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## Working Conditions and the Labor Market

### Results of the 1998 General Survey on Wages and Working Hours System

The Ministry of Labour has released the results of its 1998 General Survey on Wages and Working Hours System. The survey is administered to private companies each year and asks about their wage systems and how they organize their working hours. The 1998 survey was sent to a sample of 5,319 private businesses drawn from a sampling frame of some 118,000 such firms with 30 or more regular employees at their head offices. Usable surveys were returned by 4,890 firms (91.9%). The sample included firms in mining; construction; manufacturing; electricity, gas, thermal supply, and water; transportation and communication; wholesaling, retailing and food and drink establishments; financial services; real estate; and other services.

Scheduled working hours per week averaged 39 hours 23 minutes, down from the previous year by eight minutes. Some 92.1 percent of firms had less than 40 scheduled working hours per week, up four percentage points from the previous year. Those firms accounted for 97.4 percent of employees, up 1.2 percentage points from the survey in 1997. In terms of firm size, average scheduled working hours were 39 hours one minute in firms with 100 to 299 employees (down 9 minutes over the previous year) and 39 hours and 36 minutes in those with 30 to 99 employees (down 9 minutes), and 38 hours and 32 minutes in firms with 1,000 or more employees (up 3 minutes).

Work hour averaging schemes were adopted in 54.8 percent of all companies, as against 54.4 percent in 1997: 65.7 percent in enterprises with 1,000 or more employees, 64.0 percent in those with 300 to 999 employees, 59.5 percent in those with 100 to 299 employees, and 52.3 percent in those with 30 to 99 employees. The proportion of companies that adopted work hour averaging schemes on a yearly basis was 34.3 percent and 17.5 percent on a monthly basis, while 5.1 percent opted for flextime.

Regular rises in salary were given by 86.0 percent of all companies, with around 90 percent of those conducting some evaluation to determine the amount of the raise; only a small proportion determined the amount "automatically." Those applying annual salary systems totaled 12.3 percent, a 3.7 increase from 1996 when the same question was posed. Among companies with 1,000 or more employees, 25.6 percent had annual salary systems, a 9.7 percent rise from 1996.

Where total labor cost is concerned, the monthly cost per regular employee averaged ¥502,004, an increase in about 3.9 percent compared with the 1995 survey (¥483,009). Of

total labor cost, total pecuniary payments accounted for 81.6 percent, while labor costs other than the pecuniary payments accounted for 18.4 percent.

The proportion of labor costs other than wage payments had increased by 1.3 percent since 1997. A little over half of the non-wage costs (¥46,868 or 52.0%) was spent on legally required benefits, ¥27,300 (25.0%) was on the payment of retirement allowances, and ¥13,481 (16.6%) was on benefits not required by law. Compared with 1995, these figures represent an increase of 9.4 percent and 32.7 percent, and a decrease of 1.5 percent, respectively, with a conspicuous increase in payments to the increasing number of workers retiring at the mandatory age.

The proportion of companies requiring employees to move to a different working location was 28.1 percent, up 7.9 percent from 1994 when the same question was last asked. Some 19.1 percent of all companies had employees who lived apart from their spouses, a rise of 3.2 percent from 1994. At the end of December 1998, 314,000 employees were living apart from their spouses, an increase of about 60,000 from the figure obtained in the 1994 survey (254,000).

## Human Resources Management

### Ministry of Labour Awards for "Family-Friendly" Firms

In fiscal 1999, the Ministry of Labour instituted a system of certification and awards for "family-friendly" firms which help their employees to manage both work and child-care or other nursing responsibilities at home by enabling their employees to have flexible working conditions. Timed to coincide with the full enforcement of the Child Care and Family Care Leave Law, which added a Family Care Leave System to the existing Child Care Leave System in April 1999, the awards were founded to make the aims and contents of the new law better known and to promote the adoption of work practices which allow employees to achieve a better balance between work and the family.

The 1999 Labour Minister's Good Company Award went to Benesse Corporation (with about 1,500 employees). The firm creates and sells learning materials for children (from infants to high school students), publishes magazines concerning childbirth and child-care, and provides various child-care services. Under the Child Care and Family Care Leave Law, employees may take child-care leave until the child reaches the age of one, and may take up to three months to look after other individuals in the family. Benesse provides its employees with leave beyond the legally required minimum. Given the difficulties of enrolling children

in a nursery at any time other than in April, the company allows employees to take child-care leave until the end of March after the child celebrates his/her first birthday. It also allows employees to have up to one year to look after other family members. The company also has a number of other schemes in place to make work more compatible with family-care. It has a crèche at its Tokyo head office, a scheme for shortening working hours by one to two hours per day, a subsidy scheme to assist with expenditures on child or family care, flextime, and a re-employment scheme. Its employees, including those in managerial posts and male workers, do in fact take advantage of those schemes and services. In Benesse Corp., females account for about 60 percent of all employees, and their average tenure is now 6.3 years compared with 3.5 years 10 years ago. Their longer tenure is seen as a plus for the company.

Four other companies were given the Labour Minister's Award for Effort: Akita Seimitsu Denshi Kogyo Co., Ltd. (a precision machinery manufacturer with about 170 employees), Kikkoman Corp. (a food manufacturer with about 3,000 employees), Toto Ltd. (a ceramic manufacturer with about 10,200 employees), and Yamakataya (a retailer of various goods with about 1,400 employees). In three of these companies, all the employees who took advantage of child or family care leave schemes have returned to work afterwards. Thirty-three companies were given the Award of the Head of Women's and Young Workers' Office.

Apart from the certificate and award schemes, the Ministry of Labour is asking companies to create work environments which enable employees to combine successfully both work and family life. For example, the ministry is providing grants to firms which take initiatives to encourage workers to return to work after taking child or family care leave, and subsidies for firms which install nurseries for their employees or which take other measures to facilitate the taking of such leave.

## Labor Management Relations

### Employment Issues at the Fore on Rengo's 10th Anniversary

Celebrating its 10th anniversary, Rengo (Japanese Trade Union Confederation) held its sixth biennial convention on October 14 and 15, 1999. The conference decided on Rengo's activities for the coming two years. The conference criticized excessive belief in the market. It agreed that policies which leave everything to the market will actually curb economic vitality by widening social inequality, and that the market cannot work properly without clearly defined rules and safety-nets. It stressed the importance of "social fairness," and supported policies which would achieve a "worker-centered social welfare society."

Discussions focused on the worst unemployment rate since the end of World War II. Mr. Kiyoshi Sasamori, General Secretary of Rengo, stated that "job security is the lifeline of labor unions, and we must stand up to managers who are reluctant to take social responsibility, even as they claim that we are "insensitive to realities". The conference asked the government to create 1.4 million jobs, to deal with unemployment, and to allocate ¥5 trillion to that end in its second supplementary budget for fiscal 1999. It also called for the introduction of Japanese-style work-sharing by reducing the amount of overtime, and for the implementation of Rengo-version job placement service. Finally it considered pushing for the enactment of a comprehensive employment contract law which would provide strict guidelines for the dismissals of employees.

Some speakers argued that it is impossible to safeguard jobs simply by stubbornly resisting employers. They called for unions to foresee change before it happens and to act before the government and employers even if it means giving up some of their "vested rights."

Rengo has decided to give its main support to the Democratic Party of Japan, the largest opposition party, but to also cooperate with the Social Democratic Party, Komeito and the Liberal Party.

The membership of Rengo was about 7.88 million 10 years ago, and stood at about 7.48 million as of June 1998. Japan's unionization rate declined to 22.4 percent in 1998, due partly to increases in the number of non-regular employees such as part-time workers who have been employed to replace regular employees. Labor unions have been too slow in organizing non-regular employees. In 1996 Rengo established guidelines for organizing such workers, and founded "regional unions" to which individual part-time workers in a region could affiliate. Rengo now plans to put more effort into these units in order to better organize non-regular employees.

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### **Nissan's Restructuring Plan and the Union's Response**

On October 18 Nissan Motors Co., Ltd. unveiled its restructuring plan. Titled the "Revival Plan," the most drastic measures will result in a reduction of the workforce by 21,000 (14% of the group's total workforce) over the coming three years. It calls for the closure of five factories beginning in March 2001, including the Murayama factory in Musashi-Murayama, Tokyo which produces the "March" and the "Skyline." The plan also envisages a reduction in the number of suppliers of parts and materials to half, and a fundamental re-examination of

the relationship with affiliated companies. By the end of fiscal 2002, the final year of the plan, Nissan Motor expects to have cut back on costs by ¥1 trillion.

With its focus on cuts in production, personnel and costs, and in its fundamental re-examination of the relationship with affiliated firms, the plan is unprecedented in scale and content in the Japanese automobile industry. It will thus have a great impact on the business world in Japan.

Mr. Carlos Ghosn, who became Nissan's Chief Operating Officer as a result of Nissan's capital tie-up with Renault in March 1999, has set as the company's immediate target the restoration of profitability in fiscal 2000. The end goal is to make a consolidated operating profit equivalent to 4.5 percent of sales by fiscal 2002, and to cut the company's interest-bearing liabilities to half of the present ¥1.4 trillion. However, considering that the company's loss on a consolidated basis this fiscal year is expected to be ¥590 billion, the target will be fairly difficult to achieve.

With regard to employment issues arising from executing the Revival Plan, management states that they will secure jobs for all employees at factories due to close by transferring them to other factories, and that they are ready to pay extra retirement allowances to employees who have difficulty in moving to other factories. They claim that it is possible to achieve workforce cut-backs through attrition, parting with non-core businesses, an early retirement program, and other measures.

Nissan's union criticized the plan. From the viewpoint of safeguarding jobs and livelihoods, it claims the measures for workers at closing factories who have difficulty in transferring will not be sufficient. The union is asking management for a thorough discussion of the options, and anticipates having to negotiate with management before the plan comes into effect.

Yukio Takahashi (who represents 190,000 workers as chairman of Nissan Roren [Confederation of Nissan Workers' Unions]) said, "It is regrettable that the factories in Murayama, Kyoto, and Kurihama will be closed less than five years after the closure of the Zama factory. I think that the responsibility of the management is quite large. However, I am cognizant that Nissan would not survive in the 21st century unless it embarks on fundamental reform. The biggest task for the union is to safeguard the jobs of present workers by discussing various issues with management so as to avoid involuntary layoffs under the labor-shedding plan." The union has thus reinforced its basic position that jobs should be safeguarded even when the body actually employing the employee may change.

The closure of the Murayama factory is planned for March 2001. Individual interviews of factory workers due to be moved began last November. Each worker will have three interviews before March 2000, and personal circumstances such as housing and family members will be taken into account, along with preferences as to where they would like to move. By the end of March 2000, Nissan plans to initially inform each of its employees about their new workplace and their new duties.

## Public Policy

### **Economic Stimulus Package**

According to the Management and Coordination Agency, the unemployment rate in September (seasonally adjusted) was 4.6 percent, 0.1 percentage point down from the previous month. This was the second successive monthly improvement. However, there is still a strong feeling among enterprises that further restructuring will occur. Such perceptions have been re-enforced by the massive job cuts announced by Nissan Motors Co., Ltd. The Ministry of Labour maintains its view that, although there are some signs of improvement in the employment situation, firms are still restricting their hiring of new graduates, and it is too early to conclude that the labor market has turned around.

On November 11, 1999 the Cabinet ministers concerned with economic policies met and unveiled an economic stimulus package to put the economy on a full recovery track. The ¥18 trillion package includes ¥1 trillion for employment policy measures. In accordance with this announcement, the government will submit a second supplementary budget to an extraordinary session of the Diet.

Key facets of the employment package to create jobs and stabilize employment are the encouragement of business start-ups and support for management in small- and medium-sized firms. For instance, the Ministry of Labour will establish "special subsidies" for job-creation in small- and medium-sized firms in local areas. At the same time it will set up service centers for human resources in new and growing industries. Another type of grant will be made available to firms which create jobs in designated areas and for workers losing their jobs with subcontractors.

The special subsidies for job-creation in small- and medium-sized firms and in designated areas are designed to help workers become re-employed when they have lost their jobs with subcontractors or associated companies due to the restructuring of major firms, such as

Nissan. The subsidies are in line with the tough situation revealed by a monitoring survey conducted by the Ministry of Labour. The survey was administered to 41 firms adjusting or planning to adjust their employment levels by a thousand or more jobs. Based on the survey, it was estimated that 140,200 jobs (equivalent to 12% of all employees) will be shed by the 41 firms between 1996 and 2005.

The subsidies will be granted to subcontractors and to firms which come under pressure to reduce their workforce when the large enterprises with which they have strong ties carry out large-scale restructuring which will result in closing factories and other measures. Such firms will be recognized as "designated enterprises" by the Ministry of Labour. Business firms which employ workers who have lost their jobs due to restructuring measures will be subsidized to the extent of about ¥100,000 per worker for a maximum of six months, regardless of age, type of job or other such factors. Of the ¥1 trillion proposed expenditure for employment measures to be submitted to the extraordinary session of the Diet, ¥32.1 billion will be allocated for this subsidy.

## Special Topic

### Equal Employment Revisited

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#### 1.0 Introduction

Twenty years have passed since the author wrote on equal employment in this Bulletin in 1979<sup>(1)</sup>. It was more than five years after this before equal employment opportunity legislation was even discussed by the general public in this country.

During the 20 years since 1979, Japan as a nation, and particularly its economy, has changed in many respects. Perhaps the most important changes lie in the impacts of globalization.

Particularly today, the Japanese economy is facing the serious challenges globalization presents. Needless to say, labor and industrial relations are also required to meet global standards. Among many unique features in Japanese labor practices, the unique features of



equal employment law and practice provide some of the most intriguing issues of legal, sociological and cultural study.

In this author's view, the uniqueness of the Japanese equal employment law and practice is to some extent related to Japanese culture, and the homogeneous nature of Japanese society. But more important factors are to be found in the uniqueness of the Japanese legal and corporate culture.

Although different traditions and culture in different societies may cause differences of degree, no nation is completely free from prejudice or discrimination. Every nation is more or less biased, and thus discriminates. For instance, U.S. society, today's world champion of anti-discrimination, was very prejudiced and discriminatory at least until the 1960s. Changes in the United States over recent decades have been strongly promoted by law introduced and expanded after 1964.

In this sense, the role of law in Japan is worthy of examination, particularly because Japanese multinationals doing business abroad have been facing many problems with charges of alleged discrimination<sup>(2)</sup>. To avoid such troubles in the global development of Japanese industrial relations, domestic law regulating employer practices in Japan is expected to play an important role. In this paper, the author will first analyze unique aspects of the Japanese Equal Employment Opportunity Law (EEOL) and its amendment in 1997, and then evaluate the impact of this Law.

## **2.0 The EEOL as a Lamé Duck**

Unfortunately, the EEOL of 1985 was born as a lame duck. It had four critical defects as an anti-discrimination law from its birth; defects that still remain in substance even after major amendments were made in 1997<sup>(3)</sup>. In this sense, the EEOL was born as an ugly duckling and has never metamorphosed into a swan.

### **2.1 Legal Norms Not Meant to be Enforced**

First of all, the EEOL was never meant to be effectively enforced. In its original text, the Law prohibited discrimination in termination of employment and in training and welfare, but merely encouraged equal treatment in recruitment, hiring, job assignment and promotion. These encouragement provisions were called *doryoku gimu* (duty to endeavor). Because of these notorious "endeavor provisions," the Law has been regarded at best as "toothless," at worst a mere joke. However, a more serious deficit in this Law is the total lack of specific compliance-enforcement measures, even for provisions prohibiting discrimination. Very different from Western laws, the 1985 EEOL neither gave power to courts to provide relief

through orders to cease and desist, affirmative orders, or punitive damages, nor did it establish any administrative agency to enforce compliance with rules prohibiting discrimination.

The EEOL only established local mediation committees to mediate cases of alleged discrimination. However, under the original law, mediation could start only when the employer accused of discrimination agreed to mediate. The obvious weakness of such a voluntary mediation procedure is exemplified by the fact that only one case of mediation was ever agreed to proceed by an employer during the 10 years following enforcement of the EEOL.

The 1997 Amendment to the Law abolished this requirement of consent to start mediation. However, this change is unlikely to be effective as, needless to say, final settlement by mediation still depends on both parties' consent. As a matter of fact, even the above-mentioned single mediation case was never settled owing to the employer's refusal of the terms of settlement proposed by the Mediation Committee.

Another improvement made by the 1997 Amendment – providing for publication of names of companies violating its provisions, along with disclosure of the nature of their offenses – might be better than nothing, but it is still far from what is really needed, namely, effective enforcement measures.

## **2.2 One-sided Nature of the Law**

The EEOL is not an equal opportunity law nor an anti-discrimination law in the genuine sense at all, because it deals only with discrimination against women as compared to men. It does not deal with discrimination against men as compared with women. This unbelievable fact is reflected in provisions of the original 1985 EEOL text such as "an employer shall not discriminate against a woman worker as compared with a man by reason of her being a woman" (Arts. 9, 10 and 11), and "an employer shall endeavor to give women equal opportunity with men" (Arts. 7 and 8).

Even more astonishingly, the Women's Bureau of the Ministry of Labour, which is responsible for the enforcement of the EEOL, has taken a stubborn position in its official interpretation of the Law, and has stuck to this one-sidedness. For instance, the Bureau has made it clear in its administrative guidance that the Law is more concerned with discrimination against women than with men in recruitment and hiring, it does not care if men are similarly discriminated against. The Bureau's high-ranking officers have justified this absurd position by their concern to keep certain types of jobs, traditionally dominated by

women, exclusive to women<sup>(4)</sup>.

The irony and tragedy of this unique understanding of "equality" as a one-sided advantage reserved for women lies in the fact that it has served to enclose women in less advantageous forms of employment, such as part-time or temporary jobs, which female bureaucrats wanted to keep as an exclusive sanctuary for women.

### **2.3 Confusing Equality with Protection**

The peculiarity of the EEOL described above, which is certainly incomprehensible to Western readers, is a result of confused notions of equality held by both policy makers and supporters for equal opportunity legislation in Japan. The Women's Bureau, which was responsible for drafting the 1985 Law has been, and remains, concerned with protection for women. The Bureau has been in charge of protecting women by, for example, restricting overtime, holiday work and night labor, weightlifting and harmful jobs for women.

The Bureau took the equality issue to be part of protecting women, and never properly understood the fact that equality and protection of women are legal values that are counterpoised. It is quite symbolic that the EEOL was originally introduced as an Amendment to the Working Women Welfare Law of 1972. Thus, the official full title of the EEOL was Law Respecting the Improvement of the Welfare of Women Workers Including the Guarantee of Equal Opportunity and Conditions for Men and Women in the Field of Employment (the name of the Law was changed with the 1997 Amendment, to become the Law Respecting the Guarantee of Equal Opportunity and Conditions for Men and Women in the Field of Employment). Right from the beginning, therefore, equality was regarded as a part of protection, which, in turn, was deemed to "include" equality.

As a result of this confused understanding of equality and protection, the fundamental contradiction between these two values was never understood by women bureaucrats who were in charge of drafting the EEOL. At the same time, women's groups, including female trade unionists who promoted equal employment legislation, strongly advocated keeping full protection for women, even while demanding equality legislation.

Both policy makers and supporters of the legislation categorically refused to admit the inconsistencies inherent in attempting to provide full equal opportunity for women workers who were denied work on an equal basis with men in terms of overtime, holiday and night labor, heavy weightlifting and other dangerous jobs.

In order to make a compromise with employer groups and conservative political leaders

who opposed equality legislation, equality and protection became matters of political dealing. Thus, the EEOL was passed as a compromise, some parts dealing with protection of women were omitted on condition that certain protective provisions of the Labour Standards Law were kept. Until the 1997 Amendment, overtime and holiday work by most women workers were restricted, and night labor by women was permitted only for certain job categories. With the exception of maternity protection, these restrictive provisions for women were finally abolished by the 1997 Amendment. However, the mistake caused by confusing protection with equality was repeated again when a special restriction on the limit of overtime for women was introduced tentatively for another three years after the 1997 Amendment came into effect. Thus, complete equal opportunity in overtime work for women was once again postponed as a result of a political compromise at the final stage by promoters of women's causes who are more concerned with the vested interests of women than with complete equality.

#### **2.4 Limited Scope of the Law**

Finally, the EEOL deals exclusively with gender discrimination only. The Law was drafted in the early 1980s by the Women's Bureau, mainly to meet Japan's obligations under the UN Convention on Elimination of All Forms of Discrimination against Women. Thus, discrimination on the basis of race, not to mention on the basis of age or handicap, was completely outside of the narrow vision of the policymakers.

Such a narrow vision contributed to confusing equality with protection, two different and opposing values because the neglect of racial discrimination by policy makers meant neglecting the importance of segregation as a form of discrimination. If the policy makers had gender discrimination together with racial discrimination in mind, they might have easily recognized the importance of labor market segregation as a serious form of discrimination against both women and minority groups. Then they might have avoided the mistake of introducing such one-sided anti-discrimination legislation as the EEOL.

This confusing policy has taken away from the potential prestige and persuasive power of the EEOL, and quite obviously has provided a good excuse for opponents to sabotage enforcement of the Law. Employers can comfortably and persuasively argue that there is no reason to treat women, who do not undertake overtime, holiday work, night labor or dangerous jobs on an equal basis, the same as men who do accept such work. Hence, they have good reason to employ women only for less responsible jobs, such as temporary and part-time work.

#### **3.0 Keeping Segregation Intact: The Role of the One-sided Law**

As a result of policy makers' neglecting the issue of segregation, the EEOL has been

unable to overcome the concentration of women in less advantageous jobs during the years it has been in force.



The percentage of part-time employees among female employees increased from 29.2 percent in 1983 to 39.0 percent in 1998, according to the Report on the Special Survey of the Labour Force Survey conducted by the Management and Coordination Agency (See Table 1). This increase in the percentage of part-time employees among female employees in Japan in recent years is greater than the average for major industrialized countries, except France. The percentage has declined, or stayed on the same level, in most of these countries.

The percentage of temporary workers among female workers has also increased from 15.2 percent in 1985 to 15.7 percent in 1997, when the percent of temporary workers among male workers was only 4.3 percent, according to the Labour Force Survey conducted by the Bureau of Statistics of the Management and Coordination Agency.

The average wage gap between men and women has slightly decreased, but is still much wider than in other major countries. On average, female workers in Japan made 63.1 percent of the average male wages in 1997, up from 59.6 percent of the average male wage in 1985, according to the 1997 Basic Survey on Wage Structure conducted by the Ministry of Labour. The figure is 75.5 percent in the U.S., 74.2 percent in Germany and 80.8 percent in France (ILO, *Year Book of Labour Statistics*, 1997).

Thus, there is a general consensus among leading labor economists that after some 10 years of enforcement of the EEOL, the Law has brought some improvement in the status of women and conditions of employment, but the effect of the Law has been slow and limited<sup>(5)</sup>. The fundamental disadvantageous status of Japanese women in the macro-level labor market has not remarkably changed.

It is still too early to recognize the full impact of the 1997 Amendment. However, the 1999 Survey on Women Workers' Employment Management conducted by the Ministry of Labour in anticipation of the enforcement of the 1997 Amendment in April, shows some improvement in the human resource management (HRM) policies of some 6,000 companies surveyed in favor of equality. Nonetheless, discriminatory policies, particularly in recruitment, hiring, job assignment and promotion remain essentially unchanged.

Most large companies still separate job openings into two categories: "fast-track" career opportunities for those with anticipated managerial abilities, and non-career openings for all the rest. Of such companies, 53.7 percent employ only men for the first category, while 60.8

percent employ only women for the second category. In job assignment, a substantial number of companies assign men only to important jobs such as *eigyō* (trading) jobs (37.8% of companies), or *kenkyū-kaihatu-sekkei* (research-development-planning) jobs (26.6% of companies).

Promotion of women to managerial jobs such as *bucho* (bureau chief), *kacho* (department chief) or *kakaricho* (section chief) is still limited. Only 7.1 percent of *bucho*, 20.1 percent of *kacho* and 39.6 percent of *kakaricho* are women. The percentage of women in *bucho* and *kakaricho* positions has even declined since 1995, from 8.4 percent and 42.4 percent, respectively. Thus, it is no wonder the government itself has admitted in its white paper that between 1995 and 1998 Japan registered the least improvement among 10 industrialized nations in terms of women's participation in government and corporate decision-making processes.

#### **4.0 Background to the Japanese Law of Equal Employment**

It is obvious that the EEOL has had very little impact in changing Japan's traditional employment structure with its segregated labor markets and job opportunities for men and women, even more than a decade after its implementation.

The traditional employment structure has two aspects. First there is a core labor force (regular employees) under long-term employment arrangements, with strong job security, better working conditions, and other privileges such as company welfare benefits and facilities (so-called life-time employment). The core labor force is occupied exclusively by men with good educational backgrounds. Particularly in larger companies, the core labor force is also dominated by male-monopolized decision-making positions. Second, there is a peripheral labor force (non-regular employees) mostly composed of women, minorities, men with inferior educational backgrounds, the handicapped, employees who failed in their first job, and, more recently, illegal foreign workers.

The traditional male-dominated corporate culture of Japanese companies was established through daily business practices based on long-term personal relationships between subordinates and superiors, and among colleagues. Important decision-making often takes place in an informal way through personal relationships between privileged regular employees. Women are excluded from such decision-making processes not only in terms of formal position, but also in their daily informal personal relationships.

This corporate culture is deeply entrenched in Japanese society today, and is integrated into Japan's political, educational and bureaucratic systems. Thus, the issue of equal

employment opportunity is closely connected with the issue of equality in society in general. The Basic Law for a Gender-equal Society recently passed the Diet, and can be expected to deal more broadly with the issue. However, this Law also contains a fatal defect – a lack of any specific compliance-enforcement measures. This defect is connected with the Japanese legal culture, which avoids the universalistic approach of Western legal thinking<sup>(6)</sup>. As already mentioned, Japanese bureaucrats always prefer mediation, a way of settlement by compromise, to black-and-white judgments by the courts, or enforcement of legal norms in a universalistic way.

Obviously, the Japanese way of administrative guidance with advice, suggestions, recommendations, consultation and persuasion - including through implication and bestowal of favor and disfavor - could be to some extent effective in implementing a policy goal, as proponents of Japanese administrative guidance have argued. However, such a method of enforcing policy goals very much depends on voluntary compliance by companies, and does not work for those companies unwilling to change long-held prejudices. Even in the case of decent law-abiding companies, it is not easy to change their fundamental employment structure, which has been firmly established during the entire postwar period, and in which discriminatory practices against women and minorities have been firmly integrated.

## **5.0 Western Criticism and Japanese Response**

Some Japanese who read this article may complain that it reflects a completely Western way of thinking. To be sure, what they have read so far is based on a very Western understanding of the role of law in society. All the negative evaluations of the EEOL emphasize the ineffectiveness of the Law, which stems from the fact that it is not enforced through judicial procedures but through administrative guidance. As already discussed, administrative enforcement is carried out mostly by advice, suggestion, consultation, etc. The effectiveness of the EEOL very much depends on voluntary compliance. However, the traditional HRM policies of Japanese companies have been formulated on the basis of a strong concern for labor force efficiency. Furthermore, under the current bleak employment situation in Japan, companies are desperately trying to save labor costs, and their HRM policies are focused on how to promote maximum efficiency with maximum labor force competency. Companies will never provide equal employment opportunity to women (or minorities) as long as they are unable to compete with men on a completely equal footing.

Thus, the most important problem for Japanese women is whether they are qualified to compete with efficient men in a fully-fledged, efficient labor force, in spite of the burdens of child-birth and child-care. This latter handicap may be overcome to some extent by improving child-care and nursing facilities, and promoting equality at home. Therefore, the recent series

of government policy initiatives promoting nursing and child-care leave, and the establishment of nursing and child-care facilities in the workplace, are highly appreciated<sup>(7)</sup>. These policy measures are probably the best that Japanese bureaucrats can be expected to achieve in the current climate of economic difficulties.

Introducing such policies to create prerequisites for equal employment in the present social context is more likely to be effective than adopting the Western approach, which teaches through deterrence, punishing violations with exorbitant damage awards.

The difference between Western and Japanese approaches is how to teach the employer. The Western way is to teach by using extreme damage awards, or to correct employer behavior through direct enforcement of certain HRM steps in the name of "affirmative action." The Japanese way is to teach employers via personal contact, and to manipulate their behavior by creating a friendly environment.

The Western approach, which enforces equality through administrative agencies and courts, is certainly effective, since it is able to create equal treatment, and correct employer behavior, either directly through the use of public power, or through deterrence measures such as exorbitant damage awards. However, if we view the U.S. as being typical of such an approach, the series of equal employment legislation over recent decades has contributed substantially to the already serious degree of litigiousness in U.S. society.

For instance, it is pointed out that the number of employment cases filed in the Federal Court jumped from 10,771 to 23,152 between 1992 and 1996 as a result of the Civil Rights Act Amendments of 1991, which added punitive damages and shifted the burden of proof onto employers<sup>(8)</sup>.

One critical observer of the American employment-litigation explosion warns of the heavy burden on American employers as a result of developments in anti-discrimination law and in common law of wrongful discharge after the 1960s. He writes, "As a new body of law grew, virtually every decision employers made became the subject of a potential lawsuit"<sup>(9)</sup>. Among the abuses of lawsuits he describes as extreme examples of absurdity are frequent cases of the law's official encouragement of preferences, numerical goals, and quotas for favored groups, and numerous cases of alleged sexual harassment. Coincidentally, the 1997 Amendment of the EEOC introduced for the first time official endorsement of positive anti-discrimination measures by employers and regulations dealing with sexual harassment. One can only hope that Japan will not follow only the negative aspects of precedents set by the great United States.



Notes:

- (1) Tadashi Hanami, "Protection or Equality?", *Japan Labor Bulletin* vol. 18, no. 12, pp.7-10 (1979).
- (2) For an analysis of such charges against Japanese multinationals abroad, see Tadashi Hanami, "Equal Employment Opportunity in Japan: The Crossroad of Japanese Corporate Culture and Legal Culture," in C. Engles and Manfred Weiss, *Labour Law and Industrial Relations at the Turn of the Century – Liber Amicorum in Honor of Prof. Dr. Roger Blanpain*, Kluwer, 1998, pp. 769ff.
- (3) For a detailed description of the 1997 Amendment, 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, pp. 5-10 (1998).
- (4) For an early official publication following the introduction of the EEOL by the Women's Bureau, see Ryoko Akamatsu, *Shosetsu Danjo Koyo Kintoho Oyobi Kaisei Rodo Kinjunho* (Detailed Explanation of the EEOL and the Labour Standards Law), Japan Institute of Labour, Tokyo, 1990, pp. 265ff.
- (5) See Sachiko Imada, "Female Labor Force After the Equal Employment Opportunity Law," *Japan Labor Bulletin* vol. 35, no.8, pp. 5-8 (1996); and Naoki Mitsuya, "Josei Koyo to Danjo Koyo Kikai Kintoho" (Employment of Women and the EEOL), in T. Inoki and Yoshio Higuchi (eds.), *Nihon no Koyo Shisutemu to Rodo Shijo* (Japanese Employment System and Labor Market), Nihon Keizai Shinbunsha, Tokyo, 1995, pp. 201ff.
- (6) The best analysis of the different understandings of the role of law in Japanese and Western society was given by Frank Upham, *Law and Social Change in Postwar Japan*, Harvard University Press, 1987.
- (7) For more details, see Araki, op. cit., supra note 3.
- (8) Robert J. Samuelson, "Legal Ambiguity Positions the Workplace," *Japan Times*, June 28, 1997.
- (9) Walter K. Olson, *The Excuse Factory: How Employment Law is Paralyzing the American Workplace*, The Free Press, 1997, p. 6.

## JIL News and Information

### IIRA World Congress

#### — A Discussion of Industrial Relations in the 21st Century—

As already announced in various forms in past issues of this *Bulletin*, the 12th World Congress of the International Industrial Relations Association (IIRA) will be held from May 29 to June 2, in Tokyo. The Congress Organizing Committee has its office in the Japan Institute of Labour (JIL) and includes leading academics and people from industrial relations organizations, such as the Chairman of Rengo (Japanese Trade Union Confederation) and Nikkeiren (Japan Federation of Employers' Associations). The organizing work of the Congress has been carried out by co-organizers JIL and the Japan Industrial Relations Research Association, and officially supported by the Ministry of Labour, Rengo and Nikkeiren.

#### What is IIRA?

As the IIRA may be unfamiliar to some readers, we shall briefly explain its purpose. The IIRA is an international academic association founded in 1966 by three giant authorities on industrial relations at that time, such as Professor John T. Dunlop of the United States, Professor B.C. Roberts of the United Kingdom, and Professor Ichiro Nakayama of Japan, with

its head office at the International Institute for Labour Studies of the ILO. Since its first world congress in Geneva in 1967, it has promoted the international study of industrial relations via world congresses every third year and regional conferences at appropriate times, together with the activities of individual organizations in the member states. As the IIRA was founded by three major countries' national associations – American, British and Japanese – it was immediately recognized as an international academic body drawing on leading experts in the field from all over the world. Following the three founders, the post of president was filled by Europeans: a distinguished French sociologist, Professor Jean Daniel Reynaud, Professor Friedrich Fuerstenberg from Germany, and Professor Roger Blanpain from Belgium. Then, after being taken on by an Australian and an American, the post returned to a European, Professor Tiziano Treu. The post of IIRA secretary is traditionally taken by ILO personnel. Thus, the IIRA has tended to give the impression that it is excessively Europe-orientated for a world academic society.

The IIRA today, however, composed as it is of national industrial relations' research associations from 38 countries, and with 45 institutional associate members and about 1,300 individual academics and practitioners from throughout the world, can truly claim to be an international academic association. That such an association should hold its world congress twice in Japan attests Japan's high standard in this field, and demonstrates to the world the importance of industrial relations in this country.

The Tokyo congress next year is expected to draw participants from 85 countries and regions, or about 800 participants if those at home are included. By January 1998, the deadline for proposed reports, we had received over 350 applications from more than 50 countries, making the Officers realize the high expectations placed on the congress, as well as the difficulty of selecting individual papers.

### **The 2000 World Congress**

We have set the general theme of the 12th World Congress as "Global Integration and Challenges for Industrial Relations and Human Resource Management in the 21st Century," to cover discussion of the following five sub-themes:

- (1) Exploring Trends in Employment Relations and New Approaches to Work in the 21st Century;
- (2) The Impact of Globalization on National and Regional Systems of Industrial Relations and Employment Relations;
- (3) Changing Patterns of Employee and Union Participation: Toward New Systems of Industrial Relations?;
- (4) Search for Flexibility, Fairness and Prosperity: Alternative Employment Policies in the

21st Century; and

(5) Asia in the 21st Century: Challenges and Opportunities in Work and Labor.

For each theme there will be plenary sessions, at which individual members will give reports and participate in discussions, and workshops for smaller groups. There will also be many special seminars in which a large number of study groups will participate.

At the end of the 20th century many industrialized countries are seeing drastic and fundamental changes in employment and industrial relations. In Japan, the aging of society, the declining birthrate, the "hollowing" of industry, and the information revolution brought about by the development of electronic technology are bringing unprecedented changes in the fields of employment and labor, a situation shared by other industrialized countries. To enable Japan's economy to recover and regain its competitiveness in a globalized economy, it is vital to explore, by means of international comparisons, which problems and solutions are shared with other countries. In turn, this will clarify the problems and policy measures unique to our own country. In line with this, the coming congress will divide the tasks facing the labor sector in the coming century into five categories, and through discussion with specialists from all over the world, determine which problems are shared.

From the beginning of the Asian crisis and against a background of worldwide economic recession, labor markets and changes in industrial relations in the region have become central concerns of researchers and practitioners. This is why the congress is to treat labor issues in Asia as one of its five sub-themes.

We believe that this congress, in which will participate many of the first class experts from around the world, will provide a unique opportunity, not only for researchers, but also for those concerned with labor matters all over the world. The congress languages will be Japanese, English, and Spanish, with simultaneous interpretation. We hope that readers of this Bulletin will be encouraged to attend the congress.

**IIRA 12th World Congress Information**  
**Special Seminars**

**May 29-June 2, 2000, Shinjuku, Tokyo**

In addition to the Plenary Sessions and Workshops where subjects under the five sub-themes shown on page 11 will be discussed, 13 special seminars will take place, focusing on topics as follows.

- Private Dispute Settlement
- Labour Unions and Development Cooperation — Formation of Asian Social Safety Net and Japan's Role in the 21st Century
- The Link between International Finance, Employment and Industrial Relations
- Measures Taken by Executives in Asian Countries, Regarding Human Resources Management and Labour-Management Relations, in the Context of Globalization
- New Directions in Industrial Relations Research in Japan
- Labor Law Reform for the 21st Century: Responding to Globalization and Social Changes — Japan/U.S./E.U. Joint Research
- Research in Gender Meets the Industrial Relations Tradition — Consequences of Diversity
- Social Adjustment in Globalization in Asian Countries
- Transition from Higher Education to Work
- Corporate Governance and Industrial Democracy
- Fair Labour Standards in Asia
- The Individualisation of the Employment Contract: Comparing National Experiences
- The Unemployment Crises in Industrialized Countries

For further information please visit our web site at <http://www.jil.go.jp/jil/iira12th>, where on-line registration is also available.

Contact IIRA 12th World Congress Secretariat

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## Statistical Aspects

### Recent Labor Economy Indices

	October 1999	September 1999	Change from previous year
Labor force	6,811 (10 thousand)	6,831 (10 thousand)	-5 (10 thousand)
Employed	6,500	6,514	-26
Employees	5,373	5,355	-7
Unemployed	311	317	21
Unemployment rate	4.6%	4.6%	0.3
Active opening rate	0.48	0.47	0.01
Total hours worked	154.6 (hours)	153.9 (hours)	-0.3
Total wages of regular employees	(¥ thousand) 263.8	(¥ thousand) 263.7	-0.1

Note: \* Denotes annual percent change.

Source: *Rōdōryōka Chōsa* (Labour Force Survey), Management and Coordination Agency; *Shokugyō Antei Gyōmu Tōkei* (Report on Employment Service), *Maitsuki Kinō Tōkei* (Monthly Labour Survey), Ministry of Labour

### Trends in Weekly Scheduled Working Hours

