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CONTENTS

General Survey

Change in Income for Workers' Households and for Elderly Couples' Households - From the 1995 Family Income & Expenditure Survey –

According to the Family Income and Expenditure Survey for 1995 released in March by the Management and Coordination Agency (MCA), workers' monthly real household incomes averaged 570,800yen, up 0.9 percent in real terms, the first year-on-year increase in two years. The rate of change from the previous year in real income stood at 1.1 percent, 0.1 percent and -1.1 percent in 1992, 1993 and 1994, respectively. But the average propensity to consume posted a record low at 72.5 percent, indicating that the increase in family income went to savings and repayment of debts. Features involving the increase in income of workers' households were ascribed to a sharp increase in spouse incomes despite a drop in the house-holder's (mostly the husband's) income in all household income. Mirroring sluggish business recovery and a rise in social insurance premiums, the householder's income and bonuses decreased 4.2 percent from the year before in real terms, and regular income also gained a mere 1.4 percent increase. Worse yet, social insurance premiums (up 10.3% over a year earlier) rose more than the decrease in the workers' income tax (-7.6% from the year before) due to tax reduction.

Spouse incomes, meanwhile, showed a large 12.0 percent rise in real terms. Behind this lie changes in the labor force structure in which the number of married female employees has continued to grow from 1988 to 1994, according to MCA's 1994 Annual Report on Labour Force. Also, a contributing factor in the increased income of working wives was the growing amount of repayment of housing loans for average households in the midst of a rising tendency for purchasing homes due to low interest rates.

Real income for the households of jobless elderly couples (husband aged 65 or older and wife 60 or over) averaged 229,000yen, up 0.5 percent from the year before. But non-consumer expenditures, such as taxes, exceeded growth in real income, contributing to a 0.1 percent decline in disposable income. Thus, monthly disposable income was an average 19,000yen in short for consumer expenditures, indicating that elderly non-working households withdrew from savings for living expenses. A heavier burden of social insurance premiums to maintain pension payments that support senior citizens' households will dampen the effects of tax cuts implemented as an economic stimulative measure, and this, it is feared, will slacken economic recovery. But the fact that an increase in the spouse incomes contributed to growth in income for average worker's households, it is fair to say, paints a bright picture of where the economy is headed in the coming months.

Working Conditions and the Labor Market

Female Employment Management

Of companies which hired *sogoshoku* workers (those engaged in planning and decision-making jobs and expected to become top executives) with transfers, only 27.6 percent employed both males and females, down 18.9 points from the figure recorded in the previous 1992 survey which dealt with the same subject, said the Ministry of Labour in its 1995 Basic Survey on Female Employment Management. The survey is conducted annually to grasp the realities of employment management of women workers in major industries. Subjects vary every year and in 1995, the 10th year since enforcement of the Equal Employment Opportunity Law (EEOL), the survey was taken to gain deeper insights into active utilization of women at companies. The survey covered about 7,000 private businesses with 30 and more regular employees at head offices. Replies were received from 5,596, or 78.9 percent of the 7,000. Of the companies polled, 4.7 percent had introduced a two-track personnel administration system that is, after entering the company, women are grouped into two different categories, *sogoshoku* and *ippanshoku* (those engaged in general office work). This figure has increased 0.9 points from the previous 1992 survey, when it was 3.8 percent. It was noted that the larger the company, the higher the percentage of those which have adopted the two-track system. 52.0 percent, or over half of companies with 5,000 and more employees have instituted the system, followed by 34.3 percent of businesses with 1,000 to 5,000 employees.

Companies which have launched the two-track personnel administration system were asked about ways they recruited *sogoshoku* engaged in key positions and expected to be transferred nationwide, and about the actual number hired. In the spring of 1995, 78.5 percent "recruited both male and female new university graduates," far surpassing the 21.5 percent which "recruited only male university graduates." In the 1992 survey, 54 percent recruited "male and female new university graduates" and 28.2 percent hired "only males." The percentage of companies which said they "recruit both males and females" rose 24.5 percentage points from the previous survey. How many *sogoshoku* did they actually hire, then? Of the firms which employed *sogoshuku* in 1995, 72.3 percent hired "only male *sogoshoku*" and 27.6 percent employed "both male and female *sogoshoku*." Over 70 percent hired "only male *sogoshoku*." In 1992, 53.3 percent employed only male *sogoshoku*" and 46.5 percent took "both male and female *sogoshoku*," indicating that the percentage of those companies which "hired both men and women" dropped 18.9 points, while that of those which hired "only men" rose 19 points from the previous survey.

Introduction of the two-track system has been underway particularly among large companies as a means to resolve sex-based discrimination issues at the workplace following enforcement of the EEOL. But the outcome of the 1995 survey reveals the job market for *sogoshoku* women tightened over the past several years. The spirit and letter of the EEOL, it is safe to say, has been affected and weakened by the recession.

Human Resources Management

Majority of Companies Plan Reviews of Personnel Evaluation Systems

The majority of corporations feel it necessary to review their personnel evaluation systems, said the Ministry of Labour in a survey published on March 5. Meanwhile, labor showed a broad-minded stance toward introduction of merit-based personnel systems.

The survey, taken between March and April 1995 and covering 2,000 large companies in all industries, was intended to examine the evaluation system for regular white-collar employees with college degrees at large companies. Replies were received from 526 (26.3%) of the 2,000 companies. The survey also covered labor unions of the same 2,000 companies (including those without unions), with 339, or 17 percent of the unions responding.

Nearly 90 percent of the companies surveyed have already reviewed or plan to review their evaluation systems. They cited such reasons as "to boost worker morale (71.1%)," "a wider gap in ability necessitates better treatment of those who contribute much to the firm (64.9%)," "requested by employees and unions (46.0%)" manifesting replies which supported workers' situation. On the contrary, replies involving corporate financial overhead did not come to the front. "Difficult to maintain seniority-based wages due to the aging of the labor force," was cited by 30.9 percent and 12.9 percent said "to restrain labor costs."

Furthermore, 93 percent saw the current evaluation system as "problematic" and many pointed out as specific problems "difficult to evaluate workers who do different jobs" (68.1%) and "imprecise evaluation does not exhibit clear differentials"(64%).

In the survey of labor unions, 80.8 percent of the corporations "conditionally favored" introduction of a merit-based personnel system. On specific conditions (multiple replies permitted), a large number, or 94.5 percent of companies cited "clarifying standards of evaluation", followed by "assuring a minimum level of wages" (87.6%), "assuring employment" (66.8%) and "self-determined career path" (55.1%).

Public Policy

Suicide Stemmed from Overwork Court Orders Employer to Pay 120 Million yen

On March 28, the Tokyo District Court ordered Dentsu, Inc., a major advertising agency, to pay 120 million yen in damages to the parents of a former employee, then 24, who committed suicide in August 1991 as a result of excessive work hours. In its ruling, the court declared the employee's suicide resulted from the company's failure to take appropriate health-care measures for him. His parents filed a lawsuit against the advertising agency claiming that his suicide was caused by depression as a result of overwork. They had demanded a total of 220 million yen in damages. The court accepted the plaintiff's claim in almost full measure and ordered the former employer to pay the compensation.

The court found that the plaintiffs' son worked far into the night from the second year he started work at Dentsu and that during August 1991 he worked until 6:30 a.m. every few days. It also found that around this time he began to act abnormally, such as zigzag driving unconsciously. He killed himself at home the day after the event he was in charge was finished. The company contended that it "had taken precautionary measures for the employee's health." Noticing that the work report the employee had submitted to the company was extremely contradictory to the file which reported the time he actually left the firm, the court concluded that the company's "health-care measures" based on the work report were meaningless. Pointing out the fact that the employee "worked long hours which far exceeded the limit widely accepted in society," the presiding judge said that, as the employer, the defendant "neglected to take appropriate measures to prevent him from becoming sick." The judge thus declared that the employer was to blame for the employee's death.

In Japan there are two kinds of relief measures for labor-related accidents, relief by the Workmen's Compensation Insurance System and relief by civil court reparations. The case in question is concerned with the latter method. There have been several cases in which a person who committed suicide was acknowledged as eligible for labor-related accident compensation, but the ruling is the first ever to recognize civil liability on a company's part.

Statistically, the average Japanese worker puts in shorter hours. However, the practice of "unpaid overtime" (unreported and unpaid overtime work) still exists in a variety of jobs. The ruling, it is fair to say, lays bare some of the realities of the nation's workplace.

Wage Gap between Full-time and Part-time Workers Doing the Same Job Illegal

On March 25, the Ueda branch of the Nagano District Court ordered an auto parts maker in Nagano Prefecture to pay 14.68 million yen in total compensation to 28 of its female workers (including two retirees who served over six years) who claimed "they were doing essentially the same job as the full-time employees but were receiving unfairly low wages compared with the full-time employees." It is illegal for the company to pay them lower wages simply because of their status as temporary workers, they said. They filed the lawsuit, demanding that the company pay them compensation to cover the gap. The ruling was the first judicial judgment on the issue of the gap in wages between full-time and so-called part-time workers (quasi-part-timers) who are employed on a temporary basis but basically do the same job. It also was the first ever to acknowledge that the wage gap is illegal under certain conditions. In its ruling, the court said that the company "needs to implement streamlining and rationalization measures for their system of temporary workers in response to business fluctuations." The court also said that with the principle of "same job, same pay," the plaintiffs claim can constitute the doctrine of guidance for rectifying the unfair wage gap, but that operating counter to the principle is not automatically illegal. The court, however, maintained that the idea of equal treatment on which the principle of "same job, same pay" is based should be taken into account as a significant factor in judging the illegality of the wage disparity. A wage gap that runs counter to this idea infringes upon public order and morals beyond the scope of the employer's discretion and is illegal, the court added. In view of this and in consideration of the fact that the plaintiffs do exactly the same jobs as full-time workers, the court concluded that "it is illegal if the plaintiffs receive less than 80 percent of the wages offered to full-time female employees with the same seniority."

Special Topic

Procedures for Resolving Individual Employment Disputes

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1. Employment Litigation on the Increase

Japan is experiencing a record number of employment litigation. As shown in Table 1, the courts received almost 3,400 civil labor cases in 1994, more than twice the figure for 1990. Such a sharp increase in labor litigation in recent years undoubtedly reflects Japan's

prolonged recession and subsequent wave of "corporate restructuring." The vast majority of the cases were brought by employees against employers, typically challenging termination or unpaid wages. (See Table 2.)

Table 1. Number of Labor-Related Civil Cases Received by Courts (All Instances), Selected Years

Source: *Hoso Jiho* (Lawyers Associations Journal) Vol.47 No.7 p.169 (1995)

	Regular Procedure	Preliminary Injunction
1956	91	286
1966	627	605
1976	887	1070
1986	1043	806
1990	1035	426
1991	1099	445
1992	1523	555
1993	2110	716
1994	2523	876

Table 2. Types of Labor-Related Civil Cases Received by District Courts, 1990-95

Source: *Hoso Jiho* (Lawyers Association Journal) Vol.47 No.7 pp.170, 173 (1995)

	Regular Cases Total	Employee's Side Suing the Employer			
			Termination/Employee-Status	Wages	Others
1990	647	565	164	333	68
1991	662	584	147	379	58
1992	892	777	194	520	63
1993	1307	1216	272	834	110
1994	1506	1435	326	975	134

	Injunction Cases Total	Employee's Side Suing the Employer			
			Termination/Employee-Status	Wages	Others
1990	353	331	241	35	55
1991	392	358	257	21	80
1992	485	465	385	65	15
1993	642	621	506	94	21
1994	804	775	576	106	93

Although the figure rose as well in the economically troubled 1970s and 1980s, the current situation is remarkable for the surge of regular procedure cases. Traditionally, labor litigation centered on the preliminary injunction procedure, where the court renders a provisional decision in an expedited manner. In reality, such a decision often determines the final outcome of the dispute because the losing party complies. Today, however, parties are more inclined to push their case fully and squarely through the regular procedure, intensifying the gravity of the litigation.

Sometimes a suit is filed by a labor union for the sake of its own rights. It would be fair to say, however, that most of the labor cases involve "individual" employment litigations in that they are based on the legal rights of the individual employee. Since the employment status and wages inherently belong to each employee, such cases may be litigated solely by the employee. It is of course possible that the employee's litigation may be supported by a labor union, despite the fact that union membership in Japan has fallen to less than 24 percent.

2. Significance of Courts in Japanese Employment Law

It is noteworthy that the courts have played a crucial role in the formation of Japanese employment law. Most important is the judicially created doctrine of "abusive" dismissal. When the employment contract is without a fixed term, the employer has the right to dismiss the employee for any reason, so long as a 30-days' notice is given as mandated by Article 20 of the Labor Standards Law. Labor statutes do prohibit dismissal for certain discriminatory

reasons, but there is no general requirement of "just cause" for termination. In practice, however, the court requires just cause and takes into consideration the various circumstances to examine whether the dismissal is objectively justified. If there is insufficient justification, the dismissal in question is declared null and void as an abusive exercise of a right. (Nihon Salt Manufacturing Co. case, Supreme Court, April 25, 1975, *Minshu* 29-4-456; Kochi Broadcasting Co. case, Supreme Court, January 31, 1977, *Rodohanrei* 268-17).

The doctrine of abuse of rights, which relies on a general clause in the Civil Code, is also applied to other employer actions. For example, the employer has the right to discipline the employee for misconduct in accordance with the work rules, but the court frequently strikes down a disciplinary measure as abusive, deeming it too severe or not following due process. The employer's right to transfer the employee is being abused if there is no legitimate business need for the transfer in question, or if its impact on the employee's life is extraordinarily serious (Toa Paint Co. case, Supreme Court, July 14, 1986, *Rodohanrei* 477-6).

The courts addressed sex discrimination in termination by invoking the standard of "public order and good morals" in the Civil Code, declaring the "resignation-upon-marriage" rule for women null and void as a violation thereof. Likewise, a discrepancy in the mandatory retirement age between men and women was declared null and void (Nissan Motor Co. case, Supreme Court, March 24, 1981, *Minshu* 35-2-300). These decisions were eventually incorporated into the Equal Employment Opportunity Law of 1985.

Another important doctrine of judicial invention deals with the employer's revision of work rules. In 1968, the Supreme Court held that employees are bound by revised work rules even when they provide for less favorable terms than those which previously existed, so long as the revised rules are "reasonable." (Shuhoku Bus Co. case, December 25, 1968, *Minshu* 22-13-3459) This decision was criticized for lack of legal grounds, but the Supreme Court has since endorsed the rationale repeatedly. In the test of "reasonableness," the degree of necessity for the employer to implement the change is balanced against the extent of disadvantage inflicted on the employees. The fact that most employees in the establishment agree in support of the change may be deemed an indicator of such reasonableness.

Furthermore, tort action has been taken against an employer in various aspects of employment. A recent Supreme Court decision, for example, held the employer liable for damages for spying and alienating some employees because of their political beliefs as a tortious infringement upon their human dignity (Kansai Electric Power Co. case, Supreme Court, September 5, 1995, *Rodohanrei* 680-28). Similarly, some district courts have awarded tort damages to victims of sexual harassment. In fact, the tort clause in the Civil Code is so

abstract that any illegal conduct of the employer may be challenged thereunder.

3. Difficult Venue for Achieving Justice

While an increasing number of employees are suing their employers, such a means to obtain justice is not easy. Above all, judicial procedures are painfully slow. Hearings are held in a sporadic manner, as infrequently as less than once a month for each case. In 1994, it took an average of 15 months for a district court to dispose of a regular procedure case, including withdrawals and settlements, and cases pending at the end of the year were 18.5 months old (Table 3). The situation has improved considerably since 1990, when the figures were 25.2 months and 26.9 months respectively. Nevertheless, simple cases aside, two years before a district court would hardly be surprising. If an appeal is taken eventually to the Supreme Court, the litigation time would amount to five to ten years. Petitions for preliminary injunction are processed more quickly, of course, but more than one year may be needed in a complicated case.

Table 3. Time Required for District Courts to Decide on Labor-Related Civil Cases (Regular Procedure), 1994
Source: *Hoso Jiho* (Lawyers Associations Journal) Vol.47 No.7 p.172 (1995)

	Total	Up to 6 months	6 months to 1 year	1 to 2 years	2 to 3 years	3 to 5 years	More than 5 years	Average months
Cases Closed in 1994	1230 (100%)	500 (40.6)	275 (22.4)	236 (19.2)	91 (7.4)	84 (6.8)	44 (3.6)	15.0
Pending Cases	1805 (100%)	651 (36.1)	339 (18.8)	416 (23.0)	196 (10.8)	113 (6.3)	90 (5.0)	18.5

Other factors also fail to make the courts look inviting in the eyes of employees. Japanese cultural norms do not encourage people in general to bring a legal action in order to resolve a dispute, much less against their employer. Lawyers are scarce and hard to find; the approximate number of practicing attorneys at law is only 15,000, and they are required to refrain from advertising their services. There is neither a specialized labor court nor any special procedure for labor-related cases. Professional judges of the ordinary court decide a labor case the same way as in any other civil case. The lack of a discovery procedure makes it difficult for an employee to obtain evidence in the employer's possession. The substantive rules depend so much on vague notions such as "abuse of a right" and "reasonableness" that the final outcome is too often unpredictable. Even when a tort is found, the remedy is rather modest; damages for pain and suffering are usually no more than a few million yen. There are no punitive damages in Japan. In the Kansai Electric Power case mentioned above, each plaintiff was awarded 800,000 yen for pain and suffering plus 100,000 yen for attorney's fees, which are recoverable only in a tort case. This was the Supreme Court's holding in 1995, 24 years after the suit was initially filed.

Thus, only determined employees would venture to pursue justice in the courts. It often seems that plaintiffs are suing the employer not so much for recovery of economic interests as for self-esteem. This should help explain why the number of employment litigation in Japan is quite small in comparison with other developed countries. Even if the legal procedures were made more accessible, however, some employment disputes are so elusive by nature that they are not likely to be neatly resolved by judicial judgment.

4. Recourse to Administrative Agencies

When an employment dispute involves violation of the Labor Standards Law, the Minimum Wages Law, or the Industrial Safety and Health Law, an employee may report such violation to the Labor Standards Inspection Office. Approximately 3,300 Labor Standards Inspectors are stationed at 343 offices throughout Japan. They may inspect the workplace, direct the employer to correct violations if any, and refer the matter to the prosecutor's office in an egregious case. However, besides being understaffed, the Inspection Office lacks the authority to act on behalf of the employee. A violating employer may be cited, but the employee must initiate a civil action to be made whole, unless the employer complies in the face of possible prosecution. Moreover, when the employee feels that he/she has been terminated without just cause, for example, the Inspection Office is of no use because such a matter does not involve the Labor Standards Law or any other statute within its competence. This fact surprises many employees who are unfamiliar with labor laws. It was only as recently as this spring that "employment conditions counselors", who hear employees' grievances at large, were assigned to a handful of Inspection Offices on an experimental basis.

As for disputes concerning sex discrimination, the Equal Employment Opportunity Law provides the Director of Prefectural Women's and Young Workers' Office with the authority to give advice, guidance, and recommendations to the parties involved. Despite the weak provisions of the Law ("duty to endeavor" clauses regarding hiring and promotion; no penalty even for violation of "prohibitory" clauses), the Directors are resolving a number of disputes through this advisory channel. When a dispute does not end amicably, the Director may refer it to the prefectural Equal Employment Mediation Commission upon the request of either party. However, mediation cannot be initiated unless the other party provides consent under the Law. The result is that there has been only one case of initiated mediation since the enactment of the Law in 1985. In the first-ever mediation case in Osaka Prefecture, which involved allegations of discriminatory placement and promotion, the Mediation Commission issued a settlement proposal in February 1995, only to be rejected by both parties. Mediation failed, and the complainant employees filed a lawsuit against the employer.

Many prefectures and cities offer counseling services for employees. The Tokyo

Metropolitan Government is remarkably aggressive in this regard. At its nine labor offices, the staff not only receive by far the largest number of inquiries, but also engage in conciliation in suitable cases, which is unheard of elsewhere. Although they have no legal enforcement power, they hear the parties' assertions and give advice in any type of employment dispute. In 1994, they facilitated conciliations in 1,103 cases and achieved an impressive success rate of 73.7 percent. It is unfortunate that other prefectures are not equipped with resources to do likewise.

Certainly, every prefecture has a Local Labor Relations Commission for adjustment (conciliation, mediation, and arbitration) of labor disputes. However, rather than being a tool for individual employees, this tripartite body only has jurisdiction over "collective" disputes involving trade unions under the Labor Relations Adjustment Law. The number of such disputes has declined so that in four prefectures in 1994 there were no adjustment cases for the Commission.

5. Voices for Reform

Today, many agree that there should be a better way to deal with individual employment disputes. The Labor Ministry, based on a report submitted by its advisory committee, has begun to post "employment conditions counselors" at the Labor Standards Inspection Offices as mentioned above.

More ambitious is an ingenious proposal that suggests that counseling and adjustment of individual employment disputes should be added to the authority of the Labor Relations Commission. This would revitalize the Commission, whose two main functions, adjustment of labor disputes and redress of unfair labor practices, have been declining in societal significance.

Another proposal urges that the court's civil mediation procedures should be amended to directly address employment disputes. It is a mystery why only a small number of labor cases are currently being resolved through the procedure, but the reform would surely encourage the parties to utilize it.

Regarding formal litigation before the court, the government introduced to the Diet in March a bill to completely rewrite the Civil Procedure Code. Although a special procedure for labor cases is not provided in the bill, it would establish a small claims procedure covering cases whose amount of controversy is 300,000 yen or less. Many employees will find it worth utilizing because the cases are heard and decided there within one day. The bill also contains provisions aimed at expediting the procedure and expanding the parties' right to evidence.

Finally, there is a strong argument that the substantive rights of employees should be clarified and made easier to understand. A body of attorneys representing labor has proposed a draft of the Employment Contract Law, which would codify, and partly modify, judicially developed rules of employment. Although controversial in its content, this seems to be a commendable effort in the right direction.

6. Conclusion

It seems that Japanese employment society has attached importance to the "prevention" of disputes. Traditionally, employers communicated with employees intimately to hear their opinions and obtain their understanding, and employees tended to acquiesce, willingly or unwillingly. This picture is changing today. Employees are increasingly ready to voice their disagreement with their employer. Establishing suitable dispute resolution procedures for such employees, a system which is long overdue, would promote another important social value: the "fair resolution" of disputes.

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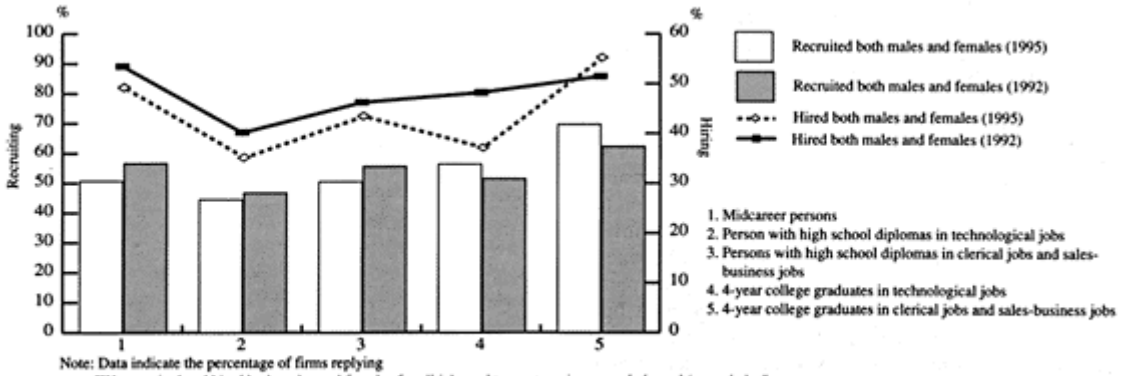
Statistical Aspects

Recent Labor Economy Indices

	February 1996	January 1996	Change from previous year
Labor force	6,522 (10thousand)	6,551 (10thousand)	8 (10thousand)
Employed	6,298	6,322	17
Employees	5,245	5,263	67
Unemployed	224	230	25
Unemployment rate	3.4%	3.5%	0.3
Active opening rate	0.67	0.67	0.00
Total hours worked	160.7 (hours)	145.2 (hours)	0.9*
Total wages of regular employees	(¥thousand) 283.0	(¥thousand) 279.2	1.6*

Source: Management and Coordination Agency, Ministry of Labour.
Notes: 1.*denotes annual percent change.
2.From February 1991, data of "Total hours worked" and "Total wages of regular employees" are for firms with 5 to 30 employees.

Recruiting and Hiring of New-School Graduates and Midcareer Persons



Note: Data indicate the percentage of firms replying
"We recruited and hired both males and females for all jobs and two categories, *sogoshoku* and *ippanshoku*."
(5,596 firms sampled)
Source: Basic Survey on Female Employment Management for 1995