

## 1 Long-term Employment System

### Employee Tenure in Japan

III-1 shows a breakdown of employees in Japan, the United States, and several European countries according to employee tenure. The only countries to have fewer than 40% of employees employed at the same company for less than five years are Japan and Italy, which, alongside countries such as France, Italy and Finland, have more than 20% employed for more than 20 years. It can thus be seen that, by international standards, employee tenure tends to be longer in Japan.

According to the 2007 *Basic Survey on Wage Structure*, average employee tenure in Japan is 11.8 years. However, this varies according to the attributes of employees and the corporate organizations to which they belong. Average employee tenure is longer for men than women, and increases with the size of the company to which they belong (III-2). By international comparison, long-term employment in Japan is thus a particular feature of employment of

male workers at large companies.

### Background to Long Employee Tenure: Long-term Employment Systems

Why then is employee tenure in Japan so long? One answer lies in the long-term employment systems that have developed at Japanese companies.

Many Japanese companies rely mostly on fresh school or college graduates to meet their hiring requirements, and this tendency is particularly pronounced at large companies. Fresh graduates have no real experience of work in a company until they are hired and their employers cannot tell what professional aptitudes they might have. The assumption is, therefore, that companies will hire them focusing on their trainability after hiring, and that their professional abilities will improve as they gain in experience in the workplace. Wage systems are similarly based on this assumption, and the approach adopted at many companies is to gradually

### III-1 Breakdown of Employees by Employee Tenure

(%)

Country (Year)	Japan 2007	United States 2008	United Kingdom 2002	Germany 2002	France 2002	Italy 2002	Belgium 2002	Holland 2002	Denmark 2002	Finland 2002	Norway 2002	Austria 2002
Percentage of all employees												
Less than 5	36.5	52.8	55.0	43.4	42.0	37.3	45.5	57.1	57.7	41.6	54.8	45.6
5 to less than 10	18.3	20.2	15.0	15.8	12.5	15.4	12.7	10.5	17.1	13.4	13.8	15.1
10 to less than 20	24.2	16.8	19.0	23.7	22.0	24.2	22.7	19.9	17.0	22.2	22.3	23.1
Over 20	21.3	10.3	10.0	17.0	23.5	23.0	19.1	12.6	8.1	22.8	9.1	16.2

Sources: (Japan) Ministry of Health, Labour and Welfare (2008), *Basic Survey on Wage Structure 2007*

(United States) U.S. Department of Labor (2008), *Employee Tenure in 2008*

(United Kingdom) Office for National Statistics (2003), *Labour Force Survey*

(Other countries) Eurostat (2006), *Structure of Earnings Survey 2002*

### III-2 Average Employee Tenure (by Sex and Number of Employees of Company)

	All workers	Male workers	Female workers
All companies	11.9	13.3	8.9
1,000+ employees	14.2	15.8	9.8
100-999 employees	11.3	12.8	8.5
10-99 employees	10.3	11.2	8.6

Source: Ministry of Health, Labour and Welfare (2008), *Basic Survey on Wage Structure 2011*

raise wages in accordance with employees' length of service.

From the company's point of view, it makes sense to have workers who have attained a certain level of professional ability stay with them for as long as possible so that they can get the most out of them when their productivity outweighs what they are paid and recoup the cost of providing them with various training opportunities to raise their abilities after hiring. They therefore encourage employees to stay by raising their wages over time. If a company employs a wage system that emphasizes length of service, employees, for their part, can expect to earn a higher wage the longer that they remain with the same company. The large number of companies that offer other non-wage incentives that increase in value with length of service, such as attractive retirement benefits, also encourage employees to stay with their employers for the long haul. The long-term employment systems of Japanese companies and the long tenure of employees in Japan may be said to have arisen out of these expectations of management and labor.

#### Transformation of Long-term Employment Systems

Although employee tenure in Japan is comparatively long by international comparison, it is in fact very slowly shrinking and the average tenure of all employees in 2003 was 0.4 years longer (12.2 years) than what it was in 2007 according to the above Basic Survey on Wage Structure.

Behind this trend is the transformation of long-term employment systems at Japanese companies. Paying higher wages to longer-serving employees necessarily carries with it a risk of pay exceeding

productivity in the case of employees whose professional skills have ceased to rise. Although this risk did not manifest itself during the 1950s through to the 1970s when most Japanese companies were enjoying rapid growth, the wage costs of middle-aged to older employees increasingly came to be seen as a problem by companies from the 1970s onward when the Japanese economy was no longer growing as it had. As a result, the practice spread among large companies in particular of temporarily or permanently transferring middle-aged and older workers to affiliates or business partners. During the prolonged recession of the 1990s, a wave of companies experienced serious business difficulties, with the consequence that many asked their employees of above a certain age (usually those in their late forties to fifties) to accept voluntary early retirement in exchange for a topping up of their retirement benefits. The use of such methods to remove middle-aged to older employees from companies' workforces appears to be what has led to the gradual decline in Japan's average employee tenure.

With the revision of the Act Concerning Stabilization of Employment of Older Persons, however, it became mandatory from April 2006 for companies to provide employment opportunities from 60 until pensionable age. While some expect this legislative action to reverse the shortening of average employee tenure, the imposition of the obligation to secure employment opportunities from the age of 60 onward may also reinforce moves by Japanese companies to rid themselves of employees before they reach that age, making it hard to predict how long-term employment systems will develop in the future.

## 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 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). (Note that the *Survey of Employment Management* cited below was discontinued in 2004, and so there are no results for

subsequent years.)

### Methods of Recruiting and Hiring

III-5 shows the general methods of recruiting 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

### III-3 Current Ratio of Hiring for New Graduates (Multiple Answers)

(%)

	2001			2004
	Clerical	Technical, Research	Non-clerical	
<b>High school graduates</b>				
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
<b>College (including graduate school) graduates</b>				
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.

### 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 v	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

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

conducted in 2001).

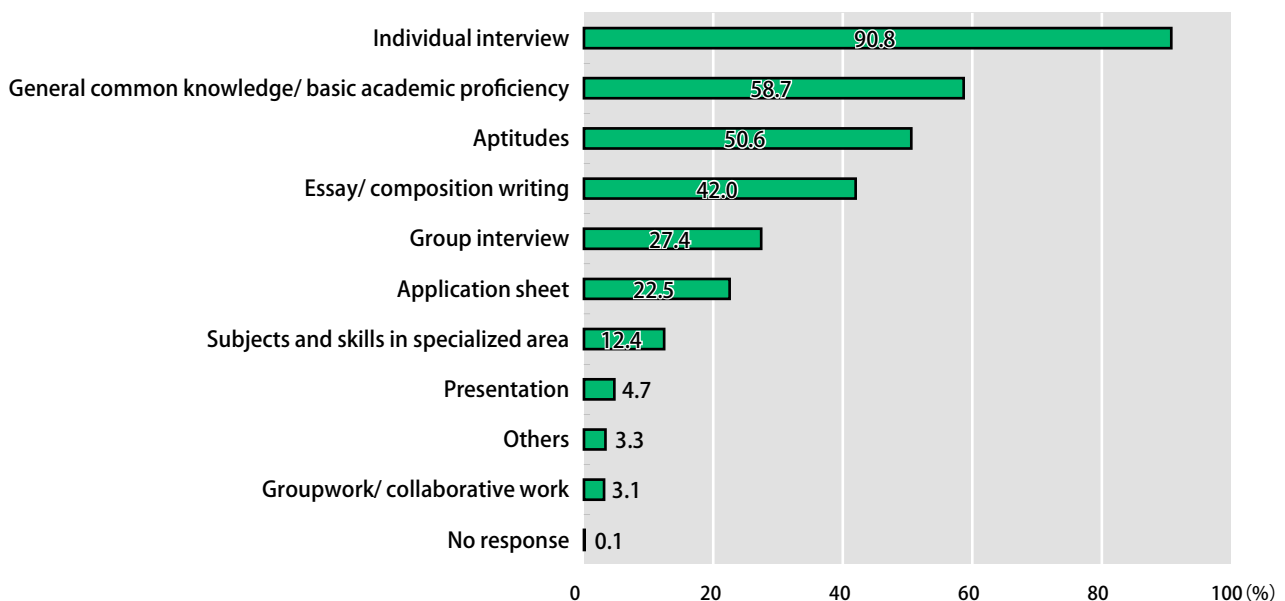
The hiring of four-year university graduates in the humanities and social sciences is generally carried out in the following way. The beginning of recruitment activities is the publication of recruitment information for students by companies (in recent years, this mostly takes place in October of their third

year). Based on this information, students apply for company information sessions. Seminars and company information sessions are held for students gathered in this way, followed by a written examination, interviews and selection. Ordinarily, conditional job offers are decided upon after two or three interviews. While the start of the communication of these conditional job offers in 1997 and 1998 peaked during June and July, it peaked around April in 2004 ( "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). In a recent study by Mainichi Communications, entitled MyComi Survey of Employment Plans of Those Due to Become New Graduates in 2012 (April 2011), the number of conditional job offers made around April increased, which indicates that there had been no changes ever since April in 2004. As seen in III-5, many of the requests 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.

Moreover, with regard to the recruitment activities of major companies, the introduction of "web-based tests" as company entrance examinations is progressing (46.8% responded "We have introduced them" in the Results of the Questionnaire Concerning New Graduate Hiring (Those Graduating in March 2010), Keidanren, published April 2010). Employment screening methods include individual interviews and tests of general knowledge, basic academic skills and aptitude, with the proportion of individual interviews reaching 90% (III-6).

In the field of science, there are many who progress as far as a master's degree before seeking employment, so in many cases those in charge of recruitment at companies visit research laboratories in relevant fields, ask the supervisors to introduce them to students and the supervisors recommend students to the companies (recommendation by the school). At companies that conduct open entry or free application for positions in regard to recruitment, in the same way as the situation for graduates in the humanities and social scientists outlined above, some students submit applications after viewing the company's recruitment information, and go through the written examination and interview process.

### III-6 Methods of Screening New College Graduates (Multiple Answers)



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

As a result of the expansion of the economy, which was said to be the longest since the war, albeit a gradual one, and also due to the mass retirement of the baby boom generation, the interest of companies in hiring employees intensified and from the perspective of new graduates, it was continually a seller's market. However, the situation changed considerably as a result of changes in the economy and the worldwide financial crisis from the autumn of 2008. In addition, as a result of the decline in corporate activities and consumption following the earthquake and tsunami on 11 March 2011, the situation relating to the job search activities of students, particularly those in the northeastern region of Japan, has become harsher, with conditional job offers being withdrawn.

### Points Taken Seriously in Hiring Workers

III-7 looks at the points considered important when hiring new college graduates. In Survey of Employment Management in 2004, 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 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"

### 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%	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 knowledge, skills 25.9%
Technical, Research	Technical knowledge, 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

and “job experience” rank high for technical/research positions, and “enthusiasm and ambition” are the most desired attributes for non-clerical workers.

In a recent survey, which was not divided into new college graduates and mid-career workers, with regard to the qualities expected of core personnel by companies (multiple responses were permitted, up to a maximum of three), in the case of personnel in managerial positions, 61.4% responded “the ability to make decisions and get things done,” 54.3% responded “leadership ability” and 46.2% responded “generalship qualities” ; in the case of personnel in

professional and technical positions, 76.5% responded “specialist knowledge and skills,” 53.1% responded “sense of responsibility” and 48.6% responded “enthusiasm and drive” ; and in the case of personnel in front-line activities who are skilled workers, 57.6% responded “specialist knowledge and skills,” 52.4% responded “sense of responsibility” and 51.6% responded “enthusiasm and drive” (Ministry of Health, Labour and Welfare, 2007 Survey on Hiring Management at Enterprises, published August 2008).



### 3 Allocation and Transfer of Human Resources

#### Allocation and Transfer of Human Resources at Japanese Companies

In the context of human resource management, “allocation” refers to a company’s apportioning of work to its employees. In Japan, where the concept of “jobs” is less entrenched than in Europe and North America, the content of work assigned to employees tends to change to suit the aptitudes and abilities of the employee and changes in the environment faced by the company, rather than human resources with the necessary aptitudes and abilities being allocated to perform a predetermined task.

“Transfers,” meanwhile, consist of moving employees around to perform different work, and the practice of transfers at Japanese companies exhibits several characteristics. Firstly, their main purpose is not only to reshuffle human resources to meet the needs of the organization (such as expansion, downsizing, or job reorganization), but also to act as a means of training and developing employees (III-9). Secondly, companies have an enormous say in determining transfers. The wishes of the human resources department are paramount in the allocation and transfer of newly-hired fresh graduates and the transfers of managers, while it is the wishes of the department actually responsible for the work to be

performed that largely determine transfers of regular employees. This is typically observed in transfers in large companies. Thirdly, with regard to the scope of transfers of regular employees, although the scope gradually narrows down to focus on those with specific abilities after a certain period has elapsed since joining the company, in the case of transfers resulting from promotion, there are many cases in which those in managerial positions experience transfers that span departments, due to the nature of their posts. And fourthly, temporary external transfers (where an employee of company A works at and is subject to the orders of company B while remaining an employee of company A) and permanent external transfers (where an employee leaves company A and becomes an employee of company B) entail transfers beyond the boundaries of the company for the purpose of supporting business partners and affiliates, developing employees’ skills, and securing positions for middle-aged and older employees.

#### New Developments in Allocation and Transfer of Human Resources

The approach to allocation and transfer of human resources employed by Japanese companies with the aforementioned four characteristics offers two

#### III-9 Objectives of Transfers by Companies (Multiple Answers)

(%)

	Establishment of new division	Expansion/downsizing of existing division	Job reorganization	Transfer to job commensurate with abilities	Development of workers' abilities through experience of diverse work (career development)	Enhancement of worker motivation	Others
Clerical	14.3	32.8	40.1	40.7	35.0	16.4	9.1
Technical/Research	14.0	32.1	41.4	42.4	32.2	15.7	6.0
Manual	10.0	34.1	35.5	45.8	32.8	18.7	5.3

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

Note: Percentages indicate the proportion of the total number of enterprises that employed transfers in the corresponding category of worker.



advantages: (1) human resources in a company can be swiftly and flexibly reallocated as movements are tailored to the circumstances of the individual employee and the business environment faced by the company, rather than being restricted by the need to fill particular jobs; and (2) employees can be trained to cope with a wide range of work due to the experience that they acquire of work in a comparatively large number of departments and at other companies. On the downside, the extremely strong authority and initiative exercised by companies over allocations and transfers increases the possibility that employees' employment and career development needs may not be taken into account when they are assigned or moved to different departments, which may in turn generate greater friction between the employee's family life and work. Transfers of male employees who are household heads, for example, may require that they live away from their families.

To combat this downside, more and more companies in Japan are introducing mechanisms such as "self-return" and "in-house recruitment" schemes to take greater account of employees' wishes. Self-return schemes are systems by which employees report their personal circumstances and wishes so that this information can be taken into account by the company in making allocation, transfer, and career development decisions. On the other hand, "in-house recruitment schemes" are systems used, for example, when a new project or business is being started up; these systems involve the content of the duties to be performed being disclosed in advance, with personnel being solicited from within the company, and those who pass the selection process take charge of those duties. In their practical application, however, these measures tend to be hindered by the wishes of employees' own departments and the difficulty of finding work to suit employees' needs, and few companies have so far been entirely successful in implementing them.

## Features of Promotions

One form of allocation or transfer of employees is "promotion." A promotion is defined as the movement of an employee from a position in which they handle duties carried out in the lower grades of

an organization to a position in a higher grade. Japanese companies have a strong tendency to place more emphasis on finding human resources from within the organization, and management positions are filled more by in-house promotion than by the hiring of people from outside the company. This is one of the characteristics of promotions in Japanese companies and is called "internal promotion."

When deciding on promotions, most companies that have set forth criteria for this evaluate the performance and skills of the candidates for promotion, but there are more than a few companies that manage promotions on the basis of seniority, emphasizing the number of years of continued service. The reality is that most new college graduates employed as regular employees at the same time ("employees hired at the same time") are promoted to managerial positions at a certain level, such as section chief level, and this system is rational, as it makes most employees hope for promotion and therefore leads to increased motivation.

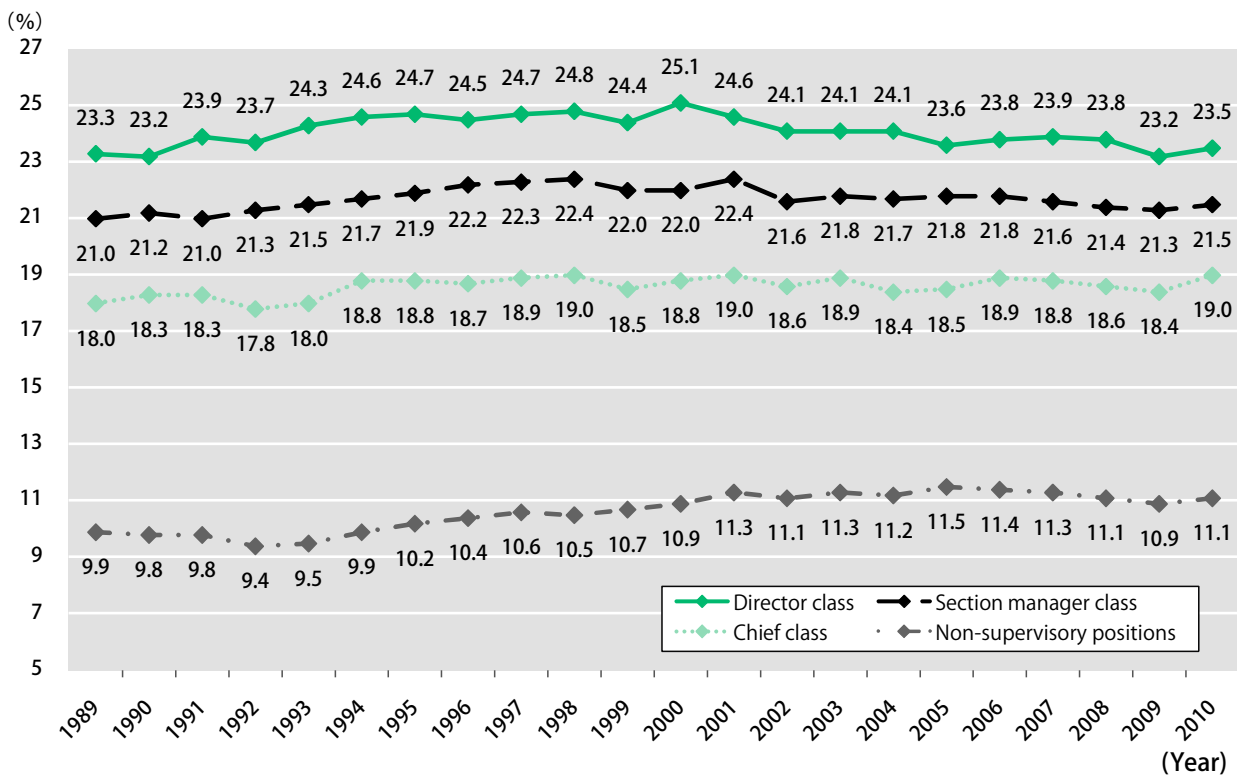
In fact, if we look at the actual situation with regard to promotions in Japanese companies, we can see that promotions in Japan are "late promotions" (the timing of the selection for promotion is late). According to the Japan Institute for Labour Policy and Training (1992), whereas the first selection period (the time when the first promotion gap emerges) is 7.85 years on average in Japan, it is 3.42 years on average in the USA and 3.71 years on average in Germany; in addition, the period of flattening out (the period when the number of employees hired at the same time is narrowed down in the competition for promotion and more than about 50% of the employees in that group have no prospect of further promotion) is 22.30 years on average in Japan, compared with 9.10 years on average in the USA and 11.48 years on average in Germany. If we look at recent trends (III-10), the first selection period corresponds to the number of years of continued service in non-managerial positions, while the period of flattening out corresponds to the number of years of continued service at section chief level, and we can see that the number of years of continued service in non-managerial positions has increased slightly and although the number of years of continued service at

department head and section chief level is declining, the fundamental trend remains unchanged.

Thus, promotions at Japanese companies have two characteristics, namely “internal promotions” and “late promotions,” but changes can be seen in the conditions that bring about the existence of “late promotions.” The reasons for this include the fact that it has become difficult to maintain the high probability of promotion, due to the flattening out of organizations and the reduction of managerial posts,

the fact that it has become difficult to provide education and training opportunities equally to all employees, due to company growth slowing down, and the fact that the desire to be promoted to managerial positions is declining, primarily among male regular employees, so it is possible that the trend towards earlier selection for managerial positions, particularly those at department chief level, will intensify.

III-10 Average Employee Tenure by Position in Japanese Company (Year)



Sources: Compiled from Ministry of Health, Labour and Welfare, *Wage Census (FY 1989-2010)*, website of Ministry of Health, Labour and Welfare  
 Note: The size of enterprise is 100 employees or more.

## 4 Resignation, Mandatory Retirement and Dismissals

### Resignation

Resignation is one of the reasons for the termination of employment contract and is the general term for a employee quitting a company where they had been working (however, dismissals are excluded from this definition).

With regard to the actual situation concerning resignation, the categories include “general resignation” and “resignation due to personal circumstances,” when an employee unilaterally terminates the employment contractual; “resignation by agreement,” “resignation at the employee’s own request” and “voluntary resignation,” which take place on the basis of agreement between the employee and employer; and “mandatory retirement,” which takes place on the basis of stipulations in the employment contract, workplace regulation or collective agreement.

Legal problems relating to resignation that have emerged in recent years include encouragement to resign resulting from business restructuring or shrinkage and preferential measures when soliciting volunteers for early retirement.

With regard to the former, unscrupulously encouraging employee to resign through persistent approaches or violence is illegal and could result in both the individual at fault and the employer becoming liable to pay damages. The details of the actual situation are unclear, but from looking at statistics concerning the system for resolving individual labor disputes, one can see that approximately 22% of disputes arising in the workplace arise from “encouragement to resign” and “bullying or harassment” that can be closely related to this (concerning this point, see Chapter 4-4 “Labor Disputes and Resolution Systems”).

With regard to the latter, there have been lawsuits in which employees have sought to be compensated for the difference in amounts in the event that they suffer any disadvantage or inequality relating to the application of preferential monetary measures

depending on the timing of their resignation. As such preferential measures have no basis in legislation, employers themselves can decide what measures to apply when and to whom. Consequently, in general, even if the application of such systems, the need for the consent of users when applying them, and any disadvantage or inequality in the application of preferential measures become an issue in litigation, employees’ claims for payment of any difference are hardly ever approved.

In addition, with regard to pension schemes established and operated independently by employers (so-called company pensions), the reduction in initial benefits, the cutting of rates of pay and the abolition of the systems themselves as a result of poor investment yields due to the deteriorating economic situation have become legal issues in recent years, and cases have been seen in which this has resulted in lawsuits (with regard to this point, see Chapter 6-2 “Income Security Systems”). This is something that is also a problem for those taking mandatory retirement, as discussed in the next section.

### Mandatory Retirement

According to the summary findings of the 2010 General Survey of Working Conditions (Ministry of Health, Labour and Welfare, released on October 14, 2010), 93.1% of private enterprises with 30 or more regular employees have mandatory retirement systems, of which 98.7% have a uniform mandatory retirement age. Of these, 82.7% set the mandatory retirement age at 60, and 13.3% set it at 65 or above.

On the other hand, if we look at the legal system, Article 8 of the Act on Stabilization of Employment of Older Persons stipulates that employer may not prescribe a mandatory retirement age below 60 years of age. Moreover, Article 9 of the same Act obliges employers to take measures to secure employment up to the age of 65. There are three of these measures, which were prescribed under the 2004 amendment of the Act, namely i) raising the mandatory retirement

age; ii) introducing continued employment systems; and iii) abolishing mandatory retirement (for the background and details of the amendment, see Chapter 5-3 “Policies Designed to Secure Employment for Older and Disabled Workers”).

If we look at the 2010 Aggregate Results of the Survey on Employment Conditions of Elderly persons (released on October 29, 2010), focusing on the status of the introduction of measures aimed at securing employment up to the age of 65, as of June 1, 2010, the companies that had already introduced measures to secure employment for employees aged 60 and above, up to the age of 65, accounted for 96.6% of the approximately 138,000 companies with at least 31 employees that were the focus of the aggregate results; even just looking at small and medium-sized companies (those with between 31 and 300 employees, totaling 119,135 companies), the figure was 96.3%.

If we look at the breakdown of measures to secure employment from the same aggregate results, in order of the measures accounting for the greatest proportion of responses, “introduction of a continued employment system” accounted for 83.3%, “raising of the mandatory retirement age” accounted for 13.9%, and “abolition of mandatory retirement” accounted for 2.8% (average for aggregated companies).

With regard to the “introduction of a continued employment system,” which accounted for the greatest share of measures introduced, 47.5% of companies applied this system to “those affected by criteria based on labor-management agreements,” while 41.4% applied it to “all those who requested it.” In addition, 11.1% of companies applied it to “those affected by criteria based on workplace regulation” (average for aggregated companies).

Moreover, 89.9% of companies have set the age to which measures to secure employment are applicable at the age of 65 or above, while 10.1% have set it at the age of 64.

However, looking at the mandatory retirement system in legal terms, there is a compelling view that it is not rational to cease the employment relationship on the grounds of having reached a certain age, and that this contravenes the principle of job security.

Nevertheless, in Japan’s seniority-based long-term continued employment system, there is a general attitude that the mandatory retirement system is rational, and no courts have ruled that the mandatory retirement system is unlawful (contravening public policy as detailed in Article 90 of the Civil Code).

Moreover, due to the fact that the aforementioned Article 9 of the Act on Stabilization of Employment of Older Persons obliges employers to implement measures to secure employment up to the age of 65, discussions have recently emerged concerning the legal enforceability of that article. More specifically, there is a question about whether or not the article concerned is valid in private law. In theoretical terms, there is a conflict between the theory that sees the article to be effective in private law, so it is possible to confirm its status with regard to compensation for damages and in employment contracts, and the viewpoint that denies its effectiveness in private law, arguing that the article only imposes on employers an obligation in public law (administrative law).

## Dismissals

### 1. General

The Labor Standards Act only prohibits the dismissal of an employee during a period of absence from work due to injuries or illnesses suffered in the course of employment, and the dismissal of a female employee during a period of absence from work before and after childbirth, or within 30 days after either type of absence, but it does not prohibit dismissal itself (Article 19). On the other hand, discriminatory or retaliatory dismissal on grounds such as gender or labor union activity is prohibited by law (by such legislation as Article 3 and Article 104, paragraph (2) of the Labor Standards Act, Article 6, item (iv) and Article 9 of the Equal Employment Opportunity Act, Articles 10 and 16 of the Child Care and Family Care Leave Act, and Article 7 of the Labor Union Act).

Amidst this legal situation, regulations based on the principle of the abuse of the right of dismissal have played a particularly important role in dismissals in general (such as dismissals due to incompetence or lack of ability to perform work). This principle is a legal theory that reviews and restricts the exercise of

the right of dismissal (to be precise, in legal terms this is the declaration of intent to dismiss), which is a unilateral termination of employment contract by the employer in regard to a employee, and it was established by Supreme Court precedents from the mid-1970s onwards.

The Supreme Court formulated the content of this principle, stating that, “the exercise of the right of dismissal by an employer shall be deemed an abuse of rights and become invalid, in the event that it lacks objectively reasonable grounds and therefore cannot be considered to be appropriate in general societal terms.” Furthermore, the Court set forth the specific elements and methods of decisions on the principle, stating that, “even when there is a reason for general dismissal, the employer may not always be able to dismiss the employee. If the grounds for dismissal in the specific situation concerned are singularly unreasonable, or if they cannot be considered to be appropriate in general societal terms, the expression of intention to dismiss in question shall be deemed an abuse of rights and become invalid.”

This legal principle is an unequivocal mandatory civil provision stipulated in the 2003 amendment of Labor Standards Act (Article 18-2). Underlying this was a recognition of two things: that these legal principles should be clearly stated because, despite having played an important role (job security = long-term continued employment) in regulating dismissals in Japan, their lack of statutory form made them unclear to the public; and that employers should be prevented from resorting to dismissals without careful consideration during the recession at time that the act was revised. This provision has now been transferred to the Labor Contract Act enacted in 2007 and stipulates that, “A dismissal shall, if it lacks objectively reasonable grounds and is not considered to be appropriate in general societal terms, be treated as an abuse of right and be invalid.” (Article 16).

## 2. Collective Dismissals (Dismissals for Economic Reasons)

Employment adjustment in Japan has mainly been carried out by means that do not involve any pain for employees, such as reductions in overtime, with the method of removing regular employees from the

company not being used unless the financial condition of the company was especially poor. This is due to the fact that Japanese companies emphasize long-term continued employment, as well as the difficulty of dismissing employees due to the existence of the principle of the abuse of the right of dismissal that has underpinned this.

The regulations governing collective dismissals for economic reasons of the company have been shaped in forms derived from the principle of the abuse of the right of dismissal; unless a dismissal complies with the following four criteria, it is deemed to be illegal and invalid (four criteria for collective dismissals):

i) That there was a necessity for reductions in personnel; ii) That the obligation to make every effort to avoid dismissals was fulfilled (e.g. by reducing overtime, transferring or assigning employees to other jobs, placing a freeze on new hires, temporary layoffs, soliciting applications for voluntary retirement, and reducing the number of non-regular employees); iii) That there were reasonable criteria for selecting employees to be dismissed (e.g. number of late arrivals to and absences from work, whether or not there was a history of violations of work rules, and imposing a minimal economic blow by selecting those with no dependents); and iv) That efforts were made to hold discussions with employees or labor unions (providing an adequate explanation of the background to the collective dismissal for economic reasons of the company, as well as the implementation period and methods, and holding consultations to seek feedback).

## 3. Disciplinary Dismissal

In general, workplace rules stipulate that disciplinary measures will be taken to punish employees who have, for example, violated an order given in relation to their work duties. Disciplinary measures are private penalties or punishments imposed by employers on employees for such reasons as violating a legitimate work order, disrupting the order of the company or workplace, or engaging in illegal acts. In ascending order of severity, the measures are admonitory warning, official warning, reprimand, reduction of salary, suspension of work,

official suggestion to resign, disciplinary dismissal.

Dismissal places employees at a significant disadvantage; particularly in the case of a employee subject to disciplinary dismissal, that person is viewed as someone who has disturbed the order of the company or workplace, so such employees are placed at an extremely great disadvantage when seeking another job. On the other hand, leaving someone who disturbs the order of the company or workplace within the company has the potential to impede the productivity of other employees, as well as the day-to-day operations of the company and workplace.

Accordingly, while giving consideration to the disadvantage to the employee and the benefit to the company, the method of judging the legal validity of disciplinary measures strictly is adopted on the basis of case law. In other words, when taking the step of disciplinary dismissal, it is necessary i) to have clearly stipulated in the workplace rules reason for the measure, as well as the type and severity of the measure to be implemented (the principle of *nulla poena sine lege*, or no punishment without law); ii) to implement a type and severity of measure consistent with those used in similar cases in the past (the principle of equal treatment); iii) for the content of the measure to correspond to the type and degree of violation, as well as other circumstances (the principle

of equivalence); and iv) for the procedures for the measure to be fair (due process: screening by a disciplinary committee, granting the employee concerned the opportunity to defend him- or herself).

Precisely because disciplinary dismissal is a form of dismissal, it was possible to cite the provisions of the amended Labor Standards Act, but currently it is regulated by the principle of abuse of the right of dismissal, which has been carried over to the aforementioned Article 16 of the Labor Contract Act. At the same time, because disciplinary dismissal is one type of disciplinary measure, it is also regulated by means of the principle of the right to take disciplinary action set forth in the Labor Contract Act (Article 15). In addition, with regard to the content of the regulation concerning the principle of the right to take disciplinary action and its interpretation, it is the same as in the case law mentioned previously, while the article concerned stipulates that, "In cases where an employer may take disciplinary action against employees, if such disciplinary action lacks objectively reasonable grounds and is not found to be appropriate in general societal terms in light of the characteristics and mode of the act committed by the employee pertaining to such disciplinary action and any other circumstances, such disciplinary action shall be treated as an abuse of right and be invalid".

### Corporate In-house Education and Training Initiatives

In order to improve professional skills, i) OJT (on-the-job training), which involves learning the knowledge and skills required for the job while actually doing the job, and ii) education and training conducted away from the workplace are required. The education and training carried out away from the workplace can take two forms: ii)-a) Off-JT (off-the-job training), which is conducted under the supervision of the company, and ii)-b) “personal development activities,” which are conducted autonomously by the worker who works at a company.

Of these, i) OJT and ii)-a) Off-JT correspond to corporate in-house education and training. For most workers, the main form of training and education opportunity is OJT; in Japanese companies, where the concept of a profession is ambiguous and it is easy for the skills required in a job to be influenced by the situation surrounding the company or workplace, the importance of this is particularly high.

OJT is mainly conducted through i) learning by watching and copying the example of the work of a more senior employee who works nearby the junior employee; ii) the daily exchange of communication between manager and subordinate, and senior and junior employees; or iii) “planned OJT,” which involves designating an instructor and providing instruction while setting clear achievement targets and levels of achievement for the individual receiving instruction. In implementing planned OJT, there are cases in which “implementation plans” that summarize the achievement targets and education and training schedule until reaching the set achievement level, or “skill maps,” which make visible the level of achievement of the person receiving instruction, are used. Moreover, with regard to the management of work in the workplace, the allocation of work with the aim of encouraging the development of skills among individuals can also be described as one aspect

of education and training through OJT.

On the other hand, Off-JT has advantages that OJT does not, namely the fact that the knowledge and skills commonly required in specific divisions, job types and positions can be taught efficiently, and those undergoing Off-JT can learn knowledge and information that they would not be able to acquire in the course of their everyday duties. Off-JT at Japanese companies can be classified into i) training that focuses on “rank” across departments in the company organization, such as position and grades relating to ability and qualifications (training by rank); and ii) training that focuses on “specialist fields” in jobs (training by specialty). The latter can be further categorized into “training by division,” which is conducted in a way that corresponds to the functional field within the organization, such as sales, accounting or personnel, and “training by tasks,” which is undertaken to achieve specific tasks relating to the management of the company, such as reforms of the organizational climate and the establishment of a more efficient management system.

### Issues relating to Corporate In-house Education and Training and Career Formation

At present, various issues and limitations are becoming clear in regard to the education and training within Japanese companies that has been implemented in the forms outlined above.

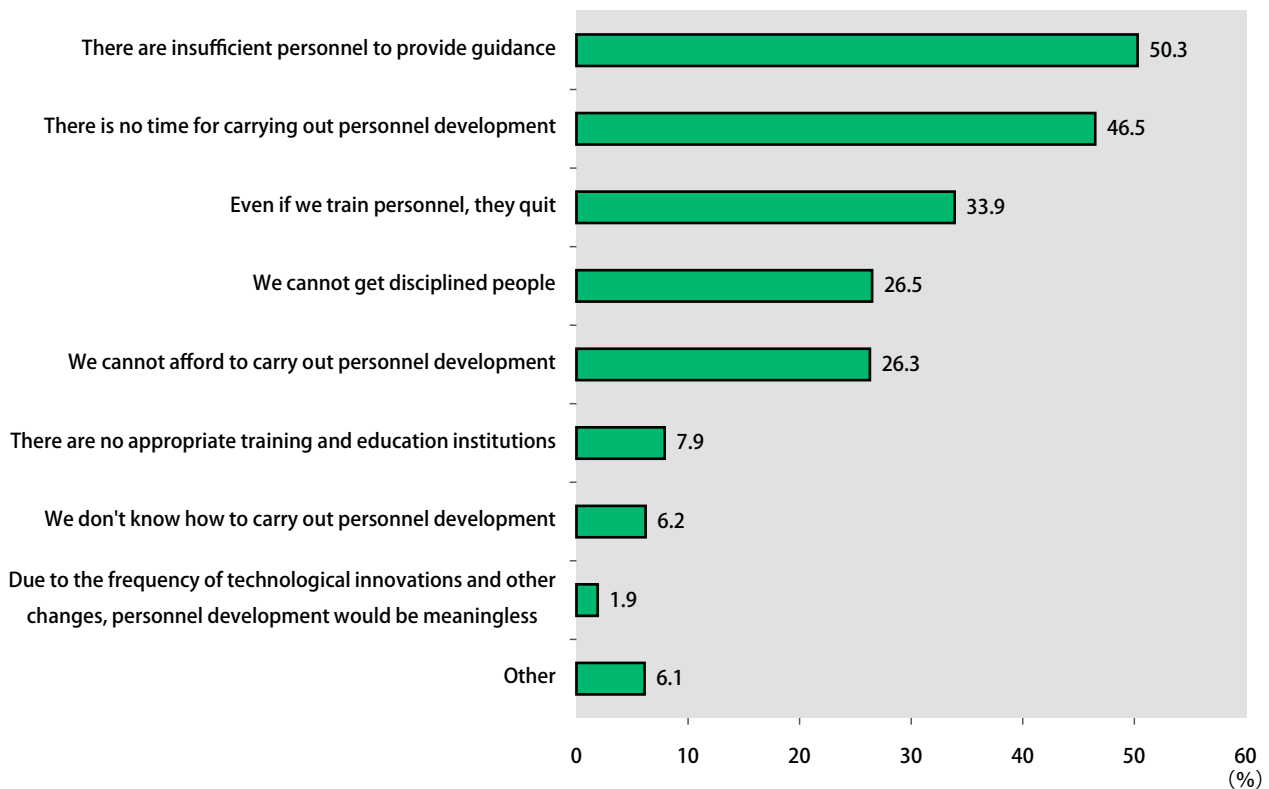
The first thing that can be cited as an issue is the decreased function of the workplace, which is the venue for OJT. According to the Basic Survey of Human Resources Development conducted by the Ministry of Health, Labour and Welfare in FY2009, 69.0% of the businesses that responded believe that there are problems in conducting human resource development in their own companies; with regard to the specific problems cited, approximately half of the companies stated that they did not have sufficient people or time to conduct human resource



development in the workplace, mentioning a lack of personnel to provide instruction and a lack of time to carry out human resource development, and the proportion citing these problems was greater even

than the proportion listing problems outside the company, such as an inadequate development environment (III-11).

### III-11 Problems in Human Resource Development in the Workplace (Multiple Answers)



Source: Ministry of Health, Labour and Welfare, *Basic Survey of Human Resources Development, 2009*

Furthermore, there is the problem of the motivation of employees receiving education and training within the company. Hitherto, under the stable long-term employment situation in Japanese companies, employees were guaranteed to have opportunities for advancement and the pay increases that would accompany any promotion, and this fact sustained the motivation of employees undergoing corporate in-house education and training. However, as a result of intensifying international competition, the aging of Japanese society, and a decrease in the overall population, it has become difficult for companies to depict a vision for their growth, and it is becoming harder to maintain an organizational system that can guarantee most employees a career that will

enable them to reach a certain post. In fact, of the employees who graduated from university or graduate school, the proportion who had reached section chief level by their early 40s declined from 32.3% in 1990 to 22.1% in 2008.

Moreover, the proportion of those who are able to be promoted into a managerial role within the organization has declined, and if it becomes more difficult to achieve a career of the type that involves promotion after continued long-term service, moves aimed at exploring skills development and career formation that do not rely on corporate in-house education and training will emerge. According to the aforementioned Basic Survey of Human Resources Development, when asked about their working lives,

the proportion responding that “I want to plan my career myself” was 67.1% among regular employees and 48.9% among non-regular employees, which was considerably higher than the proportion responding “I want the company to suggest a career plan” (15.2% of regular employees and 17.2% among non-regular employees). Moreover, with regard to methods of acquiring the professional skills required to achieve the working life that one desires, the highest proportion among both regular and non-regular employees was accounted for by the response “I need to make efforts to develop my skills at my own initiative” ; in particular, in the case of regular employees, almost half responded to this effect (47.2%). However, the development of education and training opportunities outside companies that will supplement, and sometimes replace, corporate in-house education and training, and which will lead to effective career formation, at last started to be recognized as a policy goal in Japan from 2000 onwards, but it still cannot be said that it is being adequately implemented.

With regard to problems relating to corporate in-house education and training in Japan, one can point

to the fact that there is a considerable disparity between regular and non-regular employees in terms of opportunities to access this. According to the Basic Survey of Human Resources Development, whereas the proportion of companies implementing planned OJT for regular employees was 57.2%, the proportion implementing it for non-regular employees was 28.3%; as far as Off-JT is concerned, the proportion of companies implementing it for regular employees was 68.5%, while the proportion implementing it for non-regular employees was 33.2%. Thus, in both cases, the proportion implementing training for non-regular employees is less than half the figure for those implementing it for regular employees. Amidst a situation in which the proportion of workers accounted for by non-regular employees is almost 40%, it has become increasingly important to consider how to enhance opportunities for corporate in-house education and training for workers other than regular employees, and what sort of new approach society should build to replace the education, training and career formation that is currently taking place within companies.

# 6 Wage Systems

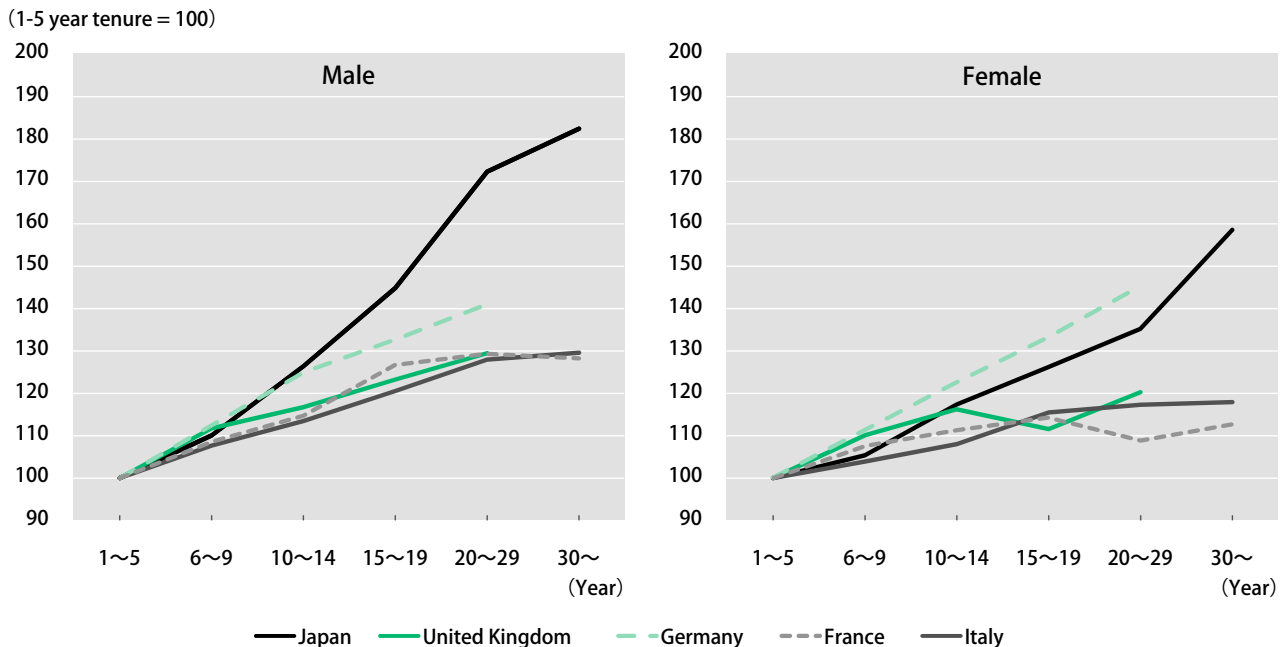
## Strong “Seniority” Element

III-12 shows that the wage levels of manufacturing workers in several countries differ according to employee tenure. In all the countries shown, wage levels tend to increase with length of tenure, but this trend is particularly pronounced in the case of Japan. Looking at male workers in Japan, the wages of workers who have worked continuously for the same company for at least 30 years is almost twice as high as that of workers who have been employed 1-5 years, compared with around 1.2 to 1.4 times as high in other countries.

There are several possible reasons for the markedly stronger “seniority” element of wages in Japan compared with other countries. One is that Japanese companies tend not to determine “job wages” based on the content of the job that an

employee performs. Instead, they much prefer to pay employees according to the level of “ability” required to perform a variety of tasks in the company. This “ability” is assumed to increase the longer that an employee has worked at a company, and accordingly wage levels increase with length of service. A further reason, in addition to the view that wages are compensation for the ability and labor services provided by an employee, is that there remains a deep-seated acceptance at Japanese companies that wages are the main means by which employees secure their livelihoods. If the intention of a company is to pay a wage that will cover the typical cost of living at a given age, then it will pay a higher wage to longer-serving employees who, being older, tend to have to spend more at home on children, education, and so forth.

III-12 Wage Differences in Manufacturing according to Employee Tenure (2002)



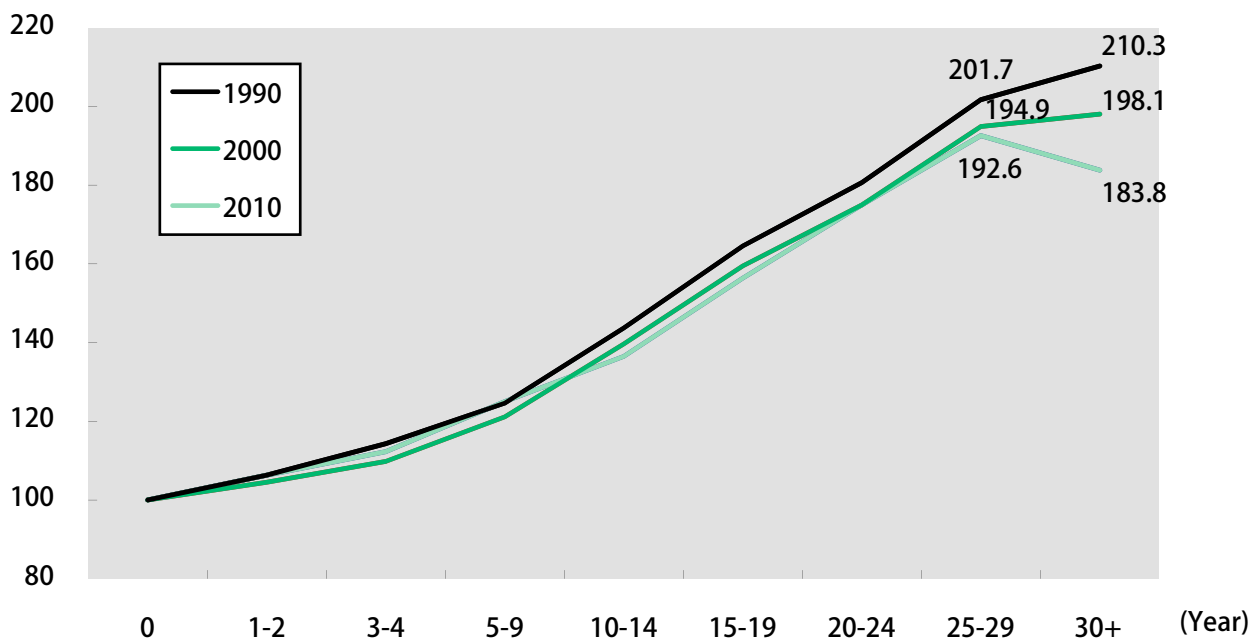
Sources: Japan—Ministry of Health, Labour and Welfare, *Basic Survey on Wage Structure* (2003.6)  
 Other countries—EU (November 2005), *Structure of Earnings Statistics 2002*

### Trends in Revisions to the Wage System

However, as can be seen in III-13, the relationship between length of tenure and wage levels is weakening in Japanese companies. More specifically, with regard to the wages of male workers, if we take the level for newly employed workers at 100, then in

1990, the level was 201.7 for workers with 25-29 years of continued service and 210.3 for those with at least 30 years of continued service, whereas the figures were 194.9 and 198.1 respectively in 2000, and 192.6 and 183.8 respectively in 2010.

**III-13 Employee Tenure and Wage Levels  
(Male Workers, Newly Employed Workers = 100)**



Source: Ministry of Health, Labour and Welfare, *Basic Survey on Wage Structure*

Note: Figures are totals by industry, academic background and age at companies with at least 10 employees.

The reason why such changes can be seen is that many Japanese companies are revising the wage system that has been in place hitherto, and are exploring new mechanisms. The *General Survey of Working Conditions* conducted in 2007 by the Ministry of Health, Labour and Welfare shows that 46.3% of companies had modified their wage systems in some way over the preceding three years. The proportion to have taken such action is greater among larger companies, with 56.5% of companies with 1,000 or more employees having done so. Regarding the types of changes made, comparatively large proportions of companies of all sizes had expanded the wage component linked to performance/results, content of work (such as job or occupational category), or job-performance skills. Even if we look at the 2010 survey, although the movement towards

the reform of the wage system is weakening, we can see that there is no change in the basic trend (III-14).

In other words, firstly, the relationship between output, in the form of performance or results, and the wages that are paid at Japanese companies has become clearer and is demonstrating a tendency to strengthen further in the future. In Japan, this trend is called the increasing prevalence of “performance-related” pay, and it has become particularly pronounced since the 1990s. Another trend is for wages to be consistent with the content of the work actually being carried out by employees. However, in Japan, employees are not often allocated to specific “positions,” so when setting wages at a level consistent with the content of the work, rather than basing them on the work itself, in many cases a mechanism is introduced that determines wages

according to the level of “responsibility” or “function” fulfilled by employees in the course of carrying out their work. This kind of mechanism is

called a “responsibility-based wage system” or a “function-based wage system.”

### III-14 Percentages of Companies Making Changes to Wage Systems in Preceding Three Years and Types of Change

	Percentage of companies to have made changes	Type of change (multiple responses allowed)										
		Expansion of portion of wage linked to work content (job or occupational category, etc.)	Expansion of portion of wage corresponding to job-performance skills	Expansion of portion of wage linked to performance results	Reduction of allowances and inclusion in base pay	Reduction of retirement benefits and inclusion in base pay	Restriction of base pay and relative expansion of bonuses	Introduction of pay scale	Modification/introduction of ability-based grade system	Modification/introduction of annual salary system	Discontinuation of regular pay increases	
2010	All companies	34.6	17.5	16.9	15.0	5.5	0.4	3.1	5.2	6.9	3.0	4.6
	1000 and over	37.0	18.8	14.6	15.4	8.0	0.4	2.1	6.5	12.7	4.8	2.5
	300-999	35.1	14.9	14.6	13.5	7.4	0.7	1.3	8.5	11.2	4.0	3.0
	100-299	35.5	17.0	15.5	16.0	7.7	0.7	3.5	6.0	10.5	3.9	3.5
	30-99	34.3	17.8	17.5	14.8	4.7	0.3	3.1	4.7	5.4	2.5	5.1
2007	All companies	46.3	23.3	22.1	23.7	9.1	1.1	6.0	7.7	11.0	4.0	7.1
	1000 and over	56.5	27.2	23.0	31.3	18.1	0.9	5.7	11.9	22.3	8.9	11.5
	300-999	52.9	23.7	23.5	30.2	15.3	0.7	6.2	13.8	19.1	8.3	10.2
	100-299	45.5	21.7	19.7	24.9	10.3	1.4	5.1	10.4	14.4	5.7	6.1
	30-99	45.5	23.7	22.6	22.4	7.8	1.0	6.2	6.2	8.7	2.8	6.9

Source: Ministry of Health, Labour and Welfare, *General Survey on Working Conditions 2007, 2010*

### Issues Encountered in Revision of Wage Systems

Moves to strengthen the link between wages and work content and output are always designed to correct the demerits of wages with a seniority element. The aging of corporate workforces with the graying of society as a whole and the decline of the birthrate, combined with the destabilization of the business environment faced due especially to the intensification of international competition, has rendered it unfeasible for Japanese companies to continue to maintain the conventional seniority element of their wage systems. Moreover, companies feared that by continuing to operate a seniority-based wage system, the motivation of young employees or high-performing employees would decline.

However, revising wage systems is not without its pitfalls. If wages are to be linked to performance and

results, mechanisms for evaluating performance are needed. According to the *General Survey on Working Conditions (2010)*, 45.1% of companies have introduced a performance evaluation system, but only 23.0% of those companies acknowledged that their performance evaluations are “going well,” with the remaining companies perceiving that problems are arising with regard to such issues as the individual concerned not accepting the results of their evaluation and evaluations resulting in decreased will to work. Introducing function and responsibility-based wages to strengthen the linkage between work content and wages also has only a limited corrective effect on conventional seniority-based wage systems if the details of roles and responsibilities are not clearly established. Japanese companies will have to tackle issues such as these as they design and administer their wage systems in the future.

## 7 Working Hours

### Japan's Working Hours Legislation - 40 Hours per Week

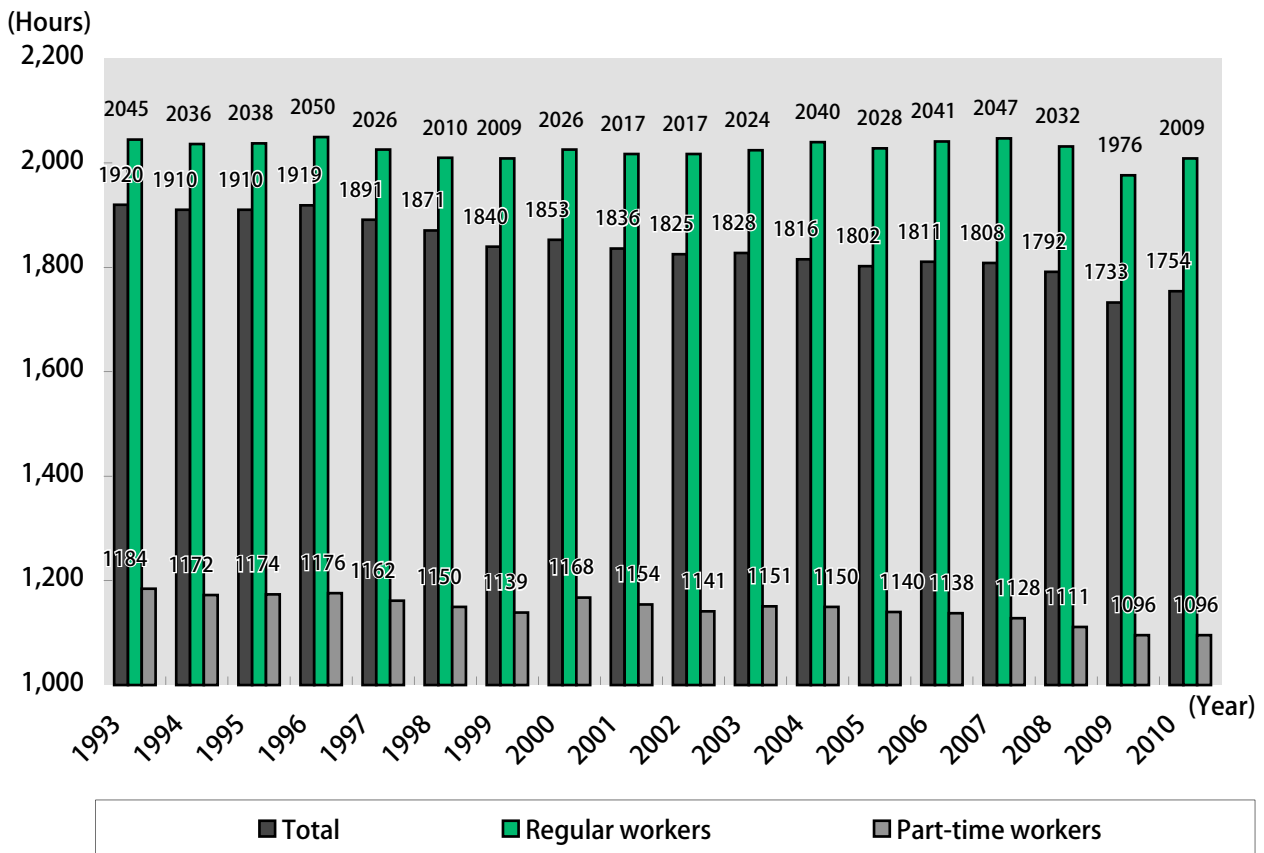
Japan's working hours legislation is provided in the Labor Standards Act, which has been in effect since 1947. Because the shortening of working hours became a big policy issue in the latter half of the 1980s, the traditional 48-hour workweek set by the law was gradually shortened since 1988. Now, aside 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

III-15 shows the annual total of hours actually worked of regular workers and part-time workers. If we look at the "Total for regular and part-time workers," we can see that the annual total of hours actually worked has been steadily decreasing and fell below 1,800 hours from 2008. However, when reading these data, caution is required with regard to a couple of points. Firstly, the decrease in the annual total of hours actually worked since 2008 was brought about by the economic slump that followed the so-

III-15 Annual Total of Hours Actually Worked by Regular and Part-time Workers



Source: Compiled from MHLW, *Monthly Labour Survey* (establishments with five or more workers)

called “Lehman Shock.” Secondly, if we look only at regular workers, who have long working hours, we can see that they have hardly decreased at all for 18 years, and even in 2010 the figure was in excess of 2,000 hours. In other words, the contraction in overall working hours during this time has been influenced by the increase in the number of part-time workers, who have shorter working hours.

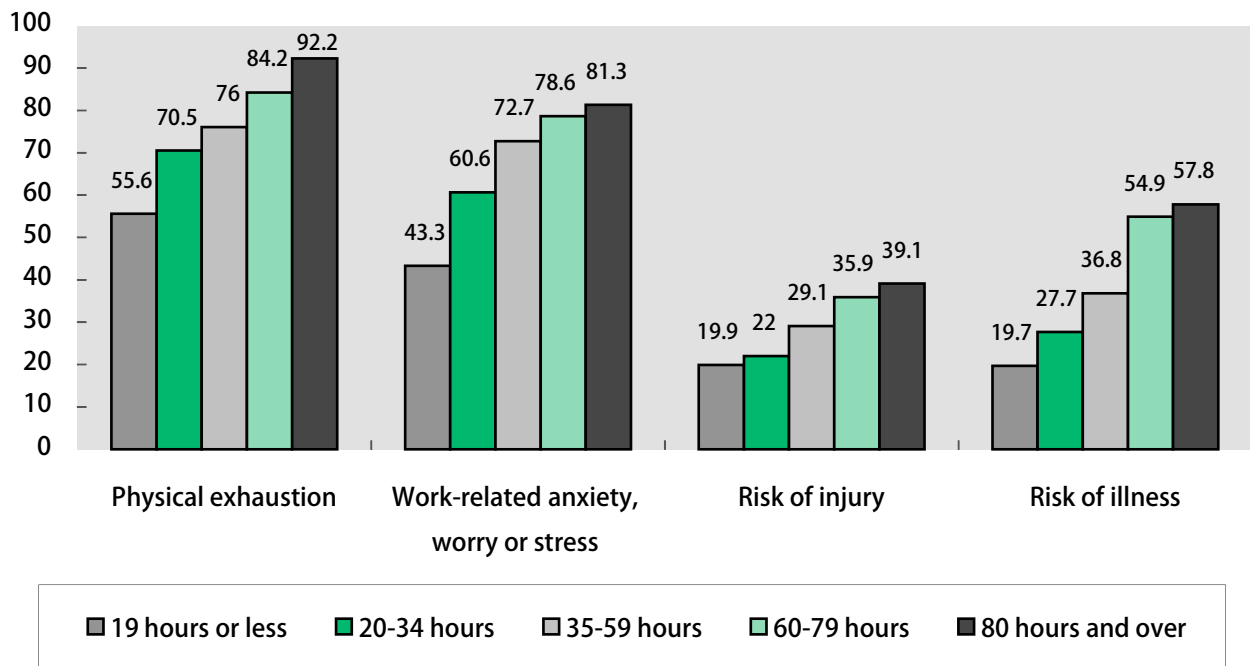
**The Reality of Working Long Hours**

The characteristics of the working hours of Japanese people are not simply that the total hours worked are long, but also that there are many people working exceedingly long hours. According to the

*Labor Force Survey* carried out by the Ministry of Internal Affairs and Communications, even from the first decade of the 21<sup>st</sup> century, the proportion of those working long hours totaling at least 60 hours a week has been around 10% of all employees. Furthermore, if we restrict this to male employees in their 30s, that proportion is in excess of 20%.

These people working long hours are easily exposed to physical exhaustion, mental stress, and the danger of injury or illness. According to a questionnaire carried out by the JILPT in 2010, one can clearly see that the longer the hours worked by a person in a week, the easier it is for them to be exposed to stress and health risks as a result.

**III-16 Relationship between Weekly Working Hours, Stress and Health Risks (%)**



Source: From JILPT, 2009 *General Survey of the Actual Employment Situation of Japanese People*  
 Notes: 1) These figures focus on all workers (including those other than employees).  
 2) The % figures are totals for those responding “Very much feel” and “Somewhat feel.”

**Karoshi (Death from Overwork)**

An infamous Japanese expression that has become widely known internationally is “*karoshi*.” 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 principal factor behind the occurrence of “death from overwork” is exceptionally long working hours. Consequently, when determining the application of workers’ compensation, firstly, the question of whether the duties from immediately before the date of occurrence up to the previous day were excessive is looked at, and then consideration is given to the situation regarding duties up to a week before the date of occurrence. Furthermore, from 2001, consideration began to be given to whether or not there were excessive duties for a long period of time (whether more than 45 hours of work were done per month outside normal working hours for a period of 1-6 months before the date of occurrence, or whether more than 100 hours of work were done outside normal working hours for the month before the date of occurrence, with more than 80 hours of work being done outside normal working hours per month for a period of 2-6 months before the date of occurrence).

According to data published by the Ministry of Health, Labour and Welfare in June 2010, from fiscal 2005 to fiscal 2009, the number of reported cases of “death from overwork” was around 300, while the number of reported cases of “suicide through overwork” was around 150, so we can see that there is a tendency for the figures to remain at a high level.

### **Annual Paid Leave**

What is effective in reducing working hours is taking annual paid leave. III-17 looks at the number of days of annual paid leave granted, the number of days taken, and the acquisition rate with these as the denominator and numerator. The Labor Standards Act prescribes that 10 days of annual paid leave shall be granted to those with a work attendance rate of at least 80% after six months of continued service, with 20 days being granted to those who have reached six and a half years of continued service. But unfortunately the average number of holidays taken

throughout Japan in 2010 was 8.5. So, in actuality, many paid leave days are not used up. 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.

Various measures need to be devised in order to increase the take-up rate of annual paid leave. One of these is a system of scheduled annual paid leave. A scheduled annual paid leave system is a mechanism that involves annual paid leave being used up simultaneously or in turn in the workplace, based on an agreement between management and labor. Even looking at III-17, we can see that in companies that have introduced a scheduled annual paid leave system, the annual paid leave take-up rate is around 5% higher in comparison to companies that have not introduced this system.

### **Flexible Working Hours System**

At the beginning of this section, the 40-hour working week system was touched upon, but the Labor Standards Act also prescribes a system of irregular working hours. Within this system are: a system of monthly variation, a system of annual variation, flexitime, 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. Flexitime 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

## III-17 Days of Annual Leave Given and Taken and Percentage Consumed (2010)

	Total			With a scheduled annual leave system			No scheduled annual leave system		
	Days given	Days taken	Percentage consumed	Days given	Days taken	Percentage consumed	Days given	Days taken	Percentage consumed
	(days)	(days)	(%)	(days)	(days)	(%)	(days)	(days)	(%)
All sizes	17.9	8.5	47.1	19.1	10.1	52.7	17.4	7.8	44.5
1,000 employees or more	19.0	10.2	53.5	19.8	11.0	55.6	18.3	9.5	51.5
300-999 employees	18.1	8.1	44.9	18.4	9.2	49.7	18.0	7.7	43.0
100-299 employees	17.3	7.8	45.0	18.4	9.3	50.4	17.0	7.4	43.4
30-99 employees	16.9	6.9	41.0	18.0	8.6	47.6	16.6	6.6	39.4
Mining and quarrying of stone and gravel	18.5	11.6	63.0	-	-	-	18.5	11.6	62.6
Construction	18.6	7.1	38.1	21.2	7.8	36.7	18.2	6.6	36.2
Manufacturing	18.6	9.9	53.2	20.2	12.9	64.0	17.7	8.6	48.5
Electricity, gas, heat supply and water	19.6	14.6	74.2	19.2	11.6	60.8	19.7	14.9	75.5
Information and communication	18.8	10.3	54.6	21.0	13.1	62.5	18.3	9.8	53.5
Transport and postal activities	17.2	8.4	48.9	17.7	6.4	36.3	17.2	8.7	50.5
Wholesale and retail trade	17.5	6.0	34.6	19.3	7.0	36.3	17.3	5.7	33.1
Finance and insurance	19.6	8.5	43.3	19.6	8.9	45.3	19.7	8.1	41.0
Real estate and goods rental and leasing	17.0	7.2	42.2	16.6	7.9	47.4	16.9	7.0	41.4
Scientific research, professional and technical services	18.2	9.7	53.3	21.9	13.2	60.1	18.0	9.2	51.1
Accommodations, eating and drinking services	15.8	5.0	31.4	16.0	5.0	31.1	15.9	4.9	31.1
Living-related and personal services and amusement services	15.4	6.5	42.0	16.4	8.5	51.5	15.3	6.4	41.7
Education, learning support	16.7	6.6	39.5	18.3	10.5	57.4	16.1	6.2	38.7
Medical, health care and welfare	14.5	6.4	44.0	17.9	8.1	45.5	14.4	6.3	43.7
Services	16.5	8.7	52.7	19.3	10.1	52.1	16.1	8.3	51.5
2004	18.0	8.5	47.4						
2005	18.0	8.4	46.6						
2006	17.9	8.4	47.1						
2007	17.7	8.3	46.6						
2008*	17.8	8.5	47.7						
2009*	18.3	8.8	48.1						
2010*	18.1	8.7	48.2						

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

Notes: 1) "Days given" does not include days carried over.

2) "Days taken" is the number of days actually taken during a year.

3) The percentage consumed is calculated as follows: total number of days taken / total number of days given x 100 (%)

4) The scope of the survey was expanded from "private enterprises whose main office has 30 or more regular employees" up to 2007 to "private enterprises that have 30 or more regular employees" from 2008.

5) \* shows the figures for "private enterprises whose main office has 30 or more regular employees," and should be referred to for the purpose of making comparisons over time.

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 Standards 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.

## 8 Company Benefits

### Long-terms Trends in Company Benefit Costs

According to a survey by Nippon Keidanren, the cost of compulsory and non-compulsory company

benefits combined in 2009 accounted for 18.3% of the total value of cash earnings (III-18). This is slightly higher than in the early 1990s, when the proportion was 15-16%.

### III-18 Trends in Monthly Benefit Costs and Retirement Benefits per Employee

Survey	Fiscal year	Category	Total value of cash earnings (yen)	Benefit costs (yen)			Retirement benefits (yen)	Proportion of benefit costs to total value of cash earnings (%)
				Total	Compulsory	Non-compulsory		
35th	90		482,592	74,482	48,600	25,822	36,466	15.4
36th	91		492,587	77,091	49,865	27,226	42,786	15.7
37th	92		501,188	79,130	50,782	28,348	36,866	15.8
38th	93		500,983	79,543	50,998	28,545	38,171	15.9
39th	94		513,412	82,169	53,291	28,878	42,908	16.0
40th	95		525,651	88,174	58,679	29,495	45,341	16.8
41st	96		542,368	90,989	61,233	29,756	48,288	16.8
42nd	97		541,209	91,828	62,896	28,932	56,745	17.0
43rd	98		546,116	91,575	63,162	28,413	63,341	16.8
44th	99		548,191	92,188	63,763	28,425	72,775	16.8
45th	2000		550,802	93,203	65,423	27,780	69,256	16.9
46th	01		562,098	95,883	68,482	27,401	80,495	17.1
47th	02		558,494	96,755	68,552	28,203	87,283	17.3
48th	03		565,935	100,811	72,853	27,958	92,037	17.8
49th	04		578,054	102,372	74,106	28,266	80,499	17.7
50th	05		583,386	103,722	75,436	28,286	81,685	17.8
51st	06		587,658	104,787	76,437	28,350	76,605	17.8
52nd	07		586,008	103,934	75,936	27,998	71,551	17.7
53rd	08		572,781	103,311	75,621	27,690	65,839	18.0
54th	09		533,379	97,440	71,480	25,960	67,006	18.3

Source: Nippon Keidanren, *Results of the FY2009 Survey of Company Benefit Costs*

### Breakdown of Benefit Costs

Compulsory benefit costs refer to costs such as social insurance premiums that are borne by companies. Consequently, the area where companies differ considerably is in that of non-compulsory benefit costs, which companies take on voluntarily.

III-19 shows a breakdown of benefit costs in FY2009.

First, the bulk of compulsory benefit costs consists of the portion of employees' pension insurance, health insurance, and long-term care insurance borne by the employer, which accounts for approximately 91% of compulsory benefit costs, 67% of total benefit

costs, and 12% of the total value of cash earnings. A breakdown of non-compulsory benefit costs reveals a relatively high proportion to be accounted for by housing-related expenses, which account for approximately 49% of non-compulsory benefit costs and 13% of total benefit costs. However, the amount spent on many categories of non-compulsory benefit costs is decreasing. Areas where the decline is greater than the decline in the total value of cash earnings include the following: support for living costs (down 8.7%); congratulatory or condolence-related benefits (down 9.7%); cultural, sporting and recreational benefits (down 8.5%); mutual aid associations (down 14.6%); welfare service agency costs (down 12.9%); and other benefits (down 11.9%).

By the way, non-compulsory benefit costs account for approximately 27% of total benefit costs, but only 4.9% of the total value of cash earnings. In contrast, retirement packages at Japanese companies are substantial and, as shown in the table, expenditure on retirement payments account for approximately 13% of the total value of cash earnings.

## 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 III-20 shows that enterprises that paid retirement benefits accounted for 83.9% of the total in 2008. Among these, only lump sum retirement allowances and only retirement pensions constitute 55.3% and 12.8% respectively, while the figure for cases where these categories are combined is 31.9%. If we look at the relationship to the scale of the company, the smaller the company, the more likely it is that a worker will receive only a lump-sum payment on retirement, while the larger the company, the more likely it is that a worker will receive either a retirement pension or both a lump sum and a pension.

It is generally seen that both lump sum retirement allowances 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 lump sum retirement allowances and retirement pension have become a factor 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. Factors behind this include the fact that the aging of employees has led to an increase in the amount paid by companies as a lump sum retirement allowance and the fact that companies can receive tax benefits if they turn their retirement benefits into a pension system.

However, the status of the introduction of retirement benefit systems differs considerably according to the form of employment. According to the General Survey on Diversified Types of Employment carried out in 2003 by the Ministry of Health, Labour and Welfare, whereas the proportion of companies that had introduced a retirement benefit system for their "regular employees" was 66.1%, the proportion that had introduced them for "contract workers (full-time workers on fixed-term contracts)" was 16.6%, and in the case of "part-time workers" it was 7.3%.

### III-19 Breakdown of Welfare Expenses in FY2009 (All-industry Monthly Average per Employee)

Category	Amount (yen)	Change from previous fiscal year (%)
Total value of cash earnings	533,379	- 6.9
Benefit costs	97,440	- 5.7
Compulsory	71,480	- 5.5
Health and long-term care insurance	24,711	- 3.9
Employees' pension insurance	40,194	- 3.0
Employment and workers' accident insurance	5,896	- 24.0
Child allowance contributions	657	- 5.9
Other	22	- 40.5
Non-compulsory	25,960	- 6.2
(Main category)(Sub-category)		
Housing related	12,654	- 4.2
Housing	12,059	- 3.5
Home ownership support	595	- 16.4
Health and medical care	2,989	- 3.5
Operation of medical and health care facilities	2,119	- 6.1
Healthcare support	870	3.3
Living assistance	5,939	- 8.7
Meals	2,076	- 12.3
Purchases and shopping	269	- 13.8
Clothing	396	- 17.3
Insurance	1,025	- 0.1
Nursing care	25	- 16.7
Childcare	177	17.2
Family support	340	3.0
Asset accumulation	1,008	- 14.5
Commuter buses and parking	494	2.3
Other	128	- 14.1
Congratulatory and condolences	713	- 9.7
Allowance for congratulatory and condolences	652	- 11.3
Fringe benefits in excess of legal minimum	61	10.9
Culture, sport, and recreation	2,021	- 8.5
Facilities and operation	1,070	- 6.1
Subsidization of activities	951	- 11.0
Mutual aid money	245	- 14.6
Benefit agency services	298	- 12.9
Other	1,100	- 11.9
Commuting allowance and commutation costs	9,597	- 6.2
Retirement benefits	67,006	1.8
Lump-sum retirement allowance	30,736	1.6
Retirement annuity	36,271	1.9

Source: Nippon Keidanren, *Results of the FY2009 Survey of Company Benefit Costs*

### III-20 Percentages of Enterprises with Retirement Benefit (Lump Sum/Annuity) Schemes and Breakdown by Type

(%)

Enterprise size, industry, and year	All enterprises	Enterprises with retirement benefit (lump sum/annuity) scheme <sup>1)</sup>					Enterprises with no retirement benefit (lump sum/annuity)	(Re-grouped) With retirement benefits	
		Lump sum only	Annuity only	Lump sum and annuity	Lump-sum scheme (inc. enterprises with both)	Annuity scheme (inc. enterprises with both)			
All sizes	100.0	83.9	(100.0)	(55.3)	(12.8)	(31.9)	16.1	(87.2)	(44.7)
1,000 employees or more	100.0	95.2	(100.0)	(19.3)	(24.0)	(56.7)	4.8	(76.0)	(80.7)
300-999 employees	100.0	92.2	(100.0)	(30.7)	(23.7)	(45.6)	7.8	(76.3)	(69.3)
100-299 employees	100.0	88.0	(100.0)	(41.1)	(17.7)	(41.2)	12.0	(82.3)	(58.9)
30-99 employees	100.0	81.7	(100.0)	(63.0)	(9.9)	(27.1)	18.3	(90.1)	(37.0)
Mining	100.0	96.4	(100.0)	(64.5)	(15.3)	(20.2)	3.6	(84.7)	(35.5)
Construction	100.0	91.9	(100.0)	(50.6)	(10.1)	(39.2)	8.1	(89.9)	(49.4)
Manufacturing	100.0	88.8	(100.0)	(51.7)	(13.9)	(34.4)	11.2	(86.1)	(48.3)
Electricity, gas, heat supply and water	100.0	100.0	(100.0)	(32.9)	(13.6)	(53.6)	-	(86.4)	(67.1)
Information and communication	100.0	89.3	(100.0)	(42.4)	(17.8)	(39.8)	10.7	(82.2)	(57.6)
Transport	100.0	78.1	(100.0)	(59.8)	(13.7)	(26.5)	21.9	(86.3)	(40.2)
Wholesale and retail trade	100.0	87.3	(100.0)	(55.2)	(12.6)	(32.3)	12.7	(87.4)	(44.8)
Finance, insurance	100.0	95.6	(100.0)	(28.7)	(27.8)	(43.5)	4.4	(72.2)	(71.3)
Real estate	100.0	79.4	(100.0)	(69.6)	(9.9)	(20.5)	20.6	(90.1)	(30.4)
Eating and drinking place, accommodations	100.0	69.9	(100.0)	(71.3)	(8.6)	(20.1)	30.1	(91.4)	(28.7)
Healthcare, welfare	100.0	62.3	(100.0)	(82.2)	(3.4)	(14.3)	37.7	(96.6)	(17.8)
Education, learning assistance	100.0	79.9	(100.0)	(67.7)	(15.6)	(16.7)	20.1	(84.4)	(32.3)
Services (Not otherwise classified)	100.0	72.5	(100.0)	(61.1)	(11.2)	(27.6)	27.5	(88.8)	(38.9)
1989	100.0	88.9	(100.0)	(49.3)	(11.3)	(39.3)	11.1	(88.7)	(50.7)
1993	100.0	92.0	(100.0)	(47.0)	(18.6)	(34.5)	8.0	(81.4)	(53.0)
1997	100.0	88.9	(100.0)	(47.5)	(20.3)	(32.2)	11.1	(79.7)	(52.5)
2003	100.0	86.7	(100.0)	(46.5)	(19.6)	(33.9)	13.3	(80.4)	(53.5)
2008 <sup>2)</sup>	100.0	85.3	(100.0)	(53.1)	(13.2)	(33.7)	14.7	(86.8)	(46.9)

Source: Ministry of Health, Labour and Welfare, *General Survey of Working Conditions* (2008)

Notes: 1) Figures in parentheses indicate the proportion as a percentage of enterprises with retirement benefit (lump sum/annuity) schemes.

2) The survey date is as of the end of December in the case of figures for 1999 and earlier, and as of January 1 from 2001 onwards. The years shown in the table represent the survey years.

3) The scope of the survey was expanded from "private enterprises whose main office has 30 or more regular employees" up to 2007 to "private enterprises that have 30 or more regular employees" from 2008.

20\* shows the figures for "private enterprises whose main office has 30 or more regular employees," and should be referred to for the purpose of making comparisons over time.