

# Review of recent industrial relations developments in Japan and USA

## A. General developments in industrial relations

Please give a brief overview of the main industrial relations developments in your country in the following areas:

- Background economic and political developments, including general information on the business climate (monetary conditions, investment prospects and consumer confidence);

After some stagnation in the first half of 2005, the Japanese economy has been gently expanding based on a steady increase in private consumption, capital investment and foreign demand. However, with the fiscal year 2005 growth rate remaining at 1.8 percent in nominal terms, or 3.2 percent in real terms, the inflation rate (GDP deflator: -1.3 percent) continues to be a negative figure as it has been since the fiscal year 1998, indicating that the economy has not yet completely emerged from deflation. However, with the continuing expansion of the economy and an assertion that the consumer price index began to improve, the Bank of Japan increased its short-term target interest rate, by ending its quantitative easing policy in March 2006 and by ending its zero-interest rate policy in July, a policy that was maintained for over five years. The Bank of Japan maintains that the suppression of inflation overheating is the reason for its actions and reportedly intends to restore its monetary policy (the operation of a policy interest rate), however, there is persistent opposition even in the government that concerns about negative economic and financial impact, partly due to the virtual failure of the BOJ in ending its zero-interest policy in 2000, which decelerated the economy in recovery trend.

Employment situation has continuously improved backed by the expanding economy. The number of workers has increased by 330000, the number of employed by 650000 (an increase for three years in a row), and the total unemployment rate has fallen by 0.3 points to 4.3 percent from FY2004 (Labour Force Survey 2005). However, as was the case last year, the number of regular employees fell while the number of part-time workers, dispatched workers and contract workers increased (Detailed Tabulation of the Labour Force Survey 2005).

With regard to working conditions, total monthly cash earnings increased to 334910 yen (0.6 percent increase from 2004), overturning the decremental trend that continued until the previous year, reflecting the influence of economic recovery and resulting manpower shortages. Within this increase, both scheduled and non-scheduled cash earnings increased by 0.2 percent and 1.6 percent respectively. On the other hand, total monthly working hours fell by 0.6 percent to 150.2 hours, while scheduled working hours fell by 0.7 percent (139.8 hours) and non-scheduled working hours increased by 1.1 percent.

- collective bargaining (including coverage, pay increases, working time, equality and other issues that have featured significantly in bargaining);

In light of the recovering economy and improved employment situation, the 2006 spring wage offensive (*shunto*) focused on reviving wage increases (demanded increases in wage other than periodic increases). Considering the performance gaps between different industries and companies, RENGO (Japanese Trade Union Confederation) abandoned a demand for uniform basic wage rate increases for five years in a row and instead presented a new concept called "wage improvement." The idea is to allow a wide range of improvement measures to be presented in the labor demands to each industry, and this includes wage increases for the young workers, revision of the wage curve for the elderly workers, additional wage for overtime work, etc. This decision was reportedly made through the influence of the performance-base wage system that was introduced mainly in large industries in recent years. Also, the topic of "Disparity Correction" was taken up as an issue inherited from the

previous year, and the Joint Struggle for Small and Medium Sized Enterprise Unions (a system in which multiple industry unions, mainly consisting of SME unions, coordinate demands and negotiations with individual company managements on behalf of those affiliated unions) was presented. In addition, a Part-time Worker Joint Struggle Council was established for the first time. Participating industry unions' demands in negotiations with each company included wage improvements, equal treatment, etc.

According to the calculations of RENGO, the demand based on the "average wage increase method" (adopted by 4804 unions for 1.989 million workers) resulted an average of 1.79 percent increase (¥5237), and on the "the individual wage increase method", in which the model wage for workers at a specific age and job function is used in the demand for wage increases, a 0.15 to 0.2 percent increase (¥432 for workers at age 30 and ¥606 for those at age 35), for which they had received no increase in the previous year<sup>\*1</sup>. Also, of those enterprise based unions participated in the Joint Struggle for Small and Medium Sized Enterprise Unions, 3,028 unions (268 thousand workers) reached an agreement, gaining a wage increase of 1.68 percent (¥4180). And as for part-time workers, among a total of 317 unions affiliated to UI Zensen Domei and other industrial federations that demanded wage increases of ¥21.3 on average, 218 unions reached an agreement with an average wage increase of ¥11.0<sup>\*2</sup>.

Elsewhere, individual company negotiations under RENGO affiliated industrial federations made demands and reached agreements on various issues, including the reduction of working hours (demanded by 2267 unions with agreements reached by 701 unions), establishment of intra-company minimum wage (2750 demands, 1221 agreements), continued employment after the age 60 (2725 demands, 1106 agreements), collective agreement for stable and secure employment (1695 demands, 824 agreements), measures to help balance work and life (1462 demands, 662 agreements), etc.

\*1 Excluding the agreements on the "application of wage improvement" reached by 123 unions of the Japan Federation of Basic Industry Workers' Unions.

\*2 In addition, 11 unions under the Japan Electrical Electronic & Information Union made demands and reached agreements.

- legislative developments;

The revised Equal Opportunity Law (Law on Securing, Etc. of Equal Opportunity and Treatment between Men and Women in Employment), mentioned in the 2004/2005 Report, was enacted in June 2006 and will come into effect from April 2007. It includes provisions prohibiting gender discrimination, indirect discrimination and disadvantageous treatment due to pregnancy, child birth, etc. An Ordinance of the Ministry of Health, Labour and Welfare will be developed to establish specific provisions on discrimination and disadvantageous treatment, including the ban on; setting weight and height requirements in recruitment and hiring; requiring "transfers anywhere in the country" when hiring career workers in the dual career track system; requiring transfer experience for promotions; demotion, change of job function, solicited retirement and termination of employment, etc. on the grounds of gender or receiving maternity protection measures. It also will likely include provisions to invalidate dismissals made during a specific period from the pregnancy and child delivery.

Also, discussion on revisions to the Part-Time Work Law slated for 2007 started this summer. In order to maintain proper treatment between regular and part-time workers, the Ministry of Health, Labour and Welfare supports necessary revisions in (i) wages, (ii) education and training and (iii) welfare benefits, and the Ministry is in the process of examining the application of the same wage table and evaluation criteria as regular workers for those part-time workers who have the same job description and responsibility as regular workers. During the 2003 revision of the guidelines for part-time work, the treatment of part-time workers in relation to that of the regular workers became an important issue, and whether there should be "balanced treatment" or "equal treatment" was debated. The results of this debate emphasized "considering the balance," while the current revision is designed to move

closer to "equal treatment." However, there will be difficult discussions between trade unions and management, as was the case with the previous revisions of the guidelines.

The Law Concerning Temporary Measures for the Promotion of Shorter Working Hours was abrogated in April 2006, and in its place the Special Measures Law on Improvement of the Setting of Working Hours, Etc. was put into effect. This law requires employers the effort to establish a labor-management committee in order to establish working hours (including holidays and paid leave), and to promote the organization of a autonomous system for managing working hours. However, some claim that this law may institutionally accelerate longer working hours for regular workers since there is a view that the increasing percentage of non-regular workers is causing longer working hours to fall increasingly to regular workers. In relation to this, the Occupational Health and Safety Law, revised at the same time, obliges those whose working hour beyond 40-hour/week adds up to more than 100 hours in a month to be interviewed by a medical doctor.

The revision of the Employment Measure Law is also discussed in the council. While the previous revision in 2001 incorporated a provision to essentially prohibit age discrimination in recruitment and hiring, the proposal for the revision to be submitted to the Diet in 2007 will incorporate a provision to promote the employment of young people, women and the elderly in response to depopulation and labor shortages, and to oblige reporting of the employment of foreign workers and trainees. In parallel to this, the Ministry of Health, Labour and Welfare has already confirmed its policy intensifying punitive provisions against companies that abuse the training programs for foreign workers.

- the organisation and role of the social partners (including the membership and density of trade unions and employers' organisations, mergers and restructuring);

According to the 2005 Basic Survey on Trade Unions, the estimated rate of unionization fell by 0.5 points from the previous year to 18.7 percent with a reduction of 171 thousand members to 10138 thousand in total, showing no signs of and end to the fall of the unionization rate. Meanwhile, the total number employed increased by 450 thousand in the same period (according to the Labor Force Survey conducted in June every year). While a large reduction was observed in the manufacturing sector (a loss of 72 thousand from the previous year, with the unionization rate falling by 0.4 points to 25.7 percent) and in the public services sector (30 thousand decrease, unionization rate down by 0.4 points to 50.7 percent), the employment increased in the medical, health care and welfare industries (5.8 percent increase) with an increase in the union membership (an increase of 18 thousand, unionization rate down by 0.2 point to 8.4 percent). The estimated unionization rate for part-time workers was 3.3 percent, the same as in the previous year (an increase of 26 thousand members), and while the number of union members is continuously increasing, the unionization rate remains the same as the total employment increases. As for union organizations, RENGO has 6543 thousand members (a decreased of 51 thousand from the previous year), Zenroren (National Confederation of Trade Unions) has 723 thousand members (22 thousand decreased), and Zenrokyo (National Trade Union Council) has 150 thousand members (4 thousand decrease).

Furthermore, Nippon Keidanren, an organization of employers, consists of 1658 companies and organizations as of May 2006 (an increase of 11 organizations since 2004), and this includes 1346 member companies, 130 national major industry organizations in areas such as the manufacturing and service industries, and 47 regional economic organizations.

- industrial action;

The number of disputes is continuously in decrease, down 29 cases from the previous year to 708 in 2005. Of all disputes, the number of disputes that involved industrial actions fell from

173 to 129 cases. Although the number of action participants and lost days increased temporarily in 2004, it substantially decreased to 27,295 actions (falling by 27,879) and 5,629 days (falling by 4,126 days) in 2005.

While there is a downward trend in collective industrial relations as seen in the unionization rate and the number of disputes, more emphasis is being added to the importance of the individual labor-management relation due to recent moves towards the individualization of labor administration. According to the summary provided by the Ministry of Health, Labour and Welfare on the application of the system for solving individual labor disputes, in 2005 among all the disputes handled by some 300 Comprehensive Labour Counseling Desks established in Labor Bureaus and Labour Inspection Offices throughout the country, 176 thousand counseling concerned civil cases (that did not involve a breach of the law) a 10.2 percent increase from the previous year\*. These disputes mainly involved dismissal (26.1 percent), reduced working conditions (14 percent) and harassment (8.9 percent). They concluded their procedures for 6856 cases in the fiscal year 2005, reaching agreement for 2961 of these cases or 43.2 percent. 450 cases (6.6 percent) were withdrawn by applicants at their discretion, and 3406 cases (49.7 percent) were abandoned due to reasons such as the failure to participate of one of the parties in the dispute. 98.4 percent of applicants were workers, including regular workers (60.0 percent), part-time and "arubaito" (temporary) workers (16.8 percent), dispatched or contract workers (15.9 percent). In terms of the size of the enterprises, more than half (54.1 percent) of all the disputes came from companies with 0 to 49 employees and 10.9 percent from companies with 100 to 299 employees. Also, 74.4 percent of the workers came from companies that do not have a trade union.

Meanwhile, the labor tribunal system was introduced into the court system in April 2006 (for this outline, see the 2003 report), to facilitate legal solutions for individual labor disputes in a simpler manner than in formal litigation. Although the data on actual use of the system is not yet available, some point out that it is difficult for individual workers to use the court and that the number of cases handled will not increase.

\* Starting from 2002, prefectural labor committees also provide consultation for individual labor disputes but the number of cases handled is not known.

- other relevant developments; and
- outlook (issues likely to have an impact on industrial relations in the coming period).

Socioeconomic disparity is widely recognized as expanding due mainly to the economic recession that took place in the 1990s along with other factors such as increases in non-standard workers, deterioration of employment conditions for the young generation, an increased number of families receiving public assistance, and the spread of the performance-based wage system among companies. Claiming that the trend of expanding social gaps at the moment is due mainly to an apparent gap caused by the increased number of elderly people, the government does not necessarily acknowledge this trend, but it does express concern about the possibility of the expansion of the gap in future because of the increasing number of "Freeters" and "NEETs" among the young generation, as they have few opportunities to build their vocational abilities.

On the other hand, a labor shortage is seen as an upcoming practical problem since a large number of baby boomers will become eligible for retirement starting in 2007. Meanwhile, with the economic recovery and improved business conditions in recent year, not only large enterprises but also SMEs show increasing labor shortages. To cope with this increasing demand for human resources, some companies have begun to employ more non-standard workers as their regular employees, including part-time workers and "freeters." The government also emphasizes the importance of the promotion of self-sustainability in the young generation through the introduction of regular employment.

## B. Employment relations in SMEs

### 1. Definition and extent

The European SME Observatory identifies 3 categories of SME: micro enterprises (fewer than 10 employees); small firms (10-49 employees); and medium-sized enterprises (50-249 employees). National statistics are not always classified in this way; for instance, in several countries a cut-off of 100 employees is used. There is thus a potential difficulty of providing comparable information across countries. Our planned solution is as follows, in order of preference.

1. Please report information on the totals for SMEs as defined above (i.e. 1-249 employees) **and** separate figures for the small (10-49) category.
2. If this is not possible, then please report figures for the small category, together with any total figures for what in your country is defined as an SME (e.g. firms with up to 100 employees).
3. Failing that, please report figures based on your national definitions, and state what these are.

If you follow options 2 or 3, please also offer, wherever possible, any estimates that are available for the whole of the category of 1-249 employees. **Note that we are interested in private sector firms only.**

Please comment if necessary on any particular definitional issues affecting data in your country.

What proportion of employment is accounted for by SMEs, and what has been the trend in this figure in recent years? In which sectors are SMEs concentrated?

In Japan, a SME is legally defined according to the number of employees and the capital size as follows: "manufacturing and other industries: 300 employees or below, or 300 million yen or below; wholesale industry: 100 employees or below, or 100 million yen and below; retail industry: 50 employees or below, or 50 million yen and below; and service industry: 100 employees or below, or 50 million yen and below" (Small and Medium Enterprise Basic Law). Similarly, a micro enterprise is defined as follows: "manufacturing and other industries: 20 employees or below; commerce (wholesale, retail (including eating and drinking places) and service industries): 5 employees or below" (Small and Medium Enterprise Basic Law). The number differs by industry since the retail, restaurant and service industries are constituted by more small companies and in particular SMEs. However, classifications in the statistical surveys are uniquely applied and do not necessarily reflect the definitions above. While there are no statistics that employ categories with 1-249 employees, the following table shows the number of private companies and employees for enterprises with 299 employees or below.

Number of enterprises and employees by size (2004)

|                       | Total      | 0 - 299 employees |                   |
|-----------------------|------------|-------------------|-------------------|
|                       |            | 1 - 9 employees   | 10 - 49 employees |
| Number of enterprises | 1,529,616  | 1,518,216<br>99%  | 339,123<br>22%    |
| Number of employees   | 31,561,764 | 18,203,984<br>58% | 6,831,221<br>22%  |

Source: "Establishment and Enterprise Census 2004," the Statistics Bureau, the Ministry of Internal Affairs and Communications.

Among the ratio to total employees (58 percent), wholesale and retail and manufacturing (each 15 percent) account for the main part, followed by services (8 percent) and construction (7 percent). In the first two industry categories, about half of the employees are in the size of 50 employees or less, respectively. As for the change from 1999, a total reduction of approximately 12 percent for companies with 299 employees or below, with the decrease of 20 to 30 percent in industries such as mining, construction, manufacturing, eating and drinking establishments, accommodations, finance and insurance, but excluding agriculture and forestry (the number of companies fell by 8 percent during this period).

- Have global competition and economic restructuring featured in public debates on the position of SMEs? If so, please give details. Has EU enlargement had particular effects on SMEs, for example employment growth in some sectors?

Since the 1990s, large manufacturing industries actively began to transfer their manufacturing sites to Asian countries principally for the purpose of cost reduction and participation in local markets. This reportedly had a substantial impact on SMEs that had direct and indirect connects to these companies as subcontractors, since, for many companies, trades with those prime contractors accounted for the main part of their business. Of those SMEs, some moved themselves or established their manufacturing facilities abroad along with their prime contractors, while others advanced to overseas independently in view to expand new customers. Domestically, they are now exploring new developments, finding new partners including companies abroad instead of the conventional practice of having business only with a specific large enterprise, and establishing networks to work with companies in the same business, other SMEs, and also universities and other research organizations.

There is no data available to show the influence of the expansion of the EU on SMEs in Japan, though it seems relatively limited. For example, according to Survey Report on Business Development Overseas by Japanese Manufacturing Companies (2005) published by the Japan Bank for International Cooperation, only about half of the companies "have a strategic business position in new member countries," and they are more interested in emerging markets such as China and India.

## *2. Employment and working conditions*

**Pay and employment conditions.** Please report all the following in terms of the figure for SMEs **and** how that figure compares to the national average. Where possible, please also report figures under items (a) to (e) for men and women separately.

- (a). What is the overall level of pay in SMEs?
- (b). Please also give pay data if available on 2 key sectors where SMEs are concentrated, namely, clothing manufacture and eating and drinking places and accommodations.

The Monthly Labour Survey provides information on working conditions, although it is based on business establishments instead of enterprises. The average monthly total earnings by the size of the establishment is as follows. For the total of all industries, establishments with 1000 or more employees show the lowest ratio of total earnings of women to that of men and establishments with 5 to 29 employees show the highest ratio.

Average monthly total earnings (2004, Yen)

|   | Average of all sizes | 1000 ~  | 500 ~ 999 | 100 ~ 499 | 30 ~ 99 | 5 ~ 29  |
|---|----------------------|---------|-----------|-----------|---------|---------|
| All industries                                | 332,784              | 526,595 | 463,174   | 392,243   | 327,567 | 271,166 |
| Men   | 423,779              | 615,060 | 555,668   | 490,727   | 415,438 | 348,212 |
| Women   | 209,680              | 297,062 | 305,447   | 247,797   | 206,572 | 180,657 |
| -----   |                      |         |           |           |         |         |
| Eating and drinking places and accommodations |                      |         |           |           |         |         |
| Total   | 141,969              | 273,105 | 271,015   | 249,352   | 146,075 | 125,120 |
| Men   | 208,047              | 327,962 | 338,224   | 326,454   | 215,149 | 180,816 |
| Women   | 98,501               | 193,894 | 187,437   | 165,040   | 94,785  | 92,999  |
| -----   |                      |         |           |           |         |         |
|   |                      |         | 500 ~     | 100 ~ 499 | 30 ~ 99 | 5 ~ 29  |
| Apparel                                       | -                    | -       | 316,010   | 225,055   | 196,260 | 178,628 |

Source

e: Monthly Labour Survey, the Ministry of Health, Labour and Welfare.

(c). Please also give, if available, information on pay rates within indicative occupations, e.g. the typical pay of a routine clerical worker in SMEs and in large firms.

No relevant data is available.

(d). What are typical annual working hours for full-time employees? As with (b) above, if data are available please give figures for clothing manufacture and eating and drinking places and accommodations.

The data on working hours by the type of employment is available only in two categories: establishments with 5 or more employees and establishments with 30 or more employees. For comparison, the data without the type of employment are also shown below, according to which, proportional relation is observed between business size and working hours.

#### Hours worked by type of employment, size of business and industry (2004)

|           | 5 or more      |  |         | 30 or more     |  |         |
|-----------|----------------|--|---------|----------------|--|---------|
|           | All industries | Eating and drinking places, accommodations | Apparel | All industries | Eating and drinking places, accommodations | Apparel |
| Total     | 151.3          | 116.9                                      | 157.7   | 153.3          | 121.4                                      | 161.1   |
| Full-time | 170.0          | 171.7                                      | 170.4   | 168.4          | 177.3                                      | 169.4   |
| Part-time | 95.0           | 85.4                                       | 109.6   | 98.0           | 85.0                                       | 123.1   |

Source: Same as above

#### Hours worked by size of business and industry (2004)

|  | Average | 1000- | 500-999 | 100-499 | 30-99 | 5-29 |
|--|---------|-------|---------|---------|-------|------|
| All industries                             | 151     | 159   | 157     | 154     | 152   | 148  |
| Men  | 166     | 167   | 166     | 165     | 166   | 165  |
| Women                                      | 132     | 137   | 143     | 137     | 132   | 128  |
| -----                                      |         |       |         |         |       |      |
| Eating and drinking places, accommodations |         |       |         |         |       |      |
| Total                                      | 117     | 151   | 149     | 152     | 112   | 114  |
| Men  | 141     | 165   | 161     | 169     | 134   | 139  |
| Women                                      | 101     | 131   | 134     | 135     | 96    | 100  |

|         |   |   | 500-  | 100-499 | 30-99 | 5-29  |
|---------|---|---|-------|---------|-------|-------|
| Apparel | - | - | 148.3 | 159     | 163.3 | 153.8 |

Source: Same as above

(e). What is the average job tenure of workers in SMEs?

For the length of service, data by size of establishment is only available for the rough categories through the Basic Survey on Wage Structure. The data from 2004 survey is shown below, indicating a proportional relation between establishment size and length of service. Women are above the average only in establishments with 1,000 or more employees and companies with 5 to 9 employees.

Length of service by size of establishments and gender (2004)

|       | Size | 1000- | 100-999 | 10-99 | 5-9  |
|-------|------|-------|---------|-------|------|
| Total | 12.1 | 15.1  | 11.7    | 10.3  |      |
| Men   | 13.4 | 16.8  | 13.0    | 11.1  | 11.7 |
| Women | 9.0  | 10.3  | 8.7     | 8.6   | 10.5 |

Source: Basic Survey on Wage Structure, the Ministry of Health, Labour and Welfare.

(f). What is the extent of formal procedures to handle discipline and dismissal? What is the frequency of use of dismissal and disciplinary sanctions?

No statistical data is available on the introduction of the formal dismissal and disciplinary procedures or on the practice of disciplinary actions. However, the practice of dismissal can be observed from the Survey on Employment Trends. According to this survey, for small enterprises the number of dismissals due to business reasons is slightly higher than the average, which remains around 1 percent. The number of dismissals due to actions of individuals (disciplinary dismissals) is half of that figure on average except for businesses with 5 to 29 employees.

Number of dismissals by reasons (2004, Unit: thousands, %)

|  | Total  | 1,000- | 300-999 | 100-299 | 30-99 | 5-29   |
|--|--------|--------|---------|---------|-------|--------|
| Total number of employees of establishments surveyed | 39,878 | 8,545  | 5,235   | 6,812   | 8,538 | 10,747 |
| number of dismissals due to business reasons*        | 364.9  | 41.5   | 47.1    | 24.9    | 131.6 | 119.8  |
|  | (0.9)  | (0.5)  | (0.9)   | (0.4)   | (1.5) | (1.1)  |
| number of dismissals due to actions of individuals   | 139.9  | 18.7   | 21.5    | 14.1    | 20.0  | 65.6   |
|  | (0.4)  | (0.2)  | (0.4)   | (0.2)   | (0.2) | (0.6)  |

\* Excludes cases where individuals are transferred or are returned from transfers.

Source: Survey on Employment Trends, the Ministry of Health, Labour and Welfare.

(h). What is the extent of the following human resource management practices: use of team work; presence of a specialist personnel manager; performance appraisals; merit- or performance-related pay; provision of training? Please also report on any other available indicators of HRM practices such as team briefings or use of total quality management.

· merit- or performance-related pay

· performance appraisals

There is no statistical data available that show specifically the status of the introduction of performance-based wage system by size of enterprise. Alternatively, the following figure approximately shows the ratio of enterprises that have a system reflecting individuals' performance in their wage, of these the ratio of enterprises that have a performance evaluation system, and the ratio of enterprises that have a personnel appraisal system. For both cases, SMEs show a low ratio in the introduction of the system, but a large gap in the adoption of a personnel appraisal system is found between enterprises of different sizes.

Companies with performance related wage system and evaluation systems (%)

|  | Average | 1000- | 300-999   | 100-299 | 30-99   |       |
|--|---------|-------|-----------|---------|---------|-------|
| Companies reflecting personal performance in wage i) | 53.2    | 83.4  | 73.6      | 62.5    | 47.4    |       |
| with a performance evaluation system                 | 33.4    | 72.4  | 61.0      | 46.1    | 25.6    |       |
|  | Average | 5000- | 1000-4999 | 300-999 | 100-299 | 30-99 |
| Companies with personnel appraisal system ii)        | 51.0    | 98.3  | 96.5      | 89.1    | 73.7    | 39.4  |

Source: i) General Survey on Employment Conditions 2004, ii) Survey on Employment Administration 'Administration Work After Employment/Dismissal 2002, the Ministry of Health, Labour and Welfare.

· provision of training

According to the 1999 Survey on Private-Sector Education and Training, which is the latest statistical survey available on the provision of education and training, training is not systematically provided in and out of the workplace in particular in SMEs with less than 300 employees.

Provision of Education and Training (1999, %)

|                                    | 1000 ~ | 500 ~ 999 | 300 ~ 499 | 100 ~ 299 | 30 ~ 99 |
|------------------------------------|--------|-----------|-----------|-----------|---------|
| Off-JT and systematic OJT provided | 98.9   | 95.6      | 91.3      | 80.7      | 65.7    |
| Not provided                       | 0.9    | 4.4       | 8.7       | 19.3      | 34.3    |

Source: Survey on Private-Sector Education and Training, the Ministry of Health, Labour and Welfare.

· use of team work; presence of a specialist personnel manager; team briefings or use of total quality management

Although no data on any of the above listed systems are available, following table shows various systems for labor-management communication on business operations and labor administration and the level of introduction of the systems. In general, the larger the size of the establishment, the higher the level of introduction.

Systems for labor-management communication (2004, %)

|                          | Total | 5000- | 1000-4999 | 300-999 | 100-299 | 50-99 | 30-49 | With trade union | Without trade union |
|--------------------------|-------|-------|-----------|---------|---------|-------|-------|------------------|---------------------|
| Casual workplace meeting | 49.8  | 72.3  | 53.8      | 52.9    | 47.0    | 39.7  | 46.5  | 51.4             | 46.2                |
| Small group activities   | 30.9  | 42.8  | 55.9      | 35.2    | 33.7    | 25.7  | 10.9  | 31.4             | 29.9                |

|  |      |      |      |      |      |      |      |      |      |
|--|------|------|------|------|------|------|------|------|------|
| Proposal system<br>(suggestion box, complaint box)   | 43.4 | 57.4 | 67.0 | 50.8 | 43.4 | 33.3 | 28.1 | 45.4 | 39.0 |
| Complaint handling mechanism                         | 23.2 | 65.9 | 38.1 | 27.6 | 17.6 | 11.8 | 6.7  | 23.2 | 23.1 |
| Site visit and interview by human resource personnel | 45.6 | 58.4 | 47.4 | 41.0 | 45.6 | 47.5 | 39.4 | 49.2 | 37.6 |

\* Casual workplace meeting A meeting organized by the workplace unit between managers and workers to discuss a certain range of topics, including business operations, workplace environment, etc.

Small group activities A small group of people is formed in the workplace, and the group establishes targets and plans and works to achieve these targets and plans through self-controlled activities (QC (quality control) activities, etc.).

Proposal system A system for employees to propose ideas and improvement plans concerning work.

Complaint handling mechanism A complaint handling committee and other full-time organizations composed of labor-management representatives to solve complaints of individual workers on wages, transfers, daily work conditions, etc.

Site visit and interview by human resource personnel Human resource personnel visit the workplace and interview individuals to understand the workplace conditions.

Source: General Survey on Labor-Management Relations (the Labor-Management Communication Survey), the Ministry of Health, Labour and Welfare

**Variation across SMEs.** Please indicate as far as possible the extent to which average figures vary between SMEs. For example, are there sectors where pay is particularly high or low and are these sectors particularly populated by SMEs? Is the take-up of the high performance practices listed under (h) above concentrated among certain types of SME? Are women and ethnic minorities concentrated in certain kinds of SME?

More SMEs are found in the wholesale and retail industries by both the number of enterprises and employees, followed by manufacturing, construction and services. The statistical data gorganized by the size of the business or industry does not show the concentration of women in any particular sector, although the distribution of men and women by the size of the business indicates that the ratio of women is lower in companies with 1000 employees or more and more women are found in medicine, welfare, wholesale, retail and services. (Survey on Establishments and Enterprises 2004 by the Statistics Bureau, the Ministry of Internal Affairs and Communications).

SMEs have a higher ratio of part-time workers in their workforce, which also contributes to a higher ratio of women in SMEs in some of industries such as manufacturing, wholesale and retail. However, the size of business is proportionally connected to the ratio of part-time workers in the service industry.

Ratio of part-time workers by industry and size of establishment (2004)

|                               | 500-  | 100-499 | 30-99 | 5-29  |
|-------------------------------|-------|---------|-------|-------|
| Total for industries surveyed | 12.57 | 20.26   | 25.15 | 30.73 |
| Manufacturing                 | 3.35  | 11.24   | 13.57 | 23.78 |
| Wholesale and retail          | 24.58 | 42.72   | 47.36 | 39.59 |
| Services                      | 36.31 | 30.15   | 23.20 | 22.71 |

Source: Monthly Labour Survey, the Ministry of Health, Labour and Welfare.

As for foreigners, in principle they are institutionally prohibited from doing simple labor (see 2005 report). Therefore, it is difficult to observe from official data the concentration in a particular industries with poor working conditions. According to the Report on Employment

of Foreign Nationals 2005 by the Ministry of Health, Labour and Welfare (summary of voluntary reports submitted by establishments), more than half of the foreign workers (58.2 percent) employed by the companies that submitted the report are employed by companies with 0 to 299 employees, and close to 70 percent of them work in the production process (followed by 10 percent working as managers in professional or technical fields). Although the summary result are not published by industry and size of enterprise, proportion of those who work in “eating and drinking places and accommodations” and “services”, as far as in this report, are basically lower than that of manufacturing (54.4 percent of all).

### *3. Social partners and interest representation*

#### Interest representation

- (a). What proportion of SMEs are members of employers’ organisations, and has this proportion changed since 1999?
- (b). What are the main employers’ organisations specifically representing SMEs, and how many SMEs belong to them? What are the main roles of these organisations, and in particular do they have a role in social dialogue at national or sectoral level?

Apart from the Japan Federation of Employers' Associations and Japan Chamber of Commerce and Industry (JCCI), both of which include certain number of SMEs as member companies along with larger enterprises, there are several employers’ organizations specialised in SMEs such as the National Federation of Small Business Associations, the Central Federation of Societies of Commerce and Industry and other nation-wide organizations composed of prefectural and regional organizations and cooperative business associations, as well as a few organizations of a similar nature with voluntary participation (e.g. the All Japan Committee for the Association of Small- and Medium-Size Enterprises). These organizations provide business and financial instruction and promotive measures to associated organizations and SMEs. The numbers of companies involved in such organizations are not provided.

Since these organizations are all business organizations, they do not conduct negotiations with trade unions for working conditions. However, representatives from some of the major organizations participate in governmental councils and study groups with trade unions for consultations. They also make their own policy proposals occasionally on issues that affects their business environment.

#### Unionisation

- (a). What is the level of union membership in SMEs, and how has this changed since 1999?
- (b). What are the sectors of relative union strength and weakness?

As for the estimated unionization rate, the only information available by rough division of enterprise size shows a proportional relationship between the unionization rate and enterprise size. For all sizes, the rate decreased from 1999, and the reduction increases with the enterprise size. No information is available on the estimated unionization rate by enterprise size for each industry, however, in relation to the aforementioned industries that have relatively more SMEs, the unionization rate is higher in the manufacturing and construction industries while it is lower in wholesale and retail, medical, health care and welfare, and service industries.

Estimated unionization rate by size of enterprise(2004 and 1999, in ten thousands, %)

|                             | Total  | 1000-  | 300-999 | 100-299 | 30-99 | -29   |
|-----------------------------|--------|--------|---------|---------|-------|-------|
| Union membership            | 802    | 462    | 126     | 73      | 27    | 4     |
| Employees                   | 4761   | 913    |         | 1260    |       | 2550  |
| Estimated unionization rate | 16.8   | 50.6   |         | 15.8    |       | 1.2   |
| (1999)                      | (18.7) | (54.2) |         | (18.8)  |       | (1.4) |

Source: Basic Survey on Trade Unions, the Ministry of Health, Labour and Welfare.

### Social partner activities

What examples are there of social partner activities directed at SMEs? This might include recruitment campaigns by trade unions or attempts by employers' organisations to target models of innovation and good employment practice at SMEs.

As for the activities of trade unions for SMEs, RENGO, for example, sees not only non-regular workers but also SME workers as their target for organization, and apart from supporting SMEs during Spring Wage Negotiations as already mentioned above (however, negotiations for pay raises are basically performed between labor and management of individual enterprises), represent SME workers in councils and study groups as necessary. On the other hand, the employers' organizations support the business operation of SMEs (for example, by establishing consultation offices for SMEs in chambers of commerce and industry, by providing business "matching" through websites, by providing information and services to support business operations, etc.) and support SMEs through the joint organization of company introduction sessions and employee training and internships.

Also, as part of a consignment project with the Ministry of Health, Labour and Welfare, the Local Labor-Management Employment Support Project is organized by trade unions, employers' organizations etc. in each prefecture, to provide information and services to support re-employment. Although it is not specifically designed for SMEs, it may function as supportive measures, since major part of the companies in local regions are SMEs.

### Public agencies

What are the main public bodies that provide advice and support specifically targeted at SMEs? Does this advice cover employment issues?

Among governmental organizations, the Small and Medium Enterprise Agency, under the Ministry of Economy, Trade and Industry, is responsible for the establishment and execution of the policies regarding SMEs. A number of implementation bodies such as SME departments of prefectural governments and the Organization for Small and Medium Enterprises and Regional Innovation, JAPAN (SMRJ) under the Agency are to carry out SME support policies, including financial and management consultation, provision of information on business innovation and financing through financial institutions for SMEs.

The government also provides subsidies for the support measures conducted by business organizations including the JCCI and the National Federation of Small Business Associations. Their support includes the provision of consultation and advice on business operation as well as support for the formation of networks between enterprises and for the development of workers' abilities.

Meanwhile, consultation and advice services on employment issues (although not specifically designed for SMEs) are provided by the Labor Bureau in each prefecture and the local Employment Security Offices under the Ministry of Health, Labour and Welfare, as well as by the prefectural branch of the Employment and Human Resources Development Organization, an organization affiliated with the Ministry of Health, Labour and Welfare.

#### 4. *Collective bargaining, representation and impact of legal regulation*

##### Collective bargaining

- (a). To what extent are SMEs covered by collective agreements, and how has this changed since 1999?
- (b). Has there been any change in arrangements whereby agreements reached by mainstream bodies are extended to SMEs?
- (c). Is there any information on the usage of company agreements by SMEs, and whether such usage has changed since 1999 (e.g. by SMEs leaving or joining multi-employer bargaining)?

No statistical information is available on the coverage of collective agreements. With some exceptions\*, collective agreements are basically made between the trade unions and management in each enterprise or business establishment, and the agreement is not expanded to other enterprises except for few cases on the provision of a minimum wage. According to the 2001 General Survey on Industrial Relations (Survey on Collective Agreements, etc.), 91.5 percent of the trade unions surveyed had an agreement, and over 80 percent of SMEs with a trade union had their own agreement or were covered by an agreement provided by upper organizations (87.3 percent of the companies with 100 to 299 employees and 81.4 percent of the companies with 30 to 99 employees). Thus, the extent of workers who are covered by the collective agreements roughly corresponds to the unionization rate. Since SMEs maintain a low rate for both unionization and the conclusion of collective agreements, and due to a continuous downward trend in the unionization rate, the extent of coverage is probably decreasing.

\* In some industries (such as metal and printing), conclusion of common collective agreements between trade unions and companies in the same area or in the same industry field are observed. Also, some regional trade unions have members from SMEs which do not have a trade union, and these trade unions may make requests to those employers for collective bargaining at the request of these union members. However, no data is available on actual situations in either of these cases.

##### Representative structures

How far do laws on representative structures (e.g. works councils) apply to SMEs? What is the coverage in practice of such bodies? What changes have occurred since 1999?

In principle, except for labor-management committees that are legally required (or set as the duty to endeavor to establish) for specific issues, such as safety committees and health committees, there is no law that requires the establishment of any labor-management consultation bodies. Even when such a consultation body is established, its form and method of operation vary in each company. However, the consultation that deals with the agenda equivalent to collective bargaining can be legally protected in the same way as it is done by trade unions.

The following table shows the status of establishments that have a labor-management consultation body. For the question asking if a labor-management consultation body is established in companies with and without trade unions, 80 percent of the companies with a trade union have the mechanism while only 15 percent of the companies without a trade union did not, clearly indicating that the majority of companies have the mechanism established as an supplementary channel to already established labor-management relations.

\* The safety committee is required in part of the manufacturing and steel industries, and the health committee is required in all industries for companies regularly employ 50 employees or more.

Ratio of companies with labor-management consultation body (%)

|      | Total | 5000- | 1000-<br>4999 | 300-999 | 100-299 | 50-99 | 30-49 | With trade<br>union | Without<br>trade union |
|------|-------|-------|---------------|---------|---------|-------|-------|---------------------|------------------------|
| 2004 | 37.3  | 80.8  | 64.6          | 47.0    | 35.0    | 22.8  | 10.4  | 80.5                | 15.0                   |
| 1999 | 41.8  | 77.9  | 66.1          | 60.1    | 37.3    | 24.2  | 16.5  | 84.8                | 17.1                   |

Source: General Survey on Labor-Management (Survey on the Labor-Management Communication), the Ministry of Health, Labour and Welfare

#### Terms and conditions without representative structures

Where formal collective bargaining is absent, what are the main ways in which pay and other key employment conditions are decided? Do alternative formal structures exist for information and consultation and for social dialogue more generally. In the absence of any formal structures, how is social dialogue organised in SMEs?

While surveys have not been conducted widely regarding the method for determining working conditions when a collective bargaining system is absent, a study by Hirasawa and others (2006)\* introduces different cases of companies without a trade union such as; organizing "general meetings" to discuss working rules and personnel reductions; making decisions led by the executives and management; establishing "working committees" (with participation by the management and workers) depending on the issue to be discussed. It seems that some of the labor-management communication systems (for example casual workplace meetings) described in the table above also provide a place between trade unions and management to discuss their working environment, safety and health and working conditions.

\* "Chusho Kigyo ni Okeru Roushi Kankei to Roudou Jouken Kettei Shisutemu no Jittai (Actual Situation of Labor-Management Relations and System for Setting the Terms and Conditions of Employment in Small and Medium Sized Enterprises)", JILPT (2006)

#### Legal regulation

Do laws on pay and working time affect SMEs more than other firms? Have any such effects led to lobbying by employers' organisations or complaints about red tape?

There is no legal provision that substantially affects wages or working hours. For wages, a minimum wage system has been established, and is revised every year, which is said to directly affect 2 to 3 percent of all workers (see 2005 report). For working hours, the Law on Improvement and Establishment of Working Hours, etc., in effect since April 2006, obliges companies to make efforts to establish a system for working hours, holidays, etc., but no strong pressure has been applied in relation to this.

Recent proposals made by employers' organizations in relation to SMEs include further deregulation of labor laws, expansion of support measures to develop and ensure human resources, reduction of social insurance contributions, reduction of the corporate tax, and the maintenance of a direct loan function through policy-based financing in connection with the elimination and consolidation of public financial institutions for SMEs.

#### 5. Other issues

Please provide a brief commentary on key developments. In particular:

- Please give your assessment of the quality of jobs in SMEs; please also comment on where among SMEs the good and bad jobs may be concentrated.
- How far has public policy focused on the number or quality of jobs in SMEs? Has the legal regulation of employment been an issue, for example in relation to the effects of regulation on employment growth in SMEs?

While it is difficult to establish criteria to compare the "quality of jobs," some of the data shown above indicates that in comparison with large companies, SMEs maintain a lower standard of wages and working conditions, and many of them do not have institution in place for ability development or labor-management consultation. However, according to the Basic Survey on Industrial Safety and Health by the Ministry of Health, Labour and Welfare in 2005, the larger the company the higher the percentage of cases reported of employees working long hours (more than 100 hours in a month in addition to the 40-hour/week work) or who took leave due to their mental health, indicating that large companies do not necessarily provide a "good quality job."

By industry, wages are higher in electricity, gas, heat and water supply; finance and insurance; information and communication, while they are lower in eating and drinking places and accommodations, wholesale and retail, services, medical, health care and welfare\*. However, volume of employment is not large in the industries that provide higher wages. Also, employment increased in information and communication in 2005, but this mainly consisted of an increase in part-time workers, and in fact the number of regular workers fell. On the other hand, of the industries that provide lower wages, volume of employment is higher in wholesale and retail, services, medical, health care and welfare. In particular, employment of both regular workers and part-time workers increased in services.

\* Wages are notably lower in eating and drinking places and accommodations in particular, and when comparing among the companies with 5 to 29 employees, one fourth of those in the highest sector (electricity, gas, heat and water supply).

The measures provided by the central and local governments show concern about low quality of employment in SMEs. Whitepaper on Labour Economy (the Ministry of Health, Labour and Welfare) in 2004 reports that the factors that influence the quality of employment, namely the contents of the job, working conditions and personnel management styles (opportunities for ability development), show signs of deterioration, and concludes that the measures for enhancing the ability of workers and developing motivation of workers should be implemented.

However, increasing number of non-regular workers, supposedly one of the main causes for the deterioration of quality of employment, seems to have been considered unavoidable in order to maintain the competitive strength of companies. The new government, inaugurated in October 2006, launched a campaign to "establish a mechanism to enabling re-challenge," setting up targets for institutional reform, such as striking a balance between non-regular and regular workers in treatment, ability development, etc., and for the introduction of a system for shifting non-regular workers to regular workers and a system of short-working hours employees. However, the concrete outcomes of these measures will not be available until they are carried out.

### **C. Temporary agency work**

For the purpose of this questionnaire, **Temporary Agency Work (TAW)** can broadly be defined (in line with the 1991 EC Directive on temporary workers' health and safety) as:

"a temporary employment relationship between a temporary work agency, which is the employer and a worker, where the later is assigned to work for, and under the control of an undertaking and/or establishment making use of his or her services (the user company)".

Thus, a **Temporary Agency Worker** (European Foundation for the Improvement of Living and working Conditions, 2002, *Temporary Agency Work in the European Union*, Luxembourg, OP, p.1):

“(…) is employed by the temporary agency, and is then, via a commercial contract hired out to perform work assignments at the user firm. Said work is performed at the user company under the supervision of the user firm”.

### *1. Background: definitions and country specific information*

In your country is there a statutory and/or collectively agreed definition of:

- temporary agency work;
- agency worker;
- user enterprise.

**If, so please give these definitions.**

**Does the definition identify clearly who the employer of the temporary agency worker is?**

According to the Law for Securing Proper Operation of Worker Dispatching Undertakings and Improved Working Conditions of Dispatched Workers, "a dispatched worker" is defined as "means a worker, employed by an employer, who becomes the object of worker dispatching" (Section 2, Article 2). There is no definition for dispatched work, while the "worker dispatching" is defined as "causing a worker or workers employed by one person to be engaged in work for another person under the instruction of the latter, while maintaining their employment relationship with the former, but excluding cases where the former agrees with the latter that such worker or workers shall be employed by the latter" (Section 1, Article 2), making clear that the employer is the business owner of the worker dispatching agency. On the other hand, the "client" (the receiver of the dispatched worker) is described as "a person receiving worker dispatching services performed by dispatched workers employed by the employer."

In Japan, the dispatch of workers is institutionally divided into "regular" and "registered." The "registered" dispatch is similar to European "temporary agency work," since wages, social insurance, etc. intermittently occur during the period of work at the dispatched company. On the other hand, the "regular" dispatch is very close to regular employment, and it is a different system from those found in western countries, since wages and others benefits are maintained by the party that dispatches the worker during the period in which work is not performed at the dispatched place as well. A dispatching agency including registered dispatches (general worker dispatching agency) requires a license, while a dispatching agency with only regular dispatches (specific worker dispatching agency) requires an application process. Both agencies are required to declare the location of their business establishment to the Labour Minister through the presiding Labor Bureau.

### *2. Regulatory framework*

Is there any specific legislation (primary/secondary, national/regional/local), collective agreement, industry-regulations, market-regulation provisions, jurisprudence covering TAW? Please give brief details of the regulations governing TAW. What is regulated in these provisions?

- a) Form of the contract (e.g. project, fixed-term, special contract, open ended, etc.):
  - i. Regarding the temporary agency worker.
  - ii. Regarding the agency.
- b) Social security and social benefits:
  - i. Regarding the right of the temporary agency worker;
  - ii. Regarding the agency;
- c) Tax/fiscal issues:

- i. Regarding the temporary agency worker;
- ii. Regarding the agency.

Has the regulation of TAW changed over the past 10 years? **If so, in what ways?**

The Worker Dispatching Law and related ordinances and supplementary provisions are in place to directly regulate the dispatch of workers. The law mainly defines the procedures for the employers of the worker dispatching undertakings who are the employers of the dispatched workers, but it also covers the companies that receive dispatched workers concerning the procedures (ban on prior specification of dispatched workers (excluding dispatch for prospective placement will be conducted, etc.), and states the client company's responsibilities concerning working hours and safety control based on the Labor Standard Law as well as other provisions including the prohibition of discriminatory treatment.

This law was put in effect in 1986, allowing the dispatch of workers in a specified form with certain limitations, since at that time the dispatch of workers was prohibited by the Job Stabilization Law. Initially, worker dispatching agencies were allowed in 13 professional work categories, and this was expanded to 26 categories with subsequent revisions of the law. Furthermore, a "negative list" method was applied to allow for dispatches except in specifically banned categories, and the 2004 revision of the law also removed manufacturing work from the specifically banned categories. As for the length of dispatches, the initial regulation imposed no limitations on the dispatch length in the 13 professional categories, and a later limitation of three years was given to the 26 professional categories\*. The 2004 revision lifted this limitation on length for many cases including the limitation on the services of those who take child care and family care leave, and the length for most other general work was extended to three years. After employment placement services were fundamentally liberalized for the above categories in 1997, the "dispatch for prospective placement," which includes new elements for employment placement services, was approved in 2002. This is a system in which the dispatch agreement is made on condition that an agreement of direct employment will be made between the dispatched worker and the party receiving the worker when the period of dispatch is completed, which is six months at the maximum. As for labor and social insurance, an obligation to promote this is given to both companies, requiring that the party dispatching the worker promotes the application of insurance for the dispatched worker (if not applied, an explanation to the party receiving the worker is required) and the party receiving the worker is required to check if the worker is insured or not.

Regulations on the dispatch of workers are established in order to clarify the regulation contents for individual provisions, and to expand the range of work categories and extend the length of dispatch, with a tendency towards the relaxation of the limitations.

\* The 26 categories are: 1) software development, 2) mechanical engineering, 3) operation of broadcast equipment, 4) direction of broadcast programs, 5) operation of office equipment, 6) interpretation, translation and stenography, 7) secretary work, 8) filing, 9) surveys, 10) financial work, 11) creation of transaction document, 12) demonstrations, 13) tour conductors, 14) building cleaners, 15) operation, inspection and maintenance of building equipment, 16) guidance, reception, car park management, etc., 17) research and development, 18) planning and idea making for business operations, 19) production and editing of publications, 20) advertisement design, 21) interior coordination, 22) announcers, 23) OA instruction, 24) telephone marketing and sales, 25) sales of sales engineers and financial products, and 26) large and small stage properties.

Which are the **requirements** for an Agency?

- a) License;
- b) Supervision (e.g. control by public authorities);
- c) Financial requirements;
- d) Other.

Depending on the type of undertaking, a license or other application is required, where the ability to perform employment management, personal information management and dispatching undertaking operations (including a financial foundation, such as a base amount of assets, bank deposits, amount of liabilities, etc., and the status of organizations and offices) are examined. It must also be shown that the dispatch is not exclusively given to a fixed party. After the operation is started, a report on the status of its business operations is required to be submitted for every year to the Ministry of Health, Labour and Welfare (including the number of dispatched workers, average length of dispatches, dispatching fees and wages, revenue from dispatches, education and training, etc.).

To operate "dispatch for prospective placement," both "general worker dispatching undertaking" and "fee charging employment placement" permits are required.

Are there **restrictions** on TAW?

- a) restrictions to the activities/services of the agency. E.g. prohibition to provide other services than TAW;
- b) restrictions to the use of Agency work in regulations or collective agreements. E.g. length of assignment, sectoral restrictions, reason restriction, no. of agency workers per company, others;
- d) restrictions for third-national companies or temporary agency workers?

As described above, the undertaking shall not be intended to dispatch workers exclusively to a fixed party, but there is no other regulations on business activities.

When receiving workers for over a period of one year for general job functions and not for professional job functions (work without definite period and manufacturing work), the company is required to obtain an opinion from the trade union representing the majority of the workers at the company and to maintain a record of this opinion for three years. If the company receives an opinion from the trade union stating that it is not suitable to receive workers, the company is required to make efforts to respect that opinion, by further explaining the plan or by reviewing the plan for receiving workers.

### *3. Employment conditions*

**Which are the employment conditions for TAWorkers which are different from those of a regular employment contract?** (The main objective here is to identify any indications or patterns of differential treatment or parity with permanent workers).

In the same way as with general workers, a series of labor laws such as the Labor Standards Law and the Industrial Safety and Health Law are applied to dispatched workers, thus providing them with the same legal rights on working conditions. The Dispatch Law requires considerations to be made for balance between workers regarding welfare benefits, education and training, which are provided in the company but not clearly provided by the law.

In reality, however, the types of work and job descriptions for dispatched workers are different from those of regular workers, and because of frequent short-term fragmented work, working conditions are different including the wage standard. Although there is no statistical information available for a direct comparison of wages between regular workers and dispatched workers, an estimation by the Bank of Japan calculates the gap between the two to be some 70 percent. According to the survey by the Ministry of Health, Labour and Welfare, 30 percent of dispatched workers did not receive paid holidays in the last 12 months (paid holidays are provided on the condition of continuous service for a period of six months and after working for more than a specified number of days), and commuting and housing allowances, as well as lump-sum and other allowance are not provided at all for approximately half of all dispatched workers (Survey on Dispatched Workers 2004).

This information indicates that dispatched workers do not particularly have lower average daily working hours or overtime hours compared with regular workers, but rather that it seems that the difference due to the length of the dispatched workers' working period and working days per week compared with regular workers. (Survey on Employment Structure 2003, General Survey on Diversification of Employment Forms)

#### *4. Social security/social benefits*

**Which are the rules and procedures which apply to TAWorkers in contrast to other workers?** (The main objective here is to identify any indications or patterns of differential treatment or parity with permanent workers).

There is no regulation that is applied only to dispatched workers. There is an obligation to have labor insurance when working or planning to work for one year or more with weekly working hours of 20 hours or more. Also, there is an obligation to have social insurance (health insurance, employees' pension insurance, etc.) when working for more than 3/4 of the normal weekly working hours and earning an annual income of 1.3 million yen or more. According to the dispatch law, dispatched workers meeting these conditions are encouraged to have insurance. According to the Survey on Employment Structure 2003 (General Survey on Diversification of Employment Form), approximately 70 percent of the dispatched workers have employment or social insurance.

#### *5. Quantitative data*

Please use information from official employment statistics and any other studies or reports which may have been conducted on TAW in your country (e.g. by researchers, temporary agencies or trade unions). Where there are no reliable statistical data on any of the above points, please try to qualify the current extent of TAW (high, average, low) and roughly assess the sectors, occupations and types of company in which it is most prevalent.

What is the overall **incidence** of TAW in:

- a) number of employees involved (e.g. at a given point in time, in full-time equivalents over a 12-month period);
- b) the percentage of the total national workforce involved;
- c) the number of temporary work agencies in operation at national or sectoral level.

According to the summary issued by the Ministry of Health, Labour and Welfare of the "Report on Worker Dispatching Undertakings," which the worker dispatching agencies are obliged to submit each year, the number of dispatched workers changed from 2.36 million workers (equivalent to 740 thousand regular workers in terms of working hours) as of the end of September 2003 to 2.27 million workers (equivalent to 890 thousand regular workers) as of the end of September 2004, showing a slight reduction in the actual number but an increase of 16 percent in the number of workers equivalent to regular workers. This corresponds to 3.4 percent of the 66.42 million total workforce in 2004 (3.5 percent of 66.66 million in 2003). Of these 2.27 million, the "registered type" of dispatched workers accounted for some 1.85 million workers (equivalent to 470 thousand regular workers) and the regular type accounted for 420 thousand. In the same period, the number of dispatch offices increased by some 20 percent from 16804 to 20278.

What are the **main sectors** where TAW is used ? If possible quantify in percentage of the total workforce involved in each of these specific sectors.

The report described above provided by the Ministry of Health, Labour and Welfare does not show information by industry, and the only source of information on this is the Survey on Dispatched Workers, which was started from the fiscal year 2004 by the Ministry. According to this survey, the manufacturing industries account for over 30 percent of all workers, and wholesale and retail, finance and insurance and services each account for over 10 percent. A higher rate of dispatched workers compared with regular workers is observed in finance and insurance, information and communication, real estate and transport.

Dispatched Workers by Industry, Rate over Regular Workers (thousands, %)

|   | Dispatched workers | Distribution over industries | Regular workers | Ratio over regular workers |
|---|--------------------|------------------------------|-----------------|----------------------------|
| All industries                                | 956.5              | 100                          | 24966           | 3.8                        |
| Mining  | 0                  | 0                            | 10              | 0                          |
| Construction                                  | 23.2               | 2.4                          | 1070            | 2.2                        |
| Manufacturing                                 | 314.4              | 32.9                         | 6396            | 4.9                        |
| Electricity, Gas, Heat, and Water supply      | 1.8                | 0.2                          | 231             | 0.8                        |
| Information and Communications                | 71.9               | 7.5                          | 1100            | 6.5                        |
| Transport                                     | 99.4               | 10.4                         | 1904            | 5.2                        |
| Wholesale and retail                          | 128.5              | 13.4                         | 4007            | 3.2                        |
| Finance and Insurance                         | 127.7              | 13.4                         | 830             | 15.4                       |
| Real estate                                   | 9.6                | 1                            | 172             | 5.6                        |
| Eating and drinking places and accommodations | 24.8               | 2.6                          | 1107            | 2.2                        |
| Medical, health care and welfare              | 31.7               | 3.3                          | 2741            | 1.2                        |
| Education and Learning Aid                    | 10.2               | 1.1                          | 1573            | 0.6                        |
| Combined Services                             | 1.5                | 0.2                          | 391             | 0.4                        |
| Services                                      | 111.8              | 11.7                         | 3434            | 3.3                        |

Source: Outline of the Survey on Dispatched Workers 2005, and "Monthly Labour Survey 2004," the Ministry of Health, Labour and Welfare.

What is the development of TAW (in percentage of the total national workforce involved) in your country since 2000:

- a) at national level;
- b) at the dominant sectoral levels.

According to the summary of the aforementioned "Report on Business of Dispatched Workers," the number of dispatched workers was 1.39 million in 2000 (equivalent to 540 thousand regular workers) and had increased by some 60 percent by 2004. Based on the 2000 labor survey, this number constitutes 2.1 percent of the 67.66 million total work force or 3.3 percent of the 42.66 million regular employees. The number of agencies doubled from 10,330, and their annual revenue increased 1.7 times from 1,671.7 billion yen to 2,861.5 billion yen.

As described above, the Survey on Dispatched Workers was conducted for the first time in 2004 and no sector specific information is available for 2000.

What is the **average length of assignment** (*in days*) of a TAWorker?

The Survey on Dispatched Workers does not show a summary for the average days of dispatch assignments, but it does show the approximate distribution of length of dispatches, as shown below. Some 60 percent of workers are dispatched for a contract of less than one year, while 2/3 of those who have a contract for over one year have no specification as to the length (seemingly, most of them work as regular type workers being dispatched fulltime from the party sending the worker).

#### Ratio of Workers by Length of Dispatch Contract (2005)

| 1 month or less | 1 month to less than 3 months | 3 months to less than 6 months | 6 months to less than 1 year | 1 year to less than 3 years | Specified for 3 years or more | No specification of length | Not known |
|-----------------|-------------------------------|--------------------------------|------------------------------|-----------------------------|-------------------------------|----------------------------|-----------|
| 0.7             | 11.8                          | 24.5                           | 22.5                         | 13.7                        | 0.7                           | 26.1                       | 0.1       |

Source: Survey on Dispatched Workers," the Ministry of Health, Labour and Welfare.

What is its **relative importance** among:

- women and men;
- different age groups;
- different occupations and levels of skill/qualification.

Approximately 63 percent of the dispatched workers are women and 70 percent of all are between the age of 20 and 39. Many of them are engaged in office administration type work, such as the operation of office equipment, filing, and general office work, and men working in software development and research and development account for less than 10 percent. However, there is no information available indicating dispatched workers' skill level or qualifications, and information on the education level of dispatched workers shows a high rate of senior-high school graduates among men, while the majority of women have an education level higher than the senior-high school level (professional school, junior college, etc.).

#### Age distribution (2004, %)

|       | 15 - 19 | 20 - 29 | 30 - 39 | 40 - 49 | 50 - 59 | 60 or over |
|-------|---------|---------|---------|---------|---------|------------|
| Total | 0.8     | 35.5    | 37.7    | 14.2    | 7.3     | 4.5        |
| Men   | 1.2     | 35.1    | 30.6    | 13.4    | 10.7    | 9.0        |
| Women | 0.5     | 35.7    | 41.9    | 14.7    | 5.3     | 1.8        |

Source: Same as above.

#### Distribution of current work (2004, M.A., %)

|       | Within 26 categories |                        |                               |        | Outside 26 categories |                     |               |        |
|-------|----------------------|------------------------|-------------------------------|--------|-----------------------|---------------------|---------------|--------|
|       | Total                | Mechanical engineering | Operation of office equipment | Filing | Total                 | General office work | Manufacturing | Others |
| Total | 90.6                 | 4.7                    | 25.4                          | 22.8   | 72.1                  | 34.1                | 13.9          | 16.7   |
| Men   | 53.9                 | 11.1                   | 5.6                           | 3.8    | 68.0                  | 8.5                 | 29.3          | 25.8   |

|       |       |     |      |      |      |      |     |      |
|-------|-------|-----|------|------|------|------|-----|------|
| Women | 111.8 | 0.8 | 37.0 | 34.0 | 74.6 | 49.2 | 4.9 | 11.4 |
|-------|-------|-----|------|------|------|------|-----|------|

Source: Same as above

#### Distribution of education level (2004, %)

|       | Junior-high or old-system elementary school | Senior-high or old-system middle school | Vocational school (specialized) | Professional school and junior college | University or higher |
|-------|---|---|---------------------------------|--|----------------------|
| Total | 5.4   | 38.4                                    | 10.9                            | 20.6                                   | 24.6                 |
| Men   | 11.5  | 44.4                                    | 11.5                            | 4.9                                    | 27.7                 |
| Women | 1.9   | 34.9                                    | 10.5                            | 30.0                                   | 22.7                 |

Source: Same as above

#### 6. *Quality criteria*

Are there **codes of conduct** for agencies/ agency workers ? If yes, please describe.

Do other **quality requirements** for members of TAW associations exist? E.g. treatment of complaints/other standards etc. If yes, please describe.

According to the Guidelines for Measures To Be Taken by Owner of Worker Dispatching Agency, issued by the Ministry in 1999, the business owner is required to properly take care of creating/canceling clectice agreements, handling complaints, and applying labor/social insurance. They shall not practice unfair treatment, but shall conduct proper collection and management of personal information. Most provisions do not provide specific procedures or methods but only indicate the direction for efforts should be made in. These guideline were revised in 2003, requiring that notification of the specific reason that dispatched workers do not have labor/social insurance be made to the party receiving the workers and adding provisions regarding the "dispatch for prospective placement", which was newly allowed.

On the other hand, the Japan Staffing Services Association, an industry organization with the participation of 654 dispatching agencies, published a "Code of Practice" in 1995, requesting member companies to wage respect to laws and dispatched workers and maintain fair competition, but it does not define specific procedures or treatment methods.

#### 7. *Role of the social partners*

Have temporary work agencies structured themselves into a separate sector of activity, and do they have a **trade and/or employers' association**?

Have there been **collective bargaining/agreements** between temporary work agencies or their employers' associations and trade unions (at sectoral/company level) ? Please give details of any such agreements.

The Japan Staffing Services Association is one of the industry organizations that dispatch companies participate in. Labor-management negotiations and labor agreements are basically performed at the company level, and there is no labor agreement at the industry level, as described before. There is no information available on the status of unionization or the collective bargaining and labor agreement situation for dispatched workers.

Institutionally, a dispatched worker is employed by the party sending the worker. However, it is possible for workers to petition the party receiving the worker for collective bargaining, by organizing a trade union or via an existing trade union, when dealing with matters that the party receiving the worker has some responsibility over, such as working hours and safety considerations. While there are examples of trade unions organized by dispatched workers of

the regular type, dispatched workers of the registered type each work in different places, and it is virtually impossible to organize a trade union against the employer sending the worker. It is also difficult for dispatched workers to join the trade union of the party receiving the worker, since trade unions traditionally consist of regular employees of the company. Consequently, dispatched workers often join regional trade unions outside the company. Therefore, it is possible for the regular type of workers to have collective bargaining through a trade union inside the company, but the registered type of workers, who are in the majority, do not often have a representing organization. According to the Survey on Trade Union Activities by the Ministry of Health, Labour and Welfare, close to 70 percent (66.7 percent) of the company/establishment trade unions that were surveyed had dispatched workers in their workplace, but only 14.9 percent of these trade unions conducted some kind of activities for dispatched workers and only a fraction of these (2.6 percent) made requests for improvements to the working conditions and treatment of dispatched workers. In response to a question about the membership of dispatched workers, approximately 1/4 (24.9 percent) of all unions replied it was "not desirable" (67.1 percent replied it was "unavoidable").

Which are the information/**consultation/participation rights** of temporary agency workers?

- a) Do TAW workers dispose of information/consultation/ representation rights? If yes, please specify.
- b) Are there any procedures for strike breaking in place in relation to TAW workers? If yes, please specify.

In principle, collective bargaining and the labor-management consultation system is voluntarily and autonomously performed by trade unions and management in Japan, and dispatched workers, in formal terms, have the same right to participate in these as workers of any other type of employment. As described above, however, it is not usual for dispatched workers to join the trade union of the party sending the worker or the party receiving the worker, and in particular, dispatched workers of the registered type use little of their right to participate in consultation or their right to receive information through the labor-management consultation system or other channels. There is no information available directly showing the status of participation of dispatched workers, however, examining the status of participation by part-time workers, who belongs to the similar category of non-standard workers, indicates that 12 percent of part-time workers participate in establishments that have the labor-management consultation mechanism General Survey on Labor-Management Relations 2004 (Survey on the Labor-Management Communications).

As for strikes by trade unions, companies are not prohibited from continuing their operations and are allowed to hire managerial staff, non-unionists, or new workers (alternative workers during a strike) to continue their operations. However, they are prohibited from receiving new employment introduction services or receiving dispatched workers (the Worker Dispatching Law, the Employment Security Law).

If a provision is included in the agreement between the trade union and management prohibiting the hiring of alternative workers during a strike, and if the management breaches this provision, it is thought to be possible to seek compensation for damages and an injunction for breach of contract.

#### *8. National discussions and policy debates*

Please describe **debates** taking place in your county regarding TAW. What **general analysis** do employers and trade unions have of TAW? Has this analysis changed over time?

The initial reason for the establishment of the worker dispatching system was related to the issue of "fake contracts" which were already widely present at the time. This referred to work

that was performed in the form of contract, but in reality the work was under instruction and direction of the party who assigns the contract. This operation corresponded to a dispatch of workers that was prohibited at the time. Therefore, a system was established to acknowledge the dispatch of workers with limitation under new rules obliging the dispatching agency to obtain a license or application, in order to control the situation.

With the dispatch of workers in manufacturing being permitted starting from 2006, the presence of "fake subcontracts" has been revealed in several of the large companies and their contractors, and this has become an important problem. As a variation of this, the "double dispatch" (the party receiving the dispatched worker dispatches the same worker to another company) which is prohibited by the Worker Dispatching Law and the Employment Security Law, is often being practiced by going through the formality of making a contract agreement between the primary party receiving the worker and the secondary party receiving the same worker. Such a violation of the law needs to be determined based on the actual condition of work performed by the worker, and the Ministry of Health, Labour and Welfare reportedly began to investigate companies through the standard supervisory department. It has intensified instructive actions to correct this, and in fact the number of instructive actions taken is on the increase in the last few years.

Claiming that the responsibilities of the direct employer of dispatched workers are not clear, trade unions were strongly opposed to establishing the Worker Dispatching Law since the beginning, and after it was established they have continued to urge a reinforcement of the regulations and an improvement of treatment. As has been described above, instead, in reality regulations have gradually been relaxed, and the system has developed mainly to respond to the needs of employers. While showing regret for the illegal dispatch of workers, employers are demanding further deregulations, such as an expansion of the categories allowing for worker dispatching, an extension of dispatch lengths, and a simplification of the procedure.

On the other hand, as has been described above, with the economic recovery, there is an increasing shortage of manpower regardless of the size of enterprise, and an increasing number of companies are also hiring non-standard workers as regular workers to ensure human resources. The dispatch for prospective placement system is designed to guide this practice. For other types of dispatched workers as well, opportunities to shift to the regular employment may increase in future due to pressure in the labor market from future manpower shortages. However, future developments needs to be observed to understand the influence of this trend on the employment and working conditions of dispatched workers (or non-standard type workers in general).

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