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Working Conditions and the Labor Market

Record Low Pay Raise for National Government Employees

On August 12, the National Personnel Agency (NPA) recommended a pay raise for national government employees in general jobs that averaged ¥2,785 (a 0.76 percent raise). With the automatic annual increase excluded, the 0.76 percent raise was the smallest ever recorded. The previous smallest was 0.9 percent in 1995 (The Statistical Aspects on page 3 provide information on the rate of increase in the pay rate for national government employees as recommended by the NPA).

The NPA submits its recommendation to the Cabinet and the Diet in every August. In a sense, it speaks for national government employees who have only a limited right to bargain collectively. The NPA recommends a pay raise commensurate with that obtained by workers in Japan's private companies. The NPA's recommendation is not binding, but the government usually follows its recommendation. The smallest-ever recommendation reflected the extremely small wage increases agreed upon in private firms in the midst of the current economic slump. A Ministry of Labour survey found that wages of private-sector workers rose an average of only 2.66 percent, the smallest increase since 1965 when the ministry began to compile statistics.

Another report published concurrently by the NPA, recommends measures to improve the personnel system in the government sector. It calls for the government to expand opportunities for those who have passed the Class II and Class III public service examinations. Generally those in that group are dubbed "non-career people." The NPA suggests they should be able to be promoted to senior officials, and that the promotion of those who have passed the Class I examination be reviewed more carefully. The aim is an overhauling of seniority-based employment practices by encouraging the employment of mid-career people from private firms. The goal is to invigorate the personnel system for public servants with the injection of an ability-based system. It calls for those in Classes II and III to be considered for promotion to senior positions in 1999. The report also calls for the public service to restrict appointment of government officials to responsible positions in private firms. Particular mention is made of the need to review practices under which such officials may retire before mandatory retirement, thereby reserving more posts for those who come "off the line." It also calls for future reflection on the current wage system.

The Placement Rate and Starting Salaries for College Graduates in 1998

The Ministry of Education's Basic Survey on Schools found that the placement rate for four-year university graduates this past spring was 65.6 percent, down one percentage point from 1997, the lowest figure registered since 1951. Of 529,000 graduates from four-year universities, 347,000 found employment. The placement rate for males was 66.2 percent, down 1.3 percentage points from the preceding year. For female graduates, the figure was 64.5 percent, down 0.3 percentage points. The ministry attributes the declining placement rate to the growing number of graduates going on to graduate school and to the fact that more companies are cutting back on the number of graduates they are employing straight out of university and college.

The placement rate for four-year university graduates was 63.8 percent in 1950, when Japan was still beset by the turmoil after World War II and the number of graduates was a mere 1,900. Thereafter, however, the rate has fluctuated between 65 percent and 80 percent. It peaked at 81.3 percent in 1991 when the nation was enjoying the end of the "bubble" years. Since then the rate has declined.

Meanwhile, the starting salary for college graduates in clerical jobs averaged ¥201,300. This was a small increase of 0.5 percent over the previous year. These figures are from a survey conducted by Nikkeiren (Japan Federation of Employers' Associations) on the starting salaries of new graduates in spring 1998. The change from 1997 represented the lowest growth rate since 1966. The average starting salary for college graduates in technical jobs was ¥202,173 (up 0.5 percent over the year before), that for technical college graduates in technical jobs was ¥177,309 (up 0.6 percent), and that for junior college graduates in clerical jobs was ¥169,743 (up 0.5 percent). Thus the survey showed that for the fourth straight year, the growth rate was below one for graduates at all levels of education.

The survey also found that 34.6 percent of the companies polled had frozen their starting salaries. The figure was 30.2 percent the year before. Only 61.5 percent of firms raised their starting salaries, down from 57.7 percent the preceding year. Both the placement rate and the starting salary growth rates for new college graduates clearly indicate that the recession has considerably affected the labor market for new school graduates.

The 1997 Survey on Employment Trends (Preliminary Findings): The First Annual Increase in the Number of Separated Workers in Six Years

Every year, the Ministry of Labour conducts a survey on employment trends, to gauge the

migration of regular workers. The survey, published in August, covered about 14,000 establishments selected from companies having five or more regular employees, about 130,000 new employees and about 120,000 people who had left an employer during the 1997 period. According to the preliminary findings, 12.56 million people began or left jobs during 1997; the labor mobility rate stood at 29.6 percent. That represented an increase of 930,000 people and a rise of two percentage points, from the previous year. The rate of hiring new employees was 14.4 percent, up 0.6 points from the preceding year. In contrast, the rate of job separations was 15.2 percent, up 1.4 point percentage points from the year before. The rate of job separations increased for the first time since 1991, when the rate was 15.2 percent.

By gender, the job separation rate was 12.9 percent for men and 18.9 percent for women, up 1.4 percentage points over the previous year for both groups.

By industry, the rate stood at 17.7 percent in the services, 17.5 percent in construction, 17.0 percent in wholesale and retail trades and eating establishments, and 12.1 percent in manufacturing, up 2.1, 3.4, 1.5 and 0.6 percentage points, respectively. The high rate of job separations for 1997 was greatly affected by the rising rate in construction and in the service industries.

Looking at those who had separated, 37.2 percent had worked for less than a year (up 2.3 percentage points over 1997), 21.9 percent, for one to five years (down from the preceding year) and 15.2 percent, for more than 10 years (down from the preceding year).

The largest number leaving their jobs (4.09 million) did so for personal reasons, followed by 640,000 at the end of a fixed-term contract, 440,000 for management reasons, 340,000 owing to the mandatory retirement age, and 330,000 for reasons connected to the worker's responsibility. Male workers who left jobs for management reasons grew 31.1 percent over the year in question, and those who left jobs after completing a fixed-term appointment grew 25.6 percent. Those who were separated for reasons of their own responsibility grew 24.5 percent. On the other hand, female workers who left work for their own responsibility rose 39.0 percent, and those who left because they had reached the mandatory retirement age rose 21.5 percent, indicating that the number of those leaving for non-voluntary reasons grew quite substantially.

The job separation rate increased and was accompanied by a growing number of individuals who were drawing unemployment benefits. The Ministry of Labour's Major Employment Insurance Index showed that in June 1998 1.04 million people received unemployment benefits, topping the one million mark for the first time in 22 years. Unless

the employment situation improves in coming years, the number of those receiving unemployment benefits will likely remain at a high level.

Human Resources Management

Findings Released from the 1997 Basic Survey on the Employment of Women

The Basic Survey on the Employment of Women (*Joshi Koyo Kanri Kihon Chosa*) is conducted annually to provide information on the employment of women in major industries. In 1997, the survey focused on how provisions for maternity in the Labour Standards Law (LSL) were being implemented at 9,967 establishments with five or more regular workers. The survey was answered by 72.5 percent of the firms. The previous survey in 1994 only covered establishments with 30 or more regular employees. For that reason, the figures presented here are, unless otherwise stated, for establishments with 30 or more regular employees.

The proportion of women who gave birth during the year accounted for only 1.2 percent of all regular employees (down from the previous figure of 1.4 percent) (1.0 percent for firms with five or more employees), and was 2.6 percent of all married women (2.1 percent for establishments with five or more employees), (down from the previous figure of 3.0 percent). In other words, the proportion of regular female employees who became mothers during the year had dropped. However, of those who were pregnant at some point during the year, only 19 percent left work because of pregnancy or childbirth, a large fall from 31.6 percent in 1994.

The proportion of establishments that offered expectant and nursing mothers a period of leave "six weeks before childbirth and eight weeks after childbirth" as stipulated under the LSL was 84.6 percent, up only 1.1 percentage points from 1994, but confirming that the majority of establishments had been following the standards set down by the LSL. Those that offered expectant and nursing mothers a period of leave before and after childbirth longer than the statutory minimum period of time represented 8.4 percent of the sample, down from 11.5 percent in 1994. Moreover, 25 percent paid wages to expectant and nursing mothers, down from 31.2 percent in 1994. The LSL does not stipulate that expectant and nursing mothers be paid, but 15.9 percent (down from 23.9 percent in 1994), paid 100 percent of wages to expectant and nursing mothers on leave. The number and length of rest periods for nursing during working hours and wages received during such periods were also down from 1994.

How do female employees utilize maternity-related benefits? The average number of rest

days before childbirth per person was 37.8 days (down from 40.2 days in 1994); 58.8 days were taken after childbirth (down from 61.1 days in 1994). Of the women workers who continue to work after childbirth, 15.2 percent requested time to raise their infant. The figure was down from 19.2 percent in 1994.

According to the ministry, these shifts were caused by two factors. One is the increasing willingness of women to continue to work after childbirth owing to the full implementation of the legally stipulated childcare leave system. From 1995, when the stipulations came into effect, this enabled the women to receive childcare leave on request until their child was one year old. The second is the need for increasing numbers of women to work for economic reasons given the serious impact the recession is having on the finances of many families.

Public Policy

The Labor Standards Law is Revised: The Discretionary Work Scheme Extended

The Diet passed a bill to revise the Labour Standards Law (LSL) at the plenary session of the Lower House on September 4 and at a similar session of the Upper House on September 25. The amendments were added jointly by the five governing and opposition parties (the Democratic Party of Japan, the Heiwa-Kaikaku Parliamentary Group, the Liberal Party, the Social Democratic Party and the Liberal Democratic Party). Only the Japanese Communist Party was not party to the amendments. The bill had been referred to the current Diet session by the previous session, postponing the implementation of the discretionary work scheme for one year to April 2000. The amendments provide for severe changes. First, they provide for employees to approve any discretionary work arrangement. In that regard, they stipulate that employees will not be treated disadvantageously when not approving such arrangements. Second, they stipulate that representatives of the employees on any labor and management committee established to oversee implementation of the scheme must have the confidence of the majority of the firm's employees. Not included in the government's original plan is also a provision encouraging the improved environment regarding late-night work. White-collar employees engaged in planning, design, research and similar jobs will now be allowed to work on a discretionary basis. Previously, the discretionary work scheme had been confined to employees in only 11 occupations (such as certified public accountancy and copywriting). (See the Special Topic section of the current issue of *JLB* for greater detail on these issues).

Special Topic

Overhaul After 50 Years: The Amendment of the Labour Standards Law

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I. Introduction

On September 25, 1998 the Diet of Japan passed a bill to amend the Labour Standards Law. The revised Law is scheduled to take effect on April 1, 1999, except for the provisions on the discretionary work scheme (April 1, 2000) and administrative assistance for dispute resolution (October 1, 1998). As this amendment covers many areas of regulation, this is the first overhaul of the Law since its enactment in 1947. This article describes the major contents of this amendment and analyzes its significance as well as remaining issues.

The Labour Standards Law is one of the most basic and comprehensive statutes regulating individual labor relations. It covers such subjects as labor contract, payment of wages, working hours, rest days and annual paid leaves, protection of children and maternity, workers' compensation, work rules and so on. It also provides for special enforcement measures by establishing the system of administrative inspection as well as criminal sanctions.

The Law has been amended several times. One of the most important amendments was carried out in the area of the regulation of working time. Originally, the maximum working time was 48 hours a week, eight hours a day. In 1987, it was reduced to 40 hours. Although this amendment had a grace period, it took full effect in 1997. Also, the 1987 amendment introduced flexible working time regulations such as the discretionary work scheme. Under this scheme, it is possible for an employer to regard the working time of certain professional workers as the time stipulated under the agreement with a majority union or, if no such union exists, a worker representing the majority of the workers in the workplace.

These amendments were partial, however, as 50 years have passed since its enactment in 1947, the socio-economic circumstances of Japan have greatly changed as described in section II. While some provisions have lost their significance, new regulation has become necessary with respect to other subjects. Thus, it has become necessary to re-examine the Labour

Standards Law in its entirety, along with other labor laws. The amendment this time is a response to such needs.

II. Background to the Amendment

A. Socio-economic Changes in Japan

As stated before, the Labour Standards Law was enacted in 1947, two years after World War II ended. In those days, Japan's economy was destroyed, and pre-modern employment relations, such as sweatshops, existed in many workplaces. The Law was meant to eradicate such workers' plight. In addition, although Japan had experienced the process of industrialization before World War II, its industrial structure was still centered on manufacturing in a traditional sense. Thus, the regulation of the Law was mainly adapted to factory work performed by blue collar workers. Although white collar workers were covered by the Law, they were usually engaged in their work at a fixed time and place.

However, circumstances surrounding Japanese workers have changed. First, their working conditions have been much improved along with economic development. Second, a considerable difference has arisen in terms of the way of working.^[1] The industrial structure of Japan has shifted into the so-called service economy. Although there are many who still work at factories, more and more workers are employed in the service sector. Their working style is more flexible than that of factory workers in terms of time and place of work. This is especially the case with professionals as well as certain high level white collar workers.

In addition to the flexibilization of working styles, the diversification of employment relations is now under way. Traditionally, Japanese labor law has focused on regular (usually male) workers who work under Japanese employment practices such as long-term employment and seniority-based wages. Since the contents of their employment relations are basically homogeneous, their contracts are uniformly regulated by work rules promulgated by their employers, and the role of the individual labor contract is quite small. However, Japanese workers are becoming less and less homogeneous, due to such factors as the aging population and the feminization of the workforce. Part-time workers and those who work under a fixed term employment contract are increasing, although it is not a new phenomenon. Also, quite a few workers do not expect a long term relationship with their employers. As a result, the contents of labor contracts are becoming diversified. Thus, it is necessary to establish new rules regarding individual labor contracts in such respects as the clarification of their contents.^[2]

B. Deregulation Drive

In some respects, the present amendment of the Labour Standards Law was influenced

by the "deregulation" policies declared by the Japanese government in recent years. After the "bubble" economy collapsed in early 1990's, the Japanese government began to make efforts to revitalize its economy. Since there has been complaints that there is too much regulation of business activities in Japan, the "deregulation" (more precisely, the relaxation of strict regulation) became one of the principal measures for economic restructuring. Although there was some debate about whether "social regulation" such as labor law should be included, in the subject, the "Deregulation Promotion Program" ratified by the Cabinet on March 31, 1995 listed up several items under labor law as a target of deregulation.^[3] Among these items are the relaxation of regulations on working time such as the discretionary work scheme and on individual labor contracts under the Labour Standards Law.

Thus, the amendment of the Labour Standards Law was carried out in the course of the deregulation drive by the government. As explained later, this is reflected in the expansion of the discretionary work scheme, the extension of the permissible period of labor contracts, and so on. However, the contents of the amendment are not necessarily "deregulation." In many respects, the amendment added new regulations such as the requirement of notice of reasons for dismissals. Also, the proposal for the reform of the Law was made well before the "deregulation" drive began regarding labor law. It was in 1993 when the Study Group on the Labour Standards Law published a report pointing out the necessity to reexamine the Law's provisions regarding labor contract (See Section III., A.). Therefore, it is the socio-economic changes in Japan rather than the "deregulation" drive that was the direct background to the amendment of the Labour Standards Law.

III. Brief Legislative History

A. Report of the Study Group

The Study Group on the Labour Standards Law provided background data and suggestion for the amendment of the Labour Standards Law. The Study Group was appointed by the Ministry of Labour as an advisory committee for the research and study of the Law in terms of its actual operation and related issues. After the 1987 amendment of the Law, the Subcommittee of the Study Group was appointed to conduct research on the issues relating to labor contract and work rules. In 1993, the subcommittee submitted its report and recommended that new regulatory schemes were necessary with respect to labor contract due to socio-economic changes in Japan. Also, in 1994, another subcommittee was appointed to focus on the provisions regarding working hours. It submitted a report in 1995 and recommended further reduction of working hours as well as a re-examination of regulation in order to promote flexible and autonomous working.

B. Proposal of the Central Labour Standards Council

The Minister of Labour then asked the Central Labour Standards Council headed by Professor Tadashi Hanami of Sophia University to re-examine the contents of the Labour Standards Law. The Council is a tripartite advisory panel to the Minister of Labour, and is in charge of making advice for legislation on labor standards. Although the agenda for the Council covered almost every aspect of the Labour Standards Law, the discussion was mainly focused on the expansion of the discretionary work scheme and the extension of the maximum period of labor contract. Also, the Council discussed the regulation of overtime work, since the special protections of women in general regarding working hours are scheduled to be abolished after April 1, 1999, when the amendment of the Equal Employment Opportunity Law that strengthens its equality provisions takes effect.^[4] Instead, labor unions called for strong regulation of overtime work.

In December 1997, the Council submitted its final proposal to the Minister of Labour after extensive discussion. Although the Diet made some modifications, this proposal became the basic framework of the present amendment. Among other things, the Council recommended that the maximum period of labor contract should be extended to three years only with respect to certain types of jobs. Also, the Council proposed that the discretionary work scheme be expanded so that it would be available for more white collar workers. Furthermore, regarding the regulation of overtime work, the Council suggested that a new provision should be incorporated into the Labour Standards Law to provide a statutory basis of the guidelines for maximum overtime hours. As for female workers, the Council suggested that a special standard be set as a means of mitigation to protect them from drastic change after the abolishment of special protections.

C. Debate in the Diet

Based on the proposal of the Central Labour Standards Council, the Ministry of Labour made a draft of the bill to amend the Labour Standards Law. With the approval of the Council (with some opinions from the members representing labor), the Ministry finalized the bill, and the Cabinet submitted it to the Diet. The discussion on the bill began in April, 1998 in the Lower House. Meanwhile, labor unions initiated a movement to oppose the amendment. Their main contention was that the expansion of the discretionary work scheme would result in the perpetuation of overtime work of white collar workers without the payment of premium. Unions also contended that the proposed limitation on overtime work was too weak, and that stronger regulations should be incorporated in the Law.

In the course of the discussion in the Diet, a move toward compromise emerged. The

ruling Liberal Democratic Party and the opposing Democratic Party, which was backed up by the Japan Trade Union Congress, reached an agreement to modify the bill. The agreement included a proposal that the enforcement of the provision on the new discretionary work scheme would be postponed for one year and that measures to prevent the abuse of this system should be added such as the requirement of individual consent for its implementation. However, as the Social Democratic Party was opposed to this agreement, the move toward compromise failed. After that, the term of the Diet ended, and the bill was carried over to the next session.

However, these efforts to reach an agreement resurfaced when the new special session of the Diet began after the Upper House election in July. The new agreement on the revision of the bill was essentially based on the earlier agreement between the Liberal Democratic Party and the Democratic Party, with some additional protective measures. The revised bill was passed by the Lower House on September 4, and by the Upper House on September 25, this time with the approval of the Social Democratic Party.

IV. Major Contents of Amendment

A. Regulation of Labor Contract

1. Fixed Term Contract

Article 14 of the current Labour Standards Law provides, in essence, that labor contracts shall not be concluded for a period longer than one year. The amendment added an exception that the maximum period may be three years in the following cases: (1) labor contracts with workers who have a highly specialized knowledge, skill or experience that is necessary for the development of new products, services or technologies or for scientific researches, and fits the standards defined by the Minister of Labour as highly specialized, only when the workers are newly hired in enterprises that need such highly specialized knowledge; (2) labor contracts with workers who have a highly specialized knowledge, skill or experience that is necessary for the jobs to be completed after a specific period regarding the opening, change, extension, reduction or abolishment of businesses, and fits the standards defined by the Minister of Labour as highly specialized, only when they are newly employed in enterprises that need such highly specialized knowledge (except as provided in item (1) above); and (3) labor contracts with workers at the age of 60 or older (except as provided in items (1) and (2) above).

As stated before, items (1) and (2) are meant to expand employment opportunities for professionals who have highly specialized knowledge and do not expect to work under long term employment relationship. Originally, the limitation on the period of employment contract to one year was intended to prevent employers from unduly restricting workers' resignation. However, given the socio-economic changes in Japan, such concern does not

necessarily apply to certain types of professional workers. There may be employment opportunities that employers are willing to provide if the contractual period can be set for a few years. On the other hand, the maximum period should not be too long, since, even among professionals, not all of them are free from concern about unjust restriction.

Thus, the amended provision sets the maximum period of three years and limits the jobs and enterprises to which the exception applies. On the other hand, there is no such limitation in the case of contracts with elder workers as provided under item (3). This is because item (3) was intended to provide for more employment opportunities for elder workers, especially after their retirement, which is quite often at the age of 60. When such workers are re-employed, their labor contracts usually fix the period for one year. In this sense, the extension of the maximum period to three years generally stabilizes their employment.

2. Clarification of Working Conditions

Article 15, paragraph 1 of the Law states that in concluding a labor contract the employer shall clearly state the wages, working hours and other working conditions to the worker. It further provides that certain matters shall be stated in the manner prescribed by ordinance. The Enforcement Ordinance of the Labour Standards Law requires the employer to put these matters in writing. Formerly, it was only matters concerning wages that were required to be notified in this manner. Under the amendment, however, it is now necessary for the employer to notify in writing scheduled working time and other matters prescribed by ordinances.

The background of this amendment is the diversification of individual labor contracts. If the contents of contracts are homogeneous or uniformly determined by work rules, there is little need for the clarification of working conditions of each worker. However, since the employment relations are now being diversified, as stated before, more disputes are likely to arise regarding the contents of labor contracts. Clarifying working conditions through documents is helpful in preventing such disputes.

3. Notice of Reasons for Termination of Contract

Article 22 of the Law, as amended, provides that when a worker on the occasion of leaving employment requests a certificate stating a reason for the termination of employment (including a reason for discharge, when the worker is discharged), the employer shall deliver it without delay. Before the Amendment, employers did not have a duty to provide the reasons for termination.

In effect, this article obligates employers to provide reasons for discharge at the request of workers. When a worker is discharged, a dispute often takes place regarding the reason for

the discharge, or even whether the worker was discharged or just voluntarily resigned. By obligating employers to provide the reason for discharge or other ways of terminating the contract, this provision is intended to prevent such disputes. Furthermore, if a reason for discharge is clarified, it will be easy for courts to determine whether the discharge is based on a just cause. In Japan, case law has established that a discharge without just cause is null and void as an abusive exercise of the employer's right to discharge.^[5] Thus, it is likely that this article will influence litigation regarding discharge of workers.

B. Regulation of Working Time

1. The Discretionary Work Scheme

The expansion of the coverage of the discretionary work scheme was one of the most debated issues regarding the present amendment. Currently, Article 38-2, paragraph 4 provides that when an employer assigns a worker to duties for which the means of accomplishment and allocation of time must be left largely to the discretion of workers, pursuant to a written agreement with the trade union organized by a majority of workers at the workplace concerned or with the person representing a majority of the workers if no such union exists, the working time of such a worker shall be the number of hours stipulated in the agreement. If this Article applies, it is not necessary for the employer to pay an overtime premium according to the actual working time, so long as the stipulated time does not exceed the standards under the Law. Based upon this Article, the Enforcement Ordinance provides that jobs available for this scheme are (1) research and development of new products and technology, (2) planning and analysis of information-management systems, (3) gathering information and editing in the mass media, (4) designing, (5) producers and directors in TV or movie production, and (6) jobs designated by the Minister of Labour. In 1997, the Minister designated seven jobs such as attorney-at-law and certified public accountant. However, business circles contended that the coverage of this scheme is still too restricted.^[6] For example, the Japanese Foundation of Employers' Association contended that this scheme should cover jobs such as planning of business strategy, sales, finance and public relations. On the other hand, as stated before, labor unions countered that the expansion of this scheme would lead to the perpetuation of long working hours. Thus, while the Central Labour Standards Council proposed the expansion of the coverage of the scheme, it stressed the necessity to prevent its abuse.

Although this proposal was incorporated into Article 38-4 of the amended Law, the Diet added a number of safeguards such as the requirement of the individual worker's consent. Also, this Article will take effect one year later than most of other provisions, i.e., April 1, 2000. Under this new Article, the discretionary work scheme is available for workers in a workplace where important business decisions are made, if their duty is planning,

investigation, and analysis on matters regarding management of the enterprise and if they have knowledge and experience of performing such duties. It is also required that the means of accomplishment of such duties must be left mostly to the discretion of such workers and no concrete discretion will be given to them regarding the means of performance as well as the allocation of time.

Unlike the existing discretionary work scheme, it is a worker-management committee rather than a worker-management agreement that determines the implementation of this scheme. Half of the members of this committee must be appointed with a specific period of appointment by the labor union organized by a majority of workers at the workplace concerned, or with the person representing a majority of the workers where no such union exists. These members must also be approved by a majority of workers in the workplace. In order to implement this scheme, the committee must unanimously determine the duties and scope of workers covered by the scheme as well as the number of hours that will be regarded as their working time. The committee must also decide that the employer shall take measures to promote the health and welfare of such workers, that the employer shall take measures to process grievances of such workers, and that the employer shall obtain the individual worker's consent regarding the implementation of this scheme and shall not discharge or otherwise treat unfavorably those who have not agreed. This resolution must be filed with the administrative office.

The discretionary work scheme before the amendment was applied mostly to professional workers. The provision regarding such workers remains as it is (Article 38-3). On the other hand, the workers covered by Article 38-4 are not necessarily professionals but high-level white collar workers. To the extent that the overtime premium of such workers is separated from actual working time, it reflects the idea that their wages are to be based on the quality or performance of their work. In this sense, this provision fits a creative and autonomous working style. On the other hand, concern has been expressed regarding the abuse of the scheme as described above. As result of the negotiation in the Diet, the amendment now contains a number of safeguard measures, and the likelihood of abuse has become smaller. One of the remaining issues regarding its implementation is how effectively an evaluation system can work with respect to the performance of "discretionary workers." This is also true with respect to the operation of the grievance system to be created by worker-management committees. More fundamentally, establishing autonomy at work for such workers is a key to the success of this system.

2. Regulation of Overtime Work

Under the current Labour Standards Law, overtime work that exceeds the standards of

forty hours a week or eight hours a day is permissible through a worker-management agreement between an employer and a majority union or, if no such union exists, a worker representing a majority of workers at the workplace concerned. However, there is no statutory provision that generally sets a limit to the amount of overtime work. Although the Ministry of Labour has issued a guideline that stipulates "standard" upper limits such as 360 hours per year, it has no statutory basis, and employers are expected to abide by this standard only voluntarily.

Now, Article 36, paragraph 2, as amended, provides that the Minister of Labour may set a standard with respect to the limit of overtime work as stipulated by the worker-management agreement. Article 36, paragraph 3 further states that employers and the trade unions or the representatives of the majority of workers shall endeavor to abide by such a limit in concluding the worker-management agreements. Although this paragraph obligates parties to the agreements only to make an effort in good faith, paragraph 4 provides that the administrative agency may give them advice and instruction in order for them to abide by such a limit. Thus, the amendment provides a statutory basis for the upper limit of overtime work, which is to be enforced through administrative guidance. Although this is surely an improvement when compared with the former scheme, how it will succeed in reducing overtime work will depend on the effort on the part of the parties to the worker-management agreements as well as the effective administrative guidance.

In addition, the amendment provides for a "mitigation" measure regarding the overtime work of female workers after the abolishment of Article 64-2 that limits their overtime work. More specifically, Article 133 provides that the Labour Minister shall set more stringent standards of the upper limit on the amount of overtime work for female workers responsible for the care of children or senior citizens if they request shorter overtime work. This standard will be in force for a period which will be stipulated by administrative ordinance. (The Central Labour Standards Council proposed that this period be three years after April 1, 1999.) As a result of the discussions in the Diet, the upper limit was specified to be 150 hours, which was in fact the upper limit for female workers under Article 64-2 before abolishment.

Moreover, Article 11, paragraph 2 of the supplemental provisions of the amendment provides that, during the period when this standard is in force, the Labour Minister shall consider the establishment of a scheme allowing the right to request the exemption of overtime work for workers who have responsibilities for the care of children and senior citizens, and shall take necessary steps. Since this scheme is not limited to female workers but covers male workers who have family responsibilities, it is one of the measures to harmonize family life and work.

3. Average Working Time System

Currently, Article 32-4 of the Labour Standards Law provides that an employer may average a maximum working time of 40 hours over a period not longer than one year, if the employer stipulates certain matters under a worker-management agreement with a majority union or, if no such union exists, a worker representing a majority of workers in the workplace concerned. In this case, the limit of 40 hours a week as well as eight hours a day may be relaxed, so long as the working time averaged for a stipulated period does not exceed forty hour a week. The 1987 amendment of the Law introduced this scheme in order to make it possible for employers and workers to allocate working time efficiently according to seasonal business fluctuation, thereby reducing working time eventually.

However, under the current regulation, there are a number of limitations on the utilization of this system. For example, the Enforcement Ordinance sets an upper limit of the working time: (1) 48 hours a week and nine hours a day if the period for averaging is more than three months or (2) 52 hours a week and 10 hours a day if this period is three months or shorter. Also, even though the employer may divide the period for averaging so that the schedule of working time will be fixed at the beginning of each divided period, each divided period must be longer than three months.

While these limitations were incorporated so that workers would not suffer from excessive flexibilization of working time, it is pointed out that they made this scheme difficult to use. Thus, the amendment relaxed such limitations to a certain extent, on the condition that holidays are definitely given to workers. For example, the upper limit of working time will be 10 hours a day and 52 hours a week regardless of the averaging period. Also, the employer may divide the averaging period so long as each divided period is one month or longer. Although some concerns were expressed about the relaxation of this scheme, there was not much debate in the Diet.

C. Other Aspects

The bill amended the Labour Standards Law in several other aspects such as annual paid leave and the dissemination of worker-management agreements. One of the notable aspects is related to the dispute resolution system. Article 105-3, added by the amendment, provides that the chief of the Prefectural Labour Standards Office may give advice or instruction regarding a dispute over working conditions if one or both of the parties to the dispute asks for assistance in its resolution. The current Law does not have a dispute resolution system that has general jurisdiction over disputes regarding working conditions. Although the Labour Standards Inspection Offices are in charge of the enforcement of the Law, they are

essentially inspecting agencies rather than neutral dispute resolution bodies. Also, their jurisdiction is limited to matters specifically regulated under the Law. They may not exercise authority over disputes including such issues as whether a discharge is an abuse of the employer's right, since the Law does not have a provision generally regulating reasons for discharge.

Because dispute resolution by judiciary is usually time-consuming and costly for employment disputes, it is often pointed out that a special system is necessary for resolving employment disputes efficiently without much cost.^[7] The jurisdiction of this new system is still limited since, for example, it does not cover disputes with respect to equal employment opportunity, over which the Women's and Young Workers' Offices have jurisdiction. However, this system may be a starting point to develop a more sophisticated and comprehensive system of resolving labor and employment disputes.

V. Conclusion - Future Prospects

A. Conditions for Successful Enforcement

As explained above, the amendment of the Labour Standards Law covered a very wide range of subjects. In this sense, it is an overhaul for the first time since the Law was enacted in 1947. This overhaul is an effort to adapt the Law to the socio-economic changes that Japan has experienced over these 50 years. On the one hand, the amendment relaxed the regulation in some important respects such as the discretionary work scheme and the limitation on the period of employment contract. Thus, the new Labour Standards Law provides for a new system of regulation of individual labor relations.

Of course, it remains to be seen whether the objects of the amended provisions will be achieved effectively. For example, the supplemental resolution of the Labour and Social Policy Committee of the Upper House states that appropriate care should be taken to make sure that worker-management committees regarding the discretionary work scheme will work properly, especially in small- and medium-sized enterprises. For this purpose, it is important to make sure that the election of the workers' representative will be carried out in a fair and democratic manner. In fact, the Enforcement Ordinance will have a provision on this election process. The role of administrative guidance as well as inspection is essential not only for this issue but also for the success of other areas of the new regulation. On the other hand, regarding such matters as the reduction of overtime work, what is critical is the attitude of labor and management, especially that of trade unions.

B. Remaining Issues

Also, there are several issues that the amendment did not address this time. For example,

a number of issues remain with respect to the regulation of employment contract other than the clarification of working conditions and notice of reasons for discharge. Among them is the codification of the limitation on the employer's right to discharge. It is pointed out that the doctrine of the abusive dismissal as described above should have a statutory basis. On the other hand, since this doctrine has flexibility as case law, it does not necessarily fit the system of criminal sanction and administrative inspection under the Labour Standards Law. Thus, this issue may lead to the fundamental question as to whether Japan should have a separate legislation such as the "Employment Contract Law."

Furthermore, there is much to discuss regarding the dispute resolution system. In the beginning, it is necessary to make sure the new system will function efficiently. However, since the jurisdiction of the new system is still limited, it is also necessary to consider developing a more comprehensive scheme that may cover a broader range of disputes such as employment discrimination.

Finally, in considering this amendment, one must take into account other legislative efforts to amend labor and employment statutes. For example, the Equal Employment Opportunity Law was considerably strengthened in 1997, and will take effect together with the amended Labour Standards Law on April 1, 1999. Also, the amendment of the Child and Family Care Leave Law will become effective at the same time. This amendment includes a provision regarding leave for medical care of family members up to three months and the right to request exemption from night work for workers who have responsibility for child and medical care. It is necessary to consider the issue of the harmonization of family life with work from a broader viewpoint including that of social security.

In the area of labor market law, a bill to amend the Worker's Dispatching Law was recently submitted to the Diet. The bill proposed a major change of policy under the Law in that it broadens the scope of worker dispatch in order to facilitate a supply system of a temporary workforce, whereas the current law is intended only to provide a supply system of skilled workers. Furthermore, the Ministry of Labour is now considering the amendment of the Employment Security Law. Although public employment agencies play a major role under the current Law in the adjustment of the supply and demand of workforce, the role of private employment agencies will be important as the mobility of workers increases. Thus, new rules in the field of labor market law appear to be necessary.

Overall, Japan's labor law is now in the process of being overhauled in many respects^[8] It is in the future that the result of this overhauling process will emerge in its entirety. In this sense, the precise contents of new Japanese labor law still remain to be seen, However, there

is no doubt that the amendment of the Labour Standards Law is one of the important steps in the course of this process.

[NOTES]

- [1] For the recent changes in employment and working styles, see MINISTRY OF LABOUR, WHITE PAPER ON LABOUR 1998, at 162-278.
- [2] See RYUICHI YAMAKAWA, *The Role of Employment Contract in Japan*, in THE EMPLOYMENT CONTRACT IN TRANSFORMING LABOUR RELATIONS 116-121 (Lammy Bettened. 1995).
- [3] See TAKASHI ARAKI, *Changing Japanese Labor Law in Light of Deregulation Drives: A Comparative Analysis*, JAPAN LABOR BULLETIN vol. 35, no. 5 (1997).
- [4] See TAKASHI ARAKI, *Recent Legislative Developments in Equal Employment and Harmonization of Work and Family Life in Japan*, JAPAN LABOR BULLETIN vol. 37, no. 4 (1998).
- [5] See generally KAZUO SUGENO, JAPANESE LABOR LAW 401-403 (1992)
- [6] See TAKASHI ARAKI, *Regulation of Working Hours for White-collar Workers Engaging in "Discretionary Activities,"* JAPAN LABOR BULLETIN vol. 35, no. 7 (1996)
- [7] See HIROYA NAKAKUBO, *Procedures for Resolving Individual Employment Disputes*, JAPAN LABOR BULLETIN vol. 35, no. 6 (1996).
- [8] For the future direction of Japanese labor law, see KAZUO SUGENO & YASUO SUWA, *Labour Law Issues in a Changing Labour Market: In Search of a New Support System*, in JAPANESE LABOUR AND MANAGEMENT IN TRANSITION 65-74 (Mari Sako & Hiroki Sato eds. 1997).

JIL News and Information

The Japan Institute of Labour is happy to announce that the *Japan Labor Bulletin* will be expanded to incorporate *Labour Issues Quarterly* (the summer 1998 issue of the *LIQ* was the last). *Labour Issues Quarterly* has since 1988 served as a most useful journal for foreign executives and managers of foreign-affiliated companies doing business in Japan. From this issue, the contents of the *LIQ* will be consolidated into the *Japan Labor Bulletin* as a means of introducing our activities.

The editorial staff at the institute hope that the expectations of all who are interested in its activities will be even better met by the expanded version of the *JLB*, and look forward to any comments or suggestions that readers might wish to send us.

花見忠

Tadashi Hanami,

JIL Research Director General

Outline of JIL Undertakings

We at JIL are endeavoring to promote three undertakings, research and study, collection and provision of information and international exchanges, which are our major pillars.

For more detailed information, visit our Web site at <http://www.jil.go.jp/jil/>.

Major Research Themes at the Japan Institute of Labour in 1998

Employment and Labor Issues, and Structural Change

1. international comparisons of the structure of unemployment
2. studies of labor mobility between industries and occupations, and consideration of issues involving supply-and-demand equation for labor
3. studies into models of the labor economy
4. studies into the development of stable employment in areas where employees will actively utilize increasingly sophisticated skills
5. an examination of the Skills Inspection System
6. studies of employment and labor issues in small and medium-size firms in the information industry
7. a review of the effects of relaxing and/or removing regulations that determine certain aspects of employment and the organization of work

Industrial Relations, Personnel Practices and Management with Structural Change

1. the extent to which personnel and labor practices have been realigned
2. comparative studies of staff evaluation and assessment in Japan and the United States
3. the effects on industrial relations of individualizing working conditions
4. the current state of the labor movement and unions in Japan
5. the history of the labor union movement in postwar Japan
6. the history of the policies of employers' organizations concerning employment and industrial relations.

Changing Attitudes of Workers and Diversifying Employment Patterns

1. teleworking and working life
2. longitudinal shifts in workers' attitudes toward employment and life

Further Graying of Workers and Problems

1. how the employment system might be restructured to allow 65-year-old workers to be actively employed
2. the life course of baby boomers known as the "*dankai*," (lump) generation, and the extent to which work-related skills are retained as they age

Women's Employment Environment

1. factors that affect the female labor force participation rate
2. the impact of late-night work on employees who have domestic responsibilities and the way regulations on late-night work operate in other countries

3. how best to promote employment strategies that will better balance the use of non-regular (e.g., part-time) and regular employees

Changes in the Attitudes of Youth Concerning Work and Their Job Hunting

1. comparative studies of how young people choose work and decide to pursue a higher education
2. the transition from school to work environments and initial steps in career development
3. ways to revise VPI and improve vocational interest inspection
4. the development of computerized aptitude tests and diagnostic procedures
5. the development and assessment of vocational information
6. the hiring practices for new school graduates and the supervision of young employees
- 7.

Introduction to the JIL's International Activities

The Japan Institute of Labour collects information in labor fields at home and abroad, and supplies that information in a variety of ways to those responsible for labor and management, and to scholars of work and industrial relations in Japan and overseas. Japanese firms overseas and foreign-affiliated firms operating in Japan are also able to utilize the information collected and generated by the institute.

The institute invites those involved in labor affairs in different countries, and arranges industrial tours and exchanges with Japanese counterparts according to specified themes for the purpose of introducing labor affairs in Japan.

The Collection and Provision of Information about the Organization of Work Overseas

The JIL is continuously collecting a wide range of information about labor laws, industrial relations and employment issues overseas. It has monitors in 22 countries around the world. The institute conducts country-by-country surveys. The results of these activities are published in Japanese in its monthly journal *Kaigai Rodo Jiho* (International Labor Information) and in its Overseas Labor Survey Series. Information from these activities is also made available directly to the general public through seminars and lectures.

Some seminars or briefing sessions are designed for foreign-affiliated enterprises operating in Japan, for interested diplomats in foreign embassies and for foreign correspondents in Japan to enhance their understanding of labor practices and industrial relations in Japan.

International Exchanges

As economies globalize, the organization of work is also being globalized. The policies and approaches adopted by labor, management and government in one country is now greatly affecting the way work is organized in other countries. As a result, a better understanding of

how work is organized in other countries is becoming increasingly important. To achieve this goal, government officials, labor union leaders and major employers from overseas are introduced to the labor situation in Japan and are able to share their deep insights into the situation in their own countries. This results in a broad-based exchange of views and opinions.

International Research Project

The JIL has been organizing a number of research projects together with international organizations such as the ILO, the OECD, the EU, and other foreign institutions (e.g. Institute of Labor and Industrial Relations, University of Illinois, Work in America Institute, Inc., Euro-Japan Institute for Law and Business and Columbia Law School).

Statistical Aspects

Recent Labor Economy Indices

	August 1998	July 1998	Change from previous year
Labor force	6,842 (10 thousand)	6,847 (10 thousand)	21 (10 thousand)
Employed	6,546	6,577	44
Employees	5,359	5,371	18
Unemployed	297	270	66
Unemployment rate	4.3%	3.9%	0.9
Active opening rate	0.49	0.50	0.23
Total hours worked	149.3 (hours)	161.0 (hours)	0.2
Total wages of regular employees	(¥thousand) 268.7	(¥thousand) 270.4	0.2

Note: *denotes annual percent change.

Source: Management and Coordination Agency, Ministry of Labour.

The Percentage Rise in Pay Recommended by the NPA for National Government Employees

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