

Work-Life Balance in Japan: Outline of Policies, Legal Systems and Actual Situations*

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This paper presents the background, course and content of Japan's Work-Life Balance policies as a whole, as well as future challenges in the main individual policy areas of childcare leave, working hours, part-time labor and nursery care. The latter analysis includes brief comparisons with four other countries (UK, USA, Germany and France).

I. The Overall Picture of Work-Life Balance Policies in Japan and a Comparison with Other Countries

1. Contributing Factors and the Course of Progress in Japan

When Japan's total fertility rate reached a postwar low of 1.57 in 1989, it provided a major stimulus for promoting Work-Life Balance (WLB). For while the population replacement level in developed economies was around 2.08, in Japan it had already fallen below 2.0 since around the mid-1970s, when the birthrate was already in decline.¹

As government trends in measures to tackle the declining birthrate, a document entitled the "Angel Plan" was jointly published by the Ministry of Education, Ministry of Health and Welfare, Ministry of Labour, and Ministry of Construction (as they were then called) in 1994. In the Plan, the declining birthrate is attributed to a progressive tendency toward later marriage and declining fertility among couples. As factors behind these, the Plan cites the advance of females into higher education,² progressive inroads into the workplace by females due to raised aspirations for self-realization,³ and the greater diffi-

* The content of this paper is based on Japan Institute for Labour Policy and Training (2012), *Waku Raifu Baransu Hikakuho Kenkyu (Saishu Hokokusho)* [Comparative law study on work-life balance (Final report)], JILPT Research Report no.151, with statistical figures replaced by the latest data. The policies, legal systems and actual situations in other countries are taken from the Final Report and are not necessarily current at the time of writing. Owing to lack of space, they are only described simply and broadly in comparison with Japan. The opinions stated in this paper are those of the author and not necessarily of the organization to which the author belongs.

¹ In recent years, the new postwar low of 1.26 was recorded in 2005, and the rate was still trending low at 1.39 in 2011 (National Institute of Population and Social Security Research, "Population Statistics of Japan 2012").

² Female university graduates (including graduate school, junior college and technical college graduates) numbered around 1 million in 1968 but had increased to around 12 million in 2007 (Statistics Bureau, Ministry of Internal Affairs and Communications, "Employment Status Survey," each year).

³ The number of females in employment grew from just under 5 million in 1953 to around 23.5 million in 2011 (Statistics Bureau, Ministry of Internal Affairs and Communications "Labour Force Survey," each year). Meanwhile, survey responses to the effect that "Even after having children, it would be preferable to keep working" have reached a record high of 47.5% as the average of both

culty of balancing child rearing with jobs,⁴ among others. The Plan also includes the noteworthy statement that “Considering the importance of child rearing as a function of the family, child-rearing support measures in family life will be strengthened to ensure that this function is not lost. This will include creating an environment for creating a gender-equal society in which men and women will share housework and childcare.”

After this, in 1997 the Council on Population Problems of the (then) Ministry of Health and Welfare published a report entitled “Basic Ideas on a Decrease in the Number of Children: The Society of Decreasing Population, Responsibility and Choices for the Future.” The report stated clearly that the way forward in addressing future birthrate decline was to correct preconceptions of gender-based role divisions and the fixed employment practice of prioritizing work above all else. Reforming public awareness and corporate culture is also seen as a priority task in correcting these two fixed mindsets. In “Plus One Measures to Halt the Declining Birthrate” announced by the Ministry of Health, Labour and Welfare in 2002, this was taken a step further by proposing “a revision of working styles, including those of men.” These policy trends led to the formulation of the Charter for Work-Life Balance in 2007 and the Action Policy for promoting it.

The government adopted the coherent approach of developing legislation to promote a balance between child-rearing with work and promoting a revision of working styles including those of men,⁵ while reviewing corporate culture⁶ and encouraging a reform of individual awareness.⁷ In other words, WLB policies in Japan owe their origins to female labor problems and gender equality problems coupled with the problem of birthrate decline. Looking over the labor market as a whole, however, we also find single-parent family problems, elderly employment problems associated with the pension system, and youth employment problems. In view of this, the thrust of government measures is changing from the old “family friendly” policies focused on parents and families with children, to WLB in line

genders (Cabinet Office, “Public Opinion Poll on a Gender-Equal Society [2012]”).

⁴ Combined with the above trends and awareness of gender-based role divisions (in the 1992 “Public Opinion Poll on a Gender-Equal Society,” 60.1% of respondents agreed that “The husband should be the breadwinner and the wife should stay at home”), the female labor force participation rate in Japan is thought to have formed an M-shaped curve (unlike in other countries).

⁵ On the subject of long working hours, for example, 4.22 million or about 13.7% of 30.83 million male workers actually in employment worked for 60 or more hours per week on average in 2012 (Statistics Bureau, Ministry of Internal Affairs and Communications, “Annual Report on the Labour Force Survey 2012”).

⁶ Companies also tend to take a positive stance on promoting WLB. For example, 73.4% of employers state that WLB support measures “are necessary in order to secure excellent human resources,” and 71.3% that they “contribute to improved work motivation by employees” (NLI Research Institute [2005], “Survey on Work-Life Balance Support Measures and Corporate Performance”).

⁷ Prior research has already shown that a greater balance between work and personal life increases the proportion of people who approach their work positively (Specialist Committee on Work-Life Balance of the Council for Gender Equality [2009], “How Promotion of Work Life Balance can Help a Wide Variety of People Realize Their Full Abilities”).

with the general lives of people as a whole and the life stages of the individual.⁸

The above can be gleaned from the “Report of the Study Council on Work-Life Balance” produced by the Ministry of Health, Labour and Welfare in 2004, and in particular, the “Charter for Work-Life Balance” formulated in 2007 and the “Action Policy” for promoting the same.

The Charter for Work-Life Balance and its Action Policy were drawn up in December 2007 by a “Council of Executives of Public and Private Sectors,” comprising the relevant government ministers and representatives of the business community, labor organizations and local authorities, among others. After this, a new agreement was concluded between the top executives of government, labor and employers in June 2010, and this was promoted on a platform of neo-corporatism.

2. Response via Individual Law Policies

The Charter for Work-Life Balance highlights working hours as a primary focus for concrete measures. It sets out to reduce long working hours, encourage workers to take their annual paid leave and promote the use of flexible working hour systems. On the problem of working locations, meanwhile, it aims to promote teleworking and working at home, as well as mentioning female labor problems, prohibition of discrimination, fair conditions, and the introduction of balanced treatment systems to meet the increase in part-time workers. It also cites measures to develop infrastructure for child-rearing and nursery care, as well as income guarantees and reduced burdens of costs related to these, and measures to support the career development and employment of young people, the elderly and women.

So far, many of these concrete measures have been tackled by enacting or amending a number of laws, including the Labor Standards Act (LSA), the Act on Temporary Measures concerning the Promotion of Shorter Working Hours (Shorter Working Hours Promotion Act), the Act on Securing, etc. of Equal Opportunity and Treatment Between Men and Women in Employment, the Act on Improvement, etc. of Employment Management for Part-Time Workers (Part-Time Act) and the Act on the Welfare of Workers Who Take Care of Children or Other Family Members Including Child Care and Family Care Leave (Child Care and Family Care Leave Act). Other action has included expanding related policy measures beyond their existing scope.⁹

⁸ In a survey on WLB wishes and reality among married men and women in employment, the wish to “Balance work, housework and private life” occupied the highest ratio among women with 45.9%, but in reality 39.7% of women placed “Priority on work and housework.” Among men, the wish to “Balance work, housework and private life” was greatest at 32.0%, but in reality 51.2% of men placed “Priority on work” (Cabinet Office [2006], “Outline of Result of Survey on Men’s and Women’s Working Styles and Work-Life Balance”).

⁹ As measures to halt the birthrate decline, the “Basic Act for Measures to Cope with Society with Declining Birthrate” and the “Act on Advancement of Measures to Support Raising Next-Generation Children” were enacted in 2003. The former provides the backbone for measures to halt birthrate decline, while the latter obliges companies with more than 100 employees to formulate “General Busi-

3. Characteristics of WLB in Japan

The general characteristics of Japan's WLB policies are that they have been triggered by measures to halt birthrate decline, and that a revision of working styles (mainly concerning female labor and equality problems but also including men) is being studied. Another characteristic is that policies have evolved while spreading outwards to embrace problems of the labor market as a whole, such as the working styles of the young and elderly and promoting their employment. What should be borne in mind is that the central and most important issues in Japan's WLB policies can be identified as the labor problems of parents (particularly women) with young children, and problems of gender equality from the viewpoint of revising working styles, including those of men.

4. Comparison with Other Countries¹⁰

As the impetus for introducing WLB policies, measures to halt birthrate decline feature heavily in Germany, France and Japan. In the UK and USA, by contrast, the aspect of labor market policies has had a more significant impact than birthrate decline. In either case, no great difference can be seen in the objectives of WLB policies, in the sense of helping to ensure national vitality, productivity, and international competitiveness over the medium to long term. Another point common to the countries studied is that there is perceived to be an awareness of gender-based role division. Moreover, although the female labor force participation rate in each country does not describe a large M-shaped curve as it does in Japan, women were initially targeted following medium- to long-term changes in national awareness and changes in family relations, family composition and formats (i.e. the traditional model of the male as breadwinner and the female as full-time housewife). On the other hand, other objectives such as revising working styles (including those of men), securing human resources in the labor market and preventing employee turnover can also be seen in the countries concerned.

As national initiatives based on this kind of impetus and background, France and the USA are promoting WLB without defining any clear policies, while, conversely, governments in Germany, the UK and Japan have set clear targets that combine measures to halt birthrate decline with the perspective of labor market policies. However, even France and the USA, where no clear policies have been defined, share the same objectives as the other countries in their WLB policies. Therefore, whether or not clear national policies are defined does not represent a substantially meaningful difference. An interesting point, meanwhile, is that in Germany, the UK and Japan, in particular, efforts are being made through partnership between the administration, labor organizations and employers.

As for the method of promoting actual WLB policies, all five countries are taking the

ness Owner Action Plans." These two acts support the individual labor laws listed above. In advance of these, the Basic Act for Gender-Equal Society was enacted in 1999 as the basic law for promoting gender equality in society at large.

¹⁰ WLB policies in other countries are summarized on pp.479–486 of the Final Report.

approach of enacting new laws or amending old ones. This point is thought to be strongly linked to the concept or rationale they have toward the economy and labor market when doing so. In the USA, the only law designed for WLB at federal level is the Family and Medical Leave Act, but in the other countries, various system amendments and new legislation related to WLB are being enacted.

Turning attention to the main areas of concern, importance can be found in the aspect of measures to halt birthrate decline. In all countries, however, a concern of particular importance is to balance work with life, home and family for working parents (including men) rearing the children who will carry the next generation.

Individual legal policies in this connection comprise systems of leave for working parents in the child-rearing phase, financial safeguards in that period, how to deal with daily working hours, and regulations on long working hours. Some legal systems also permit flexible working styles. While this includes flexibility of both working formats and working hours, they share the feature of permitting working styles not involving traditional or fixed employment formats and working hours. As well as these, another important measure involves preventing untraditional working styles from causing disadvantageous working conditions.

II. Outline and Reality of Related Legal Systems, Brief Comparative Study with Other Countries, and Issues Arising

1. Taking Childcare Leave

In Japan's system of childcare leave, leave can basically be taken until the child reaches one year of age, i.e. for 52 weeks (Child Care and Family Care Leave Act, Article 5 [1]). When both parents take child care leave, leave may be taken until the child reaches one year and two months of age (Article 9.2). When the child is not admitted to a nursery center, leave may be taken until the child reaches one year and six months of age (Article 5 [3] ii, Child Care and Family Care Leave Act Enforcement Regulations Article 4.2 i).¹¹ In this case, not only have legal measures been taken to make it easier for fathers to take childcare leave,¹² but a flexible system is also available depending on whether nursery centers can be used. Meanwhile, although applying for childcare leave is left to the choice of the worker (Article 5 [1]), an employer may not refuse a child care leave application received from a worker (Article 6 [1]).

In comparison to other countries, Japan's system is less generous than those in Germany and France (where leave can be taken for up to three years), but still allows a maxi-

¹¹ In FY2012, employees in 77.9% of businesses took childcare leave (Ministry of Health, Labour and Welfare, "Outline of the FY2012 Basic Survey of Gender Equality in Employment Management," referred to below as "Employment Equality Survey").

¹² In FY2012, however, childcare leave was taken by 83.6% of mothers but only by 1.89% of fathers (Employment Equality Survey).

imum of 18 months. Moreover, leave allowed for fathers is longer than in France, where the period permitted is not only short (normal birth 11 days, multiple births 18 days) but also cannot be split into smaller portions, and in the UK, where paternal and parental leave are both very short (for the former, a maximum of 2 weeks; for the latter, 13 weeks until the child reaches the age of 5). Unlike France and the UK, moreover, the husband can take childcare leave during the wife's postnatal leave, and because a second childcare leave may be taken in this case, the Japanese system supports both men and women in balancing work with family life. In the USA, incidentally, the leave is very short at 12 weeks within a 12-month period. Finally, a feature found in all five countries is that workers may only obtain childcare leave if they apply for it, and whether to do so is left to the choice of the individual. In general, therefore, Japan's system of childcare leave is less generous than those of Germany and France but fuller than those of the UK and the USA, and shares the universal feature that the individual has the choice whether to take childcare leave or not.

Japan's Child Care and Family Care Leave Act stipulates that the employer may not refuse a worker's request for childcare leave. Considering this from the combined aspects of childcare leave and flexible working styles, Japan's is a "rigid system." It is the worker's right to take childcare leave, and the employer's duty to give it.¹³

As processes whereby workers may achieve WLB, such as adopting a flexible working style while bringing up children (on this point, see also II. 4 [2] c below), discussion, dialog and coordination in the company or workplace (below referred to collectively as "communication") are thought to be necessary in practice. When it comes to taking childcare leave, however, these processes are written neither in the Child Care and Family Care Leave Act nor in its guidelines. WLB and problems of balancing childcare with work differ from individual to individual; they are diverse, as is the nature of the workplaces where these individuals work. In that case, workplace communication itself is thought to be the important thing. However, compared to the legal systems in the three European countries, with their provision for flexible working styles, the Japanese system has not been designed to guarantee this point. Therefore, problems of promoting and ensuring communication between individual workers and management when the worker applies to take childcare leave remain unresolved in Japan's Child Care and Family Care Leave Act.¹⁴

¹³ In legal terms, a worker's right to apply for childcare leave is construed as a "formative right"; by applying for leave, the duty to provide labor is annulled (Nobuko Matsubara, *Yoku Wakaru Ikuji Kyugyoho no Jitsumu Kaisetsu* [Practical commentary on the Childcare Leave Act in plain language], [Tokyo: Institute of Labour Administration, 1992], 67). The employer may not countermand this legal effect by "refusing" the application (*ibid.*, 87).

¹⁴ On the state of enforcement of the Child Care and Family Care Leave Act in FY2012, Equal Employment Offices processed 87,334 cases of consultation (employers 71.0%, workers 11.9%, others 17.1%). As the content of consultation, cases related to childcare leave in Article 5 were most numerous with 27.8% (16,706 cases), followed by those related to shortening of prescribed working hours and changes to start or finish times in Article 23 with 20.8% (12,522 cases), these two alone accounting for almost half of the total. Of the consultations from workers, the most numerous were those related to disadvantageous treatment in connection with taking childcare leave with 29.3%

2. Taking Childcare Leave and Financial Safeguards

Regarding income safeguards during childcare leave, in Germany 67% of the average wage is paid for 14 months, while in France the early childhood benefit program (PAJE) is paid from the first child onwards. France also gives relatively generous guarantees of income, etc., including a birth grant paid as a lump sum, plus a basic allowance lasting three years based on a disposable income for 90% of households, and a “Supplement for Free Choice of Working Time” continuing for six months after the completion of childbirth leave. In the UK, similarly, 90% of the average wage is paid for the first 6 weeks of maternity leave (seen as the equivalent of childcare leave), and a weekly payment equivalent to around 15,000 yen or 90% of the average wage, whichever is lower, for the next 33 weeks. For fathers, the length of paid leave is very short at 2 weeks, but the amount and percentage is the same as for statutory maternity benefit. However, since parental leave is regarded as unpaid in the UK, this cannot be described as a system that contributes to WLB. In the USA, there is no statutory provision for paid leave, and systems of income guarantees borne entirely by workers have merely been created in the form of family leave insurance in some states.

In Japan, 50% of the wage before taking leave is paid from employment insurance funds as childcare leave benefit (Employment Insurance Act Article 61.4; Supplementary Provisions Article 12 of the 2009 amendment).¹⁵ Compared to the 67% for 14 months in Germany, and the wide-ranging system of generous income supplements and expense subsidies in France, the percentage paid in Japan feels on the low side. Compared to the UK, however, it seems about the same, and it is far better than in the USA. Since this point is linked to “continuing employment” as one of the objectives specified in the Child Care and Family Care Leave Act, the current rate of payment cannot generally be regarded as low.

The essence of the problem, rather, lies in gender-based wage disparity. In 2008, the gender wage gap in median earnings of full-time workers was 25.4% in Germany, 21.0% in the UK and 20.1% in the USA. The figure for France in 2007 was 12%. By contrast, the gap in Japan is 30.7%.¹⁶ This level of disparity merely reduces household income to a corresponding degree (unless the wife earns around the same salary as her husband), making it financially impractical for couples to judge whether the husband should opt to take child-

(1,392 cases), followed by those related to childcare leave itself with 22.9% (1,086 cases). On corrective guidance as separate from consultation, meanwhile, prefectural Equal Employment Offices processed a total of 23,380 cases. The content in descending order of frequency was childcare leave with 20.5% (4,796 cases), shortening of prescribed working hours and changes to start or finish times with 18.1% (4,231 cases), sick or injured child care leave with 16.9% (3,950 cases), restriction on work beyond statutory working hours with 15.7% (3,672 cases), and restriction on work beyond prescribed working hours with 11.7% (2,745 cases), among others (Employment Equality Survey).

¹⁵ The current government has a plan to raise the percentage of childcare leave benefit for the first 6 months (mother and father individually) from 50% to 67% with the intention of improving the rate of taking childcare leave by husband.

¹⁶ See Japan Institute for Labour Policy and Training, *Databook of International Labour Statistics* (Tokyo: Japan Institute for Labour Policy and Training, 2012), 173, table 5–11.

care leave. Therefore, in order to promote WLB, and particularly fair sharing of childcare between men and women or taking of childcare leave by men, eliminating gender-based wage disparity is an extremely important policy task.

3. Regulations on Long Working Hours

(1) Basic Approach to Long Working Hours

As the basic rule on working hours in Japan, LSA Article 32 (1) provides that “An employer shall not have a worker work more than 40 hours per week, excluding rest periods,” and (2) of the same Article that “An employer shall not have a worker work more than 8 hours per day for each day of the week, excluding rest periods” (hereinafter “statutory working hours”).

Of course, the basic rule on statutory working hours is not cast in stone. LSA Article 36 (1) broadly permits exceptions to statutory working hours, on condition that a written agreement with a majority labor union or a majority representative in the place of business is concluded¹⁷ and notified to the authorities.^{18, 19}

Rules on maximum working hours per day or per week have also been laid down in the other countries, but particularly in the three European countries, exceptions or exemptions based on agreements and individual contracts are essentially tolerated, and there is hardly any difference with Japan’s regulations. Therefore, aside from the fact that an element of WLB in regulations on working hours can be faintly discerned in the reason for enactment of Germany’s Working Hours Act (*Arbeitszeitgesetz*), generally speaking none of the countries has a clear element of WLB in its regulations on maximum working hours.²⁰

(2) Searching for a New Approach to Long Working Hours

Compared to the three European countries, a regulation not found in Japan is that of

¹⁷ LSA Enforcement Ordinance Article 16 (1) provides that an agreement shall be made to clarify “specific reasons why workers are required to work overtime or on days off, the type of jobs in which such workers are to be engaged, the number of such workers, hours for which such workers may work overtime in a day and a fixed period exceeding a day, and days off on which such workers may work.”

¹⁸ Article 36 merely provides for non-violatory validity when setting exceptions to the statutory working hours in Article 32. However, court precedents and academic theories construe that justification must be provided in labor contracts (rules of employment) to enable employers actually to order workers to work outside statutory hours (see the *Hitachi Ltd. Musashi Factory Case* [First Petty Bench of the Supreme Court, November 28, 1991, 45 Minshu 1270; Kazuo Sugeno, *Rodoho* [dai 9 han] [Labor and employment law (9th Edition)] [Tokyo: Kobundo, 2010], 298 ff).

¹⁹ LSA Article 36 (2) has been added from the 1998 amendment onwards. This gives the Minister of Health, Labour and Welfare the authority to prescribe “standards for limits on the extension of working hours set forth in the agreement set forth in the preceding paragraph” (Ministry of Labour Notification No.154 dated December 28, 1998; hereinafter “Limit Standards”). The Limit Standards prescribe periods of 15 hours for 1 week, 27 hours for 2 weeks, 43 hours for 4 weeks, 45 hours for 1 month, 81 hours for 2 months, 120 hours for 3 months, and 360 hours for 1 year (Limit Standards Article 3 [1]).

²⁰ In fact, as stated in Note 5 above, men in Japan are frequently observed to work long hours.

rest periods. Although limit standards have been prescribed in Japan as regulations on work beyond statutory working hours, the content of labor agreements specifying hours in excess of standards is not construed to be illegal or invalid.²¹ Rather, based on the fact that they are standards grounded in legislation, there are plans for stronger administrative guidance on labor agreements aimed at normalizing overtime work.²² On the premise of the legal structure whereby concluding and notifying a written agreement has non-violatory validity regarding the LSA basic rule on working hours, the looseness of overtime work order conditions stipulated in rules of employment or labor contracts has become one of the factors encouraging long working hours.²³

From the standpoint of comparative law, the codification of rest periods should ideally be studied as an option for regulations on maximum working hours contributing to WLB.²⁴ As well as this, measures designed to make better use of the Shorter Working Hours Promotion Act should be studied. The Shorter Working Hours Promotion Act cites “realizing workers’ healthy and fulfilling lives” as one of its objectives (Article 1), and stipulates that, as the duty of employers, efforts must be made to improve the setting of working hours, etc., in consideration of circumstances such as family responsibilities (Article 2 [2]). Employers must also endeavor to develop necessary systems, such as setting up Shorter Working Hours Promotion Committees with labor and management representatives as its members (Article 6). Moreover, the guidelines to the Shorter Working Hours Promotion Act illustrate specific measures based on voluntary efforts and mutual dialogue by labor and management. The Shorter Working Hours Promotion Act provides a starting point when companies feel it really necessary and want to promote WLB voluntarily, including the problem of working hours. The key to promoting WLB lies above all in efforts to improve culture and encourage understanding in individual workplaces; from the viewpoint of comparative law, it lies in communication between labor and management being incorporated in legislation related to WLB. As such, measures for making more effective use of the Shorter Working Hours Promotion Act should be studied with a view to promoting WLB.

4. Flexible Working Styles (Part-Time Labor, Flexible Working Hour Systems)

(1) Part-Time Labor

The Part-Time Act is designed for workers whose prescribed weekly working hours are shorter than those of ordinary workers employed at the same place of business (Article 2). As provisions governing the working conditions of these part-time workers, it includes

²¹ See Note 18 above, Sugeno (2010, 296–97).

²² See LSA Article 36 (4), and Note 18 above, Sugeno (2010, 296–97). Hajime Wada (“Rodo Jikan Kisei no Hoseisaku [Legal policy on working hour regulations],” *Journal of Labor Law*, no.110 [2007]: 72) argues in favor of making the Limit Standards a mandatory statute.

²³ See Atsuko Kajikawa, “Nippon no Rodo Jikan Kisei no Kadai [What needs to be done to the working time regulations in Japan?],” *The Japanese Journal of Labour Studies* 50, no. 6 (2008): 21.

²⁴ See Note 22 above, Wada (2007).

employers' obligation to indicate working conditions clearly (Article 6 [1]), the obligation to endeavor to hear opinions in the procedure for preparing rules of employment (Article 7), prohibition of discriminatory treatment of part-time workers deemed equivalent to ordinary workers (Article 8), the obligation to endeavor to decide wages with due consideration to balance (Article 9 [1]), the obligation to endeavor to decide the same wages as ordinary workers during a period meeting certain conditions (Article 9 [2]), the obligation to provide education and training to workers with equal job descriptions (Article 10 [1]), the obligation to endeavor to provide education and training with due consideration to balance (Article 10 [2]), the obligation to give due consideration regarding the use of welfare facilities (Article 11), the obligation to take measures for conversion to ordinary workers (Article 12), and the obligation to explain matters considered when deciding terms of treatment (Article 13).²⁵

Amid the diversity of these regulations in both content and methods, the Part-Time Act is characterized in that it divides part-time workers into four types and provides different regulations for each. The first type is "all part-time workers." The second is "part-time workers with equal job description" (Article 10 [1]). The third is "part-time workers with equal job description + system and deployment of assignment as ordinary workers" (Article 9 [2]), and the fourth is "part-time workers with equal job description + system and deployment of assignment + labor contract essentially without a definite period" (Article 8). In other words, the applicable conditions increase in sequence from type 1 to type 4, while the scope of application becomes increasingly narrow.

In the three European countries, the basic rule of compensation for part-time workers in proportion to hours worked, etc., has been made statutory as domestic legislation based on EU directives. The phrases used can be rendered as "balanced treatment."

A point that attracted interest when the Part-Time Act was amended was the provision on prohibiting discriminatory treatment in Article 8. Focusing just on the meaning of prohibiting discriminatory treatment in this provision, it would appear not to differ from regulations in the three European countries. But because Article 8 has an extremely narrow scope of application, there is little substantial meaning in creating this regulation. Therefore, a relaxation of the conditions ought to be considered, based on continuous and careful investigation of the actual situations facing part-time workers.²⁶

The point about the narrow scope of application could equally be applied to the pro-

²⁵ On the state of enforcement of the Part-Time Act, in FY2012 Equal Employment Offices processed 7,485 cases of consultation, of which those from employers accounted for 49.2% (3,685 cases), those from workers 19.0% (1,419 cases), and others 31.8% (2,381 cases). As a breakdown of the content of consultations from workers, the most numerous were related to annual leave, dismissal, social security, etc., with 33.5% (476 cases), followed by issuance of documents on labor conditions with 19.1% (271 cases), conversion to ordinary workers with 13.0% (184 cases), and explanation on terms of treatment with 11.2% (159 cases), in that order (Employment Equality Survey).

²⁶ In fact, only 2.5% of part-time workers meet the requirements in Article 8 (Ministry of Health, Labour and Welfare, "Summary Report of the General Survey on Part-time Workers 2011 [Business Establishment Survey]").

vision in Article 9 (2) of the Part-Time Act. This provides that employers must endeavor to decide wages for part-time workers whose system and deployment of assignment are the same as those of ordinary workers during a specific period of time, using the same method as applied to said ordinary workers during that period. In that Article 9 (2) involves an obligation to “endeavor,” it would suffice simply to make the equality of the job description a requisite condition.²⁷

Again, on the provision for obligatory efforts in Article 9 of the Part-Time Act, it could be construed that efforts have been made when the employer takes steps for communication between labor and management. From the standpoint of comparative law, labor-management communication (the obligation of sincere discussion) is extremely important as a legal policy related to WLB. Moreover, just as in the other countries, part-time workers in Japan include a high proportion of females; there is also an abiding awareness of gender-based role division, and females bear responsibility for actually raising children owing to gender-based wage disparity. In light of this situation, law policies that facilitate realistic efforts in companies and workplaces should be developed in order to raise the productivity of female workers, together with that of companies and the nation as a whole.²⁸

(2) Flexible Working Hour Systems

a. Irregular Working Hour Systems

There are three types of irregular working hour system, based on units of one month (LSA Article 32.2), one year (LSA Article 32.4), and one week (LSA Article 32.5). Although irregular systems are based on different periods for each of these, all of them require labor agreements to be concluded with a majority union or majority representative in the place of business, or rules of employment or others equivalent to these to be determined (in the case of irregular systems based on units of 1 month). These labor agreements are to be notified to the Labor Standards Inspection Office (LSA Enforcement Regulations Article 12.2.2 [2], Article 12.4 [6], Article 12.5 [4]).

These irregular working hour systems are significant in that, as long as weekly working hours averaged from actual hours worked within a fixed period do not exceed 40 hours, they are not treated as exceeding statutory working hours. This is so in spite of the rule on statutory working hours in LSA Article 32 (for irregular working hour systems based on weekly units, “the employer may have workers work for up to ten hours per day”; LSA Article 32.5 [1]). These systems can also be seen as significant in that, while increased

²⁷ See Michiyo Morozumi, “Kinto Taigu to Sabetsu Kinshi [Balanced treatment and bans on discrimination],” *The Japanese Journal of Labour Studies* 50, no. 7 (2008): 52.

²⁸ Although 20.4% of part-time workers had requested explanation of their terms of treatment, 21.4% of these were “Unconvinced” and 8.0% “Received no explanation.” This means that, in around 30% of cases, labor-management communication has not been successful even though explanation has been sought (Ministry of Health, Labour and Welfare, “Summary Report of the General Survey on Part-time Workers 2011 [Individual Worker Survey]”).

wages for overtime work are treated as arising only when working hours exceed both statutory working hours and the working hours stipulated in labor agreements, increased wages for overtime work only arise when working hours exceed the statutory working hours stipulated in LSA Article 32, even if there are days or weeks when working hours are fewer than statutory working hours. However, irregular working hour systems cannot be regarded as diffused to any significant degree.²⁹

b. Flexitime Systems

Flexitime systems (LSA Article 32.3) give workers discretion over their hours of starting and finishing work, on condition that they provide a certain number of labor hours within a certain period of time (the settlement period). That is, they can start and finish work freely within time bands of several hours in the morning and afternoon. Of course, there are cases where a “core time band” of several hours either side of noon is set, when labor must always be provided. On the other hand, some companies set “super-flexitime systems” with no specified core time. Overtime work in flexitime systems consists of hours that exceed the number of statutory working hours during the period in question.

The requirements for introducing flexitime systems are that the rules of employment should state that the system will be introduced and a majority labor agreement should be entered. However, there is no requirement for notifying the Labour Standards Inspection Office. The level of introduction and application of flexitime systems also leaves much to be desired.³⁰

c. Comparison with Other Countries

In Germany, flexitime systems based on labor agreements are expected to contribute to WLB, in the sense of giving workers free discretion regarding the allocation of working hours. The working hour account system (with “credits” received for overtime work and “debits” cashed in when going home early) makes it possible to organize flexible working hours, and could therefore contribute to WLB. Flexitime systems based on labor agreements and the like may also be introduced in France. However, these are thought to facilitate allocation of working hours to suit individual needs, in that the use of such systems is left to the free choice of workers. A distinctive situation is found in the UK, where the use of flexible employment systems is enshrined in law as a right of application. This is highly noteworthy in that it facilitates diverse allocations of working hours and methods of employment (on

²⁹ In FY2012, irregular systems based on yearly units had been introduced by 33.3% of companies, and those based on monthly units by 15.8%. The ratio of application to workers was 22.8% in the case of yearly systems and 17.8% for monthly systems (Ministry of Health, Labour and Welfare, “Summary Report of the General Survey on Working Conditions 2012”; hereinafter “General Survey on Working Conditions”).

³⁰ In FY2012, flexitime systems had been introduced by 5.2% of companies and applied to 7.8% of workers (General Survey on Working Conditions).

this point, see also II.1 above).

Japan's irregular working hour systems cannot generally be said to contribute to WLB, because the length of working hours differs between busy and off-peak periods. However, they cannot be said not to contribute to WLB at all, in the sense that the relatively long working hours during busy periods can be planned for in advance. In some ways, flextime systems cannot be seen as necessarily contributing to WLB, as they only offer freedom in the time of starting and finishing work, and the prescribed total working hours must be worked within the settlement period. Nevertheless, they can be beneficial for those whose needs they meet, in that they can ensure the flexibility of working hour allocation. If flex-time systems could be used in combination with part-time work, they would make a great contribution to WLB. In that case, Japan's flexible working hour system would differ little from those of the three European countries.

However, Japan's flexible working hour system was codified in a form that meets the needs of companies, in response to the need for a national policy on working hour reduction and the increasing service orientation of the economy; its purpose was to ensure the flexibility of business management. In that case, Japan's system offers flexibility for companies but not for workers. Any plan to promote WLB by using flexible working hour systems must at least involve spreading flexible working hour systems in a form that contributes to promoting WLB and taking steps to encourage the use of them. In other words, an important issue is how to ensure the flexibility not of "ways of employing workers" but of "ways of working." Again, because Japan's flexible working hour system is prescribed by the LSA, a "rigid" mandatory law with penalties for violation, it does not entail the concept of WLB. The key lies in how this point will be overcome. If this proves impossible, making effective use of the Shorter Working Hours Promotion Act should be studied.

5. Nursery Care^{31, 32}

(1) Approved (Public, Private) Nursery Centers

The term "nursery center" corresponds to "child welfare institution" in Article 7 (1) of the Child Welfare Act (CWA). A nursery center is "a facility intended for providing day-care to infants or toddlers lacking daycare based on entrustment from their guardians on a

³¹ On the current state of legal policies governing nursery care services and tasks for the future, see Yukiyo Hashizume, "Hoiku Nizu no Tayoka to Hoiku Sabisu [Nursery care services and the diversification of nursery care needs]," *Jurist*, no. 1383 (2009):29–34.

³² Systems and facilities of nursery care for infants (preschool children) include the approved nursery centers (public and private nurseries), certified nursery centers and non-approved nursery care facilities mentioned below, as well as day care by kindergartens, nursery rooms, home-based nursery care ("nursery care mamas"), and *nintei kodomoen* (certified nursery schools, jointly supervised by the Ministry of Education, Culture, Sports, Science and Technology and the Ministry of Health, Labour and Welfare), and also after-school kids' clubs for elementary school infants. In recent times, the Ministry of Health, Labour and Welfare has been vigorously promoting measures for nursery care under the heading "Plan to Accelerate the Zero Childcare Waiting List Project."

daily basis” (CWA Article 39 [1]).

“In the case where a guardian’s working or illness or any other reasons prescribed by a Municipal Ordinance in accordance with the standards specified by a Cabinet Order causes lack in daycare of an infant, a toddler... whose custody must be taken by the guardian, a municipal government (*author’s note: includes special wards; the same applies below*) shall, when the guardian applies, provide daycare to those children” (CWA Article 24 [1]). Again, “A person other than the national, prefectural and municipal governments may establish a child welfare institution, pursuant to the provisions of Ordinances of the Ministry of Health, Labour and Welfare, with the prefectural governor’s approval” (CWA Article 35 [4]). As such, bodies authorized to establish and operate nursery centers are taken to consist of public nursery centers and private approved nursery centers, and a condition for admission appears to be that “a guardian’s working” or other reasons cause a “lack in daycare” for their infants. In that case, nursery centers may be understood as existing for the WLB of working parents with young children.

Nursery care hours are from 07:15 to 18:15 in one municipal nursery center, but extended nursery care may be provided from 18:15 to 19:15. The opening hours of private nursery centers are mostly in line with those of municipal nursery centers, but some centers offer extended nursery care until 20:15 or 22:15. A 24-hour service is even available in some nursery centers.

Nursery care fees, in both public and private centers, are based on the age of the child entrusted to nursery care and the parental income (amounts of income tax and residents’ tax). The fees may be reduced or exempted altogether, however, depending on the family’s financial circumstances.

As of April 2013,³³ there were 24,038 nursery centers with an admission capacity of 2,288,819 and actually providing care for 2,219,581 children in Japan. All of these figures are the highest on record, and infrastructure development for nursery centers has also become increasingly enhanced as the years have gone by.

There is still a long waiting list of 22,741 children, however, despite annual decreases since the peak in 2010. The circumstances of each local authority or other locality are thought to lie behind this. But at the same time, there is also thought to be some kind of mismatch between parents’ nursery care needs and efforts by national, prefectural and municipal governments.³⁴ The waiting list ratio for younger infants aged 0 to 2 is 82.0%, far higher than that for toddlers aged 3 or older at 18.0%; the waiting list ratio for 1- and

³³ Ministry of Health, Labour and Welfare (2013), “Summary of the Situation Concerning Nursery Centers (April 1st, 2013).”

³⁴ According to prior research, analysis related to continued employment by women suggests that “continued employment is difficult unless working hours, after returning to work, fit the hours of childcare services” (Japan Institute for Labour Policy and Training [2010], *Josei no Hatarakikata to Shussan Ikujiki no Shugyo Keizoku* [Women’s ways of working and job continuation at the stage of childbirth/childcare], JILPT Research Report no. 122, 43 ff).

2-year-olds, in particular, is 68.7%. From this, one would infer that parents face major problems in admitting children to nursery centers on completing childcare leave.

(2) Certified Nursery Centers

Certified nursery centers provide nursery care services in line with the nursery care needs of parents with young children. Local authorities set their own standards for establishment, etc., and significant participation by private businesses is permitted. Since these centers are not grounded in legislation such as the Child Welfare Act, in legal terms they are classified as non-approved nursery care facilities.

In the case of Tokyo, where the waiting list is the longest in the whole of Japan (8,117 children), centers are divided into types A and B depending on whether established by private businesses (type A) or by individuals (type B), the ages of children admitted (type A: 0–5 years, type B: 0–2 years), and the number of children admitted (type A: 20–120, type B: 6–29).

Standards on the management and operation of businesses and their facilities are the same for both type A and type B. Also, in both type A and type B, the facility standards and employees (nursery care workers) are supposed to be the same as (or compliant with) the standards applied to approved nursery centers. Certified nursery centers must also undergo on-site inspections of their compliance with standards at least once a year (Child Welfare Act Enforcement Regulations Article 38).

Opening hours are basically set at 13 hours, and although fees can be set freely, there is an upper limit of 80,000 yen up to age 3 and 77,000 yen from age 3 onwards when used for 220 hours or more in one month.

According to the Tokyo Metropolitan Government's Bureau of Social Welfare and Public Health, there were 613 type A centers and 86 type B centers as of September 1st, 2013, totaling 699 in all. The 613 type A centers had a total intake of 21,865 children and the type B centers had 1,781, while nursery care hours for both types were generally from 7 in the morning until around 9 at night.

(3) Non-Approved Nursery Care Facilities

“Non-approved nursery care facilities” is a general term referring to nursery care facilities (including certified nursery centers) not approved by prefectural governors or others based on the Child Welfare Act (hence non-approved).

These centers are established and operated by diverse bodies, and various aspects of nursery care including the age of infants admitted, nursery care hours and fees are left to the free discretion of those bodies. Consequently, night-time nursery care after 8pm, overnight nursery care, and other services are sometimes provided in exchange for relatively expensive nursery care fees. The Tokyo Metropolitan Government has stipulated supervisory guidelines and standards for the establishment and operation of non-approved nursery care facilities. To enforce these, supervision by on-site inspection is sometimes carried out.

As of March 2012, there were 7,739 non-approved facilities throughout Japan, an increase of 2.1% from the previous year.³⁵ Conversely, the number of children admitted fell by 0.6% from the previous year to 184,959. The rise in needs for non-approved nursery care facilities is thought to have peaked with the enhancement of public nursery care services (such as approved or certified nursery centers). Of course, in terms of nursery care hours, there must still be a demand for the use of non-approved nursery care facilities in time bands not covered by public nursery care services. However, since around half of these nursery centers are not compliant with standards, improving quality is a challenge for the future.

(4) Systems of Nursery Care for Company Employees

According to a previous survey,³⁶ as one aspect of WLB measures being tackled by employers, 7.5% of companies “have established and operate nurseries within the place of business” for regular employees, 9.8% “assist with the cost of childcare,” and 4.5% “provide information on external childcare services.” These are significantly lower than the ratios of companies introducing systems of leave, holidays and working hours based on law. Companies may be hesitating to develop systems of services related to nursery care for their employees, due to the cost involved in developing infrastructure or gathering data to provide information on actual nursery care services.

Nevertheless, in 2011 there were 4,165 nursery care facilities attended by 61,000 children within places of business, both figures representing new record highs. This would appear to reflect progress in the policy of promoting WLB at national level and promoting measures to support next-generation upbringing, as well as moves to secure human resources, improve productivity and/or increase work efficiency in individual companies, among other factors. Moreover, grant payments and preferential tax measures must also be having an effect.

(5) Comparison with Other Countries

Firstly, like the other countries, Japan has developed very diverse systems (although Japan has no system of free early-years education similar to those in France and the UK). Numbers of approved nursery centers, certified nursery centers, non-approved nursery center (including nursery care facilities within companies) and others have increased since the various programs were first started, and are gradually catching up with needs on the demand side. However, there is still a mismatch between supply and demand in urban areas, with many infants still waiting for places. In future, therefore, a challenge will be how to elimi-

³⁵ For details, see Ministry of Health, Labour and Welfare (2013), “Summary on the Status of Non-Approved Nursery Care Facilities in FY2011.”

³⁶ Director General for Policies on Cohesive Society, Cabinet Office (2006), “Survey Report on Childcare Support by Companies and the Effects of Its Introduction.”

nate the problem of waiting lists in urban areas while maintaining and evolving diverse systems of nursery care. The causes behind the mismatch will also need to be investigated in detail.

The second point concerns the relationship between parents' burdens of nursery care costs and their employment activity. Particularly in France, support for the WLB of mothers with young children is cited as the purpose behind introducing PAJE, with the intention of encouraging female workers to re-enter the labor market. In some countries, systems of nursery care overlap with free early-years education for infants. If working full-time means paying for nursery care, this might cause a tendency, particularly among low-wage or poorer families in the country concerned, to use free early-years education as a substitute for nursery care. This would then encourage parents to work part-time instead of full-time, thus restricting their employment (i.e. low-wage or poorer families would remain as such).

In Japan, where nursery care costs are based on income and some local authorities set upper limits for non-approved nursery care facilities, measures to avoid such restriction of employment could be regarded as established. Particularly in the case of non-approved nursery care facilities, however, a basic assumption is that the parties involved are free to set their own fees, etc., in light of the trend toward deregulation of welfare policies and market liberalization. Thus, study should be made of steps to decide detailed standards and reduce cost burdens, while safeguarding the freedom of working parents with children to choose between jobs or raising children, or both, as in the case of PAJE in France.

Thirdly, there is the issue of financial assistance to companies and organizations implementing nursery care. In the European countries, particularly Germany and France, local authorities and other bodies responsible for nursery care are incentivized to establish and operate nursery care facilities through subsidies or preferential tax measures. Financial assistance is also provided in this form in Japan. The content of this support should be reconsidered to further enhance diverse nursery care facilities.

On the subject of corporate nursery care systems, nursery care within the place of business is probably useful in some cases and not in others. The companies, at least, need to ascertain their employees' nursery care needs, as well as other (internal) systems related to WLB, by communicating with them individually. Having done so, steps will need to be taken for childcare support measures, such as nursery care tailored to the situation of the establishment or company in question. At national level, systems to ensure promotion of this kind of communication, including grants and other financial incentives, will need to be studied.