

Gender Equality in the Workplace from a Legal Perspective: Current Situation and Issues of Japan's Equal Employment Opportunity Act

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With its 2006 revision, the Equal Employment Opportunity Act (EEOA), the cornerstone of Japan's gender equality legislation, which previously had a one-sided nature to improve the conditions of women rather than men, evolved into a law prohibiting discrimination "on the basis of sex" regardless of gender. In addition, the enactment of the Act on the Promotion of Women's Participation and Career Advancement in the Workplace, popularly called the Women's Advancement Promotion Act (WAPA), in 2015 brought the legal system for gender equality to a state of completion in a sense. Still, as "equality" legislation, the EEOA faces several challenges. It does not cover all stages of employment comprehensively, but enumerates the matters regarding which discrimination is prohibited. In particular, wage discrimination is beyond its reach and left to the provisions of Article 4 of the Labor Standards Act (LSA). Moreover, decisions on whether something constitutes indirect discrimination are made restrictively by Ministerial Ordinance, the prohibition of disadvantageous treatment because of pregnancy or childbirth is not explicitly established as a condition for equality, and the obligation for employers to take measures against sexual harassment is provided quite distinctly from prohibition of sex discrimination. Also, there are doubts about the effectiveness of the WAPA, such as the contents of an action plan being left up to employers, although the Act's significance as a step toward genuine equality is acknowledged. In the future, further strengthening of the EEOA should be considered, including stronger legal remedies for violations.

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I. Introduction

The cornerstone of Japan's gender equality legislation is the Equal Employment Opportunity Act (EEOA). However, it is actually somewhat cumbersome to talk about the Act. Even when noting the basic fact that

“more than 35 years have passed since its enactment in 1985,” it would be necessary to add the caveat that it was technically a revision of the Working Women’s Welfare Act enacted in 1972.

In fact, when the Working Women’s Welfare Act was reconfigured as the EEOA, its official name was actually the Act on Promotion of the Welfare of Female Workers Including Ensuring Equal Opportunities and Treatment of Men and Women in Employment, and it still strongly retained the character of legislation for the sake of the “welfare” of female workers. On the other hand, it was inadequate as an “equality” measure in ensuring equal opportunities and treatment between men and women. (The name of the law itself suggested that it considered equality to be only a part of “welfare” rather than an inherent human right.) This weakness was exemplified by the “provision on the duty to endeavor” (i.e., a non-binding provision), which mandated employers to only make efforts to give equal opportunities to women concerning recruitment, hiring, placements, and promotions.

Subsequently, with the 1997 revision, the Act was strengthened and expanded, for example by replacing the “provision on the duty to endeavor” with a straightforward prohibition on discrimination. In addition, the name was changed to the Act on Securing, Etc. of Equal Opportunity and Treatment between Men and Women in Employment, signifying a departure from the “welfare”-centered view. However, it remained a law structured so as to prohibit discrimination against “women,” and protections were not extended to male workers.

In that sense, the 2006 revision, the second major revision of the Act, represented a fundamental leap forward. It erased this one-sided character and evolved the EEOA into legislation that prohibits gender-based discrimination regardless of sex.¹ Thus, in discussing the EEOA as it exists today, it would be appropriate to take 2006 as a starting point. Of course, we should remember the historic developments and circumstances leading up to that point,² but I do not think it fruitful to spend much time discussing how inadequate the EEOA was in the past. In any event, subsequently, in 2015, the Act on the Promotion of Female Participation and Career Advancement in the Workplace, popularly called the Women’s Advancement Promotion Act (WAPA), was enacted, and while its provisions were mild, they made it mandatory for the larger employers to take proactive measures to redress inequalities between men and women, supplementing the EEOA’s mandate of formal equality. As a result, the legal framework governing this issue could be said to be complete at last, though it is by no means perfect.

In the sections below, this article examines the current status of workplace gender equality legislation in Japan and challenges remaining. Because this was originally prepared for a research conference for interdisciplinary discussions,³ I begin by giving an overview of the basic legal structure, and then offer my own rough insights into the path we should take, without going into detailed legal niceties. While the situation surrounding gender equality in Japan is in many ways rooted in social and cultural conditions and cannot be resolved by legal measures alone, I believe there is much room for further improvement in terms of legislation mandating equality.

II. Prohibition of discrimination on the basis of sex

The core of the EEOA’s equality provisions is in Articles 5 and 6, which are headed “Prohibition of Discrimination on the Basis of Sex.” Both articles address employers, and Article 5 stipulates that, with regard to the recruitment and hiring of workers, “employers shall provide equal opportunities for all persons regardless of sex.” Article 6 stipulates that “employers shall not discriminate against workers on the basis of sex,” and lists four specific areas where discrimination is prohibited: (i) placement of workers (including allocation of duties and granting of authority), and promotion, demotion, and training of workers; (ii) loans for housing and other similar fringe benefits as provided by Ordinance of the Ministry of Health, Labor and Welfare; (iii) change in job type and employment status of workers; and (iv) encouragement of retirement, mandatory retirement age, dismissal, and renewal of labor contracts.

Previously, these provisions respectively stated that “women workers must be offered opportunities equal to those of men” and that “women workers must not be treated differently from men because they are women,” but with the 2006 revision, it came to be framed as a regulation applying equally to both sexes. According to one interpretation, stipulations for recruitment and hiring are worded differently so that they allow employers more discretion in deference to their freedom of hiring.⁴ However, prohibition of discrimination is precisely to curtail employers’ “freedom” of hiring. They should not engage in sex discrimination when hiring workers, just as they should not after workers are hired. We can reasonably assume that the EEOA made separate provisions for recruitment and hiring because, prior to hiring, a labor contract has not yet been concluded between the employer and the worker; that is, it is simply a matter of legislative technique.⁵ It is true that there is the issue of what remedies are possible in the event of hiring discrimination, but in essence the prohibition of gender-based discrimination should be viewed as no different between Articles 5 and 6.

The contents of Article 6 had been divided into separate articles covering each item, but with the 2006 revision they were integrated into a single article. It was expanded with the addition of a number of items (demotion, encouragement of retirement, renewal of labor contracts, and so on), but, as the approach of enumerating items one-by-one was maintained, some areas were inevitably omitted. This stands in contrast to the comprehensive statements made in other provisions prohibiting discrimination, such as those on “working conditions” (Article 3 of the LSA, prohibiting discrimination because of nationality, creed, or social status) and “treatment” of workers (Article 35 of the Act on Employment Promotion etc. of Persons with Disabilities, prohibiting discrimination against disabled workers; Article 9 of the Act on Improvement of Personnel Management and Conversion of Employment Status for Part-Time Workers and Fixed-Term Workers, prohibiting discrimination because of part-time or fixed-term status). Even in cases that slip through the cracks of the EEOA, it is possible to provide civil remedies through a judicially made theory of public policy (Article 90 of the Civil Code) based on Article 14 of the Constitution of Japan.⁶ Still, it seems that the EEOA should, like other laws, thoroughly cover the entirety of employment relations.

Another significant problem with Articles 5 and 6 is that effective rules have not been established for proving whether or not discrimination in a specific case is based on sex. If the presence of discrimination is not apparent at first glance, the court needs to infer gender discrimination from circumstantial evidence, and a framework that can detect and highlight hidden bias would be required for this task. In this regard, the 2015 decision of the Hiroshima High Court⁷ issued in a case where discrimination against a female worker with regard to promotion was alleged, seems to show how stingy judges can be in inferring discriminatory intent. The court recognized that there was a notable difference in promotions of male and female employees as a whole, but said that it could not be proved specifically that this disparity resulted from discrimination against women. Furthermore, it noted that the promotion decision regarding the plaintiff was based on an appropriate personnel evaluation even though she had been given high marks for job achievements. Without going into a detailed discussion of this decision, it certainly seems to overemphasize the evaluation system’s formal “mechanisms for maintaining objectivity,” and too easily accept at face value the vague and subjective aspects of the evaluation, such as “ability and performance in maintaining a sense of unity in the workplace and improving teamwork.” We can only expect that judicial principles will develop through the accumulation of further precedents in the future. Under current circumstances, however, the concern is that relevant lawsuits are unlikely to be brought at all.

Also, in the process of proving discrimination, in Japan there is no practice of “discovery” as in the United States, and securing sufficient evidence is a major hurdle for workers. This problem relates to the system of civil litigation procedures itself, and we can only wait for systemic reforms in the future. However, it should be noted that, according to Hideyuki Kobayashi, a renowned professor of civil procedure,⁸ even under the current system, a considerable amount of material can be obtained through the system of *bengoshi-shokai* (referral by a lawyer). It is hoped that the plaintiffs will make good use of this tool.

III. Relation to Article 4 of the Labor Standards Act

If Article 6 of the EEOA is to be made a comprehensive provision as described above, one issue lies in the relation to Article 4 of the LSA, which prohibits gender discrimination in wages. This article is in fact the earliest international example of legislation that sets out the principle of equal pay for men and women, but it is worded in the form of a prohibition on discrimination against women: “An employer must not use the fact that a worker is a woman as a basis for differential treatment in comparison to men with respect to wages.” Here “differential treatment” is understood to include not only less favorable but also more favorable treatment,⁹ and in substance, there is no discrepancy between this stipulation and the EEOA’s policy of prohibiting discrimination on the basis of sex.

Thus, even if making the EEOA a comprehensive regulation results in duplication of regulations on wages, there should be no particular problem with making additions to the EEOA while having it coexist with the regulations of the LSA.¹⁰ In actual court cases, wage disparities resulting from unequal placement and promotion have been challenged, and Article 4 of the LSA has often been cited together with the EEOA. While it is appropriate to leave the article in the LSA as it is, in order to indicate explicitly the importance of gender-equal wages (although there is room for reconsideration of the wording of the article, which appears one-sided), a mechanism that enables seamless solutions regardless of the matter, including discrimination in wages, is required as part of the EEOA as well.

IV. Indirect discrimination on the grounds of sex

Article 7 of the EEOA, which defines so-called indirect discrimination, was added with the 2006 revision, and is titled Measures on the Basis of Conditions Other than Sex. It stipulates, in very complicated words, that an employer shall not take measures that are facially sex-neutral but may cause de facto discrimination by reason of a person’s sex considering the proportion of men and women who satisfy the criterion, except in cases where there is a legitimate reason to take such measures. For example, in cases where a minimum height and weight (such as 170 centimeters and 60 kilograms) are established for recruitment and hiring without mention of gender, in practice women are more likely to be unequally excluded. This is illegal unless a legitimate reason is provided, such as these requirements being essential for the performance of job duties.

It is frequently pointed out that a major feature of this stipulation is that the measures in question are limited to those specified by the Ordinance for the Enforcement of the Act on Ensuring Equal Opportunities for and Treatment of Men and Women in Employment (MHLW Ministerial Ordinance). Article 2 of the MHLW Ministerial Ordinance specifies only three measures: (i) the above-described height, weight, and physical strength as criteria for recruitment and hiring; (ii) requiring “ability to comply with job transfers that entail change of residence” as pertains to recruitment, hiring, promotion, and reassignment considerations; and (iii) making “past experience of job transfer” a criterion for promotion. While the scope of (ii), initially limited to recruitment and hiring of *sogo shoku* (employees on the career track), was expanded in 2014, the overall coverage of indirect discrimination remains very limited. There would also be other potentially problematic requirements, such as the “head of household” requirement with regard to employee benefits, and specification of students from specific university departments for recruitment and hiring of graduates. It is understandable that a cautious approach was taken, as there was considerable debate over the appropriateness of the theory of indirect discrimination at the time of its introduction, but now it is time to move on to the next stage. It should be possible to identify and deal with problems potentially lurking in workplaces more appropriately by letting measures be challenged broadly from the viewpoint of indirect discrimination rather than defining them narrowly at the start, and judging in each case whether there is a risk of “de facto discrimination by reason of a person’s sex,” and when such risks are recognized, determining whether there is a “legitimate reason.”

V. Disadvantageous treatment by reason of pregnancy and childbirth, etc.

With the revision of the EEOA in 2006 to prohibit discrimination “on the basis of sex” for both men and women, matters unique to female workers such as pregnancy and childbirth were removed from provisions prohibiting discrimination, and instead special provisions were established in Article 9. The core of these provisions is Article 9, Paragraph 3, which prohibits disadvantageous treatment for women workers due to pregnancy, childbirth, and the like. In contrast to the American law which provides that sex discrimination includes discrimination on the basis of pregnancy, childbirth, or related medical conditions,¹¹ the Japanese EEOA regards it as something other than sex discrimination *per se*.

Comparing the previous EEOA of 1997 to the revised one, the scope was expanded in two areas. First, in addition to prohibiting discrimination due to pregnancy, childbirth, and prenatal and postnatal leave, prohibitions were expanded to apply to “other reasons relating to pregnancy, childbirth as provided by Ordinance of the Ministry of Health, Labor and Welfare” (including having received maternity health care measures under the EEOA, and incapacity or reduced effectiveness at work due to pregnancy and childbirth). Second, the previous prohibition of “dismissal” was expanded to “prohibiting dismissal or other disadvantageous treatment.” Regarding this provision (Article 9, Paragraph 3), much attention was paid to a Supreme Court decision issued in 2014¹² stating that it is a mandatory norm nullifying repugnant prescriptions and practices between the parties, and that demotion triggered by transfer to light duties because of a pregnant woman’s request, based on Paragraph 3 of Article 65 of the LSA, is a violation unless it falls into narrow exceptions.

In reality, reports of women workers being dismissed, having renewal of fixed-term contracts refused, or otherwise harassed due to pregnancy or childbirth are still common. Rectifying this through effective enforcement of above provision is crucial for achieving employment equality between men and women.¹³ In addition, it is necessary to prevent so-called maternity harassment even before such disadvantage occurs, and the 2016 revision of the EEOA (the current Article 11–3) brought about provisions that oblige employers to take measures to prevent it.

With regard to the Supreme Court decision mentioned above, I am a little uncomfortable about the way it positioned Paragraph 3 of Article 9 in the framework of the EEOA. The decision says, “The purposes of this Act are to promote securing equal opportunity and treatment between men and women in employment, and to promote measures, among others, to ensure the health of female workers with regard to employment during pregnancy and after childbirth” (Article 1), “the basic principle of this Act is to ensure respect for the maternity of women workers and enhancement of their professional lives” (Article 2), and “Employers shall not dismiss or give disadvantageous treatment to women workers by reason of pregnancy, childbirth, or for requesting absence from work” (Article 9, Paragraph 3). Here the problem lies with Article 2. The actual statutory text says, “The basic principle of this Act is to ensure that workers are able to lead fulfilling professional lives without being discriminated against because of sex, and in case of female workers with respect for maternity.” It is true that protections specific to women pertaining to pregnancy and childbirth are treated separately under Article 9, Paragraph 3, but they are integrated with the prohibition on discrimination based on sex applying to both men and women. It is unfortunate that the Supreme Court omitted this basic command of equality and made Article 2 look like caring only about female workers. It must be recognized that both aspects—prohibition of sex discrimination and respect for maternity—are necessary in order to ensure true equality.

VI. Sexual harassment

Concerning sexual harassment, the 1997 revision of the Act stipulating employers’ obligation to “consider” prevention of harassment of “women workers” was broadened and strengthened with the 2006 revision to impose an obligation to “take measures” in this regard for all “workers” of both sexes (Article 11, Paragraph 1). While the wording is quite difficult to understand—mandating employers to “take measures so that workers

they employ do not suffer any disadvantage in their working conditions by reason of said workers' responses to sexual speech or behavior in the workplace, or in their working environments do not suffer any harm due to said sexual speech or behavior"—it requires employers to take necessary employment management measures in two types of sexual harassment: "*quid pro quo*" and "hostile environment."

While this provision is part of Chapter 2: Securing, Etc. Of Equal Opportunity and Treatment between Men and Women in Employment, it is not in Section 1: Prohibition of Discrimination on the Basis of Sex, Etc., but in Section 2: Measures to be Taken by Employers. In contrast to the United States and Europe, where harassment is considered a type of discrimination and sexual harassment a form of gender-based discrimination, in Japan it is treated separately, and stipulated alongside measures for management of women workers' health during pregnancy and after childbirth (Articles 12 and 13). The above-mentioned obligation to take measures to prevent maternity harassment is also contained in the same Section 2 (Article 11-3, added with the 2016 revision).

Originally, the provisions of the EEOA were established in the form of a follow-up after sexual harassment lawsuits had become prevalent, claiming damages based on the tort provisions of the Civil Code. In such civil lawsuits, where the harasser is ordered to pay damages to the victim under Article 709 and the employer is also held liable vicariously under Article 715 of the Civil Code, the matter of sex discrimination is rarely clarified, and judgments tend to be made from the perspective of more general personal rights and sexual freedoms. The provisions of the EEOA have not changed this.

However, in the American law (Title VII of the Civil Rights Act of 1964) that created the notion of sexual harassment including the typology of "*quid pro quo*" and "hostile environment," there is a clear and logical categorization that sexual harassment is a form of sex discrimination: you are pressured to have sexual relations in return for benefits on the job, or placed in an unpleasant and hostile environment with sexual aspects, because you are a woman (or a man). In the case of hostile environments, the character of harassment is similar to that of bullying and mobbing based on race and/or religion. If derogatory comments are made to the effect that women are no good at their jobs and a hostile environment is created, this is clearly discrimination based on gender. Unlike race or religion, however, sex tends to invoke favorable and flirting feelings as well, and a special aspect of "*quid pro quo*" is added into consideration, but here again the victim is not regarded as a respectable worker but a lesser being (an object of sexual desire).

As we have seen, the EEOA takes the approach of enumerating the matters it covers rather than being applied comprehensively, and the extent to which it can incorporate these cases into the broader problem of gender-based discrimination is not without question. The need to change this legal structure is as described above. However, even under the current law, it does not seem appropriate to omit sexual harassment completely from the structure of prohibition of discrimination and handle it only in terms of "obligation to take measures." The position of sexual harassment prevention measures within the legal system governing equality should be clearly recognized.

As is well known in Japan, the nation's anti-harassment laws took a significant step forward with the newly imposed obligation to take measures to prevent workplace bullying by superiors (known as "power harassment" or *pawahara* in Japanese) in 2019.¹⁴ At the same time, previous harassment regulations were reinforced, and concerning sexual harassment, provisions were added to prohibit disadvantageous treatment of employees who come forward with complaints and those who respond and assist them (Article 11, Paragraph 2) and to stipulate the responsibilities of the national government, employers, and workers to prevent sexual harassment (Article 12). The new provision on "power harassment" was considered essential to respond to an urgent challenge of Japanese workplaces, where the number of complaints of bullying has increased markedly. On the other hand, there is a danger that sexual harassment will be overshadowed by the more fluid and expansive notion of "power harassment," which is characterized by the new law as "damaging the work environment" of the victim. It would be a good time to reconsider the unique features and commonalities of sexual harassment and power harassment, so that the discriminatory nature of sexual harassment will be acknowledged more squarely.

VII. Positive (affirmative) action programs

Following the prohibition of discrimination (including indirect discrimination) based on sex (Articles 5, 6, and 7), the EEOA makes “special provisions for measures pertaining to women workers” (Article 8), and states that the prohibitions stipulated in the preceding sections “shall not preclude employers from taking measures in connection with women workers with the purpose of improving circumstances that impede the securing of equal opportunity and treatment between men and women in employment.” This means that while it is possible that taking positive (affirmative) action on behalf of women workers may violate the “prohibition of discrimination on the basis of sex” in a strict sense, it is permissible in some cases since it contributes to the promotion of equality in real terms.¹⁵ However, the Act only stipulates that taking positive (affirmative) action is acceptable, and whether or not to take positive (affirmative) action is left up to employers.

This state of affairs was transformed in 2015 by the enactment of the WAPA, mentioned above at the beginning of this article. It requires private-sector employers who consistently employ more than 300 workers¹⁶ to assess the current situation and analyze issues to be addressed relating to female participation and career advancement in the workplace covering the four required areas (that is, female hiring rate, gender differences in the number of years of continuous employment, condition of working hours, and ratio of female workers in managerial positions), then draw up an action plan, notify it to the Minister of Health, Labor and Welfare, ensure all workers are aware of it, and publicize it (Article 8, Paragraphs 1 through 5). The action plan must establish goals to be achieved and outline specific steps to be taken (Article 8, Paragraph 2), and in particular, “numerical and quantitative” goals must be set for at least one of the four required items listed above (Article 8, Paragraph 3). In addition, separately from the action plan, the employer is required to periodically release information about the status of female participation and career advancement in the workplace, in order to “contribute to women’s career options” (Article 16; the current Article 20 after the 2019 revision).

Because its role as part of an economic strategy was emphasized when it was enacted, opinions on this Act are to some extent divided, with some criticizing it as not being a measure for genuine female empowerment.¹⁷ Also, the specifics of action plans, including numerical goals, are left up to employers, and it is natural to question its effectiveness. However, even as a mild piece of legislation, it is considered a significant step in that it legally mandates employers’ self-assessment and self-improvement actions. Simply prohibiting discrimination cannot immediately negate the results of past inequities, and there remain a wide range of problems that cannot necessarily be attributed to discrimination. Herein lies the significance of positive (affirmative) action, and even if the stance toward measures and their specific content is left up to employers, it is now clear that employers must do something for the betterment of female participation and career advancement. I expect that there will be significant effects over the long term because enterprises will assess their own situations, make improvements, and, by releasing their data, will also be exposed to the gaze of society.

The items which fall under the purview of the Act by the name of “female participation and career advancement in the workplace” relate not only to gender equality but also to more general work-life balance. While the EEOA is concerned with gender equality, work-life balance is also a particularly important factor for women’s work, and when taking positive (affirmative) action, it would be natural to aim for both. With the 2019 revision of the Act and the accompanying revision of the Ministerial Ordinance, this became clearer in that in setting numerical goals and regularly disclosing data as part of action plans, employers are required to select one item each falling under the categories of “provision of opportunities relating to the working lives of women workers” and “maintenance of a work environment that contributes to the balance of working life and family life.”

VIII. Concluding remarks

In this article, I have sought to give an overview of the significant provisions of the EEOA, but as I have engaged in studying American labor law, the possibility of bias toward that perspective cannot be denied. In the United States, Title VII of the Civil Rights Act of 1964, which was enacted to combat racial discrimination, had “sex” added at the final stage as one of the causes of illegal discrimination on a par with race,¹⁸ making it quite a powerful law governing gender-based discrimination. Also, sexual harassment is placed as a form of sex-based discrimination, and so is disadvantageous treatment due to pregnancy and childbirth. One may question to what extent this is relevant to the EEOA in Japan, but at the very least, it seems beneficial to review the Act from the perspective of a more thorough “prohibition of discrimination.”

In this connection, although this article did not touch on it, there are significant issues regarding how remedies for legal violations should be addressed. The EEOA contains provisions for advice, guidance or recommendation from Directors of Prefectural Labor Offices (Article 17), conciliation by Dispute Adjustment Commission (Article 18 and below), and public release of the name of the violating company (Article 30). Still, the law lacks binding force, and ultimately, individual workers must fight civil cases in court on their own. On the other hand, the U.S. has an Equal Employment Opportunity Commission (EEOC) with the authority to bring lawsuits on behalf of victimized workers, and this plays a considerable role in the swift rectification of violations. While this discussion is necessarily a wide-ranging one involving differences in judicial systems, it seems safe to say that a number of measures must be taken to fundamentally strengthen the effectiveness of the EEOA.

At the same time, in Japan, full-time employees are expected to work long hours, and it is still common for women to leave the workforce after the birth of a child, as they take on greater responsibilities such as housework and child rearing.¹⁹ Also, even if women try to find a new job afterwards, under the Japanese employment system which favors long-term employment, many of them become non-regular workers and can only obtain low-level working conditions. In order to address this structural disparity between men and women, not only the EEOA but also measures for work-life balance and flexible work style, including the normalization of working hours, and measures to improve the treatment of non-regular workers need to be further strengthened.

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Notes

1. Hiroya Nakakubo, “Phase III” of the Japanese Equal Employment Opportunity Act, *Japan Labor Review* vol. 4, no. 3 (Summer 2007): 9.
2. For a brief overview by the author, see Hiroya Nakakubo, *Danjo koyo kikai kinto ho 30 nen no ayumi* [The Equal Employment Opportunity Act: A 30-year history], DIO: Data Information Opinion (Monthly Report edited by Rengo Research Institute for Advancement of Living Standards), no.303 (April 2015): 4–7.
3. The Japan Industrial Relations Research Association’s 2020 Conference on Labor Policy Study, Main Theme Session — “Female Labor from the Perspective of Equality.”
4. See Satoshi Nishitani et al. (ed), *Shin kihon ho kommentar rodo kijyunho rodo keiyaku ho* [New commentary on basic labor laws: Labor Standards Act and Labor Contracts Act], 2nd ed. (Nippon Hyoron sha, 2020), 503 (section written by Koichi Tominaga).
5. While this does not necessarily seem inevitable, Article 9 of the Act on Comprehensive Promotion of Labor Policies and Article 34 of the Act on Employment Promotion etc. of Persons with Disabilities similarly stipulate prohibition of discrimination against disabled persons in the context of recruitment and hiring separately.
6. See the *Nissan Motor Co.* case (Supreme Court (Mar. 24, 1981) 35–2 *Minshu* 300), invalidating sex discrimination regarding mandatory retirement age before the EEOA explicitly outlawed it in 1985. Article 14 (1) of the Constitution provides that there shall be no discrimination in political, economic, or social relations because of race, creed, sex, social status, or family origin. Its spirit was realized through Article 90 of the Civil Code, which says that private legal actions repugnant to public policy are null and void.
7. The *Chugoku Denryoku* case, Hiroshima High Court (Jul. 28, 2013) 2088 *Rokeisoku* 3.

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8. Hideyuki Kobayashi, *Shoko no shushu to wakai ni tsuite* [On collection of evidence and out-of-court settlement], Chuo Rodo Jiho no. 1227 (January 2018): 10, at 15.
 9. *Kihatsu*, Administrative Notification No. 17, issued by the Director of the Labor Standards Inspection Office, September 13, 1947.
 10. In the United States, the Equal Pay Act of 1963 mandating equal pay for men and women stipulates certain justifications for differences in wages, and an adjustment provision (called the Bennett Amendment) was made to carry these over when Title VII of the Civil Rights Act of 1964 was adopted. In contrast, there would be no need to do so in Japan given the very simple provision of Article 4 of the LSA.
 11. Pregnancy Discrimination Act of 1978.
 12. The *Hiroshima Chuo Hoken Seikatsu Kyodo Kumiai* case, Supreme Court (Oct. 23, 2014) 68-8 *Minshu* 1270.
 13. It is not always easy to determine what constitutes an illegal “disadvantage” when working conditions actually change due to pregnancy, childbirth, etc. As an example of a judgment from the viewpoint of public policy, with regard to bonus payment, see the *Toho Gakuen* case, Supreme Court (Dec. 4, 2003) 862 *Rohan* 14.
 14. Labor Measures Comprehensive Promotion Act, Article 30-2. See Fumiko Obata, *The Law to Prevent “Power Harassment” in Japan*, *Japan Labor Issues*, vol.5, no.28 (January 2021) : 23.
 15. Specifically, when the ratio of women workers in a given employment management category is substantially small (less than 40%), implementation could be feasible. Ministerial Notification No. 614, Oct. 11, 2006.
 16. “Duty to endeavor” in this same regard was also imposed on employers with 300 or less full-time employees, but the 2019 revision of the law makes it mandatory for employers with more than 100 employees, effective April 2022.
 17. One author argues, after analyzing various debates on the legislative process of the WAPA, that the positive (affirmative)-action character of the law should not be neglected. Masumi Minagawa, *Josei katsuyaku suishin ho no seiritsu: ‘Seicho senryaku’ kara ‘pojitibu akushon’ e* [From economic growth strategy to positive (affirmative) action for women: The making of the Women’s Advancement Promotion Act], *Japanese Journal of International Society for Gender Studies*, no. 14 (2016): 8–31.
 18. See Gillian Thomas, *Because of Sex: One Law, Ten Cases, and Fifty Years That Changed American Women’s Lives at Work* (St. Martin’s Press, 2016).
 19. Hiroya Nakakubo, *Glass Ceiling or Iron Weight?: Challenges for Female Employees on Their Path to Becoming Managers and Executives in Japan*, *Hastings International and Comparative Law Review*, vol. 32, no. 2 (Jan. 2016): 399.

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