

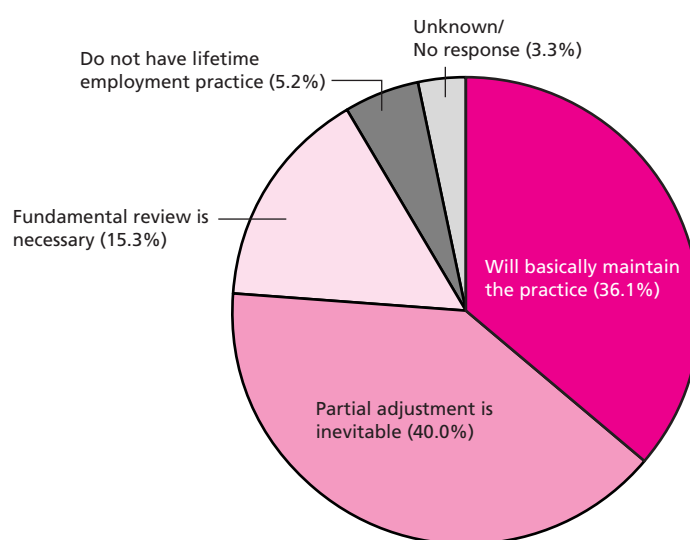
1 The Long-Term Employment System

The Lifetime Employment

Japanese companies, centered on large corporations, have few people who change jobs and a high percentage of employees who work at the same company for long periods of time. The long-term employment system of these companies is referred to as the lifetime employment system. The lifetime employment system is an employment practice where companies hire a specific number of new graduates at fixed times every year, and under contracts without a fixed period of employment, employees continue to be employed at the same company or affiliated companies from the time that they are hired as new graduates to the time they retire, as long as there are no extraordinary circumstances such as a management crisis.

Under long-term stable employment practices, employees are trained through in-company capacity development and reassignments as well as loaning of personnel to affiliated companies. Until the time that they retire, they are subject to a personnel system in which promotions and wage increases are based on seniority. Since human resources who have been trained for a long period of time within the same company without changing jobs build up skills and know-how in the organization, the strength of this type of human resources training system is most obvious in manufacturing industries in which a continuous accumulation of product development and improvement is necessary.

III-1 Attitudes of Companies Towards Lifetime Employment



Source: *Survey on Corporate Human Resource Strategies and Workers' Attitude Towards Work, (Company Survey) (2003)*, The Japan Institute of Labour

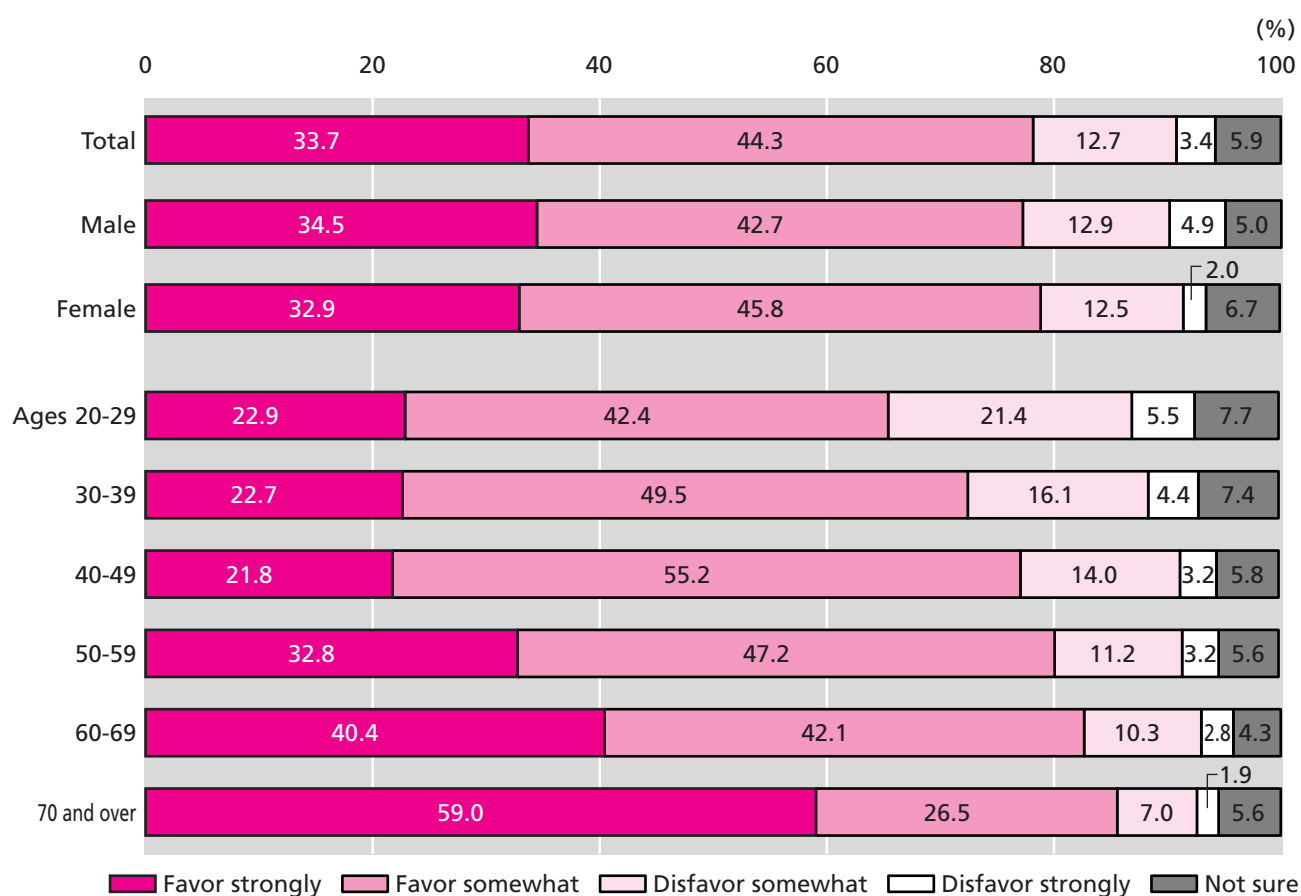
Background of the Long-term Employment System's Establishment

The long-term employment system referred to as the lifetime employment system was established at many companies during the period of high economic growth of the 1960s. With rapid changes in technological innovations and business during the period of high economic growth, companies were not able to hire the necessary human resources from outside because these human resources had not accumulated the necessary experience, and they needed to arm their employees with a high level of broad skills and techniques through in-house training. To do this, a long-term employment system was necessary, and with the introduction of a personnel system of continued wage increases and promotion, the lifetime

employment system was established. With court precedents restricting dismissals, the lifetime employment system, which emphasizes job security, was established and was welcomed by employees and labor unions.

Also a great influence behind the establishment of the lifetime employment system is the fact that actual operation of the personnel system is not rigid, but rather very flexible. At this stage in time when business is slow, rather than resorting to drastic employment adjustment measures such as sudden dismissals, a variety of measures such as limitations of overtime hours, reassignment of employees, restraint in or discontinuation of hiring new employees, and loaning or transferring employees to affiliated companies has been implemented, and a flexible response has been

III-2 Attitudes of Workers Towards Lifetime Employment



Source: 4th Survey on Working Life (2004), The Japan Institute for Labour Policy and Training

Note: Responses to the question "What is your view regarding the typically Japanese lifetime employment, working at one company until retirement?"

undertaken in which major changes to the workplace and content of work have been taken into account.

The percentage of lifetime employment workers who continued to work at the same company from the time they were new graduates to the time they retired is about 20% and not that high. In small and medium-sized companies, the number of continuing workers largely drop across the ranks of young and middle-aged employees for reasons such as resignation for personal reasons, company bankruptcy or business closings. At large companies, a major factor is the loaning and transferring of middle-aged employees centered on management-level and white-collar employees to affiliated companies or partner companies.

Argument over Reform of the Lifetime Employment System

Influenced by the long-term recession that has

continued since 1990, increases in the cost of labor as employees get older and a rise in the number of employees who cannot adjust to rapidly developing new technologies typified by information technology (IT), debate has recently begun over reform that the employment practices such as the lifetime employment system and seniority-based wage system should be reviewed. Looking at the circumstances of companies, they are consecutively carrying out reforms regarding seniority-based wages, but not that many companies are implementing major reviews of their lifetime employment systems and changing to fluid employment practices. There is instead an increasing trend for companies to restrict the number of regular staffs that are subject to lifetime employment and to increase the number of non-regular staffs such as part-time workers for whom making employment adjustments is relatively easy.

2 Recruiting and Hiring

Because Japan's labor market is divided into a new graduate market and a mid-career job seeker market, or into large enterprises and small businesses, there are accordingly great differences in recruiting and hiring. The collective hiring of a group of new college graduates immediately upon graduation is one of the characteristics of hiring activities in Japan. However, looking at Table III-3, we see that it is in great part the large enterprises hiring new graduates, and that as the size of the company decreases, the rate of hiring new graduates also decreases. On the other hand, for mid-career hires, this difference based on company size is not as large as with the new graduates; in particular, the rate of hiring mid-career workers in nonclerical positions is higher at small-scale businesses (see III-4).

Methods of Recruiting and Hiring

Table III-5 shows the general methods of recruit-

ing and hiring. For recruiting college graduates, methods such as "job-search magazine or job search website," "introduction or recommendation by professors, etc at college," "company, etc. hosts a job fair or seminar" are widely used. On the other hand, for mid-career hires the most common methods are "public employment security office, etc.," "Help Wanted" advertisement or flier in the newspaper," and "job-search magazine or job search website" (see III-5; survey conducted in 2004).

Compared to the same survey conducted three years ago, one notices that methods of recruiting and hiring have drastically changed. "Job-search magazine or job search website" became first and third, respectively, for new college graduates and mid-career hires. "Independent company website" came fourth for mid-career hires, and methods involving the internet are increasing. On the other hand, "personal connections" (22.9%) which was third in mid-

III-3 Current Ratio of Hiring for New Graduates (multiple answers)

(%)

	2001			2004
	Clerical	Technical, Research	Non-clerical	
High school graduates				
Total of all companies	4.7	2.8	12.9	16.7
5,000 or more employees	27.1	10.9	42.4	44.3
1,000—4,999 employees	14.4	6.3	31.9	37.9
300—999 employees	11.8	4.7	31.0	33.6
100—299 employees	7.0	4.6	22.3	21.1
30—99 employees	3.0	2.0	7.8	13.1
College (including graduate school) graduates				
Total of all companies	7.9	9.2	7.0	19.6
5,000 or more employees	76.2	56.8	27.4	94.1
1,000—4,999 employees	57.5	46.0	28.5	81.2
300—999 employees	33.5	36.9	22.4	64.3
100—299 employees	13.1	17.0	11.6	33.8
30—99 employees	2.5	3.2	3.6	9.0

Source: *Survey of Employment Management*, 2001, 2004, Ministry of Health, Labour and Welfare

Note: The 2004 survey was not categorized into clerical, technical/research, and non-clerical job types.

career hires three years ago has dropped to fifth (6.1%) in this survey (see III-5; survey conducted in 2001).

The hiring of four-year university graduates in the humanities and social sciences is generally carried out in the following way. First, the hiring process starts with a request for material from the company.

This usually begins during the junior year. The company will then hold a seminar or information session for the students who looked at the company materials, and proceed on to the written exam and interview stages. Ordinarily, conditional job offers are decided upon after two or three interviews. While the start of the communication of these conditional job offers in

III-4 Current Ratio of Hiring for Mid-career Workers (multiple answers)

(%)

	Management	Clerical	Technical, Research	Non-clerical
Total of all companies	13.7	27.5	18.4	50.8
5,000 or more employees	34.9	54.8	51.9	38.4
1,000—4,999 employees	26.5	44.9	38.6	42.4
300—999 employees	23.8	43.6	31.3	48.7
100—299 employees	15.6	34.5	20.0	49.3
30—99 employees	11.7	23.2	15.9	51.7

Source: *Survey of Employment Management*, 2004, Ministry of Health, Labour and Welfare

III-5 Methods of Recruiting New College Graduates and Mid-career Hires-2004, 2001 (multiple answers)

2001

(%)

	First	Second	Third	Forth	Fifth
College (including graduate school) graduates	Introduction or recommendation by teachers, etc. at school 38.4%	Company, etc. hosts a job fair or seminar 32.9%	Job search magazine or job search website 29.8%	Independent company website 23.7%	Public Employment Security Office, etc. 18.6%
Mid-career hires	Public Employment Security Office, etc. 59.6%	"Help Wanted" advertisement or flier in the newspaper 31.3%	Personal connections 22.9%	Others 22.3%	Job search magazine or job search website 18.1%

2004

(%)

	First	Second	Third	Forth	Fifth
College (including graduate school) graduates	Job search magazine or job search website 38.2%	Introduction or recommendation by teachers, etc. at school 33.9%	Company, etc. hosts a job fair or seminar 32.4%	Public Employment Security Office, etc. 25.2%	Public Employment Security Office, etc. hosts a job fair or seminar 16.0%
Mid-career hires	Public Employment Security Office, etc. 64.9%	"Help Wanted" advertisement or flier in the newspaper 33.3%	Job search magazine or job search website 30.0%	Independent company website 16.2%	Personal connections 6.1%

Source: *Survey of Employment Management*, 2001, 2004, Ministry of Health, Labour and Welfare

1997 and 1998 peaked during June and July, it peaked around April in 2004, indicating that the time was reduced by two months in those years (“Hiring of College Graduates and Human Resource Management in a Period of Reform,” Report No. 128, 2000, Japan Institute of Labour; “Survey on Hiring University Graduates,” 2006, Japan Institute for Labour Policy and Training). As seen in Table III-5, many of the request for materials and application procedures for seminars are made through E-mails or websites due to the dissemination of the internet, and private-sector portal sites built to support such activities are widely used.

The hiring of graduates of four-year universities in the natural and physical sciences generally often takes the form of either an introduction and recommendation by the student’s academic advisor, or a request to the advisor from the company for introduction of a student. Furthermore, there are many students of natural and physical sciences who find jobs after pursuing a postgraduate degree.

Most of the methods used for recruiting are those that have been long used such as individual interviews, tests on general common knowledge/basic academic and aptitudes, etc. Among them individual

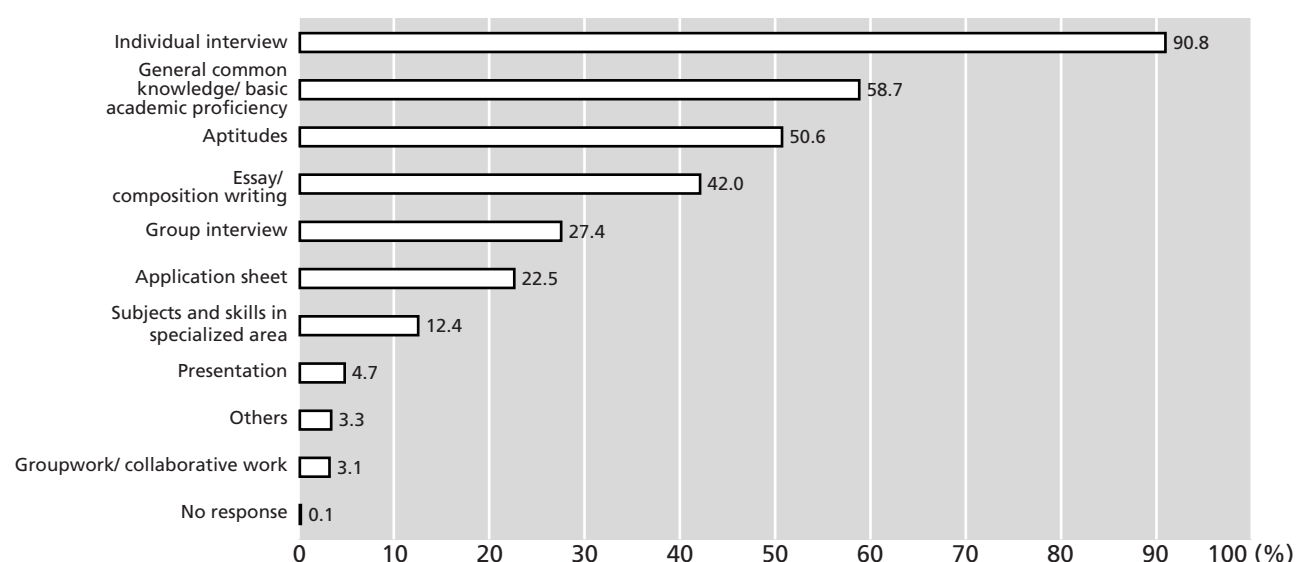
interviews reaches 90%. Occasions of making the students give “presentations” which are sometimes talked about, are still very few (see III-6).

The number of government and public offices as well as companies carrying out internship programs has been growing steadily, and the number of students who work at companies through internships during the summer vacation of their junior year, etc. are increasing. The number of students who have done internships have increased from approximately 30,000 to 50,000 in the past two years. (“Survey on Internships at Universities (2002),” Ministry of Education, Culture, Sports, Science and Technology, November 2003; “Survey on Internships at Universities (2004),” Ministry of Education, Culture, Sports, Science and Technology, November 2005).

Points Taken Seriously in Hiring Workers

Table III-7 looks at the points considered important when hiring new college graduates. In the 2004 survey, where job types were not divided into clerical, technical/research, and non-clerical categories, “enthusiasm and ambition,” “communication skills,” and “drive and executive ability” respectively came as first, second, and third priorities. In the 2001 survey

III-6 Methods of Screening New College Graduates (multiple answers)



Source: *Survey of Employment Management*, 2004, Ministry of Health, Labour and Welfare

where job types were divided, for each of the three job categories-clerical, technical/research, and non-clerical-the number one consideration was “enthusiasm and ambition.” However, large differences could be seen in the number two and number three choices. For clerical positions, importance is attached to “general common knowledge, well educated and cultured” and “cooperative spirit and sense of balance;” “technical knowledge and skills” and “understanding and judgment” are seen as crucial for technical/research positions; and for non-clerical work “drive and executive ability” and “good health and stamina” are viewed as assets.

Looking at points considered important when hiring mid-career workers (points with a rate over 50% in III-8), “job experience” is the top consideration for both management and clerical categories while “technical knowledge and skills” and “job experience” rank high for technical/research positions, and “enthusiasm and ambition” is the most desired attributes for non-clerical workers.

III-7 Points Considered Important when Hiring Recent College Graduates (up to 3 multiple answers)

2001						(%)
	First	Second	Third	Forth	Fifth	
Clerical	Enthusiasm, Ambition 74.0%	General common knowledge, Well educated and cultured 39.5%	Cooperative spirit, Sense of balance 39.2%	Drive, Executive ability 32.8%	Understanding, Judgement 31.8%	
Technical, Research	Enthusiasm, Ambition 66.7%	Technical knowledge, skills 51.1%	Understanding, Judgment 33.6% 39.2%	Drive, Executive ability 29.6%	Cooperative spirit, Sense of balance 20.4%	
Non-Clerical	Enthusiasm, Ambition 76.5%	Drive, Executive ability 46.6%	Good health, Stamina 38.3%	General common knowledge, Well educated and cultured 35.4%	Cooperative spirit, Sense of balance 29.2%	
2004						(%)
	First	Second	Third	Forth	Fifth	
2004	Enthusiasm, Ambition 64.0%	Communication skills 35.1%	Drive, Executive ability 31.0%	Cooperative spirit, Sense of balance 30.9%	Understanding, Judgement 25.9%	

Source: *Survey of Employment Management*, 2001,2004, Ministry of Health, Labour and Welfare

Note: The 2004 survey was not categorized into clerical, technical/research, and non-clerical job types.

III-8 Points Considered Important when Hiring Mid-career Workers (up to 3 multiple answers)

(%)

	First	Second	Third	Forth	Fifth
Management	Job experience 57.7%	Technical knowledge, skills 48.3%	Enthusiasm, Ambition 30.9%	Drive, Executive ability 29.7%	Understanding, Judgement 20.0%
Clerical	Job experience 52.7%	Enthusiasm, Ambition 41.5%	General common knowledge, Well educated and cultured 33.6%	Cooperative spirit, Sense of balance 28.3%	Technical knowl- edge, skills 25.9%
Technical, Research	Technical knowl- edge, skills 68.9%	Job experience 58.1%	Enthusiasm, Ambition 36.1%	Drive, Executive ability 16.6%	Good health, Stamina 15.7%
Non-Clerical	Enthusiasm, Ambition 58.8%	Good health, Stamina 47.3%	Job experience 38.3%	Drive, Executive ability 26.0%	Cooperative spirit, Sense of balance 23.1%

Source: *Survey of Employment Management*, 2004, Ministry of Health, Labour and Welfare

3 Assignments and Transfers

The Changing Recruitment System

Japanese companies have come to place great importance on the regular hire of recent graduates when hiring new employees. Behind this practice is the human resource management policy that, under the long-term employment system, in-house training of workers having a high level of broad skills and techniques is best suited for business development. Managers are also strongly influenced by the philosophy that new graduates who are trained inhouse are more likely to fit into the corporate culture.

However, the employers capable of such regular hiring of recent graduates are the large and mid-tier corporations. Many recent graduates have a strong tendency to seek employment at these large and influential mid-sized companies, where the possibility of something like bankruptcy is low, management is stable, and wages and other working conditions are relatively high. Therefore, small and medium-sized companies have considerable difficulty in regularly hiring new graduates and so-compared with large and influential mid-sized companies-are increasingly looking to workers in midcareer. Naturally, with the recent IT boom and other rapid developments in technical innovation, large enterprises too are unable to prepare the necessary human resources through in-house training, and are quickly coming to strengthen this trend of hiring mid-career experienced workers.

Human Resource Development and Promotion by Broad Rotation

New graduates are typically trained by experiencing different types of work in several departments within a company or corporate group. Most high-school graduates are posted to factories or other non-clerical departments where they gain experience in a variety of related functions and they become more versatile workers. University graduates experience a broad variety of departments and functions, which may even include being loaned to a group company; through such broad rotation, companies can evaluate employees' performance and determine the type of work for which they are best suited (see III-9). This kind of broad rotation is being carried out actively by major companies, etc. (see III-10).

In addition, these assignments and transfers are carried out in conjunction with the management of promotions (see III-11).

The promotion management of Japanese companies is known as the seniority-based promotion system in which promotions are granted based on the order in which employees entered the company. It is not as mechanical as it seems since it allows for careful evaluation over time of an employee's abilities and achievements, and encourages long-term competition for promotion among employees. The recent trend toward earlier promotions is prompting an

III-9 Method to Secure Desired Human Resources/Capacities

(multiple answers up to two, %)

Size of enterprise, industry	Enterprises, total	Respond by reassigning personnel, etc.	Strengthening capacity development of employees	Respond by hiring new graduates	Respond by hiring mid-career workers
Industries Surveyed, total	100.0	29.7	60.2	17.9	52.1
1,000 employees and over	100.0	39.7	69.7	38.9	37.7
100—999 employees	100.0	35.7	64.1	26.0	50.0
30—99 employees	100.0	27.3	58.5	14.4	53.3

Sources: *Industrial Labour Survey*, 2002, Ministry of Health, Labour and Welfare

III-10 Ratio of Companies That Did/Did Not Reassign Employees

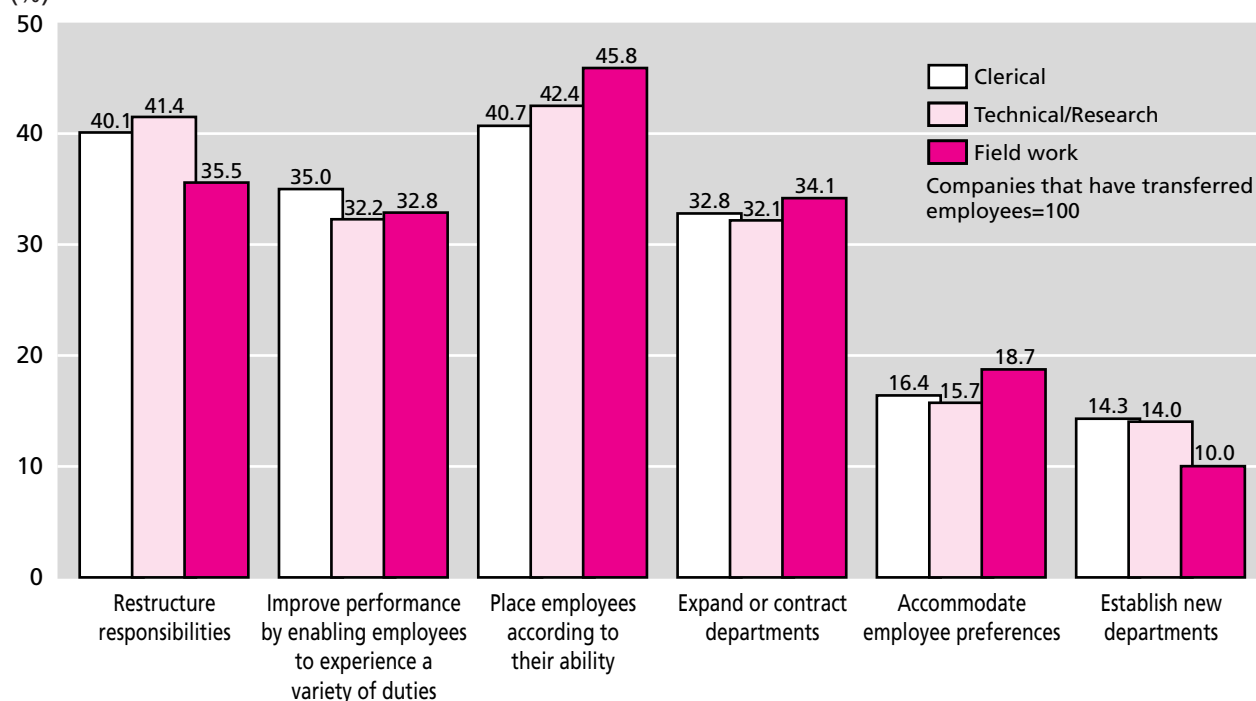
(%)

Size of enterprise, industry	All industries	Have reassigned employees (multiple answers)				Have not reassigned employees
		Total	Clerical work	Technical and research work	Field work	
Total	100.0	47.5	28.3	19.2	35.1	52.5
1) 5,000 employees	100.0	99.1	95.9	61.7	84.3	0.9
2) 1,000–4,999 employees	100.0	95.3	88.7	57.4	77.7	4.7
3) 300–999 employees	100.0	89.2	73.4	49.0	71.6	10.8
4) 100–299 employees	100.0	68.1	45.6	28.7	51.0	31.9
5) 30–99 employees	100.0	36.0	17.0	12.3	25.7	64.0

Sources: *Survey on Employment Management*, 2002, Ministry of Health, Labour and Welfare

III-11 Reasons for Transferring Employees

(%)



Source: *Survey on Employment Management*, 2002, Ministry of Health, Labour and Welfare

Note: Respondents were permitted to provide up to three answers

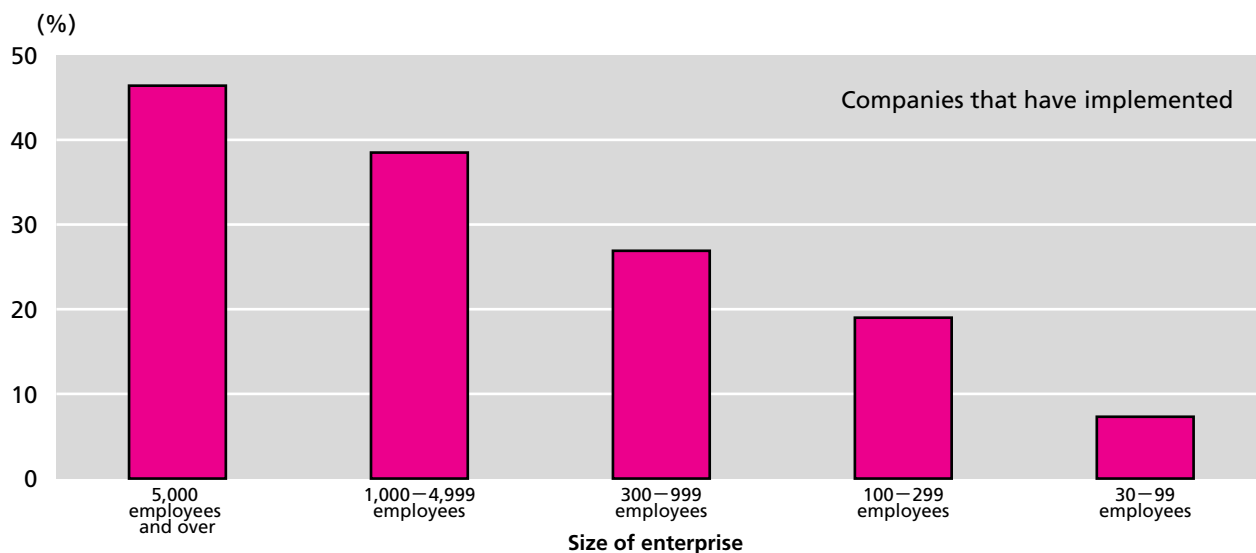
increasing number of companies to adopt a rapid advancement system.

More companies, especially large companies, are now introducing procedures that give serious consideration to employees' wishes when making assignments or transfers in connection with the long-term

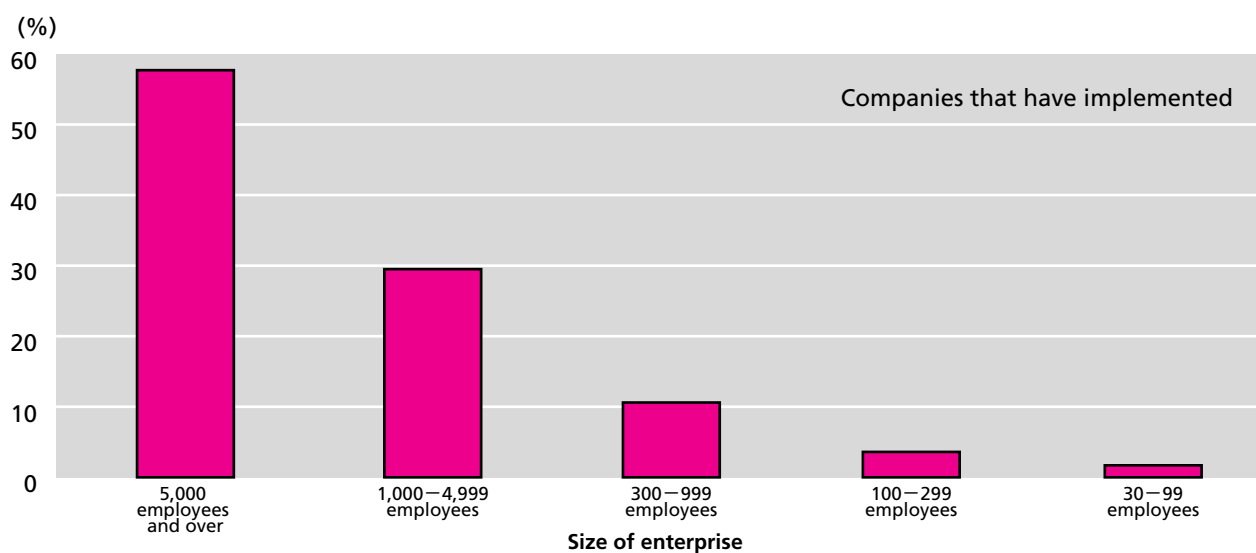
human resource training system. For instance, in the double-track personnel system, an additional course for the training of specialists in a particular field is being added to the management track that formed the heart of the old personnel system (see III-12). The system of in-house solicitation of applicants enables

III-12 Ratio of Companies by Implementation Status of Various Personnel Management Systems and by Future Plans

(Multiple-track personnel management system)



(In-house open recruitment system)



Source: *Survey on Employment Management, 2002*, Ministry of Health, Labour and Welfare

companies to recruit from within the personnel they need with a new demand accompanying business expansions and new ventures, and allows for the selection of the most appropriate candidate from the employees who applied (see III-12).

Assignment, Transfer, and Employee Motivation

Assigning and transferring employees by the in-house solicitation of applicants differs from the existing system in its consideration of employees' wishes, rather than solely on company needs. From the com-

pany point of view, this system makes it easier to unearth hidden human resources, at the same time having the merit of serving as a motivational measure for employees. Because an increasing number of companies is using the Intranet to implement in-house recruitment systems emphasizing employee initiative, the number of recruitment opportunities and transfers is also rising. The number of companies

introducing in-house venture systems that provide opportunities for establishing new businesses based on plans proposed by their employees is also rising.

In addition to traditional company-initiated career development, independent career development attentive to employees' wishes is also becoming firmly established.

Seniority-based Wage System

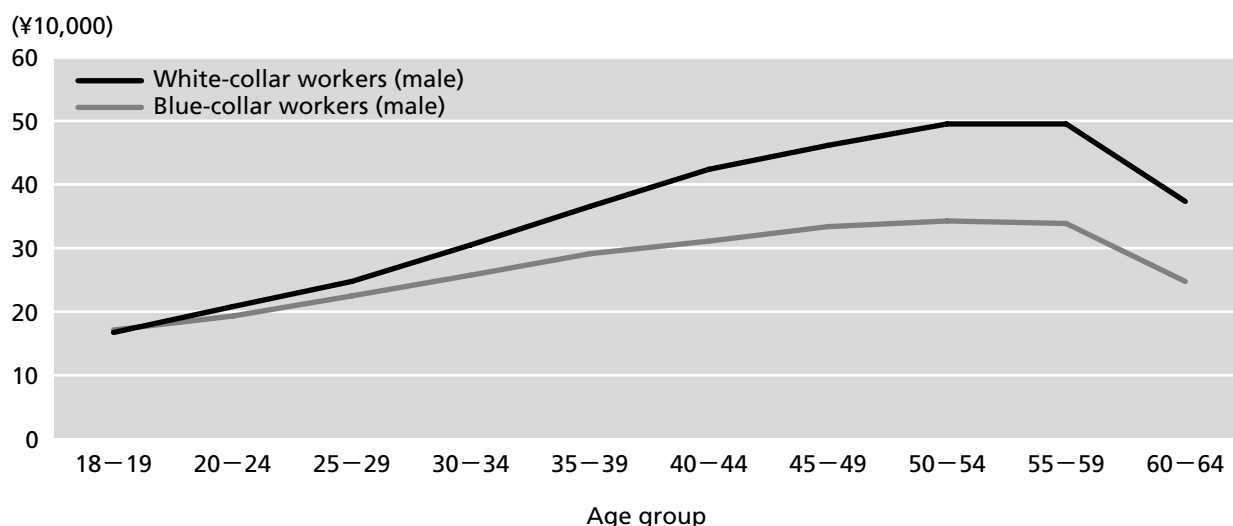
Wage systems that base remuneration on age or years of service are not unique to Japan, but it is said that these are characteristic of Japanese wage systems. This type of wage system is called a seniority-based wage system; but salary increases are not awarded based on age or years of service with total disregard of performance and ability. A merit rating is used to evaluate employees resulting in wage levels that reflect differences in performance or ability, even among employees with the same seniority.

The seniority-based wage system first appeared in Japan in the 1920s. Although considerable debate abounds regarding the reasons for its establishment, the seniority-based wage system was certainly a strategic move on the part of management who wanted to attract and retain employees. By staying at one firm, workers acquired skill with their employers' proprietary technology. Employers, in turn, used promotions to reward workers for their skill development. Additionally, the tendency of the cost of living to increase as employees aged further justified link-

ing wages to seniority. Thus, promotions following skill improvement and increases in cost of living were connected to longer years of service, and the seniority-based wage system was established to raise wages with advancing age and years of service.

The wage profile by age (and by years of service) charts the status of seniority-based wages by plotting wages for different age groups (and years of service). One characteristic of the Japanese wage profile is the phenomenon called "the white-collarization of blue collar workers" (however, this only applies to male workers). The phenomenon of the white-collar workers' wage profile rising with age is observable not only in Japan, but in Europe and the U.S. as well. However, the situation for blue-collar workers is completely different. In other nations, the wages of blue-collar workers rise a little with age, but these wage increases are all but invisible after age 30. In Japan, however, even though the wage profile for blue-collar workers does not rise as sharply as that of white-collar workers, the two curves are similarly shaped, indicating that wages increase as workers age

III-13 Wage Profile by Age and Gender



Source: *Basic Survey on Wage Structure*, 2004, Ministry of Health, Labour and Welfare
 Note: Monthly scheduled earnings are used for wages Manufacturing only.

(see III-13).

Bonus System

Another distinctive aspect of the Japanese wage system is the bonus system. Japan is certainly not the only nation in which bonuses are paid, but the peculiarity of Japan's bonuses is said to be in their large size. Companies pay biannual bonuses equivalent to several months' salary in the summer and winter. They are not legally required to do so, but after World War II the practice of providing bonuses to all employees became customary at most companies.

Performance-related Salaries

Another aspect of Japan's Performance-related Salaries come to the fore recently is the introduction of a annual salary system linked to performance. With the heightening of competition due to globalization and predictions of the further aging of Japanese society, companies have become concerned about the burden imposed by the high salaries paid to the growing ranks of middle-aged and older employees. To create a better balance between those employees' salaries and their productivity, and to further motivate workers, an increasing number of companies-mainly large corporations-are adopting a salary system based on annual performance for managers. However, it is not easy to evaluate performance, and companies will need to set fair evaluation standards before performance-based wage systems can be implemented and utilized as measures to improve efficiency.

Wage Composition

Incidentally, the wage composition is another unique element in Japan's wage system. The wage composition refers to a series of wage items that composes the total salary paid to a worker. Normally, the wage composition consists of base pay (compensation for labor) plus various additional allowances, such as a family allowance, commuting allowance, and housing allowance. The term "wage composition" became popular after its coinage under the

Wage Control Ordinance during World War II. The "electrical power industry type of wage composition" acquired by the Council for Electric Power Industry Unions in 1946 opposed the pre-war wage pattern based on management's internal class system. The Council forced management to adopt a unified pay scale for white collar and blue collar workers. This is well-known as a wage composition based on factors such as workers' living conditions (age, years of continuous employment, family structure and commuting distance), and served as the foundation for dissemination of subsequent wage compositions.

Retirement Benefits System

Finally, mention will be made of the retirement benefits system, which provides to employees either a lumpsum allowance upon retirement or pension, and is a major pillar of enterprise welfare measures. Retirement benefits are paid in proportion to the number of years of service at a specific company, but the scheme is such that differences in the payment amount arise depending on the reason for retirement. The amount paid is lower for those who retire for their own convenience, but higher for those who retire at the mandatory age after long service, or for those who retire at the companies request (such as during a period of recession). Thus, retirement benefits have become a factor promoting long-term continuous service by Japanese employees. Until recently, the lump sum retirement allowance has been a large amount, and many workers have received this substantial benefit when retiring at the mandatory age. However, in recent years the percentage of workers receiving a retirement pension has been rising. Behind this development is the fact that the cost burden for companies has increased as the aging of employees leads to larger payments of lump sum retirement allowances. Added to that are the benefits of converting retirement benefits to a pension system, such as the advantages a company may receive through tax codes.

5 Working Hours

Japan's Working Hours Legislation-40 Hours

Japan's working hours legislation is provided in the Labor Standards Act, which has been in effect since 1947. Because the shortening of working hours became a big policy issue in the latter half of the 1980s, the traditional 48-hour workweek set by the law was gradually shortened since 1988. Now, aside from the 44-hour weeks served by workers at commerce, motion picture and theatre, health and hygiene, and service and entertainment workplaces of fewer than 9 employees, the workweek across all industries and business sizes has become 40 hours long.

Annual Total of Hours Actually Worked

Looking at Figure III-16, annual working hours shortened by about 400 hours from the 1960s, when the GDP growth rate was high, through the first half of the 1970s. After the oil crisis of the 1970s, working hours hovered at about the same level; but they began shortening gradually once again when the 1980s came to a close. The decrease in working hours after the end of the 1980s shows a strong influence of the shortening in the working hours as designated by Act.

If one compares the estimated figure for working hours in the year 2002 as can be seen in Table III-14, it is obvious that while Japan is more or less on the same level as the U.S. and has only slightly longer

III-14 International Comparison of Working Hours (production workers in manufacturing industries: 2002)

(hours)

Working Hours	Japan	U.S.	U.K.	Germany	France
Annual Working Hours	1,954	1,952	1,888	1,525	1,539
Scheduled Working Hours	1,783	1,739	1,753	—	—
Overtime Hours	171	213	135	—	—

Source: Estimates made by the Working Hours Department of the Ministry of Health, Labour and Welfare's Labour Standards Bureau based on reports issued by the EU and each nation mentioned above.

Notes: 1) Size of workplaces surveyed: Japan, 5 employees or more; U.S., all sizes; Others, 10 employees or more

2) Includes regular part-time workers.

3) Scheduled working hours and non-scheduled working hours for Germany and France were unavailable

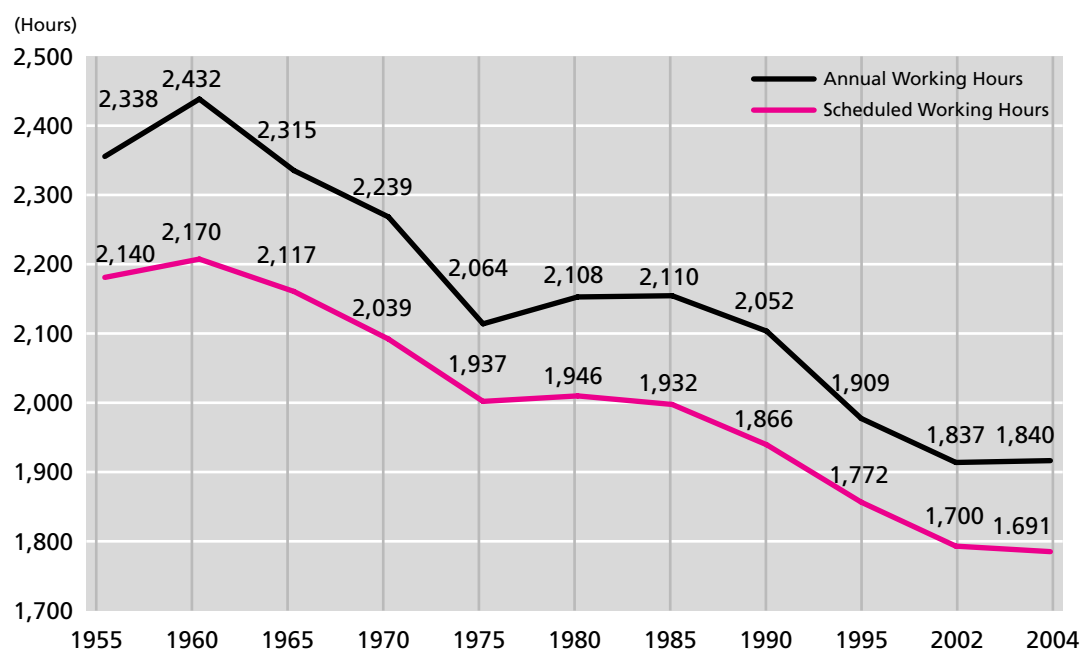
III-15 Percentage of Annual Paid Leave Consumed

(days, %)

Industry, Size of Enterprise	Annual paid leave per average worker		
	Days given (A)	Days taken (B)	Percent Consumed (B/A)
Overall Total	18.0	8.5	47.4
Businesses with 1,000 employees or more	19.2	10.4	53.9
Businesses with 300—999 employees	17.9	7.6	42.3
Businesses with 100—299 employees	17.3	7.5	43.6
Businesses with 30—99 employees	16.6	7.2	43.3

Source: *General Survey of Working Conditions*, 2004, Ministry of Health, Labour and Welfare

III-16 Long-Term Movements in the Average Annual



Source: *Monthly Survey of Labour Statistics*, Ministry of Health, Labour and Welfare

Notes: The study is based on responses from businesses employing 30 or more employees. Results indicate 12 times the figure for average monthly hours per worker from the all industries total. Decimal figures have been rounded off. The study includes general as well as part-time workers.

working hours than the U.K., it exceeds the number of working hours of Germany and France by as much as 400 hours. This difference between Japan, Germany and France mainly reflects differences in non-scheduled working hours and the number of annual paid leaves taken.

Annual Non-scheduled Hours Worked

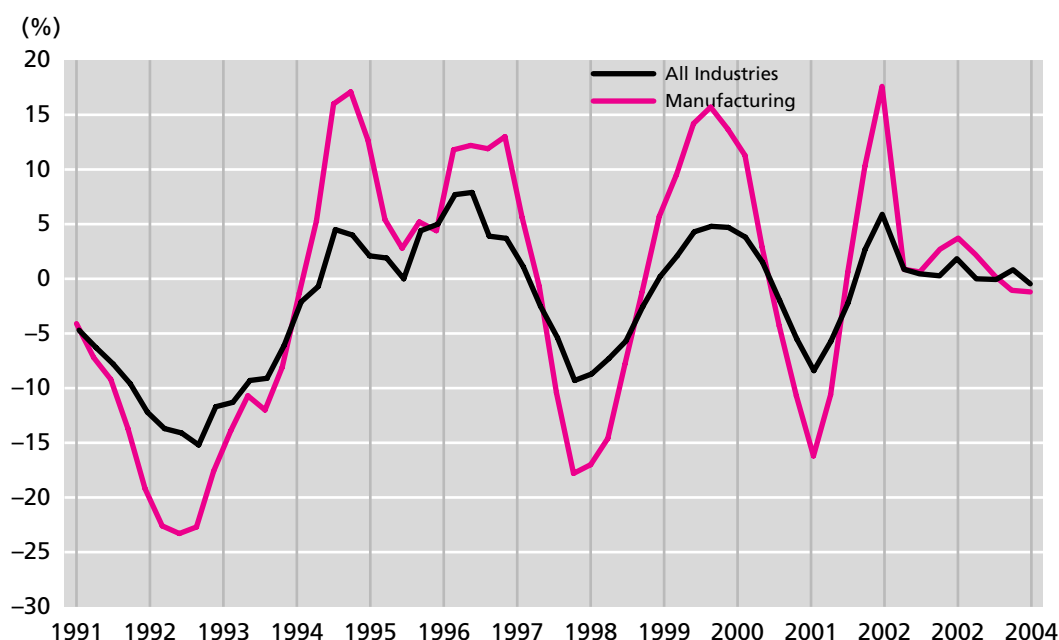
Figure III-17 shows quarterly fluctuations in overtime hours. An increase or decrease in the non-scheduled hours worked in Japan occurs slightly later than the actual fluctuations in the economy. This is due to the fact that overtime work is leveraged by companies as the principle means to make employment adjustments in response to fluctuations in production demand. That is, rather than taking on new hires during times of prosperity, overtime hours for existing employees are increased; on the other hand, without immediately resorting to measures such as layoffs when business is slow, the condition is dealt with through a reduction in overtime hours. Behind this is the fact that the cost of overtime allowances for exist-

ing employees is generally less than labor costs related to hiring additional employees. Non-scheduled working hours thus constantly exist in a large number of Japanese companies. At present, an annual maximum of 360 overtime hours per worker is prescribed by the Labor Standards Act; within this range, upper limits are set for fixed periods, such as 15 hours per week, 45 hours per month, and 120 hours per 3-month period. However, there is no penalty for violating these standards. Moreover, overtime rate for non-scheduled hours worked is 25% or higher for normal circumstances, 25% or higher for late-night work, and 35% or higher for non-scheduled work that is conducted on a non-business day.

Annual Paid Leave

Figure III-16 examines the number of days of annual paid leave given and taken, and, with those figures as denominator and numerator, the percentage of holidays taken. According to the Labor Standards Act, 10 days leave shall be granted to those workers with an 80% or greater attendance rate and at least 6 months of

III-17 Year-on-Year Difference in the Non-Scheduled Working Hours



Source: *Monthly Survey of Labour Statistics*, Ministry of Health, Labour and Welfare

Notes: 1) Study limited to businesses with over five employees.

2) Indicates quarterly rate of change.

continuous service with a business, and 20 days shall be given upon reaching 6 years and 6 months of service. But unfortunately the average number of holidays taken throughout Japan in 2004 was 8.5. So, in actuality, only half of paid leave days given were consumed.

Thus not many holidays were taken. There is a variety of factors behind this such as that company personnel management do not presume that all the holidays will be used, and that workers are often too busy with work to use holidays.

Flexible Working Hours System

A variable scheduling system is also prescribed for in the Labor Standard Act.

All within this system are: a system of monthly variation, a system of annual variation, flextime, and a free-style system of weekly variation. In the monthly and annual variation systems, the weekly scheduled working hours will be increased to over 40 hours for, respectively, a specified week(s) or specified month(s); all other weeks/months will be shorter. Therefore, this system can be applied to situations

such as a manufacturing industry for which the exceptionally busy periods vary with season, and the corresponding clerical fields. For the annual variation system, it has been possible since April 1999 to plan scheduled working hours flexibly for a period greater than one month, but maximums have been set at 10 hours per day and 52 hours per week. Flextime is a system allowing workers self-management over their comings and goings to and from the workplace during a one-month settlement period. The free-style system of weekly variation was designed for types of businesses such as retail shops, restaurants, and Japanese-style inns, where business may slow down greatly on certain days of the week. This system provides for advance changes (made by the end of the previous week) in the scheduled working hours for a particular day or days, keeping the weekly scheduled hours at a fixed constant. Furthermore, the Labor Standard Act also stipulates a de-facto working hours system. Firstly, in the case of pit work, the total time spent from the time the worker enters the underground workplace until he or she leaves it will,

including the recess time, be considered as part of the working time. Secondly, it deals with a system for work which is “conducted outside of the official workplace without specific command or supervision provided and for which it is difficult to calculate the amount of time spent,” and is targeted at work such as sales and reporting/information gathering. Thirdly it deals with what is so-called discretionary scheduling system. This consists of two parts: the “discretionary scheduling system for specialized work” that is aimed at specialized work such as research and development, computer programming, mass communication-related work such as editing, broadcast and film directing, as well as designing, and the “discretionary scheduling system for planning work” that is aimed at white-collar work involving such areas as planning and project development.

Karoshi (Death from Overwork)

The Japanese phenomenon of “karoshi” is known the world over. This can be translated broadly as death that occurs as a result of excessive work (involving such things as extremely long working hours or unnaturally high stress levels). However it must be noted that it is extremely difficult to have such cases handled by the legal system if a causal association with the work is not proved. In a more limited sense, death as a result of cerebrovascular disease or ischemic heart diseases (such as brain infarctions, subarachnoid hemorrhage, cardiac infarction, cardiac angina etc.) that have been a result of work

overload can be termed as “karoshi” or “death from overwork,” and death that is triggered as a result of mental disability that is caused by work overload or unnatural levels of stress can be said to be “suicide through overwork”

There is no doubting the fact that the principle factor behind the “death from overwork” occurrence is exceptionally long working hours. Due to this, the issue of whether a death qualifies for workmen’s compensation is considered taking into account whether the work that the intended recipient was involved in between the stage just prior to occurrence of the symptoms until the day before the death was excessive or not, and to next reflect on the conditions up until a week before the incident. In addition to this, from 2001 onwards it has also begun to be taken into account whether the worker was involved in more than 45 hours of overtime work between one to six months prior to the occurrence, or similarly involved in more than 100 hours of non-scheduled work in the first month, or more than 80 hours per month in the period between the second to sixth month prior to the occurrence.

The number of cases for both the application and certification of “death from overwork” and “suicide through overwork” have been on the rise: in 2004, 150 cases from the total number of 335 applications for “death from overwork” and 45 of the total of 121 cases (including attempted deaths) for “suicide through overwork” were certified as genuine cases.

6 Company Benefits

Labor Cost Structure

A look at the makeup of labor costs as outlined in Table III-18 shows that wages cover 80.3% in the case of Japan, making it higher as compared to other nations. On the other hand the percentage of labor costs other than wages is low in the case of Japan. In this category of non-wage labor costs, compulsory benefit costs in Japan stand at 9.3%, a figure that is slightly higher than the U.S. or the U.K., but lower than Germany and France. In addition to this, costs such as retirement benefits in Japan form 6.8%; the percentage for this component is lower in the case of the U.K., Germany and France.

Social Insurance Premium Rates

Table III-19 compares the social insurance premium rates in each country. In Japan the insurance premium rate is about 22% of total pay. This is a little higher than the rate in the U.S., and about the same as

that in the U.K., but lower than that in Germany, France and Sweden. The breakdown of Japan's 22.16% is as follows: medical insurance, 7.43%; pension insurance, 13.58%; and unemployment insurance, 1.15%. However, there is a further cost that only employers pay-the system of compensation for accidents at the workplace.

Compulsory Benefit Costs' Structure

Figure III-20 shows the composition of the average compulsory benefit costs per month per regular worker in 2001. Health insurance premiums are 31.7%, and employees' pension insurance premiums are 54.4%, so that these two compose about 86% of the compulsory benefit costs that organizations are paying out for employees. Labor insurance premium occupies 12.8%, broken down as 7.0% for unemployment insurance and 5.8% for workmen's compensation insurance.

III-18 Comparison of Labor Cost Structures by Cost Item (manufacturing)

Cost Item	Japan (2002)	U.S. (2002)	U.K. (2000)	Germany (2000)	France (2000)
Total labor costs	100.0	100.0	100.0	100.0	100.0
Total wages	80.3	72.6	76.8	75.8	64.8
Wages, salary therein	(62.1)	(65.2)	(67.9)	(65.1)	(58.4)
Wages for vacation days and other paid days off	(18.1)	(7.4)	(9.4)	(10.7)	(6.5)
Total of other labor costs	19.7	23.1	23.2	24.2	35.2
Compulsory benefit costs therein	(9.3)	(8.6)	(8.3)	(15.7)	(20.5)
Non-compulsory benefit costs	(2.9)	(14.5)	(8.7)	(7.0)	(8.9)
Cost of retirement benefits, etc.	(6.8)		(1.0)	(0.6)	(2.2)
Wages paid in kind	(0.3)		(2.3)	(0.4)	(0.1)
Vocational training expenses	(0.3)		(2.4)	(0.5)	(1.5)
Others	(0.2)		0.0	(0.3)	(2.1)

Sources: General Survey of Wages and Working Hours Systems, Ministry of Health, Labour and Welfare
Employer Costs for Employee Compensation, Bureau of Labor Statistics,
Labour Costs 2000, Eurostat

Notes: 1) All workers at companies employing 30 or more persons in Japan, 1 or more in the U.S., and 10 or more in the EU.
2) Numbers inside () are a breakdown of figures.

Retirement Benefits System

In Japan, the monetary allowance in the event of retirement can be divided into the two categories of lump sum retirement allowances and retirement pensions. A look at Table III-21 shows that only lump sum retirement allowances and only retirement pensions constitute 46.5% and 19.6% respectively, while the figure for cases where these categories are combined is 33.9%. However, it should be noted that the incidence of only lump sum retirement allowances being provided is inversely proportional to the size of the company in question, whereas the incidence of both these allowances is being provided increases in

direct proportion to the size of the company.

It is generally seen that both retirement benefits and retirement pensions are paid in proportion to the number of years of continuous service at a specific business. However there is a demarcation done on the basis of the reason for leaving the company. The ratio of payment is low for those workers who have left on their own convenience while the ratio is raised for long-term workers who have retired at the mandatory age after long-term employment and for those who had to resign at a company's request as those seen in recession etc. It is for this reason that the retirement benefits and retirement pension have become a factor

III-19 Social Insurance Premium Rates (workers)

(%)

	Insurance Premium Rate	Portion Paid by Workers	Portion Paid by Employers	Breakdown
Japan (April 1999) ²	22.16%	10.89%	11.27%	Medical insurance (government-managed health insurance) 7.43% (standard salary monthly portion 8.5%, bonus portion 0.8%), Pension insurance (employees' pension) 13.58% (standard salary monthly portion 17.35%, bonus portion 1%), Unemployment insurance 1.15%
U.S. (1999) ³	15.30%	7.65%	7.65%	Old age/survivors/disability pension (OASDI) 12.4%, Medicare 2.9%
U.K. (April 1997)	20% maximum	10% maximum ⁴	10% maximum ⁵	National insurance (retirees pension, jobhunters-benefits, benefits for those unable to work, etc.)
Germany (1998)	42.20%	20.95%	21.25%	Pension insurance 20.3%, Illness insurance (average) 13.6%, Nursing care insurance 1.5%, Accident insurance 0.3% (average), Unemployment insurance 6.5%
France (January 1998) ⁶	41.58%	9.61%	31.97%	Illness insurance 13.55%, Pension insurance 16.35%, Widows' insurance 0.1%, Family benefits 5.4%, Unemployment insurance 6.18%
Sweden (1998)	35.53%	6.95%	28.58%	Pension insurance 20.38%, Medical insurance (sickness benefits, parent benefits, etc.) 7.93%, workmen's compensation insurance 1.38%, Unemployment insurance 5.42%, Others 0.42%

Source: *White Paper on Health and Welfare (1999)*, (former) Ministry of Health and Welfare.

Notes: 1) Basically insurance premium rates are based on total salary. In Japan's case, the premium rates for medical insurance (government managed health insurance) and pension insurance (employees' pension) use values calculated on the basis of total salary including bonuses. Figures are shown in () in the case of standard salary base.

2) In addition, there is also compensation for accidents at the workplace, but the insurance premium differs with type of business.

3) In addition, there are "social insurance" programs managed at the state level—unemployment insurance and accident compensation insurance—but the premium rates differ by state.

4) Insurance rates differ with income. The insurance premium rates in the figure are those applying to any weekly pay over 64 Pounds.

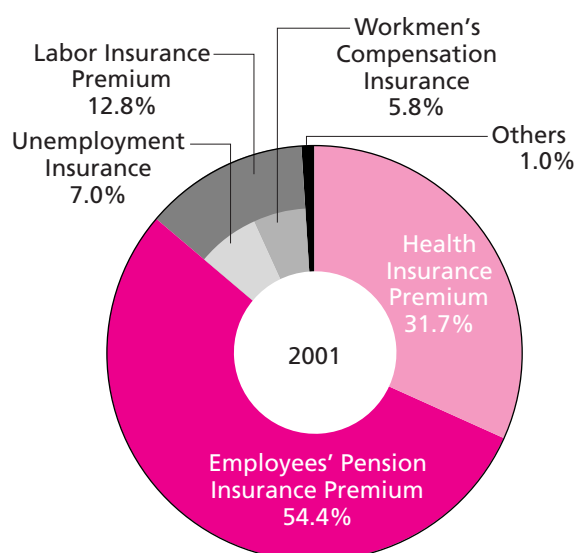
5) Insurance rates differ with income. The insurance premium rates in the figure apply in cases when weekly pay is over 210 Pounds.

6) In addition, there are insurance premium rates paid by employers for compensation for industrial accidents and occupational diseases, but they differ by enterprise (4.0% on average). Premium rates for unemployment insurance differ with income. Also, in terms of expenses borne by workers, there is a general social contribution (7.5% of income) outside of the insurance premium paid. This is a kind of tax used specifically for illness insurance and family benefits.

that promotes the long-term work tenures of workers in Japan. In addition to this, in the past it was largely the case that the amount for the lump sum retirement allowance was large, and the worker received a considerable amount of money at the time of mandatory retirement. However in the course of the last few

years the proportion of the retirement pension has been on the rise. A number of reasons lie at the background of this development, such as the fact that the amounts for lump sum retirement allowances has been increasing for companies together with the ageing of the workforce, thereby causing heavy burdens

III-20 Breakdown of Average Compulsory Benefit Costs per Regular Worker Each Month



Source: *General Survey of Working Conditions, 2001*, Ministry of Health, Labour and Welfare

III-21 Existence of Employee Retirement Benefit Systems in Companies and Percentage of Companies by the Employee Retirement Benefit System

(%)

Size of Enterprise	All Enterprises	Enterprises with an Employee Retirement Benefit System					
		Total		Only Lump Sum Retirement Allowance	Only Retirement Benefit (Retirement Pension)	Both of Lump Sum Retirement Allowance and Retirement Benefit (Retirement Pension)	No Employee Retirement Benefit Available
Total industries surveyed	100.0	86.7	(100.0)	(46.5)	(19.6)	(33.9)	13.3
1,000 employees and over	100.0	97.1	(100.0)	(11.0)	(19.1)	(69.9)	2.9
100—999 employees	100.0	91.0	(100.0)	(31.6)	(22.9)	(45.5)	9.0
300—999 employees	100.0	95.7	(100.0)	(22.7)	(26.4)	(50.9)	4.3
100—299 employees	100.0	89.5	(100.0)	(34.7)	(21.6)	(43.7)	10.5
30—99 employees	100.0	84.7	(100.0)	(54.1)	(18.3)	(27.7)	15.3

Source: *General Survey of Working Conditions, 2003*, Ministry of Health, Labour and Welfare

of cost, and also that companies become eligible to receive certain benefits through tax laws by converting retirement benefits to retirement pensions.

Diversification of Company Benefits

Lately, changes in corporate welfare have rested on matters like the increase in companies' cost burden for public welfare-and the diversification of employee needs-as well as the development of the social security system. Some new mechanisms are currently being introduced: 1) a retirement benefit pre-payment system will add the former welfare portion of labor costs to wages paid to individual workers; 2) a point system in retirement benefits can be combined with a merit-based wage system; and 3) a stock option system is being popularized, allowing

workers the choice of purchasing stock in their companies at a price fixed in advance.

In addition, to mitigate the welfare cost burden and to satisfy the diversifying needs of employees, arrangements are being made for a variety of welfare choices, and a cafeteria-style plan that will allow employees to use features according to their needs is being gradually disseminated.

Furthermore, a "Family-Friendly Company" award has been created. This is to commend businesses with personnel management systems giving consideration to the household conditions of workers through such efforts as the creation of a vacation/leave system for child care and family care, and the establishment of a daycare center. The Ministry of Health, Labour and Welfare began honoring such enterprises in 1999.

Changes in In-house Training and Education

While Japan's life-long employment practice experiences is changed by forcing restructuring, recruiting external human resources and other reason, training and education are also subject to changes due to the advocates on importance of individual career development such as emphasized capacity development through the independent responsibility of the worker and the introduction of selective education, in addition to long-term human resource development (overall basic education) in the company based on the assumption of long-term employment. Furthermore, human resource development hear in after HRD in companies faces many issues such as the year 2007 problem where large numbers of baby boomers face retirement with the concerns on how to transfer of skills and technology, the decrease in young employees accompanying an aging society, and the increase in "freeters (job hopping part-time worker)" and "NEETs (young people Not in Education, Employment or Training)."

OJT: Practical Training Predicated on Long-term Employment

Workers HRD trainy is based on on-the-job training (OJT) although there have been the changes as seen above, predicated on the assumption that employees will stay at one company throughout their careers, in-house development of human resources at Japanese companies takes place over a long period. Inhouse training-central to this development-consists primarily of OJT which gives employees the opportunity to develop their skills through actual business experience. OJT fulfills an important role in trainy both blue- and white-collar workers. In factories, for instance, OJT is used not only to teach personnel about the production process, but also to enable them to repair malfunctioning machinery and perform maintenance work. Clerical workers in accounting and other departments learn through OJT how to manage unreliability by, for example, analyzing

divergences between budgeted and actual results.

Two Types of OJT

Because OJT often overlaps with the execution of everyday work, it is difficult to gain an understanding beyond surface appearances; however, we can divide OJT into two types-formal and informal. Formal OJT generally involves assigning instructors and setting trainy schedule to train employees, and setting post-training evaluation standards. These points separate formal OJT from informal OJT.

Long-term Informal OJT Builds High-level Talent

The primary distinguishing features of HRD in Japan are as follows.

- (1) Informal OJT performs a considerably greater role than formal OJT. On the other hand, the latter is often given in limited occasions such as to cover only a part of initial skill improvement period of newly hired workers or to provide by-level training to those who assume higher rank position.
- (2) A long-term informal OJT is indispensable for employees to acquire high-level skills. Some of the principle forms of informal OJT include gradual progression of work experiences from simple to more difficult tasks and a rotation system where workers shift and serve in a variety of positions. OJT gives workers the opportunity to gain a wide range of experience, thus improving their business skills.
- (3) Long-term informal OJT is implemented in large companies in a wide and organized manner. While although there are only few small- and medium-sized companies that tend to implement in organized manner, they implement in a manner where senior workers gives guidance to junior workers.
- (4) Off-JT (off-the-job training; those conducted outside the workplace) is being implemented in between the OJT. Workers deem to organize and

systematize the OJT experiences through Off-JT, and acquire the knowledge and theoretical skills necessary in handling issues in practical business affairs.

OJT is Founded on Seniority-based Promotion and Promotional Management

This type of OJT functions effectively in Japan thanks to a promotion and pay raise management system that enables senior workers to smoothly transfer skills on to subordinates. Senior workers are not reluctant to train their subordinates, since they are confident that the latter will not be promoted or given raises ahead of them; this, in turn, has reinforced

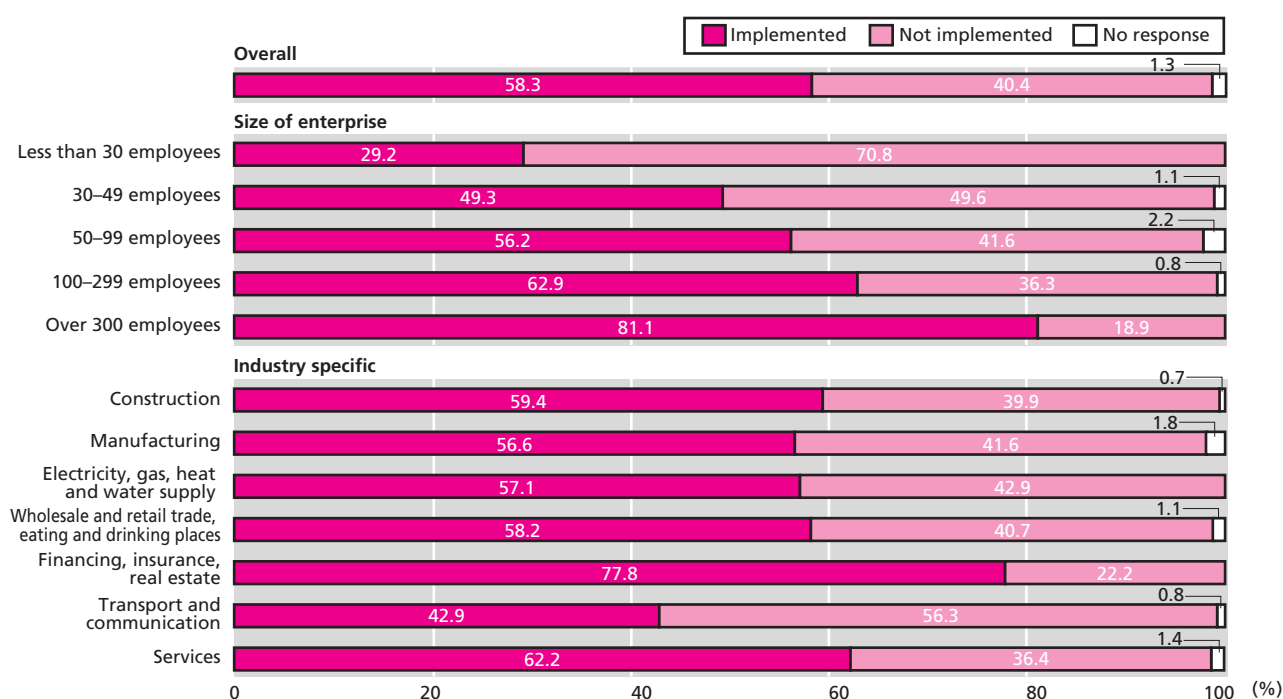
teamwork at the workplace.

This approach to HRD has proven to be a positive way for employees to refine their skills, and is also an aspect of Japanese company culture that makes Japanese companies so competitive.

58.3% of Companies Implement Off-JT, and 46.7% Implement Planned OJT

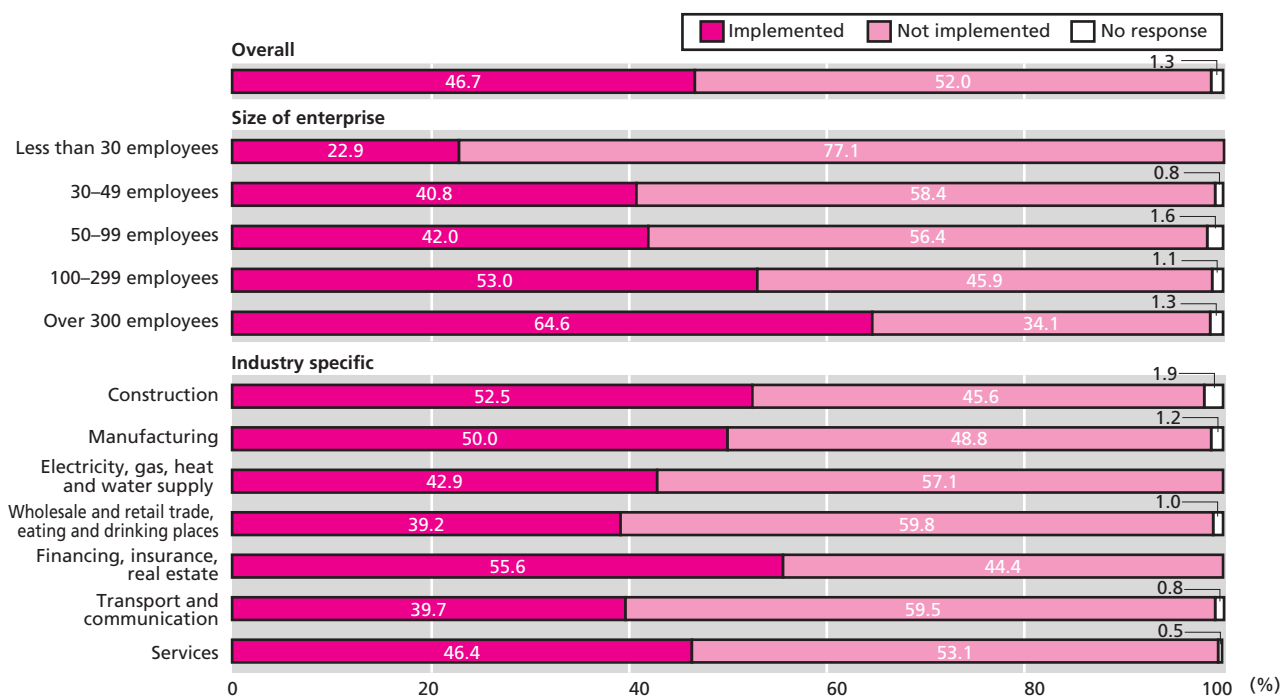
According to the most comprehensive reference on Japanese in-house training, “Basic Survey of HRD” (Ministry of Health, Labour and Welfare), 58.3% of Japanese companies implemented Off-JT in FY2003, and 46.7% implemented “formal OJT.”

III-22 Current Situation of Off-JT Implementation



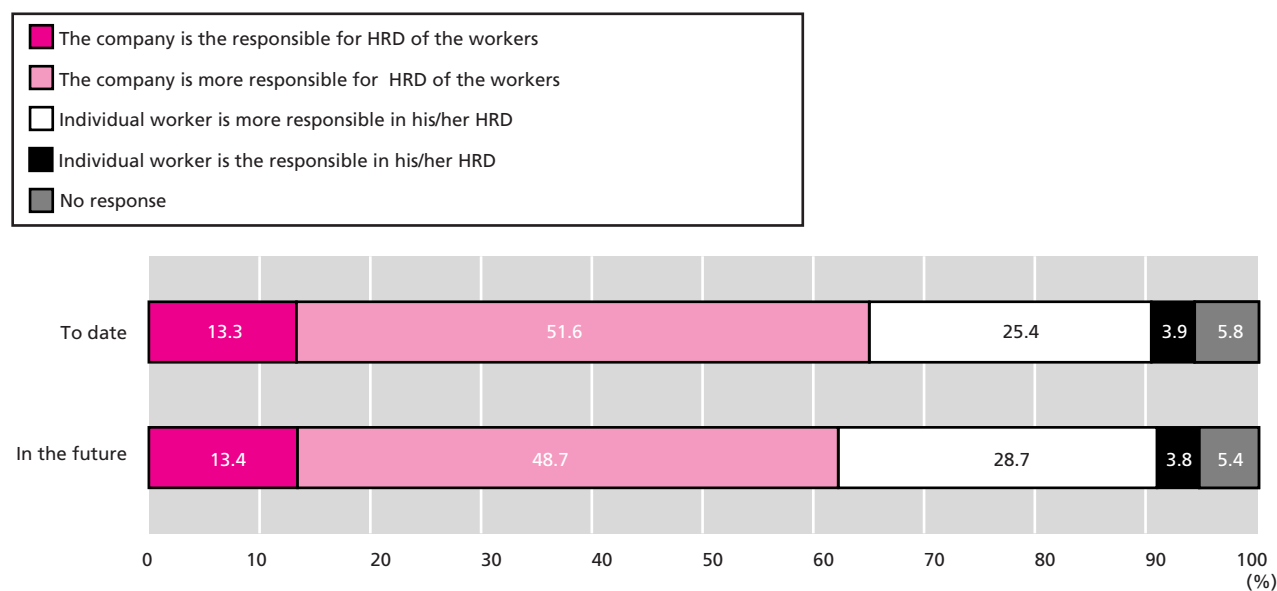
Source: Basic Survey of Human Resources Development, 2003, Ministry of Health, Labour and Welfare

III-23 Current Situation of Formal OJT Implementation



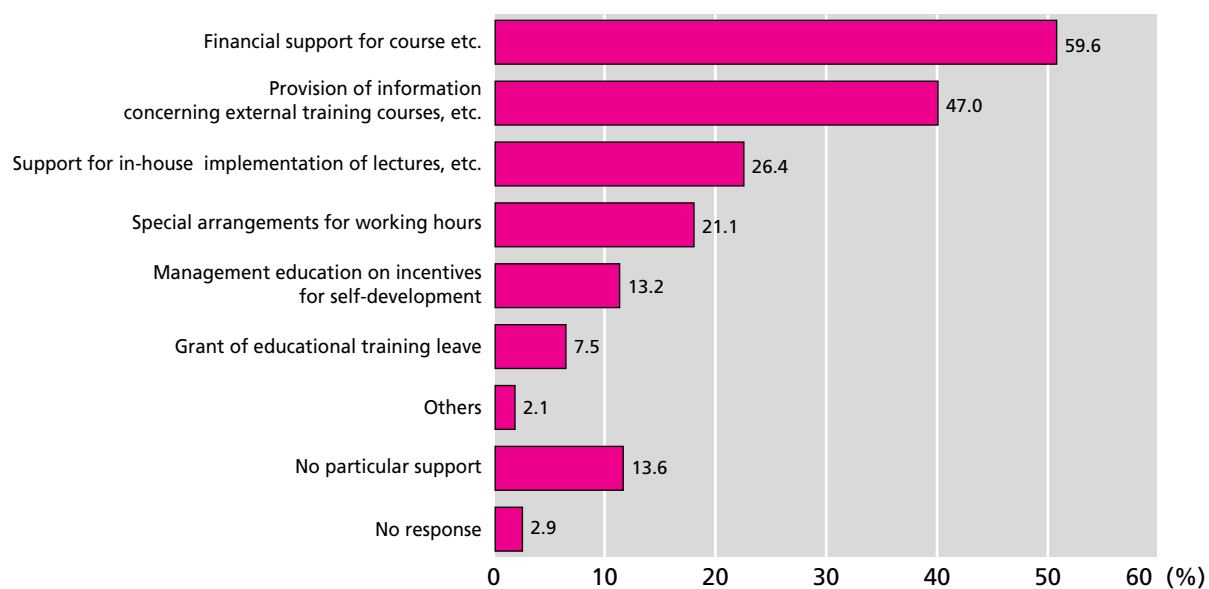
Source: Basic Survey of Human Resources Development, 2003, Ministry of Health, Labour and Welfare

III-24 The Current and Future Conditions of the Responsible Actor for HRD



Source: Basic Survey of Human Resources Development, 2003, Ministry of Health, Labour and Welfare

III-25 Support for Self-development by Employees (multiple answers)



Source: Basic Survey of Human Resources Development, 2003, Ministry of Health, Labour and Welfare

8 Resignation, Mandatory Retirement and Dismissals

Resignation

“Retirement” is a cause for the cancellation of employment contract relations, and is a general term applying whenever a worker leaves the company where he or she is employed (disregarding dismissals). There are different types of retirement: “general resignation” and “resignation for one’s own convenience” take place when the worker unilaterally cancels the employment contract relationship; “resignation by agreement,” “resignation by employee’s request,” and “voluntary retirement” all occur through consent between worker and employer; and “retirement at the mandatory age” comes about according to rules in the employment contract, work rules in the company or collective agreement.

Recent problems related to resignation that have arisen are advised resignations and preferential treatment when soliciting workers for early retirement with business restructuring.

Regarding the former, the wrongful urging of retirement such as through persistent pressing or violence is illegal, and business owners are liable for damages. The actual situation is not clear, but looking at the operational statistics of the System for Resolution of Individual Labor Disputes, approximately 15% of disputes that develop at the workplace are over bullying and harassment related to advised resignation or something closely connected to advised resignation.

Regarding the latter, there have been lawsuits in which workers seek to collect differences in money received from companies resulting from imbalanced preferential treatment depending on when workers resign. This type of preferential treatment has no legal basis, so when, to whom, and what kind of preferential treatment is given can basically be decided by companies. Thus in general, even though using such a system for preferential treatment, the issue of consent of users of the system and imbalances in preferential treatment become legal problems, unless these types of systems are acknowledged as being

permanent, applying to all employees and being clearly part of the conditions of employment, requests by workers for companies to make up for differences in pay are not recognized.

Mandatory Retirement

According to the 2005 survey (2005 Summary of “General Survey of Working Conditions,” 28 November 2005, Ministry of Health, Labour and Welfare), 95.3% of companies provide a mandatory retirement system; of those 97.6% provide a uniform mandatory retirement system, and 91.1% have set the mandatory retirement age at 60.

Although the Elderly Persons Employment Security Act stipulates that employers may not fix a mandatory retirement age below age 60 (Article 8), it also obliges employers to take measures to secure employment until age 65 (Article 9). This system has been newly stipulated by the revised Elderly Persons Employment Security Act of 2004 and has established three points: 1) rising the mandatory retirement age; 2) introducing a system of continuous employment; and 3) abolishing the mandatory retirement (refer to Policies Designed to Secure Employment for Older and Disabled Workers regarding the background and contents of the revision of the Act).

Looking at the status of introducing measures that secure employment until age 65 in conjunctions to the enforcement of the revised Elderly Persons Employment Security Act as of 1 November 2005, a total of 86.7% corporations has planned to introduce such measures. The breakdown is as follows: 23.6% already introduced and 63.1% plan to introduce measures to secure employment beyond 60 and until 65. Of this, corporations that stipulate the maximum age of the employment security to be 65 (and older) was 39.4% and from 62 to 64 was 60.6%. Furthermore, the breakdown of employment security measures that has already been introduced and that are planned on being introduced, is 0.6% for abolishing mandatory retirement, 6.9% for rising the retirement age, and

92.5% for introducing continuous employment system (“Efforts of Corporations towards the Implementation of the Revised Elderly Persons Employment Security Act,” 16 December 2005, Ministry of Health, Labour and Welfare).

As can be seen, although the securing of employment is viewed to be widely implemented, there still seems to be issues remaining for the securing and continuation of elderly employment such as how to respond to the issue as a corporation, how to fund the costs, and the real necessity of public support (see III-26, 27).

Meanwhile, there are influential opinions stating that legally speaking, the mandatory retirement system lacks rationality in terminating an employment contract for reaching a certain age, and goes against the principle of employment security. However, the common thinking is that the mandatory retirement system has rationality in the long-term continuous employment system based on seniority, and even the court does not judge the mandatory retirement system as unlawful (violation of Article 90 of the Civil Code on public order).

Dismissals

General

The Labor Standards Act only prohibits following dismissal cases: 1) during a period of leave for an injury at the workplace or illness, and during the 30 days following, as well as 2) for women, during the period of leave for pregnancy and delivery and during the 30 days following, but dismissal in general is not prohibited. On the other hand, dismissal that is against the legal principle of equal treatment between men and women is a breach of Article 90 of the Civil Code on public order and is therefore invalid. Furthermore, malicious or retaliatory dismissals to retort employee who has asserted or exercised statutory right are prohibited as disadvantageous treatment (Article 3 and Item 2, Article 104 of the Labor Standards Act; Item 2, Article 13 of the Equal Employment Opportunity Act; Articles 10 and 16 of the Child Care and Family Care Leave Act; Article 7 of the Trade Union Act).

Looking at dismissals in general (due to lack of capacity, inability to perform labor) under current

legal condition, the restriction imposed by the legal principle of abuse of dismissal rights, has attained an especially important role. This principle, which has been established by precedents of the Japanese Supreme Court from about the mid-1970s onward, is a legal theory that will examine and restrict the use of dismissal rights when an employer unilaterally cancels a employment contract with an employee. The Supreme Court formulated the context of this principle by stating that “the use of the right of dismissal by an employer shall become invalid, as an abuse of rights, when lacking in objectively rational pretext and thereby cannot be approved as corresponding to any socially accepted idea.” Further, the Court has presented specific requisites and methods for interpretation of the principle by expressing that “even when there is a reason for general dismissal, the employer may not always be able to dismiss the employee. If the basis for dismissal in the specific situation concerned is remarkably unreasonable, or when it cannot be approved as corresponding to a socially accepted idea, the concerned expression of intention to dismiss shall be invalid as an abuse of the right of dismissal.”

These legal principles are stated in an amendment to the Labor Standards Act (Article 18-2) in 2003. Behind this was the recognition that these legal principles should be stated because even though the principles have been playing an important role in Japan’s dismissal regulations, the fact that it was not a law made it socially ambiguous. There was also the recognition that by stating the principles, the easy dismissal of employees due to the recent economic recession should be stopped. In addition, punishments are not attached at all to the regulations of the revised Labor Standards Act related to dismissal restrictions, and it is a pure civil mandatory act.

Collective Dismissals for Economic Reasons

The adjustment of employment in Japan is focused chiefly on the regulation of overtime, and is accomplished through measures not to bring grief to employees. As a step to eliminate permanent employees from the enterprise, this adjustment has not been made as long as the management situation is not terri-

III-26 Special Measures Currently Taken for the Employment of Workers of 60 Years and Over

(%)

Category			Enterprises employing workers over 60 years of age	Enterpris- es that take special measures	Contents of the measure (multiple answers)								No special measures are taken	
					Adjusting the work load	Re- designing and develop- ing the job descrip- tion	All oca- tion to the appropri- ate job, adjusting the assignment	Reducing working hours, introduce flexibility to the working hour	Improving working methods, develop- ing work facilities/ equip- ments	Considera- tions on managing health and safety	Implemen- ting edu- cational training	Introduc- ing work- ing from home, working in satel- lite offices		Other measures
Total	(0.0)	100.0	30.1	17.5	1.7	16.1	15.6	2.9	10.8	2.6	0.5	0.5	59.1	
Industry														
Size of enterprise	Mining	(0.0)	100.0	25.9	14.3	3.7	11.2	10.0	3.7	13.4	2.6	–	1.1	70.7
	Construction	(68.5)	100.0	34.1	15.7	0.3	16.1	12.0	4.3	19.8	2.3	0.8	0.0	52.7
	Manufacturing	(64.9)	100.0	31.4	16.5	1.5	16.0	17.1	4.2	7.7	1.4	0.0	0.7	59.3
	Electricity, gas, heat supply and water	(68.1)	100.0	57.1	28.9	4.4	45.8	31.8	4.2	14.4	7.3	–	2.0	39.8
	Information and communications	(35.3)	100.0	16.2	5.0	3.6	8.6	7.0	0.8	3.6	0.7	1.8	1.4	64.6
	Transport	(23.9)	100.0	40.6	25.3	4.1	21.5	20.2	3.6	20.4	4.9	–	1.5	48.1
	Wholesale and retail trade	(55.6)	100.0	28.9	18.3	1.4	17.4	17.6	2.6	7.5	3.6	1.0	0.5	61.2
	Finance, insurance	(41.1)	100.0	25.1	14.6	4.4	15.6	9.7	2.4	4.1	3.2	–	0.1	60.5
	Real estate	(27.6)	100.0	23.2	10.9	1.8	14.3	8.5	0.6	10.4	1.8	0.1	0.1	67.0
	Eating and drinking place, accomodations	(51.2)	100.0	34.6	23.9	0.4	19.1	20.1	0.4	10.3	2.9	–	0.0	51.9
	Medical health care and welfare	(45.8)	100.0	24.9	15.9	1.5	11.9	16.6	1.4	12.0	1.4	0.1	0.2	63.7
	Education, learning support	(54.9)	100.0	27.2	18.5	3.1	16.0	14.5	2.3	7.3	2.9	0.9	0.2	61.1
	Compound service industry	(48.3)	100.0	19.9	8.8	1.5	11.7	5.6	3.1	9.5	5.4	–	0.3	74.1
	Services (not elsewhere classified)	(28.7)	100.0	24.8	14.9	3.4	13.1	11.3	2.3	9.1	2.4	0.9	0.9	66.4
Size of enterprise														
Size of enterprise	1,000 persons and more	(0.0)	100.0	47.8	18.8	8.4	36.0	29.3	6.1	17.7	1.5	1.1	2.0	46.8
	300–999 persons	(92.4)	100.0	40.8	20.0	5.9	24.0	24.1	5.0	14.7	3.9	1.1	1.0	52.4
	100–299 persons	(85.9)	100.0	36.3	16.5	3.7	22.3	18.8	4.5	14.2	4.1	0.2	0.4	55.6
	30–99 persons	(80.3)	100.0	37.3	18.7	3.5	20.5	21.5	3.2	12.7	3.6	0.3	0.6	52.9
	5–29 persons	(69.0)	100.0	28.1	17.2	1.2	14.8	14.2	2.7	10.1	2.3	0.6	0.5	60.7

Source: *Summary Report on 2004 Survey on Elderly Employment-Enterprise Survey*, 9 June 2005, Ministry of Health, Labour and Welfare

Notes: 1) "Enterprise employing workers over 60 years of age" includes those with unspecified measures for employing workers of over 60 years of age.

2) Figures in () indicate the ratio of enterprises that employ workers of over 60 years of age to the total number of enterprises.

III-27 Public Support for Expanding Employment of Workers over 60 Years and Over

(%)

Category	Total number of enterprises	Public support is necessary	Contents of public support (multiple answers)						None necessary	Don't know
			Contents of public support (multiple answers)							
			Introducing human resources	Providing knowledge regarding employment	Promotion of wages	Promotion of capacity development fees	Providing opportunities for educational training	Other support		
Total number	100.0	41.8	12.3	7.8	33.5	7.7	5.5	3.5	20.1	31.8
Industry										
Mining	100.0	39.6	6.2	7.2	35.1	4.1	2.3	3.8	22.1	31.9
Construction	100.0	43.1	10.6	5.2	38.2	5.4	5.1	2.4	16.8	33.1
Manufacturing	100.0	49.0	15.7	9.4	41.7	6.9	3.9	3.8	14.7	30.8
Electricity, gas, heat supply and water	100.0	45.0	6.1	2.7	40.1	19.9	6.3	1.5	27.8	24.4
Information and communications	100.0	41.0	12.5	10.4	31.0	15.4	8.0	2.1	22.5	32.1
Transport	100.0	43.0	10.6	5.8	37.3	5.8	4.0	2.5	21.9	28.2
Wholesale and retail trade	100.0	42.2	11.8	10.6	32.4	9.5	6.2	4.4	21.3	31.0
Finance, insurance	100.0	41.1	10.3	9.3	28.2	14.5	5.9	1.4	15.8	36.0
Real estate	100.0	40.6	12.7	5.3	32.9	6.4	4.6	2.6	17.9	35.9
Eating and drinking place, accomodations	100.0	34.0	12.6	3.8	28.5	4.9	6.0	3.1	25.0	31.8
Medical health care and welfare	100.0	37.2	15.3	7.2	26.7	6.1	7.1	3.2	20.7	36.8
Education, learning support	100.0	35.2	12.9	3.0	28.1	4.5	3.7	3.2	25.7	33.8
Compound service industry	100.0	41.7	9.2	6.7	36.3	7.0	6.5	4.3	13.9	39.3
Services (not elsewhere classified)	100.0	41.2	10.3	6.4	31.6	7.9	5.0	3.6	21.9	30.1
Size of enterprise										
1,000 persons and over	100.0	66.1	7.1	14.1	50.3	13.6	12.1	7.8	11.3	19.9
300—999 persons	100.0	64.0	14.2	11.6	52.5	14.4	10.4	4.8	12.9	20.7
100—299 persons	100.0	56.6	15.3	10.0	45.2	8.5	7.8	4.6	14.8	23.8
30—99 persons	100.0	54.4	15.4	9.1	46.0	9.1	6.6	3.5	15.1	25.8
5—29 persons	100.0	39.4	11.7	7.5	31.3	7.4	5.2	3.5	21.0	33.0

Source: *Summary Report on 2004 Survey on Elderly Employment-Enterprise Survey*, 9 June 2005, Ministry of Health, Labour and Welfare

Note: "Total number of enterprises" includes those with unspecified public support for expanding employment of workers over 60 years and over.

bly bad. The basis for this situation is that dismissals are, in actuality, difficult to carry out because Japanese companies have come to view long-term continuous employment as important, and the existence of the legal principle of “abuse of dismissal rights” supports this.

The regulations for collective dismissal are formulated originating from the legal principle of abuse of dismissal rights, and will be considered illegal or invalid unless it matches the legal principle of collective dismissal constituted of the following four criteria.

1) That there was a necessity in personnel cuts, 2) that every effort was made to avoid dismissals (e.g. restrictions on overtime, reassignments, temporary transfers, freeze on new hires, layoffs, voluntary retirement, and cuts in part-time and other non-permanent positions), 3) that there were reasonable criteria for selection of dismissal candidates (e.g. number of late arrivals and absences, history of violation of work rules, and lowness of economic blow to employees such as those with no dependents), and 4) that every effort was made to talk the situation over with employees or the labor union (to conduct adequate explanation and hearing of opinions regarding the events leading up to the collective dismissals, and the term and method of carrying out such dismissals).

The concept of the legal principle of collective dismissals is included in the legal principle of the abuse of dismissal rights stated in the revised Labor Standards Act.

Disciplinary Dismissals

Work rules in the company generally provide the heading “disciplinary actions” for handing down punishments to persons such as those who violate workplace orders. Disciplinary actions are the personal

sanctions or punishments that a company carries out against its own employee for the reason that the employee disturbed the order of that company. These actions are, from the most minor: warning, reprimand, official reprimand, salary reduction, suspension, counseled dismissal, and disciplinary dismissal.

Dismissals lend a great disadvantage to workers, especially in the case of a disciplinary dismissal since the worker will be evaluated as a person who has violated the order, and the employee will be at an extreme disadvantage when finding new employment. However, if such a violator of the order is left in the company, it is possible that the productivity and daily business of the other employees may be hindered.

Accordingly, an approach from precedent-based principle is being taken where, while considering the disadvantage to the employee and the benefits to the company, rigorous judgment of the legal validity of disciplinary dismissal is conducted. In short, the following are necessary in the event of a disciplinary dismissal: 1) the reason for action, and the type and degree of action corresponding to this reason, are specified in the company rules, etc. (legal principle of *nulla poena sine lege*, or no punishment without a law), 2) the same type and degree of action to be carried out as in past cases (principle of equal treatment), 3) the substance of the action is appropriate when held up against the type and degree of violation, and other circumstances (principle of equivalence), and 4) the procedures of the action are fair (appropriate procedures: examination by a disciplinary committee and an opportunity to defend given to the person in question).

Since disciplinary dismissals are also dismissals, they are regulated by applying the legal principle of abuse of dismissal rights stated in the revised Labor Standard Act.