

## Key topic

# Obligating 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.

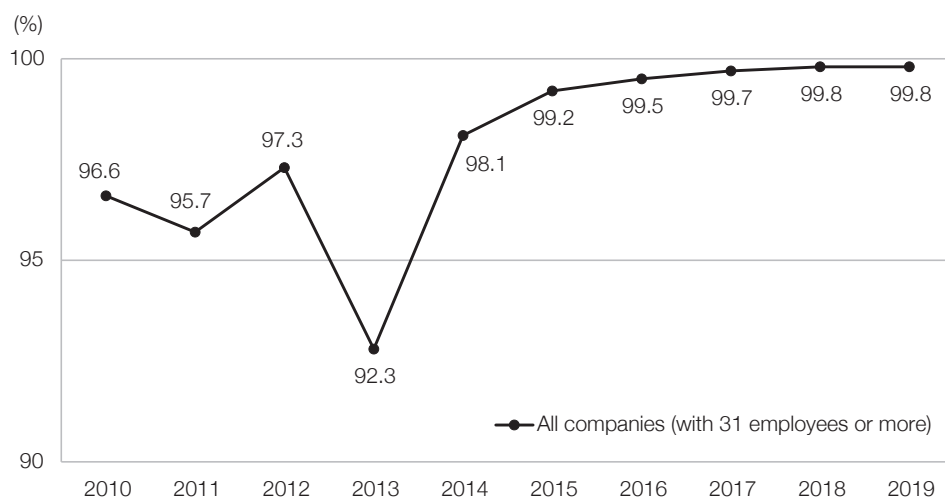
In the Action Plan of the Growth Strategy (approved by the Cabinet on June 21, 2019), the government pointed out the need to secure employment opportunities up until the age of 70 and to broaden employment options corresponding to the characteristics of individual senior citizens. This is aimed at securing employment opportunities for senior citizens who desire to work with the coming era in which life expectancy at birth will reach 100 years (so called “the age of 100-year lifespan”). Based on this, the Committee on Basic Employment Measures (headed by Masahiro Abe, Professor, Chuo University) set up under the Employment Security Committee of the Labour Policy Council of the Ministry of Health, Labour and Welfare held discussions on six occasions beginning in September 2019 that led to the release of a report titled “Regarding the securing of employment opportunities for senior citizens and the disclosure of information on mid-career employment” on December 25 of the same year. A bill containing a package of revisions for the Act on Stabilization of Employment of Elderly Persons and other laws that incorporated the report’s content was submitted to the 201st Diet session as the “Bill for Partial Revision of the Employment Insurance Act, etc.,” and adopted and enacted on March 31, 2020.

## Securing employment opportunities until the age of 65

The introduction of measures to secure employment for all people who desire it up to the age of 65 is currently compulsory as a result of successive revisions to the Act on Stabilization of Employment

of Elderly Persons. Following revisions to the Act made in 2004 and 2012, employers became obligated to implement one of three “measures for securing employment for elderly persons”—namely, (1) raising the mandatory retirement age, (2) introduction of a continuous employment system, or (3) abolition of mandatory retirement—in order to ensure stable employment up to the age of 65 (Article 9 of the Act). Although the current Act was formulated with the continued employment of senior citizens in the same company in mind, concerning the measure (3) above, it permits the continuation of employment at a specially related employer (a group company such as a subsidiary or an affiliate) until the age of 65. However, the Act states that the responsibility for the measures for securing employment in such cases rests with the employers who employed the senior citizens until the age of 60.

As of June 1, 2019, the percentage of companies that are introducing measures to secure employment up to the age of 65 for all senior citizens who desire to continue working reaches 99.8% among companies with 31 employees or more (Figure 1). The percentage of companies that go beyond their obligation under the Act by having systems for working after the age of 66 is 30.8% (Figure 2). The senior labor force participation and employment rates have been showing upward trends in recent years. The desire to work among people aged 65 or older is also strong (Table 1 and Table 2). In light of these circumstances, the report pointed out that the environment must be further developed so that senior citizens can continue being active, regardless of their age, in accordance with their individual



Note: The values for 2012 and 2013 are not suitable for simple comparison due to a system revision that took place in April 2013 (abolishment of a system that permitted the limitation of people eligible for continuous employment systems).

Figure 1. State of implementation of measures for securing employment for elderly persons

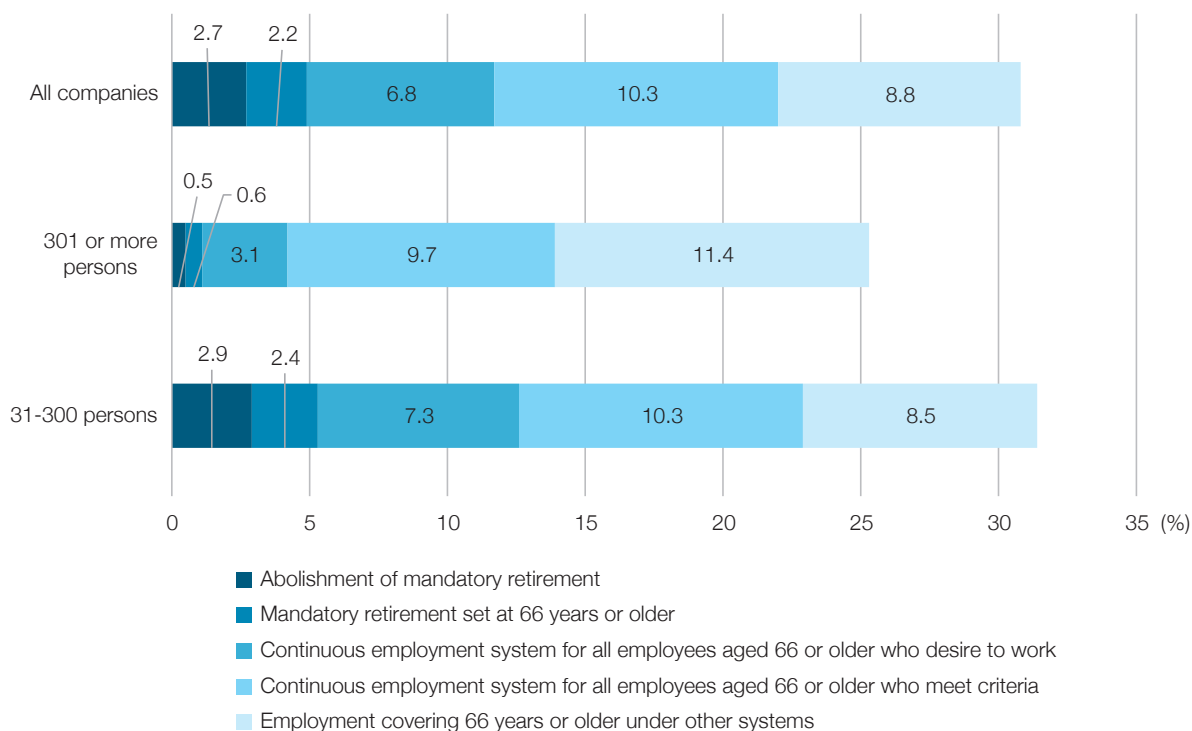


Figure 2. Companies with systems permitting work after age 66

needs and situations.

Securing employment opportunities up to the age of 70 is premised on having employment opportunities secured up until 65. Accordingly, the report notes that there is a continuing need to support

the introduction of measures to secure employment for everyone who wants it until the age of 65. (It should be noted that transitional measures that permit the application of criteria for limiting the people eligible for continuous employment systems

Table 1. Labor force participation rates of males aged 65 years or older

	Japan	USA	Canada	UK	Germany	France	Italy	Hong Kong	Singapore
1985	37.0	15.8	11.4	8.5	5.1	5.3	8.4	26.7	25.9
2018	33.9	24.0	18.1	14.0	10.3	4.0	7.7	18.6	38.2

Source: JILPT, *Databook of International Labour Statistics 2019*, <https://www.jil.go.jp/kokunai/statistics/databook/2019/documents/Databook2019.pdf>.

Note: A point in which Japan differs from other countries is that the age at which it is thought that people should retire is high. Senior citizens have a strong desire to work, and this is a factor that pushes up seniors' labor force participation rate (JILPT 2019: 62).

Table 2. Answers to the question "Do you wish to keep working even after reaching pensionable age?" (by sex and by age group)

	Yes	Probably	Probably not	No	Don't know	Motivated to work	Not motivated
Total (n=2,118)	44.1	31.8	12.8	8.9	2.4	75.8	21.8
Male (n=949)	47.5	29.2	12.5	9.5	1.3	76.7	22.0
Female (n=1,169)	41.2	33.9	13.1	8.5	3.3	75.1	21.6
Male / Ages 20–29	26.7	34.7	25.3	10.7	2.7	61.3	36.0
Male / 30–39	36.6	33.3	20.3	9.8	0.0	69.9	30.1
Male / 40–49	46.1	33.1	14.3	5.2	1.3	79.2	19.5
Male / 50–59	46.4	37.9	9.3	5.7	0.7	84.3	15.0
Male / 60–69	53.2	25.9	10.0	10.9	0.0	79.1	20.9
Male / 70+	56.1	20.7	7.6	12.7	3.0	76.8	20.3
Female / Ages 20–29	23.2	51.2	17.1	7.3	1.2	74.4	24.4
Female / 30–39	39.9	36.6	15.0	6.5	2.0	76.5	21.6
Female / 40–49	39.5	39.0	15.7	4.0	1.8	78.5	19.7
Female / 50–59	36.2	39.9	14.9	6.4	2.7	76.1	21.3
Female / 60–69	51.6	22.5	11.2	10.9	3.9	74.0	22.1
Female / 70+	42.6	29.4	9.1	12.8	6.0	72.1	21.9

Source: JILPT, "75.8% motivated to keep working even after reaching pensionable age—The 7th Survey on Working Life," *Japan Labor Issues*, vol. 1, no. 2, 2017, <https://www.jil.go.jp/english/jli/documents/2017/002-05.pdf>.

Note: "Motivated to work" is the total of "Yes" and "Probably." "Not motivated" is the total of "No" and "Probably not."

under labor-management agreements will end based on the current Act at the end of fiscal year 2024.) Additionally, securing the appropriate treatment of workers who continue employment beyond the age of 60 is necessary. The report therefore notes that the employment environment must also be developed in terms of treatment. This is in part based on the fact that a legal system concerning the improvement of the regulation for eliminating unreasonable disparities in treatment between regular and non-regular employees (the Act on Improvement etc. of Employment Management for Part-Time and Fixed-Term Workers) was executed on April 1, 2020. This will be applied to small to medium-sized enterprises

(SMEs) on April 1, 2021.

### Securing employment opportunities until the age of 70

Guidelines for the implementation and operation of measures to secure employment up to the age of 65 are established. The report stressed that similar guidelines must be established for measures to secure employment opportunities for people who desire to work until the age of 70. Moreover, it notes with regard to measures up to the age of 70 that it is appropriate to understand that employers who employ people up to the age of 60 have the legal obligation to make efforts to implement those

measures.

As for the content of measures up to the age of 70 to be implemented by employers, the report states they are similar to the measures to secure employment up to 65; specifically, (1) raising the mandatory retirement age, (2) introduction of a continuous employment system, and (3) abolition of mandatory retirement. The report further submits, however, that, in addition to the current measures (1), (2), and (3), it is appropriate to establish new measures—namely, (4) reemployment in companies that are not specially related employers, (5) work through freelancing or starting their own business, and (6) involvement in social contribution activities—and to require employers to make efforts to implement one of them. Regarding measure (4), the report refers to the conclusion of contracts among employers in the same manner as with the introduction of continuous employment systems by specially related employers. With regard to measure (5), specifically to funding for freelance contracts with individuals and business startup support for individuals, the report mentions the establishment of a system for concluding continuous outsourcing agreements up to the age of 70 with former employees after their mandatory retirement or after the end of their continuous employment up to 65, and that the matter of which businesses would be covered by the system could be settled within the systems that employers introduce.

With regard to measure (6), specifically to funding for individuals' participation in social contribution activities, the report mentions establishing a system that allows former employees to be continuously involved in the following businesses (a) or (b) up to the age of 70 after their mandatory retirement or after the end of their continuous employment up to 65. It mentions that the matter of which businesses would be covered by the system could be settled within the systems that employers introduce.

- (a) Business that the employer personally carries out.
- (b) Business that is carried out by an organization that the employer commissions, contributes to (i.e., funds), or provides other

forms of assistance, and that is related to an undertaking that helps advance the interests of an unspecified and large number of people.

With regard to (b), the report specifies that this refers to the conclusion of a contract (between the employer and the organization carrying out the business) that permits the former employee's continued involvement in the business up to the age of 70 following mandatory retirement or after the end of continuous employment up to the age of 65. It specifies that, at that time, the organization carrying out the business shall state that it will provide opportunities for involvement in the business until the age of 70 to senior citizens based on the content of the system introduced by the employer. At the same time, it specifies that a "business in which senior citizens are engaged by means of the employer's contribution (funding) or other assistance" shall require contributions or other assistance necessary for its smooth implementation, and that, "from the standpoint of balance with other options concerning the specific form of the employer's participation," a business covered by the system shall be limited to a consideration-based business that pays money as compensation for the provision of service, etc. to senior citizens.

### **Sufficient discussion between labor and management is required**

The physical strength, health condition, and other circumstances surrounding individuals become more diversified from the age of 65 compared to the years before. Because of this, the report states that "it is appropriate to permit the limitation of persons covered" in the measures that employers will implement when setting general obligations to make efforts. In view of the desirability of agreements about the criteria of the limitation to be reached between labor and management, it further demands that this point should be clarified in guidelines.

A variety of options for working styles that are tailored to senior citizens' characteristics must be prepared. On the other hand, the regulations of labor relations laws and ordinances do not extend

to “measures not by means of employment” (the measures (5) and (6) to be newly introduced). The report mentions these points and notes that sufficient discussion between labor and management will be required for the appropriate implementation of measures up to the age of 70. With regard to discussion on what measures employers will implement, it states that “while discussions and agreements with the Majority Union or the Representative of a Majority are anticipated, it is appropriate to specify such measures in guidelines in the same manner as for measures to secure employment up to the age of 65.” As for discussions on “measures not by means of employment,” the report notes that establishing in law the making of efforts to reach an agreement with the Majority Union or the Representative of a Majority is appropriate. Additionally, with regard to discussions on which measures will be applied to individual workers when an employer implements multiple measures, the report states that specifying the hearing of individual workers’ desires in guidelines is appropriate. The report also considers it appropriate to understand that the securing of employment opportunities until the age of 70 by combining multiple measures, rather than with only one, amounts to implementing measures that satisfy the obligation to make effort.

### **Disclosure of mid-career employment rates by companies becomes mandatory**

The report mentions that, as working lives become longer, it is necessary to provide support so that workers can smoothly gain employment in the occupation they desire as well as high-quality employment and can further enhance their working lives and take on new challenges through independent career development. The report points out the need to make workplace information more visible and to further promote matching between workers who desire mid-career employment and companies by disclosing information on mid-career employment. However, in light of the fact that mid-career employment is already actively occurring in SMEs as well as the burden on SMEs, the report proposes imposing the obligation to

disclose information only on large companies with 301 employees or more. Specifically, it states that it is appropriate to disclose such information as the percentage of mid-career regular workers among all regular workers by using methods that are easily accessible by job seekers, such as through websites of the companies.

However, the report points out that although companies with a strong track record in terms of regular mid-career employment are likely to present a high possibility of regular employment for job seekers, workplace assessments should not be based solely on the number of mid-career employment. It states that providing support so that companies will voluntarily disclose their workplace information is appropriate. Specifically, it mentions that it is appropriate to request large companies to voluntarily disclose quantitative information (e.g., mid-career employment rates for middle-aged/elderly workers and members of the “employment ice age” generation) and qualitative information (e.g., post-mid-career employment career paths, human resources development and treatment as well as the company’s thinking on mid-career employment), in addition to the items demanding legal obligation. It also mentions that it is appropriate to provide support to SMEs so that they too will voluntarily disclose such information.

### **Passage of a bill for legal revision by the 201st Diet session**

The report’s content was reflected in a bill for legal revision. A bill amending the “Act on Stabilization of Employment of Elderly Persons” concerning the securing of employment opportunities for senior citizens and a bill amending the “Act on Comprehensive Promotion of Labor Policies, Stability of Employment of Workers and Enhancement of Occupational Life” concerning the disclosure of information on mid-career employment were incorporated together with bills to amend the “Employment Insurance Act” and “Industrial Accident Compensation Insurance Act” into a package “Bill for Partial Revision of the Employment Insurance Act, etc.” that was submitted

to the 201st Diet session. The bill was adopted and enacted on March 31, 2020. Above legal revision will come into effect on April 1, 2021.

The interim report of the Planning Meeting on a Social Security System Oriented to All Generations that is chaired by Prime Minister Abe (issued on December 19, 2019) also mentions the securing of employment opportunities up to the age of 70. It recommends dividing legislation into two stages from the standpoint of smoothly promoting the securing of employment opportunities until the age of 70. For the legislation's first stage, it specifies the above-mentioned six measures and establishes a provision that requires employers to make efforts to systematize one of them. It adds that the Minister of Health, Labour and Welfare may, when he or she deems it necessary, demand that employers formulate a plan by labor and management at each company and that they ensure the implementation of plan formulation. In the

legislation's second stage, the revision of a bill will be studied to secure the implementation of such measures (so-called "obligation") by announcing company names as under the current law based on progress in the first stage. Here, the interim report takes the view that "as with previous legislation, the establishment of exemptions when there are labor-management agreements concerning cases of poor health condition, poor attendance rate, etc., will be studied." In addition to the establishment of such legislation, the interim report mentions the building of assessment and compensation systems that emphasize ability and results while taking into account the motivation of and acceptability by senior citizens, measures to prevent workplace accidents and maintain health based on declining physical functions that come with age, and, further, the promotion of career-development support and recurrent education with focus on advancing age.