valid or that the grace period should be counted as from the day at which employment ended.<sup>30</sup>

Nevertheless, the understanding is that the reason for the employment termination when it is other than retirement, and the good faith or otherwise of the employer have also to be taken into consideration when determining the grace period.

## 2. Problems Arising from Group Fixed Term Insurance (GFTI)

The term “group fixed term insurance” is used when a company or some other unit takes out a life insurance policy a year at a time, covering all its members. In the case of companies they are sometimes taken out for particular employees (e.g. board members) but frequently for the whole body of employees. This is a practice which has been frequently followed, as well as another type, the *jigyo hoken* (enterprise insurance).<sup>31</sup> These forms of insurance provide welfare benefits in the form of death and injury benefit, assistance in maintaining the livelihood of bereaved families, etc, and for that reason have been considered part of the welfare benefit system.<sup>32</sup>

The group fixed term insurance system, and in particular that which is known as Group A insurance<sup>33</sup> in which the company is both the payer of the contributions and also

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<sup>28</sup> For a judgment which confirmed an original finding that the grace period from giving notice of ending the contract should be six months, see the Kobe Seikosho case in note 27.

<sup>29</sup> See the Towakai case in note 27. There is also a similar judgment in the X Company case (Utsunomiya District Court, August 28, 2006, *Rodo Keizai Hanrei Sokuho* [*Rokeisoku*] 1947-19).

<sup>30</sup> See the Nippon Semento case and the Tohoku Denryoku case in note 21, and the Kobe Seikosho case in note 27. More recently, for instance, the Kyodo Toshin Jutaku Hanbai case (Tokyo District Court, February 27, 2001, *Rohan* 812-48), the Hitachi Kinzoku Shoji case (Tokyo District Court, February 2, 2003, *Rokeisoku* 1835-20).

<sup>31</sup> The difference between the two types, both of which allow the company to be the insurer and employees the insured, is that the enterprise insurance is available to companies which have too few employees to qualify for group fixed term insurance.

<sup>32</sup> Other forms of company assistance besides life insurance, given to employees for buying private insurance products as part of the welfare benefit system, are traffic injury insurance and damage and loss insurance.

<sup>33</sup> For the group fixed term insurance and the enterprise insurance, see Naoyuki, Ino, “Insurance Contracts on the Life of Third Parties” in *Compendium of Court Practice: New Edition*, 30 vols., ed.

the party which receives the benefit, has, like the enterprise insurance system, given rise over the last decade and a half to frequent disputes between the company and the bereaved family when an employee dies. As a result the insurance industry created a new product in 1996. It is known as the Comprehensive Welfare Group Fixed Term Insurance, and since April 1997 it has sought to eliminate litigation by promoting a shift to this particular form.<sup>34</sup>

#### (1) Disputes Concerning Group Fixed Term Insurance (GFTI)

This is a form of insurance in which the insurer and the insured are different entities. In such cases in which the insured is not the recipient of the benefit, the law requires that for the contract to be valid there must be consent on the part of the person insured, (Article 674, part 1 of Commercial Code, but from April 1, 2010, Article 38 of the new Insurance Act), the reason being the danger of abuse of the system—murdering to get insurance money or else gambling or speculating on people's lives to get unearned income. However in the case of GFTI, instead of consent of those insured it is merely a matter of informing the union unilaterally or getting its consent, and sometimes not even that. And there were cases in which the insurance money received was not used in accordance with the intentions of the system in order to promote employee welfare or support bereaved families, or if they were so used, only in small part. There were frequent instances of litigation by bereaved families over the proper destination of the insurance money.<sup>35</sup>

The two chief points at issue in such disputes were (i) did the mere notification of the contract to the company's union amount to a giving of consent and therefore the contract should be held valid, and (ii) whether or not there was a legal basis for arguing that the destination of insurance payments should be the family of the deceased.<sup>36</sup> The precedents on the first point tend to take a liberal interpretation of "consent of the insured" and to accept either the consent of the company union or notification to the union as constituting consent.<sup>37</sup> On the second, in cases where the amount received by the family was less than the

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Tsutomu Shiozaki and Jo Yamashita (Tokyo: Seirin Shoin, 2005), 19:231.

<sup>34</sup> In the case of enterprise insurance, as in other life insurance contracts, there is an item in the application form asking for the consent of the person whose life is being insured. As a result of guidance from the Ministry of Finance insurance companies also, since 1983, have commonly required companies, as what are called "supplementary conditions of agreement (*fuho kitei*)" to sign statements to the effect that the monies they receive shall be used for death allowances and condolence gifts. Courts have generally used the existence of such agreements as powerful arguments in their judgments. For a recent instance, see the Sera Kogyo case (Osaka District Court, March 19, 1999, *Rohan* 762-28).

<sup>35</sup> Some cases involve company directors, others ordinary employees. The account here concerns the latter type.

<sup>36</sup> For an analysis of the precedents, see Yoshiro Yamano, "Insurance Contracts on the Life of Third Parties," *Kinyu Shoji Hanrei (The Banking and Business Law Cases)* 1135 (2002):66, and Ino, "Insurance Contracts on the Life of Third Parties," 235 in note 33.

<sup>37</sup> In contrast there seems to be only the Bunka Shutter case (Shizuoka District Court, Hamamatsu Branch Court, March 24, 1997, *Rohan* 713- 39) holding that individual consent of the insured employees was required. Most commercial law theorists support the general tendency to which these

amount paid by the insurance company, lower courts have rejected the family's plea, holding that if the criteria for, or the amount of, the death benefit or condolence grant was specified or if the payment of insurance monies other than to the bereaved family was agreed in a Collective Agreement or in the company's Work Rules, this constituted consent to the arrangement.<sup>38</sup> On the other hand, particularly in the case of ordinary employees and not directors, there are judgments which seem to be groping for a legal basis for declaring the bereaved family to be the proper destination of the insurance money, whether or not there are such provisions in Work Rules, etc.<sup>39</sup> The arguments have been, for instance, that for a company to receive money far in excess of what its welfare benefit rules specify is an undeserved gain, unacceptably contrary to public order and healthy conventions,<sup>40</sup> or, that for particular circumstances there was an explicit or implicit understanding between the company and the insured person to pay a substantial amount,<sup>41</sup> or using the legal construction of contracts for third parties.<sup>42</sup> It has been a quite contentious matter in the lower courts. As far as scholarly opinion goes, the general view of the last argument—namely the one using the legal construct of contracts for third parties, the general tendency has been to see it as a somewhat dubious use of the legal construct, but, given the intentions and purposes of the GFTI as a part of the welfare benefit system, it constitutes an appropriate method of reconciling the conflict of interest.<sup>43</sup>

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judgments conform. See Kenjiro Egashira, "Insurance Contracts on the Life of Third Parties," *Jurist* 764 (1982):62ff.

<sup>38</sup> The Takayama Densetsu case, (Kobe District, December 21, 1998, *Rohan* 764-77); The Sumitomo Kinzoku Kogyo case (Group Fixed Term Insurance, No. 1) (Nagoya High Court, April 26, 2002, *Rohan* 829-12).

<sup>39</sup> Nagoya District Court, April 24, 2002, *Hanta* 1123-237.

<sup>40</sup> Most judgments accept the legal construction of "explicit or implicit consent." For cases relating to GFTI, see the Toei Shikaku case (Aomori District Court, Hirosaki Branch Court, April 26, 1996, *Rohan* 703-65); the Akita Unyu case (Nagoya District Court, September 16, 1998, *Hanji* 1656-147); the Appeal Judgment of the same case (Nagoya High Court, May 31, 1999, *Rohan* 764-20; the Tokyo District Court, August 26, 1999, *Hanta* 1063-242), the Sumitomo Kinzoku Kogyo case (Group Life Insurance, No.1) (Nagoya District Court, February 5, 2001, *Rohan* 808-62), etc.

<sup>41</sup> The Sumitomo Kinzoku Kogyo case (Group Fixed Term Insurance, No. 2) (Nagoya District Court, March 6, 2000, *Rohan* 808-30) and the same case (Nagoya High Court, April 24, 2002, *Rohan* 829-38).

<sup>42</sup> Judgments have varied in their assessment of actual amounts to be paid to bereaved families, but a common calculation is: take the insurance company's payment, subtract the total insurance premiums the company has paid for the deceased, divide by two and pay the extent to which that sum exceeds the benefit already paid.

<sup>43</sup> For an analysis of commercial law theories relating to the Commercial Code, see Noritaka Yamashita, "Insurance Contracts on the Life of Third Parties," in *Compendium of Modern Judge-Made Law*, ed. Tsutomu Shiozaki (Tokyo: Shinnippon Hoki Publishing, 1998), 31ff. For labor law theories, see Hisashi Miyajima, "Unconstitutionality or Illegality of Group Fixed Term Insurance and Workers Rights," *Gakushuin Review of Law and Politics*, no. 30 (1995):45ff.; Mitsugi Shinada, "Hanhyo (case law research)" in *A Hundred Selected Cases in Labor Law*, 7th ed., ed. Takashi Araki, Kazuo Sugeno and Satoshi Nishitani (Tokyo: Yuhikaku, 2002), 104; and Mitsuo Omoteda, "Hanhyo (case law research)," *Minshoho Zasshi* 128 (2003):369.

However as for the Supreme Court, on point (i), a relaxed interpretation of the consent clause, it has generally gone along with the lower courts, but on (ii), it has come to hold that even if the GFTI is not operated with the intention to further the welfare of employees, given that the statutory situation is such that only the consent of the insured is required and not any affirmation that the profit of the insured should equal the amount of the insurance money, one cannot declare the contract to be contrary to public order, provided consent has been given, and that consequently it cannot discern grounds for assuming an explicit or implicit understanding that the insurance money in excess of that specified in work rules should be paid to the bereaved family.<sup>44</sup>

On the first question about consent, in cases where the insured employee did not even know of the insurance, or if he or she did know had no opportunity to reject it, this can hardly be construed as giving consent as specified in Article 674, part 1 of the Commercial Code which means that the contract should be ruled to be invalid. This would mean that the bereaved family could not receive the insurance money. However, if a company were to counter a bereaved family's claim to the insurance money on the grounds that the contract was invalid, it would leave itself open to the judgment that it was unacceptably failing to act in good faith.

On the second point as the contract stood before the introduction of the new form, it is impossible to deny that although the intention was the promotion of employee welfare, in addition to making maintenance payments to the bereaved family the insurance money could be used for general employee welfare, and even to some extent to cover the employer's expenses in recruiting and training a substitute worker. Hence it is difficult not to go along with the view of the Supreme Court when it rules that when a company's Work Rules or its Collective Agreement or individual employment contract specifies the amount of death benefit or condolence money to be paid, that is the amount the bereaved family should receive even if the insurance money generously exceeds that sum. One can interpret this as meaning that in the event that there is no specific provision in Work Rules, etc, then the construction of the lower courts about an offence to public order or an implicit contract might be permitted. Although the judgment of the Supreme Court seems appropriate, it is certainly the case that to allow the use of insurance monies on a large scale for something other than grants to the bereaved family would be contrary to the spirit of the contract as an institution.

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<sup>44</sup> The Sumitomo Kinzoku Kogyo case (Group Fixed Term Insurance, No. 1) (Supreme Court, Third Petty Court, April 11, 2006, *Rohan* 915-26); the Sumitomo Kinzoku Kogyo case (Group Fixed Term Insurance, No. 2) (Supreme Court, Third Petty Court, April 11, 2006, *Rohan* 915-51). For scholars' critical evaluation of these judgments, see Tomonobu Yamashita, "The Group Fixed Term Insurance and the Destination of the Insurance Money," *New Business Law*, no. 834 (2006):12, and Ikuko Mizushima, "The Group Fixed Term Insurance and the Consent of the Insured," *Journal of Labor Law*, no. 108 (2006):224.

## (2) Comprehensive Welfare Group Fixed Term Insurance

Given that these problems with the GFTI (the consent of the insured, the criteria for deciding the amount of money to be paid and the rightful destination of that money paid by insurance companies) gave rise to the above sort of disputes, the industry, as early as November 1996 produced as a new product the Comprehensive Welfare Group Fixed Term Insurance and subsequently firms have switched to this new form of contract,<sup>45</sup> though the proportion of employees insured has been falling.<sup>46</sup> The new product deals with the consent problem by requiring notification to every employee with the right of contracting out, and prevents disputes about the destination of the sums paid out, by separating the main insurance contract which specifies the amounts to be paid to the bereaved family from a special “human value contract” which deals with the portion to be paid to the firm.

It seems safe to say that disputes are unlikely to arise under the new contract system,<sup>47</sup> though there is still some room for disputes concerning the business insurance (*jigyō hoken*) individual type of contract which did not receive the same treatment,<sup>48</sup> and some have pointed out the need for legislation to regulate the matter.<sup>49</sup>

## 3. Problems Arising from Grants for Assistance in Education and Training

There are several forms of direct payments to employees as part of the welfare benefit system; rent supplement for housing rented by the company for employees, contributions towards mortgage or insurance payments, support for sporting activities, etc. There are also grants made with an eye to employees’ future rather than their present contributions to the company, typically study abroad and various kinds of skill development. Unlike other kinds of grant, it may be required that the money will wholly or partially be paid back unless the labor contract is signed or the employee continues working for a certain period, and sometimes this is specified in the Work Rules.<sup>50</sup> The object is to make sure that the grant serves

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<sup>45</sup> On the new system, see, for instance, Ino, “Insurance Contracts on the Life of Third Parties,” 251, in note 33.

<sup>46</sup> Under the former system the participation rate shown by a 1995 survey to be covered were 76.3% for the A-type and 70.2% for the B type. After the change, a survey conducted at the end of 1999 and the beginning of 2000, found the rate to be 66.9%, subsequently falling to 54.3% at end 2003, early 2004. See “Surveys of the Welfare Benefit System published by the Institute of Labour Administration.

<sup>47</sup> It has been pointed out by Ino in “Insurance Contracts on the Life of Third Parties” (253, note 33) and by Yamano Yoshiro in “Validity and Efficacy of the Group Fixed Term Insurance,” *Hanrei Taimuzu*, no. 933 (1997):42, that there is the possibility of problems arising from the article in the main contract which allows the company taking out the insurance to separately specify the recipient of the insurance money.

<sup>48</sup> For elaborations of the difference between the business insurance and the Comprehensive Welfare Group Fixed Term Insurance, see Kuramochi (Comprehensive Welfare Group Fixed Term Insurance) case (Tokyo District Court, October 21, 2002, *Rohan* 842-68).

<sup>49</sup> See Yamano, “Validity and Efficacy of the Group Fixed Term Insurance,” 45-46 in note 47.

<sup>50</sup> There are instances in which “conditional on continuing in employment for a certain period” includes the need to sign an employment contract, and others where it involves an undertaking not to

its purpose, but the question arises whether or not such understandings breach Article 16 of the LSA which bans contracts that “fix in advance either a sum payable to the employer for breach of contract or an amount of indemnity for damages” or Article 14 which specifies the maximum length of fixed term contracts.

Article 16, forbidding any specification of an amount to be paid by an employee or his guarantor as an indemnity for non-completion or breach of contract is intended to prevent forced labor, undue pressure against the employee’s free will, enforced servitude and prolongation of employment. It is interpreted as including the imposition of constraints on an employee’s freedom to retire.<sup>51</sup> Along with Article 14 it was intended to prevent the sort of abuses which occurred in prewar times, but their significance at the present day is in relation to these grants for education and training.<sup>52</sup>

There were originally more judgments concerning the application of Article 16 in the case of training courses than study abroad and, at first, the operative considerations have been whether or not the use of the grant system was at the employee’s own free choice, whether the sum asked to be returned represents a reasonable estimate of the actual cost, whether the expenditure was conceived as the company provisionally making payment on behalf of the individual, whether the period of continued employment required in order to be released of the obligation to repay was appropriate, and in the light of all these considerations taken together whether or not an agreement to repay the money amounted to unreasonable pressure on the employee to continue in employment.<sup>53</sup>

Since then more recent judgments, particularly with regard to study abroad, have hinged on whether or not the expenditure was on education and training of the sort that the employer should normally undertake so that a requirement to pay back would take the form of a sanction, or whether, alternatively, it was something that the employee himself or herself should normally pay for but which the company temporarily undertook on the employee’s behalf (*mutuatus*). This, what is known as the “normal course of business or otherwise” criterion has come to be the chief criterion used.<sup>54</sup> One may consider it as amount-

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work for competing firms in the same industry for a given period after retirement.

<sup>51</sup> Labour Standards Bureau, Ministry of Health, Labour and Welfare, *Labour Standard Act*, 1:232-33 in note 4.

<sup>52</sup> There are scholars who hold that it is wrong to deal with the modern problem of education and training grants by applying Article 16 which was intended to prevent quite different traditional abuses and that what should be in question is the rationality of the content and operation of such grants. For example, Teruhisa Kokubu, “Hanhyo (case law research),” *Rohan* 750-6 (1999) and Tomoko Kawada, “Hanhyo (case law research),” *Rohan* 766-15 (1999).

<sup>53</sup> For instance, Osaka High Court, February 28, 1968, *Hanrei Jiho (Hanji)*, 517-85, and Kawai Gakki Seisakusho case (Shizuoka District Court [appeal court], December 23, 1977, *Rohan* 295-60).

<sup>54</sup> Most recent judgments concerning grants to study abroad have used this approach. The Haseko Corporation case (Tokyo District Court, May 26, 1997, *Rohan* 717-14); the Fuji Jukogyo case (Tokyo District Court, March 17, 1998, *Rohan* 734-15); the Shin Nippon Shoken case (Tokyo District Court, September 25, 1998, *Rohan* 746-7); the Nomura Shoken case (Tokyo District Court, April 16, 2002, *Rohan* 827-40); the Meiji Seimei Hoken case (Tokyo District Court, December 24, 2003, *Rohan*

ing to judgment as to whether the employer's expenditure on education and training amounts to a form of welfare benefit or is to be counted as, like the payment of travel expenses and so on a "business expense" (sometimes also as part of the wage).<sup>55</sup>

However, even using the "normal course of business" criterion, a number of questions can arise which have to be taken account of in the overall judgment; whether or not the arrangement was made by an executive order or by the employee's free will, the declared intention of the scheme and its place in the company's overall training plan, where employees were sent abroad, the subject they studied and its relation to the firm's business, living conditions abroad (whether they had business duties or not) and so on.

This method of resolving the question is persuasive, given that it sets reasonable limits to the application of Article 16, allowing the interests of both employer and employee to be reconciled in a way that permits the continuation of a system which can be meaningful to employees,<sup>56</sup> and makes it relatively easy for employers to predict whether or not they would be in breach of Article 16. Nevertheless, the "normal course of business" criterion and the question of whether or not there is a constraint on the employee's freedom to conclude or terminate a contract of employment (i.e. leave his job) do not necessarily coincide. There are cases where, even when such grants for study and training are made as a welfare benefit, one cannot ignore that they have the effect of acting as a constraint on freedom, and, contrariwise, there are "normal course of business" cases of study abroad where, even though an obligation to make restitution is agreed, the limitation on freedom of choice is limited and there are no problems in allowing free contracting between the parties. Strictly speaking, in both cases one can consider the size of the sum to be restituted and the length of the period of subsequent employment deemed to release the employee from the obligation of restitution as supplementary considerations in deciding whether the "normal course of business" criterion applies.<sup>57</sup> At any rate, it would seem sensible, in the first case to exclude it in principle from the purview of Article 16 of LSA and treat it as something that requires dealing with at the statutory regulation level,<sup>58</sup> and in the second case to treat it as

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881-88); the same case (Tokyo District Court, January 26, 2004, *Rohan* 872-46) and others. As for grants for study and training, see also the Saron Do Riri case (Urawa District Court, May 30, 1986, *Rohan* 489-85); the Wakokai case (Osaka District Court, December 1, 2002, *Rohan* 840-32); the Tokushima Kenko Seikatsu Kyodo Kumiai case (Tokushima District Court, August 21, 2002, *Rohan* 849-95) and others. As for scholarly opinion, the approach was already endorsed in Kazuo Sugeno, *Labor Law*, 3rd ed. (Tokyo: Kobundo, 1993), 132.

<sup>55</sup> See the Higashi-Hakone Kaihatsu case (Tokyo High Court, May 31, 1979, *Hanta* 355-337).

<sup>56</sup> See Nomura Shoken case in note 54.

<sup>57</sup> For a judgment which applies such an argument a propos the subsequent employment period, see, for example, Nomura Shoken case in note 54, and in scholarly commentary, see Shinya Ouchi, "Hanhyo (case law research)," *Jirist*, no. 1130 (1998):135. Labour Standards Bureau, M HLW, 236 in note 4 can be considered to carry the same meaning.

<sup>58</sup> In the Report of the Study Group concerning the Appropriate Contents of a Labor Contract Act, published by the Ministry of Health, Labour and Welfare in September 2005, study abroad which could not be counted as "in the normal course of business" was to be excluded from the scope of Arti-

something to be judged in the light of Article 16.

Again, Article 16 forbids any setting in advance of the sum to be paid in damages for breach of contract, but it does not forbid the company requiring the payment of damages equal to the loss that it has suffered, nor any agreement between employer and employee as to such payment.<sup>59</sup> Even in the case of study and training grants which are treated as normal business expenditure, the employer may well have suffered some damage from the employee's quitting his job. There is a real question as to whether spending on the education and training should be considered a "damage" but there are cases where it would seem legitimate for the employer to demand the payment of damages.<sup>60</sup>

#### **IV. By Way of Conclusion**

We have been looking at problems arising in labor law concerning welfare benefits, and also at some particular points at issue. Looking forward to the future it is apparent that consideration must be given to treating these issues as a matter for statutory regulation. In that connection the following points should probably be taken up.

First, as concerns those among the welfare benefit issues which are most widespread and most frequently treated under specific company rules (housing and various cash grants) it is necessary to consider either explicitly enumerating instances in Article 15 of the LSA, or, in Article 89 listing the essential contents of a set of Work Rules, not just offering the general blanket clause (Article 89, No. 10), about "stipulations applicable to all workers at the workplace" but listing such stipulations explicitly. It is the fact that welfare benefits tend to be a matter for company-by-company treatment, and they should be considered particularly in the light of the need to prevent disputes and ensuring equality of treatment in the workplace.<sup>61</sup> Again, when considering welfare benefits for non-standard workers, the function of such benefits in securing the offer of good employment alternatives cannot be ignored, and it does need careful consideration. It is also necessary to take up the questions concerning the particular forms of welfare benefit treated in this paper to see if the prevention of disputes does indeed require legislation and if so of what kind.<sup>62</sup>

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cle 16, and the maximum period of subsequent employment was to be set at 5 years, it being possible for the company to reclaim the whole amount of the cost if the employee left during that period. In the Labor Contract Act as enacted in March 2008, however, there was no such clause.

<sup>59</sup> September 13, 1943, *Hakki* No. 17.

<sup>60</sup> For instance, the Tokushima Kenko Seikatsu Kyodo Kumiai case in note 54.

<sup>61</sup> The 1993 Report of the Study Group on Revision of the Labor Standards Act did recommend that a propos housing as an important form of welfare benefit such as company houses, there should be explicit written rules and they should be written into Work Rules.

<sup>62</sup> See the 1993 Report of the Study Group in note 61. And for discussion of legislation on the restitution of grants for study and training, see MHLW's Report of the Study Group Concerning the Appropriate Contents of a Labor Contract Act in note 58.



# Current Situation and Issues of Healthcare for Employees: Based on Analysis of Recent Trend and Cases

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The purpose of this paper is to roughly understand the current situation and direction of health and medical care field in an in-house welfare system and introduce recent cases. There are three organizations related to in-house healthcare; company, labor union and organization composed of labor and management, e.g., health insurance union and welfare foundation in major companies. In this paper, I will introduce efforts of companies and health insurance unions.

## I. Current Situation of Health and Medical Care System

Before introducing specific cases, I would like to describe the current situation of health and medical care system in the in-house welfare system. According to General Survey on Welfare and Retirement Benefit 2003<sup>1</sup> conducted by the Research Institute of Employee Benefit (RIEB), among current welfare programs (Corporate Statistics), the one most introduced is “congratulatory/condolence/disaster payments” (92.2%), followed by “retirement allowance upon sudden death/condolence money program” (88.8%), “checkup (legal checkup plus extra checkup)” (71.8%), “housing allowance/rent subsidy” (54.9%) and “property accumulation subsidy program” (54.1%). This result shows that the introduction rates of top three programs including “checkup” are far higher than that of others. Focusing on health and medical care field, the introduction rate of welfare system is as shown in Table 1.

Answers to “What program do you want to introduce or expand?” are “tobacco control (support for separation of smoking areas or bans on smoking)” (24.1%), “mental health” (21.0%), “health check for lifestyle-related disease” (19.3%) and “checkup (legal checkup plus extra checkup)” (18.7%), i.e., health and medical care field occupied from second to fifth place. The top was “official certification support.”

The RIEB analyzed the reason why health and medical care field is focused on and found that companies are developing an attitude of actively support and manage it against the backdrop of the emergence of an aging society with fewer children, the correction of industrial injury standards for brain and heart disease and Japanese government’s promotion of “Healthy Japan 21.”<sup>2,3</sup>

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<sup>1</sup> Survey targets: persons in charge of personnel and general affairs in companies with 30 or more employees. Sample size: 1,561 (response rate: 19.5%). Survey period: December 2001 to January 2002.

<sup>2</sup> “Healthy Japan 21” is the third national healthcare movement begun in 2000 by the Ministry of Health, Labour and Welfare. It aims to improve lifelong lifestyle, prevent lifestyle-related disease and reduce the burdens of individuals and society. In particular, in order to promote national health, pre-

Table 1. The Introduction Rate of Welfare System in Health and Medical Care Field

Items	Introduction rate (%)
Checkup (legal checkup plus extra checkup)	70.0
Health check for lifestyle-related diseases	54.5
Private complete medical checkup subsidy	35.3
Mental health	10.2
Dispatch of family care helper	3.1
Long-term income security insurance subsidy	1.9

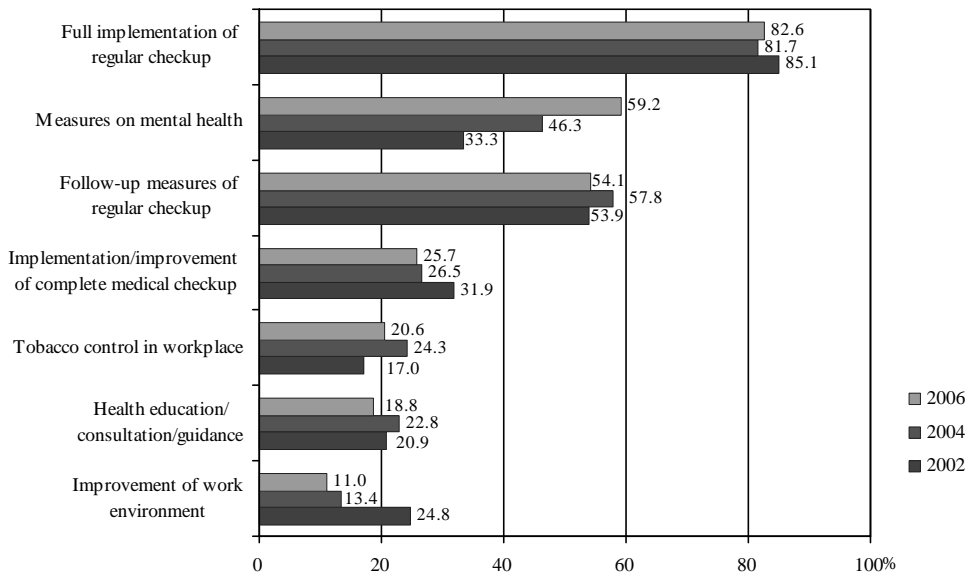


Figure 1. Health-Promoting Measures: Time Series Variations in Top Seven Measures (Multiple Answers up to 3)

There is also a survey on companies' efforts for the health and medical care field conducted by the Mental Health Research Institute, the Japan Productivity Center for Socio-Economic Development. This research institute conducted a survey three times in 2002, 2004 and 2006 for the purpose of analyzing companies' actual efforts on mental health. The survey results of time series variations in top seven health-promoting measures are shown in Figure 1.

vent disease and improve the quality of life, it sets numerical targets of nine fields (nutrition and dietary life, physical activities and exercise, rest and mental health care, smoking, drinking, dental health, diabetes, cardiovascular disease and cancer) by 2010 and takes measures with three pillars; improvement of self-control ability to achieve the goal, support and regular management by experts and promotion of information management and dissemination/enlightenment activities.

<sup>3</sup> Excerpt from Summary 1 of "Results Summary of General Survey on Fringe and Retirement Benefit."

As above survey conducted by the RIEB, this result also shows that companies put their efforts into the implementation of employees' checkup. As for mental health, when the RIEB conducted a survey in 2002, it was the second most answer to "What program do you want to introduce or expand?" It has also rapidly increased the percentage in the surveys conducted by the Mental Health Research Institute year by year; 33.3% in 2002, 46.3% in 2004 and 59.2% in 2006.

## **II. Trend of Expenses Related to Medical Care and Healthcare Field from the Viewpoint of Welfare Expenditures**

According to Survey on Corporate Welfare Expenditures<sup>4</sup> conducted by the Nippon Keidanren (Japan Business Federation), non-legal welfare expense per capita has been nearly flat; 28,203 yen in 2002 and 28,286 yen in 2006. Housing expense which is the most expensive in the welfare expenditures has decreased somewhat; its score was 96.6 in 2006 with a score of 100 representing 2002 (14,456 yen in 2002 and 13,962 yen in 2006). In contrast, medical care and healthcare expense which consists of medical and health facility management expense and health support expense got a score of 115.8 with a score of 100 representing 2002 (2,700 yen in 2002 and 3,127 yen in 2006). This is one of the few increased items in the legal welfare expense. We can also see from the structure of welfare expenditures that companies are trying to expand medical care and healthcare fields. Based on above trend of corporate welfare system, I will introduce the following manufacturing company's case.

## **III. Healthcare Activities of Company J**

### **1. Outline of Company J**

Company J mainly manufactures and sells chemicals. The capital is about 80 billion yen, the number of employees is about 4,000 and annual sales are about 1.1 trillion yen on a consolidated basis (as of 31 March 2006).

### **2. Healthcare System**

Company J has health promotion centers as a sector of managing employees' health. The centers are placed in the Headquarters and five main establishments. The center in the Headquarters plans healthcare policies and specific measures and plays a comprehensive role. Five main establishments are three factories (one of them has a laboratory) and two sales branches (Tokyo and Osaka). Each health promotion center consists of industrial

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<sup>4</sup> Survey of companies belonging to the industrial group member of Nippon Keidanren and member companies of Nippon Keidanren. The fiftieth survey was conducted in 2005. About 700 companies are surveyed every time. The number of participants was 645 in 2005 (manufacturers 49.8% and non-manufacturers 50.2%).

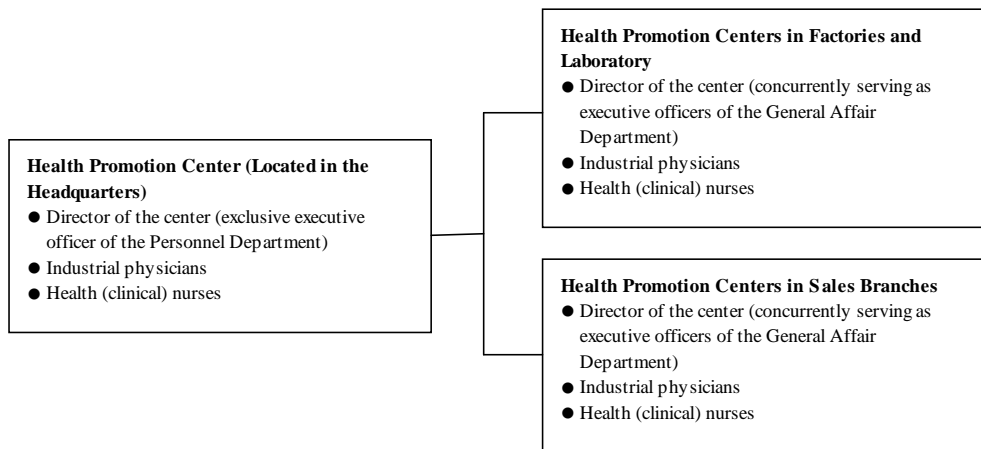


Figure 2. Healthcare System of Company J

physicians and health (clinical) nurses as professional healthcare staff under a director of the center. The director of the health promotion center in the Headquarters is an exclusive executive officer and executive officers of the General Affair Department concurrently serve as other directors of establishments (see Figure 2).

### 3. Factors of Today's Healthcare and the Future Direction

Company J also shows a trend to put more emphasis on medical care and healthcare field in the benefit programs as same as above survey. That is, companies have focused on counseling of all employees for checkup and the follow-up check. Now, maintaining that counseling, they are making efforts with an additional basic policy, "physical to mental," on the basis of changes in work and social environments. This does not mean that the company makes light of physical stuff. They are trying to respond to increased mental issues in workplace maintaining such efforts. Company J regards the following as factors of today's mental issues:

- (i) Hard work caused by expansion of scope of work and increase in activities per capita owing to reduced number of employees
- (ii) Exposed power harassment and sexual harassment (Management's less aware of change with the times is one of factors.)
- (iii) Employees' lowered tolerance for stress (Employees cannot take strict instructions and hard work.)
- (iv) Changes in family life and school education (e.g., pampering due to the low birthrate, avoidance of troubled experience, etc.)

I interviewed health and clinical nurses of Company J about future direction of healthcare and they stated as follows: "We are making efforts aimed at support for employer's legal obligation of security and employees' self-healthcare, i.e., 'protect your

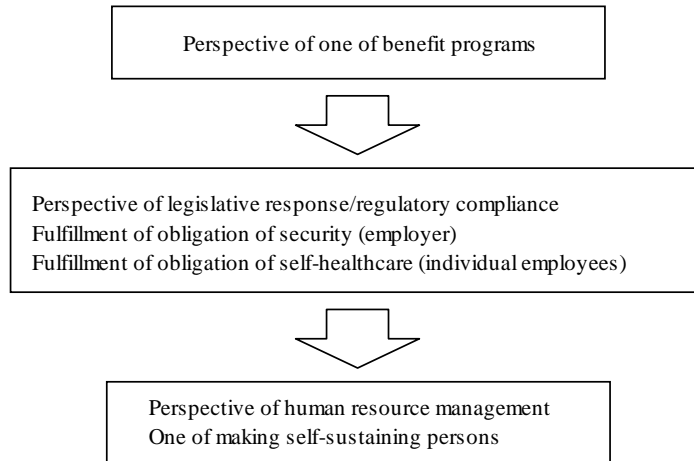


Figure 3. Changes in the Characteristic of Companies' Healthcare

health by your own power,' unlike one of conventional benefit programs.<sup>5</sup> In other words, our goal of healthcare is to let employees clearly understand their health conditions and be able to help themselves when feeling strange. That is, we provide healthcare as human resource development." Figure 3 shows changes in the characteristic of companies' healthcare.

These factors are basically difficult to solve, though there is a need to make ceaseless efforts such as in-house education. They begin with the recognition that these factors certainly continue to occur in workplace. The most important thing is to prevent the occurrence of such issues as much as possible before employees enter a danger zone while it is also important to support an employee who has to go to a hospital for the treatment of mental illness and make trinity efforts between the employee, industrial physicians (health nurses) and workplace for his return to work after the treatment as a matter of course. Through such efforts, the company aims to develop employees (human resources) who can keep themselves in shape. This is the meaning of "making self-sustaining persons" as the industrial physician says.

#### 4. Company-Wide Efforts

##### (1) Enrichment of Regular Checkup: Sharing of Roles with Health Insurance Union

Company J had added extra checkup items to legal checkup items. Since 2004, it has shared roles of items and expenses with the health insurance union (actually, sharing between labor and management) under the cooperation based on the opinions of industrial

<sup>5</sup> Mori (1995) pointed out that the purpose of conventional company benefit programs (synonymous term of non-legal benefit programs) is "to improve labor productivity," "to enhance the willingness to work (secure sense of belonging and loyalty)," "advantages for hiring or fixation" and "stabilization of labor-management relationship" on the basis of analyzed theories and surveys. Company J's industrial physician's "conventional benefit programs" is close to what Mori pointed out.

Table 2. Legal Regular Checkup Items and Company J's Ones

Checkup items
<i>Legal regular checkup items (Article 44 of Ordinance on Industrial Safety and Hygiene)</i>
Survey on health history and work history
Test of subjective and objective symptoms
Measurements of height and weight, eye test and hearing test (1,000/4,000Hz)
Chest X-ray test and sputum test
Blood-pressure measurement
Anemia test (hemoglobin content and red blood cell count)
Liver function test (GOT, GTP and $\gamma$ - GTP)
Blood fat test (total cholesterol, triglyceride and HDL cholesterol)
Blood glucose test
Urine test (sugar and protein)
Non- exercise electrocardiography
<i>Company J's regular checkup items (Additional items to legal checkup items)</i>
Body fat percentage and BMI
Anemia test (hemoglobin, hematocrit and platelet)
Inflammation (white blood cell)
Liver function test (neutral fat and LDL cholesterol)
Renal function test (creatinine and uric acid)
Blood glucose test (HbA1c)
Stomach cancer screening (pepsinogen method)
Urine test (uric blood)
Fecal occult blood test (colorectal cancer)
<i>Company J health insurance union's regular checkup items since 2004</i>
Ultrasound examination of five organs for 35 years old or older
Cervical cytology (self blood collection method, for all women)
Prostate-specific antigen test (for all men aged 45 or older)

physicians as shown in Table 2. The expenses for the checkup are not even between Company J and the health insurance union depending on the checkup they implement, and all checkup results are collected by the industrial physicians of the health promotion centers and used for counseling of all employees.

## (2) Increased Interview Opportunities and Detailed Network for Mental Care

The Industrial Safety and Health Act was revised in 1 April 2006 (see Figure 4) obliging face-to-face counseling with industrial physicians, etc. for employees whose monthly overtime work is more than 100 hours. For Company J which has emphasized on the prevention, this is insufficient to prevent the occurrence possibly before employees enter a danger zone and, therefore, in addition to conventional company-wide "interview of all employees" after regular checkup, Company J has drastically reviewed the counseling for overwork with exclusive staff of the health promotion center since fall 2006 aimed at strengthening of mental care.

A general-staff worker whose self-reported monthly overtime work is 40 hours or longer was required to receive counseling with healthcare staff (health/clinical nurse). However, self-reported working hours were sometimes different from actual ones. In

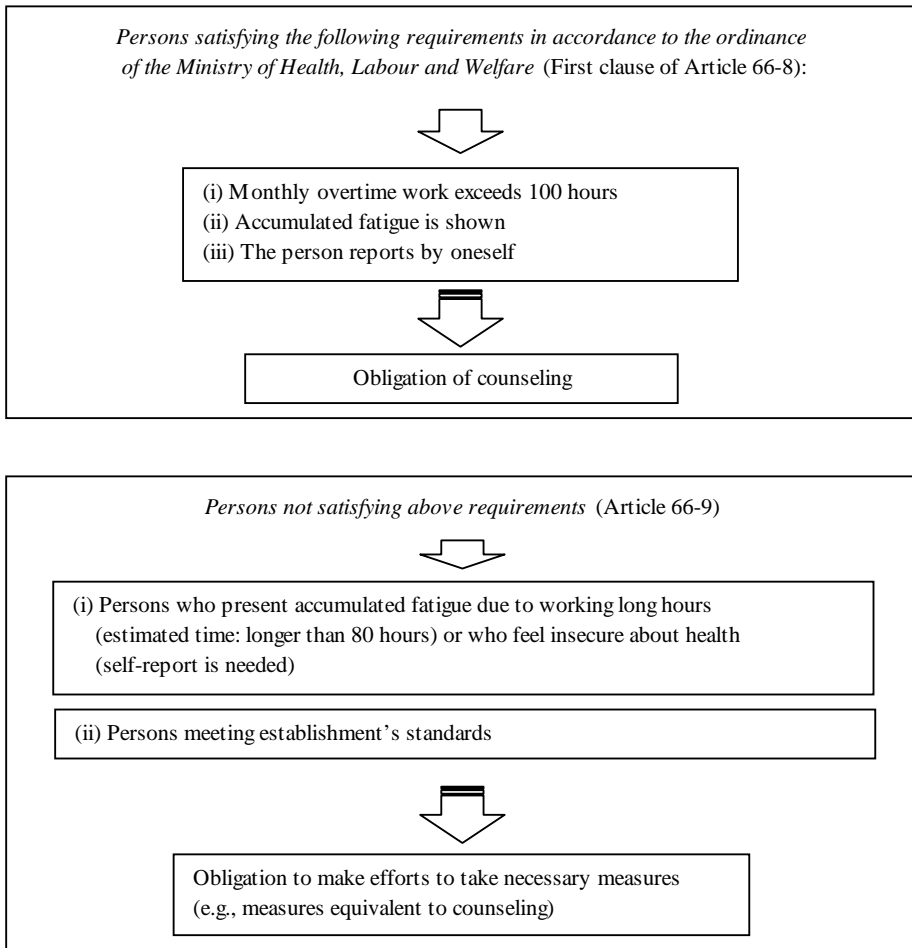


Figure 4. Counseling System Based on the Revision of the Industrial Safety and Health Act

addition, the worker who worked overtime for 40 hours or longer every month could only have an opportunity of counseling per three months. Later, labor and management built momentum toward more strict time management. Based on the agreement between labor and management in April 2006, individual personal computer's startup and shutdown times have been automatically recorded and employees have input "starting time" and "closing time" of work (self-report) so that executive officers can see both data to approve their working hours. Furthermore, the time management has also been strengthened for executive officers.

With this new system, the health promotion center drastically reviewed the conventional consulting method. In particular, when monthly overtime work (estimated monthly overtime work of general-staff workers and executive officers) are: (i) 60 to 79 hours, (ii)

80 to 99 hours and (iii) 100 hours or longer, the center required the worker to: (i) fill out a doctor's questionnaire and receive above consulting with staff once per two months, (ii) receive above consulting with staff every month and (iii) receive consulting with an industrial physician of the health promotion center every month respectively. This enables the company to find out problems earlier than before and take preventative measures. As a result, an executive officer complaining about insomnia was found.

On the other hand, as shown in Figure 2, large establishments (factory, laboratory and Tokyo and Osaka sales branches) have health promotion centers with exclusive staff and are well organized. The problem is local establishments with no health promotion center. The company then increased the frequency of regular checkup in local establishments from once a year to every six months to provide a balance with large establishments. Moreover, the health promotion center staff go the rounds of local establishments once a month in consideration of the timing of counseling.

### (3) Mental Health Workshop Held by Industrial Physicians

Mental health workshops had been held for employees who are promoted to executive post as one of labor management training. These workshops are held for executive officers and general-staff workers separately now. Especially the workshop for executive officers contains self-care of themselves as well as labor management.

### (4) Support for Healthcare of Persons Working Overseas

There are about 200 employees who are working overseas for Company J. The industrial physicians of the health promotion center had checked doctor's questionnaire and regular checkup data once a year. However, due to the low collection rate, slightly fewer than 30% in 2006, the company is trying to increase the collection rate and industrial physicians have gone the rounds of Southeast Asia and China regularly for counseling since spring of 2007 at the first step. They will expand their rounds to the world.

### (5) Strengthening of Cooperation between Health Promotion Centers

Given the poor communications between the centers, the technical physicians and director of Headquarters' health promotion center have visited each health promotion center to communicate well since April 2007. Hereafter, director meeting and industrial physician/healthcare staff meeting will be held to understand the company-wide situation and share the efforts. The company is also considering the improvement of daily report system between centers.

### (6) Response to Return-to-Work and Reinstatement of Employee Who Takes Sick Leave Because of Mental Health Problem

In Company J, labor and management have sufficiently discussed this issue. Now the company takes finely-tuned responses to return-to-work and reinstatement of employees



Table 3. Company J: Concept of Response to Return-to-Work and Reinstatement of Employee Who Takes Sick Leave Because of Mental Health Problem

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<p>1. <i>Definitions of return-to-work and reinstatement</i>  Return-to-work: meaning to return to workplace. Reinstatement: meaning to return from a recess (work absence, leave, etc.) to work, i.e., meaning to both reemployment and reinstatement.</p>
<p>2. <i>Flow of return-to-work and reinstatement</i>  Employee takes sick leave because of mental health problem.  ↓  Employee's doctor gives permission to reinstate.  ↓  Counseling for return-to-work (judgment): The employee is provided with counseling to confirm if he/she can reinstate.  ↓  Return-to-work: The employee returns to job in which he/she took responsibility before leave in principle.  ↓  Going to work with treatment: Rehabilitation for reinstatement. Employee's behavior is checked if he/she can reinstate.  (work by hours, not full-time)  ↓  Counseling for reinstatement (judgment)—Regarded as administrative leave up until this stage  ↓  Reinstatement</p>
<p>3. <i>Requirements for return to work</i>  (i) The employee recovers from illness.  (ii) The employee can understand the cause of illness and consider and take measures.  (This judgment is important. There is a likelihood of recurrence if the employee becomes this situation.)  (iii) The employee is strong enough to return to work.</p>
<p>4. <i>Requirements for instatement</i>  (i) The employee can work for normal working hours.  (ii) The employee can do a job (half or more of expectation).  (iii) The employee does not bother others around more than necessary.  (iv) Quantity and quality of work decrease, but it is not necessary to give the employee special treatment.</p>

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who have mental health problems (see Table 3). Employees having mental health problems, their supervisors, the personnel department and industrial physicians/staff of the health promotion center have been informed about the purpose and procedures of this. As a result, many of them could return to work smoothly.

#### 5. Efforts of Establishment K of Company J (Focusing on Mental Health Response)

Establishment K of Company J has strengthened efforts for mental healthcare for the first time in the company. Specifically, industrial physicians (health nurses) put up their antenna to receive information through wide-ranging routes for primary prevention. According to an industrial physician, there are roughly five routes.

### (1) Route Based on the Survey on Working Long Hours

Establishment K has conducted questionnaires targeting workers whose monthly overtime work is 40 hours or longer about general physical conditions from three years ago. It also sometimes use “concise occupational stress assessment website”<sup>6</sup> of Japan Industrial Safety and Health Association. Industrial physicians (health nurses) provide counseling on the basis of these results. There are about 1,500 employees at Establishment K and about 50 employees receive counseling per month. Sometimes nearly 90 employees receive counseling. For employees working overtime for more than 40 hours every month, counseling is provided every three months for a follow-up. Another characteristic of activities of Establishment K is to take finely-tuned responses to even executive officers. Although executive officers (section chief, senior researcher or higher positions) are exempt from overtime work allowance in Company J, under the complete time management in Establishment K, even executive officers have been obliged to input starting and closing time of work into their own personal computers from a few years ago, for the first time in the company. It has also provided compulsory counseling to executive officers whose monthly overtime work exceeds 80 hours. After implementing the complete time management, executive officers deeply understand the importance of relationship between time management and health management and no one refuses to receive counseling when overtime work exceeds 80 hours from the perspective of setting good examples for their subordinates. There are about 100 managers in Establishment K and about 10% of them receive counseling per month.

### (2) Route from Counseling of All Employees after Regular Checkup

Establishment K’s health promotion center has conducted counseling of all employees after regular checkup once a year from five years ago. Industrial physicians and health nurses break into teams to conduct this counseling. This route is most effective for primary prevention accordingly. They can give healthcare guidance to employees before entering the danger zone enhancing a preventive effect.

### (3) Route from Manager’s Management of Subordinates

This route is a case in which a manager notices his or her subordinate’s physical or mental fatigue, discuss with him and persuade him to go to the health promotion center.

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<sup>6</sup> “Concise occupational stress assessment website” is one of deliverables from Research Report on Occupational Stress and Its Impact on Health of Research on the Prevention of Work-Related Disease conducted by the then Ministry of Labour. This evaluation is not to make the diagnosis of illness but to let respondents become interested in the degree of stress and mental and physical health and increase awareness of mental and physical healthcare. It is intended that on this result, respondents may find suitable hygiene and cure for stress or consult with industrial physicians, health nurses, medical nurses or experts depending on circumstances. Nobody other than the respondent knows the answering contents or results. There are two questions; “stress about work” and “stress within one month” (each question has 15 to 17 items) and respondents can receive the diagnosis of mental stress response, physical stress response, tiredness and depression based on the result of the judgment.

(4) Route from Employee's Awareness

This is a rare case in which the employee himself directly goes to the health promotion center to receive counseling.

(5) Route from Labor Union

Labor union is of central importance as a checker of health management. It plays a part in the primary prevention through leadership's daily stewardship, information from union officials and consultation by employee himself. For the purpose of labor-management negotiation, it also interviews both supervisors and employees (union members) based on monthly overtime work data in which the company discloses to the union. At that time, the labor union suggests the improvement of job allocation and personnel issues. In this way, labor and management make efforts to prevent the occurrence of issues before working long hours becomes overwork. At the same time, it also makes full use of relationship with industrial physicians and health nurses when individual union members have a mental health problem.

#### **IV. Case Study: Health Management Activities of Health Insurance Union (Company J's Health Insurance Union)**

1. Health Insurance Union Playing a Role in Health Management

Health insurance union is of another central importance as a healthcare support by the company. There are two kinds of health insurance unions; a general health insurance union organized by each company and a comprehensive health insurance union organized by each industry or each company group (except government-managed health insurance in which small and medium companies belong to).

These health insurance unions consist of employers and employees (including retired persons for a certain period of time) and are managed with insurance premiums<sup>7</sup> as a main financial resource in which both employers and employees pay at a constant rate. Health insurance service policies are democratically determined by organizations such as assembly or council and the members generally consist of executive officers of the personnel sector (including health management sector) from management side and union members from labor side provided that there is a labor union in the company. The service of the health insurance union therefore reflects the labor-management relationship in the company and company's personnel policies. In short, when considering actual situations and issues of "company support for employees' health management," we cannot ignore the existence of health insurance unions.

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<sup>7</sup> Average premium rate of 1,561 health insurance union across the nation in 2005 was 73.95 per thousand. The breakdown is; employer's contributions 40.92 (55.3%) and insured persons' contributions 33.03 (44.7%). Data was of health insurance unions.

Table 4. Expenditures of Health Insurance Unions in 2004 (unit: %)

Expense items	National society-managed employment-based health insurance	Company J's health insurance union
Administrative fee	2.1	3.6
Insurance benefit expense <sup>1</sup>	52.0	47.9
Contributions to healthcare of the elderly <sup>2</sup> and others	37.2	42.0
Health service expense	4.9	4.0
Health guidance advertizing expense <sup>3</sup>	0.4	0.2
Disease prevention expense <sup>4</sup>	3.0	1.5
Sports incentive expense <sup>5</sup>	0.2	0.7
Directly-managed recreation facility expense	0.8	0.6
Others	0.5	1.0
Others	3.8	2.5
Total expenditures	100.0	100.0

Source: "Annual Report on Health Insurance Union Service 2004" issued by National Federation of Health Insurance Societies and Company J's health insurance union settlement data. Annual report shows average values of 1,584 health insurance unions.

Notes: <sup>1</sup>Insurance benefit expense is a medical cost.

<sup>2</sup>The mechanism of contributions to healthcare of the elderly is to prevent the possibility that the national health insurance with higher ratios of the elderly becomes involved in financial difficulties by contributing more funds from health insurance unions and government-managed health insurance with lower ratios of the elderly than national average.

<sup>3</sup>Health guidance advertising expense is mainly for issuing monthly reports and launching awareness campaigns for insured persons.

<sup>4</sup>Disease prevention expense is for health check, distribution of medicines, health counseling, health seminar, etc.

<sup>5</sup>Sports incentive expense is for sports facility contract, and healthcare campaigns and events, etc.

## 2. Insurance Service of Health Insurance Union with Narrow Resource

Among insurance premium income from employers and employees, the resources allocated to service for health management (health service) are limited. As shown in Table 4, health insurance benefit expenses and contributions to healthcare of the elderly<sup>8</sup> account for the majority of the breakdown of expenditures of health insurance unions and the percentage of health service expense is only 4.9% (excerpt from Annual Report on Health Insurance Union Service 2004). With this narrow resource, each health insurance union finds the best way and develops their health service activities. I would like to sort out the current situation and issues.

First is sharing of roles with company's health management support for employees. It can be seen in health management targets and health promotion activities. Generally company's targets are employees while health insurance unions' targets are employees (issued

<sup>8</sup> In the current healthcare system, most of medical expenses for the elderly and retirees persons are financed by "contributions" (contributions to healthcare for the elderly and contributions to retiree benefits) from medical insurance systems including health insurance unions. In case of health insurance unions, contributions are allocated to nearly 40% of health insurance expenses, a big burden.

persons) and the family (dependents). Company's health promotion activities, as introduced in above section, focus on implementation and follow-up of checkup on the basis of the Industrial Safety and Health Act and improvement of mental health measures. On the other hand, health insurance' unions' health management activities cover a widespread area such as development and implementation of unique health promotion programs, health guidance advertising activities, implementation of health check for employees and the dependents, setting up of health consulting offices and introduction of sports facilities. Company's sharing role is expected to be further issues in the context of legal claim against employers with changes in socio-economic environment, the way of employer's welfare measures for employees and roles/finance of health insurance unions (In company J, as mentioned above, there is a clear role-sharing between the company and health insurance unions after labor-management discussions).

Second is a response to "specific checkup and specific health guidance." In particular, "Medical Reform Acts" which were passed into law in June 2006 have obligated medical insurers (health insurance unions in companies) to carry out specific checkup and specific health guidance focusing on lifestyle-related disease prevention since 2008. As a policy target, it is required to decrease the number of lifestyle-related disease patients and potential patients by 25% in 2015 compared to 2008. The targets are insured persons (employees) aged 40 to 74 and the dependents. The reason why the health and labor administration obligates this is attributed to the fact that "Healthy Japan 21," a national healthcare movement, which started with a notice of the administrative vice minister for the then Ministry of Health and Welfare has not produced adequate results. It seems the Ministry of Health, Labour and Welfare is considering how to incorporate changes in amount of grant-in-aid for the healthcare system for the latter-stage elderly into a law as a penalty depending on the result of each health insurance union's efforts. However, since health insurance unions are supposed to contribute to that grant-in-aid, their opposition can be expected. Either the penalty is right or wrong, according to this, each health insurance union has to develop and implement the projects on specific checkup and specific health guidance by the end of fiscal year 2007. This effort would be health insurance unions' core health service and have an impact on companies' support measures for health management of employees.<sup>9</sup>

### 3. Specific Case Studies on Health Insurance Unions' Health Service

Based on above issues, many of health insurance unions find the best way and develop their health service activities with narrow resources. I introduce the health service of

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<sup>9</sup> Nippon Keidanren announced "Concept on Review of Regular Checkup Items" as of 16 February 2007. It insists that regarding the movement of specific checkup to be conducted by the Ministry of Health, Labour and Welfare, health management related to the job should be clearly distinguished with health management attributed to self-awareness such as lifestyle-related disease and appeals the necessity of discussions on sharing of roles and cooperation between medical insurers, employers and workers.

Company J's health insurance union. This union consists of about 4,400 insured persons (including part-time workers) and about 5,400 dependents. The premium rate is 72 per thousand, the employer contributes 45 and insured persons pay 27. The health service expense was 97.16 million yen in 2004, 4% of total budget 2.4168 billion yen. This is somewhat lower than national average, 4.9%.

(1) Particular Efforts toward the Improvement of Lifestyle—1 (2002)

In fall 2002, this health insurance union developed a particular efforts in order to carry out the slogan, "Let's walk with 10,000 steps," which is one of items recommended by the Ministry of Health, Labour and Welfare in "Healthy Japan 21." The company and labor union extended every possible cooperation to the health insurance union and achieved some positive results of "walking custom." In order to measures the results, it conducted Survey on Walking Campaign.

**Contents of Survey on Walking Campaign**

1. Name of campaign: Challenge Walk 2002
2. Implementation period: 15 October to 16 November 2002
3. Number of distributed campaign measurement sheet: 4,843
4. Number of samples: 3,335
5. Collection rate: 68.8%
6. Implementation method
  - (1) Distribute step counting pedometers to all samples to measure the number of steps and enter the measurement sheet everyday during the period.
  - (2) When the campaign period ends, submit the sheet to the health insurance union.
  - (3) The union will award a prize for participation to all and a special prize to persons who walked with 10,000 steps a day.

The characteristic of this survey is to analyze the correlation between walking results, checkup results immediately before the campaign and individual medical expenses. The analysis results are as follows (excerpt from "Walking survey results data" of Company J's health insurance union issued on 20 September 2002):

(i) The insured persons of Company J's health insurance union (Company J's employees) walk far more than national average (you need to consider a special impact of the campaign).

❖ Participants' average number of steps by sex (the numbers in parenthesis are from "national average" of National Nutrition Survey 1999)

Male: 10,364 (8,042)

Female: 10,646 (7,319)

Average: 10,420 (7,644)

*Note:* The number of steps is a monthly average of steps on weekdays and weekends.

(ii) The numbers of steps of female white-collar automobile commuters working a factory and of male local sales persons who drive a car a lot are relatively smaller compared to other insured persons. In contrast, the number of steps of male blue-collar automobile commuters working a factory exceeds 10,000 on average. One of the reasons may be the effect of patrolling in the factory.

(iii) It seems people walk more on weekdays and less on weekends. (Male average numbers of steps on weekday and weekend are about 10,500 and 9,500 respectively. Female average numbers of steps on weekday and weekend are about 11,000 and 9,300 respectively.)

(iv) Regarding persons walking a lot, the level of neutral fat is relatively lower. The level of high-density lipoprotein cholesterol (beneficial cholesterol) which has a high correction with stamina is higher.

(v) As for medical expense, the outpatient treatment fee of insured persons walking with 12,500 steps or more is relatively lower.

## (2) Specific Efforts toward Improvement of Lifestyle—2 (2006)

On the basis of these results, Company J's health insurance union once again becomes acutely aware of the importance of improving lifestyle and has continued the campaign making improvement little by little every year since 2002. However, relations with regular checkup results and medical expense are not continuously verified. According to health insurance union staff, the analysis will be resumed with assessment of entire health services.

Especially in 2006, the company changed the campaign name as "Checking Campaign" in celebration of the 80th anniversary of Company J's health insurance union and called for all insured persons and all dependents to attend not only walking but also checkup with many items which are recommended by "Healthy Japan 21." The contents are as follows:

### **Contents of "Checking Campaign"**

1. Campaign name: Health J 21 (lifestyle improvement program)
2. Implementation period: 1 to 31 October 2006
3. Number of distributed campaign program sheets: 9,800. (Targets are insured persons and the dependents of this health insurance union)
4. Number of samples: 1,406 (insured persons: 994, dependents: 268 and others: 144)
5. Collection rate: 14.3%
6. Implementation method
  - (1) Record sheets (see Record Sheet below) are sent from the health insurance union to employees' homes. Insured persons and the dependents set health targets following an example on

the sheet.

❖ Course contents

Check course (entry of figure)

*Example:* “Measure visceral fat with a body composition meter,” “Measure blood pressure,” “Count the number of steps,” etc.

Action course (entry of ○, △ and ×)

*Example:* “Brush teeth after each meal,” “Take two non-drinking days a week to give my liver a rest,” “Walk with 10,000 steps or more a day,” etc.

- (2) Enter a self-target in the record sheet and make a record every day. Enter a figure or a symbol, ○, △ or ×.
- (3) Evaluate the results by yourself one month later and submit the record sheet to the health insurance union.
- (4) The company will give gift vouchers as a prize for participation to all participants. In addition, a winner selected from participants by lottery will receive a special prize (a meal coupon or a travel coupon worth 30,000 yen).

Record Sheet (Example)

If you choose Check course, enter a figure. If you choose Action course, enter a symbol, ○, △ or ×.

○: Achieve the target, △: Nearly achieve the target, ×: Fail to achieve the target.

		Check course		Action course	
Implementation contents A		Measure blood pressure		Take two non-drinking days a week to give my liver a rest	
Implementation contents B		Check the number of steps with a pedometer		Be sure to brush teeth after each meal	
Implementation results		A	B	A	B
1	Sun	115-88	8,566 steps	×	○
2	Mon	122-89	9,932 steps	○	○
3	Tue	125-90	10,356 steps	×	○
4	Wed	118-85	12,655 steps	×	△
5	Thu	125-92	7,605 steps	×	△
6	Fri	120-85	10,654 steps	×	○

The following became clear in this campaign:

- (i) The breakdown of Check course was; “Measure weight/body fat” 61%, “Count the number of steps” 25% and “Measure blood pressure” 10%.
- (ii) The breakdown of Action course was; “Exercise (e.g., sit-up, push-up, etc.)” 40%, “Stretch” 23%, “Brush teeth” 18% and “Take a day to give my liver a rest” 11%.
- (iii) The breakdown of participants’ self-evaluation was; “Made a great effort” 14%, “Made



a good effort” 45%, “Made a normal effort” 29%, “Made less effort” 11% and “Fail to make any effort” 1%.

Company J’s health insurance union appreciates these results from the perspective that (i) an attempt to include the family as an anniversary campaign received a certain evaluation, (ii) it was found that people prefer accessible, simple and clear targets and (iii) this triggered changes in future health action. It points to the necessity of this campaign and increase in the participation rate as future issues.

### (3) Basic Concept of Health Service in Fiscal Year 2007

I introduce the latest projects of Company J’s health insurance union.

#### Basic concept

- (i) Focus on primary prevention (health promotion and prevention of onset) and secondary prevention (early detection and treatment) more than ever.
- (ii) Develop unique plans on the basis of “specific checkup” which is expected to be required from fiscal year 2008.
- (iii) Clarify roles and functions as health insurance union and promote services under the cooperation with the company and labor union.

#### Specific efforts

- (i) Continued implementation of lifestyle improvement program: “Checking Campaign”  
In the next fiscal year, under the cooperation with the company, managers take the initiative in participating in the campaign to increase the participation rate of workplace.
- (ii) Health guidance advertising  
Actively continue to utilize existing media such as various in-house magazines and health insurance union’s website to promote better understanding of full-scale medical service reform and foster the sense of health such as prevention of metabolic syndrome and lifestyle-related disease.
- (iii) Continued checkup from the viewpoint of early detection and treatment
  - (a) For insured persons
    - When company’s regular checkup is conducted, the health insurance union continues to conduct checkup for additional three items (ultrasound examination of five organs, prostate-specific antigen test and cervical cytology) at the expense of the union.
    - Gynecological exam (breast/uterus cancer test) is continuously conducted.
    - Dental checkup
  - (b) For dependents
    - Grant aids for expenses of housewife checkup (general checkup plus above gynecological exam), local government’s checkup and in-home blood test are continuously conducted.
    - Dental checkup
  - (c) For insured persons and dependents
    - Grant aids for complete medical checkup and immunization against influenza are

Table 5. Number of Telephone Counseling Users

FY	Annual number of users
2003	819
2004	809
2005	537

*Note:* The reason for the decrease in 2005 may be increased users of insurance company's telephone services and increased internet users.

continuously conducted (medical checkup of the brain is covered by the grant aid for complete medical checkup).

- Telephone counseling (family health counseling and mental health counseling. See Table 5 for number of users.)
- Counseling (mental health counseling)

(iv) Continued health promotion support activities

Continue contracts with two sports clubs to continue grant aids for users with limits of not more than four times a month.

## V. Summary

I introduced the recent trend of health and medical field of in-house welfare system centered on case studies of Company J and Company J's health insurance union. The following seven points were clarified by the case studies:

1. For several years, there is a tendency that non-legal welfare expenses of in-house welfare system are intensively allocated to health and medical field.
2. Company J's health and medical field activities have been shifted from physical care to mental care. It does not mean that the company makes light of physical checkup and the follow-up function which are requested by the Industrial Safety and Health Act, but indicates that the importance of support system for mental care is increasing with today's changes in work environment. That is, the company (health management sector) thinks that employees' self health management is largely responsible for physical problems, i.e., lifestyle-related disease problems. The company tries to strengthen follow-up of mental care which is deeply related to the job from the perspective of employer's obligation of security and company's risk management.
3. Mental care measures have a close relation with control of working hours. Company J makes efforts more than counseling system required by the revised Industrial Safety and Health Act. A check system for overload work is installed making full use of multiple routes and the prevention for mental problems is accomplished. In addition, with communications between labor and management, the company takes finely-tuned responses to sick leave and reinstatement because of mental health problem interlocking with strengthening of labor management.

4. Company J's regular checkup items exceed legal items with finely-tuned consideration. Especially, the health insurance union also plays a part in the role through labor-management negotiations.
5. In Company J, the center of efforts on the prevention of lifestyle-related disease is being shifted to the health insurance union which is another party responsible for in-house health and medical field. However, the health insurance union has a structural fragile financial condition and the issue is to continue playing that role for employees (insured persons) and the dependents with limited health service budgets and staff. This is a common issue in other companies with a problem of "specific checkup and specific health guidance" in which the Ministry of Health, Labour and Welfare expects health insurance unions to conduct.
6. The sharing of roles for health and medical field between a company and a health insurance union is being trapped in a cage of chaos. Thoughts of the Ministry of Health, Labour and Welfare and Nippon Keidanren are not clear. It is not easy to distinguish between "health management related to the job and health management attributed to self-awareness such as lifestyle-related disease" in which Nippon Keidanren states. For instance, one of the causes for lifestyle-related disease is stress but the stress factor is not only private lifestyle (food, exercise, etc.) but also changes in working life.
7. It is essential to communicate between the government, employer's association, labor union and health insurance union for future health and medical activities in companies. Similarly in a company, labor-management discussions are required more than ever how to make the roles of the health insurance union as a partner, the company and the labor union.

# Current Situation and Issues of Retirement Benefit (Corporate Pension) in Japan

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The defined contribution plan has been introduced with the Defined Contribution Pension Act and the Defined Benefit Corporate Pension Act, so called “two corporate pension acts” which were enacted in fiscal year 2001. Japanese traditional retirement benefit plans were all defined benefit plans and became “unbalanced” due to slowdown in corporate profit growth and aging of society. Since the account standard for retirement benefits has been introduced at the end of fiscal year 2000, such unbalanced plans have drawn attention as a problem of business finance and many of companies have made efforts to review the plans including transition to the defined contribution plan. However, there are still many companies with defined benefit plans. Both plans have structural problems; the defined benefit plan shifts burdens to future generations and the defined contribution plan forces individuals who have limited knowledge make investment decisions. In order to overcome those problems, measures to reduce the risk of the defined benefit plan and incorporate elements of the defined contribution (benefit) plan to the defined benefit (contribution) plan have attracted attention. In addition, legal measures for the defined contribution plan such as lowering of the maximum contribution and lifting of the ban on the matching contribution have been discussed.

## I. Introduction

Before the Defined Contribution Pension Act and the Defined Benefit Corporate Pension Act, so called “two corporate pension acts” were enacted in fiscal year 2001, Japanese companies’ retirement benefit (collective term of retirement lump sum grants and corporate pension) plans were all defined benefit plans in which companies guaranteed the benefit levels. With the enactment of two corporate pension acts, it became possible to design a defined contribution retirement benefit plan and the flexibility of designing a defined benefit plan has increased. Many companies have reviewed the retirement benefit plan using the two corporate pension acts based on the fact that the risk of companies’ traditional retirement benefit plan was exposed by the retirement benefit accounting standards introduced in fiscal year 2000 and business management was in the throes of deep deflation. In particular, companies have conducted the following: (i) dissolution or abolition of traditional defined benefit plan and *Daiko henjo* (Sending back of the substitutional portion to the government) of Employees’ Pension Fund (EPF), (ii) actual lowering benefit levels such as introduction of fixed-term life annuity and decrease in rate of return on benefit and (iii) shifting to a new retirement benefit plan, e.g., advanced retirement benefit, Defined Contribution Pension and cash balance pension plan.

Although this movement was triggered by changes in legal systems, accounting standards and severe business environment (deflation), it is not completely unrelated to changes in the balance between Japanese social and economic structure, especially companies' earning capacity and size, and risks associated with retirement benefits. The burden of retirement benefit generally increases as time advances and there is no big managerial issue when the pace of increase is within the pace of companies' revenue growth. In Japan, however, the increase in the burden of retirement benefit has accelerated due to rapidly aging of the population while companies' revenue growth has been forced to slow down, i.e., the balance between them has been largely disrupted. Since business management has been subject to the intense scrutiny such as dissolution of cross-shareholding relationship and increase in the number of foreign shareholders accompanying globalization, it has been further difficult for business management to continue "unbalanced" retirement benefits. Even from the viewpoint of employees' needs, the gap between the traditional retirement benefit plan and the employment reality has become prominent while the trend toward service economy and employment mobility have progressed. Above reviews of the retirement benefit plan are positioned as a semi-sequent movement caused by structural changes of society/economy.

As mentioned above, the trend is from the defined benefit plan to the defined contribution plan. Nevertheless, the former is still a leading player centered on major companies. Although companies have changed the system as emergency measures to reduce the burden related to the traditional defined benefit plan, there would be few cases which drastically changed the system like replacing the central player. With economic recovery, quite a few companies have groped for not only emergency measures but also a full-scale institutional reform. Then we will need to reconsider the problems of traditional defined benefit plan as well as carefully examining the problems of defined contribution plan.

## **II. Overview of the Retirement Benefit (Corporate Pension) Plan**

### **1. Retirement Benefit Developed as the Retirement Lump Sum Grants**

The origin of the retirement benefit plan was "goodwill" initiated by the Mitsui family during the Edo Period beginning with a lump-sum payment as aid money for independence. At that time, the retirement benefit was paid in the sense of reward or bounty for a longtime apprenticeship. With the development of trade and manufacture after the Meiji Restoration, it functioned as an incentive for long service to prevent career change or resignation of skilled workers. The contents of the benefits had a strong meaning as "merit rewards" based on seniority and "privilege benefits" from companies. The retirement benefit was institutionalized as labor practice after World War II. The retirement benefits were written in collective agreements or work rules and promoted from merit rewards or privilege to the "rights of workers." This positioned retirement benefits as a labor condition and the retirement benefits took on a character of "deferred wage."

From a historical point of view, one characteristic is that the benefits became popular

as a lump-sum payment for retirement. At first, the benefit fund was generally prepared within the company. Although preferential tax treatment was provided with the introduction of retirement allowance book-reserve plan in 1952, there was next to no advance funding plan outside the company. The advance funding plan outside the company was established as corporate pension after the period of high economic growth. In the background, there was an increased demand to introduce a corporate pension fund with a preferential tax treatment since sufficient funds for the retirement lump sum grants could not be secured by the reserves prepared within the company.

Specifically, Qualified Retirement Pension and Employees' Pension Fund were institutionalized in 1962 and 1967 respectively.<sup>1</sup> Those two systems have long been referred to as corporate pensions in Japan and many companies have transferred a part of the traditional retirement lump sum grants to those corporate pensions aimed at (i) tax saving, (ii) equalization of contributions, etc.<sup>2</sup> Notably, Employees' Pension Fund is a plan to add company-specific benefits to earning-related components of employees' pension run by the Japanese government. With this plan, companies are able to withhold a part of pension premiums which should be originally paid to the government. For this reason, due in part to the fact that companies gained a great advantage mainly in the period of high-interest rates, Employees' Pension Funds in which a part of retirement lump sum grants are uniquely added to showed a significant development mainly in the 70s and 80s.

As seen from the above, it is clear that the corporate pension is no more than a plan established by shifting or transforming a part of retirement lump sum grants for various purposes. Some are "separate plans" in which corporate pensions are introduced separately from retirement lump sum grants as seen somewhat in the early stage. Nevertheless, it should be noted that the overwhelmingly majority are "incorporated plans" in which a part of the retirement lump sum grants is used for pension as a pension resource. It can be pointed out that the most important characteristic is that traditional retirement benefit plans have been developed as a defined benefit plan in which the company secures the benefit levels.

## 2. Retirement Benefit Reaching a Threshold in the Past Two Decades

Traditional retirement benefit plans reached a major threshold during the period of a long stagnant economy in the 90s after the collapse of the economic bubble. Behind this threshold is the fact that companies have required a variety of options which were able to flexibly design retirement benefit plans in order to respond to changes in socioeconomic

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<sup>1</sup> At the same period, other plans to reserve payments of retirement lump sum grants mainly for employees of small and medium companies such as the Special Retirement Allowance Mutual Aid System and the Small and Medium Enterprise's Retirement Allowance Mutual Aid System were successively introduced.

<sup>2</sup> Although the number of cases is small, some companies which do not meet the tax requirements uniquely establish and manage plans called company administered pension.

Table 1. Comparison of Corporate Pension Plans (as of FY2008)

	Asset balance (trillion yen)	Number of corporate pension holders (10 thousand holders)	Asset balance/ Corporate pension holders (10 thousand yen)
<i>Defined Benefit Plans</i>			
Employees' Pension Fund	25.6	466	549
Defined Benefit Corporate Pension	32.9	570	577
Qualified Retirement Pension	8.1	348	233
Total	66.6	1,386	481
<i>Defined Contribution Pension (corporate plan)</i>	4.0	311	129

*Note:* Created by Daiwa Institute of Research Ltd. based on data from the Ministry of Health, Labour and Welfare

circumstances including the end of soaring economy and the progress of employment mobility. After a series of considerations by the government and the ruling party at that time, the Defined Contribution Pension Act and the Defined Benefit Corporate Pension Act, so called “two corporate pension acts” were enacted in fiscal year 2001 and the framework of the retirement benefit plan drastically changed. Accordingly, corporate pension plans in Japan mainly consist of the following four plans: three plans of the defined benefit; (i) Employees' Pension Fund, (ii) Defined Benefit Corporate Pension and (iii) Qualified Retirement Pension, and one plan of the corporate pension; (iv) Defined Contribution Pension Plan.

In fiscal year 2000, the accounting standard for retirement benefits was introduced into the corporate accounting world. After that, risks of the traditional retirement benefit plan have easily become obvious in companies. Since business management faced difficulties under the deflationary economy, many companies reviewed their retirement benefit plans using new legal systems mainly around 2002 to 2004. Particularly, the traditional defined benefit plan was reviewed as follows: (i) dissolution/abolition of traditional defined benefit plan and *Daiko henjo* of EPF, (ii) actual lowering benefit levels such as introduction of fixed-term life annuity and decrease in rate of return on benefit and (iii) shifting to a new retirement benefit plan, e.g., advanced retirement benefit, Defined Contribution Pension and cash balance pension plan. Although the movement of reviewing retirement benefit plans was once relaxed due to improvement in business performance caused by the export-led business recovery around 2005 to 2007, it is currently becoming popular to reform the retirement benefit plan again facing a series of financial crisis, e.g., subprime loan issues and Lehman shock.

The number of corporate pension holders and the amount of assets are summarized by plan in Table 1 to indicate the current situation of corporate pensions. The number of holders of the Defined Contribution Pension (corporate plan) which was introduced in the 21st century has already reached over three million at the present moment. Even though this

number has not come up to 14.2 million, the simple total number<sup>3</sup> of the defined benefit plan holders, about one out of 10 private corporate employees (employees' pension holders) are Defined Contribution Pension holders. It can be said that this plan is enhancing its presence. Meanwhile, the reserve fund of the Defined Contribution Pension (corporate plan) is 4 trillion yen, far smaller than 66.6 trillion yen, the simple total amount of the defined benefit plan. There is still a large gap with reserve fund even per capita.

### **III. Occurrence of Projected Benefit Obligation Problems and Companies' Response**

#### **1. Accounting Problems of Projected Benefit Obligation**

As mentioned above, the burden on companies to maintain the retirement benefit plan including corporate pension had rapidly increased since the 90s after the bubble burst. At first, the main issue was pension fund management problems based on the long-stagnant stock market.<sup>4</sup> That is, since it was difficult to continuously achieve the systematically-fixed assumed annual interest rate 5.5 % by asset management, contribution premiums to cover shortage had become a heavy burden on management. In the 90s, a spate of relaxation of regulations and sound corporate pension financing had been continuously sought, but remarkable results could not be obtained and companies were forced to introduce the retirement benefit accounting standard from fiscal year 2000.

This has led companies to confront the problems of projected benefit obligation as well as the problems of pension fund management. This obligation issue became one of the important concerns to company management since it is directly related to corporate financial issues. In the background, there were some factors to increase the corporate accounting projected benefit obligation (hereinafter referred to as PBO<sup>5</sup>) such as (i) aging employee makeup in companies, (ii) ever-increasing pension holders and (iii) decrease in interest-rate level (=discount rate) reflecting the deflationary trend. After the introduction of the retirement benefit accounting standard, especially fiscal years 2001 and 2002 (=worst time), companies' financial risks on the retirement benefit were the greatest concern. The PBO in major listed companies was approximately 70 trillion yen in total at that time while the pension fund was a little more than 30 trillion yen, and the obligation was remarkably

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<sup>3</sup> Since there are some cases of joining more than one plan, the number of individual holders and the amount of assets should not be combined. In this paper, simple average values are used for reference.

<sup>4</sup> Those included are the entry of investment advisory company, elimination of restriction on asset allocation, etc.

<sup>5</sup> PBO is the obligation measured on the basis of accounting rule related to retirement benefit. To be exact, it should be "projected benefit obligation," but "retirement benefit obligation" is generally used in Japan. In case of the defined benefit plan, a company is subject of PBO calculation since it secures the amount of benefit. However, in case of the benefit contribution plan, a company is exempt from PBO calculation since it does not secure the amount of benefit.



Table 2. Changes in the Retirement Benefit Data of Major Listed Companies: FY 2001-2008

	FY2001	FY2002	FY2003	FY2004	FY2005	FY2006	FY2007	FY2008	Comparison with previous FY
Projected benefit obligation (PBO)									
Pension funds	70.81	69.45	61.21	57.45	56.77	57.85	56.04	54.63	-1.41
Reserve fund (net PBO)	37.79	31.48	34.52	35.55	44.07	46.74	41.77	33.18	-8.59
	33.02	37.96	26.69	21.89	12.70	11.11	14.27	21.45	7.18
Net unrecognized amount	16.22	14.49	13.74	12.46	11.25	10.10	8.05	7.56	-0.49
Difference in unrecognized actuarial calculation	15.00	22.50	13.96	11.41	3.49	2.85	8.01	15.70	7.69
Unrecognized obligation of service in the past	-1.70	-1.64	-2.48	-3.15	-3.17	-2.81	-2.54	-2.35	0.20
Unrecognized difference in changing of accounting standards	3.51	2.61	1.80	1.30	1.19	0.97	0.75	0.54	-0.21
Total unrecognized obligation <sup>1</sup>	16.80	23.47	12.95	9.43	1.44	1.01	6.22	13.89	7.67
Prepaid pension cost <sup>2</sup>	1.72	2.32	2.96	3.25	3.52	4.06	4.43	3.84	-0.59
Pension obligation adjustment (pretax) <sup>3</sup>	3.52	7.38	3.57	2.69	1.27	1.44	2.71	5.34	2.63
Accrued retirement benefit cost	21.45	24.20	20.28	18.40	16.04	15.59	15.19	16.75	1.56
Shortage of a reverse on balance sheet (unlisted liability)	13.29	16.09	9.38	6.74	0.18	-0.43	3.51	8.55	5.04
Retirement benefit cost <sup>4</sup>	5.15	5.23	5.31	3.72	3.03	2.23	2.09	2.87	0.78
Of which, amortization of difference in changing of accounting standards	1.24	0.62	0.55	0.44	0.23	0.21	0.20	0.19	-0.01
Of which, amortization of difference in actuarial calculation	0.84	1.64	2.04	1.17	0.91	0.24	0.36	0.91	0.55
Discount rate <sup>5</sup>	2.79%	2.43%	2.25%	2.20%	2.16%	2.16%	2.16%	2.13%	-0.03%
Expected return on assets <sup>5</sup>	3.18%	2.72%	2.34%	2.29%	2.30%	2.45%	2.49%	2.43%	-0.06%
Stockholder' equity <sup>6</sup>	136.62	128.17	144.31	156.03	184.11	197.55	194.35	164.92	-29.43
Pension obligation adjustment (post-tax) <sup>3</sup>	-1.93	-4.06	-1.95	-1.48	-0.70	-0.94	-1.66	-3.27	-1.62
Ordinary profit <sup>7</sup>	4.08	10.36	19.54	24.58	30.13	31.93	32.65	9.76	-22.89
Reserve ratio (Pension funds/PBO)	53.4%	45.3%	56.4%	61.9%	77.6%	80.8%	74.5%	60.7%	-13.8%
Projected benefit obligation/Stockholder' equity	51.8%	54.2%	42.4%	36.8%	30.8%	29.3%	28.8%	33.1%	4.3%
Projected benefit cost/Ordinary profit	126.3%	50.5%	27.2%	15.1%	10.1%	7.0%	6.4%	29.4%	23.0%

Notes: Created by Daiwa Institute of Research Ltd. based on the settlement papers of companies (asset securities reports/settlement letters).

Object: Out of Nikkei 300 components as of the end of March 2009, 278 companies excluding companies closed a book after April and parent companies out of the parent-child listings included in this index. SUMCO is after fiscal 2003. Main mergers and acquisitions among Japanese companies are corrected retrospectively (total).

In some case, the names of accounts vary by company. Show below individually.

<sup>1</sup>Including unrecognized pension assets.

<sup>2</sup>Capitalized amounts. For example, the amounts recorded as "intangible assets" in US pension accounting.

<sup>3</sup>The amounts directly recorded on the capital without recording on cost/earnings (including amounts by controlled foreign companies, but limited to the amount recorded separately from surplus).

<sup>4</sup>Total of service cost, interest cost, expected return on assets (subtraction) and unrecognized obligation/ amortization cost of assets.

<sup>5</sup>Calculation by simple average.

<sup>6</sup>Past total shareholders' equity. The total amount of total shareholders' equity and total valuation and translation difference, etc after application of "Accounting standards for presentation of net assets in the balance sheet" (Business Accounting Standard No.5).

<sup>7</sup>Pretax profit in case for companies adopted U.S. accounting standard.

unreserved (see Table 2). The rate of PBO against capital stock reached a high 54% at the peak. Some companies were identified as failed institutions with excess liabilities and financial risks were extremely high.

## 2. Countermeasures Taken by Companies

Various plans were revised by many companies as countermeasures mainly around 2002 to 2005 for the purpose of holding down PBO. The typical revisions of plans are: (i) *Daiko henjo* of EPF, (ii) actual lowering benefit levels such as introduction of fixed-term life annuity and decrease in rate of return on benefit, (iii) partly or fully shifting from retirement lump sum grants and/or traditional corporate pension to Defined Contribution Pension. Those were also combined to make efforts to hold down entire obligation levels (as a matter of course, some companies drastically revised the plans, e.g., [iv] abolition of the plan or dissolution of the pension fund). Furthermore, since parent organizations improved corporate performance and restored financial soundness with economic recovery and pension assets favorably increased due to upturn of assets management environment, the entire issue showed a strong trend toward improvement between fiscal years 2002 and 2006. The fact that “baby boomers” moved into retirement is another factor to bolster the control of obligation levels by paying the retirement lump sum grants. Financial risks on retirement benefits seemed to be overcome. However, against the backdrop of market environment deterioration with financial crisis since fiscal year 2007 and worsening business performance since the latter half of fiscal year 2008, companies’ retirement benefit issues have been focused on again.

In fact, the amount of unreserved PBO (PBO - pension assets) of major listed companies was 21.5 trillion yen at the end of fiscal year 2008, almost double from 11.1 trillion yen in fiscal year 2006 when that unreserved amount was the smallest (see Table 2). Although the retirement benefit cost amount remained at 2.9 trillion yen (78 billion yen increase compared with the previous fiscal year) in fiscal year 2008, the total amount of unrecognized obligation which should be amortized will expand to 13.9 trillion yen in the future. This number is completely different from that of the end of fiscal year 2006 when the unrecognized obligation was approximately one trillion yen i.e., almost written off. Since the rapid expansion of unrecognized obligation shows the increasing burden on amortization from next fiscal year, there is a fear that the retirement benefit cost would increase in the future. The size of PBO would increase to 33% level of shareholders’ equity to total assets of parent organizations. Financial risks would be worsened again to almost the level of fiscal years 2004 and 2005.

## IV. Problems of Retirement Benefit Plan by Type

### 1. Problems of Defined Benefit Plan

As mentioned above, the impact of defined benefit plan’s retirement benefit on the

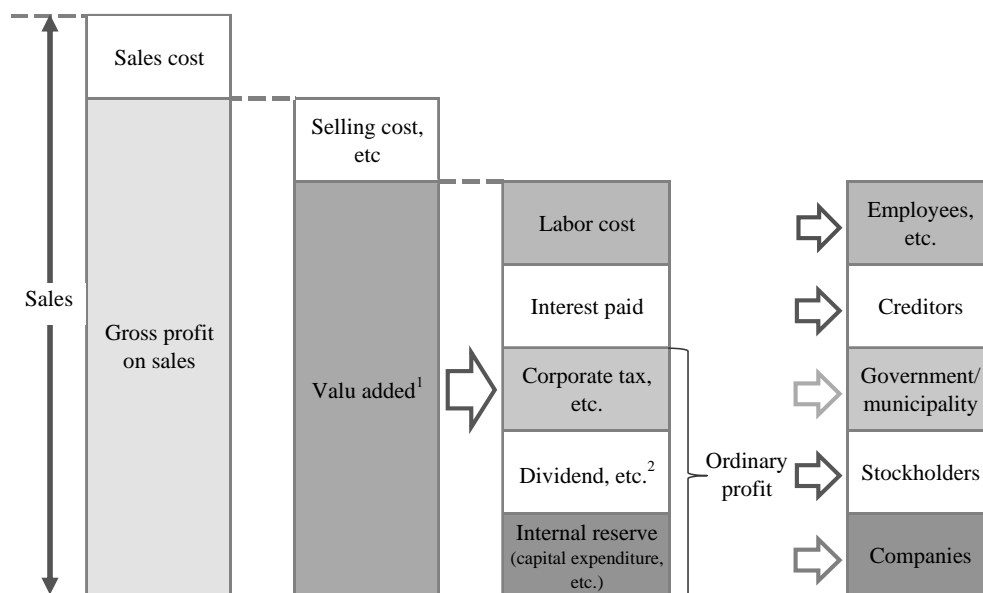
corporate finance goes beyond financial burden to cover the immediate shortage of reserve or to pay retirement lump sum grants. PBO and pension funds are strongly affected by the trend of stock/bond market<sup>6</sup> and they would be major risk factors against financial soundness or earning capacity if they are bigger compared to the company size. Since performances of parent organizations are positively correlated with the stock market in many cases, the shortage of a reserve becomes greater when corporate performance declines due to economic downturn such as March 2003 while that shortage becomes smaller when corporate performance improves such as March 2006. Whether good or bad, the size of companies' burden depends on the leveraged circumstances.

How do such risks look like from the standpoint of employees? The retirement benefit amounts of the defined benefit plan are secured by companies and it is like employees receiving bonds issued by the company. Reserves of corporate pension outside the company can be positioned as collateral. The point is that the remaining life of corporate bonds differs depending on the period to the retirement. There is a very simple case where all employees retire at the age of 60 and receive lump-sum payment at retirement. Remaining life is one year for a 59-year-old employee while 30 years for a 30-year-old employee. A 59-year-old employee can receive the retirement benefit unless the company goes into bankruptcy within a year while a 30-year-old employee can receive it provided that the company still remains three decades later. It is obvious that the latter take more risk than the former. There is a possibility that one could receive the benefit from the corporate pension reserves outside the company, but there are many cases that companies are suffering from a shortage of reserves. Moreover, the stock market often declines when the performance of parent organizations declines and there is still a possibility of reserve shortage in the future if a parent organization goes into bankruptcy even though the reserves reach a satisfactory level in the midst of recent economic boom. Thus, in order to pay retirement benefits to the leading generations, the successive generations have to bear the risk of reserve shortage or expanded risk as well as funding to cover the reserve shortage for the time being. This is essentially similar to the risk borne by companies.

The passage of risk between generations is not limited to the time of company's bankruptcy. The source of all labor costs including the retirement benefit is added-value (company distributes the added-value to the parties such as employees, financial institutions and stockholders. See Figure 1) generated by the business, and companies which do not have sufficient added-value due to growth recession have to cut other expenses to pay the retirement benefit to older employees. Generally, measures are: (i) reduction in bonuses, (ii) control of salary raise/promotion, (iii) reduction in retirement benefit and/or welfare, (iv) reduction in investment/cost relating to the business and (v) reduction in dividend/passing

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<sup>6</sup> It should be noted that PBO is strongly affected by the bond market because PBO is calculated by discounting the future amount of retirement benefit with the market interest rate (usually, yield of long-term government bond).



Notes: Created by Daiwa Institute of Research Ltd.

<sup>1</sup>Value added = business profit + labor cost + amortization

<sup>2</sup>Pay back included.

Figure 1. Conceptual Diagram of the Added-Value in Company and its Division

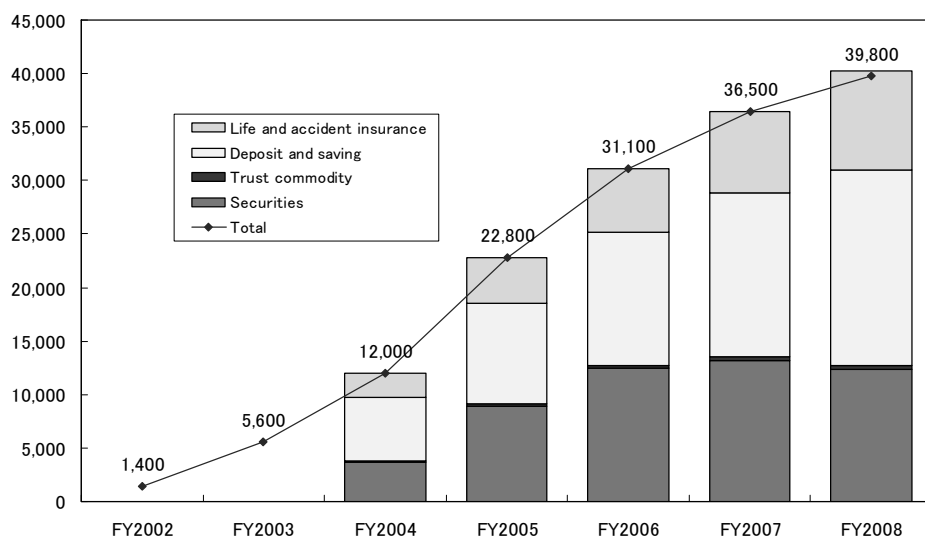
dividend.<sup>7</sup> It should be noted that not only (i), (ii) and (iii) but also (iv) and (v) would lead the passage risk to active employees (especially younger ones). Since (iv) leads to decrease in companies' potential growth ability, it may further increase the risk of implementing (i), (ii) and (iii) or the risk of bankruptcy. If (v) brings about a fall in share prices, the risk of being a target for takeover would increase.<sup>8</sup> Because the retirement benefit is usually linked with the final salary and average salary, the real amount of retirement benefits would decrease when (ii) is implemented even if the retirement benefit plan never changes. Such passage of risk between generations is a characteristic in the structure of the defined benefit plan.

## 2. Problems of the Defined Contribution Plan

In the Defined Benefit Pension Plan, since accumulated assets are managed by the

<sup>7</sup> In addition to this, curbing new hires is also conceivable. In this case, the burden would be transferred (if retirement benefits are not paid) to the successive generations who should have been hired as employees.

<sup>8</sup> It is not clear how corruption would affect employees of the bought-out company. Although the employees would have advantages if the company is on a growth path by inviting a new business manager, in the case of acquisition by a green mailer or a vulture fund who focuses on the short-term perspective, it is possible to take massive restructuring measures. It is true that employees would take risks in terms of the fact, "who knows what will happen?"



Note: Created by Daiwa Institute of Research Ltd. based on data from the Ministry of Health, Labour and Welfare.

Figure 2. Asset Balances and Commodities of the Defined Contribution Pension (Corporate Plan) (Unit: billion yen)

whole plan<sup>9</sup> and the benefit is secured by the parent company, individual holders do not have to acquire asset management skills. On the other hand, in the defined contribution plan, the accumulated assets are managed in the individual account of each holder and asset management is implemented based on the principle of holders' self-responsibility. As mentioned in the preceding section, the successive generations take on the risks of the leading generations in the case of defined benefit plan while the risk taken by each employee is limited to the risk related to his/her retirement benefits in the defined contribution plan. This plan is highly fair on condition that each employee manages assets with a certain level of rationality. However, many employees are unfamiliar with portfolio investments and those holders have been involved in management problems on investments.

According to the survey conducted by the Pension Fund Association (2007), since the estimated yield which is the base of setting premium when the defined benefit plan is shifted to defined contribution plan is 2.34% in average, asset management with a certain level of risk is necessary to achieve this estimated yield in investment theory in light of today's low-interest environment and long investment period. In reality, however, bank deposits and principal protection products such as insurance products account for about half of

<sup>9</sup> In a defined benefit plan of retirement lump sum system, assets are not invested in securities, but allowance is sometimes treated financially. It is understood that this type of plan invests in the business of a parent company.

accumulated assets (see Figure 2). Not a few employees may invest all the money into the principal protection products and it is far from acquisition of the estimated yield and implementation of consistent asset management.<sup>10</sup> It is ideal to lead employees to rational investment activities by raising employee's awareness and increasing knowledge with thorough investment education, but, on the other hand, it was reported by this survey that there is no clear correlation between investment education and allocation to risk management. Kaneko (2009b) indicated that continued education has the effect of encouraging changes in asset allocation, but the effect seems far from drastic solution of the problems.<sup>11</sup> The Japanese government has also implemented a variety of measures e.g., providing guidelines on investment education and information service and the effective methodology has not been established yet. Looking at the cases where companies have introduced the Defined Contribution Pension Plan (corporate plan), successful results have not been achieved in most cases although a variety of efforts have been made.<sup>12</sup>

Even in the U.S. section 401(k) plan which has much longer history than that of Japan's Defined Contribution Pension Plan, employees' asset management is not rational. According to Munnell and Suden (2006), the following issues have been pointed out in management of section 401(k) accumulated assets: (i) inadequate diversification (making no investment or concentrated investment of most assets in stock),<sup>13</sup> (ii) excess investment in their company's own stock and (iii) failure to rebalance. The section 401(k) plan-specific circumstances, e.g., company's matching contributions were implemented by purchasing their company's own stock in many cases, have an effect on (ii), while it would appear that (i) and (iii) are caused by employees' lack interest in asset management. Nearly 30 years<sup>14</sup> have passed since the section 401(k) plan has begun in the United States. During this period, a variety of efforts have been implemented centered on the investment education, but these have not necessarily been successful to lead employees to the rational investment behavior. It has also been reported that employees' investment behavior to hold the Defined Contribution Pension Plan has neither active so much nor rational in Europe. For instance, Byrne (2004) said that 78.8% of the defined contribution plan holders have not changed the investment contents in the past five years. According to a survey of defined contribution pen-

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<sup>10</sup> Other surveys also show much the same results, e.g., the Defined Contribution Plan Education Association/ Fedelity investment (2004) and Miyama (2007).

<sup>11</sup> According to Kaneko (2009b), it was 3.0% to 23.2% when continued education was carried out, and 2.7% to 10.0% when it was not though those rates were different depending on the year when it was introduced.

<sup>12</sup> For details, see Ministry of Health, Labour and Welfare (2005).

<sup>13</sup> According to Holden and Van Derhei (2006), 15% of holders do not invest in stocks while 39.6% invest more than 80% of their assets in equity fund.

<sup>14</sup> The section 401(k) plan was added to the Internal Revenue Code (IRC) in 1978, and the starting date to apply was expected to be the fiscal year starting after the December 31th, 1979. Then, 401(k) plan was recognized officially due to the publication of interpretation of section 401(k) by the Internal Revenue Service (IRS). This was the beginning of popularization of the section 401(k). Generally, this is considered to be the day the section 401(k) plan started.

sion specialists in U.K. by Byrne and Blake (2008), the reality is that the number of holders who understand the management risks is 15% at the most.

## V. Movement toward Overcoming Problems

As mentioned above, both defined benefit plan and defined contribution plan have structural problems that are hard to avoid. As for the defined benefit plan, the financial risk in the parent company is an extremely serious problem. It also includes personnel risks by the occurrence of burden of income and risks to the employees of successive generations. Regarding the defined contribution plan, on the other hand, it is difficult to lead holders to the rational investment behavior. Especially in the Defined Contribution Plan in Japan, there are many issues on legal restrictions of institutional design to be solved. In the following sections, I will discuss countermeasures against structural problems, legal restrictions in Japan and countermeasures against those restrictions.

### 1. Response to Structural Problems

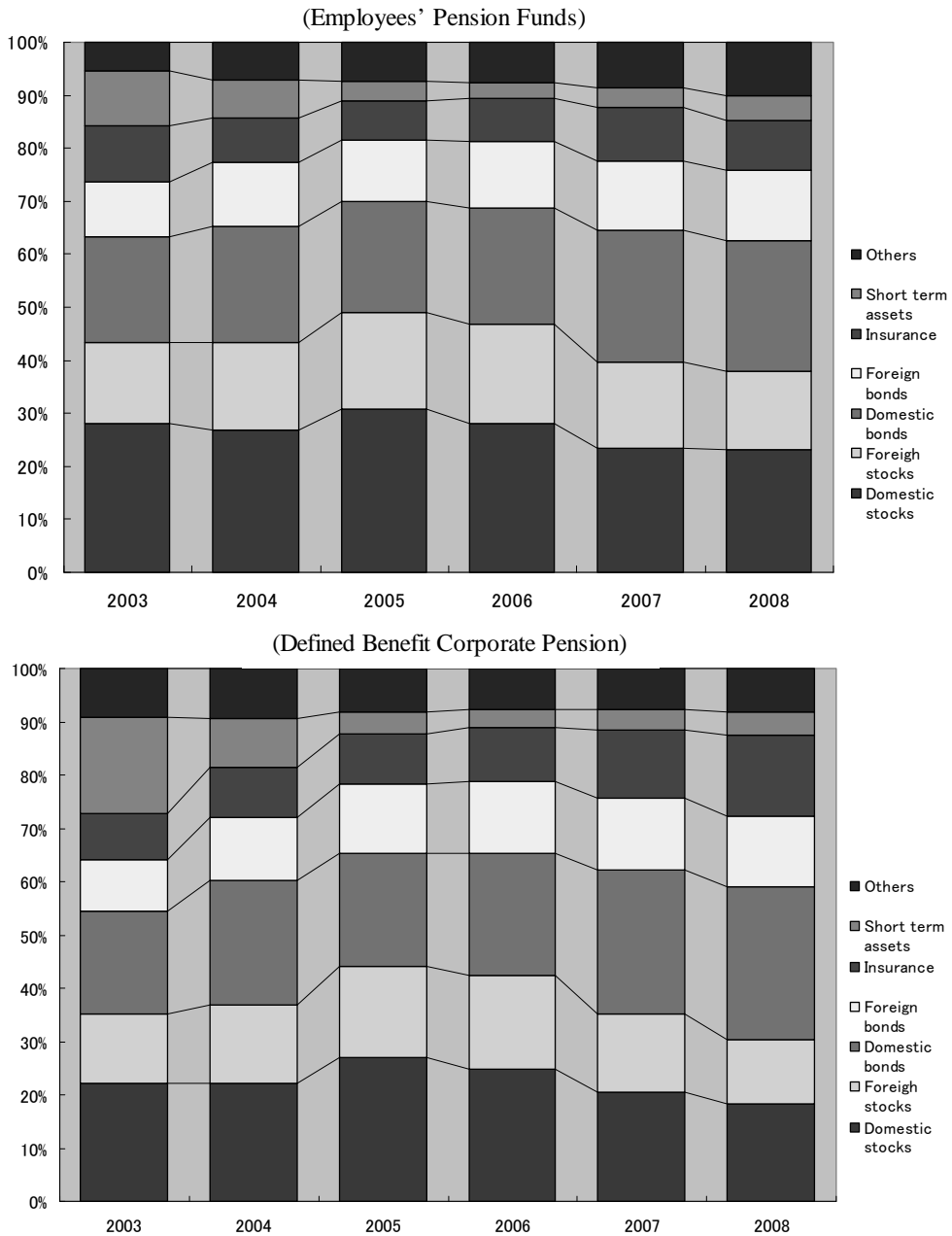
The following three points have attracted attention as countermeasures against the structural problems: (i) reduction in the risk of defined benefit plan, (ii) incorporating the elements of defined contribution plan into defined benefit plan and (iii) incorporating the elements of defined benefit plan into defined contribution plan.

Above (i) includes reduction in management risk. As shown in Figure 3, the equity stake has tended to decrease in recent years, and this tendency is more prominent in the Defined Benefit Corporate Pension than in Employees Pension Funds. At present when *Daiko henjo* increases, Employees' Pension Funds are often the comprehensive plan focusing on small/medium-sized companies while major companies are often treated as parent organizations in the Defined Benefit Corporate Pension. In other words, relatively well-financed major companies have reduced the management risk instead of allowing the increase in the burden of premiums moving toward decreasing in income and risks to the employees of successive generations. Recently, Liability Driven Investment (LDI) which offsets the interest risk of benefit obligation by increasing the interest sensitivity of assets has attracted attention.

As for (ii), hybrid-corporate pensions, namely institutional designs in which the parent company and holders (including leading and successive generations) are sharing risks of the defined benefit plan, are included. The cash balance plan which interlocks<sup>15</sup> the benefit level with the market interest rate is also one of them, but the risk shared here is limited to the interest risk and the management risk is still taken by the parent company and

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<sup>15</sup> A virtual individual account is set for each holder, and the reassessment rate of balance interlocks with the market interest rate. What is recognized as the reassessment rate is (i): fixed rate, (ii): yield of government bonds and other objective indicators which can be projected rationally, (iii): combination of (i) and (ii), and (iv): (ii) or (iii) with determined upper or lower limit.



Note: Created by Daiwa Institute of Research Ltd. based on data from Pension Fund Association.

Figure 3. Changes in Asset Allocation of the Defined Benefit Pension  
(Employees' Pension Fund)



successive generations. In recent years, there is an increasing attention to the institutional design in which the parent company shares the management risk with holders. A typical example is Collective Defined Contribution Plan (hereinafter referred to as CDC) which has adopted in Netherland. It aims to let holders (including leading generations) bear the management risks by interlocking the reassessment rate of the pension benefit amount with the reserve ratio. The interlock with the reassessment rate is stopped when the reserve ratio exceeds a certain range and the reduction of benefit level is generally avoided even if the management loss is caused.<sup>16</sup> In this case, the risk transfer to the parent company or successive generations would be reduced but not eliminated because an additional premium burden could be placed on the parent company. It is thought that it is unlikely to create additional burdens by maintaining a high-level reserve ratio.

More recently, the Japanese Society of Certificated Pension Actuaries has advocated “Benchmark Related (hereinafter referred to as BR)” plan.<sup>17</sup> This regards the benefit level as total amount of basic benefit and additional benefit and interlocks the latter with the earning rate (compound index earning rate) obtained from the predetermined asset allocation and the up-down ratio of each asset’s index. The management risk would be transferred to holders if assets equivalent to the benefit obligation are accumulated and completely the same management as the predetermined asset allocation is carried out. As same as CDC, however, since the lower limit of additional benefit is assumed as zero, the risk transfer to the parent company or successive generations is not eliminated.

One of the problems that CDC and BR have is the decision making process related to asset management.<sup>18</sup> If the management risk is transferred from the parent company to holders, it is reasonable that holders’ will should be reflected in the decision making process of investment. However, it would be not practically easy to build consensus in which all holders are satisfied due to many holders who lack interest in the asset management. It should also be noted that desirable investments differ depending on the ages of employees, etc.

Regarding (iii) incorporating the elements of defined benefit plan into defined contribution plan” default investment should be included. The default investment originally means that the investment in assets of holders who automatically joined the section 401(k) plan in the U.S. because they did not perform any procedures for “not to join.” In recent years, this has attracted attention as an investment in assets of holders who lack interest in the asset management and cannot make investment decisions voluntarily. As for default investment, the possibility of insufficient long-term asset accumulation has been pointed out. There is a possibility that companies face fiduciary responsibility if a management loss of the default investment occurs, and the targets of investment are, therefore, biased toward

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<sup>16</sup> See Pond and Riel (2008).

<sup>17</sup> For details, see the Japanese Society of Certificated Pension Actuaries (2009).

<sup>18</sup> In the case of BR plan, it includes asset allocations and an index which is the base of calculating compound index earning rate.

low-risk ones such as Guaranteed Investment Contract (hereinafter referred to as GIC) and Money Market Fund (hereinafter referred to as MMF) in the U.S.

In response to this, the U.S. government largely alleviated companies' responsibility on the default investment with the Pension Protection Act enacted in 2006. This enables companies to conduct the asset management with a certain level of risks such as lifecycle funds without facing any fiduciary responsibility for the default investment. Although it is pointed out that this encourages easy reliance on the default investment and the original mission of the defined contribution plan, accumulation of funds being set aside for use in retirement based on the principle of self-responsibility, would be in name only, the U.S. government made a tough choice on the basis of nearly 30 years of experience.

It is striking that when increasing the co-movement of the earning rate of asset management and benefit levels, above hybrid-corporate pensions move closer to the default investment of the defined contribution plan. The advantages of default investment are: holders can quit on their own will<sup>19</sup> and individual holder's attribution can be reflected in the management in the lifecycle funds, etc. The advantage of hybrid plan is that the risk sharing between the parent company and holders is adjustable. It is also pointed out that since the latter is positioned as an extension of the traditional defined benefit plan, it is easy to gain understanding of holders when changing the plan.

## 2. Response to Legislative Problems

Concerning legal restrictions on Japan's Defined Contribution Pension (corporate plan), the following two points are important: (i) raising the maximum limit of contributions and (ii) lifting of the ban on matching contributions.

The current contribution premiums in the Defined Contribution Pension (corporate plan) are up to 552 thousand yen a year per capita (276 thousand yen a year per capita when used with other pensions). This contribution limit is fixed at any age, and there are often discrepancies. Since corporate contribution amount is generally considered as the constant rate of wage, it is insufficient for younger generations but it reaches the maximum limit for employees who are on the verge of retiring. After all, the rate of shifting from the traditional defined benefit plan to the defined contribution plan is kept at low level and this has become a big restriction on the design of retirement benefit plan of companies which want to make extensive use of the Defined Contribution Pension (corporate plan). Another problem is that the amount itself is remarkably lower than that of the section 401(k) plan in the U.S. It is hoped that the government raises the maximum limit of the contributions, introduces measures to manage the contribution limit based on holders' lifetime accumulative total amounts and revises plans so that flexible designs can be made in line with the current conditions of companies.

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<sup>19</sup> Since the Japanese Society of Certificated Pension Actuaries (2009) proposes to manage the defined benefit plan and defined contribution plan as a unit in order for employees to change the rate on their own will, the advantage of default investment "possible to quit" may not be so large.

The lifting of the ban on matching contributions means that employees' contributions are allowed in corporate pension. In the section 401(k) plan which is modeled on Japan's defined contribution plan, the main contribution premiums are employees' contributions. This is called optional contribution; employees select either the contribution to the plan or receiving as income at that time. Employees accumulate the pension assets on their own will joining the section 401(k) plan. It is designed for easily fostering the sense to make self-help efforts (matching contribution means the company adds a certain rate of contribution as an incentive to the employee who selected to join the plan). On the other hand, it is often strongly critical of Japan's defined contribution plan that companies always contribute to it and it is not a self-help plan in which employees can think and act on their own will. It is also pointed out that holders have little meaning for thinking or selecting targets of investment for asset management and tend to be passive. As a result, the funds are mostly used for principal protection products such as bank deposits which are safe but with little return.

If the matching contribution is allowed in the Defined Contribution Pension (corporate plan), it would be expected that holders think seriously about using a part of wage for the investment to tax sheltered financial products. For instance, it is pointed out that although the premium levels of corporate contribution are generally low when employees are young, if they can add to the contribution on their own will, they would take rational asset management behavior in view of the effects.

## **VI. Conclusion**

In this paper, I discussed problems of retirement benefits in both the defined benefit plan and the defined contribution plan and approaches to those problems. It is hard to say that the defined benefit plan is sustainable because companies and successive generations cannot bear the transferred burden. The defined contribution plan has little significance of existence if employees' wealth building is insufficient. Such structural problems have been solved in the United States and Europe while technical discussions attract attention but there are few discussions on structural and fundamental problems in Japan. There are many reasons for companies to review personnel policies such as retirement of baby boomers, criticism of decreased labor distribution rate regardless of business recovery, dwindling labor supply due to the low birthrate and distorted age composition of employees due to prolonged cutback on new hiring.

Under the circumstances, sustainable and significant retirement benefit plans would be an essential element. Based on the structural changes in Japanese society and economy and efforts of the United States and Europe, we need to immediately hold active discussions on efforts toward the solution of structural problems of the retirement benefits turning anew to the roots.

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## Occurrence Mechanism and Resolution Process of Labor Disputes: Cases of Community Unions (Kyushu Area)

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In recent years, the number of individual labor disputes has increased. Labor unions organized outside companies have addressed the resolution of these disputes. One of major labor unions is “community union.” In this research, I conducted interview surveys of three community unions and union members in Kyushu Area (19 cases) in order to clarify how community unions play a role to settle and prevent individual labor disputes. As a result, I found that the *raison d’être* of community unions for settling/preventing labor disputes is to: (i) lead to a dispute resolution with a high rate of success as well as bringing consolation to workers involved in the disputes, (ii) restore dignity to workers and motivate them to return to workplace and (iii) point out companies’ personnel or labor management problems and communications problems which have led to disputes, and call for the improvement in the collective bargaining session.

### I. Awareness of Issues and Method of Research

In recent years, the number of labor disputes concerning individual workers has been increasing. For dispute resolution, a system of mediation by prefectural Labour Bureaus and Labour Relations Commissions and an industrial tribunal system have started, and administrative and judicial efforts have also begun to be made. In addition to these administrative and judicial systems, some labor unions have assumed a function of resolving individual labor disputes. They are mainly community unions, general nationwide labor unions, local unions of regional federations and local unions of the National Confederation of Trade Unions (“Zenroren”), all of which are organized outside of companies. In this research, I took up three community unions in the Kyushu area to examine their roles in the resolution and prevention of individual labor disputes.

The survey was carried out in a series of five interviews between December 2007 and February 2009. About two hours were spent on each interview of three community union executives and union members (including former members) who could settle disputes through their unions. An individual labor dispute generally arises when a worker files an objection against what they cannot accept concerning their relations with the company and takes action to resolve the problem, and whether a dispute arises or not depends largely on how the worker sees and assesses the issue under certain circumstances. In order to elucidate the mechanism by which a dispute arises, it is quite important to carefully examine how the worker thinks. In view of the importance of this point, in this paper I will present the workers’ remarks as straightforward as possible. The survey was conducted of officials at Rengo Fukuoka Union (hereinafter referred to F Union), Oita *Fureai* Union (O Union)

and Rengo Kagoshima Union (K Union) and 19 members introduced by these three unions.

## **II. Research Contents**

In the first place, “community union” means a labor union rooted in the local community, and any worker including part-time workers, temporary agency workers and foreign workers can join it as a single individual. The first community union was Edogawa Union, which was organized in 1984 under the slogan of “*Fureai, Yuai and Tasukeai* (Contact, Compassion and Cooperation).” After that, community unions were organized nationwide. As of September 2008, 74 unions in 31 prefectures participated in the Community Union National Network, and the number of union members reached about 15,000 in total. Each community union is basically an independent labor union and their activities vary accordingly, but still, the resolution of labor disputes is listed among their commonly performed activities.

Among the three community unions, I will focus here on F Union and examine its role in the resolution and prevention of individual labor disputes. F Union, which was established in December 1996, had 411 members as of August 31, 2007. The number of members is generally on the increase having a lot of entries to and withdrawals from the union. F Union handles the labor consultation service of Rengo Fukuoka and all requests for consultation to Rengo Fukuoka are automatically forwarded to F Union whether by telephone, direct visit or other medium. The number of requests for labor consultations has been decreasing since it peaked in FY 2003 at 928 and the Union has an average of two labor consultations each day. The breakdown of labor consultation requests made in FY 2007 by form of employment is: 53.7% from regular employees, 12.6% from part-time workers, 8.6% from temporary agency workers, 7.7% from contract employees, 5.1% from *arubaito* workers, and 12.2% for others.

In the 11 years since its establishment in December 1996 to 2006, F Union has accepted 693 cases of individual labor disputes (involving 1,374 union members) and requested collective bargaining in many of them. Among these cases, 70.0% were about employment, 16.7% were about wages, 6.1% were about labor contracts, and 7.2% were about other issues. Most of these cases or 79.9% were settled by voluntary dispute resolution approaches such as collective bargaining while some cases were referred to Labour Relations Commissions (11.6%) or brought to court (8.5%).

Looking at the breakdown, by type of employment, of workers involved in 41 dispute cases in which F Union made a request for collective bargaining to the company concerned in a one-year period from October 2006 to September 2007, a large majority or 34 cases (82.9%) concerned regular employees while part-time and temporary agency workers were involved in one case each (2.4%) and contract workers were involved in five cases (12.2%). By gender, more male workers were involved than female workers: 26 cases for male workers and 19 cases for female workers.

F Union functions not only to help resolve labor disputes but also to prevent disputes. One of the measures to prevent disputes is to have the activities of F Union introduced in local newspapers or publicized on local TV programs. The employers who read or watch them might think that if they cause any personnel or labor problems, they would be forced to enter into bargaining by the union or the issue could be brought to the regional Labour Relations Commission or to court, and they would become careful about personnel and labor management so that no problems would occur. The publicity is indeed believed to have led to the prevention of disputes. F Union may also make demands sometimes that would prevent a recurrence of disputes and have them accepted during collective bargaining.

Next, I will briefly describe and compare 19 cases of labor disputes presented in this paper, summarize them mainly based on their similarities, and classify them. The cases are classified into the following four patterns in terms of how the disputes arose. The first is the “status-improvement” pattern. These are the cases where the workers demand a higher status than the current one (in terms of post, capacity, position or working conditions such as their wage and bonus) from the company and the conflict of claims between the workers and management gives rise to a dispute.

The second is the “status-reinstatement” pattern. In these cases, the workers protest their lowered status and demand the company reinstate them to their former status and the company refuses the demand, causing the dispute to arise.

The third is the “subsistence” pattern. This pattern can be subdivided into cases concerning an economic aspect and those concerning a physical and mental aspect. In the economic aspect, the workers, claiming that they barely subsist with their current status or the lowered working labor conditions, demand an improvement in their status or recovery of the former working conditions from the company in order to subsist economically, and the dispute arises when the company disregards or refuses the workers’ demands. In the physical and mental aspect, the workers who think that they cannot sustain their life physically or mentally under the current situation seeks help from outside the company, and in this process the dispute arises.

The fourth is the “tit-for-tat” pattern. The workers demand the recovery of their dignity and humanity, which have been violated or denied, or make a countercharge against the management who did such things, and a dispute arises as a result.

These four patterns are not mutually exclusive, two or more patterns combine in many cases and the above classification is not therefore absolute but relative.

The patterns of dispute resolution can be classified into three. The first pattern is voluntary resolution. The union requests the company employing the union member who joined the union for the purpose of dispute resolution to enter into collective bargaining and resolves the dispute through negotiation with the company. Most labor disputes are settled through voluntary resolution. The second pattern is resolution with the intervention of the Labour Relations Commission. When the company refuses the union’s approach for voluntary resolution by not accepting the request for collective bargaining, etc., the union files a

request for examination of unfair labor practices or adjustment of labor disputes with the Labour Relation Commission to settle the dispute. The third pattern is settlement through judicial proceedings at a court, industrial tribunal, etc. The union refers disputes that have not been settled by the Labour Relations Commission to judicial proceedings or directly refers them to judicial proceedings without bringing them to the Labour Relations Commission. The number of cases brought to the industrial tribunal for rapid resolutions have been increasing recently.

I classified dispute cases into three patterns in order to examine the social expansion of dispute resolution and learned that these three patterns of dispute resolution were also not mutually exclusive. Considering the fact that workers can seek an order, decision or judgment from the Labour Relations Commission through the courts because of the union's support, all can be regarded as part of an attempt at voluntary resolution led by the union.

In the following sections, I will examine the mechanisms by which disputes arose and the dispute resolution processes of 16 cases of individual labor disputes excluding three cases of collective labor disputes, and then discuss suggestions that may lead to dispute prevention and resolution for each form of employment.

## 1. Standard Workers

### (1) Dispute Occurrence Mechanism and Suggestions for Dispute Prevention

(i) *Beginning of the disputes in five cases*: All disputes, except for the case of T.U. (a cement mixer truck driver, 51 years old, male) which did not lead to dispute, occurred when the workers were encouraged to retire by their companies. In the case of T.Y. (an office clerk of a major paper company, 41 years old, female), it was a typical case that a female worker over 30 years old was pushed to quit her job. I.W. (a hotel sales representative, 39 years old, male) was forced to work so hard that his life was threatened. His case was a dispute over unpaid overtime, but he felt that he was being urged to retire. K.B. (a professor of junior college, 68 years old, male) was suspended from teaching classes and repeatedly encouraged to retire. In the case of N.N. (a sales representative of a camera shop, 52 years old, male), the company suspended payment of his executive allowance and announced reduction of an employee implying termination of his employment. S.R. (a university assistant professor, 44 years old, male) was required to accept a false claim of his retirement agreement.

(ii) *Behind the encouragement to retire were*: a customary practice in the workplace that runs counter to the Equal Employment Opportunity Act in the case of T.Y.; personal attacks by the president of the company in the case of I.W.; an unfair demand from the junior college's side that was made in violation of the initial employment contract and troubles with students in the case of K.B.; the company's reorganization and interruption of his work when he was hospitalized in the case of N.N.; and the university's failure to assign replacement classes that should have been assigned in response to the closure of the department in



the case of S.R.

(iii) In all five cases, in light of the legal principle concerning abuse of the right of dismissal and the legal principle setting forth four requirements for retrenchment<sup>1</sup>, the acts of the employers to encourage retirement are highly likely to constitute violations of laws and ordinances. In the case of T.Y., the company violated the Equal Employment Opportunity Act, as the company admits. In the case of I.W., the issue was not limited to the nonpayment of a large amount of overtime pay. He was “murderously overworked” and it is not too much to say that he was close to dying from overwork. Legal compliance by management would result in preventing labor disputes.

(iv) In all five cases, I cannot guess the extent to which it was inevitable for the companies’ side to encourage these workers to retire. However, if they had kept in close communication with the workers in question, disputes may have not occurred. If the employer’s side had checked the initial contract with K.B. and sought out facts about his troubles with students, if they had confirmed N.N.’s medical condition during his hospital stay, and if the university had confirmed that S.R. had no intention of retiring, it seems quite possible that the disputes would not have occurred.

## (2) Dispute Resolution Process and Suggestions for Early Resolution and Prevention of Disputes

(i) *The dispute resolution process in the case of T.Y. was:* visit the labor and welfare office of Fukuoka Prefecture → introduction to F Union → entry into F Union and a voluntary resolution of the dispute through collective bargaining by F Union. The dispute was resolved smoothly probably because the union obtained evidence on cutbacks of female workers. It took about three months to resolve the dispute.

In the case of I.W., as he already knew about K Union from past experience, he joined K Union and the dispute was resolved voluntarily through collective bargaining by K Union. He received nearly the full amount of unpaid overtime pay he was due probably as a result of the combined effect of the determined attitude of the secretary general of the K Union, I.W.’s core position and experience at the company, the social environment favorable to workers, and persuasion by the company’s lawyer. It took about four months to resolve the dispute.

The resolution process of the case of KB was: consultation with professors of another university and introduction to F Union → entry into F Union and voluntary resolution through collective bargaining by F Union. It seems that K.B.’s prompt action and the union’s appropriate negotiation strategy contributed to an early resolution. The dispute was

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<sup>1</sup> For details, refer to Kazuo Sugeno, “Kaiko [Dismissal]” in *Rodoho* [Labor laws], 2nd Revised Edition of the 7th Edition, 416-437 (Tokyo: Kobundo, 2007).

resolved in about two months.

In the case of NN, the resolution process was: heard about F Union from his younger brother and found F Union by searching on the Internet → entry into the union and collective bargaining by the union → company's refusal of collective bargaining → resolution through collective bargaining attended by the regional Labour Relations Commission. It took about five months for the dispute to be resolved mainly because the company's side raised an objection to the existence of F Union itself.

The case of S.R. went through the following process before resolving the dispute: introduction to O Union by a colleague → entry into the union, the union's request for collective bargaining and the university's inflexible attitude → petition to the district court for an interim injunction to preserve the position pending trial (decision admitting the dismissal) → appeal to the high court of the decision of the district court on the petition for an interim injunction and institution of a lawsuit in the district court → settlement in the high court (tentative payment of wages) → the district court's judgment on the lawsuit nullifying the dismissal, and a refusal of collective bargaining for return to work and appeal to the high court by the university → high court judgment nullifying the dismissal → return to the university. The whole process took about two and a half years. It took such a long time because the alleged reason for retirement or dismissal was changed from retirement by agreement to disciplinary dismissal by the university's side while the university maintained an unyielding attitude not to withdraw the dismissal, and also it took a long time for repeated trials and judgments of the district court and the high court.

For an early resolution, the employer should respond to the union's request for negotiation in a sincere manner and take realistic actions in line with the actual circumstances.

(ii) The dispute over encouragement to retire was resolved by the worker's retirement in three cases other than the cases of K.B. and S.R. Everyone including these two workers expressed gratitude towards the union for its efforts. They thanked the union's rapid response (T.Y. and K.B.) while N.N. thinks that the union's action helped prevent his death from overwork, saying, "If I had endured everything without taking action, I may have died from overwork... No one talked to me because I was out of my mind." I.W. highly appreciated the union as he was able to negotiate with the company on an equal basis thanks to the union as a social body existing outside the company.

(iii) In two cases, resolution of the dispute directly led to dispute prevention. In the case of T.Y., she requested the company to take measures to prevent a recurrence of the dispute and the company accepted. As a result, the practice of pressuring female workers over 30 years old into retirement has actually been ended. I.W. also demanded improvements in working conditions for his colleagues and obtained a reply from the company stating "the company shall make efforts so that the working conditions for employees will be improved." Emotional attachment to colleagues by workers involved in disputes and the negotiation strategy

Table 1. Patterns of Occurrence and Resolution of Labor Disputes of Standard Workers

	Case 4 T.Y.	Case 5 I.W.	Case 6 K.B.	Case 7 N.N.	Case 8 S.R.	Case 9 T.U.
<i>Dispute Occurrence</i>						
Status-improvement						
Status-reinstatement	◎		◎	◎	◎	
Subsistence						
Economic		○				
Physical/Mental		◎		○		
Tit-for-tat action		○				◎ hidden
<i>Dispute Resolution</i>						
Voluntary Resolution	○	○	○			
Regional Labour Relations Committee				○	○	
Lawsuit					○	

Notes: 1. Dispute occurrence ◎: most strongly applicable, ○: strongly applicable, blank box: not applicable.

2. Dispute resolution ○: utilized, blank box: not utilized.

of the union help bring about the prevention of disputes.

### (3) Classification of Patterns of Occurrence and Resolution of Disputes

The process of occurrence and resolution of disputes for standard workers are summarized as above. Table 1 shows which of the four patterns are applicable to each case. In the case of T.Y., her employment was jeopardized by the company's encouragement to retire in the form of pressure on female workers over 30 years old to quit, and she visited F Union in order to ask the company to stop the practice, be reinstated to her status and allow her to continue working. As a result of collective bargaining, T.Y. managed to be reinstated to her previous status as the company withdrew the suggestion of early retirement and apologized. However, she decided to retire because, she said, "My feeling that I was betrayed by the company lowered my motivation and I lost my enthusiasm to keep on working."

I.W. felt a sense of physical crisis as he was, in spite of a serious disease, aortic valve insufficiency, transferred to an extremely busy post with deadly long working hours which would eventually led him to accept encouraged retirement. He initiated the dispute because he needed to solve the issue of encouragement to retire and excessive unpaid overtime in order to subsist, and he also had to prepare economically to undergo an operation. With strong determination to fight whether he win or lose rather than just putting up with the situation, he rose up to give tit-for-tat to the president who assaulted his dignity, and then the dispute arose.

K.B., who feared that he might be forced to retire because of his suspension from teaching classes due to troubles he had with students as well as repeated encouragement to retire, joined F Union with a view to win reinstatement of his status and continue working,

and the situation developed in to a dispute.

N.N. joined F Union in order to protect his current status from the crisis of job loss implied by a cut in salary due to his exclusion from receiving payments of executive allowances and an announcement of the company's intention to cut one employee. His desire to recover from the crisis, coupled with the desire to live by avoiding the risk of death from overwork, gave rise to the dispute.

S.R. joined O Union in order to win reinstatement in the position he assumed before he was dismissed by the university, which claimed that he agreed to retire with the closure of the department he belonged to, a claim that he said was not true because he never agreed to retire, and thus the issue developed into a dispute.

T.U. joined K Union out of fear that his retirement allowance would not be paid. Although his case did not develop into a dispute because the retirement allowance was paid, his experience revealed that there are many potential disputes in provincial areas ripe for Retaliation, as is emphatically indicated by his shocking remark, "If we were in the Edo period, I would have liked to pull out my sword and cut off the president's head."

Looking at the pattern of dispute resolution, the cases of T.Y., I.W. and K.B. are classified as voluntary resolutions through the union's collective bargaining. The case of N.N. was resolved before the regional Labour Relations Commission and the case of S.R. was finally resolved through a lawsuit and a hearing before the regional Labour Relations Commission.

## 2. Non-Standard Workers: Part-Time Workers

In this section I will review the occurrence mechanism and resolution process of disputes involving part-time workers, temporary agency workers, and (disguised) outsourced workers, which have been a major issue in Japanese society since the late 1990s. First, I will focus on part-time workers, who occupy the largest portion of non-regular workers.

### (1) Dispute Occurrence Mechanism and Suggestions for Dispute Prevention

(i) *Dispute occurrence mechanism*: S.M. (52 years old, male) who had been working full-time hours as a part-time driver of a pickup bus for a driving school for 11 years, joined F Union in order to eliminate uncertainty about his employment and anxiety about his life caused by a transfer and drop in hourly wage as a result of outsourcing of driving division work to a temporary agency, causing the dispute to arise. The complete ban on overtime work and reduction in his hourly wage threatened the livelihood of S.M. who lives alone.

In the case of S.K. (a food processing company worker, 49 years old, female), the company was going to force her against her will. S.K. visited administrative bodies and the union in an attempt to work off her frustration, and as a result the issue developed into a dispute.

K.G. (a guard of a supermarket, 39 years old, male) thought that the trouble which arose from his "thoughtless behavior" would be resolved by submitting a written apology.

However, he was ordered transferred to either Tokyo or Osaka. This transfer was unacceptable to K.G. who was taking care of his disabled parents. Later, he was ordered to submit a letter of resignation and was excluded from all work shifts. In order to resolve the issue of forced retirement, he visited K Union which had been helping him for five years, and became a member. In this way the issue developed into a dispute.

S.S. (a food sales person, 58 years old, female) who worked for the company for six years, received a dismissal notice from the company for reasons of a single complaint filed against her by a customer and her chatting at another shop. Thinking that these reasons did not deserve dismissal, she asked her husband for advice over the dismissal notice, and then she visited the Labour Standards Inspection Office to seek clarification and was introduced to F Union. She joined F Union, and the dispute arose.

In the last case of M.N. (a sales person of second hand clothing store, 32 years old, female), she was suddenly given an order of transfer by facsimile from headquarters. She was a single parent looking after a six-year-old son. If she were transferred, the cost of transportation would take up nearly half of her wages and it would be hard for her to live. The transfer was therefore not acceptable. She joined F Union to resolve this issue, and thus the dispute arose.

(ii) In these five cases of part-time workers as well, a dispute would have been prevented if close communication had been maintained between the worker and management. A dispute would not have occurred: if the company had known that S.M. was barely making a living; if the company had confirmed S.K.'s will; if the company had taken into consideration that K.G. was looking after disabled parents and understood that he was not a man to accept the unilateral action of the company and also noticed that they had no adequate complaint handling system; if S.S.'s manager had talked to her politely; and if the company had accepted M.N.'s request for discussion.

## (2) Dispute Resolution Process and Suggestions for Early Resolution and Prevention of Disputes

The process of how these five part-time workers resolved their disputes described above is summarized below.

(i) In the case of S.M., the dispute resolution process was as follows: finding out the union through the Internet → entry into F union and collective bargaining → the company's full entrustment of development of the resolution plan to the union → choice of retirement and voluntary resolution by the union.

S.K. resolved her dispute case by: working continuously following the advice of the Labour Standards Inspection Office → forceful demand for retirement by the company → retired → visited again to the Labor Standard Inspection Office but in vain learning that it would be impossible to change from voluntary retirement to involuntary retirement → get-

ting to know the union through her daughter → entry in K Union eventually leading her case to voluntary resolution through collective bargaining.

The case of K.G. went through the following process to resolution: his refusal of unacceptable transfer to a remote place causing the company's forceful demand for retirement → consultation with colleagues and their advice that he did not have to retire → consultation with and entry into the already-known K Union → voluntary resolution through collective bargaining (with a guarantee by the secretary general of the union as his "guardian").

In the case of S.S., the dispute resolution proceeded by: visit to the Labour Standards Inspection Office and introduction to F Union → entry into F Union, experiencing two rounds of failed collective bargaining → dispute resolution through three hearings before the industrial tribunal.

The case of M.N. went through the following process: visit to the Labour Standards Inspection Office getting the advice to maintain her attendance record there → application for mediation by the dispute coordinating committee of the prefectural Labour Bureau, which was refused by the company → introduction to F Union by a lawyer → entry into the union, experiencing two rounds of collective bargaining in vain → settlement after two hearings before the industrial tribunal.

The time taken for resolution after the dispute arose was the longest in the case of M.N. It took about eight months mainly because the company did not sincerely engage in collective bargaining. The case revealed that prevention of unfair labor practices and imposition of severer penalties would lead to early resolution of disputes.

Among these part-time workers, S.K., S.S. and M.N. used the service of labor administrative bodies. S.S. was introduced to the union and her case was resolved soon while it took a long time for S.K. and M.N. to find the union. In order to promote early resolution of disputes, it would be effective that administrative bodies introduce the workers involved in disputes to community unions. In the case of M.N., the dispute resolution was prolonged because the company refused mediation by the prefectural Labour Bureau. Successful mediation by the prefectural Labour Bureau is effective for early dispute resolution and measures should be taken to improve the success rate of mediation. K.G. managed to resolve the dispute without using the services of administrative bodies. One of the reasons was that the secretary general of the union became his "guardian." The community unions did indeed contribute to the early and amicable resolution of disputes.

(ii) The *raison d'être* of community unions for resolution of dispute. In the case of S.M., the union was so good at negotiation that the company fully entrusted development of the settlement plan to the union. S.K. expressed her gratitude to the union saying "They listened to me so earnestly and, only by that, I was satisfied. It was impressive that (the secretary general of the union) actually took action on my behalf. I was really pleased. I felt a sense of relief." In the case of K.G., the secretary general of the union became his "guardian." S.S. also expressed her thanks saying "I am grateful to the union for taking my problem seri-

Table 2. Patterns of Occurrence and Resolution of Labor Disputes of Part-time Workers

	Case 10 S.M.	Case 11 S.K.	Case 12 K.G.	Case 13 S.S.	Case 14 M.N.
<i>Dispute Occurrence</i>					
Status-improvement					
Status-reinstatement	○	○	◎		◎
Subsistence					
Economic	◎		○		○
Physical/Mental					
Tit-for-tat action		◎		◎	
<i>Dispute Resolution</i>					
Voluntary Resolution	○	○	○		
Regional Labour Relations Committee					
Lawsuit				○	○

Notes: 1. Dispute occurrence ◎: most strongly applicable, ○: strongly applicable, blank box: not applicable.

2. Dispute resolution ○: utilized, blank box: not utilized.

ously and treating me kindly.” M.N. said, “I am deeply grateful to the staff of the union. I really thank them.” She was glad that the dispute, which had not been solved by an administrative approach, was resolved before the industrial tribunal thanks to the support of the union.

### (3) Classification of Patterns of Occurrence and Resolution of Disputes

S.M. joined the union in order to eliminate employment uncertainty and worry about his life to be caused by his transfer, and the issue developed into a dispute. He thought that if he accepted a transfer, he would not be able to make a living by himself. It was a dispute for economic subsistence.

S.K. was “annoyed” and “felt so frustrated” with the attitude of the company which was trying to force her to retire in spite of the fact that she did not say she would retire at once and was particularly angry about the female president who acted as if she knew nothing about the matter and said so to others even though she induced S.K. to retire. S.K. said the president was “a rude person who disdains others” and she could not help feeling vengeful.

K.G. had no choice but to refuse a transfer to a remote place because he was taking care of his disabled parents. When he refused, his employer demanded his retirement and actually excluded him from work shifts. He turned to the union for help to win reinstatement by returning to work.

Although S.S. admitted that she had made trivial mistakes, she was frustrated by the impolite attitude of the manager who forcefully handed her a dismissal notice due to those mistakes and by the inconsiderate nature of the dismissal notice. She said, “Couldn’t he talk

in a different way?” Her accumulated grievance against his disregard for her humanity gave rise to the dispute. Her remarks show her vengeful thoughts, though they are not very strong.

M.N. refused an unacceptable transfer, and as a result she was prevented from working. She joined the union with a view to returning to work at her former shop which she was prevented from going to and the issue developed into a dispute. She wanted to return to the former shop in order to protect her hand-to-mouth existence as a single mother.

By pattern of dispute resolution, the cases of S.M., S.K. and K.G. terminated through voluntary resolutions brought about by the union and the cases of S.S. and M.N. were resolved by settlements before the industrial tribunal. The resolution resulted in reinstatement in his former job only in the case of K.G., and retirement for the four other part-time workers.

### 3. Non-Standard Workers: Temporary Agency Workers

In this section, I will examine the dispute occurrence mechanism and resolution process of two cases concerning temporary agency workers, who have become a major social concern in recent years.

#### (1) Dispute Occurrence Mechanism and Suggestions for Dispute Prevention

(i) Occurrence mechanism of dispute. In the case of M.I. (a worker in the system section of a mineral trading company, 28 years old, female), she was notified of her dismissal when she was working at a client company. She said, “The Temporary agency abruptly called me during the lunch break and said, ‘Let’s make today the day of termination.’” As M.I. signed an employment contract after undergoing a “preliminary interview” by the client company, she could not accept such a sudden dismissal. She visited F Union with her mother’s advice and became a member, and then the dispute arose.

T.K. (54 years old, female) was told by the temporary agency prior to being dispatched to the client company that the working conditions were the same for the two divisions (clothing management division and packaging division) of the client company. When she heard that the hourly wage of the staff working for the packaging division was to increase by 50 yen, she tried to confirm with the temporary agency that her wage would be raised by the same amount. Because of this, perhaps, her employment contract was not renewed and she was virtually dismissed. T.K. could not accept the situation and consulted with the Labour Standards Inspection Office, the prefectural Labour Bureau, and F Union. As a result, the dispute arose.

(ii) The problem of labor-management communication derived from the nature of temporary agency work underlies the occurrence of disputes. M.I. and T.K. repeatedly pointed out the unsatisfactory response they received from the temporary agencies. M.I. said, “I would like the temporary agency to have said, ‘for such and such reason.’” She also said, “I wish that



the client company had directly told me if there was something wrong, not through the temporary agency.” She pointed out the problem of communication among three parties, that is, the temporary agency worker, the temporary agency and the client company. T.K. pointed out the lack of communication with the temporary agency saying, “I have never been satisfied with their response. They never explained anything to me.” How to establish a system for good communication would seem to be the key to the prevention of disputes involving temporary agency workers.

## (2) Dispute Resolution Process and Suggestions for Early Resolution and Prevention of Disputes

(i) Looking at the dispute resolution process in the case of M.I., the dispute terminated through the following process: asking her mother for advice and getting to know the union through the television → entry into the union and voluntary resolution through collective bargaining.

The case of T.K. went through the following process: advice of the Labour Standards Inspection Office → application for mediation by the dispute coordinating committee of the prefectural Labour Bureau but in vain due to the refusal by the company → introduction to F Union by the lawyer she consulted using the free legal counseling service provided by the city → entry into the union and voluntary resolution through collective bargaining.

(ii) In both the cases, M.I. and T.K. terminated their disputes by voluntary resolution. For M.I., it took a relatively long time for collective bargaining because the temporary agency did not admit the actual state of affairs that gave rise to the dispute. Dispute resolution would be facilitated if the temporary agency responds in line with the actual state of affairs in the negotiation with the union.

## (3) Classification of Patterns of Occurrence and Resolution of Disputes

When M.I. received a telephone call from the temporary agency during the lunch break at the client company and was told, “Your contract terminates today” and she “could not understand what happened.” After she went home, she talked to her mother and visited F Union which they had seen on TV for a consultation. Then she joined the union and the dispute arose. She seems to have demanded to return to work, though this has not been clearly shown. She also felt distrust toward the temporary agency because of the way they treated her.

In the case of T.K., the dispute began when she confirmed with the temporary agency about a 50-yen wage hike. She thought that the wage hike in another division would also apply to her. In this sense, it is considered a passive demand rather than an active demand for improvement of status. She was offended by the temporary agency “insisting that she said what she didn’t actually say” and started the dispute partly as a means to appease her anger.

The case of M.I. was resolved in the form of a voluntary resolution by the union without using other dispute resolution bodies. In the case of T.K., too, the dispute was terminated through a voluntary resolution negotiated by the union, but she visited the Labour Standards Inspection Office, the prefectural Labour Bureau, and the free legal counseling service of the city before she reached the union.

#### 4. Non-Standard Workers: (Disguised) Outsourced Workers

Disguised outsourcing, along with temporary agency work, constitutes a serious social issue. In disguised outsourcing, the outsourcer manages the personnel and labor affairs of the outsourced workers, such as their arrival and departure from work, command and control of work, etc. In this research, we examined three cases of workers who were employed under disguised outsourcing.

##### (1) Dispute Occurrence Mechanism and Suggestions for Dispute Prevention

(i) Looking at the dispute occurrence mechanism, K.R. (a call-center staff member, 62 years old, female) called the president of the company on a Saturday with good intent, but on the same call her colleague spoke ill of the manager of her office. On the following Monday when she went to the office, the manager said to her, “You don’t need to work. Go home” and she was dismissed instantly. Dissatisfied with the situation, she demanded payment in lieu of dismissal notice from the company, which was eventually refused. Then she turned to dispute resolution bodies outside the company and the dispute arose.

I.U. (a carpenter, 59 years old, male) was seriously injured and hospitalized when he fell down while working at the construction site of a parking lot. Worried about the huge cost of hospitalization, he requested that the company would regard his accident as an industrial accident but in vain. He consulted with K Union seeking recognition of the accident as an industrial accident and the issue developed into a dispute.

H.N. (a worker engaged in maintenance operation of industrial refrigerators, 58 years old, male) was suddenly told, “Go home today, anyway” and was encouraged to retire. This happened shortly after he had chosen to work as a temporary agency worker from among three options presented by the company, in response to the company’s intention to change his contract from an illegal outsourcing contract to a legal one. Three days later he was ordered to agree to retire in exchange for a payment of one million yen. H.N. refused it and he was forced to retire. He joined F Union in order to resolve this issue, which developed into a dispute.

(ii) If the company’s side had admitted it was engaged in disguised outsourcing, these disputes would have been prevented. In the case of K.R., apart from the reason for dismissal, she demanded payment in lieu of dismissal notice, but the company refused her demand insisting that she was an outsourced worker. K.R. turned to labor administrative bodies, the union and finally an industrial tribunal in an attempt to resolve the issue of payment in lieu

of dismissal notice. In the case of I.U., if the company had recognized him as its employee based on his actual way of working and cooperated with him in claiming workers' accident compensation, the dispute would not have occurred. If the company's side admitted its illegal disguising of outsourced workers in dealing with problems, it would lead to dispute prevention.

## (2) Dispute Resolution Process and Suggestions for Early Resolution and Prevention of Disputes

(i) In terms of the dispute resolution process, K.R. terminated her case through the following process: demand for payment in lieu of dismissal notice → company's refusal of her demand → conclusion by the Labour Standards Inspection Office that it was not outsourcing and discontinuation of investigation due to the difference in claims concerning dismissal between the worker and the management → application for mediation by the dispute coordinating committee of the prefectural Labour Bureau and company's refusal of mediation → request for collective bargaining by the union and company's refusal of collective bargaining → settlement before the industrial tribunal.

In the case of I.U., the dispute resolution began with talking about workers' accident compensation with his family. H learned of K Union and joined it resulting in voluntary resolution through collective bargaining. He obtained the right to receive a workers' accident compensation pension with the union's support.

In the case of H.N., the dispute was resolved through consultation with a licensed social insurance consultant who was his classmate at high school and introduction to the union. He joined the union and terminated his case by voluntary resolution through collective bargaining.

(ii) As was stated above in connection with the dispute occurrence mechanism, once a dispute arises, if the company admits the illegality of disguising outsourced workers and addresses the issue in accordance with all laws and ordinances, the dispute would have been resolved earlier.

## (3) Classification of Patterns of Occurrence and Resolution of Disputes

In the case of K.R., her actions with good intent generated the opposite results and she was suddenly dismissed. She demanded payment for one month in lieu of dismissal notice probably because she wanted to fight the company due to the manager's abrupt notice of dismissal and the president's approval of it. There was also an economic reason for her to raise the dispute, because she had to economically support her mother who was living alone.

In the case of I.U., he was seriously injured and hospitalized when he fell down while working, but the company refused to regard his accident as an industrial accident. He joined the union in order to receive treatment of his injury and secure medical expenses resulting

Table 3. Non-Standard Workers: Patterns of Occurrence and Resolution of Labor Disputes of Temporary Agency Workers and (Disguised) Outsourced Workers

	Case 15 M.I.	Case 16 T.K.	Case 17 K.R.	Case 18 I.U.	Case 19 H.N.
<i>Dispute Occurrence</i>					
Status-improvement		⊙			
Status-reinstatement	⊙				
Subsistence					
Economic			○	○	
Physical/Mental				⊙	
Tit-for-tat action	○	○	⊙		⊙
<i>Dispute Resolution</i>					
Voluntary Resolution	○	○		○	○
Regional Labour Relations Committee					
Lawsuit			○		

Notes: 1. Dispute occurrence ⊙: most strongly applicable, ○: strongly applicable, blank box: not applicable.

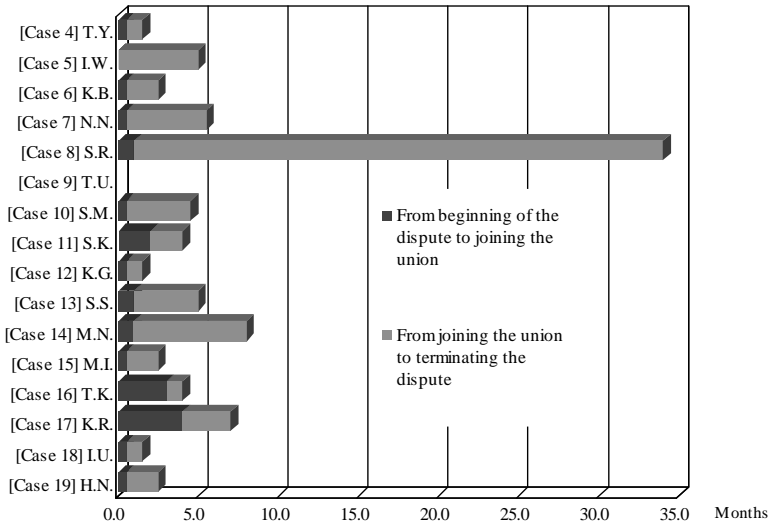
2. Dispute resolution ○: utilized, blank box: not utilized.

Table 4. Summary of Occurrence and Resolution of Individual Labor Disputes

	Non-standard worker				Total (100%)
	Standard worker	Part-time worker	Temporary agency worker	(Disguised) outsourced workers	
<i>Dispute Occurrence</i>					
Status-improvement			1		1 (6.3%)
Status-reinstatement	4	2	1		7 (43.8%)
Subsistence					
Economic		1			} 3 (18.8%)
Physical/Mental	1			1	
Tit-for-tat action	1	2		2	5 (31.6%)
<i>Dispute Resolution</i>					
Voluntary Resolution	3	3	2	2	10 (62.5%)
Regional Labour Relations Committee	2				2 (12.5%)
Lawsuit	1	2		1	4 (25%)

in a labor dispute.

In the case of H.N., he took action for “all-out resistance” against the company’s “illegal act” of “forcing him to pack up his belongings and go home at once.” He came to join the union and the dispute arose. He had a strong tit-for-tat attitude towards the company for its inhumane treatment saying, “I thought I would resist them to the end.” Also, the payment of one million yen offered in exchange for his retirement was far short of what he expected, and he could not accept retiring in that way.



*Note:* K.R. was originally a union member and the period from union enrollment to dispute resolution in Case 17 means the period from union's involvement with dispute to dispute resolution.

Figure 1. Time Taken to Resolve Individual Labor Disputes of Non-Standard Worker

I summarized the occurrence mechanism and resolution processes of individual labor disputes. The seeds of these labor disputes were sown due to companies' violation of law and lack of labor-management communications, which is just the same in the cases of the collective labor disputes. The occurrence patterns of individual labor dispute are divided into four depending on workers' response and they are shown in Table 4. Individual labor disputes by pattern of occurrence are: one "status-improvement" case accounted for 6.3%, seven "status-reinstatement" cases for 43.8%, three "subsistence" cases for 18.8% and five "tit-for-tat" cases for 31.6%. According to details of disputes occurrence, an overwhelming majority or 13 employment problem cases including dismissal and encouragement to retire accounted for 81.3% and one case each for 6.3% for unapproved worker's accident compensations, employment transfer, wage reduction and concern for unpaid retirement allowance. On the other hand, looking at dispute resolution pattern, the most common cases are 10 voluntary resolutions by collective bargaining between union and the companies accounted for 62.5%, followed by four tribunals including labor court for 25% and two resolutions by regional labor relations commission for 12.5%. However, given that the union backed up the union members as part of voluntary resolution in either tribunal or regional labor relations commission, it can be said that the union has been virtually involved in all the dispute resolutions.<sup>2</sup>

<sup>2</sup> Since all the cases presented in this paper were resolved, the rate of resolution is almost 100%. I

Figure 1 shows the time taken for the resolution of individual labor disputes.

One of the issues in the most prolonged dispute between S.R. and the University was whether or not S.R. submitted a resignation letter and the case was dealt with in the regional labor relations commission and the district court and finally resolved in the high court. The university eventually lost the case and accepted his reinstatement.

### **III. The Raison D'être of Community Unions in Prevention and Resolution of Disputes**

Firstly, community unions have a role of comforting workers who are involved in disputes. When workers who are in disputes feel bewildered, irritated and despondent about their claims not being accepted, community unions listen to them sympathetically and provide advice. Thanks to community unions, workers can resolve their disputes calmly and indeed, many workers express their gratitude for the existence of community unions saying, "I am thankful" or "I was relieved." It would be difficult for other organizations to assume a similar function.

Secondly, community unions help workers regain their dignity and provide them with a revitalizing power that enables them to go back to work and keep up their courage. If their claims are accepted by the union and the dispute is resolved to their satisfaction, workers can move on to the next job with enthusiasm, as in the case of temporary agency workers such as M.I. and T.K., in particular.

Thirdly, during collective bargaining community unions point out the problems the company has with personnel management, labor management or communication that led to the dispute. If the company's side listens to what is pointed out in a positive manner, they will improve their personnel management, labor management and communication resulting not only in preventing disputes but also in increasing workers' willingness to work. Whether the company makes use of this opportunity depends on the attitude and decision of each company.

Fourthly, every company and organization contains the seeds of future labor disputes. It would be advisable for companies to take in-house labor disputes as a good opportunity to create a better working environment, instead of regarding disputes as something that must be contained and avoided. It may well be said that community unions provide companies with such an opportunity from outside.

Finally, I would like to make a brief suggestion regarding the necessity of public support for community unions. Community unions resolve labor disputes which are social problems that cannot be resolved within a company. They often deal with kinds of labor disputes that cannot be resolved by administrative bodies. It is not too much to say that

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would also like to add that most of the cases in which the union offered collective bargaining were settled by the union's efforts.

community unions function as an administrative body or a judicial body in terms of dispute resolution and play a different role from most company unions. I suggest that some form of public support should be provided to community unions for their public function of dispute resolution.

# Youth Career Development Support at School and Career Development: For Cooperation between Career Education and Labor Administration

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In this research, we present basic data for the establishment of a theoretical basis for studying how Japanese administrative bodies should cooperate effectively in supporting career development for youth at school in Japan. We took three aspects: “tests” as a tool supporting self-understanding; “information” for understanding jobs; and enlightening vocational “experiences,” and looked at how these three aspects are related to the self-efficacy of junior and senior high school students. Based on the research findings, we made policy suggestions for cooperation between career education at school and labor administration. In particular, we pointed out that cooperation at a more fundamental level needs to be sought between labor administration and education administration

## I. Research Objectives

In June 2003, the Ministry of Health, Labour and Welfare, the Ministry of Education, Culture, Sports, Science and Technology, the Ministry of Economy, Trade and Industry and the Cabinet Office announced Young People’s Independence and Challenge Plan in order to take comprehensive human resources development measures through enhanced cooperation between education, employment and economic policies. The joint announcement of the Plan by the three ministries and the Cabinet Office means that the relevant government agencies demonstrated their readiness to deepen their cooperation for the entire society’s support for youths’ career development. The Action Plan for Young People’s Independence and Challenge, which was developed in 2004 in response to the Plan, called for prefectural labor bureaus and public employment security offices (“Hello Work”) to create regional cooperation and support systems for integral and effective implementation of career education programs.

Hello Work has traditionally been designed to cooperate with schools and other relevant parties in “vocational guidance” including (i) provision of employment information, and survey and research findings on occupations, (ii) placement of jobs meeting students’ respective abilities, (iii) provision of practical working experience, and (iv) measures to deepen students’ interests and understanding for selection of jobs. They have also implemented vocational lectures for junior and senior high school students, playing a key role in deepening youths’ job consciousness.

In order to address current youth employment problems for the entire society, however, it is necessary for young people to develop perceptions of work and jobs, recognize



their characteristics or aptitudes, and choose their respective future careers independently at school before participating in the labor market. To that end, deeper cooperation between the labor administration with various vocational resources and schools is required more than ever before.

In this respect, the labor administration side has recently given various opinions on career education at school.

Among the recent opinions, a report (on July 20, 2007) by the Research Association on Lifelong Career Development Support and Corporate Organization, as organized by the Human Resources Development Bureau at the Ministry of Health, Labour and Welfare, discussed factors behind a number of so-called “freeters” and “NEETs” hovering at a high level in Japan. Acknowledging that “young people’s education before their entry into enterprises has great impacts on their future career development,” the report concluded: “Career education at school is insufficient, while students stay away from the realities of work and are easily influenced by various information. Therefore, it is pointed out that a rising number of young people have failed to cultivate their job consciousness sufficiently and that mismatches between youths’ qualities and their careers have grown even more serious.” It also warned, “As young people fail to learn basic job consciousness and vocational skills when they should do so, their future career development may be impeded.”

Labor-related organizations have thus been looking for ways for greater cooperation to further “support youths’ career development” at school as the starting point for the formation in a bid to back up their lifetime career development amid structural economic and social changes.

Based on the above problem consciousness, in this research we intended to compile basic information for supporting youths’ career development at school, to indicate basic demonstrative data for theoretical consideration of relevant problems, and to provide basic data for planning enhanced cooperation between relevant organizations.

Specifically, we aim at making an approach to youths’ career development at school from the three viewpoints—“tests,” “information” and “experiences”—and at demonstrating how best to support their career development. Following are our reasons for focusing on “tests,” “information” and “experiences”:

First, “information” is related to youths’ understanding about jobs. Problems with youths’ career development stem from their lack of knowledge about vocational lives and the entire adult society surrounding them. Therefore, youths should be provided with necessary and sufficient job information for considering their future careers. They should be led to consider what job information they need. They should also be told of how to get and understand job information they need. These are indispensable for youths’ career development.

Second, “tests” are related to self-understanding. When youths consider their careers, they may first ask what they like and what matters to them. Then, after deepening their understanding about jobs to some extent, answers to these questions would provide important



Figure 1. The Concepts of “Information,” “Tests” and “Experiences” as Focused on in This Research

criteria for their choices from abundant future options. Youth’s career development support should be based on their full self-understanding. “Tests” are a tool to promote their self-understanding.

Third, students’ “experiences” with real work outside school provide them with practical and enlightening knowledge that they cannot get through “information” or “tests.” In addition to “information” and “tests,” therefore, school students’ “experiences” including work-based learning and internship have been promoted nationwide. It is very important to consider the impact of these experiences demonstratively.

The above concept is illustrated in Figure 1. An approach using the three angles of “information,” “tests” and “experiences” may indicate youths’ career development at school in the center of a circle, allowing us to consider youths’ career developed autonomously in the context of the three angles at school in the illustrated form.

The above concept meets a “Research Report on Career Consulting Techniques 2001” by the Ministry of Health, Labour and Welfare. The report provides “Six Career Development Steps,” including self-understanding, understanding of work and enlightening experiences as three steps before the decision on career choices. Naturally, these three steps may also be taken at school. After self-understanding, understanding of work and enlightening experiences, students may make decisions on career choices and implement their decisions upon graduation, and go on to the next step of adapting themselves to jobs (See Table 1). In this research, we take a look at “tests,” “information” and “experiences” focusing on the three steps of self-understanding, understanding of work and enlightening experiences before decisions on career choices.

This research also pays attention to the “self-efficacy on career choices” as a benchmark for consideration of youths’ career development at school.

Table 1. “Six Career Development Steps” toward Implementation of Career Consulting

1. Self-understanding	Understanding self regarding future careers, jobs, duties and career development
2. Understanding of work	Understanding types and details of future careers, jobs, duties and career routes
3. Enlightening experiences	Experiences before making choices or decisions
4. Decision on career choices	Making choices among options after consulting
5. Implementation	Implementing decisions on jobs, employment, higher education, selection of career routes, direction of skill development, etc.
6. Job adaptation	Evaluating consulting results and adapting to new jobs

*Note:* Excerpt from *Research Report on Career Consulting Techniques* published by Ministry of Health, Labour and Welfare in 2001.

Self-efficacy is a well-known psychology concept indicating anticipation of whether one could perform well. A higher self-efficacy score may lead one to make persistent efforts and withstand some difficulties, or to take advantage of his/her capacity for making further efforts. It has been demonstrated as an almost established theory that those with higher self-efficacy scores regarding career choices may make proactive efforts to select career options, while those with lower self-efficacy scores may refrain from making career choices or end up with insufficient efforts.

In this research, we focus on the self-efficacy on career choices as one of the indicators to consider youths' career development degrees at school. Particularly, we have adopted “career choice self-efficacy scores” of Sakayanagi and Shimizu (1990). The scores indicate junior high school students' self-efficacy on career choices for 12 specific points—four each for the three areas of the educational career choice self-efficacy score, the occupational career choice self-efficacy score, and the life career choice self-efficacy score. The educational score indicates the degree of confidence in higher education choices. The occupational score represents the degree of confidence in job choices. The life score refers to the degree of confidence in a way of life. These scores are designed to respectively measure the three aspects of higher education, employment and life regarding human careers with the small number of specific points.

## II. Research Methods for This Study

### 1. Research Methods and Survey Items

In conducting basic consideration of career development support at school, we took a

method to analyze basic data accumulated at the JILPT as well as recently collected new data and compiled them into this research. Based on accumulation and compilation of research findings through analyses of multiple data sets, in this research, we discuss career development support and career development at school.

## 2. Outline of Survey Respondents and Procedures

In this research, we use six data sets collected by the JILPT Department of Career Guidance on career development support at school, covering a total of 6,309 junior and senior high school students. The data sets used in this research are outlined below:

### Data used in the “Information” section

- A junior and senior high school (questionnaire) survey was conducted in fiscal 2000, covering a total of 4,399 students including 2,021 junior and 2,378 senior high school students in the vicinities of Tokyo and in the suburbs of Sendai. Senior high schools where 50% of students enter employment upon graduation with another 50% proceeding to higher education were asked to take part in the survey. Eventually, the survey took place at six academic, two industrial, one agricultural and one commercial senior high schools in Tokyo and its vicinity, and one academic senior high school in suburban Sendai. Questionnaires were sent to junior and senior high schools, and were filled out by students in class and sent back.
- The first junior high school (monitor experiment) survey was conducted in fiscal 2001, covering 106 first year students (53 males and as many females) in three classes at Public Junior High School T in Tokyo. In a workplace visit class in the second school term, the OHBY (occupation handbook for youth) was used as a tool for advanced learning about jobs. Later, students were asked to fill out questionnaires about the impressions of OHBY and their career consciousness in general.
- The second junior high school (monitor experiment) survey was conducted in fiscal 2001, covering 197 second year students (103 males, 92 females and two unknown students) in three classes at Public Junior High School M in Tokyo. Students filled out questionnaires twice, before and after the OHBY use. In class, students were asked to fill out pre-learning questionnaires before the OHBY use, take a lecture of career guidance using the OHBY and fill out post-learning questionnaires.

### Data used in the “Tests” section

- A senior high school (questionnaire) survey was conducted in fiscal 2007, covering 314 first and second year students (174 first year students including 81 males and 93 females, and 140 second year students including 66 males, 73 females and one who failed to fill out a questionnaire) at Academic Senior High School F in Tokyo. In a part of the career education curriculum, students were asked in class to undergo the Vocational Readiness Tests (VRT) and answer questions about their career consciousness.

### Data used in the “Experiences” section

- The third junior high school (longitudinal research survey) was conducted in fiscal

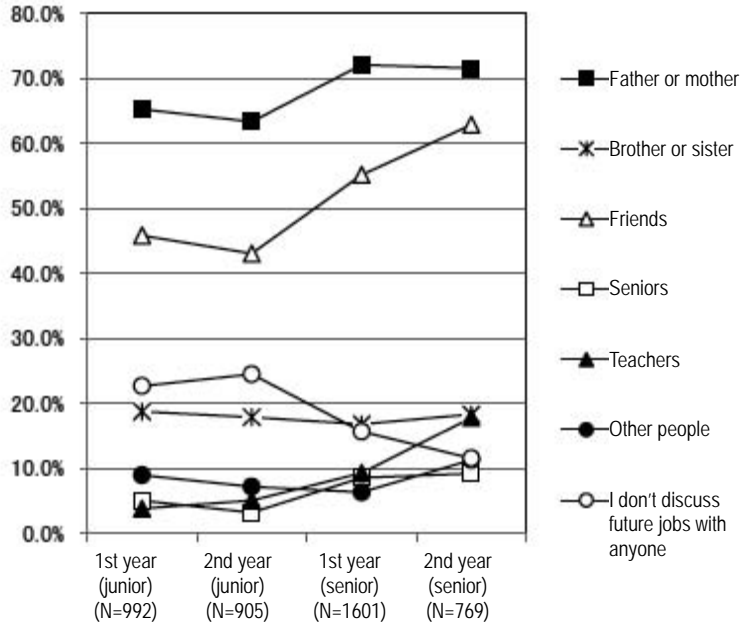


Figure 2. Grade-by-Grade Differences in Answers to a Question on Advisers about Future Jobs: “With Whom Do You Usually Discuss Future Jobs?”

2003, covering 205 second year students (111 males and 94 females) at Public Junior High School T in Tokyo. It took place in four phases from October to December. The first phase came after a general briefing in late October before work experiences. The second one was conducted after a job learning class which was implemented in late November. The third one was implemented after work experiences which was implemented in early December. The fourth one came after a reporting meeting on work experiences in mid-December.

- The fourth junior high school (questionnaire) survey was conducted in fiscal 2006, covering 833 second year students (442 males, 386 females and five unknown students at eight schools) at Public Junior High School in City M of Tokyo. Students filled out questionnaires before and after a five-day workplace experience program. Data from questionnaires by 315 students who filled out them, for a certain reason, only after the five-day workplace experience program were also used for our analysis.

### III. “Information”

In this section, we look at the sources of career information available to junior and senior high school students.

Figure 2 indicates grade-by-grade data at junior and senior high schools on students’ advisers about their future jobs. Data cover first and second year students alone as third year

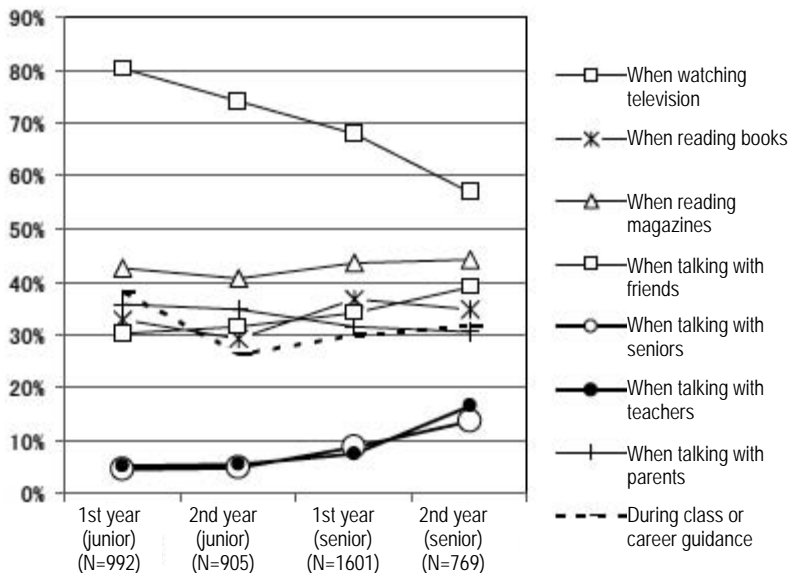


Figure 3. Grade-by-Grade Differences in Answers to a Question on Job Information  
Sources: “When Do You Get Information on Jobs of Interest to You or on New Jobs?”

students at both junior and senior high schools failed to take part in the survey. Figure 2 indicates that percentage shares for “father or mother,” “friends” and “teachers” as advisers are higher for older students. The percentage for students having no adviser about their future jobs is lower for students in higher grades. The figure hints that students take advantage of familiar advisers such as parents, friends and teachers as job information sources when they proceed to senior high schools from junior high schools.

Figure 3 indicates that the percentage share for television as job information sources decline while those for teachers and seniors rise as students get older. Mass media including television become far less important as students proceed to senior high schools from junior high schools. The figure also hints at the importance of teachers. Given that percentage shares for seniors are also higher for students in higher grades, we can assume that older students get job information at school more frequently.

These findings suggest that junior and senior high school students acquire most job information from familiar people such as parents and brothers or sisters, and media like television. But familiar people including family members may not necessarily have sufficient job information. Media like television also may not necessarily provide necessary and sufficient job information for junior and senior high school students. Therefore, some interventions are required for ensuring provision of sufficient job information in career development support at school.

For this purpose, the JILPT has opened the OHBY software in the form of CD-ROMs

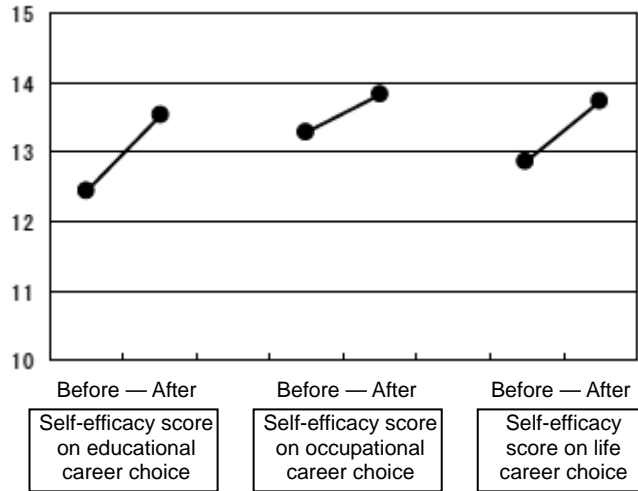


Figure 4. Changes in Average Self-Efficacy Scores on Career Choices after Use of Job Information Tool

for personal computers to support career development at school. We have asked students to answer the 12 specific questions regarding self-efficacy on career choices before and after their OHBY use and consider the effect of the OHBY use. Our analysis has found that the self-efficacy scores regarding career choices change after the OHBY use. All of the “educational,” “occupational” and “life” scores after the OHBY use are higher than before (See Figure 4).

#### IV. “Tests”

In this section, we use the “vocational readiness test” (VRT) to look at differences in job consciousness development between different grades or between males and females.

The VRT have been developed to measure development of job consciousness for junior and senior high school students, consisting of Test A (covering 54 question items to measure interests in jobs, Test B (covering 64 items to measure basic orientations) and Test C (covering 54 items to measure confidence to perform jobs). Tests A and C are related to specific job contents and planned to measure job orientation, while Test B is linked to daily life behaviors and consciousness, and positioned to measure basic orientations (See Table 2).

The VRT require respondents to give responses on the two aspects of interests in jobs for Test A and confidence in job performance for Test C. Past data collected in the course of VRT revisions indicate that scores are similar for interests in jobs and confidence in job performance. This means that people are confident in performing jobs in which they are interested. Test B’s basic orientation scores have highly positive correlation with Test A and

Table 2. Correlation Coefficients for the VRT Scores (Pearson's Correlation Coefficient)

Holland's six interest types		Test A						Test B		
		R	I	A	S	E	C	Orientation		
Test C	R	.82**	.41**	.16**	.08	.36**	.20**	.25**	.21**	.47**
	I	.40**	.77**	.24**	.19**	.27**	.22**	.33**	.05	.32**
	A	.14*	.23**	.81**	.26**	.45**	.15**	.42**	.28**	.41**
	S	.10†	.21**	.33**	.76**	.44**	.16**	.33**	.45**	.25**
	E	.27**	.25**	.41**	.31**	.78**	.21**	.44**	.38**	.24**
	C	.22**	.12*	.26**	.15**	.26**	.71**	.42**	.07	.17**
Test B										
Test B	Data	.18**	.27**	.41**	.20**	.42**	.33**			
	People	.16**	.04	.24**	.42**	.34**	.01			
	Thing	.47**	.38**	.43**	.22**	.24**	.12**			

Note: \*\*:  $p < .01$ ; \*:  $p < .05$ ; †:  $p < .10$ ; Absence of mark: Below statistically significant levels.

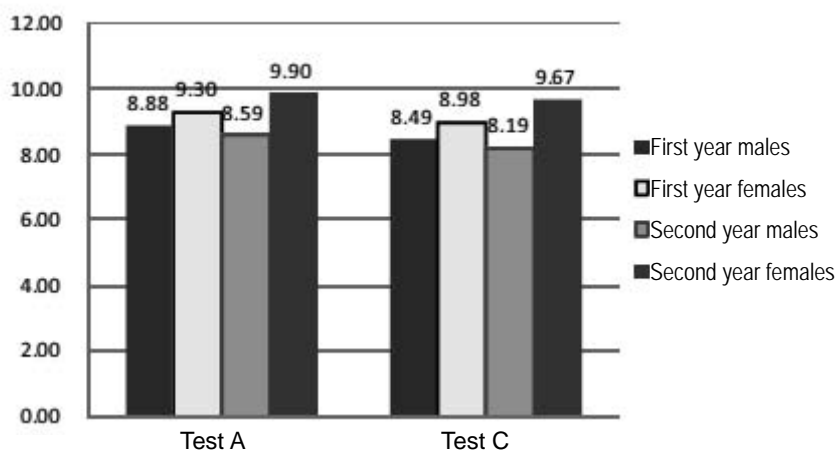


Figure 5. Average Degrees of Differentiation by Grade and Sex

C scores in areas related to personal characteristics. Our test data also indicate the positive correlation.

As for interests in jobs (Test A) and confidence in job performance (Test C) in the VRT, a gap between the highest and lowest scores regarding areas of interest is defined as the “degree of differentiation.” A higher degree of differentiation is interpreted as indicating a greater development in job consciousness. Figure 5 indicates average degrees of differentiation for male/female and first/second year senior high school students in Tests A and C. Among males, the degree of differentiation for second year students is lower than for first year students. Among females, however, the degree of differentiation for second year stu-



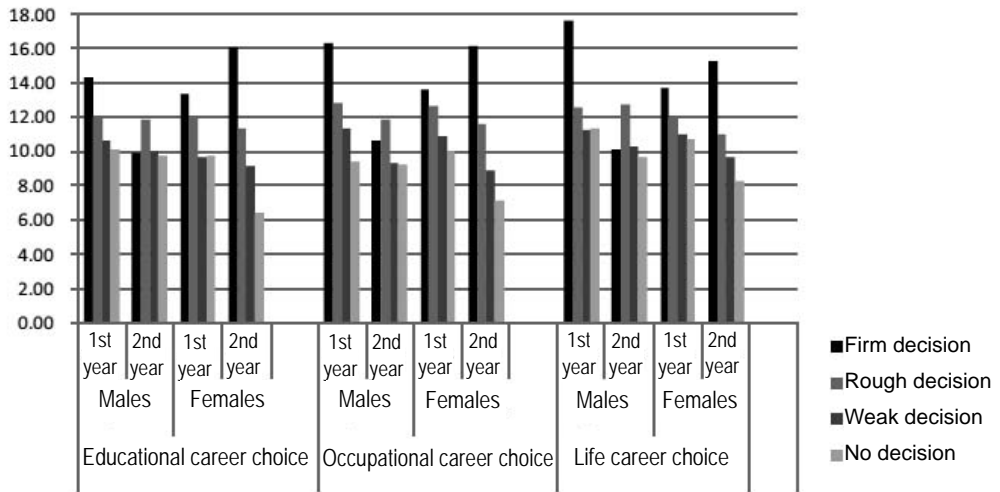


Figure 6. Average Self-Efficacy Scores on Future Careers by Degree of Decisions, Sex and Grade

dents is higher than for first year students. The degree of differentiation for females is higher than for males in both grades of students. Such tendency is seen in both Tests A and C. Due to the tendency difference between males and females, statistical examinations have failed to indicate that the degree of differentiation is higher for older students. But they have confirmed that the degree of differentiation for females is higher than for males.

Furthermore, centering on the self-efficacy scores of career choices, we considered their relations with variables, such as responses to questions concerning the consideration of future careers, the degrees of confidence in school subjects and VRT responses. Figure 6 indicates average responses to self-efficacy scores by grade and sex for different degrees of decisions on future careers. Among first year males and females and second year females, self-efficacy scores are higher for those who have firmly decided on their future careers. Such scores are lower for those who have made lower degrees of decisions on future careers. Particularly, the gap is very large between second year females who have made firm decisions on future careers and those who have yet to make decisions on future careers. Among second year males, however, self-efficacy scores are the highest for those who have made rough decisions on future careers but differences are smaller among their responses. Thus, self-efficacy scores on future careers are almost the same irrespective of career consciousness gaps among second year males, while a large score gap exists between second year females with higher degrees of career consciousness and those with lower degrees.

The differences between males and females in degrees of differentiation seen among VRT data and in details of self-efficacy development indicate the importance of considering development of career consciousness not only by grade or age but also by sex. If a difference exists between males and females in development of career consciousness, schools and labor administration authorities may have to give considerations to challenges and problems

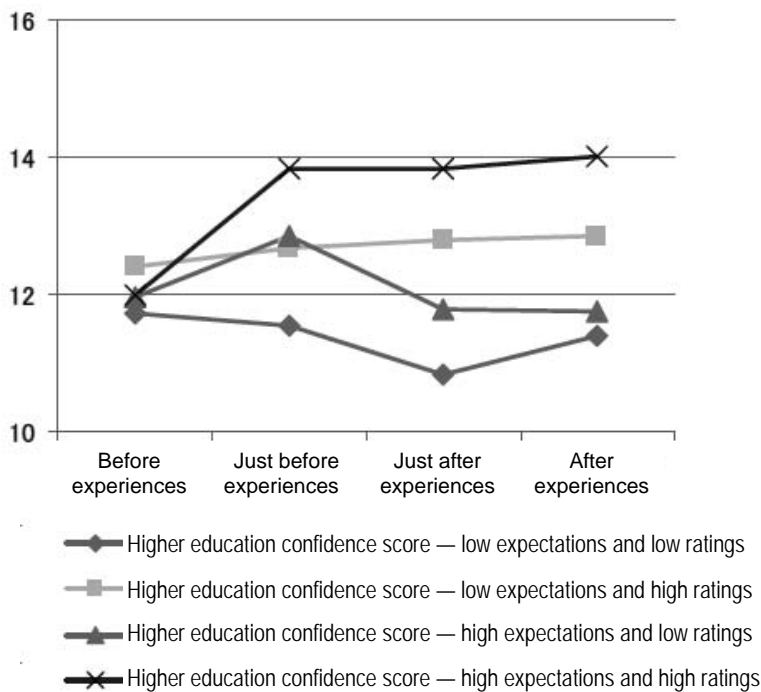


Figure 7. Changes in Higher Education Confidence Scores of Career Choice Self-Efficacy Scores for Four Groups of Students Divided by Expectations and Ratings on Work Experiences

based on gender difference in consciousness development in setting goals and devising effective measures for supporting career development.

## V. “Experiences”

In this section, we take a look at work experience. Particularly, we have considered factors behind changes after work experiences, based on surveys of students before and after such experiences. Factors subjected to our consideration include expectations before work experiences and ratings after such experiences. Students with higher expectations before work experiences are expected to make more positive efforts, while those with lower expectations are predicted to make less positive efforts. Higher ratings after work experiences are expected to indicate that the experiences are interesting, fulfilling and satisfactory. In contrast, lower ratings are expected to suggest that the experiences are not so interesting or satisfactory.

We have divided students into four groups—low expectations and low ratings, low expectations and high ratings, high expectations and low ratings, and high expectations and high ratings. We have conducted a dispersion analysis on changes indicated by four career

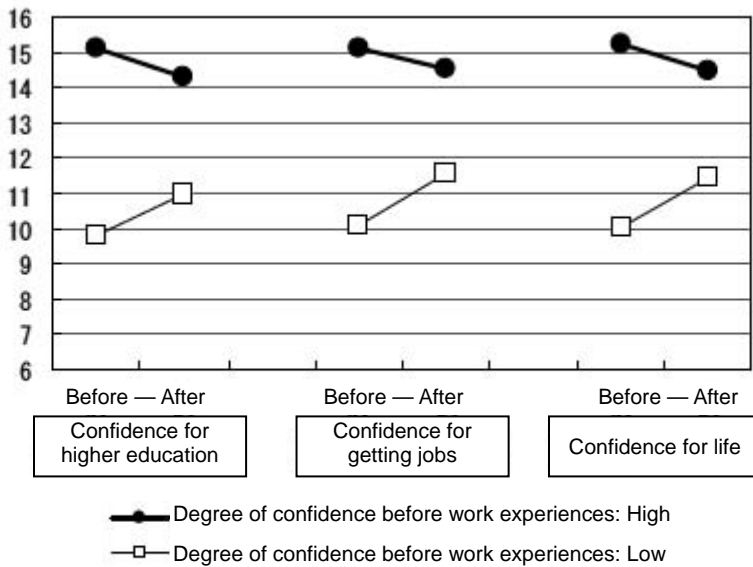


Figure 8. Confidence Changes after Work Experiences by Degree of Confidence before Experiences

choice self-efficacy score surveys and their types. Figure 7 indicates only education career choice self-efficacy scores representing degrees of confidence. Overall, students with high expectations before work experiences and high ratings after such experiences were the most confident, followed by those with low expectations and high ratings. Students with high expectations but low ratings lost confidence sharply, indicating that how students are impressed with work experiences and rate such experiences is important.

As shown in Figure 8, the results generally indicate that students who had been highly confident before their working experience became less confident after such experience, and that those who had not been very confident before this type of experience became more confident afterwards. This means that work experiences may not only make students' consciousness about future careers positive but also change too-positive consciousness into less positive consciousness and too-negative consciousness into positive consciousness. The data tentatively prove that actual work experiences can make students' consciousness about future careers more realistic.

In this research, we also analyze the students' free reports written after work experiences.

First, we paid attention to the volume of writing or the number of letters in each free report and considered how the volume of writing on specific themes affected students' confidence after the work experiences. As indicated by Table 3, "confidence before work experiences ( $\beta = -.41$ )," "the most terrible among your work experiences ( $\beta = -.09$ )" and "ideas about higher education after work experiences ( $\beta = -.11$ )" were statistically significant.

Table 3. Factors Influencing Changes in Confidence on Higher Education after Work Experiences

	$\beta$	sig.
Sex (1=male, 2=female)	-.02	
Confidence before work experiences	-.41	**
Free reports after work experiences		
What business operations have you experienced?	-.03	
What was the most impressive among your work experiences?	.06	
What was the most pleasant among your work experiences?	.01	
What was the most terrible among your work experiences?	-.09	*
What was the most useful among your work experiences?	.03	
What did you discuss with parents about your work experiences?	.06	
What did you discuss with friends about your work experiences?	.03	
What did you discuss with coworkers during your work experiences?	-.02	
What are you planning to do after your work experiences?	.02	
What are changes in your way of thinking after your work experiences?	.02	
What are your ideas about higher education after your work experiences?	.11	*
What are your ideas about the workplace after your work experiences?	-.03	
What are your ideas about the future after your work experiences?	.01	

Note:  $\beta$  means the standard partial regression coefficient. \*\*  $p < .01$  \*  $p < .01$ .

Contribution rate [R-squared]  $R^2 = .16^{**}$

cant as factors influencing degree of confidence on education career choice self-efficacy. We have thus found that students with lower confidence before work experiences tend to have higher confidence after such experiences (see Figure 8), that those with less volume of writing on terrible work experiences tend to have higher confidence, and that those who have opportunities for thinking about higher education through such experiences and write a lot about higher education tend to have higher confidence on higher education.

Next, we paid attention to contents of students' free reports. After considering contents of free reports on "ideas about higher education after work experiences," we found that the contents had close relations with the volume of writing. Table 4 shows the contents broken down by the volume of writing on "ideas about higher education after work experiences." Reports with a larger number of letters tend to specify the significance of and reasons for proceeding to higher education and what they should do toward higher education. This tendency may be natural because of differences in the number of letters for free reports. But this indicates that what degree of significance of higher education students can educe through the same work experiences may depend on their respective interpretations of such experiences.

Table 4. Contents of Free Reports on Ideas about Higher Education after Work Experiences (Broken Down by the Volume of Writing)

Contents of free reports by top 10 students for high volume of writing
<p>I would like to go to senior high school and university to continue studying because basic studies and knowledge are required for any job.</p> <p>I was told at the workplace that I should study steadily to prevent myself from feeling pressed just before examinations for higher education.</p> <p>I would like to make persistent efforts to improve my academic capability because my academic grade has yet to reach a level for a school to which I want to go.</p> <p>I would like to know more about child-care and go to a school handling the matter. To this end, I would like to go to a higher-level senior high school.</p> <p>I have learned that I am still a half-man and it's too early to work and I should study more about society at a senior high school.</p> <p>I thought I would never make light of working when I take a side job after proceeding to a senior high school.</p> <p>While thinking about various schools (including universities with veterinary science faculties), I am still undecided.</p> <p>I thought I should begin now to slowly consider a higher education school that suits me as much as possible.</p> <p>I would like to find properly what I want to do and think about various things in pursuit of the goal.</p> <p>As a matter of course, I may go to a school to which I want to go. I would like to choose a school in view of such factors as school characteristics.</p>
Contents of free reports by 10 students using some 20 letters
<p>I did not think about higher education through work experiences.</p> <p>I would like to be confident of my strengths and do my best.</p> <p>I would like to decide on my future course toward my future dream.</p> <p>I would like to decide a school of first choice within this year or by next February.</p> <p>I would like to pursue higher ground to get a better job.</p> <p>I would like to study hard whatever school I would go to.</p> <p>I would like to proceed to a senior high school without failure for the immediate future.</p> <p>I would like to do my best to proceed to a better senior high school.</p> <p>I would like to hustle in order to enjoy a pleasant senior high school life.</p> <p>After graduating from a senior high school, I will proceed to a junior college, pass a national exam and get a job.</p>
Contents of free reports by 10 students using some 10 letters
<p>I have been given due considerations.</p> <p>I am not confident of doing well at the current pace.</p> <p>I have no idea about higher education.</p> <p>What senior high school should I choose for entrance examinations?</p> <p>I would like to think from now on.</p> <p>I will go to a senior high school anyway.</p> <p>I would like to enter a senior high school of my choice.</p> <p>I thought that studying is important.</p> <p>What senior high should I go to?</p> <p>The workplace has no link to my future.</p>
Contents of free reports by 10 students using some five letters
<p>Proceeding to a senior high school</p> <p>Nothing special</p> <p>Nothing special</p> <p>Little idea</p> <p>Nothing special</p> <p>No change</p> <p>Nothing special</p> <p>Nothing special</p> <p>Nothing</p> <p>Little idea</p>

## **VI. Implications about Future Career Development Support at School**

In this research, we considered three aspects regarding future career development support measures at school based on demonstrative data: (i) the functions of job information, (ii) the utilization of psychological tests and (iii) the effects of work experience.

The results of this research are summarized as follows. First, concerning the functions of job information, (i) information support required for career development support, (ii) the functions of job information in career development support at school and (iii) the importance of job information and information skills in career development support have been suggested.

Secondly, concerning the utilization of psychological tests, useful findings have been obtained on (i) utilization of psychological tests at school, (ii) implications from the Vocational Readiness Tests and (iii) the relationship between self-efficacy formation and various variables, etc.

Concerning the effects of workplace expectations, we have obtained important results concerning (i) the aptitude treatment effects of work experience and gaps between the different sexes, (ii) realization (leveling) of career consciousness through work experience and (iii) the effects of work experience to be considered.

In response to the above results, we would like to make the following three implications on the relationship between labor administration and career development support at school.

First, it is important for relevant parties to cooperate in career development support at school. In this research, we indicate that junior and senior high school students' career/job consciousness is unstable. It thus points out anew the importance of career development support at school. It has long been pointed out that career development support at school, new senior high school graduates' career choices, and later career development have close relations. Many studies have indicated that new senior high school graduates' mischoices could lead to freeters and NEETs representing unstable employment of youths. School students are expected to emerge as job seekers in regional job markets. The absence or presence of sufficient career development support for students at school will have a great impact on their future adult career development. Career development support at school means that effective support should be provided not only after students' job market participation but also before their graduation. Experts and relevant organizations should be prepared to provide career development support services to guide students' career development into more appropriate directions.

Second, it is important to develop and diffuse career guidance tools. In this research, we see that findings about information and tests indicate that the labor administration side's provision of career guidance tools can support promotion of youths' career development at school indirectly. The JILPT has continued research and development of career guidance tools for a long time and these tools have been effectively utilized for career development

support at school. In reality, it may be difficult for Hello Work public employment security offices to be involved somehow in career development support at school without any tool. If they were to provide better career guidance services, it would be more effective in many cases for them to use tools with some established procedures and with a certain level of effectiveness already demonstrated. Even at present, the labor administration side frequently uses some tools for participating in career development support at school. This research is significant in that it provides findings as the base or background for utilization of such tools.

Third, it is important to accumulate, consolidate and compile know-how for career consulting. Advisers and counselors have respectively accumulated their personal know-how for youth career development support at school. The government should consider consolidating and standardizing such know-how in some way to enhance indirect career development support at school throughout Japan. Regarding career consulting services under development at the labor administration side for youths and educational institutions, particularly, the findings in this research may give implications on how best to grasp impacts of “tests,” “information” and “experiences” on individual students accurately and how best to support their guidance into decisions on career choices. In this research, we find that attention should be paid to differences between males and females when “tests” are effectively utilized in career development support at school. Regarding “information,” in this research, we also find that information should be provided from the viewpoint of experts since students are influenced greatly by their family members, friends and mass media. Regarding “experiences,” in this research, we can also see that their effects can heat up some students and cool down others. Their effects may thus differ depending on students’ attributes. We believe that we have received a vision that we can consolidate and standardize more practical know-how for career counseling, from consolidating, accumulating and compiling these findings, these findings could be consolidated, accumulated and compiled to consolidate and standardize more practical know-how for career consulting.

Finally, regarding all themes taken up by this research, we would like to note that more essential cooperation between labor and education administration agencies should be pursued. Career guidance links schools to work. But career guidance is peripheral for both schools and labor administration agencies and frequently fails to attract attention from either. The problem of unstable youth employment in the transition from school to society in Japan often emerges as youths are trapped between school and jobs. Particularly, schools and public employment security offices should always cooperate in supporting youths to ensure that school dropouts, jobless university graduates and other youths separated from schools can receive continuous, immediate and appropriate career development support. Therefore, career development support measures at school should rather overlap with those at public employment security offices. As noted at the outset of this paper, the Japanese government is seeking to support youths’ independence through cooperation between relevant government agencies. We can conclude that enhancement of such cooperation is essential to career development support.

## **Reference**

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# Company Size and Childcare Leave: The Problems of Support for Women's Job Continuity

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I analyzed factors which determine job continuity at the stage of childbirth/childcare by company size focusing on the difference between the progresses of the childcare leave system of large and small/medium companies. It was said that small/medium companies flexibly support individual workers even without a system for balancing work and childcare. According to the analysis result, however, it was found that companies without a childcare leave system result in a high rate of women quitting the job before having the first child regardless of company size, the number of workers taking childcare leave is small in companies with less than 100 employee and the rate of women quitting the job before having the first child is high in urban areas where it is difficult to use a childcare center. It is important for even small/medium companies to promote the childcare leave system and utilization of that leave. On the other hand, even in large companies in which the rate of workers taking childcare leave is high, job continuity decreases due to the expansion of non-regular employment and the decreased job continuity of clerical workers. It can be an issue for large companies to further enhance the support system in response to changes in women's way of working.

## I. Issues

The Childcare Leave Act was established in 1991 in Japan in order to support women's job continuity at the stage of childbirth/childcare, and workers became able to take childcare leave with or without that system in their companies. Since this act was put into effect, the number of women taking childcare leave increased.<sup>1</sup> In fact, most of women taking childcare leave are in companies with the childcare leave systems, but the number of companies without the childcare leave system which add provisions of childcare leave to their Work Rules is increasing (Wakisaka 2002).

However, the rate of small/medium companies with the childcare leave system (hereinafter referred to as introduction rate of childcare leave system) is relatively low compared with large companies. Higuchi (1994), Higuchi, Abe and Waldfogel (1997), Morita and Kaneko (1998), Nagase (2003) and Imada and Ikeda (2006) pointed out in their studies that the childcare leave system increases job continuity at the stage of childbirth/childcare. It is expected that more than a few women in small/medium companies quit the job since they cannot take childcare leave there. In the meantime, the actual support for balancing work

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<sup>1</sup> Although the Childcare Leave Act was put into effect in 1992, that act has been applied to small establishments with 30 or less regular employees since 1995, i.e., three years were given for preparation. Since 1995, the name of the act has been changed to the Child Care and Family Care Leave Act due to adding provisions of family-care leave to the Childcare Leave Act.

and childcare in small/medium companies is different from that in large companies. Some researchers point out that small/medium companies respond flexibly to individual situations of employees (the Small and Medium Enterprise Agency 2006). According to this point, the relationship between childcare leave system and job continuity in small/medium companies is different from that in large companies.

Although having said that, there are still only a few studies which analyzed job continuity at the stage of childbirth/childcare by company size and it is still unclear that women can continue to work especially at the stage of having the first child, the most difficult time to continue the job, even without the childcare leave system. In this paper, therefore, factors determining job continuity at the stage of childbirth/childcare will be compared by company size. Through this analysis, I would like to highlight issues regarding the support for job continuity at the stage of childbirth/childcare of both large companies and small/medium companies.<sup>2</sup>

## **II. The Progress of Childcare Leave System in Japan**

With the expansion of the employment of women in postwar Japan, the support for balancing work and childcare became an important issue of the employment support for women, and companies have provided childcare leave as a pillar of that support.<sup>3</sup>

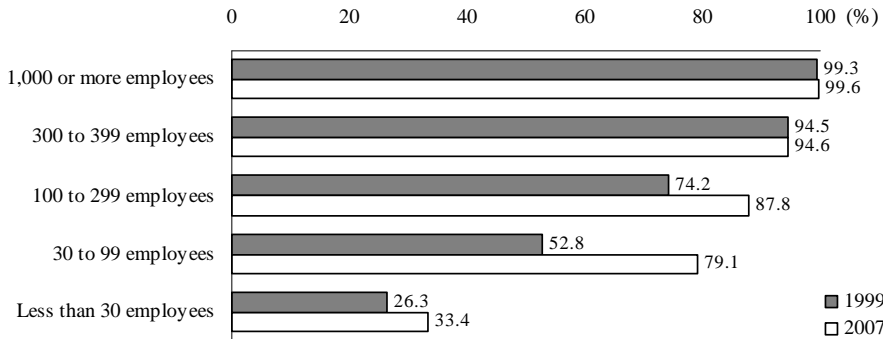
In the legal sense, the words “childcare leave” first appeared in Article 11 of the Working Women Welfare Act established in 1972 stipulating that it is employers’ obligation to make effort to “provide childcare leave and other favors regarding childcare” (Fujii 1992). The Childcare Leave Act for Specific Jobs, which make the childcare leave for particular public workers such as female teachers, nurses and child-minders obligatory, was enacted in 1975. The Equal Employment Opportunity Act (hereinafter referred to as Equal Opportunity Act) which was established in 1985, by revising the Working Women Welfare Act, also stipulates that it is employers’ obligation to make effort to provide childcare leave.

During this time, the number of establishments introducing the childcare leave systems increased. According to the Survey on Implementation of Women’s Protection Work conducted by the Ministry of Labour, the rate of establishments with 30 or more regular employees having the childcare leave system was only 4.3% in 1973, just after the Working Women Welfare Act was passed, but rose to 19.2% according to the Basic Survey on Employment Management for Women conducted by the Ministry of Labour in 1988 after the

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<sup>2</sup> This paper is based on the Japan Institute for Labour Policy and Training (JILPT) (2009). This report is an interim report of “Study on Policy Effect of Job Continuity,” a sub-theme of the project research, “Survey Research on the Way of Establishing Working Conditions towards Response to Diversification of Employment Formats and Realization of Work-Life Balance” in which JILPT conducts from FY2007 to FY2011.

<sup>3</sup> For social movements in and out of Japan for establishment of the Childcare Leave Act, see Fujii (1992), Yokoyama (2002) and the Japan Institute for Labour Policy and Training (2006).



Sources: Ministry of Labour (1999), *Basic Survey on Employment Management for Women 1999*; The Japan Institute for Labour Policy and Training (2007), *Survey on Fixed-Term Contract Workers' Usage of Childcare Leave System, Etc.*

Figure 1. Companies with Childcare Leave System by Company Size:  
Comparison of 1999 with 2007

Equal Opportunity Act has been put into effect. The obligatory childcare leave made by the Childcare Leave Act established in 1991 further encouraged this trend.<sup>4</sup> The Basic Survey on Employment Management for Women conducted by the Ministry of Labour indicated that the rate of establishments with 30 or more regular employees having the childcare leave system was 21.9% in 1990, just before the Childcare Leave Act was passed, but rose substantially to 50.8% in 1993 just after that act came into effect. That rate continued to rise and became 88.8% in 2008 according to the Basic Survey of Gender Equality in Employment Management conducted by the Health, Labour and Welfare Ministry.

However, the progress of the childcare leave system in small/medium companies is different from that in large companies. Figure 1 shows the rates of establishments with the childcare leave system (introduction rates) in 1999 and 2007.<sup>5</sup> Looking at the results in

<sup>4</sup> This Childcare Leave Act was established riding on the strength of the fact that the declining birthrate was recognized as a serious problem, triggered by the so-called "1.57 shock," which the total fertility rate dropped down to 1.57 in 1989. Although the declining birthrate and the balancing work with childcare are different issues, the support for balancing work with childcare was positioned as an important issue for the measures against declining birthrate, since it was said that there is a burden of balancing work with childcare behind women's avoidance of marriage/childbirth. The background information on the measures against declining birthrate is provided by the Cabinet Office (2004).

<sup>5</sup> Data sources are "Basic Survey on Employment Management for Women in 1999" conducted by the Ministry of Labour for 1999 and "Survey on Fixed-Term Contract Workers' Usage of Childcare Leave System, Etc." conducted by JILPT (hereinafter referred to as 'JILPT 2007 Survey'). Both are national surveys targeting private establishments with 5 or more regular employees and the sampling method is the same. Although the name of JILPT 2007 Survey is "Survey on Fixed-Term Contract Workers'...", since the implementation of the childcare leave system for open-ended contract employees was also surveyed as a target for comparison, we can see the implementation of the childcare leave system in establishments regardless of employment pattern. The meaning of company size in this paper is the number of employees in an entire company including affiliates and branches other than survey targets, distinguished from "scale of establishment" which indicates the number of regular

1999 (gray-colored bars), the introduction rates of establishments with 300 to 999 employees and 1000 or more employees exceed 90%, but the smaller the company size is, the lower the introduction rate becomes. There is a significant difference between companies with 300 or more employees and those with less than 300 employees. Although the results in 2007 (white-colored bars) show that the rate of companies with less than 300 employees introducing the childcare leave system rose, there is still a difference depending on company size. Particularly, the introduction rate of companies with less than 30 employees is low, about 30% in 2007.

However, it is pointed out that since small/medium companies respond flexibly to individual situations of employees even without a childcare leave system, women can continue the job (the Small and Medium Company Agency 2006). Nonetheless, such point is based on the survey of companies and more than a few women may have left the job under the situations in which companies have not recognized. Therefore, I will analyze whether or not the relationship between the existence of childcare leave system and job continuity at the stage of childbirth/childcare differs depending on company size based on individual data.<sup>6</sup>

### **III. Job Continuity at the Stage of Having the First Child by Company Size and Childcare Leave**

#### **1. Situation of Resignation before Having the First Child by Company Size**

In Japan there are two peaks on the curve of women's workforce rate by age, one in

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employees in a single establishment.

<sup>6</sup> Data to be analyzed in the following are from "Survey on Work and Life" (JILPT 2005). 4,000 men and women at age between 30 and 54 were sampled with their spouses from throughout the country for the survey, conducted in the two-stage stratified random sampling method. The samples were interviewed and the placement method was used for their spouses. The survey was conducted in the period from June 17 to July 18, 2005 by a survey company (*Shin Joho* Center, Inc.). Responses were returned from 2,448 samples and 1,425 spouses, resulting in the collection rate of 57.9% from the samples (including 230 backup samples). This was the primary survey for the research project "Research on Establishment of Social System That Brings Harmony between Work and Life" conducted by the Japan Institute for Labour Policy and Training in the period from 2003 to 2006. The survey was designed to identify issues presented in establishing social systems that bring harmony between work and life, investigating actual conditions of employment management by companies, community services and family supports, at various life stages, including marriage, childbirth, childcare, independence of children, elderly care, retirement and others. The questionnaire was constructed primarily to ask about career, marriage, childcare, etc. For childcare in particular, detailed questions were prepared for care of each child they had, asking employment conditions during the stage of childcare (availability of the support systems for balancing work and childcare, use of the childcare leaves, etc.), assistance provided by family and relatives for childcare (division of household duties and childcare between husband and wife, helps of relatives for childcare), use of community services (childcare center, preschool childcare center, school children care center, nursery center, helps from neighbors, volunteer support, etc.). For details, see the Japan Institute for Labour Policy and Training (2006).

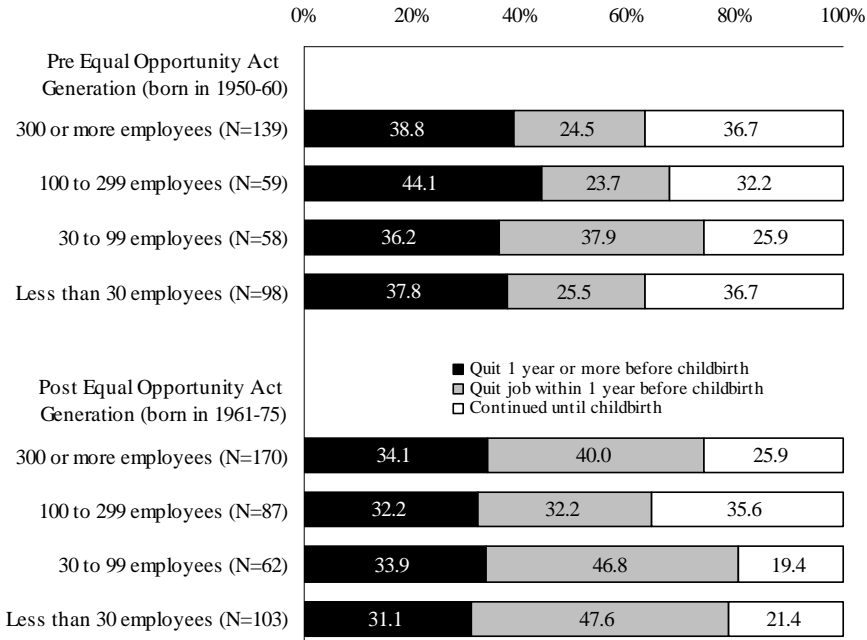
the young generation and the other in the middle-to-higher-age generation and there is a sharp drop of the workforce rate for childbirth and childcare, i.e., making an M-shape curve. Especially, the rate of women quitting the job at the time of having the first child is high. According to the 1st Longitudinal Survey of Babies in the 21st Century conducted by the Ministry of Health, Labour and Welfare in 2001, about 70% of women who worked one year before having the first child quit the job by six months after childbirth. It can be said that many women quit the job at the stage of pregnancy/childbirth. The Japan Institute for Labour Policy and Training (2006) and the National Institute of Population and Social Security Research (2007) proved that there was almost no change in the rate of women continuing the job after childbirth regardless of before or after the Equal Opportunity Act was put into effect. The Equal Opportunity Act put restrictions on employment management discrimination against women and the Childcare Leave Act put an obligation to give childcare leave on companies. Nevertheless, the rate of women continuing the job has not risen.

Is such situation dependent on company size? Figure 2 shows time to quit job before having the first child by company size for each cohort.<sup>7</sup> A large majority of women in the "Pre Equal Opportunity Act Generation" (born in 1950-60) started their first job before the Equal Opportunity Act was enforced in 1986 and had their first child before the Childcare Leave Act was put into effect in 1992. On the other hand, a large majority of those in the "Post Equal Opportunity Act Generation" (born in 1961-75) started their first job after the Equal Opportunity Act was established and had their first child after the Childcare Leave Act was put into effect. I would like to mainly pay attention to "Post Equal Opportunity Act Generation" for the purpose of clarifying today's problems of the support for job continuity in the following, but will also show the analysis result of "Pre Equal Opportunity Act Generation" due to other issues to be clarified by comparing with the previous generation.

Looking at the result of "Pre Equal Opportunity Act Generation" (born in 1950-60), the rates of "continued until childbirth" (hereinafter referred to as job continuity rate) in companies with "300 or more employees" and "less than 30 employees" are relatively high. We can see from this that women in companies with less than 30 employees, the smallest company size, continued their job as same as those in large companies with 300 or more employees. However, the job continuity rates of younger cohort, "Post Equal Opportunity

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<sup>7</sup> As for company size, based on the results shown in Figure 1, companies with 300 or more employees are regarded as large companies and small/medium companies are divided into three groups by the number of employees: "100 to 299 employees," "30 to 99 employees" and "less than 30 employees." Companies with 300 or more employees are equivalent to the company size which is obliged to develop an action plan of support for balancing work and childcare on the basis of the Act on Advancement of Measures to Support Raising Next-Generation Children (hereinafter referred to as Next Generation Act). Companies with 100 to 299 employees are equivalent to the company size which is newly obliged to develop an action plan of support for balancing work and childcare by the revised Next Generation Act. As shown in Figure 1, even among enterprises with less than 100 employees, there is a difference of the introduction rate of the childcare leave system between those with 30 or more employees and less than 30 employees. That is why they are divided into four groups.



Source: The Japan Institute for Labour Policy and Training (2005), *Survey on work and life*.

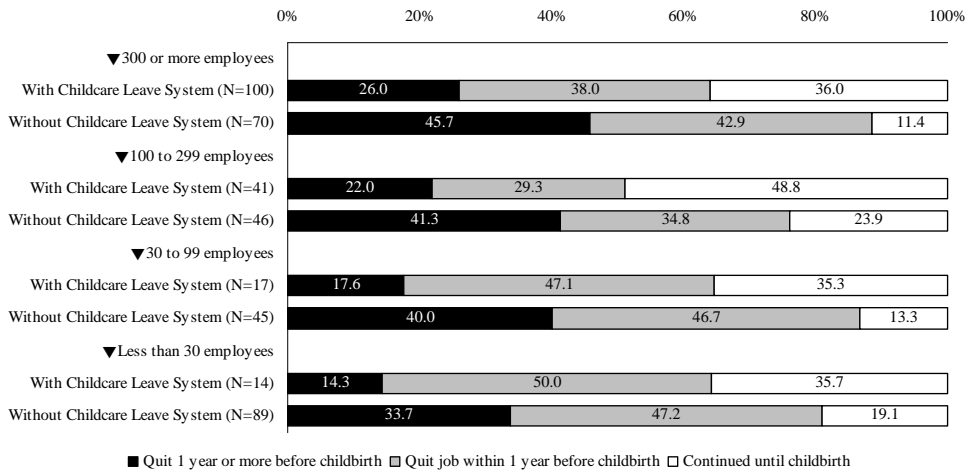
Figure 2. Time to Quit Job Immediately before Having the First Child: By Company Size for Each Cohort

Act Generation” (born in 1961-75), in companies with 300 or more employees and less than 30 employees are substantially lower compared with the previous generation. The job continuity rate of women in companies with 30 to 99 employees is also lower compared to the previous generation while its rate of drop is small. Women in companies with 100 to 299 employees show the highest job continuity rate among this generation and the rate is not lower compared to “Pre Equal Opportunity Act Generation.” It can be said the reason why younger cohorts’ job continuity rate does not rise is mainly due to drop in the job continuity rates of women in large companies with 300 or more employees and small/medium companies with less than 100 employees.

## 2. Quitting Job before Having the First Child and Childcare Leave System

In not only small/medium companies with less than 100 employees where the rate of adopting a childcare leave system is relatively low but also large companies with 300 or more employees which adopted that system at an early date, the job continuity rate of younger cohorts is still low. However, it would still be unwise to conclude that the childcare leave system does not have an effect of enhancing the job continuity rate.

Figure 3 shows time to leave job before having the first child by company size with



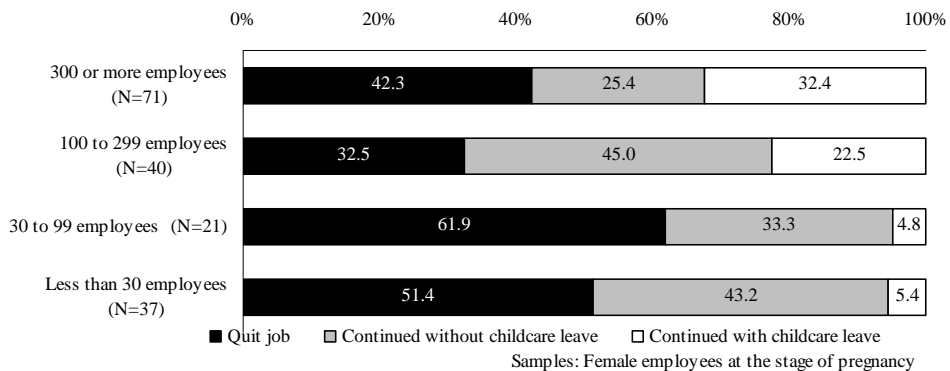
Source: Same as Figure 2.

Figure 3. Time to Quit Job Immediately before the First Childbirth: With or Without Childcare Leave System by Company Size for Each Cohort (Post Equal Opportunity Act Generation [Born in 1961-75])

and without the childcare leave system. Since a large majority of women in the “Pre Equal Opportunity Act Generation” had their first child before the Childcare Leave Act was put into effect and companies with the childcare leave system were rare, the result of younger cohort, “Post Equal Opportunity Act Generation” is only shown here. According to the result, the job continuity rate of women in companies without the childcare leave system is lower than that with the childcare system regardless of the company size. Particularly, the rate of quitting the job more than one year before childbirth is high in companies without the childcare leave system. In order to encourage women's willingness to continue the job before pregnancy/childbirth, it is important for each company to make provisions for the childcare leave system regardless of the company size.

Nevertheless, we can see from Figure 4 that it is difficult to take childcare leave in small/medium companies with less than 100 employees. Figure 4 shows the rate of women in the “Post Equal Opportunity Act Generation” (born in 1961-75) who took childcare leave among those during the period of pregnancy/childbirth. The rate of women who continued their job by taking childcare leave in companies with less than 100 employees is extremely lower and the rate of those who quit their job is higher compared to that in companies with 100 or more employees.

On the other hand, no less important is the fact that the job continuity rate of women is also low in companies with 300 or more employees in which the rate of women who took childcare leave is the highest. In this company size, the rate of women who continued the



Source: Same as Figure 2.

Figure 4. Job Continuity at the Stage of the First Pregnancy/Having the First Child and Taking Childcare Leave: By Company Size for Each Cohort (Post Equal Opportunity Act Generation [Born in 1961-75])

job without taking childcare leave is low and even lower compared to that in small/medium companies with less than 100 employees. Therefore, the job continuity rate of women who continued the job by taking childcare leave and without taking childcare leave in companies with 300 or more employees is lower than that with 100 to 299 employees. It would appear that younger cohort's job continuity rate dropped in large companies with 300 or more employees due to increased number of women quitting the job without the reason of childcare leave.

#### IV. Difference of Factors Determining Job Continuity Depending on Company Size

##### 1. Changes in Way of Working and Increase in Demand for Childcare Services

It is highly possible that many of women in small/medium companies with less than 100 employees quit the job since they cannot take childcare leave even after the Childcare Leave Act was put into effect. In large companies with 300 or more employees, on the other hand, the rate of women taking childcare leave is high but the job continuity rate of those who do not take childcare leave is lower compared to that in small/medium companies with less than 100 employees. In order to clarify today's problems of the support for job continuity, it is necessary to focus on other factors as well as the childcare leave system. I would like to focus on the following points in this paper.

Firstly, there is a possibility that it becomes difficult for younger cohort to continue the job due to changes in women's way of working. The Equal Opportunity Act put restrictions on the employment management which discriminated against women, while the Labor Standard Act was also revised and the regulation for female worker protection was substan-



tially relaxed. Although such policies provided a major boost to the expansion of women's job categories, there is a possibility that job continuity at the stage of childbirth/childcare became difficult due to their job categories such as night, dangerous and long hours of work. Among younger cohort, the number of non-regular workers has increased. Since many of non-regular workers sign a fixed-term contract, they were exempt from childcare leave before the revised Child Care and Family Care Leave Act was put into effect in 2005. It remains possible that the number of women who had to give up the hope of taking childcare leave due to such changes in the way of working. In particular, it would appear that the reason why women in large companies in which the childcare leave system is widely adopted and the rate of taking childcare leave is high do not continue the job is based on such changes in the way of working.

The other one is the change in support systems for balancing work and childcare outside the companies. It is a common knowledge that housework/childcare support by families living together played a great role for job continuity at the time when there were few companies which introduced the childcare leave system and there was no Childcare Leave Act. According to Imada and Ikeda (2006), however, it becomes difficult for younger cohort to rely on the childcare support by families in order to continue the job. On the other hand, the shortage of childcare centers is still a serious problem in urban areas even though childcare services have been expanded since the 1990s. There is a possibility that since the supply of childcare services cannot keep up with the increase of demand for that, it becomes difficult for younger cohort to continue the job. It is highly likely that women working for small/medium companies with less than 100 employees quit the job since it is difficult to take childcare leave and use childcare centers especially in urban areas.

I will analyze the data in the following for these issues.

## 2. Factors of Employment at the Stage of Having the First Child

Figure 5 shows the time to quit job before having the first child of "Pre Equal Opportunity Act Generation" and "Post Equal Opportunity Act Generation" by type of employment immediately before childbirth for each company size.<sup>8</sup>

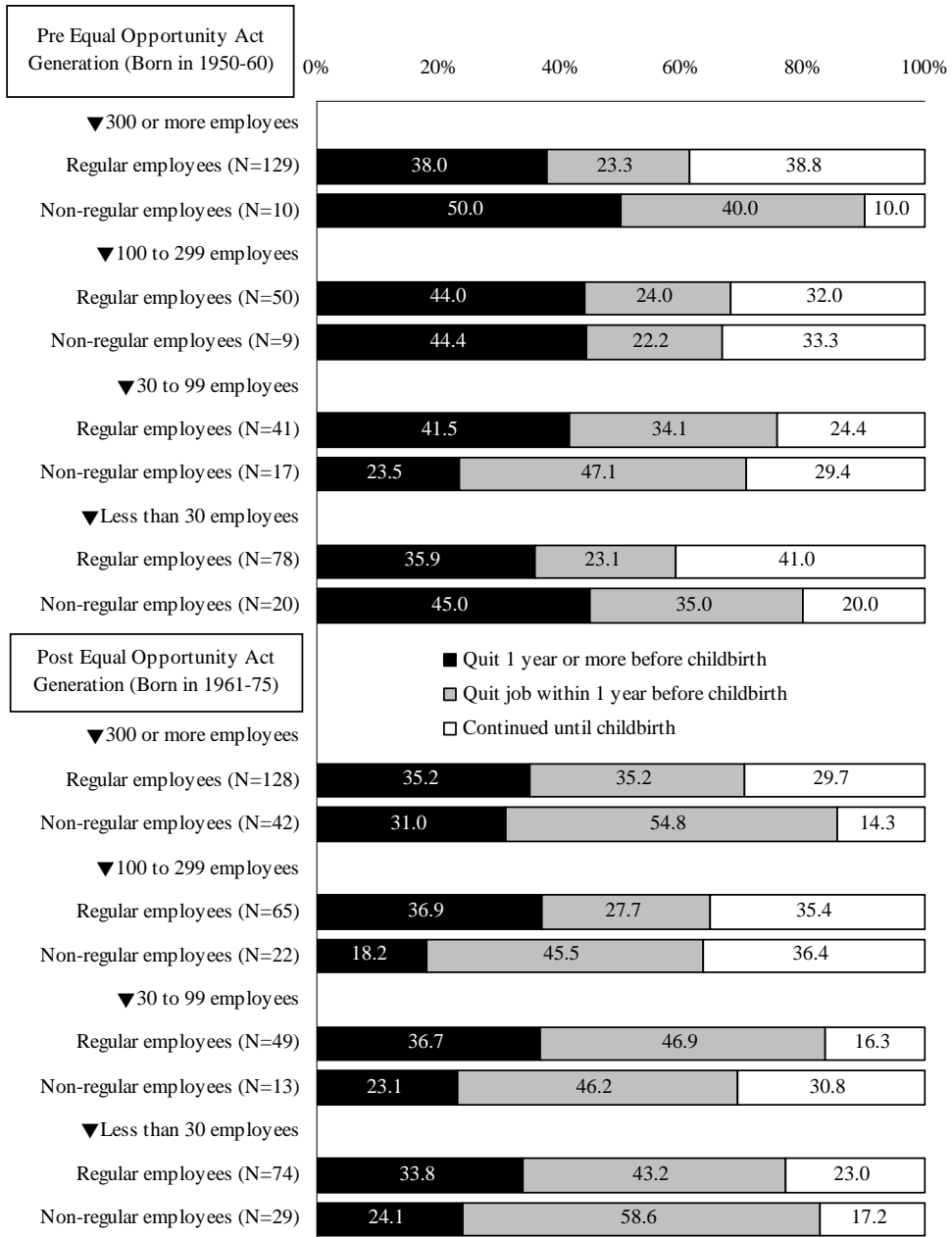
In this figure, I firstly would like to focus on "regular employees." In companies with "300 or more employees," "30 to 99 employees" and "less than 30 employees," the job continuity rate of female regular employees in "Post Equal Opportunity Act Generation" is lower than that in "Pre Equal Opportunity Act Generation."

In Figure 2, the job continuity rate of these company sizes dropped overall. Figure 5 indicates that the dropped job continuity rate of female regular employees contributed to that.

I also would like to focus on non-regular employees in "Post Equal Opportunity Act

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<sup>8</sup> Based on the questionnaire, "department managers and above" and "general regular employees" are defined as "regular employees," and "part-timers, temporary workers and contract employees" and "dispatched workers" are defined as "non-regular employees."



Source: Same as Figure 2.

Figure 5. Time to Quit Job Immediately before Having the First Child: By Company Size and Type of Employment Immediately before Having the First Child for Each Cohort

Generation.” Although a part of fixed-term contract employees became eligible for childcare leave by the revised Child Care and Family Care Leave Act enforced in 2005, most of women analyzed here had the first child before the revised act has been put in effect. There is a high possibility that many of non-regular employees could not take childcare leave due to the fixed-term contract.

However, I also would like to pay attention to the fact that the difference of the job continuity rates between regular and non-regular employees are dependent on company size. In companies with “300 or more employees” and “less than 30 employees,” the job continuity rate of non-regular employees is lower than that of regular employees. Although figures are omitted, the rate of younger generation's non-regular employees in companies with 100 or more employees rises and that rate in companies with 300 or more employees rises from 7.2% of “Pre Equal Opportunity Act Generation” to 24.7% of “Post Equal Opportunity Act Generation.” It can be said that the expansion of non-regular employment in young people became a factor contributing to reduce the job continuity rate of large companies. In companies with “100 to 299 employees” and “30 to 99 employees,” however, the job continuity rate of non-regular employment is not lower than that of regular employment. The expansion of job continuity for fixed-term contract employees who became eligible for childcare leave after 2005 is an important issue especially for companies with 300 or more employees.

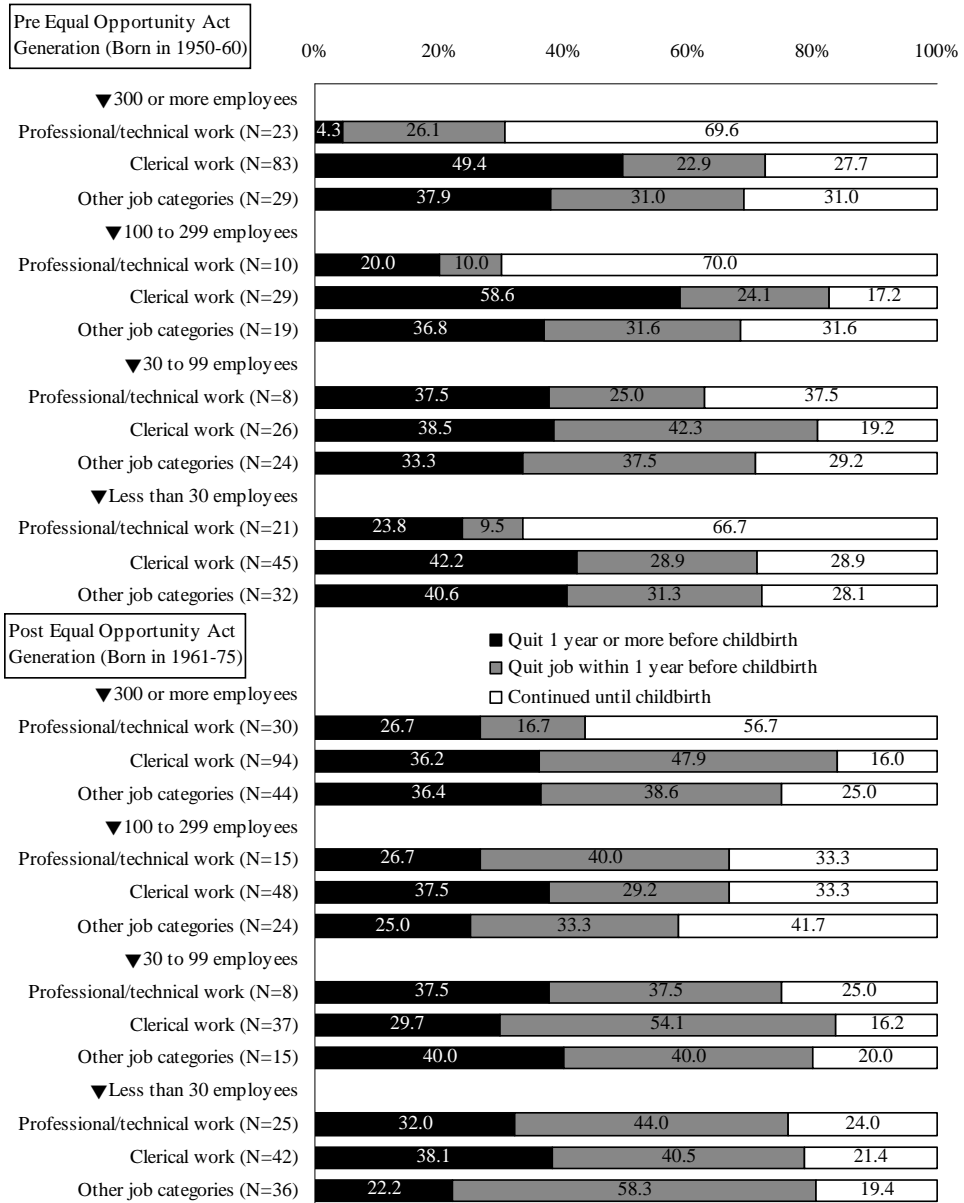
Next, I focus on the relationship with type of job category. Figure 6 shows the time to quit job before having the first child of “Pre Equal Opportunity Act Generation” and “Post Equal Opportunity Act Generation” by type of job category immediately before childbirth for each company size.<sup>9</sup>

Firstly, I would like to point out that the job continuity rate of professional/technical work dropped regardless of company size. The childcare leave has been legalized for traditional female professional work, i.e., nurses, teachers and child-minders, by the Childcare Leave Act for Specific Jobs since 1975. Nevertheless, the job continuity rate of professional/technical work dropped among younger cohort.<sup>10</sup> Additionally, I would like to pay attention to the job continuity rate of clerical work. In companies with “300 or more employees” and “less than 30 employees” in which overall job continuity rate dropped substantially in figure 2, the job continuity rate of clerical work also dropped. Especially in companies with 300 or more employees, that rate dropped extremely. In contrast, the job continuity rate of clerical work increased in companies with 100 to 299 employees.

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<sup>9</sup> Since the samples size which allows to analyze each job category by company size cannot be secured, clerical work which has the highest rate in each company size in “Pre Equal Opportunity Act Generation” and “Post Equal Opportunity Act Generation” and professional/technical work which has traditionally high job continuity rate are regarded as single categories and other job categories are lumped together and regarded as “others.”

<sup>10</sup> In the traditionally sustainable job category of clinical nurses, teachers and childcare nurses, there are an increasing number of other professionals of diversified job descriptions. A separate research shall be conducted to analyze this issue in detail.



Source: Same as Figure 2.

Figure 6. Time to Quit Job Immediately before Having the First Child: By Company Size and Job Category Immediately before Having the First Child for Each Cohort

Companies with 30 to 99 employees showed little or no drop in that rate. We can see the fact that the job continuity rate of clerical work which makes up the largest number of women before childbirth has a great influence on entire job continuity rate.

Based on these analysis results, I will conduct multivariate analysis in order to clarify the factors that determine quitting job before having the first child. What I would like to examine in this analysis is not the effect of company size on job continuity but the difference of factors depending on company size. As shown in Figure 4, since there is a big difference of the rate of women taking childcare leave between companies with 100 or more employees and less than 100 employees, the object of analysis is divided into companies with 100 or more employees and those with less than 100 employees.

The explained variable is employment at the time of having the first child; employment = 1, unemployment = 0. Explanatory variables include cohort, educational attainment, age at first birth, type of employment immediately before having the first child (regular employment = 1, non-regular employment = 0), job category immediately before having the first child<sup>11</sup> (benchmark is clerical work), availability of the childcare leave system at the workplace immediately before having the first child (available = 1, unavailable = 0), the first child's age when using a childcare center for the first time, availability of childcare help from the parent (available = 1, unavailable = 0), sharing of husband's housework/childcare, and attribute of residential area (urban<sup>12</sup> = 1, others = 0).<sup>13</sup> As for childcare center, child's age when using it for the first time is important for job continuity, not just use of it. Therefore, the first child's age when using a childcare center for the first time shall be divided into "infant," "one year old," "two years old" and "three years old or older" and the benchmark shall be "no use of childcare center." Regarding the availability of childcare help from the parent, "available" = 1 and "unavailable" = 0. Concerning the sharing of husband's housework/childcare, "30% or higher" is regarded as "sharing" = 1, "10%" and "wife shares almost all" are regarded as "none" = 0.

Table 1 shows a result of breakdown for all cohorts.

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<sup>11</sup> No appropriate samples were available for "Workers in agriculture, forestry or fishery," "Managers and officials" and "Protective service work." A few samples were found for "Transportation" and "Communication," but the number of samples was not large enough for the analysis and they were excluded.

<sup>12</sup> The term "urban areas" means urban areas defined by "Situations of Childcare Center (as of April 1, 2008)," the Ministry of Health, Labour and Welfare and specifically refers to Tokyo, Kanagawa, Chiba and Saitama in the Tokyo metropolitan district, Kyoto, Osaka and Hyogo in the Osaka metropolitan district, ordinance-designated cities and core cities with a large size of population. In Japan, children who cannot get in childcare centers due to applications exceeding the capacity are called "waiting children." According to that report, 77.7% of the waiting children concentrate in urban areas.

<sup>13</sup> Although JILPT (2006, 2007) analyzed with combination variables of childcare leave system, use of childcare center and childcare help from family/relatives, since the sample size which allows to estimate in each category cannot be secured with combination variables, those are inputted as independent variables.

Table 1. Factors Determining Employment/Non-Employment at the Time of Having the First Child (Logistic Regression Analysis)

Explained variable	Employment/non-employment at the first childbirth (employed = 1, not employed = 0)					
	100 and more employees			Less than 100 employees		
Subjects of analysis (company size)	Coefficient	Standard error	Odds ratio	Coefficient	Standard error	Odds ratio
Cohort (reference: Born in 1950-55)						
Born in 1956-60	-.152	.393	.859	-.199	.414	.820
Born in 1961-65	-.693	.450	.500	-1.054*	.497	.349
Born in 1966-70	-1.397**	.455	.247	-1.490*	.587	.225
Born in 1971-75	-.957*	.466	.384	-1.066*	.527	.344
Educational attainment	-.098	.105	.907	-.293**	.109	.746
Age at first birth	.010	.041	1.010	-.072	.048	.930
Type of employment (regular employment = 1, non-regular employment = 0)	.110	.389	1.116	.017	.402	1.017
Job category (reference: clerical work)						
Professional/technical work	.906*	.388	2.474	1.408**	.445	4.086
Sales	-.171	.449	.843	-.434	.546	.648
Services	.433	.785	1.542	.089	.537	1.093
Skilled workers and laborers	1.256**	.412	3.512	-.277	.559	.758
The childcare leave system at the workplace (available = 1, unavailable = 0)	1.586**	.302	4.883	1.028**	.385	2.796
First child's age when using a childcare center for the first time (reference: no use of childcare center)						
Infant	3.113**	.588	22.480	2.899**	.724	18.159
One year old	1.689**	.490	5.412	1.816*	.817	6.147
Two years old	.805	.577	2.236	.260	.671	1.297
Three years old or older	.342	.337	1.407	.424	.370	1.528
Childcare help from the parent (available = 1, unavailable = 0)	.911*	.354	2.487	.760	.404	2.137
Husband's housework/childcare (sharing = 1, none = 0)	.724*	.344	2.064	1.150**	.442	3.158
Attribute of residential area (urban = 1, others = 0)	-.583*	.284	.558	-.644	.350	.525
Constant	-1.420	1.646	.242	3.869*	1.744	47.909
Chi-square	138.848**			81.906**		
Df	19			19		
N	406			297		

Samples: Women who were employed before having the first child.

\*\*p<.01; \*p<.05

Source: Same as Figure 2.

In this result, I would like to firstly point out that both companies with “100 or more employees” and “less than 100 employees” show a positive effect of the childcare leave system. To make provisions for the childcare leave system as a support for job continuity at the stage of childbirth/childcare must be important regardless of company size. As for the effect of job category, “professional/technical work” also shows a positive effect regardless of company size. Looking at companies with “100 or more employees,” however, “skilled work/labor service” also shows a significant positive effect. This result suggests the job continuity rate of “skilled workers and laborers” is higher among “other job categories” in Figure 6. On the other hand, companies with “less than 100 employees” shows a negative effect of educational attainment and the analysis result indicates that the higher the level of education, the more women quit the job. It would appear that since not only the progress of the childcare leave system but also the use of female workforce differ depending on company size, differences in the effects of educational background and job category appear.

Focusing on the effect of support systems for balancing work and childcare outside companies, both companies with "100 or more employees" and "less than 100 employees" shows common effects that women using a childcare center from when child is infant or one year old continue the job more than those who do not use any childcare center and the more the husband shares housework/childcare, the more the wife continues the job. Meanwhile, the availability of childcare help from the parent and the attribute of residential area show different effects between companies with "100 or more employees" and "less than 100 employees." The analysis result shows that among women working for companies with "100 or more employees," the job continuity rate is higher if the parent helps childcare and the rate of quitting job is higher if living in "an urban area." By contrast, there is no significant effect of the availability of childcare help from the parent or the attribute of residential area in companies with "less than 100 employees." It indicates that since the way of working differs depending on company size, the effect of support outside companies on job continuity also differs.

I would like to point out another thing; even if the effect of these supports for balancing work and childcare is controlled, younger cohort's job continuity rate is still low. Among companies with "less than 100 employees," the job continuity rates of women born in 1961-65, 1966-70 and 1971-75 are lower than that of those born in 1950-55, the oldest cohort. Even among companies with "100 or more employees," the job continuity rates of women born in 1966-70 and 1971-75 are lower than that of those born in 1950-55. The cohorts equivalent to "Post Equal Opportunity Act Generation" in the previous analyses discontinued the job. Younger cohorts reach the stage of childbirth/childcare when childcare centers are expanded as well as spreading the childcare leave system. Husbands take part in housework/childcare more than previous generations. Nevertheless, the number of women quitting the job before having the first child increases according to the analysis result.

Under such circumstances of younger cohorts quitting the job, the important thing is that the factors determining job continuity have changed from "Pre Equal Opportunity Act Generation." Analysis objects were divided into "Pre Equal Opportunity Act Generation" and "Post Equal Opportunity Act Generation" and the results are as follows:

Table 2 shows the result when the analysis object was limited to "Pre Equal Opportunity Act Generation" (born in 1950-60). I would like to pay attention that the factors determining job continuity differ depending on company size, i.e., different between companies with "100 or more employees" and "less than 100 employees."

In case of companies with 100 or more employees, the analysis result shows that the job continuity rates of professional/technical work and skilled work/labor service are higher than that of clerical work and that rate is higher if there is a childcare system in the company and the husband takes part in housework/childcare. The rate of quitting job is higher if living in an urban area. As for the support for balancing work and childcare, the childcare leave system and husband's housework/childcare have a significant positive effect. Note that not many companies adopted the childcare leave system even among those with 100 or

Table 2. Factors Determining Employment/Non-Employment at the Time of Having the First Child in Pre Equal Opportunity Act Generation (Born in 1950-60)  
(Logistic Regression Analysis)

Explained variable	Employment/non-employment at the first childbirth (employed = 1, not employed = 0)					
Subjects of analysis (cohort)	Pre Equal Opportunity Act Generation (born in 1950-60)					
Subjects of analysis (company size)	100 and more employees			Less than 100 employees		
	Coefficient	Standard error	Odds ratio	Coefficient	Standard error	Odds ratio
Educational attainment	-.020	.158	.980	-.294*	.145	.745
Age at first birth	.038	.064	1.038	-.082	.065	.921
Type of employment (regular employment = 1, non-regular employment = 0)	.433	.713	1.542	-.109	.535	.896
Job category immediately before having the first child (reference: clerical work)						
Professional/technical work	1.427*	.651	4.167	1.846**	.655	6.331
Sales	-.805	.879	.447	-.584	.784	.558
Services	1.022	1.236	2.779	-.056	.839	.945
Skilled workers and laborers	1.974**	.632	7.201	-.007	.621	.993
The childcare leave system at the workplace (available = 1, unavailable = 0)	1.622**	.461	5.062	.987	.564	2.683
First child's age when using a childcare center for the first time (reference: no use of childcare center)						
Infant	23.246	13910.166	12457522376.982	4.235**	1.263	69.056
One year old	1.586	.982	4.882	22.398	18564.539	5338909666.460
Two years old	-.699	.986	.497	-.449	1.254	.638
Three years old or older	.423	.494	1.526	.940	.482	2.561
Childcare help from the parent (available = 1, unavailable = 0)	.608	.514	1.837	.689	.521	1.991
Husband's housework/childcare (sharing = 1, none = 0)	1.442*	.626	4.230	.950	.717	2.587
Attribute of residential area (urban = 1, others = 0)	-.909*	.463	.403	-.573	.497	.564
Constant	-3.420	2.560	.033	3.814	2.558	45.330
Chi-square		71.909**			51.812**	
Df		15			15	
N		173			146	

Samples: Women who were employed before having the first child.

\*\*p<.01; \*p<.05

Source: Same as Figure 2.

more employees in this generation. The rate of husbands participating in housework/childcare is also lower compared with younger cohorts. It is believed that the childcare help from the parent played a central role for job continuity in this generation. The rate of living with the parent in urban areas is lower than that in rural areas. The childcare help from the parent appears as the effect of residential area here. It seems childcare leave system and husband's housework/childcare in which there is no regional difference show independent effects.

Next, in case of companies with less than 100 employees, professional/technical work and use of a childcare center for the first child when the child is infant show significant effects. The effect of professional/technical work is common to that in companies with 100 or more employees. My focus is that not childcare leave system but infant childcare has a significant effect on the support for balancing work and childcare. As pointed out in Figure 4, not many women take childcare leave in companies with less than 100 employees. This analysis result indicates that infant childcare was practically used for job continuity with or without the childcare leave system in the company.



Table 3. Factors Determining Employment/Non-Employment at the Time of Having the First Child in Post Equal Opportunity Act Generation (Born in 1961-75) (Logistic Regression Analysis)

Explained variable	Employment/non-employment at the first childbirth (employed = 1, not employed = 0)					
Subjects of analysis (cohort)	Post Equal Opportunity Act Generation (born in 1961-75)					
Subjects of analysis (company size)	100 and more employees			Less than 100 employees		
	Coefficient	Standard error	Odds ratio	Coefficient	Standard error	Odds ratio
Educational attainment	-.161	.142	.851	-.540*	.236	.583
Age at first birth	-.014	.055	.986	-.055	.078	.946
Type of employment (regular employment = 1, non-regular employment = 0)	.030	.501	1.031	.267	.670	1.306
Job category (reference: clerical work)						
Professional/technical work	.787	.505	2.196	1.176	.673	3.242
Sales	.081	.551	1.085	-.799	.848	.450
Services	.335	1.002	1.399	-.035	.782	.965
Skilled workers and laborers	.771	.583	2.163	-19.077	16065.806	.000
The childcare leave system at the workplace (available = 1, unavailable = 0)	1.650**	.433	5.206	.584	.581	1.793
First child's age when using a childcare center for the first time (reference: no use of childcare center)						
Infant	2.670**	.632	14.445	1.598	.995	4.943
One year old	1.777**	.611	5.910	.063	1.192	1.065
Two years old	1.464*	.702	4.325	.035	.856	1.035
Three years old or older	.239	.492	1.270	-.994	.719	.370
Childcare help from the parent (available = 1, unavailable = 0)	1.270*	.555	3.559	.926	.739	2.525
Husband's housework/childcare (sharing = 1, none = 0)	.488	.441	1.630	1.398*	.607	4.048
Attribute of residential area (urban = 1, others = 0)	-.536	.377	.585	-1.257*	.585	.285
Constant	-1.170	2.276	.310	6.155*	2.787	471.075
Chi-square		77.523**			35.570**	
Df		15			15	
N		233			151	

Samples: Women who were employed before having the first child.

\*\*p<.01; \*p<.05

Source: Same as Figure 2.

Such factors determining job continuity have changed in younger cohorts. Table 3 shows the analysis result of "Post Equal Opportunity Act Generation" (born in 1961-75).

Looking at companies with 100 or more employees, the analysis result shows that the job continuity rate is higher if (i) there is a childcare leave system in the company, (ii) using a childcare center when child is infant/one year old/two years old compared to "no use of childcare center" and (iii) the parent helps childcare. The effect of job category is not significant. Women who can use the childcare leave system, childcare center for infant to 2-year-old child and childcare help from the parent have a high rate of continuing the job regardless of the way of working.

It should be noted that the first child's age when using a childcare center for the first time shows a positive effect when the child is not only infant but also one year old and two years old. By comparing odds ratios, the effect of infant is outstandingly high followed by one year old and two years old. It would be appear that since the use of a childcare center for infant has a positive impact on the job continuity of women who do not take childcare leave as same as those in companies with less than 100 employees of "Pre Equal Opportu-

nity Act Generation,” the effect of infant is the highest. The reason why one year old and two years old also show a significant effect independently of the effect of the childcare leave system may be due to the period of taking childcare leave. Although the legal childcare leave period is until the child becomes one year old, if a childcare center can be used for infant, women can select options such as not taking childcare leave and returning to work after a short leave. Some of large companies even allow women to take childcare leave more than the legal period. It is contemplated that since the period of returning the job depends on the use of a childcare center even among women whose company adopts a childcare leave system, infant, one year old and two years old show independent effects.

It should also be noted that the effect of residential area is not significant. The analysis result indicates that the difficulty of job continuity in an urban area is made easier by flexibly using the childcare leave system and childcare service for infant/one-year-old/two-year-old child depending on the situation. In addition, the childcare help from the parent has a significant positive effect in companies with 100 or more employees. As Imada and Ikeda (2006) pointed out, this result tells that childcare leave system, childcare center and childcare help from family or relatives function effectively in an interrelationship.

In contrast, both childcare leave system and use of a childcare center have no significant effect in companies with less than 100 employees. “Educational attainment,” “husband’s housework/childcare” and “residential area” show significant effects. According to the analysis result, women are more likely to continue the job if the husband takes part in housework/childcare and more likely to quit the job if better educated or living in an urban area.

I would like to pay special attention to the effect of residential area. Most of women using a childcare center for infant who showed a significant effect in the previous generation are living in urban areas. Women of professional/technical work who also showed a significant effect are more likely to be working in urban areas. It would be appear that the effect of residential area had no significant effect in “Pre Equal Opportunity Act Generation” since women using a childcare center for infant and of professional/technical work raised the job continuity rate in urban area. However, due to increase in the demand of using a childcare center for infant and decrease in the job continuity rate of professional/technical work shown in Figure 6, a sharp contrast between residential areas is seen in younger cohorts. The husband’s housework/childcare shows a significant effect in companies with less than 100 employees while it has no significant effect in those with 100 or more employees. Men’s participation in housework/childcare has been a recent important issue. It shows that sharing housework/childcare with husband plays an important role especially for women working for small/medium companies with less than 100 employees.

Interpreting the analysis result of such “Post Equal Opportunity Act Generation” of companies with less than 100 employees from the perspective of the interrelationship between childcare leave system, childcare center and childcare help from family/relatives, it is

believed that women in younger cohorts living in urban areas and working for small/medium companies do not continue the job since it is difficult to take childcare leave, use a childcare center and rely on childcare help from the parent.

## V. Summary and Conclusions

Focusing on the difference between the progresses of the childcare leave system of large companies and small/medium companies, I examined problems of the support system for job continuity at the stage of childbirth/childcare. The results can be summarized as below:

- (i) Regardless of company size, women whose company does not adopt a childcare leave system are more likely to quit the job before having the first child.
- (ii) In case of small/medium companies with less than 100 employees, there are few women taking childcare leave even among younger cohorts, and those living in urban areas where it is difficult to use a childcare center are more likely to quit the job before having the first child.
- (iii) Even in case of large companies with 300 or more employees in which the rate of taking childcare leave is high, the job continuity rate of younger cohorts is decreasing due to the expansion of non-regular employment and the decreased job continuity rate of clerical work.

I should firstly point out that it is important for even small/medium companies to institutionalize the childcare leave system in order to improve the job continuity at the stage of childbirth/childcare. Previous studies have pointed out in the surveys of companies that small/medium companies have flexibly supported individual employees even without a support system for balancing work and childcare. However, there are cases in which companies do not recognize the real reason for leaving job, e.g., some of women quit the job not revealing the fact of pregnancy. In this paper, I analyzed data of individual employees and it became clear that women are more likely to quit the job before having the first child without a childcare leave system in the company regardless of company size according to the analysis result. Especially I would like to pay attention to the time to quit the job. Women whose company does not adopt a childcare leave system are more likely to quit the job more than one year before having the first child. That is, not a few women quit the job before the period of pregnancy. It is important for individual companies to make provisions for the childcare leave system in order to enhance women's willingness to continue the job.

In companies with less than 100 employees, however, there are few women taking childcare leave even after the Childcare Leave Act was put into effect. That is why the rate of quitting job is high during the period of one year before childbirth, i.e., at the stage of pregnancy/childbirth. Of course, there is an option to return the job taking leave only after childbirth using childcare help from family/relatives or a childcare center for young child even without taking childcare leave. Nevertheless, it is difficult to rely on childcare help

from family/relatives in urban areas and it is not easy to leave the child in a childcare center. The analysis result indicates that under such circumstances, women have to give up the hope of continuing job if they cannot take childcare leave.

On the other hand, from the analysis result we can see the fact that female workers can flexibly select the period of leaving the child in a childcare center and returning the job since they can take childcare leave in companies with 100 or more employees. However, even in companies with 300 or more employees in which the rate of women who took childcare leave is the highest, younger cohort's job continuity rate has dropped due to the expansion of non-regular employment and the decreased job continuity rate of clerical work. As for non-regular employment, the Child Care and Family Care Leave Act was revised after most of women who were analyzed in this paper had the first child and the target of childcare leave has expanded to a part of fixed-term contract employees. It can be said that it is an important issue especially for large companies to support the job continuity of non-regular employees with such policy. In either company size, the job continuity rate of professional/technical work which is a traditional continuous job dropped in younger cohorts. In addition, the job continuity rate of clerical work also dropped in companies with 300 or more employees. Although women's job categories have been expanded after the Equal Opportunity Act was enforced, the number of women having jobs in which it is difficult to balance work with childcare is increasing as a result. The analysis result shows that such effect is widespread in large companies. It is an issue for large companies to further improve the support system for job continuity in response to such changes in women's way of working.

Regardless of company size, many of women quit the job before having the first child even today in Japan. But facing specific problems of promoting job continuity differ depending on company size. In order to provide an effective support for job continuity, it is a future issue to study the analysis result in this paper in depth and examine the way of support in response to each issue of large companies and small/medium companies.

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## **JILPT Research Activities**

### ***Research Reports***

The findings of research activities undertaken by JILPT are compiled into Research Reports (in Japanese). Below is a list of the reports published from September to November 2009. The complete text in Japanese of these reports can be accessed from the JILPT website.\* We are currently working on uploading abstracts of reports in English onto the JILPT website as well.

#### **Research Material Series**

- No.62 Research on Minimum Wage Plan: Situations of Low-Wage Workers (November 2009)
- No.61 Current Situations of Youth Employment Situation/Career/Human Resource Development: Special Aggregate from “Employment Status Survey 2007” (October 2009)
- No.60 “Current Situation and Issues of Work Sharing: Comparison between Japan and Korea,” the 9th Japan-Korea Workshop Report (October 2009)
- No.59 Work-Life Balance in Europe: Cases of Systems that Govern Working Hours (September 2009)

\*JILPT website: <http://www.jil.go.jp/english/index.html>

### ***JILPT Data Archives***

In November 2009, JILPT has started, as a data archive service, providing individual data of questionnaires collected labor for researches/surveys of JILPT and others to researchers, etc. outside JILPT in order to use for statistical analyses/researches which will contribute to the promotion of labor welfare and economic development. Released data are individual data of questionnaires in which incorrect or inaccurate records are corrected or removed and are provided to universities, research institutions, government institutions, etc. only if statistical analyses/researches are for noncommercial purposes and are beneficial to the promotion of labor welfare and economic development.

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