

Guide to Human Resource Management
-Comparative HRM between Japan and the US-
(JAPAN)

The Japan Institute of Labour

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I. Corporate Management and Human Resources Management (JAPAN)

1. Factors to Determine Human Resources Management System

● Distinguishing Features of Japanese Employment Practices

- Preferential treatment is given to seniority, based on long-term employment relations in the same company, mainly among large enterprises.
- On-the-job training (OJT) is conducted, particularly for employing new graduates.
- Employees of the same company are managed under the same system of human resources management, regardless of job type.
- The practices greatly vary with the scale of enterprise and have been changing significantly in the 1990s and later.

The major employment practices in Japan, mainly at large enterprises, are “lifetime employment”, “seniority” and “enterprise unions.” They were object of worldwide attention as the primary force behind corporate growth in Japan before the bursting of the economic bubble. These include the idea that long careers are formed through long-term employment, the fact that the seniority factor is important in pay management, promotion in rank and job promotion, progressive fostering of talent at the company and OJT, and the fact that employees have a strong sense of belonging to the company instead of the feeling that they have been just contracted to do their jobs.

Basically, employees of the same company like, for example, white-collar and blue-collar workers, are managed under the same system of human resources management, regardless of job type.

However, these employment practices concern mainly to large enterprises. It is difficult for medium and small enterprises to put these costly employment practices into effect. Therefore, they are much less prevalent at medium and small enterprises than they are at large enterprises, and have been changing significantly since the 1990s.

- **Function of Personnel Division**

- The role of personnel division is the overall integration of various measures of human resources management; including hiring and stationing personnel, promotion, assessment, salary raise and dismissal.

The personnel division at Japanese companies generally fulfills the role of the overall integration of various measures for HRM. This includes hiring, stationing personnel, promotion, assessment, salary raise and dismissal. In general, managers of individual divisions are not authorized to hire employees. The personnel division must approve stationing personnel and promotions.

Under the premise of lifetime employment, by spending a lot of time in determining the aptitudes and skills of employees, the personnel division is able to efficiently utilize human resources among their employees by rationally stationing them within the company and gathering personnel-related information.

The personnel division has often managed personnel in a way that is linked to business strategy. For this reason, skills at large enterprises are fostered in the personnel division with the overall company in mind. Such personnel-related activities as those regarding basic HR policy, essential planning for required personnel, and pay-related systems, standards for determining working conditions, measures for skill development, welfare measures, measures for in-house activation, safety and hygiene measures, industrial relations measures and measures for work management are determined by the personnel division based on HR strategy. These are subsequently communicated to the workplaces.

It is considered essential for personnel divisions at Japanese companies to be aware of the viewpoints of business strategy regarding system planning. Accordingly, personnel divisions at Japanese companies are closer to the administrative center of the company than their counterparts in Europe and the US.

II. Hiring Management

(JAPAN)

1. Planning for Required Personnel and Job Design

- Personnel divisions are in charge of all matters about hiring, ranging from personnel cost training and the management of clerical affairs.

There are mainly two planning functions for required personnel: One is the quality and quantity of human resources required for developing business. The other is promoting these plans on a daily basis. At Japanese companies, the personnel division is in charge of all these functions.

Concretely, personnel divisions are also responsible for a series of activities consisting of stationing, job rotation, temporary transfer to another workplace or company, employment transfer to another company, and retirement. Planning for required personnel is made considering the total mass of labor force that would be able to decide matters concerning not only about regular employees, but also the irregular ones and temporary workers and requests for workers from outside sources. It also requires making the most effective choices for business. Then the division promotes those activities following the plan.

- **Job Design**

- Depending on the circumstances of the company, jobs are sometimes flexibly designed, and personally formed.

At Japanese companies, rather than the idea of applying the labor force to specific jobs, job definition tends to be vague. Even if the business environment changes, the company has to secure and maintain its staff. Therefore, a person's specific job is flexibly designed and might change depending on the business strategy and the circumstances.

- **Planning for Required Personnel**

- While short-term consideration might be given to mid-career hiring for immediate use depending on the business situation, basically the planning for required personnel is mid- or long-term and focused on the periodic hiring of new graduates.

Japanese companies mainly conduct the periodic hiring of young people (new graduates) under the premise of long-term employment, having to adapt to occasional market and economic trends. However, planning for required personnel is often influenced by short-term considerations and the company's business situation. Therefore, many of them hire the flow-type personnel (peripheral employees) to secure a certain portion of labor required. Recently, companies are hiring mid-career persons, temporary workers, and contract workers to achieve its business strategy, reducing labor costs as much as possible.

[For reference]

<Standards for Hiring New graduates>

Rather than hiring new graduates for a specific job, the average Japanese company hires these people from the viewpoint of their potential and their future possibilities, under the premise that they will undergo OJT after being hired. (Importance is not often given to a person's major field of study at the school.)

Also, since people are hired under the premise of long-term employment, importance is also given to an individual's personality, from the viewpoint of whether or not he or she is a person with whom coworkers will be able to get along with over the long term.

[Standards for hiring(examples)]

"Enthusiasm," "desire," "ability to understand and judge things," "ability to cooperate with others and sense of balance," "common sense, culture," etc.

2. Entry Process

- The periodic hiring of new graduates is common practice and is conducted different process from mid-career hiring.

When a company tries to hire employees, its recruiting activities are determined by regulations of the Employment Security Act. So, the entry process performed through fee-charging employment exchanges and public employment security offices (including human banks and those which place people seeking part-time jobs), recruitment based on applications, direct recruitment and consignment recruitment are all regulated by that act.

Japanese companies, where the periodic hiring of new graduates “en masse” is a common practice, employ different methods for recruiting new graduates and recruiting people who are hired at mid-career. When it comes to mid-career hiring, they often clarify the necessary requirements. However, the requirements of new graduates are sometimes unclear.

Since the personnel division handles all personnel management, it is rare public recruiting from within the company.

• Main Methods of Entry Process

Type of Entry Process		Method	Main Target
School	Recommendation from school (through public employment security offices)	A job order is sent through the public employment security office, and a decision is made based on a school recommendation. Continuing relationships are often established. This takes place around fall.	New graduates (junior high/ high school)
	Recommendation from school (job placement office at school)	A job order is submitted to the job placement office at the desired school. The student might be recruited directly, or through the job placement office.	New graduates (college/university level or above)
	Recommendation from professor (laboratory)	A decision is made based on the professors’ recommendations at each company. Continuing relationships are often established.	New graduates (mainly in the field of science, and graduate school students)
	Company introduction meetings	These are held to conduct public relations among a wide sector of students. In many cases interviews are not conducted.	New graduates

Type of Entry process		Method	Main Target
Outside the Company	Referral Connections	Applicants are recruited through business connections.	Mid-career hiring (managerial positions, engineers)
	Want ads	Want ads are placed in newspapers (including trade newspapers) and magazines.	New graduates Mid-career hiring
	Direct mail	Information about the company is sent out via direct mail to new graduates.	New graduates (Mainly university graduates)
	Private Human Bank (employment agencies, outplacement agencies, etc.) including private employment agencies and worker dispatch)	Referrals of workers	Mid-career hiring (Managerial positions, engineers) *Transfer of employees might include new graduates.
	Employment exchange service	Public employment agencies (including human banks and part-timer banks) Employment exchange by labor unions	Mid-career hiring
	Job fair	Company introduction meetings are held and several companies under the sponsorship of the Chamber of Commerce and Industry and employment agencies hold interviews.	New graduates Mid-career hiring

[Points for consideration]

Some companies do not hire people who have blood relatives in the company or in the same division.

~~ Coffee Break ~~

Topic 1: Period of Recruitment of New graduates

When Japanese companies hire employees, they most commonly hire new graduates. In the past, there were gentlemen's agreements ("employment arrangements") made for job conventions between industry and university representatives, and arrangements were made regarding the time schedules of company introduction meetings, contact with recruiters, screening and informal hiring. However, this practice was greatly abused, with these agreements not being sufficiently observed, and with people jumping the gun to grab the best students and binding means being employed to do so. Then, this practice was discontinued in 1997. Since then, the hiring period has differed from company to company and industry to industry, but companies informally decide with their own free will which people they will formally hire on October 1. (The Ethics Charter)

Since the discontinuance of the practice of employment arrangements, there has been a trend for companies to hire sooner and to spend longer periods of time in their hiring activities. It used to be common for companies to begin their hiring activities for the hiring of new graduates around March or April, for students who plan to graduate in March of the following year. These students were usually hired "en masse". Presently, however, due to the participation of foreign-owned companies in the hiring arena, companies are doing their hiring early.

Topic 2: Transfer of Jobs to Other Companies Among People Who Have Been Hired at Mid-career

While recently there has been a trend among companies for an increase in the number of mid-career hiring, many of these employees are transferring their jobs to other companies in the same industry. In fact, it is difficult to hire talented people from other companies in the same industry. In order to prevent the leaking of company secrets, there are some companies that prevent employees from working at a competitor company after leaving the company. (They have contracts with their employees that do not allow them going to work at a company in the same industry for a certain period of time after they have left it.)

[Judicial precedent]

Employees are restricted from working at a competitor company "for a reasonable period of time" after leaving. It is generally determined by the following factors:

- Prohibited period
- Sphere of location
- Type of occupation the person in question has left
- Whether or not the person in question receives compensation

[Trends during recent years]

<Increase in transfer of jobs to other companies among younger age groups>

With an increase in the activities of human banks and private employment agencies, in recent years it has become easier to secure employees among younger age groups. There is particularly a great deal of hiring through private employment agencies for managerial positions at foreign-owned companies in Japan. Recently, people are hired at mid-career through human banks and executive search companies.

<Recruiting through the Internet>

As the Internet has become more and more widespread, there has been an increase in the number of companies that put recruiting information on their web site. Since there are companies that accept applications directly through their web site, the Internet is now becoming a main method of public recruiting. However, since it has now become easy for applicants to access these web sites, during the recruiting period for new graduates there has been a radical increase in the number of applicants when compared to the past, and popular companies now face the task of making the processes of document screening and hiring more efficient.

<Recruiting by Individual Job Type>

It used to be common practice for companies to hire new graduates “en masse”, without making an issue of job type. However, people of the younger age groups are now changing from having a sense of going to work for a “company,” to going to work at a “job.” In the past, it used to be a policy among Japanese companies to train new graduates by letting them experience a variety of different jobs after being hired. However, with the introduction of business division system, and the increased necessity for fostering expertise, there are now companies which are hiring new graduates by individual job type, including financial affairs, accounting, personnel affairs, international business, product planning and system development, just as they do for people who are hired at mid-career.

<System of Public Recruiting within the Company, and the FA System>

There are some companies that have introduced systems by which employees are able to undergo job rotation within the same company after applying for that. In the past, although the personnel division would consider an employee’s desire for job rotation, which was expressed by such means as periodic applications filled by an employee on for this purpose, job rotation was decided by the initiative of the personnel division. This was to activate and promote the balance of demand and supply of labor force in the company and prevent motivated employees with superior skills from leaving the company as a result of the diversification and specialization of business, the diversification of worker’s job consciousness, and increasing mid-career hiring.

<Hiring Throughout the Year>

In Japan, it was common practice for companies to hire new graduates “en masse” in April. Now, they introduced systems for “hiring throughout the year” (several times). These companies hope that hiring throughout the year will have the effect of enabling them to actively hire an increasing number of university students who attend undergraduate and graduate schools overseas, as well as people of superior talent.

<Recruiting Secondary New graduates>

Now, there are companies that, in addition to recruiting new graduates for a given year, recruit secondary new graduates (people who have transferred their employment to another company within several years after graduating from school). A secondary new graduate is a person who, after actually starting to work at a company, leaves that job within several years after starting there as a new graduate, and tries to find employment elsewhere, because he/she was unable to utilize his/her skills, or because that person was not assigned to a position which he/she wanted, or for some other reason. Companies expect that a secondary new graduate will have the basic common knowledge of a full-fledged member of society and will be a young employee who actively works. Companies often do not make experience an issue for secondary new graduates. They often distinguish secondary new graduates from people who are hired at mid-career and for whom the required specifications have been clarified. Besides, they often treat secondary new graduates as they do with new graduates.

3.Screening Process

- The personnel division has the authority to hire and generally handles the entire hiring process.

It is common practice for the personnel division at Japanese companies to handle the entire hiring process, taking into accounts the surpluses or shortages in various workplaces. Line managers are simply involved in the interviewing process rather than determining if the candidate is suitable for a specific job. It is a distinguishing feature of Japanese companies to place more importance on assessing a probable new employee, to determine if that person would be able to act in a suitable manner as a member of the company.

- **Detailed Screening Process**

- The process of hiring is basically different for new graduates and people who are hired at mid-career.
- Generally, application documents include date of birth, date of completion of last educational course, and a photograph.

- **Screening for Hiring New graduates**

Generally, this process often entails (1) resume screening, (2) screening by written examination and (3) screening by interview. After the resume screening to eliminate inappropriateness from the recruiting conditions, the job candidates are narrowed down through a written examination to test intelligence, aptitude and character. After this, the students are interviewed. Everything will be assessed, from self-introduction and motivation for applying for the job, his/her general character and how that student will be able to display his/her skills at the company. Importance is seldom placed on a student's major field of study at school.

- **Screening of People Who Are Hired at Mid-career**

Generally, this process entails (1) resume screening and (2) screening by interview. Instead of a written examination, in the process of screening the applicants based on resume and an interview, it is common practice to have the applicants submit resumes indicating their work experience, with some aspects as their careers and job performance; thus, allowing such data to be closely scrutinized.

[For reference]**<Reference Check>**

It is common for Japanese companies to consider applicants who have changed jobs many times as problematic people. In order to check if the applicant is not in the habit to repeatedly change jobs, or has not committed any mistakes on the job at his/her previous company, nor leaved that company as a result of some kind of trouble, sometimes companies check the number of times the person in question has changed jobs and the reason why the applicant left his/her previous company.

<Personal Reference>

When hiring a new employee, many Japanese companies exchange contracts (“personal references”) between “a guarantor and an employer” by which the guarantor agrees to compensate for any damages the company may incur as a result of the behavior of the person being hired, if the person hired is not able to settle the matter of his/her own accord.

[Related laws and systems]

A personal status guarantee contract is usually valid for a period of 3 years. A 5-year period is also possible. (Articles 1, 2, 3 and 5 of the Personal Status Guarantee Law).

<Orientation Period>

Since there are no legal stipulations, companies are free to institute an orientation period or not to do so. However, in order to determine whether or not a worker is suited for the company, companies often institute an “orientation period.” The orientation period is considered to be a kind of employment agreement by which the right to dismiss an employee is retained by the employer, and refusing to formally hire an employee after the orientation period is over is equivalent to dismissing that employee.

[Judicial precedent]

The exercising of the right to dismiss an employee is only permitted if there appears to be a rational reason, and it would be generally accepted by society.

[Points for consideration]**<Dismissal during orientation period>**

If a person is to be dismissed after his/her fourteenth day working at the company, the company must either notify the dismissal 30 days in advance or pay that person an amount which is equivalent to 30 days’ salary as a dismissal allowance, even if this dismissal takes place during the orientation period. (Article 21, Labor Standards Law)

~~Coffee Break~~

Topic 3: Clear Statement of Working Conditions

Formerly in Japan it was not generally a custom for both employers and employees to make a written contract at the time of hiring. Accordingly, there could be a situation in which the employee would work without knowing the details of his/her working conditions. In order to prevent the occurrence of such troubles, the Labor Standards Law obligates the employer to clarify to the employee all working conditions when concluding a contract of employment with that employee (Clear Statement of Working Conditions).

Working conditions are often indicated in the work rules. So, the portions involving directly the employee are often validated after they have been clarified.

Topic 4: Informal Hiring

It is a custom among many Japanese companies to periodically hire new graduates on April 1, which is around the time they graduate.

Although the company and the student will still consider the matter conditional at the time that a notification of informal hiring reaches the later, the labor agreement between them is considered to be in effect at that time. However, the company can cancel this labor agreement if it has a rational reason to do so by or before the date the employee has been actually installed in the company (employment contract with the reservation of the right to cancel by or before the date the employee is to be installed in the company).

-Conditions for Canceling an Informal Hiring Agreement

The conditions under which a company can cancel an informal hiring agreement are restricted as follows: “There was something that the company had no way of knowing about when it informally agreed to hire the person in question, or there was something it would have been impossible for the company to be expected to know about in advance. And it has been clearly, objectively and rationally acknowledged that this is the reason for the company’s purport and/or objective in reserving the right to cancel the agreement, and that in doing so is recognized to be in line with generally accepted ideas in society.” Based on general judgment, including a judicial precedent that (generally speaking, it is not acceptable for a company to cancel an informal hiring agreement due to poor business showings at that company), the judgment pertaining to a company’s exercising of the right to cancel the agreement tends to be strict.

[Related laws and systems]

According to the provision titled “Guidance on Employment Methods” (Article 54) of the Employment Security Act, based on the “system of advance notification regarding the cancellation of the hiring of new graduates,” “in order to cancel an informal hiring agreement by or before the date that the person being hired is to be installed in the company, or in order to extend that date, the company must make this matter known in advance to the chief of the public employment security office which has jurisdiction over that company. Also, after receiving this notification, the chief of the public employment security office might give the guidance to the company regarding this evasion.” (Article 526, Civil Law; based on No. 134 issued on June 24, 1993)

[Points for consideration]

<Extending the Orientation Period>

Long orientation periods are considered invalid for being in violation of public order and good customs. The maximum rational period allotted for making judgment is around 6 months, and the normal period is around 3 months. A company cannot extend an orientation period unless there is an exceptional provision in the existing work rules for extending it. Also, generally speaking, it is prohibited to establish an orientation period for an employee while that one is employed.

[Related laws and systems]: Articles 14, 19, and 20, Labor Standards Law

[Trends during recent years]

At an interview, making an applicant answer questions or present documents which are unrelated to the applicant’s aptitude or skills is a violation of basic human rights under the constitution, and it is linked to job discrimination.

[Non-appropriate questions at an interview]

- Questions about birthplace, foreign nationality, disability, a fatherless home, a motherless home, part-time course (educational background), correspondence course (educational background), specific thoughts, and questions which exclude a person of faith
- Questions which are unrelated to the applicant’s skills

III. Salary Management

(JAPAN)

1. Salary Determination Factors

- The main salary determination factors are seniority and the number of years the employee has been working at the company.

Many Japanese companies have systems in place for periodic salary increases. Base pay is increased periodically based on years of service and seniority. Also, in determining wages, increase in salary is linked to the promotion system, with job promotion resulting in seniority and included in periodic salary increases. (However, job promotion itself is not based entirely on the seniority system.) Salary increase based on seniority is general labor practices, and not a “system.” However, the idea of seniority is deeply embedded in the consciousness of workers in Japan.

Japanese companies rarely evaluate academic degrees such as doctorate. That is, while it cannot be said that there is no difference in salary between white-collar and blue-collar workers, or based on educational background, this difference is remarkably smaller than it is in other capitalist nations.

Generally, even if someone is an executive or occupies a position of upper management at a Japanese company, that person’s base pay is based on the same standard as the base salaries of the people who work under that person. Therefore, a distinguishing feature among Japanese companies is that the salary range of company executives is lower standard compared to that for companies in the US and Europe.

- **Basic Concept in Deterring Salaries**

- Pay system Based on Seniority**

The distinguishing feature of the Japanese pay system is that many companies employ a “seniority-based system,” whereby salaries are increased in nearly direct proportion to age and the years of service. While in the strict sense salary increase is based on seniority, this is not to say that salaries are increased based on age and the years of service regardless of a person’s job and skills. But even if employees are of the same age and started working at the company at the same time, differences do occur between them if there have been differences in their promotion and job performance.

Generally, many companies adopt base pay based on age and job skill as follows

Age-based salary

Under the premise that a person's job skill improves with age, a person's base pay increases by one (1) rank every working year within the company.

Skill-based salary

Judging job proficiency level from the appraisal results, an employee receives rank points and increased salary based on promotion in skill rank or in accordance to proficiency level in this same rank.

[Points for consideration]

Although the notion of skill-based salary is primarily different from that of seniority, since the tendency to evaluate potential skills, it also tends to apply to seniority factors.

[For reference]

<Starting Salary>

The starting salary is the amount paid by a company to a new hired graduate.

[Distinguishing features of starting salary]

- The conditions of supply and demand on the job market have a direct influence on decisions regarding starting salary.
- There is not a big difference in starting salaries based on such factors as industry, scale of company, educational background or geographical area.

Companies decide starting salaries based on the balance of supply and demand on the job market and the standard salaries of employees are determined through negotiation, taking into consideration the standard pays to new graduates.

Since decisions regarding starting salary are influenced by the overall balance of supply and demand on the job market, which goes beyond the situation in some companies, as a general rule the starting salary for people hired at the same company has nothing to do with what university someone is graduated from, what department a person belonged to in the university, grades at the university, affiliations or job type. There are no big differences based on educational background and almost none among people of the same age based on the attended university or high school. For example, the average starting salary in all industries in fiscal 2000 (monthly salary) for male university graduates was 195,100 yen, while that figure was 154,000 yen for male high school graduates. The salary for male high school graduates in their fourth year working at the company would be very close to the starting salary for a male university graduate. (Ministry of Health, Labor and Welfare: Basic Statistical Survey on Salary Structure in Fiscal 2001)

-Wage Differentials

The longer a person works at a company the greater wage differentials that follow his/her personnel appraisal will be. Considering the pay of company employees on an individual basis, while they receive the same amount for their starting salary, it increases throughout the years they work within the company, and the difference in the promotion level according to skill rank system is caused by their appraisal results, which are reflected in pay, so that the difference in their salaries grows.

The general tendency is for employees to continuously receive similar salary increases for the first several years of work. Then, when they have reached the age for rank promotion for their job skills, their skill rank is determined based on the appraisal by their immediate senior and the results of rank promotion examinations.

[For reference]

“Skill rank system” is a mechanism for the systematic classification of job achievement skills, the standardization of the grading of all employees together, and the comprehensive integrated organization of personnel throughout the company.

-Salary Increase

Salary increases generally take place once a year, with employees receiving a raise in their base pay based on the system of salaries in each company. This is called “periodic salary increase.”

Increases in employee salaries normally consist of the portion of periodic salary increase with its rising salary table according to seniority and the portion of substantial pay increase (base up) for the actual standard of the pay table. The amounts of these pay increases are basically determined by some factors like performance at the company and the increase rate in consumer prices. For deciding the amounts there are the customs (spring pay offensive) assumed every spring by labor unions to set a standard of pay increase demand focusing on large enterprises. Since companies in the same industry or in the same type of business decide pay increase amounts around the same time through the spring pay offensive, while differences do occur between industries and business types, a “public market” has been formed in the same industry and the same type of business so that there are few occurrences of large differences in salary increase amounts.

-Minimum Wage

Based on the Minimum Wage Act, the minimum wage is determined by municipalities and the employer is legally compelled to abide by that minimum wage. (In 2001 the weighted average for prefectures was 5,168 yen for daily wages, and 633 yen for hourly wages.)

Concretely, the regional minimum wage in prefectures is determined by the Minister of Health, Labor, and Welfare, the directors of the labor standards bureaus in prefectures, based on studies and deliberation by the Minimum Wage Council. (There are some employees to whom this does not apply.) An employment agreement which calls for a wage amount below the minimum line is invalid, and an employer who has concluded such agreement will ultimately be penalized.

[Trends during recent years]

<Wage System Based on Performance Achievement>

In recent years there has been an increase in the number of Japanese companies that are considering the adoption of a “pay system based on performance achievement,” represented by the annual salary system. The main reason for this is, because of the raise in the percentage of the middle-aged and elderly brackets among the overall employee population at individual companies, the increase in the cost of wages has laid heavily upon corporate management in companies with pay systems that are deeply based on seniority.

Companies are mainly adopting the idea of “job-based salary,” focusing on people occupying managerial positions or higher, and there is an increasing number of companies which are putting a stop to their practice of periodic salary raises based on seniority, and introducing systems in which bonuses are influenced by the appraisal results. In this case, many companies have adopted or are considering the adoption of the management by objectives as well as an arrangement for feeding back the appraisal results to employees.

While there has been an increase in the number of companies that have begun to adopt a form of payment that puts less emphasis on seniority, others tend to be faced with problems such as the difficulty in fairly evaluating “results” and obtaining employee’s understanding. A major theme for the future will most likely be the extent to which companies will be adopting pay systems based on results at the exclusion of seniority, in addition to the measures to improve the short-term management by objectives for key positions.

2. Pay System

- **Basic Pay System**

- At Japanese companies, this system is generally made up of “base pay,” “allowance” which is influenced by personal factors, and “periodic bonuses.”

In addition to seniority-based wages, distinguishing pay features in Japan include periodic bonuses and allowances. Generally, employees receive their pay monthly; usually, bonuses are given during summer and winter.

Monthly salaries include pays within the prescribed sphere and pays outside the prescribed sphere. The former consists of base pay and allowances (family allowance, etc.), the latter is paid against work performed outside of the prescribed sphere (overtime work, work on days off, midnight work, etc.). Base pay, which is the core of this pay system, used to generally be age-based salary, increased in accordance to age and years of service. But, in order to raise the levels of functionality and desire to work among employees, there is the necessity from companies to reflect the difference in the skills and performance of employees in their pays, so that starting in the mid-1960s more and more companies have switched from age-based to job-based salary system. Job-based salary is a form of pay where the base pay is determined by skill rank, defined by the systematic classification and organization of job achievement skills in a company. Rank promotion means that an employee's rank raises according to the skill rank system. Since the standard for years of service within a company is determined based on appraisal by one's senior, even if employees have the same number of years of service, differences arise in base pay because of the different speed in which employees are promoted in rank. However, on the practical level this is often based on age.

-Bonuses

A bonus is the surplus in profit paid to the employees based on business performance at the company. However, bonuses in Japanese companies have the nature of compensative salary paid in addition to one's monthly salary as “subsistence wage”. The amounts of these bonuses are normally determined through negotiation between labor and management. Bonuses are generally paid twice a year, in summer and winter, and it is possible to adopt the sliding scale of the amounts and conditions of these bonuses in connection with performance at the company. However, once an agreement regarding bonuses has been concluded between labor and management, the company must pay these bonuses even if it is in the red. The bonus amount is generally calculated by multiplying the calculated basic amount (base pay) by the coefficient determined by the situation at the company (e.g., this is often calculated as x number of months' worth of the calculated basic amount), and adding the rate of attendance at the company during the period to which the bonus is applied and the evaluation coefficient (based on the results of the personnel appraisal).

[Points for consideration]

A bonus is only paid to people who are in the registered roll the day the bonuses are paid and the day that the standard was determined (requirement to be in the registered roll at the day of payment). For example, the period in which the summer bonus is to be paid, between October of the previous year and March, even if an employee should retire after April 1, if it is before the day that the standard was determined, then that employee might not receive a summer bonus.

[Trends during recent years]**<Wage System Linked to Job Performance>**

While there is hardly any difference in monthly salaries at Japanese companies, there is a big difference in bonuses based on the results of personnel appraisal.

Amidst the trend for “pays based on performance achievement” during recent years, a considerable portion is distinguished as performance salary mainly for people occupying positions of management and workers performing specialized jobs. More and more companies adopt a system for determining bonus amounts based on the evaluation of the degree by which objectives were achieved. This trend has been spreading also to overall pay, as represented by the “system of annual salary.”

3. Incentive System

- **Main Pecuniary Incentive Systems**

- It is a custom at Japanese companies to periodically pay a uniform bonus to employees. This bonus has more to do with the livelihood of the employees than it does with incentive.

The main incentive system in Japanese companies is that by which a uniform bonus is generally paid to employees. Although the bonus amount is somewhat affected by such factors as the company's business performance, it is looked upon mostly as a subsistence pay for the employees. Also, there are some companies that have adopted systems of official commendation for individuals or organizations that have made a special contribution to the company.

-Bonus System

As previously mentioned, bonuses are incorporated into the basic pay system at most Japanese companies. That is to say, most Japanese companies pay bonuses equivalent to several months' salary twice a year, in summer and winter.

This bonus ratio is of a much higher standard than in other countries, and it is proportionate to around one half of an employee's annual income. Almost all Japanese companies pay bonuses, even if they are in the red. This is not because a bonus is linked to the business performance of the company, but because practices result from the deep-rooted concept that bonus is a deferred payment against wages, and the fact that it is an important factor in the livelihood of the employees. However, unlike monthly salaries, 10% to 20% of the bonus amount is assessed based on the employee's evaluation during the period in which it is applied, and even if employees receive the same wage, the amounts of their bonuses are generally different.

A company can be flexible about its payment of bonuses. During times of economic depression cutting bonuses can be an important means of avoiding employment adjustment.

-System of Official Commendation

There is a system by which companies officially commend and give pecuniary incentive to employees, evaluating the level of contribution by individuals or organizations that have contributed to the expansion of the company, with the commendation and pecuniary incentive being granted by the company president.

[Trends during recent years]

<Introduction of Stock Options>

During recent years the idea of distributing the achievements of the company among the employees has been spreading, mostly among venture businesses. Some companies have established incentive systems based on appraisal results and stock options.

<Greater differentials in bonuses>

Although bonuses formerly reflected appraisal results as a basic logic for calculating them, the differentials in bonuses received among employees of the same rank were very small, even when the employee had a high ratio of base pay (which was influenced by service years, including skill-based salary and age-based salary). During recent years there has been a trend for “bonus based on results” incorporated into the logic for calculating them, particularly regarding bonuses for people occupying management positions. So, the appraisal results and job performance of such people are greatly reflected in their bonuses, meaning that there are some companies that have curtailed the seniority factor. The aim is to guarantee employees a salary for their livelihood through their monthly pays, and to reward people who have achieved good results with a bonus.

4. Appraisal System

- Appraisal results are used to determine such matters as employee skill development, employee stationing and rank promotion.
- Appraisal is determined by judging overall “skills,” “enthusiasm” and “achievement,” and the appraisal results are used as data for the development and selection of human resources.

Through the appraisal system, companies can observe the everyday job performance of employees, and evaluate such aspects as job achievement, how well an employee demonstrates his/her skills, and job attitude.

Generally, Japanese companies use these appraisal results as data for developing skills among employees, including “human resources development,” organizing jobs, stationing, rotation, salary increases, rank promotion and “selection” for bonuses.

Each company determines of its own accord the standards and concrete procedures of its appraisal system. However, the following factors are the most common standards for appraisal: the higher a person’s position, more severe becomes the standards for evaluating that person’s performance, with a high standard being applied to the evaluation of the younger age bracket.

[Important factors for appraisal]

Skill evaluation:	Knowledge and skills required for job performance, which are obtained through job experience and training
Enthusiasm evaluation:	Job posture and attitude
Achievement evaluation:	Degree of job achievement by which an employee has contributed to the company during a specified period

Appraisals are generally conducted periodically, with an annual skill evaluation being reflected in salary increases and rank promotion. Achievement evaluation and enthusiasm evaluation are reflected in the bonus decisions made twice a year (during summer and winter). The primary evaluator is generally the line manager (direct senior), who possesses the authority to appraise employees.

The consideration for appraisal consists of “absolute evaluation” and “relative evaluation”. The former is considered from the viewpoint of “development,” to determine the level of achievement against appraisal standards that have been set in advance. The latter is considered from the viewpoint of “selection”. The primary evaluator generally conducts an absolute evaluation, while the secondary evaluation is performed by the head of the division, generally from the point of view of relative evaluation based on logic in selection.

- **Main Appraisal Systems**

[Skill rank system]

As a general rule, many large Japanese companies periodically hire new university graduates, and have a skill rank system in effect for evaluating the job achievement skills of employees, standards of certain job skills and ranking them according to job skill level. There are few evaluation factors limited to job contents, and the focus of the evaluation is placed on such factors as a wide range of experience, skills and knowledge, including potential skills as the requirements for skill evaluation.

-Rank Promotion and Title promotion

A rise in rank is called “rank promotion.” A rise in position is called “title promotion.”

In actual practice, rank promotion at the upper levels is generally accompanied by title promotion to positions like chief clerk or section manager. There are cases in which one job rank is applied to one position, and there are cases in which multiple job ranks are applied to a certain managerial position.

For rank promotion candidates, in addition to appraisal results covering the past 1 to 3 years of that person’s job, rank promotion is also decided through interview. And depending on the situation, some companies conduct this appraisal through written examinations in the form of essays.

~~ Coffee Break~~

Topic 5: Feedback of Appraisal Results

In the past, evaluators were reluctant to feedback appraisal (evaluation) results to people who had been appraised. In recent years, however, due to an increased awareness for fairness, clarity and understanding for appraisal, and for purposes of human resources development, more and more companies are feeding these results back to the people in question and holding interviews with them, in an effort to effectively apply the results to the improvement of employee's skills.

[Trends during recent years]

<Shortage of Management Positions>

When the skill rank system was first introduced in Japan, there were many companies that correlated ranks with management positions. However, with the deceleration of expansion and growth of companies that went through the oil crisis in the 1970s and the increase in the density of middle-aged and elderly brackets, companies have become unable to prepare a number of high-ranking people who could fill for management positions. In order to eliminate the shortage of posts, there are an extremely great number of companies that have instituted a "system of setting retirement age for management position" and a "system of professionals by course".

<Management By Objectives (MBO)>

There is an increased awareness for clarity and understanding of management by objectives. An increasing number of companies are introducing MBO so that seniors and subordinates can establish objectives and review achievements of objectives together based on appraisal. Particularly, through joint-use of MBO, companies that are reducing seniority factors and examining treatment "based on results" are introducing personnel systems and increasing understanding for evaluation.

<Versatile Evaluation/360-degree Evaluation>

There is an introduction of a versatile type of evaluation, the evaluation of colleagues and subordinates who regularly work with the person being appraised, in addition to appraisal by the person's senior. However, since it is difficult to evaluate people, many companies use evaluation by colleagues and subordinates who are not developed as evaluators as reference information for the primary appraiser, in order to apply this evaluation from the standpoint of human resources development.

IV. Training and Skill Development

(JAPAN)

1. Skill Formation at the Workplace

- In Japan, particularly among large enterprises, the arrangement is to expect improvement in the dexterity and skills of employees as they get experience in a variety of jobs within a company.
- Since long-term employment relationships are often maintained at the same company, individual technical skills are formed through OJT.

With age and years of service used as an index to indicate the width and depth of the job skills of an employee, it is a rational way of thinking for companies to use this index to determine job ranking and employees qualifications, counting with their understanding.

Since employee turnover is low and long-term employment relationships are secured, it is possible to accumulate a suitable technology within the company, and this contributes to an improvement in production. For example, the training results, the research and development and the proficiency in manufacturing technology are not slipped outside the company. That is to say, companies are able to reliably collect profit from the investment they have made in skill formation, and this is beneficial for conducting in-house training and technical development. Furthermore, since the results of individual in-house training are not very useful for employees of other companies, workers remain in their company. That is to say, since Japan enjoys employment stability through its system of lifelong employment and long-term employment, employees and the information regarding their technical skills remain in their company, greatly contributing to the building of harmonious relations between employees and between labor and management.

-Skill Formation Through Job Rotation

It is a common practice for Japanese companies to hire new graduates, to train these people and to periodically rotate their jobs. Under the practices of long-term employment, from the standpoint of systematically fostering employees as candidates for future managerial positions, these companies foster multi-skilled personnel who will be able to perform many functions. In order to systematically make these employees experience several jobs in several divisions, companies perform periodic job rotation so that employees' job achievements themselves serve to promote training.

-OJT

As an effective means of adjusting the excess or shortage in their labor force, it has become necessary for Japanese companies to perform job rotation among their employees and to have their employees learn the work at their new workplace. In such situation, on-the-job training (OJT) plays a big role.

The focus of training in Japan is OJT (training at the workplace), with off-JT (training at training facilities) having little weight. This is because importance is placed on having employees learn from experience by systematic training necessary knowledge, technical skills, problem-solving skills and proper attitude toward work. The company supports the development of main skills among subordinates and people with less experience, along with seniors and more experienced people.

When a veteran employee trains a new employee at the workplace, although during this training process the veteran employee's performance will have a temporary drop in productivity, the training constitutes in no disadvantage to the veteran employee. Rather, since employees often remain at the same company, that person's connections and popularity at the company will be a basic factor in his/her success, and training subordinates will be a positive factor in the veteran employee's own advancement. And the results of an employee's training and development will also be directly linked to the results of group evaluation, so that enthusiasm for training will further increase.

[Points for consideration]

In order to match as much as possible a person's will and desire with the new job to which he/she will be transferred, personnel departments try to consider the desire and CDP of the person in question based on a "self-declaration."

2. Off-JT

- Since it is the general rule for Japanese companies to train employees at the company, there are a lot of groups training by career stage and function.

It is a general rule at Japanese companies to train employees at the workplace. The focus of this training is OJT (training at the workplace), with off-JT (training at training facilities) having relatively little weight. But even so, compared to companies in other advanced nations, at-company training in Japanese companies is over 80%, a much higher percentage than the ones in other advanced nations (OECD Employment Outlook 1993).

-Orientation Training

Every year companies hire new graduates who do not have any special technical skills, and conduct basic training for these people in groups. Large enterprises often conduct group training for periods ranging from 1 to 3 months (training for new graduates).

-Training by Career Stage and Function

Companies conduct various types of training, including training to improve job performance skills and management training, according to the career stage of the employees (training by career stage and training by job type).

[Training by career stage]

Main purpose: To impart knowledge and management skills needed in an organization.

This includes orientation training, training of mainstay employees, training of section managers, training of newly appointed section managers, training of section managers, training of newly appointed section managers, training of section managers, advance training for department managers, training for newly appointed department managers, training of department managers, (training of employees who have not yet been formally hired).

[Training by function]

Main purpose: To impart unique skills rather than managerial skills to younger employees before the level of section manager.

This includes training regarding techniques and technical skills (sales techniques, computer training, language training, etc.).

[For reference]

<Studying for MBA at company expense>

Large enterprises occasionally send employees to study at business schools overseas. Such employees are those whom they consider to be prospects for executive positions. More than harboring expectations for the actual education provided at a business school, these companies might consider this as a public relations expense for securing human resources when hiring and keeping essential personnel to perform overseas activities. Even if an employee gets an MBA, he/she seldom receives special treatment because of that. Rather, an MBA is only one of many items evaluated. To begin with, aside from researchers at manufacturers, very few people hired by Japanese companies have attended a graduate school. Even when personal background counts to a company, this is often only for seniority salary addendums based on age. In Japan, employees are seldom distinguished for their education background (level, grades, etc.) in the true sense.

<HR development through temporary assignment outside the company>

Occasionally companies provide their employees with an OJT-like training outside the company, by sending them to work for a certain period of time to another company in their own corporate group, to a company with which they do business, or elsewhere. By giving young personnel experience in a position of responsibility at a subsidiary or other company, a company can expect to foster leadership and management skills in those people, as well as to strengthen their relations with companies with which they do business.

3. Management Development

- Management training and leadership training are conducted through training by career stage.
- Managers are required to have the skills to coordinate affairs between different workplaces. These skills are often developed by means like job rotation.

In addition to the management development in training by career stage, managers are generally trained through OJT

Since the systems of business operations and management in Japan are based on the workplace, more than gathering business operation-related information, processing that information and issuing orders to the workplace, executives and managers are required to perform the main function of coordinating affairs between the different workplaces. Since the function of management is to coordinate affairs between the different divisions, they must have a wide-ranging knowledge of the workplaces. And so, through active rotation, they are relocated to a wide spectrum of the workplaces to acquire management skills.

[Trends during recent years]

<Training of evaluators>

With a rising awareness of clarity and fairness of evaluation even among Japanese companies, when an appraiser (a person with the highest qualifications among people under his/her direct control) becomes an evaluator, in order to prevent a drop in morale among employees due to a feeling of inequality in evaluation, more and more companies are training their appraisers.

V. Employee Relations (JAPAN)

1. Promotion and Job Rotation

● Promotion

- At Japanese companies it is common to have promotion within the company, with top managers being selected from among the employees.
- Regardless of job type, opportunities for promotion are periodically provided.

The “promotion from within the company,” through which top managers are selected from among the employees, is one of the distinguishing features of Japanese companies. This is because of the fact that even if there are human resources outside the company who have excellent general management skills, they do not have knowledge of information in the company that is actually required, nor do they have the unique skills needed. This stems from the notion that since it is difficult to adopt executives and managers from outside the company, unless such a person has a wide range of knowledge about the workplace, he/she will not be able to advance to a position of top management. For this reason, it is very rare for an executive to move to a different company, particularly a rival one.

Also, under the practices of lifetime employment, it is possible to monitor a person’s suitability as an executive or a manager, and to train that person accordingly. For this reason, Japanese companies believe that it is necessary to attach importance to the management performance accumulated for the tenth or fifteenth year period after the candidate has started working at the company.

Promotion within the company is considered an important incentive for increasing morale among employees. For example, employees periodically have a chance for promotion based on years of service, so that not only white-collar workers but also blue-collar workers can advance. Generally, there are many instances of promotion based on seniority. This is not merely based on age and years of service, as it is in the American seniority system, but rather it considers appraisal results. In general, however, since individual appraisals are not made public, the standards for promotion are often vague.

[For reference]

More than gathering business information, processing that information and issuing orders to the workplace, an executive is required to perform the main function of coordinating affairs between different workplaces. So, another distinguishing feature is that comparing to accounting and financial affairs divisions which excel in administration and management, top managers who have advanced within the company more often come from the production division, the sales division, or the personnel and employment affairs divisions.

- **Job Rotation**

- Job rotation is conducted by initiative of the company, in order to train personnel through OJT and to secure a balance between the supply and demand of personnel power at the company.

Since workers are not hired based on specific jobs, the stationing of workers is decided according to the needs of the company. However, since it is not easy to divert specialized job skills, as the skills needed change with the times, a mismatch emerges between the necessary skills and the actually existing skills. In order to obtain the former, companies make workers proficient in them through training (OJT) and job rotation. Thus, in addition to stationing workers to suitable jobs, job rotation also serves the purpose of training workers. It is believed that rotating workers even at the same workplace makes it easier for them to replace one another at various jobs, and contributes to enhancing productivity through cooperation at the workplace. For example, because of job rotation personal information can be smoothly conveyed from the development division to the manufacturing division and conversely, manufacturing and sales related information can be fed back to the development division.

Rotation is conducted, including the transfer of employees to local areas, based on the needs of companies. If a mismatch occurs in supply and demand for quality and quantity, workers are rotated between different localities within the same company in order to make up for this mismatch. This does not simply mean adjusting the supply and demand of the workforce, but also familiarizing people who work at company headquarters with workplaces in the localities, as a very important form of training. Occasionally these people are burdened with severe conditions, like having to go alone to their new place of assignment.

2. Employment Adjustment and Retirement

- The main method of employment adjustment is to increase personnel expenses during good economic times. During the bad ones, to ultimately control the overtime and hiring, and assigned dismissal are the final method.

Employment adjustments are the measures taken to change the demand and supply for labor services and the qualitative structure of labor services against changes in the quantity and quality of demand among consumers for the goods and services of the company. It consists of “pay adjustment” by reducing allowances, base salary increase and bonus amounts, and “quantitative adjustment” in either the number of workers or the number of working hours.

During times of economic slump, large and mainstay enterprises in Japan adjust employment by some measures like restricting overtime, stopping mid-career hiring, transferring, temporarily stationing employees at affiliated companies (*see p.77 Coffee Break Topic 6*), stopping hiring new employees, stopping employing peripheral workers (part-time workers), having employees take temporary leaves of absence and laying off employees. When companies are unable to deal with the problem through these measures of adjustment, they urge for dismissal. They only do that in extreme situations when their very survival is at stake.

Without a margin for such procedures, however, medium and small enterprises directly urge retirement on employees who wish to do that, and if they cannot reduce the number of their employees with this measure, they will occasionally conduct designated dismissal.

• Employment Adjustment Measures

- Japanese companies have mandatory retirement age system which automatically and indiscriminately ends employment relations with employees who have reached a certain age.

-Mandatory Retirement age system

The Mandatory Retirement age system is an arrangement by which employment relations are automatically and indiscriminately ended with employees who have reached a certain age. That is to say, this compensates for seniority in the system of lifetime employment, and allows companies to rationally retire high-salaried middle-aged and elderly workers who no longer contribute to productivity, thus enabling them to maintain a pyramid structure in their organization through the system of promotion from within the company.

[Points for consideration]

[Related laws and systems]

In establishing a mandatory retirement age system, companies were obligated to incorporate mandatory regulations for employees of the age of 60 or above, but cannot enforce mandatory retirement for employees under that age. Even if a employer has established rules of employment which make it mandatory for employees to retire under the age of 60, these rules will be considered invalid and the employer will be treated as if the company did not have a mandatory retirement age system. If a person who has reached the retirement age of 60 ~ 65 wants to continue working, the employer is obligated to endeavor employing that person until he/she reaches the age of 65.

(Article 4, Law for Stability in Employment of Elderly People) (*Based on related laws and ordinances, an elderly person is 55 years or older.)

[Trends during recent years]

<Early Retirement System / Voluntary Retirement System>

Because of the recent continuous economic slump, companies are now urging retirement not only among middle-aged and elderly employees, but also among the younger bracket. Under the system of early retirement and the voluntary retirement system, companies adjust employment by urging people who want to retire to do so, offering them more favorable retirement allowances than they would receive if they were to retire at the normal age limit under the conditions of Mandatory retirement age.

<Second Life Plan and Outplacement (support service for reemployment)>

Similar to the system of favorable treatment for retirement which companies use to adjust employment, outplacement is worthy of notice for its favorable treatment of retiring workers. Outplacement is a kind of support service for reemployment provided by companies engaged in employment adjustment, by which they place retired employees at special companies, providing these employees with counseling, training and information about job openings. With an increasing need for companies to greatly reduce their number of employees, and because of such reasons as companies not being able to reduce their number of employees as planned without supporting employees as much as possible to place employees at places of employment outside the company, the market for the outsourcing industry has expanded rapidly. *Outplacement services fees are the responsibility of the company which the employee in question is leaving. These fees can be paid at a fixed rate based on the annual salary of the person being outplace (annual salary x approximately 10% ~ 15%), or as a uniform rate (approximately 700,000 yen ~ 1,500,000 yen).

-Dismissal

Dismissal is the unilateral cancellation of an employment contract by the employer.

It is actually difficult among Japanese companies, as reflected in the current situation at the courts. The situation in Japan is much different than that of companies in Europe or in the US regarding legal restrictions on dismissal rights. (Principle of Law for Misuse of the Right of Dismissal, Requisite for Adjustment Dismissal)

[Related laws and systems]

Two restrictions (People for Whom Dismissal Is Prohibited [Article 19]) and the Dismissal Procedure (Article 18) are prescribed by the Labor Standards Law regarding dismissal.

<People for Whom Dismissal Is Prohibited>

Workers who are recuperating from work-related injuries (except for cases in which compensation has been paid to drop negotiations, based on Article 81), and women on maternity leave may not be dismissed during the period that they are taking off from work or for a period of 30 days after that.

<Dismissal Procedures>

When dismissing a worker, the employer must notify the worker of his/her dismissal at least 30 days in advance. If this does not occur, the employer must pay the worker an amount equivalent to the employee's salary of 30 days or more.

<Grounds for Exclusion from Notification of Dismissal, Persons Excluded from Application of Dismissal>

If permission is received from the chief of the office which supervises labor standards, employees may be dismissed immediately in the following instances:

- If it has become impossible to continue business for unavoidable reasons such as natural disaster
- For a situation which stem from reasons which are the responsibility of an employee

<People who are not needed Advance Notice of Dismissal (Article 21)>

- Persons employed on a daily basis (This does not include situations in which people have been continuously employed for more than 1 month.)
- Persons employed for a stipulated period of less than 2 months (4 months for seasonal jobs) [This does not include cases in which people have been continuously employed for longer than a prescribed period of time.]
- Persons who are still employed during an orientation period (This does not include cases in which people have been continuously employed in excess of 14 days.)

[Points for consideration]

[Judicial precedent]: Principle of Law for Misuse of the Right of Dismissal

In Japan, it is not easy for an employer to dismiss an employee. This is not to say that they are actually restricted from dismissing employees, but the notion of the “Principle of Law for Misuse of the Right of Dismissal” has taken form based on judicial precedent. Dismissal without proper grounds for that is considered to be misuse of one’s right of dismissal, and must not be exercised.

This rational reason for dismissal has been established by judicial precedent. For example, if a worker has behaved in such a way which is in violation to the rules and regulations of employment, this would be considered to be worth of punishment, and an employer will have permission to dismiss that worker. However, an unilateral display of intent to dismiss a worker can be considered misuse of the right of dismissal by that employer, and therefore be invalidated.

<Requisite for Adjustment Dismissal>

Cases of judicial precedent regarding adjustment dismissal have been accumulated as a final aspect of employment adjustment. As a result, the “Principle for the Legal System of Adjustment Dismissal” has taken form. Unless the four conditions below are followed, it will be considered that there was a misuse of the employer’s right of dismissal, and the adjustment dismissal exercised by that employer will be invalidated.

- Measures for decreasing the number of personnel are based on a high degree of necessity from the standpoint of the company’s corporate management.
- The employer has tried to avoid dismissing the employee in question.
- The employer has explained to the labor union and/or the worker in question the necessity, time period, scale and method for the adjustment dismissal, and has consulted with the labor union and/or the worker in question about these matters.
- There is a rational basis for dismissing the employee in question.

~~ Coffee Break ~~

Topic 6: Temporary Transfer and Formal Transfer

At Japanese companies there is a system in place whereby employees are temporarily transferred or formally transferred to a subsidiary or an affiliate company. They are defined as follows:

[Temporary transfer and formal transfer]

[Temporary transfer]

When an employee works under the direction of the company to which he/she has been temporarily transferred, but formally remains an employee of the original company (the one which was temporarily left, under the premise that he/she will return to that in the future.)

[Formal transfer]

When an employee formally moves from his/her original employer to another company.

This is sometimes considered to be a form of job rotation beyond an employee's company, in the sense that it helps with the formation of that employee's career. When it comes to the middle-aged and elderly bracket, even if such people are just making a temporary transfer, it is often treated as if this was the first step toward employment adjustment, under the assumption that they are actually making a "formal transfer." In such case, the employee in question will essentially never return to his/her original company, and from the point of view of the company this has the same effect as if he/she had been dismissed. Of course, from the point of view of an employee, if it is just a temporary transfer, he/she still has the employment rights guaranteed, but, in effect, this is often decided regardless of the intent of the employee.

[Main purposes for temporary transfer]

- To strengthen the business of a subsidiary or affiliate company, or to provide guidance to that business
- Skill development or career formation of the worker in question
- Employment adjustment
- As a means of treatment of middle-aged and elderly people

While an employee is under temporary transfer his /her cooperative work relationship with his/her original company is suspended. (This is often essentially treated as a leave of absence.) An employee in such situation is expected to abide by the job management and business regulations of the company to which he/she has been temporarily transferred. Generally, that employee is guaranteed the same salary standard from his/her original company. Concerned to this, there are the following two methods:

[Forms of pay to a worker who has been temporarily transferred]

- The company to which the employee has been temporarily transferred will pay the salary, with his/her original company compensating for any difference in pay amount from the salary received when the worker was still at his/her original company.
- The original company will pay the salary, receiving the amount due from the company to which the employee has been temporarily transferred.

Generally, the retirement allowance is paid in one lump sum either by the worker's original company or by the company to which he/she has been temporarily transferred, counting the period of time that worker has worked in both places. Both companies assume their own share of the payment.

[Related laws and systems]

From the point of view of the worker, since the party with whom he/she has an agreement will change, if either a temporary transfer or formal transfer originates by the company's initiative, it is a general rule that that company must obtain the consent of the worker. (Civil Law, Article 625)

[Points for consideration]

[Related laws and systems]: Delivery of Written Proof of Ground for Retirement under the Labor Standards Law, Article 22

Even if a company has not reached the point where it is in the red, it is difficult to judge if there is a necessity to reduce its personnel in situations in which that company is planning to do so (dismiss regular employees) in order to change its business and/or actively rebuild its business during a time in which profits tend to decline. Even if the company has satisfied the measures to avoid dismissal (for example, if it has tried to transfer employees who work at a division which is being abolished for being unprofitable to other divisions, this will be considered invalid from the point of view of worker protection.

<Obligations of a company when an employee leaves it>

- If the employee in question requests a certificate of retirement upon leaving the company (certifying the probation period, obligation, position and wage of the employee or the grounds for retirement or dismissal), the employer must provide the employee with the certificate without delay. (In such a case, the former must not include items in the certificate which the latter has not requested.)
- Clarifying the contents of the employment relations at the time of termination of the labor contract. The worker who is going to leave the company can request a certificate from the employer on the grounds that he/she is leaving the company. That is to say, the worker can request the employer to issue a certificate including the grounds for leaving the company, such as, encouraged retirement, Mandatory Retirement age and dismissal, or the grounds for dismissal if it is the case (concrete actual relationship, rules of employment, articles in question, etc.).

[Related laws and systems]: Obligation to return valuables (Labor Standards Law, Article 23)

In the event that a worker dies or leaves the company, the employer must pay that worker's wages if so requested by a person having the right to receive those pays, and must return those valuables, including reserve funds and guarantee money to which the worker in question has the right, within 7 days of such request. In the case of a dispute regarding these wages and/or valuables, the employer must pay that portion if there are no objections to that or return the valuables within the designated period of time. However, in a situation that the payment period or payment method for the retirement allowance is stipulated in the rules of employment (Labor Standards Law, Article 89, paragraph 1, Item 3-2), the retirement allowance may be paid as stipulated by those rules. (It is often indicated that this payment must be made within one month after retirement.)

[Trends during recent years]

Due to a shortage of official posts based on seniority, some companies have taken the following measures.

<Mandatory retirement age system and Tenure>

By removing people occupying official posts after they have reached a certain age, companies are able to offer younger employees an official post. As their number is limited, doing that is a means of maintaining morale among younger employees. It is the intention of companies to prevent aging among people occupying official posts, and to activate their management organization (large retail stores).

<Specialist course System>

This system allows companies to put to use the aptitude and specialties of employees who have been stationed at jobs that require specialized skills and/or an advanced level of knowledge, turning such employees the equivalent to specialists. Since in the past promotion and salary increases were based on seniority, specialized jobs were considered to deviate from the line, and tended to be easily linked to demotivation. During recent years, however, companies have tended to consider official posts for the role they play on the job, and so consider role, skills and rank to be separate from official posts, actively applying them accordingly.

3. Working Conditions

- Rules of Employment

- Companies in Japan which normally employ 10 people or more are obligated by law to draw up and file rules of employment, and to notify their employees of these rules.

Most of Japanese companies must draw up rules of employment. Rules of employment stipulate the minimum employment conditions, and the employer must at least meet these ones. Employment requirements which do not meet the standards of employment conditions stated in the rules of employment are invalidated.

[Points for consideration]

[Related laws and systems]: Obligation to draw up rules of employment

Rules of employment stipulate employment conditions and workplace regulations which, as a general rule, apply to all workers, universalizing and standardizing the employment conditions. They are imposed to employers who normally employ more than 10 people. (Labor Standards Law, Article 89)

Based on the views of the workers, the employer must draw up rules of employment and file these with the chief of the office that supervises labor standards, under whose jurisdiction the employer falls. The employees must be informed of these rules. (Labor Standards Law, Article 106)

[Related laws and systems]: Drawing up and changing rules of employment

When an employer files rules of employment after hearing the views of the labor union or employees' representative (a person or organization representing the majority of employees), they do not need necessarily to agree with one another, the employer must append a document including the views of the labor union or the representative. (Labor Standards Law, Article 90)

[11 items of the rules of employment]

Absolutely necessary items (necessary in all cases)	(1) Items regarding working hours, workday, break time, breaks, vacations, and changes in work time (2) Items regarding pay-related decisions (except bonuses and retirement allowance), calculation method, payment method, closing, when payments are made, and salary increases (3) Items regarding retirement (dismissal, Mandatory retirement age)
Relatively necessary items (need to be included if so stipulated by a system at the workplace)	(4) Range of workers to whom retirement allowance applies, calculation of retirement allowance, payment method and when payment is made (5) Items regarding incidental pays, other allowances, bonuses, and minimum pay (6) Items regarding meal expenses for workers, and who is responsible for paying for implements used for working and the like (7) Items regarding safety and hygiene (8) Items regarding job training (9) Items regarding disaster compensation and support for injuries or illnesses originated outside the workplace (10) Items regarding commendation and discipline (types and degrees) (11) In addition to those things that have been mentioned above, items regarding provisions applying to all workers

-Employee Classification

As a general rule, employment relations regarding regular employees based on long-standing employment practice at Japanese companies are an “employment agreement which does not stipulate term,” but assumes that the employees will continue working over a long period of time. However, there are workers called “peripheral employees” whose employment conditions are distinguished from that of the regular ones. Such peripheral worker is employed based on an employment agreement that stipulates the terms of work. These peripheral workers include day laborers, temporary workers, seasonal workers, contracted employees, working students, commissioned workers and part-time workers.

[Peripheral workers]

<Temporary Workers>

Dispatching workers to companies for a fee is what is known as the “temporary worker dispatch” business. Generally, a model for the worker dispatch business registers people who would like to work on a temporary basis. Each time a model receives an order for a temporary worker from a company for a particular job, the model will conclude a relationship of temporary employment dispatch, and dispatch a temporary worker to that company.

<Contract Employees, Part-timers, etc.>

According to a law established in 1993 for improving employment management of short-term workers, a short-term worker is defined as “a person who works for a lesser number of prescribed hours in one week than do regular workers in the same office.” The definition of a “part-time worker” is a person (a person on vacation) who actually works less than 35 hours during the surveyed week.

[For reference]

<Tax Exemptions>

The income of a part-timer is considered as a salary. Therefore, if the annual income of a part-timer exceeds 1.03 million yen, he/she must pay income tax against the amount in excess. If it is over 1 million yen, he/she must pay a resident tax against the amount in excess. If a part-timer's annual income is 1.03 million yen or less, spousal exemption is applied against the income of his/her spouse. If the annual income exceeds 1.03 million yen but it is less than 1.41 million yen, special spousal exemption is applied. (the exemption amount is adjusted according to the annual income of the part-time worker, and it is limited to situations in which the income of his/her spouse is 10 million yen or less.) Therefore, part-timers often prefer to work a number of hours which will give them a salary within the exempted range.

[Related laws and systems]

<Term of Labor Agreement>

According to the Labor Standards Law, the term stipulated in a labor agreement concluded with a worker employed for a certain period of time must not exceed one year, except the term necessary for completing the work prescribed in the labor agreement. (Article 14) However, according to revisions made in the Law in 1998, for people who are required to have an advanced level of specialized knowledge (academic degree, national examination qualifications, number of years of service, etc.), and for people who are 60 years of age or older, this term may be up to 3 years, if it is the first term during which such people are employed. (As a general rule, when renewing such an agreement for 3 years or less, the renewal period is limited to 1 year.)

<Jobs to Which a Temporary Worker May Be Dispatched>

As a general rule, there are no restrictions on jobs (Worker Dispatch Law: established in 1985; revised in December 1999) to which a temporary worker may be dispatched. However, such a worker may not be dispatched for the following jobs: harbor shipping work; construction work; policing; assisting in medical examinations and treatment including physicians, dentists and nurses; manufacturing, etc. A company that receives a dispatched worker for listed companies may not continuously employ that one at the same job for a period exceeding one year. A worker may not be dispatched to work at a job against which a ban was lifted after the Worker Dispatch Law was revised for a period exceeding one year, and this period may not be renewed. If labor is still required for the same job for a period exceeding one year, the employer is obligated to give priority to directly employing the dispatched worker in question. However, the term for the 26 jobs in which workers were allowed to be dispatched before the revision may be renewed for a period up to three years. (Agreements that are for a period of one year may be renewed twice.)

[Points for consideration]

[Related laws and systems]

<Relationship between Dispatching Company and Dispatched Temporary Worker>

While there is an employment relationship between the dispatching company and the dispatched temporary worker, there is only a system of instructions and command between the company to which the temporary worker is dispatched and the dispatched temporary worker. The Worker Dispatch Law requires that the receiving company takes the appropriate measures to be sure that the work performed by a dispatched worker conforms to the job conditions stipulated in the dispatched worker agreement.

- Appropriate and immediate response to complaints made by a dispatched temporary worker
- The creation of a ledger for the management of the receiving company, recording the circumstances of the job performed by the dispatched temporary worker, and keeping these records for 3 years
- Appointing a manager responsible for these matters at the receiving company.

Laws and regulations for labor protection apply to jobs performed by dispatched temporary workers. The company to which the temporary worker is dispatched is required to approve or disapprove such things as regulations regarding working hours, breaks and vacations, as well as days off for childcare and menstruation periods.

<Obligation to Deliver Notice of Employment>

Upon employing a short-term worker, the employer bears the obligation of trying to deliver quickly to the worker a document (notice of employment) clarifying matters regarding the working conditions, including wages and working hours. (Article 6) (However, the employer does not have to deliver such document to the worker if the working conditions are clarified in a written work agreement or in the rules of employment.)

<Working Conditions for Short-term Workers>

For business in which 10 or more workers are normally employed, rules of employment that apply to short-term workers must be drawn up.

According to a legal index for short-term workers (Notification by the Ministry of Labor in 1993, No. 118), employers “in addition to abiding by various laws and ordinances protecting labor, must stipulate working conditions, taking into consideration the actual state of the job in question and its normal balance with regular workers.

When continuously employing a short-term worker for over a year based on an employment agreement renewal for which the term has been stipulated, but not renewing the employment agreement in question, the employer must inform the short-term worker at least 30 days in advance that the agreement will not be renewed.

VI. Industrial Relations

(JAPAN)

1. Institutional Framework of Industrial Relations

- **Style and characteristic of Japanese labor unions**

- In Japan it is common a labor union being organized based on companies, nor by functions nor industries.

Industrial relations have two kinds: a relation based on work rules and labor agreements to each individual worker and an inter-organizational relation to “union” as a group of workers. The characteristic of Japanese labor unions is that they are organized at each company. In Japan there are some labor unions organized by functions and industries, which is a mainstay in the US and Europe. But these ones represent an exception to the norm that most of the labor unions are company-based. However, there are cases that these company-based labor unions form a federation, such as a confederation or council that is based on a company group level.

The historical reason for development of company-based labor unions is that since workers did not know which job type would be assigned to them by rotations within a company; it was difficult to establish working conditions such as job-based salary. Also, because salaries were paid just for being a part of a company, not based on job type and skills, it became rational for workers to carry out labor-management bargaining by forming a union within a company.

- **Union shop**

Characteristic of company-based labor unions is that their membership is limited to company employees. In many cases, a collective membership system covering all employees is adopted, and white-collar workers who are university graduates and blue-collar workers are mixed in the same organization. It is not a prerequisite for a worker to be a union member in order to be employed. However, many companies adopt a “union shop” style where, once employed, a worker must join a union within a certain period of time to maintain status as an employee. According to an agreement between employees and management for the union shop, in principle, the company is obligated to dismiss a worker who does not join the union or who has been expelled from the union. (The Labor Union Law, Article 7-1, proviso) In reality, however, there are many cases where “workers and management cooperate,” and “nothing is stipulated.”

- Check-off

It is common that Japanese companies adopt a check-off system to deduct labor union fees from the pay of a union member (employee). Along with the union shop, this system helps establish a stable fiscal basis of company-based labor unions.

- Full-time labor union officer

Most full-time labor union officers engaged in labor union operations maintain employment with companies. Only during the period of their terms, they are away from company duty. The full-time labor union officer system is one of characteristics of the Japanese labor movement. In many large enterprises, full-time labor union officers take charge of union operation.

Generally, to become a leader of a labor union is often regarded as an elite course since coordination function within a company is a skill required for corporate management. Therefore, a post of a union leader can often be on a course to become like that of a company executive. With his/her experience as an employees' representative, a company executive can promote smooth negotiations with workers, which is said to be a basis of a Japanese-style management system.

- Union Density

Across all Japanese companies, the labor union organizational rate stands at 21.5%. (The basic survey on labor union, 2001 by the Ministry of Health, Labor and Welfare) However, organizational rates differ greatly from company to company. Labor unions of large companies bigger than a certain size are usually organized but those of small-to-medium-sized companies, which represent the majority of Japanese companies, are not .

2. Role of Collective Industrial Relations and Bargaining Style

- **Collective Bargaining**

- Company-based labor unions in Japan display strong bargaining power in collective negotiation to determine wages and working conditions of the members. At the same time, they maintain a flexible stance and a fully understanding of the financial situation of the companies.

Consequently, unions can reflect their opinions in company management policy to some extent. Companies seek labor unions for their views on management in general, in relation to discussing wages, working conditions and employment issues. However, compared with labor unions in Europe and the US, Japanese labor unions have a weakness of having no influence on issues affecting the whole industry and the economy. To compensate for this weakness, company-based labor unions form federations of labor unions by industry and business types to set up standards for wages and working conditions.

[Points for consideration]

[Related laws and systems]

The characteristic of Japanese collective industrial relations is that the Article 28, the Constitution and the Labor Union Law guarantee the right of workers to negotiate collectively. Rejection of collective bargaining by a employer without legitimate reason is deemed an unfair labor practice (Article 7, the Labor Union Law). The right of workers to negotiate collectively is one of the three labor rights, along with the right of workers to organize and to bargain. Bargaining in industrial relations has two forms: collective bargaining and labor-management talk.

Bargaining in industrial relations to determine employment and working conditions of workers is called collective bargaining. Workers can participate in decisions on employment and working conditions and can add regulations through a collective bargaining. However, because the Labor Union Law does not stipulate specific matters for collective bargaining, employees and employers have to determine the range of bargaining items together. When a collective bargaining fails to reach an agreement, there is a possibility of entering a labor dispute.

Results of collective bargaining are documented in labor agreements. Presently more than 80% of unit labor unions have concluded labor agreements and nearly 90% of workers are covered by labor agreements. Generally, collective bargaining is conducted three times a year; a spring labor offensive for working conditions, an increase in base wages, and offensives for negotiating bonuses in summer and winter.

[Impact of labor agreement]

[Related laws and systems]

<Normative effects of labor agreement>

In case that working conditions and other items concerning treatment of workers stipulated by work rules are below those stipulated by labor agreement, the relevant provisions become null and the provisions of the labor agreement take precedence. (Article 16, the Labor Union Law)

<General restriction of labor agreement>

If over three quarters of workers at a company are covered by a labor agreement, the agreement also applies to non-union members. (Article 17, the Labor Union Law) However, only the relevant normative clause is applicable. This aims to prevent union members' working conditions from deteriorating due to non-union members working below the standard conditions stipulated by the labor agreement.

- Joint labor-management conference system

A joint labor-management conference system is “a permanent mechanism where representatives of workers and employers exchange information and views on various issues of corporate management, especially issues which have direct and indirect impacts on employment and working conditions and interests in daily life.”

While a collective bargaining is a means of negotiation backed by threat of labor dispute, in a joint labor-management conference system the direct labor dispute does not proceed, because it is not authorized to decision-making.

VII. Employee's Benefits

(JAPAN)

1. Holidays and Days Off

- **Decision of Working Hours**

- A law stipulates working hours in Japan.

The Labor Standards Law stipulates “legal working hours.” The law establishes a principle that a worker should not be made to work over 40 hours per week, excluding recesses, or eight hours per day, excluding recesses. (However, it also approves flexible treatment as follows.)

- **Flexible Working Hour System**

- Although there is a principle concerning working hours per day and per week, diversification of work style is also approved.

- **Variable working hour system**

The concept is to balance operations during busy and slack periods. It sets an average of working hours over a certain period of time. As long as the average working hours per week do not exceed 40 hours, even if on a specific day or in a specific week they are exceeded, the exceeding limit set for legal working hours is not.

- **Discretionary working system**

Concerning operations stipulated by law, when fixed working hours are set by an agreement between workers and an employer, regardless of the actual working hours by workers engaged in the concerned operations, a discretionary working system recognizes the fixed working hours stipulated in the agreement between those two parts. This discretionary working system has two types.

Special operation type	Project operation type
• Research and development of new products and new technology • Analysis and design of information processing system • Data collection and editing of articles • Designing • Producer and director • Copy writer • Certified public accountant • Lawyer • Registered architect • Real estate appraiser • Patent attorney	Clerical workers engaged in planning, survey and analysis at a central department, such as the headquarters of a company, where important decisions are made for business management.

- Flexi-time system

A flexi-time system allows workers to start and finish working at times of the day that they choose, under the condition that they work a certain total hours within a period of time, such as a month. (Article 32-2, the Labor Standards Law) Requirements for introduction of a flexi-time system are allowing workers to decide work start and finish times according to work rules, and concluding a labor-management agreement with a labor union organized by a majority of workers or a representative of workers. Many companies divide working hours of a day into two segments: a core time when all workers should work and a flexible time when workers can freely start or finish working. However, setting a core time is not always necessary and it is possible to provide all working hours as flexible time.

- Upper limit regulation for overtime work: Agreement of 36

In order to exceed legal working hours (overtime work), with 360 hours per year as a barometer, an agreement with a representative of majority of workers is required. (Article 36, the Labor Standards Law)

- Work on holidays

Concerning work on holidays, an employer has to give workers more than one holiday per week, or four days or more per four weeks. An extra payment of 35% should be made for work on holidays.

● Acquisition of Paid Holidays

- In Japan, the Labor Standards Law has regulations concerning paid holidays and also stipulates paid holidays for part-time workers.

An annual paid holiday system guarantees workers a certain number of paid holidays per year, plus days off. This applies to workers who have worked for six consecutive months, starting on the day of hiring, and have worked for more than 80% of the total working days. Workers get ten working days as paid holidays, consecutive or divided. Later, the number of paid holidays increases depending the years an employee has worked for a company. For part-time workers (whose designated working days are four days or less per week and working hours are less than 30 hours per week or whose working days are 216 days or less per year), a system is established to provide a number of annual paid holidays proportional to their designated working days. (Article 39, the Labor Standards Law)

In principle, workers can take annual paid holidays at any time they choose. However, a employer can exercise a right to change this time if granting the paid holidays at the time requested would hamper regular business operations.

The Labor Standards Law promotes acquisition of paid holidays by concluding a labor contract stipulating that a certain number of paid holidays can be taken at the workplace at the same time or by taking turns according to a plan. (e.g. summer vacation)

[Points for consideration]

[Related laws and systems]

When a woman who is expecting to deliver a baby within six weeks requests holidays, an employer should not obligate her to continue her work and an employer also should not force her to work within eight weeks after delivery. (Article 65, the Labor Standards Law) However, these holidays are not required to be paid holidays.

● **Days Off**

- In Japan, a law stipulates that at least one day per week should be a day off.
- Days off more than once a week should be decided based on an agreement between workers and an employer.

Days off are stipulated as “days without duty to work” designated in advance by labor agreement or work rules. In Japan, law stipulates a “legal days off” per week system, which grants at least one day off every week. However, along with the shift to a 40-hour work per week system, in reality it is common companies that practice a two days off per week system. To give more holidays than the law designates, adding unique holidays to a company, including a company’s foundation day, or substituting holidays that fall on days during a company’s busy period for public holidays, all these decisions are made by an agreement between workers and a employer.

[Points for consideration]

[Related laws and systems]: Legal days off

An employer must grant at least one day off every week to workers. (Article 35-1, the Labor Standards Law)

However, it is not necessary to give this day off to all the workers at a workplace at the same time, because an irregular holiday system of four days off per four weeks is approved. It can be given to each individual worker by turns, but one day off per week should be given to each worker without fail. (Article 35-2, the Labor Standards Law)

~~Coffee Break~~

TOPIC 7: Penalties for violation of working conditions

The Labor Standards Law stipulates the minimum standards for working conditions, including wages, working hours and holidays. Articles 121 to 177 of this Law stipulate penal regulations that force an employer to observe working conditions. These articles provide fines, or in some cases imprisonment, if duties of the Labor Standards Law are violated by the employer. That is, violation of this law is not a subject of administrative control but a criminal offense.

[Penal regulations and violation examples]

Penalty examples	Violation examples
Imprisonment of one year or less or a fine of ¥500,000 or less	• Employment of children under 15 • Midnight work of workers under 18
Imprisonment of six months or less or a fine of ¥300,000 or less	• Sudden dismissal without paying an allowance prior to dismissal

-Additional payment

The Labor Standards Law stipulates additional payment and imposes a penalty on an employer to assure payment especially important for workers, such as wages. In the following cases, a court can order a employer to make an additional payment of an amount equal to the unpaid fee owed by the employer.

- When an employer fails to pay an extra wage for overtime, work on days off and midnight work
- When an employer fails to pay a wage for a holiday period, which is stipulated by work rules, to a worker taking annual paid holidays
- When an employer fails to pay an allowance for leaves.

-Double penalty regulation

As a system for making an employer to observe the Labor Standards Law, besides additional payments, there is a double penalty regulation. If a shop manager or a supervisor at the workplace violates it, in addition to the supervisor concerned, a fine is also imposed on the employers (president or manager).

[Trends during recent years]

<Nursing-care leave>

The Childrearing and Nursing-Care Leave Law was revised in November 2001, establishing a nursing-care leave system for parents whose children are under elementary school age, as a duty for companies to make an effort to adopt it. Regarding a flexi-time system or a shorter working hour system which companies are obliged to prepare to support employees' childrearing, the age of children will be raised to "under three" from "under one." The revised law also enables men and women alike to request for an exemption from overtime work of more than 150 hours per year and 24 hours per month. Because about three quarters of troubles concerning dismissals and retirements derive from a childbirth or pregnancy, the law modified the definition of "disadvantageous treatment" resulting from application for or taking childrearing leave to include unfair rotation or promotion discrimination, along with conventional dismissal. The revised law will enter into effect in April 2002.

2. Welfare

- At Japanese companies, the ratio of welfare expenses to wages is high and the welfare expenses are not reflected in total pay amount.

Although superficial pay amount is small at a Japanese company, the economic standard of living is not necessarily low. That is because welfare is well supported. When a company employs someone, besides salary and bonuses, it pays about 30% of them as additional personnel expenses. (Japan Federation of Employers' Association: Results of welfare expense survey in 1999.)

• Types of Welfare

- Non-legal welfare is a means to distribute a company's profits. Large companies tend to have more favorable welfare systems.

A company's welfare expenses consist of "legal welfare expenses" funded by a company's contributions of labor social insurance premiums, and "non-legal welfare expenses" funded by expenses for a company's voluntary welfare projects. Non-legal welfare expenses include support for housing, medical insurance, living, gifts of family celebration and condolence, mutual aid, insurance, culture and recreation, and asset formation. In addition to a system of social insurance premium shouldered by a employer, there are significant benefits, including company dormitories, funds for house loans at low interest rates, dormitories for single workers, resort houses, gymnasiums, sport fields and other welfare facilities. Other programs include co-purchase of goods and employee discounts for company products. These are generous at a large company and are a means of distributing benefits.

Fringe benefits offer a big flexibility in a good economy and a small one during a recession. They are convenient means for a company to make payments. An employee share-holding system enhances an employee's awareness of belonging to a company. Because company development translates into an individual's asset formation, the system also helps raise an employee's morale. In this way, the Japanese welfare system aims to promote employee's total welfare by providing a reward system beyond compensation for work and serves as a source to supply flexible work.

-Diversity of allowances

Regardless of working hours and work volume, a wage (allowance) aiming to assist livelihood is not small. Allowances are paid for various reasons, including allowances for family, housing and commuting. It is a unique feature of Japanese companies to pay a wage to an employee's family members who are not engaged in work at the company.

These allowances are usually excluded from calculation standards for bonuses and retirement allowance and will not have an impact on the share of payments in the future.

[Trends during recent years]

As a company's burden of legal welfare expenses and retirement allowance is expected to increase, companies are making an effort to curtail the non-legal welfare expenses as much as possible.

<Abolition of personal allowances>

In a shift to a "performance-based system," there is a growing trend of abolishing personal allowances that are not related to job, such as an allowance for family and an allowance for housing, including these as part of bonus funds and distributing these funds based on performance in order to secure fairness.

<Cafeteria plan>

As a corporate welfare system, cafeteria plan is getting popular. The system allows employees to select welfare benefits according to their needs among choices in a certain welfare usage framework. The system cuts wasting related to provision of uniform benefits and contributes to a reduction in total personnel costs. Meanwhile, it is attracting attention as a system that makes it possible to consider each employee's conditions.

3. Social Insurance Procedures

- **Workers Accident Compensation Insurance**

- The entire workplace is covered and reporting to labor standards inspection offices is required.

Workers accident compensation insurance is a system to provide insurance necessary for workers' injury, sickness, disability and death due to business operations or commutation. In principle, compulsory coverage applies to the entire workplace where workers are employed. An employer must submit an insurance relation establishment report to a labor standards inspection office with jurisdiction within ten days after establishing an insurance relation. Compensation is provided to a worker's accident even if an employer fails to report and neglects to pay insurance premiums. In this case, the government makes an additional collection of them. If the employer fails to report intentionally or as a result of serious negligence, the government collects the full or partial expenses required for the insurance payments from the employer.

Insurance premiums are solely shouldered by an employer. The premium is calculated by multiplying the total wage by the workers accident insurance rate (rate is set at 144/1000 to 6/1000 and designated by each business type). Payments of workers accident insurance include recuperation compensation, leave compensation, pension for the sick and injured persons, disability compensation, and compensation for the family of the deceased. Requirements for receiving payments, provision contents and procedures for each are stipulated.

- **Unemployment Insurance**

- The entire workplace is covered and reporting to a public employment security office is required.

Unemployment insurance is a system to provide insurance required when a worker loses their job or when a reason for difficulty of continuation of employment arises. In principle, compulsory coverage applies to the entire workplace where workers are employed. When an employer employs a worker, he or she meets requirements for insurance coverage (or an employee's coverage is terminated due to leaving a job). Then, the employer must report to a public employment security office with jurisdiction within the first ten days of the following month after the employee has been covered by the insurance (or the employee's coverage is terminated). When an employee loses entitlement because he/she leaves a job, in principle, a certificate for job leave of the insured for unemployment insurance should be attached. However, newly employed persons who are 65 years or older and temporary workers (an employee who has worked less than 30 hours per week or less than one year) are excluded from the unemployment insurance coverage.

The insurance premium rate is 15.5/1000 of the total wage, 12/1000 of which is allotted to expenses required for insurance payment shouldered equally by the insured and an employer. The remaining 3.5/1000 is allotted to expenses required by the government's employment security operations and shouldered solely by the employer. A general insured employee (who has been covered by the unemployment insurance for more than six consecutive months during the year before leaving a job) visits a public employment security office and applies to find a new job in order to get unemployment approval. In this case, in principle, a base allowance will be paid for up to a specific number of days without a job (which is stipulated based on the duration of insurance coverage, age and the reason of leaving the job) for one year after the day following the leaving (receiving period).

- **Medical Insurance (health insurance)**

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| <ul style="list-style-type: none">● A social insurance office or a health insurance society operates a medical insurance. |
|---|

A medical (health) insurance system provides insurance payments necessary for injury, sickness, death or delivery, which takes place outside business operation of the insured. Operators of health insurance are the Social Insurance Agency and health insurance societies. (Government-managed or union-managed health insurances)

In principle, at corporations, everybody has to join a health insurance plan. An employer has to submit a "report on acquisition of qualification for the insured" to a social insurance office or a health insurance society within five days after the starting day of employment (within five days after the day following retirement). The employer has to submit a "report on forfeiture of qualification for the insured" along with a health insurance certificate," which was returned by the insured to a social insurance office or a health insurance society within 5 days after the day following retirement. When the report is accepted, a "confirmation notice of qualification acquisition" and "health insurance certificate for the insured" (to be handed to the employee) is issued at the office. In the case of a government-managed health insurance, a monthly insurance premium is calculated by multiplying standard monthly wage by 8.5% and is shouldered equally by an employer and the insured. In the case of a union-managed health insurance by a general company, the union decides a monthly insurance premium. Payments of health insurance include a sick and injury payment, a childbirth payment and a death payment. Requirements for receiving payments, provision contents and procedures for each are stipulated.

● Employees' Pension Insurance

- In Japan, there are roughly two types of public pensions: basic pension and employees' pension which is a part of an additional pension proportionate to wages.

In Japan, there are roughly two types of public pensions: basic pension (the National Pension Fund) and employees' pension which is a part of an additional pension proportionate to wages. Meanwhile, in addition to the public pension, there is a corporate pension plan. In Japan there are around three types of corporate pension plan: employees' pension fund provided by a company on behalf of the government or with a company's own corporate pension added to the employees' pension, in some cases; tax-qualified pension operated based on the Corporation Tax Law; and a 401K-style fixed contribution pension which has recently been introduced. An employees' pension plan makes insurance payments necessary for aging, injury and death of the insured.

The insurers of employees' pension are the Social Insurance Agency and the Employees' Pension Fund. The employees' insurance is a mandatory insurance that obligates each company and all the employees to join it. In principle, the insured of employees' pension loses the qualification on the day he/she reaches 65 years old. One of the typical payments is an employees' pension for the elderly.

Insurance premiums for an employees' pension are shouldered equally by the insured of the employees' pension and an employer. In principle, an employee insured by an employees' pension plan starts receiving an old-age employees' pension payment at the age of 65, along with an old-age basic pension payment from the National Pension Fund. A employer must submit a "report on acquisition of qualification for the insured" to a social insurance office within five days after the day an employee acquires the qualification (the day he/she is employed) by the company. When this report is accepted, an "acquisition confirmation of qualification for the insured and a standard wage decision notice" is issued to the company. When an employee joins the employees' pension plans for the first time, his/her name is registered in a list of the insured at a social insurance office and a pension ledger is issued. Since an employee uses the same ledger after changing employment, he or she keeps the ledger.

Payments of an employees' pension include a payment for the elderly, a payment for the disabled, and a payment for the bereaved. Requirements, contents of payments, and procedures are stipulated for each payment.

[Trends during recent years]

<401K-style fixed contribution pension>

In 2001, a 401K-style Defined Contribution Pension has been introduced in Japan as a new form of corporate pension. A conventional Defined Benefit Pension scheme is a system where a company manages the whole installment premiums paid every month and receives a fixed benefit. Meanwhile, in the case of 401K-style Defined Contribution Pension recently introduced in Japan, an employee chooses a favorable operation method and takes operation risk by keeping pensions in his/her deposit account. In the taxation system, contributions are treated as loss or pay exemptions and while the pension is managed, it is treated as taxation deferment. When an employee changes employment, an account can be transferred to a new company's Defined Contribution Pension account.

[Points for consideration]

In Japan, medical insurance (health insurance) and pension plans are operated based on the principle that all people are eligible for insurance and can receive medical service and pension payments when they become sick or elderly (national insurance and pension for all people).

Income compensation for the unemployed or employees injured by workplace accidents is covered by unemployment insurance. Besides unemployment benefits, three operations are characteristic of the Japanese unemployment insurance program. For example, to prevent unemployment, the unemployment insurance provides wage subsidies called employment adjustment subsidies to companies to restrain dismissal when a necessity is recognized. The insurance also provides benefits for continuous employment of the elderly or benefits for reemployment of the elderly to promote continuous employment of the elderly.

To join each social insurance, it is necessary to report to a labor standards inspection office, a public employment security office, a social insurance office and other offices with jurisdiction over the location of a company in question.

~~ Coffee Break ~~

TOPIC 8: Retirement allowance systems

Retirement allowance is a payment made by an employer to a worker based on regulations such as the work rules at the time of termination of an employment contract concluded between an employer and a worker.

A retirement allowance means a deferred payment of wages, rewards and benefits for long-term labor. For employers, the payment encourages employees to stay with the company, while for workers the payment is a guarantee for living after retirement. A retirement allowance is usually calculated by multiplying an estimated basic wage by a payment rate based on the number of years of service. Because a retirement allowance has a nature of rewards for seniority, for calculating the amount, regulations stipulate the reduction or confiscation of a retirement allowance based on the reason for retirement: a voluntary retirement, a retirement due to a company's circumstance, or a retirement due to a reason unfavorable to a employer (e.g. disciplinary dismissal).

A characteristic of a retirement allowance is that as the retirement age approaches, a coefficient to estimate retirement allowance significantly rises, serving to restrain retirement in the middle. This suppresses the number of early retirements. Currently, in an early retirement system the coefficient has been revised to estimate a retirement allowance.

[Points for consideration]

In principle, a retirement allowance is not a legally enforced system but represents an issue agreed between employer and workers under a labor agreement. However, if the payment and payment standards of the retirement allowance are stipulated by work rules, it is deemed as a wage and the employer has an obligation to make payments.

[Trends during recent years]

<Retirement allowance and corporate pension>

While almost all major companies have a retirement allowance system, 90% of small companies with 30 to 99 employees also adopt this system. An employee who reaches retirement age commonly receives about 40-months of monthly salaries.

The patterns for payments are “only retirement allowance,” “only corporate pension,” and “a combination of a retirement allowance and corporate pension.” Recently, there has been an increasing trend to adopt the combination pattern. The bigger companies become, the more they adopt a combination pattern. Generally, many corporate pension systems adopt a qualified retirement pension plan (Article 83 and the following articles, the Corporate Tax Law) and the employees’ pension fund system (Article 160 and the following articles, the Employees’ Pension Law), which set up tax preferential treatment remedies for installments of funds as described before. An employer pays the installments to a trust bank, a life insurance company or an employees’ pension fund, and these institutions pay a retirement pension or a retirement allowance to retired workers.

<Point system for retirement allowance>

It has been common for companies to estimate a retirement allowance uniformly by multiplying an estimated base wage (base pay) by the number of years of service. However, some companies have started to adopt a system of retirement points calculated by job and appraisals during employment as a standard for estimating a retirement allowance.

<Public nursing care insurance>

In April 2000, the public nursing care insurance system was set up and applications for the elderly eligible for that have started. There are two types of members of public nursing care insurance: type 1 - people aged 65 or older and type 2 - people aged 40 to 64.

For an employee of type 2 an insurance premium is collected from the wage of the employee, and the employee and the employer equally pay the premium. (The premium payment of the insured of type 1 is deducted from pension.)

A public nursing care insurance premium is included in conventional health insurance and is deducted as a health insurance premium. That is to say, the health insurance premium (rate) is a dual system: a general insurance premium (rate) (conventional health insurance premium (rate)) and a nursing care insurance premium (rate).

[Points for consideration]**<Businesses subject to health insurance and employees' pension>**

Businesses subject to a health insurance and an employees' pension are obliged to join them by law. There are two kinds: businesses that compulsorily join the plans and businesses that voluntarily join the plans.

[For reference]

Compulsorily applied businesses Regardless of the will of a employer and its employees, a law stipulates that it is compulsory for them to join health insurance and employees' pension.	Businesses (including offices) fall under category or . Businesses constantly employing five or more employees and engaged in the following operations. - Manufacturing - Civil engineering and construction - Mining - Electricity and gas - Shipping - Cleaning - Goods Sales - Finance and insurance - Storage and leasing - Mediation - Fee collection and advertisement - Education, research, and survey - Medical and health - Telecommunication and press National and regional public organizations or corporations constantly employing workers.
Voluntarily applied businesses - Joining a plan is possible when agreed to and approved by employees - With an agreement of employees, a withdrawal is possible.	Among businesses for which membership is not compulsory, businesses that can join health insurance and employees' pension insurance with an approval of a head of a local social insurance office. If a business voluntarily becomes a member of plans, payment of insurance and premiums will be same as for those businesses with compulsory membership. <Application> A business can voluntarily join plans when a majority of workers at the workplace agree to join and a head of a local social insurance office approves the employer's application. All the employees (except for those excluded from among the insured) join the plans. When more than 3/4 of the insured agree to withdraw from being a voluntary member, a voluntary comprehensive withdrawal is possible after a head of a local social insurance office approves the employer's application for withdrawal.

VIII. Discipline and Grievances (JAPAN)

- **Discipline and Grievances**

- For the prevention of unequal employment opportunities among men and women, there is a strengthening trend for legal regulations.

Protection of workers is strengthening. Although corporate employment was centered on employment of new male graduates, after the revision of the Equal Employment Opportunity Law, Japanese companies cannot recruit or hire workers by gender. By a revision of the Labor Standards Law, major working conditions should be clearly stated in documents to avoid trouble after hiring.

-Measures for employment discrimination based on gender

[Related laws and systems]: The Equal Employment Opportunity Law

<When the Equal Employment Opportunity Law is violated>

Although there is no penal regulation like the Labor Standards Law, when the Equal Employment Opportunity Law is violated, a head of a municipal labor relations bureau's equal opportunity office can demand a report from the employer and give advice, instructions and recommendations. But if the employer fails to follow the recommendation, the Health, Labor and Welfare Minister can announce the matter to the public.

<Protection regulations for women>

As the conventional limitation of working hours for female workers has been abolished, the idea of protection for women under the Labor Standards Law is that while protecting maternity functions, such as pregnancy, delivery and childcare, working conditions other than these should be the same for men and women. However, there are some moderations in measures. These include grant of a right to request an exemption for midnight operations (limited to those who meet certain requirements) under the Childcare and Family Care Leave Law, establishment of guidelines by Health, Labor and Welfare Minister for improving working conditions for women engaged in late night operations (e.g. securing safety for commuting and operations etc.) and setting an upper limit of 150 hours of overtime per year for women engaged in childcare and family care. (Until March 2002)

<Gender equality in employment>

On April 1, 1999, the idea of gender equality in employment was further strengthened. Concerning part of all types of welfare benefits, including recruiting, hiring, stationing, promotion, training, retirement age and dismissal, the law was revised to prohibit employers from taking different measures based on gender.

<Positive action>

Special positive actions to realize gender equality have been approved and promoted. Measures such as increasing the ratio of women and promotion for female executives have been approved.

[Points for consideration]

The Equal Employment Opportunity Law stipulates “employers must give women the same equal opportunity as that given to men in recruiting and hiring.” It is a violation if an employer does not give a woman an equal opportunity without reasonable reasons. Therefore, it is a violation of a recruiting conduct, a discrimination of gender.

[Exceptions to the equal employment opportunity (occupations that can be recruited with gender specification)]

Occupation	Only man/woman can be recruited
An occupation necessary to be engaged by either gender in the fields of entertainment and art	• Male model, female model • Baritone singer, soprano singer etc.
An occupation necessary to be engaged by a man because of a need for crime prevention, such as guard	• Guard who needs to prevent crime (guard to an armored car etc.)
An occupation necessary to be engaged by either gender due to a reason of religion, discipline, and sport	• Catholic father, priest, shrine maiden • Attendant for female locker rooms, athlete etc.
Occupations where it is hard to give women an equal opportunity under the Labor Standards Law regulations	• Labor in mines (Article 64-2, the Labor Standards Law) • Dangerous, harmful operations (Article 64-3, the Labor Standards Law)
When it is hard to show women’s full skill due to difference in customs and practices	• Working overseas where it is difficult for women to work • Remote areas in the mountains where commuting is impossible

-Sexual harassment

The Ministry of Health, Labor and Welfare categorizes sexual harassment at the workplace as follows and specifies typical examples. (Announcement No. 20, the Ministry of Labor, 1998)

	Sexual harassment, typical examples
Compensatory sexual harassment	Due to a reaction of a female worker to sexual words or deeds at the workplace, the female worker later incurs disadvantageous working conditions.
Environmental sexual harassment	Sexual words or deeds harm a female worker's working conditions.

[Related laws and systems]

An employer needs to give considerations necessary for employment management so that a female worker employed does not incur disadvantageous working conditions or her employment environment does not suffer damage due to sexual words or deeds taking place at the workplace. (Article 21) However, nothing is required from an employer except his/her efforts.

-Measures for employment discrimination against the disabled (physically disabled, mentally disabled)

[Related laws and systems]

The law related to promotion of employment for the disabled aims to stabilize employment of the people with mental or physical disabilities. The law takes measures to promote independence of disabled people's working lives by promoting their employment, steps for job rehabilitation and placement of the disabled in positions matching their skills. The law states that "the disabled" are divided into "physically disabled" and "mentally disabled" and defines the disabled person as "a person whose occupational life is extremely limited over a long period of time or who has an extreme difficulty to lead an occupational life because of a physical or mental handicap."

<Actual conditions of legal employment rate, report on employment situation>

The disabled employment promotion law imposes on private companies an obligation to employ more than certain percent of physically or mentally disabled people.

A private company employer who constantly employs more than 56 workers has to employ more than 1.8% (legal employment rate) of physically or mentally disabled workers.

Employers subject to this law have to report their employment situation for disabled workers on June 1st every year to a public employment security office.

[Points for consideration]

[Payment system for employment of the disabled]

A payment system for the employment of disabled people aims to improve the employment rate.

- A company constantly employing over 300 workers.

- Payment: Collecting a monthly fee of ¥50,000 per person short of target employment from companies that have not achieved the employment goal.
- Adjustment fund: If a company employs more than the employment rate, it receives a monthly reward of ¥25,000 per person that exceeds the target number.

- A company constantly employing 300 workers or less.

- Cash reward: If a company employs the disabled exceeding the higher number between the annual total of 4% of the number of employees per month and 72 employees per month, a monthly reward of ¥17,000 per person that exceeds the target

-Measures for age discrimination in employment (Favorable treatment to the elderly)

[Related laws and systems]

To induce employment of the elderly economically, various kinds of subsidy systems are adopted as part of employment stability operations for unemployment insurance. “Subsidy to promote continuous employment stabilization” adopts a system to continuously employ a worker until he/she becomes over 65 years old (including raising a retirement age, extending the employment and reemployment etc.) and provides subsidy to an employer who employs workers aged 60 to 64 as more than 10% of all workers. A “grant to encourage improving working environment for the elderly” is given to a company that improves facilities and equipment for the elderly and increases the number of workers in their early 60s.

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