

Japan Labor Issues

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February 2020

Volume 4 Number 21

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Key topic

Thirty Years since JTUC-Rengo's Foundation: Challenges and Prospects for Japan's Labor Movement

OGINO Noboru

The Japanese Trade Union Confederation (JTUC-Rengo), Japan's largest national confederation of trade unions, was founded on November 21, 1989. Until then, for many years following the Second World War, the central labor organization of Japan's labor unions had been split into four national centers: Sohyo (formed in 1950), Domei (formed in 1954 and changed its name in 1964), Churitsu Roren (formed in 1956), and Shin-sanbetsu (formed in 1949). Meanwhile, as a national center opposing JTUC-Rengo, forces critical of this movement as a right-wing reorganization started the National Confederation of Trade Unions (Zenroren) on the same day. Besides these two organizations, the National Trade Union Council (Zenrokyo; 100,000 members) also exists as a moderate consultative body.

Japan's labor movement was greatly reorganized when JTUC-Rengo was formed through the consolidation of a labor union associated with public-sector unions (Government and Public Workers Union) and industrial-specific unions of the private sector (Japanese Private-Sector Trade Union Confederation; so-called Minkan Rengo). Additionally, the post-war labor movement had composed of opposing left and right wings in part due to the influence of the Cold War, but this too came to an end with JTUC-Rengo's inauguration.

Looking back at the 30 years that have passed since this labor front reorganization, the memberships of both JTUC-Rengo and Zenroren have decreased; improvements in terms of labor conditions, such as wages and work hours, have continued to stagnate, being affected by long-term

deflation and other factors. Facing these facts and challenges, Japan's labor movement is attempting to rebuild its organization and actions by formulating a new vision and organization strategy.

A falling unionization rate with no sign of stopping

Japanese labor unions have a three-layer structure comprised of enterprise unions (unit unions, composed of individuals only), industrial unions, and national centers. The member units of national centers are, in principle, industrial unions. In 1989, JTUC-Rengo started with 74 industrial unions bringing 7.92 million members and Zenroren started with 27 industrial unions bringing 1.4 million members. The memberships of JTUC-Rengo and Zenroren fell to 7 million members (48 industrial unions) and 764,000 (18 industrial unions), respectively, as of October, 2019.

The labor front was reorganized during the height of Japan's "bubble economy" years. However, a look at the unionization rate reveals that the rate has continued to fall until the present day. According to a survey by the Ministry of Health, Labour and Welfare (MHLW), the unionization rate was 25.9% (12.22 million people) in 1989 and fell to 16.7% (10.08 million) in 2019.

Looking at memberships of JTUC-Rengo affiliated industrial unions, the All Japan Prefectural and Municipal Workers' Union (Jichiro, organization comprised of local public servants' unions), which was originally the largest affiliate with 1.25 million workers, has lowered its membership to 770,000 partly due to the administrative reform

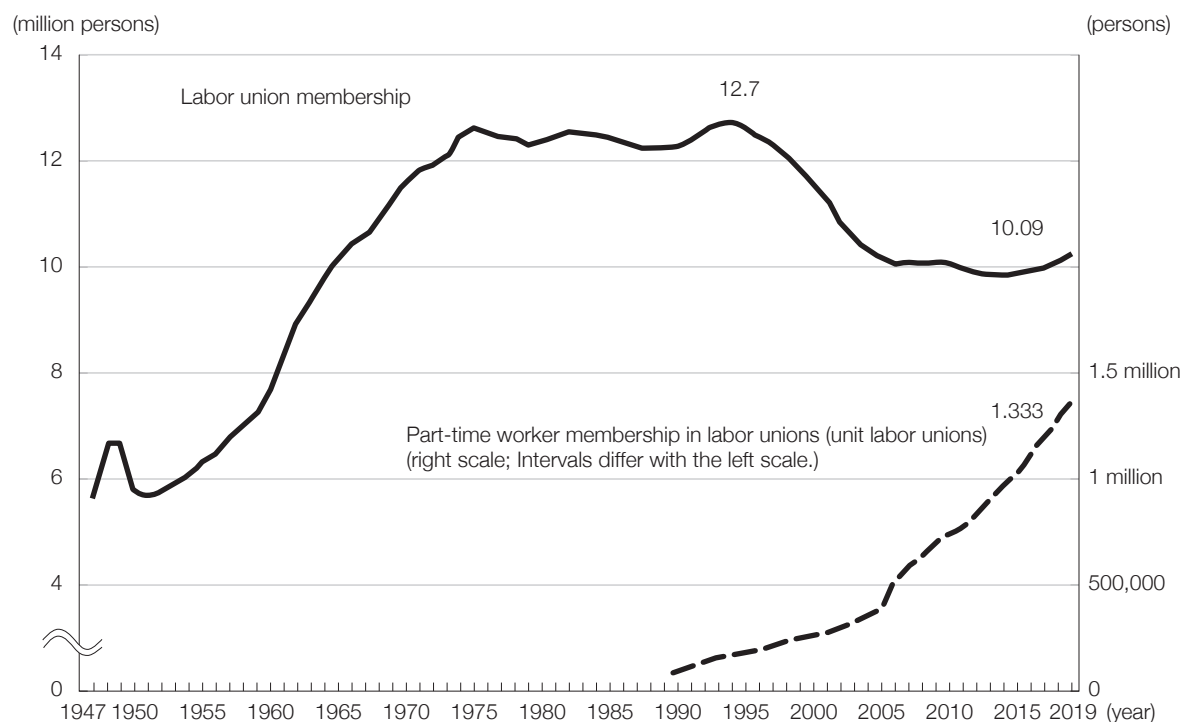
for government-affiliated corporations. In contrast, the Japanese Federation of Textile, Chemical, Food, Commercial, Service and General Workers' Union (UA Zensen), an industrial union primarily associated with logistical services and currently JTUC-Rengo's largest affiliate, has increased its membership by promoting organizational integration and actively organizing part-timers, to 1.77 million, almost three times compared to that of its predecessor (Zensen Domei, 510,000 members at the time of JTUC-Rengo's birth). As for Zenroren, the membership has decreased dramatically during this time in part because it was built primarily around the Government and Public Workers Union whose members are national and regional public servants.

Looking at overall trends and the number of union members, the pace at which unionization rates falling in Japan has slowed somewhat as more and more part-timers and contract workers become organized despite a continuing decrease in regularly employed union members due to the effects of administrative reform and private companies'

restructuring.

JTUC-Rengo strives toward membership of 10 million, and Zenroren toward 1.5 million

Amid the reduction in membership by JTUC-Rengo and Zenroren, both organizations devised organization strategies in 2012 to stop the decrease and shift toward an increase. JTUC-Rengo approved a major organizational expansion program called "Rengo with 10 million members" that will continue until 2020. In 2007, JTUC-Rengo's membership fell to 6.65 million, which was partially attributable to a simultaneous decrease in regular employees and increase of non-regular workers. Because of this, the Department of Non-regular Employment was established in its headquarters in the same year to strengthen its activities vis-à-vis part-timers, fixed-term contract workers, and dispatched workers. In 2013, a team dedicated to the organization was set up in its headquarters as a step toward achieving the membership goal. Since then, JTUC-Rengo's



Source: MHLW, "Basic Survey on Labour Unions."

Figure 1. Changes in number of labor union members (1947 to 2019)

headquarters, component of the organization as well as regional councils worked toward organizational expansion, and their efforts paid off with a subsequent increase in membership.

Meanwhile, Zenroren strengthened its movement based on its medium-term plan for organizational expansion and reinforcement beginning in fiscal year 2012. Organizational expansion has been positioned as the top priority with the objective of realizing growing membership by the time of its 2020 convention. Although Zenroren faces tough hurdles in reaching its goals, it is promoting movements aiming at “promoting new membership,” “expanding membership within the organization,” and “achieving a 100% unionization rate for non-regular workers.”

To improve the unionization rate, it is essential to promote the organization of unions at companies with fewer than 100 employees, whose unionization rate is around 1%. Moreover, shoring up the organization of non-regular workers will become an important challenge for both organizations. According to *Labour Force Survey* (Ministry of Internal Affairs and Communications, MIC), non-regular employment has grown 2.5 times, from 8.17 million people in 1989 to 20.36 million in 2017.

Wages stagnating, long work hours enduring

Japanese economy fell into a long-term period of deflation from the mid-1990s. Looking at long-term trends in consumer prices, prices had a year-on-year change of -0.3% in 1995 and then entered a state of deflation as negative growth continued for the seven years between 1999 and 2005. Meanwhile, the rate of wage increase was falling. As the economy stagnated, passive economic behavior became the norm among companies and households. As a result, poor demand caused the economy to shrink even more and enter a deflationary spiral in which price decreases and wage decreases occurred reciprocally. In part because of such economic circumstances, the words “across-the-board pay increase” (called “base-up” in Japanese) disappeared from unions’ wage demands in the early 2000s, and demands for a regular pay raise system (maintenance of wage

curves) continued for years. Consequently, wage levels have continued to lack growth over the past 30 years.

The hours worked decreased in the early 1990s. This was partially due to efforts to shorten scheduled working hours in labor-management agreements. However, from 2000, non-regular employment increased while the non-scheduled working hours of regular employees remained high, and thus working hours remained largely unchanged.

Ever since a government-labor-management agreement was reached to realize a positive economic cycle in 2013, wages—including across-the-board pay increases—have risen an average of more than 2% for six consecutive years. Additionally, discussions and negotiations between labor and management at companies toward reducing working hours are progressing following the enactment of the Work Style Reform Act in 2018. It is anticipated that the fruits of these efforts will appear in the years ahead.

Initiatives to realize policy

JTUC-Rengo declared the organizational objective in the mission statement approved at its inaugural convention in November 1989. “We will cooperate in the creation of a new political force capable of assuming governmental power and realize a sound parliamentary democracy that allows for a change of government.” This specified that the aim was to change the tide of the Liberal Democratic Party (LDP) regime that had continued since 1955, and that JTUC-Rengo has the “responsibility to be triggering factor toward this end.” A major goal of JTUC-Rengo’s foundation was to serve as a catalyst for political reorganization and bring about a “regime change” by leading the labor world’s unification.

Later, in 1993, the Hosokawa administration was born from a coalition of eight parties that were unaffiliated with the LDP or Communist Party, bringing the collapse of the LDP’s one-party rule, which JTUC-Rengo had sought to achieve. And in the 2009 general election, a regime change occurred and JTUC-Rengo’s supporting party, Democratic Party of Japan (DPJ) led the new regime. However,

DPJ (then known as the Democratic Party) split up in 2017. In the House of Councilors election held in the summer of 2019, candidates endorsed by JTUC-Rengo's member industrial federations were divided into those from two parties, namely, the Constitutional Democratic Party of Japan (CDPJ) and Democratic Party for the People (DPP) for the campaign. Among those endorsed candidates, five candidates affiliated with the CDPJ were all elected. As for the endorsed candidates affiliated with the DPP, three were won, and two were defeated.

Faced with the split in the political parties it supported, JTUC-Rengo established the Forum on Promotion of Policy and Systems (Rengo Forum) in February 2018. The forum is joined by individual Diet members with the premise that they will support JTUC-Rengo's policies. At the present time, some 150 Diet members from opposition parties are said to have enrolled. One of the forum's aims is to encourage reunite the three parties from the former Democratic Party that split up.

New vision for society

As JTUC-Rengo celebrated its 30th anniversary, its 16th Biennial Convention held on October 10 and 11, 2019 reported and approved a new vision of society toward 2035 —“A Secure Society based on Work — Protecting, Connecting and Creating”—as a view based on the convention's slogan “We Will Change the Future.” The new action policies for the coming two years based on this vision includes of legislation of worker representation systems as well as legal revisions that will permit the extended application of labor agreements, with an eye to building collective labor-management relations in all workplaces.

The new action policies bring to the forefront a posture as a concrete direction for rebuilding its movement. At a time when work-related difficulties are diversifying, “Rengo must take the lead in taking action to realize ‘true diversity’ and ‘fair work’ with the ideal of ‘social inclusion’ whereby no one is left behind.”

In addition to bolstering its policy aspects, JTUC-Rengo made the decision to strengthen

movement aspects that “generate social waves” so as to earn empathy from not only union members but also the public at large. This is why it is committed to rebuilding its movement into a new vision, “Protecting, Connecting and Creating.” It is a movement that puts “protecting” the dignity and living of each and every worker, including workers who face various difficulties, at its very foundation. It is a movement that “connects” the cycle of participation in workers' labor union activities to affiliated organization and JTUC-Rengo's activities and, furthermore, to community activities. And it is a movement that “creates” new social and economic vitality through dialogue and cooperation with various stakeholders.

New network to include diversified workers and platform for local based general unions

Until October of 2020, JTUC-Rengo plans to address organizational expansion based on the Rengo with 10 Million Members Program of 2012. It will then put forth new goals provisional called Rengo with 10 Million Members NEXT starting in November 2020. At the top priority of the action policies will be “reinforcement of the work rules that protect workers, including promoting legal protections for diverse workers.” Specifically, with an eye to building collective labor-management relations in all workplaces, JTUC-Rengo will make sure that majority representation systems are operated appropriately and will study the legislation of worker representation systems in a way that strengthens the roles of labor unions. Additionally, JTUC-Rengo will study the building of mechanisms that include legal revisions permitting the extended application of labor agreements so as to spread the fruits of collective employee-employer relations to even more workers.

Moreover, JTUC-Rengo will summarize the attitude towards legal protections, including extension of the concept of “worker,” for people engaged in “ambiguous employment” such as crowd work. It will also discuss the creation of network membership as a mechanism in which people who are in diversified forms of employment and working

styles could join JTUC-Rengo. Additionally, it has planned “Regional General Rengo” (provisional name) as a platform for the local based general unions.

On top of the above, JTUC-Rengo will establish a fair work promotion center to replace its current Department of Non-regular Employment. The new center will strengthen problem-solving and social influence for diversified forms of employment,

including non-regular employment, ambiguous employment, young labor, and foreign labor. At the same time, JTUC-Rengo will review its consultation service for diversified employment forms, through building its labor consultation framework by, for example, integrating consultation functions, applying multilingual approaches and utilizing databases, and collaborating with the existing one-stop service called Life Support Centers.

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Legal Liability Regarding “Power Harassment” and the Scope of That Liability

The Fukuda Denshi Nagano Hanbai Case

Tokyo High Court (Oct. 18, 2017) 1179 *Rodo Hanrei* 47

TAKIHARA Hiromitsu

I. Facts

Company Y₁ specializes in the sale of medical equipment. Y₂ took over as representative director (“CEO”) of Company Y₁ on April 1, 2013.

X₁, X₂, X₃ and X₄ were employees of Company Y₁. In April 2013, the time of the incident, X₁–X₃ were in their fifties and X₄ was 48 years old. X₁–X₄ were the only female employees working at the head offices of Company Y₁. X₁ was a section chief (*kakarichō*) of sales management and administration, X₂ was a section chief of accounting and general affairs, and X₃ and X₄ were administrative staff members.

X₂ had been responsible for accounting under Company Y₁’s former CEO, who had held said role for over 20 years. One of X₂’s tasks was to deal with any incomplete or incorrect entries on the payment request forms submitted by the former CEO, by checking with the former CEO or other such means. X₂ would submit such documents for audits by the parent company’s internal control department and other such purposes, and was never instructed to make improvements to her handling of such matters. Company Y₁ underwent an inspection by the local tax office in 2011, and in May 2012 submitted an amended return for corrections to entertainment expenses and other such items, on which basis it paid 20 million yen in corporation and other such taxes. The company subsequently also paid delinquent tax and other such charges around 6 million yen in October 2012.

In a speech he gave to introduce himself after taking up his post, Y₂ touched on the fact that

Company Y₁’s former CEO had held that post for a long period of time, and that most of the employees had therefore been accustomed to following said former CEO’s leadership. Y₂ went on to note that the current choice of personnel and their positions was not his doing, and he would be demoting staff whom he felt incapable for their positions.

Shortly after, Y₂ started to look into the backgrounds of the aforementioned amended return and payments, as he had decided that they were a problem that needed to be addressed. On July 9, 2013, Y₂ summoned X₂ to talk to her about what he saw as her improper processing of the accounts. On this occasion, Y₂’s statements to X₂ included such comments as: “My predecessor was strange, that’s probably why it was done that way” and “So, would you steal if you were ordered to?” Y₂, who claimed that he felt offended because X₂ was “emotionally shut off” to him, also made comments such as: “You’d do anything my predecessor told you to? You’re not an errand child” and “It’s as if the company was run by gangsters.” Company Y₁’s committee for rewards and disciplinary action decided to impose the punishment of demotion (“the demotion”) on X₂, on the grounds of “improper accounts processing.” Y₂ also reduced the bonus paid to X₂ in July 2013.

In addition, Y₂ reduced the July 2013 bonus paid to X₁. When explaining to X₁ the grounds for reducing her bonus, Y₂ made comments such as the following: “We are going to implement a personnel rotation now, but if we get someone else to take over your position, could they properly carry out the tasks you have done? If one person has been

doing the same work for 32 years, it's impossible. Leaving a job to the same person for as long as 30 years is not right—the same goes for accounting. They just assume everything is fine—they barely recognize the potential problems. Women feel they have something to protect, so they will always resist when someone tries to do something new. You (X_1) and X_2 are both afraid of change.” Y_2 also said to X_1 , “If you are not responsible because you were doing exactly what the CEO told you to, that makes you an errand child.” He also told X_1 that while X_2 was responsible, X_1 could also be held responsible, and that the company could seek criminal prosecution of the case, as well as commenting: “ X_2 is strange, so she has shut herself off to me” and “I have spoken to X_2 many times, but when someone gets to the age of 57 or 58, they are not prepared to change their minds.” Y_2 also commented that the salaries received by X_1 and her colleagues were too high.

X_2 and X_1 spoke with X_3 , and the three decided to resign, forfeiting the few years of employment they had left before mandatory retirement age. They submitted their letters of resignation on July 16, 2013. On the same morning, X_4 heard from X_2 and the others that they were resigning and was persuaded by them not to resign from the company because she still had a considerable number of years of employment before mandatory retirement age. However, X_4 submitted her letter of resignation the following day, because she felt it would be difficult for her if only she continued to work at the company.

X_4 left her employment with the company on August 31, 2013, and X_1 – X_3 left on September 30, 2013. X_1 – X_3 each received a severance payment from Company Y_1 calculated using the coefficient for voluntary resignations (resigning for personal reasons), while X_4 did not receive a severance payment on the grounds that she was a person resigning voluntarily who did not meet the conditions regarding period of employment at the company.

X_1 – X_4 each sought consolation money (*isharyō*) and other totaling 3.3 million yen as well as other payments from Y_2 and Company Y_1 on grounds such as the fact that as Company Y_1 employees they had been subjected to “power harassment”

(see commentary) by Y_2 which had forced them to resign. The claim against Y_2 was based on his having committed a torts, while the claim against Company Y_1 was based on the provisions of Article 350 of the Companies Act. (The other payments sought by X_1 – X_4 included the amount of severance payment lost due to it being calculated using the coefficient for voluntary resignation, the amounts by which the bonuses of X_1 – X_2 had been reduced, and the amount that the wages of X_2 had been reduced due to the demotion.) The court below (Nagano District Court Matsumoto Branch (May 17, 2017) 1179 *Rohan* 63) partially upheld X_1 – X_4 's claims. Company Y_1 and Y_2 filed an appeal with the Tokyo High Court and X_1 – X_4 lodged an incidental appeal.

II. Judgment

The Tokyo High Court's judgment can be summarized as follows:

(1) The demotion of X_2 was extremely unjust, given that, in terms of substantial grounds, there was no premise for such a disciplinary action and, in terms of the procedures followed, the investigation into the circumstances was highly insufficient. The demotion is an abuse of the right to discipline and thereby invalid, and X_2 is therefore entitled to claim the amount that her wages were reduced.

(2) Y_2 made an arbitrary assessment to determine the reduction of X_1 's and X_2 's bonuses. Said assessment was a deviation or abuse of Y_2 's discretionary powers and thereby invalid, and X_1 and X_2 are therefore entitled to claim the amount by which their bonuses were reduced.

(3) The judgment regarding power harassment by Y_2 was as follows.

(a) Regarding X_2

On July 9, 2013, Y_2 one-sidedly criticized and reproached X_2 at length, without responding to X_2 's attempts to explain. His comments included: “You followed the former CEO's orders, but you won't follow mine,” “Would you steal, just because you were told to?” “It's as if the company was run by gangsters,” “It's wrong to place the blame on someone who's not here,” and “That's what a child would do.” As noted, there were no grounds for

X₂ to receive a disciplinary action and thereby the demotion was invalid and there was no cause to reduce her bonus. There are no grounds upon which it could be claimed that Y₂'s decision to impose a disciplinary punishment and bonus reduction upon X₂ was unavoidable. After taking up his post as CEO of Company Y₁, Y₂ continuously criticized and reproached X₂ without due cause, reduced her bonus without due cause, and imposed an invalid demotion upon her, among other actions. As a result, X₂, a long-term employee of Company Y₁ who was intending to remain with the company until mandatory retirement age, abandoned her intention to continue working with the company and resigned. With this combination of circumstances, the series of actions by Y₂ constitute forcing X₂ to resign and are therefore illegal.

(b) Regarding X₁

As X₁–X₄ were the only four full-time administrative staff members employed at Company Y₁'s head offices, X₁ was inevitably aware of Y₂'s words and actions (“conduct”) toward X₂ in and after April 2013. In July 2013, around the time that this was happening, X₁ was aware that X₂ would definitely receive a disciplinary action despite a lack of due cause. X₁ also had her own bonus reduced without due cause. As grounds for the reduction of X₁'s bonus, Y₂ suggested to X₁ that she was not necessary for the future running of the company, with comments such as “X₂ is responsible but you (X₁) can also be held responsible,” “The company has what it needs to make this a criminal case—we can sue, and we haven't forfeited that right,” “If you keep this up, it'll be a case of whether we take this to court, and X₂ will inevitably face the same charges,” “Your salary is too high. Staff in their fifties are no use to the company.”

As a result, X₁, a long-term employee of Company Y₁ who was intending to remain with the company until mandatory retirement age, discussed with X₂ and others and consequently abandoned her intention to continue working with the company and resigned. With this combination of circumstances, the series of actions by Y₂ constitute forcing X₁ to resign and are therefore illegal.

(c) Regarding X₃ and X₄

As they shared a workplace with X₁ and X₂, X₃ and X₄ saw and heard Y₂'s conduct toward X₁ and X₂ and were aware that Y₂ had imposed disciplinary punishments upon X₁ and X₂, and reduced their bonuses without due cause, as well as telling them that they were not necessary for the running of the company. It is natural that X₃ and X₄ should therefore assume that they should also be treated in a similar way in the future. Having seen and heard Y₂'s conduct toward X₁ and X₂, and thereby believing that they would at some point be treated in the same way and be forced to resign, X₃ and X₄ consequently each decided to resign, despite having been intent on working at Company Y₁ until mandatory retirement age. With this combination of circumstances, the aforementioned series of actions by Y₂ toward X₁ and X₂ also constitute indirectly forcing X₃ and X₄ to resign, such that the actions were also illegal in the context of the relationship with X₃ and X₄.

(d) As explained above, the aforementioned series of actions by Y₂ are illegal, and, given that X₁ and X₄ thereby suffered mental damage, it holds that Y₂ committed a tort, and that Company Y₁ is liable under Article 350 of the Companies Act. The suitable amounts of consolation money and other such compensation to be received for said mental damage are 770,000 yen for X₁, 1.1 million yen for X₂, and 440,000 yen for X₃ and X₄ respectively.

(4) As X₁–X₄ had no choice but to resign due to Y₂'s actions, their resignations can be regarded as involuntary resignation (resignation at the convenience of the employer). X₁ and X₄ are therefore entitled to claim a severance payment calculated using the coefficient for involuntary resignation.

III. Commentary

Company Y₁ and Y₂ subsequently responded to this judgment by filing a Supreme Court appeal, but the appeal was dismissed (Supreme Court [May 15, 2018] *Hanrei Hisho* L07310102).

Workplace harassment is a recognized employment-related issue in many countries, and Japan is no exception. Before the introduction of

regulations prohibiting workplace harassment in respective labour laws, courts have accumulated many precedents related to sexual harassment and what is known as “power harassment.”

“Power harassment,” a term originally coined into Japanese, borrowed each word from English words (in total, no equivalent expression in English), first came into use in the early 2000s, generally to refer to harassment by a person in a superior position. Typical cases of power harassment are seen as those in which a person with some form of power inflicts harm upon someone lacking such power, such as a manager taking advantage of their superior position to discipline a subordinate, or a senior employee giving unjust training to a junior employee.

Below are five examples of the power harassment-related cases¹ that have been pursued in Japan to date.

(1) The *Mitsui Sumitomo Insurance Company* case (Tokyo High Court [Apr. 20, 2005] 914 *Rohan* 82), in which a manager sent an email containing comments such as “If you can’t be motivated, you should quit the company” to not only the subordinate the comments were directed at but also the colleagues at the subordinate’s workplace.

(2) The *Nippon Doken* case (Tsu District Court [Feb. 19, 2009] 982 *Rohan* 66), in which a supervisor’s conduct toward new employee included saying “you can’t even understand that?” throwing items, and kicking a table.

(3) The *Windsor Hotels International* case (Tokyo High Court [Feb. 27, 2013] 1072 *Rohan* 5), in which a manager forced a subordinate to drink alcohol, sent said subordinate reprimanding email in the middle of the night, and, when said subordinate did not follow orders, left an answerphone message in the middle of the night saying “Quit. Hand in your resignation. I’ll beat you to death.”

(4) The *Arkray Factory* case (Osaka High Court [Oct. 9, 2013] 1083 *Rohan* 24), in which a regularly employed manager said “I’ll kill you,” to an agency worker when said worker failed to follow instructions or made a mistake.

(5) The *Kano Seika* case (Nagoya High Court [Nov. 30, 2017] 1175 *Rohan* 26), in which a senior

employee adopted a severe tone when reprimanding a junior employee who had made a mistake, making comments such as “always the same mistakes.”

In all these cases, the claims of the person subjected to the harassment (“harassed person”) were partially upheld. In contrast, the following are two examples of cases in which the harassed person’s claims were not approved.

(6) The *A Hospital* case (Fukui District Court [Apr. 22, 2009] 985 *Rohan* 23), in which the hospital director reduced the number of patients assigned to the physician in charge of internal medicine.

(7) The *Maeda Road Construction* case (Takamatsu High Court [Apr. 23, 2009] 990 *Rohan* 134), in which a manager reprimanded a subordinate with comments such as: “You probably think you can solve this by quitting the company, but even if you quit, things won’t get easier.”

In both cases, the judgments were influenced by the recognition that the harassed person had committed serious misconduct. Namely, in case (6), there were found to be grounds for the dismissal of the harassed person under the provisions of the rules of employment, and in case (7), it was recognized that the harassed person had been improperly processing accounts and had failed to correct said conduct more than a year after receiving an order to do so.

As explained above, power harassment cases involve the personal relationship that exists between a manager and their subordinate—namely, a relationship in which one party has some form of superiority over the other. Many of these cases also involve situations in which the superior was responding to misconduct by the harassed person with excessive discipline or unjust training. One distinctive characteristic of power harassment cases is perhaps therefore that they may also involve scenarios in which the victim (harassed person) committed misconduct.²

In the case addressed here, the point at issue was whether Y₂, in his role as CEO of Company Y₁, had committed power harassment that resulted in X₁–X₄ resigning, which included addressing the fact that Y₂ one-sidedly criticized and reproached

X₂ at length, and that Y₂ behaved in a discriminatory manner toward X₁ (which included comments such as: “Women feel they have something to protect, so they will always resist when someone tries to do something new” and “Staff in their fifties are no use to the company”).³ It is also a case in which a person in a position of seniority used excessive discipline in response to perceived misconduct, because Y₂ adopted such conduct due to his belief that X₂ had been involved in “improper accounts processing” (a belief which was, however, found to be unjust, as noted in item (1) of the judgment summary above).

A particularly distinctive aspect of the judgment in this case is that X₃–X₄ were also recognized as eligible for judicial remedy, despite not being direct targets of Y₂’s conduct (as noted in (3) (c) of Judgment). The judgment that the series of actions toward X₁ and X₂ also indirectly forced X₃ and X₄ to resign is based on situations such that X₁–X₄ were the only four female employees working at the head offices of Company Y₁. In this respect, the scope of relevance of this judgment as a judicial precedent is relatively limited. It is, however, possible to build on this judgment to suggest that in cases that involve conduct toward a particular individual who is part of a group of people all sharing certain characteristics (in this case, the fact that X₁–X₄ were all women, of older age, and in full-time administrative roles), where that conduct is related to those characteristics, said conduct may be regarded as illegal not only in the relationship with the particular individual but also in the relationships with the other individuals who make up the said group. This judgment is particularly significant given that there does not appear to be any other clear judgments regarding indirect victims in the context of power harassment cases.

In Japan, harassment is often legally perceived as an infringement of personal rights (rights to protect personal interests). As a result, judgments on workplace harassment disputes may—as in this case—take the form of the conduct being considered to constitute a tort, or, of the conduct being held to constitute a default due to a breach of contractual obligations (Civil Code, Article 415⁴). There are many incidences in which cases are brought on the

basis of a combination of the two.

As this case addressed whether Y₂’s conduct constituted a tort, it was assessed whether that conduct was illegal in relation to Article 709 of the Civil Code.⁵ The case also addressed Company Y₁’s liability under Article 350 of the Companies Act,⁶ an article that prescribes liability to compensate damages caused by the actions of “representative directors or other such representatives.” As there are only a limited number of cases in which such conduct is committed by such a representative themselves, the majority of harassment-related judgments in Japan take the two forms described above (namely, whether the conduct constitutes a tort or whether it constitutes a default on obligations). This method of judging such cases in terms of whether the behavior constitutes a tort or default on obligations under the Civil Code originates from the fact that there is no existing legislation in Japan to substantiate the kind of compensation for damages generally appropriate in the case of workplace harassment.

However, that is not to say that there is no legislation in Japan regarding harassment in the workplace. At present, there are provisions covering the following forms of harassment.

- (a) Provisions pertaining to sexual harassment
- (b) Provisions pertaining to harassment related to pregnancy or childbirth, etc.
- (c) Provisions pertaining to harassment related to childcare leave, etc.
- (d) Provisions pertaining to power harassment (provisions newly established in 2019, as explained below)

Equal Employment Opportunity Act (Act on Securing, Etc. of Equal Opportunity and Treatment between Men and Women in Employment), which can be classified as public law if we assume a dichotomy between public and private law, contains the provisions pertaining to sexual harassment (type (a)) in Article 11 and Article 11-2. Said Act (Article 11-3 and Article 11-4) also contains provisions pertaining to harassment related to pregnancy or childbirth, etc. (type (b)). Likewise, provisions pertaining to harassment related to childcare leave, etc. (type (c)) are set out in Article 25 and Article

25-2 of the (Childcare and Family Care Leave Act (Act on Childcare Leave, Caregiver Leave, and Other Measures for the Welfare of Workers Caring for Children or Other Family Members), which can also be classified as public law. In Japan, a certain level of conduct that obstructs or interferes with a person to exercise the rights guaranteed to them as a worker in relation to pregnancy or childbirth, etc. is addressed as a type of harassment known as “maternity harassment.” In the case of harassment related to childcare leave, etc., discussions are likewise directed at conduct that hinders a person from exercising the rights guaranteed to them as a worker. Provisions concerning these three types of harassment (types (a), (b) and (c)) share the common element that they ensure that “employers shall establish necessary measures in terms of employment management to give advice to workers and cope with problems of workers, and take other necessary measures so that said workers....do not suffer any harm in their working environments” due to said conduct.⁷ The measures that business operators (employers) are obliged to take regarding each type of harassment are set out in the respective guidelines established by the Minister of Health, Labour and Welfare. While employers may receive administrative guidance and or other such forms of direction on the basis of such legislation regarding their obligations to take measures, such legislation is not directly effective in a private law context. Namely, a violation of an obligation to take measures does not directly lead to the employer being liable to provide compensation for damages. At the same time, in the case of civil disputes where damage compensation is sought in relation to workplace harassment, courts may also refer to the extent to which the employer has fulfilled their obligations to take measures as prescribed under public law in making their judgments on the employer’s liability regarding default on obligations or (the employer’s) liability for torts,⁸ or other such factors.

In relation to such obligations for employers to take measures, new provisions regarding power harassment (type (d)) have been established in Japan in 2019—namely, Article 30-2 and Article

30-3 of the Act on Comprehensive Promotion of Labour Policies (promulgated on June 5, 2019; to be enforced on June 1, 2020).⁹ Firstly, Article 30-2 (1) obliges employers to take measures on power harassment, as is the case with the other three types of harassment (types (a), (b), and (c) above). Moreover, while there was no legislation prescribing the definition of power harassment, the text of Article 30-2 (1) in fact states (i) language and conduct based on the superior position in the working relationship in which one party has a superior position, (ii) exceeds the necessary and suitable boundaries according to the business, and (iii) causes harm to the worker in their working environment can be treated as power harassment.¹⁰ (The Ministry of Health, Labour and Welfare has distributed a pamphlet to essentially the same effect.) Article 30-2 (2) also prohibits dismissal or other such disadvantageous treatment on the grounds that a worker sought advice regarding power harassment or other such reasons, and Article 30-2 (3) prescribes matters such as the creation of related guidelines. Secondly, Article 30-3 also addresses (1) power harassment by prescribing the national government’s responsibility to pursue measures to share information and raise public awareness, (2) employers’ responsibility to conduct training and pursue other such means to support the measures developed by the national government as well as (3) their responsibility to draw attention and promote understanding and to take the necessary care, and (4) workers’ responsibility to support the measures taken by their employer to develop attention and understanding and to take the necessary care—although in all cases the parties involved are only under the “duty-to-endeavor” (*doryoku gimu*) to do so. The guidelines regarding the measures that employers will be expected to take (that is, the guidelines to be created as prescribed in Article 30-2 (3)), are under consideration by the Labour Policy Council at present (as of October 2019).

As we have seen, legislation regarding power harassment is now being introduced along the lines of Japan’s existing public law provisions addressing harassment in the form of sexual harassment, harassment related to pregnancy and childbirth, etc.

and harassment related to childcare leave, etc. We have also addressed the fact that there are various judicial precedents regarding power harassment in the context of private law. Amid such developments and precedents, the judgment here is noteworthy as a significant decision regarding legal liability on power harassment in particular, the scope of that liability, and more specifically, the fact that not only the direct victim, but also indirect victims were entitled a remedy.

1. For the purpose of this paper, “power harassment-related cases” refers to judicial precedents in which the term “power harassment” appeared in any part of the judgment and a judgment was passed regarding it.
2. Cases in which the harassed person was repeatedly harassed even though they had not committed serious misconduct may be referred to with the term “workplace bullying” or other such terms. Such workplace bullying is often regarded as power harassment where it involves a personal relationship in which one party has a superior position. Misconduct by the harassed person is therefore not a requirement to be considered power harassment.
3. In the original text of the judgment, the part that corresponds to the case summary (3) of this judgment is titled “Regarding power harassment by Y₂.”
4. Article 415 of the Civil Code reads: “If an obligor fails to perform consistent with the purpose of its obligation, the obligee shall be entitled to demand damages arising from such failure. The same shall apply in cases it has become impossible to perform due to reasons attributable to the obligor.”

<http://www.japaneselawtranslation.go.jp/law/detail/?re=01&dn=1&x=0&y=0&co=1&ia=03&yo=%E6%B0%91%E6%B3%95&gn=&sy=&ht=&no=&bu=&ta=&ky=%E6%B0%91%E6%B3%95&page=3>

5. Article 709 of the Civil Code reads: “A person who has intentionally or negligently infringed any right of others, or legally protected interest of others, shall be liable to compensate any damages resulting in consequence.”
6. Article 350 of the Companies Act reads: “A Stock Company is liable for damage caused to third parties by its Representative Directors or other representatives during the course of the performance of their duties.”
7. In the provisions pertaining to harassment related to pregnancy or childbirth, etc. the phrase “said women workers” is used in place of “said workers.”
8. Regarding an employer’s liability, Article 715 Paragraph 1 of the Civil Code states: “A person who employs others for a certain business shall be liable for damages inflicted on a third party by his/her employees with respect to the execution of that business; provided, however, that this shall not apply if the employer exercised reasonable care in appointing the employee or in supervising the business, or if the damages could not have been avoided even if he/she had exercised reasonable care.”
9. For small and medium-sized enterprises, the obligation to take measures shall be treated as duty-to-endeavor until March 30, 2022.
10. It is, however, important to note that the term “power harassment” does not appear in the main clause of the law.

The *Fukuda Denshi Nagano Hanbai* case, *Rodo Hanrei* (Rohan, Sanro Research Institute) 1179, pp. 47–70. See also *Journal of Labour Cases* (Rodo Kaihatsu Kenkyukai) no. 70, January 2018, pp. 1–22.

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▶▶ Human Resource Management

▼ Labor-Management Relations

▼ Labor Market

▼ Labor Administration and Legislation

Fringe Benefits

NAKAMURA Ryoji

I. What are fringe benefits?

“Fringe benefits” (referred to below as “benefits”) basically refers to remuneration other than the wage that enterprises regularly offer to employees. When benefits are substantial, enterprises can expect to secure and retain a competent workforce and boost their motivation to work, while workers can work with peace of mind and effectively demonstrate their abilities. This is enterprises’ fundamental purpose in introducing benefits, which are considered to be systems with positive outcomes for both labor and management.

II. Breakdown of labor costs and welfare expenses

All costs incurred by employers hiring workers (i.e. enterprises’ share of costs) are labor costs, and as Figure 1 shows, the majority of labor costs consist of cash earnings. Looking at the breakdown of labor costs other than cash earnings, they include statutory welfare costs, voluntary social benefits and retirement allowances (see the right-hand side of the figure). Since retirement allowances are statistically regarded as “labor costs other than cash earnings,” they may on occasion be regarded as belonging to the category of benefits, but basically they are interpreted as part of wages and remuneration, paid collectively at retirement. Retirement allowances are paid only if payment criteria are clearly defined by the work rules, or by labor-management practices or labor-management agreements.

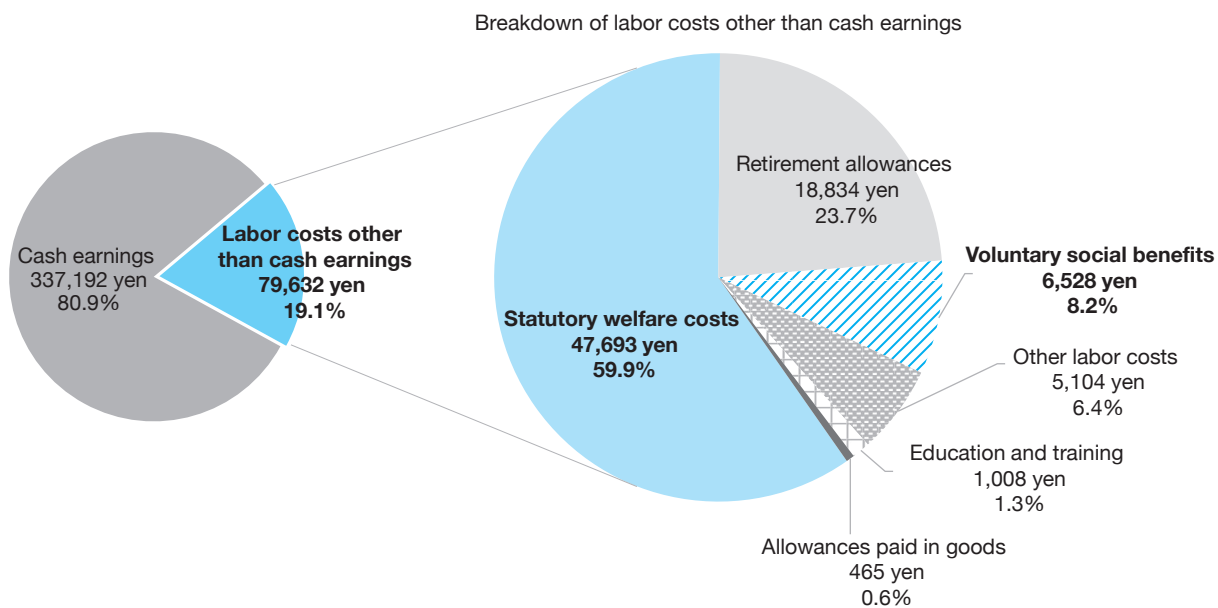
Welfare expenses are subdivided into statutory welfare costs and voluntary social benefits. The

former are the costs of benefits that are defined by laws on social insurance, and comprise social insurance-related expenses including medical insurance, pension insurance, long-term care insurance, industrial accident compensation insurance, and employment insurance, of which enterprises and workers share costs. The latter consist of costs of benefits defined by enterprises at their own discretion which apply only to employees who work in-house. Typical examples are provision of company housing and assistance with home purchases. Although these are said to be voluntary benefits, they may be subject to laws and regulations, such as non-discrimination provisions under the Equal Employment Opportunity Act¹, and regulations regarding company housing and systems of personal savings within the company under the Labor Standards Act.

III. Changes in welfare expenses: Long-term trends

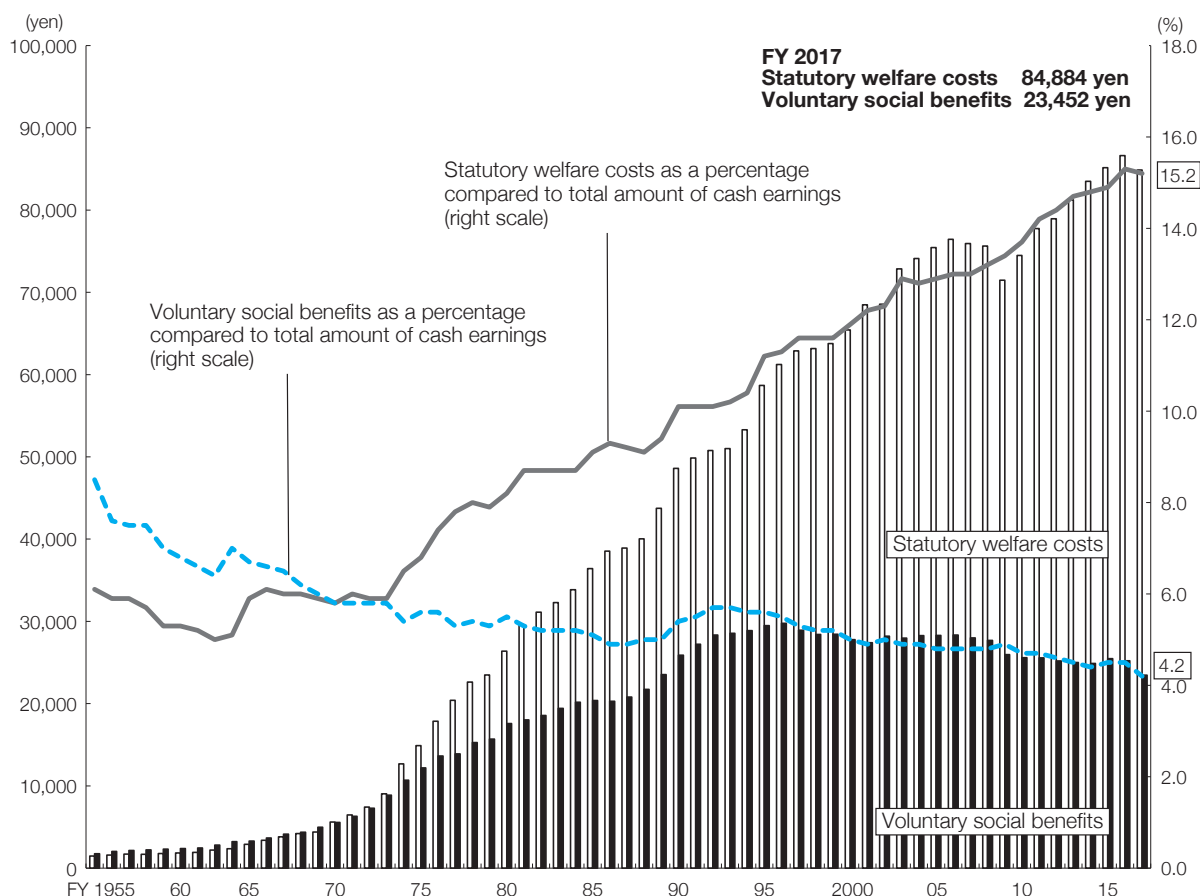
Let us examine changes in welfare expenses over time based on the Japan Business Federation (Keidanren)² survey on corporate welfare expenditures for FY 2017 (Figure 2). The survey covers enterprises belonging to Keidanren, and thus basically illustrates the situation in large enterprises. The difference between large enterprises and small and medium-sized enterprises (SMEs) in terms of benefits is an important issue, which will be discussed later.

The average across all industries of enterprises’ welfare expenses for FY 2017 (total of statutory welfare costs and voluntary social benefits) was



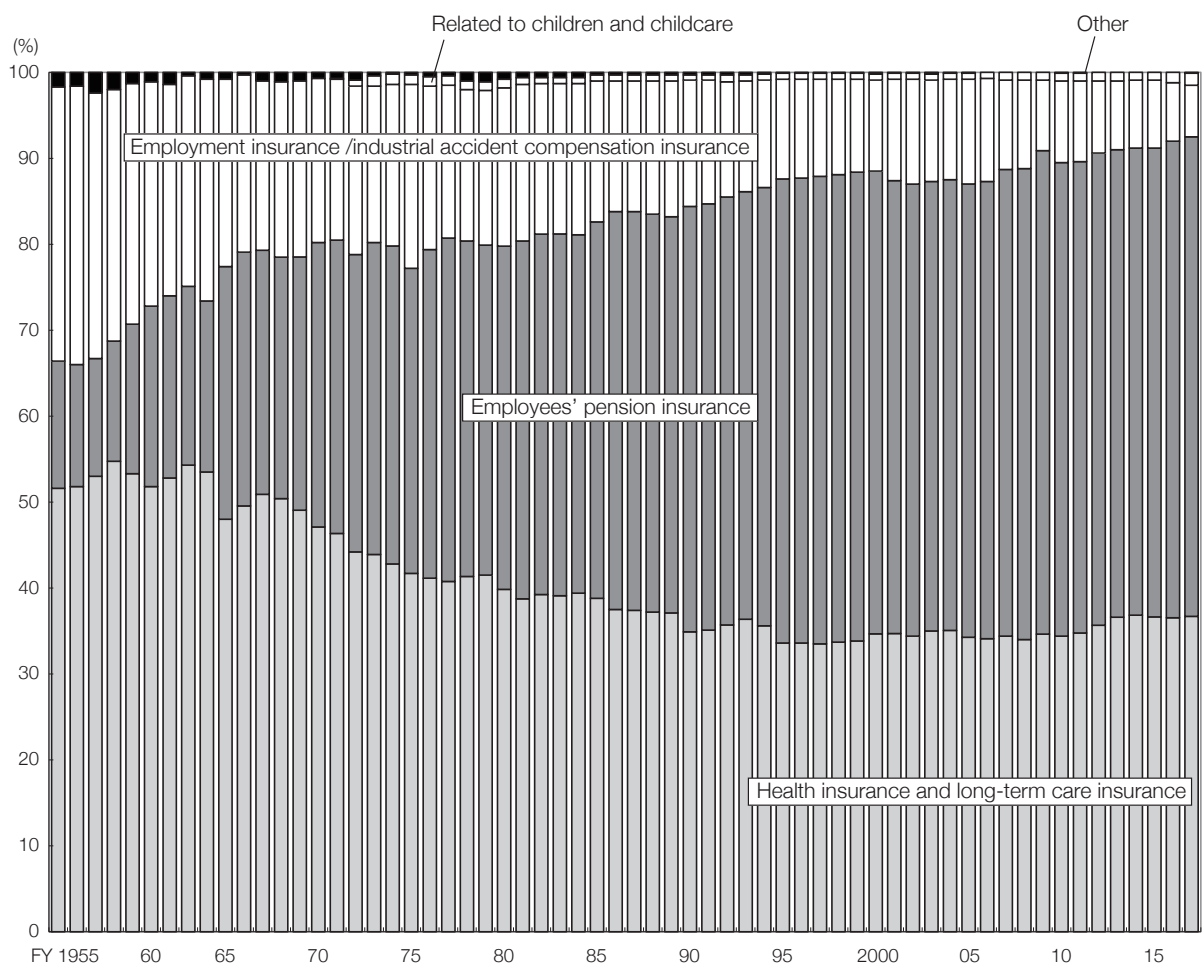
Source: Prepared on the basis of MHLW, "General Survey on Working Conditions 2016," 2017.

Figure 1. Average monthly labor cost per regular employee



Source: Prepared on the basis of Japan Business Federation, "Results of Survey on Corporate Welfare Expenditures for FY 2017," 2018.

Figure 2. Change in welfare expenses



Source: Prepared on the basis of Japan Business Federation, "Results of Survey on Corporate Welfare Expenditures for FY 2017," 2018.

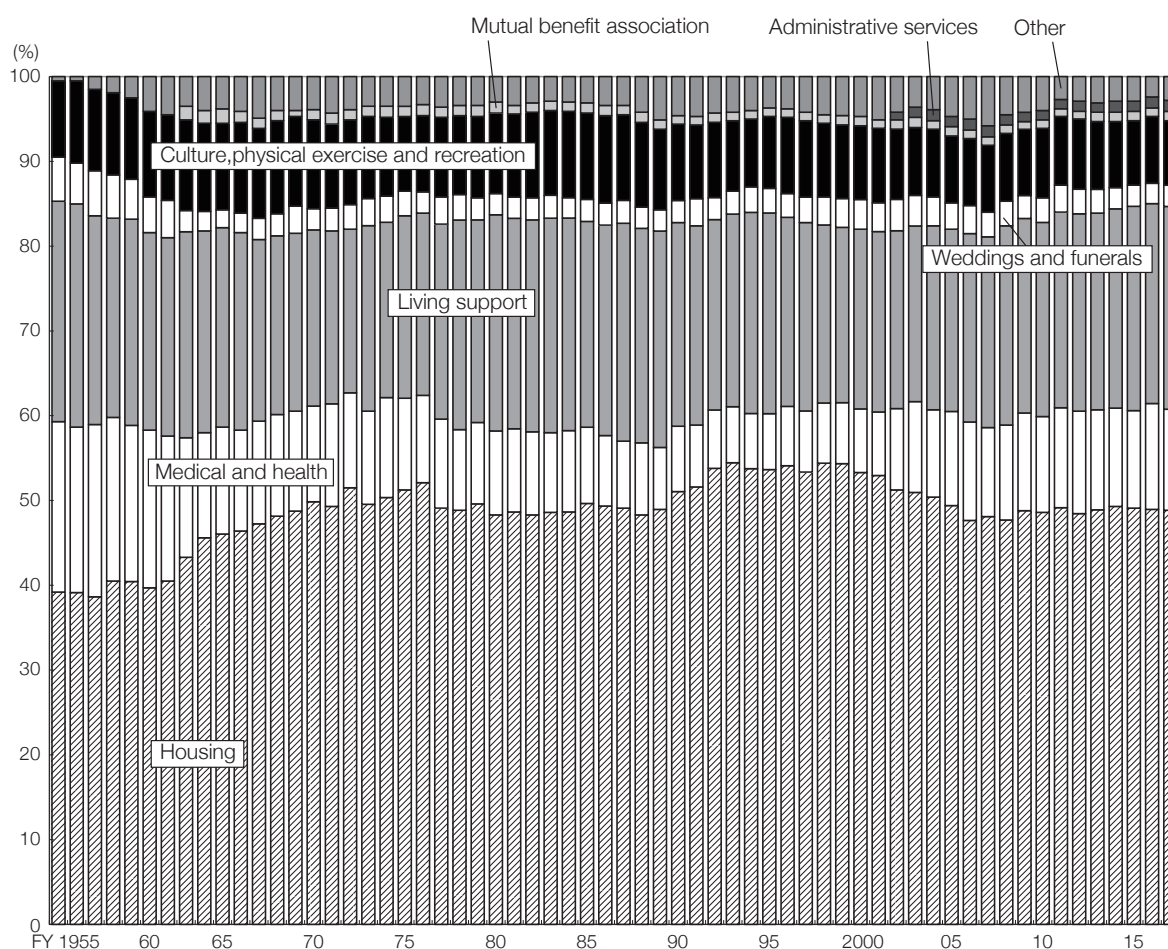
Figure 3. Breakdown of statutory welfare costs

108,336 yen per employee per month, (down 3.1% year-on-year), which accounts for only 19.4% of total cash earnings. Statutory welfare costs were 84,884 yen (down 2.0% year-on-year) and voluntary social benefits were 23,452 yen (down 7.0% year-on-year).

Until 1970, voluntary social benefits had accounted for larger part of cash earnings than statutory welfare costs, but the latter surpassed the former that year, and the ratio of statutory welfare costs to cash earnings has been consistently on the rise. For example, the ratio of statutory welfare costs to total amount of cash earnings was 5.8% in 1970, but in 2017 it reached approximately one-sixth, or 15.2%. In contrast, the ratio of voluntary social benefits to total amount of cash earnings has

continued to decline, from between 5% and 6% in the 1970s to 4.2% in 2017. This trend is considered to result from an increase in costs borne by employers due to increases in premium rates of employees' pension insurance, health insurance and so forth due to the declining birthrate and aging population.

Examining the breakdown of statutory welfare costs and its changes (Figure 3), we see an ongoing year-on-year rise in the aggregate amount of employees' pension insurance and health and long-term care insurance as a percentage of the total. Their shares of statutory welfare costs in fiscal 2017 were 55.8% and 36.7% respectively, which when combined exceeds 90%. Clearly, it can be considered as the impact of the declining birthrate and the aging of the population.



Source: Prepared on the basis of Japan Business Federation, "Results of Survey on Corporate Welfare Expenditures for FY 2017," 2018.

Figure 4. Breakdown of voluntary social benefits

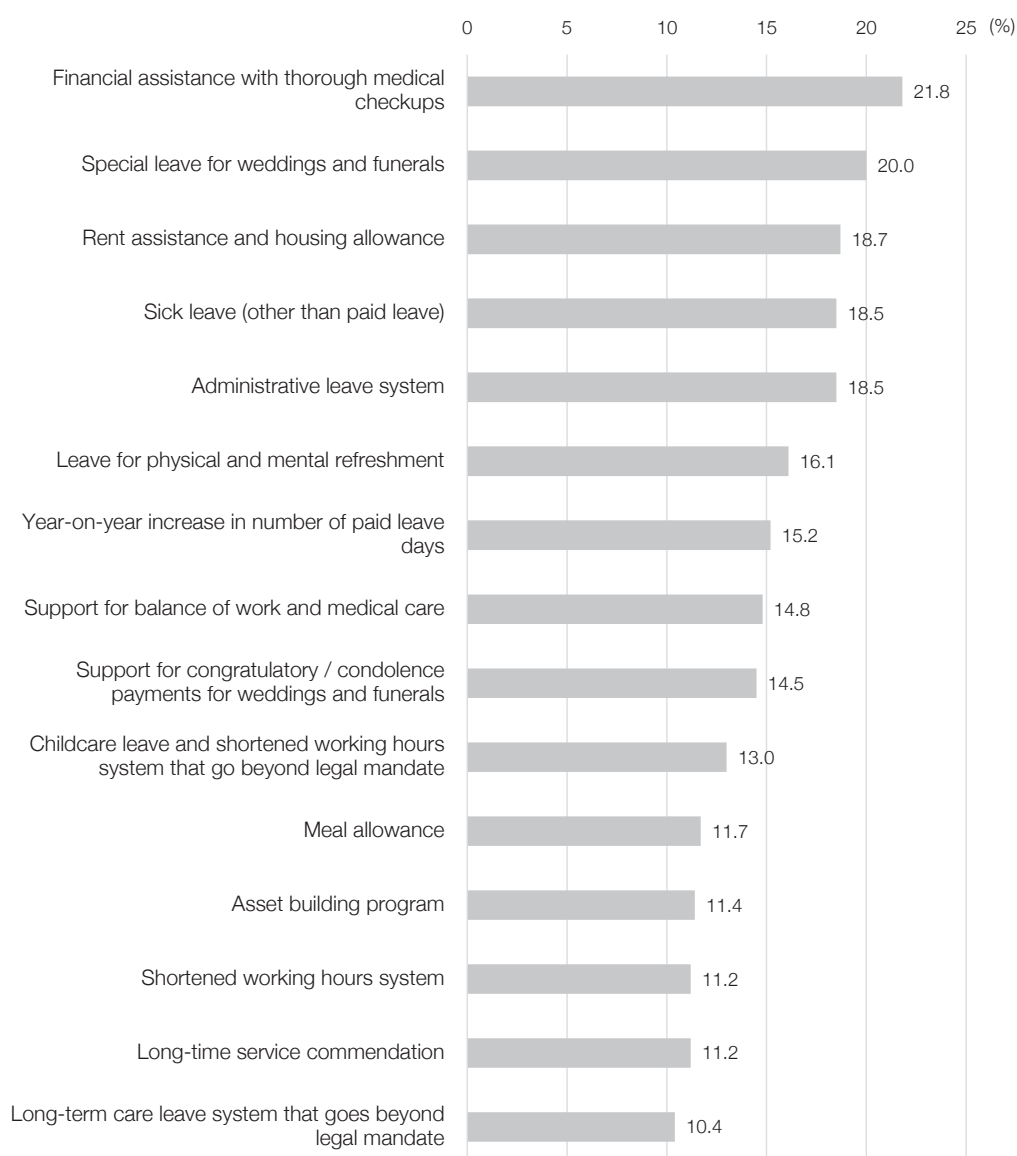
The breakdown of voluntary social benefits and its changes over time are shown in Figure 4. Housing-related expenses such as assistance with home purchases were the largest category, accounting for about 50%. This was followed by the cost of supporting various aspects of workers' day-to-day lives (shown as "living support") such as providing meals, purchasing and shopping, insurance, family care, child-care related costs, 'family support,' asset building and so forth, accounting for a quarter. Only about 10% were related to "medical and health."

IV. Benefits sought by employees and enterprises

Do the systems and schemes of benefits meet the needs of employees? According to the results of a

survey conducted by the Japan Institute for Labour Policy and Training (JILPT) in 2017, categories where employees felt "there is a particularly strong need for assistance" were related to "maintenance of health" and "leave system." As seen in Figure 5, the most frequently cited, in order, were "financial assistance with thorough medical checkups" (21.8%), "special leave for weddings and funerals" (20.0%), "rent assistance and housing allowance" (18.7%) "sick leave (other than paid leave)" (18.5%) and "administrative leave system" (18.5%) (JILPT 2018a, and 2018b).

We should also consider whether the feelings and hopes of employees are in line with the intentions of the companies that provide benefits. According to Matsuura (2003), it is apparent that



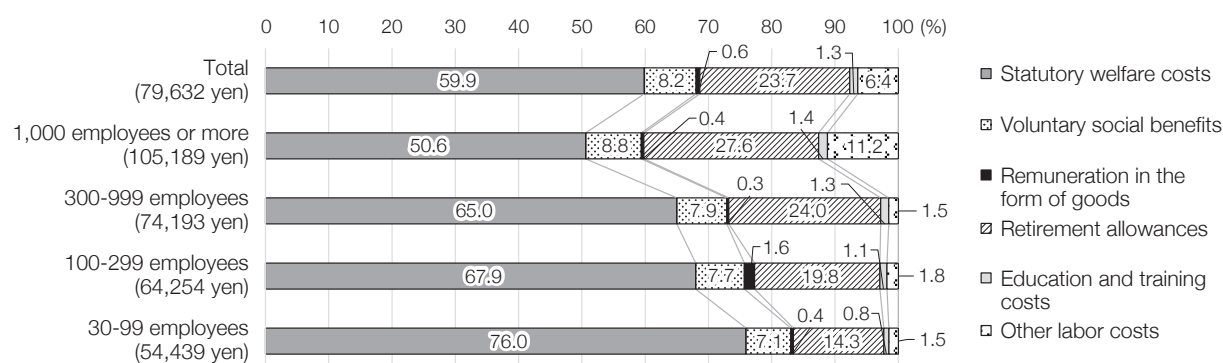
Source: JILPT, Fact-finding survey on current voluntary social benefits programs of Japanese firms: Companies and employees questionnaire survey. Press release, July 24, 2018.

Figure 5. Systems and measures perceived as highly necessary (employees survey)

labor and management had somewhat different perceptions of categories of “particularly strong need for employees.” While employees want to utilize benefits for their current health and future lives, enterprises focus more on productivity, such as acquiring skills and qualifications that are directly applicable to their current work (Matsuura 2003, 4–6). Further study from this perspective will be required in the future.

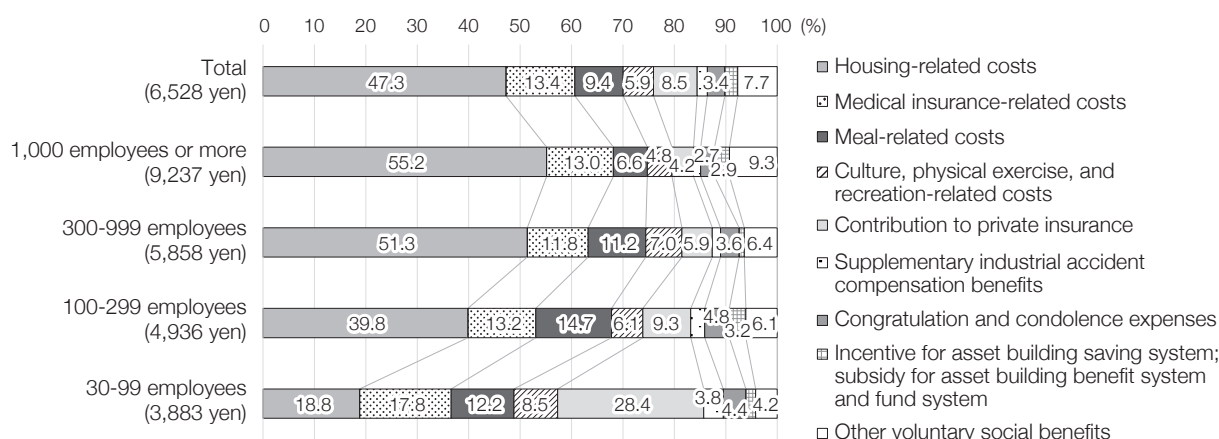
V. Disparities between large enterprises and SMEs

Finally, let us examine disparities in benefits between large enterprises and SMEs as tracked by the Ministry of Health, Labour and Welfare (MHLW 2017). There are various disparities in treatment of employees, including wage. Various differences exist with respect to benefits as well, as seen in



Source: Prepared on the basis of MHLW, "General Survey on Working Conditions 2016," 2017.

Figure 6. Average monthly labor costs other than cash earnings per regular employee



Source: Prepared on the basis of MHLW, "General Survey on Working Conditions 2016," 2017.

Figure 7. Average monthly voluntary social benefits per regular employee

Figure 6. To clarify these disparities, let us compare enterprises having 1,000 or more employees with those having 99 or fewer employees.

First, the total amount of labor costs at large enterprises is roughly double that of SMEs. There is a sizable difference concerning statutory benefits, their share of total labor costs being approximately 50% at enterprises with 1,000 or more employees and slightly under 80% at enterprises with 99 or fewer. Taking into account retirement allowances as a percentage of total labor costs as well, SMEs struggle to provide even mandatory benefits stipulated by laws and labor agreements, and providing benefits beyond legal requirements would be extremely challenging. It should be noted, with

regard to retirement allowances, that the share to total labor costs is relatively low at SMEs as compared with large enterprises. The reasons for this may be that remuneration levels at the former are not high, and that relatively small enterprises may have no retirement allowance system at all.

Concerning statutory welfare costs, while there are scale-based discrepancies (they average 53,254 yen at enterprises with 1,000 or more employees and 41,349 yen at those with 99 or fewer), their components are almost the same. As for voluntary social benefits (Figure 7), while the average is above 9,000 yen at enterprises with more than 1,000 employees, it is only about 40% of that, approximately 3,900 yen, at enterprises with 99 or fewer employees.

In terms of the specific breakdown, at both large enterprises and SMEs, housing-related expenses are the single largest category, accounting for well over half for the former and about 20% for the latter. One notable characteristic is that at enterprises with 99 or fewer employees, “contribution to private insurance” accounts for slightly under 30%, a significantly higher percentage than at large enterprises.

As we have seen, voluntary welfare is first of all geared toward delivering basic support for the daily lives of employees and their families, such as housing-related, medical and dietary assistance. In that sense, benefits within enterprises are an important system to secure livelihood. However, compared to large enterprises, SMEs are faced with relatively limited budgets for fringe benefits. There is public-sector support for SMEs to compensate for this situation, but it is necessary to continually review the scope of these systems and whether they are functioning adequately.

Notes

1. Act on Securing, Etc. of Equal Opportunity and Treatment between Men and Women in Employment.
2. The Japan Business Federation (Keidanren) is a

comprehensive economic organization with membership comprised of 1,376 representative companies of Japan, 109 nationwide industrial associations and 47 regional economic organizations (as of May 31, 2018).

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Akiomi Kitagawa, Souichi Ohta, and Hiroshi Teruyama
*The Changing Japanese Labor Market:
 Theory and Evidence*

Arthur Sakamoto

I. Introduction and overall summary

The Changing Japanese Labor Market: Theory and Evidence assesses both theoretically and empirically the current state of the Japanese labor market. This book is an important contribution to the English-language literature on the Japanese economy and its labor market. Given the notable success and global influence of the Japanese economy during its heyday of rapid growth from roughly the late 1950's through the 1980's, many Western social scientists have learned about the main features of Japanese industrial relations through the well-known writings (in English) of eminent scholars such as Masahiko Aoki, Ronald Dore, Masanori Hashimoto, Kazuo Koike, and Ezra Vogel.

Since the onset of slow economic growth and relative stagnation in the early 1990's, however, the English-language literature on the Japanese economy has been rather more limited and less well known. Many Western social scientists were left wondering about how the classical Japanese labor market was faring. We would occasionally read dire journalistic accounts about its imminent demise amidst a stagnating Japanese economy.

This book is a much needed and welcomed contribution that fills a significant lacuna in the literature by bringing Western readers up-to-date on understanding the nature of the dynamics of the Japanese labor market in the contemporary period. The book convincingly analyzes and concisely reviews the major trends in the Japanese labor market since the 1990's. Rather than simply collapsing, the Japanese labor market is evolving to

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 ISSN: 2197-8859, 190 pages



adapt to the modern era of greater uncertainty and lower growth for an economy that is still the third largest in the world.

The book has three authors including Akiomi Kitagawa, Souichi Ohta, and Hiroshi Teruyama. It consists of five chapters. As stated in the preface, the first chapter was written by Ohta and Teruyama. Chapters 2 and 3 were written by Kitagawa. Chapter 4 was written by Teruyama while Chapter 5 was written by Ohta and Teruyama.

Despite this demarcated division of labor, the chapters are well organized and smoothly integrated. After providing a general overview of the Japanese labor market in Chapter 1, Chapters 2 and 3 present theoretical models using rigorous economic analysis to explain seniority-wage profiles, long-term employment relations, labor market segmentation, and patterns of unemployment. Chapters 4 and 5 investigate survey data to assess and empirically apply the preceding theoretical models.

The authors are all obviously esteemed scholars who are affiliated with leading universities in Japan. This book is thus not surprisingly an impressive and highly informative book. It will be of interest to professional economists who emphasize detailed, causal analysis that is mathematically reasoned and rigorous. Although obviously focused on the

Japanese case, the substantive concerns considered in this analysis shed important insights on efficiency wage theories, unemployment, and segmentation by employment relations. These phenomena are significant in many modern economies beyond Japan including in the U.S. The book should therefore be of interest to labor economists beyond those who are Japan specialists.

At the same time, the empirical analyses in Chapters 1, 4, and 5 are accessible and highly readable for other social scientists. Furthermore, both Chapters 2 and 3 provide non-technical, discursive summaries of the substantive structure of the mathematic models. For these reasons, sociologists, management specialists, organizational psychologists, and business analysts would all learn valuable and relevant information from reading this book. Other researchers who are interested in other aspects of Japanese society—including for example, its demographic, cultural and political dimensions—would also likely find this book to be worthwhile reading because economic factors constitute such an important background context for the behavior of many people in any modern society.

II. Summary by chapter

Chapter 1 provides a concise overview of important empirical trends in the Japanese labor market during the last three decades. Unemployment has substantially increased since the glory years of expanding productivity and global preeminence during the 1980's. The analysis shows that unemployment has risen due to both increased job loss as well as longer spells of unemployment. Other important trends include a rising share of workers who are “non-regular” in terms of their employment relations (i.e., not in long-term employment contracts which is a critical feature of labor market segmentation in Japan); a somewhat less steep age-earnings profile for full-time male workers in regular employment; slightly reduced firm-worker attachment; and evidence of negative cohort effects for university graduates who entered the labor force during years with higher unemployment.

Overall, this depiction suggests that the Japanese

labor market still has its discernable “three sacred treasures” (i.e., long-term employment, seniority wages, and enterprise unionism) but they are slowly being attenuated and increasingly limited to a smaller portion of the labor force. For this reason, understanding the causal nature of these phenomena is all the more important. As inequality in Japan has begun rising during this period of low economic growth, the welfare consequences of long-term employment may be shifting if it is becoming more a source of monopolistic advantage and less of a mechanism for developing firm-specific skills that ultimately enhance productivity and promote economic growth.

Against this empirical and theoretical backdrop, Chapter 2 develops a formal economic model in which the key analytical factor is bankruptcy risk. While that analytic reference is admirably clear, bankruptcy risk might be more generally understood as referring to low profitability or the increased risk of becoming a corporate acquisition. In other words, the model is a more relevant depiction for firms in the current era of greater economic uncertainty, rising globalized competition, lower profits, and limited economic growth.

The model developed in Chapter 2 finds that bankruptcy risk flattens the age-earnings profile and increases the efficiency-wage component of the earnings of workers in the primary sector. A higher level of bankruptcy risk correspondingly increases those effects and leads to greater (non-price) rationing of employment in the primary sector. The welfare implications of these processes are analyzed leading to the conclusion of worsened societal economic well-being. In other words, according to this model, the monopolistic aspect of the long-term employment relations has increased in contemporary Japan.

Chapter 3 presents an economic model of long-term unemployment which, as noted above, has become more prevalent in the Japanese labor market. A key substantive issue here is “duration dependence” which is a sort of “scarring effect” (Yu 2012) whereby the longer a person is unemployed, the more prospective employers deem the person to be less productive as a potential employee. This

model relies heavily on informational frictions especially the uncertainty with which prospective employers can know the potential productivity of currently unemployed persons. Firms therefore engage in the ranking of the unemployed such that the longer a person is unemployed the lower is his or her rank. The formal model demonstrates that a Pareto-improving welfare outcome may follow from appropriate government intervention by increasing employment through the subsidizing of newly established firms.

Chapter 4 moves back to the empirical portion of the book. Investigating survey data for the Tokyo metropolitan area from 2002 to 2014, Chapter 4 empirically delineates the dual structure of the Japanese labor market (i.e., jobs with long-term employment in the primary sector versus “non-regular” employment). The major statistical tool for this chapter is the endogenous switching regression model which has been used in related prior literature (Sakamoto and Powers 1995). Multivariate probit models are estimated for workers who change employment across firms in order to assess the extent of labor market segmentation in terms of serial state dependence and first-job effects.

The empirical results in Chapter 4 generally confirm the persistence of labor market segmentation. In contrast to the fairly modest net effects of tenure in the U.S. (Altonji and Williams 2005), regular workers in the primary sector still receive higher returns to years of tenure than for general experience indicating that the traditional seniority-wage system continues to operate for this segment of the Japanese labor market. Regular employees are also the only group that clearly benefits from firm-size effects and from superior educational background premiums suggesting perhaps that these workers have adequate bargaining power to capture firm rents (Blanchflower, Oswald, Sanfey 1996) which, in the Japanese case, may derive from annual bonus payments.

By contrast, “non-regular” workers only receive returns for general work experience. Among male workers (though probably not among female workers) those returns are similar to regular workers

in the primary sector. This latter finding suggests that “non-regular” male workers are generally not characterized as being in “dead-end” jobs as was once a popular view about dual labor markets in the U.S. (Piore 1975). These findings do imply, however, the continuing significance of gender in Japanese labor market segmentation with a wide gap between female regular workers in the primary sector versus those “non-regular” employment.

Regarding mobility patterns, the empirical findings discussed in Chapter 4 confirm that regular employment is still difficult to obtain for workers who are in “non-regular” employment underscoring continued labor market segmentation. That pattern applies to both men and women. Net of current employment status, however, first-job effects appear to be small at least for this sample of job movers. In general, the empirical results from Chapter 4 appear to be mostly consistent with the theoretical analysis from Chapter 2.

Chapter 5 discusses the empirical results for bivariate probit models that are specified to investigate governmental data on unemployment from 2003 to 2012. This approach is used to control for unobserved individual heterogeneity. The findings suggest duration dependence. Consistent with the formal analysis in Chapter 3, men and women who are unemployed for a longer period of time become less likely to be hired for employment even after controlling for their individual characteristics.

III. Further discussion and suggestions for future research

One potential theme that arises from the analysis in this book is identifying the firm and industrial characteristics of regular employment in the primary sector in contemporary Japan. That sector once seemed to be generally synonymous with large manufacturing firms and government agencies. As Japan has now become more of a post-industrial economy, how salient is manufacturing in defining regular employment? What sort of medium and even small sized firms (perhaps associated with advanced technologies and knowledge-intensive research activities) pay high wages for a sizeable component

of the regular employment? Correspondingly in the U.S. as well, the wage premium for workers in large firms is declining (Bloom et al. 2018).

From a more theoretical perspective, the finding in Chapter 4 that firm-size and educational premiums persist mostly for regular workers may suggest some relevance of insider-outside theory (Lindbeck and Snower 2001). Identifying the characteristics of firms that constitute the primary sector or regular employment may be consistent with related trends in labor economics in Western countries which focus on rent-sharing theories of the firm (e.g., Card et al. 2018). In general, many labor economists in the West seem to be becoming more accepting of theoretical models in which labor market disequilibrium of some sort may be persistent (e.g., due to informational asymmetries, moral hazard, transaction costs, monopsony, oligopoly in product markets, firm-rents, unionization, government regulations on employment and wages) which is more compatible with traditional views about dual labor market segmentation in Japan.

In regard to policy, the Chapter 3 suggests subsidizing newly established firms so that they can become more capable of paying high wages to their regular employees. More broadly, however, one could furthermore suggest that marginal enhancements to the wages and living standards of workers outside of regular employment may also be economically feasible. Because this book has demonstrated that the clear majority of employees are now “non-regular,” promoting their economic outcomes—to the extent fiscally feasible and consistent with maintaining productivity—might have a wider impact on ameliorating the overall level of inequality. Although beyond the scope of this book, the pressing policy issue of an aging population and a declining fertility rate might also be partially addressed by promoting a greater level of economic security among the majority of younger people (who are not regular employees in the primary sector) so that they may increase their marriage rate and the formation of new families with children.

IV. Conclusion

The Changing Japanese Labor Market: Theory and Evidence is an important and welcomed contribution to the English-language literature on the Japanese labor market. The book brings Western readers up-to-date on the current situation in the contemporary period characterized by low growth and heightened global competition. The book demonstrates both theoretically and empirically how the Japanese labor market is adapting to this new era. The traditional practices of the Japanese labor market are still evident in attenuated form, but the classical system of long-term employment and seniority-wages is increasingly limited to a smaller portion of the overall labor force. In the modern period with increased inequality and reduced economic growth, policy makers need to reconsider the pros and cons of evolving labor market segmentation in Japan.

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Economy

The Japanese economy is recovering at a moderate pace, while weakness mainly among manufacturers is increasing further, as exports are continuing in a weak tone. Concerning short-term prospects, weakness remains for the time being, but the economy is expected to continue recovering, supported by the effects of the policies, while employment and income situation is improving. However, attention should be given to situations in overseas economies including the situations over trade issues, the prospect of the Chinese economy and the UK leaving the EU, the effects of fluctuations in the financial and capital markets, and the situations of the consumer sentiment after the consumption tax increase. (Monthly Economic Report,¹ December, 2019).

Employment and unemployment

The number of employees in November increased by 630 thousand over the previous year. The unemployment rate, seasonally adjusted, was 2.2%.² Active job openings-to-applicants ratio³ in November, seasonally adjusted, was 1.57.⁴ (Figure 1)

Wages and working hours

In October, total cash earnings (for establishments with 5 or more employees) remained the same level as the previous year and real wages (total cash earnings) decreased by 0.4% year-on-year. Total hours worked decreased by 2.3% year-on-year, while scheduled hours worked decreased by 2.4%.⁵ (Figure 2)

Consumer price index

In November, the consumer price index for all items increased by 0.5% year-on-year, the consumer price index for all items less fresh food rose by 0.5%, and the consumer price index for all items less fresh food and energy increased by 0.8%.⁶

Workers' household economy

In November, consumption expenditure by workers' households decreased by 0.8% year-on-year nominally and decreased by 1.4% in real terms.⁷

For details, see JILPT *Main Labor Economic Indicators* at <https://www.jil.go.jp/english/estatis/eshuyo/index.html>

Notes: 1. Cabinet Office, *Monthly Economic Report* analyzes trends in the Japanese and world economies and indicates the assessment by the Japanese government. Published once a month. <https://www5.cao.go.jp/keizai3/getsurei-e/index-e.html>

2. Ministry of Internal Affairs and Communications (MIC), *Labour Force Survey*.

<http://www.stat.go.jp/english/data/roudou/results/month/index.htm>

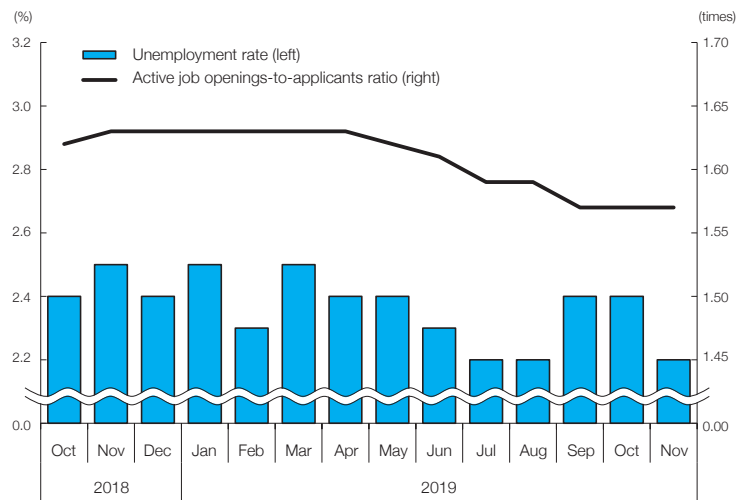
3. Active job openings-to-applicants ratio indicates the number of job openings per job applicant at public employment security offices, published monthly by Ministry of Health, Labour and Welfare (MHLW). It shows the tightness of labor supply and demand.

4. MHLW, *Employment Referrals for General Workers*. http://www.mhlw.go.jp/english/database/db-l/general_workers.html

5. MHLW, *Monthly Labour Survey*. <http://www.mhlw.go.jp/english/database/db-l/monthly-labour.html>

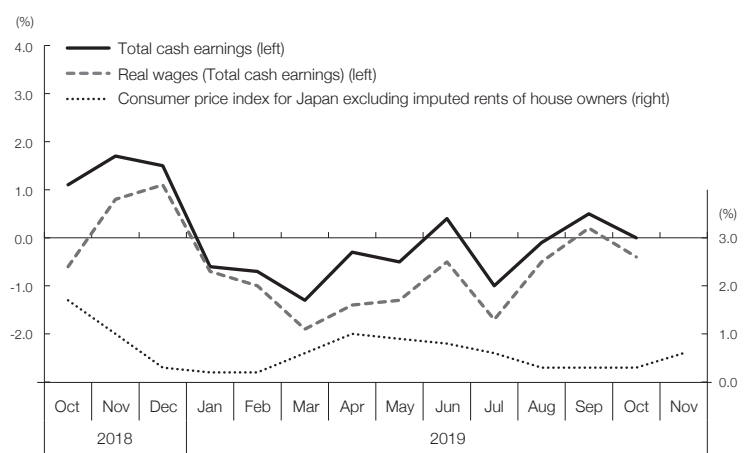
6. MIC, *Consumer Price Index*. <http://www.stat.go.jp/english/data/cpi/index.htm>

7. MIC, *Family Income and Expenditure Survey*. <http://www.stat.go.jp/english/data/kakei/index.htm>



Source: Labour Force Survey²; Employment Referrals for General Workers.⁴

Figure 1. Unemployment rate and active job openings-to-applicants ratio (seasonally adjusted)



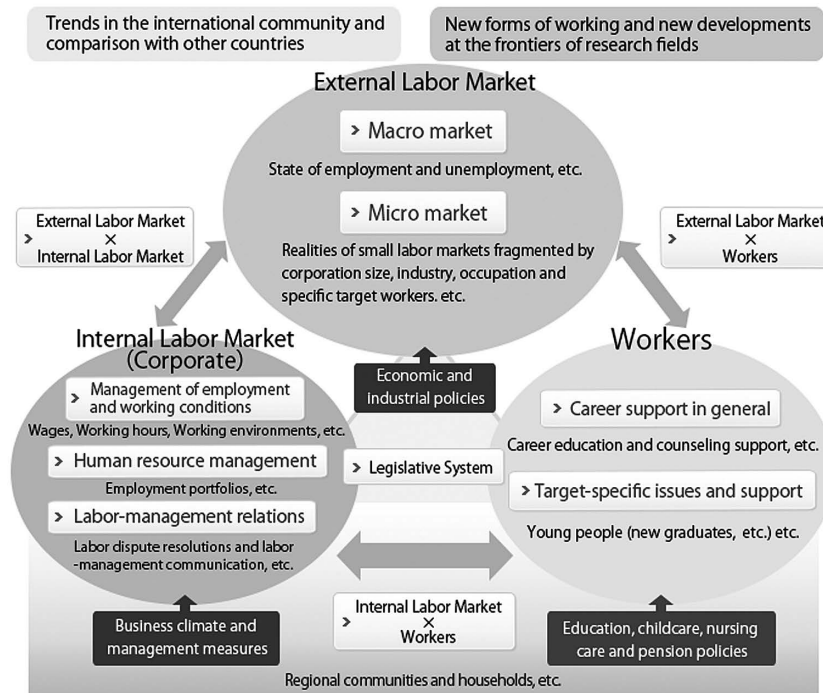
Source: Monthly Labour Survey⁵; Consumer Price Index.⁶

Figure 2. Total cash earnings / real wages annual percent change

JILPT Research Activity

The Japan Institute for Labour Policy and Training is conducting surveys and research focused on producing valuable insights that assist the Ministry of Health, Labor and Welfare in planning and pursuing labor policies and initiatives.

The Fields of Our Research



Comprehensive Research on Labor Policies

The following research projects are now being conducted in FY 2017-2021.

Research on Employment Systems

This research analyzes the current state and directions of Japan's long-term employment systems amid significant changes in industrial and demographic structures, using an analytical approach that incorporates a range of perspectives including the viewpoints of companies, workers, and society as a whole. Once we have established an overview of the current state and changes in Japanese employment systems, we consider how employment systems should be developed in the future.

Research on Labor and Employment Policies Adapted to Correspond with Changes, etc. in Demographic and Employment Structures

As Japan experiences rapid population aging and decline and a continued increase in non-regular workers, this project encompasses surveys and research that contribute to promoting measures and presenting policy implications

in areas such as the creation of a society where people remain in the workforce throughout their lives (*shōgai gen-eki shakai*) and the improvement of working conditions for non-regular workers.

Research on Potential Future Developments in Employment and Labor along with Technological Innovation, etc.

In light of major economic and social trends—including the rapid progress of technological innovation in A.I., the internet of things (IoT), and other such areas, etc., and changes in the structure of labor supply and demand—this research looks ahead to consider potential developments in employment and labor, and employment opportunities in the regional community, and also presents policy implications for the future.

Research on Worker and Corporate Behavior Strategies amid “Work Style Reform”

In preparation for “Work Style Reform,” this research picks out the issues involved in the behavior strategies of both workers and companies—such as the appropriate state of working hour systems and other such aspects of

human resources management, promotion of the active participation of women, and balancing child-rearing and long-term care for families, with pursuing a career—and sets out policy implications that contribute to improving the quality of employment.

Research on Vocational Skills Development Suited to Diverse Needs

This research ascertains and analyzes the various needs involved in enhancing vocational skills, and sets out policy implications regarding the appropriate state of infrastructure for vocational skills development across Japan as a whole, human resource development in new industrial fields, etc., and mechanisms for young people to make a smooth transition into employment and develop careers.

Research on Career Formation Support toward the Achievement of a “Society in which All Citizens are Actively Engaged” (*zen’in-sanka-gata shakai*)

This research looks at the actual state of work and job-seeking environments to identify the issues that need to be addressed—such as the appropriate state of lifetime career development support, job matching and counselling to promote the labor participation of people who have difficulties in the job-seeking activities, and the development of occupational information and tools suited to the current age—and proposes effective support methods.

Research on Mechanisms for Establishing Terms and Conditions of Employment, Centering on Labor Management Relations

This research ascertains the actual state of the changes in the notion of employees and labor-management relations and the ongoing shifts in mechanisms for establishing terms and conditions of employment amid increasing diversity in ways of working. While also comparing domestic developments with international trends, we identify the challenges with regard to labor law and policies, and present policy implications to prepare for developments in the future.

Results of Research Activities

The results of our research activities will be published quickly in research reports on labor policies, newsletters and on the web site with an eye to contributing to the planning and drafting of labor policies and the stimulation of policy discussions among different strata. At the same time, the Institute will organize policy forums and other events to provide opportunities for open discussion on policies.

Collection and Analysis of Information on Labor and Related Policies

JILPT collects and analyzes a variety of labor-related statistical data and information, both domestically and internationally, with the aim of contributing to promote research and debate on labor policy.

Domestic Labor Information

Information on domestic labor trends, such as employment, human resource management, industrial relations and so on, is gathered and sorted through surveys including “Monitoring Survey on Business and Labor” and other researches which are carried out through questionnaires or interviews to businesses, management and labor organizations.

International Labor Information

- Information on the labor situation in key countries is continuously and systematically assembled, and then sorted by country as well as by policy issue.
- JILPT networks with foreign research institutions, participates in joint field surveys when necessary, and collects information on pressing issues for labor policy research.

Compilation and Dissemination of Various Statistics Data

A variety of statistical data related to labor is collected from a broad range of information sources. This data is analyzed and processed, and is used to provide information that cannot be obtained from existing numerical data.

Research Report

JILPT regularly publishes research reports as results of various researches and studies conducted.

- *Japan Labor Issues* (monthly)
- JILPT Research report
- JILPT Report

International Research Networks

Creating Networks with Foreign Institutions

JILPT networks with research institutes in foreign countries with the aim of exchanging and utilizing to the extent possible the results of each other’s research activities including joint study programs.

Accepting Foreign Researchers and Intellectuals, and Sending Researchers Abroad

Exchange researchers and intellectuals are undertaken to foster research into Japanese labor issues, as well as creating a basis for future joint international research.



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