

Japan Labor Issues

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April-May 2018

Volume 2 Number 6

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● Statistical Indicators



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NEWS

Employment Quota for Persons with Disabilities at Private Enterprises to be Incrementally Raised to 2.3%

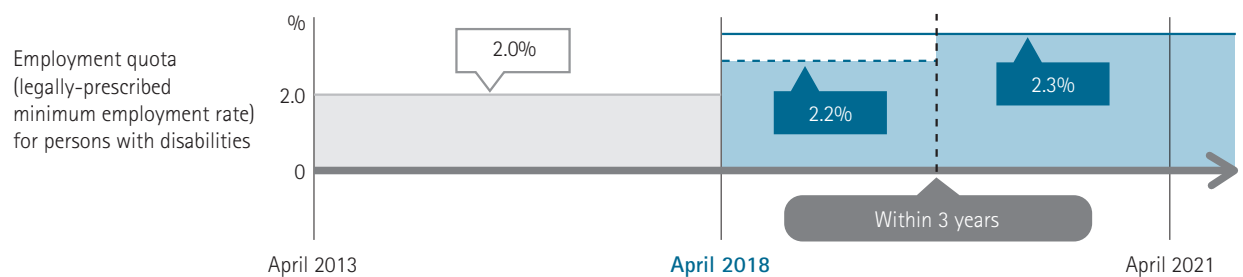
The Labor Policy Council, (an advisory panel to the Minister of Health, Labour and Welfare), approved the report of its Subcommittee on Employment of Persons with Disabilities and submitted its findings to Minister Yasuhisa Shiozaki on May 30, 2017. The report included the ministry’s proposal to incrementally raise the employment quota* applied to private-sector employers from the rate of 2.0% to 2.3%. The subcommittee has addressed measures by the ministry (MHLW) and declared such measures “on the whole reasonable” in the report. Consequently, it was determined that the employment quota for persons with disabilities would be raised from 2.0% to 2.2% in April 2018, and further raised to 2.3% by the end of FY 2020 (Figure 1).

*Employment quota is the legally-prescribed minimum employment rate of persons with disabilities whom employers must employ among their total employees.

Japan’s efforts to facilitate the employment of persons with disabilities are fundamentally based on the principle of achieving an inclusive society. Promoting the independence of persons with disabilities by enabling them to pursue an occupation

is considered an important aspect that needs to be addressed to achieve such a society in which people with disabilities are able to live a normal life in their communities and be included as a member of those communities. On the basis of such principles, the Act on Employment Promotion etc. of Persons with Disabilities set out an employment quota for persons with disabilities as an obligation for enterprises and other such employers to fulfil. In doing so, it sought to ensure that persons with disabilities receive the same level of opportunity to become regular employees as workers without disabilities.

An act for partial amendment to the Act on Employment Promotion etc. of Persons with Disabilities was enacted in June 2013, and has been enforced in stages. In addition to prohibiting discriminatory treatment such as refusing to hire or dismissing persons on the grounds of disability, the amended Act also prescribed the obligation to provide reasonable accommodation—that is, the obligation to pursue measures to solve difficulties that hinder persons with disabilities in the workplace, such as adjusting the height of desks or workbenches for persons in wheelchairs, or using the written



Source: Prepared by the editor based on the leaflet distributed by the Ministry of Health, Labour and Welfare.

Notes: 1. The employment quota for persons with disabilities will be raised from the 2.0% to 2.2% on April 1, 2018. The rate will be further raised to 2.3% by the end of FY 2020, of which specific timing will be discussed by the Labor Policy Council at a later date.

2. The scope of enterprises and other such employers applicable will be expanded from employers with 50 employees or more to those with 45.5 employees or more in April 2018. The scope will be further expanded to employers with 43.5 employees or more once the employment quota is raised to 2.3%.

Figure 1. Schedule for increasing the employment quota for persons with disabilities (for private enterprises)

word or drawings to provide easily comprehensible explanations to persons with intellectual disabilities. In doing so, the Act seeks to ensure that employers and coworkers pursue means of interacting with persons with disabilities on a more equal footing.

Moreover, persons with mental disabilities are to be added to the basis for calculating the employment quota for persons with disabilities, which formerly prescribed the employment of persons with physical disabilities and persons with intellectual disabilities. Alongside this, measures such as the raise in the employment quota for persons with disabilities have also been adopted, and the revision of the employment quota will take effect on April 1, 2018.

It is stipulated that the employment quota for persons with disabilities shall be prescribed by government ordinance at least every five years based on consideration of the trends in the percentage of persons with disabilities in employment. Up until now, the rate has been calculated using “number of regular employees – number of employees to be omitted according to relevant exemption rate + number of unemployed persons” as the denominator, and “number of persons with physical disabilities and persons with intellectual disabilities in regular employment + persons with physical disabilities and persons with intellectual disabilities in unemployment” as the numerator.

$$\begin{array}{l}
 \text{Employment rate} \\
 \text{of persons with} \\
 \text{disabilities} \\
 = \\
 \frac{\begin{array}{l} \text{number of persons with} \\ \text{physical disabilities, persons} \\ \text{with intellectual disabilities} \\ \text{and persons with mental} \\ \text{disabilities in regular} \\ \text{employment} \end{array} + \begin{array}{l} \text{persons with physical} \\ \text{disabilities, persons with} \\ \text{intellectual disabilities and} \\ \text{persons with mental} \\ \text{disabilities in unemployment} \end{array}}{\begin{array}{l} \text{number of regular} \\ \text{employees} \end{array} - \begin{array}{l} \text{number of employees} \\ \text{to be omitted according} \\ \text{to relevant exemption rate} \end{array} + \begin{array}{l} \text{number of} \\ \text{unemployed persons} \end{array}} \\
 \text{Starting with April 1, 2018}
 \end{array}$$

Adding persons with mental disabilities to the basis for calculating the employment quota

As a result of the amendment to the Act, persons with mental disabilities have been newly added to the basis for calculating the employment quota for persons with disabilities from April 2018. In the first provisional calculation of the employment quota with the addition of persons with mental disabilities to the numerator, the denominator is 37.05 million people and the numerator is 897,000 people, making

a rate of approximately 2.42%.

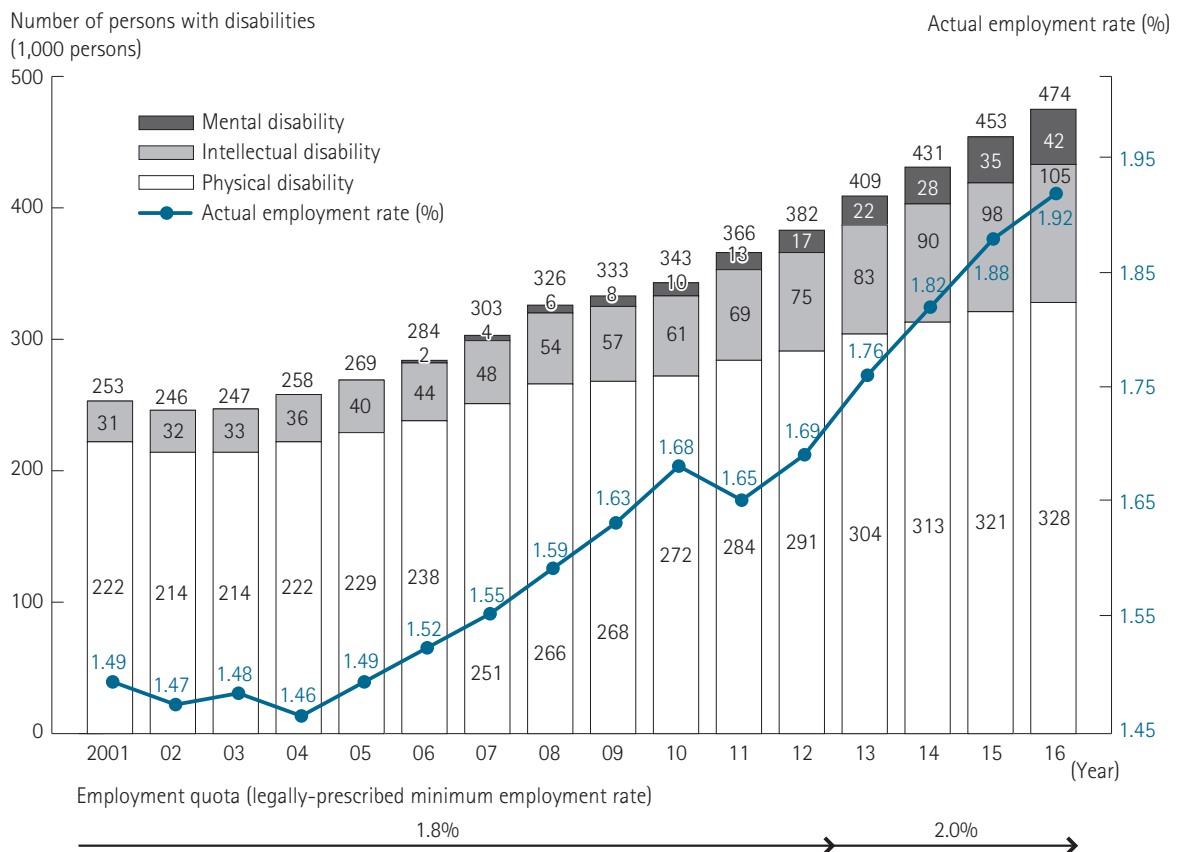
Employment quota to be raised to 2.2% for private-sector employers

While working on this basis, MHLW also took into account the state of employment of persons with disabilities and other conditions when stipulating the employment quota for persons with disabilities. It therefore investigated the possibility of setting the rate at 2.3% for private-sector employers, at 2.6% for national and regional public bodies and specified incorporated administrative agencies, for which the rate is to be set no lower than that for private-sector employers, and at 2.5% for prefectural and local boards of education, for the five years after the amendment taking effect—namely, April 1, 2018 to March 31, 2023. These quotas were approved by the Labor Policy Council on May 30, 2017. This time, however, in consideration of the burden on enterprises, a transitional measure has been put in place provisionally setting rates at 2.2% for private-sector employers, 2.5% for national and regional public bodies and specified incorporated administrative agencies, and 2.4% for boards of education. This is with the proviso that this transitional measure shall be abolished within 3 years of the government ordinance taking effect, once efforts have been made to further the employment of persons with disabilities and the employment of persons with disabilities has been stabilized.

Moreover, along with the rise in the employment quota for persons with disabilities to 2.2%, the scope of private enterprises and other such employers obliged to employ persons with physical disabilities also expanded. The scope, “employers with 50 or more employees,” will be changed to “employers with 45.5 or more employees (with each part-time employee counted as 0.5),” and will be changed later to “employers with 43.5 or more employees” when the employment quota is raised to 2.3%.

Majority of enterprises failing to meet the employment quota despite rise in numbers of persons with disabilities in employment

Since the quota system regarding the employment of persons with disabilities was first launched in 1977, the actual employment rate has risen from



Source: MHLW, "Shogaisha koyo jokyo no shukei kekka" [Aggregated results on the state of employment of persons with disabilities], 2016. <http://www.mhlw.go.jp/file/04-Houdouhappyou-11704000-Shokugyouanteikyokukoureishougaiikoyoutaisakubu-shougaisaikoyoutaisakuka/0000146180.pdf> (Japanese only)

Notes: 1. Data is for companies obliged to employ persons with disabilities (up to 2012: companies with 56 or more employees; from 2013 onward: companies with 50 or more employees).

2. "Number of persons with disabilities" shows the totals of the following types of people:

- Up to 2005; Persons with physical disabilities (each person with severe physical disabilities counted as two people)
- Persons with intellectual disabilities (each person with severe intellectual disabilities counted as two people)
- Part-time employees with severe physical disabilities
- Part-time employees with severe intellectual disabilities
- From 2006 to 2010; Persons with physical disabilities (each person with severe physical disabilities counted as two people)
- Persons with intellectual disabilities (each person with severe intellectual disabilities counted as two people)
- Part-time employees with severe physical disabilities
- Part-time employees with severe intellectual disabilities
- Persons with mental disabilities
- Part-time employees with mental disabilities (each part-time employee with mental disabilities counted as 0.5)
- From 2011; Persons with physical disabilities (each person with severe physical disabilities counted as two people)
- Persons with intellectual disabilities (each person with severe intellectual disabilities counted as two people)
- Part-time employees with severe physical disabilities
- Part-time employees with severe intellectual disabilities
- Persons with mental disabilities
- Part-time employees with physical disabilities (each part-time employee with physical disabilities counted as 0.5)
- Part-time employees with intellectual disabilities (each part-time employee with intellectual disabilities counted as 0.5)
- Part-time employees with mental disabilities (each part-time employee with mental disabilities counted as 0.5)

3. The employment quota was set at 1.8% until 2012, and at 2.0% from April 2013 onward.

Figure 2. Trends in actual employment rate and number of persons with disabilities in employment (private enterprises)

1.09% at that time to 1.92% in 2016, the most recent figure before the amendment this time. While it has dropped at a few points, it has generally been on the rise (Figure 2). The number of persons with disabilities in employment has risen to a total of 474,000 people (of which 328,000 are persons with physical disabilities, 105,000 are persons with intellectual disabilities, and 42,000 are persons with mental disabilities), with a consistently higher figure recorded each year over a period of 13 years.

The employment quota for persons with disabilities has also been raised over the years, from the initial 1.5% to 1.6% on April 1, 1988, to 1.8% on July 1, 1998, and again to 2.0% from April 1, 2013 onward. In contrast, the percentage of enterprises

fulfilling the employment quota was as low as 48.8% even in the most recent figures recorded in 2016. Initiatives are particularly behind at small and medium sized enterprises.

A levy (50,000 yen per month for each person under the quota) is collected from enterprises (with over 100 regular employees) that fail to meet the employment quota for persons with disabilities. On the other hand, enterprises and other such employers that meet the quota receive adjustment subsidies (27,000 yen per month for each person over the quota) or financial incentives (21,000 yen per month for each person over the quota, only for enterprises with 100 employees or fewer).

Article

The Future of the Japanese-style Employment System: Continued Long-term Employment and the Challenges It Faces

Koji Takahashi

I. Background and outline of the research

JILPT has just published a book titled *The Future of the Japanese-style Employment System** as an output of a cross organizational research project. This article introduces the background to this research and its content.

* JILPT. 2017. *Nihonteki koyo shisutemu no yukue*, Project Research Series no.4 on the JILPT 3rd Midterm Project.

Setting detailed names and definitions aside, the system of employment and labor in Japanese companies, oriented toward the long term and generally known as the “Japanese-style employment system,” certainly used to attract the attention of researchers and policymakers alike. Looking back very briefly, the existence of this Japanese-style employment system was highlighted in the writings of James C. Abegglen, OECD reports and others, and consequently became known to the Japanese people as well. Subsequently, the system was explained in detail by researchers such as Ronald P. Dore and Masahiko Aoki, and the concept became crystalized. The Japanese-style employment system has often been linked with theories on Japanese society and the Japanese people. At least until about twenty years ago, the Japanese-style employment system was one of the most important research themes for Japanese labor researchers, as well as overseas researchers with an interest in Japan.

Somewhere along the line, however, research focusing on specific targets and individual topics such as “young people,” “non-regular employment,” “female employment” and “working hours” became the mainstream. This process of specialization and segmentation was also a sign that labor research had matured in response to the diversification of working

styles and workers’ rights and interests. The fact that attaining individual policy targets has been prioritized in labor policy could also be mentioned as a background factor.



In spite of that, however, JILPT conducted research between FY2014 and FY2016 to consider the future prospects of the Japanese-style employment system. There were three main reasons for this.

The first was that it would facilitate the formation of policy based on the big picture. Since the Japanese-style employment system is at the center of the country’s “employment society” (a coined term by Kazuo Sugeno to describe the mixed structure of employment practice, labor market, and other institutions related to people’s working-life), predicting its future would lead to an awareness of basic directions of change in that structure and major issues that it could face in future.

The second reason was that such research is inseparably related to important labor legislation. Important parts of Japan’s current labor legislation are formed on the premise of the Japanese-style employment system, and particularly of long-term employment practices; this labor legislation has in some ways promoted the spread of the Japanese-style employment system. And in order to maintain the integrity and consistency of labor legislation and make necessary revisions (or prevent unnecessary revisions), the current status of the Japanese-style employment system must be observed objectively and constantly.

The third reason was that this research would

enable us to gain a comprehensive grasp of systems and practices of human resource management and labor relations. Components of the employment system are mutually complementary; changes in one part would trigger changes in other parts. Conversely, if one part is constant, other parts would be difficult to change. Now that labor research is becoming segmented while the priority is on attaining individual policy targets, a comprehensive grasp of the situation is more important than ever.

Based on such concerns, this book defined the Japanese-style employment system as “a system of employment and labor aiming for long-term livelihood security and skills development of its members (almost synonymous with regular employees in this article), as typically seen in large corporations and / or manufacturing companies since the era of high economic growth (from 1960s to the early 1970s),” and attempted to predict how it would change in the future. Specifically, as basic groundwork, government statistics were first collated and analyzed to trace a number of factors over the last 20 years or so. These were (a) long-term employment, (b) seniority-based pay and promotions, (c) cooperative, harmonious industrial relations, (d) wide-ranging education and training centered on OJT, (e) the existence of a certain number of non-member workers as an employment buffer, and (f) norms shared by employers and employees, public support for long-term employment and seniority-based hierarchies, and so on. Next, findings on changes in the Japanese-style employment system were derived from the researches on different targets, such as young people, women and the elderly, and from those of different sectors of human resource management, namely employment portfolios, wage systems, skill development, career management, and in-house career counseling. Having done so, these findings were integrated to discuss which parts of the Japanese-style employment system have been retained and which changed, and what sort of new issues it is facing.

II. Changes in the environment surrounding Japan's employment society

To start with, let us confirm what sort of environmental changes have affected Japan's

employment society over the last 20 years or so. The first point to be made is that the Japanese economy has been hit by a prolonged and serious recession coupled with deflation. Specifically, as well as experiencing the collapse of the economic bubble at the beginning of the 1990s, the economy was also subjected to a series of hardships in the form of the Asian financial crisis of 1997-98, the burst of dot-com bubble at the beginning of the 2000s, and the global economic crisis that began in the autumn of 2008.

The second point is that, quite apart from recessions and deflation, the shift toward service industries continued to progress (Figure 1), while professional and engineering workers and service workers accounted for an increasing percentage of the workforce. Although systems of employment and labor aiming for long-term livelihood security and skills development of regular employees had until then been seen typically in large corporations and / or manufacturing companies, their share has decreased as a whole.

The third point is that workers have progressively aged, irrespective of industry or corporate scale; in macro terms, the workforce has started to shrink. According to the *Labor Force Survey* of the Ministry of Internal Affairs and Communications, persons in employment in Japan peaked at 65.6 million in 1997 and the working-age population at 67.9 million in 1998, since when both have been on a downward trend over the long term.

In the following section, we will see which parts of the Japanese-style employment system have been retained and which have been changed amid these environmental changes.

III. Continuity of long-term employment, and strong support for it

Although employment is said to have become more fluid since the collapse of the economic bubble (i.e. since the 1990s), how has this affected the employment of regular employees, viewed chronologically over the long term? Figure 2 shows the job entry ratio and job resignation ratio by gender for ordinary workers (defined as “workers other than part-time workers,” considered here as a statistical category close to regular employees) in companies

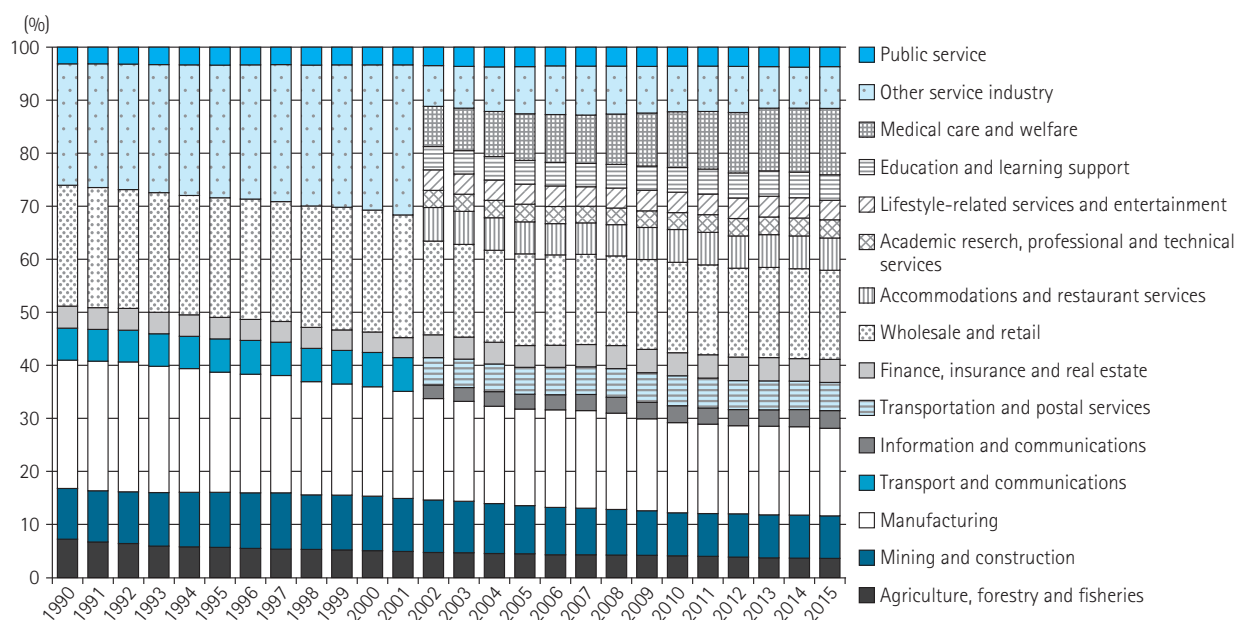
with 1,000 or more employees (hereinafter “large corporations”). The job entry ratio for both men and women is strongly correlated with the state of the economy, peaking as the economic bubble came to an end in 1991, bottoming out in the mid-1990s, then rising during the economic expansion phase in the mid-2000s, only to fall again during the recession following the global economic collapse of 2008. Meanwhile, the job resignation ratio has decreased among women over the long term. Among men, the ratio was higher in the 2000s than in the 1990s, but it peaked in 2002 (10.4%) after the burst of dot-com bubble, and has not exceeded that level since then. In terms of the occurrence of “voluntary retirement and dismissal” in large manufacturing corporations as shown in the *Survey on Labour Economy Trends* by the Ministry of Health, Labour and Welfare (MHLW), here again the peak was in around 2000 (Figure 3). In other words, for regular employees (“ordinary workers” in the MHLW survey), there has been no consistent trend of a rise in the ratio of flow to stock.

How do things look if we focus on mid-career hiring only? Figure 4 shows the mid-career hiring ratio, by gender, of ordinary workers in large

corporations. From this, we can see that for both men and women, mid-career hiring has become more common over a relatively long term from the middle of the 1990s until today. In other words, while the job entry ratio has been trending cyclically in line with the economy, mid-career hiring has been increasing. This is thought to reflect a decrease in the youth population and increasing difficulty in hiring new graduates.

In what sectors are large corporations increasing mid-career hiring? This is clarified in Figure 5, which shows the change in industries among male mid-career job entrants (by manufacturing vs. non-manufacturing industries and company size). The data suggest that from 2000 to today, the ratio of mid-career entrants has risen in large non-manufacturing corporations, while it has not risen much among large manufacturing-industry corporations. Mid-career hiring is taking place especially actively at large non-manufacturing corporations that have been expanding over the last 20 years or so, boosting the mid-career hiring ratio of the entire large corporate sector.

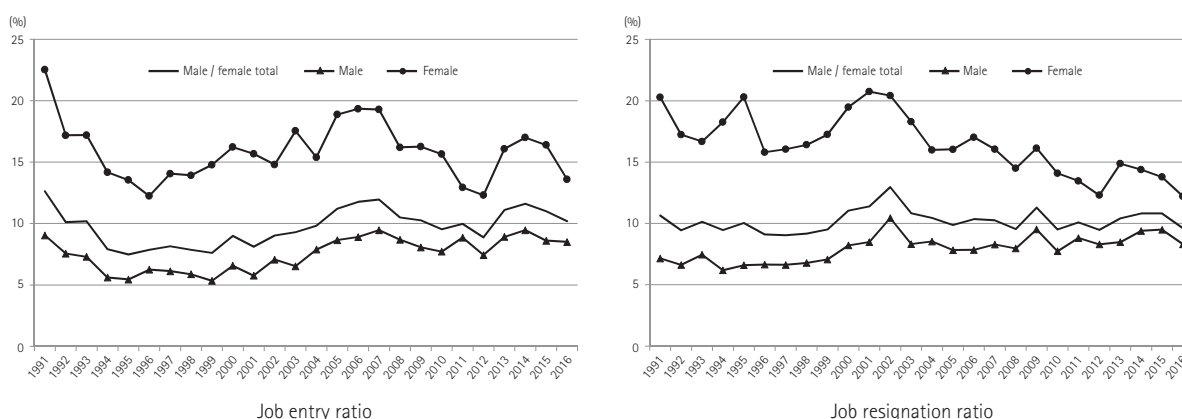
Thus, long-term employment of regular employees appears to be largely sustained at large



Source: Ministry of Internal Affairs and Communications, *Labor Force Survey*.

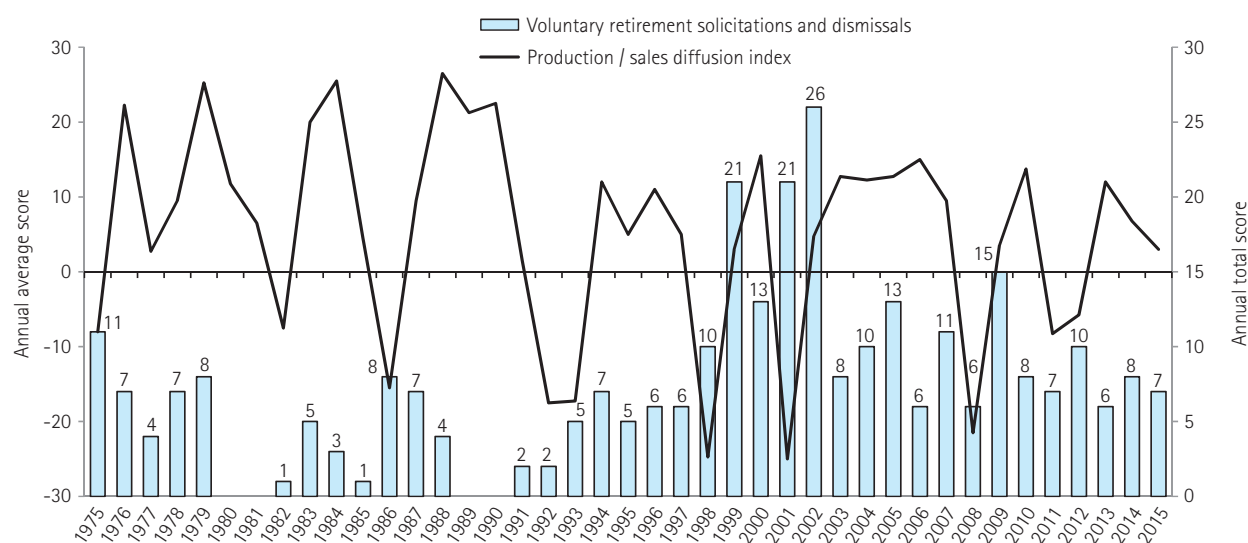
Note: "Wholesale and retail" up to 2001 includes "eating and drinking" establishments, and "finance, insurance and real estate" from 2002 onward includes the merchandise rental business.

Figure 1. Change in share of industries (by number of employed persons)



Sources: Ministry of Health, Labour and Welfare, *Survey on Employment Trends*. Figures for 2016 are preliminary (August 23, 2017).
 Notes: 1. This survey covers businesses with 5 or more employees.
 2. The job entry ratio and job resignation ratio are the number of employees entering and the number leaving jobs, respectively, divided by the number of regular or full workers.
 3. Since the scope of the surveyed industries was expanded in 2004, it should be noted that the data cannot be connected precisely from data for 2003 and earlier.

Figure 2. Change in job entry ratio and job resignation ratio (ordinary workers) (companies with 1,000 or more employees)

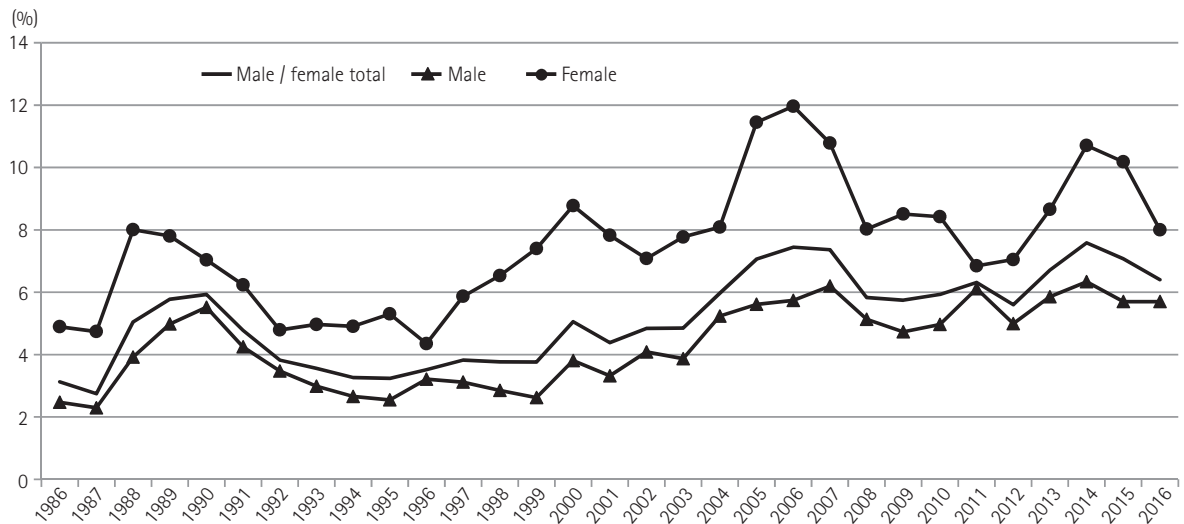


Source: Ministry of Health, Labour and Welfare, *Survey on Labour Economy Trends* (quarterly).
 Note: The production and sales diffusion index for each year is an annual average of production and sales diffusion index for each quarter, voluntary retirement solicitations and dismissals for each year is a simple sum of the percentage of establishments implementing those measures in each quarter.

Figure 3. Change in production / sales diffusion index (left axis: annual average score) and occurrence of "voluntary retirement solicitations and dismissals" (right axis: annual total score) for manufacturing industry (companies with 1,000 or more workers)

manufacturing-industry corporations, which are the mainstay of the Japanese-style employment system if not the economy as a whole. Even at large non-manufacturing corporations, the mid-career hiring is increasing because the industries themselves are

expanding, but the job resignation ratio itself is not rising (figure omitted). According to the "Survey on the State of Human Resource Management" (JILPT 2014), nearly 90% of companies have a policy of keeping regular employees in long-term

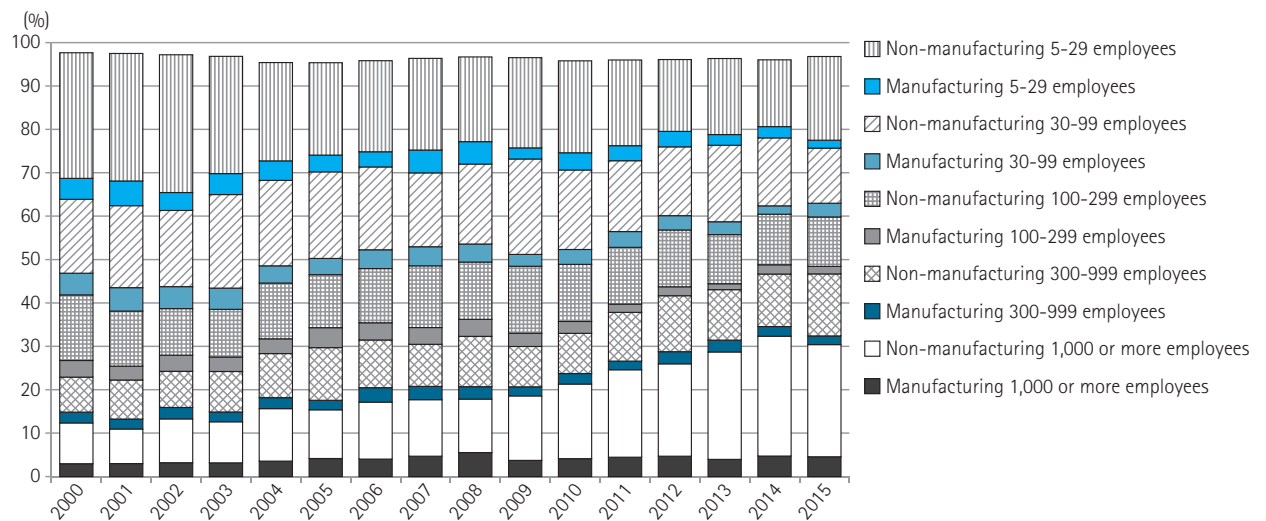


Sources: Ministry of Health, Labour and Welfare, *Survey on Employment Trends*. Figures for 2016 are preliminary (August 23, 2017).

Notes: 1. This survey covers businesses with 5 or more employees.

2. The mid-career hiring ratio is the number of mid-career job entrants divided by the number of ordinary workers.

Figure 4. Change in mid-career hiring ratio (ordinary workers) by gender (companies with 1,000 or more employees)



Source: Ministry of Health, Labour and Welfare, *Survey on Employment Trends*.

Notes: 1. The tabulated data includes both full-time and part-time mid-career job entrants who were working with an employment contract at a previous position and were at work at the time of the survey.

2. Totals do not add up to 100% because publicly managed businesses are excluded.

Figure 5. Change in industries among male mid-career job entrants

employment, and this trend is strong in traditional sectors such as manufacturing, finance, and large corporations across the board. Also, annual policy reports from *Keidanren* (Japan Business Federation) and *Rengo* (Japanese Trade Union Confederation) indicate that both labor and management view lifetime employment as desirable, while the “Survey

on Working Life,” JILPT’s repeated survey on attributes to work and life (conducted since 1999) show that the percentage of people viewing it positively has increased since the year 2000. Long-term employment of regular employees at large corporations is being sustained, and it is safe to say there is strong, broad-based support for this.

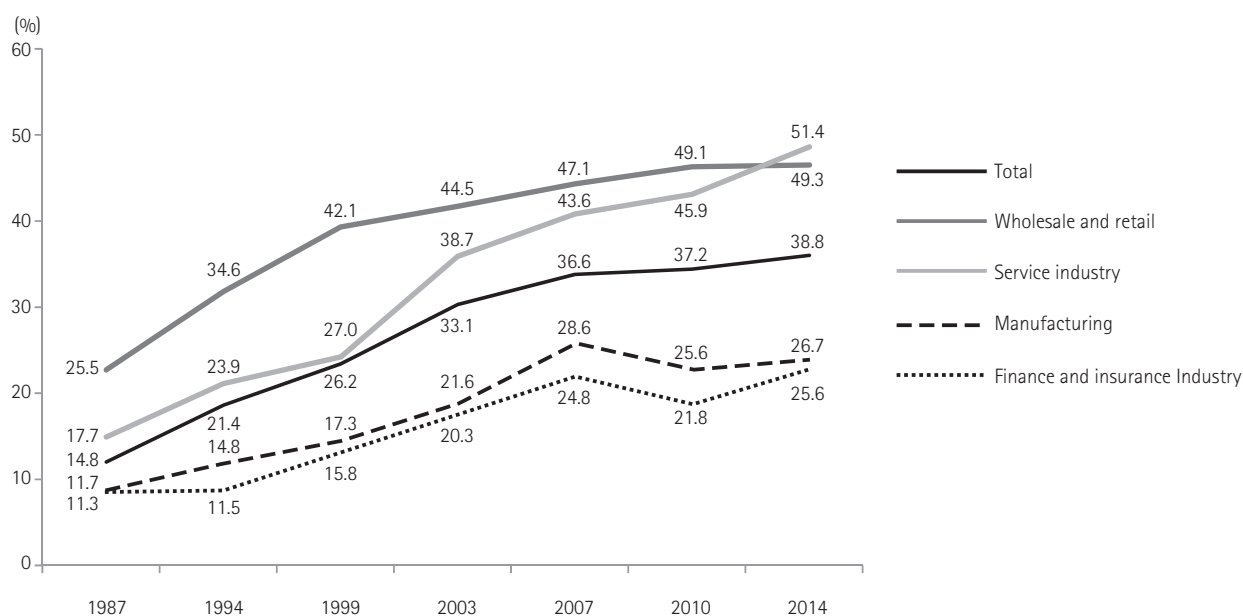
IV. Shrink of the scope of long-term employment and its re-expansion

This article has stated above that long-term employment of regular employees is sustained, but how about the scope of the long-term employment?

Readers already know that non-regular employment has been growing for the past 20 years, and the scope of long-term employment has shrunk. Figure 6 shows the percentages of non-regular employees by industry, and we can see that non-regular employment has advanced across all industries. However, it declined between 2007 and 2010 in “manufacturing” and “finance and insurance.” This is not due to hiring of regular employees or transitioning from non-regular employment to regular employment, but rather because many non-regular employees (most of them are working under fixed-term employment contract) had their employment contract terminated during the recession following the global financial collapse of 2008. Japanese companies utilized non-regular employees intentionally as a buffer to protect the jobs of regular employees at that time. Regarding

this, MHLW’s *White Paper on Labour Economy 2009* sounded an alarm, saying that “employment adjustment accompanied by employee layoffs is being curtailed for regular workers through overtime restriction, reassignment, temporary transfer to another company while maintaining employment relationship with the original company, but it is intensively targeting non-regular workers.” There escalated tensions between regular employees considered “members” and non-regular employees considered “non-members” in the Japanese-style employment system.

There was a quick labor legislation response to this situation. After discussions in the Labor Policy Council (in its subcommittee on working conditions) and a study group on fixed-term employment contracts, the Labor Contract Act was amended in 2012, introducing a conversion rule to permanent status (enacted in April 2013, to be fully enforced in April 2018). According to this rule, a fixed-term employment contract is converted to an indefinite one when it is repeatedly renewed at the same company for more than 5 years in total and if the employee in question submits an application.



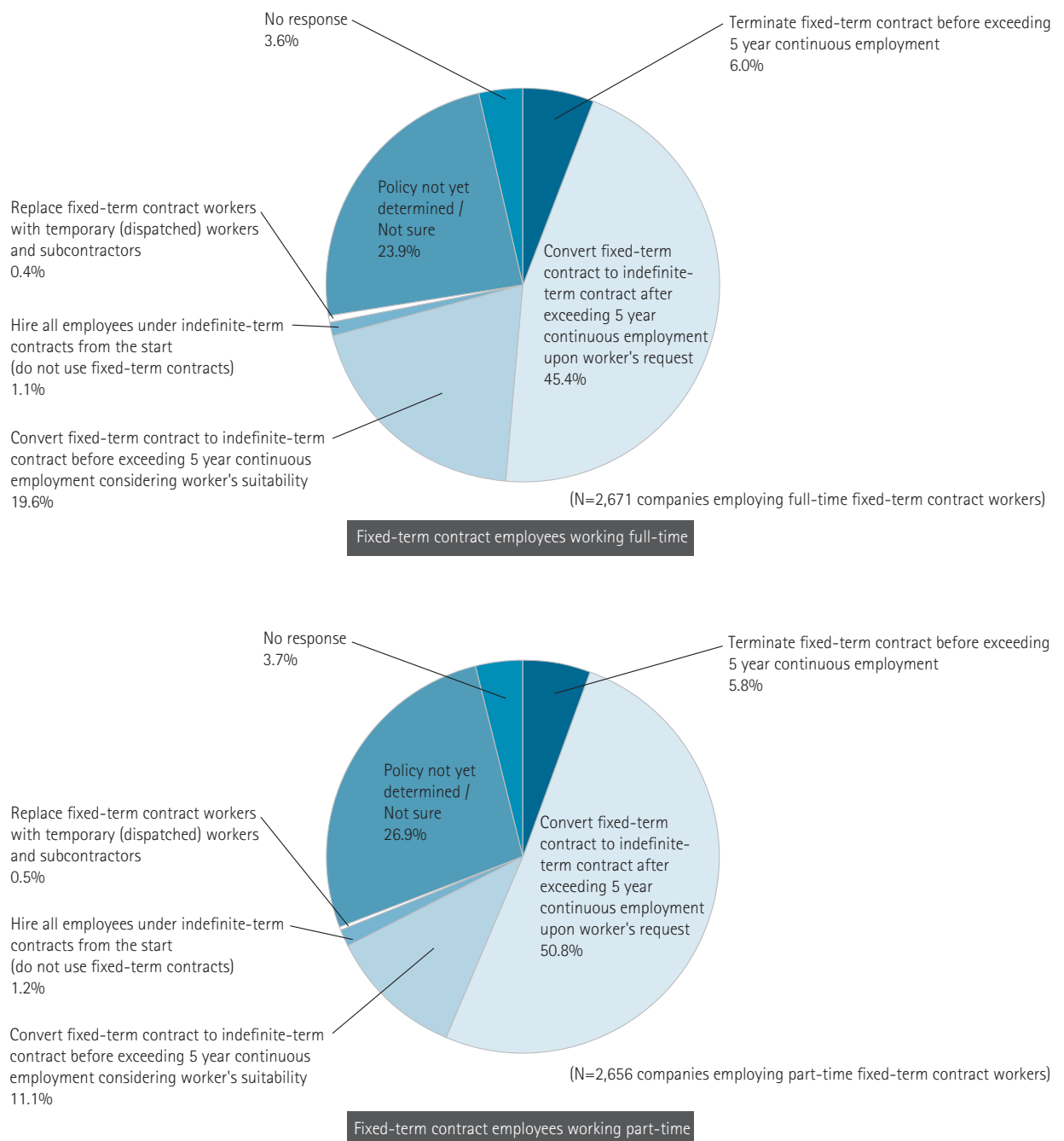
Source: Ministry of Health, Labour and Welfare, General Survey on Diversified Types of Employment.

Notes: 1. Excludes “employees temporarily transferred to another company.”

2. 1987 and 1994 figures are for businesses with 30 or more employees, figures from 1999 onward are for businesses with 5 or more employees.

3. Wholesale and retail” up to 2001 includes eating and drinking establishments.

Figure 6. Change in percentage of non-regular employees by industry



Source: JILPT, "Survey on Response to the Amended Labor Contract Act and Special Cases, and the Utilization of Diverse Regular Employees, 2015.

Figure 7. Companies' policies for dealing with the conversion rule from fixed-term employment to indefinite-term employment

As it happens, this legislative reform coincides with the baby-boomer generation reaching the age of 65 and fully retiring, and companies have responded positively to the conversion rule to permanent status. According to the results of a questionnaire survey

conducted by JILPT in 2015, 60% to 70% of firms are, in compliance with the law, planning some form of conversion to permanent status (Figure 7). And the most recent survey (2016) suggests that even large corporations are progressively shifting to a policy of

converting employees to permanent status. It should be noted that those corporations were more likely to respond when they were asked immediately after the amendment, that they would “manage [fixed-term contract employment] in such a way that it did not last more than 5 years.” (It can be interpreted that they terminate fixed-term contract before exceeding 5 year continuous employment.)

Again, what is the scope of long-term employment, and has it been changed?

This book (JILPT 2017) presents case studies of companies where the reorganization of employment categories, such as the shift from fixed-term to indefinite-term employment, conversion of non-regular employees to regular employees, and introduction of restricted (in terms of place of work, job content, etc.) regular employees has progressed, resulting in the ratio of regular employees rising again in the context of a worsening labor shortage and encouraged by amendment of the Labor Contract Act. The *Labor Force Survey* by the Ministry of Internal Affairs and Communications also indicates that since 2013, the number of employees shifting from non-regular to regular employment exceeds the number who conversely shifted from regular to non-regular employment. Looking ahead, at least for the time being, it is possible that the scope of long-term employment will re-expand.

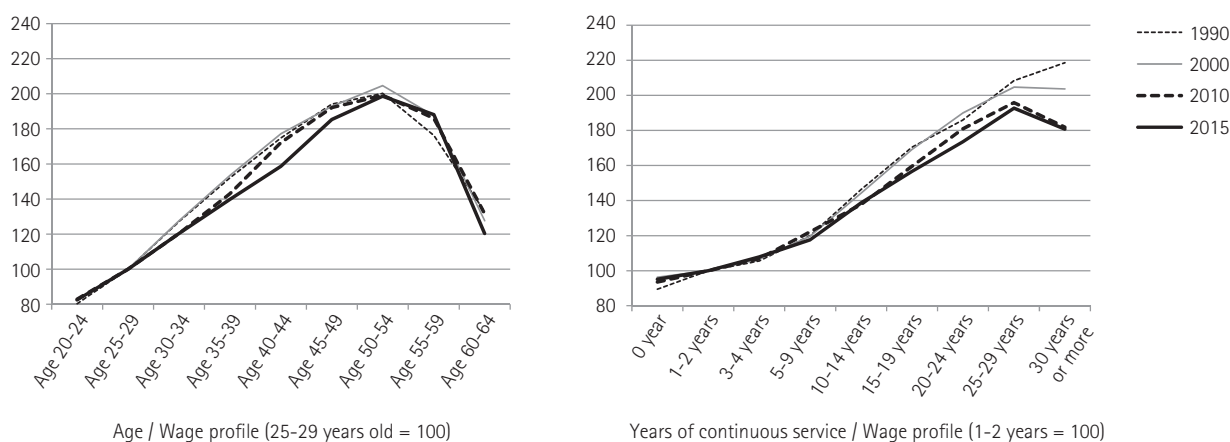
Of course, even if there is a re-expansion of this scope, it will not consist entirely of regular employment in the same sense as before. The

wage levels of restricted regular employees and employees shifted from fixed-term to indefinite-term employment are expected to differ from those of conventional regular employees. What we expect to see is strictly a re-expansion of the scope of long-term employment, and whether the scope of conventional regular employment will increase is unknown.

V. The decline of seniority-based treatment of workers, emergence of selective training, and transformation of the roles of workplace organizations

Meanwhile, some aspects have definitely changed over the past twenty years, one of which is seniority-based treatment of workers. According to the *Basic Survey on Wage Structure* by MHLW, the profiles of wages in relation to age and years of continuous service have both become more gradual (Figure 8). A JILPT questionnaire survey indicates that wage systems have evolved from seniority-based, through a trend of introducing performance-based compensation, to a responsibility or role based wage system that now appears to have stabilized. And if the retirement age is raised further in the future, it is expected that the conventional seniority-based wage profile will be further modified.

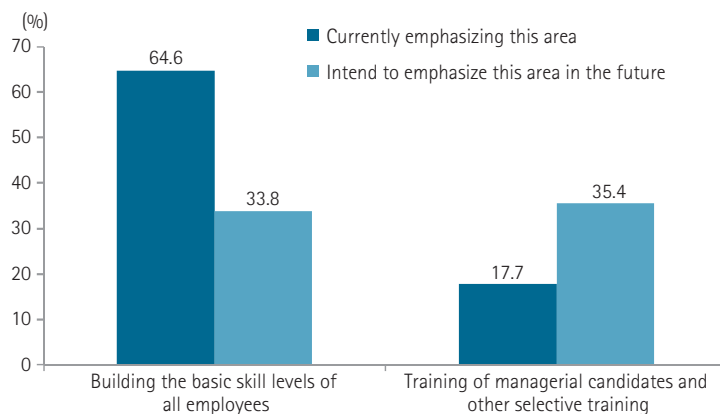
Also, the *Basic Survey on Wage Structure* suggests that there has been a decline in the practice of steady promotion based on age and years of continuous service particularly among



Source: Ministry of Health, Labour and Welfare, *Basic Survey on Wage Structure*.

Note: Survey and tabulated data covers private-sector businesses with 10 or more employees.

Figure 8. Wage profiles of male full-time workers (companies with 1,000 or more employees)



Source: Processed by author from Figures 6-3 and 6-5 in *The Future of the Japanese-style Employment System* (JILPT 2017). Based on JILPT Survey on Companies' In-House Training, Skill Development and Career Management (Corporate Survey, 2016).

Notes: 1. Tabulated data is for companies with 1,000 or more employees (N=130).

2. For both "Currently emphasizing" and "Want to emphasize in the future," the original questions consisted of 16 items with multiple responses, but in this figure only two items were extracted.

Figure 9. Present and future priorities with regard to training / skill development and career management of regular employees (multiple responses)

highly educated male employees (figure omitted). According to the analyses of a questionnaire survey, ("Survey on How Corporate Human Resources are Utilized and the Work Patterns of Male and Female Regular Employees" (JILPT 2016), the more companies phased out seniority-based promotion, the more female employees were promoted to management positions. This suggests that seniority-based promotion will be further modified as women play increasingly active roles in the workplace. The same JILPT questionnaire survey also indicates that large corporations and those active overseas are shifting the focus of human resource development from building the basic skill levels of all employees to training managerial candidates and other selective training (Figure 9).

Thirdly, although this was not originally one of the issues to be examined in our research project, we cannot overlook the transformation of the roles of workplace organizations. One of the original features of the Japanese-style employment system is that workplace organizations play a wide range of roles in company management, such as supervisors and senior employees conducting OJT of their subordinates and juniors, and supervisors counseling their subordinates on careers and human relations. However, the NHK Broadcasting

Culture Research Institute found that people today are leading more individualistic lifestyles, such as limiting social relationships with colleagues rather than leading group-oriented lifestyle embedded in the workplace and company (*Survey of Japanese Value Orientations*). Also, workplace problems, as embodied by bullying and harassment, are becoming increasingly apparent. Under these circumstances, it is becoming more difficult for workplace organizations to play their conventional role.

VI. Future challenges

As described above, long-term employment has been maintained over the past 20 years or so, its scope having shrunk but showing potential for re-expansion in the future. Meanwhile, seniority-based promotion and remuneration is declining, selective training is emerging, and workplace organizations have also evolved. What challenges will the employment system face as this mixture of stability and change progresses?

The first challenge is that while long-term employment is sustaining itself, its performance may be declining. In the Japanese-style employment system, long-term employment, seniority-based wages and promotion, and OJT as well as a wide range of other training have performed strongly

in combination. Taken alone, however, long-term employment may continue as there is no reason to press abolishing it, but the advantages of long-term employment per se will be less significant. From the perspective of workers, even if they work long term they cannot necessarily expect pay raises or promotions. From companies' point of view, even if they guarantee long-term employment, workers' skills and competencies would not necessarily continue to improve. As a result, there are likely to be mismatches between jobs and skills / competencies, and failure to activate the full potential of human resources, within the enterprise and throughout the labor market. This is a problem affecting not only the employment system but also the entire economy. On the premise that long-term employment remains, there is also a need to support mid-career job applicants and the companies that hire them, and enhance mechanisms for skills evaluation commonly accepted in the labor market.

The second challenge is the reduction of buffers to protect the jobs of regular employees. As mentioned earlier, while regular employees' jobs were protected during the recession after the global financial collapse of 2008, many non-regular employees lost their jobs. Partially as a way to compensate for what was later seen as excessive layoffs, the Labor Contract Act was amended in 2012. From April 2018, there is projected to be a shift from fixed-term employment to indefinite-term employment and even to regular employment (including restricted regular employment). In addition, according to the analysis in this book, both labor and management and the general public have strongly held on to the norm that employment of regular employees should be maintained. However, companies will need again in the future to adjust the number of employees if and when a serious recession strikes. Under these circumstances, is it possible to

safeguard regular employees' jobs without relying on layoffs of non-regular employees? Although proposing countermeasures to this problem goes beyond the scope of this study, there seems to be potential needs for examination of laws and judicial precedents governing dismissals and corporate restructuring in the near future.

The third challenge is that with seniority-based treatment of workers in decline and selective training on the rise, there are widening disparities in treatment among regular employees, and their fairness is called into question. Such disparities were considered problematic when performance-based personnel and wage systems were introduced in 1990s. Now that large corporations and those active overseas have been selectively giving training to the next generation of management, disparities in employee treatment are seen as expanding in recent years. In addition, with the introduction of region-restricted regular employees aimed at promoting employees' work-life balance, and introduction of restricted regular employees as a means of converting fixed-term contract employees to indefinite-term contract employees under the amended Labor Contract Act, the employment category of regular employees itself is becoming more diversified and complicated. The issue of disparities in treatment of regular employees is basically to be handled in the context of labor-management relations within companies. In view of the decrease in labor union density, however, the role of various worker organizations, not limited to labor unions, is likely to grow in importance.

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▶▶ Human Resource Management

- ▼ Labor-Management Relations
- ▼ Labor Market
- ▼ Labor Administration and Legislation
- ▼ Social Security System

Termination of Employment Relationships in Japan (Part I):

Resignation and Termination of Employment Contracts by Mutual Consent

Hirokuni Ikezoe

This is the first in a series of three articles on the topic of the termination of employment relationships in Japan. These articles provide an outline of the main reasons for such terminations from a legal perspective, while also touching on the actual conditions in Japan. This time, we will look at resignation and termination of employment contracts by mutual consent. (The following and the third (final) articles will cover dismissals and the mandatory retirement age system respectively.)

I. Resignation

Resignation refers to an employee's unilateral notification to their employer of the termination of an employment contract. It tends to be regulated under the Civil Code, as opposed to under the regulations of labor law.

Looking at the present state of conflict resolution by government bodies (see Figure 1), of the 255,000 consultations related to civil affairs in FY 2016, there were a considerable number of consultations regarding resignations—with around 40,000 consultations regarding voluntary resignations, and 22,000 regarding solicited resignations—in contrast with 37,000 regarding dismissals. Moreover, around 71,000 consultations regarding workplace bullying and harassment may include cases in which employers went too far in soliciting resignations. Therefore, judging from the significant numbers of conflicts, such issues related to resignation are a problem that society cannot ignore. Even in the event of employment relationships being terminated due to corporate downsizing and other reasons such as early retirement, both employers and employees tend to aim to end the relationship in a way that avoids conflict. In such a situation, importance of issues related to resignations

becomes more evident, in contrast to dismissals, where the employer unilaterally terminates the employment relationship.

Here we look at the legal treatment of resignations under the Civil Code. (Issues regarding the validity of manifestations of intention to end an employment relationship are summarized in section II.)

According to Article 627 of the Civil Code, when the employment contract does not specify the term of employment, the termination of employment shall take effect when 2 weeks have passed from the day of the request to terminate (Civil Code, Article 627, Paragraph 1). Although scholars' opinions are divided, it is generally understood that the employer is not permitted to extend the notice period to a period longer than 2 weeks, considering the provisions of the Labor Standards Act (such as Article 5, "Prohibition of Forced Labor") and the freedom to choose an occupation (Constitution of Japan, Article 22, Paragraph 1). Systems by which a company prescribes that it must approve resignations also have no legal force as they restrict the freedom of employees to resign (The *Takano Meriyasu* case, Tokyo District Court, Oct. 29, 1976; 841 *Hanrei Jiho* 102, etc.). On the other hand, an employee who has resigned may face liability to provide damages to employers (such as when the employee has resigned suddenly [4 days after starting work at the employing company]; the *K's International* case, Tokyo District Court, Sept. 30, 1992; 616 *Rohan* 10).

In the event that remuneration is specified with reference to a time period, it is possible to request

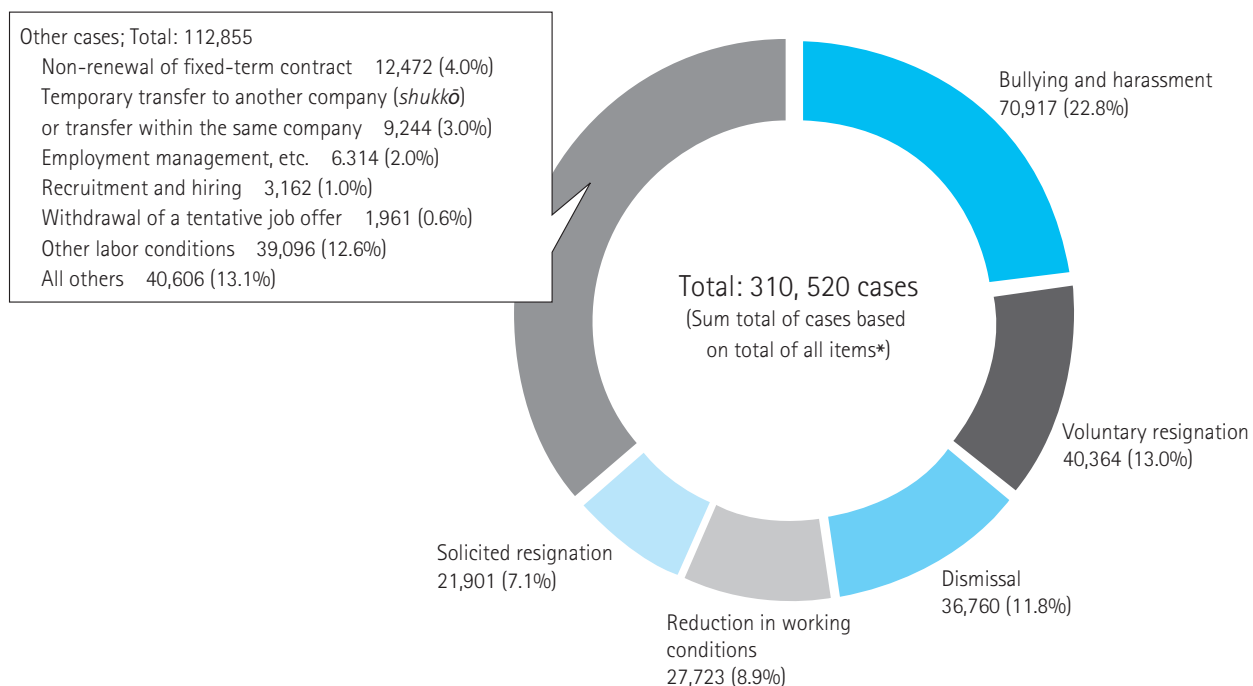


that the employment contract be terminated in the next time period or later, provided that the request is made within the first half of the current period (Civil Code, Article 627, Paragraph 2). Moreover, when remuneration is specified with reference to a period of 6 months or more, the request must be made at least 3 months before the termination of employment (Paragraph 3). It must, however, be noted that for employees who receive annual salaries, the regulations set out in Paragraphs 2 and 3 are excessively restrictive at the time of resignation. In the Amended Civil Code (law of obligations), such regulations are therefore only applied to the termination notification by the employer to the employee (Amended Civil Code, Article 627, Paragraph 2), and termination notifications made by employees are to be subject to the general principle of 2 weeks' notice as set out in Paragraph 1.

On the other hand, in the case of fixed-term employment contracts, the general principle is for the contract to terminate when the term of employment expires. Furthermore, Article 14 of the Labor

Standards Act prescribes the maximum length of contract periods as 3 years as the general rule, and 5 years for contracts concluded with (a) employees with expert knowledge, and (b) employees aged 60 or older. However, Article 137 of the Labor Standards Act seeks to protect employees, by specifying that employees in contracts pertaining to the completion of a certain business lasting more than one year and employees in contracts pertaining to items (a) and (b) above may resign by notifying request to their employer at any point after one year has passed.

The Civil Code addresses such relatively long contract periods by specifying that where the contract period is for a long period such as over 5 years, the parties concerned may terminate the contract after 5 years have passed (Civil Code, Article 626, Paragraph 1). In such cases, 3 months' notice is required (Paragraph 2). However, as under the present regulations, long, fixed-term contracts may also lead to excessive restrictions on employees when resigning, it was decided that the 3 months' notice of contract termination only applies to the



Source: MHLW, "The status of implementation of the individual labor dispute resolution system in FY 2016," press release, June 16, 2017.
 Note: Percentages reflect the proportion of cases within the total for all consultations (sum total of cases based on total of all items*). The total may not be exactly 100% due to the fact that figures are rounded up or down. Moreover, in calculating the sum total of cases based on the total of all items, consultations covering several different areas were counted multiple times.

Figure 1. Individual labor disputes related to civil affairs: Number of cases according to consultation content

employer's duty to the employee, and employees are permitted to terminate their employment contract with 2 weeks' notice (Amended Civil Code, Article 626, Paragraph 2). Moreover, when an employee has continued to work after the expiration of the original period of a fixed-term contract and the contract has been implicitly renewed by the parties concerned, from the point of renewal onward, the employee may terminate the contract with 2 weeks' notice (Article 629, Paragraph 1).

The Amended Civil Code touched on above is due to come into effect in 2020.

II. Termination of employment contracts by mutual consent

The termination of employment contracts by mutual consent refers to a mutual agreement by the employee and the employer to terminate an employment contract. Such an agreement normally takes effect once the employee has manifested to the employer their intention to resign from the company and the employer—in particular, a person with the authority to accept the resignation—manifests their approval of the resignation (The *Okuma Machinery Works* case, Supreme Court, Third Petty Bench, Sept. 18, 1987; 504 *Rohan* 6; Person of authority was head of the personnel department). However, termination by mutual consent is recognized to have taken effect even in such a case where the proprietor of the company the employee was originally employed with has established a temporary staffing agency and an agreement has been formed that the employee will thereafter work under an employment contract with that temporary staffing agency (The *Nikken Sekkei Ltd.* case, Osaka District Court, Feb. 18, 2005; 897 *Rohan* 91, etc.). In contrast, even where the employee is working on the premise that they will resign—and handing over their duties while preparing to leave the company for a new job—termination of the contract by mutual consent cannot be said to have taken effect in such cases where no official written confirmation of the resignation has been exchanged (The *FreeBit* case, Tokyo District Court, Feb. 28, 2007; 948 *Rohan* 90). In other words, substantial agreement of the intentions, of both the employee and the employer, to terminate the employment contract is necessary for termination by

mutual consent to be recognized (albeit, there may be cases in which such mutual consent is acknowledged based on various circumstances).

III. Overview of precedents related to resignation and termination of employment contracts by mutual consent

Here we will provide an overview of specific precedents regarding resignation and termination of employment contracts by mutual consent.

A. Lack or error of manifestation of intention

An employee's manifestation of intention to resign must be the employee's true intention. In the eyes of the law, cases where it is not the employee's real intention are handled under the Civil Code as issues of concealment of true intention, mistakes, or duress.

Concealment of true intention refers to cases such as situations in which an employee submits a letter of resignation despite having no intention to resign from the company, where the employer is aware that the employee in fact has no intention to resign from the company (The *Showa Women's University* case, Tokyo District Court, Feb. 6, 1992; 610 *Rohan* 72). Such manifestations of intention are void (Civil Code, proviso to Article 93).

Mistakes refer to cases in which, for instance, an employee has submitted a letter of resignation because he or she wrongly assumed that he or she would be dismissed and was attempting to avoid that dismissal, but there was in fact no possibility of him or her being dismissed (The *Showa Electric Wire and Cable* case, Yokohama District Court, Kawasaki Branch, May 28, 2004; 878 *Rohan* 40, etc.). Such manifestations of intention are void (Civil Code, Article 95).

Duress refers to cases in which, for example, an employee has been compelled to tender his or her resignation as the employer has hinted that the employee will be subject to disciplinary action or disadvantageous treatment (The *Nishimura* case, Osaka District Court, Oct. 17, 1986; 486 *Rohan* 83, etc.). Such manifestations of intention may be rescinded (Civil Code, Article 96).

B. Solicited resignations

There are some cases in which an employer may encourage an employee to resign, but as a general rule, it is illegal to repeatedly and persistently recommend to an employee that the employee resign in such a way that they are almost obliged to, and the person who solicited the resignation and the employer may be liable to pay damages (The *Shimonoseki Commercial High School* case, Supreme Court, First Petty Bench, Jul. 10, 1980; 345 *Rohan* 20).

Using grounds such as gender or union activities as the basis for soliciting a resignation is of course illegal, as it is in violation of the Equal Employment Opportunity Act or the Labor Union Act. It is also illegal to set a gender-based difference in the ages used as a basis for determining which employees should be solicited to resign (The *Tottori Prefectural Teaching Staff* case, Tottori District Court, Dec. 4, 1986; 486 *Rohan* 53). Encouraging or coercing a woman to resign on the grounds of pregnancy also places the company liable to pay damages, given that it is illegal behavior in violation of the objectives of the Equal Employment Opportunity Act (The *Imagawa Gakuen Konomi Kindergarten* case, Osaka District Court, Sakai Branch, Mar. 13, 2002; 828 *Rohan* 59).

Furthermore, going beyond encouraging and thereby coercing resignation is of course an illegal act. This includes such cases as coercing an employee to resign in a way that constitutes defamation of character, due to the use of particularly derogatory expressions in a public setting (The *Tokyo Women's Medical University* [coercion of resignation] case, Tokyo District Court, Jul. 15, 2003; 865 *Rohan* 57), or hinting at disciplinary dismissal such that an employee is pressured to choose between resigning of their own accord or putting up with being demoted, taking a pay cut, or being transferred to a different position (The *Gunma town* [coercion of resignation] case, Maebashi District Court, Nov. 26, 2004; 887 *Rohan* 84).

C. Early retirement (incentive) systems

Systems to encourage retirement earlier than the normal mandatory retirement age by incorporating more financially favorable treatment are known as

“early retirement incentive systems” among other such names.

As early retirement incentive systems are temporary measures for employment adjustment, they are not specifically applied unless an employee fulfils certain qualification requirements and applies within a certain period or the company has the system automatically applied to the employees. However, if it is prescribed in a company's internal regulations that there may be cases in which the system is also applied to people of other ages—even those of an age that would not normally be subject to the system—the system may be applied with modifications (The *Asahi Advertising* case is an example of a precedent in which a claim for the difference between the actual retirement allowance and the retirement incentive allowance was upheld; Osaka High Court, Apr. 27, 1999; 774 *Rohan* 83).

In order to prevent a call for employees willing to take early retirement resulting in an outflow of talented human resources, companies will often attempt to dissuade people from leaving. As a result, not everyone to whom the system is applied is able to resign with incentives. This is also why it is generally necessary for the employer to give their approval of early retirement. Furthermore, as the right to the additional retirement allowance provided for early retirement only takes effect once the employer approves the early retirement (The *Kanagawa Agricultural Credit Cooperative* [claim for additional retirement allowance] case, Supreme Court, First Petty Bench, Jan. 18, 2007; 931 *Rohan* 5), persons whose early retirement was not approved and other such persons who received relatively disadvantageous financial treatment will not have any claims for payment of the difference (The *Sumitomo Metal Industries* [retirement allowance] case, Osaka District Court, Apr. 19, 2000; 785 *Rohan* 38).

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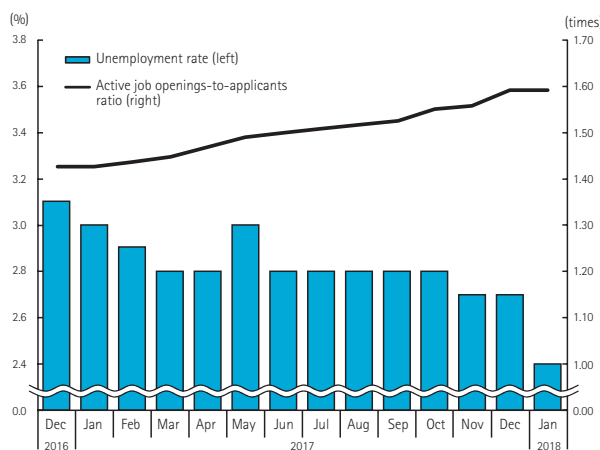
Economy

The Japanese economy is recovering at a moderate pace. Concerning short-term prospects, the economy is expected to continue recovering, supported by the effects of the policies, while employment and income situation is improving. However, attention should be given to the uncertainty in overseas economies and the effects of fluctuations in the financial and capital markets. (“Monthly Economic Report,”¹ February, 2018).

Employment and unemployment (See figure 1)

The number of employees in January was 870 thousand increases over the previous year. The unemployment rate, seasonally adjusted, was 2.4%². Active job openings-to-applicants ratio* in January, seasonally adjusted, was 1.59³.

* Active job openings-to-applicants ratio: An indicator published monthly by MHLW, showing the tightness of labor supply and demand. It indicates the number of job openings per job applicant at public employment security offices.



Source: “Labour Force Survey”²; “Employment Referrals for General Workers.”³

Figure 1. Unemployment rate and active job openings-to-applicants ratio (seasonally adjusted)

Wages and working hours (See figure 2)

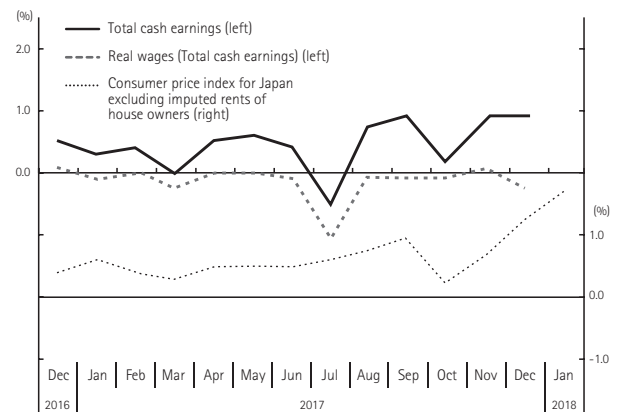
In December, total cash earnings (for establishments with 5 or more employees) increased by 0.9% and real wages (total cash earnings) decreased by 0.3% year-on-year. Total hours worked increased by 0.5% year-on-year, while scheduled hours worked increased by 0.4%⁴.

Consumer price index

In January, the consumer price index for all items increased by 1.4% year-on-year, the consumer price index for all items less fresh food rose by 0.9%, and the consumer price index for all items less fresh food and energy increased 0.4% year-on-year⁵.

Workers’ household economy

In December, consumption expenditure by workers’ households increased by 0.8% year-on-year nominally and decreased by 0.5% in real terms⁶.



Source: “Monthly Labor Survey”⁴; “Consumer Price Index.”⁵

Figure 2. Total cash earnings / real wages annual percent change

See the websites below for details.

The Japan Institute for Labour Policy and Training. “Main Labor Economic Indicators,” <http://www.jil.go.jp/english/estatis/eshuyo/index.html>

Notes: 1. Cabinet Office, “Monthly Economic Report” analyzes trends in the Japanese and world economics, and indicating the assessment by the Japanese government. Published once a month, <http://www5.cao.go.jp/keizai3/getsurei-e/index-e.html>

2. Ministry of Internal Affairs and Communications (MIC), “Labour Force Survey,” <http://www.stat.go.jp/english/data/roudou/results/month/index.htm>

3. Ministry of Health, Labour and Welfare (MHLW), “Employment Referrals for General Workers,” http://www.mhlw.go.jp/english/database/db-l/general_workers.html

4. MHLW, “Monthly Labour Survey,” <http://www.mhlw.go.jp/english/database/db-l/monthly-labour.html>

5. MIC, “Consumer Price Index,” <http://www.stat.go.jp/english/data/cpi/index.htm>

6. MIC, “Family Income and Expenditure Survey,” <http://www.stat.go.jp/english/data/kakei/index.htm>

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