

Japan Labor Review

Volume 12, Number 1, Winter 2015

Special Edition

The Outlook for Employment of Persons with Disabilities in Japan

Articles

Recent Trends and Issues in Employment Policy on Persons with Disabilities

Hitomi Nagano

Reasonable Accommodation for Persons with Disabilities in Japan

Tamako Hasegawa

The Employment of People with Mental Disabilities in Japan: The Current
Situation and Future Prospects

Nobuaki Kurachi

Disability Employment and Productivity

Akira Nagae

Potential and Challenges of Mutually-Oriented Social Enterprises
Where People with and without Disabilities Work on an Equal Basis:
Case Study on *Kyodoren*

Akira Yonezawa

Article Based on Research Report

Personnel Management of Restricted-Regular Employees

Itaru Nishimura

JILPT Research Activities



EDITOR-IN-CHIEF

Kazuo Sugeno, *The Japan Institute for Labour Policy and Training*

EDITORIAL BOARD

Sumiko Ebisuno, *Rissho University*

Yukie Hori, *The Japan Institute for Labour Policy and Training*

Shingo Ikeda, *The Japan Institute for Labour Policy and Training*

Ryo Kambayashi, *Hitotsubashi University*

Yuichiro Mizumachi, *Tokyo University*

Harumi Muroyama, *The Japan Institute for Labour Policy and Training*

Souichi Ohta, *Keio University*

Tadashi Sakai, *Hosei University*

Hiromi Sakazume, *Wako University*

Yoshihide Sano, *Hosei University*

Masaru Sasaki, *Osaka University*

Tomoyuki Shimanuki, *Hitotsubashi University*

Hisashi Takeuchi, *Waseda University*

The *Japan Labor Review* is published quarterly in Spring (April), Summer (July), Autumn (October), and Winter (January) by the Japan Institute for Labour Policy and Training.

EDITORIAL OFFICE

The Japan Institute for Labour Policy and Training

International Affairs Department

8-23, Kamishakujii 4-chome, Nerima-ku, Tokyo 177-8502 Japan

TEL: +81-3-5903-6315 FAX: +81-3-3594-1113

Email: jlr@jil.go.jp

Homepage: <http://www.jil.go.jp/english/JLR/index.htm>

Printed in Japan

How to Receive the *Review*:

The *Review* is distributed free of charge. (However, in some cases the receiver will have to pay for postage.) To receive the *Review*, please complete the order form and fax it to the Editorial Office, or access <http://www.jil.go.jp/english/index.html>.

Japan Labor Review

Volume 12, Number 1
Winter 2015

CONTENTS

The Outlook for Employment of Persons with Disabilities in Japan

Articles

- 5 Recent Trends and Issues in Employment Policy on Persons with Disabilities
Hitomi Nagano
- 21 Reasonable Accommodation for Persons with Disabilities in Japan
Tamako Hasegawa
- 38 The Employment of People with Mental Disabilities in Japan:
The Current Situation and Future Prospects
Nobuaki Kurachi
- 56 Disability Employment and Productivity
Akira Nagae
- 76 Potential and Challenges of Mutually-Oriented Social Enterprises
Where People with and without Disabilities Work on an Equal Basis:
Case Study on *Kyodoren*
Akira Yonezawa

Article Based on Research Report

- 97 Personnel Management of Restricted-Regular Employees
Itaru Nishimura

124 **JILPT Research Activities**

NEXT ISSUE (Spring 2015)

The spring 2015 issue of the Review will be a special edition devoted to **Changes in Industrial Structure and Movement of Human Resources.**

Introduction

The Outlook for Employment of Persons with Disabilities in Japan

In 2013, the number of persons with disabilities employed at enterprises with 50 or more employees, where hiring of disabled persons is mandated by law, stood at 408,947.5, setting a record high for the tenth consecutive year. While numerous challenges exist, it is clear that employment of persons with disabilities is steadily on the rise in Japan.

Amid this rise in the number of employed persons with disabilities, 2013 saw the first major amendment since 1998 of the Act on Employment Promotion etc. of Persons with Disabilities, which has thus far underpinned disabled persons' employment in Japan. The expectations are that this amendment will contribute not only to promotion of employment, in terms of a quantitative increase in the number of disabled persons hired, but also to qualitative improvements in working conditions, such as allocation of duties and adaptation of workplaces so as to enable continued employment over the long term.

What changes to employment of persons with disabilities in Japan result from the most recent amendment to the law? This special feature gives an overview of the current status of employment of persons with disabilities, and then outlines changes occasioned by the amendment and issues that these changes have brought to the forefront. The discussion herein aims to clarify matters that require consideration in order to move disabled persons' employment and labor in a positive direction, from the perspective of both the individuals and the organizations involved. The following is a description of the articles appearing in this issue, and their relation to the overall theme of this feature.

Hitomi Nagano's article "Recent Trends and Issues in Employment Policy on Persons with Disabilities" specifically outlines the content of the 2013 Amendment of the Act on Employment Promotion etc. of Persons with Disabilities and examines outstanding issues remaining after the amendment, including those inherent in the amendment itself. The amendment introduces the principle of prohibiting discrimination on grounds of disability, and makes it obligatory to employ persons with mental disabilities. The approach to disabled persons' employment taken in Japan thus far has been focused on employment rates (employment quotas), but now the discrimination prohibition approach has been added, with the goal of having the two approaches reciprocally complement one another and effectively promote employment of persons with disabilities. The hope is that the discrimination prohibition approach will contribute to qualitative improvements in disabled employment, but the article suggests that there are numerous issues employers need to examine when actually implementing discrimination prevention initiatives, including the key questions of what constitutes discrimination on the basis of disability, what constitutes unfair discriminatory treatment, and how this approach and the employment rate approach should be reconciled so as to ensure compatibility.

The two ensuing articles discuss two key aspects of the 2013 amendment, namely the obligation of employers to provide reasonable accommodation, and the newly added man-

dating of employment of persons with mental disabilities. The first of these raises the question of what exactly is meant by “reasonable accommodation.” Tamako Hasegawa’s article “Reasonable Accommodation in Japan” examines the content of reasonable accommodation, referencing discussions of the subject in the United States, and outlines issues surrounding the provision of reasonable accommodation in Japan. Reasonable accommodation, an idea that originated in the US, aims to ensure equality between persons with disabilities and those without. While this perspective differs significantly from the one that has prevailed in Japan, wherein persons with disabilities are a group to be sheltered, comparison of the actual manner in which persons with disabilities are accommodated in the US and Japan reveals commonalities. The article also notes the importance of making “reasonable accommodation” consistent with the current situation in Japan, including an employment system that does not restrict the positions or work locations of disabled persons in the manner of the American system, and growth in the number of non-regular employees. Because it remains an unfamiliar concept to many in Japan, reasonable accommodation has been responsible for some degree of anxiety and confusion. There is a need for further examination of reasonable accommodation, in light of the accommodation that Japanese enterprises have offered persons with disabilities thus far.

The other key aspect of the amendment of the Act on Employment Promotion etc. of Persons with Disabilities is the legal mandating of employment of persons with mental disabilities. Nobuaki Kurachi’s article “The Situation and Prospects of Employment for People with Mental Disabilities” begins by outlining the historical background of support systems for persons with mental disabilities in Japan, including hiring and employment support. Currently, while employed persons with mental disabilities continue to make up a low percentage of the overall number of employed persons with disabilities, the employment rate is exhibiting truly astounding growth, with further dramatic growth expected in the future. Not only is the number of employed persons with mental disabilities growing, the target demographic is diversifying, with a radical paradigm shift occurring in the area of depression and a rising number of employed persons with developmental disabilities. In this context, Kurachi’s article points out the need for human resource support from employment and occupational support institutions, not only for persons with mental disabilities but also for employers, to facilitate continued employment over the long term. It also asserts that the time has come for re-examination of programs with the aim of providing solid support for people who truly require it, in light of improvements in the precision of diagnostic technologies at medical institutions. In examining who requires support, and of what kind, it is vital to keep in mind that support for employed persons with disabilities will inevitably take on an increasingly individualized and complex character.

Now, let us turn our attention to the perspective of enterprises and the current status of organizations, on which numerous obligations are being placed. While advances have been made in terms of the legal framework for employment of persons with disabilities, the reality is that progress has not been made as envisioned. As mentioned earlier, thus far an approach based on employment rates has been applied in Japan. Akira Nagae’s article

“Disability Employment and Productivity” takes a sample of individual companies under the jurisdiction of the Tokyo Labour Bureau to conduct empirical analysis on the relationship between statutory employment rates and corporate performance, and thus evaluate the effectiveness of Japan’s policy on disabled persons’ employment. The results of this analysis reveal that companies that met the statutory employment rate performed worse (in terms of profits) than those that did not. While the current employment quota-based levy system has bolstered employment of persons with disabilities, the system does not effectively cover corporate burdens associated with employment of persons with disabilities. The article asserts that an anti-discrimination approach does not actually contribute to growth in the number of disabled persons employed, and to achieve this it is necessary to reinforce policies aimed at equalizing corporate burdens in the form of increased levies and subsidies.

Employers of persons with disabilities are not necessarily corporations. In general, disabled persons’ employment is broadly divided into two categories, general employment and social-welfare employment, but the focus of Akira Yonezawa’s article “Potential and Challenges of Mutually-Oriented Social Enterprises Where People With and Without Disabilities Work on an Equal Basis: Case Study on Kyodoren” focuses on a type of workplace that falls into a separate category, namely mutually-oriented social enterprises (MSEs) encompassing a diverse range of workers, and clarifies the organizational characteristics and features of work at these enterprises. In addition to persons with disabilities, MSEs provide employment opportunities to other employment-challenged workers such as single parents and homeless individuals, but a key characteristic is that these people work alongside non-employment-challenged workers on an equal footing. While relatively low wages are a problematic issue, feedback from workers is positive, with employment-challenged workers appreciating the flexible work conditions and low levels of on-the-job pressure, and voluntarily employed workers (i.e. those who chose to work at the enterprise of their own accord, not because of difficulties in finding employment) enjoying high levels of professional fulfillment and sense of their work’s significance, and a high degree of discretionary authority. Particularly with regard to working styles, MSEs have the potential to provide highly useful references for the broader endeavor to create workplaces that effectively accommodate persons with disabilities.

All of these articles provide perspectives of great importance in understanding the trajectory of employment of persons with disabilities in Japan, a field that is poised to change as a result of the amendment to the Act on Employment Promotion etc. of Persons with Disabilities, and in examining this field’s potential future directions. We are confident that this special feature will aid overseas readers in understanding disabled persons’ employment in Japan, and hope that it provides opportunities for consideration of the future course of this field in the readers’ own countries.

Hiromi Sakazume
Wako University

Recent Trends and Issues in Employment Policy on Persons with Disabilities

Hitomi Nagano

Sophia University

Until now, Japan's employment policy on persons with disabilities has been based on the quota system. However, the 2013 Amendment of the Act on Employment Promotion etc. of Persons with Disabilities introduces some significant changes. Specific additions to the policy to promote employment of persons with disabilities under the Amendment are (i) the principle of prohibiting discrimination against persons with disabilities and (ii) the obligation on employers to provide reasonable accommodation. These reflect the adjustment of domestic legislation needed to ratify the Convention on the Rights of Persons with Disabilities (adopted by the United Nations General Assembly in 2006), and have been the focus of much social interest. The amendment also makes it obligatory for employers to employ persons with mental disabilities, who until then had only been counted in employment quotas. With these changes, Japan's employment policy on persons with disabilities can be said to have entered a new phase.

This paper reflects on the content of this amendment and discusses various issues the incoming disabled employment policy must face. Namely, what will be classed as discrimination on grounds of disability? What must employers provide as reasonable accommodation? How will the principle of prohibiting discrimination and the conventional quota system coexist? What other challenges will arise when employing persons with mental disabilities? These points will be extremely important when considering the employment of persons with disabilities in future.

I. Introduction

Japan's policy on persons with disabilities went through some very big changes during the 2000s. Employment policy on persons with disabilities was no exception, as it was the subject of unprecedentedly lively debate. This was triggered by the Convention on the Rights of Persons with Disabilities (referred to below as "the Convention"), which was adopted by the UN General Assembly in December 2006 and came into effect in May 2008.

Japan signed the Convention in September 2007, but still needed to adjust domestic legislation in order to ratify it.¹ Among the general obligations, the Convention commits signatory countries to prohibiting discrimination on the basis of disabilities and taking all appropriate steps to ensure that reasonable accommodation is provided to persons with disabilities (Articles 4 and 5). On the issues of work and employment, in particular, signatories are committed to a number of pledges, including the following. (i) To prohibit discrimination on the basis of disability with regard to all matters concerning all forms of employment,

¹ Japan ratified the Convention in January 2014.

including conditions of recruitment, hiring and employment, etc. (ii) To ensure that reasonable accommodation is provided to persons with disabilities in the workplace. (iii) To promote the employment of persons with disabilities in the private sector through appropriate policies and measures, which may include affirmative action programs, incentives and other measures. And (iv) to protect the rights of persons with disabilities, on an equal basis with others, to just and favorable conditions of work, safe and healthy working conditions, and the redress of grievances.

Partly due to these requirements of the Convention, steps to revise Japan's employment policy on persons with disabilities were set in motion, culminating in the 2013 Amendment of the Act on Employment Promotion etc. of Persons with Disabilities (referred to below as "the Employment Promotion Act"). With this, Japan's disabled employment policy can be said to have entered a new phase.

This paper takes the general theoretical viewpoint of the "Future Employment of Persons with Disabilities in Japan," as featured in this special issue which was drawn up in light of the situation above. First, moves to amend the Employment Promotion Act will be outlined (Section II). This will be followed by reflection on the content of the 2013 Amendment of the Employment Promotion Act (Section III). Finally, outstanding issues in employment policy on persons with disabilities after the amendment will be examined (Section IV).

II. Moves to Amend the Employment Promotion Act

1. Progress to Date

The number of persons with disabilities in employment has been increasing year by year.² This increase has been supported by various measures based on the Employment Promotion Act. Ever since it was first established as the Act on Employment Promotion of Physically-Disabled Persons in 1960, the Act has been used to promote the employment of persons with disabilities, with primary focus on the employment quota system. In 1976, the levy system was introduced, and the obligation to make efforts was changed to a legal obligation to employ persons with physical disabilities. Then, in 1987, the scope of application of the Act was changed from "persons with physical disabilities" to "persons with disabili-

² According to the "2013 Aggregated Results on the Status of Disabled Employment," 408,947.5 disabled persons were employed by private companies (companies with a scale of 50 or more employees, i.e. subject to the employment quota system) as of June 1st, 2013. This breaks down into 303,798.5 with physical disabilities, 82,930.5 with intellectual disabilities, and 22,218.5 with mental disabilities. Meanwhile, there were 62,249 disabled persons working in government, local authorities and other public institutions, as well as public corporations and elsewhere. To this is added the number of disabled persons working for companies not subject to the employment quota system. Persons with severe physical disabilities and those with severe intellectual disabilities are counted as double, while part-time workers with physical, intellectual and mental disabilities other than severe categories are counted as half.

ties,” enabling persons with intellectual disabilities to be included in employment quotas (this “inclusion” means that, when employing persons with intellectual disabilities, they are counted as employed persons with disabilities in the same way as persons with physical disabilities). In 1997, it was also made mandatory to employ persons with intellectual disabilities. Again, in 2005, it became possible to include persons with mental disabilities in employment quotas. And in 2008, this was extended to include part-timers with working hours of at least 20 hours but less than 30. In the meantime, the employment quotas themselves were gradually raised, rising from 1.1% (private companies: site-based businesses) when the system was first launched to 2.0% (private companies) in April 2013. The employment quota system could thus be said to have developed as an important system aiming to promote the employment of persons with disabilities, while gradually expanding the scope of persons with disabilities to which it applies and expanding the applicable corporate scale by gradually raising the employment quotas themselves.³

2. Events Leading to the 2013 Amendment

While Japan’s employment policy on persons with disabilities has thus evolved with its focus on the employment quota system, a legal amendment that significantly changed the nature of the policy came into being in 2013.

One stimulus for the amendment can be found in the adoption of the Convention, as mentioned above. This is because Japan had to adjust its domestic legislation before it could ratify the Convention. In terms of the disabled employment situation, moreover, employment of persons with mental disabilities in private companies had been increasing and the scope of jobs available to them had also broadened, in response to the 2005 amendment that persons with mental disabilities could be included in employment quotas. These various circumstances contributed to moves aimed at amending the Employment Promotion Act.

The processes leading to the amendment can be summarized as follows. Firstly, after the Democratic Party came to power in 2009, the Cabinet decided “Basic Directions for Promoting Reforms of Systems for Persons with Disabilities” in 2010. This raised several matters for review in connection with work and employment. In response to this, three research groups were set up inside the Ministry of Health, Labour and Welfare to study various matters for review, and in August 2012, each group compiled a report on its findings. Then the Labour Policy Council’s Subcommittee on Employment of Persons with Disabilities held a review based on the content of these reports. The Subcommittee’s Statement of

³ On the historical development of disabled employment policy, see Noriomi Soya, *Shogaisha Koyo Taisaku no Riron to Kaisetsu* [Theory and commentary on disabled employment policy] (Tokyo: The Institute of Labour Administration, 1998); Naoki Tezuka, *Nippon no shogaisha koyo: Sono Rekishi, Genjo, Kadai* [Disabled employment in Japan: Its history, present status and issues] (Tokyo: Koseikan, 2000); Hitomi Nagano, *Shogaisha no Koyo to Shotoku Hoshō: Furansuho o Tegakari to Shita Kisoteki Kosatsu* [Employment and income security of persons with disabilities: A basic study taking hints from French Law] (Tokyo: Shinzansha, 2013): 41–52.

Opinion (“On the Future Enhancement and Reinforcement of Policy on Employment of Persons with Disabilities”) was published in March 2013. Finally, a bill reflecting the content of the Opinion Statement was submitted to the Diet on April 19, 2013, and after deliberation by both Houses, the “Act for Partial Amendment of the Act on Employment Promotion, etc. of Persons with Disabilities (Law No.46 of 2013)” was enacted with unanimous approval on June 13, 2013.⁴

III. Content of the 2013 Amendment

The amendment that was enacted in 2013 introduced four important changes to the system. Namely, it (i) clarified the scope of persons with disabilities, (ii) introduced prohibition of discrimination against persons with disabilities and the obligation to provide reasonable accommodation for them, (iii) made it mandatory to employ persons with mental disabilities (revised the basis for calculating the statutory employment rate), and (iv) provided for support in processing grievances and resolving disputes.⁵

1. The Scope of Persons with Disabilities

The first change revises the definition of persons with disabilities. This serves to clarify the scope of persons with disabilities covered by the Employment Promotion Act.

Before the amendment, the Employment Promotion Act defined persons with disabilities covered by it as “those who, because of physical, intellectual or mental disabilities..., are subject to considerable restriction in their vocational life, or who have great difficulty in leading a vocational life, over a long period of time.” In the amendment, this was revised to “those who, because of physical, intellectual, mental (including developmental...) disabilities or other impairments of physical or mental functions..., are subject to considerable restriction in their vocational life, or who have great difficulty in leading a vocational life, over a long period of time” (Article 2 [i]). The purpose of this change is to clarify, in a form consistent with the provisions of the Basic Act for Persons with Disabilities as amended in 2011, that mental disabilities include developmental disabilities and that disabilities caused by intractable diseases are also included in disabilities provided under the Employment Promotion Act.

⁴ Employment Measures for Persons with Disabilities Division, Employment Measures for the Elderly and Persons with Disabilities Department, Employment Security Bureau, Ministry of Health, Labour and Welfare, “Kaisei Shogaisha Koyo Sokushinho no Gaiyo [Outline of the Amended Act on Employment Promotion etc. of Persons with Disabilities],” *Quarterly Labor Law* 243 (Winter 2013): 2–5; Tamako Hasegawa, “Shinpo Kaisetsu, Shogaisha Koyo Sokushinho no Kaisei [New law commentary: Amendment of the Act on Employment Promotion etc. of Persons with Disabilities],” *Hogaku Kyoshitsu* 398 (November 2013): 52–54.

⁵ Of these, (i) came into force on the date the amendment was promulgated (June 19, 2013). (ii) and (iv) will take effect from April 1, 2016, and (iii) from April 1, 2018. The article and paragraph numbers below are as of April 1, 2018, when the 2013 Amendment will come into full force.

Incidentally, persons with disabilities covered by the principle of prohibiting discrimination under the Employment Promotion Act are the persons with disabilities provided in Article 2 (i). Of these, persons subject to the employment quota system are limited to those with physical or intellectual disabilities, and those with mental disabilities who have mental disability passbooks certifying that they have a mental disability (Article 37). In other words, there are discrepancies in the scope of persons with disabilities covered by different measures.

2. Prohibiting Discrimination and Providing Reasonable Accommodation

The second change is the introduction of provisions on “prohibiting discrimination against persons with disabilities” and “measures to secure equal opportunities for both persons with disabilities and persons without disabilities in the employment sector (obligation to provide reasonable accommodation).”⁶ This is an important amendment that adds a “qualitative” improvement in disabled employment to the “quantitative” improvement previously targeted by disabled employment policy. Until this change, with no explicit provision on prohibiting discrimination on grounds of disability or providing reasonable accommodation, the general clauses of the Civil Code (e.g. public morality, the principle of good faith) and provisions of labor law (e.g. abuse of rights) had been used to outlaw discrimination against persons with disabilities, or to impose an obligation for reasonable accommodation.⁷ However, it used to be very difficult for these clauses and provisions to be recognized in actual court cases. Therefore, the amendment could be seen as very significant in that it adds explicit provisions on prohibiting discrimination and providing reasonable accommodation to the Employment Promotion Act.⁸

A. Prohibition of Discrimination

Provisions prohibiting discrimination are divided into those related to recruitment and

⁶ The Disabled Persons Discrimination Elimination Act was also enacted in 2013, as a general law prohibiting discrimination on grounds of disability. Article 13 of that Act states, “Measures to be taken by administrative organs, etc., and businesses as employers to eliminate discriminatory treatment against workers on grounds of disability shall be governed by the Act on Employment Promotion, etc. of Persons with Disabilities.” As such, the Discrimination Elimination Act merely imposes the obligation to *make efforts* to provide reasonable accommodation (Discrimination Elimination Act, Article 8). As discussed below, however, private businesses (employers) are legally obliged to *provide* reasonable accommodation to workers (Employment Promotion Act, Articles 36–2, 36–3).

⁷ The Sun Oil (Dismissal of Person with Visual Impairment) Case (Sapporo High Ct., Judgment, May 11, 2006, Rohan 938–68; the Hanshin Bus (Consideration for Service) Case (Kobe Dist. Ct., Amagasaki Branch, Judgment, Apr. 9, 2012, Rohan 1054–38); the Company X Case (Tokyo Dist. Ct., Judgment, Dec. 25, 2012, Rohan 1068–5), etc.

⁸ Masahiko Iwamura, Yoshimi Kikuchi, Satoshi Kawashima, and Tamako Hasegawa, “Shogaisha Kenri Joyaku no Hijun to Kokunaiho no Aratana Tenkai: Shogaisha ni Taisuru Sabetsu no Kaisho o Chushin ni [Ratification of the Convention on the Rights of Persons with Disabilities and new developments in domestic law: With focus on eliminating discrimination against persons with disabilities],” *Quarterly Jurist* 8 (Winter 2014): 16, 17.

hiring situations and those concerning situations after hiring.⁹ The provision on the former is that “Employers... must give equal opportunities to persons with disabilities as to persons without disabilities” (Article 34), and on the latter, that “Employers must not give unfair discriminatory treatment in terms of the decision of wages, the implementation of education and training, the utilization of welfare facilities and other treatments for workers, compared to workers without disabilities, on grounds that they are persons with disabilities” (Article 35). In other words, the prohibition of discrimination extends to all aspects connected with employment.

B. Obligation to Provide Reasonable Accommodation

Similarly, provisions on the obligation to provide reasonable accommodation are also divided into recruitment and hiring situations, and situations after hiring. The provision on the former is that “Employers ... must take necessary measures, taking into account the characteristics of the disability, following a request from a person with disabilities” (Article 36–2), and on the latter, that “Employers ... must take steps such as preparing the facilities necessary for the smooth performance of work, the allocation of support personnel and other necessary measures, taking account of the character of the disabilities the workers have” (Article 36–3). The two differ on the point of whether a request from a person with disabilities is necessary or not. But both include a proviso to the effect that this does not apply when taking necessary measures would place “undue hardship” on the employer. This point is shared by both provisions.

Another provision states that, when providing reasonable accommodation, employers must fully respect the wishes of persons with disabilities, prepare a system necessary for engaging in consultation with workers with disabilities employed by them and appropriately responding to the same, and take other necessary measures in terms of employment management (Article 36–4).

C. Preparation of Guidelines, etc.

On the prohibition of discrimination and the obligation to provide reasonable accommodation, the Minister of Health, Labour and Welfare is to draw up guidelines enabling employers to appropriately address the prohibition of discrimination, and to appropriately and effectively provide reasonable accommodation (Article 36, Article 36–5). The Minister may also, when deeming it necessary, issue advice, guidance or recommendations to employers (Article 36–6). The action to be taken by employers is to be made clear by such guidelines and advice, etc., from the Minister of Health, Labour and Welfare.

3. Mandatory Employment of Persons with Mental Disabilities

In addition to the above, this amendment has made it mandatory to employ persons

⁹ This is the same scenario as in the Equal Employment Opportunity Act for Men and Women.

with mental disabilities (revised the basis for calculating the statutory employment rate).

Under the existing employment quota system, when employing persons with mental disabilities, they can be included in employment quotas as persons with disabilities (exceptional application). However, persons with mental disabilities are not included in the basis for calculating the statutory employment rate.¹⁰ This has now been amended so that persons with mental disabilities are added to the basis for calculating the statutory employment rate.

For the first five years after the amendment comes into effect, however, a measure will be adopted to enable the increase in the statutory employment rate resulting from the addition of persons with mental disabilities to the basis for calculation to be set lower than the rate calculated by using the usual formula. This measure is taken to reflect consideration for employers.

4. Resolution of Disputes

In the amendment, finally, provisions on how to deal with disputes arising inside companies are added to the Employment Promotion Act.¹¹ Means of resolving disputes newly established in the amended Employment Promotion Act are divided into two types, namely (i) voluntary resolution by the employer and (ii) assistance in resolving disputes by the Director of the Prefectural Labour Bureau. The rationale behind these provisions is that the Convention requires persons with disabilities to be guaranteed a mechanism for redress against working conditions and grievances.

For type (i), the amendment states, in connection with prohibiting discrimination and the obligation to provide reasonable accommodation after hiring, that employers “must, when receiving a complaint from a worker with disabilities, endeavor to achieve a voluntary resolution by means such as entrusting the handling of said complaint to a complaint handling organ (which means an organ for handling complaints from workers at the place of business which is composed of the representative(s) of the employer and the representative(s) of the workers at said place of business)” (Article 74–4). The rationale adopted is that it is preferable for problems to be solved voluntarily as far as possible, through rigorous internal dialog and mutual understanding between workers and employers, when a dispute arises within a company.

For type (ii), on the other hand, the amendment states that the Director of the Prefectural Labour Bureau may, when receiving a request for assistance in the resolution of a dispute from both or either of the parties, provide necessary advice, guidance or recommendation to the parties to said dispute (Article 74–6 [1]); or alternatively, when deeming it nec-

¹⁰ Statutory employment rates are currently based on the proportion of all workers with physical disabilities and intellectual disabilities (including the unemployed) compared to all workers (including the unemployed) (Article 43 [2]).

¹¹ The system of support for processing grievances and resolving disputes under the Employment Promotion Act is basically the same as that used in the Equal Employment Opportunity Act for Men and Women, the Child Care and Family Care Leave Act, and the Part-Time Worker Act.

essary for the resolution of said dispute in cases where an application for conciliation is filed by both or either of the parties, the Director of the Prefectural Labour Bureau shall have the Dispute Coordinating Committee conduct conciliation (Article 74–7 [1]). These are stipulated as means of reaching a coordinated resolution when a dispute is not resolved voluntarily inside the company. Another provision is that employers must not dismiss or otherwise treat a worker with disabilities disadvantageously by reason of said worker having requested such assistance or conciliation (Article 74–6 [2], Article 74–7 [2]).

IV. Analysis and Evaluation of the Amendment, and Its Issues

Based on the content of the amendment as outlined above, the details will now be analyzed and evaluated, and outstanding issues will be examined. While the discussion will follow the content of the amendment in sequence, issues related to the resolution of disputes (Section III. 4) will be dealt with under the prohibition of discrimination and provision of reasonable accommodation (Section IV. 2), and those related to mandatory employment of persons with mental disabilities (Section III. 3) in the section on the employment quota system (Section IV. 3).

1. The Scope of Persons with Disabilities

The amendment can be said to have further clarified the scope of persons with disabilities covered by the Employment Promotion Act. Nevertheless, the following issues still remain with regard to this scope.

Firstly, although persons with developmental disabilities and other impairments of physical or mental functions have been added to coverage under the Act, in reality, the risk remains that persons without disability passbooks could still be omitted. While it is up to Public Employment Security Offices to judge whether or not persons without disability passbooks should be covered by the Act, there are no standards for making this judgment. Particularly in connection with prohibiting discrimination, moreover, employers will need to judge whether or not the workers they employ are persons with disabilities covered by the Act, but there are no standards for them to do so. As a result, one outstanding issue is how to judge whether persons without disability passbooks are included in the scope of coverage under the Employment Promotion Act.

Another issue is that some persons with disabilities will be omitted from the new definition of persons with disabilities. To be covered by the Employment Promotion Act, a person must be “subject to considerable restriction in vocational life, or have great difficulty in leading a vocational life.” Therefore, those with a mild degree of disability and only minor restriction on their work are not considered to be covered by the Act. Also, since the Employment Promotion Act is designed to promote employment for those who have difficulty in leading a vocational life because they “currently” have a disability, those who do not “currently” have a disability (i.e. those who had a disability in the past, or could have a

disability in the future) and those with disabled persons in their family are not covered by the Act.¹² On the subject of discrimination, in particular, persons with a mild degree of disability and only minor restriction on their work fall victim to this, as do those who do not “currently” have a disability and those with disabled persons in their family.¹³ The fact that these people are not protected by the Act could be seen as an outstanding problem in the Employment Promotion Act remaining even after the amendment.

Furthermore, a problem that has always existed is the nature of the system in relying on disability passbooks. When judging whether someone is a “person with disabilities” under the Employment Promotion Act, disability passbooks based on various disability welfare laws play an important role. On persons with physical disabilities, in particular, the definitions of such persons in the Employment Promotion Act and in the Act on Welfare of Persons with Physical Disabilities are completely the same. As a result, whether a person is covered by the Employment Promotion Act is defined by whether that person has a disability passbook. Since the Welfare Act and the Employment Promotion Act have different objectives, there should be distinct means of defining the scope of persons with disabilities in the Employment Promotion Act.¹⁴ In future, it will probably be necessary to study ways of certifying disability specific to the Employment Promotion Act. Hopefully, the problem mentioned above, which affects people who don’t have disability passbooks, will also be solved as a result.

2. Prohibiting Discrimination and Providing Reasonable Accommodation¹⁵

The provisions on prohibiting discrimination on grounds of disability and providing reasonable accommodation contain a number of problem areas, as follows.

A. Prohibiting Discrimination

Firstly, based on the process of enactment, the only type of discrimination assumed to be prohibited under the amended Employment Promotion Act is direct discrimination on

¹² Iwamura et al., *supra* note 8, at 18, 19.

¹³ This is because, in Japan, it is not discriminatory treatment on grounds of “disability” but discriminatory treatment on grounds of being “a person with disabilities” that is prohibited (see 2. A below). Tamako Hasegawa, “Shogaisha Koyo Sokushinho ni okeru ‘Shogaisha Sabetsu’ to ‘Goriteki Hairyo’ [Discrimination against ‘persons with disabilities’ and ‘reasonable accommodation’ in the Act on Employment Promotion etc. of Persons with Disabilities],” *Quarterly Labor Law* 243 (Winter 2013): 32.

¹⁴ For a criticism of the importance given to disability passbooks, see Jun Nakagawa, “Shogaisha Koyo Sokushinho no Sabetsu Kinshi Joku ni okeru ‘Shogaisha’ no Gainen [The concept of ‘persons with disabilities’ in clauses prohibiting discrimination in the Act on Employment Promotion etc. of Persons with Disabilities],” *Quarterly Labor Law* 243 (Winter 2013): 12, 13.

¹⁵ Koichi Tominaga, “Kaisei Shogaisha Koyo Sokushinho no Shogaisha Sabetsu Kinshi to Goriteki Hairyo Teikyo Gimu [Prohibition of discrimination against persons with disabilities and the obligation to provide reasonable accommodation in the Amended Act on Employment Promotion etc. of Persons with Disabilities],” *Quarterly Jurist* 8 (Winter 2014): 27–34.

grounds of the disability itself. Indirect discrimination on grounds of facts connected with the disability is not explicitly prohibited.¹⁶ The reasoning behind this was that the content of the prohibited discrimination had to be made clear, and that the problem of indirect discrimination could be resolved by providing reasonable accommodation. And while the need to establish provisions prohibiting indirect discrimination would have to be studied in future,¹⁷ it was thought premature to incorporate them in this amendment.¹⁸ In the Subcommittee's Statement of Opinion, however, disadvantageous treatment on grounds of using wheelchairs, guide dogs or other support devices, using means of compensating for social disadvantage such as having an attendant caregiver, and others that could be interpreted as indirect discrimination, are assumed to be included in "direct discrimination." Although the amended Employment Promotion Act does not explicitly prohibit indirect discrimination, it could perhaps be said to extend the concept of direct discrimination and essentially prohibit cases that would be taken to fall under indirect discrimination.¹⁹ Moreover, cases of blatantly unreasonable standards that have the effect of excluding persons with disabilities could conceivably be treated as direct discrimination, since a discriminatory intention to establish direct discrimination can be inferred.²⁰ This kind of interpretation is expected to compensate for the absence of provisions prohibiting indirect discrimination. Meanwhile, the nature of this interpretation will likely be defined more clearly and specifically by the "Guidelines" currently being drawn up, as mentioned above.

Next, the amended Employment Promotion Act has been described as one-sided in prohibiting discrimination. That is, it prohibits discrimination against persons with disabilities, but not discrimination against persons without disabilities, and can therefore be said to condone advantageous treatment for persons with disabilities. This means that the amended Employment Promotion Act provides no redress at all for disadvantage suffered by persons without disabilities, compared to those with disabilities. Moreover, the amended Employment Promotion Act makes no provision at all for discriminatory treatment *between* persons with disabilities. This means that the provisions of the Employment Promotion Act cannot be used as justification when contesting differences in treatment between persons with disabilities. In addition, the Act is composed such that it prohibits discrimination not on grounds

¹⁶ Based on the text of the amended Employment Promotion Act and the background to its enactment, direct discrimination is distinguished from indirect discrimination in terms of the intention to discriminate. Direct discrimination is construed as being prohibited, in that it is intentional. *Ibid.*, 29.

¹⁷ On this point, one published view states that provisions on indirect discrimination should be added in future, because (i) cases in which reasonable accommodation is the problem and those in which indirect discrimination is the problem differ in the content of proof that must be furnished by employers and workers with disabilities, and (ii) providing reasonable accommodation alone is not enough to stop problems of indirect discrimination from arising. Hasegawa, *supra* note 13, at 33.

¹⁸ The Statement of Opinion of Labour Policy Council's Subcommittee on Employment of Persons with Disabilities, "On the Future Enhancement and Reinforcement of Policy on Employment of Persons with Disabilities," 2.

¹⁹ Iwamura et al., *supra* note 8, at 24.

²⁰ Tominaga, *supra* note 15, at 31.

of “disability,” but on grounds that the person concerned is a “person with disabilities.” Consequently, discriminatory treatment against people with disabled persons in their family is not subject to regulation. This could be seen as a shortcoming of the amended Employment Promotion Act.²¹

Finally, because the amended Employment Promotion Act prohibits “unfair” discriminatory treatment, the question of what constitutes “unfair” discriminatory treatment is expected to cause problems. The point of prohibiting “unfair” discriminatory treatment is to make sure that affirmative action taken toward persons with disabilities, or different treatment when a difference in working abilities arises, cannot be called “unfair” discriminatory treatment. For example, if there is a system whereby persons with disabilities are prioritized when hiring as *shokutaku* employees (employees on temporary contracts), this would have an aspect of affirmative action. If this aspect is stressed, priority hiring as *shokutaku* employees would not constitute “unfair” discriminatory treatment. However, if only persons with disabilities were hired as *shokutaku* employees, or if hiring as *shokutaku* employees were the only option offered to persons with disabilities, and as a result, persons with disabilities were only guaranteed a low wage, this could constitute “unfair” discriminatory treatment.²² Meanwhile, even when a difference arises in working ability, if a markedly unreasonable difference in remuneration is created in excess of that difference, this would also be “unfair” discriminatory treatment.²³ The question of what constitutes “unfair” treatment needs to be carefully interpreted in future. And it is to be hoped that, as a result of this interpretation, a “qualitative” improvement in employment of persons with disabilities can be achieved.

B. Reasonable Accommodation

Another important point of this amendment is that it establishes the obligation on employers to provide reasonable accommodation. The Convention defines the denial of reasonable accommodation as one form of discrimination (Article 2 of the Convention). However, the amended Employment Promotion Act opts only for a provision obliging employers to provide reasonable accommodation, in that creating an obligation to provide reasonable accommodation and prohibiting the failure to do so, as a form of discrimination, are both equal in effect.²⁴ On the subject of providing reasonable accommodation, the amended Employment Promotion Act can be characterized as adopting a legislative format that does not clarify the rights of persons with disabilities.²⁵

²¹ Iwamura et al., *supra* note 8, at 15, 16.

²² Iwamura et al., *supra* note 8, at 20, 21.

²³ For details, see Tominaga, *supra* note 15, at 30, 31.

²⁴ The Subcommittee’s Statement of Opinion, *supra* note 18, at 2.

²⁵ Yoshikazu Ikehara, “Goriteki Hairyo Gimu to Sabetsu Kinshi Hori [The obligation for reasonable accommodation and the principle of prohibiting discrimination],” *Rodo Horitsu Junpo*, no.1794 (June 2013): 11.

At the stage of recruitment and hiring, reasonable accommodation is to be provided following a “request” by a person with disabilities.²⁶ The reason for requiring a “request” is that, at the stage of recruitment and hiring, employers do not know the disability status of persons with disabilities. Conversely, after hiring, a “request” is not a requirement for providing reasonable accommodation. Nevertheless, the amended Employment Promotion Act holds that employers must fully respect the wishes of persons with disabilities when devising reasonable accommodation, and must adjust their systems so that they can respond to consultation from workers with disabilities. The content of reasonable accommodation is not determined uniformly. As to what sort of reasonable accommodation is specifically sought, the wishes of persons with disabilities must be respected. Therefore, although a “request” is not a requirement, it could be seen as desirable for the provision of reasonable accommodation after hiring also to be based on a request from a worker with disabilities, with a view to eliminating prejudice.²⁷ Here again, the “Guidelines” currently under review will likely play an important role in determining the specific content of reasonable accommodation.

Besides the above, how to judge “undue hardship” could also be a problem in connection with reasonable accommodation. “Undue hardship” is thought to comprise (i) disproportionate burden and (ii) excessive burden. Of these, (i) includes cases in which the cost of measures based on reasonable accommodation (not only monetary cost, but also including the difficulties of personal, organizational or work-related response) is not in proportion to the benefits of harnessing the ability and ensuring equality of opportunity and conditions for persons with disabilities. It also includes cases where there are other highly effective measures for the same cost, and cases where there are other measures with the same effect but at lower cost. On the other hand, (ii) includes cases in which the burden is judged excessive in light of overall circumstances, such as the company’s scale and the state of its finances.²⁸ Although both (i) and (ii) certainly have potential to constitute undue hardship, when judging this, care must be taken not to overlook the purpose of imposing an obligation for reasonable accommodation on employers.

The mechanism of the levy system is also expected to be used in connection with employers’ burdens.²⁹ Indeed, the Subcommittee’s Statement of Opinion suggests the possibility that the mechanism of levies will be applied as one aspect of adjusting financial burdens among employers, and that this could at the same time help to ease the financial burdens on

²⁶ It should also be borne in mind, however, that some persons with disabilities would have difficulties in appropriately conveying their own need for reasonable accommodation to their employers. It has been pointed out that limiting the person making the request to “persons with disabilities,” as in the text of the Employment Promotion Act, is problematic. Hasegawa, *supra* note 13, at 37.

²⁷ Tominaga, *supra* note 15, at 32, 33.

²⁸ Tominaga, *supra* note 15, at 33, 34.

²⁹ In France, for example, the existence of public subsidies is taken into account when deciding whether a burden is excessive. There, levies are used as a fiscal resource for a very diverse array of subsidies provided to employers.

employers arising from reasonable accommodation. Revising the levy system in this direction must be a task for the future.

C. Ensuring Effectiveness

The following points can be made with regard to means of ensuring the effectiveness of prohibiting discrimination and the obligation to provide reasonable accommodation.

Firstly, provisions prohibiting discrimination and obliging employers to provide reasonable accommodation in the amended Employment Promotion Act are administrative enforcement provisions, and are not considered to have effect in private law. The prohibition of discrimination and the obligation to provide reasonable accommodation are merely to be observed in an administrative context, and are not thought to trigger claim rights in civil law. On this point, the amended Employment Promotion Act could be said to have its limitations. However, general clauses of the Civil Code and the provisions of labor law can be used to contest disadvantageous treatment in a causative relationship with discrimination and the obligation to provide reasonable accommodation in court cases, as has been the case until now. Provisions on prohibiting discrimination and reasonable accommodation, as prescribed in the amended Employment Promotion Act, are thought likely to influence the interpretation of these general clauses of the Civil Code and provisions of labor law in future, and in fact, are expected to do so.³⁰

On the other hand, while encouraging voluntary resolution of disputes, the amended Employment Promotion Act adopts the method of “ensuring effectiveness by administrative intervention.” This refers to advice, guidance or recommendations to employers from the Minister of Health, Labour and Welfare or from the Director of the Prefectural Labour Bureau, and conciliation by the Dispute Coordinating Committee following a request from both or either of the parties. This administration-led approach feels inadequate in terms of upholding the rights of individuals. Nevertheless, using this approach can probably be expected to raise the levels of prohibition of discrimination and provision of reasonable accommodation in society as a whole.³¹ A characteristic of the amended Employment Promotion Act could be said to lie in the fact that it adopts this method.

Moreover, it has been pointed out that this method lacks an aspect of participation or involvement by representatives of persons with disabilities when resolving disputes. There have also been demands from persons with disabilities that opportunities for dialog be created, mediated by support workers or others with detailed knowledge of the field of disabled employment, positioned midway between voluntary resolution by the employers and assis-

³⁰ Iwamura et al., *supra* note 8, at 25. However, on the obligation to provide reasonable accommodation itself, measures based on the obligation are diverse and cannot be uniformly specified. As such, it is construed that demands for specific measures to be implemented will not be possible. Tominaga, *supra* note 15, at 34.

³¹ Ikehara, *supra* note 25, at 11.

tance in resolving disputes by the Director of the Prefectural Labour Bureau.³² In relation to resolving disputes, the participation or involvement of representatives of persons with disabilities and experts in the field of disability will probably be an issue from now on.³³

3. The Employment Quota System

Several issues can be raised concerning the employment quota system.

A. Relationship with the Principle of Prohibiting Discrimination

Firstly, introducing the principle of prohibiting discrimination throws up the theoretical problem of how to position it in relation to the employment quota system. On this point, the employment quota system is thought to be positioned as affirmative action toward persons with disabilities.³⁴ This means, in other words, that the employment quota system is not thought incompatible with the principle of prohibiting discrimination. The employment quota system has, so far, contributed to a “quantitative” improvement in employment of persons with disabilities, but not necessarily to a “qualitative” one. In future, both “quantitative” and “qualitative” improvements in their employment are expected to result from a combination of the employment quota system and the principle of prohibiting discrimination.

Incidentally, the system of special subsidiaries based on the employment quota system has also contributed to employment of persons with disabilities in large corporations.³⁵ Concerning these special subsidiaries, the Labour Policy Council’s Subcommittee on Employment of Persons with Disabilities has expressed the view that the system should be continued because “It has played a great role in promoting employment of persons with disabilities, and also contributes to continued employment of many persons with disabilities, taking their characteristics into consideration.”³⁶ At present, however, working conditions in

³² On this point, support from Public Employment Security Offices, Local Vocational Centers for Persons with Disabilities and others could possibly be used, as well as follow-ups by Employment and Life Support Centers for Persons with Disabilities, job transition support providers and special support schools. Satoshi Hasegawa, “Shogai o Riyu to Suru Koyo Sabetsu Kinshi no Jikkosei Kakuho [Ensuring the effectiveness of prohibiting employment discrimination on grounds of disability],” *Quarterly Labor Law* 243 (Winter 2013): 44.

³³ *Ibid.*, 46.

³⁴ See “Research Group Report on the Response to the Convention on the Rights of Persons with Disabilities in the Fields of Work and Employment (August 3, 2012)” 7. In the process of drafting the Convention, it is confirmed that employment quota systems were included in affirmative action. Ryosuke Matsui, “Rodo [Work],” in *Shogaisha no Kenri Joyaku to Nippon: Gaiyo to Tenbo* [The Convention on the Rights of Persons with Disabilities and Japan: Overview and prospects], ed. Nagase Osamu, Toshihiro Higashi, and Satoshi Kawashima (Tokyo: Seikatsu Shoin, 2008): 172.

³⁵ Special subsidiaries are subsidiaries established within the framework of the employment quota system. Workers employed by a special subsidiary are deemed to be employed by the parent company that established the subsidiary (Employment Promotion Act, Article 44).

³⁶ The Subcommittee’s Statement of Opinion, *supra* note 18, at 7. According to the “2013 Aggregated Results on the Status of Disabled Employment”, as of June 1, 2013, a total of 380 companies

special subsidiaries generally differ from those in the parent companies, while a transition from special subsidiaries to parent companies is not basically assumed.³⁷ Moreover, because special subsidiaries mainly recruit persons with disabilities and provide them with employment opportunities, some have expressed the view that they are also problematic in terms of inclusion of persons with disabilities. Introducing the principle of prohibiting discrimination is likely to trigger a demand for special subsidiaries that do not contradict the principle of prohibiting discrimination.

B. Problems with the Mandatory Employment of Persons with Mental Disabilities

As problems and issues accompanying the mandatory employment of persons with mental disabilities, one could firstly cite the fact that persons with mental disabilities eligible for mandatory employment are limited to those who have mental disability passbooks. To be sure, it cannot be denied that, since the obligation to employ persons with disabilities imposed on employers is linked to the obligation to pay levies, there will be a demand that the scope of persons with disabilities subject to mandatory employment should be made clear, fair and nationally uniform. It could also be said that confirming this scope using disability passbooks is reasonable as a basis for this. However, the proportion of persons with mental disabilities who have actually obtained mental disability passbooks is not very high. As a result, limiting eligibility to those with mental disability passbooks has caused the problem that persons who should normally be covered by the employment quota system are excluded from eligibility for the system. As also discussed under the scope of persons with disabilities, it would probably be effective to deal with this problem by introducing a means of defining the scope of persons with disabilities unique to the Employment Promotion Act.

Another problem or issue is that, by making persons with mental disabilities subject to mandatory employment, companies will start to “hunt out” such persons (including forced acquisition of mental disability passbooks). With a view to preventing this “hunting out,” the Ministry of Health, Labour and Welfare has already issued “Guidelines on Identifying and Confirming Persons with Disabilities with Consideration for Privacy.” Employers will probably be required to make rigorous efforts to respond in a form that complies with these Guidelines.³⁸

had obtained certification as special subsidiaries, and 20,478.5 persons with disabilities were employed by them. This corresponds to about 5% of all disabled persons working in companies subject to the employment quota system.

³⁷ Matsui, *supra* note 34, at 176, 177.

³⁸ For more details on the above issues, see Hiroyo Tokoro, “Seishin Shogaisha no Koyo Gimuka to Kongo no Kadai [Mandatory employment of persons with mental disabilities and future issues],” *Quarterly Labor Law* 243 (Winter 2013): 54–59.

V. Conclusion

This paper has confirmed the content of the 2013 Amendment of the Act on Employment Promotion etc. of Persons with Disabilities and examined outstanding issues remaining after the amendment. When the amended Act comes into effect, Japan's employment policy on persons with disabilities will enter a new stage. Until now, Japan's policy for promoting their employment can be said to have made quantitative improvements based on the employment quota system. Now, with the new addition of the principle of prohibiting discrimination, improvements are also expected to be made in qualitative aspects. The amendment will also add persons with mental disabilities to mandatory employment under the employment quota system, further strengthening its significance. In future, the already established employment quota system and the newly introduced principle of prohibiting discrimination will mutually supplement each other while contributing to quantitative and qualitative improvements in employment of persons with disabilities.

However, employment policy on persons with disabilities will need to be continuously revised. This is because the problems and issues highlighted in this paper still remain unresolved. And while future issues have mainly been examined with focus on the content of the 2013 Amendment in this paper, there are still many other matters that will need to be examined. These remaining problems and issues will need to be carefully studied one by one and systems related to employment of persons with disabilities continuously improved in future.

Reasonable Accommodation for Persons with Disabilities in Japan

Tamako Hasegawa

Fukushima University

In June 2013, the Act on Employment Promotion etc. of Persons with Disabilities was amended to prohibit employment discrimination against persons with disabilities and oblige employers to provide “reasonable accommodation.” Until then, Japan’s policy on employment of persons with disabilities had been focused on employment quotas, and the addition of this new element prohibiting discrimination signaled a major turning point for the policy. In this paper, the framework and characteristics of Japan’s anti-discrimination legislation on employment of persons with disabilities will first be clarified, including a comparison with legal systems in the USA and other countries. Next, problems concerning “reasonable accommodation” (which plays an important role in disability discrimination law) will be highlighted with reference to “Draft Guidelines” currently being discussed with a view to formulation. Finally, the position that should be occupied by reasonable accommodation within Japan’s unique employment system and legal system—including the legal principle of abuse of dismissal rights (Labor Contract Act, Article 16) and the obligation to consider safety (health) (Article 5 of the same)—will be discussed.

I. Introduction

Until now, employment of persons with disabilities has mainly been promoted via the employment quota system in Japan, based on the Act on Employment Promotion etc. of Persons with Disabilities (abbreviated to AEPPD below). This system (the “employment quota approach”) obliges employers to employ persons with disabilities at or above a predetermined ratio. When the Act was amended in June 19th, 2013, however, Japan’s policy on employment of persons with disabilities took on the additional approach of prohibiting discrimination against persons with disabilities.

This “discrimination prohibition approach” first attracted attention with the enactment of the “Americans with Disabilities Act of 1990” (abbreviated to ADA below) in the USA, and was gradually adopted by other countries thereafter. Meanwhile, the Convention on the Rights of Persons with Disabilities, which has the basic principle of prohibiting discrimination on the basis of disability, was adopted by the United Nations in 2006 and has since been ratified by many countries.

In Japan, too, work was started on preparing domestic legislation with a view to ratifying the Convention.¹ First, the Basic Act for Persons with Disabilities was amended in

¹ Without the target of ratifying the Convention on the Rights of Persons with Disabilities, it would probably have taken even longer for the discrimination prohibition approach to be introduced in Japan. Besides this, the change of government from the Liberal Democratic Party (LDP) / the New Komei Party (NKP) coalition to the Democratic Party in September 2009 ushered in a new structure for discussing disabled policy, and this also had a significant impact on subsequent amendments (the

August 2011, including provisions that prohibit discrimination on the basis of disability (Article 4 [1])² and make the provision of reasonable accommodation mandatory (Article 4 [2]). Next, to materialize the basic principle of prohibiting discrimination in Article 4 of that Act, the Act for Resolution of Discrimination of Persons with Disabilities (abbreviated to ARDPD below)³ was enacted in June 2013.⁴ The ARDPD prescribes more specific provisions on prohibiting discrimination on the basis of disability, as well as concrete measures to ensure compliance, among others. In the field of employment,⁵ the AEPPD was amended in the same month.⁶ In terms of action aimed at ratifying the Convention, new provisions were added on three issues: (i) prohibiting employment discrimination on the basis of disability, (ii) mandatory provision of reasonable accommodation, and (iii) support for processing complaints and resolving disputes.⁷ Once domestic legislation had been adjusted in this way, a protocol ratifying the Convention on the Rights of Persons with Disabilities was deposited with the United Nations on January 20th, 2014, and came into force on February 19th.

Characteristic features of the discrimination prohibition approach adopted by ADA and the Convention on the Rights of Persons with Disabilities lie in the fact that it regards persons with disabilities not as objects of protection but as subjects of rights, and that it sets out to promote employment of persons with disabilities by prohibiting discrimination on the basis of disability. While the employment quota approach focuses (only) on the “quantitative expansion” of disabled employment, the discrimination prohibition approach could be said to take account of the “quality” of disabled employment as well. Again, rather than

LDP-NKP coalition returned to power in December 2012).

² A provision on prohibiting discrimination was already embedded in the 2004 amendment, though this was generally understood merely to prescribe the basic principle but to have no effectiveness.

³ For the content of the ARDPD, see the Commentary Editorial Committee on the Act for Resolution of Discrimination of Persons with Disabilities, ed., *Gaisetsu Shogaisha Sabetsu Kaishoho* [Overview of the Act for Resolution of Discrimination of Persons with Disabilities] (Kyoto: Horitsu Bunkasha, 2014).

⁴ With effect from April 1, 2016.

⁵ While the ARDPD governs discrimination against persons with disabilities in general life, prohibition of discrimination in the field of employment is entrusted to the Act on Employment Promotion etc. of Persons with Disabilities (ARDPD, Article 13).

⁶ On factors leading to the 2013 amendment of the Act on Employment Promotion etc. of Persons with Disabilities, see Tamako Hasegawa, “Shogaisha Koyo Sokushinho no Kaisei [Amendment of the Act on Employment Promotion etc. of Persons with Disabilities],” *Hogaku Kyoshitsu* 398 (November 2013): 52ff.

⁷ In the 2013 amendment, besides these points, employment of persons with mental disabilities became mandatory and the definition of persons with disabilities was revised. On the content of these, see “Recent Trends and Issues in Employment Policy on Persons with Disabilities” by Hitomi Nagano in this Special Edition. Sections concerning the prohibition of discrimination were to take effect from April 1, 2016, mandatory employment of persons with mental disabilities from April 1, 2018, and the revised definition of persons with disabilities from June 19, 2013 (the date of promulgation). In principle, article and paragraph numbers refer to those of April 1, 2018, when the amendment will come into full force.

simply prohibiting discrimination, the fact that it requires employers and others to provide “reasonable accommodation” for persons with disabilities could also be seen as another major characteristic not found in conventional frameworks for prohibiting sexual or other forms of discrimination.

As will be discussed later, the provisions on prohibiting discrimination against persons with disabilities and providing reasonable accommodation, adopted for the first time in Japan following the amendment of the AEPPD, have a number of important characteristics compared to those in other countries. In this paper, therefore, the first objective is to clarify the structure of the “Japanese version” of legislation prohibiting employment discrimination against persons with disabilities, including comparisons with legal systems in the USA and elsewhere (II). The second objective is to investigate the positioning of “reasonable accommodation,” which plays an important role in disability discrimination law, within Japan’s unique employment and legal systems (III).

Japan is attempting to create unique legislation on employment of persons with disabilities by opting to maintain the existing employment quota approach while embedding the discrimination prohibition approach within it. For sure, many issues still remain in this respect (IV), but the third objective of this paper is to introduce Japan’s initiatives amid a global rise in concern for problems of persons with disabilities. The aim in doing so is to connect it to the development of legislation on employment of persons with disabilities as a whole.

II. “Prohibition of Discrimination” and “Reasonable Accommodation” in the AEPPD

In this section, of the content of the amended AEPPD, provisions on (i) prohibition of discrimination and (ii) reasonable accommodation will be surveyed. For (i), problems will also be examined, while problems concerning (ii) will be considered in the following section (III).

1. Prohibition of Discrimination

(1) Prohibited Discrimination

Prohibition of discrimination on the basis of disability is divided into provisions related to recruitment and hiring and those concerning situations after hiring, in reference to the provisions of the Act on Securing, Etc. of Opportunity and Treatment between Men and Women in Employment (referred to below as the Equal Employment Opportunity Act). On the former, the amendment provides that “With regard to the recruitment and employment of workers, employers must give equal opportunities to persons with and without disabilities” (AEPPD, Article 34). On situations after hiring, it provides that “Employers must not engage in unfair discriminatory treatment in terms of the decision of wages, the implementation of education and training, the utilization of welfare facilities and other treatments for

workers, compared to workers without disabilities, on grounds that they are persons with disabilities” (Article 35). These provisions on prohibiting discrimination extend to all matters related to employment.

The Labour Policy Council Subcommittee on Disabled Employment, which had been conducting studies aimed at amending the Act, pointed out in its “Statement of Opinion” that although discrimination on grounds of disability (direct discrimination) should be prohibited, it would be difficult at the present stage to establish provisions prohibiting indirect discrimination. The reasons it gave for this were that (i) it is not clear what exactly constitutes indirect discrimination, and (ii) cases not falling under direct discrimination could be addressed by providing reasonable accommodation.⁸ In other words, indirect discrimination is not considered to be prohibited in Japan. The AEPPD is construed as adopting the position of distinguishing direct discrimination from indirect discrimination in terms of whether or not there is an “intention to discriminate,” it prohibits direct discrimination as discrimination in which there is an intention to discriminate.⁹

To further clarify the specific content of prohibited discrimination and content of the obligation to provide reasonable accommodation, the Minister of Health, Labour and Welfare is to draw up guidelines (AEPPD, Articles 36 and 36–5). As preparatory work for this, a “Guidelines Research Group”¹⁰ was set up within the Ministry of Health, Labour and Welfare in September 2013. Its deliberations included hearings on discrimination against persons with disabilities and reasonable accommodation, conducted with various disabled groups, business organizations, labor unions and other bodies involved in disabled employment. Its studies culminated in the publication of a report on June 6th, 2014 (referred to below as the “Guidelines Research Group Report”).¹¹ In response to this, the Labour Policy Council Subcommittee on Disabled Employment is now conducting studies aimed at draw-

⁸ The Labour Policy Council Subcommittee on Disabled Employment (chaired by Professor Koichiro Konno of Gakushuin University), the Statement of Opinion, “On the Future Enhancement and Reinforcement of Policy on Employment of Persons with Disabilities” (2013): 2. <http://www.mhlw.go.jp/stf/houdou/2r985200002xeb3.html>. According to the Subcommittee’s Statement of Opinion, disadvantageous treatment on grounds of using wheelchairs, guide dogs or other support devices is regarded as included in direct discrimination.

⁹ Koichi Tominaga, “Kaisei Shogaisha Koyo Sokushinho no Shogaisha Sabetsu Kinshi to Goriteki Hairyo Teikyo Gimu [Prohibition of discrimination against persons with disabilities and the obligation to provide reasonable accommodation in the Amended Act on Employment Promotion etc. of Persons with Disabilities],” *Quarterly Jurist* 8 (Winter 2014): 27, 29.

¹⁰ “Research Group concerning the Nature of Guidelines on the Prohibition of Discrimination and the Provision of Reasonable Accommodation Based on the Amended Act on Employment Promotion etc. of Persons with Disabilities” (chaired by Professor Ryuichi Yamakawa of the University of Tokyo).

¹¹ “Report of the Research Group concerning the Nature of Guidelines on the Prohibition of Discrimination and the Provision of Reasonable Accommodation Based on the Amended Act on Employment Promotion etc. of Persons with Disabilities” (June 6, 2014). <http://www.mhlw.go.jp/file/04-Houdouhappyou-11704000-Shokugyouanteikyokoukoureishougai koyoutaisakubu-shougaisakoyoutaisakuka/0000047633.pdf>.

ing up guidelines.¹²

(2) Problems with Prohibiting Discrimination

Although various issues still remain concerning the provisions prohibiting discrimination, the following three will be examined in this paper.

Firstly, regarding the fact that indirect discrimination is not prohibited, one commentator points out that “What is regarded as indirect discriminatory discrimination could be added as a violation of the obligation to provide reasonable accommodation, but other cases in which an intention to discriminate can be discerned should be added based on flexible presumption of the intention to discriminate, judging from issues such as the employer’s behavior or the marked unreasonableness of treatment.”¹³ Meanwhile, in cases where reasonable accommodation or indirect discrimination is the problem, it has also been asserted that provisions on indirect discrimination should be incorporated in law, in that the content to be verified by workers and employers differs, or that, even if reasonable accommodation is provided, indirect discrimination cannot necessary be ruled out, among other reasons.¹⁴ The Guidelines Research Group Report states that, although it would be difficult at the present stage to establish provisions prohibiting indirect discrimination, the need to establish a provision prohibiting indirect discrimination will have to be considered in future, after amassing specific cases of consultation and judicial precedents, etc.¹⁵

Secondly, provisions prohibiting discrimination in the AEPPD (Articles 34 and 35) prohibit unfair discriminatory treatment compared to “persons without disability,” but do not presume discrimination between persons with disabilities. Consequently, it is thought that this Act cannot legislate for cases in which, for example, persons with mental disabili-

¹² Based on the Guidelines Research Group Report, two sets of guidelines are to be prepared some time during fiscal 2015. Namely, (i) guidelines on prohibiting discrimination against persons with disabilities, and (ii) guidelines on the obligation to provide reasonable accommodation. As this paper is based on the state of discussions up to the end of October 2014, it should be borne in mind that the content of the guidelines could change in future. Meanwhile, according to the Draft Guidelines presented at the 64th meeting of the Labour Policy Council Subcommittee on Disabled Employment (October 23, 2014), the official titles will be (i) “Guidelines for employers to cope appropriately with matters prescribed in provisions on prohibiting discrimination against persons with disabilities (draft)” and (ii) “Guidelines on measures to be taken by employers to guarantee equal opportunities and treatment for persons with and without disabilities in the field of employment, and to improve situations that hinder the effective exercise of abilities by workers with disabilities (draft).” Below, these will be abbreviated to (i) “Draft Guidelines on Prohibiting Discrimination” and (ii) “Draft Guidelines on Reasonable Accommodation.” For the data, see the MHLW website (<http://www.mhlw.go.jp/stf/shingi2/0000062398.html>).

¹³ Tominaga, *supra* note 9, at 29.

¹⁴ Tamako Hasegawa, “Shogaisha Koyo Sokushinho ni okeru ‘Shogaisha Sabetsu’ to ‘Goriteki Hairyo’ [‘Discrimination against persons with disabilities’ and ‘reasonable accommodation’ in the Act on Employment Promotion etc. of Persons with Disabilities],” *Quarterly Labor Law* 243 (Winter 2013): 25, 33.

¹⁵ “Report of the Research Group,” *supra* note 11, at 2.

ties are treated disadvantageously compared to those with physical disabilities, or persons with severe disabilities compared to those with mild disabilities.

The third point is that positive measures to correct discrimination and other advantageous treatment toward persons with disabilities are not thought to constitute discrimination. In Japan, where the employment quota system is used, a quota for persons with disabilities is generally set when hiring. To be sure, this kind of action increases the potential for hiring persons with disabilities, and could be regarded as a positive measure to correct discrimination. However, there are doubts as to whether all such cases should be treated as not being discrimination because they are positive measures to correct discrimination. For example, there could be cases in which workers hired within a disability quota are uniformly allocated to light work without taking their work performance ability or motivation into account, and their wages and other working conditions are reduced accordingly; or cases in which only persons with disabilities are given longer probation periods than usual, on grounds that it takes longer to ascertain their aptitude for the work. In the author's opinion, even if, in one sense, the system contributes to maintaining and expanding employment of persons with disabilities (i.e. as a positive measure to correct discrimination), it should not be permitted if it treats only persons with disabilities more or less uniformly without considering the situations of individuals, and as a result causes disadvantage for persons with disabilities.¹⁶

The first and second points above are prohibited as discrimination in other countries, and could be seen as important issues for study in future. The third point, meanwhile, should be used as an impetus to revise employment practices that have, until now, not been seen as particularly problematic in Japan, where the employment quota system is adopted, and to conduct studies aimed at an appropriate fusion of the employment quota approach and the discrimination prohibition approach.

2. Reasonable Accommodation

Provisions on the obligation to provide reasonable accommodation are similarly divided into (i) situations of recruitment and hiring and (ii) those after hiring. Firstly, employers must take measures for reasonable accommodation when recruiting and hiring workers, following a request from a person with disabilities, in order to improve situations that hinder the assurance of equal opportunities for persons with and without disabilities¹⁷ (AEPPD, Article 36–2). After hiring, employers must take steps for reasonable accommodation of

¹⁶ For a more detailed discussion, Hasegawa, *supra* note 14, at 34ff.

¹⁷ As the reason for making this dependent on a “request” from a person with disabilities, at the 59th meeting of the Labour Policy Council Subcommittee on Disabled Employment, it was explained that it would be difficult to make advance preparations on the assumption of various disabilities, since it could not be known what specific disability an applicant would have. There has been some criticism of this, however (Yoshikazu Ikehara, “Goriteki Hairyo Gimu to Sabetsu Kinshi Hori [The obligation for reasonable accommodation and the principle of prohibiting discrimination],” *Rodo Horitsu Junpo*, no. 1794 [June 2013]: 12).

workers with disabilities, in order to improve situations that hinder the assurance of equal treatment compared to persons without disabilities or the effective exercise of abilities by persons with disabilities (Article 36–3). The Articles in question do not specifically refer to “reasonable accommodation,” but prescribe “necessary measures, taking into account the characteristics of the disability” when recruiting and hiring, and, after hiring, “preparing the facilities necessary for the smooth performance of work, allocating support personnel and other necessary measures, taking into account the characteristics of the disability.” But if taking such steps for reasonable accommodation causes the employer “undue hardship,” the obligation to provide it may be waived (Article 36–2 proviso, Article 36–3 proviso).

When providing reasonable accommodation, employers must fully respect the wishes of persons with disabilities (Article 36–4 [1]), and must prepare a system necessary for responding to consultation from workers with disabilities (Article 36–4 [2]). The Minister of Health, Labour and Welfare may issue advice, guidance or recommendations to employers when they violate provisions on prohibiting discrimination and providing reasonable accommodation, etc. (Article 36–6).

III. Examination of “Reasonable Accommodation”

1. Birth of the Concept of Reasonable Accommodation and Its Expansion to Include Disability Discrimination

In the field of law prohibiting employment discrimination, the concept of “reasonable accommodation” was first used not in the context of disability discrimination but in that of “religious discrimination.”¹⁸ In the USA, the Civil Rights Act of 1964 banned discrimination based on race, skin color, religion, gender or country of origin. However, a difference of opinion arose between the Equal Employment Opportunity Commission (EEOC) and the courts on whether or not employers should give a degree of accommodation (e.g. exemption from the obligation to work on the Sabbath) so that workers could observe their religious beliefs and commandments; the EEOC deemed it permissible while the courts opposed it. As a result, the Civil Rights Act was amended in 1972, stating that employers must provide reasonable accommodation for an employee’s religious observance or practice, provided this imposed no “undue hardship” on the conduct of the employer’s business (Civil Rights Act, Article 701 [j]).

¹⁸ On the chronological background to the concept of reasonable accommodation in the USA, see Jun Nakagawa, “Shogaisha ni taisuru Koyojo no ‘Bengiteki Sochi Gimu (1)’ to Sono Seiyakuteki Hori: Amerika, Kanada no Hikakau Kenkyu [The duty of reasonable accommodation for persons with disabilities: Comparative study between United States and Canada (1)],” *The Hokkai-Gakuen Law Journal* 39, no.2 (2003): 29 ff. Meanwhile, for recent research on (reasonable) accommodation by employers in the context of religious discrimination, see Ryoko Sakuraba, “Shiyosha no Hairyo o Michibiku Apurochi: Rodosha no Shukyo e no Hairyo o Sozai to shite [An approach to guiding accommodation by employers: Using accommodation of workers’ religion as a basis],” *Quarterly Labor Law*, no.243 (Winter 2013): 186 ff.

This concept of reasonable accommodation would later be expanded to include the context of disability discrimination. First, the enforcement regulations of the Rehabilitation Act of 1973 stipulated that employers subsidized by the federal government must provide reasonable accommodation for persons with disabilities, as long as this caused no undue hardship. Then ADA stipulated that not making reasonable accommodations and denying employment opportunities on the basis of need of reasonable accommodations would be necessary constituted discrimination on the basis of disability (Article 102 [b] [5]). Here, specific examples of reasonable accommodation are given, including “(A) making existing facilities used by employees readily accessible to and usable by individuals with disabilities,” and “(B) job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities” (Article 101 [9]). In response to these provisions, enforcement regulations and various guidelines were produced for ADA. These introduced and analyzed examples of reasonable accommodation by type of disability and corporate scale, etc., as well as notes when implementing reasonable accommodation, and others in very great detail.¹⁹

The question whether providing reasonable accommodation imposes “undue hardship” is to be judged from factors including the nature and cost of the accommodation, the overall financial resources of the facility or facilities involved in providing reasonable accommodation, the number of persons employed, the impact upon operation of the facility, and the scale, type and location of the business entity (Article 101 [10]). If, as a result of this judgment, significant difficulty or expense were deemed to arise in the business entity, this would constitute undue hardship, and reasonable accommodation would not have to be provided.

2. Action Similar to Reasonable Accommodation in the Employment Quota System

The rationale of reasonable accommodation, originating in the USA, is that, if persons with disabilities are hindered from performing their work as a result of their disability, such hindrance should be removed by means of reasonable accommodation; not providing this accommodation would constitute “discrimination.” This would appear to be based on the reasoning that, in order to achieve equality between persons with and without disability

¹⁹ These regulations, guidelines and others have been published online (http://www.eeoc.gov/laws/types/disability_guidance.cfm). Partial Japanese translations of ADA as well as related enforcement regulations and guidelines can be found in “Legislation and Measures for Anti-Discrimination on Employment of Persons with Disabilities in Western Countries, Part 1: USA/UK” (2013) edited by the National Institute of Vocational Rehabilitation (NIVR) of the Japan Organization for Employment of the Elderly, Persons with Disabilities and Job Seekers (JEED). Besides this, the contents of reasonable accommodation are organized by type of disability and type of reasonable accommodation in John W. Parry, *Equal Employment of Persons with Disabilities: Federal and State Law, Accommodations, and Diversity Best Practices* (Chicago: American Bar Association, 2011), 177–93.

amid a social framework created on the premise of persons without disability, standards and rules built around persons without disabilities must be changed flexibly to suit the situations of individual persons with disabilities.

The rationale traditionally adopted in Japan, contrastingly, is that persons with disabilities should be subject to protection, and that prioritizing the provision of places of employment is indispensable to promoting employment of persons with disabilities. Thus, the rationale of prohibiting discrimination against persons with disabilities, and providing reasonable accommodation within the context of prohibiting discrimination, was arguably not evident in Japan's conventional policy on employment of persons with disabilities.

However, the approaches of these two countries, though differing greatly in theory, are found to have many points in common when considering the specific content of accommodation actually provided to persons with disabilities. That is, many of the response actions regarded as "reasonable accommodation" in the USA could also be said to have existed under Japan's employment quota system.

For example, according to the 2008 Survey on the Employment Situation of Persons with Disabilities,²⁰ 72.6% of employers were found to provide accommodation in employment for persons with physical disabilities, 61.9% for persons with intellectual disabilities, and 52.4% for persons with mental disabilities. In other words, the majority of employers already provide accommodation for persons with disabilities. As for the actual content of this accommodation, the most common type for persons with physical disabilities is "Accommodation in terms of personnel reassignment and other human resource management" (51.1%), followed by "Accommodation in terms of hospital outpatient visits, medication management and other healthcare" (41.7%) and "Improvement of facilities, equipment and machinery, making it easier to work and move in the workplace" (33.0%) (multiple response; the same applies below). For persons with intellectual disabilities, a characteristic is that high scores were recorded for "Simplification of work processes and other accommodation in terms of the work content" (64.5%) and "Assignment of personnel to assist with work execution" (43.8%) ("Accommodation in terms of personnel reassignment and other human resource management" [41.1%]). For persons with mental disabilities, "Accommodation in terms of personnel reassignment and other human resource management" (54.2%) and "Accommodation in terms of hospital outpatient visits, medication management and other healthcare" (46.3%) were high, as they were for persons with physical disabilities. However, a characteristic here is that these were followed by "Short working hours and other accommodation in terms of working hours" (38.6%). Thus, on examining the content of accommodation actually provided, "Accommodation in terms of personnel reassignment and other human resource management" is found to be high for all types of disability (physical 51.1%, intellectual 41.1%, mental 54.2%), while differences are found in the ac-

²⁰ Ministry of Health, Labour and Welfare, "Summarized Results of the FY2008 Survey on Disabled Employment" (in Japanese) (November 13, 2009).

accommodation required, depending on the type of disability.

Furthermore, some of the various “subsidies” provided under the employment quota system can be regarded as resembling reasonable accommodation. For example, “Grants for the provision of workplace facilities, etc. for persons with disabilities” subsidize part of the cost incurred by employers who improve working facilities or install toilets or slopes for persons with disabilities when newly employing or continuing to employ such persons. Besides this, there are also “Grants for workplace attendants, etc. for persons with disabilities” to subsidize part of the cost incurred when using caregivers, job coaches and others to assist with work execution, “Workplace adaptation supporter subsidies,” and others.

The provision of “reasonable accommodation,” made mandatory for employers under the amended AEPPD, is said to have caused considerable anxiety and confusion among employers because the concept had not previously existed in Japanese law.²¹ In many aspects, however, its content overlaps with the various forms of accommodation for persons with disabilities already practiced by employers under the existing employment quota system and others, and should not cause any particular anxiety. Even so, because reasonable accommodation has become mandatory in the context of prohibiting discrimination, it differs from previous accommodation in terms of its conditions and effects. In connection with Japan’s unique employment system and labor legislation, moreover, it may not be so simple to import the discussion on reasonable accommodation in western countries into Japan. For these and other reasons, the significance given to the new concept of reasonable accommodation within Japan’s legislation on labor and disabled employment will be very important.

3. Draft Guidelines on the Obligation to Provide Reasonable Accommodation

As mentioned above, the Labour Policy Council Subcommittee on Disabled Employment is currently studying guidelines on the obligation to provide reasonable accommodation. In the following, as well as introducing these Draft Guidelines on Reasonable Accommodation, the issues raised by them will also be indicated.

The Draft Guidelines on Reasonable Accommodation consist of (i) Purpose, (ii) Basic concept, (iii) Procedure for reasonable accommodation, (iv) Content of reasonable accommodation, (v) Undue hardship, and (vi) Development of a consultation system, among others. On (iii) Procedure for reasonable accommodation, it has been proposed that the guidelines be divided into those at the time of recruiting and hiring and those for workplaces after hiring; they should indicate what employers and persons with disabilities should do at each stage, from confirming the need for reasonable accommodation until finalizing the content

²¹ For example, Masahiko Iwamura, Yoshimi Kikuchi, Satoshi Kawashima, and Tamako Hasegawa, “Shogaisha Kenri Joyaku no Hijun to Kokunaiho no Aratana Tenkai: Shogaisha ni taisuru Sabetsu no Kaisho o Chushin ni [Ratification of the Convention on the Rights of Persons with Disabilities and new developments in domestic law: With focus on eliminating discrimination against persons with disabilities],” *Quarterly Jurist* 8 (Winter 2014): 4.

of accommodation through dialog between the parties.²² At the time of recruiting and hiring, the start of procedures is conditional upon a request from a person with disabilities. But in cases after hiring, if the employer has ascertained that the worker is a person with disabilities, the employer is required to confirm whether there are any hindrances to the execution of work, even without a request from the person with disabilities. On this point, in the US system, the responsibility for conveying the need for reasonable accommodation to the employer is thought to lie with the person with disabilities, both before and after hiring.²³ This could therefore be seen as a point of divergence between the two countries. In Japan too, however, the basic concept in (ii) above states that “It is obligatory upon the employer to provide reasonable accommodation, but with regard to reasonable accommodation after hiring, when it was not possible for the employer to know that a worker employed by said employer is a person with disabilities even after making the necessary checks, there shall be no question that the obligation to provide reasonable accommodation has been violated.” As such, there is potential for disputes to arise over the exact circumstances under which the employer could be said to have ascertained the disability.

With respect to (iv) Content of reasonable accommodation, the Guidelines Research Group was divided on what specific examples should be given in the guidelines as reasonable accommodation. That is, whether the guidelines should be positioned (a) as a means of enhancing the understanding of persons with disabilities by society as a whole, including employers and workers, or (b) as minimum standards that must be observed. If (a) were to apply, the guidelines should ideally list as many examples of accommodation as possible; but if (b) were true, they would merely need to include the minimum required content already established in many sites of disabled employment. In the case of (a), understanding of

²² The importance of a flexible interactive process between employers and persons with disabilities when determining and implementing reasonable accommodation has also been pointed out in the USA. According to the EEOC enforcement regulations (29 C.F.R. Part 1630 Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act [2011]), steps in this process are (i) Analyze the particular job involved and determine its purpose and essential functions, (ii) Consult with the individual with a disability to ascertain the precise job-related limitations imposed by the individual’s disability and how those limitations could be overcome with a reasonable accommodation, (iii) In consultation with the individual to be accommodated, identify potential accommodations and assess the effectiveness each would have in enabling the individual to perform the essential functions of the position, and (iv) Consider the preference of the individual to be accommodated and select and implement the accommodation that is most appropriate for both the employee and the employer (29 C.F.R. §1630.9 [2011]). Although there is no legal obligation to comply with this process, a court precedent has shown that if the employer does not engage in this process in good faith and as a result reasonable accommodation is not provided, the employer will bear liability for damages (EEOC v. Convergys Customer Mgmt. Group, Inc., 491 F.3d 790 [8th Cir. 2007]). As discussed below, however, unlike the US employment system, where job contents are specified, it is extremely difficult to specify job contents for regular employees in Japan. Consequently, the US-style process premised upon the specification of job content cannot be adopted unmodified in Japan. Nevertheless, the emphasis given to “labor-management dialog” will also provide hints for when the issue is discussed in Japan.

²³ 29 C.F.R. §1630.9 (2011).

persons with disabilities might certainly be enhanced among some employers and workers, but this approach could even weaken the very binding force of the guidelines, which had no legally normative character in the first place. In the case of (b), conversely, although the possibility remains that courts could regard the guidelines as an objectively reasonable interpretation of law,²⁴ they would not make employers and others broadly aware of pioneering initiatives and other case studies that could constitute reasonable accommodation. The Guidelines Research Group Report adopts a stance close to (b), as do the Draft Guidelines on Reasonable Accommodation formed in response to it. The aim of these appears to be that “the guidelines should describe measures that could conceivably be applied by many employers as case studies.”²⁵

In the Draft Guidelines on Reasonable Accommodation, reasonable accommodation is divided into (i) situations when recruiting and hiring, and (ii) situations after hiring, for each of nine types of disability (visual impairment, auditory and speech impairment, motional disabilities, internal disorders, intellectual disabilities, mental disabilities, developmental disabilities, disability caused by intractable disease, and higher brain dysfunction).²⁶ The examples of accommodation shown here are all very basic and, moreover, do not entail significant cost. As such, they feel inadequate. However, the direction taken by the Guidelines Research Group may be unavoidable for the time being, at least, as a way of first clarifying the minimum required compliance for employers and others who feel anxious about the opaque content of reasonable accommodation, and also to give the guidelines some realistic binding force. Nevertheless, the Guidelines Research Group wants the guidelines to state that the examples of reasonable accommodation they present are merely “illustrations” and need not necessarily be implemented by all enterprises,²⁷ and the Draft Guidelines on Reasonable Accommodation have been drawn up with this in mind. In that case, guidelines which should clearly specify the content of accommodation to be provided as the minimum requirement could ultimately be regarded as not requiring compliance. Moreover, the scope of what is required as reasonable accommodation remains unclear, and disputes could arise over the extent of employers’ obligations.

Although there is uncertainty over the positioning of these reasonable accommodation guidelines, such problems may be addressed for the time being through advice, guidance or recommendations from the Director of the Prefectural Labour Bureau (AEPPD, Article 74–6 [1]), conciliation by the Dispute Coordinating Committee based on the Act on Pro-

²⁴ For a discussion on how the guidelines on the Equal Employment Opportunity Act are evaluated by the courts, see Sugeno Kazuo, *Rodoho* [Labor law], 3rd ed. (Tokyo: Yuhikakau, 2012), 189ff.

²⁵ “Report of the Research Group,” *supra* note 11, at 8; “Draft Guidelines on Reasonable Accommodation,” *supra* note 12, at 4.

²⁶ 64th meeting of the Labour Policy Council Subcommittee on Disabled Employment, data material 2–2 (Table). http://www.mhlw.go.jp/file/05-Shingikai-12602000-Seisakutoukatsukan-Sanjikanshitsu_Roudouseisakutantou/0000062547.pdf.

²⁷ In fact, the guidelines are to state that there are other forms constituting reasonable accommodation besides those illustrated in them.

moting the Resolution of Individual Labor-Related Disputes (Article 74–7 [1]), and other aspects of the administrative dispute resolution system. It is hoped that the guidelines will be applied appropriately within this system.²⁸ What will need to be tackled in future, moreover, is the formulation of detailed guidelines and Q&A on reasonable accommodation, by type of disability and corporate scale.²⁹ Within this, it should be possible to materialize the rationale in (a) above, i.e. broadly specify not only pioneering examples of reasonable accommodation but also specific individual cases of accommodation in guidelines, etc., and enhance understanding of persons with disabilities by society as a whole.

4. The Need for a Uniquely Japanese Concept of Reasonable Accommodation

(1) The Japanese-Style Employment System and Reasonable Accommodation

In the USA and other western nations, jobs are usually fixed from the point of hiring, and the content of essential functions of those jobs are thought to be clear. As a result, the ability of persons with disabilities to perform jobs and the content of reasonable accommodation thought necessary for them to perform those jobs are relatively easy to evaluate and judge. By contrast, in the “Japanese-style employment system” characterized by “long-term employment practices” and “seniority-based treatment,” jobs are not limited in this way; employees are expected to be reassigned to various departments and jobs within a company under the principle of long-term continuous service, especially in the case of regular employees. As a result, even if we wanted to measure the ability to perform jobs, the “jobs” themselves are often unknown, and moreover, it is often unclear what jobs should receive reasonable accommodation in order to meet the obligation.

Let us imagine a situation in which an applicant with a disability can perform duties in one of five jobs (departments) in a given company, but not in the other four, even if reasonable accommodation were provided. Thinking solely in the context of prohibiting discrimination, giving disadvantageous treatment to a disabled person who can only perform one job compared to a person without disabilities who can perform all five cannot be called unfair discriminatory treatment. However, if the concept of “reasonable accommodation” is incorporated into this, the same no longer necessarily applies. That is, (i) continuing to assign a worker only to a single job but not to the four others that the worker cannot perform could be regarded as “reasonable accommodation,” and as long as it does not cause undue hardship, the employer could be seen as obligated to provide this kind of accommodation. Alternatively, though it might be difficult to regard this as reasonable accommodation, (ii) if four of the jobs could be performed and only one could not, would it be regarded as includ-

²⁸ As a study on ensuring the effectiveness of provisions prohibiting discrimination in the Act on Employment Promotion etc. of Persons with Disabilities, see Satoshi Hasegawa, “Shogai o Riyu to Suru Koyo Sabetsu Kinshi no Jikkosei Kakuho [Ensuring the effectiveness of prohibiting employment discrimination on grounds of disability],” *Quarterly Labor Law* 243 (Winter 2013): 38.

²⁹ The above-mentioned guidelines and Q&A produced by EEOC are expected to serve as reference when drawing up guidelines in Japan.

ed in reasonable accommodation if the worker were not assigned to that single job? If we consider fulfilling various jobs in accordance with nationwide transfers as the essential function of an employee (i.e. an approach approximating [ii] above), many persons with disabilities would be excluded from the framework of prohibition of discrimination. On the other hand, if not assigning a worker to several jobs that the worker cannot perform, as in (i) above, could be said to constitute reasonable accommodation, the potential for employment of persons with disabilities would expand; whereas conversely, the employer's burden would increase, and dissatisfaction could arise among other employees without disabilities.³⁰ In the AEPPD, reasonable accommodation is regarded as a measure "necessary for the smooth performance of work, taking account of the nature of the disability" (AEPPD, Article 36-3); providing this is positioned as the employer's obligation. This differs from the system in the USA and other countries, where not providing reasonable accommodation is determined as discrimination and reasonable accommodation is positioned as a means of achieving equality. When considering the range and content of reasonable accommodation in Japan, this difference in systems should be kept in mind. On this basis, the government should indicate the directionality for the range and content of "reasonable accommodation" as provided in the AEPPD, based on the relationship with Japanese-style systems including the employment system and the employment quota system. The answer to the two examples given above could be seen as depending on this directionality.

Another important characteristic arising from the Japanese-style employment system is the "legal principle of abuse of dismissal rights" (Labour Contract Act, Article 16). Taking this as their justification, courts have demanded various forms of accommodation from employers in cases where, due to personal injury, illness or disability, labor cannot be provided without accommodation, or cases that have led to dismissal. Examples are when a worker who has taken leave due to personal injury or illness is permitted to engage in familiarization work for a short while after returning to the workplace,³¹ when a worker who is no longer able to perform the previous duties is permitted to be reassigned to another department where the duties can be performed,³² and when, even after reassignment to another department, the work duties are further reduced.³³ Also, when a worker is injured, falls ill or dies because the employer has not given appropriate accommodation, the employer

³⁰ In a case contesting whether accommodating persons with disabilities to the extent of violating "neutral rules" inside a company could constitute reasonable accommodation, the US Supreme Court deemed there to be situations in which preferential treatment should be given to persons with disabilities in violation of neutral rules, as a general principle in order to achieve equality of opportunities as the basic target of ADA. It ruled nevertheless that, in relation to a "seniority system" that gives expectations of fair and equal treatment as an important interest of the employees (a system in which employee reassignments, promotions, dismissals, layoffs, re-employment, etc., are treated preferentially depending on years of service), personnel reassignments that run counter to seniority do not constitute reasonable accommodation as a rule (US Airways, Inc. v. Barnett, 535 U.S. 391 [2002]).

³¹ Air France Case (Tokyo Dist. Ct., Judgment, Jan. 27, 1984, Rohan 423-23).

³² Katayama Gumi Case (Sup. Ct., Judgment, Apr. 9, 1998, Rohan 736-15).

³³ JR Tokai (Termination) Case, (Osaka Dist. Ct., Judgment, Oct. 4, 1999, Rohan 771-25).

has been deemed liability for damages due to default, in violation of the obligation to consider safety (health) (Labour Contract Act, Article 5).³⁴

In Japan, therefore, due to a strict legal principle of abuse of dismissal rights and the obligation to consider safety (health), if a worker who is already working sustains a disability in the process, there is a tendency to demand that the employer gives flexible accommodation as a measure to avoid dismissal. The JR Tokai Case, in which the employer was required to reduce work duties even further after personnel reassignment, is similar to the case given as an example above, in which the worker could not perform four jobs but was able to perform just one.³⁵ However, most cases in which such generous accommodation is recognized have involved regular employees with no limit on work duties, on the assumption of long-term employment.³⁶ The fact that reasonable accommodation has been explicitly specified in law means that accommodation will undoubtedly be expanded to cover non-regular employees and others with specified employment terms or restricted work duties as well. However, if premised on the framework for judgment in existing judicial precedents,³⁷ disparities are expected to arise between reasonable accommodation for non-regular employees compared to that for regular employees.³⁸

Further study is needed on how reasonable accommodation should be positioned and developed within these uniquely Japanese systems of labor legislation and employment.

(2) Privacy and Reasonable Accommodation

Because information concerning disability is closely related to privacy, it has to be treated carefully. This requirement is particularly acute in the case of mental disabilities, which still carry a strong stigma, as well as internal disorders and others that are not evident from the outside. However, for persons with disabilities to continue working in the workplace (while receiving reasonable accommodation), the understanding of the people around

³⁴ Dentsu Case (Sup. Ct., Judgment, Mar. 24, 2000, Rohan 779–13).

³⁵ In the JR Tokai (Termination) Case, the employer was required to reduce the workload even further for the one job to which the worker could be assigned.

³⁶ When demanding accommodation in the JR Tokai (Termination) Case and others, courts seem to have taken account of “corporate scale, the possibility of employee assignment or transfer, and the possibility of sharing or changing work duties,” and demanded a higher level of accommodation from companies above a certain scale. In future, these elements will most likely be taken into consideration when judging undue hardship as well.

³⁷ However, since the obligation to consider safety (health) and the obligation to provide reasonable accommodation differ in both intent and purpose, it would not be appropriate to apply the framework for judgment in existing court precedents directly to cases of reasonable accommodation; a more careful consideration needs to be made.

³⁸ Moreover, regarding the “restricted regular employees” that have been attracting attention in recent years (employees who have no specified employment period but have restrictions on their work duties or place of employment), “reassignment to a vacant position” is taken to constitute reasonable accommodation in the USA, even if duties are restricted (ADA 101 [9] [B]). In Japan, too, it should be possible to seek reassignment to other duties or locations as reasonable accommodation, even when there are restrictions on work duties or the place of employment.

them (e.g. other employees) is also important. When support from other employees itself serves as reasonable accommodation, or when dissatisfaction between employees arises over the fact that persons with disabilities receive accommodation that other employees without disability do not, the employer will be compelled to convey some kind of information to the other employees.

On this point, in the USA, the employer's duty of confidentiality concerning information related to disability is viewed rigorously. The employer must not disclose the fact that a given employee has a disability, or that such a person is receiving reasonable accommodation for this reason, to other employees, etc.³⁹ As an exception, however, employers are permitted to tell supervisors and managers about restrictions on the employee's work and about necessary accommodation. In addition, companies are permitted to tell other employees that they intend to support all employees who suffer difficulties in the workplace, and that they respect the privacy of employees as a company policy.

In Japan, when it became possible to add persons with mental disabilities to employment quotas (in 2005), "Guidelines on Ascertaining and Confirming Persons with Disabilities with Consideration for Privacy" were drawn up, and awareness of the need to consider privacy has been growing. However, the US style of regulation with maximum priority placed on protecting privacy is not thought amenable to Japan, for a number of reasons. Firstly, when employing persons with disabilities, many employers see it as their task to make other employees understand the nature of those disabilities (physical disability 27.3%, intellectual disability 40.0%, mental disability 43.4%).⁴⁰ Secondly, among the examples of reasonable accommodation that should be stated in the guidelines, the Guidelines Research Group Report includes "Explaining the content and other details of a disability to other employees, having considered the privacy of the person in question" for all classes of disability.⁴¹ Moreover, the understanding of persons with disabilities is strongly sought by disabled groups. And thirdly, Japan's existing policy on employment of persons with disabilities includes various measures based on clarifying that a given employee is a person with disabilities. Nevertheless, when persons with disabilities themselves do not wish information concerning their disability to be disclosed, accommodation from the viewpoint of protecting privacy is required.

IV. Tasks for the Future

Following the amendment to the AEPPD, discrimination against persons with disabilities in the workplace is now prohibited and employers are obliged to provide reasonable accommodation. As a result, Japan's legislation on the employment of persons with disabili-

³⁹ EEOC Enforcement Guidance on the Americans with Disabilities Act and Psychiatric Disabilities, 15 (1997).

⁴⁰ Ministry of Health, Labour and Welfare, *supra* note 20, at 18.

⁴¹ "Report of the Research Group," *supra* note 11, 12ff.

ties is expected to reach a major turning point. However, with only just over a year remaining until the amendment comes into force, many issues still remain.

On the positioning of reasonable accommodation in Japan, this paper has pointed out that it is difficult to determine job performance ability and the scope of reasonable accommodation under Japan's unique employment system, where the ability to perform a wide range of job contents is expected of employees. It has also made it clear that the various accommodations already given (particularly for regular employees) under the legal principle of abuse of dismissal rights and the obligation to consider safety (health) need to be scrutinized, as well as their relationship with reasonable accommodation. Besides these, while action similar to reasonable accommodation has already been undertaken in line with the employment quota system, which provides a scheme for cost sharing known as the disability employment levy system, we need to study how employers should be expected to undertake such action within the framework of the reasonable accommodation, which does not have such a scheme.

In Japan until now, the main focus has been on giving special treatment to persons with disabilities in employment situations. As a result, problems concerning the employment of persons with disabilities have tended to be seen as separate from general labor legislation. On the other hand, under the Japanese-style employment system, treatment enabling workers who have been employed for a long time to continue working without being dismissed, even when (temporarily) suffering illness or injury, has developed around a core of judicial precedents. In the sense that they secure and maintain employment for people with disabilities or health problems, these two approaches share the same purpose. But in spite of that, the two are hardly ever mentioned in the same breath, and this has been partially to blame for disparities in the generosity of protection towards workers. It is to be hoped that, with this amendment to the AEPPD, the newly incorporated provisions prohibiting discrimination and obliging employers to provide reasonable accommodation will be seen as bridging the gaps in this debate, and that coherent legislation on the employment of persons with disabilities will be created as a result.

The Employment of People with Mental Disabilities in Japan: The Current Situation and Future Prospects

Nobuaki Kurachi

Kyushu Sangyo University

Support for people with mental disabilities in Japan was traditionally provided in the form of medical care and was strongly focused on protecting society from crime. As a result, Japan has been suffered from a bad reputation of the longest period of hospitalization and the highest number of beds for patients with mental disabilities in the world. One of the negative side effects of this fact involves the problem of human right issues such that the patient's initiative in the treatment has been completely ignored by the doctor-oriented medical practice. Welfare and employment support measures for people with mental disabilities have been developed since the 1980s, but the traditional psychiatric care models have had a pervasive influence on such measures. As people with mental disabilities were considered to require medical care rather than support for social rehabilitation, there was a delay in introducing employment support initiatives, which were first introduced with the enforcement of the Act on Employment Promotion etc. of Persons with Disabilities and the Mental Health Act in 1988. From that time on, employment support initiatives for people with mental disabilities were developed at a rapid pace, and with the ratification of the ILO Convention No. 159 in 1992, became almost equal with the support provided to people with physical and intellectual disabilities, with the only exception that people with mental disabilities were not yet included in the employment quota system defining the ratio of people with disabilities that companies are obliged to employ. In 2006, people with mental disabilities were included in the employment quota system and from 2018 they are scheduled to have terms that are equal with those of people with physical and intellectual disabilities. The recent years have seen increasing diversity in how mental disabilities are perceived and people with severe mental disabilities are also being offered employment support. Companies are also obliged to further develop employment opportunities for people with disabilities, and in the future it will be necessary for specialists from employment agencies to actively support companies in developing such initiatives. Moreover, as the perceptions of mental disabilities become increasingly more diverse, the diagnostic techniques of psychiatric institutions will need to be improved.

I. Introduction

During the regular session of the Diet in 2013, the Act on Employment Promotion etc. of Persons with Disabilities was amended. The major pillars of this amendment were aspects such as including people with mental disabilities when calculating the legal employment quota for people with disabilities—the ratio of people with disabilities that companies are required to employ within their workforce—prohibiting companies from discriminatory treatment on the basis of disability, and imposing on companies the obligation to provide reasonable accommodation for employees with mental disabilities. Prior to the amendment,

a government ordinance was issued raising the legal employment quota for people with disabilities from 1.8% to 2.0%, effective as of April 2013. This paper will address the effects of such developments on the state of employment of people with mental disabilities, examining the current situation and possible future prospects, while also taking into account how support for people with mental disabilities was developed in Japan in the past.

II. The Historical Development of Support for People with Mental Disabilities

In 1900, the Japanese government enacted the Mental Patients' Custody Act. Since then, the treatment of people with mental disabilities in Japan has been overshadowed by negative aspects such as medical care aimed at protecting society, hospitalization-centered care, the establishment of largely private—as opposed to public—psychiatric hospitals, the long-term hospitalization of patients, and the prolonged hospitalization of patients with stable conditions due to the lack of support and acceptance for them to live in the community, known as “social hospitalization.” At present, earnest efforts are being made to break away from such characteristics, but the constraints imposed by the fact that Japan's psychiatric hospitals are largely private are hampering efforts to release more patients from hospital and decrease the number of hospital beds. It could be suggested that Japan is now paying the price for the fact that the national government did not take the responsibility for establishing and developing psychiatric hospitals.

Moreover, because people with mental disabilities were regarded as “invalids,” rather than as “people with disabilities,” they were largely the subject of measures focused on medical care, and were not recognized as requiring welfare or employment support. This still has a significant influence on measures aimed at people with mental disabilities today. It can be said that current support measures for people with mental disabilities are also greatly influenced by complications arising from the fact that such psychiatric care included treatment which violated patients' human rights and did not recognize the importance of their independence.

The aforementioned Mental Patients' Custody Act allowed for the establishment of the “Home Custody System,” a system allowing people appointed with custody over a person with mental disabilities, such as a family member or relative with potentially no experience of providing medical care, to privately confine the person in isolation, submit notification to that effect to the police, and gain permission from the local government, with the aim of protecting the person with mental disabilities and preventing potential harm to society. In other words, it can be said that under this system people with mental disabilities were not being provided with medical care and were subjected to pitiful treatment. In a report of a survey of the state of home custody, Shuzo Kure, a professor of Tokyo Imperial University (currently the University of Tokyo), stated that the 100,000 or so psychiatric patients in Japan suffered not only the misfortune of their condition, but the double misfortune of being born in Japan.

In 1950, 50 years after the establishment of the Home Custody System for psychiatric patients, the Mental Hygiene Act was promulgated. As a result, the Home Custody System was abolished and the focus was placed on medical care provided in psychiatric hospitals. However, this “medical care” consisted of enforced hospitalization and isolation of the patient, which was not aimed at preparing them to return to everyday lives in the community, but at hospitalizing them in order to protect society. Patients were simply hospitalized as opposed to being treated and there were consequently very few cases in which patients were able to be discharged from hospital.

In 1965, the Mental Hygiene Act was amended with the aim of breaking away from such a system and moving in the direction of rehabilitation and community care. However, while the amendments were being developed, an incident occurred in which a young man suffering from a mental disorder stabbed the then United States Ambassador to Japan, Edwin O. Reischauer, on the street outside the United States Embassy. This incident, which is known as the “Reischauer Incident,” led to a strong public opinion demanding for people with mental disabilities who pose a danger not to be allowed in society. As a result, the amendments to the act, which were aimed at developing community care by community support organizations led by public health centers, were curtailed and hospitalization-centered measures were continued.

As measures for people with mental disabilities continued to be focused on hospitalization, measures for increasing the number of psychiatric hospitals and hospital beds were developed, giving Japan the largest number of psychiatric hospital beds of any country in the world, with 200,000 beds in 1966, 280,000 beds in 1975, and 340,000 beds in 1985. At the same time, a large number of private hospitals were established, in part due to the Mental Hospitals Act, enacted in 1919, which allowed private hospitals to provide care to publicly-supported patients, by being designated as “substitute hospitals” to compensate for the shortage of public psychiatric hospitals. The fact that private hospitals account for as much as 80% of all psychiatric hospitals in Japan is perpetuating long-term hospitalization and “social hospitalization,” and impeding attempts to decrease the number of hospital beds.

In 2005, patients admitted to psychiatric care facilities in Japan were hospitalized for an average of 327 days. Comparing this with figures for other countries—6.9 days in the United States, 57.9 days in the United Kingdom, 22 days in Germany, 13.3 days in Italy, and 6.5 days in France (OECD Health Data 2008)—demonstrates the significant length of hospitalization in Japan. Incidentally, the average number of days of hospitalization in Japan is decreasing, with an average of 292 days in 2012.

Long-term hospitalization leads to an increase in the number of psychiatric hospital beds. The number of psychiatric hospital beds per 10,000 members of the population in Japan is 28, which is conspicuously more than the figures for other countries: 3 in the United States and Canada, 1 in Italy, 7 in the United Kingdom, and 10 in France (OECD Health Data 2007; data for the United States and Canada is from 2004, data for all other countries is from 2005). This is largely influenced by the fact that while in other countries psychiatric

hospitals are largely public and measures have been made to decrease the number of beds and actively develop community care, in Japan it is difficult to develop measures to decrease the number of beds due to the fact that the majority of psychiatric hospitals are private.

As the Medical Care Act allows psychiatric facilities to be staffed by small teams of nursing staff, many facilities assigned only a limited number of staff. The relatively low numbers of staff combined with ongoing long-term hospitalization of patients for the purpose of keeping them confined led to conspicuous trends of treatment characterized by supervising and controlling patients and the use of force. A succession of scandals involving psychiatric hospitals shocked society by revealing the conditions in such facilities. For example, the Utsunomiya Hospital Incident, which came to light in 1984, was a tragic case involving medical practice by unqualified people, violence inflicted on patients by medical care professionals, and patients being allowed to die due to violation of their human rights.

The first movements toward the provision of community care were initiated by the Mental Health Act, which was enforced in 1988 as an amendment of the Mental Hygiene Act. This legal revision was focused on preventing incidents such as the Utsunomiya Hospital Incident and other cases of human rights violation in psychiatric hospitals, and on developing community care. The act stipulated the development of social rehabilitation, the introduction of welfare for people with mental disabilities, and appropriate medical care and protection taking into account the patient's human rights. Facilities providing daily lifestyle training, daily-living with support, and employment training were stipulated by law as facilities aimed at preparing patients to be discharged and return to everyday society. However, as financial support was limited, many of these facilities were established by corporations operating psychiatric hospitals, and eventually became welfare support as an extension of the conventional psychiatric medical care model.

With the enactment of the Basic Act for Persons with Disabilities in 1993, people with mental disabilities were specified as "people with disabilities" for the first time. The national government was obliged to formulate a program for people with disabilities and the decision was made to formulate a welfare program for people with mental disabilities. Moreover, in 1995 the Mental Health Act was amended to become the Act on Mental Health and Welfare for People with Mental Disabilities (hereafter, the "Mental Health and Welfare Act") and initiatives were introduced to develop support to allow people with mental disabilities to be discharged from hospital and return to everyday society.

In the same year, the "New Long-Term Program for People with Disabilities" and the "Plan for People with Disabilities" were formulated, including for the first time a target for establishing a number of social rehabilitation facilities for people with mental disabilities. The initial program and plan were succeeded by the "Basic Program for People with Disabilities" and the "New Plan for People with Disabilities," formulated in 2003. While they clearly defined a plan for discharging 72,000 of the 330,000 socially-hospitalized patients over a period of ten years, and for shifting from hospitalization-centered measures to

measures focused on allowing people with mental disabilities to live in the community, the number of people discharged from hospital did not increase.

In 2004, the Ministry of Health, Labour and Welfare released their “Vision for Reforming Mental Health Care and Welfare,” specifying targets for decreasing the number of hospital beds and the restructuring of social rehabilitation facilities. Moreover, “Regarding Future Health and Welfare Measures for People with Disabilities (Proposal of a Grand Design for Reform)” was published, and led to the 2006 Act on Services and Supports for People with Disabilities and its successor, the Act on Comprehensive Support for People with Disabilities. Currently, welfare measures for people with mental disabilities are equal with those for people with physical or intellectual disabilities.

However, little progress has been made on the pending issue of promoting the discharge of patients in long-term hospitalization. While the national government set a target in the “Basic Program for People with Disabilities” and implemented various different initiatives to promote the discharge of more patients, the situation has not improved. An increasing number of the patients in long-term hospitalization are now in their old age, and such patients are currently dealt with as part of measures for elderly people.

The majority of people with mental disabilities who are aged 50 or under are hospitalized for short periods or receive treatment as outpatients, and many people with mental disabilities are now living in the community. According to the estimated proportion of patients discharged within one year of being admitted to a psychiatric hospital in June 2010, 58.1% of patients are discharged within a period of three months, and 87.6% of patients are discharged within one year (Ministry of Health, Labour and Welfare). Moreover, according to a patient survey in 2011, hospitalized patients account for approximately 10% of the 3,201,000 patients being treated for mental disorders in Japan.

New drugs for the treatment of mental disorders are constantly being developed, and are beginning to be effective in treating people with mental disabilities. Frequent hospitalization has become a new issue and there are an increasing number of people with mental disabilities who require counselling and support to avoid this, as well a place to be active during the day, and support for living in the community, such as employment support. Mental disorders are also becoming more diverse, and there are now people with severe mental disabilities living in the community. Today, the scope of the term “people with mental disabilities” includes not only people with mental disorders but also people with developmental disabilities and higher cerebral dysfunction. In the future, it will be necessary to provide support which responds to the increasingly diverse types of mental disorders and levels of severity of disorder.

III. The Historical Development of Employment Support for People with Mental Disabilities

1. The Period without Employment Support (Up to the 1970s)

In 1955, the International Labour Organization (ILO) adopted the Recommendation concerning Vocational Rehabilitation of People with Disabilities (Recommendation No. 99). The recommendation classified people requiring vocational rehabilitation as people “whose prospects of securing and retaining suitable employment are substantially reduced as a result of physical or mental impairment,” thereby also specifying people with mental disabilities as being entitled to such rehabilitation.

However, in Japan, the term “people with disabilities” was interpreted as “people with *physical* disabilities” and a system aimed at providing employment support for people with mental disabilities was not adopted. This was one of the major factors which delayed the introduction of measures for people with mental disabilities and other categories of people with disabilities who do not belong in the category “people with physical disabilities.”

In Japan, mental disabilities were perceived as “illnesses,” and people with mental disabilities were considered to require medical care as opposed to support for employment.

2. The Period of Preparation for Employment Support (1980–1987)

1981 was proclaimed by the United Nations as the International Year of People with Disabilities, and a glimmer of hope began to appear regarding employment support measures for people with mental disabilities. In 1982, the Japanese government finalized the “Long-Term Program regarding Measures for People with Disabilities,” under which the consideration of employment support for people with mental disabilities was stipulated for the first time.

In 1986, the former Ministry of Labour established the first system for employment measures for people with mental disabilities, known as the “Workplace Adjustment Training System.” Under this system, companies would be entrusted with providing occupational training to a person with disabilities for a period of six months, with the aim that the company would employ that person at the end of the six-month period. The system was simply applied to people with mental disabilities in addition to being applied to the other categories of people with disabilities, but it meant that, for the first time, people with mental disabilities were able to receive support from the enquiries services for people with disabilities offered by Public Employment Security Offices—public agencies, commonly referred to in Japan as “Hello Work” offices, which offer employment placement and consultation services.

Outside of Japan, in 1983 the ILO adopted the Convention concerning Vocational Rehabilitation and Employment (People with Disabilities), referred to as “Convention No. 159.” Convention No. 159 stipulates that it applies to “all categories of people with disabilities.” The international trend was to implement the same vocational rehabilitation measures

for people with mental disabilities as those implemented for other categories of people with disabilities.

3. The Dawn of Employment Support (1988)

In 1988, the chance occurrence that both the former Ministry of Labour and the former Ministry of Welfare amended laws in the same year marked the formal introduction and development of employment support measures for people with mental disabilities.

In that year, the former Ministry of Labour amended the Employment Promotion Act for Persons with Physical Disabilities, and put into effect the Act on Employment Promotion etc. of Persons with Disabilities (hereafter, the “Employment Promotion Act for Persons with Disabilities”). The Employment Promotion Act for Persons with Disabilities defines the people with disabilities to whom it applies as “people who are considerably restricted in their working life or have significant difficulty leading a working life in the long term due to a physical or mental disability.” This was the first time that people with mental disabilities were legally stipulated as being eligible for employment measures.

As a result of the enforcement of the Employment Promotion Act for Persons with Disabilities, people with mental disabilities were formally recognized as people with disabilities. They became able to officially register with the enquiries service of a Public Employment Security Office as a person seeking employment under the status of a person with disabilities, and to receive employment counselling and assistance in finding employment opportunities.

In the same year, the former Ministry of Welfare amended the Mental Hygiene Act and introduced the Mental Health Act. One of the major pillars of the Mental Health Act was aiming to ensure that more people with mental disabilities would be discharged from hospital and return to everyday life in society, and the act stipulated the provision of social rehabilitation facilities for people with mental disabilities. This also included the establishment of vocational training centers, which allowed employment support for people with mental disabilities to progress significantly, by providing them with training in work activities and preparing them for employment.

4. The Development of Employment Support (1989–2005)

In 1992, Japan ratified the ILO Convention No. 159. This led to significant developments in the domestic system in Japan. In the same year, the Employment Promotion Act for Persons with Disabilities was partially amended to include people with mental disabilities in the subsidy system based on the “Levy System for Employing People with Physical Disabilities,” under which companies who fail to meet the legal employment quota pay a levy for each person below the quota, which is then distributed to companies who meet the quota. Also in the same year, people with mental disabilities were included in the “Subsidy for Employment Development of Designated Job Seekers,” allowing companies to receive partial subsidies for the wages paid to the people with mental disabilities they employed.

With this development, the only difference remaining between the measures for people with mental disabilities and those for people with physical and intellectual disabilities was the fact that people with mental disabilities were not included in the employment quota system for people with disabilities.

Following Japan's ratification of the ILO Convention No. 159, employment support measures for people with mental disabilities became significantly more widespread. In 1987, regional vocational centers for people with disabilities operated and established in each prefecture by the Japan Organization for Employment of the Elderly, Persons with Disabilities and Job Seekers (JEED) began to offer training to assist preparation for employment. This was followed, in 1992, by active support for people with mental disabilities through a succession of projects in which advisors provided individual training in the workplace to prepare people with mental disabilities for employment. In 2002, these projects incorporating guidance offered by advisors in the workplace were developed into the "Job Coaching Project," a project which is currently still in place and achieving significant results in employment support for people with mental disabilities.

In addition to these developments, Public Employment Security Offices were also gradually beginning to improve their capacity for supporting people with mental disabilities, appointing employment counsellors for people with mental disabilities in 1993. These roles were later developed in 2011 into roles for specialist advisors, known as "comprehensive-supporters," who provide counselling and a range of support for people with mental disabilities seeking employment, on the basis of careful consideration of the person's mental condition. They also conduct initiatives aimed at raising awareness and promoting understanding among business holders regarding the employment of people with mental disabilities.

In April 1998, the scope of the definition of people with mental disabilities within employment for people with disabilities was expanded to include "people who have been issued a 'Mental Disability Passbook'" in addition to the original categories, which included people with schizophrenia, mood disorders, and epilepsy. The former Ministry of Labor also established a review committee in 1999 to investigate the possibility of including people with mental disabilities in the employment quota system for people with disabilities. In order to prepare for the inclusion of people with mental disabilities in the employment quota system, it was necessary to improve the environment for the promotion of employment of people with mental disabilities and accumulate know-how regarding the employment of people with mental disabilities by companies. This may have influenced the fact that this year saw an increase in employment support measures which were aimed at, or which benefited, people with mental disabilities.

5. The New Employment Support Period (2006–Present)

2006 saw the dawn of a new period in employment support. The Employment Promotion Act for Persons with Disabilities was amended in order to include people with men-

tal disabilities in the employment quota system for people with disabilities from April onwards. In addition to this, another act entitled the “Act on Services and Supports for People with Disabilities” (currently the “Act on Comprehensive Support for People with Disabilities”) was put into effect and the system of facilities for people with disabilities was restructured. While the details of the Act on Services and Supports for People with Disabilities will not be addressed here, it should be noted that employment support was drastically improved as a result of its introduction.

One of these improvements was a project specifically focused on providing people with mental disabilities with support for finding, preparing for, and entering employment with a company, known as the system of “Transition Support for Employment.” This system actively encourages training not only at facilities but also in the workplace, and incorporates the support methods employed by job-coaches. The aim of the system is for participants to enter employment with a company within two years of the support first being provided, and it has led to a significant increase in the number of people with mental disabilities entering employment with companies.

From April 2013 onward, the legal employment quota for people with disabilities was set at 2.0% according to government ordinance. This was later followed by the amendment of the Employment Promotion Act for Persons with Disabilities in June that year. The amendment was primarily aimed at revising the scope of the definition of people with disabilities used when calculating the legal employment quota, and preparing for the ratification of the UN Convention on the Rights of People with Disabilities, including aspects such as the prohibition of discrimination against people with disabilities, and the obligation of companies to provide reasonable accommodation. It was decided to include people with mental disabilities in the scope of people with disabilities used to calculate the legal employment quota, which up until then had included only people with physical and intellectual disabilities. As a result, it became certain that the legal employment quota for people with disabilities would further increase, causing the burden for companies to increase successively over a short period of time. The quota will therefore be maintained at 2.0% until 2018, after which for the subsequent five years until 2023 it will be possible to adopt a quota set by government ordinance at a figure between the quota calculated with people with mental disabilities included and the quota calculated without people with mental disabilities included. The employment quota including people with mental disabilities will be formally employed from 2023.

At the same time, under the amendment of the Employment Promotion Act for Persons with Disabilities, the guidance which Public Employment Security Offices provide to companies to assist them to achieve the employment quota for people with disabilities will include guidance encouraging companies to employ not only people with physical and intellectual disabilities but also people with mental disabilities. This is expected to help boost the employment of people with mental disabilities. 42 years after the employment quota system for people with physical disabilities was first enacted in 1976, the three categories of

people with disabilities will be able to stand on the same start line. The next issue that must be addressed is skills for supporting employment and the models for employment support.

IV. The Current Situation of Employment of People with Mental Disabilities

According to data collected from companies and compiled by the Ministry of Health, Labour and Welfare on the employment of people with disabilities in FY2013, the actual rate of employment of people with disabilities by private-sector companies was 1.76% as of June 2013, and is continuing to steadily increase. The increase in the number of people with disabilities employed by private-sector companies is remarkable, with the number of people with disabilities employed by companies with 50 employees or more totaling 408,947.5 people, a 7.0% increase on the figure for 2012 (26,584.0 people). This figure has increased consistently each year since 2002, and represents an increase of 162,000 people in comparison with 2003, ten years previously, and an increase of around 83,000 people in comparison with 2008, five years previously.

However, the breakdown of the 408,947.5 people with disabilities employed by private-sector companies in 2013 reveals that 76.3% (303,798.5 people) are people with physical disabilities, 20.3% (82,930.5 people) are people with intellectual disabilities, and 5.4% (22,218.5 people) are people with mental disabilities. The low proportion of people with mental disabilities reveals that the number of people with mental disabilities in employment is still low in comparison with people in other categories of disability. At the same time, the proportion of people with mental disabilities in employment is increasing at a significant rate, with a 33.8% increase on the previous year, in comparison with a 4.4% increase in the proportion of people with physical disabilities and an 11.0% increase in the proportion of people with intellectual disabilities on the previous year. While the proportion that people with mental disabilities account for among people with disabilities in employment is low, it has increased significantly from the 2000 people recorded in 2006 when figures were first taken and is increasing every year. It is expected that the number of people with mental disabilities in employment will continue to rise, and the proportion they account for will continue to gradually increase.

At the same time, data from the Ministry of Health, Labour and Welfare on introductions to employment by Public Employment Security Offices in FY2013 indicates that the number of cases of people with mental disabilities entering employment on introduction from Public Employment Security Offices during the 2013 fiscal year was 29,404, the largest number of cases to date and a remarkable increase of 23.2% (5,543 cases) on the previous year. Among the separate categories of people with disabilities, this is the highest number of cases, exceeding the figures for people with physical disabilities and people with intellectual disabilities. It can be said that the number of cases of people with mental disabilities entering employment is increasing at an extraordinary rate each year, having gone from 2,493 cases ten years previously in FY 2003, to 9,456 cases five years previously in FY

2008, reaching 29,404 cases in FY 2013.

However, while the number of cases of people with mental disabilities entering employment is extraordinarily high, the employment status of people with disabilities reveals that people with mental disabilities account for only 5.4% of the total number of people with disabilities currently in employment. This indicates there is a high proportion of people with mental disabilities who quit their employment. This in turn suggests that the challenge for people with mental disabilities is remaining in employment once they have entered it, and that specialists from employment support organizations need to focus on support measures to assist people with mental disabilities in remaining in employment, as opposed to finding it.

V. The Expansion of the Types of People with Mental Disabilities Perceived as Requiring Employment Support

As mentioned in the previous section, the number of people with mental disabilities entering employment is increasing significantly at an extraordinary rate. On this note, let us look again at the types of people with mental disabilities who are perceived as requiring support. The Employment Promotion Act for Persons with Disabilities defines people with disabilities as “people with physical disabilities, intellectual disabilities, or mental disabilities (including developmental disabilities) and other people who are considerably restricted in their working life or have significant difficulty leading a working life in the long term due to a disability which affects their mental or physical functions.” People with mental disabilities are defined as (i) people who have been issued a Mental Disability Passbook, and (ii) people who have not been issued a Mental Disability Passbook but are affected by schizophrenia, manic depression (including mania and depression), or epilepsy. Only people who have been issued a Mental Disability Passbook are counted as people with mental disabilities when calculating the actual rate of employment of people with disabilities.

While medical care, welfare, and employment measures for people with mental disabilities were formerly all largely focused on supporting people with schizophrenia, this began to change after the turn of the century. The Association for Research on the Promotion of Employment of People with Mental Disabilities, which was established by the Ministry of Health, Labour and Welfare in September 2002, conducted a survey of companies which revealed that 94.3% of the people with mental disabilities employed by the companies surveyed had developed mental disorders after entering employment. The survey also indicated that of the people with mental disabilities 83% were affected by mood disorders (depression), and 22% were on temporary leave from work. This revealed the shocking revelation that while employment support organizations perceived people with mental disabilities as people with schizophrenia, the type of people with mental disabilities that companies were actually being confronted with was people with mood disorders (depression). The survey highlighted the necessity of providing support for people affected by mood disorders (de-

pression) and support to assist the return to work of employees on temporary leave due to mental disabilities developed after entering employment.

From around this time onward, attention was focused on developing support to assist people with mental disabilities in returning to work. In 2002, programs to support people with mental disabilities who were on leave from employment in returning to the workplace were launched by regional vocational centers for people with disabilities and private psychiatric care facilities also began to offer programs to prepare patients for returning to work, known as “rework programs,” which were mainly provided in the form of day care.

As described above, the employment support for people with mental disabilities which was available in around the year 2000 consisted of support for people with mild or moderate schizophrenia, and support for people with depression, provided in the form of support for returning to work. In around 2010 the situation changed again, accompanied by changes in the structure of welfare for people with disabilities and significant increases in the number of cases of people with mental disabilities in employment.

One of the developments around this time was the increase in people with developmental disabilities. Developmental disabilities affect the cognitive functions and other cerebral functions, and measures concerning developmental disabilities were traditionally included in employment support measures. At the same time, people with developmental disabilities were regarded as an additional category of people with disabilities, as they were not regarded as belonging in the category for intellectual disabilities or the category for mental disabilities. However, there was an increase in the number of people with developmental disabilities who developed mental disorders due to the difficulties their developmental disabilities created in their everyday lives. These people in turn received treatment at psychiatric care facilities as outpatients, were diagnosed with developmental disabilities or mental disorders, and used employment support services. Moreover, as a Mental Disability Passbook is required in order to be included in the employment quota for people with disabilities, there was also an increase in the number of people with developmental disabilities acquiring Mental Disability Passbooks, including people who had not been affected by mental disorders. This is likely to have been influenced by the fact that developmental disability was defined as a type of mental disability in the Basic Act for Persons with Disabilities and the Employment Promotion Act for Persons with Disabilities.

The nature of depression has also changed drastically. Depression among young people aged 30 or younger changed significantly from the traditional perception of depression, and began to be described using terms such as “new-type depression” and “immature-type depression.” These types of depression are characterized by strong narcissistic tendencies, a tendency to blame others and one’s environment, difficulty with interpersonal relations, and the inability to adapt to environments such as the workplace. People affected by such types of depression tend not to experience episodes of severe mental symptoms, and are able to enjoy mental diversions such as changes of scenery. Even among specialists it is suggested that in such cases it is difficult to distinguish between “depression” and “laziness.”

Depression does not involve disabilities of the cerebral functions as in the case of developmental disabilities, but there are similarities in the language and behavior that people with depression and people with developmental disabilities may adopt in everyday workplace situations and their ways of approaching and interpreting situations. As a result, at lifestyle support organizations there are many cases diagnosed as developmental disabilities which also include new-type depression, and at psychiatric care facilities there are many cases diagnosed as new-type depression which also include developmental disabilities. It is thought that this in turn is leading to confusion at employment support organizations. It is feared that, if cases of social withdrawal and other types of social anxiety disorder are also included, the number of people with mental disabilities in this field will steadily increase and reach an inordinate number. In fact, such aspects have already begun to reveal themselves in statistics regarding the employment of people with disabilities.

Such concerns regarding large increases in the number of people with mental disabilities may also be attributed to factors resulting from the new system of welfare for people with disabilities, which places no restrictions on the establishment of facilities providing welfare services and finances the operational costs of these facilities in accordance with the number of users. This has resulted in an increase in the number of small-scale facilities offering disability welfare services. As these facilities are not funded for their operational costs if they are unable to secure users, resulting in a significant influence on their operations, securing users has become their utmost priority. Particularly in the case of “Transition Support for Employment” projects, welfare service projects focused on preparing people with mental disabilities to enter employment for companies, facilities offering welfare services must always seek to secure new users, as users receiving such services can only receive support for a maximum period of two years. Furthermore, as increasing the number of users who enter employment increases the operational budget available for each user and benefits operations, these facilities welcome people with mild disabilities who are more likely to find employment—even though they may also be more likely to leave employment. People with mild disabilities are essentially people with new-type depression and people with mild developmental disabilities. If such people receive medical consultation at psychiatric care facilities and acquire Mental Disability Passbooks, the number of people with mental disabilities will increase even more. The accuracy of the diagnostic techniques employed by psychiatric care facilities appears to have a significant influence on the number of people with mental disabilities.

At present, the number of people with mental disabilities who are affected by schizophrenia and are of working age is decreasing considerably. However, there is a growing number of people with severe schizophrenia who up until now were considered to require treatment through hospitalization but are now being discharged from hospital and living in the community, due to the fact that policy is now oriented toward providing support to allow such people to live in the community, as a result of the momentum generated by the appearance of outreach organizations providing comprehensive home support such as Asser-

tive Community Treatment (ACT) programs, and the increase in regional lifestyle support organizations under the new disability welfare system. Moreover, there are also pioneering employment support organizations and medical facilities which have begun to provide employment support for people with severe schizophrenia. While the number of people receiving support is still low, the fact that people with severe schizophrenia are also now able to receive employment support reflects the expansion in the range of people for whom support is provided.

Another factor leading to the increase in people with mental disabilities eligible for employment support is the fact that people with higher cerebral dysfunction caused by cerebrovascular disease or head injuries and people with epilepsy, as well as people with drug and alcohol dependencies and people with borderline personality disorders are also able to receive employment support if they acquire a Mental Disability Passbook. The types of people with mental disabilities are becoming more diverse and expanding in number, resulting in a steady increase in the number of people requiring support.

As it becomes increasingly more difficult to discuss employment support measures for people with mental disabilities in general terms, the question is whether not only companies but also specialists at employment support organizations will be capable of adapting to the growing diversity in the types of people with mental disabilities. It will become increasingly more necessary for these specialists to equip themselves with appropriate support skills by understanding the difficulties faced by people with mental disabilities in their working lives and the functional disorders that cause such difficulties.

VI. The Impact of the Amendment of the Employment Promotion Act for Persons with Disabilities

The pillars of the amendment of the Employment Promotion Act for Persons with Disabilities in 2013 were (i) adding people with mental disabilities to the basis of the definition of people with disabilities used when calculating the legal employment quota for people with disabilities, and (ii) incorporating content in preparation for Japan's ratification of the UN Convention on the Rights of People with Disabilities (prohibition of discrimination against people with disabilities, obligation of companies to provide reasonable accommodation).

1. Adding People with Mental Disabilities to the Basis of the Definition of People with Disabilities Used When Calculating the Legal Employment Quota for People with Disabilities

The 2013 amendment of the Employment Promotion Act for Persons with Disabilities stipulates that people with mental disabilities will be included in the definition of people with disabilities used when calculating the legal employment quota for people with disabilities from 2018 onwards. Prior to this amendment, the definition of people with disabilities

included people with physical disabilities and people with intellectual disabilities. From 2018, people with mental disabilities will also be included when calculating the legal employment quota for people with disabilities.

The legal employment quota for people with disabilities is currently calculated by taking the number of people with physical disabilities in regular employment + the number of people with physical disabilities who are unemployed (job-seekers) + the number of people with intellectual disabilities in regular employment + the number of people with intellectual disabilities who are unemployed (job-seekers) as the numerator, and dividing them by the total number of people in regular employment and the total number of people who are unemployed (job-seekers) as the denominator. As a result of the 2013 amendment, the number of people with mental disabilities in regular employment and the number of people with mental disabilities who are unemployed (job-seekers) will be included in the numerator. In this case, the definition of people with mental disabilities is restricted to people who have been issued a Mental Disability Passbook.

This means that the number in the numerator will increase, inevitably causing an increase in the legal employment quota for people with disabilities. It should also be noted that even people with disabilities who are unable to enter employment and are therefore not included in the number of people in regular employment will be counted in the calculation of the quota as unemployed people with disabilities if they are registered with a Public Employment Security Office as a job-seeker. This will also cause the legal employment quota for people with disabilities to increase. It is noteworthy that the system is such that an increase in the number of people with mental disabilities who wish to work will lead to an increase in the legal employment quota for people with disabilities.

This revision of the definition of people with disabilities used when calculating the legal employment quota for people with disabilities will therefore not only promote the employment of people with mental disabilities but also lead to an increase in the legal employment quota for people with disabilities. This in turn will make it necessary for companies to further promote the employment of people with disabilities, and lead to the promotion of employment of people with disabilities as a whole.

Prior to the revision in 2013, the legal employment quota for people with disabilities had last been revised in 1997, when people with intellectual disabilities were added to the definition of people with disabilities and the legal employment quota was increased from 1.6% to 1.8%. It was then revised for the first time in 16 years in April 2013, raising the legal employment quota for people with disabilities to 2.0%, prior to the amendment of the Employment Promotion Act for Persons with Disabilities in June that year. The amendment of the Employment Promotion Act for Persons with Disabilities, which stipulates adding people with mental disabilities to the definition of people with disabilities used when calculating the quota, will also lead to a further increase in the legal employment quota of people with disabilities in 2018. Given that the number of people with mental disabilities who are in regular employment or seeking employment is currently increasing every year, a signifi-

cant increase is expected. As this will result in the burdens on companies increasing successively in a short period of time, measures have been taken to mitigate sharp changes. In anticipation of the increase in the legal employment quota for people with disabilities in 2018 as a result of adding people with mental disabilities, the amendment allows for the quota to be lower than the quota that would be calculated with the original formula.

In 2023, the legal employment quota for people with disabilities will be calculated using the original formula, and is therefore likely to increase. It is predicted that in the future the legal employment quota for people with disabilities will increase every five years and it is clear that this will have a significant influence both on all people with disabilities—including people with mental disabilities—as well as all companies to which the legal employment quota for people with disabilities applies.

Expanding the definition of people with disabilities to include people with mental disabilities will also affect people with mental disabilities as a result of the impact that it will have on the guidance that Public Employment Security Offices provide for companies to help them fulfil the legal employment quota for people with disabilities. While at present the guidance which Public Employment Security Offices provide companies which fail to fulfil the legal employment quota for people with disabilities entails assisting companies with employing people with physical disabilities and people with intellectual disabilities, from 2018, this will also include guidance encouraging the employment of people with mental disabilities. This will provide a significant boost for the employment of people with mental disabilities.

2. Content in Preparation for the Ratification of the UN Convention on the Rights of People with Disabilities (Prohibition of Discrimination against People with Disabilities, Obligation of Companies to Provide Reasonable Accommodation)

The amendment of the Employment Promotion Act for Persons with Disabilities was also aimed at preparing an environment to support adherence to the UN Convention on the Rights of People with Disabilities, which Japan ratified in 2014.

Firstly, the amendment prohibits companies from adopting discriminatory treatment on the grounds of disability. Discriminatory treatment in this case refers to such treatment as using disability as grounds for not hiring a person or as grounds for setting an employee's wages at a low rate. It is important to understand that companies have been prohibited from ignoring the abilities of a person and making decisions regarding whether or not to hire them or regarding the level of wages to offer them purely on the grounds of their disability or its level of severity.

Secondly, the amendment also stipulates that companies are obliged to provide reasonable accommodation. Except in cases in which it would become an excessive burden, companies must provide treatment that takes into consideration the characteristics of disabilities. Specific case studies outlining discriminatory treatment and reasonable accommodation will be specified under guidelines which are currently being formulated by the Min-

istry of Health, Labour and Welfare.

However, even if guidelines are provided, the increasing diversity in the perception of people with mental disabilities will restrict how far companies alone can implement measures which accommodate for such disabilities. In the future specialists from employment support organizations will be expected to provide an increasingly higher level of support for companies and develop increasingly specialist knowledge.

VII. Prospects for the Future

Under the amendment of the Employment Promotion Act for Persons with Disabilities, the Japanese government has imposed various obligations on companies regarding the employment of people with disabilities. Japan's measures for supporting the employment of people with disabilities involve (i) imposing various obligations on companies and providing guidance regarding adherence to laws and regulations, (ii) decreasing the financial burdens on companies which employ people with disabilities, and (iii) providing human support through employment support organizations.

It is important to note that without number (iii)—the support provided by employment support organizations—it would be difficult to ensure the ongoing employment of people with mental disabilities and other people with disabilities who require significant amounts of support. Employment support organizations play an essential role in providing people with disabilities with counselling, training, support for adjusting to a workplace, support for transition into employment, and follow-up support after entering employment. It is also necessary not only to support people with disabilities but also to provide various forms of support for companies which employ people with disabilities, such as support for understanding disabilities, identifying and redesigning work that people with disabilities could do, and interacting with people with disabilities.

The greater the emphasis on obligations to be fulfilled by companies becomes, the greater the impact that support for companies provided by employment support organizations will have on the employment of people with disabilities and sustaining such employment. In the future, employment support organizations will need to provide an increasingly higher quality of support, by possessing skills to provide support which is suited to more diverse types of people with mental disabilities, and skills for supporting companies. The increase in the legal employment quota will undoubtedly lead to increasing numbers of people with disabilities who require greater amounts of support entering employment. It will be necessary to find a means by which employment support organizations, the people with disabilities themselves, and companies can work together to promote and sustain the employment of people with disabilities.

As the perception of people with mental disabilities becomes increasingly more diverse, it will also be necessary for psychiatric care facilities to increase the accuracy of their diagnostic techniques, and conduct diagnoses which are based on both medical models as

well as social models which can be used to assess the difficulties the person faces in daily life. If the current situation continues, there may come a time when there are no borders between people with mental disabilities and people without mental disabilities. Moreover, as facilities providing disability welfare services such as support for transition into employment will make desperate endeavors to secure users for their services, there is an undeniable possibility that such facilities will play a role in generating new types of people with mental disabilities. It is now necessary to make fresh attempts to devise a system which will properly support people who are genuinely affected by physical and mental disabilities and as a result are considerably restricted in their working life or have significant difficulty leading a working life in the long term.

Disability Employment and Productivity

Akira Nagae

Waseda University

Japan's disability employment policy is a levy system based on employment rates. The policy has been reinforced in recent years, in conjunction with Japan's ratification of the United Nations Convention on the Rights of Persons with Disabilities. This paper takes a sample of individual companies continuously listed on the Tokyo Stock Exchange between 2003 and 2010 and coming under the jurisdiction of the Tokyo Labour Bureau to conduct empirical analysis on the relationship between statutory employment rates and corporate performance. The aim in doing so is to evaluate the effectiveness of Japan's disability employment policy. The results of this analysis reveal that companies that met the statutory employment rate within the estimation period performed worse (in terms of profits) than those that did not. No impact could be found from the fact that persons with mental disabilities were added to employment rates during the period in question. Furthermore, it was also confirmed that achieving the statutory employment rate has no impact on a company's productivity. Therefore, disability employment policies aimed at equalizing corporate burdens need to be reinforced.

I. Introduction

On January 20th, 2014, the Japanese government ratified the "Convention on the Rights of Persons with Disabilities" adopted by the United Nations. The Convention is a global initiative aimed at improving the socially inferior status of persons with disabilities. Japan signed it on September 28th, 2007, but the necessary preparations delayed ratification until this point. In future, domestic legislation and others aimed at enhancing the social rights of persons with disabilities will be developed in Japan.

Policies for persons with disabilities in developed countries largely consist of policies on employment and income security. With advances in medicine and rehabilitation technology in recent years, persons with disabilities are now able to achieve the same productivity as those without disabilities, as long as they are given a degree of consideration. Moreover, since achieving the general employment¹ of persons with disabilities has the ultimate

* The author would like to thank Ryo Kambayashi for useful comments in preparing this paper, as well as Toshiya Takekawa, Mirai Naito, Tomohiro Kumagai and Masayuki Onishi for their tremendous efforts in gathering and organizing data. This research was funded by Science Research Grant (C) No. 25380374 from the Japan Society for the Promotion of Science.

¹ Disabled persons who wish to start work are provided with employment through a special welfare system. This is because the mainstream employment system is heavily biased against the limited abilities of the handicapped, and regular kinds of work are difficult for them. For persons employed in rehabilitation institutions, social participation occurs concurrently with rehabilitation for vocational aid. Labor law is not applicable to this employment system. In this paper, the term "general employment" is used in contradistinction to work obtained through the special welfare system. Therefore,

goal of enabling them to participate in society, employment policies have a particularly central role to play. Therefore, disability employment policy should be such that general employment of the disabled is efficiently promoted. Disability employment policies adopted in developed countries largely consist of anti-discrimination laws and employment quota and levy systems. However, neither of these could be said to promote general employment of the disabled with any efficiency. Moreover, given the relationship with income security policy, it is not clear what kind of policy would be preferable (Burkhauser and Dary 2002; OECD 2003; National Institute of Vocational Rehabilitation 2002).

Anti-discrimination laws have taken shape under the concept of guaranteeing the human rights of persons with disabilities. These laws oblige companies to provide reasonable accommodation (such as barrier-free workplace environments) enabling persons with disabilities to perform their work duties smoothly. They also prohibit discrimination against persons with disabilities in connection with employment. Under these laws, persons with disabilities have their rights guaranteed and are no longer subjected to discriminatory treatment (Jones 2006). As such, these laws could ensure the quality of employment for disabled workers. However, companies have to cover the cost of providing reasonable accommodation to jobseekers and employees with disabilities. In other words, anti-discrimination laws do not include the function of compensating employers for the costs involved in disability employment. In countries that adopt this policy, therefore, it has been shown that the policy either has no effect or has a negative impact on disability employment and wages, owing to the opportunity cost of disability employment incurred by companies. This result has not been overturned to date (Acemoglu and Angrist 2001; Delaire 2000; Jones 2008; Burkhauser, Houtenville, and Rovba 2007).

Meanwhile, the employment quota and levy system arose out of the concept that it is society's obligation to protect persons with disabilities, as they are socially vulnerable. This system imposes a fixed disability employment quota on companies and obliges them to employ persons with disabilities. Levies are imposed on companies that fail to meet the statutory employment rate, and these are used to create funds that promote the general employment of the disabled. The funds are used as a financial resource for the rehabilitation needed for general employment of the disabled, as well as paying employment subsidies to companies. Moreover, subsidies known as adjustment payments are distributed to companies that achieve the statutory employment rate (Thornton 1998). Under this system, the aim is for the burden of costs associated with disability employment by companies to be borne equally by companies as a whole. As such, corporate burdens associated with disability employment ought to be taken into account. However, this system does not guarantee the rights of persons with disabilities. Therefore, since persons with disabilities could undeniably suffer discrimination when employed, the possibility remains that even if they find employment, their welfare will not improve. Since disability employment policy is expected to play a

general employment is used to imply "regular" or "usual" employment.

central role within policies for persons with disabilities, and numerous countries adopt the employment quota and levy system, the effects of the employment quota and levy system will need to be analyzed in detail in order to consider a preferable disability employment policy.

The purpose of this paper is to study the effectiveness of the employment quota and levy system adopted in Japan, by verifying the relationship between corporate performance and levels of achievement of the statutory employment rate. Firstly, as will be explained in Section III, there has been no major change in the system, other than an increase in the types of disability counted in employment quotas. The effectiveness and problems of the system will be discussed by viewing differences in the corporate performance of companies whose achievement of the statutory employment rate changed between 2003 and 2010, when the average real employment rates of private companies gradually increased. Secondly, by viewing the relationship between companies' productivity and their achievement of the statutory employment rate, problems with the system will be highlighted and the future impact of introducing a Discrimination Elimination Act will be discussed.²

Below, in Section II, research evaluating disability employment policies in developed countries will be reviewed. Section III will give an outline and history of Japan's employment quota and levy system, then survey the employment status of persons with disabilities in private companies in recent years. Empirical analysis will be conducted in Section IV, insights obtained from the results will be summarized in Section V, and finally, future policies will be discussed.

II. Review of Existing Research

1. Anti-Discrimination Laws

Laws prohibiting discrimination against persons with disabilities have been adopted by western nations. Acemoglu and Angrist (2001) have produced notable research analyzing the effects of these laws. They use data from the CPS (Current Population Survey) and the EEOC (Equal Employment Opportunity Commission) to verify the effects of the "Americans with Disabilities Act" enacted in 1990, and use the Difference-in-Differences method (DD method) to verify the effects of policies. As a result, they reveal that both employment and wages have fallen. Meanwhile, Delaire (2000) uses different data to reach the same conclusion with regard to employment, though unable to verify a decrease in wages. Since then, other researchers have tried various ways of re-verifying the effects of the Act, but have been unable to overturn the results of research conducted immediately after it came into effect (Burkhauser, Houtenville, and Rovba 2007; Jones 2008). The consensus currently obtained from research on anti-discrimination laws is that, because they fail to account

² Japan's anti-discrimination law is known as the Discrimination Elimination Act. It comes into force in April 2016.

for the corporate burden of opportunity cost incurred by disability employment, they have consequently not enhanced the economic welfare of persons with disabilities.

2. The Employment Quota and Levy System

Countries that have adopted the employment quota and levy system are mainly concentrated in Europe. In these countries, the system is founded on the long-standing acceptance of a social obligation to employ individuals with disabilities (Thornton 1998). Lalive, Wuellrich, and Zweimüller (2013) analyze policies in Austria. The system adopted in Austria obliges companies to hire one additional person with disabilities for every 25 new employees, with financial penalties imposed on companies that fail to do so. They examine two groups of companies, one that just managed to meet the requirement for disability employment, and another that just failed to do so, incurring penalties. Comparing the distribution of corporate scale in terms of the numbers of persons with disabilities and non-disabled full-time workers employed by these two groups, companies that had to pay penalties tended to hire more persons with disabilities than those that did not. This shows that financial penalties produce incentives for disability employment, while subsidies tend to cause moral hazard in this respect. In addition, Edzes, Rijnks, and van Dijk (2013) reveal that the location of companies that hire persons with disabilities also has an impact on their employment. This suggests that the monetary amounts of subsidies and penalties provided under the system should not be uniform.

Economic research on the effects of the system in Japan includes that of Tsuchihashi and Oyama (2008). They state that “There are problems, in terms of efficiency, with each company always having to employ persons with disabilities in proportion to their corporate scale when society as a whole employs a fixed number of such persons.” They go on to assert that “Each company’s stance on acceptance of disability employment differs depending on the type of industry, the type of occupation and the corporate scale. Therefore, uniform employment rates are inefficient in social terms, in that they lead to wastage of resources and a diminishment of social welfare.” They go on to propose a system design that could improve problems with the system, though in reality, it would be difficult to put into practice. Meanwhile, Nakajima, Nakano, and Imada (2005) conduct simulation analysis based on the existing system, and find that increasing subsidies for disability employment could promise certain effects in terms of the social balance, but that conversely, increasing levies and subsidies and raising the statutory employment rate would not necessarily produce good effects. Finally, Nagae (2005) suggests the possibility that penal measures are not effective, based on the fact that the positive impact of these penalties on stock prices.

What is highlighted in these research results is that there is still room for improvement in order to make the policy less wasteful. In particular, a point asserted by all research studies in common is that the policy should take account of companies’ opportunity cost with regard to disability employment, and that in order to achieve this, the amounts of levies and subsidies need to be appropriately adjusted. In this paper, this point will additionally be

confirmed and the discussion expanded.

III. An Outline of Japan's Disability Employment Policy and Trends in Recent Years

1. System Outline

Japan's system of disability employment is based on the 1960 "Act on Employment Promotion etc. of Persons with Disabilities." Disability employment policy in its present form has been developed since the amendment of the Act in 1976. This law promotes disability employment among corporate employers by establishing a system of employment quotas, to ensure that persons with disabilities are employed at a fixed proportion of all employees. It also imposes disability employment levies of 50,000 yen per month on employers not meeting the employment quota for every person falling short of the quota, with the resultant income to be used for promoting disability employment. Levies from these companies are mainly converted to subsidies paid to employers who employ persons with disabilities beyond the statutory employment rate. Employers failing to achieve disability employment targets and meeting certain conditions set by the Ministry of Health, Labour and Welfare are ordered by the Ministry to draw up "Plans for Employment of Persons with Disabilities." If they fail to do so, they are fined up to 200,000 yen. Furthermore, if they fail to employ persons with disabilities in accordance with these plans, they receive the maximum penalty of "naming and shaming" (publication of the company name). The main purpose of the system is taken to be (i) to promote and stabilize employment for persons with disabilities, and (ii) to correct the imbalance in corporate burdens involved in employing persons with disabilities.

(1) Examples of Policy Reinforcement in Recent Years

With the ratification of the Convention on the Rights of Persons with Disabilities, an anti-discrimination law was added to Japan's disability employment policy. To prepare for this, the government has been taking steps to reinforce the policy over the last ten years. The first step was to expand the number of companies subject to levies. The statutory employment rate for private companies had been set at 1.8% until 2012, but was raised to 2.0% in 2013. Similarly, levies had been applicable to companies with 301 or more full-time employees up to 2009, but in 2010 the scope was expanded to include companies with 200 or more full-time employees, and again in 2015 to those with 100 or more. Secondly, types of disability subject to employment quotas were expanded and different treatment for ways of working depending on the degree of disability was introduced. In the policy until then, mental disabilities had not been included in the disabilities applicable to employment quotas. But they were included from 2006 onwards, and in 2010 the scope was again expanded to include minor physical disabilities and intellectual disabilities. Also in that year, part-time

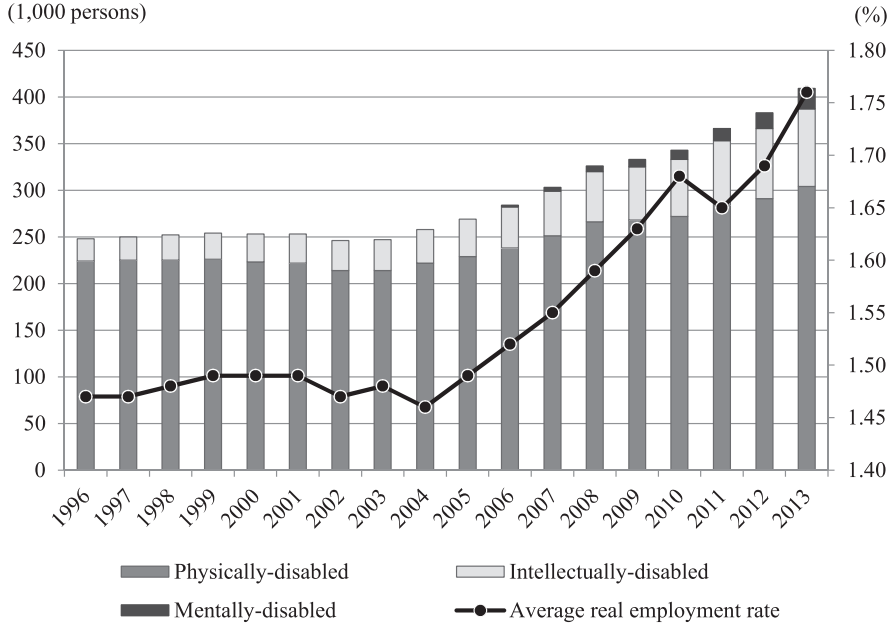
workers were included for the first time.³ Thirdly, penal measures have been intensified. Until 2003, hardly any companies were “named and shamed,” but several company names have been published in most years since 2003. In 2006, moreover, the standards for orders to formulate “Plans for Employment of Persons with Disabilities” as the precursor to naming and shaming have also been reinforced (Ministry of Health, Labour and Welfare 2006). Fourthly, the exclusion ratios have been reduced. Provisions on exclusion ratios permit companies to exclude some employees from calculations of the statutory employment rate, when their jobs are considered difficult to apply to disability employment. However, since this system could conversely cause a disparity in burdens between companies, a decision was made to abolish it in stages. Although there has been little progress in implementing this abolition measure, in 2011 the ratios were reduced by a uniform 10 percentage points.

Of employment promotion policies designed for the economic welfare and social participation of socially disadvantaged minority groups, the primary objective of the employment quota system is to increase the employment volume among relevant groups. This system may be regarded as the very first step in the social inclusion of these previously excluded groups. But since this policy sets a “framework” for applicable groups and aims to forcibly increase their employment volumes, it does not guarantee the welfare or rights of persons with disabilities. On the other hand, an anti-discrimination law based on the now ratified Convention on the Rights of Persons with Disabilities is an attempt by society to guarantee the rights of persons with disabilities and improve their welfare. In countries that have adopted employment quota systems, ratifying the Convention means that they face the tricky predicament of both expanding the social participation of persons with disabilities and guaranteeing their rights at the same time. In this section, attempts to reinforce the policy over the last ten years or so have been introduced. Confirming what happened during that time will present a good environment for confirming the effectiveness of the employment quota and levy system and examining where its problems lie.

(2) The Impact of Policy Reinforcement

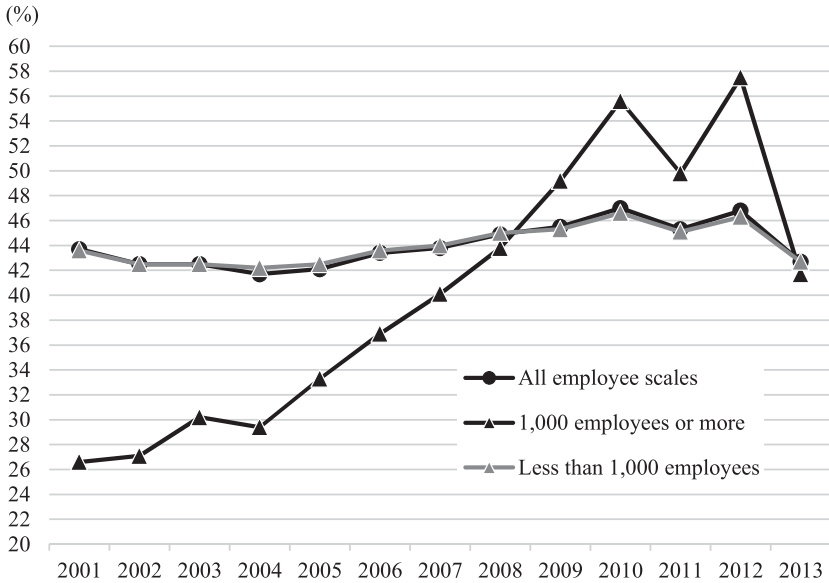
Firstly, the impact arising from reinforcements of the policy in recent years will be confirmed. Figure 1 is a graph showing numbers of persons in disability employment and trends in average real employment rates in the private sector from 1996 to 2013. According to this, both persons in disability employment and average real employment rates in the private sector remained more or less constant until 2005, but both figures have been increasing since 2006. However, real employment rates have been increasing more vigorously than the number of persons in disability employment. This phenomenon is being led by companies with a large employee scale. Figure 2 shows how only these larger scale companies have been leading the rise in the statutory employment rate. Nevertheless, people who

³ Workers with contractual weekly working hours of between 20 and less than 30 hours were added to the quotas, each being counted as 0.5 persons.



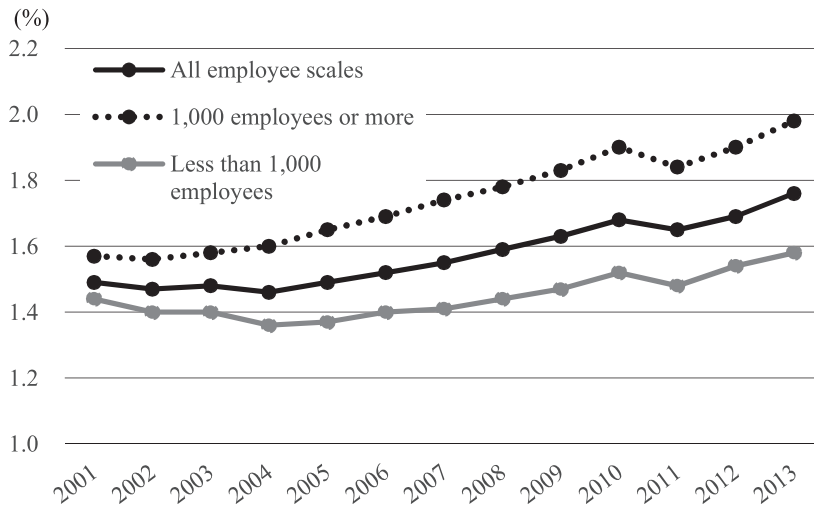
Source: Compiled by the author from Ministry of Health, Labour and Welfare, "2013 Aggregated Results of Disabled Employment Status."

Figure 1. Persons in Disability Employment and Changes in the Average Real Employment Rate



Source: Compiled by the author from Ministry of Health, Labour and Welfare, "2013 Aggregated Results of Disabled Employment Status."

Figure 2. Trends in the Proportion of Companies Meeting the Quota



Source: Compiled by the author from Ministry of Health, Labour and Welfare, "2013 Aggregated Results of Disabled Employment Status."

Figure 3. Trends in Average Real Employment Rates

work for companies with a scale of 1,000 employees or more account for less than half of all employees working in the private sector as a whole. This leads to the phenomenon whereby the rise in average real employment rates is higher than the increase in persons in disability employment.

The policy includes systems that are advantageous to large corporations, namely the special subsidiary system⁴ and the special system for group calculation.⁵ Since economy of scale is expected to work well with disability employment, it is thought to have caused disability employment to be led by large corporations that have used these systems in promoting disability employment. However, it is not that all large corporations are able to use these systems. Moreover, if the employee scale is large, the total cost incurred when employing persons with disabilities also rises. Figure 3 shows that even in corporate groups with large employee scales, average real employment rates fell in 2011, when the rate of exclusion was reduced. Figure 2 also shows that the proportion of companies meeting the statutory employment rate fell in 2013, when that rate was increased. As a result, even in groups with large employee scales, a considerable number of companies only just meet the statutory employment rate. Furthermore, Figure 3 shows that average real employment rates follow

⁴ A system whereby, if a company creates a subsidiary with special consideration for employing persons with disabilities in order to promote and stabilize employment for such persons, and provided certain conditions are met, workers employed by the subsidiary may exceptionally be regarded as being employed by the parent when calculating real employment quotas (See Ministry of Health, Labour and Welfare [2014]).

⁵ A system whereby real employment quotas for a group of employers may be aggregated provided certain conditions are met (Ministry of Health, Labour and Welfare 2014).

more or less the same trend in all groups. Based on this fact, we may surmise that, even for large corporations with reserve capacity to meet the statutory employment rate, a considerable burden of cost is required.

However, if the levy system were to achieve its goal of equalizing corporate burdens, no difference in corporate performance should appear as a result of whether or not the statutory employment rate is met. In the following, therefore, our attention will turn to the relationship between corporate profit and meeting the statutory employment rate. Specifically, of listed companies with a Head Office in Tokyo between 2003 and 2010 in which there has been a change in the achievement of the statutory employment rate, the relationship between corporate performance and whether or not they have met the statutory employment rate will be confirmed. In addition, to confirm that the inclusion of persons with mental disabilities in employment quotas has not had an impact, it will also be confirmed whether or not there was any difference in the corporate performance of companies meeting and those not meeting the statutory employment rate in around 2006.

IV. Empirical Analysis of Disability Employment and Corporate Performance

1. The Relationship between Corporate Profit and Meeting the Statutory Employment Rate

In this section, the relationship between corporate profit and whether or not the statutory employment rate is met will be verified. The following estimation model will be used for verification.

$$y_{it} = \beta_0 + \beta_1 d_att_{it} + x'_{it} \cdot \pi_j + d'_t \cdot \gamma_m + \alpha_i + \epsilon_{it} \quad (1)$$

Here, y_{it} represents the profit margin on sales. Profit margin on sales is defined as “profit margin on sales \equiv (sales turnover – [cost of sales + marketing and general management costs]) \div sales turnover.” d_att_{it} is a dummy variable for statutory employment rate achievement, with 1 representing achievement of the rate and 0 representing failure to do so. For x'_{it} , the capital-to-sales ratio is used to control the opportunity cost of capital, the debt-to-sales ratio to control the impact on profit of borrowings the company could make when the market suffers a negative shock, and the average age of employees as a control for the employee composition. Finally, the cross term of an industry dummy and a calendar year dummy is used to control the year-on-year effect of industries. d'_t is the calendar year dummy, while α_i expresses individual effects unobservable by the analyst.

Data on individual companies' disability employment status were obtained by information disclosure request. These data include company names, addresses, industrial categories, disability employment status, full-time employee employment status and other information on individual companies under the jurisdiction of Labour Bureaus. The data also include categories for different types of disability and information on whether part-time

Table 1. Basic Statistics 1

Name of variable	Observed value	Average	Standard deviation	Minimum value	Maximum value
Profit margin on sales	3880	0.449	0.341	-0.335	3.014
Capital ratio	3880	0.887	1.971	-0.467	53.834
Debt ratio	3880	1.252	8.798	0.038	268.855
Average employee age	3880	39.777	3.434	25.5	54.3
Real employment rate	3880	1.525	0.545	0	7.32
Statutory employment rate achievement dummy	3880	0.295	0.456	0	1
Employee scale 1,000 or more dummy	3880	0.589	0.492	0	1
Industry dummy					
Fisheries / Agriculture & forestry: base	3880	0.004	0.064	0	1
Mining	3880	0.004	0.064	0	1
Construction	3880	0.093	0.290	0	1
Foods	3880	0.064	0.245	0	1
Textiles	3880	0.029	0.167	0	1
Pulp and paper	3880	0.006	0.078	0	1
Chemicals	3880	0.087	0.281	0	1
Pharmaceuticals	3880	0.025	0.155	0	1
Petroleum & coal products	3880	0.008	0.090	0	1
Rubber products	3880	0.004	0.064	0	1
Glass, stone & clay products	3880	0.025	0.155	0	1
Steel	3880	0.021	0.142	0	1
Non-ferrous metals	3880	0.021	0.142	0	1
Metal products	3880	0.014	0.119	0	1
Precision equipment	3880	0.021	0.142	0	1
Machinery	3880	0.066	0.248	0	1
Electric equipment	3880	0.113	0.317	0	1
Transport equipment	3880	0.023	0.149	0	1
Other equipment	3880	0.033	0.179	0	1
Electric & gas	3880	0.002	0.045	0	1
Information and communications	3880	0.052	0.221	0	1
Services	3880	0.041	0.199	0	1
Warehousing & transport related industries	3880	0.012	0.111	0	1
Maritime transport	3880	0.004	0.064	0	1
Air transport	3880	0.004	0.064	0	1
Land transport	3880	0.025	0.155	0	1
Wholesale trade	3880	0.101	0.301	0	1
Retail trade	3880	0.047	0.213	0	1
Other finance business	3880	0.014	0.119	0	1
Securities and futures trading	3880	0.002	0.045	0	1
Real estate	3880	0.039	0.194	0	1
Calendar year dummy					
2003 : base	3880	0.125	0.331	0	1
2004	3880	0.125	0.331	0	1
2005	3880	0.125	0.331	0	1
2006	3880	0.125	0.331	0	1
2007	3880	0.125	0.331	0	1
2008	3880	0.125	0.331	0	1
2009	3880	0.125	0.331	0	1
2010	3880	0.125	0.331	0	1

Table 2. Corporate Profit and Achievement of Statutory Employment Rate

Profit margin on sales	(1)	(2)	(3)	(4)
Statutory employment rate dummy	-0.0088 ** (0.0044)	-0.0095 ** (0.0045)	-0.0074 * (0.0044)	-0.0090 ** (0.0045)
Capital-to-sales	0.0401 *** (0.0009)	0.0401 *** (0.0009)	0.0401 *** (0.0010)	0.0406 *** (0.0010)
Debts-to-sales	0.0031 *** (0.0005)	0.0031 *** (0.0005)	0.0031 *** (0.0005)	0.0031 *** (0.0005)
Average age			-0.0042 *** (0.0015)	-0.0051 *** (0.0015)
Constant term	0.4122 *** (0.0021)	0.4098 *** (0.0040)	0.5788 *** (0.0578)	0.6080 *** (0.0613)
Calendar year dummy	no	yes	no	yes
Observations	3880	3880	3880	3880
No. of companies	485	485	485	485
Pseudo-coefficient of determination	0.18	0.18	0.21	0.21

Notes: 1. Brackets show standard error.

2. Analysis with control of employee scale was also carried out, but this is not shown as there was no significant difference in the results.
3. Estimations after introducing the cross term of the calendar year dummy and the industry dummy are not shown, as the results are not significantly different from those using the calendar year dummy only.
4. * significant at 10%, ** significant at 5%, *** significant at 1%.

work is involved or not, but these details are masked as they relate to personal information and could lead to individuals being identified. As such, these data are not used. Financial data are taken from *Kaisha Zaimu Karute 2011* (Toyo Keizai Inc.). The sample consisted of companies with a Head Office located in Tokyo, which had been continuously listed from 2003 to 2010 and which had no typological errors or omissions in the financial data and Labour Bureau data. Table 1 shows basic statistics.

Elements of companies' personnel policies and corporate culture are expected to be strongly related to disability employment. Therefore, effects that are unique to individual companies and unobservable by the analyst must be controlled. To this end, the method of fixed effect estimation, as used in research on corporate performance and personnel policies, is selected, and α_i is thus controlled.⁶ Meanwhile, in consideration of effects peculiar to individual years, a model including a calendar year dummy for each year is also estimated.

Table 2 shows the results for estimation model (1). Rows (1) and (2) are the results of the model without control of workers' attributes, while (3) and (4) are the results of the model with control of workers' attributes. Rows (2) and (4) are models taking account of

⁶ It has been confirmed that the fixed effect model is also adopted in Hausman tests.

effects peculiar to each year. In all of the models, the interesting coefficients are those of the statutory employment rate dummy variable. In terms of the effects seen there, the performance of companies that met the rate in this period is shown to be statistically significantly lower than that of those that did not, by around 7–9% in all models.

2. Employment of Persons with Mental Disabilities and Corporate Performance

No major change to the system occurred during the period highlighted in this paper, except that persons with mental disabilities were added to real employment rates. As such, the impact of making this addition needs to be confirmed.

One difficulty when considering disability employment is that there are many people who develop a disability after starting employment (i.e. “workers with acquired disability”). In such cases, corporate incentives for disability employment would be difficult to analyze because the workers are not newly employed from the (external) labor market. The same could be said of persons with mental disabilities. This problem is easier to understand if we consider the existence of workers with developmental disabilities and intractable diseases who are already in the workforce, in particular. Workers with developmental disabilities carry passbooks certifying that they have either an intellectual or a mental disability. However, if the advantages of obtaining a passbook when already working are not so great, many such workers do not apply for mental disability passbooks, as the very name carries a certain stigma. If these workers were to obtain a passbook on request from their employer, the number of persons in disability employment in that company would increase, but its productivity would be unchanged. In such cases, no impact on productivity or corporate profit would be observed as a result of the company achieving the statutory employment rate. Even if persons with mental disabilities have started to be employed, it is thought highly likely that factors such as the above would have a significant impact for a period after the start. Therefore, even if persons with mental disabilities are included in employment quotas, no change is expected to be observed in corporate performance.

In the following, it will be confirmed how corporate profit is affected by the inclusion of persons with mental disabilities in disability employment policy. As stated in the outline of the system, companies that fail to comply with the disability employment policy are advised by the Ministry of Health, Labour and Welfare to draw up plans for employing persons with disabilities, and these plans are supposed to cover a period of three years. Thus, the impact of system change between 2003 and 2008 will be verified using the DD method. Estimation model (1) will be modified as shown below for this purpose.

$$y_{it} = \beta_0 + \beta_1 d_t \cdot d_{att_{it}} + \beta_2 d_t + \beta_3 d_{att_{it}} + x'_{it} \cdot \pi_{it} + d'_t \cdot \gamma_m + i'_i \cdot \delta_i + \epsilon_{it} \quad (2)$$

Here, d_t is a dummy variable set at 0 for 2003 to 2005 and at 1 from 2006 to 2008. i'_i is the industry dummy and d'_t the calendar year dummy, while x'_{it} also includes the industry \times calendar year dummy. To measure the impact of workers with acquired disability,

Table 3. Impact from the Inclusion of Mental Disability

Profit margin on sales	(1)	(2)
Achievement dummy × period dummy	-0.0047 (0.0190)	-0.0069 (0.0198)
Achievement dummy	0.0258 ** (0.0141)	0.0275 * (0.0148)
Period dummy	0.0173 (0.0153)	0.0178 (0.0156)
Capital-to-sales	0.0633 *** (0.0158)	0.0638 *** (0.0159)
Debts-to-sales	-0.0009 (0.0007)	-0.0009 (0.0007)
Years since establishment	-0.0008 *** (0.0003)	-0.0008 *** (0.0003)
Average age	-0.0111 *** (0.0019)	-0.0111 *** (0.0019)
Constant term	0.8765 *** (0.0777)	0.8780 *** (0.0799)
Calendar year × industry dummy	no	yes
Observations	2910	2910
Coefficient of determination	0.5455	0.5482

Notes: 1. All models include the calendar year dummy and industry dummy.

2. Brackets show robust standard error.

3. * significant at 10%, ** significant at 5%, *** significant at 1%.

information on average length of service would be needed, but since such information is not included in the data used in this paper, years of operation are used as a proxy variable. The estimation method is OLS.

Table 3 lists the estimation results. As expected, the inclusion of persons with mental disabilities in the quotas has had no impact on corporate profit. This tells us that the expansion of applicable disabilities had hardly any impact in the period when average real employment rates were gradually being increased in the private sector.

3. The Relationship between Disability Employment and Productivity

The analysis so far has revealed that companies meeting the statutory employment rate have poorer corporate performance than those that fail to do so. Finally, the relationship between disability employment and corporate productivity will be confirmed. In particular, it will be confirmed that the results revealed in the previous section are most likely due to inappropriate setting of levy and subsidy amounts.

There are a number of conceivable reasons why the performance of companies that meet the statutory employment rate worsens while that of non-achievers improves. Firstly, the levy and subsidy amounts could be too small. Let us suppose that there are two companies with similar attributes, identical gross production capacity and identical marginal cost of employing persons with disabilities. However, one of the companies meets the statutory

employment rate, while the other does not. In this situation, the cost of disability employment borne by the company that meets the statutory employment rate would be the marginal cost of the number of persons with disabilities it employs, plus the costs for newly employing persons with disabilities, minus the subsidy amount for the number in excess of the quota. By contrast, the cost of disability employment borne by the company that does not meet the statutory employment rate would be the marginal cost of the number of persons with disabilities it employs, added to the levy amount corresponding to the number falling short of the quota. Since these two companies both have the same gross production capacity, their income is also the same. However, even considering that economy of scale could have the effect of diminishing the marginal cost of disability employment, if the amounts of levies and subsidies are small, the company that fails to meet the statutory employment rate will have a smaller total cost related to disability employment. Therefore, the company that fails to meet the statutory employment rate will make a bigger profit than the company that meets it.

The second conceivable reason is the impact of penal measures. The rise in average real employment rates of persons with disabilities by private companies in recent years is due to an intensification of penal measures since 2006 (Ministry of Health, Labour and Welfare 2006). This means that, if a large corporation that achieved the statutory employment rate started to employ persons with disabilities beyond the optimal number, its personnel costs would go up and the surplus labor force would reduce its production capacity. This could have an impact on corporate profit. The third possible reason is that the productivity of employed persons with disabilities is lower (Jones 2006). This would mean that a company's productivity would decrease if it employed additional persons with disabilities. The fourth possibility is that companies' internal labor markets are not so efficient as to enable persons with disabilities to be allocated to suitable workplaces. In this case, again, additional employment of persons with disabilities would function as a reducing factor on productivity.

Of the above hypotheses, productivity would not be affected by whether the statutory employment rate is achieved only if the first hypothesis were true. If the other hypotheses were true, a company's productivity would be affected by whether the statutory employment rate is achieved or not. To confirm this point, the impact of achieving the statutory employment rate on productivity will be verified. The estimation model is represented by equation (3) below.

$$\ln Y_{it} = \beta_0 + \beta_1 \ln K_{it} + \beta_2 \ln L_{it} + \beta_3 d_att_{it} + x'_{it} \cdot \pi_{it} + d'_t \cdot \gamma_m + \alpha_i + \epsilon_{it} \quad (3)$$

Here, $\ln Y_{it}$ is the logarithm of the value added amount, $\ln K_{it}$ the logarithm of tangible fixed assets, and $\ln L_{it}$ the logarithm of the number of full-time employees. d_att_{it} is the dummy variable for statutory employment rate achievement and x'_{it} shows the control variable, but average employee age and industry \times calendar year dummies are used

Table 4. Basic Statistics 2

Name of variable	Observations	Average	Standard deviation	Minimum value	Maximum value
Logarithm of value added amount	3456	9.884	1.316	4.217	14.579
Logarithm of full-time employees	3456	7.266	1.191	4.043	11.192
Logarithm of tangible fixed assets	3456	10.072	1.628	4.174	16.319
Average employee age	3456	39.844	3.412	25.5	54.3
Real employment rate	3456	1.543	0.539	0	7.32
Employment rate achievement dummy	3456	0.304	0.460	0	1
Industry dummy					
Fisheries / Agriculture & forestry: base	3456	0.005	0.068	0	1
Mining	3456	0.002	0.048	0	1
Construction	3456	0.090	0.287	0	1
Foods	3456	0.065	0.246	0	1
Textiles	3456	0.030	0.171	0	1
Pulp and paper	3456	0.007	0.083	0	1
Chemicals	3456	0.097	0.296	0	1
Pharmaceuticals	3456	0.028	0.164	0	1
Petroleum & coal products	3456	0.007	0.083	0	1
Rubber products	3456	0.005	0.068	0	1
Glass, stone & clay products	3456	0.023	0.150	0	1
Steel	3456	0.021	0.143	0	1
Non-ferrous metals	3456	0.016	0.126	0	1
Metal products	3456	0.016	0.126	0	1
Precision equipment	3456	0.016	0.126	0	1
Machinery	3456	0.069	0.254	0	1
Electric equipment	3456	0.104	0.306	0	1
Transport equipment	3456	0.021	0.143	0	1
Other equipment	3456	0.030	0.171	0	1
Electric & gas	3456	0.002	0.048	0	1
Information and communications	3456	0.053	0.225	0	1
Services	3456	0.037	0.189	0	1
Warehousing & transport related industrie	3456	0.012	0.107	0	1
Maritime transport	3456	0.005	0.068	0	1
Air transport	3456	0.005	0.068	0	1
Land transport	3456	0.028	0.164	0	1
Wholesale trade	3456	0.111	0.314	0	1
Retail trade	3456	0.051	0.220	0	1
Other finance business	3456	0.012	0.107	0	1
Real estate	3456	0.032	0.177	0	1
Calendar year dummy					
d2003 : base	3456	0.125	0.331	0	1
d2004	3456	0.125	0.331	0	1
d2005	3456	0.125	0.331	0	1
d2006	3456	0.125	0.331	0	1
d2007	3456	0.125	0.331	0	1
d2008	3456	0.125	0.331	0	1
d2009	3456	0.125	0.331	0	1
d2010	3456	0.125	0.331	0	1

Table 5. Achievement of Statutory Employment Rate and Productivity

Fixed effect model	(1)	(2)	(3)	(4)
Logarithm of full-time employees	0.2390 *** (0.0254)	0.2334 *** (0.0252)	0.2392 *** (0.0254)	0.2309 *** (0.0253)
Logarithm of tangible fixed assets	0.3017 *** (0.0201)	0.2984 *** (0.0200)	0.3016 *** (0.0201)	0.2986 *** (0.0200)
Employment rate achievement dummy	0.0113 (0.0191)	-0.0044 (0.0194)	0.0111 (0.0192)	-0.0029 (0.0194)
Average age			0.0009 (0.0069)	-0.0104 (0.0072)
Constant term	5.0133 *** (0.2522)	5.0268 *** (0.2511)	4.9754 *** (0.3785)	5.4490 *** (0.3857)
Calendar year dummy	no	yes	no	yes
Calendar year dummy × Industry dummy	yes	yes	yes	yes
Observations	3456	3456	3456	3456
No. of companies	432	432	432	432
hausman	481.29	497.08	461.62	476.40
Pseudo-coefficient of determination	0.7496	0.7441	0.7487	0.7527

Notes: 1. Brackets show standard error.

2. All models show estimation results for the fixed effect model.
3. * significant at 10%, ** significant at 5%, *** significant at 1%.

here. d'_t is the calendar year dummy.

Table 4 shows the basic statistics. The base sample is the same as in the analysis until now, except that companies with omissions in their value added amounts and tangible fixed assets have all been removed. Moreover, variables such as the value added amount and tangible fixed assets have been converted to actual amounts using the SNA's GDP deflator by economic activity (chain-linked). At this time, if the coefficient of β_3 estimated in equation (3) is not significantly different from 0, the first hypothesis is highly likely to be true. However, when adopting a figure that is statistically significantly other than 0, one of the other hypotheses would apply.

Table 5 shows the estimation results. None of the noteworthy parameters for dummy variables of statutory employment rate achievement is statistically significant. Therefore, as expected, the first hypothesis is highly likely to be true.

V. Conclusions and Discussion

1. Summary of Analysis in This Paper and Conclusions

In this paper, empirical analysis has been conducted on the relationship between whether private companies achieve the statutory employment rate and their corporate performance, to confirm the effectiveness of Japan's disability employment policy. Firstly, the reinforcement and expansion of disability employment policy in parallel with the ratification of the Convention on the Rights of Persons with Disabilities was explained. Then aggregated data were used to confirm that, in recent years, average real employment rates of

private companies have risen sharply, that this trend is observed in corporate groups with an employee scale 1,000 or more, and that more than half of Japan's private-sector employees work for companies with an employee scale of less than 1,000. They also confirm that, although it is difficult to make a general evaluation of the system because the proportion of achieving companies in this group has remained more or less constant, the number of disabled persons in general employment has increased.

Next, to confirm the effectiveness of the existing system, the period from 2003 to 2010 was selected as a time when average real employment rates grew steadily and the only other system change was that persons with mental disabilities were added to employment quotas from 2006. In this period, the difference between the corporate performance of companies that achieved the statutory employment rate and that of non-achieving companies was verified, and it was confirmed that there was no impact from other system change factors. As a result, it was revealed that companies that achieved the statutory employment rate had poorer performance than non-achieving companies. Finally, several hypotheses in which this trend could be observed were considered, and the relationship between statutory employment rate achievement and productivity was confirmed. As a result, no relationship between the two could be found.

From the above series of analyses, the implications obtained will be organized and conclusions drawn. The first is that, if official guidance and monitoring were carried out properly in the form of intensified penal measures, the employment quota system would have the effect of increasing general employment of the disabled. Until now, however, this effect has been led by large corporations for which the existing policy is advantageous. In order to maximize social welfare, several auxiliary systems incidental to disability employment policy should also offer benefits equally to all companies.

Secondly, equalization of corporate burdens associated with disability employment has not been achieved. Although the government has reinforced its disability employment policy over the last ten years, policies aimed at equalizing corporate burdens in the form of increased levies and subsidies have not been reinforced. Large corporations have greater reserve capacity than smaller businesses. In addition, the policy includes systems that are beneficial to large corporations. Thanks to these, policy reinforcement in recent years has mainly had an impact on large corporations, and has raised numbers of persons in disability employment and average real employment rates in general. Nevertheless, it was revealed that the performance of companies that achieved the statutory employment rate is worse than that of non-achieving companies. Therefore, as already pointed out in previous research, the policy should be improved with the aim of equalizing corporate burdens, so that they can reflect the opportunity cost connected with disability employment as much as possible.

2. The Convention on the Rights of Persons with Disabilities and Directions for Disability Employment Policy

The ultimate objective of policies for persons with disabilities is to promote their social participation. From this viewpoint, disability employment policy should play a central role within those policies. Japan's disability employment policy is a levy system based on employment quotas. It has been effective to a degree in increasing the number of persons with disabilities in general employment, i.e. those engaged in normal working formats. But it does not have the effect of guaranteeing the rights of persons with disabilities (Holzer and Newmark 1999). Since general employment of the disabled has increased to a certain extent, policies on persons with disabilities should also take account of guaranteeing their rights. In that sense, the introduction of the Discrimination Elimination Act can be regarded as opportune. Nevertheless, if employing persons with disabilities offers no merits in terms of corporate activity, no significant increase in general employment of the disabled can be expected.

According to research in countries where anti-discrimination laws have been adopted, the policy does not contribute to an increase in the number of employees with disabilities. A key point in this respect is the scope of "reasonable accommodation" that individual businesses are supposed to provide to enable persons with disabilities to work without barriers. Since disabilities are wide-ranging, the content of "reasonable accommodation" specified in writing is also determined "loosely." With that, however, it has been revealed that companies' opportunity costs increase, and disability employment by private companies is not promoted. Under existing Japanese law, the constraints of mandatory employment are not stringent, so that when measures to reinforce the policy are implemented with focus on certain specific corporate groups, disability employment does not progress in other corporate groups. Considered from this perspective, "loosely" determining the content of "reasonable accommodation" provides grounds for concern in terms of increasing the general employment of the disabled.

In Japan, the policy has been expanded and reinforced over the last ten years or so. As a result, companies with basic robustness that can devote energy to disability employment have increased their employment quotas. On the other hand, in small and medium-sized enterprises, where the proportion of costs needed for disability employment within general costs is larger, the proportion of achieving companies is more or less constant or even decreasing on average. Thus, a trend toward polarization of disability employment status is seen in the private sector. This suggests that some companies could find it easier to employ persons with disabilities while others will find it harder. If we are to evaluate the situation based on the welfare of persons with disabilities, this state of polarization is undesirable, as the type of job that persons with disabilities can perform will be limited. As has been discussed in this paper, research in other countries where employment quota systems are adopted has proved that monetary incentives have the effect of increasing the employment of persons with disabilities. Therefore, the policy should be reinforced with proper attention

to areas related to the equalization of corporate burdens.

An issue left unresolved in this paper is to check the precision and robustness of the estimation method. As the companies cited in this paper are large corporations, several factors need to be controlled in greater detail in order to measure the impact of personnel policies on productivity more strictly. To confirm whether the results obtained in this paper are robust, tasks for the future will be to gather suitable variables, refine estimation models and confirm the validity of results.

References

- Acemoglu, Daron, and Joshua D. Angrist. 2001. Consequence of employment protection? The case of the Americans with Disabilities Act. *Journal of Political Economy* 109, no. 5:915–50.
- Burkhauser, Richard V., and Mary C. Daly. 2002. Policy watch: U.S. disability policy in a changing environment. *Journal of Economic Perspectives* 16, no.1:213–24.
- Burkhauser, Richard V., Andrew J. Houtenville, and Ludmila Rovba. 2007. Accounting for the declining fortunes of working-age people with disabilities. Paper presented at the post *ADA employment*, New York University.
- DeLeire, Thomas. 2000. The wage and employment effects of the Americans with Disabilities Act. *Journal of Human Resources* 35, no. 4:693–715.
- Edzes, Arjen J.E., Richard Rijnks, and Jouke van Dijk. 2013. Spatial implications of using firm level quotas to employ low productive workers. *Tijdschrift voor Economische en Sociale Geografie* 104, no. 5:621–29.
- Griffin, Peter. 1992. The impact of affirmative action on labor demand: A test of some implications of the Le Chatelier principle. *Review of Economics and Statistics* 74, no. 2:251–60
- Hoyzer, Harry, and David Neumark. 1999. Are affirmative action hires less qualified? Evidence from employer-employee data. *Journal of Labor Economics* 17, no. 3:534–69.
- Jones, Melanie K. 2006. Is there employment discrimination against the disabled? *Economic letters* 92 (1): 32–37.
- . 2008. Disability and the labour market: A review of the empirical evidence. *Journal of Economic Studies* 35 (5): 405–24.
- Lalive, Rafael, Jean-Philippe Wuellrich, and Josef Zweimüller. 2013. Do financial incentives affect firms' demand for disabled workers? *Journal of the European Economic Association* 11, no. 1:25–58.
- Ministry of Health, Labour and Welfare. 2006. Heisei 17 nen 6 gatsu 1 nichu genzai no shogaisha no koyo jokyō ni tsuite [On the employment status of persons with disabilities as of June 1, 2005]. <http://www.mhlw.go.jp/houdou/2005/12/dl/h1214-2a.pdf> (accessed March 16, 2014).
- . 2014. *Shogaisha koyoritsu seido* [The disability employment rate system].

- <http://www.mhlw.go.jp/bunya/koyou/shougaisha/04.html> (accessed August 28, 2014).
- Nagae, Akira. 2005. Shogaisha koyo to shijo hyoka: Osaka funai kobetsu kigyō shogaisha koyo jōkyō kaiji no ibento sutadei [The effect of disability employment on stock prices: Web announcement in Osaka]. *Japanese Journal of Labour Studies* 47, no. 2–3:91–109.
- Nakajima, Takanobu, Satoshi Nakano, and Shunsuke Imada. 2005. Wagakuni no shogaisha koyo nofukin seido no keizai bunseki: Shogaisha koyo no shokushin ni mukete [Economic analysis of Japan's disability employment levy system: With a view to promoting disability employment]. Discussion Paper no. 05A–23, Policy Research Institute, Ministry of Finance, Tokyo.
- National Institute of Vocational Rehabilitation. 2002. Shogaisha no koyoritsu, nofukin seido no kokusai hikaku [International comparison of employment quota and levy system for persons with disabilities]. Material Series no.26. Tokyo: National Institute of Vocational Rehabilitation.
- OECD (Organisation for Economic Co-operation and Development). 2003. *Transforming disability into ability: Policies to promote work and income security for persons with disabilities*. Paris: OECD.
- Thornton, Patricia. 1998. *Employment quotas, levies and national rehabilitation funds for persons with disabilities: Pointers for policy and practice*. Geneva: International Labour Office.
- Tsuchihashi, Toshihiro, and Daisuke Oyama. 2008. Keizaigaku kara mita shogaisha koyo kyufukin, choseikin seido [Disability employment levy-subsidy scheme from an economic viewpoint]. *Japanese Journal of Labour Studies* 50, no. 9:43–52.

Potential and Challenges of Mutually-Oriented Social Enterprises Where People with and without Disabilities Work on an Equal Basis: Case Study on *Kyodoren*

Akira Yonezawa

Meiji Gakuin University

This article examines the inherent potential and challenges of the type of organization known as *shakaiteki jigyo* (Mutually-oriented Social Enterprises [MSEs]), wherein people with disabilities and people without them work together and assist one another on an equal basis. There are high hopes for this newly established paradigm to play an important role as one of many diversified working styles for people with disabilities in the Japanese employment system. By analyzing the organizational-level features of MSEs and the characteristics of work carried out in them, this article aims to contribute to the body of research on employment for people with disabilities.

By reviewing documents released by MSEs and other materials, this study verified that their target demographic includes “employment-challenged” people other than those with disabilities, and that there is equality, in terms of job position, between employees with disabilities and those without. Also, the advantages and disadvantages of MSEs were examined through interviews with multiple employees of one particular MSE. It was found that while employment-challenged workers appreciate flexible work conditions and low levels of on-the-job pressure, and non-employment-challenged workers enjoy high levels of professional fulfillment and discretionary authority, relatively low wage levels are a problematic issue. In its conclusion, this article outlines the implications of MSE-related research for broader research and policy in the field of employment for people with disabilities.

I. Issues Addressed Herein

This article discusses the roles and challenges of *shakaiteki jigyo* (Mutually-oriented Social Enterprises, hereinafter “MSEs”), one of many diversified working styles for people with disabilities in the Japanese employment system. MSEs are enterprises with a diverse workforce, including both employment-challenged workers such as people with disabilities and workers who face no such issues, who work together on an equal footing, and are one example of Work Integration Social Enterprises (WISE) (Nyssens 2006) that have been the focus of attention in Europe and elsewhere. MSEs, while modeled on the Italian “Social Cooperative,” were organized independently in Japan by domestic groups advocating for people with disabilities.

Thus far, policymaking and research concerning employment for people with disabilities in Japan have largely been focused on two fields: general employment schemes in place at companies (covered by labor laws and policies) and social-welfare employment schemes in place at employment-support enterprises (covered by social welfare laws and policies). Recently, studies on working styles in the general labor market (Somayama 2011;

Yamamura 2011) and on problems and improvement measures in social-welfare-oriented employment (Ito 2013; Matsui and Iwata 2011) have been released. Both fields occupy a significant position within the larger issue of employment for people with disabilities.

There have also been attempts to create employment opportunities that do not fit the description of either general or social-welfare-oriented employment schemes. Between 2010 and 2012, under the Democratic Party of Japan, a working group on employment (labor and hiring) in the Comprehensive Welfare Subcommittee of the Council on Reform of Systems for Persons with Disabilities issued a report discussing MSEs along with “employment with social support” and “employment with social welfare support”¹ as one of new diverse employment schemes (Comprehensive Welfare Subcommittee Working Group 2011).

In Japan, little research in the field of employment for people with disabilities has been focused on MSEs, with a few exceptions (Yasui 2005, 2006; Ito 2013).² Academic discussion of MSEs has largely been limited to the field of “third-sector” (not-for-profit sector) research primarily dealing with their role in encouraging social inclusion, and MSEs have largely been viewed as social enterprises where economic activity fosters social inclusion of employment-challenged workers (Work Integration Social Enterprises) (Yonezawa 2011; Fujii 2013; Homeless Resource Center 2013).

One reason given for the limited extent of research on MSEs in the context of employment for people with disabilities is MSEs’ lack of consistency with existing systems of employment support for people with disabilities in Japan. MSEs do not limit their target population to people with disabilities, and adopt a more anti-ability based approach, characterized by people with disabilities working alongside people without them on an equal footing. MSEs occupy a unique position within the framework of employment for people with disabilities, and it is difficult to gauge their direct effects on the core issues within this framework. However, clarification of various features of MSEs, while it may not lead to direct solutions to various issues in the field of employment for people with disabilities, appears capable of making meaningful contributions to research and policy in this field.

In light of the concerns outlined above, this article will analyze two key issues, and to demonstrate the significance of MSEs to research and policy on employment for people with disabilities. Firstly, MSEs’ organizational characteristics are examined through a review of available literature and case studies (Section II). Secondly, the features (advantages and challenges) of work at MSEs are explored through interviews with employees of a particular MSE (Section III). Through discussion of these two topics, this article will clarify significant implications for the field of employment for people with disabilities (Conclusion).

¹ “Employment with social support” and “Employment with social welfare support” are types of sheltered employment seen in Europe and elsewhere, for which wage compensation by government is a prerequisite (Ito 2013).

² However, these studies were not focused on enterprises where people with and without disabilities work on an equal footing, but rather on the sheltered employment character of enterprises.

II. Formative Process and Features of MSEs

1. Concept and Background

This part of the article outlines the organizational-level features of MSEs. It first examines the context of their formation as described in materials issued by related organizations, and then provides a case study of typical MSE activities.

The MSE enterprise paradigm was created in the context of the *Kyodoren* network. *Kyodoren*, which means something like “Allied Federation,” is a business federation established in 1984 to advocate for people with disabilities, uniting enterprises throughout Japan that seek to improve employment opportunities and standards of living for this demographic. Initially, negotiation with and lobbying of the national government were its key objectives, but today its aims have diversified to include forging partnerships with businesses, providing support to new business establishments, and dealing with social enterprises in other countries.

MSEs are based on the Mutually-oriented Social Firms (MSF) developed by *Kyodoren* in the early 1990s.³ The principles of an MSF are: (i) “working together” (in the sense of people with and without disabilities working in an equal, rather than hierarchical, context), (ii) viability as a business, (iii) the right of people with disabilities to work, and (iv) a pathway to cooperative labor. The following is an explanation of these principles, based primarily on materials released by the federation (Kyodoren 1998, 16).

The first principle, “working together,” refers to relationships among people with and without disabilities. It draws a contrast with the dynamics of giving and taking orders, as seen in most workshops and vocational centers for people with disabilities, and hierarchical structures at for-profit companies. “‘Working together’ means that people with disabilities and those without work and manage a firm on an equal basis.” *Kyodoren* views unequal relationships among workers at both welfare facilities and for-profit companies as problematic, and envisions an approach that eschews such hierarchies.

The second, “viability as a business,” means that firms should be independent, profitable business entities. A *Kyodoren* document notes with regard to small-scale vocational centers, “when they are viewed as social-welfare employment schemes, scant attention is paid to economic output as long as day-to-day work is carried out,” and takes a negative view of their relative lack of autonomy as businesses. It goes on to say that “for people with disabilities to attain independence through work, the economic output and viability of their business activities must be assessed as with any other business endeavor,” and emphasizes solid business results at the enterprise level, in contrast to the status quo at small-scale vocational centers.

The third principle is “the right of people with disabilities to work.” *Kyodoren* asserts that “people cannot live sufficiently full lives while relying on public assistance or a pen-

³ MSFs were first advocated at the 10th *Kyodoren* National Conference in 1993 (Kyodoren 1993).

sion alone,” and that “working is not important for income alone, but also for verification of one’s significance as part of an interpersonal network.” In specific terms, “rights and responsibilities that workers without disabilities take for granted, such as income (at least at minimum-wage level), an eight-hour workday, two days off per week, social insurance, employment insurance, etc., should apply to workers with disabilities.” Here, as well, *Kyodoren* draws a contrast with small-scale vocational centers, and takes issue with a state of affairs in which people earn less than minimum wage and lack the benefits of the social safety net.

Finally, “a pathway to cooperative labor” refers to the working styles of people with disabilities and those without. *Kyodoren* criticizes “the alienation of the worker fostered by the capitalist system” and “increasingly mind-numbing labor performed solely for the purpose of earning a living,” and points to the need to “explore the possibilities of cooperative, egalitarian labor.” This principle relates to the first principle (“working together”), but is understood as referring not to workers’ roles in the employment relation of enterprises, but to the goal of a working style similar to those of worker cooperatives.

The four principles of MSFs can be grouped in terms of their relation to two primary goals: more or less economically self-sufficient business entities⁴ (viability as a business, and the right of people with disabilities to work) and equality between people with disabilities and those without (working together, and a pathway to cooperative labor). The former primarily contrasts with the state of affairs at small-scale vocational centers for people with disabilities, and the latter to the status quo at companies in general (and also at small-scale vocational centers, to an extent). Differences between MSFs and other employment schemes for people with disabilities, as enumerated by *Kyodoren*, are shown in Table 1.

The goal of equality between people with disabilities and those without, a key feature of MSFs, is grounded in *Kyodoren*’s anti ability-based philosophy. Social models⁵ relating to people with disabilities, and to their employment in particular, can essentially be grouped into an ability based approach and an anti-ability based approach (Toyama 2004). The ability based approach attempts to compensate people in accordance with their abilities, so as to correct for entrenched social barriers, whereas the anti-ability based views performance-linked discrepancies in compensation as invalid, and calls on society to correct these discrepancies. *Kyodoren* adopts an anti-ability based stance, prioritizing equality, and not linking individual workers’ compensation to individual productivity or employment status.

⁴ However, the MSF paradigm does not envision business entities as being completely economically self-sufficient based on income from the market alone. From the start, subsidies from the government have been seen as an important element of the business model of *Kyodoren* (Yonezawa 2011, chap. 4). This sort of model, drawing on multiple types of revenue sources, is a typical feature of WISEs (Gardin 2006).

⁵ Here a “social model” means a paradigm that “aims to solve problems by transforming our society, in which various issues facing people with disabilities are seen as arising from a social structure centered around people without disabilities” (Toyama 2004, 161).

Table 1. Outline of Types of Enterprises within the *Kyodoren* Network

	Principles			
	People working together	Viability as a business	Right of people with disabilities to work	Pathway to cooperative labor
<u>Format</u>				
Mutually-oriented social firm	○	○	○	○
Mutually-oriented vocational center*	○	×	×	○
For-profit company	×	○	○	×
Small-scale vocational center	×	×	×	×

Source: *Kyodoren* 1998.

Note: *An explanatory note points out that, “While mutually-oriented vocational centers share some of the philosophy of MSFs, they do not share their economic viability.” From this, it is evident that *Kyodoren* put increased emphasis on “working together” and “cooperative labor.”

The MSE organizational concept, which is the focus of this article, is grounded in the MSF concept. Since the 2000s, *Kyodoren* has advocated MSE enterprises in place of MSFs. The most prominent difference between the two organizational forms is an expansion of the scope of “working together.”⁶ In the case of MSFs, this applies to relations between people with disabilities and those without. In the case of MSEs, it encompasses a diverse range of employment-challenged workers without disabilities as well, such as single parents, homeless individuals, and young people who lack professional experience.

There appear to be two main factors behind *Kyodoren*’s expansion of the concept’s scope. One is the influence of initiatives carried out overseas, specifically the activities of Italian social cooperatives that members of *Kyodoren* encountered in the early 2000s.⁷ The other has to do with business administration. *Kyodoren* had made efforts to create workplaces for people with disabilities, including many with severe ones, based on its anti-ability based approach, but there were concerns about low productivity on a business-entity level (Saito 2012).⁸

⁶ Views of the following sort are expressed in pamphlets issued by *Kyodoren*: “The aim of a ‘social enterprise’ such as we seek to create is not only for people with and without disabilities to work side by side. The goal is a business enterprise in which all manner of people marginalized from the workforce—homeless individuals, NEETs, socially withdrawn young people, people struggling with drug or alcohol dependency, people with criminal records, foreign nationals, the elderly, single mothers, and so forth—can participate, along with young people who have had temporary employment contracts terminated and others lacking employment, in a workplace that does not divide them or reject them, and earn a stable income that enables them to live independently.” (*Kyodoren* 2010, 54–55).

⁷ *Kyodoren*’s pamphlet notes that, “since 2000, *Kyodoren* has been pursuing new policy directions inspired by our interactions with Italian social cooperatives” (*Kyodoren* 2010, 54).

⁸ According to the executive director of *Kyodoren*, “Eventually, despite our utmost efforts to implement this business model, the number of people with severe disabilities drastically increased and

As we have seen, the MSE organizational form was formulated on the basis of the MSF organizational form. It has not only been disseminated within *Kyodoren* but also implemented by regional and municipal governments such as Shiga Prefecture and the City of Sapporo (Yonezawa 2013). For example, Shiga Prefecture's MSE program states the objective of "creating a new type of workplace in which people with disabilities and those without can work together on an equal basis," and the prefecture provides support for these workplaces. A similar program in the City of Sapporo calls for "expansion of workplaces where people with disabilities can work side by side with others," and provides accreditation and support to enterprises that prioritize equality among people with and without disabilities. These two programs are both similar to one another and consistent with the MSF approach.⁹

2. MSE Case Study: *Wappa no Kai*

Thus far we have discussed the development of the MSE enterprise paradigm and its application by regional and municipal governments. This part of the article will give an overview of *Wappa no Kai*, a representative example of an MSE,¹⁰ to elucidate the specific activities MSEs are engaged in.

Wappa no Kai is an organization established in 1971 in Nagoya, Japan with the objective of "realization of a society in which all people, with and without disabilities, work and live side by side." It is one of the largest entities within the *Kyodoren* federation, with 100 members with disabilities and 90 without, including formerly homeless workers, as of 2013.

The group is engaged in a wide range of business enterprises including the manufacture of additive-free bread and sweets, plastic bottle recycling contracting, farming, and processing of agricultural products. Among *Kyodoren* member organizations, *Wappa no Kai* is notable for the broad scope of its activities.

Wappa no Kai utilizes government employment support programs for people with disabilities, such as the Support for Continuous Employment (Class A) under the Act on the General Support for Persons with Disabilities, deriving subcontracting revenue from these programs in addition to income from sale of goods and services. Its revenue totals 750 million yen, of which approximately 350 million yen consists of governmental subsidies and 400 million yen of business revenue (Homeless Resource Center 2013).

The compensation structure is as follows: A base dividend of 120,000 yen is distributed. For people with disabilities, this consists of a disability compensation pension (approximately

the workforce ended up consisting almost exclusively of people with disabilities. People without disabilities were unable to earn a sufficient living there and were not eager to participate, further driving up the percentage of people with disabilities" (Saito 2012, 157).

⁹ These programs would be more accurately referred to as cooperative enterprises rather than social enterprises, as their scope is limited to people with disabilities.

¹⁰ Information in this case study is based on previous publications: Yonezawa (2011) and Homeless Resource Center (2013).

Table 2. Average, Highest, and Lowest Wages at *Wappa no Kai*

Monthly wages	People with disabilities (yen)	People without disabilities (yen)
Average	70,000	170,000
Highest	200,000	250,000
Lowest	35,000	145,000

Source: Study Group on People with Disabilities and Labor (2002, 40).

65,000 yen for Class 1 and 81,000 yen for Class 2 disabilities) plus whatever differential amount is required to reach 120,000 yen. In addition, workers living alone receive 30,000 yen as a housing or household maintenance allowance, and an additional allowance is paid for dependent family members. Wages at one *Wappa no Kai* enterprise are shown in Table 2 (as of 2002).

Issues affecting the entire organization are discussed, and decisions made, at monthly administrative meetings in which all are welcome to participate. As of 2008, the number of participants was generally about 20. Dividend amounts are also determined at these meetings. The management of individual enterprises, however, is delegated to the enterprises themselves.

As in the case of *Wappa no Kai*, MSEs do not exist solely for people with disabilities, and their administration emphasizes equality between employment-challenged workers, such as people with disabilities, and those who do not fall into this category. People with disabilities are regarded not as recipients of support or training, but as full-fledged workers; compensation structure is designed to minimize disparities between people with and without disabilities; and workers are guaranteed the right to participate in enterprise management. These features reflect an overall anti-ability based approach in which employment status and rank do not depend on individual productivity.

III. Features of Work at MSEs: Positive and Negative Aspects

1. Characteristics and Classifications of Surveyed Demographic

The preceding section outlined the organizational characteristics of MSEs. Now, let us examine the features of work at these enterprises. This section analyzes positive and negative aspects of this work on the basis of interviews with MSE workers.

Enterprise A, surveyed for this study, is an MSE primarily engaged in manufacture and sale of sweets, with sales of over 300 million yen. In the manufacturing arm of the enterprise are 18 workers without disabilities and 41 with disabilities (nine with physical, 10 with mental, and 22 with intellectual disabilities). A relatively large percentage of the disabilities are severe, with 20 out of the 41 workers with disabilities classified as severely disabled for occupational purposes. Enterprise A utilizes the Support for Continuous Employ-

ment (Class A) program within the framework established by the Services and Supports for Persons with Disabilities Act, with all workers under employment contract regardless of their disability status. The majority of people without disabilities, or with physical disabilities, are engaged in clerical work, and those with intellectual or mental disabilities engaged in manufacturing and shipping of sweets. There is also a wide range of employment-challenged workers of other types, including workers not officially classified as having disabilities (i.e. not in possession of disability passbooks) but judged likely to have disabilities; single mothers; and public assistance recipients.

Employees are classified under regulations for businesses participating in the Support for Continuous Employment program. Among employees without disabilities there are eight classified as regular employees, four non-regular employees working 35 or more hours a week, and five non-regular employees working less than 35 hours a week, while employees with disabilities are classified as welfare-facility users who are guaranteed the minimum wage. However, while employment-support enterprises are required to make these distinctions, there are no decisive differences in the treatment of workers of different categories.

Enterprise A stands opposed to the ability based approach in which workers are compensated based on their abilities or performance. There is no significant difference between the hourly wages of people with disabilities and those without. Both categories of workers are guaranteed the minimum wage, on top of which there are gradual performance-based wage increases, although the concept of productivity-based wages is rejected.

Average monthly remuneration at Enterprise A is 85,000 yen per month for people with disabilities and 170,000 yen per month for those without. With the exception of workers with shortened work schedules, all workers including those with disabilities are enrolled in social safety net programs such as employment insurance, worker's accident insurance, employees' pension, and medical insurance. As a rule employees work 40 hours per week, but there is occasional overtime or work on days off (around one day per month) during especially busy periods. In these cases regular employees receive an allowance for working on holidays, while employees paid hourly are given overtime pay. Paid leave is also offered. The analysis below is primarily based on interviews with employees and documents on wages and working conditions provided by Enterprise A. Interviews were conducted with 14 people: six regular employees, two part-time employees who work 35 or more hours per week, three people with physical disabilities, two people with mental disabilities, and one former employee of the enterprise (Table 3). None of those surveyed were employees with shortened work schedules (less than 35 hours per week), and the majority of the interviewees were engaged in core duties at the enterprise. Interviews were conducted in May and June 2010, and each took place on the enterprise premises and lasted one or two hours.¹¹

¹¹ Considering that these interviews were conducted on the enterprise's premises with management permission, there is a possibility of bias in terms of underreporting of problem areas.

Table 3. List of Employees Interviewed

Employees without disabilities								
No.	Sex	Age group	Days worked per week	Hours worked per day	Hours worked per week	Interviewed? (indicated with "+")	Employment-challenged / voluntarily employed	
1	F	40-49	5	8	40			
2	F	30-39	5	8	40	+	challenged	
3	M	30-39	5	8	40	+	voluntarily	
4	M	30-39	5	8	40	+	voluntarily	
5	F	20-29	5	8	40			
6	M	40-49	5	8	40			
7	F	50-59	5	8	40	+	voluntarily	
8	F	50-59	5	8	40	+	voluntarily	
9	F	50-59	4	8	32	+	voluntarily	
10	M	30-39	5	8	40			
11	M	60-69	5	8	40			
12	F	40-49	5	8	40	+	challenged	
13	F	40-49	5	7	35	+	challenged	
14	F	50-59	5	7.5	37.5			
15	F	30-39	4	5.3	21.2			
16	F	30-39	3	4	12			
17	F	50-59	3	7	21			
18	F	30-39	4	5	20			
19	F	50-59	5	5	25			
20	M	20-29	(Already resigned)				+	voluntarily
Employees with disabilities								
No.	Sex	Age group	Type of disability	Days worked per week	Hours worked per day	Hours worked per week	Interviewed? (indicated with "+")	Employment-challenged / Voluntarily employed
1	F	40-49	Physical	5	7	35	+	challenged
2	M	40-49	Mental	4	2	20		
3	M	40-49	Mental	4	5.5	22		
4	F	50-59	Physical	5	7	35	+	challenged
5	M	20-29	Intellectual	5	7	35		
6	M	20-29	Intellectual	5	7	35		
7	M	40-49	Intellectual	5	8	40		
8	F	40-49	Intellectual	5	8	40		
9	M	20-29	Intellectual	5	7	35		

Table 3 (Continued)

No.	Sex	Age group	Type of disability	Employees with disabilities			Interviewed? (indicated with "+")	Employment-challenged / Voluntarily employed
				Days worked per week	Hours worked per day	Hours worked per week		
10	M	30-39	Intellectual	5	7	35		
11	F	40-49	Physical	5	4.5	22.5		
12	M	30-39	Intellectual	5	6	30		
13	M	20-29	Intellectual	5	5.3	26.5		
14	F	30-39	Physical	5	5	25		
15	F	30-39	Mental	5	4	20		
16	F	20-29	Intellectual	5	4	20		
17	M	30-39	Intellectual	5	4	20		
18	M	20-29	Intellectual	5	6	30		
19	M	30-39	Intellectual	5	4	20		
20	M	40-49	Physical	5	4.5	22.5		
21	F	20-29	Intellectual	5	4	20		
22	M	20-29	Intellectual	5	4	20		
23	F	30-39	Intellectual	5	5	25		
24	M	30-39	Mental	5	6	30	+	voluntarily
25	F	20-29	Intellectual	5	4	20		
26	M	20-29	Intellectual	4	5	20		
27	F	20-29	Mental	1	2	20		
28	F	40-49	Physical	4	5	20		
29	M	Teens	Intellectual	5	4	20		
30	F	20-29	Intellectual	5	5.5	27.5		
31	M	30-39	Mental	5	7	35	+	challenged
32	M	30-39	Mental	4	5	20		
33	F	20-29	Intellectual	5	4	20		
34	F	40-49	Physical	5	5	25		
35	M	30-39	Intellectual	5	4	20		
36	M	20-29	Physical	5	4	20		
37	M	20-29	Mental	5	6	30		
38	F	40-49	Physical	5	8	40	+	challenged
39	M	20-29	Intellectual	5	4	20		
40	F	30-39	Mental	5	4	20		
41	F	30-39	Mental	5	4	20		

2. Routes to Employment

Having clarified the features of work at MSEs, let us turn our attention to employees' routes to being hired by these enterprises. This is a significant issue because MSEs employ a wide range of employment-challenged workers, and presence or absence of disability alone is not significant grounds for judging the degree of difficulty they face in finding employment. Some are certified as having disabilities and yet face little difficulty in getting hired, while others lack such certification and yet cannot find employment.

For this reason, interviewees are classified as either employment-challenged or voluntarily employed (i.e. having selected Enterprise A of their own accord, not because of difficulties in finding employment) for the purposes of this analysis. The former category consists of those who had no other employment options when they were hired by Enterprise A, and the latter of those likely to have had other options. As for the route by which they arrived at Enterprise A, ten people were introduced by acquaintances, while four found it through public employment institutions.

Those in the employment-challenged category were in circumstances that left them with few alternatives. For example, one employee with a severe physical disability came to Enterprise A when his former employer was failing financially and he was facing likely unemployment in the near future, yet he had not been able to find another job even through the Public Employment Security Office.

No matter how hard I looked, I couldn't find a job, and my age made it that much tougher...I visited the Public Employment Security Office, but they told me things like, "You'd better stick it out at your present job, you won't be able to find another one."

Advised to "stick it out" at his former place of employment, and left with no other options, he began working at Enterprise A, having been informed of it by an acquaintance involved with the enterprise.

Another employee, a single mother, had searched for secure employment after getting divorced, but was eventually forced to give up, in some cases being refused even the right to apply on the grounds that "it wasn't the sort of workplace where you could take time off for the sake of your children." She was introduced to Enterprise A by a public employment office, and began working there. The employee was grateful that Enterprise A did not reject her because of her academic background or single parent status.

Their help-wanted ad of Enterprise A said they were looking for people who had at least graduated from junior college. On the phone I told them I had only a high school diploma, and they told me, "Oh, that's no problem. As long as you can add, subtract, multiply, and divide, you'll be fine." I went on to tell them I was a single mother, and again they said, "Oh, that's no problem." I can't tell you how relieved I

was.

For the employment-challenged group, Enterprise A presented a lower hurdle to being hired than other enterprises. Enterprise A is forgiving toward people who have diminished skills due to long absence from the labor market, or face other barriers to participation in the labor market.

Another group of interviewees (seven people) elected to work at Enterprise A despite having other options. They fall broadly into two categories: people who were drawn to the enterprise by the organization's philosophy, atmosphere, or the content of the work (four people), and people who chose to work there without much consideration of the differences with other employers (three people). These two are collectively referred to here as the voluntarily employed group.

The first category of voluntarily employed persons were informed about the enterprise by acquaintances or others, and selected it from among various employment options. Employees who proactively elected to work there had had experiences that oriented them positively toward the enterprise's philosophy, such as having a family member with disabilities, or experience assisting a person with disabilities during their student years. One employee in this category spoke as follows.

When I was weighing my employment options, an acquaintance with disabilities that I had assisted during university told me he knew of "an interesting place to work," and that was how I came to work here.

(Interviewer [the author]: Did you look for employment elsewhere?)

I went to one event. It was a briefing session on jobs in the welfare sector, but it didn't interest me much.

There were also interviewees who had gone to work voluntarily at Enterprise A without particular interest in the philosophy or policies of MSEs in general. These people had viewed the enterprise as a viable employment option, but did not have any strong motivation for choosing it above others. However, perhaps reflecting the fact that these interviews focused on core employees, people in this category tended to be finding the work rewarding even if they had lacked interest in the enterprise's philosophy or policies when they were first hired.¹²

Analysis was carried out with the employees of Enterprise A divided into the voluntarily employed group and the "employment-challenged" group, as shown below. Next, let us examine how employees in each group evaluated their work at Enterprise A.

¹² However, according to the enterprise's representative director, these tendencies are correlated with work styles. There are a considerable number of workers not necessarily in sympathy with the social-enterprise philosophy among workers with shortened work schedules of 20 hours per week or less.

3. Evaluations of the Work

(1) The Employment-Challenged Group: Flexible Schedule and Workload, and a Low-Pressure Work Environment

What are employees' assessments of labor conditions at MSEs? The employment-challenged group characterizes the work environment at Enterprise A first of all as "flexible," and second as "low-pressure."

The first of these positive assessments reflects the fact that employees of Enterprise A are able to consult management and adjust the times they start and finish work relatively freely, take days off and so forth, as long as they work the prescribed number of hours. Of the seven employees in the employment-challenged group, six noted this flexibility as an advantage. Not only people with disabilities but also single parents and other members of the employment-challenged group enjoy the benefits of this flexibility.

For example, one worker with a mental disability made the following statement about the flexible approach adopted by Enterprise A, in contrast to other enterprises where he had worked:

I can hide the fact that I'm sick, and if I'm in bad condition I can take a day off. This gives me peace of mind and makes it pleasant to work here.

Single parents also have high praise for the flexible working conditions. Raising children while working, without relying on family members, is a challenge because of the need to take time off from work suddenly due to children's illnesses and so forth. Virtually all single-parent employees made highly positive assessments of Enterprise A's flexible work schedules. For example, one employee made the following statement:

At this point my child is the main focus of my life, and perhaps it doesn't benefit Enterprise A that much to have me on the workforce. Personally, though, I'm deeply grateful for their flexibility.

(Interviewer: Would you say that flexibility is an extremely important factor for you?)

Yes, it is...I'm ashamed to say it, but I arrive late for work practically every day. Something always comes up, like my kid making a fuss or not wanting to go to school, and this makes me run late a lot of the time. Most companies would want to get rid of me, I think. At Enterprise A, I'm sure my lateness is a problem for them, but they have been very lenient, and I'm thankful that they have put up with me thus far.

Work schedules are determined when an employment contract is signed, based on discussions between employees and management. Further adjustments may be carried out later, if necessary due to changes in the employee's lifestyle. One worker with a mental

disability made the following statement:

I had a tendency to take on too many duties by myself, and I was encouraged to go home earlier, and took steps to limit my volume of work...the problem was not the length of time allotted for tasks, but my wish to get tasks out of the way so that work wouldn't pile up, which made me unable to leave work on schedule. My workload was recently lightened, and now seems to be at the right level. The manager took note of my situation and addressed it by restricting my workload, lengthening the time I was allotted to perform tasks and so forth.

With regard to the second positive trait of work at Enterprise A, "a low-pressure work environment": Enterprise A does not designate sales or productivity quotas, and employees are evaluated positively for taking their time with their work. Employees are not subject to strong pressure from co-workers. Three of the seven employees in the employment-challenged group noted this aspect.

The workload Enterprise A employees are expected to take on could not be called heavy. Employees with mental health issues and those who had experienced excessive workloads at past employers evaluated this aspect positively. One worker with a mental disability made the following statement. This employee worked at another enterprise in the past, and trouble on the job and at home exacerbated his mental health issues.

At most companies, there's more negativity in interpersonal relationships.

(Interviewer: So you had some negative experiences at your former workplace?)

Yes, relationships among people were much more strained, people didn't relate to one another and weren't very concerned about one another's wellbeing. Here, most of the workers have some sort of disability, and people go easy on one another.

It is evident that these two aspects, "flexibility" and "low-pressure work environment," are highly significant for the employment-challenged group. This reflects their past negative work experiences, involving interpersonal relationships in the workplace, conflict, and daunting quotas, which had the effect of making them employment-challenged.

(2) The Voluntarily Employed Group: Rewarding Work and Large Degree of Discretion

Meanwhile, among the voluntarily employed group, while flexibility and lack of pressure were seen as positive features of Enterprise A, they were not the decisive reasons that employees continued working there.

One of the decisive factors was the rewarding and meaningful nature of the work. Specifically, several employees mentioned the significance of working with people with disabilities and manufacturing high-quality products sought after by society. The rewarding nature of the work was remarked on by five of the seven in the voluntarily employed group

and also by one member of the employment-challenged group. The same number of employees in both groups noted the degree of discretion they were given as a positive factor. One employee made the following statement about finding professional fulfilment by working with people with disabilities:

I engage in teamwork with people with disabilities, and as time goes on, the work goes more and more smoothly. It's been a good experience so far and I feel that I want to stay on here indefinitely. I don't want to quit and abandon these people... In the past I only had this sense of engagement with a few of the sales personnel, but over time I have worked with a more varied group of people outside sales, and I've come to feel I want to remain connected and engaged with this entire group.

People also had positive opinions about the large degree of discretion they were granted. The following statement is an employee's positive assessment of both working with people with disabilities, and his perceived degree of discretion:

This job is an interesting one for me. After we've made the rounds and made some good sales, they [employees with disabilities] are just as pleased as I am. That makes this job enjoyable. When sales are strong, I feel like the approach we're using is working, and when things don't go well, we all talk together about why we didn't sell well today, what time of day we should visit the customers next time, and so forth. Whether we succeed or fail, working with them is a pleasure.

As described above, among the voluntarily employed group, prominent reasons for continuing to work at Enterprise A were positive feelings about working with people with disabilities on an equal footing, and a work style with a high degree of autonomy.

4. Issues regarding Labor Conditions at MSEs and Potential Solutions

While there were positive assessments of Enterprise A, as described in the preceding section, problematic issues were raised as well. One was the relatively low wages, also pointed out in previous studies.

Enterprise A pays people with disabilities at least the minimum wage, and they earn an average monthly salary of around 85,000 yen. This is relatively high compared to other organizations utilizing the Support for Continuous Employment (Class A) program in the same prefecture.¹³

However, for people without disabilities, the average monthly salary of approximate-

¹³ As wage averages are affected by working hours and degree of disability, it is not possible to make a straightforward comparison. It should also be pointed out that while no workers with intellectual disabilities were interviewed for this study, those with relatively severe intellectual disabilities, at least, appear to have relatively high levels of remuneration.

ly 170,000 yen could hardly be called high.¹⁴ More than half of the interviewees mentioned this as a drawback of working at Enterprise A, with comments like “I haven’t been given a raise,” “I don’t get a bonus,” and “My salary is lower than most people’s.” This feedback is consistent with the findings of the Basic Survey on Wage Structure. Wages also do not compare favorably to averages for the food manufacturing industry or healthcare and welfare industry in the same prefecture.

At the same time, some members of both the employment-challenged group and the voluntarily employed group noted that when labor conditions at the enterprise are taken into account, the remuneration is appropriate. The low wages were counterbalanced for the employment-challenged group by the flexible, low-pressure working conditions, and for the voluntarily employed group by the rewarding work and high degree of autonomy. Some employees said they would like a 20,000- or 30,000-yen increase in monthly salary in order to make ends meet, but many others, including those in the employment-challenged group, said they could manage to get by without a raise.

However, it must be noted that employees were “getting by” not on their income from Enterprise A alone, but from multiple sources. Among interviewees, virtually all in the employment-challenged group had other sources of income for their households.

In both categories, one other source of income was other family members. Two male survey respondents were the primary breadwinners for their households, but both had working wives capable of earning nearly the same amount as the husbands, while some female respondents had husbands with high incomes.

Also, among the employment-challenged group in particular, there was often some form of public income supplementation. Five interviewees received a disability pension, one received a pension for bereaved family members, and two received public assistance. Most, if not all, of people in this category cover their living costs with a combination of income from an MSE and income supplementation.

The issue of relatively low wages compared to the general standard reflects the difficulty of running an MSE successfully, due precisely to the positive aspects described (flexibility, low pressure). One reason that wages do not rise is the impossibility of running a business efficiently with such favorable and forgiving working conditions in place. Adjustments to individuals’ work schedules, noted as a positive aspect by employees, are labor-management challenges from the enterprise’s perspective. As a general rule, it is difficult to boost motivation in low-pressure workplaces. One core employee had the following comment about employees’ attitudes:

I think we still have some people on the workforce who feel they “can’t do things because they have disabilities,” when actually they can do these things but are put-

¹⁴ 170,000 yen per month is around the same as the starting salary of a new university graduate in Japan.

ting forth the disability as an excuse not to. What I'd like to see is everyone making an effort to do what they can, whether they have disabilities or not. Some people without disabilities as well don't take this job as seriously as they should, and seem to regard it as some sort of welfare benefit...Actually, we're a business enterprise, and I would like to see everyone recognizing that properly.¹⁵

This comment reflects the challenge MSEs face in seeking to balance a favorable working environment, reflecting their anti-ability based philosophy, with sufficient productivity on an organizational level.

5. Summary of Analysis: Significance and Limitations of MSEs

The analysis revealed differences in employment-challenged workers' and voluntarily employed workers' perceptions of work at Enterprise A. The former saw flexibility and low work pressure as key advantages, whereas the latter reported a high degree of satisfaction, despite low wages, due to the rewarding and autonomous nature of the job. Enterprise A guarantees the employment-challenged group an opportunity to participate in society, from which they have been marginalized, while it offers the voluntarily employed group a chance to do rewarding work.

As for challenges facing MSEs, relatively low wages are often mentioned. Wage levels are high compared to most welfare-oriented enterprises, but the flat wage structure means that incomes are relatively low, especially those of non-employment-challenged workers and people without disabilities, when compared to their counterparts at ordinary for-profit companies. Household incomes are supplemented by working spouses or benefits such as disability pensions. The low wages are the other side of the "forgiving work environment" coin, and reflect the difficulty of making this sort of enterprise succeed.

MSEs are characterized by workers with different backgrounds (both employment-challenged and voluntarily employed) engage in the same work, which they find significant for different reasons (ease of working, rewarding nature of work). Factors that make this working style possible are the goal of equal status between employment-challenged workers, including those with disabilities, and non-challenged workers, and the fact that employment-challenged workers play a role in decision-making. There is a need for closer examination of the character of such organizations and the mechanisms by which they produce favorable and accessible work environments, but hopefully this analysis has provided

¹⁵ This quote refers to the amount of effort displayed by the individuals in question, and displays a somewhat ability based outlook. However, the speaker goes on to say immediately afterward, "It would be an overstatement to say that people with physical disabilities cannot move their bodies and those with intellectual disabilities cannot use their heads, but at the same time there is a degree of truth to it. That's why we need to cover for one another and do the things that we are capable of and others are not." It is evident that this interviewee is not only focused on the performance of individuals, but also on improving overall productivity on an organizational level.

one useful window into the nature of enterprises where people with and without disabilities work together.

IV. Conclusion

This article has analyzed the principles of the MSE organizational form, the process by which it was formed, and perceptions of the work environment at these enterprises. In closing, let us discuss the suggestions that work at MSEs provides for research and policy in the field of employment for people with disabilities.

The position of MSEs within systems and practices relating to employment for people with disabilities is not firmly established. While there are some regional or local governments that accredit and provide support to MSEs where people with and without disabilities work together on an equal basis, under the current legal system, a sudden drastic expansion of MSEs is not a realistic possibility. However, the implementation of MSE offers hints for the effort to promote employment for people with disabilities.

One noteworthy aspect of MSEs is the equal footing on which employees work. This study found that at MSEs where there is equality among workers regardless of their level of productivity, employment-challenged workers and those not falling into this category each have something to gain. However, the analysis of data did not provide sufficient observations on the process by which organizational-level features of MSEs generate this favorable and forgiving work environment. It is evident that it would be highly meaningful to explore the mechanisms by which MSEs' organizational features, such as the equal status and role in decision-making of all workers regardless of productivity, alleviate psychological strain on workers and facilitate more flexible work rules.

A second issue worthy of attention is the MSE target demographic. These enterprises do not limit their workforce to people with disabilities, but also provide employment opportunities to other employment-challenged workers such as single parents and young, underskilled workers. This suggests there is potential for other enterprises to employ multiple types of employment-challenged workers. This business administration paradigm does run the risk of generating conflict within organizations. On the other hand, in the context of the current emphasis on the social model¹⁶ of disability, with increased attention to continuities between persons with disabilities in the medical sense and others (such as the parents of children requiring special care) who are unable to participate fully into society due to various barriers, and a trend toward re-examining the scope of disability and interpreting it more broadly, it appears that MSEs' characteristic of accepting multiple types of employment-challenged workers is a highly significant one.

¹⁶ The social model of disability does not view physical or mental functional impairment, from a medical standpoint, as a disability in and of itself, but rather sees challenges such as slopes in the physical environment, and disadvantages to individuals posed by systems and people's attitudes, as the source of disability.

As stated above, it will not be easy to apply the MSE paradigm on a more widespread basis. However, the potential for expansion is not the only important issue, and by focusing instead on the role of various internal programs and systems employed at MSEs in realizing the goal of “working together, it should be possible to put forward valuable hints for the administration of enterprises that provide employment opportunities not only to people with disabilities in the medical sense, but also to a wider range of employment-challenged individuals. Interpretation of MSEs from this vantage point and examination of their activities should contribute significantly to research on employment for people with disabilities.

References

- Comprehensive Welfare Subcommittee Working Group on Integrated Employment (Labor and Hiring). 2011. “Shuro (rodo oyobi koyo)” godo sagyo chimu hokokusho [Report of the working group on integrated employment (labor and hiring)]. http://www.mhlw.go.jp/bunya/shougaihoken/sougoufukusi/2011/06/dl/0623-1a06_02.pdf (accessed February 27, 2014).
- Fujii, Atushi. 2013. Shakaiteki kigyo gainen wa donoyoni toraerarete kitaka [Interpretations of the social enterprise concept]. In *Tatakau shakaiteki kigyo: Komyunitai empawamento no ninaite* [Social enterprises: Spearheading the struggle for community empowerment], ed. Atsushi Fujii, Koki Harada and Otaka, Kendo, 20–55. Tokyo: Keiso Shobo.
- Gardin, Laurent. 2006. A variety of resource mixes inside social enterprises. In *Social enterprise: At the crossroads of market, public policies and civil society*, ed. Marthe Nyssens, 111–36. London, New York: Routledge.
- Homeless Resource Center, ed. 2013. *Seikatsu konkyusha, koritsusha no shuro ni yoru seikatsu saiken no senshin jirei to arubeki shikumi ni kansuru chosa kenkyu jigyo hokokusho* [Report: Advanced case studies on employment-based lifestyle rehabilitation of the needy and isolated and research on favorable mechanisms]. Tokyo: Homeless Resource Center.
- Ito, Naoki. 2013. *Shogaisha no shuro to fukushiteki shien: Nippon ni okeru hogo koyo no arikata to kanosei* [Employment and welfare-oriented support for people with disabilities: Current status and possibilities of “protected employment” in Japan]. Kyoto: Kamogawa Shuppan.
- Kyodoren, ed. 1998. *Asu e kyodo Hajimeru: Kyodo jigyo sho zukuri hando bukku* [Creating a future of working together: Handbook for building socially integrated enterprises]. Nagoya: NPO Kyodoren.
- , ed. 2010. *Asu e kyodo Hajimeru (2): Nyumonhen* [Creating a future of working together (2): Introductory version]. Nagoya: NPO Kyodoren.
- Matsui, Ryosuke, and Katsuhiko Iwata, ed. 2011. *Shogaisha no fukushiteki shuro no genjo to tenbo: Hataraku kenri to kikai no kakudai ni mukete* [Current status and outlook for

- welfare-oriented employment for people with disabilities: Toward expansion of the right and opportunity to work]. Tokyo: Chuo Hoki.
- Nyssens, Marthe ed. 2006. *Social enterprise: At the crossroads of market, public policies and civil society*, 111–36. London, New York: Routledge.
- Saito, Kenzo. 2012. *Kyodoren no rekishi o fumae: Ima, shakaiteki jigyo o* [Building on the history of the kyodoren movement: Now is the time for mutually-oriented social enterprises]. In *Nipponhatsu kyosei, kyodo no shakaiteki kigyo: Keizai no minshu shugi to kohei na bunpai o motomete* [Japanese social enterprises that promote working and living side by side: In search of economic democracy and fair distribution], ed. Kyodoren, 147–63. Tokyo: Gendai Shokan.
- Somayama, Kiyoe. 2011. *Chiteki shogaisha koyo ni okeru keiei no fukushisei* [Welfare aspects of management in employment of persons with intellectual disabilities]. Kyoto: Hakujisha.
- Study Group on People with Disabilities and Labor. 2002. *General survey on work and life of people with disabilities in the 21st century and some environmental conditions*. Survey Report, Shogaisha Rodo Kenkyukai, Osaka.
- Toyama, Masayo. 2004. *Shogaisha no shogai mondai to shakai moderu: Noryoku o meguru shiron* [Issues faced by people with disabilities and social models: Interpretations of competency]. *Shakai Seisaku Kenkyu*, no. 4: 163–82.
- Yamamura, Ritsu. 2011. *Seishin shogaisha no kokateki shuro shien moderu to seido: Moderu ni motozuku seido no arikata* [Models and systems for effective employment support of persons with mental disabilities: Modeling-based examination of systems]. Kyoto: Minerubua Shobo.
- Yasui, Shusaku. 2005. *Shigaken ni okeru shogaisha no shuro shien no kongo no hokosei ni tsuite: Jigyogata kyodo sagyojo o chushin to shite* [The future of the work support system for people with disabilities in Shiga prefecture: A topic of the work-oriented type of cooperative workshops]. *Journal of Kinki Welfare University* 6 (1): 43–51.
- . 2006. *Shogaisha jiritsu shienho ni okeru koyo, shuro shisutemu no kadai* [Problems of employment support systems in the newly established “independent support law for people with disabilities”]. *Journal of Kinki Welfare University* 7 (2): 199–214.
- Yonezawa, Akira. 2011. *Rodo togogata shakaiteki kigyo no kanosei: Shogaisha shuro ni okeru shakaiteki hosetsu no apurochi* [The possibilities of work integration social enterprises: Social connotations of work by persons with disabilities]. Kyoto: Minerubua Shobo.
- . 2013. *Shogaisha shuro o meguru shoseido kara manabubeki ten* [What we should learn from systems relating to employment for people with disabilities]. In *Seikatsu konkyusha, koritsusha no shuro ni yoru seikatsu saiken no senshin jirei to arubeki shikumi ni kansuru chosa kenkyu jigyo hokokusho* [Report: Advanced case studies on employment-based lifestyle rehabilitation of the needy and isolated and research on favorable mechanisms], ed. Homeless Resource Center, 24–28. Tokyo:

Homeless Resource Center.

Personnel Management of Restricted-Regular Employees

Itaru Nishimura

The Japan Institute for Labour Policy and Training

This paper has two objectives. Firstly, it aims to shed light on the current personnel management approaches to “restricted-regular employment,” a form of employment about which a concern is raised in Japan. Secondly, using these insights, this paper will clarify the relationships between three forms of employment: regular employee, restricted-regular employee, and non-regular employee.

“Restricted-regular employee” is the term used to describe regular employees who have limitations on their work location and tasks. In other words, they are regular employees with different characteristics to those of “typical regular employees,” workers employed under conventional Japanese-style employment practices, who have no limitations on their work location or tasks. The case studies introduced in this paper revealed that there are two main types of restricted-regular employee category: categories introduced for existing regular employees of the company, referred to in this paper as “restricted-regular employee (type 1),” and categories introduced for non-regular employees, referred to as “restricted-regular employee (type 2).” These types of categories are each utilized within companies in different ways. Employees in “restricted-regular employee (type 1)” categories are “limited-location regular employees” in the pure sense of the term, because, while their place of work is limited to a certain location, their tasks are flexible. As there is a tendency for the personnel and wage systems and career paths applied to them to overlap with those of “typical regular employees,” employees in “restricted-regular employee (type 1)” categories can be described as restricted-regular employees with similar characteristics to “typical regular employees.” On the other hand, employees in “restricted-regular employee (type 2)” categories have limitations on both their work location and tasks, and there tends to be few overlaps between their personnel and wage systems and career paths and those of “typical regular employees.”

I. Introduction

This paper has two objectives. Firstly, it aims to shed light on the personnel management of “restricted-regular employment,” a form of employment about which a concern is raised in Japan. Secondly, using fact findings, this paper will clarify the relationships between three forms of employment: regular employee, restricted-regular employee, and non-regular employee.

“Restricted-regular employee” refers to regular employees who have limitations on the range of their work location or tasks. In other words, their form of employment has different characteristics to that of “typical” regular employees, who will be discussed later.

There are currently two main factors encouraging government to advocate introducing restricted-regular employee categories. Firstly, restricted-regular employment may assist

with measures tackling labor problems of non-regular employment.¹ It has been indicated that, in comparison with regular employees, non-regular employees generally have (i) less employment stability, (ii) lower wages, and (iii) considerably fewer opportunities for career development. Restricted-regular employment is expected to solve these three problems by allowing for the promotion of non-regular employees to restricted-regular employees.

Secondly, restricted-regular employment is seen as a means of changing the way of regular employees' working style. As is well known, regular employees in Japan are far from achieving ways of working which allow an adequate work-life balance, as is reflected by the long working hours of many regular employees. A contributing factor to this is said to be typical regular employment, as employees do not have a clearly defined range of work location or tasks and are expected to adapt their way of working flexibly to suit their given situation. The aim is therefore to facilitate the diversification of ways of working by employing more workers as restricted-regular employees, in other words, by employing more regular employees with restrictions on the way they work. In the past, there were attempts to create more diverse ways of working by establishing various types of non-regular employment. The important aspect of the discussions regarding restricted-regular employees is to create more options for ways of working while maintaining "regular employee" as a form of employment.

As described, restricted-regular employees are anticipated to serve as the remedy to solve a number of different problems at once. Moreover, in addition to the challenges regarding labor policy, changes in the labor supply structure (overall reduction in the labor force on one hand, increase in women and older people on the other) will urge corporate personnel management to consider utilizing regular employees with limitations on how their labor can be used. It is expected that there will be a growing necessity to consider the potential for making use of restricted-regular employment in order to effectively utilize human resources.²

On the basis of this background, this paper clarifies personnel management approaches to restricted-regular employment, a form of employment which is anticipated to become more widespread, through case studies of companies which have already introduced such types of regular employment. Using the insights gained from these case studies, it then addresses the relationships between typical regular employees, restricted-regular employees, and non-regular employees.

Let us also define the term "employee category" used in this paper. Employee catego-

¹ In this paper, "non-regular employment" or "non-regular employees" refers to cases in which the employment contract is a fixed-term contract. It includes both direct employment and indirect employment.

² Imano (2012) highlights the fact that with diversification in the makeup of the labor force, there is growing scope and necessity for personnel management in companies to utilize employees with restrictions on factors such as their type, place, and hours of work, regardless of their form of employment. Imano gives restricted-regular employees as one form of employment.

ries are regarded as the foundations of personnel management,³ and the term normally refers to the categories created by dividing employees into multiple different groups based on some form of logical grounds. The categories are according to factors including forms of employment such as regular employees and non-regular employees, differences in future career development possibilities, and differences in ways of working (Morishima 2011).

Using criteria described by Imano (2010) as a reference, employee categories have been defined in this paper as follows. Firstly, different forms of employment are considered to be independent employee categories. In other words, regular employees and non-regular employees (e.g. directly-employed full-time workers on fixed-term contracts), each belong to different employee categories.

The divisions of employees according to differences in how they develop their career are also regarded as independent employee categories. For example, *sogoshoku*, the “managerial career track,” and *ippanshoku*, the “clerical career track,” are taken as two separate employee categories. Moreover, cases in which personnel management manages employees separately according to differences in ways of working, such as different range of work allocation, are also regarded as different employee categories.

For example, if a company introduces personnel system reforms to create a “limited-location managerial career track,” dividing the “managerial career track” into managerial track employees who may be transferred and managerial track employees who may *not* be transferred, the employee categories are further broken down into subcategories. On the contrary, there are also cases in which employee categories are combined. For example, in a system initially consisting of “unrestricted-regular employees,” regular employees with no restrictions on their work location or tasks, and “limited-location regular employees,” employees who only work in a certain location, if the limited-location regular employee category is abolished and such employees are treated as unrestricted-regular employees, the employee categories are combined.

II. Relationship between the Typical Image of Regular Employees and Restricted-Regular Employees

1. Characteristics of Personnel Management of Typical Regular Employees

Before pursuing the discussion on restricted-regular employees, let us clarify the characteristics of conventional Japanese employment practices and the regular employees who work under such practices. As is widely known, the characteristics of Japanese-style employment systems are the principles of (i) long-term, stable employment, (ii) seniority-based wages and promotion, and (iii) cooperation between labor and management (Hisamoto 2008).

It is also significant that in Japan, not only those employees in the white-collar level

³ For example, Imano and Sato (2009).

but also those in the blue-collar level have benefited from the aforementioned characteristics of the employment system. On the other hand, female regular employees and non-regular employees have often been left outside of the “core level,” which consists largely of male regular-employees. Hisamoto cites the following two points as characteristics of the employment management of regular employees: (i) the small size of the gap between blue collar workers and white collar workers, and (ii) different management according to gender (Hisamoto 2008). It can be inferred from these insights that while there are only minor gaps in treatment due to different jobs, there is a significant gap between the sexes.

Under the conventional Japanese employment practices described above, typical regular-employees (mainly male regular-employees) were expected to always maintain a certain level of flexibility with regard to the delineations and boundaries of their work in order to fulfil their anticipated role as the primary labor force (Inagami 1989). As can be ascertained from the points raised by Inagami, typical regular-employees have been expected to be flexible when it comes to the range of their work location and tasks. This means that companies have essentially been able to utilize human resources without any restrictions. As Marsden has highlighted, in Japan, unlike in countries such as Germany, it is possible for employers to utilize human resources without any limitations being placed upon them regarding the allocation of tasks.⁴

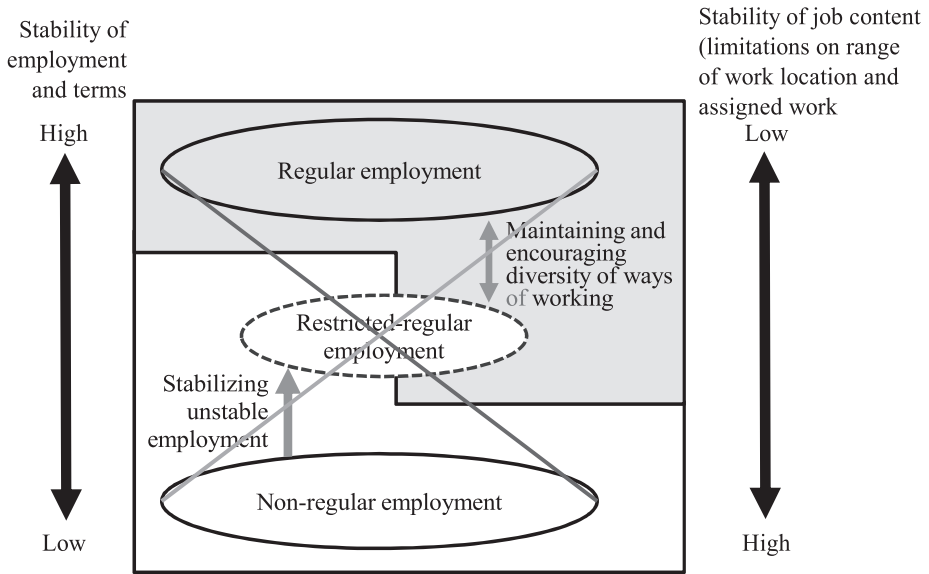
However, on the other hand, the employers following conventional Japanese employment practices undertake the obligation of guaranteeing the employee employment stability until retirement age (Sugeno 2004). In addition, due to the seniority-based wage curve, it is necessary for companies to take on a certain level of personnel expenses. Essentially, employers bear such obligations and expenses in return for the benefits of being able to utilize human resources flexibly.

Given that for employees in long-term employment there are no restrictions on the range of tasks or duties, it can be said that employment in Japan is characterized by the fact that employees are employed as “members” of a company, as opposed to being given specific tasks and receiving payment in return for accomplishing those tasks. Based on this characteristic, Hamaguchi (2011) describes Japanese employment as “membership-based employment,” highlighting the difference with the characteristics of employment contracts in Europe and the United States, which he describes as “job-based employment.”

2. Restricted-Regular Employees

Bearing in mind the points which have been raised so far, restricted-regular employees can be described as regular employees with a certain level of restrictions on their work

⁴ For characteristics of task distribution in the employment systems of each country, see Marsden (1999).



Source: Compiled by the author with reference to JILPT Research Report no.158, *Research on Personnel Management of Diverse Regular Employees*.

Note: Please note that this is merely a schematic image.

Figure 1. The Relationship between Typical Regular Employees, Restricted-Regular Employees and Non-Regular Employees

location or tasks. Therefore, unlike typical regular employees, they are regular employees which place a certain level of restrictions on their employer in terms of how they can be utilized. This is comparable to the characteristics of *non-regular* employees, whose work responsibilities and places of work have a limited range.

Figure 1 represents the relationship between typical regular employees, restricted-regular employees, and non-regular employees. As Figure 1 demonstrates, typical regular employees enjoy stable employment and treatment in return for there being no limits on the range of the tasks they engage in or their work location. On the other hand, while non-regular employees have a limited range of work location or tasks, their employment and treatment are unstable. As this indicates, the polarization between typical regular employees and non-regular employees in Japan forms what is referred to in Japan as a “twist phenomenon,” in which factors which are problems for one form of employment are solved by the other form of employment, and vice versa. Restricted-regular employees can be found at the intersection where typical regular employees and non-regular employees meet, as an intermediate layer between the two. As noted in the introduction of this paper, restricted-regular employees are expected to have the effect of increasing the stability of employment of non-regular employees, while also maintaining and encouraging the diversity of regular employees’ working style.

At the same time, there is research highlighting that in the 1980s at least a number of

Japanese companies began to introduce different types of regular employment, in the form of personnel management systems consisting of multiple employment paths, such as managerial and clerical career tracks, and systems for employees with restrictions on their place of work.⁵ Moreover, using the criteria defining employment categories as a basis, the JTUC Research Institute for Advancement of Living Standards (RENGO-RIALS) demonstrates that regular employees with restrictions on the range of their work location or their tasks in considerable numbers (RENGO-RIALS 2003). According to RENGO-RIALS (2003), among 547 companies surveyed, 56.3% of companies have a number of different employment categories of regular employees. RENGO-RIALS also highlight that among these multiple employment categories for regular employees, there are regular employees with restrictions on the range of their work location or tasks. However, such employees account for around just 30% of the total number of regular employees. 69.0% of regular employees have no restrictions on their work location or tasks, making the majority of regular employees *unrestricted-regular employees*.

Research on human resources architecture and internal labor market also highlights the existence of regular employees with restrictions on the way they work.⁶ Addressing the existence of a number of different types of regular employee, Sato, Sano, and Hara (2003) point out that personnel management are faced with the challenges of defining boundaries and providing balanced treatment for the different employee categories.

However, while research has demonstrated the existence of restricted-regular employees and emphasized the importance of defining the treatment and boundaries between the categories, there is a particular lack of research addressing the personnel management of employees in restricted-regular employment categories and the challenges involved in utilizing such restricted-regular employees. As Morishima (2011) points out, it is necessary to clarify the changes which occur in corporate personnel management in companies when multiple regular employee categories are created within the same company, and more specifically to define the characteristics of the treatment and career paths offered to employees. Let us look at the current status of such personnel management through the following case studies, which reveal the approaches being taken toward restricted-regular employment in companies which have already introduced such forms of employment.

III. Case Studies

The companies covered in this paper are companies which have utilized human resources according to so-called Japanese-style employment practices. The case studies include companies in the finance and insurance industries, the manufacturing industry, and one company for which it is not possible to disclose its industry sector, but which can be

⁵ For example, Inagami (1989).

⁶ Examples include Nishimura and Morishima (2009) and Hirano (2010).

Table 1. Profiles of Case Study Companies

	Number of employees	When restricted-regular employment was introduced	Direction of employee category reform	Whether or not restricted-regular employment has been continued or abolished
Manufacturing Company A	Over 10,000	Mid-1990s	Breaking down regular employee categories into subcategories	Continued
Manufacturing Company B	Over 10,000	Early 2000s	Breaking down regular employee categories into subcategories	Abolished
Manufacturing Company C	Approx. 6,000	Mid-1990s	Breaking down regular employee categories into subcategories	Abolished
Finance Company D	Over 5,000	2006	Old restricted-regular employees → new restricted-regular employees	Continued
Finance Company E	Over 10,000	2000s	Old restricted-regular employees → new restricted-regular employees	Continued
Major Company F	Approx. 5,000	2000s	Newly established restricted-regular employee categories	Continued
Manufacturing Company G	Approx. 4,000	2008	Non-regular employees → restricted-regular employees	Continued
Manufacturing Company H	Over 1,000	Late 2000s	Non-regular employees → restricted-regular employees	Continued

described as a major corporation with just under 5,000 employees. All of the companies were selected as the subject of case studies because they introduced categories for restricted-regular employees alongside their existing “typical regular employees” who have no restrictions on their work location and tasks, as in Figure 1. The profile of each of the companies is given in Table 1. As shown in the table, they are all large companies with 1,000 employees or more. An overview of each case study is given in Table 2.

The case studies revealed two main types of restricted-regular employees. The first is the type in which companies introduce restricted-regular employment for existing regular employees with the aim of changing the way in which they work. The second is the type in which restricted-regular employment is introduced with the aim of employing non-regular employees as regular employees. Let us look at the personnel management of restricted-regular employees in each case.

Table 2. Overview of

	Main target group	Names of employee categories following the reforms	Approaches to hiring for the restricted-regular employee category	Basic wage system applied to restricted and unrestricted employee categories
Manufacturing Company A	All employees (In effect, employees engaged in administration work at branch offices and in work-site operations)	G Employee (Unrestricted) L Employee (Restricted)	Continuing to recruit new graduates en masse	Same system applied
Manufacturing Company B	All employees (In effect, employees engaged in work-site operations)	G Employee (Unrestricted) Limited-area employee (Restricted; this category has been abolished in effect)	Not hiring at present	Same system applied
Manufacturing Company C	All employees (In effect, employees engaged in general administration work and in work-site operations)	G Course (Unrestricted) L Course (Restricted; this category was later abolished)	None	Same system applied
Finance Company D	Clerical track (female employees)	Managerial track (Unrestricted) Limited-region managerial track (Restricted)	Recruiting new graduates	Same system applied

Case Studies

Differences in treatment in comparison with other regular employees	Policy toward changing range of tasks/position	Policy toward switching between categories
Base salary is around 90% of that of unrestricted-regular employees (Wages decided according to three geographical areas)	L Employees not appointed to managerial positions at section chief level or higher “Limited-period G Employee System” introduced for L Employees in work-site operations	There is a system for switching between categories in both directions The company does not actively encourage switching category
Base salary is 85–90% of that of unrestricted-regular employees	Limited-area employees not appointed to managerial positions at section-chief level or higher	In principle, switching is only allowed in the case of transfer accompanied by change of residence at the convenience of the company
While the system was still in place, there was an allowance which was only paid to G Course employees (Around 100,000–200,000 yen per year)	L Course employees not appointed managerial positions at section-chief level or higher	While the system was still in place, switching between categories was possible (employees decided every 5 years) In effect, no employees switched between categories
Different title-based portions of the monthly salary	Range of work expanded from mainly administrative work to include out-of-office sales and marketing work	A system for switching between categories exists
Different speeds of promotion	Possible for restricted-regular employees to reach higher positions than when “clerical track” existed Restricted-regular employees also on career path for internal promotion	Less employees switch now than when the “clerical track” existed

Table 2

	Main target group	Names of employee categories following the reforms	Approaches to hiring for the restricted-regular employee category	Basic wage system applied to restricted and unrestricted employee categories
Finance Company E	Clerical track (female employees)	G Course (Unrestricted) A Course (Restricted)	Recruiting new graduates	Same system applied
Major Company F	Regular employees of main body above a certain age	Reemployed-regular employee (Restricted)	Regular employees of main body are reemployed by a group company after retiring from the main body of the company	Same system applied
Manufacturing Company G	Non-regular employees engaged in sales work (fixed-term contract workers)	Regular employee for sales (Restricted)	Recruiting new graduates en masse in urban areas	Different system applied No retirement allowance
Manufacturing Company H	Non-regular employees engaged in work-site operations on the manufacturing floor (temporary agency workers)	Regular employee C (Restricted)	Recruiting new graduates to fill vacancies	Same system applied

Note: The category names are merely for descriptive purposes and may not be the official names.

(Continued)

Differences in treatment in comparison with other regular employees	Policy toward changing range of work/position	Policy toward switching between categories
There is an allowance which is only paid to G Course employees (Around 20% of the monthly salary)	Range of work expanded from mainly administrative work to include out-of-office sales and marketing work	A system for switching between categories exists
	Possible for restricted-regular employees to reach higher positions than when "clerical track" existed	The company does not actively encourage switching
	Restricted-regular employees also on internal promotion career path	
Base salary is around 70% of that of regular employees at the main body of the company (Wages decided according to three geographical areas)	Range of duties is the same as unrestricted regular employees	Changes in one direction only (unrestricted-regular employees becoming restricted-regular employees)
Different wage table is applied	No significant change in comparison to when such employees were non-regular employees	Existing other non-regular employees are not converted to regular employees
	Separate career path for restricted-regular employees	
Salary raises are lower in comparison with existing regular employees	No significant change in comparison to when the employee was a non-regular employee	Category is essentially replenished by recruiting new graduates, not existing other non-regular employees.
	Separate career path for restricted-regular employees	

1. Restricted-Regular Employment Introduced for Regular Employees

Restricted-regular employment introduced for regular employees may be further broken down into forms of employment introduced for all regular employees of the company, and forms of employment introduced for specific levels of employees. The following sections set out the characteristics and challenges of each type.⁷

(1) Forms of Employment Introduced for All Regular Employees (Manufacturing Companies A, B, and C)

Manufacturing Company A

In the mid-1990s, Company A divided its regular employees, which up until then had been a single category, into two categories: regular employees *without* restrictions on work location (G Employee) and regular employees *with* restrictions on work location (L Employee). There were two reasons behind this change: firstly, the company wished to expand the narrow range of locations within which regular employees were transferred, and secondly, it was necessary to give consideration to the family circumstances of employees.

From the time of the company's establishment and during the period of high economic growth, Company A transferred its salespeople repeatedly between various regions across Japan. However, once the company entered a period of stability, around 80% of the salespeople were only transferred within one branch office. This trend was effective in allowing the company to ascertain the trends in demand in local regions, but as the company's projects began to expand overseas, it became detrimental to training employees with the ability to take into account what is best for the company as a whole. In order to send out the message that it would be expanding the range of locations within which regular employees with no restriction on their work location could be transferred, the company established two categories: "L employees," whose range of work location is restricted, and "G employees" whose range of it is *not* restricted.

All employees were free to choose between the two categories, but in practicality, the employees who selected to become L employees were employees whose work duties and work location were in effect already limited prior to the new categories being introduced. More specifically, the employees who selected to become L employees were employees engaged in work-site operations in the manufacturing division and employees engaged in routine administrative work at branch offices or sales offices.

Personnel management of the L Employees—the restricted-regular employees—is characterized by the fact that a different wage table to that of G Employees is applied, and the wages of L Employees are around 90% of those of G Employees. There is a significant number of L Employees who are dissatisfied with such differences in treatment. Discontent is particularly common among the workers in charge of work-site operations in the manu-

⁷ The system names used in the following case studies have been created for descriptive purposes based on characteristics of the systems and are not the official names used in the companies.

facturing division. The reason for this is that there are a considerable number G Employees whose work location is in effect limited to one location. The discontent of L Employees engaged in work-site operations is increased by the fact that the G Employees with backgrounds in science and engineering who work alongside them in the research and development division are essentially never transferred and in many cases effectively remain in the same work place. On the other hand, there is relatively less discontent among L Employees who work in branch offices and sales offices, because they see at close hand G Employees who specialize in sales being regularly transferred.

Moving on to look at career development, L Employees are mainly hired as new graduates. The company recruits students from local high schools and universities with which it has already built up relationships. L Employees differ from G Employees in that there is an upper limit on the positions to which they can be promoted, such that it is not possible for L Employees to be appointed to managerial positions at the level of section chief or higher. On the other hand, the system allows employees to switch between the two courses (G Employee and L Employee). Every year employees have an opportunity to choose whether to remain in their current course or switch to the other. However, in practicality the general rule is that employees remain in the course that they started in when they were initially hired.

There is a significant number of employees who wish to switch from G Employee to L Employee, but as the company wishes to retain a certain amount of employees who can be transferred as a buffer, changes are not permitted except in unavoidable circumstances (such as to allow employees to provide nursing care for their children or parents). Changes from L Employee to G Employee are generally limited to cases of highly-capable employees who are deemed to be difficult to replace, but changes are sometimes also allowed when it is determined that the employee has sufficient time to develop their career. As a result, employees who switch from L Employee to G Employee are generally employees aged 30 or under and employees who have worked for the company for less than 20 years.

At the same time, there is also a system known as “Limited-period G Employee System,” by which L Employees become regular employees with no restriction on work location and tasks for a limited period of three years. This system is mainly aimed at L Employees engaged in work-site operations and is used in situations such as when the company is selecting overseas production bases. “Limited-period G Employees” receive the same treatment as G Employees.

Finally, as a feature of human resources development, initiatives are being conducted to expand the range of the work duties of female L Employees working at branch offices. The aim is to allow employees who were previously engaged in mainly routine administrative work to also take on sales work.

Manufacturing Company B

Company B first divided its categories for regular employees in the early 2000s, and

introduced a category for “limited-area employees” aimed at non-managerial employees in positions at subsection chief level or lower. The main aims for introducing this category were to alleviate the burden of the personnel expenses spent on regular employees and to preserve the jobs of domestic regular employees. The limited-area employee category was open to all employees in positions at subsection chief level or lower, but, as in the case of Company A, in reality the employees who selected to become limited-area employees were those who in effect already had restrictions on the place and content of their work before the category was introduced. More specifically, a number of regular employees who had been hired after high school graduation to engage in work-site operations and were working in the same location selected to become restricted-regular employees, while the regular employees who had been hired by head office upon graduating university selected “G Employee,” the category which includes the possibility of transfer and relocation.

As in the case of Company A, Company B largely recruits new graduates. Cases of mid-career recruitment into the company are rare. Moreover, limited-area employees also receive lesser wage in comparison with G Employees, such that their wages are generally around 90% of those of G Employees. Furthermore, restricted-regular employees are also not able to be appointed to managerial positions.

At present, the company is not recruiting limited-area employees and the category has in effect been abolished. This can be attributed to the fact that, following the introduction of the category, the company (i) implemented an early retirement system and decreased the number of workers as a whole, and (ii) significantly increased the discontent among limited-area employees when they transferred such employees to different locations due to the closure and consolidation of locations. This discontent is largely due to the fact that the limited-area employees were under the understanding that they would be guaranteed employment in the same workplace until retirement age in exchange for accepting wage reductions.

Manufacturing Company C

In the mid-1990s, Company C divided its employee categories to create two categories: “G Course,” employees *without* restrictions on their work location, and “L Course,” employees *with* restrictions on their work location. However, the company later abolished the L Course and merged its employees into one category again.

The objectives for introducing the new categories were firstly to raise the motivation of employees by increasing the number of options of working style, and secondly to facilitate the efficient use of human resources by allowing the company to clarify which employees could and which employees could *not* be transferred globally. This was necessary due to the fact that expansion of business meant that there were possibilities for career development which included opportunities overseas.

The new categories were open to all employees, but eventually the choices employees made were neatly divided according to the content of their work. The employees closely resembling the “clerical career track,” in other words, employees engaged in general ad-

ministrative work, and the employees engaged in work-site operations on the manufacturing floor selected L Course, while employees engaged in all other types of work selected G Course.

After introducing the new categories, Company C consolidated its production locations. At that time, it was decided that, with the situation expected to become increasingly more uncertain in the future, it would be difficult to utilize a category which guarantees employees work in a certain location, and the system of restricted-regular employment was abolished.

While the system was still in place, the company's policy for hiring new employees to fill positions in the restricted-regular employee category was largely to recruit new graduates from colleges of technology and high schools. Restricted-regular employees were subject to essentially the same wage system as applied to G Course employees, but there was a special allowance provided only for G Course employees, and therefore the wages of unrestricted-regular employees (typical regular employees) were higher than those of restricted-regular employees by the amount of this allowance. The system also did not allow restricted-regular employees to be appointed to managerial positions.

(2) Forms of Employment Introduced for Specific Levels of Employees (Finance Company D, Finance Company E, and Major Company F)

Finance Company D

Company D abolished its "clerical career track," its existing category for restricted-regular employees, and introduced a "limited-region managerial career track" as a new category for restricted-regular employees. This reform was implemented with the aim of increasing the flexibility of female employees in terms of their work content and opportunities. With a background of factors such as the decreases in the number of employees of the company and increases in the length of clerical track employee's service, the employee categories were changed with the aim of expanding the work duties of the company's clerical track employees and increasing the ease of switching between duties under each of the employee categories. For female employees who had formerly been clerical track employees, the changes opened up a wider range of potential duties and higher levels of positions to which they could be promoted. Female limited-region managerial track employees began to be appointed to posts which until then had largely been held by male managerial track employees, and also began to participate in meetings on matters such as business strategy for branch offices, which they would not have participated in when they were clerical track employees.

As managerial track employees are frequently transferred, and former clerical track employees generally wish to remain in the local area where they grew up, limited-region managerial track employees were not subject to transfers requiring relocation and the same stipulations regarding work location which had applied to them as clerical track employees were kept in place. Moreover, limited-region managerial track employee categories are all

occupied by women.

It is also the case in Company D that wage level of restricted-regular employees is at a lower level in comparison with unrestricted-regular employees. However, as managerial track employees are transferred frequently, limited-region managerial track employees are not significantly discontent toward the difference in wage level. There are very few employees who switch course between the managerial career track and limited-region managerial career track, and the number of employees switching track is in fact lower now than it was before the new category was introduced. This is due to the fact that, unlike when they were clerical track employees, limited-region managerial track employees are able to develop their career while remaining in the same category.

Finance Company E

Company E abolished its existing restricted-regular employee category, the “clerical career track,” and introduced the “Managerial career track A Course.” With decreasing numbers of regular employees in the company and expansion in the market aimed at women, Company E was under pressure to expand the range of tasks assigned to female employees in the clerical career track. However, initiatives aimed at allowing their range of tasks to be expanded while they remained clerical track employees did not yield the results anticipated. This can be attributed to the fact that the name “clerical career track” was restricting the female employee’s motivation toward their work. Company E therefore abolished the clerical career track and expanded the range of tasks of female employees by placing them in the Managerial career track A Course. As a result, there are a greater number of cases in which the treatment and work content of female former clerical track employees are equivalent to those of employees in the “Managerial career track G Course (the former managerial career track),” a regular employee category with no restrictions on work location or tasks. The level of the positions to which these female employees can be promoted has also increased. As former managerial track employees were frequently transferred, A Course employees retain the same stipulations on work location which applied to them as clerical track employees, and are not subject to transfers which require relocation. Similar to the case of Finance Company D, the majority of A Course employees are women. The company is not considering recruiting men as A Course employees.

Company E applies essentially the same personnel and wage system to both G Course and A Course employees. There were previously significant differences in the number of titles and grades and corresponding salary amounts between the clerical track employees and former managerial career track employees, but these differences no longer exist (Figure 2). At the same time, there is a “G Employee allowance,” the equivalent of around 20% of the monthly salary, which is paid only to “G Course” employees as an allowance in exchange for no restriction on work location. Restricted-regular employees (A course employee) are not particularly discontent about this difference in conditions, due to the fact that, as in the case of Company D, G Course employees are transferred and relocated

Old System			New System						
Managerial career track			Clerical career track			Managerial career track (G Course/A Course)			
Title	Grade	Amount of salary (yen)	Title	Grade	No.	Amount of salary (yen)	Title	Grade	Amount of salary (yen)
Senior-level assisting role	3	340,000	Clerical-track senior-level assisting role	3		280,000	Senior level assisting role	3	
	2			2				2	
	1			1				1	
Mid-level	3	320,000	Clerical-track mid-level	3		260,000	Mid-level	3	
	2			2				2	
	1			1				1	
Mid-level assisting role	3		Clerical-track mid-level assisting role	3			Mid-level assisting role	3	
	2			2	2			2	
	1	220,000		1	2	200,000		1	
Entry level	5		Entry level II	3			Entry level	5	
	4			2	2			4	
	3			1	1			3	
	2			1	2			2	
	1			1	1			1	
Entry level I	3		Entry level I	3			Entry level assisting role	3	
	2			2	2			2	
	1			1	1			1	
Entry level assisting role	3		Entry level assisting role	3	2		Entry level	3	
	2			2	1			2	
	1			1	1			1	

Source: Compiled by the author using materials provided by the labor union.
 Notes: 1. The amounts have been created for the purpose of this paper and are not real amounts.
 2. Titles and grades are shown for levels which are members of the labor union.

Figure 2. Changes in the Titles and Grades of Company E

frequently and therefore restricted-regular employees appreciate the merits of having a fixed work location.

Major Company F

Company F is a company made up of a main body and a number of group companies. The main body of the company consists of around 5,000 employees. Including employees from group companies in which Company F holds 50% or more of shares, the company has a total of around 37,000 regular employees. Regular employees of the main body of the company are characterized by the fact that they may engage in the duties of the group companies as a whole, through temporary transfer to group companies.

Table 3. Wage Level Groupings

Wage level (% of wage of regular employees in the main body of the company)	Region group
<i>x</i> %	Prefecture A
<i>y</i> %	Prefecture B, Prefecture C, Prefecture D, Prefecture E...
<i>z</i> %	Prefecture F, Prefecture G, Prefecture H...

Source: Compiled by the author using materials provided by the labor union.

Company F has introduced a category of limited-location regular employees, known as “reemployed-regular employees,” which is aimed at employees over a certain age. In the past, there was a period when Company F hired huge numbers of regular employees in line with the expansion of its business. As the employees hired at that time grow older, the growing personnel expenses have begun to place a strain on corporate management. Under pressure to take some form of action to address the issue, the company introduced the reemployed-regular employee system.

Upon reaching the prescribed age, all regular employees employed by the main body of the company make the choice whether to become a reemployed regular employee or to remain as regular employee of the main body of the company. Employees who select to become a reemployed regular employee at that time are able to become “aged 60-plus employees”⁸ when they are over 60 years of age, while employees who choose to remain regular employees in the main body of the company are not given such an employment contract. More specifically, employees who select to become reemployed-regular employees retire from the main body of Company F and are reemployed by one of F’s group companies as a restricted-regular employee.

The range of duties for reemployed-regular employees is the same as that of regular employees of the main body of Company F, and their actual duties are the same as those they engaged in as regular employees of the main body of the company. In that sense, there are no restrictions on the tasks that they engage in. Their work location, on the other hand, is limited to within specific prefectures.

As demonstrated in Table 3, the wage level of reemployed-regular employees differs according to the region in which they are reemployed. The prefectures are divided into three different groups and there is a different wage level for each. 100% refers to the wage received by regular employees of the main body of the company, and each region group receives a lower wage level than that. The wage level is approximately 70% of that received by regular employees of the main body of Company F. The company adopted the system of

⁸ “Aged 60-plus employees” are fixed-term contract workers employed under a system introduced as part of measures to extend the employment of employees aged 60 years or over. Employees who select this system have their employment extended until the age of 64.

setting different wage levels on the grounds of the restrictions on the range of the work location because they determined that employees would not be satisfied to receive lower treatment despite taking on the same tasks as before.

2. Forms of Employment Introduced to Employ Non-Regular Employees as Regular Employees (Manufacturing Company G, Manufacturing Company H) Manufacturing Company G

Company G manufactures products in-house and sells these products in department stores and shops in suburban shopping malls and through mail order. The company has around 4,000 regular employees and around 900 fixed-term contract workers.

In 2008, Company G introduced the “regular employees for sales” category allowing sales staff engaged in selling Company G products at department stores and other shops to become regular employees with restrictions on the work location and tasks. Since the 1990s, Company G had begun to change the recruitment of sales staff, hiring them as fixed-term contract workers. In 2001, the company made the decision to stop recruiting sales staff as regular employees altogether, and to employ all sales staff as fixed-term contract workers. A wage system and training system were established for fixed-term contract workers, and these workers were utilized as the key players in sales work.

It later became difficult to hire sales staff as fixed-term contract workers due to tightening labor market, and in 2008 the company established the regular employee category known as regular employee for sales and began to recruit sales staff as restricted regular employees. At that time, significant numbers of the fixed-term contract workers engaged in sales work were employed as regular employees for sales. However, this applied only to sales staff working at department stores, mass retailers, specialty stores, and other retail stores with longstanding stable relationships with clients. Sales staff working at suburban shopping malls and other such stores with unstable relationships with clients remained as fixed-term contract workers. Given that regular employees are guaranteed lifetime employment, the company considered it difficult to commit to utilizing regular employees unless relationships with clients are stable.

In the urban areas of Tokyo, Nagoya, and Osaka, regular employees for sales are hired by recruiting recent graduates en masse. In other regions, employees are recruited as necessary when vacancies arise. Moreover, fixed-term contract workers who work at suburban shopping malls and other such stores with unstable relationship with clients are not converted to regular employees for sales.

There is no overlap between the work of regular employees for sales and unrestricted-regular employees who work within the company. The work is divided such that unrestricted-regular employees engage in sales to clients, while regular employees for sales sell products on the shop floor. As a result, the career paths created for each are different. Regular employees for sales have the possibility of developing their career up to section chief class, but there are special posts exclusively for regular employees for sales, such as “train-

ing section chief,” and they are not promoted to section chief positions normally held by unrestricted-regular employees.

There is a special wage system for regular employees for sales and the number of titles and grades and wage levels are completely different to those of unrestricted-regular employees. The prefectures are divided into several groups, and wage levels differ from group to group.

Manufacturing Company H

Company H is a manufacturing company with business locations across Japan and more than several thousand employees. The company made its *haken-shain*, temporary agency workers who were dispatched from agencies to work on the manufacturing floor, into restricted-regular employees under the category known as “Regular Employee C.”

From the late 1990s, Company H became more conscious of its overall personnel expenses and made efforts to diversify its forms of employment. The most significant change was the introduction of indirect employment in the manufacturing division. In addition to using more *ukeoi-shain*, contracted workers who undertake work based on a service contract, in on-site operations in the manufacturing division, the company conducted initiatives such as introducing titles and grade systems and welfare benefit systems for such workers, with the aim of creating an environment in which each and every worker would be highly motivated and work hard daily with the aim of acquiring a position. There were in fact contracted employees who took on roles as leaders responsible for various processes on site under the supervision of their foreman.

However, as it became difficult to utilize these employees as contracted workers due to revisions in the Worker Dispatching Act, the law defining the appropriate use and employment conditions of temporary agency workers, the company decided to change the form of employment of the workers engaged in on-site operations to employ them as temporary agency workers. At the same time, it was necessary to allow all temporary agency workers to switch to direct employment after three years of working for the company, and therefore, following internal deliberations, it was decided that temporary agency workers would be employed as regular employees.

At that time, the temporary agency workers were employed as regular employees under a newly-established category for regular employees known as “Regular Employee C,” as opposed to the conventional terms for regular employees. Up until then Company H had had only one employee category, and therefore its regular employees were all regular employees with the possibility of transfer requiring relocation. As the temporary agency workers were not subject to transfers, a personnel system incorporating multiple career path options was introduced at the time of the conversion to allow the company to create a new category of regular employees who *not* be subject to transfers.

Through these changes to the system, Company H created three new employee categories: “Regular employee A,” employees who may be subject to relocation anywhere in

Japan and have *no* restrictions on their work duties, “Regular employee B,” employees who essentially work in the same region, largely engaging in production technology in the manufacturing division or sales work, and “Regular Employee C,” employees who will not be subject to transfers requiring relocation and who engage in on-site operations in the manufacturing division.

After switching all temporary agency workers to Regular Employee C category, Regular Employee C category employees are recruited as new graduates. The company has given little thought to replenishing its human resources by employing existing other non-regular employees as regular employees. Moreover, while the company annually recruits large numbers of new graduates under the category Regular Employee A, recruitment for Regular Employee C is carried out as required when it is necessary to fill vacancies at factories.

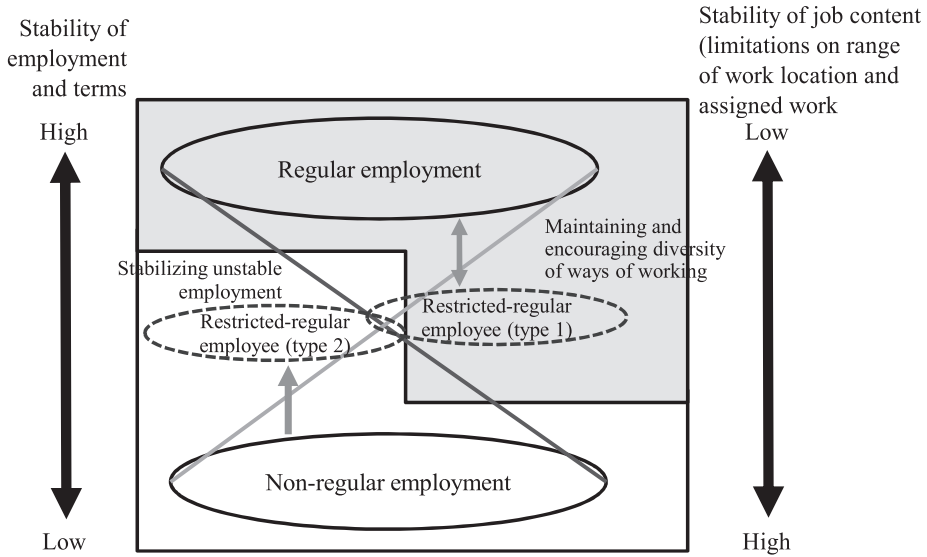
Employees in the Regular Employee C category engage in on-site operations on the manufacturing floor, and the content of their work overlaps very little with the work of regular employees in other categories. As a result, the internal career paths of employees in the Regular Employee C category differ from those of the employees in the Regular Employee A and B categories. Employees in the Regular Employee C category have career paths which progress upward from workers engaged in on-site operations, to “sub-leaders,” who are responsible for a number of machines within a certain manufacturing process, followed by “leaders,” who have overall responsibility for a certain process, and finally up to “foremen,” who oversee all processes. Even in the manufacturing division, Regular Employee A and B employees engage in production planning and maintenance. The role of manufacturing division chief, who holds the highest position of responsibility in the manufacturing division, is generally held by employees selected from the Regular Employee A and B categories.

Employees in the Regular Employee C category receive lower wages in comparison with the previously-existing regular employees. However, their wages are higher than they were when they were non-regular employees.

IV. Conclusion

1. Restricted-Regular Employee Types

In the cases described above, there are two main types of category for restricted-regular employees: those introduced for existing regular employees already directly employed by the company, and those aimed at non-regular employees. There was no type of restricted-regular employee category which was introduced for both regular employees and non-regular employees. Therefore, rather than there being one type of restricted-regular employees which simultaneously fulfils both of the expectations of labor policy described in the introduction to this paper—namely, to tackle labor problems of non-regular employment and to facilitate changes in the way that regular employees work—there are two types of



Source: Compiled by the author with reference to JILPT Research Report no.158, *Research on Personnel Management of Diverse Regular Employees*.

Note: Please note that this is merely a schematic image.

Figure 3. The Relationship between Typical Regular Employees, Restricted-Regular Employees and Non-Regular Employees (Amended)

restricted-regular employee: “restricted-regular employee (type 1),” which are introduced with the aim of changing the way that existing regular employees work, and “restricted-regular employee (type 2)” which are introduced with the aim of employing non-regular employees as regular employees. These types exist independently of each other and it is expected that restricted-regular employee categories which have both qualities are rare.

In the case studies, restricted-regular employees of type 1 are recruited as new graduates, and no consideration was being given to making non-regular employees regular employees as a means of recruiting for this category. Moreover, even in the case of Manufacturing Company A, which allows non-regular employees to become regular employees, there is a strong tendency toward selecting only highly capable employees who cannot be replaced with other people, and converting non-regular employees to regular employees is not being considered as one of the dominant means of replenishing human resources.

In this respect, Figure 1 can be rewritten based on the insights of the case studies to create Figure 3.

2. The Characteristics of the Two Types of Restricted-Regular Employee

Let us look at the characteristics of the two types of restricted-regular employees, namely restricted-regular employee (type 1) and restricted-regular employee (type 2). Firstly, preserving the jobs of regular employees was a common aim between each of the com-

panies introducing restricted-regular employees of type 1. In addition to preserving jobs, in the cases in which the restricted-regular employment categories are still in place, there is also a strong tendency when adopting categories of restricted-regular employees to place no restrictions on the work tasks, and restrict only the work location. This point is well reflected by the fact that, in the case of Manufacturing Company B and C, where in addition to the work location being restricted in employment contracts, the work tasks of employees was also in effect restricted, the categories have been abolished. Meanwhile, in the case of Manufacturing Company A, which expanded the range of tasks of female restricted-regular employees and established a "Limited-period G employee system" to allow the company to maintain a certain level of flexibility in the utilization of restricted-regular employees, the system is still in place.

Therefore, restricted-regular employees of this type are considered to exist as a category for *limited-location* regular employees in their pure form, which places restrictions on the work location while maintaining the flexibility of the work tasks the employees engage in. As a result, it could be said that they are restricted-regular employees with characteristics which are similar to those of "typical regular employees." In this pool, there is a mixture of two types of cases. Firstly, there are cases in which the tasks of employees whose employee category has been changed in fact closer resembles that of typical regular employees in that it is less restricted, as demonstrated in the case of the two finance companies. Secondly, there are cases in which employees' work location have been further restricted by the change, as in the case of Major Company F. It can be inferred that the types of employees belonging to restricted-regular employee (type 1) categories include mainly women and also older people above a certain age.

On the other hand, restricted-regular employee (type 2) is a newly-established type of regular employees with restrictions on *both* the duties *and* location of their work, newly established with the aim of employing non-regular employees as regular employees.

This type is characterized by the fact that the companies who introduced such categories had continued to employ non-regular employees who were not subject to transfer or relocation for relatively long periods of time. Companies which have continued to provide stable employment for a certain period of time to employees with restrictions in their employment contracts are able to utilize restricted-regular employees with restrictions on both the work location and tasks. Due to the fact they were initially non-regular employees, the restricted-regular employees (type 2) have different career paths to those of other regular employees in the company. As a result, there is a tendency for personnel management to apply career paths to restricted-regular employees which differ from those of unrestricted-regular employees. It is expected that restricted-regular employee (type 2) mainly consists of women, or, men who were recruited as high school graduates (or in some cases, as technical college graduates).

If we put aside the specific differences described above and make a broad summary, employment of restricted-regular employees (type 1) introduced for existing regular em-

employees are characterized by the fact they maintain flexibility in their tasks and only establish restrictions on the work location, while restricted-regular employees (type 2) aimed at non-regular employees within the company place restrictions on both the work location and tasks.

Moreover, it is possible to infer a trend that while in the case of restricted-regular employee (type 1) it is possible to see overlaps in the personnel and wage systems and career paths applied to these employees and those applied to unrestricted-regular employees, in the case of restricted-regular employee (type 2), there tends to be few overlaps between these employees and unrestricted-regular employees.

3. Challenges for Personnel Management

It was just pointed out that when utilizing several different types of regular employee, equal treatment can become an issue. It was established that there are many challenges to be faced in maintaining and operating systems for restricted-regular employee (type 1), in comparison with restricted-regular employee (type 2). Firstly, on the operational side, discontent regarding differences in wage between the different employee categories is more commonly seen in the case of restricted-regular employee (type 1). It is thought that this discontent is largely influenced by how frequently unrestricted-regular employees are transferred.

Secondly, let us address the issue of whether or not the restricted-regular employment systems have been maintained. As demonstrated by the case studies, there are cases in which categories for restricted-regular employees (type 1) which were aimed at existing regular employees have already been abolished. This is largely due to problems arising in relation to preserving the jobs of employees.

In the case of Manufacturing Company B, the reason why the system for restricted-regular employment was abolished can be traced to the fact that the company increased the discontent of employees when it transferred restricted-regular employees due to closures and consolidations of its plant. In fact, this discontent originally arose due to the fact that wage of restricted-regular employees was lower than those of other regular employees in exchange for restriction on their work location. But it can be said that it is an extremely delicate issue for personnel management, because if treatment of restricted-regular employees is not lower, there is a risk of increasing discontent among unrestricted-regular employees.

On the other hand, as demonstrated by the case of Manufacturing Company G, when introducing categories for restricted-regular employees (type 2) it is possible to utilize restricted-regular employees and fixed-term contract workers separately depending on the sustainability of their work place, hence avoiding the issues faced by Manufacturing Company B. In reverse, when the category is aimed at all employees, as in the case of Manufacturing Company B and Manufacturing Company C, it is difficult to opt to make regular employees working at business locations with uncertain prospects into non-regular employees,

and the company has no choice but to remain committed to treating all employees as regular employees. This factor is thought to be making it difficult to utilize restricted-regular employee categories introduced for regular employees.

Moreover, based on the above, it can be said that when introducing categories for restricted-regular employees, it is necessary to also take into account factors concerning corporate management, such as strategies for selecting locations, rather than simply focusing on aspects of personnel management such as overlaps in work tasks and securing human resources.

4. Restricted-Regular Employees and Japanese-Style Employment Practices

In terms of the proportion they account for among all employees, the number of restricted-regular employees is not significantly high. However, in closing let us see what can be deduced regarding any signs of change—and in reverse, any aspects which are being steadfastly maintained—in companies which have introduced a category of restricted-regular employees.

(1) Maintaining the Principle of Long-Term Employment Stability

At the beginning of this paper it was noted that companies bear the obligation to preserve the jobs of typical regular employees. It is a common factor in both the restricted-regular employee (type 1) and restricted-regular employee (type 2) categories that the company still tries to continue to fulfil this obligation even if the employee is a regular restricted employee. In that sense, at least in the case of companies which are thought to have consistently implemented Japanese-style employment practices, the concept of employment security seems to remain a constant, regardless of what type of regular employee the employee is, and it is thought that these companies are maintaining the principle of the obligation of long-term employment stability.

(2) Gender-Differentiated Management and Restricted-Regular Employees

As far as the case studies suggest, there are no cases in which significant numbers of male employees have switched to employment categories formerly occupied by women. This is particularly well demonstrated in the case of the two finance companies. In this respect, it can be said that gender-differentiated management remains strongly rooted. However, there are increasing cases in which employee categories to which women belong are provided with the same personnel and wage systems as those applied to unrestricted-regular employees (typical regular employees). As this reflects, female restricted-regular employees are beginning to be able to enjoy the same benefits that were essentially enjoyed by typical regular employees. It is therefore anticipated that the restricted-regular employee categories which have been introduced in recent years will contribute to counteracting an aspect of gender-differentiated management.

(3) White Collar and Blue Collar Workers

At the same time, the gap between white collar and blue collar workers is expanding in companies which introduce restricted-regular employee categories. Including the case studies in which the systems were abolished, in the four cases in which the categories were also aimed at male employees (Companies A, B, C, and H), the restricted-regular employee categories were aimed at regular employees engaged in work on the manufacturing floor. For the majority of such employees, a different wage table was applied, and these employees also did not have the possibility of being appointed to managerial positions. This deviates slightly from the characteristic of the Japanese-style employment system described at the beginning of this paper—namely, the fact that treatment of blue collar and white collar workers has generally be similar. In fact, as many employees of the shop floor have already been employed under non-regular employment conditions, it is probably possible to suggest that in this case the characteristic had already broken down, but it is worth noting the fact that such a trend can be seen even among regular employees.

To summarize the three characteristics addressed above, it is anticipated that the fundamental principle of preserving the jobs of employees will be maintained and groups which were formerly divided by large gaps (men and women) will become closer, while the groups that were formerly close (white collar and blue collar workers) will separate slightly.

It is not possible to predict at present what form the development of restricted-regular employment will take in the future, or whether or not the development of this form of employment may stagnate. However, at the least, it is possible to interpret the trends described above based on the characteristics of restricted-regular employee categories which have already been introduced.

References

- Hamaguchi, Keiichiro. 2011. *Nihon no koyo to rodoho* [Employment and labor law in Japan]. Tokyo: Nihon Keizai Shinbun Shuppansha.
- Hirano, Mitsutoshi. 2010. Sansoka suru rodo shijo: Koyo kubun no tayoka to kinko shogu [The three-layered labor market: The diversification of employment categories and equal treatment]. *Organizational Science* 44, no. 2:30–43.
- Hisamoto, Norio. 2008. Josho: Nihonteki koyo shisutemu towa nanika [Prologue: What is the Japanese-style employment system?]. In *Nihonteki koyo shisutemu* [The Japanese-style Employment System], ed. Michio Nitta and Norio Hisamoto, 9–26. Kyoto: Nakanishiya Shuppan.
- Imano, Koichiro. 2010. Koyo kubun no tayoka [Increasing diversity of employee and HRM]. *The Japanese Journal of Labour Studies* 52, no. 4:48–51.
- . 2012. *Seishain shometsu jidai no jinji kaikaku* [Personnel reform in the age of extinction of regular employees]. Tokyo: Nihon Keizai Shinbun Shuppansha.
- Imano, Koichiro, and Hiroki Sato. 2009. *Jinji kanri nyumon*. 2nd ed. Tokyo: Nihon Keizai

Shinbun Shuppansha.

- Inagami, Takeshi. 1989. *Tenkanki no rodo sekai* [The world of labor in transition]. Tokyo: Yushindo.
- Marsden, David. 1999. *A theory of employment system: Micro-foundations of Social Diversity*. Oxford: Oxford University Press.
- Morishima, Motohiro. 2011. “Tayona seishain” to hiseiki koyo [“Diverse regular employees” and non-regular employment]. RIETI Discussion Paper Series11-J-057. The Research Institute of Economy, Trade and Industry, Tokyo.
- Nishimura, Takashi, and Motohiro Morishima. 2009. Kigyonai rodoshijo no bunka to sono kitei yoin [Diversification of internal labor market and determinative factors]. *The Japanese Journal of Labour Studies* 51, no. 5: 20–33.
- RENGO-RIALS (JTUC Research Institute for Advancement of Living Standards). 2003. Koyo kanri no genjo to aratana hatarakikata no kanosei ni kansuru chosha kenkyu hokokusho [Survey report on the current state of employment management and potential new ways of working]. Tokyo: JTUC Research Institute for Advancement of Living Standards.
- Sato, Hiroki, Yoshihide Sano, and Hiromi Hara. Koyo kubun no tagenka to jinji kanri no kadai: Koyo kubunkan no kinko shogun [Diversifying employment categories and issues of HRM: Balancing wages across employment categories]. *The Japanese Journal of Labour Studies* 45, no. 9:31–46.
- Sugeno, Kazuo. 2004. *Shin koyo shakai no ho* [Laws of employment society: The revised edition]. Tokyo: Yuhikaku.

JILPT Research Activities

International Workshop

The Japan Institute for Labour Policy and Training (JILPT), the Korea Labor Institute (KLI), and the Chinese Academy of Labour and Social Security (CALSS) held a research forum on the theme “Recent Trends in Wages and Minimum Wage System” on September 26, 2014 in Tokyo, Japan. The three institutes hold a forum with a common theme once every year. In the forum, they present their research results with the aim of promoting mutual understanding among the three countries and raising the standards of research. This was the twelfth forum held with the collaboration of the three research institutes. The Japanese text of research papers presented at the forum will be uploaded on the JILPT website (<http://www.jil.go.jp/institute/kokusai/index.htm>).

JILPT

Keiichi Yamakoshi, Executive Director, *Realities and Policies concerning Wages in Japan*

Noboru Ogino, Director of Research and Statistical Information Analysis Department, *Wage Hike Movements Centered on the ‘Spring Offensive’: The Wage Level Wave-Effect System and Tasks for Escaping from Deflation*

KLI

Jaeryang Nam, Director of Center for Labor Policy Analysis, *Wage Gap, Types of Work, and the Working Poor in Korea*

Seung-Bok Kang, Senior Researcher, *Minimum Wage, Employment and Prices in Korea*

CALSS

Liming Yang, Vice President, Institute of Labor and Wage Studies, *The Basic Situation of Wage Systems in China and Trends in their Development*

Xiaoli Ma, Researcher, Institute of Labor and Wage Studies, *The Situation of the Minimum Wage System in China and New Trends in Development*

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 since April 2014. The complete Japanese text of these reports can be accessed via the JILPT website (<http://www.jil.go.jp/institute/pamphlet/>). English summaries of selected reports are also available on the JILPT website (http://www.jil.go.jp/english/reports/jilpt_01.html).

Research Reports

No. 168 Current Status and Challenges in the Supply and Demand Structure of Nursing Care Human Resources: Toward a Stable Supply of Nursing Care Workers (May 2014)

No. 167 Regional Comprehensive Care in the Netherlands: Reinforcing Care Provision

- Frameworks and Securing Care Providers (May 2014)
- No. 166 Employment Portfolio Formation Mechanisms: Empirical Research through Qualitative Analysis (May 2014)
- No. 165 Labor-Management Relations in Sweden: Focus on Analysis of Labor Agreements—Research Project on Directions for Collective Labor Relations in Connection with the Establishment of Norms (Sweden) (May 2014)
- No. 164 Research on Employment and Lifestyles of Non-Regular Workers in Their Prime of Life: Focus on Analysis of Current Status (May 2014)
- No.163 Survey Research on the Jobseeker Support System—Survey and Analysis of Vocational Training Institutions (May 2014)

Research Series

- No.132 Survey on Hiring, Deployment, Promotion and Positive Action (Preliminary Report) (October 2014)
- No.131 The Present Status of Policies to Support Youth Employment and Tasks for Further Development: From the “Survey on Utilization Status of Policies to Support Youth Employment” by Companies Offering Jobs via Public Employment Security Offices (November 2014)
- No.130 Results of the “Fact-Finding Survey on Fixed-Contract Workers with High-Level Specialized Knowledge, etc.” (September 2014)
- No.129 Survey on Acquisition of Vocational Qualifications and Career Formation (Summary of Online Survey Results) (October 2014)
- No.127 Survey on Company Allowances and other Personnel Treatment Systems (August 2014)
- No.125 Survey Results on the Discretionary Labor System and Other Working Hour Systems : Results of the Worker Survey (May 2014)
- No.124 Survey Results on the Discretionary Labor System and Other Working Hour Systems : Results of the Business Establishment Survey (May 2014)
- No.123 Survey on the Implementation of Employment Adjustment and Use of Employment Adjustment Subsidies (August 2014)
- No. 122 How Companies Are Addressing Revisions to the Labor Contract Act: Results of the Survey on Status of Utilization of Older Regular Employees and Fixed-Term Contract Employees Following Legal Revision (May 2014)
- No. 121 How Companies Addressed Enactment of the Revised Act concerning Stabilization of Employment of Elderly Persons: Results of Survey on Status of Utilization of Older Regular Employees and Fixed-Term Contract Employees Following Legal Revision (May 2014)
- No. 120 Survey on Securing and Developing Skilled Workers toward Realization of a Society in Which All Demographics Can Participate (May 2014)
- No. 118 Verifying the Policy Effects of Employment Creation Fund Projects (May 2014)

No.115 Follow-Up Survey of Child-Raising Households (First Survey: 2013): Comparison with 2011 and 2012 Surveys (May 2014)

Research Material Series

No.145 Analysis of Dismissal Precedents Involving Diverse Regular Employees (October 2014)

No.144 Youth Employment Status and Current Situation of Careers and Vocational Ability Development (2): From the 2012 “Employment Status Survey” (September 2014)

No.143 International Comparison of Unemployment Insurance Systems—Denmark, France, Germany, Sweden (July 2014)

No.142 Dismissal Legislation in European Countries—Surveys on Denmark, Greece, Italy and Spain (August 2014)

No. 141 Survey on Utilization of Skills Evaluation Standards in England (May 2014)

No. 140 Toward a Survey on Hiring and Job Continuation at Small and Medium Enterprises (May 2014)

No.139 Foreign Workers in the Nursing Care Sector in European Countries—Five-Nation Survey of Germany, Italy, Sweden, UK and France (June 2014)

No. 138 Promotion of Female Labor Force Participation at Global Companies: Interview Record (May 2014)

No.137 Utilization of Non-Regular Workers and Potential for Hiring as Regular Workers in Companies and Workplaces: Analysis Based on Interview Surveys at Business Establishments (May 2014)

No. 136 Fathers’ Work Patterns and Home Life: Report on Results of Interview Survey (May 2014)

No. 129 Labor Supply and Demand Estimates: Policy Simulations Based on the Labor Supply-Demand Model (FY2013 Edition) (May 2014)

Japan Labor Review Order Form

The Japan Labor Review is published four times a year and is free of charge.

To receive the Japan Labor Review on a regular basis, please fill out this form and

fax to the Editorial Office at : +81-3-3594-1113.

(You can also register via our website: <http://www.jil.go.jp/english/JLR/index.htm>)

NAME: Mr. / Ms. _____

TITLE: _____

ORGANIZATION: _____

ADDRESS: _____

ZIPCODE: _____

COUNTRY: _____

TEL: _____

FAX: _____

EMAIL: _____

Soliciting Your Opinions

To improve the contents of the Review and provide you with the most useful information, please take the time to answer the questions below.

What did you think of the contents?

(Please check the most appropriate box.)

Very useful Useful Fair Not very useful Not useful at all

(If you have additional comments, please use the space below.)

What issues do you want the Review to write about?

- ❖ If you wish to unsubscribe the Japan Labor Review, please send an e-mail to jlr@jil.go.jp placing the word “remove” in the subject line.



The Japan Institute for Labour Policy and Training