

# Japan Labor Issues

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## Column

# Spread of the Novel Coronavirus and the Future of Japanese Labor Policy

HAMAGUCHI Keiichiro

## I. Introduction

Fiscal 2020 was supposed to be a year when new labor policies were rolled out on many levels. In legal terms, at least, it actually began in this way. Under the Act on Arrangement of Relevant Act on Promoting the Work Style Reform enacted in June 2018, restrictions on overly long working hours, which had already been in effect at large corporations since April 2019, were expanded to apply to small and medium-sized enterprises (SMEs) starting on April 1, 2020. Another main feature of the Act, providing for non-regular workers to receive equal pay for equal work, came into force on April 1, 2020, for large corporations and dispatching agencies. Amendments to the Civil Code (law of obligations) passed in May 2017 went into effect on April 1, 2020, and in line with the amended extinctive prescription under the Code, Article 115 of the Labor Standards Act was also amended at the end of March 2020, to go together into effect on the same day (five years in principle, three years for the time being under supplementary provisions). Furthermore, as a result of amendments to laws including the Comprehensive Labor Policy Promotion Act in May 2019, employer's obligation to take measures against "power harassment" (workplace bullying generally at the hands of superiors) was enhanced in June 2020, and regulations on other forms of harassment such as sexual harassment were strengthened. However, while the above should have made fiscal 2020 an epoch-making year for labor policy, the year began amid the rapid spread of the novel coronavirus (referred to below as COVID-19), which

began growing in early 2020 and became a global pandemic, with emergency measures implemented one after another. This was a situation no one had imagined until just a few months ago, and today no one can predict how it will develop. While it is difficult to discuss the future of labor policy under such circumstances, this article will consider future directions in labor policy by analyzing the policies that have been launched as emergency countermeasures against COVID-19.



## II. Reappraisal and revision of employment security oriented policies in response to external shocks

Employment Adjustment Subsidy (EAS), which in recent years have been apt to be viewed negatively in light of the catchphrase "transition from excessive employment security oriented policies to labor mobility oriented policies," have once again been thrust into the spotlight as a crucial employment policy amid several moves to ease the requirement. With COVID-19 rampaging, calls for businesses to refrain from operating as a countermeasure against the spread have sharply reduced economic activity particularly in the service industry, and labor demand is shrinking. As a countermeasure, employment security schemes, in which the national government (i.e. its employment insurance funds) covers a large portion of allowance for absence from work for job retention, have already been implemented in continental European countries such as Germany and France (during the oil crises and the late-2000s

Global Financial Crisis). Now, this scheme has been introduced in the UK for the first time in history.

The criticism of “excessive employment security oriented policies” during normal, non-crisis times is that they excessively protect lifetime employment-oriented labor practices (in traditional industrial sectors that have relatively lower demand for workers) and curtail the proper redistribution of the workforce (to other sectors thought to require more labor) via labor mobility in the external labor market. It cannot be denied that such criticism had a certain degree of reasonableness, at least in theoretical policy terms, under normal circumstances, but it does not make much sense in the current states of emergency. Whether in the case of the oil crises in the 1970s, which originally spurred the establishment of EAS, or the Global Financial Crisis at the end of the 2000s, the problem was that economic shocks from abroad caused labor demand to contract sharply in sectors where a certain level of labor demand was expected to continue in the medium-to-long term. This leads to criticism of the contrasting path, *laissez-faire* adjustment via the external labor market, i.e. dismissing workers who are no longer needed for the time being, and then hiring workers when the crisis has passed and demand recovers (which is the path the US has consistently taken to this day), on the grounds that it is undesirable not only for the workers, but also for the companies in question.

In response to temporary economic shocks, a “not excessive” policy of maintaining employment through public financial support and waiting for labor demand to recover, is today standard operating procedure across virtually all developed countries, with the exception of the US. In Japan, in late February 2020 a first step was taken by expanding the scope of eligible business owners and relaxing requirements such as production index, employment index, and insurance coverage period. In addition to further easing of requirements, as the second set of measures, in April the subsidy rate was raised (for large corporations, from 1/2 to 2/3, or 3/4 if no workers are dismissed; for SMEs, from 2/3 to 4/5, or 9/10 if no workers are dismissed.) As the third set of measures, in May the subsidy rate was

raised to even 10/10 for SEMs. These resemble the special measures taken at the time of the late-2000s global financial crisis. What is especially noteworthy about the special measures taken this time is the elimination of the requirement for employment insurance coverage—previously considered an obvious restriction as employment insurance payments are the source of the required funding—and inclusion of subsidies for workers absent from work who are not covered by employment insurance. The removal of the requirement that workers be covered by insurance for six months or more, in the first round of measures, was in the same vein.

Underlying this is the development of measures to safeguard/secure non-regular workers. In the 1970s in Japan, where employment security oriented policies were implemented in the form of EASs, what society demanded were measures to maintain the employment of (male) regular employees supporting wives and children, assumed to be those regular employees’ dependents. It was not considered necessary to maintain the employment of housewives and students with part-time jobs. However, the nation’s employment and occupational structure have changed since the 1990s. There has been an enormous rise in the number of non-regular workers who depend on their wages for their livelihoods, causing restrictions on discontinuation of fixed-term contract workers’ employment and equal treatment and balanced or proportional treatment of non-regular workers to emerge as policy issues. One of the best-known policy consequences is the “equal pay for equal work” policy which went into effect in April 2020 for large corporations and dispatching agencies. Meanwhile, unlike during the oil crises of the 1970s, during the global financial crisis that struck in 2008, the fact that many non-regular workers were not covered by employment insurance came under severe criticism, and the requirement that workers expected to be with a certain employer for one year or more in order to qualify for unemployment insurance was loosened so that the period shrank to one month. Nevertheless, there are still many non-regular workers not covered by employment insurance, and even if covered, they often do not meet a requirement that they be

covered for a six-month insured period. As long as the social insurance system depends on contributions from the insured, the employment insurance system itself cannot be relaxed indefinitely. However, if employment adjustment subsidies for emergency situations cannot protect non-regular employees who require protection due to the state of the employment insurance program that funds these subsidies, then the system needs to be improved. In this sense, the relaxation of requirements for eligibility of workers under the current special measures can be considered as part of the policy direction of extending protections for non-regular workers.

### **III. The teleworking promotion effort and the challenges it highlights**

As a COVID-19 countermeasure, in early March 2020 a special subsidy for improvement of work conditions with regard to overtime, etc. (telework course) was established for small and medium-sized enterprises who newly introduced telework (working remotely from home, etc., usually by means of ICT [information and communications technology]). Prior to this, in late February of the same year, the government announced an initiative to promote teleworking and staggering commuting hours. Also positioned as a measure against COVID-19, it entails subsidizing half the cost of installing and running communications equipment for teleworking, and is aimed at small and medium-sized enterprises' newly introducing telework.

In fact, promotion of teleworking has been a government policy challenge for some years now. In particular, the March 2017 "Action Plan for the Realization of Work Style Reform" praised teleworking in that it "is an effective means of balancing childcare and nursing care with work and enabling various people to show their abilities because it imposes no geographical or time restrictions on workers." The plan went on to note that there were still extremely few businesses utilizing teleworking in Japan, and it was necessary to promote its adoption. In response to this, the Ministry of Health, Labor and Welfare (MHLW) convened a committee to study flexible work styles. Based on the committee's report,

in February 2018 it newly released the "Guideline for Telework (guideline for proper introduction and implementation of work from home exploiting information-telecommunications devices)" However, there is a strong tendency for Japanese companies to try to ensure that work proceeds smoothly by sharing the same space, fostering a sense of companionship, and sharing various information that cannot necessarily be put in the form of text, and teleworking did not take root despite these efforts.

In the midst of this situation, the COVID-19 pandemic suddenly struck. In late February 2020, the Novel Coronavirus Response Headquarters formulated the Basic Policies for Novel Coronavirus Disease Control, which urges "companies to encourage employees and other personnel to take leave if they have fever or other flu-like symptoms, and promote teleworking and staggering commuting hours, in order to reduce the opportunities for contact with patients and infected persons." Like this, "teleworking and staggering commuting hours" were called for in a request for cooperation in halting the spread of the virus delivered by Minister of Health, Labour, and Welfare Katsunobu Kato, Minister of Economy, Trade and Industry Hiroshi Kajiyama, and Minister of Land, Infrastructure, Transport and Tourism Kazuyoshi Akaba to Keidanren (The Japan Business Federation, Chairman Hiroaki Nakanishi), JCCI (The Japan Chamber of Commerce and Industry, Chairman Akio Mimura), Keizai Doyukai (The Japan Association of Corporate Executives, Chairman Kengo Sakurada), and JTUC-RENGO (The Japanese Trade Union Confederation, President Rikio Koza).

However, according to a survey conducted by the MHLW via the LINE messaging app in early April, only 5.6% of workers were engaged in telework, and this sheds new light on the fact that even with COVID-19 on the scene, the circumstances of Japanese workplaces are such that teleworking cannot easily be introduced. These circumstances and the underlying factors are as described above, but also, the issue of application of laws governing working hours to off-site work may be an obstacle to the introduction of teleworking. With this in mind, let us look at a brief overview of recent developments.



The Labor Standards Act stipulates a conclusive presumption system of the number of working hours for off-site work, mainly for sales staff working away from company premises, but administrative interpretation issued in 1987 state that the conclusive presumption system does not apply to those who work off-site while receiving instructions as needed via radio communication or pager. This interpretation, based on the ICT environment of an era when people did not have mobile phones, let alone smartphones, remains in place today.

The above-mentioned February 2018 guidelines for off-site work state that teleworking does not mean that a de facto working-hours system can be applied, and that to do so, it is necessary to satisfy requirements including that ICT equipment *not* be in a state in which the employer can always contact the employee. Therefore, even with teleworking, in principle a normal working-hours system is to be applied, and suggests that idle periods be treated as breaks, or as annual paid leave measured in hourly units. Considering that the guidelines were drawn up at a time when addressing excessive working hours were a primary concern, there is unavoidably some degree of over-regulation.

Now, COVID-19 has brought the issue sharply into focus, but even prior to it, with the development of ICT over the past 10 to 20 years the paradigm of “working anytime, anywhere” has become prevalent worldwide. In this context, many different parties are calling for re-examination of the legal system governing working hours, which is premised on an Industrial Revolution-era work style in which workers arrive at a factory at a certain time and work in unison. In the future it will be necessary to revise working-hours regulations for teleworking, focusing on the principle of employers not micromanaging how work is performed and time allocated, which also relates to a re-examination of the discretionary work scheme. It is not yet clear how much telework will advance during the current crisis, but it is to be hoped that as businesses implement teleworking for the first time, various issues will be identified and it will provide the impetus for revision of regulations.

#### **IV. Subsidies for elementary school closures, etc. and the (unintended) launch of measures for freelance workers**

Among the current countermeasures against COVID-19, support for working parents taking leave due to the closure of school for children is extremely important in terms of the extension of labor policy, and that support has been extended to freelance workers. This countermeasure emerged because, on February 27, Prime Minister Shinzo Abe requested at the Novel Coronavirus Response Headquarters meeting at the Prime Minister’s official residence that all elementary schools, junior high schools, high schools, and so forth nationwide be temporarily closed from March 2 through spring break (late March, eventually continued until May).

For working parents of young children, schools undoubtedly also play the role of daycare providers, and when schools are closed the parents find themselves torn between work and childcare. Thus, MHLW swiftly established the “Subsidy for Guardians Affected by School Closures Related to COVID-19.”

While this is a new subsidy, it is still within the broader framework of employment subsidies. That is, it is a subsidy program for employers who offer paid leave (wages paid in full) separate from the annual paid leave under the Labor Standards Act for workers who are parents or guardians of (1) a child attending an elementary school, etc. that is temporarily closed in response to COVID-19, or (2) a child attending an elementary school, etc. who is infected with COVID-19 or shows cold symptoms, etc. indicating possible infection with COVID-19. The maximum subsidy amount is 8,330 yen per person per day, and this amount is the same for large corporations and small and medium-sized companies.

Since this is an “employment” subsidy, it is of course limited to workers who are employed, but it was pointed out that while freelance workers with children find themselves in the same position, they are unreasonably excluded from the subsidies, and a debate emerged. It can indeed be regarded as unreasonable, but at the same time, it is difficult to extend an employment policy intended for employed

workers to those who are self-employed. Over the past few years, however, there have been repeated discussions in governmental committees and so forth regarding measures for those with “employment-like (quasi-employment) working styles,” but there is a dark and deep gulf, so to speak, between employee and non-employee workers, which cannot easily be bridged.

Under the current circumstances, a countermeasure for this cohort suddenly appeared like a rabbit from a hat as part of the package of COVID-19 countermeasures, and compensation for freelance workers needing to take leave was established. However, when the outline of the system was announced on March 10, there was widespread criticism that the amount of “4,100 yen (fixed amount) per day” was too low compared to “8,330 yen (maximum amount) per day” for employed workers.

Thereafter, applications for this program began to be accepted on March 18, but at this time it was known as “financial support for elementary school closures, etc. due to COVID-19.” (financial support, hereafter) The different wording appears to indicate that the program differs in character from the “*subsidy* for elementary school closures, etc. due to COVID-19” aimed at employed workers. The payment procedure specifically indicates that those eligible to receive payments are “self-employed persons contracted to perform work.” Here, let us directly quote the wording of this section of the payment procedure.

## 2. Persons eligible for payment

Those eligible for financial support are parents or guardians to which all of (1) to (5) below apply.

(1) The person belongs to either category (a) or (b) below:

(a) Have taken care of child attending or receiving supervision at elementary schools, etc., that have instituted temporary closures (School Health and Safety Act [Act No. 56 of 1958] Article 20) or equivalent measures (referred to below as “temporary closures”) in response to the spread of COVID-19

(b) Have taken care of child attending or receiving supervision at elementary schools, etc., where that child has been infected by COVID-19 or is considered at risk and has been asked to refrain from attending the elementary school, etc.

(2) Prior to the temporary closure described in (1)(a) above, or prior to caring for the child as described in (1)(b) above, the person concluded a contract with a client (ordering party) to which all of the following (a) to (c) apply:

(a) Remuneration must be paid for the performance of tasks based on a business consignment contract, etc.

(b) There is a client (ordering party), and the person has been given certain indications from the client regarding the manner in which the work is to be performed, the place and time work is to be done, etc.

(c) The form of remuneration, such as calculation by hours worked, is based on the assumption that there is little variation among individuals in terms of time required to perform work and the results of the work.

(3) The person has ceased doing work based on business consignment contract, etc. with client as described in (2) above, in order to take care of a child as described in (1) above during the period of temporary closure or other measures described in (1) (b) above (referred to below as “temporary closure measures”).

(4) The person is not covered by employment insurance.

(5) The person is not a business owner who employs workers.

(6) The person is not a national or regional civil servant.

(3. to 5. is omitted here)



## 6. Days eligible for payment

Days eligible for financial support payments are days during the overall payment period on which work based on business consignment contract, etc. with the client as described in 2 (3) above was canceled. However, days on which work based on the business consignment contract with the client is done even for part of (some hours of) the day are excluded from eligibility for payment.

## 7. Amount paid

The amount of financial support shall be the amount obtained by multiplying the number of days eligible for payment by 4,100 yen per day, and is to be paid by MHLW's Employment Environment and Equal Employment Bureau Director (referred to below as Director) within the scope of the allocated budget.

As mentioned above, there was widespread criticism to the outline announced on March 10 that half of the 8,330 yen per day allocated for employed workers was too low. The essence of the problem with this system, although it was lost amid such criticism, is how to apply a framework intended for employed workers, who are under the supervision and follow the orders of employers while carrying out duties during working hours, to freelance self-employed people in the first place. Naturally, MHLW bureau is very aware of the problems surrounding this. For example, with regard to the part of the overall framework referring to "days when the individual was scheduled to work," the payment procedure refers to days when the individual "has ceased doing work based on a business consignment contract, etc. with the client as described in (2) above, in order to take care of a child as described in (1) above during the period of the temporary closure of school or other measures described in (1)(b) above." In other words, to be eligible for payment the worker is required to have already received an order and have been working on it or been about to start with it, but have stopped due to the child's school closure.

Reading through the payment procedure, it seems that the scope of freelance workers eligible for payment is limited to those in so-called "employment-

like working styles," i.e. whose situation is similar to that workers officially employed at businesses. In other words, requirements 2(2), particularly (b) ("certain indications from the client regarding the manner in which the work is to be performed, the place and time work is to be done, etc.") and (c) ("form of remuneration, such as calculation by hours worked, is based on the assumption that there is little variation among individuals in terms of time required to perform work and the results of the work") are oriented toward the criteria used to determine "worker status" according to labor laws.

From this perspective, the "financial support" package that suddenly emerged as a COVID-19 countermeasure may be unexpectedly preceding in part of the policy governing "employment-like working styles" that has been discussed in successive committees of the MHLW's Employment Environment and Equal Employment Bureau in recent years. We should now look at an overview of these discussions' progress in recent years.

Here as well the starting point of recent developments is the March 2017 Action Plan for the Realization of Work Style Reform. The plan notes that "[c]onsidering work styles, which are like employment, such as non-employment-type telework are more increasing, we will grasp the present situation and discuss necessity of legal protection as a mid-term or long-term agenda, establishing a conference consisting of intellectuals." Starting in October 2017, the MHLW convened the Meeting on Employment-like Working Styles, conducted interviews with related parties and organizations, heard reports on the status of these working styles in Japan and other countries, and compiled a report in March 2018. This report was presented in April 2018 to the Committee on Basic Labour Policy of the Labour Policy Council (an advisory panel to the MHLW), and this committee also conducted interviews and discussions and in September of the same year compiled a committee report entitled *Addressing Evolving Working Styles in an Evolving Era*. In October the Meeting on Points of Controversy with regard to Employment-like Working Styles was established and discussions are

underway. The committee was scheduled to compile a report in March 2020, but it has been postponed due to the spread of the COVID-19. Then, let us turn to the Interim Report compiled in June 2019, which includes a discussion of protections for those with employment-like working styles.<sup>1</sup>

According to the Interim Report, the basic idea is that with regard to self-employed persons who are not objectively recognized as having “worker status” but have work styles similar to those of workers, there are three potential approaches:

- (1) Expanding the definition of “worker” to extend protections to these individuals
- (2) Defining those self-employed individuals that require protections as occupying an intermediate category between employees and self-employed, and partially apply the labor-related laws to them,
- (3) Rather than expanding the definition of “worker,” separately taking necessary measures for self-employed persons who require a certain degree of protection, while considering the content of protections. Among these, the Interim Report notes that (1) is difficult because it involves a drastic review of the criteria for worker status, and for the time being, policy direction will be taken toward (3) and focus primarily on those self-employed people who are “persons who are entrusted with work by a client, provide services, and receive remuneration for these services while operating primarily as individuals.”

To enumerate specific approaches outlined, those under discussion are: (1) Measures to promote clarification of terms and conditions when recruiting individuals who will perform work in a employment-like working context, (2) Measures to encourage clients to explicitly indicate working

conditions to employment-like working individuals when ordering work or altering working conditions, (3) Regarding termination of contracts, requiring advance notice from clients and setting certain limitations on reasons for termination or revocation of contracts, (4) With regard to ensuring payment of remuneration, measures to encourage payment of remuneration by a certain fixed day, (5) Regarding amount of remuneration, potentially setting a minimum remuneration amount, with reference to minimum wage regulations, (6) Regarding health and safety, measures to encourage certain safeguards such as establishment of procedures to prevent hazards when transferring equipment, goods, etc. that may cause harm to employment-like workers, and (7) Establishing a consulting service for when disputes arise.

As noted above, these considerations are still in the final stages, but in the meantime, it seems that the financial support program for freelance workers with elementary school children, suddenly established and implemented at this point, represents one of the measures for “employment-like working styles” being unexpectedly implemented ahead of schedule. Moving forward, it is necessary to pay continued attention to how policies for employment-like working styles develop after emergency countermeasures have ended.

The views and recommendations of this paper are the author’s and do not represent those of the Japan Institute for Labour Policy and Training.

1. For detail, see Koichi KAMATA, “Legal Issues Surrounding Employment-like Working Styles: Disguised Employment and Dependent Self-employment,” *Japan Labor Issues* vol.4, no.22 (March-April 2020), <https://www.jil.go.jp/english/jli/documents/2020/022-01.pdf>.

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<https://www.jil.go.jp/english/profile/hamaguchi.html>

# A Look at Japanese Households Facing Risk of Livelihood Collapse Due to COVID-19

ZHOU Yanfei

“The dust of an era weighs a mountain when it falls on an individual.”

—From *Wuhan Diary* by female Chinese writer Fang Fang (February 3, 2020)

## I. A once-in-a-century pandemic

Infectious disease caused by the novel coronavirus COVID-19 is spreading out of control throughout the world and has the potential to change human history. It is reported that, as of June 1, 2020, the number of COVID-19 cases confirmed in 188 countries and regions of the world exceeds 6.06 million and that of fatalities has surpassed the astounding level of 371,000.<sup>1</sup> As at the time of writing, in almost all countries, including Japan, infections and fatalities continue to grow rapidly, and thus it is impossible to predict when infections will peak out.

Throughout history, society-transforming pandemics have occurred numerous times with the movement of people and goods. Particularly well known among them are the Black Death (Plague) of the 14th century, smallpox in the 16th century, cholera in the 19th and 20th centuries, and the Spanish flu in the early 20th century. In terms of its rates of infection and fatality, the current pandemic appears ready to become one of the worst pandemics in history, rivaling the Spanish flu of 1918 and 1919, at the end of World War I, that killed 50 million people (equivalent to 3% of the global population at that time).

Furthermore, the spread of infectious diseases

is even broader than it was in the early 20th century due to the current dramatic pace of globalization. According to a simulation conducted by Murray et al. that was published in the authoritative medical journal *The*

*Lancet*,<sup>2</sup> if a pandemic equivalent to the Spanish flu of 1918 had occurred globally in 2004, it would have produced 62 million fatalities, or 12 million more than the number who died from the Spanish flu.

Even if the actual number of fatalities remains comparatively low due to medical advancements and aggressive infection countermeasures, no one can presently predict how much human damage and economic loss the COVID-19 will ultimately cause. However, it seems almost certain that the global economy is already falling into recession. The International Monetary Fund (IMF) wasted little time in presenting a pessimistic outlook, saying on March 24 that a global recession will likely continue at least until 2021.<sup>3</sup> Moreover, the International Labour Organization (ILO) also raised an alarm in a report issued on April 7, stating that the current pandemic's effect on employment will exceed that of the global crisis which followed Lehman Brothers' bankruptcy. Some 3.3 billion people in the world (81% of the world's total workforce) are being affected by the COVID-19 today, and a 6.7% decrease in total global working hours is anticipated in the second quarter of 2020 alone.<sup>4</sup>



## II. The importance of “protecting the vulnerable”

Natural disasters do not always affect individuals in the same way. Some people are only slightly affected, while others suffer catastrophic effects. In general, individuals and households in circumstances of biological disadvantage or socio-economic disadvantage are exposed to greater risk.<sup>5</sup>

“Biological disadvantage” is a term referring to demographic characteristics with a high risk of infection, such as being elderly, a child, pregnant, or a person with a disability or chronic disease. In the case of the COVID-19, it is reported that the elderly and people with chronic conditions, such as high blood pressure and diabetes, are more likely to experience aggravated symptoms and are therefore at greater risk.

On the other hand, “socio-economic disadvantage” refers to social and economic characteristics that can raise the risk of infection. Examples include being economically challenged, being an uninsured person who cannot receive health insurance coverage, or being a person who is socially excluded due to nationality, religion, race, or other such factors.

A problem is that “socio-economic disadvantage” and “biological disadvantage” are not independent phenomena, as both can occur in combination. Let’s take the United States as an example. Compared to whites, many black Americans are in the low-income bracket and extremely disadvantaged economically. Because people with lower incomes tend to eat inexpensive high-calorie meals more often, they have comparatively higher rates for obesity and diabetes. In other words, “economic disadvantage” causes “biological disadvantage” among African Americans. For instance, in Chicago, where the COVID-19 is spreading out of control, blacks comprise 30% of the city’s total population but account for 52% of infections and 68% of fatalities. Indeed, the fatality rate among blacks is as much as five times that of whites (announced on April 7).<sup>6</sup>

People in a situation of “socio-economic disadvantage” are especially vulnerable to the

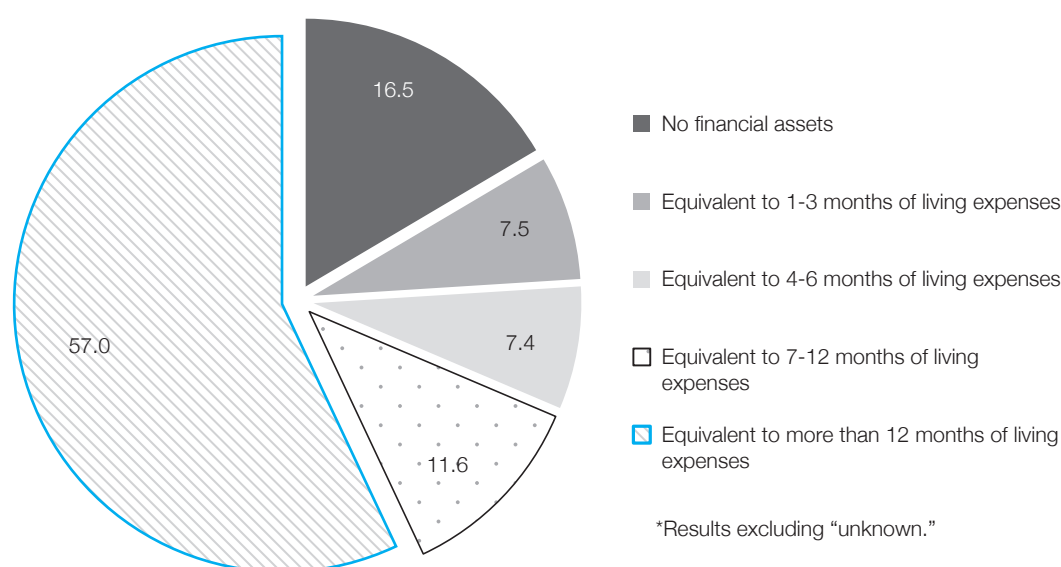
pandemic. This is because, in addition to having a high risk of infection, they also have a high risk of seeing their livelihoods collapse as a result of unemployment or reduced wages. For these reasons, the pandemic will spur the polarization of social classes and expansion of income disparities. Protecting the vulnerable in the pandemic is not only a public health issue but also a matter of great urgency in terms of social justice.

## III. Insufficient preparations for sudden loss of income among one-fourth of Japanese households

As the fight against the novel coronavirus continues, the government is being pressed to make a policy shift toward a high alert mode. This is represented by its asking the public to voluntarily refrain from staging large events; temporarily close movie theaters, sports gyms, and the like; and shorten the business hours of eating and drinking establishments. It is predicted that, if this situation becomes prolonged, consumer activity will contract, companies will go bankrupt, more people will become unemployed, and household finances will be seriously impacted.

Generally speaking, households with few “liquidity constraints”—in other words, which have ample savings and other financial assets available—are robust to economic shocks. This is because, even if their labor income temporarily plummets due to a pandemic, it is unlikely they will experience an immediate collapse of livelihood. In the case of households with few financial assets, however, it is highly likely they will be unable to make ends meet amid dramatic income fluctuations, and their livelihoods could collapse without policy assistance.

Although this is not commonly known, the percentage of Japanese who have absolutely no financial assets is rather high. According to a nationwide survey conducted by the Yu-Cho Foundation in 2018, for example, one in six working-age households (16.5%) has no financial assets of any kind. Under 10% (7.5%) are households with few financial assets that can only cover between



Source: Calculated by the author using the individual data from Yu-Cho Foundation, "Dai-san-kai (2018) Kakei to Chochiku ni kan-suru Chosa" (third survey [2018] on household finances and savings).<sup>7</sup>

Note: Result is limited to two-or-more-person households with the head under age 65.

Figure 1. Financial assets of working-age households (2018, %)

Table 1. Financial assets of two-or-more-person households (2018, %)

	Working-age households <sup>a</sup>		Elderly households <sup>b</sup>		Child-rearing households <sup>c</sup>		Working-age households with female head	
No financial assets	16.5	(10.7)	13.6	(7.7)	16.4	(10.8)	37.9	(22.4)
Equivalent to 1–3 months of living expenses	7.5	(4.8)	3.0	(1.7)	7.1	(4.7)	10.3	(6.1)
Equivalent to 4–6 months of living expenses	7.4	(4.8)	3.5	(2.0)	8.0	(5.2)	5.2	(3.1)
Equivalent to 7–12 months of living expenses	11.6	(7.5)	7.7	(4.3)	13.3	(8.7)	6.9	(4.1)
Equivalent to more than 12 months of living expenses	57.0	(37.0)	72.3	(41.0)	55.1	(36.0)	39.7	(23.5)
Unknown	—	(35.2)	—	(43.3)	—	(34.6)	—	(40.8)
Total	100.0	(100.0)	100.0	(100.0)	100.0	(100.0)	100.0	(100.0)
Average amount of financial assets (unit: 10,000 yen)	1,043		1,857		903		765	
Percentage of households with assets of less than 1 million yen	29.0	(18.8)	29.1	(16.5)	28.2	(18.5)	60.3	(35.7)
N	1,193		716		688		98	

Source: Same as Figure 1.

Notes: 1. a = head of household under age 65, b = head of household aged 65 or older, and c = household with child under age 18.

2. Results excluding "unknown." Values in parentheses are aggregated values when "unknown" is included.

3. "Living expenses" refers to the average per-month amount of expenditure of the year prior to the survey of surveyed households.

4. One million yen is approximately US\$9300.

one and three months of living expenses. When both groups are added together, roughly one in four working-age households falls into a risk group that will run out of living money within six months in

the event of unemployment or reduced income (see Figure 1 and Table 1). This percentage rises even further when household heads are female (e.g., households comprised of an unmarried female with



her parents or a single mother with her children), reaching as high as just under half (48.2%) of the total (Table 1).

For the time being, the government has declared a state of emergency that will last until the end of May. However, considering that it took between two and three years for the Spanish flu to subside, Japan could be in for a long-term struggle. An important fact that must not be forgotten here is the existence of many risk-group households who possess extremely limited financial assets.

#### IV. Demographic characteristics of the group at risk of livelihood collapse

It is probable that many individuals and households grappling with biological disadvantage and socio-economic disadvantage are included among the “households without assets”<sup>8</sup> that face a high risk of livelihood collapse. In fact, conducting an attributes comparison demarcated by having and not having financial assets reveals that “households without assets” have democratic characteristics that are closely associated with “socio-economic disadvantage.” Based on the aforementioned Yu-Cho

Foundation survey, it is apparent that, compared to households “with assets,” the heads of households “without assets” disproportionately tend to be women, people with a low level of education, people with health issues, jobless people, or employees of microenterprises (Table 2).

Looking at the heads of households engaged in the “food and beverage services, accommodations” industrial sector, which is suffering particularly as a result of COVID-19, the percentage of those of “households without assets” is conspicuously higher than those of “households with assets” (5.4% vs. 2.3%). It is easy to predict that economic harm will befall “households without assets” as a result of COVID-19. The government should focus on the existence of these “households without assets” and pay particular attention to them as a policy target.

#### V. Determining the targets for support

As a practical matter, adopting policies that target this risk group is challenging. This is because the government cannot accurately ascertain the amount of financial assets each household possesses nor even individuals’ income. It is possible that

Table 2. Comparison of attributes by “having assets” and “not having assets” (2018, %)

Attributes	Not having financial assets (N=128)	Having financial assets (N=721)	p-value (chi-squared test)
Head of household is female	17.2	6.2	0.000***
Head of household's final school of graduation is high school or junior high school	62.5	36.2	0.000***
Head of household suffers from (some) health issues	18.0	7.5	0.000***
Form of employment			
Regular employment	60.2	71.7	0.009***
Non-regular employment	16.4	11.7	0.132
Self-employed, freelance, etc.	10.2	11.4	0.687
Jobless	13.3	5.3	0.001***
Head of household works at an enterprise with fewer than 30 employees	37.8	26.9	0.018**
Head of household works in the “food and beverage services, accommodations” sector	5.4	2.3	0.068*
Lives in a rented house (other than own house)	37.5	21.4	0.000***

Source: Same as Table 1. Results are limited to working-age households in which the head of household is under age 65.

Notes: 1. Statistics of enterprise and job attributes is limited to the employed persons.

2. \*p-value<0.1, \*\*p-value<0.05, \*\*\*p-value<0.01



**Table 3. National economic assistance schemes (relating to COVID-19; as of May 1)**

	Recipient of payment	
	Employers (indirect payment)	Individuals/households (direct payment)
Involve income screening		Emergency small amount funds/general support funds (COVID-19 special exception) Deferments of social insurance premiums and public utility charges Temporary rent subsidy Special payments to child-rearing households (10,000 yen per child)
No income screening	Employment Adjustment Subsidies (COVID-19 special exception) Allowances in response to elementary school closures, etc. (business suspension allowances for parents and guardians)	A universal cash handout of 100,000 yen (\$930) to every residents of Japan

*Source:* Prepared by the author based on the following Ministry of Health, Labour and Welfare webpage <https://www.mhlw.go.jp/content/10900000/000622924.pdf> (Accessed on May 5, 2020).

deferments of social insurance premiums and public utility charges, temporary rent subsidies, and special payments to child-rearing households, all of which are currently being planned as COVID-19 responses, will reach some of these risk group households. However, because these responses will involve income screening, it is also likely that a considerable number of targeted households will slip through (Table 3).

“Employment Adjustment Subsidies (COVID-19 special exception)” and “business suspension allowances for parents and guardians,” which will be paid indirectly to employed persons through their employers, do not have income requirements for eligibility. Because of this, it is even less likely they will reach the risk group. In particular, there is a problem in that, from the start, people who have lost their jobs due to COVID-19 are not targeted by this assistance.

Additionally, although “a universal cash handout of 100,000 yen” (approximately US\$930) will be provided without income screening to all residents as economic assistance, this program will likely amount to no more than stopgap monetary assistance and will be unable to cope with prolonged COVID-19 effects.

## **VI. The need for speedy provision of interest-free/unsecured loans**

Expanding interest-free/unsecured loans (with a leniency system) for individuals is an effective way of providing immediate assistance and, further, addressing risk groups who possess few financial assets. Because speed should be the top priority, it is important to provide loans using a simple self-declaration system and thereby, first and foremost, prevent livelihood collapse among individuals and households.

The possibility that some people will submit false declarations naturally exists. As a countermeasure, after the COVID-19 crisis settles down, it will be necessary to demand that false reporters pay interest based on their income and other information that will become available following final income tax return filing with the tax office. It should also be possible to take additional measures for people who are truly in need at a later date, such as debt reduction or exemption.

A loan system for living expenses in the form of “emergency small amount funds/general support funds” (interest-free/unsecured) is currently available and most closely approaches what the author has in mind. This system is based on the already existing “emergency small loans” program

of the Japan National Council of Social Welfare (special loans of the Social Welfare Program) and, as a special measure in response to COVID-19, permits the exemption from the repayment obligation of households who continue to suffer from a significant loss of income when repayment is due.

It has been pointed out, however, that loan programs led by the Japan National Council of Social Welfare have problems in terms of their practicality. Specifically, these problems are (1) the programs are difficult to use in practice, (2) a large number of documents must be submitted before loans are approved, and (3) the screening process takes a considerable amount of time.<sup>9</sup> In view of this, one idea could be to make loans available through not only government-affiliated financial institutions but also private-sector financial institutions (e.g., city banks, regional banks, and credit unions) that are closer to the needs of individuals and households. Both institutional types have a complementary relationship, and therefore it is desirable for both to work together to provide policy assistance to high-risk groups.

The views and recommendations of this paper are the author's and do not represent those of the Japan Institute for Labour Policy and Training.

1. WHO, "Situation report—133 Coronavirus disease (COVID-19)" (2020.6.1).
2. Murray CJL, Lopez AD, Chin B, Feehan D, Hill KH. (2007) "Estimation of potential global pandemic influenza mortality on the basis of vital registry data from the 1918–20 pandemic: a quantitative analysis," *Lancet*. 368:2211–2218.
3. Reuters "IMF sees pandemic causing global recession in 2020, recovery in 2021" (2020.3.24).
4. ILO: COVID-19 causes devastating losses in working hours and employment (2020.4.7).
5. Lori Uscher-Pines, Patrick S. Duggan, Joshua P. Garron, Ruth A. Karron, Ruth R. Faden (2007) "Planning for an Influenza Pandemic: Social Justice and Disadvantaged Groups." *The Hastings Center Report*, Vol. 37, No. 4, 32–39.
6. Washington Post, "'Those numbers take your breath away': Covid-19 is hitting Chicago's black neighborhoods much harder than others, officials say" (2020.4.7).
7. In January 2018, the Yu-Cho Foundation mailed questionnaires to 5,000 households (with a head of household aged 20 or older and two-or-more members) that were randomly sampled from the Basic Resident Registers of 250 survey locations selected nationwide via two-stage stratified random sampling. Valid responses were obtained from a total of 2,005 households (40.1%). Please see the Yu-Cho Foundation's website for details.
8. Here, "assets" refers to financial assets. Just under 60% of the "households without assets" own a home (fixed asset) in their own name or the name of a family member (Table 2).
9. Ministry of Health, Labour and Welfare, "*Seikatsu Fukushi Shikin Seido no Seido Gaiyo*" [System outline of the Social Welfare Loan System] (around 2018) page 13, [https://www.mhlw.go.jp/file/06-Seisakujouhou-12000000-Shakaiengokyoku-Shakai/syuro\\_2\\_kougi-siryō\\_8.pdf](https://www.mhlw.go.jp/file/06-Seisakujouhou-12000000-Shakaiengokyoku-Shakai/syuro_2_kougi-siryō_8.pdf) (Accessed on May 5, 2020).

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# Employment Trends and Employment/Labor Measures of Japan Affected by Spread of COVID-19

NAKAI Masayuki

## I. Introduction

Japan's entire society has been greatly affected by the novel coronavirus infectious disease (COVID-19). There are concerns that the disease will also have a major impact on employment by retarding and inhibiting economic activity.

Regarding the current employment situation, amid labor shortages that have continued for the past few years, Japan's unemployment rate<sup>1</sup> in March 2020 stood at 2.5% following a 0.1-percentage point rise from the previous month and its active job openings-to-applicants ratio<sup>2</sup> stood at 1.39 after a fall of 0.06 points from the previous month.<sup>3</sup> Both statistics are worse compared to the previous month. However, these levels are still not severe, and the kind of rapid deterioration seen in the United States is not evident at the present time. On the other hand, while companies have thus far been attempting to secure employment somehow, there are fears that corporate performance is rapidly deteriorating<sup>4</sup> and more and more companies have fallen deeply into the red. There are also concerns that the employment situation will suddenly grow worse as the response to COVID-19 becomes prolonged and economic stagnation continues, and thus future trends must be watched.

In Japan, efforts have been progressing in recent years toward stimulating labor movement and strengthening the external labor market's functions in order to adapt labor to technical innovation and the changing industrial structure. In the event of a major economic crisis, the common practice is to secure employment for a certain period of time.

This is true in response to the current COVID-19 crisis, as measures to comprehensively support employment are being taken by expanding Employment Adjustment Subsidy (EAS). Meanwhile, this economic crisis



is taking place amid a new trend associated with movement toward a service economy and technical innovation, namely, the diversification of forms of employment, which includes the expanded use of freelance worker. Responses to this change are also taking place. This report clarifies such developments that have continued up to the present time and compares them with those that took place during the Lehman Brothers' bankruptcy-sparked financial crisis (hereinafter, the "Lehman Shock").

## II. The current economic and employment situation

### 1. Economic situation

Regarding the current economic outlook based on the government's "Monthly Economic Report," the report of March 2020 stated, "The Japanese economy is in a severe situation, extremely depressed by the Novel Coronavirus." The report did not contain the word "recovery" for the first time in six years and nine months since June 2013. The following report of April 2020 states, "The Japanese economy is getting worse rapidly in an extremely severe situation, due to the Novel Coronavirus." The phrase "getting worse" appeared in the report for the first time in approximately eleven years since May

2009, when the effects of the Lehman Shock were being felt.

According to the Cabinet Office's "Economy Watchers Survey" covering taxi drivers, restaurant staff and other jobs close to the average consumer, the diffusion index for current economic conditions in March 2020 was 14.2 (survey period of March 25 to 31), which is the worst ever recorded, falling below those of the Lehman Shock (19.0 in December 2008) and the Great East Japan Earthquake (24.0 in March 2011). It indicates that the regional economy is in an extremely severe situation.

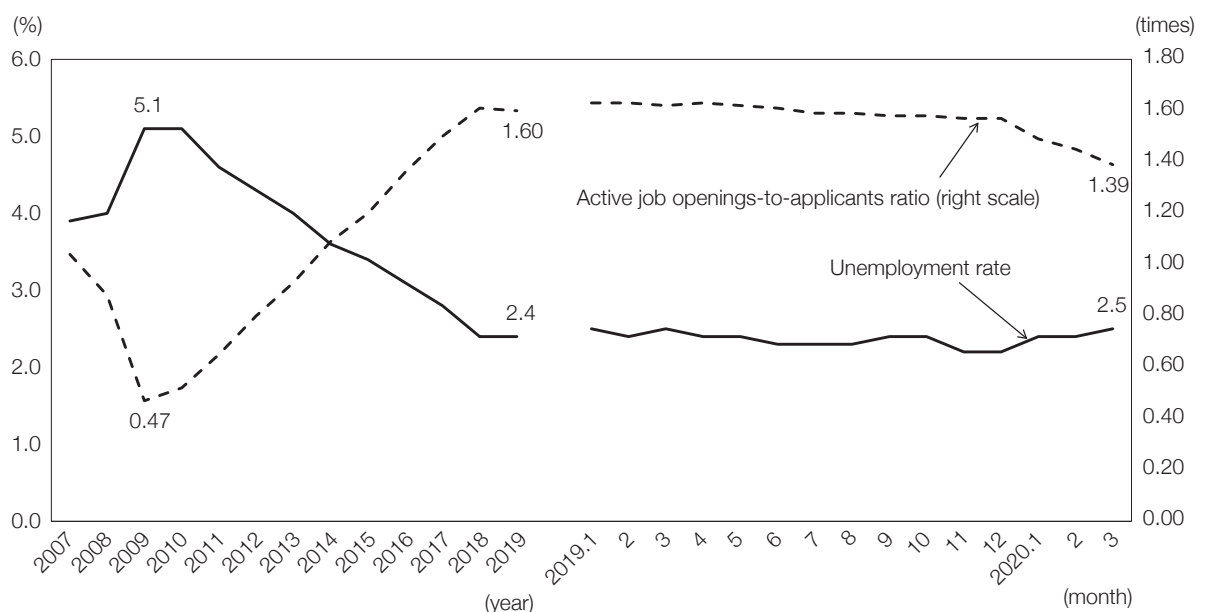
## 2. Employment situation

The unemployment rate of March 2020, which was announced on April 28, rose 0.1 percentage points over the previous month to 2.5%. It has risen 0.3 points since falling to 2.2% in November and December 2019. The active job openings-to-applicants ratio for March was 1.39, which was 0.06 points below that of the previous month. This figure is 0.24 points below the recent peak of 1.63<sup>5</sup> (Figure 1). Both of these indicators are showing a worsening trend in terms of direction. However, as

levels, an unemployment rate in the mid-2% range is the lowest since 1993, and an active job openings-to-applicants ratio at the 1.3 level is the highest since 1991, before the recent economic recovery.

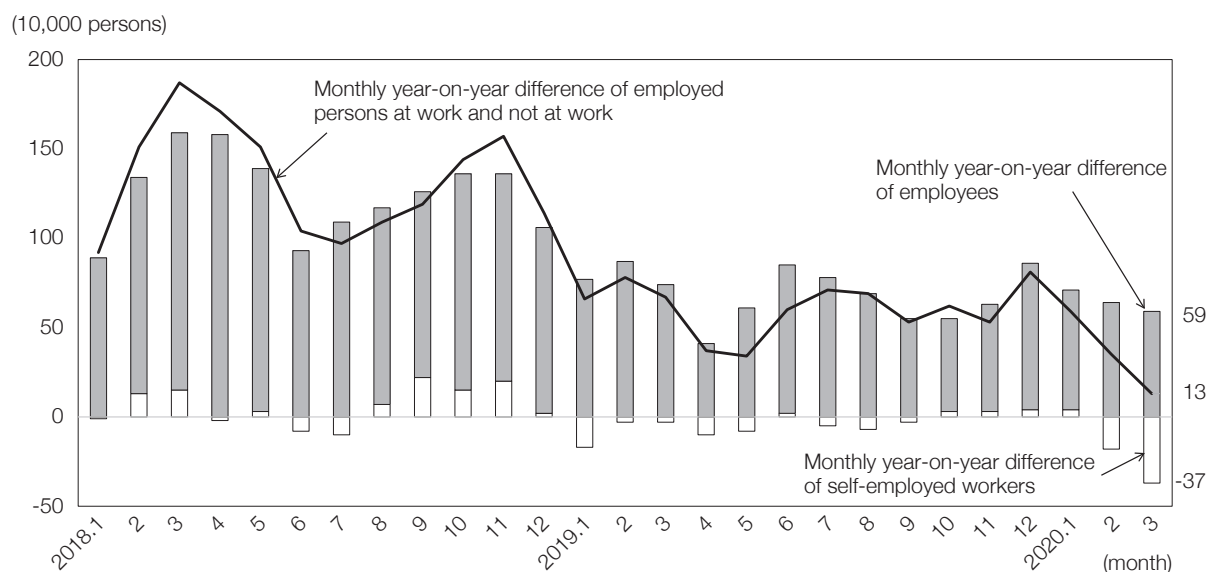
Looking a little more closely, according to the Ministry of Internal Affairs and Communications' *Labour Force Survey* the number of the employed persons of March 2020 showed growth of 130,000 compared to the same month of the previous year. Although this marked the 87th consecutive month of year-on-year increase, the degree of growth shrank. One factor behind this is that the self-employed workers decreased for two consecutive months and fell by 370,000 in March (Figure 2). It is reported that freelance workers are facing tough circumstances due to a decline in work attributable to the novel coronavirus's impact. If this situation is being reflected here, it presents a worrying situation.

Concerning the "employed person not at work"<sup>6</sup> among the employed persons (Figure 3), their number grew by 310,000 compared to the same month of the previous year to 2.49 million. March is typically a time when there are comparatively many people with a job but not at work. However,



Source: Ministry of Internal Affairs and Communications, *Labour Force Survey*, and Ministry of Health, Labour and Welfare, Report on Employment Service.

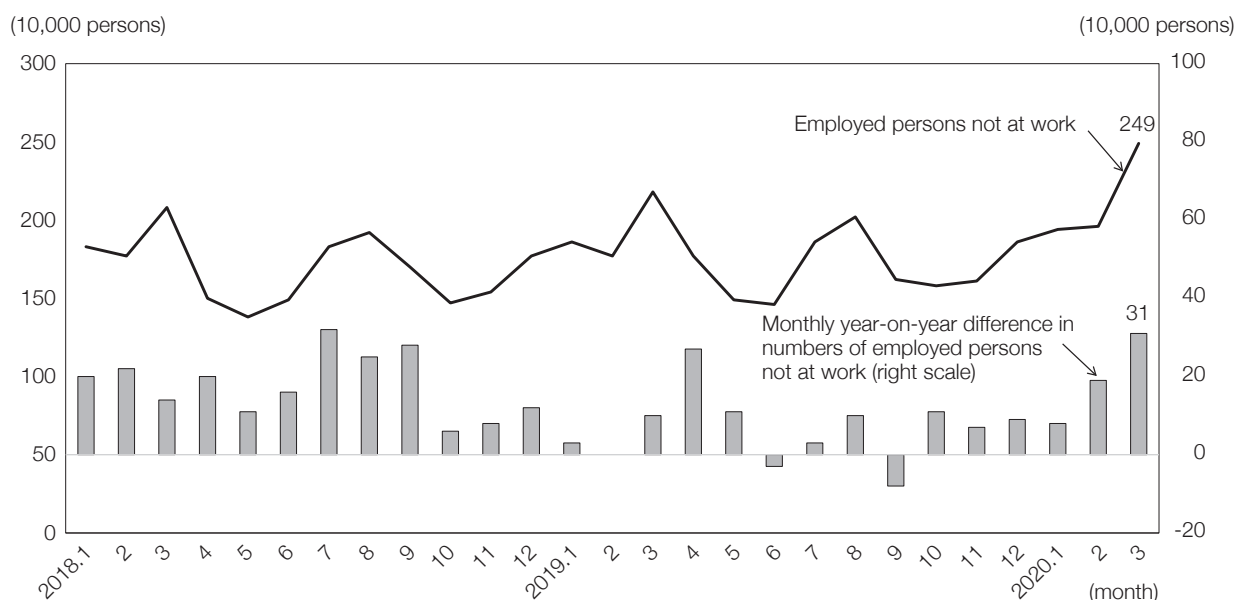
Figure 1. Changes in unemployment rate and active job openings-to-applicants ratio



Source: Ministry of Internal Affairs and Communications, *Labour Force Survey*.

Note: Because employed persons includes family workers, the totals of the monthly year-on-year differences of self-employed workers and employees do not match the monthly year-on-year differences for employed persons.

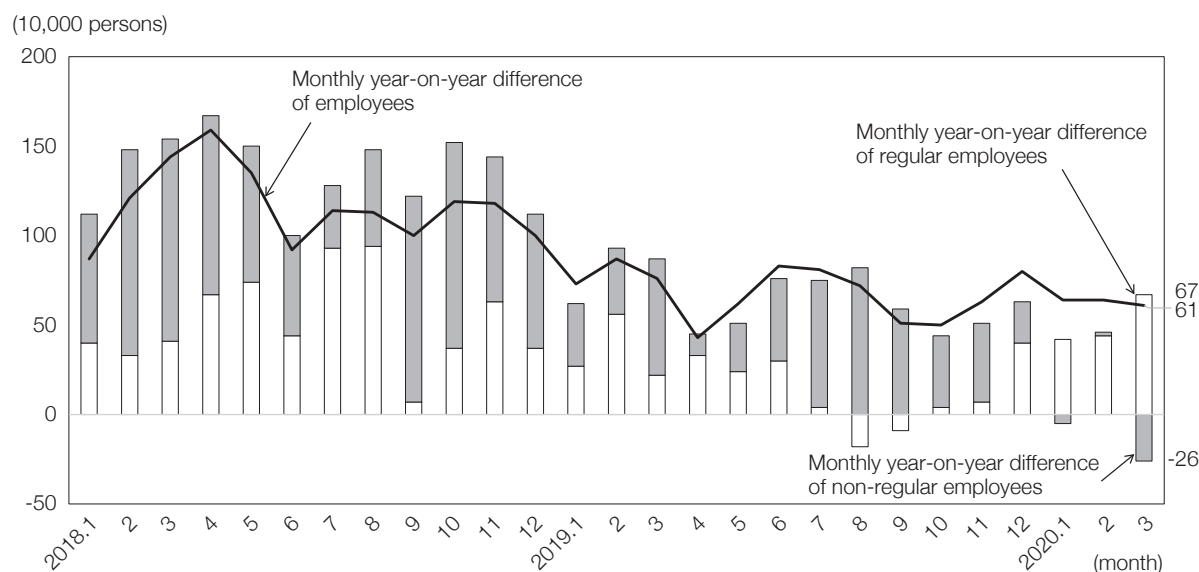
Figure 2. Changes in monthly year-on-year differences in numbers of employed persons



Source: Ministry of Internal Affairs and Communications, *Labour Force Survey*.

Note: "Employed person not at work" refers to employees and self-employed workers described as follows. (i) Employees who did not work during the reference week but who received or were expected to receive wage or salary. (ii) Self-employed worker who did not work during the reference week and whose absence from work has not exceeded 30 days.

Figure 3. Changes in employed persons not at work



Source: Ministry of Internal Affairs and Communications, *Labour Force Survey*.

Note: Because “employees” includes executives, the totals of the monthly year-on-year differences of regular employees and non-regular employees do not match with the monthly year-on-year differences for employees.

Figure 4: Changes in monthly year-on-year differences in numbers of employees

the effects of stagnation in the tourism industry caused by a significant drop in inbound tourists and suppressed economic activity may be being seen here.

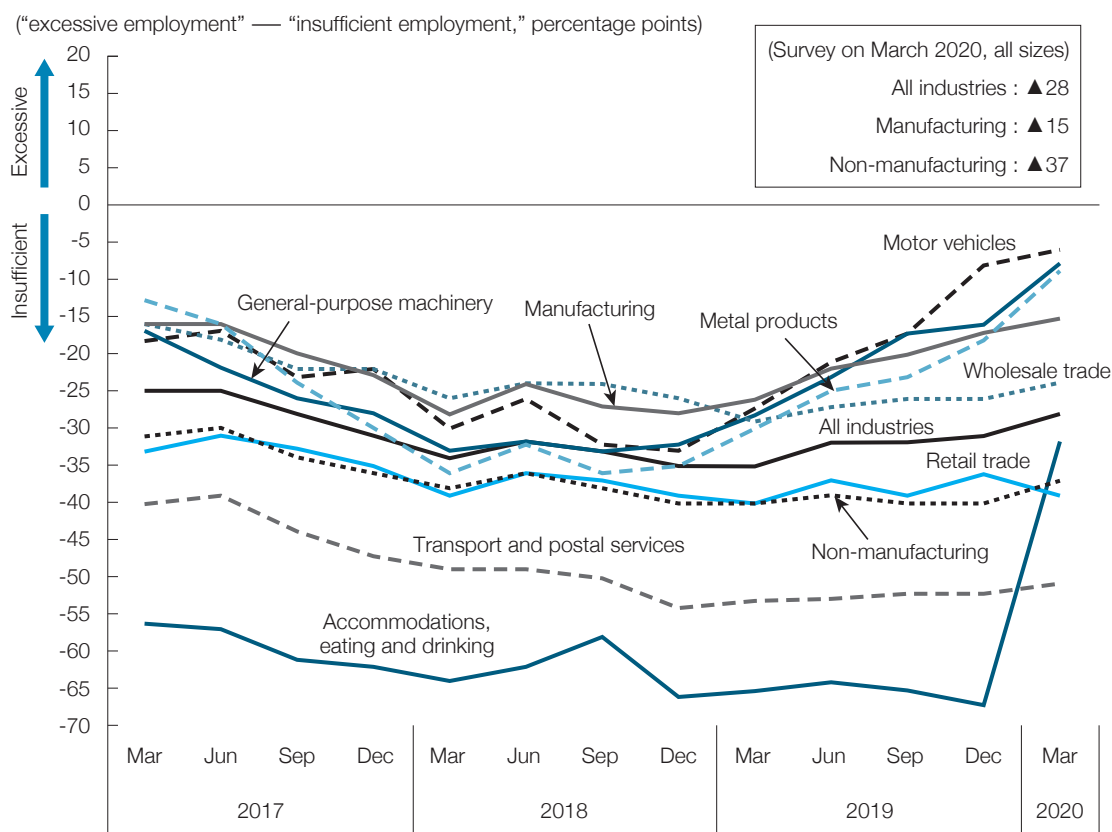
Let us examine the number of the employees including executives (Figure 4). In March the number grew by 610,000 compared to the same month of the previous year, marking an increase for the 87th consecutive month. A breakdown of the number reveals that non-regular employees decreased by 260,000 while regular employees had a relatively large year-on-year increase of 670,000. Let us look at this more specifically by sex and by industry. As for male non-regular employees, while showing an increase of 20,000 in total, a decrease of 210,000 in contract employees, particularly in manufacturing is conspicuous. Female non-regular employees show a decline of 290,000 in total, and particularly a decrease of 220,000 in part-timers in accommodations, eating and drinking services, education, learning support; and manufacturing are conspicuous. When serious economic crises occur, major impacts are first seen in non-regular employment. This was a problem during the Lehman

Shock, and it is possible that the same trend is being seen now.

The employment situation’s direction is worsening as is seen in the difference between the Monthly Economic Reports of March (“Employment situation is affected by the infectious disease although it has been improving”) and April (“Employment situation shows some weak movements lately, due to the influence of the infectious disease”), where the word “improving” is missing. Although, the employment situation has not yet reached a severe level as a whole, in part because improvements were being seen heretofore against a backdrop of labor shortages, it appears that effects are beginning to emerge among self-employed workers and non-regular employees. Additionally, as for the sense of excess or insufficiency in employment in Japanese companies by business category from the Bank of Japan’s Tankan (Short-Term Economic Survey of Enterprises in Japan), it can be seen that the sense of insufficient employment has been shrinking rapidly recently, particularly in accommodations, eating and drinking services (Figure 5).

Making a comparison with the employment





Source: Bank of Japan, Short-term Economic Survey of Enterprises in Japan (Tankan).

Figure 5. Employment Conditions DI (quarterly)

situation at the time of the Lehman Shock, the crisis occurred at a time when the employment situation was worsening, with Japan already entering an economic slump from February 2008. In September 2008 (the time of the Lehman Shock), the number of unemployed persons was 2.64 million, the unemployment rate was 4.0%, and the active job openings-to-applicants ratio was 0.83. Later, in July 2009, unemployed persons (seasonally adjusted value) grew by one million compared to September 2008 to 3.64 million, the unemployment rate worsened by 1.5 points to 5.5%, and, in August 2009, the active job openings-to-applicants ratio fell by 0.41 points compared to September 2008 to 0.42.

Unlike the Lehman Shock, the current economic crisis arose when the employment situation was improving against a backdrop of labor shortages. However, there are fears that the employment situation will suddenly deteriorate as the problem

becomes prolonged and economic stagnation continues. As can be seen in the above discussion, some worrisome statistical movements have become apparent, and therefore future trends must be watched.

### III. Summary of employment and labor measures thus far (as of May 8)

The following employment and labor measures are being implemented as part of a series of countermeasures targeting COVID-19. First, requirements were relaxed for EAS in the Novel Coronavirus Disease (COVID-19) Emergency Response Package (February 13, Novel Coronavirus Response Headquarters). Here, requirements were relaxed for production and employment indices and to allow ex-post submission of plan notifications for business operators affected by a rapid drop in travel

between Japan and China as a result of the spread of COVID-19.

Additionally, the second Emergency Response Package (March 10, Novel Coronavirus Response Headquarters) contain the following:

- Subsidy for parents and guardians to take time off when elementary schools, etc., are temporarily closed (10/10, daily maximum of 8,330 yen)
- Subsidy also for self-employed people performing subcontract work when they must care for a child due to the temporary closure of elementary schools, etc. (daily amount of 4,100 yen)
- Assistance with expenditures for SME business operators who introduce telecommuting as a measure to deal with COVID-19 (maximum of 1 million yen)
- Incorporation of additional implementation of special measures into EAS, including the expansion of special measures to all business operators; inclusion of newly hired graduates, etc., whose period of insured person's status is less than six months as workers; and addition of extra subsidy rates in special regions (SME=2/3→4/5, large enterprise=1/2→2/3)

Furthermore, within the Basic Policies for Novel Coronavirus Disease Control (March 28, Novel Coronavirus Response Headquarters) and Emergency Economic Measures to cope with the Novel Coronavirus (COVID-19)—Thoroughly Secure People's Lives and Move Toward Economic Revitalization (April 7, amended on April 20 [Cabinet decision]) are

- Regarding EAS during the emergency response period (April 1 to June 30), raising of the grant rate to 9/10 for SMEs and 3/4 for large enterprises when they do not dismiss employees, addition of workers who work less than 20 hours a week and are thus not covered by employment insurance, and strengthening of the paperwork processing system and simplification of procedures to accelerate payments
- Expanded employment support for people who have had informal job offers canceled and expanded job-seeker support training for job-

seekers who are not covered by employment insurance

- Expanded support for impoverished people in danger of losing their homes
- Implementation of special loaning, such as emergency small amount funds for individuals, and expanded support through Housing Security Benefit made in cases of lost housing
- Incorporation of support measures that include reduction and exemption of insurance premiums for National Health Insurance, etc.

Moreover, on April 25, a policy was prepared to set a special grant rate for business suspension allowances (leave allowances) of 10/10 for SMEs that received business suspension requests from a local government and satisfy certain requirements as a further expansion of EAS. This policy was implemented on May 1.

It should be noted that, at a press conference by Prime Minister Abe that was held on May 4, when the state of emergency declaration was extended to May 31, it was announced that additional measures would be implemented quickly based on a study by the ruling parties. They include alleviation of the rent burden borne by eating and drinking establishments and other businesses, further expansion of EAS, and support for students working part-time jobs who are facing severe circumstances.

#### **IV. Characteristics of employment and labor measures**

At present, responses to the tough challenges are required with respect to not only stagnant economic activity but also in terms of maintaining the socioeconomic foundation while simultaneously suppressing economic activity generated by human interaction to prevent infections. Against this backdrop, characteristics shown in the employment and labor measures being implemented in response to the novel coronavirus's impact include (1) the support for securing employment as a socioeconomic foundation, (2) provision of livelihood support for working people placed in an economically severe environment due to the stop of economic activity

(including not only employees but also freelance workers and other self-employed workers), and (3) the promotion of telecommuting as a tool for conducting corporate activity amid mobility restrictions.<sup>7</sup>

(1) Looking first at the maintenance of the socioeconomic foundation, support for business operators' cash flow and fixed cost are needed. However, from the standpoint of personnel expenses, a response is being made through expanded EAS.

EAS program is the one that subsidizes expenses that business operators who are forced to scale back their business activities for economic reasons incur to secure the employment of their workers and pay leave allowances. The program is rarely used during normal times, in part due to past criticism that it hinders transformation of the industrial structure. It has a history of applying special measures during major economic crises and was employed at the times of the Lehman Shock in 2008 and Great East Japan Earthquake in 2011.

The program has been sequentially expanded in response to the ever changing situation since being incorporated into the "emergency measures concerning the novel coronavirus infectious disease" that were formulated on February 13. On April 25, a policy was prepared to set a special grant rate for leave allowances of 10/10 for SMEs that received business suspension requests from a local government and satisfy certain requirements. This policy was implemented on May 1. As a result, the personnel expenses of SMEs that suspend business in response to these requests are, in effect, almost entirely covered.<sup>8</sup> Additionally, non-regular employees and workers who work less than 20 hours a week and are thus not covered by employment insurance have been added in the process of expansion, meaning that attention is being given to preventing unemployment among groups that are particularly susceptible to major economic crises.

At the time of the Lehman Shock, these subsidies were most commonly applied in manufacturing. In contrast, as can be seen in the results of the recent employment conditions' DI, the industry that is being most affected at the present time is accommodations,

eating and drinking services. Accordingly, the effective use of these grants in this industry will become more important. However, this industry contains many small, medium-sized, and micro-enterprises, which are thought to be unaccustomed to using the subsidies. Therefore, a more targeted response in terms of the subsidies' administrative procedures will undoubtedly become necessary.

Moreover, the subsidy system is one in which payments are made at a later date based on actual business suspension records and the like. However, as the subsidies' role in supporting personnel expenses when business operators suppress their economic activity following business suspension requests becomes more important, it has been pointed out that responses to inquiries and consultations from enterprises are sometimes late. Preparations are underway to speed up simplified payment administration for application procedures—namely, the simplification of application forms and method for calculating grant amounts—and to make online application possible in May. Nonetheless, payments made with a sense of speed are required. With the state of emergency declaration's extension, it has become necessary to respond with speed in terms of not only the subsidies but also financial assistance and financing for enterprises.

(2) Assistance measures are being implemented for working people in the forms of rent assistance through Housing Security Benefit, deferment of social insurance premium payments, special loans for living money, and financing of business costs for freelance workers and other individual business operators. These measures provide livelihood support for working people in need who have lost opportunities to work because economic activity has stopped and whose income has decreased or disappeared.

As for the suppression of social activity, support measures were created in response to a request for the temporary closure of elementary schools and other schools throughout Japan beginning on March 2 that was made at a February 27 press conference by Prime Minister Abe. Specifically, they are a scheme that subsidizes an amount equivalent to

paid wages to business operators who granted paid holidays to workers who needed to care for children as a result of the schools' temporary closure (10/10, daily maximum of 8,330 yen),<sup>9</sup> and a scheme created with freelance workers in mind that assists people who work individually doing commissioned jobs when they must care for a child due to the schools' temporary closure (daily amount of 4,100 yen).

(3) Additionally, corporate activities based on work from home (telecommuting) have become necessary with the implementation of restrictions on people's mobility to control infections. Here, a support measure that subsidizes one-half of paid expenses (up to a maximum of one million yen) for SME business operators who newly introduced telecommuting was incorporated into the "The Second Novel Coronavirus Disease (COVID-19) Emergency Response Package" of March 10; however, since then, the following developments have taken place.

- At a press conference on March 25, the Governor of Tokyo, Yuriko Koike called on people to work from home as much as possible on weekdays and to especially refrain from going out at night, as there was a rapid increase in the number of infections in Tokyo, stating "Tokyo is at a critical phase in terms of preventing an explosion of infections."
- On April 7, the national government declared a state of emergency<sup>10</sup> and the Governor of Tokyo issued a request for people to stay home that coincided with this declaration.
- At the 28th Novel Coronavirus Response Headquarters meeting held on April 11, Prime Minister Abe directed that "...the number of employees going to the offices [omission] must be reduced by a minimum of 70%. I instruct the relevant ministries to ensure, with a strong sense of urgency, that all business operators, including micro, small, and medium-sized ones, adhere to this request towards next week [the italicized words are added by the editor]."
- The area covered by the state of emergency declaration was expanded to the entire nation on April 16.<sup>11</sup>

- In view of the decision to extend the state of emergency declaration on May 4 to May 31, promoting work from home (telecommuting), which had not made much progress in Japan theretofore, became unavoidable.<sup>12</sup> According to the results of the "National Survey on Novel Coronavirus Countermeasures" that were announced on April 30,<sup>13</sup> among people whose work primarily involved office work, the national rate of those who began telecommuting was 27% as of April 12–13. While this was significantly higher in comparison with the level prior to the state of emergency declaration, it still did not reach the government's target of "70%."
- There are significant differences among the prefectures in terms of introducing telecommuting. Tokyo has the largest percentage with 52%, while many prefectures have percentages of under 5%.

This is the translation of the original column released in Japanese as of May 8, 2020, at <https://www.jil.go.jp/tokusyu/covid-19/pt/docs/200508pt-report.pdf>.

1. Ministry of Internal Affairs and Communications, *Labour Force Survey*.

2. Ministry of Health, Labour and Welfare, "Report on Employment Service."

3. It must be noted that the number of items required to write on job postings was added in January 2020 and this helped lower the ratio of job openings to job applicants for March.

4. According to the March 2020 Survey of the Bank of Japan's Tankan (Short-term Economic Survey of Enterprises in Japan), a decrease in current profits of enterprises is expected for the second consecutive year. Following a decrease of 7.6% in FY2019, a 2.5% decrease is forecasted in FY2020, reflecting a 7.2% year-on-year decrease in the first half of FY2020 and a 2.9% year-on-year increase in the second half of the same year, amounting to a 2.5% decrease for the entire fiscal year.

5. The figure of 1.63 was attained in August to November 2018 and January, February, and April 2019.

6. "Employed person not at work" refers to employees and self-employed workers described as follows. (i) Employees who did not work during the reference week but who received or were expected to receive wage or salary. (ii) Self-employed worker who did not work during the reference week and whose absence from work has not exceeded 30 days.

7. See Keiichiro Hamaguchi, "Spread of the Novel Coronavirus and the Future of Japanese Labor Policy," *Japan Labor Issues*, vol.4, no.24, <https://www.jil.go.jp/english/jli/documents/2020/024-01.pdf>.

8. Even when a business does not receive a suspension request,

the subsidy rate for the portion where the SME payment rate exceeds 60% is considered to be 100% as a special measure. In this case, the subsidy rate up to 60% is 9/10, and thus, when a business pays 100% of the business suspension allowance to workers, a subsidy rate of 94% applies overall. However, the maximum per diem amount per eligible worker is 8,330 yen.

9. Whether employment is regular or non-regular is not considered.

10. The declaration applied to seven prefectures: Saitama, Chiba, Tokyo, Kanagawa, Osaka, Hyogo, and Fukuoka.

11. At the same time, thirteen prefectures comprised of the original seven prefectures plus six additional prefectures (Hokkaido, Ibaraki, Ishikawa, Gifu, Aichi, and Kyoto) were designated as “prefectures under specific cautions” that require

high priority on containing the spread of the COVID-19.

12. A request to promote teleworking and other actions was issued to the heads of the Japan Chamber of Commerce and Industry, and other SME associations by the Ministry of Economy, Trade and Industry on April 13, [https://www.meti.go.jp/english/press/2020/0413\\_002.html](https://www.meti.go.jp/english/press/2020/0413_002.html).

13. On March 30, the Ministry of Health, Labour and Welfare entered into an “agreement on the provision of information contributing to COVID-19 cluster countermeasures” with LINE Corporation. The “National Survey on Novel Coronavirus Countermeasures” is implemented targeting registered service users on official LINE Corporation accounts to provide information based on this agreement. For survey results, see [https://www.mhlw.go.jp/stf/newpage\\_11109.html](https://www.mhlw.go.jp/stf/newpage_11109.html) (in Japanese).

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## Key topic

# Proposal on Extinctive Prescriptions of Claims for Wages: The Labor Policy Council

The revised Civil Code, enacted in June 2017, was scheduled to go into effect on April 1, 2020. Under it the extinctive prescription period of general claims was to become uniform, and various short-term extinctive prescriptions including employees' salaries were to be abolished. The Labor Policy Council (Chair: Koichi Kamata, Professor Emeritus of Toyo University) started discussions in July 2019, concerning the extinctive prescriptions of claims for wages, retirement allowances, annual paid leave, work-related accident compensation and so forth (hereinafter referred to as "wages, etc.") in its tripartite committee on working conditions (Chair: Takashi Araki, Professor of the University of Tokyo) and issued a proposal on the matter to Katsunobu Kato, the Minister of Health, Labor and Welfare on December 27, 2019. According to the proposal, the extinctive prescription period of claims for wages will be extended from the current 2 years to 5 years in principle in the future, but for the time being, set at 3 years to match the obligatory period for preservation of records. Based on this, the Ministry of Health, Labor and Welfare (MHLW) submitted a bill for the Partial Amendment to the Labor Standards Act to the ordinary session of the Diet which started on January 20, 2020, aiming for implementation on April 1, 2020.

## The Civil Code and Article 115 of the Labor Standards Act

The former Civil Code stipulated that in principle, claims expired if they were not exercised for 10 years (based on the "objective starting point" for the extinctive prescription period). The short-

term extinctive prescriptions of 3 years, 2 years, and 1 year for specific occupations were set forth as exceptions. The former Civil Code stipulated that "a claim pertaining to the salary of an employee which is fixed by one month or any shorter period shall be extinguished if not exercised for one year." Meanwhile, from the standpoint of worker protection and transaction safety, Article 115 of the LSA prescribes that claims for wages, accident compensation and others are subject to lapse if not exercised within 2 years.<sup>1</sup> (Claims for retirement allowance, this is 5 years.<sup>2</sup>) As for the starting point for the extinctive prescription of claims for wages under Article 115 of the LSA, it has been interpreted and implemented as an "objective starting point" in practice and in past court cases. Documents such as wage ledgers must be preserved for 3 years (Article 109 of the LSA).

### Article 115 of the former Labor Standards Act

Claims for Wages (excluding retirement allowances), accident compensation and other claims under the provisions of this Act shall lapse by prescription if not made within two years; and claims for retirement allowances under the provisions of this Act shall lapse by prescription if not made within 5 years.

## The revised Civil Code

The Civil Code underwent partial but large scale amendments. The provisions for short-term extinctive prescription which now lacks rationality



were abolished to unify and simplify the period of prescription. One-year short-term extinctive prescription regarding employees' salaries has been abolished. As for extinctive prescriptions for general claims, a "subjective starting point" has been newly established in addition to the "objective starting point" that has been used thus far. Specifically, claims lapse due to prescription in the following occasions (1) and (2).

- (1) If the obligee does not exercise the right within 5 years from the time when the obligee came to know that it was exercisable ("subjective starting point").
- (2) If the obligee does not exercise the right within 10 years from the time when it became exercisable ("objective starting point").

The newly established (1) is based on concerns that if the short-term extinctive prescriptions are abolished and their prescription periods become 10 years across the board, obligors' costs to preserve proof of payment would increase due to greatly prolonged period.

## **Discussions at the Council's Committee on Working Conditions**

### **Extinctive prescription of claims for wages set at 5 years in principle, 3 years provisionally**

According to the proposal, the Council's Committee found the abolition of the short-term extinctive prescriptions due to the partial revision of the Civil Code as an opportunity to examine matters such as the extinctive prescription periods under the LSA, and comprehensively considered matters such as the need to protect the rights of workers to claim unpaid wages after leaving their employment. Specifically, the following proposals were made.

(1) The extinctive prescription period of claims for wages shall be 5 years, taking into account the balance with the extinctive prescription period of contractual claims after the abolition of the short-term extinctive prescription.

(2) In line with the interpretation and implementation of the current LSA, an "objective starting point" shall be maintained and explicitly stipulated in the amended LSA.

(3) However, immediate introduction of a long-term (5-year) extinctive prescription of claims for wages may destabilize the labor-management relationship on rights and obligations. It is necessary to cautiously consider its impact in light of the role of extinctive prescription of claims for wages in preventing and/or swiftly resolving disputes. In this context, for the time being a 3-year extinctive prescription period will be set to match the period of required record preservation stipulated in Article 109 of the LSA, so that a certain degree of worker protection regarding unpaid wages can be ensured without increasing the burden on employers of preserving records.

The proposal also recommends that the current extinctive prescription period for retirement allowance (5 years) be maintained.

### **Extinctive prescription periods of claims other than claims for wages remain 2 years**

As for claims other than those for wages, such as those regarding annual paid leave, accident compensation and so forth, the Council's Committee proposes that the former extinctive prescription period of 2 years should be maintained because they are rights established by the LSA and the extinctive prescription periods have been uniformly set at 2 years under the LSA up to the present regardless of the extinctive prescription period for general claims (10 years) under the Civil Code. The proposal adds the following reasons for maintaining the current 2-year extinctive prescription.

First, annual paid leave should be taken without fail during the year in which the annual leave right is granted, given that the purpose of annual paid leave system is to ensure worker health and relieve mental and physical fatigue. The Council's Committee pointed out that if the extinctive prescription period of annual paid leave is made longer than it is now, it will not be in line with the purpose of this system, and it may contradict the policy direction of improving the rate of paid leave usage.

Second, an essential requirement of the accident compensation system is to verify the claim as early as possible and seek remedy for workers. Under this system, it is necessary to make it clear that the

worker's injury or illness are caused in the course of employment. However, it becomes more difficult over time for both labor and management to prove or disprove cause and effect of injury or illness. In addition, prompt claims for accident compensation in the event of a work-related accident will enable worker's recover and return to work swiftly, and also encourage companies to take safety and health measures to address work-related accidents early on.

For other claims (traveling expenses for returning home, certificates on the occasion of leaving employment, return of money and goods [excluding wages]<sup>3</sup>), it is necessary to maintain incentives for early verification of claims. In addition to this early verification as the original purpose of the system, in general, if a long period has passed since the termination of a labor contract, it becomes difficult for the worker and employer to verify their rights and obligations under the terminated contract, and there is a possibility that unnecessary confusion may arise.

#### **Records of documents to be preserved for 5 years in principle, 3 years provisionally**

The obligation to preserve records, such as rosters of workers and wage ledgers, is stipulated so as to preserve evidence for dispute resolution and supervision purposes (Article 109 of the current LSA). Given this purpose of record preservation, the proposal states that the current 3-year period of preservation, responding to the new regulations of the extinctive prescription period, should be 5 years in principle but should be maintained at 3 years for the time being.

Article 114 of the LSA provides for "additional amount." When an employer has not paid overtime premium or other payments required by the LSA and the worker requests the payment thereof within 2 years from the date of the violation, the court may order, in addition to the unpaid portion of the amount that the employer was required to pay under the LSA, the additional payment of that identical amount. The purpose of additional amount scheme is to establish a kind of sanction for breach of payment obligations such as premium wages, so as to secure payment of unpaid amounts, and to give individuals

incentive to bring lawsuits which would hinder the employers' violation of the LSA. Concerning additional amounts, the proposal states that the claim period should be 5 years in principle and 3 years for the time being, in line with the extinctive prescription period of claims for wages.

#### **Effective date of the revision and claims subject to the new regulations**

The proposal stated that the amended LSA should come into effect on April 1, 2020, the same date as the revised Civil Code. As to claims that shall be subject to the revised LSA, it proposed that the new regulations of the extinctive prescription period should apply to claims for wages when wages are due after April 1, 2020 irrespective of the date of conclusion of the employment contract. The same applies to the request for additional amounts.

The Committee's discussion covered whether the new regulation should apply to (1) claims arising from contracts concluded after April 1, 2020 in the same manner as the revised Civil Code, or (2) all claims that are due after April 1, 2020 regardless of the fact that the contract had been concluded prior to or after April 1, 2020.

Since parties to civil law contracts take it for granted that the law applicable at the time of conclusion applies to them, it is natural that the revised Civil Code applies to contracts that are concluded after the effective date of the revision (April 1, 2020). However, if this rule were applied to employment contracts, workers in the same workplace would be subject to different periods of the extinctive prescription in accordance with the timing of the conclusion of their contract, which might lead to confusion in human resource management. In addition, workers' claims for wages arise in large quantities and regularly and thus there is a strong request for universal treatment. Considering these situations, the Committee proposed that all claims for wages due after the effective date of the revised LSA should be subject to the new rules of the extinctive prescription period, namely a 3-year period for the time being. The Committee also proposed that the request period for additional

amounts should be treated similarly.

### **Review to be conducted 5 years after enforcement**

The proposal calls for examining the situations of implementation 5 years after the revision of the LSA, and for necessary measures to be taken based on the results. As for the principle of the 5-year extinctive prescription period for claims for wages being set at 3 years for the time being, the proposal took note that the Committee members representing workers expressed the opinion that “in light of the LSA’s purpose of protecting workers, the 5-year principle should be followed when reviewing the situation of the revised LSA after 5 years.”

The proposed revision of the extinctive prescription for claims

for wages, etc. in the Labor Standards Act passed in the Diet on March 27, 2020 and was put into effect on April 1, 2020.

1. The reason for the 2-year period under the LSA is that extinctive prescriptions of claims that are important to workers provide insufficient protection if set at 1 year (short-term extinctive prescription) under the Civil Code, but if it is set at 10 years, it would place too severe a burden on employers and have a significant impact on transaction security.
2. The extinctive prescription period of claims for retirement allowances was 2 years when the LSA was enacted in 1947. However, retirement allowance amounts may be larger and employers may take time to pay because of the difficulty procuring finances, and for such reasons the period was extended to 5 years when the LSA was amended in 1987.
3. Traveling expenses for returning home should be paid within 14 days from the date of cancellation of contract. Certificate on the occasion of leaving employment shall be issued without delay when requested by a worker. Regarding return of money and goods, in the event of a request by one with the right thereto, the employer shall return money and goods within 7 days.

## Is an Owner-manager of a Convenience Store a “Worker” under the Labor Union Act?

*The Seven-Eleven Japan Case*

Order, the Central Labour Relations Commission

(Feb. 6, 2019) 1209 *Rodo Hanrei* 15

IKEZOE Hirokuni

### I. Facts

X is a labor union with members consisting of owner-managers (hereinafter referred to as “franchisees”) who operate convenience stores under member-store contracts with Company Y. Y operates a franchise chain of one of Japan’s major convenience stores. X made a collective bargaining request to Y with agenda items including the establishment of rules for collective bargaining. Y, however, did not respond to the request, stating that the franchisees belonging to X were independent business operators and that they had no labor-management relationship with Y.

X asserted that Y’s refusal to engage in collective bargaining constituted an unfair labor practice under Article 7 No. 2 of the Labor Union Act (LUA), and filed a complaint for remedy with Okayama Prefectural Labour Relations Commission (abbreviated below as “Okayama Pref. LRC”). Okayama Pref. LRC concluded that the franchisees as workers under the LUA and that Y’s failure to respond to X’s proposal for collective bargaining was an unfair labor practice, and issued a remedial order that Y must respond to X’s request for collective bargaining (Okayama Pref. LRC Order 2014.3.13 *Bessatsu chuo rodo jiho*, June 2014, p. 1).

Y then appealed to the Central Labour Relations Commission (abbreviated below as the “Central LRC”) for administrative review, seeking revocation of the order of Okayama Pref. LRC, and dismissal of X’s complaint for remedy.<sup>1</sup>

### II. Order

#### 1. Worker status of franchisees under the Labor Union Act

##### (1) Framework for determining worker status under the Labor Union Act



A. The worker status under the Labor Union Act of those in labor-supply relationships is interpreted as follows.

a. Even if labor is supplied under contracts other than labor contracts, such as through outsourcing etc., the labor supplier should be considered a worker under the LUA<sup>2</sup> when it is deemed necessary and appropriate that collective bargaining protections should be given considering the following three criteria substantially: criteria ① to ③ substantially, defined in the LUA as “persons who live on their wages, salaries, or other equivalent income, regardless of the kind of occupation.”

- ① Whether the person providing the labor is integrated into the business organization of the other party, such as consistently supplying labor that is indispensable for the business activities of the other party.
- ② Whether all or important parts of the labor supply contract are determined in a unilateral and standardized manner by the other party.
- ③ Whether the payment for the labor supplier can be considered equivalent or similar to the remuneration for the labor supply.

b. Regarding the criteria a. ① above, the following supplementary factors (a) to (c) are also

considered for the judgment of “being integrated into the business organization.”

- (a) Whether the labor supplier is in a relationship where he/she is to respond to the other party’s individual business requests.
- (b) Whether the labor supplier is bound to a specific date, time and location of labor supply and engages in work in the manner directed or supervised by the other party in a broad sense.
- (c) Whether the labor supplier provides labor exclusively to the other party.

c. On the other hand, if the labor supplier shows conspicuous characteristics to be qualified as business operator, such as having constant opportunities to gain profits by directing business operations based on their own independent management decisions, worker status under the LUA is denied.

**B.** Looking exclusively at the provisions of the franchise agreement, the relationship between Y and the franchisees is only a relationship between the franchise system provider and retailers who operate stores using it, and the latter cannot be said to be providing labor to Y. Therefore, in this case, a legal question arises that the focal point of dispute is whether the criteria for worker status under the LUA outlined in A above, which regulates those in labor-supply relationships, may not be applied.

However, in this case, it is recognized that (1) the provisions of the franchise agreement were determined in a unilateral and standardized manner by the other party Y, and there was no leeway for the franchisees to alter it by means of individual negotiation, (2) the franchisees have been bound by the unilateral and standardized contract while receiving advice and guidance from Y on managing the member stores, and in many cases, have been operating the stores themselves for a considerable amount of time, (3) based on the consistent appearance of store interiors and exteriors, signboards, uniforms and so forth adhering to design prescribed by Y, the franchise should appear to be a chain store with Y as its headquarters, and (4) Y, a franchise chain headquarters, conducted business activities and provided more than management

support to the franchisees such as store opening plan and product development based on Y’s own management strategies, and thus, Y is considered to increase its own profits through the business activities of the franchisees. Given these circumstances, it can be said that in the light of the relationship between Y and franchisees in reality, there is possibly scope for assessing franchisees themselves as providing labor for Y’s business endeavors.

Therefore, in this case, it is still necessary to take criteria A above into account when making judgments, and to examine whether the relationship between Y and franchisees can be viewed as, in effect, a labor-supply relationship.

## **(2) Integration into the business organization (1 (1) Aa① above)**

In this case the franchisees, as retailers, raise their own funds and bear the costs of their business, and take on both losses and profits, as well as hiring employees and managing personnel at their own discretion. They use the labor force of others to manage stores at the locations of their choice. There are certain restrictions on the management of funds, purchase of products, and business days and hours, but managers have the character of an independent retailer with considerable discretion. On the other hand, Y conducts training, evaluations, and so forth on the management of franchisees’ stores, and requires to present consistent external appearance of their stores showing that they are part of the Y’s chain. However, even though there are constraints on aspects of franchisees’ business operations and store management, this does not provide grounds for franchisees to be considered as part of the labor force integrated into Y’s business organization.

The next point is that franchisees cannot be said to be supplying labor under time and location constraints from Y, and while engaging in the management of store operations, following a manual and receiving advice and guidance from “operation field counselors” (Y’s employees who visit stores and provide advice and guidance to franchisees), these practices are not governed by binding rules, with the exception of acts that violate the Franchise



Agreement. Even if there are practical constraints on business operations at stores, these should be regarded as restrictions on store management as a business activity of franchisees, and therefore franchisees are not actually supplying labor under the supervision of Y, even in a broad sense. Also, while franchisees are exclusively affiliated with Y as far as convenience store management is concerned, in this case for judgment, that point should not be emphasized in considering the issue of integration into the business organization. With all these points taken together, franchisees cannot be assessed as being integrated into Y's business organization as an indispensable labor force of Y's business activities.

### **(3) Unilateral and standardized determination of contents of contract (1 (1) Aa② above)**

It is appropriate to state that the contents of this franchise agreement have been determined in a unilateral and standardized manner by Y. However, as mentioned above, considering that franchisees are independent retailers, it is appropriate to say that this franchise agreement does not regulate the labor supply and working conditions of franchisees, but rather stipulates the manner of the business activities of franchisees' store management. Though the fact that Y decides the contents of the contract unilaterally may indicate a disparity in bargaining power between Y and franchisees, it is not grounds for recognizing franchisees' worker status under the LUA.

### **(4) Payment as remuneration for labor supply (1 (1) Aa③ above)**

It should be said that the money that franchisees receive from Y lack the precondition to be considered as characteristics that remuneration for franchisees' supply of labor should have, given the purpose of the franchise agreement and the actual situations regarding the relationship between franchisees and Y. In addition, when the character of the funds is examined, it is not possible to affirm their nature as remuneration corresponding to labor supplied. Therefore, it cannot be said that franchisees are being paid by Y for the labor they supply.

### **(5) Conspicuous business-operator status (1 (1) Ac above)**

Given the franchisees' form and scale of business and store management in reality, franchisees are independent business operators, and they constantly have the opportunity to gain profits through independent management decisions with regard to the overall management of their own retail business operations. Franchisees can make judgments on business forms and the number of stores, plan for the proper daily stock, the payment of expenses, and operational direction and so forth. Also, by bearing the costs of their own retail business, having a responsibility to accrue losses and profits, and utilizing the labor force of others, franchisees take risks on their own initiative. They clearly have the status of business operators.

### **(6) Conclusion**

The franchisees are independent retailers, and can be said neither to be integrated into Y's business organization as a labor force integral to carrying out Y's business, nor to supply labor through a contract similar to a labor contract. Furthermore, it cannot be said that franchisees supply labor to Y and receive payment from Y as remuneration for labor, and in addition, franchisees' character as business operators is conspicuous. In view of the above comprehensively, the franchisees in relation to Y cannot be considered workers under the LUA, under which it would be deemed necessary and appropriate to apply protections of the LUA to ensure equal footing in negotiation with the employer.

## **2. Whether unfair labor practices are recognized**

It was concluded that, given the fact that franchisees do not have worker status under the LUA, Y's failure to respond to X's request for collective bargaining does not constitute an unfair labor practice under the Article 7, No. 2 of the LUA.

## **III. Commentary**

In recent years, the rapid growth of new forms of work which cannot be defined as employment, including personal delivery of documents, food, and



other items via motorcycle or bicycle has seen in many countries. Are the people doing these “gigs” workers? Who has worker status? Problems have arisen regarding the scope of application of labor laws, which have drawn public attention.<sup>3</sup> In the same context the issue of owner-managers of convenience stores, like those in this case, involves worker status. Thus far the legal relationship between franchisee owner-managers and the franchise companies, and the regulation of the contents of their contract have been discussed from a judicial perspective.<sup>4</sup> Although this case is not a court decision but an administrative order issued by the CENTRAL LRC regarding a motion for review of the prefectural labour commission order in the first instance (therefore, this order is subject to a judicial review in the future),<sup>5</sup> we have focused on it here because of the widespread attention it drew.<sup>6, 7</sup>

In Japan, the concept of a “worker” under collective labor relations law (the Labor Union Act) is different from that under the individual labor relations laws (the Labor Standards Act, the Labor Contracts Act, abbreviated below as the “LSA,” and the “LCA”). The issue in this case is the worker status under the LUA. Article 3 of the LUA stipulates that “the term ‘Workers’ as used in this Act shall mean those persons who live on their wages, salaries, or other equivalent income, regardless of the kind of occupation.” On the other hand, the LSA and the LCA state as requirements for “workers” that they are “employed” and “receive wages.”<sup>8</sup> In the area of individual labor relations laws, being “employed” based on a labor contract, in other words, the presence of control and supervision of an employer, is an important factor that determines worker status.<sup>9</sup> By contrast, as for collective labor relations law, worker status under the LUA does not require being “employed,” as shown in the article quoted above. In other words, under the LUA, a labor contract relationship is not absolute, and rather worker status is broadly defined, and one can have the status of a “worker” if they receive remuneration by supplying labor. In addition, Japan’s collective labor relations legislation is interpreted as focusing on the voluntary and autonomous setting of working conditions between labor and management,

by promoting collective bargaining. The scope of “workers” is defined in terms of “who should reasonably be included in collective bargaining relationships.” Thus, regarding “workers” under the LUA, the normative values for “workers to be included in collective bargaining” have greatly differed depending on the scholar, and there has been heated controversy regarding various legal judgments and theories.<sup>10</sup>

Under these circumstances, the Supreme Court of Japan issued three decisions in recent years (2011–2012)<sup>11</sup> on worker status under the LUA, making judgments comprehensively based on the factors summarized in 1. (1) A of II above. Later, Study Group on the Labor-Management Relations Law composed of labor law scholars, set in the Ministry of Health, Labour and Welfare (MHLW), organized the factors for consideration indicated in the Supreme Court’s three decisions, and issued a report on criteria for worker status under the LUA (July 2011, hereafter the LMRL Study Group Report).<sup>12</sup> It can be said that the interpretation of this issue has almost established with this report.

To describe the factors for consideration specifically, in accordance with the summary of the decision and order in this case, the LUA concept of “workers,” in comparison with the concept of “workers” under the individual labor relations laws of the LSA and LCA, is characterized by judgment based on considerations of “integrated in the business organization” (as described in 1 (1) Aa①, for details see 1 (2) of II above), and “unilateral and standardized determination of contracts contents” (as described in 1 (1) Aa②, for details see in 1 (3) of II above). These factors are not seen in the criteria defining “workers” under the individual labor relations laws. From the viewpoint of the labor-management relations law, facts that can be grasped through these factors should be appropriately dealt with by means of collective bargaining. This illustrates the uniqueness of the concept of “workers” under the LUA.

Still, the factors for the concept of “workers” under individual labor relations laws have not completely been neglected. In the supplementary factors for the judgment of the criteria “integration

into the business organization (1 (1) Ab above), reference is made to whether the labor supplier can refuse the orders of the client, and whether there are constraints on the time and place business operations are performed. These are factors considered upon the determination of worker status under the individual labor relations laws, the LSA and the LCA. However, in determining worker status under the collective labor relations law as well, these are considered “positive supplementary factors” that allow worker status (in two of the supplementary factors (a) and (b) of the above 1 (1) Ab). Similarly, business operator status (1 (1) Ac above) is also a factor that can be considered not only with regard to worker status under individual labor relations laws, but also worker status under the collective labor relations law, where business operator status is interpreted as a factor denying worker status.

The judgment procedures comprising these factors are comprehensive judgments. At the same time, in accordance with the worker-status judgment under the collective labor relations law of Japan, it is an interpretative approach in which “those who obtain wages under labor relationship similar to those of a labor contract ought to be recognized as ‘workers’ under the LUA, if it is deemed necessary and appropriate to provide collective bargaining protection.”<sup>13</sup>

In this case, the CENTRAL LRC denied the worker status of an owner-manager of a convenience store. In this regard, this order seems to be characterized by the logical construction and the use of factors for consideration for the judgment.

The three Supreme Court decisions and the LMRL Study Group Report as well as the Okayama Pref. LRC order in the first instance of this case all appeared to interpret three factors for determining worker status to be considered based on (1) integration into a business organization, (2) unilateral and standardized determination of contents of contract, and (3) compensation as remuneration for labor supplied (1 (1) Aa①–③ of II above), and as supplementary factors, (4) relationship necessitating response to business requests and (5) supplying of labor under control and supervision in

a broad sense and the imposition of certain spatial and temporal constraints (1 (1)Ab (a) and (b) above) to be considered respectively. Furthermore, (6) conspicuous business-operator status (1 (1) Ac above) was classified as a factor that could cancel out factors (1) to (5) above after consideration of these factors. It seems that a logical construction used above led to a comprehensive judgment as a result of the consideration.

On the other hand, in light of 1 (1) B above regarding the provisions of the franchisees agreement, the order in this case seems to have assumed the business-operator status of franchisees since the beginning of the review. Nonetheless, considerations were made using criteria that have been widely recognized until now, namely “it can be said that there is possibly scope for assessing franchisees themselves as providing labor for Y’s business endeavors.” In addition, as shown in 1 (1) Ab, when considering integration into a business organization, considerations included the supplementary factors listed above, (4) relationship necessitating response to business requests and (5) supplying of labor under control and supervision in a broad sense and the imposition of certain spatial and temporal constraints.

One could presume that there could be two reasons behind the fact—that criteria which have been used so far were restructured to give a new framework, while it premised on the business operator status of franchisees. First, the CENTRAL LRC would probably have had strong hesitation about a drastic alteration in the judgment framework (or factors) of worker status under the LUA in this case that may shake the judicial stability. Second, while X claims that under actual working conditions franchisees are supplying labor to Y, (it seems that) it is recognized as a premise that franchisees are business operators under a franchise agreement. Under these circumstances, the CENTRAL LRC recognized essential differences between franchisees and individual contractors<sup>14</sup> which had been set in precedents and orders thus far in the relationship with the company, contract forms, and the nature of work form. For these two reasons, it can be surmised

that in this case, the franchisees' worker status was denied from the start, that is, the underlying logical construction was based on the affirmation of their status as business operators. This is because without such a construction, as the Okayama Pref. LRC order in the first instance and some experts point out,<sup>15</sup> membership under a franchise agreement and execution of business operations would have to be recognized as the integration of franchisee into the business organization of Y.

Also, because it cannot be denied that the franchise owner-managers in this case have the status of business operators, which contradicts worker status, a new judgment approach differing from precedents was presented, or perhaps the interpretation may be limited to franchisees with business-operator status.<sup>16</sup> Such implications are not stated in the order, and remain inferred. However, even on the presumption of this understanding, the order's unconventional interpretation seems to add ambiguity to the existing judgment framework (or the construction of the factors for consideration).<sup>17</sup> Specifically, it would seem that the "unilateral and standardized determination of contract contents" and "compensation as remuneration for labor supplied," which ought to be the main factors for consideration, have been relativized and belittled and their significance as factors greatly diminished. On the other hand, supplementary factors such as "a relationship necessitating a response to other party's business requests" and "supplying of labor under control and supervision in a broad sense, and the imposition of certain spatial and temporal constraints" are included in consideration of "integration into the business organization," and as a result, it occupies an important position in the overall judgment on the value or meaning of the relationship between franchisor company and franchisees, beyond its intrinsic supplemental significance. This point will be clarified through an examination of the judicial approach in similar cases in the future.

Furthermore, the CENTRAL LRC might have denied franchisees' worker status in relation to the conclusion of collective bargaining agreements and the guaranteed right to engage in labor disputes.

Franchise agreements are contracts between businesses, this objective fact cannot be altered. Once a collective agreement is concluded, however, the question arises of how to interpret the collective agreement's normative effect (legal effect of the part of the agreement that determines working conditions) in a franchise contract, or of whether a franchise contract will be accepted as a (relative) labor contract. In addition, there may be a question of whether a franchise agreement can provide civil immunity in the event of a dispute.<sup>18</sup> Because the issue of worker status in this case was closely related to such interconnected issues in collective labor relations law, the CENTRAL LRC seems to have made a judgment in this case focusing on the business-operator status of the franchise owner-managers, and came to the conclusion that they were not eligible for worker status.

Considering the working conditions of franchise owner-managers, who work extraordinarily long hours due to operating businesses open 24 hours a day without being able to secure sufficient staff, contemplating the problems they face as a labor law issue is essential. Postulating franchise agreements between businesses which are the basis of relationships between the franchisor company and the franchisees as the unignorable, in the field of economic law as well, it would be necessary to consider institutional and policy measures to render more appropriate the business operations of franchise stores and the working conditions of owner-managers.<sup>19</sup> The CENTRAL LRC order in this case indicates the limitations of labor law, and also suggests a need for greater connection and coordination with adjacent legal domains.

1. Unfair labor practice remedial procedure in the labor relations commission and its relationship with judicial procedure, see <https://www.mhlw.go.jp/english/org/policy/dl/08.pdf>.

2. Article 3, LUA, defines "workers" as "persons who live on their wages, salaries, or other equivalent income, regardless of the kind of occupation."

3. In Japan, unlike other countries, ridesharing services such as Uber and Lyft are not legally permitted. Thus, no legal judgments so far have been made on the worker status of those services' drivers.

4. See Yoko Hashimoto, "Can Owners of Convenience Stores

Be “Workers” under the Japanese LUA?” *Japan Labor Issues* 3, no. 12 (January–February 2019): 19.

5. According to newspaper reports, X has appealed to the CENTRAL LRC order and filed a suit in the Tokyo District Court for revocation of the administrative decision and order.

6. On the same day as this CENTRAL LRC order, an order was issued for a similar case. See *FamilyMart* case, Central Labour Relations Commission (Feb. 6, 2019). Ministry of Health, Labour and Welfare website: <https://www.mhlw.go.jp/churoi/houdou/futou/dl/shiryuu-31-0315-2z.pdf>. Because the basic contents of that order are the same as the order in this case, this article deals only with the latter.

7. Commentary on this order includes Yoko Hashimoto “Konbini-ouna no rosoho jo no rodosha-sei” [Can Owners of Convenience Stores Be “Workers” under the Japanese LUA?] *Jurist*, no. 1533 (2019): 4; Yoichi Motohisa “Konbini-ouna no rosoho jo no rodosha-sei” [Worker Status of Convenience Store Owners under the LUA] *Rodo-Horitsu-Junpo*, no. 1943 (2019): 6; Yoichi Shimada, “Konbini chen kameitenshu no rosoho jo no rodosha-sei” [Worker Status of Convenience Store Chain Franchisees] *Rodo Hanrei*, no. 1209 (2019): 5; Susumu Noda, Kaoko Okuda, “Daiarogu: Rodo hanrei kono 1-nen no soten” [Dialogue: Labor law precedents 2018–19: The issues involved] *The Japanese Journal of Labour Studies* 61, no. 11 (2019): 2 (all commentary is only available in Japanese).

8. “In this Act, ‘Worker’ means one who is employed at a business or office and receives Wages therefrom, regardless of the type of occupation.” (Labor Standards Act Art. 9); “The term ‘Worker’ as used in this Act means a person who works by being employed by an employer and to whom wages are paid.” (Labor Contracts Act Art. 2 (1)).

9. In a lawsuit in which the worker status of a convenience store owner-manager under the LSA and LCA was disputed, the court denied worker status. The *Seven-Eleven Japan (franchisees)* case, Tokyo District Court (Nov. 21, 2018) 1204 *Rohan* 83.

10. For the history of legal decisions and debates on theories, see Takashi Araki, *Rodoho* [Labor and Employment Law], 3rd ed. (Tokyo: Yuhikaku, 2016) 573–576.

11. *Central Labour Relations Commission v. Shin-Kokuritsu Gekijo Un’ei Zaidan* case, Supreme Court (Apr. 12, 2011) 65-3 *Minshu*\* 943; *Central Labour Relations Commission v. INAX Maintenance* case, Supreme Court (Apr. 12, 2011) 1026 *Rohan* 27; *Central Labour Relations Commission v. Victor Service & Engineering* case, Supreme Court (Feb. 21, 2012) 66-3 *Minshu* 955. All of these decisions determine only whether the union members in the cases have worker status under the LUA, and do

not provide a general definition of the concept of a worker.

\**Minshu*: Saikosaibansho Minji Hanreishu (Supreme Court Reporter)

12. Labor-Management Relations Law Study Group, “Report of the Labor-Management Relations Law Study Group: Criteria for Worker Status under the LUA (July 2011, only available in Japanese) (Chair: Takashi Araki, Professor of The University of Tokyo). This report identified criteria based on the Supreme Court decisions cited in the note 9, and classified (1) integration into a business organization, (2) unilateral and standardized determination of contract contents, and (3) compensation as remuneration for labor provided [(1) to (3) are defined as “basic criteria” by the Report], (4) relationship where the labor supplier is to respond to the other party’s business requests and (5) supplying of labor under the other party’s control and supervision in a broad sense and the imposition of certain spatial and temporal constraints [(4) and (5) are defined as “supplementary criteria”], and (6) conspicuous business-operator characteristics [defined as a negative criterion that could cancel out factors (1) to (5) above].

13. Kazuo Sugeno, *Rodo ho* [Labor law]. 12th ed. (Tokyo: Kobundo, 2019), 830 (only in Japanese).

14. In addition to the three cases cited in note 11, there is also a decision and order in the *Sokuhei* case, Central Labour Relations Commission (July 7, 2010) 1395 *Bessatsu chuo rodo jiho* 11.

15. Hashimoto, *supra* note 7, 5.

16. Noda and Okuda, *supra* note 7, 9, 11 (Comments by Professor Noda and Professor Okuda); Shimada, *supra* note 7, 12–13.

17. Hashimoto, *supra* note 7, 5; Shimada, *supra* note 7, 12–13.

18. Noda and Okuda, *supra* note 7, 9–10 (Comments by Professor Noda).

19. Shimada, *supra* note 7, footnote 17 at 13. Japan Fair Trade Commission, which has jurisdiction over the Antimonopoly Act, has published implementation standards for the act, entitled “Guidelines concerning the Franchise System under the Antimonopoly Act” (April 24, 2002, revised June 23, 2011) (only available in Japanese). However, this is merely an approach to implementation of laws and regulations regarding relationships between business operators, and does not provide views on how franchisees supply labor.

The *Seven Eleven Japan* case, *Rodo Hanrei* (*Rohan*, Sanro Research Institute) 1209, pp. 5–63. See also *Labor Law Studies Bulletin* 2708.

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## Wages in Japan

### Part II: Wages and Size of Company

NISHIMURA Itaru

Part I identified the formation of seniority-based wage curves as a characteristic of wages in Japan. Seniority-based wage curves are comprised of annual increments and “base-up”.<sup>1</sup> Do the wage curves of all employees take the same form? This article presents characteristics of wages with focus on size of company (as measured by the number of employees).

#### I. Wage curves vary depending on size of company

First of all, let us look at the wage curve of employees who were employed immediately after graduation and continued to work at the same company. Using data of the *Basic Survey on Wage Structure*, Figure 1 shows the wage curves of “standard employees (*hyōjun rōdōsha*)”<sup>2</sup> at companies with 1,000 or more employees. Both wages of university graduates and high school graduates show seniority-based curves and rise at roughly the same pace, particularly in their twenties. Although the curve of high school graduates subsequently becomes more gradual compared to that of university graduates, both have similar shapes. Regarding degrees of increase, the peak of the wage for high school graduates is at the 55–59 age group, when the wage amount reach 2.3 times that at the 20–24 age group. The peak for university graduates is at the 50–54 age group, when the wage amount reach 2.6 times that for the 20–24 age group.

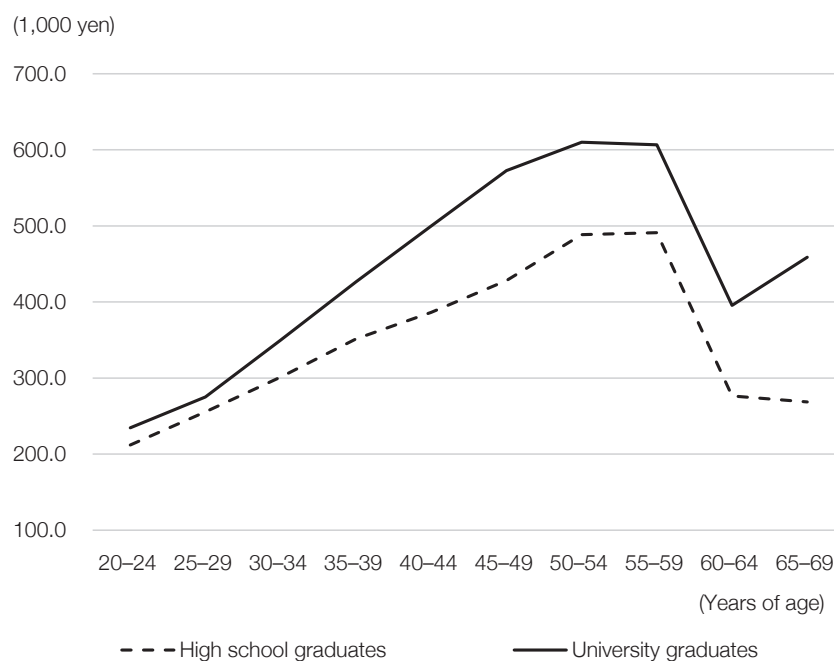
Figure 2 shows wage curves for “standard employees” by size of company, looking only at university graduates. It is apparent that while wages show a seniority-based curve for all sizes, the

steepness of the curves varies. The larger the size of company is, the more seniority-based the wage curve is.

For all company sizes, wages are lowest for the 20–24 age group and peak at the 50–54 age group. Let us look at degree of increase for each size of company. For companies with 1,000 or more employees, the peak is at the 50–54 age group, with wages being 2.6 times those of the 20–24 age group. For companies with 100–999 employees, the peak is at the 50–54 age group, with wages being 2.3 times those of the 20–24 age group. For companies with 10–99 employees, the peak is at the 50–54 age group, with wages being 2.1 times those of the 20–24 age group. Thus, the steepness of the wage curves varies depending on the size of the company at which employees work. Moreover, looking at the steepness of the wage curve by education background, the peak for high school graduates at companies with 1,000 or more employees is 2.3 times those for the 20–24 age group. Regarding university graduates, the steepness of the wage curve at companies with 100–999 employees is the same as that for high school graduates at companies with 1,000 or more employees, and that at companies with 10–99 employees is more gradual than that for high school graduates at companies with 1,000 or more employees. The above suggests that employees’ wages depend on the size of the companies at which they are employed.

#### II. To what extent do wage differentials arise depending on size of company?

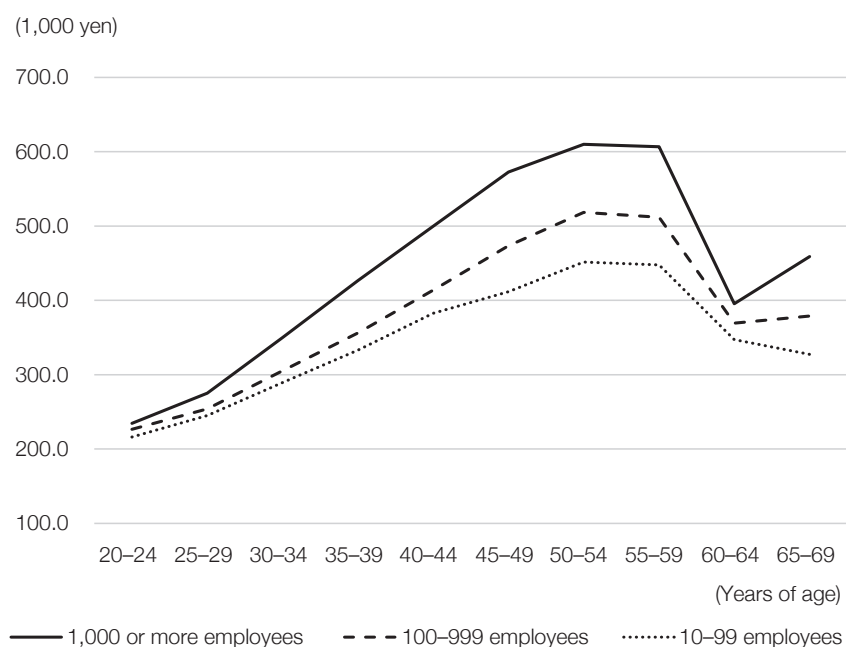
Then, to what extent do wage differentials arise



Source: MHLW, *Basic Survey on Wage Structure*, 2019.

Note: Calculated based on scheduled cash earnings of male "standard employees (*hyōjun rōdōsha*)."

Figure 1. Wage curves of "standard employees" in companies with 1,000 or more employees (industrial total)



Source: MHLW, *Basic Survey on Wage Structure*, 2019.

Note: Calculated based on scheduled cash earnings of male "standard employees (*hyōjun rōdōsha*)."

Figure 2. Wage curves of "standard employees" by size of company (university graduates)



Table 1. Wage differentials among establishment size categories

(1,000 or more employees=100)

Size of establishment/company	Size total	5–29 employees	30–99 employees	100–499 employees	500–999 employees	1,000 or more employees
Japan <sup>1</sup>	68.8	58.2	67.2	78.5	86.7	100
United States <sup>2</sup>	60.9	48.3	58.4	69.5	84.5	100
United Kingdom <sup>3</sup>	99.0	84.8	111.1	101.8	121.5	100
Germany <sup>3</sup>	68.7	—	71.0	100.9	88.7	100
Italy <sup>3</sup>	92.0	78.6	110.9	102.4	—	100
Netherlands <sup>3</sup>	101.8	102.5	115.4	125.4	124.1	100
Denmark <sup>3</sup>	100.4	95.0	110.5	111.4	116.4	100
Finland <sup>3</sup>	100.3	95.1	104.0	110.6	104.6	100
Spain <sup>3</sup>	91.2	95.1	89.9	103.7	114.4	100

Source: JILPT, *Databook of International Labour Statistics 2017*, [https://www.jil.go.jp/kokunai/statistics/databook/2017/05/p186\\_t5-14\\_t5-15.pdf](https://www.jil.go.jp/kokunai/statistics/databook/2017/05/p186_t5-14_t5-15.pdf).

Notes: 1. 2015 values. By size of establishment. Size total is for establishments with 5 or more employees. For “regular employees (*jōyō rōdōsha*)” of companies in a non-agriculture/forestry/fishery industry. Calculated based on monthly contractual cash earnings.

2. Values for the first quarter of 2015. By size of establishment. Size total is for establishments with 1 or more employees. For private-sector companies in a non-agriculture/forestry/fishery industry. Calculated based on average weekly wage.

3. 2014 values. For companies with 10 or more employees and in a non-agriculture/forestry/fishery industry, excluding those in Public Administration and Defense; Compulsory Social Security. Calculated based on total monthly wages.

with different company sizes? Table 1 summarizes wage differentials by size of company in Japan and other countries, in which the wage level for each size is displayed using establishments and companies with 1,000 or more employees as the basis. It can be seen that in Japan, wage differentials grow larger as company’s size decreases. Although it should be noted that calculation methods differ when making comparisons, wage differentials depending on size of company are apparently larger in Japan than in other countries. The United States shows a tendency similar to that of Japan. In European countries (United Kingdom, Italy, Netherlands, Denmark, Finland, and Spain), wages are higher in the 100–499 employee and 500–999 employee categories than the 1,000 or more employee category, and higher in the 30–99 employee category than the 1,000 or more employee category except Spain. Additionally, in Germany, wages in the 100–499 employee category are about the same as those in the 1,000 or more employee category.

### III. What causes wage differentials by size of company?

#### 1. Labor-management negotiations

What causes wage differentials by size of company? One factor is that Japan does not have

a mechanism for forming cross-company wage rates, such as sectoral bargaining in continental Europe (e.g. Germany or France). For example, labor-management negotiations are conducted at the company level, and there is no system by which wage rate of each job title is decided at the industrial level. Industrial unions encourage their member company unions to call for achieving uniform wage increases by presenting to them minimum standards for wage increases (minimum increase, in Japanese, so-called *hadome*). However, member company unions are allowed to settle for an amount below the minimum standards depending on business conditions of their companies. For this reason, labor and management at each company can set wage levels in accordance with the situation of their company.

#### 2. Job content and wages

Furthermore, Japan’s wage system has the characteristic of not promoting the formation of cross-company wage rates. Connections between wage and particular job is not strict in Japan. As in other countries, the elements of a job are not ignored when determining wages in Japan, and the abilities necessary for a job and the content of the job actually performed are considered. However, in the case of jobs in Japan, the scope of duties and the level of

Table 2. Hourly wages of part-time employees

Size of company (Number of employees)	Hourly wage (yen)	Wage differentials with other company sizes (1,000 or more employees=100)
1,000 or more employees	1,146	100.0
100–999 employees	1,226	107.0
10–99 employees	1,212	105.8

Source: MHLW, *Basic Survey on Wage Structure*, 2019.

responsibility change from employee to employee.

Let us examine this point a little more closely. In the basic interaction of the employment relationship—namely, “how much work will an employee do and how much money will he or she get for it”—there is a difference in thinking between the United States/Europe and Japan. In the United States and Europe, regarding at least for non-managerial employees who are not considered to be prospective managers in the future, the “how much work” component of the abovementioned employment relationship is already established to a certain degree prior to their entering the company, and the “how much money” component is determined in a cross-company wage rates that is much stronger than that of Japan. Accordingly, the scope of duties that companies can require their employees to perform as well as the pay for those duties are predetermined to a certain extent and cannot be easily changed by the company. Marsden points out that companies of the United States, United Kingdom, and Germany must utilize human resources under such constraints (Marsden 1999). Japan is a country where companies do not have the constraints faced in the U.S. and Europe.<sup>3</sup> Consequently, it is quite common for the scope of duties and the weight of responsibilities to change each year even for employees assigned to the same position. This unique relationship between job and wage in Japan is thought to be a factor that inhibits the formation of cross-company wage rates based on the sense of “this job is to be paid this amount of money.”

A characteristic of this labor-management negotiation framework and wage system is that wages are aligned with the company’s ability to pay wages and the state of labor relations in the company.

As a result, differences in wage levels and wage curves arise according to the size of company.

#### IV. Do the wage differentials by size of company apply to all forms of employment?

This article has presented characteristics of wages of “standard employees” with a focus on size of company. Meanwhile, Table 2 shows wage levels by size of company focusing on part-time employees. No major differences in the hourly wages of part-time employees are observed among the company size categories. In other words, part-time employees earn roughly the same wages regardless of company size. Noteworthy is that their wages of companies with 999 or less employees are higher, albeit only slightly, in comparison with those at companies with 1,000 or more employees. Thus, the wages of part-time employees have a characteristic that differs from “standard employees.” This suggests the possibility that wages may also differ depending on how employees work. Part III will examine forms of employment and wages.

1. The “base-up” is a wage increase brought about by across-the-board revision of a company’s pay scale. It is determined through labor-management negotiations in spring called *Shunto*. As explained in Part I, seniority-based wage curves are comprised of annual increments and “base-up.”

2. “Standard employees” refer to *hyōjun rōdōsha*, as used in statistics, that is defined as those employees among employees who were employed by a company immediately after graduation and are deemed to be continuing to work at the same company who meet the following condition according to their educational background. High school graduates: Employees whose age minus their number of years of continuous service is 18. University graduates: Employees whose age minus their number of years of continuous service is 22 or 23.

3. Marsden points out that, unlike the three countries of the United States, United Kingdom, and Germany, in Japan, the scope of assigned tasks and minimum performance standards

of an employee to be hired are not established by any kind of externally-formulated standards prior to the employee's joining the company. He further notes that the building of a trusting relationship between management and the employee is the foundation upon which the employment relationship is established in Japan (Marsden 1999).

#### Reference

Marsden, David. 1999. *A Theory of Employment Systems: Micro Foundations of Societal Diversity*. Oxford: Oxford University Press.

This is a series of three articles on the topic of wages in Japan. See Part I (May-June issue, vol. 4, no. 23) at <https://www.jil.go.jp/english/jli/documents/2020/023-04.pdf>. Part III will be in August-September issue, vol. 4, no. 25.

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## Economy

The Japanese economy is worsening rapidly in an extremely severe situation, due to the Novel Coronavirus. Concerning short-term prospects, an extremely severe situation is expected to remain due to the influence of the infectious disease for the time being, although the level of socio-economic activities will be resumed gradually with taking measures to prevent the spread of infectious diseases. Also, attention should be given to the effects of fluctuations in the financial and capital markets. (Monthly Economic Report,<sup>1</sup> May, 2020).

## Employment and unemployment

The number of employees in April decreased by 360 thousand over the previous year. The unemployment rate, seasonally adjusted, was 2.6%.<sup>2</sup> Active job openings-to-applicants ratio<sup>3</sup> in April, seasonally adjusted, was 1.32.<sup>4</sup> (Figure 1)

## Wages and working hours

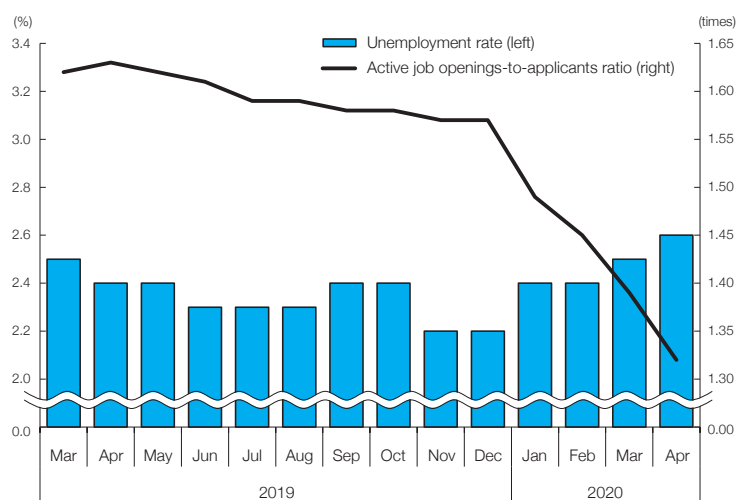
In March, total cash earnings (for establishments with 5 or more employees) increased by 0.1% and real wages (total cash earnings) decreased by 0.3% year-on-year. Total hours worked decreased by 1.2% year-on-year, while scheduled hours worked decreased by 0.8%.<sup>5</sup> (Figure 2)

## Consumer price index

In April, the consumer price index for all items increased by 0.1% year-on-year, the consumer price index for all items less fresh food declined by 0.2%, and the consumer price index for all items less fresh food and energy increased by 0.2%.<sup>6</sup>

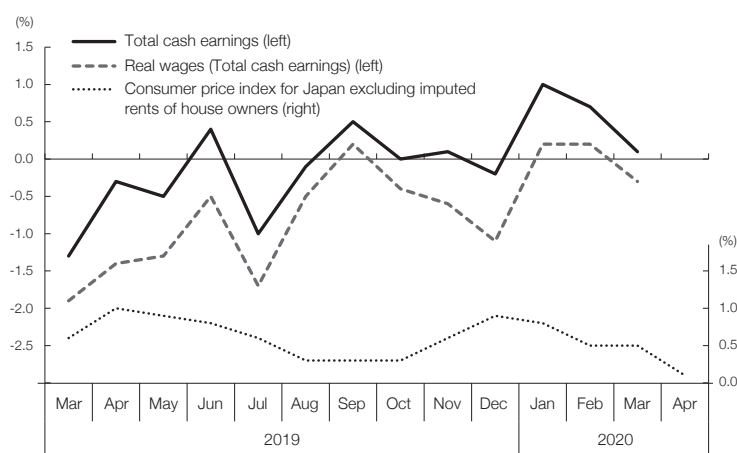
## Workers' household economy

In April, consumption expenditure by workers' households decreased by 9.9% year-on-year nominally and decreased by 10.0% in real terms.<sup>7</sup>



Source: Labour Force Survey<sup>2</sup>; Employment Referrals for General Workers.<sup>4</sup>

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



Source: Monthly Labour Survey<sup>5</sup>; Consumer Price Index.<sup>6</sup>

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

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.html>

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*. [https://www.mhlw.go.jp/english/database/db-l/general\\_workers.html](https://www.mhlw.go.jp/english/database/db-l/general_workers.html)

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

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

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

## What's on the Next Issue

### *Japan Labor Issues*

Volume 4, Number 25,

August-September 2020

*tentative*

#### ● Trends

[Column]

▷ Student Part-Timers as a Subject of Labor Policy

[Key topic]

▷ Obligor Efforts Concerning Measures to Secure Employment Opportunities up to the Age of 70: Revision of the Act on Stabilization of Employment of Elderly Persons, etc.

#### ● Research

[Research notes]

▷ Development of the Input Data for the Occupational Information Network of Japan

#### ● Japan's Employment System and Public Policy 2017-2022

▷ Wages in Japan  
Part III: Wages and Forms of Employment

#### ● Statistical Indicators



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