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The Japan Institute for Labour Policy and Training
International Research Exchange Section
8-23, Kamishakujii 4-chome, Nerima-ku, Tokyo 177-8502, Japan
TEL: +81-3-5903-6274 FAX: +81-3-3594-1113
For inquiries and feedback: j-emm@jil.go.jp

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A Record 12.65% of Fathers in Japan Took Childcare Leave in 2020

MHLW's Basic Survey of Gender Equality in Employment Management

The Ministry of Health, Labour and Welfare (MHLW) announced the results of the FY2020 Basic Survey of Gender Equality in Employment Management on July 30, 2021. Its findings revealed that the rate of men taking childcare leave rose by 5.17 percentage points from the previous survey (7.48% in FY2019) to 12.65%, which is a new record high. The survey is conducted annually with the aim of grasping the actual circumstances of employment management regarding the equal treatment of men and women and balancing work and family life, asking companies and business establishments in all parts of Japan about their percentage of women in managerial positions, usage situation of the childcare leave system, and other matters as of October 1, 2020.

Company survey

Of the 6,000 companies (with 10 or more regular employees) targeted by the survey, number of valid responses were 3,326 companies (valid response rate, 55.4%).

Women account for 27.2% of regular employees

Looking at regular employees by career path, the percentage of women among regular employees was 27.2%, which was up 1.5 percentage points from the previous survey (25.7% in FY2019). Looking at these women by career path, 20.2% were *sōgō-shoku* (employees on the career track), 32.6% were *gentei sōgō-shoku* (employees on the career track with limited transfers, job changes, etc.), 35.4% *ippan-shoku* (employees on the clerical track), and 29.5% were in other career paths. The percentage of companies that hired new graduates in the spring of 2020 was 20.6%, down 0.6 percentage points from the previous survey (21.2%). Of them, 40.6% responded "hired both men and women," which was the highest percentage among the responses. By hiring categories, 46.5% of companies responded "hired both men and women" for employees on the career track with limited transfers, job duties, etc., the highest percentage, followed by 40.0% that responded "hired only men" and 13.4% that responded "hired only women." For employees on the career track with limited transfers, job duties, etc., the percentage of companies that responded "hired only men" was the highest at 53.5%, followed by 24.1% that responded "hired only women" and 22.4% that responded "hired both men and women." And for employees on the clerical track, the percentage of companies that responded "hired only men" was the highest at 39.2%, followed by 33.2% that responded "hired only women" and 27.6% that responded "hired both men and women."

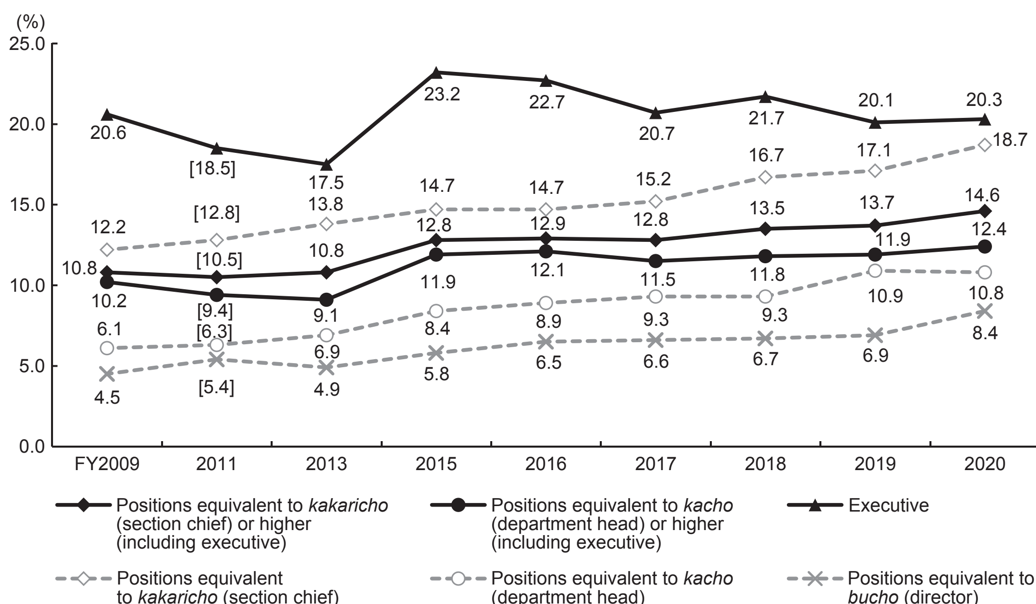
The percentage of females at the department head level or higher is 12.4%

Looking at the percentage of female managers, that of females equivalent to *kacho* (department head) (including executives; hereinafter the same) or higher was 12.4%, up 0.5 percentage points from the previous survey (11.9%), and that of females equivalent to *kakaricho* (section chief) (including executives; hereinafter the same) or higher was 14.6%, up 0.9 percentage points from the previous survey (13.7%) (Figure 1). Breaking this down by position, the percentage of females in executive positions was 20.3% (20.1% in the previous survey;

hereinafter the same), in positions equivalent to *bucho* (director) was 8.4% (6.9%), in positions equivalent to department head was 10.8% (10.9%), and in positions equivalent to section chief was 18.7% (17.1%).

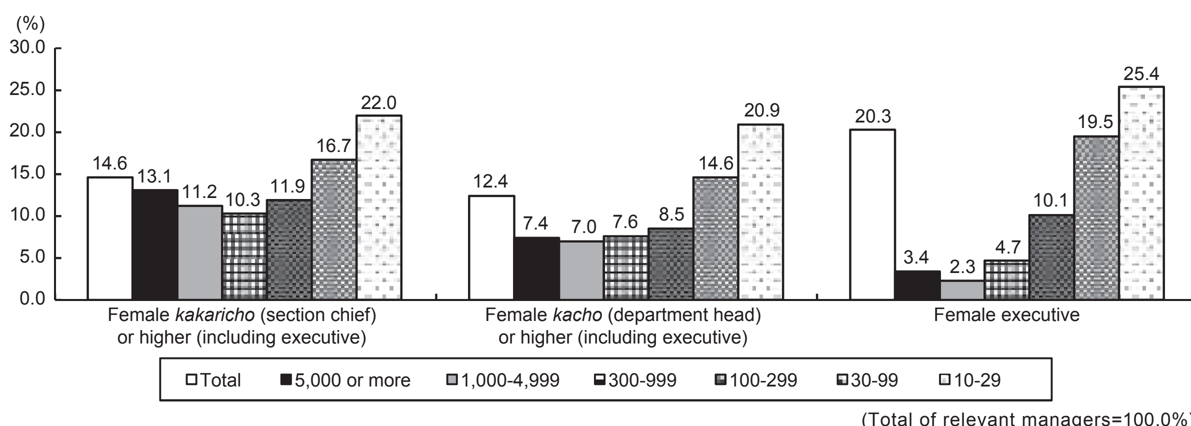
Regarding the percentages of females by business size, a trend is seen whereby smaller business sizes have higher percentages of female managers (Figure 2). By industry, the percentage of female managers is conspicuously high in “medical, health care and welfare” (49.0%), followed by “living-related and personal services and amusement services” (23.5%), “education, learning support” (22.5%), and “accommodations, eating and drinking services” (19.0%).

As for the percentage of companies with females in managerial positions, 52.8% (51.9% in FY2019) of the companies have female managers equivalent to department head or higher. The percentage of companies with female managers equivalent to section chief or higher is 61.1% (59.4% in FY2019).



Source: Ministry of Health, Labour and Welfare, “Basic Survey of Gender Equality in Employment Management.”
Note: The figures in the brackets ([ ]) for FY2011 are percentages of all prefectures excluding Iwate, Miyagi, and Fukushima Prefectures.

Figure 1. Changes in the share of female managers by position (companies with 10 or more regular employees)



Source: Same as Figure 1.

Figure 2. Share of female managers by position (companies with 10 or more regular employees)

Roughly 80% of companies are working to prevent mobbing and workplace bullying

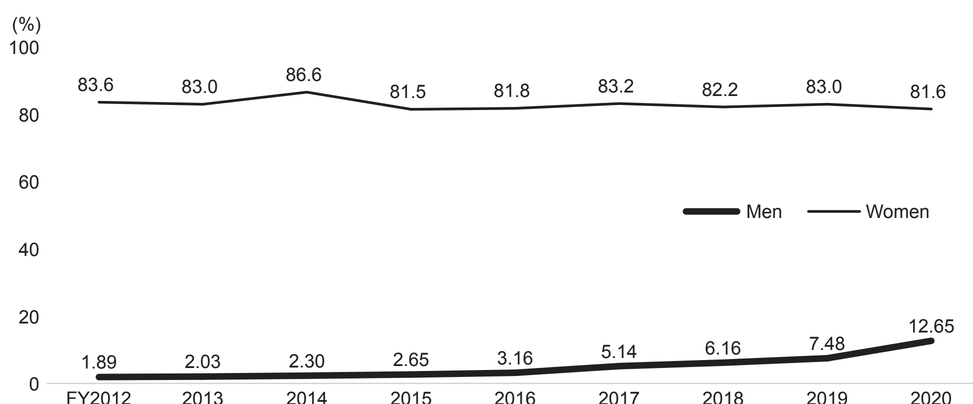
After the implementation of preventative measures became mandatory on June 1, 2020, with the enforcement of the Revised Comprehensive Promotion of Labor Measures Act, 79.5% of companies are "taking actions" with measures to avoid workplace bullying (known as "power harassment" in Japan). This figure was up 41.6 percentage points from the previous survey (37.9%). By business size, the percentages of companies taking actions to prevent workplace bullying were higher with larger business sizes, with the percentage being 100.0% in companies with 5,000 or more employees, 99.8% in those with 1,000 to 4,999 employees, 97.4% in those with 300 to 999 employees, 94.7% in those with 100 to 299 employees, 84.3% in those with 30 to 99 employees, and 74.7% in those with 10 to 29 employees. Looking at the content of prevention measures (multiple responses), the highest percentage (62.7%) was "clearly stating policy in writing (such as in work rules and collective agreements) and making it known." This response was followed by "establishing a consultation or complaints office" with 49.4% and "taking necessary measures to protect the privacy of persons concerned and making those measures known" with 49.1%.

Business establishment survey

Of the 6,291 business establishments (with 5 or more regular employees) targeted, number of valid responses were 3,591 establishments (valid response rate, 57.1%).

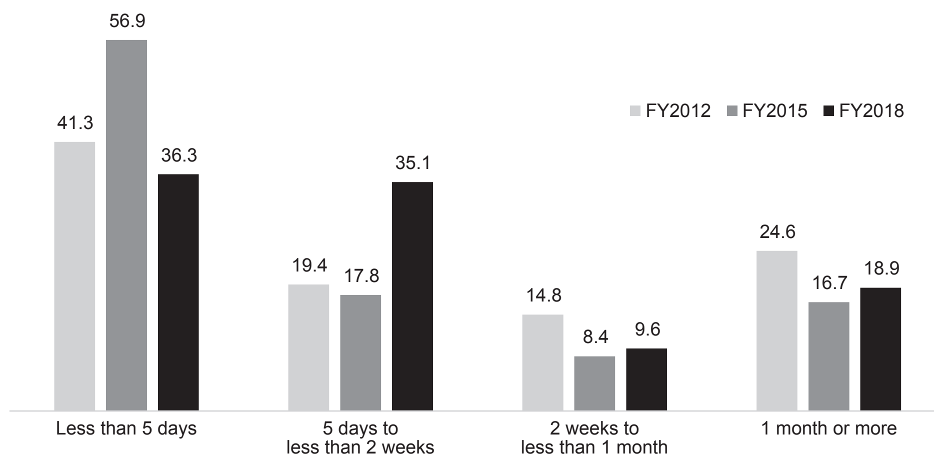
The childcare leave-taking rate is 81.6% for women and 12.65% for men

The business establishment survey reveals usage situation of childcare leave system. Among women who gave birth while still employed during the year between October 1, 2018, to September 30, 2019, the percentage of those who began taking childcare leave by October 1, 2020 (including those who applied for childcare leave) was 81.6%. This figure was down 1.4 percentage points compared to the previous survey (83.0%). On the other hand, among men whose spouses gave birth during the same period, those who began taking childcare leave by October 1, 2020 (including those who applied for childcare leave) was 12.65%, up 5.17 percentage points compared to the previous survey (7.48%) (Figure 3). A person in charge at MHLW states a view that legislation; the government's 'Ikumen' Project (*ikumen* is a Japanese coined word referring to men who take an active role in childrearing), which encourages men to take childcare leave and balance their work and childcare; and subsidies may have had some effect on these results. Meanwhile, the childcare leave-taking rate among women with fixed-term contract workers was 62.5%, which was down 15 percentage points from the previous survey (77.5%). The same rate among men with fixed-term contract



Source: Same as Figure 1.

Figure 3. Changes in the childcare leave-taking rates of men and women (FY2012–2020)



Source: Same as Figure 1.
Note: Share of male employees returning to work after childcare leave by duration of leave. "Those who returned to work after childcare leave" refers to those who completed childcare leave and returned to work during the fiscal year preceding the survey.

Figure 4. Period of childcare leave taken by men (FY2012, 2015, 2018) (%)

workers was 11.81%, up 8.74 percentage points from the previous survey (3.07%). Figure 4 shows the period of childcare leave taken by men (FY 2012, 2015, and 2018).

Seventy percent of establishments have a reduced working hours system for childcare

The percentage of establishments that have a system to reduce scheduled working hours for childcare was 73.4%, which is up 1.3 percentage points from the previous survey (72.1%). Looking at establishments with reduced scheduled working hours system, 39.1% (38.4% in the previous survey; hereinafter the same) responded that the maximum available period for childcare leave is "while the child is under 3 years old." This was followed by the responses that the system is available "until the child begins elementary school" with 21.6% (23.7%) and available "even after elementary school graduation" with 21.0% (14.7%). The total percentage of establishments indicating that the system is available "until the child begins elementary school," after entering elementary school (including "until the third grade" and "until the graduation"), and "even after elementary school graduation" was 55.8% (54.0%). This percentage is 41.0% (39.0%) of all establishments (including establishments without the system), up 2.0 percentage points from the previous survey. Looking at specific industries, the industries at the top in terms of percentage of establishments with systems were "finance and insurance" (96.9%) and "electricity, gas, heat supply and water" (95.7%). And a look at percentages by business size reveals that larger sizes have higher percentages of establishments with systems, with 99.2% for "500 or more employees," 95.8% for "100 to 499 employees," 89.4% for "30 to 99 employees," and 69.8% for "5 to 29 employees."

The use of flextime systems and teleworking lags within the 10% range

Looking at the introduction of measures to reduce scheduled working hours and other related systems (multiple responses), more than 60% of establishments responded "reduced working hours system" (68.0%) and "limitations on overtime work" (64.3%). Additionally, 39.3% indicated "applying earlier or later start/end times" and 24.2% indicated "measures equivalent to childcare leave." On the other hand, the responses for "flextime system available for childcare" (15.0%) and "teleworking (working from home, etc.)" (10.0%) lagged behind in the 10% range.

Article

Labor Law Policy on Freelance Work

HAMAGUCHI Keiichiro

The year 2021 saw continued developments in labor law with respect to freelance work: a number of new policies made an appearance, and progress in the EU culminated in the proposal of a Directive on platform work by the end of the year. These developments inspired the booklet *Labor Law Policy on Freelance Work*,[1] which builds on the issues I addressed in a special lecture for the JILPT Tokyo Labour College in March 2021. This article focusses on summarizing that lecture and the subsequent developments, and therefore seeks to convey, as far as possible, a clear overview of current trends, rather attempting an earnest debate on the related labor law. It introduces a few of the key aspects of the labor policy developments, addressing trends both in Japan and several other countries.

1. Historical background to the issues of freelance work

There has been a long history of issues surrounding the kinds of work that do not quite fall under employment contracts. Craftspeople in the premodern era were more akin to subcontractors than employees, as they pursued their work according to their own individual methods, without detailed supervision or directions. Employed labor typically took the form of roles as domestic workers, such as butlers or maids. However, the Industrial Revolution prompted dependent labor—labor under the direction of an employer—to become the norm. Workers came to be regarded as the vulnerable, and therefore provided with social protection in the form of labor laws and social security. The self-employed, on the other hand, were not seen as such, and were consequently excluded from the social protection of labor laws and social security.

In fact, already then, there were persons who, while in legal terms self-employed, were socially and financially more struggling than employed workers. Namely, the persons engaged in "industrial homework" (*naishoku*), where factories outsourced portions of their manufacturing and assembly processes to be carried out by individuals in their homes for low piece rate wages. These "homeworkers" (*kanai rōdōsha*) thereby formed the lowest level of the economic structure. Albeit following a number of road bumps along the way, the Industrial Homework Act, enacted in 1970, set out provisions on minimum piece rate wages by work type. However, the said Act applies only to the manufacturing and processing of goods. The number of homeworkers has dropped dramatically, from 1.81 million persons at the time of the Act's enactment to 110,000 persons in 2017.

In contrast, an ever-increasing number of persons are working from home via the internet. In 2000, the Japanese Ministry of Labour (currently the Ministry of Health, Labour and Welfare, MHLW) sought to address such workers by formulating the *Guidelines for the Proper Implementation of Work from Home*, obliging employers to stipulate the contract conditions in writing and preserve them in document, and to pay remuneration within 30 days of receiving the products of work, among other provisions. In 2018, MHLW's revised guideline, the *Guidelines for the Proper Implementation of Self-employed Type*

Teleworking, was formulated in response to the 2017 Action Plan for the Realization of Work Style Reform. This guideline also covers cases in which intermediaries that have already done business with the worker place reorders (including crowdsourcing). The guideline also prescribe the protection of intellectual property rights in the event of competitive bids and the provision of notice when annulling a contract. However, the guidelines are merely government notifications with no legal grounds and are therefore not legally binding. Violations of the Industrial Homework Act are investigated by a labor standards inspector, but these guidelines lack legal force.

2. Criteria for determining worker status: Analysis of labor standards inspection cases

Once the protection of workers was established through labor and employment law and social security, persons in the borderline category began to seek to claim their status as a worker (*rōdōsha*). Benchmarks for such cases were compiled in the "Criteria for determining 'worker' under the Labor Standards Act," which were set out as part of the 1985 report of the Ministry of Labour's Study Group on the Labor Standards Act (*Rōdō kijyun hō kenkyu kai hōkoku-sho*; Ministry of Labour, 1985). According to the report, worker status is determined on the basis of whether the person in question is subordinate to and dependent on an employer (*shiyō jūzoku sei*)—that is, whether an employer provides direction and supervision, and pays wages. In doing so, a combination of all the relevant elements—such as whether the person in question is a business operator, and whether the person is working exclusively for a certain organization—is taken into consideration.

I analyzed the content of documents on individual labor standards inspection cases, over a two-and-a-half-year period from April 1, 2017, to October 2, 2019, focusing on any labor standards inspection reports (*kantoku fukumeisho*) or declaration processing records (*shinkoku shori daichō*) containing the terms "worker status" and/or "sole proprietors" (*kojin jigyōnushi*)[2]. This encompassed a total of 122 documents: 80 inspection reports and 42 declaration processing records.

The different industry types covered in these documents included 54 cases (44.3%) in the construction industry, 16 cases (13.1%) in the field of food and drink services, serving customers and providing amusement services, 11 cases (9.0%) in the transport industry, and 10 cases (8.2%) in commerce. In terms of occupation types, 56 persons (45.9%) were working on construction sites as independent contractors (*hitori oyakata*), 13 persons (10.7%) were drivers, 13 persons (10.7%) were serving staff, 9 persons (7.4%) were barbers or hairdressers, 7 persons (5.7%) were marketing and sales staff, 4 persons (3.3%) were information and communications technologists, and 3 persons (2.5%) were chefs. The issues addressed in the cases were unpaid wages, which accounted for 54 cases (44.3%), and issues related to occupational health and safety, which accounted for 40 cases (32.8%). Finally, a breakdown of the cases according to whether worker status was recognized shows that worker status was recognized in 27 cases (22.1%) and not recognized in 37 cases (30.3%), while in 58 cases (47.5%) no decision was made either way.

Looking at the distinctive characteristics of each occupation, among independent contractors (56 persons)—who make up the lowest extreme of the several layers of contracting that takes place in the construction industry—the common approach is to combine the forms of work, such that it may not for instance be clear even for the person themselves whether they are working under an employment contract or a subcontracting agreement, or such that a person may sometimes work as a contracted business operator and sometimes as an employed worker, rendering the differences between the two unclear. This may pose considerable difficulty in reaching an unequivocal judgment according to the aforementioned criteria set forth by the Study Group on the Labor Standards Act in their report. In many cases, independent contractors also come about their work through highly informal personal relationships such as those with relatives, friends or acquaintances,

which in turn renders it difficult to clearly identify whether the work is being conducted under an employment contract or a subcontracting agreement.

Drivers (13 persons) include not only owner-drivers (*yōsha untenshu*; drivers who own their vehicle and use it to transport goods on commission from a freight company) but also a number of cases of drivers who transport goods using a truck or other such vehicle loaned to them by the company commissioning the work (in a total of 13 cases, 10 involved trucks belonging to the client company). This prompts the question of whether it is appropriate to presume such drivers to be business operators, as is the case for owner-drivers, who, according to the report of the Study Group on the Labor Standards Act, "are tentatively presumed to be business operators given the high expenses of owning their own truck, etc."

In the case of serving staff (13 persons), given that the nature of the work at hostess bars, pubs, and other such entertainment establishments serving food and drink requires such staff to serve customers from evening to late night, remuneration is determined according to an hourly rate (a factor that indicates worker status). On the other hand, such staff do not receive detailed direction and supervision from their place of work regarding the specific means by which service is provided to customers. Likewise, while the work of barbers and hairdressers (9 persons) does to some extent involve constraints on the place and times of work—in the form of the salon or similar place of work and its opening times (factors that indicate worker status)—as, due to some extent to the fact that it requires specialist skills (often nationally certified), providing such services entails high levels of individuality and involves very little detailed directions or orders, such roles seem to fit well in the category of sole proprietor.

For marketing and sales staff (7 persons), in the event that such staff engage in marketing and sales outside of the default workplace—in other words, not at a shop or sales office—the lack of restriction on time or place of work lends itself to classification as a sole proprietor. As employed workers who engage in marketing work outside of the default workplace also work under a system by which they are deemed to have worked their prescribed hours, there has in fact been little necessity for persons in such roles to be classified as sole proprietors in legal terms. Likewise, in the case of information and communications technologists (4 persons), who are eligible for the application of the discretionary working system for specialist work (by which they are deemed to have worked their prescribed hours), there has been relatively little need to adopt the category of sole proprietor in legal terms.

3. The 2021 Guideline on freelance work, a joint guideline by Cabinet Secretariat, Fair Trade Commission, Small and Medium Business Administration, and MHLW

In recent years, new forms of employment utilizing information and communications technology—such as platform work, gig work, and crowd work—are becoming increasingly common across the world. Likewise in Japan, the Uber Eats food delivery service developed particular prominence due to the COVID-19 pandemic. Among its mid- to long-term goals established in the 2017 Action Plan for the Realization of Work Style Reform, the Japanese government intended to explore the necessity of legal protection for non-employment type teleworking and other such types of employment-like working styles. The MHLW responded by convening the Meeting on Employment-Like Working Styles that year. The subsequent Meeting on Points of Controversy with regard to Employment-Like Working Styles published a preliminary review of its findings, the Interim Report, in June 2019, establishing that rather than (i) expanding the scope of protected worker status or (ii) creating an intermediate category between employees and the independent self-employed, the appropriate direction to pursue would be to (iii) separately provide the self-employed persons who require a certain level of protection with the special protection they require as suited to the type of protection.

The JILPT survey results reported to these expert meetings recorded the estimated number of persons in employment-like working styles (namely, persons

who receive a request to carry out work from an ordering party, provide their services primarily as an individual, and receive remuneration in return for those services) as 2.28 million persons (of which, 1.69 million persons pursue such work as their primary employment and around 590,000 persons pursue it as secondary employment). Of this number, 1.7 million persons (1.3 million persons pursuing the work as primary employment, 400,000 persons pursuing it as secondary employment) work directly with businesses.

Meanwhile, the *Guidelines for Secure Working Conditions for Freelancers*, formulated in March 2021, clarified approaches to the application of the Japan Fair Trade Commission's Act on Prohibition of Private Monopolization and Maintenance of Fair Trade (Antimonopoly Act, the provisions on the unjust use of a superior bargaining position) and Act against Delay in Payment of Subcontract Proceeds, etc. to Subcontractors (Subcontract Act). According to said guidelines, the Antimonopoly Act and Subcontract Act are also applied to transactions with freelancers, such that if a party ordering work (the client) has a superior bargaining position to the freelancer and utilizes that position to unjustly cause the freelancer disadvantage contrary to typical business practices, such a case constitutes the abuse of a superior position and is regulated under the Antimonopoly Act. Failure by the client to provide the freelancer with written clarification of the terms of the transaction at the time of order is also deemed inappropriate under the Antimonopoly Act and a violation of the Subcontract Act. Furthermore, intermediaries with superior bargaining positions to freelancers utilizing said position to impose unilateral changes to the agreed terms and thereby unjustly impose disadvantages on freelancers contrary to typical business practices also constitute the abuse of a superior position.

4. Special industrial accident insurance coverage and health and safety

The *Guidelines for Secure Working Conditions for Freelancers* also address special insurance coverage under the industrial accident insurance program. Developments toward special coverage began with the establishment of a system to address the high risk of workplace accidents faced by independent contractors in the construction industry, through the 1965 amendment to the Industrial Accident Compensation Insurance Act allowing such contractors to cover their own industrial accident insurance contributions, thereby ensuring that they receive industrial accident insurance benefits when they suffer an accident.

With the growing numbers of freelancers in recent years, this was expanded in April 2021 to include persons engaged in performing arts-related work, persons engaged in animation production, judo therapists, and persons pursuing businesses in accordance with the assistance for the establishment of new businesses and other such support measures under the 2020 amendment of the Act on Stabilization of Employment of Elderly Persons.

September 2021 saw the addition of two new occupation types: food delivery businesses such as Uber Eats, and IT freelancing. Under the provisions of a ministerial ordinance, the former is described as "businesses utilizing motorized bicycles or bicycles for transporting goods," and not limited to platform work. The Uber Eats Union, formed by delivery workers, responded to this addition with the assertion that as long as platform enterprises are generating profits from the work of delivery workers, those enterprises should cover the costs of industrial accident insurance premiums. Other occupation types now eligible for special coverage are masseuse, chiropractor, acupuncturist, and moxibustion practitioner, which were added in April 2022.

Meanwhile, the national government's responsibility to an independent contractor has been recognized, in a May 2021 Supreme Court judgment regarding asbestos used in construction. It is difficult to argue that the Industrial Safety and Health Act automatically excludes persons not classified as workers from protection in the event that they handle items that may potentially damage their health, even when they are working alongside persons classed as workers. The MHLW therefore established the Committee on Occupational Safety and Health under

the Labor Policy Council to set to work on reviewing the regulations. As a result, protection under Industrial Safety and Health Act policy, which had previously been limited to workers (including those in indirect employment relationships), was expanded to cover independent contractors and other such self-employed persons not classified as workers.

5. Leave for business suspension and unemployment safety nets

When former Prime Minister Shinzo Abe declared the closure of schools in March 2020 as part of measures to address the COVID-19 pandemic, the MHLW established the Subsidy for Guardians Affected by School Closures for Business Owners Who Have Employees (*shōgakkō kyūgyō tou taiō joseikin*) for employed workers with children to take paid leave. This prompted criticism highlighting the fact that freelancers were also having to look after their children while working. In response, the MHLW urgently set up the equivalent subsidy (financial support) for freelancers (Subsidy for Guardians Affected by Elementary School Closures for Individual Contract Workers, *shōgakkō kyūgyō tou taiō shienkin*), providing freelancers with 4,100 yen, equivalent to approximately US$35, per day (an amount that was later increased to 7,500 yen per day, then to 4,500 yen per day from March 2022).

Meanwhile, measures by the Ministry of Economy, Trade and Industry included the establishment of the Subsidy Program for Sustaining Businesses in May 2020 to provide 2 million yen to corporations and 1 million yen to individual business operators seeing declines of 50% or more in year-on-year monthly revenue. It would typically be assumed that freelancers would also be covered by such a subsidy, as "sales" referred to the amount recorded as business income on the tax return. However, since freelancers have generally, under the instruction of the tax office, recorded their earnings as salaried income (*kyūyo shotoku*) and miscellaneous income (*zatsu shotoku*), there was a succession of cases of freelancers being declared ineligible for the subsidy. Following criticism, persons who had recorded their earnings as salaried income and miscellaneous income also finally became able to apply for the subsidy as of late June 2020. This could be described as a case which exposed a discrepancy with the worker status concept in tax law.

The aforementioned financial support for freelancers provides, albeit in quite limited circumstances, freelancers with similar allowances for business suspension (allowances for absence from work) as that received by employed workers. This raises another question—namely, do surely freelancers also require compensation for unemployment? Unlike employed workers, in the case of freelancers it is difficult to draw a clear distinction between absence from work and unemployment in legal terms, as this would typically be determined according to whether an employment contract is in place. However, in reality, many freelancers are financially dependent on their primary client, placing them at real risk of being forced to take absence from work or becoming unemployed should orders from said client cease. There is surely some means of providing assistance through a system similar to that of employment insurance.

In fact, in November 2019, the Council of the European Union adopted the Council Recommendation on access to social protection for workers and the self-employed, calling for social protection covering unemployment and five other fields to be extended to the self-employed, as it is to workers. Looking at the actual circumstances in EU countries, as many as 20 countries apply unemployment insurance to self-employed persons in some form (full, partial, or voluntary application). South Korea likewise determined in December 2020 the successive steps to apply, as part of national employment insurance, employment insurance to persons in special types of employment work not covered under the South Korean Labor Standards Act. This entails the person engaging in the work and the business owner equally sharing the costs of insurance premiums, and is being expanded, step by step, to the occupations of parcel delivery drivers, motor cycle messengers and persons providing replacement driver services.

Likewise in Japan, the amendment of the

Employment Insurance Act adopted in March 2022, addresses persons eligible for the basic allowance who launch a business after leaving employment (that is, after they become eligible to receive the said allowance), proposing that the period for which the said business is implemented, up to a maximum of 4 years, not be included when calculating the period for which the allowance can be received. While a highly localized form, this can be seen as unemployment benefit for freelancers (who were formerly workers).

6. Labor law policies on freelancers in countries other than Japan

As noted above, in recent years, the platform economy has been attracting increasing attention across the world, highlighting the issue of the worker status of persons who obtain work through platforms, also known as gig workers. Let us very briefly summarize the developments in various countries.

France is the only country to have legislation aimed at persons working through platforms. The 2016 El Khomri Act (*Loi n. 2016–1088 du 8 août 2016 relative au travail, à la modernisation du dialogue social et à la sécurisation des parcours professionnels*) recognized platform workers' right to be insured against industrial accidents (with platform enterprises responsible for covering the premiums of those platform workers who chose to do so), right to form and join a labor union, and right to continuous professional training. Furthermore, although the 2019 Mobility Orientation Act (*Loi d'orientation des mobilités*) incorporated a policy that sought to ensure the establishment of charters for appropriate labor conditions in the transportation industry by allowing for platform workers to be recognized as self-employed persons where such charters were in place, France's supreme court (*Cour de Cassation*) passed a judgment recognizing the employee status of such a worker. In Germany, *Fair Work in the Platform Economy*, published by the Federal Ministry of Labour and Social Affairs in November 2020, explores shifting the burden of proof with regard to the potential misclassification of platform workers.

Turning to the trends in court precedents, it is again France's supreme court blazing the trail—a judgment recognizing a food delivery platform worker to be in an employment relationship with the platform (the *Take Eat Easy* case, November 28, 2018) was also followed by a judgment recognizing the employee status of a driver for a ride-hailing platform (the *Uber* case, March 4, 2020). Likewise in Spain, a Supreme Court judgment recognized the existence of an employment relationship between a food delivery platform rider and the platform (the *Glovo* case, September 23, 2020). In Germany, a Federal Labor Court (*Bundesarbeitsgericht*) judgment recognized the employee status of a crowd worker conducting the small, task-based job (micro job) of checking product displays at gasoline stations (the *Roamler* case, December 1, 2020). Moreover, while no longer an EU member since 2020, the UK has similarly seen a Supreme Court judgment recognizing ride-hailing platform drivers as workers (a status differing from that of an employee, according to a concept unique to the UK) as opposed to self-employed (the *Uber* case, February 19, 2021).

Meanshile, developments in the US state of California have been marked by considerable seesawing back and forth. A California Supreme Court judgment recognizing employee status (the *2018 Dynamex* case, in which a class of same-day delivery drivers asserting that they had been misclassified as independent contractors were recognized as employees) was subsequently incorporated into legislation with the enactment of California Assembly Bill 5, commonly known as the "gig worker bill," only for this progress to be overturned by the results of a referendum (which saw voters support legislation exempting gig workers from the application of the bill). The referendum was, however, later declared unconstitutional in a Superior Court decision.

7. The EU proposal for a Directive on platform workers

Amid the developments touched on above, the European Commission, as the EU's governing body, published a proposal for a Directive on improving the working conditions of persons working through

digital platforms on December 9, 2021. These proposals have attracted considerable interest given their considerably bold proposals regarding the presumption of worker status.

Article 4 of the proposed Directive prescribes that the contractual relationship between a digital labor platform that controls, within the meaning of Paragraph 2 of said article, the performance of work and a person that performs platform work through that platform shall be legally presumed to be an "employment relationship," that said legal presumption should apply in all relevant administrative and legal proceedings, and that the competent authorities shall be able to rely on that presumption as they verify compliance with or enforce relevant legislation. The legal framework is such that Paragraph 2 of the said article lists five factors as requirements for this; if at least two of the five requirements are fulfilled, it is legally presumed that the person conducting platform work is in an employment relationship.

(a) effectively determining, or setting upper limits for the level of remuneration;
(b) requiring the person performing platform work to respect specific binding rules with regard to appearance, conduct towards the recipient of the service or performance of the work;
(c) supervising the performance of work or verifying the quality of the results of the work, including by electronic means;
(d) effectively restricting the freedom including through sanctions, to organize one's work, in particular the discretion to choose one's working hours or periods of absence from work, to accept or to refuse tasks, or to use subcontractors or substitutes, and
(e) effectively restricting the possibility of building a client base or performing work for any third party.

These requirements all draw on characteristics that have been noted as the distinctiveness of platform work. Given that for the legal presumption of an employment relationship, just two—not all—of these requirements need to be fulfilled, they are fairly lenient requirements.

Of course, as the relationship is thereby "legally presumed" rather than "deemed" to be an employment relationship, it is possible to provide facts to rebut that legal presumption. And yet, when a digital labor platform asserts that the contract relationship at issue is not an employment relationship, the burden of proof falls on the digital labor platform. Although such procedures are being pursued, the legal presumption of an employment relationship does not cease to be applied. While in some respects, this may be due to the tailwind provided by the judgments of the domestic courts in recent years, the proposed Directive adopts an unquestionably severe stance toward platform businesses.

1. Detailed analysis is provided in the booklet *Labor Law Policy on Freelance Work* (*Furiransu no rōdōhoseisaku*; The Japan Institute for Labour Policy and Training, JILPT, March 22, 2022, only available in Japanese). The booklet is a compilation of a presentation and related materials from a special lecture held by the JILPT Tokyo Labour College on March 3, 2021. Moreover, following a similar process, the booklet *Telework: Government, Management and Labor Initiatives in the COVID-19 Pandemic* (JILPT 2021, only available in Japanese), incorporates the results of survey research on telework.

2. JILPT Research Report No.206, Content Analysis of Labor Standards Inspection Documents Related to Worker Status (February 2021, only available in Japanese).

HAMAGUCHI Keiichiro
Research Director General, The Japan Institute for Labour Policy and Training. Research interest: Labor policy.
https://www.jil.go.jp/english/profile/hamaguchi.html

Commentary

Legality of Restrictions on Use of Worksite Facilities by a Transgender Employee

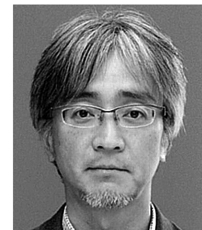
The *State and National Personnel Authority (METI Employee)* Case
Tokyo High Court (May 27, 2021) 1254 *Rodo Hanrei* 5

IKEZOE Hirokuni

I. Facts

Plaintiff X is a government employee working for the Ministry of Economy, Trade and Industry (METI), and a transgender female who has not undergone gender reassignment surgery and whose gender remains a male on the family register. When X complained of restricted use of the METI's restrooms for women and asked the National Personnel Authority (NPA) for free use of the restrooms that matched X's gender identity, this request was not granted by the NPA administration. In addition, X was subject to restrictions on the use of women's restrooms at worksite (though permission was given to use women's restrooms two or more floors away from X's work area), and X suffered psychological damage due to comments by supervisors, etc. that denied X's gender identity or were otherwise inconsiderate. For these reasons, X has filed administrative case litigation and state redress litigation against the national government (hereinafter referred to as Y) seeking reversal of the NPA's administrative judgment (administrative action regarding use of restrooms and compensation for damages).

In the first instance judgment (Tokyo District Court (Dec. 12, 2018) 1223 *Rohan* 52), the Tokyo District Court ruled that in light of the current legal system and the facts found of this case, in exercising the authority to manage government facilities, X's employer METI neglected the duty of care by restricting X's access to women's restrooms, and that X's supervisor's comments denying X's gender identity were illegal under the State Redress Act, affirming Y's liability for damages. Furthermore, the NPA's administrative judgment refusing X's request was reversed on the grounds that it was a deviation from or abuse of its authority of discretion, and therefore illegal.



This case is the one both X and Y appealed to the high court with its the initial judgment. When a lawsuit is filed against relevant government agencies (in this case, the NPA and METI), the litigant is the national government. (A further appeal has been filed with the Supreme Court.)

II. Judgment

X's appeal was dismissed; Y's appeal was partially admitted and partially dismissed. The main points of the judgment are as follows.

1. "Leading a social life in accordance with one's gender identity is a legally protected interest." Furthermore, under the State Redress Act, "If and only if there are circumstances where it is recognized that a public employee has acted thoughtlessly and neglected the duty of care that should normally fall under that employee's scope of duties... this behavior shall be deemed illegal."

2. In response to X's requests, and following discussions and explanations with relevant parties,

METI acted with consideration for X, such as leaving decisions on personal appearance to X's discretion and allowing use of nap rooms, while in terms of use of restrooms, limited use (restrooms two or more floors away from where X works) was allowed in consideration of other employees. Thus it is difficult to recognize that in METI's treatment of X ,"a public employee has acted thoughtlessly and neglected the duty of care that should normally fall under that employee's scope of duties," and the handling of the restroom issue in this case is not deemed illegal under the State Redress Act.

3. With regard to various comments made by METI officials toward X, it can be said that these remarks lack the prerequisite facts or that "some aspects of them could be regarded as lacking in consideration," but it is still difficult to assess that these remarks were carried out "thoughtlessly" that could be evaluated to be illegal. However, among the remarks, a supervisor's comment to X—who wishes to undergo gender reassignment surgery but has been unable to do so due to factors such as a skin disorder—to the effect that "if you aren't going to have the surgery, you ought to go back to being a man," clearly deviates from METI's policy established in response to X's request and is illegal as defined by the State Redress Act.

4. As for METI's maintaining its current stance pertaining to use of restrooms, it cannot be said that the discretionary authority exercised by METI, which is responsible for creating a comfortable work environment for all employees including X, constituted deviation or abuse. With regard to the NPA, which has a duty to judge cases in a manner that is fair to the public and to all concerned, with a view to ensuring employees' potential is realized and advanced, the NPA did not deviate from or abuse its discretion in refusing X's request (to allow full and unrestricted use of women's restrooms in the workplace).

III. Commentary

1. Significance

This was the first suit on the merits and the first high court judgment held with regard to restrictions on the use of women's restrooms by a transgender employee (male to female, who has not undergone gender reassignment surgery and whose gender remains unchanged on the family register). Regarding transgender employees, there are legal precedents in the case of private-sector company S (dismissal of a transgender employee) (Tokyo District Court ruling (June 20, 2002) 830 *Rodo Hanrei* 13) and the case of Yodogawa Kotsu (provisional disposition) (Osaka District Court ruling (July 20, 2020) 1236 *Rodo Hanrei* 79). (Both of these were provisional dispositions, and do not constitute suits on the merits.)

The *S Co*. case was a disciplinary dismissal case in which the matter of dispute was the right of the employee (who is biologically male but identifies as female) to wear clothing at work that matched the employee's gender identity; and the legality of the employer's work order (to dress in accordance with the employee's externally recognizable gender) was examined. With regard to the employee's disciplinary dismissal on the grounds of violating said work order, the court that the employee's actions did not constitute a serious and malicious violation of employer's work order that would be grounds for disciplinary dismissal, and approved the request for a provisional disposition including contractual status with company.

At issue in the Yodogawa Kotsu (provisional disposition) case was the reasonableness of the employer's (a taxi company's) refusal to allow a transgender taxi driver (who is biologically male but identifies as female) to wear makeup on the job on the grounds that it violated company regulations. While the court did not deny the necessity or reasonableness of a service-industry employer prohibiting only male employees from wearing makeup on the job in order to avoid offending customers, it denied the reasonableness of the employer's refusal to allow the taxi driver, whose gender identity differed from their gender at birth, to wear makeup at work, recognizing the personal value of leading social life in accordance with one's gender identity, and the necessity of wearing makeup as being equivalent to that of female taxi drivers.

In contrast to these provisional dispositions, the Tokyo High Court heard a suit on the merits on the legal interests of transgender employee, i.e. the right "to lead a social life in accordance with one's gender identity," and as such, this is a significant court judgment. Also, although the case was in particular in that proceedings were based on the State Redress Act and the Administrative Litigation Act, it is an important judgment in the sense that it has a high practical value as a precedent for human resource management, because it makes a legal judgment on the presence or absence of illegality based on detailed facts found.

2. Legal theory and scope / Impact on human resource management

(1) At an issue in this case was whether the legal interests of a transgender employee are protected under the State Redress Act. For this reason, the scope of this judgment per se seem to be somewhat limited, and it is unlikely that the holding will be immediately applicable to cases involving private-sector companies. Nonetheless, it is quite conceivable that future cases will dispute on the tort (under Articles 709 and 715 of the Civil Code) of restrictions on the use of workplace facilities (restrooms), like those in this case, in civil cases involving private-sector employees. In this respect, while a judgment on illegality under the State Redress Act differs from the "intentional or negligent" infringement of rights under the Civil Code, given that the legal interests discussed by the High Court in this judgment are underpinned by the Act on Special Cases in Handling Gender Status for Persons with Gender Identity Disorder as well as the personality interests that have long been widely recognized, it is quite possible to interpret the right to "to lead a social life in accordance with one's gender identity" as an interest protected under tort law. For this reason, while this judgment is limited in scope, it is considered to have significant value as a precedent for practices in the human resource management of private-sector enterprises.

(2) In this case, the issue raised was that of restrictions on the use of women's restrooms, but what judgments will be made regarding the use of other workplace facilities such as nap rooms, locker rooms, and shower rooms? This is not immediately clear about other facilities, as the judgment is on the specific matters of this case. In this regard, this judgment states that "it is undeniable that METI is responsible for creating a comfortable work environment for all employees, including X, while also taking into consideration the gender and sex-related interests of other employees such as sexual sense of shame and anxiety," and that "a large portion of one's life is spent at work, and it is understood that the desire of X, a transgender individual, to act based on gender identity at work is derived from the sincere intentions and true feelings, while at the same time the desire to feel happy in the workplace is shared by all those belonging to the organization."

Considering this judgement, as the facts found of this case show, it is highly important that there be a "process of coordination" aimed at achieving mutual understanding and acceptance through discussions and explanations with the parties concerned, based on the wishes of the person(s) affected. The holding indicates that this will be a consideration in future legal judgments. It appears that in the future, with regard to the use of nap rooms, locker rooms, shower rooms and so forth, there can be a need for a more carefully considered "process of coordination" that includes the "consideration of sexual sense of shame and anxiety" on the part of organizations. In addition, medical treatments undertaken by transgender employees to advance their physical gender transitions, such as hormone replacement therapy and gender reassignment surgery, may become a prerequisite for granting their requests.

In other countries, issues related to identity and the body, as in this case, are often discussed as directly related to rights and obligations such as civil rights and anti-discrimination statutes. However, this judgment seems to show that in Japan, legal judgments are made from the perspective of managing the entire workplace organization, which encompasses impact on "interests of and consideration for other employees."

The *National Personnel Authority (METI Employee)* case, *Rodo Hanrei* (*Rohan*, Sanno Research Institute) 1254, pp.5–27.

IKEZOE Hirokuni
Assistant Research Director, The Japan Institute for Labour Policy and Training. Research interest: Various issues on labor contract, Legal concept of workers, Labor dispute settlement, Employment and Labor Law in the USA.
https://www.jil.go.jp/english/profile/ikezoe.html

Overview of Employment Policy in Japan

HAMAGUCHI Keiichiro

1. Employment policy at the macro level

To understand Japan's macro-level employment policy which are distinguished by target group such as elderly people, young people, women, or non-Japanese workers, it is helpful to start by focusing on two perspectives: policy aimed at employment maintenance and policy encouraging mobility in the labor market.

First, employment maintenance policies are those which provide state subsidy measures aimed at steering employers toward retaining employment relationships with their employees even when there is no work available, in the event of an external crisis temporarily reducing enterprises' business activities and in turn prompting worker redundancy at those enterprises. In Japan, such support takes the form of the Employment Adjustment Subsidy (*koyō chōsei joseikin*; EAS), a subsidy covered by the employment insurance fund. Similar systems are also used in European countries such as Germany and France.

Such a system was first introduced in Japan under the Employment Insurance Act, which was enacted in 1974 in response to the first oil crisis in 1973. It was a system inspired by the short-time work allowance (*Kurzarbeitergeld*) scheme being employed in then West Germany. Under Japan's system at that time, the state specified target industries, and employers in those industries received a subsidy covering a certain percentage of allowances to those employees sent on leave. While in its initial stages the system was limited to being a response to short term changes in economic conditions, this was later expanded to include cases of mid- to long-term issues such as change in industrial structure.

Second, policy aimed at generating employment mobility responds to structural change in industrial sector by shifting workers from enterprises facing decline in demand to enterprises anticipating to see an increase in demand. Its objective is to promote inter-industry or inter-enterprise labor mobility in the form of transfers of workers' employment status to another company (*tenseki*) or reemployment, in such a way that avoids workers becoming unemployed as far as possible. While such policy first emerged as benefits aimed at enabling and encouraging job change (Job-Change Benefits) introduced under the 1966 Employment Measures Act, it only began to be emphasized as key policy once the Labor Mobility Subsidy (*rōdō idō shien joseikin*) was established under the 2001 amendment to the Employment Measures Act. This fund consisted of subsidies for granting affected workers time off to search for jobs and for commissioning employment placement service providers to provide outplacement services to support the reemployment of affected workers.

The trends in macro-level employment policies in the 20 years that followed shifted back and forth between employment mobility and employment maintenance policy, with employment mobility as the main course adopted in economically prosperous periods and employment maintenance during economic downturns. That is, while the number of businesses receiving payment of the EAS remained at around 500 businesses annually in FY 2006 and

FY 2007, once the onset of the 2008 global financial crisis prompted rapid deterioration of business conditions, particularly in the manufacturing industry, the government relaxed the conditions for receiving payment of the EAS, and the number of payments to establishments rose to almost 800,000 annually in FY 2009 and FY 2010. Although this figure declined as the economy subsequently recovered, the effects of the COVID-19 pandemic from 2020 onward led to the number of businesses receiving payments of such subsidies skyrocketing once more. This was due to the slump in labor force demand in many industries—particularly the accommodation and food services industry—prompting the government to respond by once again significantly relaxing the conditions for receiving payment of the EAS, as well as creating a similar system aimed at workers not enrolled in the employment insurance scheme, known as the Emergency Employment Stabilization Subsidy (*kinkyū koyō antei joseikin*). Namely, the number of businesses receiving payment rose to just under 3 million in FY 2020 and just over 2.5 million in FY 2021. The employment insurance reserve funds, which were previously as high as several trillion yen, were therefore exhausted in just a short period, to the extent that they have to be covered with a transfer from the general account. In March 2022, Employment Insurance Act was amended to significantly raise the rates of employment insurance contributions.

On the other hand, since mid-2020, there have been calls for encouraging the new cross sectional labor mobility as responses to the COVID-19 pandemic other than focusing on employment maintenance. The government has also sought to lay out this approach in its budget proposal. In this approach, emphasis is placed on the Subsidy for Industrial Employment Stability (*sangyō koyō antei joseikin*) to ensure that in cases of labor mobility through employee transfers to another enterprise while maintaining affiliation to the transferring enterprise (*zaisekigata shukkō*), subsidies are provided to both the transferring enterprise and the receiving enterprise. However, with each wave of COVID-19 infections it has been difficult to make progress toward an exit strategy for moving away from employment maintenance policy. While it is difficult to anticipate potential future developments, it looks likely that employment mobility policy will be prioritized once the pandemic has been brought under control.

2. Labor market safety nets

While employment maintenance policy seeks to maintain employment relationships, which secure workers' income by ensuring that it continues to be paid by their employers, unemployment benefit entails the government directly securing the income of workers who are no longer in employment relationships. This system was established in 1947 as the unemployment insurance system and was reorganized in 1974 as a comprehensive employment insurance system including schemes such as the aforementioned EAS. Unemployment benefit is part of the contributory social insurance system, such that insurance contributions are split fifty-fifty between the employer and the worker (in contrast, the funds for all subsidies related to employment relationships are covered entirely by employers). Workers become eligible to receive such unemployment benefits once they have worked six months for an employer. The periods for which unemployed workers can receive the unemployment benefit range from 3–11 months and depend on the length of time they were employed with the relevant employer, their age, and the grounds for leaving employment.

Given that the unemployment benefit system is designed in this way, some people may not qualify to receive the benefit despite becoming unemployed, and some people may find the period for which they are entitled to receive the benefit finishes while they are still unemployed and not yet to find new employment. While in Western European countries such people have long been catered for with non-contributory unemployment assistance systems, such systems did not exist in Japan for some time. When a significant number of non-regular workers lost their employment as a result of the 2008 global financial crisis, it came to light that the majority of those

workers were ineligible for the benefit, and the government hastily took a budgetary measure in order to provide a certain amount of benefit to workers who attended basic vocational training. This was made a permanent system under the 2011 Jobseekers Support Act. It is a system that has the nature of non-contributory unemployment assistance provided on the condition that the worker in question attends vocational training.

On the other hand, the premise of the EAS is that employers in business suspension firstly pay the allowances for absence from work to workers who have been sent on leave, and secondly apply to the government for subsidy payments. In reality, however, the EAS system did not work during the 2020 COVID-19 crisis because a number of employers did not pay the allowances to those workers, which resulted in the impoverishment of workers as reported. In response to this, it was even argued that unemployment benefit should be paid as a special exception (regardless of whether the worker in question is unemployed or not). Instead, in the same year the government founded a new financial support for business suspension due to COVID-19 (*kyūgyō shienkin*). This financial support enables the government to directly pay allowances for business suspension to workers who are not paid allowances despite having been sent on leave by an employer while still in an employment relationship with said employer. However, in the event that the employer is obliged to pay the leave allowance, the legal implications are complex.

3. Job creation initiatives

Policies that seek to address a lack of employment opportunities by utilizing public funds to pursue initiatives and seeking to absorb unemployed people into such projects have been adopted all around the world, such as the Tennessee Valley Authority project established as part of the New Deal policy in the US. Likewise, in Japan directly after the end of World War II the Emergency Unemployment Countermeasures Act was enacted with the aim of rebuilding the country following the extensive destruction of the war. The emergency unemployment countermeasures initiatives were subsequently scaled back during the period of economic growth and eventually abolished in 1995.

However, around that same time, there was a rise in the numbers of unemployed people due to the economic downturn resulting from the bankruptcy of financial institutions and other such factors. The government therefore adopted a budgetary measure in 1999 to establish a grant-in-aid system to support local government bodies to pursue public projects utilizing unemployed people. And when the numbers of unemployed people rose once again during the 2008 global financial crisis, the Emergency Job Creation Program was implemented along the same approach of providing grants-in-aid to local governments. The model case of the use of such grants was following the Great East Japan Earthquake, in response to the devastating damage caused by the resulting tsunami in the coastal areas of the Tohoku region. This illustrates a Cash-for-Work program; local victims of the crisis were employed by the projects to recover and reconstruct the affected areas.

4. Public employment services

Japan also provides public employment services nationwide in accordance with the ILO Employment Service Convention of 1948 (No. 88). Such services started out as free-of-charge employment placement initiatives operated by municipal governments under the 1921 Employment Placement Act. These were nationalized in 1938 and following the World War II were, in accordance with the 1947 Employment Security Act, also operated as a nationwide network directly controlled by the national government.

While the main offices consist of 544 Public Employment Security Offices—commonly known as *Hello Work* centers—facilities to assist specific types of jobseekers in finding employment known as Talent Banks (*jinzai ginkō*) and Part-timers Banks (*pāto banku*) were established in 1967 and 1981, respectively. Although these have been abolished, the *Ladies' Hello Work* offices established in their place in 1991 have been relaunched in 1996 as *Hello Work for Supporting Work-Family Balance* and in 2006 as the *Hello Work for Mothers* program, which

is still in operation today. Facilities for younger jobseekers—*Hello Work for Youth* and *Hello Work for New Graduates*—have also been established. In regions without *Hello Work* offices, local municipal government buildings also house *Hometown Hello Work* offices.

Since 1999, the *Hello Work* centers have been equipped with computers with job searching functions that jobseekers can use themselves and job vacancy information has also been provided online. These internet services subsequently underwent gradual expansion. Under the influence of the COVID-19 pandemic, both employers with job vacancies and jobseekers have, since September 2021, been able to open their own account online and receive job placements online.

5. Private-sector labor market businesses

While the 1947 Employment Security Act applied strict regulations all but prohibiting paid employment placement services and labor supply services, from the 1980s to the 1990s the provisions were increasingly relaxed, and at present both private employment agencies and worker dispatching service providers are able to operate considerably freely, generally under the license system. Of these two business types, worker dispatching service providers are connected with issues that dispatched workers—as non-regular workers, alongside part-time workers and fixed-term contract workers—face unstable employment conditions and low wages, and the process of amending the Worker Dispatching Act has been ongoing for over 20 years.

On the other hand, various forms of business, which may not fall under the category of conventional employment placement services, have been expanding in their services giving various online offers to provide recruitment information. In March 2022, Employment Security Act was amended to introduce a notification system to gently regulate these new business forms.

HAMAGUCHI Keiichiro
Research Director General, The Japan Institute for Labour Policy and Training. Research interest: Labor policy.
https://www.jil.go.jp/english/profile/hamaguchi.html

I. Main Labor Economic Indicators

1. Economy

The Japanese economy shows movements of picking up as the severe situation due to the Novel Coronavirus is easing. Concerning short-term prospects, the economy is expected to show movements of picking up, supported by the effects of the policies and improvement in overseas economies while all possible measures are being taken against infectious diseases, and economic and social activities move toward normalization. However, full attention should be given to the further increase in downside risks due to rising raw material prices and fluctuations in the financial and capital markets and supply-side constraints while the uncertainties surrounding the state of affairs of Ukraine. Also attention should be given to the effects of the Novel Coronavirus. (*Monthly Economic Report*,[1] April 2022).

2. Employment and unemployment

The number of employees in March increased by 140 thousand over the previous year. The unemployment rate, seasonally adjusted, was 2.6%.[2] Active job openings-to-applicants ratio in March, seasonally adjusted, was 1.22.[3] (Figure 1)

3. Wages and working hours

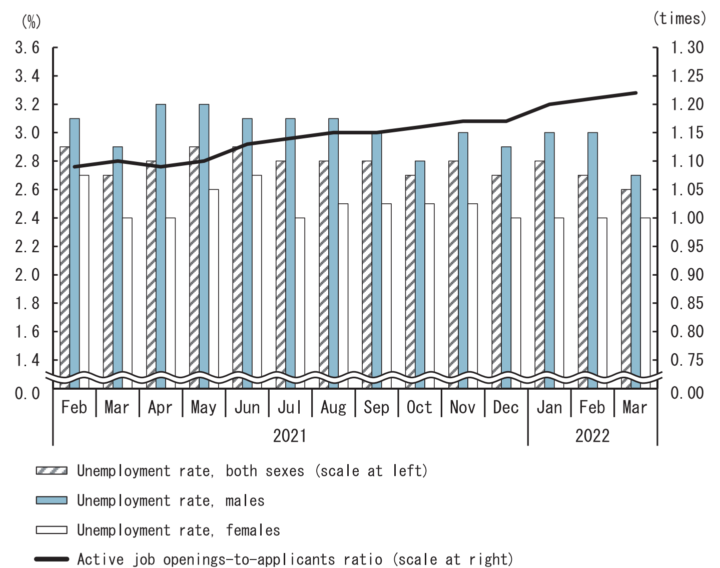
In March, total cash earnings increased by 2.0% year-on-year and real wages (total cash earnings) increased by 0.6%. Total hours worked decreased by 1.1% year-on-year, while scheduled hours worked decreased by 1.5%.[4] (Figure 2 and 6)

4. Consumer price index

In March, the consumer price index for all items increased by 1.2% year-on-year, the consumer price index for all items less fresh food increased by 0.8%, and the consumer price index for all items less fresh food and energy declined by 0.7%.[5]

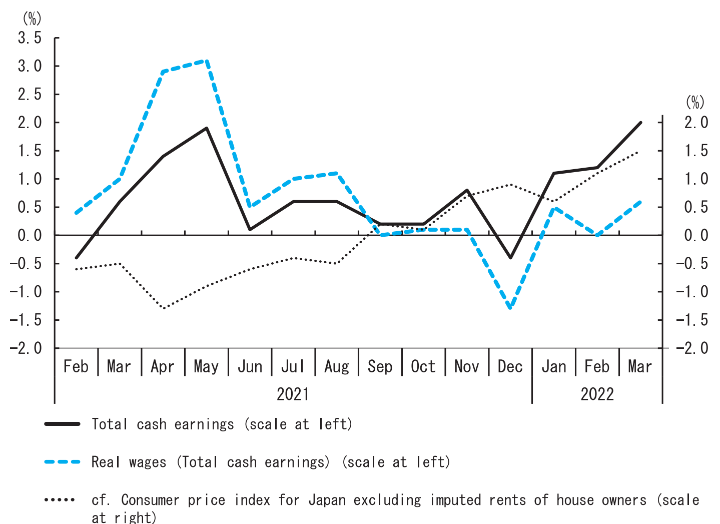
5. Workers' household economy

In March, consumption expenditures by workers' households decreased by 0.1% year-on-year nominally and decreased by 1.6% in real terms.[6]



Source: Ministry of Internal Affairs and Communications (MIC), *Labour Force Survey*; Ministry of Health, Labour and Welfare (MHLW), *Employment Referrals for General Workers*.
Note: Active job openings-to-applicants ratio indicates the number of job openings per job applicant at public employment security. It shows the tightness of labor supply and demand.

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



Source: MHLW, *Monthly Labour Survey*; MIC, *Consumer Price Index*.

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

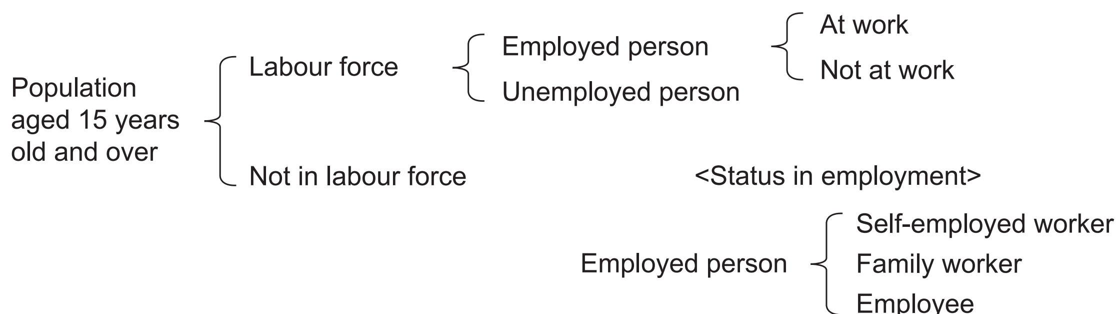
1. Cabinet Office, *Monthly Economic Report* analyzes trends in the Japanese and world economies and indicates the assessment by the Japanese government. Published once a month. https://www5.cao.go.jp/keizai3/getsurei-e/index-e.html
2. https://www.stat.go.jp/english/data/roudou/results/month/index.html
3. https://www.mhlw.go.jp/english/database/db-l/general_workers.html
4. For establishments with 5 or more employees. https://www.mhlw.go.jp/english/database/db-l/monthly-labour.html
5. https://www.stat.go.jp/english/data/cpi/index.html
6. MIC, *Family Income and Expenditure Survey*. https://www.stat.go.jp/english/data/kakei/index.html

II. Impacts of the COVID-19 pandemic on employment and unemployment

The following outlines the recent trends shown in statistical indicators relating to employment. See JILPT website *Novel Coronavirus* (*COVID-19*) for the latest information (https://www.jil.go.jp/english/special/covid-19/index.html).

1. Employment and unemployment

(1) Definitions of *Labour Force Survey*[7]



(2) Labor force

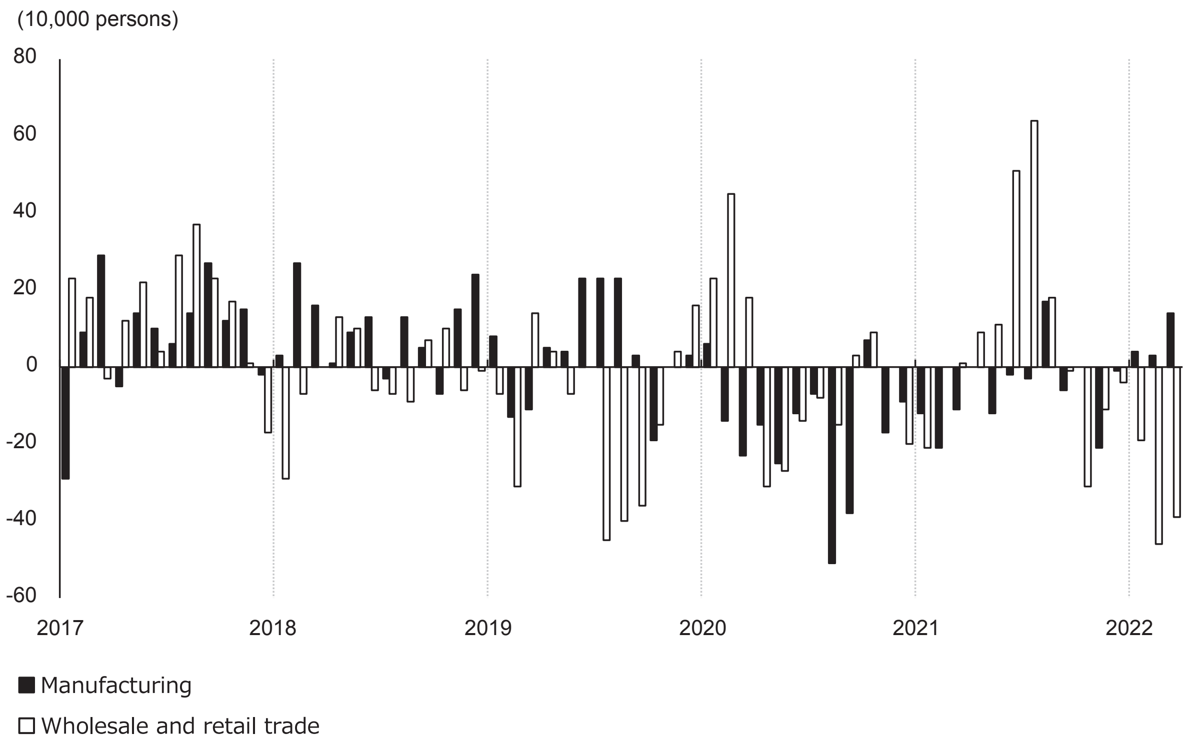
Table 1. Labor force

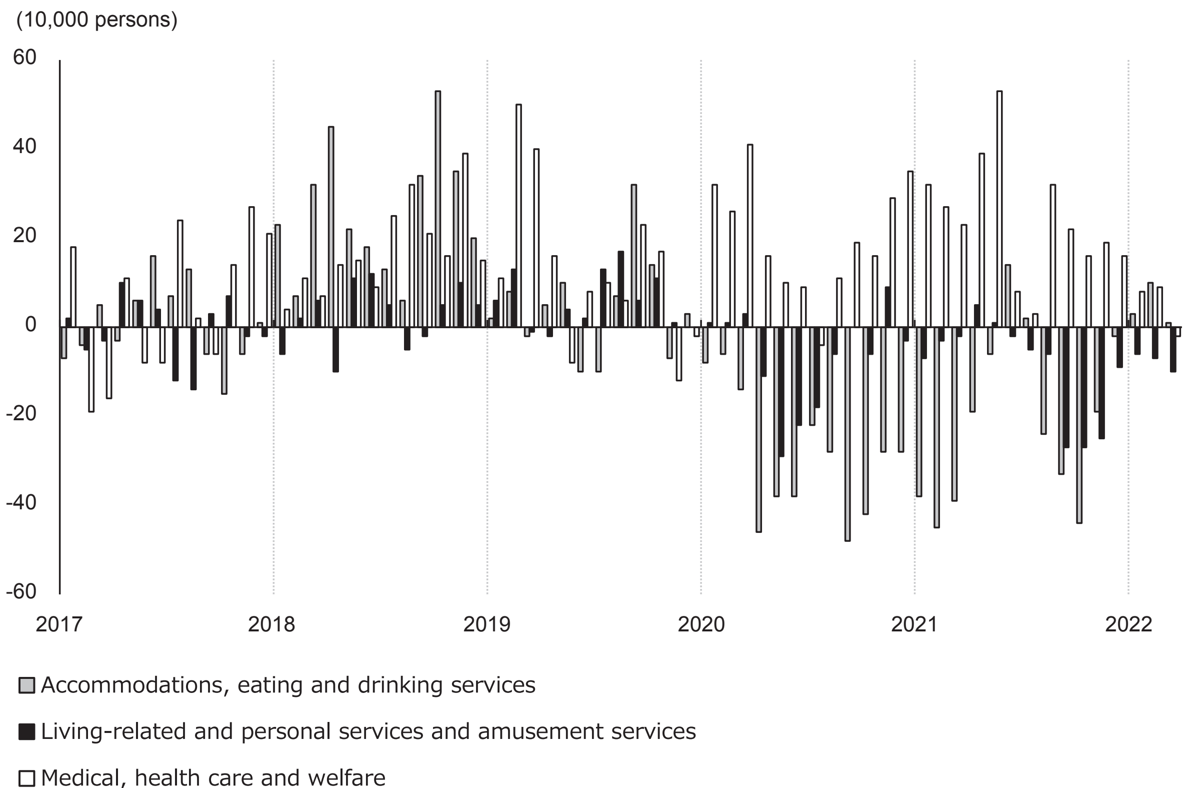
(10,000 persons)

		Labor force			
		Total	Employed person		Unemployed person
				Not at work	
2019		6,912	6,750	177	162
2020		6,902	6,710	258	192
2021		6,907	6,713	208	195
	March	6,885	6,695	221	189
	April	6,914	6,703	200	211
	May	6,926	6,713	214	213
	June	6,945	6,738	184	207
	July	6,950	6,757	214	193
	August	6,934	6,739	250	194
	September	6,920	6,726	210	194
	October	6,889	6,705	166	184
	November	6,879	6,696	167	183
	December	6,879	6,706	190	173
2022	January	6,830	6,646	249	185
	February	6,838	6,658	242	180
	March	6,864	6,684	243	180

Source: Compiled by JILPT based on Ministry of Internal Affairs and Communications (MIC), *Labour Force Survey* (Basic Tabulation) (unadjusted values).[8]
Note: Figures in the past have been changed according to revisions of the switch in the bench mark population in the *Labor Force Survey*. The same applies to Figure 1 and Figures 3 to 5.

7. Ministry of Internal Affairs and Communications (MIC), *Labour Force Survey*, Concepts and Definitions. https://www.stat.go.jp/english/data/roudou/pdf/definite.pdf
8. For up-to-date information, see https://www.jil.go.jp/english/estatis/eshuyo/index.html (in English), for "employed person not at work" https://www.jil.go.jp/kokunai/statistics/covid-19/c23.html#c23-1 (in Japanese).

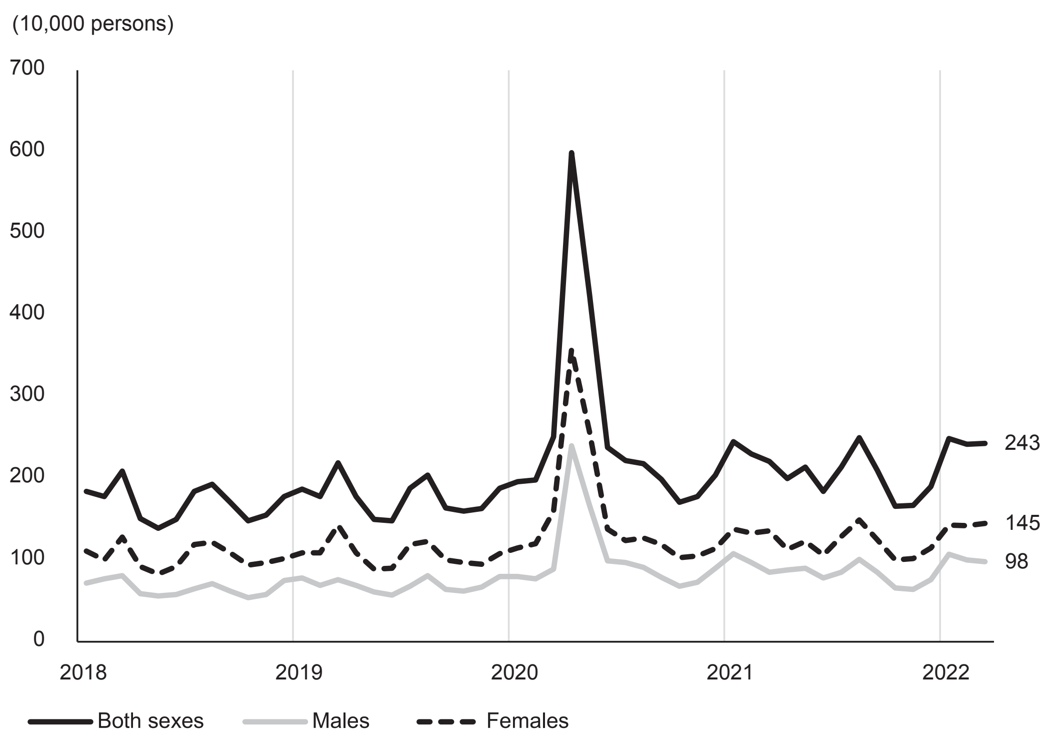




Source: Ministry of Internal Affairs and Communications (MIC), *Labour Force Survey* (Basic Tabulation).[9]

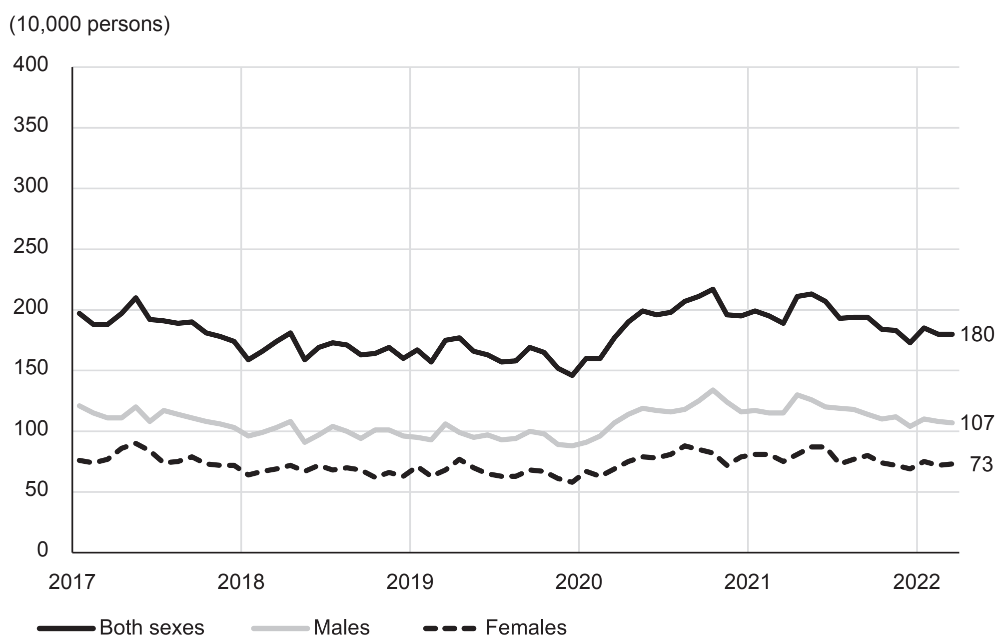
Figure 3. Number of employed persons by main industry (unadjusted values, year-on-year change) (January 2017 to March 2022)

9. For up-to-date information and further details, see https://www.jil.go.jp/kokunai/statistics/covid-19/c01.html#c01-7 (in Japanese).



Source: MIC, *Labour Force Survey* (Basic Tabulation).[10]

Figure 4. Number of employed persons not at work (unadjusted values, by sex) (January 2018 to March 2022)

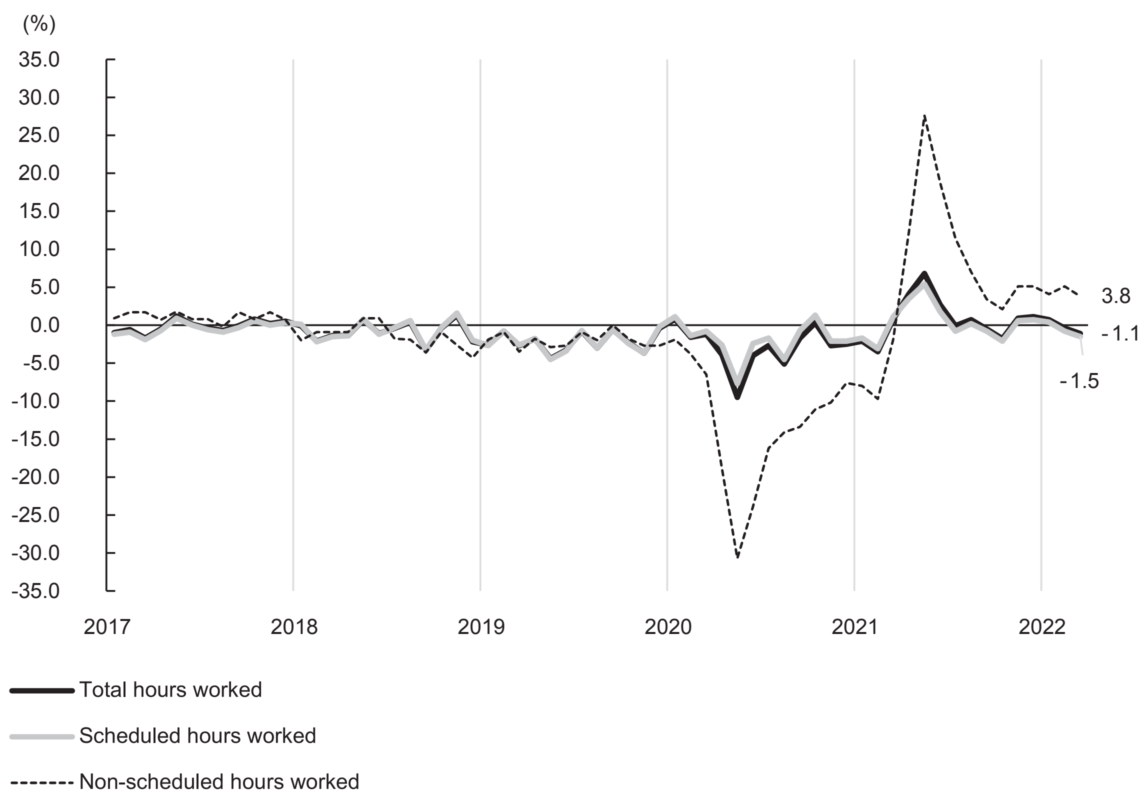


Source: MIC, *Labour Force Survey* (Basic Tabulation).[11]

Figure 5. Number of unemployed persons (unadjusted values, by sex) (January 2017 to March 2022)

10. For up-to-date information and further details, see https://www.jil.go.jp/kokunai/statistics/covid-19/c23.html (in Japanese).
11. For up-to-date information and further details, see https://www.jil.go.jp/kokunai/statistics/covid-19/c03.html#c03-1 (in Japanese).

2. Working hours



Source: Compiled by JILPT based on MHLW, "Monthly Labour Survey."[12]
Notes: 1. Beginning in June 2019, values are based on a complete survey of "business establishments with 500 or more employees."
2. "Business establishments with 500 or more employees" for the Tokyo metropolitan area are re-aggregated beginning in 2012.

Figure 6. Total hours worked, scheduled hours worked, and non-scheduled hours worked (year-on-year change, total of full-time employees and part-time workers) (January 2017 to March 2022)

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

12. MHLW, *Monthly Labour Survey*. https://www.mhlw.go.jp/english/database/db-l/monthly-labour.html. For up-to-date information and further details, see https://www.jil.go.jp/kokunai/statistics/covid-19/c11.html#c11-1 (in Japanese).

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