

# Japan Labor Issues

Autumn 2024

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The Japan Institute for Labour Policy and Training

International Research Exchange Section

8-23, Kamishakujii 4-chome, Nerima-ku, Tokyo 177-8502, Japan

TEL: +81-3-5903-6274 FAX: +81-3-3594-1113

For inquiries and feedback: [j-emm@jil.go.jp](mailto:j-emm@jil.go.jp)

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## Freelance Act Comes into Effect in November 2024

A new law for protecting persons working as freelancers will be in effect in Japan on November 1, 2024. The Act on Ensuring Proper Transactions Involving Specified Entrusted Business Operators (“Freelance Act”) was passed by the plenary session of the House of Councilors unanimously on April 28, 2023, and was promulgated on May 12 that year. The Act aims at optimizing transactions and improving the work environment for freelancers “can stably engage in services with which they have been entrusted as enterprises, in view of the progress in the diversification of ways of working in Japan, thereby contributing to the sound development of the national economy.” It obligates for the client enterprises to clearly state the contract details and pay remuneration to freelancers within 60 days after the completion of the work or delivery of the product. The client enterprises are required to consider the balance between work and childcare and family care for freelancers and to take necessary measures to prevent harassment.

### I. Definitions

#### **The Act covers persons who undertake work and have no employee**

The parties and transactions covered under the Freelance Act are defined in Article 2 as follows. The business contractor—called in the Act “specified entrusted business operator” (*tokutei jutaku jigyo-sha*)—is an individual or a corporation to whom business is entrusted (to whom work is “outsourced,” in a broad sense) and who does not use any employees. Freelance worker—“specified person engaged in

entrusted business” (*tokutei jyutaku gyomu jigyo-sha*)—is an individual who is a specified entrusted business operator and the representative of a corporation to whom business is entrusted and who does not use any employees.

Besides these terms given respectively in the Act, both are “freelancer” collectively. It should be noted that the same single freelance worker is regarded as a business contractor from an economic-legal point of view by Japan Fair Trade Commission (JFTC) which has jurisdiction over this new law, and, on other hand, is considered as a person engaged in business/work from a labor policy point of view by the Minister of Health, Labour and Welfare (MHLW), and that both of entities has placed provisions for each.

As for the client side, the Act defines as follows. Similar to the above, the following two are “client enterprise” collectively. One is “entrusting business operator (*gyomu itaku jigyo-sha*)” regarded as an enterprise that entrusts business to a freelancer. The other is “specified entrusting business operator (*tokutei gyomu itaku jigyo-sha*)” considered as an individual or a corporation that uses employees.

“Business entrustment” (*gyomu itaku*) is defined as an activity in which an client enterprise, for the business purposes, entrusts business such as the manufacturing of goods, creation of information-based products, or provision of services to another enterprise. The term “employee” used in the Act does not include a person employed temporarily for short hours or a short term.

## II. Prohibitions and obligations

### 1. Prohibiting the unjust reduction of remuneration and the return of the delivered product

For the optimization of transactions, the Freelance Act requires a client enterprise that has outsourced work to a freelancer to clearly indicate matters such as the details of the work and the amount of remuneration (Art.3). It also requires the client enterprise to pay remuneration to the freelancer by a due date, which is set within 60 days after the completion of the work or the delivery of the product (Art.4).

The Act prohibits a client enterprise that has outsourced work to a freelancer from engaging in the following acts (Art.5): (i) refusal to receive the work from the freelancer without grounds attributable to the freelancer; (ii) reducing the amount of remuneration without grounds attributable to the freelancer; (iii) returning the delivered product or creation to the freelancer without grounds attributable to the freelancer; (iv) unjustly setting an amount of remuneration at a level conspicuously lower than the price ordinarily paid; and (v) coercing the freelancer to purchase goods or use services as designated by the client enterprise without good reasons. The Act also provides that the client enterprise must not unjustifiably harm the interest of the freelancer by (vi) having the freelancer provide money, services, or other economic gains for the client enterprise or (vii) having the freelancer change the details of the work or perform the work again without grounds attributable to the freelancer.

### 2. Making it obligatory for a client to consider the balance between work and childcare and family care

The Act also provides for measures to improve the work environment for freelancers. Specifically, (i) when providing recruitment information by advertisement, the client enterprise must not make false representation and must keep the information accurate and up-to-date (Art.12); (ii) the client enterprise must give necessary consideration upon

request to enable the freelancer perform the work related to the contracted work for a period longer than the specified by Cabinet Order or a longer period (hereinafter “continued business entrustment”) while balancing work and childcare and family care, etc. (Art.13); (iii) the client enterprise must take measures to set up necessary systems for providing consultation to the freelance worker on harassment, etc. (Art.14); and (iv) if the client enterprise cancels the contract for continued business entrustment before the expiry date, the client enterprise must notify the freelancer 30 days prior to the date of cancellation in principle (Art.16).

With regard to the client enterprise that have violated the Act, the Fair Trade Commission, the (Director-General of) Small and Medium Sized Enterprise Agency, or the MHLW may provide advice and guidance, collect reports, conduct on-site inspection, make recommendations, issue orders, and publicize the facts about the recommendation or order. Those who have violated an order or refused inspection are punished by a fine of up to 500,000 yen.

## III. Labor unions’ reaction

### “First step toward protection and support for freelancers” (JTUC-Rengo)

How does the labor side regard the new legislation? Considering that the Act would lead to increase protection for working person, Japan’s largest national confederation of trade unions, JTUC-Rengo (Japanese Trade Union Confederation), prioritized this bill in this plenary session and demanded that it should be passed. On April 28, 2023, in the name of the General Secretary Hideyuki Shimizu, JTUC Rengo issued a statement that it would evaluate the Act as the “first step toward protection and support for freelancers” and appreciated the fact that the bill was passed unanimously. It raised the issue of how to ensure the effectiveness of the Act in terms of payment of remuneration and the consideration of the balance between work and childcare and family care as a challenge, stating that discussion should be held at an

open forum with the participation of stakeholders toward shaping related supplementary resolutions. JTUC-Rengo also pointed out that “working as a freelancer is similar to working as a ‘worker’ in the meaning under the Labor Standards Act, but quite a few freelancers engage in work under a contract for work as an ambiguous employment contract.” It stressed that “reviewing and improving the criteria for judging the worker status was an urgent issue and discussion should be started as soon as possible.”

Zenroren (National Confederation of Trade Unions) argued in the discussion on the bill in the Diet that the bill should be amended to apply to short-term transactions, to introduce the minimum wage regulation, and to set the due date for payment of remuneration with due consideration for freelancers’ livelihood (shortening the period until the payment date from 60 days to 30 days).

#### **IV. MHLW study group’s report on improving freelancers’ working environment**

In preparation for the enforcement of the Act, the MHLW’s study group had been studying the specifics of the items included in the Act, for improvement of

the working environment for the business contractors. Their report, compiled on May 22, 2024, presents specific methods of providing information on the accurate display of recruitment information (as stipulated in Article 12 of the Act) including written documents, faxes and e-mails. The matters to be indicated were enumerated, including the nature of the work, place of work, duration, hours and remuneration. In relation to Article 13, which stipulates that consideration shall be given so that business contractors can work in a way that is compatible with pregnancy, childbirth, childcare, or nursing care, the report clearly states that “six months” is an appropriate period of continued business entrustment in cases where consideration is required, and gives examples of the specific details of the consideration.

For information on Japanese government’s policies on freelance work, Hamaguchi 2022 provides detailed explanation and commentaries including comparison with those in other countries.

#### **Reference**

Hamaguchi, Keiichiro. 2022. “Labor Law Policy on Freelance Work.” *Japan Labor Issues* 6, no.38: 6–12. [https://www.jil.go.jp/english/jli/documents/2022/038\\_02.pdf](https://www.jil.go.jp/english/jli/documents/2022/038_02.pdf).

## Article

What Is “Job-based Employment” (*Job-gata koyō*)?

HAMAGUCHI Keiichiro

“Japan is updating the current seniority and ability-based pay on the membership-based employment system into a new job-based employment system.” In September 2022, Prime Minister Fumio Kishida announced at the New York Stock Exchange. Also, in his policy speech to the 210th session of the Diet in October of the same year, he stated that the government would compile guidelines for “transitioning from ability-based pay within a seniority system to job-based pay that is appropriate for Japan.”

The term “job-based employment” (*job-gata koyō*) was first used in the beginning of the year 2020 by Keidanren (Japan Business Federation) in the *2020 Report of the Special Committee on Management and Labor Policy*, and has become a buzzword in the media and on the internet. This term seems to be used in the context of meaning that Japan’s membership-based employment system, which is outdated, rigid, and less productive, should be replaced with a new job-based employment system, which is more flexible and productive. However, “job-based employment” and “membership-based employment” are terms that I invented with the objective of comparing Japan’s employment system with that of Europe and the United States. From the viewpoint of the person who coined these terms, I should say that arguments on “job-based employment” currently going viral are full of misunderstandings of this term.

The first point that I expect you to understand is that job-based employment is not a new but rather an old employment system. The job-based employment system has at least more than 100 years of history. A modern industrial society was born in the United

Kingdom in the 19th century and then gradually spread in European countries, the United States, Japan, and Asian countries. The job-based employment system is the basic structure of the corporate organization in modern society. In this system, a job comes first, and then a person suited to the job is assigned to it.

On the other hand, the membership-based employment is a new employment system established in Japan during the post-war rapid economic growth period. In this system, a person (employee) comes first, and a job is assigned to the person. Basically, employees are expected to do whatever their company orders them to do, without limitation to their work, working hours, or place of work. Such flexibility of the membership-based employment system produces higher efficiency than the rigid job-based employment system. At the same time, however, the membership-based system has had negative effects, as it involves long working hours and *tenkin* (workplace relocation by the order of the company), becoming an obstacle to the use of female workers and non-regular workers. Today, the harmful effects are becoming more noticeable.

From this perspective, I have advocated the introduction of job-based regular employees. However, arguments on the job-based employment system prevailing in recent years seem to be based on the opposite interpretation of this system. What is most problematic among them is the argument that the job-based employment system is a performance-based evaluation system, which is repeatedly covered by the media. So many people believe that, but this is nearly the opposite of the truth.

## Job-based employment system

### Basic structure of the corporate organization in modern society

A job comes first, and then a person suited to the job is assigned to the job.

## Membership-based employment system

### New employment system established in Japan during the post-war rapid economic growth period

A person (employee) comes first, and a job is assigned to the person.

Naturally, in both under the job-based employment and membership-based employment systems, employees with jobs in higher positions are more likely to be evaluated for their job performance, whereas those with jobs in middle and lower positions are less likely to be evaluated. This is common to both systems, but the degree or range for evaluation differs. Completely contrary to “common sense” accepted by many people, under the job-based employment system, employees’ job performance is not subject to evaluation except for those in managerial positions or those with specialized jobs, whereas, under the membership-based employment system, all employees, including entry-level employees, are subject to evaluation. This is the biggest difference between these systems.

Let us go back to the basics and consider what the job-based employment system is. With this system, there is a job first, and then a person who is expected to be able to perform the job is assigned to the job. Metaphorically speaking, a price tag (wage) is already put on the chair before a person is seated there. This can be described as the fixed price system for jobs. A person who has the skills that are required for the job and commensurate to the fixed price is assigned to the job, rather than evaluating the job performance in detail and changing the price after assigning a person to the job. This is the fundamental principle of the job-based employment system. In the first place, the performance-based evaluation system does not fit an ordinary job. As an exception, jobs in

higher positions close to the management cannot be completely evaluated by the dichotomy (i.e., whether or not the person has done the job “good” or “not so good”); but the job performance of them is evaluated in more detail. This appraisal is probably what many in the media and critics perceive as the performance-based evaluation system. However, such a fluctuating price framework represents only the higher echelons of the job-based employment system.

On the other hand, under the membership-based employment system, companies’ strong authority over personnel affairs allows them to assign employees to many different jobs. Thus, the price (wage) would not vary depending on the job. Instead, a uniform price is offered to all new recruits, and then, from the stage of entry-level employees, detailed performance review is conducted to set different prices for them. Nevertheless, employees are not evaluated based on their job skills upon recruitment and after joining the company.

Although often misunderstood, the term “ability” (*nōryoku*), which serves as an evaluation criterion in Japanese companies, does not mean specific job skills, but rather means a person’s potential ability or social skills. Another evaluation criterion frequently used is “aspiration” (*iyoku*). Employees who work hard until late at night are more likely to be valued as having high aspirations than those who voluntarily study to improve their specific job skills. Meanwhile, at the typical workplace in Japan where employees carry out their work by forming a group, it is difficult



to distinguish individual employees' performance, which makes it difficult to evaluate them based on the performance. On the other hand, in the Japanese workplace where work is carried out in groups, distinguishing the performance of each individual is challenging, which makes it difficult to evaluate them on the basis of "results."

As explained above, for ordinary workers who form the majority, the membership-based employment system is overwhelmingly more likely to value workers themselves as being than the job-based employment system. However, it places too much emphasis on their "abilities" and "aspirations," and evaluation based on performance is rare. The problem is that this approach to evaluating middle and lower-level workers is automatically applied to workers in managerial positions who are close to the management as well. As a result, a criticism arises that while workers in managerial or specialized position in the job-based society are subject to strict performance evaluation unlike ordinary workers who are secured as long as they do their assigned work, managers in the Japanese employment system settle in the cosseted situation. That is exactly true. However, such managers are only a handful at the higher echelons of the job-based society. A typical worker in the job-based society is completely different from them.

The major principle of the job-based employment system is that a job comes first. There is a job, with its specific content being clearly indicated in advance, and an almost fixed price (wage) is set for the job. A company recruits personnel to be assigned to the job, people who have the skills to perform the job apply for the job, the operational manager decides to hire a person for the job through an interview and checks whether the hired person can actually perform the job, and the predetermined wage (job wage) is paid to the person. This is a job-based employment system in the vast majority of cases.

I would like to say that such job-based employment system, which is sober and not glamorous, is what is now needed in Japan. The membership-based employment system, in which workers are ordered to do anything at anytime, anywhere, may have been highly efficient in society as a whole at the time when tough, young males who could stand such work accounted for the majority of workers. It cannot use a diverse labor force such as females and older people, resulting in undermining social vitality. If companies earnestly intend to introduce the job-based employment system, they should first prepare to give up their strong authority over personnel affairs that they have taken for granted. How many Japanese companies are ready to do so?

**HAMAGUCHI Keiichiro**

Research Director General, The Japan Institute for Labour Policy and Training. Research interest: Labor policy.

<https://www.jil.go.jp/english/profile/hamaguchi.html>



## Article

# Changes and Continuity in Non-regular Employment in Japan: Improved General Situation, Yet Persistent Gender Structure

TAKAHASHI Koji

## I. Background and purpose

There have been numerous research articles produced that address the issue of non-regular employment in Japan dealing with the situation at a certain point in time, but few analyzing the flow. However, the reality is changing over time, affected by the labor policies and economic conditions. This article aims to clarify the changes in and continuity of non-regular employment in Japan during the 2010s and discuss further research agenda on regular/non-regular employment.

Takahashi (2017), published in the first issue of *Japan Labor Issues*, emphasized the severe polarization of working conditions and working styles between regular and non-regular workers in the first half of the 2010s in Japan. It was a commentary based on a research report (JILPT 2016) written by eight researchers and compiled by the author in the previous year.

During the 2010s, however, we also saw a notable transition in the direction of labor policies, and in the latter half of the decade, the demand-supply balance transformed dramatically from labor excess to labor shortage. Fundamental shifts in legislation and the labor market might improve the working conditions of non-regular workers. Five researchers including the author agreed that such situation needs to be clarified in terms of the changes in and continuity of non-regular employment in Japan. Thus, another research report was compiled to delve deeper into the issues “after” the polarization of working conditions and working styles (JILPT 2024).

The analysis conducted along these lines yielded

important results not only for domestic researchers and policy makers but also for international readers. We decided to jointly make presentations at an international academic conference in June 2024, for the purpose of developing JILPT’s research by sharing the results and exchanging insights with foreign researchers in this field.<sup>1</sup> Sections II to V summarize the contents of four presentations made by Koji Takahashi, Yasutaka Fukui, Fumiko Nishino, and Takeshi Okamoto, respectively. Section V challenges to answer to the question “what has changed and what has not changed” in the long term and discusses further agenda for our future research.

## II. Overview of non-regular employment problems and a few positive signs for an equal labor market

At the above-mentioned conference, Takahashi presented an overview of non-regular employment problems in Japan, pivotal shifts in legislation and the labor market, and showed a few indicators that suggest slight improvement toward an equal labor market. Non-regular workers are defined as workers who fall under the category of part-time, fixed-term contract, or temporary agency (dispatched) workers, in principle. According to Takahashi, however, it is also important to note that under the Japanese-style employment system, non-regular workers are used for jobs that involve supplementary tasks with less stability, whereas regular workers enjoy long-term employment.

What characterize the severity of regular/non-regular employment issues in Japan are the rapid

expansion of non-regular employment and the establishment of a “new dual labor market.” Amid the de-regulation of the labor market and during the so-called “employment ice age” after the burst of the bubble economy, the number of non-regular workers increased rapidly, resulting in the establishment of a new dual labor market at the beginning of the 21st century. Here, the new dual labor market is composed of: (1) significant wage disparity between regular and non-regular workers; (2) difficulty in transitioning from non-regular to regular positions; and (3) the association between non-regular employment and the male breadwinner model.

More recently, reversal trends have appeared.<sup>2</sup> The growing public discontent toward the striking social disparity prompted the Liberal Democratic Party (LDP) administration to begin laying out policies for the protection of non-regular workers around 2007. From 2009 to 2012, the Democratic Party of Japan administration tightened regulations regarding part-time work, fixed-term labor contracts, and temporary agency work. The LDP administration, upon returning to the government at the end of 2012, focused even greater efforts toward stabilizing employment and improving the treatment of non-regular workers in light of serious growing labor shortages.

In fact, we can observe a few positive signs from the mid-2010s to now. For example, the percentage of non-regular workers among all employed workers has started to decrease except for older workers. In addition, the ratio of non-regular workers who select non-regular positions involuntarily (who chose “not obtaining a job as a regular employee” as the reason why they have become non-regular workers) among all non-regular workers is also declining.

Based on the understanding above, Takahashi argued that detailed analyses on each aspect of the new dual labor market are required. Corresponding to the agenda set by Takahashi, each of the three other researchers examined whether “the wage disparities have been narrowed,” “the transition to regular positions has become easier,” and “the linkage between regular/non-regular employment and male breadwinner model has changed,”

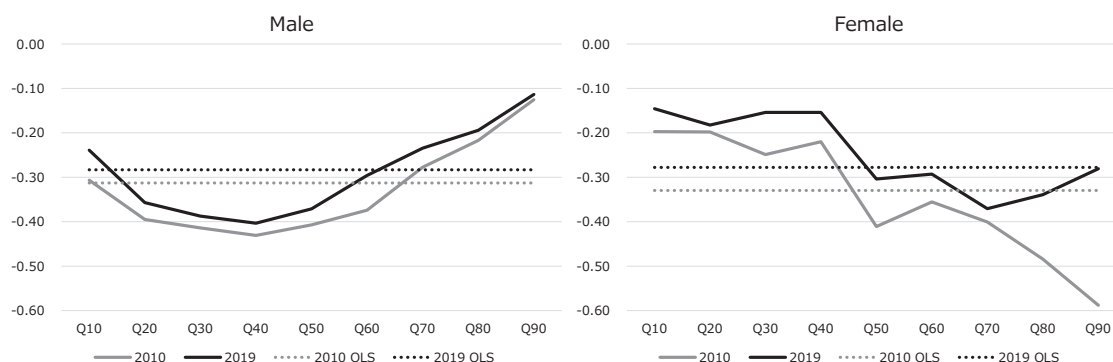
respectively.

### III. Wage disparity between regular and non-regular employment

Fukui, Associate Professor at Nagoya University, examined whether the wage disparity between regular and non-regular employment in Japan decreased in the 2010s. What is unique to Fukui’s approach is to focus on different points on the wage distribution curve. It is well known that there is a significant wage disparity between regular and nonregular employees in Japan, but whether this disparity is uniform or heterogeneous has not received sufficient attention. Fukui also pays attention to the impact of the minimum wage on the wage gap between regular and non-regular employees. Although the government, labor unions, and employers’ associations agreed to raise the minimum wage in 2008, and regional minimum wages have increased substantially since then, the impact of these institutional changes on wage disparity between regular and non-regular employees has not been examined.

Fukui applies unconditional quantile regression analysis with the Recentered Influence Function (RIF) of the quantiles as the objective variable. A sample of workers aged 20–59 collected by the “General Survey on Diversified Types of Employment,” a nation-wide survey conducted by the Ministry of Health, Labor, and Welfare in Japan in 2010 and 2019 is analyzed.

Firstly, focusing on the results of simple OLS Models, Fukui finds that the wage penalty for non-regular employment decreased slightly between 2010 and 2019, showing a 1 percent point decrease for male workers and a 5 percent point decrease for female workers. Secondly, the results of the unconditional quantile regression indicate that the wage penalty is not uniform, depending on the location of the wage distribution. For male workers, the wage disparity between regular and non-regular employment is sizeable at the bottom and small at the top of the wage distribution curve, while that for female workers is small for those receiving lower



Source: JILPT (2024: 151), Figure 4-5-1. Calculated by Yasutaka Fukui.

Notes: 1. Dependent variable is the logarithm of hourly wage of individual workers.

2. Control variables include years of education, years of experience, squares of years of experience, occupation, industry, and firm size.

Figure 1. Wage penalty of non-regular employment (coefficient of non-regular dummy)

wages and sizeable for those with higher remuneration (Figure 1). Thirdly, more importantly, the second results are consistent in 2010 and 2019. And finally, regional minimum wages were found to increase the remuneration of low-wage workers to a larger extent in non-regular than in regular employment.

Based on the results above, Fukui concludes that the wage penalty for non-regular employment decreased during the 2010s, and that higher regional minimum wages reduced the wage penalty for non-regular employment at the lower end of the wage distribution, suggesting that policies to increase minimum wages were effective in reducing the wage gap between regular and non-regular employment.

#### IV. Transition from non-regular to regular positions

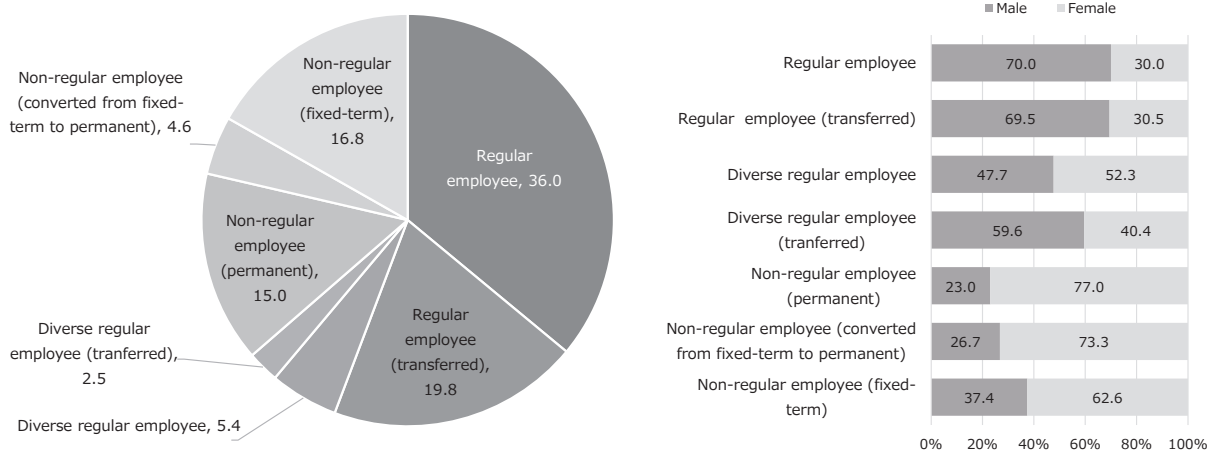
Nishino, Professor at Hitotsubashi University, aimed to reveal the reality of the transition from non-regular to regular employment and “diverse forms of regular employment” in Japan, and discussed whether the previous division of the labor market has changed and become ladder shaped.

It has been theorized that the Japanese labor market is dualistic, characterized by strong protection for regular employees and minimal regulation for non-regular employees. There has been limited

upward mobility among non-regular employees and difficulties in transitioning from non-regular to regular positions. Since 2010, the government has aimed to bridge this gap and improve working conditions for non-regular employees in two ways: (1) promoting the transition from non-regular to regular jobs; and (2) improving the wages of non-regular employees. According to Nishino, the government has placed a particular emphasis on the first method, and it promoted the introduction of a new type of regular employment, “diverse forms of regular employment,” as an intermediate category.

Nishino analyzes data obtained from a large scale internet survey conducted by JILPT in 2021. The advantage of using this data is that it can grasp the transition of workers after 2018, when conversions from fixed-term to permanent contracts, which were enabled by the revision of Labor Contract Act in 2012, have been accelerated.

The questionnaire of the survey includes questions regarding “employment type (regular employment/diverse forms of regular employment/non-regular employment),” “period of employment contract (permanent/fixed-term),” and “whether he/she has transferred from fixed-term to permanent employment.” Mixing these three criteria, Nishino divides workers into seven categories. The left side of Figure 2 shows that while “regular employees



Source: JILPT (2024: 231-2), Figure 7-5-1 and 7-5-2. Calculated by Fumiko Nishino.

Note: Respondents were collected from registrants of an internet survey company. The distribution of gender, age, and employment types of the respondents are identical to those of all employees in Japan.

Figure 2. Ratio of workers by employment type and gender composition of each type

(transferred)” account for more than 35% of all regular employees,<sup>3</sup> the share of “diverse forms of regular employees (transferred)” is not that large. The right side of the figure reveals that the composition of men among “regular employees (transferred)” and “diverse forms of regular employees (transferred)” is higher than that of men among non-regular employees, suggesting that men are more likely to switch to regular employees.

So far, diverse forms of regular employment are not necessarily utilized as the bridge from non-regular to regular transition, although transition itself has become prevalent to some extent. In addition, it should be noted that male non-regular workers have a better chance of transitioning to regular employment, while female non-regular workers tend to remain in non-regular employment even if converted to a permanent contract.

## V. Relationship between regular/non-regular disparity and “male breadwinner model”

Okamoto, a Ph.D student at Hitotsubashi University, examined whether the “male breadwinner model” is still predominant in Japan while a variety

of policies to reduce working hours, to promote flexible work styles, and to support childcare and older adult care have been implemented since 2010. Okamoto analyzes the individual data of “General Survey on Diversified Types of Employment” conducted by the Ministry of Health, Labour, and Welfare in 2010, 2014, and 2019 to observe the change after 2010. With these data, Okamoto categorizes “family structure (mixed variable of whether living with a spouse and whether living with a child/children),” and “employment and earner status (mixed variable of employment type and primary/secondary earner status)” as independent variables. Dependent variables are working hours and monthly salary/wage.

Despite policy implementation since 2010, Okamoto finds that there have been no significant changes regarding the following aspects: (1) the proportion of “regular employees and primary earners” among men in “living with both a spouse and a child/children” and that of “non-regular employees and secondary earners” among women in “living with both a spouse and a child/children” remain disproportionately high; (2) wage levels for men in “living with both a spouse and a child/children” remain disproportionately high; (3) the

interquartile range of working hours for both genders in regular employment remains narrow, regardless of family structure; and (4) the interquartile range of working hours among women in non-regular employment in “living with both a spouse and a child/children” is disproportionately wide.

Based on the results above, Okamoto concludes that the male breadwinner model continues to be observed in Japan, and that the realistic combination of working arrangements may be limited to “regular employment for men and non-regular employment for women” if one seeks to secure high household income and enough hours necessary for childcare and other household duties.

## VI. Conclusion

While we have observed both changes and continuity in non-regular employment in Japan, the re-regulation and labor shortage in the 2010s seem to have brought about changes in non-regular employment. Certainly, we observed a few positive signs from the mid-2010s to now. The percentage of non-regular workers started to decrease, except for older workers. The ratio of non-regular workers who select non-regular positions involuntarily also decreased. In addition, wage disparity between regular and non-regular workers has been narrowed, and transition from non-regular to regular positions seems to be prevalent at least for males according to the data collected in 2021.

On the other hand, the regular/non-regular disparity is profoundly connected with the male breadwinner model. For couples with a child/children, the combination of regular employment for husbands and non-regular employment for wives is still dominant in Japan. It is also true that female non-regular workers remain in non-regular employment even if converted to a permanent contract.

There are such signs, but the diversity of directions makes it difficult to draw a clear conclusion to the question “what has changed and what has not changed.” The author’s interpretation of this theme had to be updated in the report (JILPT 2024) and then

in the presentation at the international conference. It varied, even more subtly, in the reconsideration for this article. Acknowledging such difficulties, the conclusion for now can be expressed as “improved general situation, yet persistent gender structure.”

After the presentations at the conference, we had valuable feedback from the audience. Some participants who had interests in the situation of freelance workers and platform workers in Japan asked us if the decrease in the ratio of involuntary non-regular workers means there is a shift from non-regular workers to freelance or platform workers. As for those questions, our direct answer was “for now, no.”<sup>4</sup> We presented our views there that, illustrating the data from JILPT (2024), the ratio of non-regular workers who select non-regular employment because “they can work at times convenient to them” is steadily increasing, which suggested that there might be an increase in the number of freelance or platform workers in the near future. We should continue to observe the labor market.

We also received questions regarding the situation of older non-regular workers in Japan. It was, in part, because the majority of the participants at the conference were researchers specialized on social policies and Japan’s “aging society” was one of the topics of most concern to them. We had to excuse, however, that the employment and working conditions of older workers is a different research topic since the mandatory retirement system divides the labor market for older workers and that for young and prime age workers. Nevertheless, it is true that most of the older workers are non-regular workers. We should include their employment and working conditions into our research agenda on non-regular employment in Japan.

1. The 20th East Asian Social Policy Network (EASP) and the 30th Foundation for International Studies of Social Security (FISS) Joint International Conference held in Kyoto, Japan, on July 13-14, 2024. Four of us applied for the conference as a team. One of the contributors, Tomohiko Moriyama (JILPT researcher), was unable to join the presentation as planned due to a conflict in schedule with another international conference to which he attended as a presenter. Their abstracts and posters are available at <https://www.jil.go.jp/english/publications/materials/presentation/2024/p01.html>.



2. A detailed explanation of the reversal shift from de-regulation to re-regulation (or enhanced protection of non-regular workers) is provided in Takahashi (2023).
3.  $(19.8+2.5)/(36.0+19.8+5.4+2.5)=35.0\%$ .
4. According to the discussion at a panel session on the comparison of platform workers among East Asian countries (Lee et al. 2024), it may be “yes” (there is such a shift) in China and South Korea, where a shortage of employment opportunity leads to an increase in platform workers.

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## TAKAHASHI Koji

Senior Researcher, The Japan Institute for Labour Policy and Training. Research interest: Non-regular employment.

<https://www.jil.go.jp/english/profile/takahashi.html>



## Commentary

# Differences in the Base Salary and Bonus between Re-employed Entrusted Workers (*Shokutaku*) and Regular Workers, and Violation of the Former Article 20 of the Labor Contracts Act

The *Nagoya Driving School Case*

Supreme Court (Jul. 20, 2023) 1292 *Rodo Hanrei* 5

YAMAMOTO Yota

## I. Facts

X1 and X2 (plaintiffs; appellees of final appeal) concluded open-ended labor contracts with Company Y (defendant; appellant of final appeal) and engaged in duties of driving instructors of a driving school as regular workers. After retiring at the mandatory retirement age, they were re-employed as entrusted workers (*shokutaku*) by concluding fixed-term labor contracts (for a term of one year) with Company Y, under the continuous employment system prescribed in the Act on Employment Security of Elderly Persons. They continued to engage in duties of driving instructors after being re-employed, but there were differences between the base salary and bonus (lump-sum payment) paid to entrusted workers and those paid to regular workers. At Company Y, while the base salary and bonus for regular workers were stipulated in the work rules, the base salary and lump-sum payment for entrusted workers were stipulated in the rules for entrusted workers and the fixed-term labor contract. The base salary (monthly amount) for X1 and X2 was about 160,000 yen to 180,000 yen at the time of retirement, but it decreased to about 70,000 yen after re-employment (about 80,000 yen for the first year). The average amount of bonuses paid to X1 and X2 for the three years before retirement was about 220,000 yen to 230,000 yen per payment, whereas the amount of lump-sum payment paid to them after re-employment was about 70,000 yen to 100,000 yen per payment. After re-employment, X1 and X2 received employees' old-

age pension and basic continuous employment benefits for the elderly.

X1 sent a document to Company Y to demand that the company revise the wage and other working conditions applied to him as an entrusted worker, and exchanged communications in writing with the company. X1 also sent a document to Company Y as the head of the branch of his labor union (Union A) to request the company's answer regarding the differences in wages between entrusted workers and regular workers.

X1 and X2 filed a lawsuit against Company Y, alleging that the differences in the base salary and bonus between entrusted workers and regular workers as described above are in violation of the former Article 20 of the Labor Contracts Act (Act No. 128 of 2007, prior to the amendment by Act No. 71 of 2018).<sup>1</sup> The court of first instance (Nagoya District Court (October 28, 2020) 1233 *Rohan* 5) found that among these differences, the portion by which the base salary for X1 and X2 after re-employment is less than 60% of the amount of their base salary at the time of retirement, and the portion by which their lump-sum payment is less than the amount calculated on the basis of 60% of their base salary at the time of retirement, were unreasonable, and ordered Company Y to pay these portions to X1 and X2 as compensation for damage due to a tort. As the lower court (Nagoya High Court, (March 25, 2022) 1292 *Rohan* 23) upheld this conclusion, Company Y filed a final appeal to the Supreme Court.

Because of space limitations, the section below



focuses on discussing the part of the Supreme Court judgment concerning the base salary.

## II. Judgment

The judgment in the lower court was partially quashed and the case was remanded to the lower court.

(i) Determining whether or not a difference in working conditions is unreasonable as prescribed in the former Article 20 of the Labor Contracts Act, “it is necessary to examine whether the difference can be evaluated to be unreasonable by considering various circumstances prescribed in the same Article in light of the nature of the base salary...and the purpose of their payment specified by the employer (see the *Metro Commerce* case, Supreme Court (Oct. 13, 2020) 74–7 *Minshu* 1901).”

(ii) The lower court only ruled that the base salary for regular workers had the nature of seniority pay in view of the changes in the amount of base salary paid to some regular workers according to the length of service, and did not examine any other characteristic, the content, or the purpose of payment of the base salary for regular workers, nor did it examine characteristic and the nature of the purpose of the payment of the base salary for entrusted workers.

(iii) In considering the circumstances concerning labor-management negotiations as “other circumstances” (as referred to in the former Article 20 of the Labor Contracts Act), not only the results of the labor-management negotiations such as any agreement reached on the working conditions and the content of such agreement, but also the specific circumstances of the negotiations, should be taken into consideration.

(iv) Company Y engaged in labor-management negotiations with X1 and his labor union, Union A, regarding the revision of the wage and other working conditions for entrusted workers. The lower court only paid attention to the results of the labor-management negotiations and did not take into consideration any specific circumstances, such as Company Y’s answer to the request for the revision and whether and how Union A reacted to it.

## III. Commentary

### 1. Significance of this judgment

This judgment is the eighth judgment rendered by the Supreme Court regarding whether a difference in working conditions violates the former Article 20 of the Labor Contracts Act; it is the second case in which a difference in a working condition between a fixed-term contract worker re-employed after retirement and an open-ended contract worker before retirement, following the *Nagasawa Un-yu* case (Supreme Court (Jun. 1, 2018) 72–2 *Minshu* 202).<sup>2</sup> Compared with these precedents, this judgment is significant in that the Supreme Court clarified the following three points: (a) a difference in the base salary may also be subject to the determination as to unreasonableness under the former Article 20 of the Labor Contracts Act; (b) this determination should be made in light of the nature and the purpose of the base salary, which is an individual working condition; and (c) “other circumstances” referred to in the same Article include the specific process of labor-management negotiations. This judgment also has value as a precedent to be referenced under the Article 8 of the Act on Improvement of Personnel Management and Conversion of Employment Status for Part-Time Workers and Fixed-Term Workers (hereinafter referred to as the “Part-Time/Fixed-Term Employment Act”), which is the successor of the former Article 20 of the Labor Contracts Act.

### 2. Characteristics of this case and the rulings by the court of first and the lower court

In light of the *Nagasawa Un-yu* case and other similar cases in the past, the following five points can be cited as the characteristics of this case. (1) X1 and X2 continued to engage in duties of driving instructors of Company Y throughout the period before and after retirement, and there was no difference in the “content of duties” or “the extent of changes in the content of duties and work locations” referred to in the former Article 20 of the Labor Contracts Act. (2) The base salary for X1 and X2 after re-employment was reduced to about slightly more than 40% to slightly less than 50% of their base salary before

retirement, and the absolute amount of the base salary was quite low. (3) The average amount of base salary for regular workers of Company Y was about 110,000 yen to 120,000 yen for those who have worked for one year or more but less than five years and 160,000 yen to 180,000 yen for those who have worked for 30 years or more. (4) After re-employment, X1 and X2 received employees' old-age pension and basic continuous employment benefits for the elderly. (5) X1 sent a document to Company Y via Union A regarding the differences in wages between entrusted workers and regular workers, and also personally exchanged communications in writing with the company, demanding the revision of the wage and other working conditions.

Given these facts of the case, the first instance regarded the following two facts as the facts serving as a bar to an evaluation of unreasonableness: i) while the base salary for regular workers paid on the assumption of long-term employment has the nature of seniority pay (mentioned in (3) above), the base salary for entrusted workers is not based on the assumption of long-term employment and does not have such nature; and ii) the fact in (4) above. On the other hand, the court took into consideration the following facts as the facts serving as the basis for the evaluation of unreasonableness: iii) the fact in (1) above; iv) the base salary is the "core of the compensation for labor under a labor contract"; and v) the amount of base salary for X1 and X2 after re-employment was reduced to 50% or less than the amount they received as regular workers at the time of retirement, and it was lower than the amount for regular workers who have worked for one year but less than five years (mentioned in (2) and (3)); and vi) such consequence was not the result of labor-management autonomy (mentioned in (5) above). In conclusion, the lower court found that the differences in the base salary were partially unreasonable. The lower court upheld this conclusion.

In drawing the conclusion mentioned above, the court of first instance compared the base salary paid to X1 and X2 at the time of retirement with the average wage of workers in the same age group (55 to 59 years of age) based on the statistical data on the

average wage of workers, etc., which was obtained by compiling the results of the *Basic Survey on Wage Structure* (generally called "Wage Census") conducted by the government every year. Based on the result of the comparison, the court pointed that the base salary for X1 and X2 falls below the average wage, and held that the base salary for X1 and X2 as entrusted workers, which had been reduced to 50% or less of the base salary for regular workers at the time of retirement, has "reached a level that cannot be overlooked from the perspective of securing workers' livelihood." The lower court deleted the description of the comparison with the *Wage Census* but upheld the abovementioned holding. This holding can be evaluated as the stance to take the viewpoint of ensuring the absolute level of working conditions for fixed-term contract workers as a factor in the determination of unreasonableness (hereinafter referred to as the "livelihood security theory").

### 3. Nature and purpose of the base salary

On the other hand, the Supreme Court remanded the case to the lower court to have it further examine the base salaries of regular and entrusted workers in terms of the nature and the purpose of payment of the base salary payments. In this respect, as indicated in point (i) of the judgment, the Supreme Court made reference to the judgment rendered in 2020 by the Supreme Court on the *Metro Commerce* case (first instance: Tokyo District Court (Sept. 14, 2017) 1164 *Rohan* 5). In this case, the difference in the retirement allowance was disputed, and the Supreme Court presented a framework for the determination in which the nature and the purpose of the retirement allowance are examined individually, followed by an evaluation of unreasonableness under the former Article 20 of the Labor Contracts Act. Such a framework itself was also referred to by the Supreme Court in the *Nagasawa Un-yu* case in 2018 (Supreme Court (Jun. 1, 2018) 1179 *Rohan* 34), but the Supreme Court judgment in the *Nagasawa Un-yu* case also left room to determine unreasonableness by comparing the total wages.

The reason why the Supreme Court made reference to the Supreme Court judgment on the

*Metro Commerce* case, instead of the *Nagasawa Unyu* case which was related to re-employment after retirement as in this case, may be that the Supreme Court intended to present a framework for determination of unreasonableness regarding the base salary, with an awareness of the wording and structure of the Article 8 of the Part-Time/Fixed-Term Employment Act,<sup>3</sup> which was revised after this case. The existing Article 8 of the Part-Time/Fixed-Term Employment Act clearly provide that, in determining unreasonableness, the nature and the purpose of individual working conditions (treatment of workers) should be taken into consideration. In addition, with regard to differences in the base salary, in many cases the standards and rules for determining the base salary may differ between open-ended contract workers and fixed-term contract workers. According to the interpretive guidelines for the Article 8 provided by the Minister of Health, Labour and Welfare (MHLW Notice No. 430 of Dec. 28, 2018), the nature and the purpose of each base salary should also be determined first.

In this judgment, the Supreme Court pointed out the possibility that the base salary for regular workers may have the nature of job-based pay or ability-based pay in addition to the nature of seniority pay (pay for length of service), and stated that the base salary for entrusted workers “has the nature and the purpose of payment that are different from those of the base salary for regular workers.” (omitted in II. Judgment above). In this respect, it is not necessarily clear why it can be assertively said that the nature and the purpose of the base salary for entrusted workers are different from those of the base salary for regular workers even though the nature and the purpose of the base salary for regular workers cannot be determined. In any case, however, while the court of first instance and the lower court made a somewhat abstract finding regarding the nature and the purpose of the base salary by describing the base salary as the “core of the compensation under a labor contract,” the Supreme Court demanded that these matters be inquired into more specifically and therefore did not choose to make its own decision after quashing the judgment in the lower court.

Thus, the inquiry into these matters will be the issue to be addressed by the lower court in the remanded case. In this case, however, it seems that there was no clear standard for determining the base salary for both regular workers and entrusted workers (Company Y itself stated in its statement of reasons for a petition for acceptance of final appeal that the base salary is a wage to be determined by comprehensively taking multiple factors into consideration, without any clear purpose). In light of what is indicated in Point (ii) of the judgment concerning the fact that the lower court found that the base salary for regular workers has the nature of seniority pay in view of the changes in the amounts paid to some regular workers (mentioned in (3) above), the parties will be required to make allegations and proof and the court will be required to make a finding regarding the nature and the purpose of the base salary based on objective facts, including the distribution and changes in the amount of base salary for all regular workers and entrusted workers.

#### **4. Circumstances of labor-management negotiations**

Furthermore, the Supreme Court criticized the lower court for focusing only on the results of labor-management negotiations (mentioned in (5) above) (the fact that the results were not reflected in the base salary for entrusted workers), and demanded that in the remanded case, the lower court examine specific circumstances of negotiations. “Labor-management negotiations” mentioned here include negotiations between Union A and Company Y. In lower court decisions, not only whether or not any agreement has been reached with the labor union (whether working conditions have been improved) and the content of such agreement, but also the processes of collective negotiations and labor-management consultation, had been considered in determining unreasonableness (the *Kitanihon Broadcasting* case, Toyama District Court (Dec. 19, 2018) 2374 *Rokeisoku* 18). Point (iii) of the judgment can be evaluated as showing that the Supreme Court supported such trends in lower court decisions.

It is noteworthy that in Point (iv) of the judgment,

communications in writing between X1 and Company Y were included in “labor-management negotiations.” It is suggested that the circumstances in which the employer has held consultation and negotiations with a fixed-term contract worker individually with regard to the worker’s working conditions can be considered as facts serving as a bar to an evaluation of unreasonableness. How much importance should be placed on such individual negotiations may be open to debate.

### 5. Public benefits and livelihood security theory

By contrast, the Supreme Court did not make a ruling, at least directly, with regard to the relationship between the receipt of public benefits (employees’ old-age pension and basic continuous employment benefits for the elderly after re-employment) and determination of unreasonableness, or the relationship between the livelihood security theory and the determination of unreasonableness. Therefore, these points will be considered again in the determination of unreasonableness at the court in the remanded case. The existence of public benefits had been regarded as a fact serving as a bar to an evaluation of unreasonableness in the precedents such as the Supreme Court judgment on the *Nagasawa Un-yu* case. Regarding the livelihood security theory, scholars are divided into those supporting this theory<sup>4</sup> and others negating it.<sup>5</sup>

#### 1. The former Article 20 of the Labor Contracts Act

If a labor condition of a fixed-term labor contract for a Worker is different from the counterpart labor condition of another labor contract without a fixed term for another Worker with the same Employer due to the existence of a fixed term, it is not to be found unreasonable, considering the content of the duties of the Workers and the extent of responsibility accompanying the said duties (hereinafter referred to as the “content of duties” in this Article), the extent of changes in the content of duties and work locations, and other circumstances.

2. Ryo Hosokawa, “Are Wage Disparities Unreasonable and Illegal? Between Fixed-term Contract Employees Rehired After Retirement and Regular Employees,” *The Nagasawa Un-yu Case*, The Supreme Court (June 1, 2018) 1179 *Rohan* 34, *Japan Labor Issues* 2, no.11 (December 2018): 13–16. <https://www.jil.go.jp/english/jli/documents/2018/011-03.pdf>.
3. **The Article 8 of the Act on Improvement of Personnel Management and Conversion of Employment Status for Part-Time Workers and Fixed-Term Workers**  
An employer must not create differences between the base pay, bonuses, and other treatment of the part-time/fixed term workers it employs and its corresponding treatment of its workers with standard employment statuses that are found to be unreasonable in consideration of the circumstances, including the substance of the duties of those part-time/fixed term workers and workers with standard employment statuses and the level of responsibility associated with those duties (hereinafter referred to as the “job description”) and the scope of changes in their job descriptions and assignment, that are found to be appropriate in light of the nature of the treatment and the purpose of treating workers in that way.
4. For details, see Makoto Ishida, “Teinen-go sai koyō-sha no shōgū kakusa zesei to rōdō-sha no seikatsu hoshō no kanten: Nagoya jidōsha gakkō jiken Nagoya chisai hanketsu o keiki ni kangaeru” [Rectifying the treatment disparity for reemployed people after retirement and the perspective of “securing workers’ livelihood”: Thinking about the *Nagoya Driving School* case and the Nagoya District Court judgment], *Rōdō Hōritsu Junpō*, no. 1980 (2021): 15–17. See also, Keiko Ogata, “Teinen taishoku-go no yūki shokutaku shokuin no rōdō jōken to rōkeihō kyū 20-jō no fugōri-sei” [Working conditions for fixed-term contract workers after retirement and the unreasonableness of the former Article 20 of the labor Contracts Act], *Shin Hanrei Kaisetsu Watch*, no. 31 (2022): 310.
5. For details, see Michio Tsuchida. “Teinen-go sai koyō shain no rōdō jōken o meguru hōteki kōsatsu: Rō keihō 20-jō pāto yūki-hō kōrei sha koyō antei-hō no kiritsu” [Legal consideration on the working conditions for rehired employees after retirement], *Doshisha Hogaku* 73, no. 6 (December 2021): 695, and Yota Yamamoto, “Teinen-go shokutaku shokuin to sei shokuin-kan de no rōdō jōken no sōi to kyū rōdō keiyaku-hō 20-jō: Nagoya jidōsha gakkō jiken (Nagoya-chi hanrei 2. 10/ 28 (Wa) dai 4165-gō)” [Differences in working conditions between re-employed entrusted worker and regular workers and the former Article 20 of the Labor Contracts Act: The *Nagoya Driving School* Case (Nagoya District Court Case No. 4165, 2.10/28 (Wa))], *Rōdō Hōritsu Junpō*, no. 1980 (2021): 23–24.

### YAMAMOTO Yota

Doctor of Law. Senior Researcher, The Japan Institute for Labour Policy and Training. Research interest: Labor law.

<https://www.jil.go.jp/english/profile/yamamoto.html>



# Allocation and Transfer Management by Japanese Companies

MAEURA Hodaka

## I. Characteristics of allocation and transfer management in Japan

In the field of personnel and labor management, “allocation” occurs when a company assigns jobs to the employees. The concept of “job” is not penetrated here in Japan as it is in Europe and the United States. Employers do not always assign human resources who have the aptitude and competence to perform a particular job with a defined job description. Instead, there is a strong tendency for the content of the assigned job to change in line with each employee’s aptitude and competence, or in a form responding to changes in the environment surrounding the company. To put it more simply, Japanese companies assign jobs to persons, rather than assigning persons to jobs.

In recent years, there has been a call in Japan for a shift of the employment system from “membership-based” to “job-based (*jobu-gata*).”<sup>1</sup> According to Hamaguchi (2021 and 2024) who invented these terms, the job-based employment system is recognized as the basic structure of the corporate organization society originally established in the United Kingdom in the 19th century and gradually spread in European countries, the United States, and Asian countries. Under this system, only the workers who are necessary for a particular job are hired, and their pay is determined according to their performance of the job specified by their contract. As the job is thus specified, then of course personnel transfer does not take place.

The membership-based employment system, on the other hand, is a model established in Japan during

the post-war period. The emphasis is placed on employees’ status as members of the organization, and their labor contracts do not specify jobs to be assigned to them. As jobs are not specified, personnel transfer is conducted periodically as a common practice as it has been in Japan. The objective criterion for determining the pay is not job contents but the length of service or age. In short, the criteria for personnel management are literally job-based in this system, while in the membership-based system they are person-based.

However, confusion is observed among arguments concerning the employment system reform in Japan. As pointed out by Sato (2022) and Tsuru (2023), the definition of the job-based employment system varies depending on the researcher or the research entity. In addition, looking at companies’ initiatives, one can find that there is a misunderstanding of the meaning of the job-based employment system among those that intend to adopt the system and that what they intend to adopt rather resembles the membership-based employment system (Hamaguchi 2021). Hamaguchi 2024 (included in this issue) explains the debate on the shift is still in confusion of the “job-based” employment system with the performance-based evaluation system.

Although observed such confusion, the employment systems adopted by most Japanese companies seem to be categorized as the conventional membership-based employment system. Based on this premise, the approach to allocation and transfer management by Japanese companies has the following four characteristics.



Table 1. The reasons why companies transfer staff (multiple responses)

		Total of companies using transfer=N	HR development of employees	To maintain or improve employee's motivation	Treatment of employees / right person in the right place	Response to changes in business activity	To revitalize the organization through transfer	Employment adjustment	Others	No response
	Total	3,845	67.0	47.5	76.7	55.2	62.9	17.9	1.3	1.0
JILPT survey (2013)	1,000 or more	219	82.2	63.9	84.0	68.5	79.5	25.1	1.4	0.9
	300-999	570	76.0	57.5	82.3	60.7	75.3	18.6	0.9	0.5
	100-299	1,651	67.0	47.3	77.7	56.1	63.1	17.9	1.2	0.7
	Fewer than 100	1,405	61.1	41.0	72.2	49.8	54.9	16.4	1.6	1.6

Source: Created by the author based on JILPT 2014 (2013 survey).

First, transfers are taken place for organizational need, such as their response to changes in business activity or organizational revitalization of the organization. Some transfers are mainly for the purpose of improving the treatment of employees, putting the right people in the right place, training/educating employees, and maintaining or improving their motivation. This tendency applies more to larger companies (Table 1).

Second, corporate authority and initiative are very strong when it comes to allocation and transfer. Human resource departments tend to have a stronger say regarding the allocation and transfer of employees hired as new graduates as well as the transfer of management personnel. In contrast, regarding the transfer of other regular employees, the intention of the departments that are in charge of the actual work operation tends to be more reflected. Such practice is observed typically in large corporations.

Third, the range in which regular employees may be transferred gradually becomes narrower (consolidating toward specific duty or profession that each employee possesses or excels) when they have been in the company for a certain amount of time. When transfer involves promotion, however, managers often experience transfer beyond departments due to the limited number of posts.

Fourth, some types of transfer may go beyond the framework of the original company. The aim of these transfers may be to support suppliers and subsidiaries, develop employees' competence, or secure posts for middle-aged and older employees. These are known

as *shukkō* (temporary transfer, or transfer to another company and work under the direction of it while maintaining the employment relationship with the original company) and *tenseki* (permanent transfer, or moving out to another company without maintaining the employment relationship with the original company). These types of transfer over company boundaries are common in Japan.

## II. New arrangements for eliminating disadvantages in traditional allocation and transfer management

Given the four characteristics outlined above, there are two advantages in the management of allocation and transfer by Japanese companies. Namely, (i) companies can adjust internal staff allocation flexibly and quickly because allocation and transfer are made to suit the situation of individual employees and the business environment surrounding the company without being limited to specific jobs; and (ii) companies can develop human resources capable of handling a wide range of work operations, having employees experience of work in different departments or in other related companies.

Conversely, these methods are highly likely to have disadvantages. This is because companies have strong authority and initiative regarding allocation and transfer, while their employees' needs with regard to working style or career formation are not taken into account. Allocation and transfer can significantly affect the employees' private lives

particularly in the case of *tenkin* (relocation, or job transfer requiring a change of residence) which are usually subjected to employees in the main career track. Among *tenkin* cases, employees who are heads of households (mostly males) may have no option but to live apart from their families due to reasons such as that their spouse has a job or their children wish to stay at the same schools, which is called *tanshin funin* (“solo allocation, ”or transfer not accompanied by family).

To eliminate the disadvantages pointed out above, arrangements for allocation and transfer that reflect employees’ intentions—such as the *jikoshinkoku seido* (self-declaration system) and *shanai kōbo seido* (in-house recruitment system)—are finally spreading among Japanese companies. Under the self-declaration system, employees declare personal circumstances and wishes to the company so that the company can carry out allocation, transfer, and career development while taking into consideration the employees’ preferences. The in-house recruitment system is a system wherein, upon launching a new project or business, the company recruits staff members from among the employees while clearly indicating the content of the job assignment, and those who have passed screening are appointed to perform the job. However, there are actually not many companies where these arrangements have produced adequate results, due to the unwillingness identified in the department to which the employee belongs or the difficulty in securing a job that is suited to the employee’s needs.

### III. Characteristics of promotion management and how they are changing

One type of allocation and transfer management is promotion management. There are two characteristics of promotion management by Japanese companies. Promotion is defined as the movement of an employee from a lower position to a higher one, usually with a change in job contents, within an organization.

#### “Internal promotion”

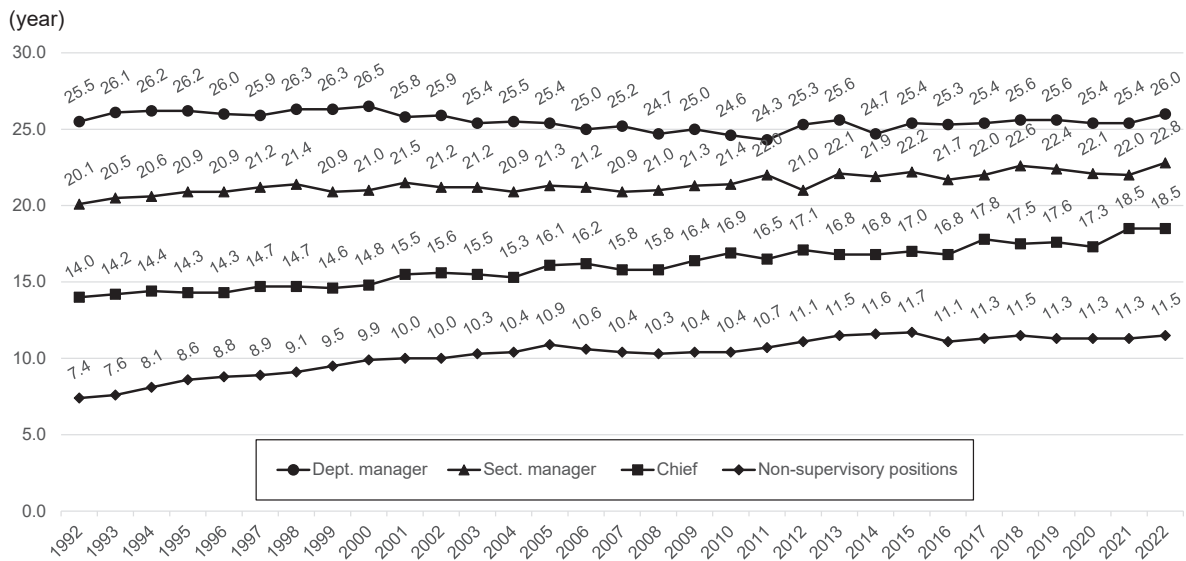
There is a strong tendency to emphasize the

securing of human resources from within the organization, so that when assigning management posts, promotion within the company is used rather than hiring from outside. Such “internal promotion” is one of the characteristics of promotion in Japanese companies. When making decisions on promotion, many companies establish standards to evaluate the works done and competence of the candidate.

However, not a small number of other companies practice seniority-based promotion management evaluating employees based on years of service. This does have a certain rationality. Japanese companies usually recruit and hire new graduates simultaneously and have them join the company as regular employees all at once in April. The company calls them *dōki shain* (peers, literally the “same period employee”) and treat them as a group for personnel management purposes. Those new employees also call each other “*dōki*” in short among themselves, sharing a special camaraderie in a sense. After a certain number of years of employment, the company promote many *dōki shain* to managerial posts, almost all at once, up to a certain level such as section manager. In such a way, employees expect to be promoted themselves and believe that they can catch up the promotion gap among peers. This system thus gives those employees the hope of and expectation to promotion and keeps them motivated to contribute more to the company.

#### “Late promotion”

Another characteristic is “late promotion” (late timing of selection for promotion). According to Koike and Inoki (2002), in 1996, in the case of university graduate white-collar workers, the timing of the first selection round (the time when a promotion disparity first arises) was 7.85 years (after joining the company) on average in Japan, compared to 3.2 years in the United States and 3.71 years in Germany. Meanwhile, the average timing of the career plateau phenomenon—when the number of *dōki shain* competing for promotion is narrowed down, and there are no further promotion prospects for about half of them—was 22.30 years after joining the company in Japan, 9.10 years in the United States, and 11.48 years in Germany.<sup>2</sup> According to the



Sources: Created by the author based on the Ministry of Health, Labour and Welfare, *Basic Survey on Wage Structure* (1992–2022), and e-Stat.

Note: The above data represent industry totals, corporates with 1,000 employees or more, age group totals, males, and university graduates and/or graduate school graduates. Data cover only university graduates or cover both university graduates and graduate school graduates depending on the year of data collection.

Figure 1. Average years of service in Japanese companies by position

Ministry of Health, Labour and Welfare (Figure 1), the timing of the first selection more or less corresponded to the number of years served by employees in non-supervisory positions, and the average timing of the career plateau phenomenon corresponded to those of the section manager class. As a recent trend, however, years of service have increased for the section manager class, the chief class, and employees in non-supervisory positions. The timing of promotion is thus gradually being further deferred.

Thus, promotion in Japanese companies has the two characteristics of internal promotion and late promotion. In recent years, however, the conditions under which the mechanism of late promotion is established have changed. That is, it has become more difficult to see rationality in late promotion, for several reasons. One is that it has become harder to sustain the high probability of promotion, due partly to the flattening of organizations and cuts in the number of officer posts. Another reason is that it is harder to provide opportunities for equal education

and training to all employees due to stagnant corporate growth, and moreover, the inclination toward promotion to management has decreased, particularly among male regular employees.

#### IV. Talent management, a new tide?

As one new phenomenon, companies are now starting to adopt “talent management,” a new personnel and labor management measure. Although talent management has yet to be given a unique definition, companies adopting this approach proceed to form “talent pools” (groups of human resources) based on their competence and link them to utilizing human resources through education and training, allocation, and evaluation. It is not clear how widespread this system is, but the de facto selection of future management personnel already seems to be practiced by some companies. This implies that late promotion, which have long been customary in Japan, has been changing and possibly started taking on a new shape (Sato 2016; JILPT 2017).



## V. Future direction

What is the future direction of allocation and transfer management at Japanese companies? As mentioned at the beginning of this article, the debate over the reform of Japan's employment system has centered on the shift from the membership-based (person-based) employment to the job-based employment, although there are differences in definitions of these terms. On the other hand, the talent management adopted by Japanese companies consists of two management types: position-based (job-based) and person-based (JILPT 2017; Ishiyama 2020). Thus, both the employment system and talent management have two types: job-based and person-based.

If Japanese employment system changes in the future, will the way it shifts have an impact on the talent management practice within the company? Or will the employment system and the talent management practice survive according to separate criteria? This can be an important point of contention when looking ahead to these human resource management at Japanese companies. With this in mind, it is necessary to keep a close eye on the trends in allocation and transfer management in Japan.

1. For a discussion on this topic, see Sato (2022). The respective stances of the Japanese government, labor, and management regarding "job-based employment" are discussed in detail in the article compiled by JILPT, "Seifu, zaikai, rōdōkai wa 'jobu gata koyō' ni donoyōni genkyū shiteiru no ka—sorezore no sisaku hōshin, hōkoku, teigen, kenkai kara" [How do the government, business circles, and labor circles make mention of 'job-based employment': From their respective policies, reports, recommendations, and opinions] (*Business Labor Trends* May 2023 issue, <https://www.jil.go.jp/kokunai/blt/backnumber/2023/05/tokushu.html>).

2. The survey targets university graduate white-collar workers, and more than 90% of the respondents' companies have 1,000 or more regular employees. These result in a difference from the data in Figure 1 (based on survey targeted companies with 100 or more employees) in terms of the timing promotion.

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### MAEURA Hodaka

Vice Senior Researcher, The Japan Institute for Labour Policy and Training. Research interest: Human resources management and industrial relations.

<http://www.jil.go.jp/english/profile/maeura.html>



## Main Labor Economic Indicators

### 1. Economy

The Japanese economy is recovering at a moderate pace, although it remains pausing in part. Concerning short-term prospects, the economy is expected to continue recovering at a moderate pace with the improving employment and income situation, supported by the effects of the policies. However, slowing down of overseas economies is downside risk of the Japanese economy, including the effects of continued high interest rate levels in the U.S. and Europe, and the lingering stagnation of the real estate market in China. Also, full attention should be given to price increases, the situation in the Middle East and fluctuations in the financial and capital markets. (*Monthly Economic Report*,<sup>1</sup> August 2024).

### 2. Employment and unemployment

The number of employees in July increased by 280 thousand over the previous year. The unemployment rate, seasonally adjusted, was 2.7%.<sup>2</sup> Active job openings-to-applicants ratio in July, seasonally adjusted, was 1.24.<sup>3</sup> (Figure 1)

### 3. Wages and working hours

In July, total cash earnings increased by 3.4% year-on-year and real wages (total cash earnings) increased by 0.3%. Total hours worked increased by 0.6% year-on-year, while scheduled hours worked increased by 0.8%.<sup>4</sup> (Figure 2)

### 4. Consumer price index

In July, the consumer price index for all items increased by 2.8% year-on-year, the consumer price index for all items less fresh food increased by 2.7%, and the consumer price index for all items less fresh food and energy increased by 1.9%.<sup>5</sup>

### 5. Workers' household economy

In July, consumption expenditures by workers' households increased by 2.0% year-on-year nominally and decreased by 1.2% in real terms.<sup>6</sup>

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

Notes: 1. Cabinet Office, *Monthly Economic Report* analyzes trends in the Japanese and world economies and indicates the assessment by the Japanese government. <https://www5.cao.go.jp/keizai3/getsurei-e/index-e.html>

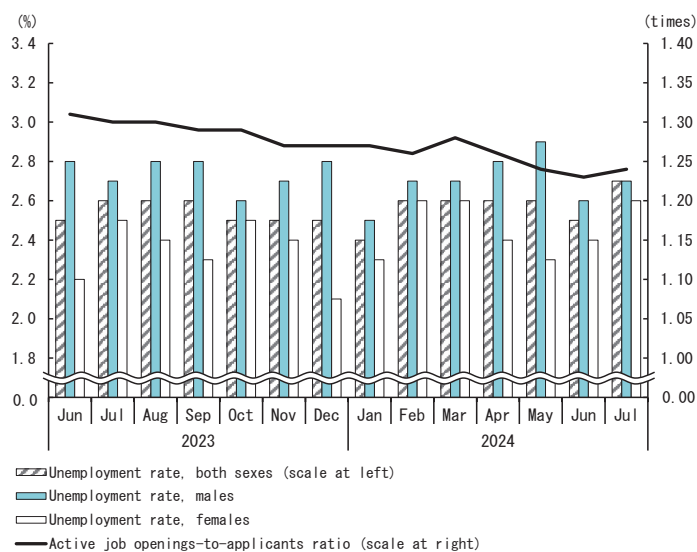
2. <https://www.stat.go.jp/english/data/roudou/results/month/index.html>

3. [https://www.mhlw.go.jp/english/database/db-l/general\\_workers.html](https://www.mhlw.go.jp/english/database/db-l/general_workers.html)

4. For establishments with 5 or more employees. <https://www.mhlw.go.jp/english/database/db-l/monthly-labour.html>

5. <https://www.stat.go.jp/english/data/cpi/index.html>

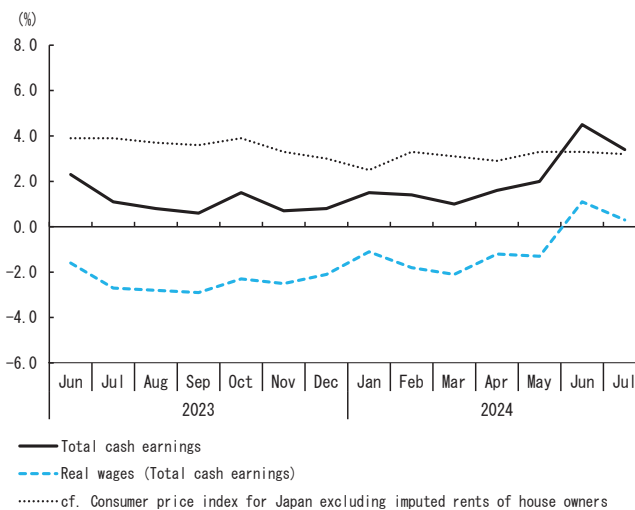
6. MIC, *Family Income and Expenditure Survey*. <https://www.stat.go.jp/english/data/kakei/index.html>



Source: Ministry of Internal Affairs and Communications (MIC), *Labour Force Survey*; Ministry of Health, Labour and Welfare (MHLW), *Employment Referrals for General Workers*.

Note: Active job openings-to-applicants ratio indicates the number of job openings per job applicant at public employment security. It shows the tightness of labor supply and demand.

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



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

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

# What's on the Next Issue

## *Japan Labor Issues*

Volume 8, Number 50, Special Issue 2024

*tentative*

Country reports on “Challenges in Collective Labor Relations in the Context of Worker and Workstyle Diversification—Reassessing the Role of Labor Unions” presented by researchers from countries and regions in the Asia-Pacific area at the 7th JILPT Tokyo Comparative Labor Policy Seminar (held on March 27, 2024).

●**KEYNOTE LECTURE**

María Emilia CASAS BAAMONDE

●**REPORTS**

**Australia/Australian Trade Union Density in Crisis: Precarious Work and Collective Bargaining**

Eugene SCOFIELD-GEORGESON

**New Zealand/Collective Labour Relations and Labour Law in a Changing World of Work**

Yvonne OLDFIELD

**Philippines/Labor Unions in a Changing World of Work: The Philippine Experience**

Ronahlee A. ASUNCION

**Malaysia/Evolving Workstyles, Evolving Challenges: A Malaysian Perspective on Gig Labour Relations**

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**Indonesia/The State of Indonesian Labor Unions: Navigating Labor Dynamics and Challenges**

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**Taiwan/Navigating the Changing Landscape: Labor Unions in Taiwan amidst Contemporary Challenges**

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