

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

(US)

The Japan Institute of Labour

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I. Corporate Management and Human Resources Management

(US)

1. Factors to Determine Human Resources Management System

Distinguishing Features of Employment Practices in the United States

- Employees and their employers have a “relationship of employment at will,” and it is common for the labor force to move from one company to another.
- Importance is placed on “equality in employment,” and it is strictly observed that employees are not discriminated for reasons like race, sex, age or religion.
- Jobs are clarified and stipulated in contract, and the people needed to perform them are hired.

It is common for the labor force to frequently move from one company to another in the US. Law establishes employment relationship by “employment at will.” This means that both employers and employees understand that either one is free for any reason whatsoever and at any time to discontinue the employment relationship.

That is to say, it is a common belief among employers and employees that “an employer negotiates with an employee regarding various employment-related matters. In fact, the employer can hire or dismiss the employee according to business necessity, and compensate the later accordingly.”

However, even though employment relationships are flexibly established, it is strictly observed that employees are not discriminated against because of race, sex, age, pregnancy, religion, disability or nationality. What’s more, in “progressive” legal jurisdictions (e.g., the states of California and Michigan), there is also the condition that an employer’s decision to dismiss an employee must not infringe the basic notion of fairness to an employee. Importance is placed on the fact that “equality in employment” will be observed.

With the frequent labor force liquidity, it becomes hard to manage an organization according to unwritten regulations. Accordingly, things must be stipulated in writing. As a base for the ways of thinking about employment, first of all the functions of the organization are established, and then the labor force is applied to the organization and its posts. For this reason, it is common practice for companies in the US to clarify such things as job regulations and job definitions, and manage affairs based on this. In such companies there is a very high level of awareness toward fairness in employment. For this reason, in order to deny allegations of unfairness by employees for such reasons as race, sex or age, or allegations that an employee has been treated worse than another one, many employers decide personnel policies and procedures for their company which apply to all employees, and prepare detailed “Personnel Manuals” stipulating these policies and procedures.

Function of Personnel Division

- The manager of the workplace has the authority to hire and dismiss employees.

The function of the personnel division is to perform management operations.

In US companies, people in management positions, including line managers at the workplace, have the authority to hire and dismiss employees. This is because since it is the manager who knows more than anyone else about the technical skills, abilities and performance of the worker(s) in question. It is considered important for the managers to use their own discretion to hire or dismiss people who are most required at each division. That is to say, this is based on the way of thinking that, since there is a pool of human resources in the labor market outside of the company, rather than fostering workers at the company, it is better to find at a fair price the most excellent workers from the marketplace outside the company, according to the functions required at the divisions.

The only function of the personnel division in such companies is to perform separate activities on an individual basis, including hiring and stationing personnel, training and salary management. There are few instances in which personnel divisions are strongly required to be aware of strategic viewpoints, including business strategy.

II. Hiring Management

(US)

1. Planning for Required Personnel and Job Design

- Accounting divisions are in charge of personnel cost planning, management and budget allotment, and personnel divisions take charge of the stationing of personnel, 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, and the other is promoting these plans on a daily basis. At US companies, the accounting division is in charge of the former, while the personnel division takes care of the later.

Concretely, the accounting division is in charge of the functions of overall cost planning, control of personnel costs, and the allotment of budgets to the various divisions. The personnel division is in charge of stationing personnel, training, and management of clerical affairs. Planning for required personnel requires considering the total quality and quantity of the labor force which would be able to function as a labor force to decide matters concerning not only regular employees, but also irregular employees, temporary workers, requests for workers from outside sources and outsourcing. It also requires making the most effective business choices.

Job Design

- Details of jobs, authority and responsibility are clearly defined, and the appropriate personnel is assigned to the appropriate job

The supply of labor force at US companies is based on the concept that it is applied to a specific job. Authority, responsibility and specific tasks are clarified based on job analysis. By analyzing job, in addition to setting objective job standards, a base is established for creating a salary system. Also, it is a basic practice to hire and station personnel based on written job descriptions that are created according to a job analysis.

At US companies, job details must be well explained, to assure that after a person is hired he/she is not unilaterally transferred at the company's will. For example, if a company stations a person in a certain workplace without clarifying the details of that job, does not allow that person to receive pay raises or dismisses him/her because he/ she did not produce the expected results, that company might be sued for misconduct.

In order to avoid this, there are companies that take steps to deal flexibly with these matters, through the following methods.

At the time of hiring, they add special contractual issues and establish written job descriptions with flexibility.

They rewrite the job definitions and enter into a new contract, as a person's career develops.

Planning for Required Personnel

- Importance is given to short-term (quarterly) vision in planning for required personnel according to the situation at the company

Planning for required personnel is generally influenced by short-term considerations and the business situation of the company. This is because it is easy for companies in the US, where there is frequent movement of the labor force, to secure the most suitable human resources for a job from outside the company. It is more important to secure the needed human resources for short periods of time to increase short-term profits rather than achieving mid- and long-term growth of business results.

2. Entry Process

- The method of recruiting depends on the position to be filled.

Companies in the US clarify the necessary requirements for a job. That is to say, their method of recruiting depends on the position to be filled and the required skills. For example, a person hired to fill a managerial position is hired as a manager from the start. The method used for hiring such a person is different from the method used for hiring a regular employee.

Main Methods of Entry process

Type of Entry process	Method	Main Target
School	Recommendation from school (job placement office)	A job order is submitted to schools. This is done quite often for hiring engineers “en masse”.
	Job fair	Company introduction meetings are held at schools to conduct public relations among a wide sector of students. Contact is made with a large number of students without interviews.
	Campus Recruiting	After permission has been received from the university job placement office, the company conducts hiring activities on campus, including interviews. Depending on the situation, a person might be informally hired.
Within the company	Job posting (Recruiting within the company)	People who want to be transferred to another post are recruited from within the company.
		All posts

Type of Entry process	Method	Main Target
Outside the Company	Referral Connections	Applicants are recruited through business connections. Main sources of referral include banks, law offices, accounting offices and advertising agencies.
	Want ads	Want ads are placed in newspapers (including trade newspapers) and magazines.
	Human banks (employment agencies, outplacement agencies, etc.)	Referrals of people registered in the low-income sector (This includes the re-hiring of people in management positions through employment agencies to go along with the relocation of company headquarters and a curtailment in business scale.)
	Executive search (head hunting)	Human resources for president and top management are searched mainly by scouting.
	Employment agencies	Public employment agencies, private employment agencies, and the employment section of labor union

[Points for consideration]

Careful attention is paid to language in want ads. While there are some exceptions, the position in question entails justifiable bona fide occupational qualifications. Preferential treatment, discrimination or restrictions based on sex, age, race, skin color or country of origin are illegal. Similarly, it is also illegal to place such specific requests with employment agencies.

Under the Equal Employment Act, a company may not refuse to hire an applicant because that person has a blood relative at the company, even if parent or child, sibling, spouse or blood relative of the applicant should be working in the same division.

3. Screening Process

- The workplace has the authority to hire, and line managers are directly involved in the hiring process.

In general, at US companies, the line managers can take some decisions in personnel administration, and they are directly in charge of hiring. Since they hire people who have definite required skills for a certain job, they do that beforehand, taking into account what kind of work those people will be performing and what skills are required to perform that work.

Detailed Screening Process

- Much of the screening of applicants consists of (1) resume screening and (2) screening by interview.
- Companies are very careful in application documents to only ask about the skills required by the job in order to avoid discrimination issues.

Much of the screening consists of (1) resume screening and (2) screening by interview. However, the number of interviews depends on the entry level.

Also, it is prohibited by law in an application document to ask a person's date of birth, date of completion of compulsory education, country of origin, nationality, marital status, family circumstances, whether or not the applicant has been rewarded or punished for anything in particular, like health condition, membership to organizations and so on. Nor is it necessary for an applicant to submit a photograph to identify his/her race, sex or age. Similarly, companies rarely give tests in order to avoid the risk of being sued for discriminating based on race, language, sex or age. At an interview, a company may not ask questions other than those necessary for knowing about skills or aptitudes. If a company asks questions other than those necessary and decides not to hire a person based on these questions, this would turn into relinquishing the Equal Employment Opportunities (EEO). Concretely speaking, a company must not ask questions regarding such matters as nationality, sex, age, family or disabilities. Even if, for example, it does not base its hiring decisions on such questions, the problem is whether or not the applicant who was not hired will suspect that "that was the reason why the company did not hire me," so that companies must be sure not to arouse such suspicions. Many companies seek the advice of a lawyer specialist in this area to draw up application forms, in order to avoid EEO problems. If an EEO problem occurs, most companies seek the advice of this specialist.

[For reference]

<Reference Check>

Once the screening process is over and a company has decided the ones it will hire, it conducts a reference check. However, when an US company conducts a reference check, it will often get the applicant's consent to conduct a reference check with the reference, in order to avoid being sued for discrimination.

<Personal Reference>

Companies place importance upon getting personal information through references. Many companies require at least around three sources of reference in writing, aside from references from relatives and former employers.

<Orientation Period>

After someone has been hired, he/she goes through an orientation period that usually lasts between 60 and 90 days before being permanently hired. Usually there is a salary adjustment to a certain extent once someone has passed the orientation period and been permanently hired. So, salary is adjusted, the number of paid vacations allowed to be taken is determined, and the number of years the employee works at the company for retirement allowance is calculated based individually on the date that he or she started working at the company. Since managing individuals becomes troublesome for companies of a certain size, salary adjustment after the orientation period has ended is in many cases linked to periodic evaluation of individual job performance performed throughout the entire company. This period used to be called "probation." However, since this term has a bad nuance, which insinuates that the company monitors and evaluates its new employees, the term "orientation period" is often used.

III. Salary Management (US)

1. Salary Determination Factors

- The main salary determination factor is one's job. The years of service have little influence in determining wages.

Laws prohibiting employment discrimination on the federal, state and local levels govern US companies. There are big differences in salaries based on a person's job and academic degrees, with only a very small range in salary increase based on the years of service. Although there are some companies which provide salary increases based on the years of service, the range of salary increase is not very large, and there are bigger differences in salaries resulting from other formal factors. There are completely different salary tables for people occupying management positions and company executives, and regular workers, and also completely different ranges of salary between company executives and regular workers.

Basic Concept in Deterring Salaries

Based on the pay system at US companies, salary is determined by one's job. Also, generally, the way of thinking about working hours differs between the blue-collar segment and the white-collar segment.

- Blue-collar bracket → Hourly wage system
- (Workers at the manufacturing plant), support jobs, etc
 - *Even in cases of hourly wage system, wages are often paid by week
- White-collar bracket → Annual salary
- (Company executives, management and clerical staff, including professionals)

The basic concept for the hourly pay system applied to the blue-collar bracket is "job-based salary." That is "the job is defined in detail, and the range of the per-hour amount paid in a certain job is determined based on the evaluation by each workplace."

The actual salaries paid are determined based on the job performance and skills of the worker in question within the job-based salary range. Companies must pay workers to whom the hourly pay system applies based on federal and state regulations on overtime allowance of 50% over their normal pay for the hours exceeded in a 40-hour journey per week, based on the Fair Labor Standards Act. (This is called "non-exempt.")

The white-collar bracket to which the system of annual salary applies basically has the same concept of “job-based salary.” As with the blue-collar bracket, the range of the annual salary amount for the worker engaged in the job in question is determined based on the evaluation by each workplace. Generally, a worker’s annual achievement objective is decided through discussion with the worker’s senior, and that worker is evaluated based on the degree by which the objective has been achieved. A worker’s salary increase for the following year is determined based on the evaluation of management by objectives (MBO). Job types for which the system of annual salary has been adopted are not managed according to the system of hourly labor, and these workers are not paid an over-time allowance. (This bracket is called “exempt.”)

By conducting “salary surveys” to find out the salary standards of other companies, companies perform maintenance of their own salary standards. Based on the findings of these “salary surveys,” companies establish their own pay policy.

[Pay policy]

Pay policy	Salary standard	Expected effect
Lead	Higher than the market standard	Securing excellent employees
Meet	Same as the market standard	Few disadvantages
Follow	Lower than the market standard	Personnel cost control (reduction)

[Points for consideration]

Formerly many of the job classification regulations (job table) in the US were extremely detailed. However, with the accelerated pace of advancement in technological innovation, new jobs are being created and there has been an increase in the number of unnecessary jobs. As a result, changes in classification regulations take time and it has become difficult to deal flexibly with technological innovation. At the present time, there is an attempt to reduce the number of jobs, which were separate in past, by means of integrating them. There is a particular tendency in the IT industry, which has recently been advancing in leaps and bounds, to adopt simple job classifications.

-Wage Differentials

At US companies, salaries are determined based on job. There is a particularly big differential in salaries between regular employees and contingent workers, between different companies, between different races and between men and women. This is turning into a social problem.

[Main reasons for differentials in salaries]

- (1) Advanced technical skills which are in demand in the work force, and the fact that things are becoming more beneficial to workers who have completed higher education (Since industrial society has gone through great change to give priority to technology due to the computer revolution, there is a great need for highly educated, skilled and experienced workers and, naturally, they receive a higher pay.)
- (2) International competition and the effect of the industrial hollow (relations with neighboring Mexico due to the effectuation of NAFTA, etc.)
- (3) Increase in the work force supply. Due to increases in imports and immigration from nations with low technological levels and low wages, there is a glut of unskilled workers. Therefore, income has been reciprocally depressed.
- (4) A weakening of labor unions
- (5) The fact that legal job dismissal regulations do not exist
- (6) The fact that fluidity in the labor market has advanced excessively (the revelation of contingent workers)

-Salary Increase

In the US, guaranteeing a salary with consideration given to salary standards for a certain job in the market is fundamental for salary management.

[Salary increases based on individual performance]

Merit	Salary increases based on the results of evaluation of performance and skills over the years (once a year)
Equity	Compensation for securing skills to compete in the market (relative to the average salary level) (about twice a year)
Rank Promotion	Increase in salary as one's job authority increases

[Increase in salary regardless of individual performance]

General increase	The rate of annual salary increase is determined in the employment agreement, and the salaries of all employees are uniformly raised. (it is common in companies with labor unions.)
COLA (Cost Of Living Adjustment)	Determined based on cost of living trends
Seniority, years of service,	Salary increase is based on the years of service.

-Minimum Wage

The system of minimum wage in the US is based on the Fair Labor Standards Act (FLSA), with a uniform minimum wage amount throughout the nation.

[Employees to whom minimum wage applies (FLSA)]

- (1) People occupying a management position, people performing specialized jobs
- (2) Salespeople who perform their job outside the company
- (3) Workers who are employed at seasonal entertainment facilities and educational institutions
- (4) Workers who are employed by small newspapers
- (5) Operators who are employed by small telephone companies
- (6) Workers who take care of people, including children, at other people's homes

*Each state is given the authority to set a minimum wage that is higher than the uniform minimum wage set by the federal government. In fact, most states set their own minimum wage.

[Related laws and systems]

The uniform minimum standard wage throughout the country is \$5.10 per hour (put into effect in 1997). However, employees can demand hourly wages that are higher than normal for hours they work in one week in excess of 40 hours. (The FLSA does not apply to certain employees, including company executives, people occupying managerial positions and people who perform specialized jobs, or to workers in several business divisions, and such people are excluded from the protection of the FLSA.) Based on regulations of each state and the federal government, employers must clearly record the category of its employees. [The Fair Labor Standards Act (FLSA); Equal Pay Act (EPA)]

2. Pay System

Basic Pay System

- At companies in the US, there are normally 3 types of bonuses. These are “base pay,” which is determined based on job, “merit pay,” which is based on results, and “incentive.”

[Main pay system]

Base pay

This amount is determined based on the peculiarities of the job, regardless of who achieved what, years of service or individual skills.

Merit pay

In order to reflect differences based on individual skills and experience, this is paid against past results, and is an amount paid in addition to base pay.

Incentive

This is an additional pay which is given based on the rate of achievement of objectives which have been determined in advance, including sales, production, quality and profit.

That is to say, since payments at companies in the US are made based on job and results, wages are determined within the wage range for a particular job, and there is no conception of periodic salary increase. That is to say, wages are paid based on the skills and job performance for individual jobs, within the wage range of a particular job.

Employees are determined as being “non-exempt” or “exempt,” in accordance to federal and state laws, with the method of payment differing to each other. Since there are laws and regulations which stipulate that companies should pay employees a salary every certain number of days, depending on the state, employees at the same company do not necessarily receive their salary on the same day. For example, there are different pay systems in place for the blue-collar bracket and the white-collar bracket, with the blue-collar bracket and employees paid hourly wages given weekly.

[Main ways of thinking about wages]

Main wage determination factor	Allowance for overtime work	Salary increase	
Non-exempt	Job description Working hours	Wages more than 50% higher than the wages paid for normal working hours are paid for work performed in excess of 40 hours a week	Determined by the job performance and skills of an employee within the wage range of a particular job
Exempt	Job description Achievement of objective	Basically there is no wage paid (exempt).	Annual objective is decided through discussion with the worker's superior, and the worker is evaluated based on the degree by which the objectives have been achieved. (MBO) Salary increase for the following year is determined based on this evaluation.

The position of an employee among different brackets used as a standard for the payment of wages is often classified by rank as designated in the labor agreement which is applied at each company based on skill qualification recognized by society (e.g., CPA, PhD), and the relationship between labor and management by individual industry. There are not many companies with their own systems of position in place.

3. Incentive System

Main Pecuniary Incentive Systems

- Many companies in the US have adopted incentive systems, and there are a wide variety of types of them.

Rather than standardized salary, salaries in US companies depend on job and position. For example, depending on the business showings of a company, bonuses are often paid based on achievement. These bonuses are paid mainly to executives and the white-collar bracket.

Since there is a strong sense that “the company belongs to the stockholders and the executives,” remuneration for executives, which includes perks and options, is much better than that for regular employees.

[Main ways of thinking about awards]

- Achievement of objectives: award for a certain financial achievement
- Fixed mode: award for achievement beyond a certain minimum standard
- Compared to similar industries: award compared to groups in similar industries
- Discretionary: award given at the discretion of the CEO, award committee, or director

[Example of Pecuniary incentive program]

Type	Main targets	Target period	Amount	Achievement	Expected effect
Profit sharing	All employees	1 year	Depending on profit	Increasing profit ratio	Retaining employees, long-term motivation, recognition and praise by the company
Stock option	Upper management	3 years	Depending on stock prices	Increasing profit ratio	
Commission	Sales	1 year	Around 35% ~ 65% of base pay	Increasing sales	Luring applicants, retaining employees, short-term motivation
Annual incentive	People occupying managerial positions or higher	1 year	Around 10% ~ 50% of base pay	Successful MBO	
Milestone incentives	Engineers	0.5 ~ 2 years	Around 10% ~ 40% of base pay	Achieving development objectives	
Award	Given immediately for short-term contributions by an employee (This is a small amount of around \$100. Gifts other than cash are also given.)				Recognition and praise for results achieved by an employee

[Trends during recent years]

Companies that generally have good business showings tend to pay relatively low base salaries, although they give a high percentage of awards. Salary adjustment is simply performed by changing ranks of employees once or twice a year instead of annual salary increase based on detailed classification of achievements.

4. Appraisal System

- Appraisal results are used to determine employee's skill development and the amount of salary increase for employees.
- Since appraisal results are also used as a basis of dismissal, it is essential that the results be properly showed back to the employee in order to assure his/her understanding.

Through the appraisal system, companies 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, companies in the US use these results as data for developing skills among employees, including "human resources development," for determining the amount of salary increases for each employee, and, in some cases, the rank promotion of a certain employee. These results are also important as a basis for employee's dismissal; that's why it is important to secure clearness and fairness of evaluation in order to obtain the understanding of the person being appraised.

US companies usually conduct appraisals in the form of interviews once to four times a year. There are some ranking systems by which employees are arranged according to the size of their job based on the written job description. Basically, it is common practice for a company to station a person at a job with a suitable level to the person's skills. Therefore, although each company formulates its own standards and concrete procedures for conducting appraisals, MBO is generally used as a model for appraisal in the form of performance review. MBO means that, through the appraisal system, companies 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.

Main Appraisal Systems

[Management by objectives(MBO)]

The primary purpose of appraisal systems is to have the employees achieve the objectives they have been assigned, in line with the vector of all the employees, in order to improve the business. Open communication is required so that the employees can achieve these objectives and the company can praise them with points.

-Setting Objectives

Objectives are set at the beginning of the fiscal year according to budgets determined by the people who run the company (financial objectives for the entire company), with important points of strategy, distribution of resources, and the objectives of each of the divisions decided. Particular objectives to be achieved by the individual divisions are assigned to each employee, and are decided through interviews between managers and subordinates.

-Evaluation

The standard for making evaluation is not gender or age, but rather “to what degree an employee has achieved the job objective” which has been assigned to him or her. This is the only standard that must be considered for all personnel-related decisions, including pay and rank promotion. Evaluation is made after an agreement between managers and subordinates, as regards appraisal according to the level of achievement.

[Points for consideration]

Just as reflecting evaluation results in pay serves the purpose of motivating employees, it also serves as proof that the company does not practice employment discrimination. That is to say, since setting objectives and evaluation are both conducted by the signed agreement of both the employee and the manager in question, even if there should be litigation this will serve as strong written evidence “objectively proving that there has been no employment discrimination.” For this reason, the personnel division will often check to be sure that there is nothing in the written comments made by the manager suggesting employment discrimination and that the evaluation was indeed objective and limited to job requirements, before those comments are given to the employee in question.

It is important to do negative feedback indicating those points in which the employee in question is particularly lacking. In addition to evaluation points expressed numerically, these results must also convey concrete mistakes, problems and improvements at the time the employee is interviewed. This is because, in addition to the employee’s own development, consideration must be given to the fact that unless the points which require improvement are clarified, it is possible that this could develop into a litigation issue over unfair dismissal, with the employee saying “the company dismissed me even though there was no problem with my job performance.”

IV. Training and Skill Development

(US)

1. Skill Formation at the Workplace

- Companies in the US do not develop employee's skills by such means as stationing personnel at the company's initiative.
- Since it is not presumed that employees will remain at the same company for a long period of time, they generally accumulate knowledge and technical skills required at the company through manuals.

In US companies, an employee basically decides his or her own skill formation, generally by specializing in a certain job rather than getting experience in many different jobs at the same company.

Since it is a general rule that companies basically hire HR that will be of "immediate use," they do not have programs for training brand new employees from scratch, but rather employees are often trained through work manuals.

In the US, where there is a high turnover of employees, in order to accumulate suitable skills, companies have universalized the knowledge and skills of employees to match the knowledge of the organization, and have passed these down to the next generation. That is to say, by replacing silent knowledge at the company with formal knowledge, they have been able to secure knowledge within the company.

A distinguishing feature of the US, since there are many immigrants, language communication represents a great barrier. According to the law, as long as applicants are able to perform the essential portions of a job, their inability to speak a language cannot be used as a reason for not hiring them. In fact, there are many immigrants in the US who cannot speak fluent English. For this reason, by using illustrated manuals, companies train these human resources in a way that they will be able to quickly acquire the necessary knowledge. This manual culture in the US is particularly effective for hiring unskilled employees and building their skills up to the necessary level.

- Skill Formation Through Job Rotation

Although US employees basically perform a specialized job in one specialized area, companies conduct job rotation for providing their employees with experience in other jobs for a short period of time (several weeks), as part of training in different jobs. Particularly in recent years, there has been a tendency for "lateral promotion" and "lateral moves" among middle-aged and elderly people occupying managerial positions. By getting experience in managerial positions for different jobs at the same position level, this is used as a test for the skill formation of general managers.

-OJT

Basically, in a sense the focus on OJT among companies in the US when forming technical skills is in performing jobs. These companies use methods like expanding job authorities as well as coaching and mentoring for OJT.

[Trends during recent years]

During recent years more and more people believe that “competency” should be applied to the development of human resources, and not just to making hiring and salary decisions. With the competency in skills needed for a job and the level of that competency being clarified, company strategy and organizational strategy within the company are reviewed every year.

2. Off-JT

- Group training in the US is uncommon, except for the first orientations given when an employee starts working

Companies in the US provide much less at-company training (about 20%) than do companies in other advanced nations. The smaller the number of years of service, the lower the percentage of at-company training (less than 20% for employees with less than 5 years at the company) and the greater the number of years of service, the higher that percentage becomes (OECD Employment Outlook 1993).

Since employees at companies in the US often have different levels of competency and they start to work at the company at different times, these companies seldom conduct group training with all their employees together.

-Orientation Training

When a person starts working within the company, generally there is only a simple orientation, after which he/she receives an employee handbook for OJT.

[Typical example of contents of orientation for new employees]

- Welcoming and explanation about company
- Explanation about company policy
- Explanation about benefits
- Distribution of documents
- Explanation of main channels of communication
- Tour of the company, and so on.

There is a lot of OJT for training seniors on how training subordinates as trainers. Methods are taught for efficiently and reliably teaching technical skills, through programs lasting about 8 hours. From a position of responsibility inside the company, all work procedures and objectives are generalized, and then methods for transferring these to the technical skills of the employees are indicated.

3. Management Development

- Management development is conducted thoroughly for employment equality based on the awareness of EEO problems.
- Special groups are formed among candidates for executive positions in the future, and these groups go through special training programs.

Management development is one method by which to thoroughly eliminate causes that might invite litigation regarding EEO, and this training is essential for doing away with discriminatory behavior.

[Areas in which managers should receive training]

- Basic training for management
- Training to promote understanding of EEO
- Training for deciding on personnel in line with EEO
- Training to maintain smooth relations between seniors and subordinates
- Training to ensure smoothness of communication

Companies draw up company policy manuals for managers, train and instruct them accordingly.

[Outline of policy manual]

- Measures for dealing with problems and matters in everyday operation
- Measures for dealing with questions from society
- Basic points in business management
- Points of caution regarding matters that can possibly develop into legal problems
- Rules and regulations for matters regarding “appraisal system” and “salary assessment”

Since the executives who are directly related to the way the company should be organized and manage workers at the workplace are required to have completely different knowledge and skills from those of his subordinates, excellent personnel who have received special training are required. For this reason, candidates for executive positions are trained through the formation of special groups and special outside programs.

V. Employee Relations

(US)

1. Promotion and Job Rotation

Promotion

- In American companies, promotion is only conducted when there is an opening in a post rather than done periodically.

Rather than periodic promotion, decisions for promotion in American companies are only made when there is an opening in a position. When that happens (which would represent a promotion), it is more common trying to fill that post from within the company, before recruiting from outside. In such cases, the salary level for the post and the requisites for application are clarified. On the other hand, there is a tendency among division heads to quickly promote excellent workers from within the company so that they will not be recruited by other divisions.

It is a common American way of thinking that people can advance according to their skill, and generally the employees will not be attracted to a company unless the company treats them the way they think they deserve. With many companies having job stages for jobs, paying “job-based pay” established for job stages, it is a common practice to increase salary according to the breadth of a person’s job, based on such factors as promotion.

In the past, importance was placed on achievement at the company, for people occupying management positions. However, now there is a tendency for placing importance upon academic degrees among people who have studied management techniques at business schools. And although promotion within the company exists, managers are often hired from outside the company, which is different from the way they hire regular employees.

Job Rotation

- Since companies hire employees for specific jobs and station them at these ones, they cannot rotate personnel according to company needs.

American workers often continue working at a certain type of job. If a worker thinks his/her chances of promotion or salary increase at the present job are low, it is a common practice changing jobs in order to receive better conditions and greater future prospects. For this reason, since it is considered unfair changing employees' jobs according to the company's own needs, and there is a concern that they might be sued if they do so, companies are required to obtain the consent of employees for making changes in their status. In general, aside from senior managers, who are near the level of top management, it is rare to transfer employees to completely different works in which they have no experience or not related with their field of study.

Since there is a strong desire among these employees toward specializing in a certain field and/or career development, more importance is placed on these factors than on what job or what company they will work at.

[Trends during recent years]

Among the bracket of middle management appeared a movement between jobs called "lateral movement" or "lateral promotion." It consists of an incentive in order to accumulate business skills within the company by venturing to move personnel skilled at one job to another post in the company. Since the range of career development would be extensive, the employees also consider it a plus to widen the range of their choices for opportunity of reemployment when being transferred, and so a bracket has emerged which actively accepts this movement.

2. Employment Adjustment and Retirement

- The main goal of employment adjustment is to increase personnel expenses during good economic times, and during the bad ones, to flexibly control personnel expenses through dismissal and layoffs.

Employment adjustment means measures to change the demand and supply quantity 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. Its measures are “quantitative adjustment” in either the number of workers or the number of working hours and “pay adjustment.”

In US companies it is common to raise value (personnel expenses) during good economic times, and to lay employees off whenever the bad times come.

Aside from employees who are union members and executive management with whom companies have concluded written agreements, almost all employees in the US are “employees at will,” and may be dismissed by the employer at any time. The salary, job contents and employment conditions are decided at the independent discretion of the latter. However, when dismissing an employee it is common, it is customary and an actual practice, for the employer to explain to that employee the grounds for that decision, and to discuss with him or her issues like dismissal allowances.

Employment Adjustment Measures

- At companies in the US the employment relationship is based on will, and when a position is to be dropped or an entire division is closed because of reasons regarding the company’s financial affairs, the employees of the division in question are laid off in accordance to seniority.

-Lay-off

This is generally referred to by such terms as “reduction in force,” “downsizing” or “light sizing.” Occasionally “restructuring” is also used as a synonym for “lay-off.” For blue-collar workers, selection of those who are to be laid off is decided in cooperation with the labor union, with preferential treatment being given to employees who have seniority (longer years of service).

Rather than being stipulated by law, retirement allowance differs from company to company, but it is usually paid in most cases. For a certain period after being laid off, an employee is allowed to use his/her company health insurance.

[Related laws and systems]

Almost all proprietors are obligated to give employees who have been dismissed and their dependent family members the right to continue with their group medical plans and dental plans for a period of 18 months (in some cases, this is for a longer period). Employees who have been dismissed must pay their insurance premium during the extended period. In the case of a “qualifying event” which has nothing to do with dismissal, such as a reduction in working hours which results in an employee’s not being eligible for insurance if this law did not exist, the employer is clearly obligated to inform that employee and his dependent family members of their rights.

[1985 Consolidated Omnibus Budget Reconciliation Act (COBRA)]

Since discrimination based on Title Seven and discrimination against a worker who is forty years of age or older are prohibited under the standards for choosing who will be laid off, workers are laid off for fair reasons. For example, in the case of the same evaluation points given to two employees, the one with more years on the job will be given priority for being retained, based on seniority.

In American companies, the reasons for retirement are kept confidential and rarely leaked to the outside. When an employee is laid off because the job in question no longer exists due to a change in the company policy, and this layoff is not due to any problems in the job performance skills, the fact that the employee has been laid off seldom hinders his/her search for a new job. For example, even if the employee has been dismissed, the personnel division will not make the reason for his/her leaving the company available outside the company. This is because it will cause such legal problems as “infringement of privacy” or “loss of face.”

[Related laws and systems]

When laying off fifty employees or more, or 1/3 or more of its total number of employees, a company must notify the Department of Labor and the mayor at least 60 days in advance. (WARN: Worker Adjustment Retraining Notification Act). Although group layoffs themselves are legal, if many of the people being laid off are middle-aged and/or elderly people of forty years of age or older, with the exception of only a very few types of jobs (pilots and police officers), the Mandatory retirement age system would constitute a violation of the law prohibiting age discrimination. However, as in the “the early retirement system for people of age fifty and older,” systems which favor people as they get older are legal. (Age Discrimination in Employment Act: ADEA)

-Dismissal

Dismissal indicates a situation in which an employer unilaterally cancels employment relations on grounds that the results of the performed work have been unsatisfactory, or that the worker in question has violated rules of employment.

If a worker is dismissed or leaves the company for his/her own personal reasons, a retirement allowance is not generally paid.

3. Working Conditions

Rules of Employment

- Although American companies are not obligated to submit rules of employment to the government, in order to avoid trouble they independently produce employee handbooks for each job level.

American companies are not obligated to produce employee handbooks regarding employment nor to submit rules of employment to the government. This is left up to the judgment of the each company and the contents of these handbooks and rules of employment depend on the company. However, in compliance with the intent of laws regarding employment, many companies produce handbooks in order to, as much as possible, avoid legal problems and litigation. Also, employment and labor laws are very complicated and regulated on the national and state levels. In general, these handbooks cover employment, wages, benefits, services rendered by the company (welfare), company regulations, etc. Many companies produce separate handbooks for managers and regular employees, according to job. Basically speaking, many companies use these handbooks for employees, instead of drawing up agreements for a large number of them.

-Employee Classification

Generally, companies utilize the following methods to classify employees, based on employment conditions.

<Classification Based on Whether an Employee Receives Overtime Allowance>

Exempt /Non-exempt

Depending on an employee's job, those who are exempt from overtime allowance by overtime allowance regulations determined by the federal and state governments are called "exempt," and those who receive overtime allowance are called "non-exempt."

In any situation of doubt and vagueness, the solution is determined based on the Exemption Rules issued by the US Department of Labor.

[For reference]

[Those who are exempt based on the Fair Labor Standard Act: FLSA]

- Administrative executives, and professionals
- Salespeople of retail or service establishments who work on commission
- Domestic service workers residing at the employer's residence
- Farm workers, railroad workers and airline workers
- Seamen
- Auto, truck, trailer, farm implement, boat or aircraft salesperson, parts men, and mechanics employed by non-manufacturing dealers
- Outside salespeople

[Classification Based on Employment Agreement]

<Full-time>

- Employees stipulated to work 35 hours a week who meet the conditions of a full-time employee can receive all benefits.

<Part-time>

- There are many employees working under 35 hours a week who are not qualified to receive benefits.

<Temporary Employees>

- Employees engaged in special projects, those whose work amount is greater than normal, and those who perform a job for a limited period of time, the necessity of which has arisen due to unusual circumstances, and employees who have been introduced by an employment agency

[Peripheral workers]

<Contract Employees>

Employees in management who receive a high salary, employees whose job is to handle high-level and subtle problems and/or technical problems, and salespeople are voluntarily employed for an unrestricted period of time, and, in drawing a line between these employees and regular employees, it is considered effective to conclude an employment agreement with the formers.

Normally, while general employees receive a salary based on hours worked, without time limits being determined and regardless of whether or not their job has been completed, the salary of contracted employees is based on their job agreement, with the term being for a certain period of time or perhaps being renewable. That is to say, rather than limiting the term of the voluntary employment relationship in order to dismiss the employee in question at any time, the employer tends to let the employee bear a heavy responsibility, and to pay a high salary based on this. The employer bears a substitute responsibility for the behavior of contract employees, as it does for general employees; this responsibility is for illegal behavior committed within the sphere of the employment in question.

<Dispatched Temporary Workers/Temporary Workers>

These workers are normally hired by companies that dispatch regular workers to businesses, as well as by employment agencies. Therefore, various employment obligations and responsibilities regarding these employees belong to the company/employment agency that dispatched the worker. In addition, it is stipulated that there is no contractual relationship between the employer and the company/employment agency that dispatched the worker. The obligations of each part are all stipulated by law.

In the US, a “part-time worker” is defined as a person who normally works less than 35 hours per week at his/her actual job. (However, this does not include family employees who work less than 15 hours per week.)

[Workers employed for a certain period of time]

<Independent Contractors>

Self-employed people who are also called “independent contractors” are people who are commissioned for work. As a general rule, there is a lesser degree of management required for independent contractors than there is for general employees. Normally these workers are not bound by such things as particular rules stipulated by the employer regarding responsibility, working hours, or working conditions.

The advantages to the employer are: he/she does not bear responsibilities for the collection of various taxes or for welfare and the possibility that he/she will have to bear a substitute responsibility in case of the death of an independent contractor is small. But, while there are cases in which a manufacturer will use an independent contractor as a salesperson, distributor or in another similar capacity, the federal and state governments monitor records, and if the relationship between these parties is similar to a relationship with an employee, it might be determined that an independent contractor is an employee. In such case, the employer must bear the same responsibilities for an employee toward the contractor. With laws protecting such people as salespeople from wrongful dismissal, and ensuring that sales commissions will be paid based on their achievements, depending on the state there are special legal systems in effect regarding both employers and independent contractors.

[Trends during recent years]

<Telecommuting>

There has been an increase in the numbers of telecommuters who work in their homes or in home offices called SOHO. With companies hoping to reduce costs while improving the level of productivity amidst a fluctuating business environment, this is recognized as a work model that gives people latitude, both time-wise and mentally speaking. However, since there is a lot of telecommuting among employees at companies in the United States, it is urgent that systems be set up for managing and evaluating employees, as well as security for job-related accidents.

<Semi-retired Re-workers>

Amidst a shortage of workers, it is noteworthy that companies are reemploying middle-aged and elderly people as workers who “have experience and knowledge, and will work on a part-time or temporary basis under flexible employment conditions.” For example, since this allows companies to employ engineers for whom there is a temporary high demand in the labor force, and who are well-versed in their job, require hardly any retraining and are not looking to work on a full-time basis, “8 hours a day, 5 days a week,” it represents good business strategy for these companies.

[Trends during recent years]

<Lengthening in Employment Period of Part-timers>

With a remarkable lengthening in the employment period of temporary employees, the difference in treatment between regular employees and temporary employees has become an issue, and there have been instances in which this has been linked to litigation. There have been a particularly large number of problems regarding the treatment of the large number of independent contractors employed by high-tech companies.

There is also a steady increase in the number of personnel leasing companies which lease dispatched employees to their original employers, after transferring contract employees and the employees of certain companies into their own employment all at once. Because of the diversification of this kind of employment conditions, there have been problems regarding the lengthening of employment period, particularly among odd hand employees and temporary employees. (This is particularly the case in the high-tech industry.)

While there are temporary employees who, desirous of such employment conditions, have been dispatched to companies by employment agencies, many of them are treated differently from regular employees, although they perform the same job as the regular ones. As a result, they have become dissatisfied over their status as “temporary employees,” and there is a growing opinion that this is a kind of wrongful discrimination.

Generally, the hourly wage of temporary employees is about 5% higher than that of regular employees performing the same job type. However, the health insurance and welfare benefits of temporary employees are inferior from those of the regular ones. Temporary employees do not receive the benefit of being able to purchase company stock at an advantageous price, nor are they given stock options.

In 1998, the Supreme Court determined that since “the method of employing temporary employees” is substantially the same as that of regular company employees, they should be given the same benefits. While this rule directly concerns the treatment of independent contractors, from the present situation whereby companies actually control temporary employees, and what's more employ them for a long period of time, it is thought that this rule must also be applied to temporary employees.

VI. Industrial Relations (US)

1. Institutional Framework of Industrial Relations

Style and characteristic of American labor unions

- In the U.S. unions by industry and function are organized and there are more than one labor union within a company.

Industrial relations have two kinds: a relation based on work rules and labor agreements to each worker and an inter-organizational relation between employer and “union” as a group of workers. In America, the AFL-CIO is a nationwide organization that integrates unions. Most local labor unions, national labor unions and international labor unions are members of the AFL-CIO. Many of the labor unions are organized by industry and skill, but actual activities are carried out in workplaces and local areas mainly by local unions. It is common that a local union is set up at each factory, for large factories. There are cases that some factories have unions for job types which have different bargaining units. Most of the employees are not organized.

- Organization of labor unions

The National Labor Relations Act (NLRA) adopts an exclusive bargaining unit system. In order to organize a labor union, it is necessary to collect consensus signatures from 30% of workers in a bargaining unit and obtain support by more than half of workers in a bargaining unit by election.

- Prohibition of closed shop

Federal law prohibits a closed shop where employment is restricted to members of a union with which a company has an agreement. Federal law does not prohibit but state laws do not allow union shops forcing all employees to become union members.

- One bargaining unit

A bargaining unit does not have more than one labor union. Without support by more than half of workers, a bargaining unit cannot collectively negotiate as a labor union.

[Related laws and systems]

Collective bargaining should be carried out by bargaining and selection of member workers. Only one labor union acting like a workers’ representative can negotiate with the employer. (NLRA: The National Labor Relations Act)

Labor unions usually insist on a narrow range of a bargaining unit to easily obtain support by more than half of workers, while employers often claim a wide range of a bargaining unit to reduce a labor union's influence. This decision on a bargaining unit is likely to be an issue before a collective bargaining. If workers and employers cannot settle on a bargaining unit, the National Labor Relations Board (NLRB) makes a decision.

[When a decision on representation of a bargaining unit by NLRB is needed]

- When a labor union demands a new proof of representation
- When workers deny the representation of an existing labor union
- When an employer refuses the representation of an existing labor union
- In cases where non-member workers to whom a labor agreement is applied make an expense payment to a labor union and they demand a suspension of the payment
- In cases where a labor union's organization changes, an employer or a labor union demands a proof or an employer or a labor union demands confirmation of a bargaining unit

- Union Density

In the US, the union organizational rate stands at 13.5%. (An overseas labor situation report, 2001 by the Ministry of Health, Labor and Welfare)

2. Role of Collective Industrial Relations and Bargaining Style

Collective Bargaining

- At US companies, collective bargaining is conducted under a system of an exclusive negotiation unit system based on the NLRA. Therefore, labor unions that are supported by majority in each negotiation unit represent all the workers in the concerned negotiation and collective bargain.

Collective bargaining is the negotiation between workers and employers to decide workers' employment and working conditions. Items that collective bargaining negotiates are working conditions, including wages, prevention of unfair labor dismissal, sexual harassment and discriminatory treatment as well as grievance procedures and welfare. If a majority of workers vote for an agreement, the agreement is likely to become a labor-management agreement for both workers and employers for a certain period of time. The effective period is usually three to four years and collective bargaining is often conducted during this time. The timing of collective bargaining varies among companies and there is almost no uniform bargaining.

[Points for consideration]

<Unfair labor practices>

The NLRA prohibits employers and labor unions from unfair labor practices and administrative remedies by the NLRB are set to deal with cases of unfair labor practices.

[Unfair labor practices by employers]

- To block the right to form and join a labor union and collectively bargain
- To control a labor union or financially support a labor union by interfering with its organization
- To discriminate workers for working conditions in order to encourage or block joining a labor union
- To dismiss or in some other way discriminate a worker on a ground that the worker appeals or testifies to the NLRB
- To refuse collective bargaining with a labor union supported by a majority of workers, concerning working conditions such as wages and working hours (Hot cargo clause of labor agreements)

[Unfair labor practices by labor unions]

- To limit rights to form and join a labor union and to collectively bargain through a labor union or to limit rights not to do so
- To limit an employer's actions, concerning collective bargaining and to discriminate workers in relation to issues between workers and an employer
- To refuse collective bargaining regarding working conditions such as salaries and working hours by a bargaining unit which has a representative right
- To utilize business relations to join a labor union and an employer's organization or to get an approval of a labor union by conducting strikes, picketing and boycotts, and making threats
- To collect discriminatory or excessive dues under a clause guaranteed by a labor union
- Feather-bedding
- To picket or threaten to picket to organize an unproven labor union and to seek an employer's approval (Hot cargo clause of the labor agreements)
- To perform strikes and picketing in hospitals without prior notice

VII. Employee's Benefits (US)

1. Holidays and Days Off

Decision of Working Hours

- US Federal Law does not stipulate paid holidays and days off.
- The FLSA stipulates working hours, total hours spent at work and recesses.

There is no regulation about paid holidays and days off in the US Federal Law. However, the Working Hours and Standards Act of 1962, the Fair Labor Standards Act (FLSA) stipulates working hours, total hours spent at work, and recesses. For example, in the case of California, under the Industrial Welfare Commission Order, employees should be granted more than 30 minutes of lunchtime and a 10-minute recess for more than four hours of work. Also, an employer is obliged to pay non-exempt workers an additional 50% above the usual wage for overtime over 40 hours per week.

A employer of a company with a labor union can decide on working hours per week by a labor agreement and a employer of a company without a labor union by a labor contract, not bound by legal regulations. As with working hours, paid holidays and days off can be decided by a labor agreement or a labor contract, not bound by legal regulations.

Flexible Working Hour System

- In the US there is no concept of overtime work for exempt employees, but for non-exempt employees a variable working hour system is applied within limits stipulated by a labor agreement and a labor contract.

For non-exempt workers, variable working hour systems of a 26-week unit and a 52-week unit are typical.

- A 26-week variable working hour system

According to a labor agreement, an extra wage payment is not required for working hours exceeding legal working hours during a specific week, with an upper limit of 1,040 hours per 26 weeks. However, an extra wage of 1.5 times should be paid for working hours exceeding 12 hours per day and 56 hours per week. When this is neglected or when an employee is made to work over 1,040 hours, the rule of 40 hours per week is applied to each of the 26 weeks.

-A 52-week variable working hour system

When a labor agreement guarantees working hours of more than 1,840 hours and less than 2,080 hours per 52 weeks (guaranteeing a wage payment even without work) and stipulates an upper limit of 2,240 hours, an extra wage payment is not required for hours exceeding legal working hours during a specific week. An extra wage of 1.5 times should be paid for work exceeding 12 hours per day and 56 hours per week. If this is neglected, when an employee is made to work over 2,240 hours, the rule of 40 hours per week is applied to each of the 52 weeks. An extra wage of 1.5 times should be paid for work exceeding the guaranteed working hours.

- Upper limit regulation for overtime work

An upper limit is decided based on a labor agreement or a work contract, and there is no regulation by federal laws.

-Work on holidays

Work on holidays is decided based on a labor agreement or a labor contract, and there is no regulation by federal laws.

Acquisition of Paid Holidays

- At US companies, there are no legal stipulations for paid holidays. It is common to estimate the number of paid holidays based on an average of the same industry or the same business type.

An annual paid holiday system guarantees workers a certain number of paid holidays every year, in addition to days off. Annual paid holidays are not stipulated by federal laws or state laws but are decided by the parties concerned. It is common that the number of holidays is decided upon an average of the same business type or in the same industry.

Regular paid holidays are divided into vacation and sick leave. For acquisition of holidays, some states establish laws concerning childrearing, nursing, and sick and maternity leaves. The FMLA obliges employers of companies with 50 employees or more within a 75-miles radius to allow employees to acquire non-paid holidays, with an upper limit of 12 weeks during 12 months for the following reasons.

[Companies are obliged to give non-paid holidays in the following cases]

- Childbirth or adoption
- Nursing of a sick spouse, a child or a parent
- Serious illness of an employee

Federal laws specify 3 months for maternity leave. However, attention should be paid to state law stipulations. An employer must observe whichever stipulates more favorable treatment of an employee.

[Related laws and systems]: The Family and Medical Leave Act of 1993

Days Off

- US companies designate their own days off, selecting among federal or state holidays.

In the US, each company decides days off, selecting among federal or state holidays. Because it is a multi-racial, multi-cultural and multi-religious country, the holidays vary a lot according with each people's culture and beliefs. For example, in addition to the days off stated in an employee handbook, companies set up floating days off, which are days that employees can choose for their own religious reasons.

2. Welfare

- In US companies, there are employment benefit plans to provide specific employee welfare based on plans, funds or programs documented by an employees' organization or an employers' organization.

The method of contribution to benefits and the sharing responsibility for operations and surveillance are described in documents. Revision procedures are regulated and standards for benefit payments must be described.

Types of welfare

- At US companies, concepts of welfare include various matters and welfare is one of the incentives to retain employees at work.

Because paid holidays are not stipulated by laws, welfare for employees is not limited to insurance and may include paid holidays and other benefits which vary at each company. It is possible to roughly divide them into three types.

[Type of welfare]

- **Protection program:** including health insurance, life insurance, and pension.
- **Reimbursed time away from work:** including vacation and sick leave.
- **Employee services:** including cafeteria plans and financial planning

To US companies, welfare is important for retaining employees and an employee handbook lists benefits to employees provided by a company.

[Taxation for legal welfare]

	Tax payment	Tax bearer
Disability Insurance	State	Employee
Unemployment Insurance	State	Company responsible for full expense
Employment Training Fund	State	Both company and employee
The Federal Insurance Contributions Act (FICA)	Federal	Both company and employee
Medicare (Medical insurance for the elderly)	Federal	Both company and employee
Federal Unemployment Tax	Federal	Company responsible for full expense
Workers Compensation	Federal (Taxes collected are fixed)	Company responsible for full expense

*All the tax rates, except for Workers Compensation, are revised every year.

- Dependent care

With the ratio of female management rising, paternity leave (long-term leave of male employees related to their spouses' pregnancy and delivery), childcare (program for childcare) and subsidies for these expenses are provided.

- Cafeteria plan

Historically, at US companies, except for perks provided to some executives, a cash reward system of skill-based wages for general employees was the mainstay. In the 1990's, a movement started to also give benefits to general employees to secure excellent workers. To flexibly distribute medical fees in wage budgets to individuals, and to cope with a surge in medical expenses, companies with many employees are aggressively adopting a flexible benefit cafeteria plan. The plan gives points to employees, depending on their job rank, the years of service and performance. Employees select welfare services focused on their needs within the points given.

3. Mechanisms and Procedures of Social Insurance

Workers Accident Compensation Insurance

- Based on state laws, it is mandatory to provide workers accident compensation insurance.

In America, states are entrusted to compel employers to comply with the workers accident compensation law. Compensation contents vary, depending on the state, but in most of them all employers with one or more employees are subject to the law. All the states obligate an employer to join insurance for fulfilling their responsibility to provide compensation. Use of a workers accident compensation insurance provided by a private insurance company is a mainstay. However, if certain requirements are met, other methods such as setting up self-insurance by an employer or joining a state-managed insurance plan may be allowed depending on the state.

[Related laws and systems]: The Occupational Safety and Health Act

Unemployment Insurance

- Based on the Social Security Act, each state individually operates unemployment insurance under standards stipulated and supported by the federal government.

Many states adopt a system where only employers make contributions. (Some states make employees contribute to insurance premium payments.) Depending on recipient history of unemployment compensation among employees, a merit system which increases or decreases the insurance premium of each company is commonly adopted.

Unemployment insurance payment is usually set at around 50% of an employee's weekly wage. In many states, the period of payments is a maximum of 26 weeks. However, during a period of recession, an extension of 13 weeks has been approved by federal government funds. Payment of unemployment insurance is made through a state's public employment security office.

Requirements for unemployment insurance recipients usually include that a worker was employed over a certain period of time during the past one-year and received more than a certain amount of pay. If a worker was dismissed due to job-related misconduct or voluntarily left a job without a reasonable cause, a qualification for a recipient is denied or limited. A worker who did not work due to a workplace strike or lockout is generally excluded from recipients of unemployment insurance payments.

[Related laws and systems]

Social Security Act (1935),
Federal Unemployment Tax Act,
Unemployment Insurance Law

Medical Insurance (health insurance)

- Contents of medical insurance greatly vary with companies.

Public health insurance includes Medicare for those aged 65 and older and Medicaid for low-income earners. The majority of workers belong to a group health insurance (corporate health insurance) provided by an employer. Insurance content varies widely depending on the company.

[Typical medical insurance]

- Indemnity plan
- Blue cross/blue shield
- Health maintenance organization (HMO)
- Self-funding plan
- Preferred provider organization (PPO)
- Point of service (POS)

[Related laws and systems]

Continuation of a group health insurance coverage is obligated under certain conditions for occasions, such as retirement of an employee (a dismissal case is excluded). (The Consolidated Omnibus Budget Reconciliation Act (COBRA)) Retaliatory discrimination against a recipient exercising a right is forbidden. For example, it is forbidden to dismiss an employee to stop receipt of insurance benefits when an employee or a family member becomes sick. (Article 510, the Employee Retirement Income Security Act (ERISA). There are many duties concerning an employee, including notice concerning rights based on the FLMA, continuation of health insurance and a return to the same or similar job. The FLMA is applied to employers who employ 50 or more employees within a 75-mile radius.

Corporate Pension Plan

- In the US legal system, standards for pension plans are stipulated and the minimum requirements for pension plans for each company are established.

In the US legal system, standards for participation in and awarding of benefits based on a pension plan are stipulated and the minimum fund requirements for a pension plan are established. (ERISA)

Those who exercise a discretionary right or power to control the management of a pension plan, disposal of assets or the management of benefits are all “fiduciaries” and are subject to fiduciary relationship standards. These fiduciaries are obliged to satisfy precautionary standards as “prudent persons,” when they carry out their planning duties.

However, the pension plan is extremely complicated, governed by the Age Discrimination in Employment Act (ADEA) and employment adjustment regulations on an early retirement preferential treatment system.

[Regulations to protect rights of employees based on the employee welfare program according to the ERISA]

- When claiming a right based on a plan, a relief right is given to an employee who is in a disadvantaged position.
- An employee should not be put in a disadvantageous position of being obstructed from acquiring a right.
- An employee who participates in a procedure under the ERISA to approve or to object to it is protected.

[Related laws and systems]:

Although the ERISA does not stipulate welfare benefits an employer must provide, it is a comprehensive law stipulating complicated standards for all the welfare benefits an employer agrees to provide. It provides for the setting and management of welfare benefits for employees, including pension plan, profit return program, employee group medical insurance and other insurance (or self-insurance), and retirement allowance program. This is also applied to an employee, subject to state minimum business standards.

The Family and Medical Leave Act (FMLA) of 1993

The Consolidated Omnibus Budget Reconciliation Act (COBRA)

- 401k plan

The 401k Plan was named after Article 401-k of the Internal Revenue Code. Under the plan, an employee saves a certain amount of money from pre-tax income through income exemption and uses the savings for a retirement pension. A member of the plan makes an investment at personal risk and contributions and revenues from investments are accumulated in an individual account. Therefore, an employee can monitor their current savings and has an advantage of being able to transfer the account even when changing employment.

[Related laws and systems]

The Employee Retirement Income Security Act (ERISA)

The Tax Reform Act (TRA)

The Tax Equity and Fiscal Responsibility Act (TEFRA)

VIII. Discipline and Grievances (US)

Discipline and Grievance

- In the US, the laws strictly stipulate that for personnel decisions, factors irrelevant to the skill of carrying out jobs should not be considered.

Nowadays, in addition to the prohibition of discrimination for employment, systems to rescue those discriminated against employment and active solutions to eliminate employment discrimination are demanded. For instance, employees promoted to management and those newly hired as managers must always take seminars on prevention of discrimination for employment. Company value standards without any discriminatory factor for employment are described in the Management By Objectives (MBO) documents. By doing these, a company takes measures that appeal to employees.

-Measures for employment discrimination on the ground of race, gender, religion and nationality

[Related laws and systems]: Title VII

Title VII is applied to all the employers with 15 or more employees.

Title VII prohibits discrimination against workers on the ground of race, color of skin, religion, gender and nationality, set up the Equal Employment Opportunity Commission (EEOC), a new legislative institution, and established a right to file a suit in a federal court to enforce the new law. It stipulates that foreign companies conducting business activities in the US must give equal treatment to US nationals and their own nationals, concerning wage, promotion and other employment conditions.

-Measures for employment discrimination based on gender

[Related laws and systems]

<Discrimination against pregnant women (The Pregnancy Discrimination Act, 1978)>

The revision of Title VII defines that discrimination on the ground of gender includes discrimination of pregnancy, delivery and related medical conditions. This requires that a woman with disability due to conditions related to pregnancy or delivery should be treated equally to those with other disabilities.

<Measures for wage differential based on gender (The Equal Pay Act, 1963)>

The Equal Pay Act prohibits unfair wage payment for labor based on gender and approves an individual's right to file a suit to a federal court. If there is a wage differential between men and women, a employer's claim is carefully screened and the employer must prove that the wage differential is based on a clear factor other than gender. An intentional violator of this law must pay the actual amount of damage as compensation or make up a shortage for past wages with interest.

- Measures to increase employment opportunities for minority and women

[Related laws and systems]:The Affirmative Action Plan

The Office of Federal Contract Compliance and administrative organs carry out the Affirmative Action Plan. Courts and state administrative organs demand private employers, who have been judged to have discriminated or have been sued for alleged discrimination, but are willing to settle out of court, to choose an affirmative action plan. They also encourage other employers to voluntarily choose an affirmative action plan as a preemptive measure to avoid lawsuits or as a correction for past injustice.

[Typical affirmative action plan]

- Employers draw up a self-analysis plan based on a regulatory formula concerning underutilization of minorities or women for various jobs.
- Employers promise to correct underutilization by setting goals to increase the number of minorities and women hired for jobs for which they are underutilized and by making a plan to achieve the goals.

[Points for consideration]

Since 1980, compliance with affirmative action plans is costly for employers and a shift to a government's hiring quota system induced mistrust among those who are not minorities and led to the regulation being hardly practiced.

-Sexual harassment

Sexual harassment is sexual discrimination prohibited by Title VII. Two typical sexual harassment examples are specified based on legal judgment.

	Sexual harassment, typical example
Working conditions	In return for better working conditions, appraisal, wage increase, promotion or continuous employment, there is a demand of sexual relations with an employee. An assailant is usually a senior to a victim or a person who can influence the victim's working conditions.
Hostile working environment	Creating a threatening, hostile or unpleasant working environment or engaging in a deed or physical harassment that hinders an employee's work. In this case, it does not have to be a purely sexual deed and regardless of gender it can fall within sexual discrimination

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

[Related laws and systems]: The Americans with Disabilities Act (ADA) of 1990

The Federal Rehabilitation Act of 1973 prohibits contracted companies of specific federal projects funded by federal agencies or the owner(s) of such companies from discriminating disabilities. The ADA further extended the protection to private companies and state governments.

Disabilities include not only physical disabilities but also mental and psychological ones. Since July 26, 1994, the law has been applied to employers with 15 workers or more and obliges them to provide reasonable accommodation to workers with disabilities who can fulfill basic duties of a job they are engaged in or they wish to be engaged in.

The reasonable accommodation means to revise jobs, working environment or operation method or to adjust these to enable workers with disabilities to obtain fair employment opportunities. (e.g. Wheelchair access, change in schedules, reorganization of job allotments and providing access to bathrooms, lounges and cafeterias.)

-Measures for employment discrimination based on age

[Related laws and systems]

<The Age Discrimination Employment Act of 1967>

The act prohibits discrimination against employees and job applicants over age 40 for hiring, promotion, dismissal and ranking based on age. However, it is possible to use age as part of a bona fide occupational qualification (BFOQ) to carry out usual jobs. (e.g. It is possible to prohibit a pilot over age 60 from maneuvering an aircraft.)

Regardless of employee age, it is possible to dismiss based on factors unrelated to age, such as job performance.

<The Older Workers Benefit Protection Act>

The Older Workers Benefit Protection Act (OWBPA) revised the ADEA. The OWBPA made an important revision to influence a voluntary early retirement encouragement program and stipulates specific standards when an employer requires an employee to sign releases of rights based on the ADEA.

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