
Japan's Employment Measures for Persons with Disabilities: Centered on Quota System of "Act on Employment Promotion of Persons with Disabilities"

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This paper introduces the history and specific contents of "Act on Employment Promotion of Persons with Disabilities" which forms the foundation of Japan's measures for employment of persons with disabilities. The system of "mandatory employment of persons with disabilities" based on the Act on Employment Promotion of Persons with Disabilities consists of the following two pillars: (i) a quota system which obligates employers to employ a certain percentage or more of persons with disabilities and (ii) a payment system for employment of persons with disabilities which charges employers a sanctions when they cannot achieve the legally-prescribed minimum employment rate. In this paper, I will precisely explain the contents of the law which has been amended repeatedly to deal with facing various problems and examine future issues bringing the realities of employment of persons with disabilities and the enactment of an antidiscrimination law for persons with disabilities into view. Readers will be able to obtain an overall grasp of Japan's measures for employment of persons with disabilities.

I. Introduction

1. Convention on the Rights of Persons with Disabilities

The Convention on the Rights of Persons with Disabilities was adopted by the 61st United Nations General Assembly on December 13, 2006. The purpose of the convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity (Article 1). As a means to accomplish this purpose, the convention upholds the prohibition of discrimination on the basis of disability and requires the states parties to realize it. 142 countries and European Committee have already signed and 76 countries have ratified the convention as of December 14, 2009. This approach, "prohibition of discrimination on the basis of disability," has gradually expanded around the world since the United States legislated Americans with Disabilities Act of 1990. As you can see the number of countries which ratified the Convention on the Rights of Persons with Disabilities, some kinds of "prohibition of discrimination on the basis of disability" have been implemented in many countries.

Japan has signed the convention but not ratified yet. Japan is now developing domestic legislation toward early conclusion of it, but due to regime change which took place in August 2009, discussions on specific contents of domestic legislation which needs for the conclusion have been continued. In the area of employment, discussions on the response to the Convention on the Rights of Persons with Disabilities including the enactment of an antidiscrimination law for persons with disabilities have been held in the Sectional Meeting on Employment of Per-

sons with Disabilities, the Labor Policy Council of the Ministry of Health, Labour and Welfare.

2. Japan's Employment Measures for Persons with Disabilities: Quota Approach

As mentioned above, it is true that "prohibition of discrimination on the basis of disability" approach is of increasing importance. In Japan, however, "quota" approach which obliges employers to employ a certain percentage of persons with disabilities and imposes sanctions against those who fail in their obligation has been traditionally adopted and has a major impact on the employment of persons with disabilities. This quota approach has been implemented under the Act on Employment Promotion etc. of Persons with Disabilities (hereinafter referred to as Act on Employment Promotion of Persons with Disabilities). The importance of this quota approach never changes even after the enactment of an antidiscrimination law for persons with disabilities. Therefore, I will examine Japan's employment measures for persons with disabilities centered on "quota system" of Act on Employment Promotion of Persons with Disabilities as follows: introduction of establishment processes, amendment details (II) and contents (III) of Act on Employment Promotion of Persons with Disabilities, analysis of the employment reality of persons with disabilities (IV) and discussions on the future issues (V).

II. Historical Development: Establishment and Development of Act on Employment Promotion of Persons with Disabilities

1. Process toward "Act on Employment Promotion of Persons with Disabilities" Established in 1960

People need to earn an income for a living in some way. One of the most effective measures for that is working. However, it is difficult for persons with disabilities to ensure employment opportunities equal to those without disabilities. Therefore, various measures have been implemented for the purpose of promoting employment of persons with disabilities.¹

However, it is not so long ago that governments responsibly began to implement a variety of measures for persons with disabilities. It was recognized that the care of persons with disabilities should be addressed by the family or charity relief works in not only Japan but also other countries. Such recognition was changed by a large number of persons with physical disabilities caused by two world wars. As a result, the need of national comprehensive measures for persons with disabilities was recognized (Hori 1961, 20). In Japan, although the government has implemented measures for soldiers with disabilities since around the First World War, measures for general persons with physical disabilities have been implemented far later, after the Second World War (Tezuka 2000, 111). Soldiers-oriented measures were expanded to all the people with disabilities mainly by the policy of the allied forces during their occupation of Japan (Hori 1961, 32).

¹ For disability pension which is essential for life security of persons with disabilities, see Momose (2008).

After the Second World War, measures for employment promotion of persons with disabilities were implemented as an emergency and have been implemented with a unique system since 1952. However, since the measures for employment promotion of persons with disabilities were “administrative measures” at that time, the effect was limited and the employment situation of persons with disabilities remained stagnant (Hori 1961, 53-54; Yamada 1992, 40-42).

In addition to such domestic situation, Japanese government was affected by foreign situations, i.e., many foreign countries have already legislated acts on employment promotion of persons with physical disabilities and International Labour Organization Assembly adopted “Recommendation on Rehabilitation of Persons with Disabilities” (ILO Recommendation No. 99) in 1955 and was driven by necessity to take not only “administrative measures” but also some “legal measures” (Soya 1998, 55).

Discussions on a concrete proposal for the bill began in the spring of 1958 and an outline for Act on Employment Promotion of Persons with Physical Disabilities was finally compiled at the end of the next year. After gaining approval from all committees, this outline was submitted as a proposal for Act on Employment Promotion of Persons with Physical Disabilities from the Cabinet to the House of Representatives in February 1960. Major issues which were especially addressed in the process of discussions on this proposal were: (i) scope of persons with physical disabilities, (ii) pros and cons of mandated employment of persons with disabilities in major enterprises and (iii) securing the effectiveness of the act if the employment of persons with disabilities is not forced (Soya 1998, 55).

As for (i), there was a problem whether or not persons with physical disabilities include persons who recovered from tuberculosis or persons with intellectual disabilities and it was decided to exclude those persons from the scope of disabilities because of a lack of explicit criterion (Hori 1961, 108-10). Regarding (ii) and (iii), private companies were not forced to employ persons with disabilities but required to make efforts to do from the perspective that since employment relationship is based on human relations, the welfare of persons with physical disabilities is not truly improved by mandated employment and employment settlement and promotion of persons with physical disabilities are secured on the basis of understanding and cooperation of employers (Soya 1998, 56).

After the substantive deliberation and hearing from witnesses in the Committee on Social and Labour Affairs, etc. of the House of Representatives, this bill was enacted on 15 July, issued on 25 July and enforced on 26 July 1960. The Act on Employment Promotion of Persons with Physical Disabilities 1960 legislated through above processes had a significant meaning as Japan’s first law for measures for employment of persons with disabilities. However, this Act had the following serious problems: (i) the quota system should have set up a certain employment rate of persons with disabilities but private companies were required to set a challenge (field work: 1.1%, office work: 1.3%)² only³ and (ii) as indicated by the name of the Act, the scope

² Public corporations were required to set a challenge (field work: 1.3%, office work: 1.5%).

of persons with disabilities is limited to those with “physical” disabilities, i.e., it was lack of attention to persons with severe disabilities (Yamada 1992, 46). Since then this Act has been amended repeatedly in order to solve these problems and improve the contents.

2. Processes toward the Amendment of the Act in 1976: Mandatory Employment and Introduction of Payment System

The employment situation of persons with physical disabilities has gradually developed after the enforcement of the Act in 1960. It is said that this was the result of the Act and also caused by another factor, i.e., a significant impact of young labor shortage which occurred in connection with high economic growth starting from 1960.⁴ The labor shortage associated with high economic growth which turned from the postwar labor glut brought about a change in Japan's employment policy and the Employment Measures Act whose policy objective was “achievement of full employment” was enacted in 1966.

Looking at the employment situation of persons with physical disabilities by company size and industry, however, the larger the company size was, the lower the actual employment rate of persons with disabilities became and the higher the rate of unachieved full employment became. There was also a significant difference of achievement rate of full employment between industries. This caused a sense of injustice on the basis of unfair financial burden accompanied with employment of persons with disabilities while the economic crisis triggered by the oil crisis of 1973 accelerated the escalation of problems on the employment of persons with disabilities.

The government then began serious consideration of the amendment of the Act on Employment Promotion of Persons with Physical Disabilities from 1975 in order to (i) reinforce employers' mandatory employment of persons with physical disabilities⁵ and (ii) set up a payment system to financially back up as the fundamental direction. Based on a report by the Employment Council for Persons with Physical Disabilities, the Ministry of Labour advanced preparations of an amendment bill and submitted it to the ordinary session of the Diet. The bill was passed by a vote in the Lower House plenary session and “Act on the Partial Revisions of Act on Employment Promotion of Persons with Physical Disabilities and Act on Special Measures concerning Employment Promotion of Middle-aged and Older Persons” was enacted (issued on May 28, 1976 and enforced on October 1, 1976).

³ Mandatory employment was adopted by the government and local authorities (governmental organization: 1.4%, clerical organization: 1.5%).

⁴ Persons with physical disabilities who had rarely been regarded as regular workforce before were positively taken by companies, especially small and medium sized ones (see Yamada [1992, 47-48]).

⁵ As for strengthening of mandatory employment, the relationship with free choice of employment including free of business which is guaranteed by Article 22 of Japanese Constitution was addressed as a problem. Contents of “public welfare” in Article 22 of Japanese Constitution, purpose and contents of regulation, property, contents and degree of free of business to be regulated, etc. were considered. The conclusion was that there was no problem unless obliged with punishment (see Soya [1998, 88]).

The basic concept of the Act amended in 1976 was that since only employers who directly manage workplaces can offer employment to persons with disabilities, all employers shall have corporate responsibilities to offer employment to persons with physical disabilities who are willing to and able to work based on the concept of social solidarity and persons with physical disabilities shall make efforts to support themselves as business workers while the government shall play a central role in the implementation of measures as a matter of course (Endo 1976, 32).

From a perspective of this concept, a basic framework for Japan's measures for employment promotion of persons with disabilities was completed. Specifically, the Act amended in 1976 (i) converted the responsibility of private employers from obligation to make effort to employ persons with disabilities to obligation to employ them (at the same time, the legally-prescribed minimum employment rate for persons with disabilities was lifted by 0.2 point, i.e., that of private companies became 1.5%) and (ii) established a payment system for employment of persons with physical disabilities which charges employers a penalty when they cannot achieve the legally-prescribed minimum employment rate and supplies benefit adjustment money to those who employ a lot of persons with disabilities more than that rate. In addition, (iii) a double counting system which regards employment of one person with severe disabilities (first or second grade of disability provided by Act on Welfare of Persons with Physical Disabilities) as employment of two persons with disabilities, (iv) a disclosure system which discloses names of companies employing persons with disabilities less than the legally-prescribed minimum employment rate in order to ensure implementation of mandatory employment and (v) a notification system in which employers must notify when firing persons with disabilities were introduced.

3. Processes toward the Amendment of the Act in 1987: Expanding the Definition of Persons with Disabilities

Since employment of persons with physical disabilities became a legal obligation in 1976, the employment situation of persons with disabilities had been improved year after year. Especially, it showed a drastic improvement around 1981, the International Year of Disabled Persons. Since 1983, however, the actual employment rate of persons with physical disabilities had shown a modest rise and showed little improvement in 1986. Increased turnover rate of persons with disabilities and difficulties of continued employment/return-to-work of persons with acquired disabilities are cited as factors of this situation, and the society began to recognize the need for the improvement of measures for the stabilization of employment. At the same time, expansion of the quota system to persons with intellectual disabilities became a problem. In addition to such domestic situation, the law amendment became unavoidable due to international relationship.⁶ The international movements on concerns of persons with disabilities were

⁶ During this time, legal changes were conducted in 1980, i.e., subsidies based on the payment system

U.N. resolution on “International Year of Disabled Persons” in 1981 and the adoption of ILO Convention No. 159 on Vocational Rehabilitation and Employment (Disabled Persons) in 1983, and its accompanying Recommendation No. 168.

Following these requests from home and abroad, the government advanced preparations of an amendment bill from July 1986. The amendment bill submitted to the 108th ordinary session of the Diet was unanimously approved and enacted in February 1987 and issued on June 1, 1987. The major revised points of the Act in 1987 are as follows: (i) the coverage of the Act is not only persons with physical disabilities but expands to all persons with disabilities including those with intellectual and mental disabilities and (ii) in accordance with this expansion, the name of the Act has changed from Act on Employment Promotion of Persons with Physical Disabilities to Act on Employment Promotion etc. of Persons with Disabilities. Although the obligation of employment was postponed, the number of persons with intellectual disabilities was included for the calculation of actual employment rate.⁷ Moreover, in order to deal with issues of persons with acquired disabilities, a subsidy system for continued employment of them was newly created.

According to a survey on the actual employment of persons with physical disabilities conducted in 1986, the percentage of persons with disabilities which is the standard of setting legally-prescribed minimum employment rate showed a gradual increase and looked set to exceed 1.6% in the near future. Therefore, the governance ordinance was revised, i.e., the legally-prescribed minimum employment rate for persons with disabilities was lifted by 0.1 point (1.6% for private companies) from April 1, 1988.

4. Processes toward the Amendment of the Act in 1997: Mandatory Employment of Persons with Intellectual Disabilities

Although mandatory employment of persons with intellectual disabilities was not legislated at the stage of the amendment of the Act in 1987, there was an exception that the number of persons with intellectual disabilities who are currently employed is included in the calculation of the actual employment rate and that had an impact on the employment of persons with physical disabilities. The need for additional consideration on mandatory employment of persons with intellectual and mental disabilities arose and meetings of the Employment Council for Persons with Disabilities were held in September 1996 and January 1997. According to opinions from the council, since the understanding of persons with intellectual disabilities has been deepened and the employment has been developed, it is time to add them to the standard for

for employment promotion for persons with severe disabilities expanded and the payment amount increased. After that, the law was amended again in 1984 aiming at transfer of payment-related operations and expansion of the scope of persons with disabilities.

⁷ Concerning mandatory employment of persons with intellectual and mental disabilities, however, since judgment of vocational capability is difficult, occupation field is limited, it takes time and effort for occupational adjustment and vocational training, etc., it was determined not to apply the quota system immediately (See Soya [1998, 202]).

calculating legally-prescribed minimum employment rate. The council also expressed an opinion on persons with mental disabilities that the history of measures for them is short so it is too early to apply the employment rate system.

In accordance with the opinions from the council, the Ministry of Labour advanced preparations of an amendment bill and submitted it to the ordinary session of the Diet. The bill was passed by a vote in the Lower House plenary session and the amended Act was enacted (issued on April 9, 1997 and enforced on July 1, 1998). The major revised points of the Act in 1997 are as follows: (i) the scope of the mandatory employment system expands to those with intellectual disabilities, (ii) the legally-prescribed minimum employment rate of private companies arises from 1.6% to 1.8%.

5. Processes towards the Amendment of the Act in 2005: Strengthening of Employment Measures for Persons with Mental Disabilities

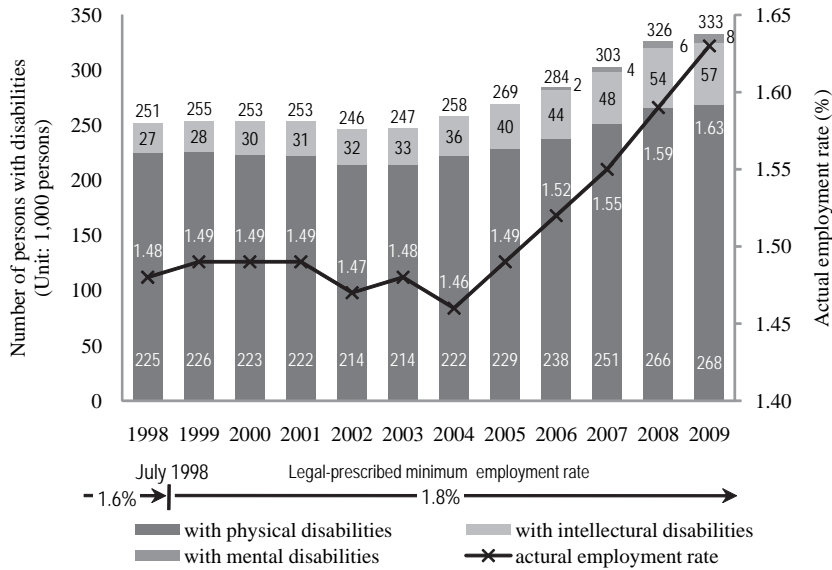
The Labor Policy Council of the Ministry of Health, Labour and Welfare came out with “future improvement and strengthening of measures for employment of persons with disabilities” on December 15, 2004. Based on this, a bill to amend the Act on Employment Promotion of Persons with Disabilities was approved in a Cabinet meeting on February 10, 2005 and enacted on June 29, 2005 (enforced on April 1, 2006 with some exception). The amendment of the Act in 2005 was aimed at promoting various measures for expansion of employment opportunities for persons with disabilities in order to support workers with disabilities and those who want to work.

The major revised points of the Act 2005 are as follows: (i) measures for employment of persons with mental disabilities was strengthened; although mandatory employment was rejected, currently employed persons with mental disabilities who hold certificates of mental disabilities were included for calculating the actual employment rate, and (ii) the Act encourages companies to place orders in order to support work-at-home employed persons with disabilities. Regarding (i), given the fact that many of persons with mental disabilities get tired easily so it is difficult to work long hours, a part-time worker who works for 20 hours or over but less than 30 a week is counted as 0.5 persons for calculating the actual employment rate. Since persons with mental disabilities are included in the calculation of the actual employment rate, raising of the legally-prescribed minimum employment rate should be considered. However, since many companies still have a poor understanding of the employment of persons with mental disabilities and do not quite understand how to manage their employment, the government left the legally-prescribed minimum employment rate unchanged, 1.8%.

6. Processes toward the Amendment of the Act in 2008: Employment Promotion of Persons with Disabilities in Small and Medium Sized Companies and Review of the Employment Rate System Corresponding to Part-Time Workers

As shown in Figure 1, although the actual employment rate of persons with disabilities dropped to 1.46 in 2004, thereafter it showed upward trend due to increasing corporate social

Japan's Employment Measures for Persons with Disabilities



Source: Ministry of Health, Labour and Welfare, *Press Release* (November 20, 2009), p. 6.

<http://www.mhlw.go.jp/stf/houdou/2r9852000002i9x-img/2r9852000002ibf.pdf>.

Notes: 1. Companies with 56 or more of employees which are obliged to employ persons with disabilities were surveyed.

2. ‘Number of persons with disabilities’ means total number of the following persons:

Up to fiscal year 2005:

Persons with physical disabilities (a person with a severe physical disability is counted as two people)

Persons with intellectual disabilities (a person with a severe intellectual disability is counted as two people)

Part-time workers with severe physical disabilities

Part-time workers with severe intellectual disabilities

From fiscal year 2006:

Persons with physical disabilities (a person with a severe physical disability is counted as two people)

Persons with intellectual disabilities (a person with a severe intellectual disability is counted as two people)

Part-time workers with severe physical disabilities

Part-time workers with severe intellectual disabilities

Persons with mental disabilities

Part-time workers with mental disabilities

Figure 1. The Actual Employment Rate of Private Companies and the Number of Employed Persons with Disabilities

responsibility of major companies and utilization of special subsidiary system (to be described below), especially many companies with 1,000 or more of regular workers achieved the high actual employment rate. On the other hand, the actual employment rate of small and medium sized companies with 300 or less of regular workers remained low (see Figure 2) and the government had to focus on employment promotion of persons with disabilities in small and medium sized companies. The mandatory employment of persons with disabilities was based on regular employment with 30 or more working hours a week and that interfered the acceptance

Table 1. Counting Method for Actual Employment Rate

Scheduled working hours a week	30 hours or longer	20 hours or more but less than 30
Persons with physical disabilities	○	△
With severe disabilities	◎	○
Persons with intellectual disabilities	○	△
With severe disabilities	◎	○
Persons with mental disabilities	○	△

Revised points of the law 2008

○: Counted as one person

◎: Counted as two people (double counting)

△: Counted as 0.5 persons

Source: Ministry of Health, Labour and Welfare.

of persons with disabilities who had a difficulty in working full-time and wished to work part-time into private companies.⁸

In order to solve these problems, a bill to amend the Act on Employment Promotion of Persons with Disabilities was submitted to the 169th ordinary session of the Diet on March 7, 2008. After the continuous deliberation, the amendment bill was passed into law at the 170th ordinary session of the Diet (enacted on December 29, 2009 and will be enforced from April 2010 in stages).

The major revised points of the Act 2008 are as follows: (i) Although private companies with 300 or less of regular workers were exempted from the payment system for employment of persons with disabilities before in consideration of their capacity, in order to promote the employment of persons with disabilities at small and medium sized companies, the payment system has also been applied to companies with 101 or more of regular workers but 300 or less⁹ and (ii) part-time workers with disabilities working for 20 hours or more but less than 30 a week have been included in the scope of mandatory employment so that the quota system can be applied to part-time work and a part-time worker with a disability is counted as 0.5 persons for calculating the actual employment rate (see Table 1).¹⁰

⁸ For the background of the amendment of the law in 2008 and discussion at this stage, see Fujii (2008).

⁹ It will be applied to companies with 201 or more of regular workers but 300 or less from July 1, 2010 and to those with 101 or more of regular workers but 200 or less from July 1, 2015.

¹⁰ Part-time workers with mental disabilities were counted as 0.5 persons for calculating the actual employment rate before the amendment of the law in 2008 (see II. 5).

III. Act on Employment Promotion of Persons with Disabilities

As mentioned above, since Act on Employment Promotion of Persons with Physical Disabilities was enacted in 1960, the law has been amended repeatedly to improve the contents. I will detail measures for employment of persons with disabilities based on the current Act on Employment Promotion of Persons with Disabilities below while I briefly mentioned them at above processes toward the amendment of the law:¹¹

1. Quota System and Payment System for Employment of Persons with Disabilities

(1) Quota System

In accordance with Act on Employment Promotion of Persons with Disabilities, private companies, the government, local authorities, etc. are required to employ a certain percentage (legally-prescribed minimum employment rate) or more of persons with disabilities (quota system). This system charges employers a penalty when they cannot achieve the legally-prescribed minimum employment rate and supplies benefit adjustment money to those who employ persons with disabilities more than that rate (payment system for employment of persons with disabilities). As above, measures for employment of persons with disabilities on the basis of Act on Employment Promotion of Persons with Disabilities roughly consists of two systems, (i) quota system and (ii) payment system for employment of persons with disabilities.¹²

The current legally-prescribed minimum employment rate for private companies is 1.8%, i.e., private companies' employers are obliged to employ one person with disabilities per 56 employees.¹³ The method of calculating the percentage of employed persons with disabilities is slightly complicated as a result of repeated amendment of the law (see Table 1). Regular employment with 30 or more working hours a week is the basis of calculating the actual employment rate and a person with a disability with such employment status is counted as one person for the employment rate. Given that employment of persons with severe disabilities is generally difficult, an employed person with a severe physical or intellectual disability is counted as two people (double counting).¹⁴ A part-time worker with a severe disability is counted as one person for the employment rate. A part-time worker with a disability working 20 hours or more but less than 30 is counted as 0.5 persons.

¹¹ Regarding employment system for persons with disabilities, see Kudo (2008, 4-16) and Cabinet Office (2009, 56 ff.).

¹² Act on Employment Promotion for Persons with Disabilities also defines vocational rehabilitation, but that is not discussed in this paper.

¹³ The legally-prescribed minimum rate of special public corporations, the government and local authorities is 2.1%. That of prefectural education boards is 2.0%.

¹⁴ Since there is no classification of "severe," a person with mental disability is not counted as two people.

(2) Persons with Disabilities Covered by Quota System

This quota system covers persons who hold certificates of disabilities in principle and the law providing a legal basis depends on class of disabilities. That is, in the case of persons with physical disabilities, the law providing a legal basis is Physically Disabled Persons Welfare Act, the class of disabilities is determined in the light of Appendix No. 5 of the Ordinance for Enforcement of the Act on Welfare of Physically Disabled Persons and the physical disability certificate is issued by the prefectural governor. Concerning persons with intellectual disabilities, although there is no legal definition on intellectual disabilities, under a notification, “Implementation of Therapeutic Education” from the Ministry of Health and Welfare in 1973, child consultation offices and welfare consultation offices for persons with intellectual disabilities judge and issue a certificate to persons under 18 years of age and those aged 18 or over respectively. Regarding persons with mental disabilities, the prefectural governor issues a certificate of mental disabilities in the light of definitions of the Act on Mental Health and Welfare of the Mentally Disabled (persons with integration disorder syndrome, acute poisoning caused by psychotomimetic agent or its addicted, intellectual disabilities or mental disorder including psychopathy).

(3) Payment for Employment of Persons with Disabilities

The purpose of the payment system for employment of persons with disabilities is to adjust economic burdens associated with employment of persons with disabilities between employers as well as offering subsidies to raise the entire employment level. The monthly penalty amount are paid by employers who cannot achieve the legally-prescribed minimum employment rate for persons with disabilities (1.8%); $50,000 \text{ yen} \times \text{number of persons below the rate}$. The monthly penalty to employers of companies with 300 regular workers or less who are newly included in the scope of the payment system by the amendment of the Act in 2008 will decrease to 40,000 yen for the first five years as a special exception.

The monthly benefit adjustment money is supplied to employers who employ persons with disabilities more than the legally-prescribed minimum employment rate; $27,000 \text{ yen} \times \text{number of persons over the rate}$.

Due to the characteristic of the payment system aimed at adjusting economic burdens associated with employment of persons with disabilities, it does not charge any penalty to the government, local authorities and education boards.

2. Special Subsidiary System

The special subsidiary system is that when an employer establishes a subsidiary with special consideration to persons with disabilities (hereinafter referred to as special subsidiary), workers who are employed in the special subsidiary can be regarded as employed in the parent company for calculating the actual employment rate under given requirements.

There are advantages for employers: jobs taking into account the property of disabilities can be secured and arrangement of work environment becomes easier. As a result, it brings out

the latent potential of persons with disabilities and employers can expect an increase in job retention rate of persons with disabilities and improvement of productivity. There are also advantages for persons with disabilities. Job opportunities expand and they can work under ideal working environment. The special subsidiary system has received attention mainly from major companies and the number of those which introduce this system has increased.¹⁵

3. Various Subsidy Systems for Employers

Various subsidies are provided to employers who employ persons with disabilities. A representative one is the subsidy system based on the payment for employment of persons with disabilities. In particular, when employers establish or arrange working facilities/equipment for persons with disabilities, take administrative measures for employment such as commission of sign-language interpret or assistance at workplace or foster in-house personnel who are familiar with working environment or work contents as job trainers to support for work commitment, subsidies are provided on the basis of the payment for employment of persons with disabilities in order to reduce economic burdens of these employers and promote and continue the employment of them (Cabinet Office 2009, 65).

In addition, various measures to support the employment of persons with disabilities have been taken, e.g., subsidies are provided to employers who established special subsidiaries, special tax benefits are provided to employers who employ many people with disabilities, etc.

4. Administrative Guidance toward the Achievement of Legally-Prescribed Minimum Employment Rate for Persons with Disabilities (Public Announcement of Company Names)

In order to ensure the achievement of legally-prescribed minimum employment rate for persons with disabilities and charge penalties for failure to employ persons with disabilities, each employer is obliged to report the employment situation of persons with disabilities as of June 1 every year. In accordance with the report, if the actual employment rate is lower than the minimum employment rate, the employer is ordered to prepare a three-year plan of employing persons with disabilities by the director of local public employment office. Companies which default the implementation of this plan will be advised to properly implement the plan and especially those which are delayed in improving the employment situation for persons with disabilities will receive a special guidance. If companies cannot achieve the legally-prescribed minimum employment rate and there is a huge gap between the minimum employment rate and actual employment rate, names of the companies may be eventually disclosed in public. The number of companies whose names were disclosed in public is: one in fiscal year 2003 and 2004, two in fiscal year 2005 and 2006, three in fiscal year 2007 and four in fiscal year 2008

¹⁵ However, it is pointed out that the special subsidiary system which separates workplace of persons with disabilities from that of persons without disabilities hinders understanding of persons with disabilities and the system itself is a discrimination against persons with disabilities.

(Cabinet Office 2009, 63).

IV. Other Measures for Employment of Persons with Disabilities

1. Special Reduction of Minimum Wage

In Japan, the Minimum Wage Act was made for the purpose of improving labor conditions by ensuring minimum wages. Prefectural minimum wage is determined in consideration of cost of living of local workers, wages and normal solvency of local companies. The highest minimum hourly wage is 791 yen in Tokyo and the lowest one is 629 yen in Okinawa, Miyazaki, etc. as of October 1, 2009.

Employers must pay wages higher than the minimum wage to workers who are guaranteed the minimum wage. However, when employers obtain a permission from the director of Prefectural Labour Standards Office, they can pay wages lower than the minimum wage to persons with disabilities who are regarded as “persons whose capacity to work is significantly low due to mental or physical disabilities” (Article 8 of Minimum Wage Act).¹⁶ This provision is criticized by some people as a discrimination against persons with disabilities while some people positively accept it as a contribution to employment expansion for persons with disabilities.

2. Trial Employment

In order to find out adequacy and job performance for employment or transfer to regular employment, a trial employment system has started since April 2003. It provides a financial incentive to employers hiring job seekers who are difficult to find jobs due to less work experience, low skills or less knowledge for a short period (three-month in principle) as a trial. There is a certain requirement to become a target worker of this system¹⁷ and persons with disabilities meet the requirement. The financial incentive is provided to the employer, monthly 40,000 yen per trial worker for up to three months. It is pointed out that the trial employment system is effective since it may trigger employment of persons with disabilities for employers with less experience of employing them and for persons with disabilities who obtain employment for the first time.

3. Support by “Hello Work,” Public Employment Offices

“Hello Work” is a national administrative agency which introduces careers, provides career guidance, administers unemployment benefits, etc. under the Employment Security Act as well as introducing careers to persons with disabilities. As for employment placement, it regis-

¹⁶ Employers are also allowed to pay wages lower than the minimum wage to workers during the trial period and those working on light duty as well as persons with disabilities.

¹⁷ Target workers include middle-aged and older persons, young people, mothers of single-mother families, day workers, homeless people, etc. as well as persons with disabilities.

ters job-seeking persons with disabilities, provides vocational counseling based on the skills, vocational aptitude, knowledge, desired type of business, physical ability, etc. and tries to introduce stable workplace. For this reason, senior supervisors who are in charge of persons with disabilities are allocated to major "Hello Work" offices (Cabinet Office 2009, 68).

In addition, "Hello Work" deals with the following so that persons with disabilities can transfer from welfare working to general employment. When persons with disabilities using welfare facilities (vocational aid center, small-sized workplace, special-needs school, etc.) wish to work for private companies, "Hello work" can provide support for employment in cooperation with the welfare facilities. In that case, "Hello Work" establishes an employment support team consisting of local supporters including welfare facilities for each target person with disability and the team consistently supports the person from preparation for employment to settlement of workplace. In fiscal year 2009, 10,442 people were supported by the teams and 5,202 people were employed (Cabinet Office 2009, 73-74).

V. Actual Conditions of Employing Persons with Disabilities

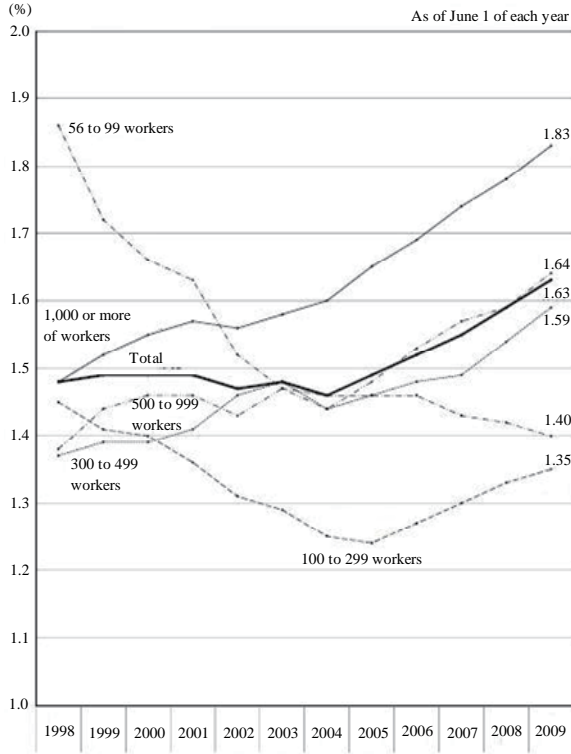
Act on Employment Promotion for Persons with Disabilities requires employers who are obliged to employ one or more persons with physical or intellectual disabilities to report employment situations of persons with physical, intellectual or mental disabilities as of June 1 every year and the results are released by the Ministry of Health, Labour and Welfare. Therefore, I will introduce actual conditions of employing persons with disabilities in Japan based on data released by the Ministry of Health, Labour and Welfare (Ministry of Health, Labour and Welfare 2009).

Although Figure 1 does not show, the first actual employment rate after the amendment of Act on Employment Promotion for Persons with Disabilities in 1976 was 1.09% (legally-prescribed minimum employment rate was 1.5% at that time). After that, the actual employment rate increased year after year and reached 1.49% in 1999. Since then it showed slightly downward trend until 2004 (1.46%), but rose rapidly and became 1.63% in 2009. The number of employed persons with disabilities has also increased year by year and reached 333,000 (those with physical disabilities: 268,266, intellectual disabilities: 56,835 and mental disabilities: 7,710.5) in 2009.¹⁸

Rises in the actual employment rate after 2004 are largely caused by increase in employment of persons with disabilities in large-sized companies with 1,000 or more of regular workers (see Figure 2).¹⁹ The actual employment rate of companies with 1,000 or more of

¹⁸ The number of employed persons with disabilities below includes double counting and 0.5 counting. See Table 1 for the counting method of actual employment rate.

¹⁹ The employment of persons with mental disabilities has been counted for calculating the actual employment rate since 2006 and that has an impact on increased actual employment rate and increased number of employed persons with disabilities, but even if the employment effect of persons with mental dis-



Source: Ministry of Health, Labour and Welfare, *Press Release* (November 20, 2009), p. 7 (3).
<http://www.mhlw.go.jp/stf/houdou/2r98520000002i9x-img/2r98520000002ibf.pdf>.

Figure 2. Actual Employment Rate of Private Companies by Company Size

regular workers reached 1.8%, i.e., exceeded the legally-prescribed minimum employment rate for the first time in 2009.

However, even at the stage of 2009, the percentage of companies which achieved the legally-prescribed minimum employment rate is 45.5%, i.e., more than half of companies are not able to achieve it. The downward trend in employment of persons with disabilities has recently been obvious especially among small and medium sized companies. In order to deal with this problem, the Act on Employment Promotion for Persons with disabilities was amended in 2008.

Regarding special subsidiaries, the number of companies which are certified to have special subsidiaries is 265 as of June 1, 2009 and the number of persons with disabilities employed by these special subsidiaries is 13,306.0.

abilities is neglected, the actual employment rate has increased (The actual employment rate in 2009 without persons with mental disabilities is 1.60%).

VI. Future Issues

I will briefly discuss future issues on Japan's measures for employment of persons with disabilities in the following:

(i) It is time to consider mandatory employment of persons with mental disabilities which was passed over for legislation. It is not enough to place an obligation to employ on employers. The government should provide adequate support for employers who have no experience of hiring persons with mental disabilities.

(ii) Although certificates of persons with disabilities are not issued by the current recognitions system for persons with disabilities, we should consider whether or not the quota system covers persons who are difficult to work due to injuries or diseases including persons with developmental disorders (except those with intellectual disabilities) and serious disease patients.

(iii) Since the number of persons with disabilities is on an upward trend and currently employed persons with mental disabilities can be counted for calculating the actual employment rate, the increase in the legally-prescribed minimum employment rate which has been left unchanged since 1997 should be considered.

(iv) We should consider how to coordinate the antidiscrimination law for persons with disabilities²⁰ with current quota system in Japan. From this aspect, the Convention on the Rights of Persons with Disabilities allows to promote the employment of persons with disabilities in private section through appropriate policies and measures including affirmative action, incentives and other measures in express terms (first paragraph [h] of Article 27 of the Convention on the Rights of Persons with Disabilities). Therefore, the coexistence of the quota system with the antidiscrimination law is possible. However, given that the quota system protects persons with disabilities while the antidiscrimination law requires an equal treatment, there may be some contradictions between them. For instance, the quota system does not regulate that employers hire persons with disabilities as special entries which are different from general employment and treat them differently from general employment after that. Rather, some people regard that as a contribution to the employment promotion for persons with disabilities²¹ and many companies have introduced such system. Such treatment, however, may be deemed to discriminatory treatment based on disabilities. These issues are also related to the problem how to coordinate quantity with quality of employment of persons with disabilities and are being discussed by the section meeting on employment of persons with disabilities, the Employment Council for Persons with Disabilities of the Ministry of Health, Labour and Welfare. We should watch the direction of the discussion.

²⁰ Although the provision set forth in Section 3, Paragraph 3 of the Basic Act for Persons with Disabilities describes "No person shall discriminate against or violate the rights or benefits of persons with disabilities for reasons of disabilities," it is nothing more than a basic concept and considered to be ineffective.

²¹ The Nippon Soda case (dehiring) (Tokyo District Court, April 25, 2006, *Rohan* 924-112).

References

- Cabinet Office, ed. 2009. *Heisei 21 nendo-ban shogaisha hakusho* [2009 annual report on government measures for persons with disabilities]. Tokyo: Nikkei Insatsu.
- Endo, Masao. 1976. *Atarashii shintai shogaisha koyo sokushinho no aramashi* [Outline of the act on employment promotion for persons with disabilities]. Osaka: International Economy & Work Research Institute.
- Fujii, Ryoji. 2008. Shogaisha koyo no kakuju ni mukete: Shogaisha no koyo no shokushinto ni kansuru horitsu no ichibu wo kaiseisuru horitsuan [For improving employment of persons with disabilities: Act on the partial revisions of act on employment promotion etc. of persons with disabilities]. *Rippo to Chosa* [Legislation and investigation] 280: 29-39.
- Hori, Hideo. 1961. *Shintai shogaisha koyo sokushinho kaisetsu* [Description of act on employment promotion for persons with physical disabilities]. Tokyo: Rodo Horei Kyokai.
- Kudo, Tadashi. 2008. Shogaisha koyo no genjo to kadai [The current state and problems regarding the employment of people with disabilities]. *The Japanese Journal of Labour Studies* 50, no. 9:4-16.
- Ministry of Health, Labour and Welfare. 2009. Employment of persons with disabilities has been developed in private companies during difficult employment situation (released on November 20, 2009.) <http://www.mhlw.go.jp/stf/houdou/2r9852000002i9x-img/2r9852000002ibf.pdf>.
- Momose, Yu. 2008. Shogaisha ni taisuru shotoku hosho seido: Shogai nenkin wo chushin ni [Income security Programs for persons with disabilities: With a special focus on invalidity pension Scheme]. *The Quarterly of Social Security Research* 44, no. 2:171-85.
- Soya, Noriomi. 1998. *Shogaisha koyo taisaku no riron to kaisetsu* [Theory and description of employment measures for persons with disabilities]. Tokyo: The Institute of Labour Administration.
- Tezuka, Naoki. 2000. *Nippon no shogaisha koyo: Sono rekishi, genjo, kadai* [Japan's employment of persons with disabilities: History, current situation and issues]. Tokyo: Koseikan.
- Yamada, Kozo. 1992. Wagakuni ni okeru shogaisha koyo sokushinho no rekishi [History of act on employment promotion for persons with disabilities in Japan]. *Kagawa Law Review* 11, no. 3-4:37-67.