

CSR Management and Employment: Disability Employment as an Example

Summary

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Prologue: Objective, Issues and Method of the Study

Today's enterprises are required to enhance corporate governance focusing on corporate social responsibility (CSR), giving special consideration to environment, human rights, and labor. CSR is premised on corporate compliance, against a background where stakeholders have changed their awareness and are now believing that enterprises have to take social and ethical actions to sustainably and stably grow and develop. In our study on CSR and compliance, we paid particular attention to "employed labor," especially to disability employment. Some of the reasons for that include: (i) it is subject to strong restrictions of the "employment quota" (= "legally required employment quota for persons with disabilities"), (ii) it is a difficult employment issue on which many may support certain ideas in principle but oppose them in practice, (iii) it is directly linked to corporate human resource management (HRM), and (iv) it is one of the major themes regarding CSR throughout the world, in terms of both research and practice. These days, disability issues are under active reconsideration that they should be dealt with in the field not of welfare but of employed labor. It is also becoming common that "disability employment" is regarded as one of the key matters for CSR-oriented management and that indices to measure CSR performance include "employment quota for disabled persons" (= net rate of disability employment).

This study aims to clarify the following three points: (i) the position of "employed labor," especially "disability employment," in CSR management, (ii) through an analysis focusing on the current situation of disability employment, realities of the "employment quota system for disabled persons" as well as disability employment as a whole, and actual situations surrounding policies and assistance programs to realize and further enhance disability employment, and (iii) based on the results of such analysis, future challenges in relation with CSR and corporate HRM, that is, challenges that enterprises have to address in the future and those that should be given importance to when establishing policies and assistance programs for the purpose of increasing disability employment.

For this research, the "Study Group on Compliance Management," within the JILPT, mainly comprised of the authors of this report, held hearings and question and answer meetings involving experts, and organized and analyzed existing documents and

available statistical data.

Outline of the Results

Chapter 1: Corporate Compliance and CSR

Recently, the domain that corporate compliance covers has been expanding, and corporate compliance is now often identified with CSR. We believe, therefore, that it is appropriate to consider corporate compliance as one of the important elements to realize CSR. CSR is a concept to review the relationship between private enterprises and the society, which is founded on the idea that what is vital for a company to sustainably develop is to achieve, in a balanced manner, financial results (e.g. to secure profits), environmental results (e.g. to protect the environment), and social results (e.g. to maintain good relations with employees and local communities). As for the social issues in particular, it is generally becoming a common understanding that they include “compliance with laws and regulations,” “accountability and information disclosure,” “consumer protection,” “fair trade,” “employment,” “human rights,” and “contribution to local communities.”

Today, the new trend is to argue disability issues not only in the field of “welfare,” but in the field of “employed labor.” As seen in the legal obligation for companies to employ disabled persons, strictly enforceable policies are now being implemented. Another reason that we decided to take “disability employment” as an example of CSR management and employment is because it is one of the elements that are always included in CSR mechanisms in the field of “employed labor” and recognized as a performance index.

Chapter 2: Human Resource Management (HRM) and Disability Employment

We analyzed the performance of the employment quota system for persons with disabilities in the last 10 years. We also examined entire circumstances surrounding disabled employees including those who work for companies that are not subject to the employment quota system, the range and level of corporate implementation of “proper employment management” (i.e. “disability (disabled employees) management” taking employees’ disabilities into account), and macro employment situations including “non-competitive employment,” using the index of “actual working rate.”

What we learned were as follows: the percentage of companies that failed to employ sufficient number of disabled persons to meet the legally required employment quota (so

called “the ratio of underachieving enterprises”) rose from 49 percent to 58 percent in the last 10 years; the number of disabled employees that are hired under this employment quota system has not significantly changed, remaining at between 180,000 and 190,000; although the total number of employees who work for companies that are subject to the employment quota system dropped by 2 percent in the last 10 years, the number of “severely disabled employees” rose by as much as 21 percent in the same period, indicating that the system has contributed more to the employment of “severely disabled persons,” rather than to that of disabled persons in general. The increase in the number of “severely disabled employees” was more evident in non-manufacturing industries than in manufacturing industries, and in large companies than in small and medium-sized companies with less than 300 employees.

The employment quota system has a drawback that the whole disability employment issue tends to be understood as a matter of numbers. To fulfill the employment quota, companies have to address the issue in the framework of their human resource management, including implementation of “proper employment management” (i.e. “disability (disabled employees) management” taking employees’ disabilities into account) by, for example, adjusting employment conditions and environment in the company and individual workplaces. Although saddled with many challenges in employing disabled persons, private enterprises are now struggling to enhance disability employment by carrying out a wide range of measures (e.g. sufficient consideration, coordination, and devising of various approaches). However, there are problems to be solved as in-house career development for disabled employees tends to become insufficient after entrance, in terms of human resource development and training, personnel relocation and promotion.

Disabled employees who are hired under the quota system account for less than half of the entire disabled worker population. In other words, we should note that more than half of them are employed by small-sized companies with less than 56 staff, which are not legally required to employ disabled workers. Moreover, many disabled employees are working in various employment forms including “non-competitive employment.” In terms of “actual working rate” of disabled employees, Japan has achieved higher levels compared with other developed countries. However, the ratio of “disabled persons who are officially employed” in the entire disabled worker population is low, which indicates that Japan has a policy hurdle to overcome, by promoting a shift from “non-competitive employment” to “competitive employment.” What is inevitable for success in the shift are not only for individual companies to explore and make efforts for adjustment of employment conditions and environment in the workplace, but also

for them to actively utilize local resources, as well as for the government to establish policies and assistance programs that can support enterprises.

Chapter 3: Assistance Service Programs for Disability Employment

In order to realize CSR, on top of each enterprise's efforts, it is necessary to formulate policies and assistance programs (i.e. institutional environment) to encourage or promote CSR. One of such programs is employment assistance services for the disabled. The assistance services designed for employing companies include: (i) providing information on job seekers and helping companies find prospective candidates, (ii) providing assistance to train new employees and develop their vocational abilities, (iii) providing technical information and practical methods regarding employment management for disabled employees ("disability (disabled persons) management"), (iv) granting subsidies to compensate additional expenses for disability employment management, and (v) providing social resources available for employers.

In these days, more advanced services are often required as employable disabled persons' types of disability diversify and the degree of disability become severer,. At the same time, it is also important to offer, in collaboration with local communities and social resources, comprehensive assistance services that can support their overall professional lives, not only by securing workplaces but also by, for instance, helping them find places to live and giving assistance in maintaining their daily and social lives. In these trends, in addition to services provided by the Public Employment Security Offices ("*Hello work*") and public vocational ability development schools for disabled persons, the roles played by private support organizations are also expanding. Although it is often pointed out that one of the major features of training programs designed for the disabled is the "pre-employment training" on top of publicly-provided general vocational trainings, it does not mean that the significance of such publicly-provided vocational trainings can be neglected.

What is currently drawing attention is the fact that more and more trainings and services are provided not in schools or organizations outside of companies but in actual workplaces. Some of the representative examples for such programs include the "Experimental Disability Employment Program (Trial Employment)" that gives introductory opportunities for companies without much experience in hiring disabled persons, the "Workplace Accommodation Support System" where job coaches who have professional knowledge and experience on disability employment visit workplaces and give assistance, and a wide range of "personalized training programs according to each disabled person's conditions and circumstances" commissioned to private organizations

that have know-hows to give guidance and trainings for the disabled.

It is yet understood that the government remains responsible for regulating and supervising *Hello Work* in terms of its operations for the purpose of promoting the legal quota system for employment of persons with disabilities. As for the issue of prohibition of employment discrimination against disabled people, it will be required to examine what kind of organizations or institutions should play the key roles, including the reviewing of share of roles between such bodies as Labor Standards Inspection Offices, and Equal Employment Opportunity Offices currently set up in prefectural Labour Bureaus.

Chapter 4: Employment of Persons with Mental Disability and Associated Assistance Service Programs

This chapter discusses employment assistance services for “mentally disabled persons” who are not presently covered and counted as potential labor force under the employment quota system for the disabled. Also a recent report compiled by the study group in the Ministry of Health, Labour and Welfare is introduced. “Basic Guidelines for Disability Employment” (1998) stated that it should be considered to also apply the employment quota system to mentally disabled persons after establishing an appropriate employment environment. Meanwhile, the recent opinion letter “Enhancement and Reinforcement of Future Disability Employment Measures: Aiming at Professional Independence of the Disabled by Expanding Employment Opportunities” (December 2004) submitted by the Labor Policy Council indicated the direction that mentally disabled employees should be counted in the disability employment rate for the time being to appreciate each company’s efforts to employ disabled people so that this can further encourage enterprises to increase disabled workers, and that it should be discussed based on performance after revision of the system whether the employment quota should be expanded to oblige enterprises to hire mentally disabled persons as well.

Employment assistance programs specialized in persons with mental disability are intended to enable existing assistance programs for physically and intellectually disabled people to be expanded and applied also to mentally disabled persons. Although such programs can not be considered sufficient to fully reflect specificities of mentally disabled people who suffer from both illness and disability, the comprehensive vision on healthcare and welfare for the mentally disabled presented a short while ago has implied that employment assistance for mentally disabled persons would significantly change in the not so distant future. The currently available assistance

programs reflecting characteristics of mentally disabled persons include: the “Job Guidance for the Mentally Disabled,” designed as an employment guidance for mentally disabled people who wish to work, the “Rework Assistance Program” targeted at those who are on a sick leave due to mental disorder that developed while they were working to help them, upon returning to work, smoothly resume their jobs and adjust to the workplace environment, and the “Social Adjustment Training Program” that allows cooperative organizations commissioned by prefectural offices to provide pre-employment trainings with mentally disabled persons who regularly receive outpatient treatments. Although 320,000 copies of “mental disability certificates” have been issued today, mentally disabled persons employed by private enterprises with 5 or more staff are as few as 13,000. In order to expand employment through diversification of work conditions taking specificities of the mentally disabled into account, it has been recommended by the “Study Group on Disability Employment Issues” in August 2004 to organize assistance programs for short-term employment that allow hiring enterprises to count mentally disabled employees who work for 20 hours or more per week as 0.5 person in calculation of the disability employment rate, to step up employment support measures to encourage disability employment for 15 hours or more per week, and to provide group assistance as a transition support training for mentally disabled people who are currently working on a temporary basis and wish to obtain regular employment, under conditions that they have achieved certain performance thresholds in a fixed period of time.

“Future Health and Welfare Policies for Persons with Disabilities (Tentative Grand Design for Reform)” (October 2004) advocates the provision of services to the disabled (though not limited to mentally disabled persons) in line with individual life stages, and aims to establish a system to promote disability employment based on assistance plans customized according to each person’s aptitude.

What is particularly emphasized is to enrich general consultation support systems backed by associated organizations including employment, welfare, and educational bodies and to organize and implement comprehensive assistance programs for individuals, so that each disabled person can map out plans and/or choose available options with respect to his/her professional lives depending on the motivation and capability.

So that corporations can expand disability employment in accordance with such trends, they are required to further improve HRM including “disability (disabled persons) management” by strengthening support for in-house career development and human resource development through appropriate job assignment after hiring, and by

enhancing assistance in retaining employment for adventitiously impaired workers who developed mental illness after they had started working for the company.

Chapter 5: Realities and Challenges of Laws and Regulations Related to Disability Employment

In respect to laws and regulations associated with disability employment, we examine companies' roles in disability employment, tracing back the history of philosophy on employment and welfare and its transitions observed in the post-war years. During the "period of non-distinction between welfare and labor," self-employment, for example, in the field of agriculture was also regarded as one of available professions for the disabled, and there were few arguments about responsibilities imposed on private enterprises. After the high economic growth period, Law for the Employment Promotion of the Physically Disabled Persons (1960) separated the issue of disability employment from the general welfare law and triggered discussion on corporations' obligation to hire disabled people. In 1976, when the Law for the Employment Promotion of the Physically Disabled Persons was amended, a legally binding employment quota and penalty fine system was introduced, mandatorily assigning each company to offer job opportunities specifically open for the physically disabled. The system started to be applied not only to physically disabled people but also to persons with other types of disabilities in 1987. Since 1990s as work styles diversified, what we call "labor relativization" occurred, where work does not always mean regular/full-time employment but also includes part-time work, dispatched work, self-employment, and work in cooperative associations. At the same time, various arguments on human rights such as right to travel and right to access information also started to develop. As for professional independence of the disabled, possibilities should widely be explored without limiting the range to those provided by "employers." "Firms that employ a large number of severely disabled persons" exist not for the sake of their shareholders, but for the benefit of disabled persons who desire to work. Such enterprises with social and welfare significance should be recognized as "social companies" and be granted subsidies.

Even amid current growing calls for respect for human rights of the disabled and their social participation, we should not overlook the reality that some disabled workers are confined in such workplaces as seen in the following two judicial trials: <Case 1: Akasu Paper Containers Case> The president of this firm abused his disabled employees physically, sexually, and psychologically, against his obligation to secure safe and peaceful labor and daily life environment for his workers. The company had 30

staff, among which 27-28 were intellectually disabled. <Case 2: Sun Group Case> The president was indicted on charges of abusing his intellectually disabled employees (even some of them died), failing to pay wages and pocketing disability pension paid to his employees. The supervising prefecture and national government were also accused of negligence. Seventy percent of the total employees turned out to be intellectually disabled.

We classified human rights into four groups in terms of welfare and employment for the disabled: (i) Rights of freedom: Though having not been particularly emphasized, the rights in this category drew attention when campaigns for independence of disabled persons were initiated for the first time. These rights that were originally understood to refer to freedom from the state are now supposed to also involve freedom from communities such as family and welfare institutions. (ii) Rights of equality: The constitution does not clearly stipulate the prohibition of discrimination based on “disabilities.” Still, since it is against discrimination on the ground of social status, we may interpret that discrimination against the disabled is also constitutionally banned. However, this understanding has not been widely shared yet. The equal distribution of income has already been realized in effect, through systems such as basic pension for the disabled and special child care allowance. The legally required employment quota of the persons with disabilities should also be considered acceptable as an anti-discrimination means to practically secure equal employment opportunities. (iii) Social rights: These are modern human rights including “labor rights” emerged in the 20th centuries. (iv) Rights of personality (with a central focus on the right of self-decision): The self-decision right is now considered one of the most important human rights for the disabled and is discussed in various occasions. The self-decision right often has its foundation on rights of personality. In our era, it is vital to promote disability employment paying careful attention to such perspectives of human rights. What is necessary in particular is not to speak of “human rights” in general terms, but to constitute philosophy and establish principles both of which are well-balanced and easily acceptable by the entire society, by seeking theoretical justifications applicable for each goal in various combinations of human rights listed above and by elaborately developing arguments in accordance with these justifications.

Chapter 6: International Trends in Disability Employment

The characteristics of recent international trends in disability employment and profession are equal opportunities and fair treatment, as well as prohibition of

discrimination incompatible with the first two causes. In relation with discrimination against disabled persons, terms such as “reasonable accommodation” or “reasonable adjustment” are drawing attention. In 2001, the United Nations embarked on drawing up a draft of “Convention on the Rights of Persons with Disabilities,” in which ten measures were proposed concerning labor rights, including: “(a) promote a labor market and work environment that are open, inclusive, and accessible to all persons with disabilities; ... (c) promote employment opportunities and career advancement for persons with disabilities in the open labor market, including opportunities for self-employment and starting one's own business, as well as assistance in finding, obtaining and maintaining employment; (d) encourage employers to hire persons with disabilities, such as through affirmative action programs, incentives and quotas; (e) ensure the reasonable accommodation of persons with disabilities in the workplace and work environment” (according to the draft presented by the Working Group in January 2004).

ILO’s “Code of Practice on Managing Disability in the Workplace” was unanimously adopted following examination at the tripartite meeting of experts (governments, labor organizations, and employers’ associations) in October 2001, convened in Geneva at the decision of the ILO Governing Body (March 2001). This Code of Practice reflects changes in services, etc. such as the concept of disability, reasonable accommodations, and employment with assistance, which have been observed since 1983 when Convention 159 and Recommendation 168 were adopted. It intends to encourage employers to incorporate active disability management strategies, base on the belief that persons with disabilities can make great contribution through jobs suitable for their skills and capabilities in workplaces and that employers can make profit by employing disabled persons in both private and public companies regardless of size (small, medium, or large), as long as they conduct appropriate management in respect of disability employment.

As one of the concrete measures concerning disabled management, this Code of Practice mentioned “adjustments” as follows: “In recruiting or retaining workers with disabilities, employers may need to make an adjustment or adjustments in some cases to enable the individual to perform the job effectively.” These “adjustments” are comprised of “accessibility” and “restructuring.” The practical contents of the “restructuring” include redesigning workstations, tools, and equipment, replacing tasks that are impossible for a disabled worker to carry out with other feasible assignments, and flexibilizing work schedules.

Aiming at combating discrimination in the field of employment and occupation, the

European Union's "Equal Treatment Directive" has an article to prohibit any direct or indirect discrimination based on particular religion or belief, particular disability, particular age or particular sexual orientation. This article is applied to labor conditions such as selection criteria, recruitment conditions, vocational guidance, vocational training, employment, and pay. In relation with disability, the Article 5 of this Directive on "reasonable accommodation for disabled persons" states: "... employers shall take appropriate measures, where needed in a particular case, to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a 'disproportionate burden' on the employer." It also stipulates that "lack of reasonable accommodation could constitute discrimination." Although EU member countries were supposed to amend individual domestic laws and regulations according to this Directive by the end of 2003, revised provisions concerning disability and age are exceptionally allowed to delay application until the end of 2006.

"Equal opportunities for people with disabilities: a European Action Plan" (formulated by the EC Commission and communicated to the Council and European Parliament in a form of a statement in 2003) is a multiannual plan through to 2010, aiming at mainstreaming disability issues in the relevant community policies and implementing specific measures in key areas with a view to enhancing the integration of people with disabilities. It says that 14.5 percent of the population of the member states (14 countries as of 2000) of working age (approximately 26 million people) reported some form of disability, and that only 42 percent of people with disabilities are employed, compared to almost 65 percent of non-disabled people. The "European Employment Strategy" (amended in 2003), an employment strategic guideline for EU member countries, set a goal for each member state to reduce the unemployment gap between the disadvantaged and non-disadvantaged in the labor market by 2010. This Strategy pointed out the importance of a shift in emphasis away from programs targeted at those with disadvantages in the labor market including disabled persons towards a mainstream approach which encourages them to participate in measures designed for general workers, and that of the advancement to policies personalized according to individual needs of workers including groups of disadvantaged persons in the labor market such as the disabled, so as to implement active measures against mass unemployment in the member countries. As for the concrete steps specifically designed for the disabled, the Strategy referred that "workplaces must be accommodated to take account, where required, of the needs of disabled workers," and in relation to CSR, Commission will "Continue to promote awareness and dissemination

of Corporate Social Responsibility approaches and experiences aiming at employing disabled people.”

The “Declaration of the Social Partners For the European Year of People With Disabilities: Promoting Equal Opportunities and Access to Employment for People with Disabilities” (2003) was jointly released by European Trade Union Confederation (ETUC), Union of Industrial and Employers' Confederations of Europe/European Union of Crafts and Small and Medium-Sized Enterprises (UNICE/UEAPME), and European Centre of Enterprises with Public Participation (CEEP), all representative labor/management associations in EU. In order to improve employment opportunities for the disabled living in Europe, the Declaration presented the following recommendations among others: “Employers develop equal opportunity policies for people with disabilities and make these policies known to all players in the enterprise: directors, managers, with particular emphasis on raising the awareness of those in charge of recruitment and human resources and employees, employees and their representatives;” “trade unions examine disability issues with their members, develop equal opportunity policies in this area and integrate them in their trade union policies;” and “social partners, at the appropriate level, seek to promote through collective bargaining which can lead to collective agreements, or through actions among their members, equal opportunity policies in favor of persons with disabilities taking account of the five key factors for success identified above.” In addition, EuroCommerce and Uni-Europa Commerce (representative labor/management organizations in the sector of commerce and distribution) also said in their “Statement on Promoting Employment and Integration of Disabled People” (2003) as follows: “Supporting the employment of disabled people is a joint responsibility, where governments, employers, trade unions and the disabled persons themselves need to cooperate. As social partners, both employers and trade unions should pay increased attention to the working life needs of the disabled. They have a mutual responsibility to combat negative attitudes towards disability, and towards integrating disabled persons into working life. A disability management strategy should be formulated through social dialogue, in consultation with individual disabled employees and, where possible, including organizations of persons with disabilities. It should be part of an equal opportunities policies and practices. Where possible, measures that support the inclusion of disabled people should be made a subject of social dialogue.”

Epilogue: Further promotion of “proper employment management” and establishment of a monitoring system, in pursuit of achieving the employment quota and expanding

disability employment

Based on the results of the examination and analyses in each chapter, we hereby present the following four policy implications mainly on the tasks that enterprises have to deal with and assistance that should be enhanced to support the efforts of private companies. Firstly, although the ratio of companies that fulfills the employment quota of persons with disabilities is lower than 50 percent at present, most enterprises have set their CSR or performance goals to achieve the quota or to promote disability employment, which suggests that a certain general and common understanding regarding disability employment has been established and shared. We can assume that modern enterprises are further required to devote themselves to achieving the employment quota and expanding disability employment. Secondly, the employment quota serves as a regulation regarding the number of disabled employees, yet it does not necessarily contribute to employment expansion. It is becoming more important to additionally implement “proper employment management,” that is, adjustment of employment conditions and workplace environment according to disabilities. Since whether or not such a “proper employment management” is realized is dependent on each company’s discretion, a framework to further enhance the practice should be more actively discussed. Thirdly, it will be more vital from here on for each company to clearly incorporate “proper employment management” for the disabled workers (i.e. “disability (disabled persons) management” taking employees’ disabilities into account, “reasonable accommodations,” and “adjustments”) including retention of their employment into its human resource management (HRM) policy, and to commit itself to adjusting environment while spontaneously utilizing local resources. Although creation of diverse employment and job opportunities in local communities can be considered as one of the available measures for environment adjustment as it will expand opportunities for disabled persons to exercise their capabilities, it is also true that diversification of work styles often ends up unstabilizing their lives. It is therefore a significant challenge to establish a legal safety net that can secure income and protect human rights. Fourthly, from the perspective of CSR management, disclosure of information will be more important in the future, including individual philosophy, basic principles, and practical measures concerning disability employment and the achievement level of the employment quota. The government has also launched to develop a “Basic Plan for the Disabled” with numerical targets and to release performance results. Under such circumstances, it can be said that we are now in the phase where discussions are necessary to establish a consultation body or a third-party organization which continuously monitors improvements in the

governmental statistics and development levels of disability employment, both in terms of quantity and quality, to fully understand work situations the disabled people face, and which always works out tasks and measures required in the next stage.

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