

# Career Formation and Balanced Treatment of Part-time Workers: An Examination Focusing on Legal Policy

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## 1. Career Formation of Part-time Workers

Part-time workers refers to those whose scheduled working hours are shorter than those of regular employees. The term “career formation” refers to the formation of professional careers in general, including development of an employee’s professional abilities and skills.<sup>1</sup> This article seeks to examine the general direction of legal policy concerning balanced treatment for and the career formation of part-time workers.

Previously, the concept of career formation was generally regarded as irrelevant as far as part-time workers were concerned. In exchange for a high degree of freedom, part-time workers accepted inferior treatment and unstable employment as a member of the peripheral workforce. Career formation was only concerned with policy and institutions for regular employees taking on core duties. However, the number of part-time workers is growing due to the expansion of the service industry and changes in workers’ attitudes. According to data for 2002, the number of part-time employees whose weekly scheduled working hours were less than 35 hours was 12.05 million (8.29 million of whom were women), constituting 22.9 percent of the entire employee population (39.3% of the female work force were part-time workers). Essentially, part-time workers have come to constitute an indispensable human resource for companies, and it has become crucial to also support their career formation. If the increase in the number of part-time workers is an irreversible trend, it will be necessary to develop conditions to ensure that part-time employment will come to be regarded as a “desirable employment opportunity” that workers will not view as creating unreasonable disadvantages for them. Promoting the career formation of part-time workers will be indispensable

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<sup>1</sup> Concerning the importance of the concept of career in employment policy, see Yasuo Suwa, “Kyariaken no Koso wo Meguru Ichi Shiron (A Treatise concerning the Concept of the Right to a Career).” *Nihon Rodo Kenkyu Zasshi* 468 (1999), p. 54.

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in realizing this goal. To this end, voluntary initiatives by labor, management and companies will be of utmost importance, but government policy for fostering such efforts will also be necessary.

Promoting the career formation of part-time workers will bring the following advantages to companies, workers and society. First, in the long run, such a policy will bring business benefits to companies by allowing them to secure improved human resources and enhance businesses efficiency, even though it may result in increased costs in the short run. From the workers' perspective, there is a growing demand for diverse and desirable employment opportunities, especially among female and older workers, and promotion of career development will provide them with an opportunity to improve their abilities and achieve self-realization. The perspective and policy of career formation are quite important also as a tool for reducing the number of *freeters*, so prevalent among today's youth. From the perspective of society as a whole, promoting the career formation of part-time workers will improve employment opportunities qualitatively as well as quantitatively, and enhance economic efficiency and the equity of society. It will also serve as a long-term policy tool for nurturing and supporting the next generation of workers as well as providing an avenue to balance work and one's personal life within the employment system, and secure a workforce to support an aging Japanese society.

In respect to part-time employment, the main agenda is promoting career formation while making part-time work an attractive employment opportunity in its own right. At the same time, it will be also important to encourage conversion from part-time employee to regular employee. No matter how vigorously the career formation of part-time workers is promoted, it is undeniable that companies will invest much more in the career formation of their regular employees than that of part-time workers. This is inevitable given that regular employees play indispensable roles in developing and handing down corporate ideals, strategies, knowledge and skills. One policy goal therefore is creating a bridge between part-time employment and regular employment, the latter of which is a better employment opportunity. This essentially means the setting of a goal to develop the abilities of part-time workers so they can be hired as regular employees (career formation).

On the other hand, it is also necessary to create diversity in employment types for regular employees. Compared to part-time workers, regular employees are placed under a higher degree of constraint, for example, working long hours, while simultaneously enjoying better treatment and stable employment. The problem is not only that part-time workers avoid the working style of traditional regular employees but also that regular employees themselves are increasingly concerned about the imbalance between work and their personal life. The polarization within the employment system between regular employees and non-regular employees seems to be escalating. The issue of diversification of regular employment will be revisited later in this article.

The career formation of workers can take place in companies and in the external market, but when it comes to part-time workers we should mainly think of career development within companies. Traditionally, human resource development policy in Japan placed priority on corporate initiatives and emphasized assistance for corporate in-house on-the-job and off-the-job training. With the transformation of the system of long-term employment, however, career formation measures that target individual workers are being implemented (including measures such as the education and training benefits system, the education and training leave system, and career consulting). However, the first priority should be the facilitation of career formation within companies because career formation and skill development are realized most effectively when they are built into corporate personnel and treatment systems. Part-time workers possess some of the same characteristics of standard employees, more so than other types of non-regular employee (non-typical employee), and it should be important to foster their career formation and skill development within the framework of a corporate employment system. Such a policy, of course, does not mean that part-time workers will be prevented from utilizing skill development opportunities outside their companies according to their individual needs.

## 2. Career Formation of Part-time Workers Within Companies<sup>2</sup>

When companies have responsibility for the career formation of part-time workers, it is important that they carry out institutional reforms that will accommodate diverse work styles as well as promote career formation that is balanced when compared to that of regular employees. Reforms that help accommodate diverse work styles will create a result that is different from career formation in which the gaps between regular employees and part-time workers continues to widen. However, balancing the career formation of both regular and part-time workers is not advantageous to the company and therefore has the potential of actually reducing employment opportunities for part-time workers.

Steady progress has been made in the field of legal policy concerning the diversification of employment types due to a series of recent revisions to the labor laws. Of particular importance is the relaxation of the regulation dealing with definite-term employment (Article 14 of the Labour Standards Law) as a result of the 2003 revision to the Labour Standards Law, and extension of the allowable period that workers can be dispatched and the lifting of the ban on dispatching workers for manufacturing jobs, both of which came about as a result of the 2003 revision to the Worker Dispatching Law. The revision of the Labour Standards Law in particular strongly impacts part-time workers.

How should career formation policy be approached? The two keywords here are “balance” and “fairness” in personnel management and treatment. It is important to foster the career development of part-time workers while striking a balance between regular employees and part-time workers in

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<sup>2</sup> Concerning the issues discussed in this article, see also the Ministry of Health, Labour and Welfare, *Paato Rodo no Genjo to Kadai: Paatotaimu Rodo Kenkyukai Saishu Hokoku* (Present Conditions and Problems concerning Part-time Work: Final Report from the Study Group on Part-time Workers) (2002); Nissei Kiso Kenkyujo, *Tayo de Junan na Hatarakikata wo Sentaku dekiru Koyo Shisutemu no Arikata ni kansuru Kenkyukai Hokokusho* (Study Group Report on an Employment System in Which Workers Can Choose Diverse and Flexible Work Styles) (2002); and Michio Tsuchida, “Kaiko Rodo Joken no Henko Waaku Shearingu — ‘Hatarakikata no Tayoka’ ni muketa Hoteki Senryaku (Dismissals, Alterations of Working Conditions, and Work-sharing: Legal Strategies for ‘Diversification of Work Styles’).” *Doshisha Hogaku* 288 (2002), p. 115.

terms of treatment. It is inevitable that companies will invest differently in the career development of regular and part-time workers. If this gap becomes too extreme, however, the morale of part-time workers will decline, and corporate management will also be negatively affected. Therefore, it is necessary to promote balanced and fair treatment of part-time workers not only in the area of skill development but also in the personnel management system as a whole. It is also important to simultaneously implement measures that encourage part-time workers to become regular employees because regular employment offers a much better opportunity for their career formation. Legally speaking, “equality under the law” embodied in Article 14 of the Constitution becomes the moral foundation of the policy, and the “idea of balance” in the Part-time Work Law — discussed later in this article — is important in terms of part-time workers. After presenting an overview of the present situation and legal regulations concerning part-time workers, the remainder of the article will examine legal policy from the above perspective.

### **3. Present Situation concerning Part-time Workers**

As noted above, the number of part-time workers is growing every year, and recently the number of part-time workers engaged in core and specialized duties nearly identical to those of regular employees (“core part-time workers”) is increasing, particularly in the service industry. Moreover, many part-time employees are working as many hours as regular employees (“fulltime part-time workers”), currently constituting roughly 20 percent of all part-time workers. In addition, a great number of part-time workers are employed under indefinite-term contracts (roughly 25% in 2001), and part-time workers display characteristics similar to fulltime workers more so than any other type of non-regular employees. This has led some companies to begin implementing measures to foster the career formation of part-time workers, such as promoting skills development via personnel evaluation and promotion systems, and to consider promoting part-time employees to regular employees. Hence, there are indications that employment management is beginning to take into consideration the question of reaching a balance in treatment between regular employees and

part-time workers.

However, there are notable gaps between regular employees and part-time workers when it comes to wages. According to data for 2002 (*Basic Survey on Wage Structure*, The Ministry of Health, Labour and Welfare), the average hourly wage of part-time women workers was ¥891, 64.9 percent of the wage for regular employees, and ¥1,029 for men, 50.7 percent of the wage for regular employees. Moreover, the gap tends to get wider each year because the wages of regular employees increase at a higher rate than those of part-time workers. Therefore, whether this situation is lawful or not becomes an important legal issue.

## **4. Legal Regulations concerning Part-time Work**

### **4.1 Application of Labor Laws and Other Regulations**

The Labour Standards Law and other labor laws also apply to part-time workers since part-time workers are “workers” as defined by Article 9 of the Labour Standards Law. Regarding employment insurance, however, workers whose weekly scheduled working hours are less than 20 hours are not eligible to join the insurance system while those whose hours are more than 20 but less than 30 are considered “insured part-time workers” and treated differently from standard workers (Item 1-2, Article 6 and Paragraph 3, Article 22 of the Employment Insurance Law). In the area of social security, moreover, workers whose hours are roughly three-quarters or more that of standard workers and who also have a certain level of income are eligible to join the health insurance and welfare pension plans. As far as tax law is concerned, workers whose incomes are below a specified level (¥1.03 million) are not subject to income tax. A spouse is eligible for the spousal exemption and the spousal special exemption if her/his income is below a specified level (¥1.41 million), a situation which has caused the “work adjustment problem,” that is, a tendency among part-time workers to curb their work hours so their annual incomes will not exceed the aforementioned specified levels. This is one of the factors hindering wages and career formation of part-time workers.

## 4.2 The Part-time Work Law

The basic law concerning part-time work is the “Law concerning the Improvement of Employment Management, etc. of Part-time Workers” enacted in 1993 (Law No.76 of 1993; referred to as the “Part-time Work Law” hereafter). The law is administrative policy legislation, and its aim is to allow the state to improve the employment management of part-time workers in areas such as maintenance of proper working conditions and to implement skills development and improvement measures in recognition of the increasing importance of part-time labor (Article 1). Therefore, all legal measures to improve employment are limited to “duties to endeavor” (*doryoku gimu*) and cannot be considered very effective.

The Part-time Work Law applies to “short-time workers” whom it defines as “those whose weekly scheduled working hours are shorter than regular workers employed at the same workplace” (Article 2). Therefore, not only “part-time employees” but also casual workers and *fretters* are regarded as short-time workers and covered by the law as long as their working hours are shorter than those of regular workers. On the other hand, the law does not apply to those whose scheduled working hours equal or exceed those of regular employees (“fulltime part-time workers”) even though they may be treated as part-time workers by their employers. This is unfair. The Guidelines of the law stipulate that it is the duty of the employer “to make an effort to provide proper treatment, as with regular employee” for those who are treated differently in terms of treatment and working conditions even though their working hours and professional duties are more or less the same as those of regular employees (3-4, Guidelines).

To achieve its goal, the Part-time Work Law stipulates:

- 1) The employer’s responsibility to improve the employment management of part-time workers (Article 3)
- 2) The general responsibilities of the government and local public bodies (Article 4)
- 3) The establishment of basic government policy concerning part-time workers (Article 5)
- 4) Measures concerning improvement of employment management of part-time workers (Article 6–Article 9)

- 5) The government's power to request a report from and give advice, guidance and recommendations to employers (Article 10)
- 6) Special consideration for vocational training provided by the government and other institutions (Article 11) and enhancement of the employment placement service system (Article 12)
- 7) The establishment of the "Part-time Work Support Center" to conduct surveys and research on part-time workers and to offer seminars to employers (Article 13–).

Stipulations contained in number 4 include the employer's duty (duty to endeavor) to issue a document to the part-time worker concerning his/her working conditions (Article 6), the employer's duty (duty to endeavor) to listen to the views and opinions of a worker representing the majority of part-time workers when drafting or changing work regulations (Article 7), the establishment of guidelines concretely specifying the employer's responsibility to improve employment management stipulated in Article 3 (Article 8), and the employer's duty (duty to endeavor) to appoint an employment manager for part-time workers (Article 9). The Guidelines (Ministry of Health, Labour and Welfare Notification No. 297, 2003) play an important role in clarifying the employer's responsibility as stipulated in number 1 and promoting balanced treatment.

## **5. Treatment and Working Conditions of Part-time Workers**

### **5.1 Basic Ideal**

According to Paragraph 1, Article 3 of the Part-time Work Law, the employer is required to "endeavor to promote effective utilization of the abilities of part-time workers, in due consideration to their actual conditions of employment, and to maintain balance in treatment with regular employees by securing proper working conditions, providing education and training, improving their welfare, and improving other aspects of employment management." Essentially, the Part-time Work Law requires employers to consider a balance between part-time workers and regular employees in determining treatment and working conditions of part-time workers, and this can be called the "idea of balance."<sup>3</sup> In other

<sup>3</sup> See Michio Tsuchida, "Paatotaimu Rodo to 'Kinko no Rinen' (Part-time Work and the 'Idea of Balance')". *Minshoho Zasshi* 119: 4-5 (1999), p. 547 for the "idea of balanced treatment."



words, the basic aim of the law is to ensure proper working conditions for part-time workers by generating a balance between the treatment given to regular employees and the treatment of part-time workers while acknowledging certain differences between them. The law provides important guidelines for promoting balanced treatment and career formation.

### **5.2 Clear Notification on Working Conditions**

Labor disputes involving part-time workers occur often because their working conditions are not clearly specified. For this reason, the Part-time Work Law stipulates that the employer must make an effort to immediately issue a document (employment notice) clearly indicating working hours and other working conditions when hiring a part-time worker (Article 6 of the Part-time Work Law, and 3-1 (1) of the Guidelines). Some parts of these provisions overlap with the provisions concerning the employer's duty to clearly inform the employee of the working conditions that are contained in the Labour Standards Law (Article 15), and the Part-time Work Law therefore does not have particular significance in this respect. But its Guidelines state that the employer must also include information in the employment notice on pay raises, allowances, amount of overtime hours, safety and hygiene, education and training, and leave of absences, and it is in these areas that the law has made an original contribution.

### **5.3 Work Regulations**

The employer is allowed to establish work regulations for part-time workers that are different from those for regular employees. The Guidelines also stipulates that the employer has a responsibility to establish work regulations for part-time workers (3-1(2) of the Guidelines). The failure to establish work regulations for part-time workers, if the work regulations for regular employees are not being applied, is a violation of the provision on the duty to establish work conditions as set forth in the Labour Standards Law.

Moreover, the employer must endeavor to listen to the opinions of a worker representing the majority of the part-time workers at the workplace when establishing or altering work regulations for part-time workers

(Article 7 of the Part-time Work Law and 3-1 (2) of the Guidelines). The provision seeks to allow the views and opinions of part-time workers to be reflected in work regulations as their working conditions and interests differ from those of regular employees.

## 5.4 Wages

a) The biggest issue concerning part-time workers is to what extent the gaps that exist between them and regular employees in the economic areas, such as wages and allowances, are legal. As noted above, there exist notable wage gaps between part-time workers and regular employees. The issue of the legality of the difference in wages is particularly problematic for part-time workers engaged in duties that are identical or similar to those of regular employees (core part-time workers) and part-time workers who work the same number of scheduled hours as regular employees (fulltime part-time workers). In this case, the question is whether such gaps constitute discrimination based on one's "social status," which is prohibited by Article 14 of the Constitution (concerning equality) and Article 3 of the Labour Standards Law, which deal with equal treatment. Conventional view does not recognize the applicability of "social status" in this situation, arguing that "social status" refers to hereditary positions and not positions that are acquired, such as job status.<sup>4</sup>

b) Another academic view takes the principle of "the same wage for the same work of the same value," predominant in Continental European countries, to argue that wages gaps are unlawful. According to this view, this principle corresponds to the public order provision (Article 90 of the Civil Code), and discriminating in wages against part-time workers who offer labor of the same value as regular employees is a violation of the public order provision and therefore illegal.<sup>5</sup> However, in Japan there is no

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<sup>4</sup> Kazuo Sugeno, *Rodoho Dai 6 Pan* (Labor Law, Sixth Edition) (Kobundo, 2003), p. 149.

<sup>5</sup> See Mutsuko Asakura, "Paatotaimu Rodo to Kinto Taigu Gensoku (Part-time Work and the Principle of Equal Treatment)." *Rodo Horitsu Junpo* 1387 (1996), p. 45; and Shozo Yamada, "Paatotaima ni taisuru Kinto Taigu Gensoku (Principle of Equal Treatment for Part-time Workers)." *Rodoho* 90 (19), p. 92. It has also been argued that the "principle of the same wage for the same responsibility" should be applied to part-time workers who have responsibilities (degree of required commitment to their companies) as well as duties that are identical to those of regular employees and, that the wage gaps between them and regular employees are unlawful. See Yuichiro Mizumachi, *Paatotaimu Rodo no Horitsu Seisaku* (Yuhikaku, 1997), p. 234.

standardized occupation-based wage system cutting across different companies, which is often seen in Europe, and wages are determined by a variety of factors such as age, length of service, professional duties, education and contribution to the company. It therefore seems difficult to interpret the principle of the same wage for the same work of the same value as corresponding to the public order provision, which is a universal legal norm.<sup>6</sup> In terms of international labor standards, a provision of ILO Convention 175 (1994) guarantees part-time workers wages that are proportionately calculated on the basic wages of comparable fulltime workers (Article 5). Those who argue that the wage gap is legal focus on the introduction of this provision, but it is doubtful that strong legal intervention based on this provision — without regard to the difference in labor markets — will work effectively. Furthermore, part-time workers and regular employees often have different levels of responsibility and constraint (freedom to decide working hours, obligation to work overtime, acceptance of personnel changes, and so on) even when engaged in the same duties. The wisdom of arguing for the same wages for both types of workers while ignoring this difference is questionable.

On the other hand, there are some who argue that wage gaps are legal, noting that those who argue that wage gaps are illegal lack a legal basis. They propose that correction of the gaps should be left to the market and self-governance by labor and management.<sup>7</sup> However, this argument seems to be dismissive of the fact that the existing Part-time Work Law is based on the “idea of balance.” As a matter of fact, leaving the problem up to the market and self-governance by labor and management has resulted in widening differences in treatment in general. This situation is problematic from the perspective of the “idea of balance.” Another problem with the argument put forward by those who believe that the wage gap is legal — that it can be corrected through collective self-governance by labor and management — is that the majority of part-time workers do not (or cannot) belong to a union. Hence, in my view, a certain degree of policy response

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<sup>6</sup> For the same view, see Kazuo Sugeno and Yasuo Suwa, “Paatotaimu Rodo to Kinto Taigu Gensoku (Part-time Work and the Principle of Equal Treatment).” *Gendai Yoroppa Ho no Tenbo* (Survey of Modern European Law) (Tokyo Daigaku Shuppankai, 1998), p. 131.

<sup>7</sup> Refer to Sugeno and Suwa (cited in footnote 6), p. 129-. The *Nihon Yubin Teiso* case, Osaka District Court, May 22, 2002, *Hanji* No. 830, p. 22 is an example of a similar judicial case.

is required.

c) Instead of making such polarized arguments, I have stressed the importance of striking a balance between the treatment of part-time workers and regular employees.<sup>8</sup> As noted above, Article 3 of the Part-time Work Law stipulates that the “idea of balance” is its overarching goal. According to this idea, companies are allowed to differentiate between part-time workers and regular employees in accordance with the level of responsibility and time constraints for each type of worker, but, at the same time, gaps must be limited to a rationally justifiable degree. The “idea of balance” is, to be sure, only a duty to endeavor, but it is still possible to interpret the idea as corresponding to the public order provision (Article 90 of the Civil Code) and to regard tremendous gaps in working conditions between part-time workers and regular employees as a tort in violation of the public order provision (Article 709 of the Civil Code). In other words, if a gap between regular employees and part-time workers engaged in work that is identical in terms of quality and quantity develops to a socially unacceptable degree, it is appropriate to interpret such a situation as a tort in violation of the public order provision based on the “idea of balance.” Of course, what the “idea of balance” guarantees is *balanced* wages between regular employees and part-time workers. Therefore, not all wage gaps should be considered illegal, and differences according to degrees of constraint (involving factors such as the recruitment process, freedom to choose working hours, obligation to accept personnel changes, work overtime, and so on) are permitted.

There is a judicial precedent which corresponds to my view, the Maruko Alarms Case.<sup>9</sup> This case was fought over whether wage gaps (more than 33% at the largest) between regular employees and part-time workers (definite-term employees) engaged in the same type of duties for nearly the

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<sup>8</sup> See Tsuchida (cited in footnote 3), p. 563- and Tsuchida (cited in footnote 2), p. 135. Although similar to my discussions in its conclusion, Yoichi Shimada’s “Koyo Shugyo Keitai no Tayoka to Horitsu Mondai (Diversification of Employment and Work Styles and Legal Problems)” *Jiyu to Seigi* 51:12 (2000), p. 86 more succinctly argues that excessive wage gaps between part-time workers and regular workers are a violation of the part-time worker’s right to receive equal treatment concerning wages and hence is unlawful.

<sup>9</sup> The *Maruko Keiho Kiki* case, Ueda Branch, Nagano District Court, March 15, 1996, *Rohan* No. 690, p. 32.

same length of time at the same assembly lines were lawful. While rejecting the principle of the same wage for the same work of the same value, the court held that the idea of equal treatment upon which the principle is based corresponded to the public order provision. Based on this, the court ruled that it was a violation of the public order provision if wages of part-time workers were less than 80 percent of those of regular employees who had worked for the same number of years. The court found the employer liable for damages for the difference between the actual wages of the part-time workers and roughly 80 percent of the regular employees' wages. This can be seen as an example of a court ruling that emphasizes a balance between treatment of regular employees and that of part-time workers.

### **5.5 Working Hours and Annual Paid Holidays**

Many workers choose part-time work because it gives them a large degree of freedom to match their working hours and individual situation. The Guidelines, therefore, require that the employer give adequate consideration to the situation of part-time workers when establishing and changing work hours and workdays and to avoid demanding that they work outside their scheduled working hours and workdays (3-1 (3) of the Guidelines). In terms of legal interpretation also, an employer should not change the work hours of a part-time worker nor demand he/she work overtime or on holidays without the worker's consent, unless there is a specific stipulation. Even when such a special stipulation exists, the employer should consider the individual circumstances of the part-time worker as stipulated in the Guidelines, and employers who order workers to work overtime and on holidays without such consideration will be considered as abusing their right. Moreover, when demanding that part-timers work overtime or on holidays, employers are required to offer them balanced treatment that is appropriate to the work they will do. Currently, a legal policy discussion is under way regarding the obligation of the employer to pay the equivalent of the increased wages for statutory overtime when part-time workers engage in work outside their scheduled working hours (Article 37 of the Labour Standards Law).<sup>10</sup>

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<sup>10</sup> Ministry of Health, Labour and Welfare, *Shigoto to Seikatsu no Chowa ni kansuru Kento Kaigi Hokokusho* (Study Group Report on Balancing Work and Life) (2004).

Unlike other working conditions, there is a provision concerning annual paid holidays in the Labour Standards Law, according to which the employer is required to give statutory annual holidays that are proportionately calculated for part-time workers with fewer scheduled workdays (Paragraph 3, Article 39).

## **5. 6 Dismissals and Non-renewal of Contracts**

### **a) Regulations on non-renewal of contracts**

In principle, when a part-time worker is employed under a definite-term contract, his/her contract will expire when the term ends. However, if there is reasonable ground for a worker to expect continued employment, for example if his/her contract has been renewed repeatedly, when the contract is not renewed, it will be possible to apply the regulation dealing with abuse of the right of dismissal. In this case, the employer must provide a rational explanation as to why the contract was not renewed. What constitutes a rational explanation for not renewing a contract is more loosely defined for part-time workers than for regular employees, who are employed under indefinite-term contracts, but the employer is still required to make an effort to avoid non-renewals of contracts of part-time workers under certain conditions.<sup>11</sup> Moreover, the Guidelines require the employer to stipulate the longest possible contract term — within a one year limit — for part-time workers who have been employed for more than a year because their contract has been continually renewed, and to give 30 days notice if the contract will not be renewed (2-1 (5) of the Guidelines).

### **b) Regulations concerning dismissals**

The regulation on abuse of the right of dismissal (Article 18-2 of the Labour Standards Law) is applied in the same manner to regular employees and to part-time workers employed under indefinite-term contracts, and dismissing these workers requires an objectively rational explanation. In this case too, what constitutes a rational explanation for dismissal is defined more loosely for part-time workers. However, when the working hours of part-time workers is identical to those of regular employees and they have worked under indefinite-term contracts for many years,

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<sup>11</sup> The *Zenkoku Shakai Hoken Kyokai Rengokai* case, Kyoto District Court, September 10, 2001, *Rohan* No. 818, p. 35 ruled against the non-renewal of a contract.

dismissals of these workers will be regulated more strictly in accordance with the degree to which they can reasonably expect continued employment.<sup>12</sup> Moreover, the provisions concerning dismissals (Article 19), dismissal notification (Article 29) and notification of retirement (Article 22) of the Labour Standards Law also apply to these workers.

### **5.7 Skills Development and Promotion to Regular Employee**

In promoting balanced treatment of part-time workers, it is important to provide them with opportunities to develop their skills, and core part-time workers and fulltime part-time workers are demanding the opportunity to be promoted to regular employee. To address this issue, the Guidelines require that employers not only provide opportunities for part-time workers to receive education, training and skills development (3-2 (1)), but also to give priority to part-time workers, in terms of access to information and application opportunities, when hiring regular employees (3-2 (6)). The revised 2003 Guidelines will be discussed in the next section.

## **6. Legal Policy concerning Part-time Work**

### **6.1 Study Group Report on Part-time Workers and the Revised Guidelines**

The existing legal policy concerning career formation and balanced treatment of part-time workers has been discussed above, and, as argued at the onset of this article, and moving forward on this issue is a task for the future. As discussed above also, it is necessary to promote measures that encourage part-time workers to become regular employees while maintaining the position that part-time work is a desirable employment opportunity when tackling this task. Based on such an understanding, the “Study Group on Part-time Workers” within the Ministry of Health, Labour and Welfare issued its final report entitled *Problems concerning Part-time Work and Direction of Response (Final Report of the Study Group on Part-time Workers)* in July 2002. Based on this report, the following section of the article will examine problems concerning legal policy.

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<sup>12</sup> There is a case in which the court ruled that a dismissal of a part-time English-language typist was a case of abuse of the right of dismissal. See the *Wakita* case, Osaka District Court, December 1, 2000, *Rohan* No. 808, p. 77.

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The final report proposes “rules on Japanese-style balanced treatment” for part-time workers, rules that are based on the “idea of balance.” They require that the “principle of equal treatment” be applied to part-time workers who are engaged in duties identical to those of regular employees and who are employed under the same career management schemes (professional responsibilities and functions, freedom to determine working hours, and extent and frequency of personnel moves). At the same time, the rules also stipulate that the employer has a “duty to consider the balanced treatment” of part-time workers who are engaged in duties identical to those of regular employees but who are employed under different employment management schemes. However, both stipulations are not intended to require balanced and equal treatment of part-time workers in a uniform fashion. The main objective of the principle of equal treatment is to devise similar methods for determining the treatment of part-time workers with that of regular employees, and the duty to consider balanced treatment means that employers should implement various measures with the goal of achieving the balanced treatment of part-time workers. In this sense, these are rules for promoting initiatives by labor, management and companies, and they can be regarded as an example of Japanese-style soft-law regulations. In terms of specific measures, the rules recommend the introduction of performance-based personnel management and treatment for part-time workers, the creation of employment types that fall between regular employment and part-time employment such as “part-time regular employees” and guarantee the mobility among different employment types, and the participation of part-time workers when making decisions about their treatment. By inducing companies to implement such measures, the rules aim to promote equal and balanced treatment of part-time workers. As mentioned, the focus of labor policy for part-time workers should be “balanced treatment” with regular employees, and this should be achieved through rules that support the independent initiatives of companies, labor and management rather than forceful legal intervention into the labor market. From this standpoint, the rules seem appropriate.

The Guidelines were subsequently revised in 2003 following discussions in the Labor Policy Council’s Subcommittee on Employment Equality. The revision reflects much of the final report discussed above. In

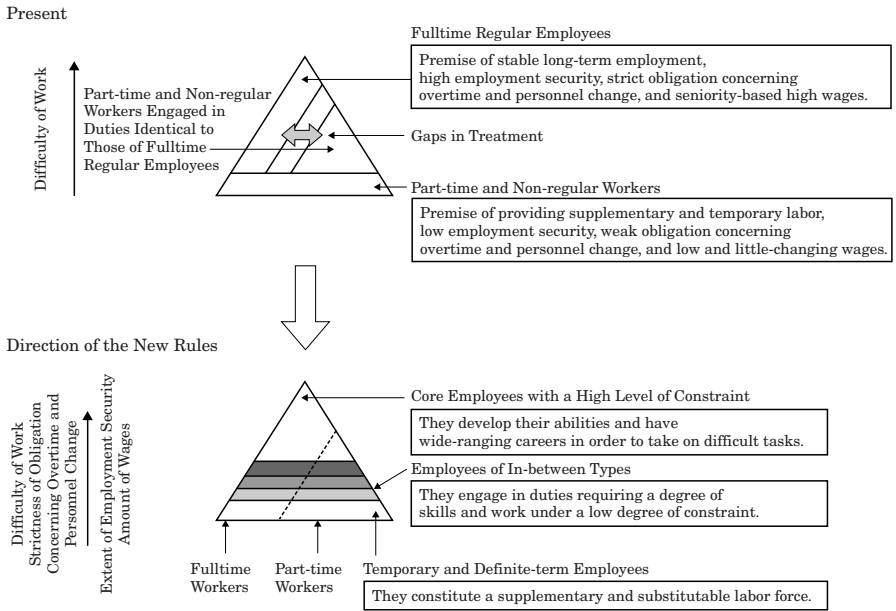


terms of basic rules, the revised Guidelines require that the employer maintain a balance in treatment between regular employees and part-time workers who are engaged in the same duties and employed under the same career management schemes and conditions by standardizing the methods used to determine their treatment. As for those employed under different employment management schemes and conditions, the Guidelines stipulate that the employer must try to maintain balanced treatment for part-time workers by basing their treatment according to the individual worker's ability, experience and performance (2 of the revised Guidelines). In term of specific rules to secure balanced treatment, the revised Guidelines lay out the following:

- 1) The employer should make arrangements to facilitate the conversion from part-time employment to regular employment, such as establishing a regular employee conversion program, skills development for conversion, and provision of pertinent information (3-2 (7)).
- 2) The employer should implement measures such as applying promotions, pay raises and personal evaluation systems to part-time workers to match their treatment to that of regular employees according to duty, willingness, experience and performance (3-3).
- 3) The employer should devise mechanisms to facilitate discussion between labor and management to deal with such matters as explaining treatment, listening to opinions, and handling complaints (3-5).

Hence, recommendations contained in the *Final Report of the Study Group on Part-time Workers* are reflected in the revised Guidelines, but the Guidelines have failed to adequately incorporate the *Final Report's* recommendation to develop a diversified employment system (creating an intermediate type of employee). The *Final Report* recommends the development of a pluralistic employment system as a way to achieve the balanced treatment of and career formation for part-time workers, and proposes to transcend the current employment system based the traditional dichotomy with part-time workers/non-regular employees playing only supplementary roles vs. fulltime regular employees. The report envisions "in-between" employees to be those who are "engaged in duties requiring a certain degree of skill but placed under a lower degree of constraint," and cites part-time regular employees, employees whose areas of employment

**Figure 1. Pluralizing the Employment System  
(Conceptual Diagrams of Corporate Employment Management)**



- 1 Pluralistic systems concerning employment security, levels of constraint (such as overtime and personnel change), and wages/ treatment will be created.  
Choices for workers will be expanded, and employment flexibility of companies will be increased.
- 2 Fulltime employees preferring a low level of constraint and part-time employees engaged in core duties will constitute employees of in-between types.
- 3 Regardless of part-time or fulltime, methods for determining treatment of employees concerning overtime and personnel change will be standardized by, for example, using the same wage chart.
- 4 A balance in treatment will be maintained even among employees of different types.

Source: "Career formation of part-time workers and balanced treatment" Figure 32

are stipulated, and core part-time workers as examples of such in-between types of employee.

Such a policy should be significant from the standpoint of achieving the balanced treatment of and career formation for part-time workers. Regarding the balanced treatment of part-time workers, the policy would facilitate treatment and career formation for part-time workers that would match different individual circumstances by creating varying employment types, including for regular employees.

In particular, the policy would contribute to the career formation of core part-time workers as it would situate them as “in-between” type employees and facilitate the development of evaluation, treatment and skill development systems that are appropriate for this position. In fact, many companies that actively utilize part-time workers are creating detailed employment management classification systems for them, utilizing systematic personnel evaluation and qualification systems, and actively supporting their skills development. Recent studies also show that companies which conduct meticulous personnel management by classifying employees into various employment types tend to maintain a better balanced treatment for part-time workers,<sup>13</sup> and such methods are bringing positive results to their business performance.<sup>14</sup> Therefore, when promoting career formation for part-time workers it is necessary to devise a comprehensive personnel management system combining evaluation, wage and treatment as well as skill development systems, and to achieve balanced treatment. Regarding diversification of employee types, promoting balanced treatment not only between part-time workers and regular employees but also among part-time workers who are classified differently according to employment type will be an important policy issue.<sup>15</sup>

This policy would also be effective in encouraging conversion of part-

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<sup>13</sup> Hiroki Sato, Yoshihide Sano, and Hiromi Hara, “Koyo Kubun no Tagenka to Jinji Kanri no Kadai (Pluralizing of Employment Types and Problems for Personnel Management).” *Nihon Rodo Kenkyu Zasshi* 518 (2003), p. 31.

<sup>14</sup> Maeko Nishimoto and Koichiro Imano, “Paato wo Chushin ni shita Hiseishain no Kinko Shogu to Keiei Pafomansu (Balanced Treatment for Non-regular Workers Focusing on Part-time Employees and Business Performance).” *Nihon Rodo Kenkyu Zasshi* 518 (2003), p. 47.

<sup>15</sup> Sato, Sano, and Hara (cited in footnote 13), p. 45.

time employees to regular employees. Because regular employment offers better employment opportunities from the standpoint of developing a worker's career, developing a route to regular employment for part-time workers is important. However, if regular employment were limited to fulltime regular employment with a high degree of constraint, the notion of becoming a regular employee would only be "pie in the sky" as both employers and part-time workers would be hesitant to commit under such a condition. It is possible to encourage part-time workers to become regular employees more easily and to increase their conversions to regular employee by incorporating various types of workers into the category of in-between type of employees and creating various forms of employment for regular employees.<sup>16</sup> This would also support the creation of a mechanism in which workers could move continuously among the varying forms of work styles in accordance with their different life stages.<sup>17</sup> Regarding the issue of diversification of regular employment, it is important to consider various types of in-between employees, such as home-based workers, workers with flexibility concerning discretionary labor, and regular employees with definite-term contracts as well as the aforementioned part-term regular employees, employees with specified areas of employment, and employees with specified duties.<sup>18</sup>

In moving forward with such a policy, it is also important to take measures that would make the hiring of regular employees attractive for companies. The key concept in this case is achieving a balance in treatment among various types of regular employees. Just as in the case of balancing treatment between part-time workers and regular employees, maintaining reasonable differences between regular employees with a low constraint (regular employees with in-between status) and fulltime regular employees is permissible and lawful, and companies should be allowed to do so in order to reduce their excess costs. Because regular employment will take various forms, however, carefully considering the correct balanced treatment for each type of regular employee is necessary.

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<sup>16</sup> Norio Hisamoto, *Seishain Runessansu* (Renaissance for Regular Employees) (Chuo Koronshinsha, 2003) advocates the promotion of career formation based on a "diverse regular employee" model.

<sup>17</sup> The example of Daiei is well known for introducing such mechanisms. See *Rosei Jiho* 3551 (2003), p. 3.

<sup>18</sup> Concerning this point, discussions in *Shigoto to Seikatsu no Chowa ni kansuru Kento Kaigi Hokokusho* (Study Group Report on Balancing Work and Life) is useful.

## 6.2 Direction of Legal Regulations

The *Final Report* suggests incorporating a general legal norm (the idea of balance) into the Part-time Work Law that can be used as a basis for the rules governing Japanese-style balanced treatment, but this suggestion is not included in the revised Guidelines. However, promotion of balanced treatment and career formation for part-time workers is a desirable goal for workers, companies and society as a whole, and now is the time to stipulate it as a basic norm in the Part-time Work Law. Of course, actual activities for realizing balanced treatment should be left to the initiatives of labor, management and companies, and the Guidelines should only support them. Nevertheless, it is necessary to establish a clear norm in the Part-time Work Law in order to promote such activities, and this is a matter that needs to be urgently addressed.

## 6.3 Other Issues

The problem with part-time labor contracts not being renewed has already been discussed. It is possible that the anxiety and disputes related to part-time workers under definite-term contracts are reducing their incentive to take on a career. The 2003 revision of Article 14 of the Labour Standards Law set standards for concluding, renewing and not renewing definite-term labor contracts, and the government is to provide advice and recommendations (Paragraph 2 and 3, Article 14 of the Labour Standards Law). The core of this change is the requirement that the employer clearly present “standards for deciding to renew or not renew” a definite-term labor contract (Ministry of Health, Labor and Welfare Notification No. 357, October 22, 2003). Companies will be required to establish these standards in a clear fashion and to provide explanations.

As previously mentioned, part-time workers are treated differently in the tax and social insurance systems and this contributes to the problem of work adjustment among part-time workers. It is necessary to modify these systems as well into systems that will be fair for all working styles and to remove barriers that prevent the career formation of part-time workers while promoting the balanced treatment of and career formation for part-time workers within companies.