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**Non-regular work:
Trends, labour law policy,
and industrial relations
developments –
The case of Japan**

**Keiichiro Hamaguchi
Noboru Ogino**

October 2011

Industrial
and Employment
Relations
Department
(DIALOGUE)

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Foreword

This paper is one of a series of national studies on collective bargaining, social dialogue and non-standard work conducted as a pilot under the Global Product on ‘Supporting collective bargaining and sound industrial and employment relations’. The national studies aim at identifying current and emerging non-standard forms of work arrangements within which workers are in need of protection; examining good practices in which those in non-standard forms of work are organized; analyzing the role that collective bargaining and other forms of social dialogue play in improving the terms and conditions as well as the status of non-standard workers and identifying good practices in this regard.

While ample sources are available about Japan’s long-term employment practices, there have been very few in-depth studies undertaken, other than in Japanese, which illustrate non-regular work developments and practices. In this regard, this paper provides useful knowledge and contributes to better understanding among international readers of the complex manner in which non-regular work arrangements are organized and used in practice, together with the ways such work forms have each evolved differently in terms of their legal, historical and cultural backgrounds.

The authors underscore that Japan’s long-term employment practices, which are often associated with employment security and a seniority-based pay rise system, have gone hand-in-hand with the use of a wide variety of non-regular work arrangements. As they indicate, the relative stability of the former has been achieved through the use of the latter. However, they also show that in Japan’s industrial relations, which are characterized by enterprise unionism, the majority of enterprise unions have in practice limited their membership qualifications to regular workers, thereby failing to cover large numbers of non-regular workers through enterprise-level representation. This, nevertheless, has not been seen as a significant social issue until recently, since a large proportion of the non-regular workforce traditionally comprised married women, or students who voluntarily engaged in non-regular work, according to the authors. The paper notes that since the collapse of the bubble economy in the 1990s, however, the situation has changed and a growing number of people have started involuntarily engaging in non-regular work, contrary to their wish for regular work, thereby posing a number of challenges in traditional industrial and employment systems and practices.

The paper shows that lack of effective autonomous governance by the social partners, based on collective representation and negotiation in addressing these non-regular workforce issues, has resulted in a call for a number of policy measures providing adequate legal protection for such workers. In face of the growing non-regular workforce, it emphasizes that trade unions have also been adopting different strategies in order to revitalize the labour movement, striving to organize such workers and improve their situation in different ways, albeit still limited in scope and impact. The paper underlines the importance of further advancing multiple measures and actions targeting non-regular workers, which are supported by both legislative policies and the social partners.

DIALOGUE Working Papers are intended to encourage an exchange of ideas and are not final documents. The views expressed are the responsibility of the author and do not necessarily represent those of the ILO. I am grateful to Keiichiro Hamaguchi and Noboru Ogino of the Japan Institute for Labour Policy and Training (JILPT) for undertaking the study and commend it to all interested readers.

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Introduction

Non-regular work is considered one of the most important issues in Japan's labour market policies today. Non-regular workers are by no means a new phenomenon. Within the traditional Japanese-style employment system, non-regular workers have existed hand-in-hand with regular workers, although without the long-term employment practices, seniority-based pay systems, company-based trade unions, and other support enjoyed by regular workers. Until the beginning of the 1990s, however, the majority of non-regular workers were either married women working part-time while primarily devoting themselves to housework, or students engaged in part-time work (generally referred to in Japan as *arbeits* (temporary part-time staffers)) while principally attending school. In this context, this pattern of labour was not necessarily viewed as a social problem. The situation changed from the mid-1990s, however, with an increase in the ranks of workers – particularly those in younger age groups – who, although desiring employment as regular workers, were unable to find such positions and thus were forced to accept work as non-regular workers. Against this backdrop, the situation evolved into a societal problem.

As a result, legal policy targeting non-regular work faced the growing need to complement the part-time-labour measures that steadily advanced from the period of the conventional focus on married working women with steps geared to address the needs of full-time fixed-term workers, the ranks of which have increased in recent years.

In addition, temporary agency work, which was originally developed as a means of providing employment opportunities for those who tending to have difficulty being recruited, including married women and middle-aged and older workers, emerged as the focus of the problem as large numbers of young, newly graduated male workers who were traditionally expected to enter the job market as regular employees came to be taken on as temporary agency workers, partly due to the legal expansion of the range of business fields targeted under the temporary agency work system. This has therefore become one of the reasons that legal policy in recent years has wavered between the relaxing and tightening of regulations. This report provides an overview of the non-regular-work situation, primarily using statistical data. In the second section, it examines the legal policy developments concerning non-regular work by the separate work patterns of part-time, fixed-term, and temporary agency work, as well as so-called economically dependent workers (although the latter is not necessarily counted as non-regular employment in the Japanese context). Finally, from the aspect of labour-management relations, the report highlights the approaches and efforts of trade unions at all levels that attempt to represent non-regular workers and improve their working conditions.

1. Overview of recent developments in the economy and labour markets and the trends in non-regular employment

1.1 Trends in non-regular employment from the 1980s

The collapse of the asset-inflated bubble economy in the early 1990s had a serious impact on the economy and society of Japan. A particular focus was placed on the employment pattern of non-regular work, a category that had continued to grow from the 1990s. Partly because non-regular forms of work are characterised by the limited duration of the contract, their growth has accelerated changes in long-term employment and seniority-

based employment practices that had typified the Japanese-style employment model over the years.

Non-regular workers in Japan are made up mainly of part-timers (including temporary part-time staffers, called *arbeit*), so-called “dispatched workers (temporary agency workers)”, fixed-term contract workers, temporary contract workers (called *shokutaku*, typically for the reemployment of retired employees). The number of part-time workers began to increase in the 1980s. Due to changes in the industrial structure in the wake of the oil crises, while Japan experienced a contraction in the ranks of people engaged in manufacturing process work, with a shift in labour demand to service-related fields (particularly distribution and retailing), the part-timer share of the aggregate number of workers rose. During the period from 1985 through 2000, the total number of part-timers doubled to more than 10 million, making up 22 per cent of all employees. Since 2003, this share has effectively peaked at around the same level (22 per cent).

The number of regular employees grew after the collapse of the economic bubble as well, with that growth continuing through 1997. Subsequent to this, however, the hiring of such employees shifted to a declining trend, while the numbers of non-regular employees rose from 20.2 per cent in 1990 to 34.0 per cent in 2008. This meant that one of out every three workers was a non-regular worker (table 1).

This expansion of non-regular workforce has been driven by the growth in numbers of full-time non-regular workers other than part-timers and temporary part-time staffers (*arbeit*), such as fixed-term contract workers and dispatched workers. From 1.87 million people (3.8 per cent) in this category in 1998, the number tripled over the next 10 years, to approximately 6 million (11.6 per cent) in 2008. As this shows, this period witnessed the advance of a trend toward full-time non-regular employment, the results of which included the progression of diversification in non-regular employment in Japan’s labour market.

The following factors have intensified the diversification of non-regular work since the latter half of the 1990s. The first is the restriction of hiring of regular full-time employees imposed by companies due to the prolonged economic slump following the collapse of the bubble economy. The period from said collapse through early 2000 came to be known generally as the “ice age for job hunters,” and during this time there was further growth in non-regular employment. Temporary part-time staffers (*arbeit*) who work continually in this capacity mainly because they are unable to land regular full-time jobs after graduating from high school or college, emerged on the scene. This group, called *freeter*, was a phenomenon that became a social problem. According to the Ministry of Health, Labour and Welfare, the number of *freeter* was tracked at 1.78 million people in 2009, meaning that the total had doubled over the past 10 years. In addition to this, with the lifting of a ban on the use of dispatched workers by merchandise manufacturing businesses in March 2004 and other developments, there was an increase in the number of male or high-school graduate dispatched workers.

During the same period, furthermore, a combination of Japan’s baby boomers retiring in large numbers, a revision to the Law Concerning Stabilization of Employment of Older Persons, and other events prompted an increase in the number of non-regular employees age 60 and older (typically referred to as *shokutaku*, or temporary contract workers), along with growth in the share of older people within the total number of non-regular workers. This phenomenon can be described as the aging of non-regular workers.

Non-regular employment is a practice that has become structurally incorporated into corporate hiring systems in the quest to address economic globalization, changes in the industrial structure and business environment, and other factors. The decline in the number of regular full-time employees along with the diversification and aging of non-regular workers continues and has become a big problem in Japan.

Table 1.
Trends in the number of employees by employment pattern

(unit: 10,000 people (%))

Year/ period	Employees (excl. executives)	Regular employees	Part-timers, dispatched workers, fixed-term contract workers, etc							
					Part-timers (including arbeit)		Dispatched workers, fixed-term contract workers, temporary contract workers (shokutaku), etc.			
										Subtotal of dispatched workers
1984	3,936	3,333 (84.7)	604	(15.3)	440	(11.2)	164	(4.2)	-	-
1985	3,999	3,343 (83.6)	655	(16.4)	499	(12.5)	156	(3.9)	-	-
1986	4,056	3,383 (83.4)	673	(16.6)	523	(12.9)	150	(3.7)	-	-
1987	4,048	3,337 (82.4)	711	(17.6)	561	(13.9)	150	(3.7)	-	-
1988	4,132	3,377 (81.7)	755	(18.3)	599	(14.5)	156	(3.8)	-	-
1989	4,269	3,452 (80.9)	817	(19.1)	656	(15.4)	161	(3.8)	-	-
1990	4,369	3,488 (79.8)	881	(20.2)	710	(16.3)	171	(3.9)	-	-
1991	4,536	3,639 (80.2)	897	(19.8)	734	(16.2)	163	(3.6)	-	-
1992	4,664	3,705 (79.4)	958	(20.5)	782	(16.8)	176	(3.8)	-	-
1993	4,743	3,756 (79.2)	986	(20.8)	801	(16.9)	185	(3.9)	-	-
1994	4,776	3,805 (79.7)	971	(20.3)	800	(16.8)	171	(3.6)	-	-
1995	4,780	3,779 (79.1)	1,001	(20.9)	825	(17.3)	176	(3.7)	-	-
1996	4,843	3,800 (78.5)	1,043	(21.5)	870	(18.0)	173	(3.6)	-	-
1997	4,963	3,812 (76.8)	1,152	(23.2)	945	(19.0)	207	(4.2)	-	-
1998	4,967	3,794 (76.4)	1,173	(23.6)	986	(19.9)	187	(3.8)	-	-
1999	4,913	3,688 (75.1)	1,225	(24.9)	1,024	(20.8)	201	(4.1)	-	-
2000	4,903	3,630 (74.0)	1,273	(26.0)	1,078	(22.0)	194	(4.0)	33	(0.7)
2001	4,999	3,640 (72.8)	1,360	(27.2)	1,152	(23.0)	208	(4.2)	45	(0.9)
2002	4,891	3,486 (71.3)	1,406	(28.7)	1,023	(20.9)	383	(7.8)	39	(0.8)
2003	4,941	3,444 (69.7)	1,496	(30.3)	1,092	(22.1)	404	(8.2)	46	(0.9)
2004	4,934	3,380 (68.5)	1,555	(31.5)	1,106	(22.4)	449	(9.1)	62	(1.3)
2005	4,923	3,333 (67.7)	1,591	(32.3)	1,095	(22.2)	496	(10.1)	95	(1.9)
2006	5,002	3,340 (66.8)	1,663	(33.2)	1,121	(22.4)	542	(10.8)	121	(2.4)
2007	5,120	3,393 (66.3)	1,726	(33.7)	1,165	(22.8)	561	(11.0)	121	(2.4)
2008	5,108	3,371 (66.0)	1,737	(34.0)	1,143	(22.3)	594	(11.6)	145	(2.8)
2009	5,086	3,386 (66.6)	1,699	(33.4)	1,132	(22.3)	567	(11.1)	116	(2.3)

Source: Ministry of Internal Affairs and Communications, Statistics Bureau: *Labour Force Survey* (detailed tabulation) and *Special Survey of the Labour Force*.

1.2 Characteristics of non-regular employment by employment pattern

Part-timers and *arbeit*

This category represents the largest pattern of non-regular employment in Japan. Although there is no strict definition in force, under the Act on Improvement, etc. of Employment Management for Part-Time Workers, the designation given is “a worker whose prescribed weekly working hours are shorter than those of ordinary workers employed at the same place of business.” The Labour Force Survey (Ministry of Internal Affairs and Communications), defines part-time workers as “persons who are called ‘part-time workers’ [in their workplace]”, and as “persons who are called ‘arbeit’ [in their workplace].” However, in some companies there is no firm distinction made between part-timers and arbeit. In any case, these terms are used to describe workers who work fewer hours than regular full-time employees. Among part-timers, the core group is primarily married women, and arbeit are mainly students, freeter, and other younger members of the workforce.

In supermarkets and other industries (where the use of part-timers is on the rise), in the early days part-timers only engaged in standard unskilled operations. From the 1990s, however, part-timers became more capable in terms of work skills, with some becoming part of the core manpower and taking over operations handled by regular full-time employees. Their pay, however, is generally based on hourly wages.

Fixed-term contract workers and temporary contract workers (*shokutaku*)

This category consists primarily of those who work full time under fixed-term employment contracts. These fixed-term workers are variously referred to as *jun-shain*, *rinjikou*, *kikankou*, among other names; they may be broadly divided into specialist and generalist categories. The specialist group includes workers hired for set periods of time to start up projects or for other purposes – when the specialized skills and knowledge needed to carry out such projects are not available internally. The generalist group comprise those whose tasks resemble standard duties.

Also included in this category recently are the shokutaku, employees who have reached mandatory retirement age and are rehired under temporary working status, as described above. Aside from fixed monthly wages they also receive salaries under pay-by-the-job schemes resembling those used widely for sales people.

Temporary agency workers (dispatched workers)

This is an employment pattern in which companies enter into contracts with personnel placement agencies. The placement agencies hire employees and then dispatch them to the companies to work under the supervision of user companies.

In Japan, this practice was officially addressed in the Act for Securing the Proper Operation of Worker Dispatching Enterprises and Improved Working Conditions for Dispatched Workers (hereinafter referred to as the “Worker Dispatch Act”) in 1986. Although originally limited to certain business categories, target industries were expanded in subsequent revisions to the Act in 1999 and 2004. These revisions resulted in an increase in the number of dispatched workers. As of June 2009, according to an establishment survey of the Ministry of Health, Labour and Welfare, among dispatched workers approximately 200,000 possess relatively high occupational capabilities and skills, allowing them to be dispatched as regular (indefinite-term) workers. In addition to this

type of “specified” dispatched worker, another type is the “general” dispatched worker comprising approximately 2.3 million people employed not only as regular (indefinite-term) dispatched workers but also through registration (for being dispatched upon user companies’ demands), temporary contracts, daily hiring, and other unstable employment patterns. Both general and specified categories, however, plummeted 40 per cent compared to 2008 levels. This reflects the large number of dispatched workers who were dismissed, primarily from automobile industry related plants, in the wake of the economic crisis triggered by the collapse of Lehman Brothers in 2008. As a result, the dispatched labour problem attracted keen attention through debates targeting a revision to the laws.

Work forms midway between employment and self-employment

In addition to the aforementioned employment patterns, Japan is experiencing an increase in the number of people engaged in small-office/home-office (SOHO) work, telecommuting, homeworking, independent contracting, and other forms of work that give rise to ambiguity and uncertainty about whether they are associated with an employment relationship or considered self-employment. Factors contributing to this development include (1) the utilization of contracting/sub-contracting and outsourcing in fields where the workforce has traditionally been secured through employment relationships; (2) the increase in emerging forms of work including SOHO work, homeworking, and telecommuting due to improvements made in the telecommunications environment; and (3) greater specialization and skills on the part of private contractors together with an increase in the number of companies which contract out some of their work components. Meanwhile, problems are emerging concerning the way commercial service contracts are regulated.

There are no official statistics for private contractors, rendering it difficult to obtain an accurate picture of the total number engaged in this category of work. However, in JILPT’s *Realities and Issues of Diversified Ways of Working* (in Japanese, 2007), the number is estimated at 1.25 million people, based on the Labour Force Survey. It can be presumed that those who are employed at contractor companies are included in this research.

Key characteristics of non-regular work arrangements

The Employment Status Survey (2007) indicates the key characteristics of non-regular work arrangements (table 2).

- Women make up the overwhelming majority of part-timers (at 90 per cent), but there is a roughly 50-50 division between male and female temporary part-time staffers (arbeit). The female-male ratio for dispatched workers is 6:4. With regard to fixed-term contract workers, the breakdown between men and women is roughly even, but for temporary contract workers (shokutaku) the breakdown favors men 6:4.
- In Japan, the years from 2003 through 2007 correspond to a period of economic recovery. During this time, the share of male non-regular workers such as part-timers, fixed-term contract workers, temporary contract workers (shokutaku), and dispatched workers rose. Following an amendment to the Worker Dispatch Act in 2004, a sharp increase was observed in the share of males engaging in dispatched work, in which men traditionally had a low presence. During this period as a whole, there was an increase in male non-regular workers, in particular dispatched workers.
- The age range of part-timers is broad, from the late 30s through the early 60s. Around half of temporary part-time staffers (arbeit), mainly consisting of students and freeter, are in their teens or early 20s. As for dispatched workers and fixed-term contract

workers, the majority fall into the 20-29 and 30-39 age brackets. Temporary contract workers (shokutaku) are mostly in their early 60s. Part-timers and temporary part-time staffers (arbeit) engage in different occupations: clerical work; sales work, services; production process/line work; and manual labour. Fixed-term contract workers also engage in the aforementioned occupations, but a large number engage in specialized/technical work. Dispatched workers are highly represented in office work, production process/line work and manual labour. Although the temporary contract worker (shokutaku) group is also represented among those performing these types of work, the proportion of the latter engaged in service work and sales work in which they can utilize knowledge acquired from previous jobs is also relatively high.

- Part-timers and temporary part-time staffers (arbeit) are largely employed in small companies with fewer than 100 workers. In contrast, a high share of fixed-term contract workers and dispatched workers are employed in business establishments with 100 or more workers.

Table 2.
Breakdown by gender, age, occupation,
viewed by employment pattern

Age	Total	Regular employees	Part-timers	Temporary part-time workers (arbeit)	Dispatched workers	Fixed-term contract workers	Temporary contract workers (shokutaku)	Other
Male	55.8%	69.3%	10.3%	50.5%	37.9%	51.6%	62.2%	48.5%
Female	44.2%	30.7%	89.7%	49.5%	62.1%	48.4%	37.8%	51.5%

Note: Totals are for employees (excluding executives, etc.).

Source: Employment Status Survey 2007.

Age	Total	Regular employees	Part-timers	Temporary part-time workers (arbeit)	Dispatched workers	Fixed-term contract workers	Temporary contract workers (shokutaku)	Other
15 to 19	2.0%	0.9%	0.4%	16.2%	1.5%	0.7%	0.1%	0.8%
20 to 24	8.9%	7.9%	3.0%	30.4%	11.9%	11.5%	2.5%	6.7%
25 to 29	11.4%	12.7%	4.9%	11.3%	19.3%	15.9%	4.4%	9.9%
30 to 34	12.7%	14.6%	8.2%	7.5%	18.7%	12.5%	4.8%	8.3%
35 to 39	12.4%	13.9%	11.2%	6.0%	15.6%	9.7%	4.6%	8.2%
40 to 44	11.0%	11.9%	12.7%	4.4%	10.4%	8.0%	5.2%	8.0%
45 to 49	10.3%	10.8%	13.1%	3.6%	7.3%	7.7%	5.8%	8.4%
50 to 54	9.9%	10.5%	13.1%	3.2%	4.5%	7.1%	6.7%	9.2%
55 to 59	11.1%	11.3%	14.9%	4.4%	4.3%	9.5%	11.6%	11.1%
60 to 64	5.9%	3.5%	10.1%	6.1%	3.4%	11.3%	35.3%	11.8%
65 to 69	2.9%	1.3%	6.1%	4.8%	2.3%	4.8%	13.1%	9.2%
70 to 74	1.0%	0.5%	1.9%	1.7%	0.5%	1.0%	4.4%	5.5%
75 and over	0.4%	0.3%	0.5%	0.5%	0.2%	0.3%	1.6%	2.9%

Note: Totals are for employees (excluding executives, etc.).

Occupation	Total	Regular employees	Part-timers	Temporary part-time workers (arbeits)	Dispatched workers	Fixed-term contract workers	Temporary contract workers (shokutaku)	Other
Specialized/ technical workers	15.8%	19.2%	8.0%	7.0%	5.1%	12.9%	19.4%	21.2%
Management workers	0.9%	1.4%	0.0%	0.0%	0.0%	0.1%	0.8%	0.2%
Office workers	24.0%	24.3%	23.8%	15.7%	39.3%	25.3%	31.4%	15.7%
Sales workers	13.3%	13.7%	11.7%	19.7%	6.0%	13.3%	7.3%	5.3%
Service workers	10.6%	6.4%	20.5%	26.8%	4.8%	11.8%	9.7%	11.4%
Safety/ security workers	2.1%	2.5%	0.6%	1.9%	0.0%	2.9%	3.6%	1.9%
Agricultural, forestry & fisheries workers	1.2%	1.0%	1.1%	1.3%	0.2%	0.7%	0.7%	9.6%
Transportation & communication workers	3.8%	4.4%	1.1%	3.3%	2.1%	6.2%	6.4%	2.4%
Production process & labour affairs workers	28.4%	27.2%	33.1%	24.4%	42.5%	26.8%	20.8%	32.3%

Note: Totals are for employees (excluding executives, etc.).

1.3 Why companies use non-regular forms of work

In the General Survey on Diversified Types of Employment (2007) conducted by the Ministry of Health, Labour and Welfare, business establishments with non-regular workers were asked to state their reasons for hiring them (multiple-response format that permitted up to three answers). The reply most often given was “To economize on wages” (40.8 per cent), followed by “To deal with busy and slack periods on a daily or weekly basis” (31.8 per cent) and “To obtain capable personnel who will contribute immediately” (25.9 per cent) (table 3).

As noted, the reason most often given (averaged from all responses) for hiring non-regular workers was “To economize on wages.” The top responses differ, however, when viewed by employment pattern. The most frequent reply given for hiring dispatched workers was the aforementioned “To obtain capable personnel who will contribute immediately” (35.2 per cent), followed by “Full-time employees cannot be obtained” and “To adjust employment volume in response to business cycles.” For part-time workers, the answer given most often was “To economize on wages” (41.1 per cent), followed by “To deal with busy and slack periods on a daily or weekly basis” and “To deal with extended business (operation) hours.” For fixed-term contract workers, the most frequent reply was “To deal with specialized operations” (43.6 per cent), followed by “To obtain capable personnel who will contribute immediately” and “To economize on wages.” As these findings suggest, the reasons why companies hire such personnel differ by employment pattern.

Table 3.
Reasons for hiring workers other than full-time employees
(business establishment shares)

(up to three multiple responses; unit: %)

Employment pattern	Business establishments with workers other than full-time employees	Full-time employees cannot be obtained	To enable full-time employees to specialize in key operations	To deal with specialized operations	To obtain capable personnel who will contribute immediately	To adjust employment volume in response to business cycles	To deal with extended business (operation) hours	To deal with busy and slack periods on a daily or weekly basis	To respond to shifts in special or seasonal work volume	To economize on wages	To economize on non-wage labour costs	For elderly person reemployment measures	As replacements for full-time employees taking child-care or nursing-care leave	Other
2007														
Workers other than full-time employees present	100.0	22.0	16.8	24.3	25.9	21.1	18.9	31.8	16.6	40.8	21.1	18.9	2.6	14.1
Fixed-term contract workers	100.0	18.2	10.6	43.6	38.3	15.6	6.4	4.5	5.0	28.3	8.1	11.0	2.4	13.2
Temporary contract workers	100.0	10.9	5.1	35.4	41.9	2.2	1.2	3.4	1.6	20.5	5.2	67.3	0.4	6.4
Temporary transfers	100.0	23.5	2.6	47.9	48.8	2.6	0.6	1.5	1.9	8.9	4.5	3.2	0.1	34.9
Dispatched workers	100.0	26.0	20.4	20.2	35.2	25.7	3.4	13.1	20.3	18.8	16.6	2.6	6.5	7.0
Temporary fixed-term employees	100.0	14.7	3.0	22.9	21.9	23.5	12.0	29.2	35.1	27.2	15.4	9.5	0.8	0.7
Part-time workers	100.0	17.6	15.3	12.7	11.8	18.0	21.7	37.2	14.5	41.1	21.3	7.9	1.6	10.6
Other	100.0	20.8	14.5	15.9	13.1	23.6	16.1	16.9	16.7	36.2	14.8	8.9	1.7	14.2

1. Of business establishments hiring worker in various employment patterns other than full-time employees, totals are for establishments citing reasons for utilizing such workers.
2. Of the employment patterns, with regard to the "Workers other than full-time employees present" column, because replies were given for all "reasons for utilizing" for which responses were made regarding employment patterns other than full-time employees, there are cases when more than three replies are made.
3. "Wages" referred to here include basic salaries, commuting allowances, and overtime work allowances.
4. "Non-wage labour costs" refer to the employer burden for health insurance, etc., education and training, welfare benefits and other costs.

Source: Ministry of Health, Labour and Welfare.

1.4 Mindset of workers who chose non-regular employment

The same survey is used to examine the reasons why workers chose non-regular employment. Based on these findings, the share of people working other than as full-time regular employees because they could not find full-time regular employment spiked from 14 per cent in 1999 to 25.8 per cent in 2003. This implies a clear increase in those who chose non-regular forms of work involuntarily. Subsequently, supported by a recovery in the job environment fuelled by the economic turnaround from 2002, this share fell back down to 18.9 per cent in 2007. Nevertheless, there are still higher percentages of dispatched workers, temporary contract workers, and those in other working patterns who see no alternative to non-regular employment (table 4).

Examining the reasons by employment pattern, differences were found in and among individual patterns. First, the response “Because there were no companies where it was possible to work as full-time employees” (the “involuntary pattern”) was relatively high among fixed-term contract workers and dispatched workers, but low among temporary employees such as daily workers and *arbeit* (temporary employees are employed either on a daily basis or temporarily for a period of no more than one month) and among part-time workers. In the case of male fixed-term contract workers, however, the response “To utilize specialized qualifications and technical skills” (hereinafter, the “income and specialization emphasis pattern”) was higher.

Table 4.
Mindset of non-regular workers

Percentage of persons working other than as full-time employees because there were no full-time jobs available (involuntary pattern)

Year	Total other than full-time and temporary transfer	Fixed-term contract workers	Temporary employees	Part-time workers	Dispatched workers
1999	14.0	29.3	10.2	8.5	29.1
2003	25.8	36.1	20.2	21.6	40.0
2007	18.9	31.5	14.6	12.2	37.3

Percentage of persons wishing to change to other employment patterns (%)

Year	Non-regular employee total	Fixed-term contract workers	Temporary employees	Part-time workers	Dispatched workers
1999	13.5	20.4	21.9	8.8	22.9
2003	22.9	32.1	34.0	20.2	31.2
2007	30.6 (90.9)	50.2	36.1	22.6	51.6

Source: General Survey on Diversified Types of Employment (Ministry of Health, Labour and Welfare).

1. Figures in parentheses show percentage of non-regular employees who wish to become regular full-time employees.
2. The 2007 figures for percentage of persons wishing to change to other employment patterns are tabulated treating workers who wish to work at their present company or at other companies as 100.
3. Temporary employees are employed either on a daily basis or temporarily for a period of no more than one month.

Among part-timers, ranking high were reasons related to flexible working conditions, such as “Because of the ability to work at hours that fit my own circumstances” (the “personal circumstances pattern”). In the case of elderly part-timers, “Because of short work hours and a lower number of working days” was ranked high. For female part-timers, the reasons that ranked high were “To help with the family budget, earn school expenses, etc.” and “Easy to balance with family life and other activities”. The reasons that female part-timers provided were more diverse than those for men). A large share of part-timers indicated the “Desire to earn money to spend freely by myself” as a reason for selecting their particular employment pattern.

Dividing these results into three categories (i.e., the involuntary pattern, income and specialization emphasis pattern, and personal circumstances pattern), it can be seen that the share of the involuntary pattern is comparatively high among dispatched workers but low among married female part-timers and elderly part-timers. The personal circumstances pattern is prevalent among part-timers, and the income and specialization emphasis pattern scored high among male contract workers and temporary contract workers (shokutaku).

Next, examining the percentage of those who wish to change from non-regular-worker status to other employment patterns, there has been a major increase, from 13.5 per cent in 1999 to 30.6 per cent in 2007. This is particularly true of dispatched workers (51.6 per cent) and fixed-term contract workers (50.2 per cent) in 2007. Close to 90 per cent of non-regular workers who wish to change their employment status wish to become regular full-time employees. Categories in which large shares of workers wish to work as full-time employees include fixed-term contract workers, dispatched workers, and young part-timers. In contrast, the percentages of married female part-timers and elderly part-timers wishing to change to full-time employee status are low (table 4).

With regard to the reasons for wanting to become regular full-time employees, the overall results show a high percentage of responses “Because full-time employees enjoy more stable work conditions” and “Because I want to earn a higher income.” Examined by the three pattern categories defined above, “Because full-time employees enjoy more stable work conditions” scored high among the unwilling pattern, “Because I want to earn a higher income” was high among the income and specialization emphasis pattern and the unwilling pattern, and “Because I want to deepen my experience and expand my perspective” was high among the personal circumstances pattern.

1.5 Wage gaps between regular and non-regular work

In Japan, a large gap in wages by employment pattern has emerged as a serious problem. The Basic Survey on Wage Structure (Ministry of Health, Labour and Welfare) on the basis of June 2010 data shows scheduled compensation amounts by specific employment pattern (Figure 1-1) as well as a differential index, marking the compensation of regular full-time employees as 100 (Figure 1-2). As Figure 1-1 shows, the overall compensation level is approximately 310,000 yen for full-time regular employees, while it is just below 200,000 yen for full-time non-regular employees, and just below 90,000 yen for part-timers. Viewing the differential index, which marks regular full-time employee compensation as 100, the level for full-time non-regular employees is in the vicinity of 64 and that for part-timers is about 28.

Again looking at Figure 1-1, under compensation value by age, for regular full-time employees the amount continues to increase on a largely sustained basis, from just under 200,000 yen for the 20-24 age group to a peak of 390,000 yen for the 50-54 age group. For full-time non-regular employees, in contrast, although compensation gradually increases to 200,000 yen for the 30-34 age group, the trend after that is either a levelling off or a decline.

For part-timers, with the exception of the 20-24 age group (which includes a considerable number of so-called student arbeit), the compensation amounts are roughly at the same level of around 90,000 yen. Because married women holding part-time jobs can receive a spousal tax deduction, in most cases they strive to limit their annual income to within 1.03 million yen in order to qualify for that deduction. This practice is said to be keeping part-time job wages at lower levels.

The result, viewed by age, is that gaps remain comparatively narrow at younger ages but then steadily widen as workers grow older. For example, in the case of full-time non-regular employees, although the gap ranges from just approximately 80-85 per cent of that of full-time regular employees for workers in their 20s, the differential then proceeds to grow larger proportionally to age. By the time workers are in the second half of their 40s, the compensation of non-regular employees falls to about one-half that of their regular full-time counterparts.

Thus, the wage curve for full-time regular employees and non-regular employees reveals that, although wages rise proportionally to age for regular full-time employees, there is very little growth in wages for non-regular employees even as they become older.

Figure 1-1.
Prescribed scheduled compensation by hiring
and employment pattern (actual amount)

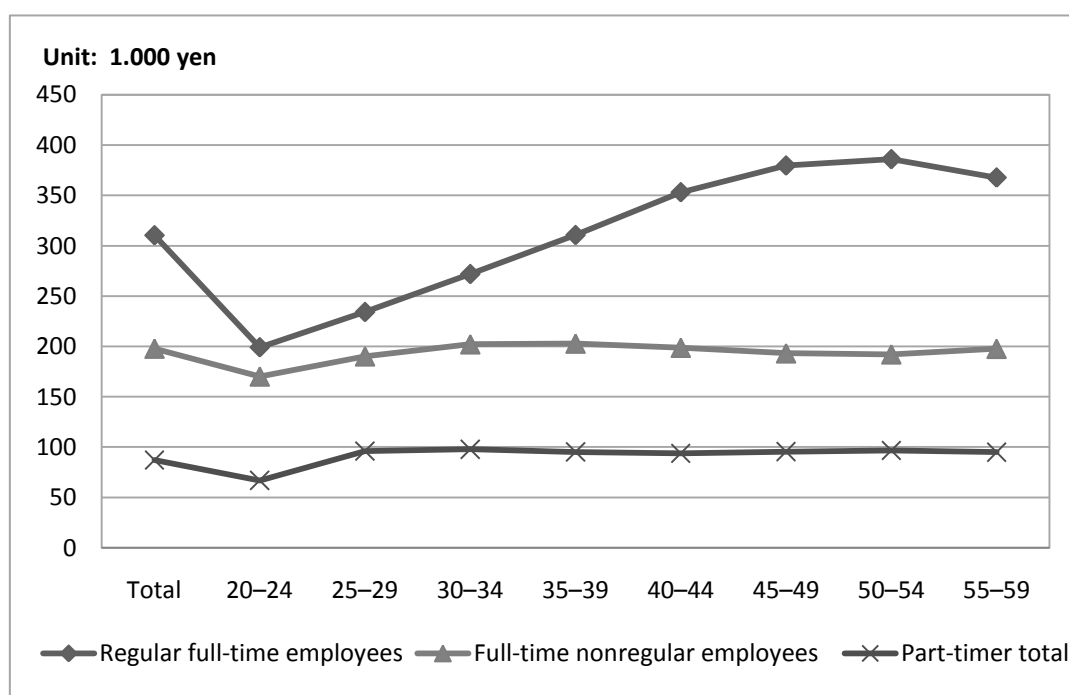
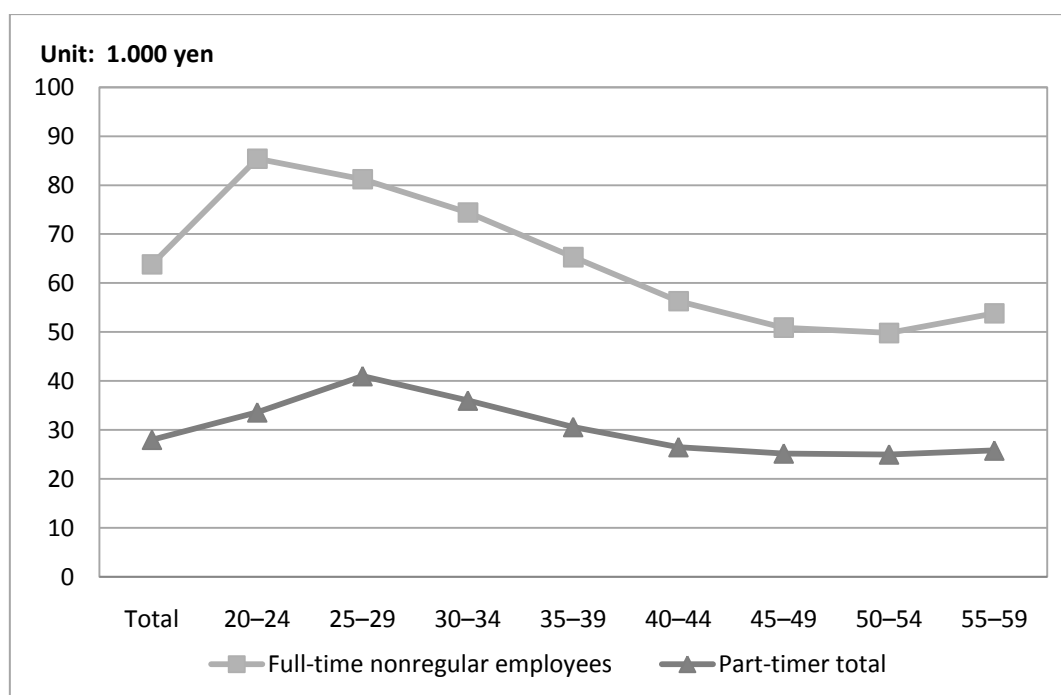


Figure 1-2.
Prescribed scheduled compensation by hiring and employment pattern
(regular employees = 100)



Source: Basic Survey on Wage Structure (Ministry of Health, Labour and Welfare) for June 2009. Note: Classifications of regular employees and non-regular employees were made in accordance to how they are treated at business establishments.

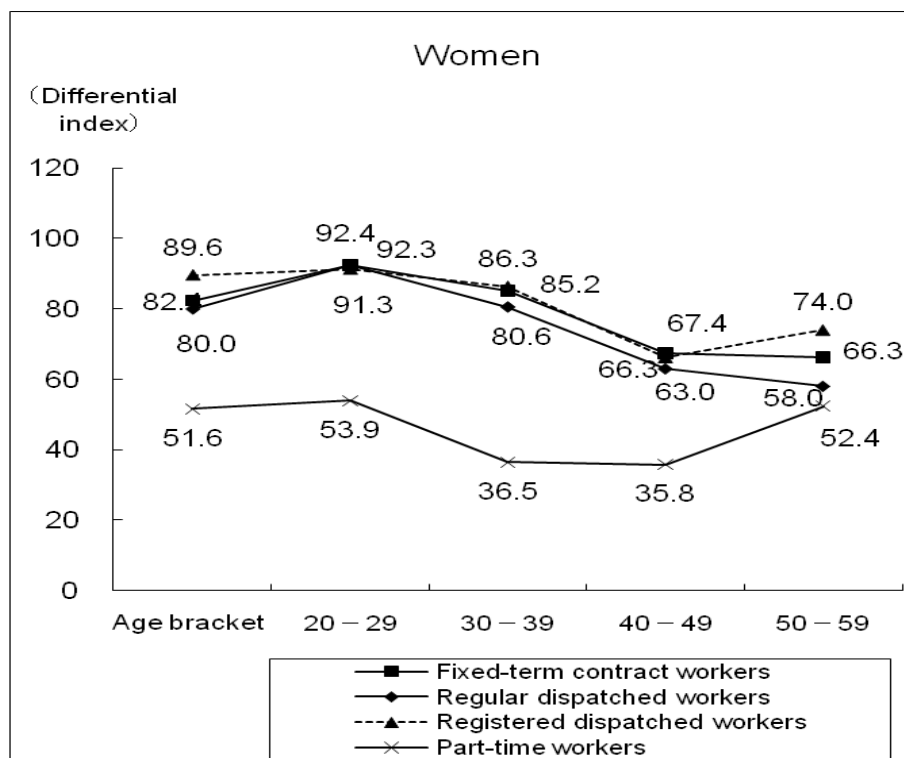
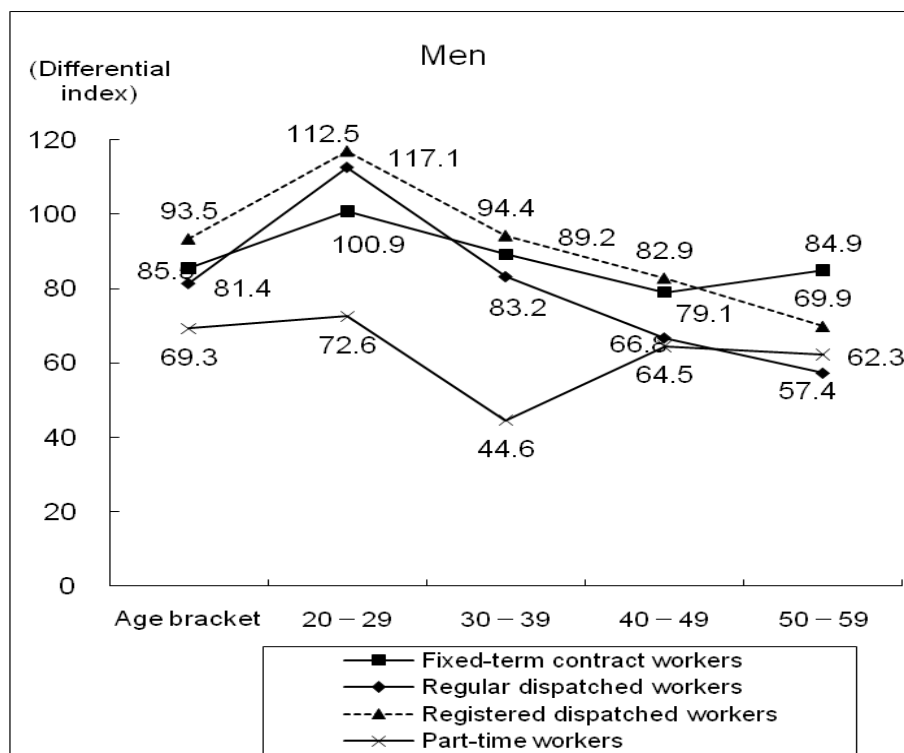
Figure 2 shows the wage gaps between regular and non-regular workers, estimated by using individual data from the General Survey on Diversified Types of Employment (Ministry of Health, Labour and Welfare). Here, attributes were coordinated to the greatest possible degree, with trial calculations made on the wage gaps between regular and non-regular workers.

According to these results, the overall estimated wage gaps by employment pattern were estimated at 86 for male fixed-term contract workers and 82 for their female counterparts; 94 for regular dispatched workers and 90 for their female counterparts; and 81 for male registered dispatched workers and 80 for their female counterparts. For part-time workers, the figures were 69 for males and 52 for females. As this shows, the gaps between regular employees and full-time non-regular workers were estimated at between 80 per cent and 90 per cent, and gaps between regular employees and part-time workers were estimated at between 50 per cent and 70 per cent.

Viewed by age group, overall gaps are at a level less severe than the Basic Survey on Wage Structure data presented above. Among people in their 20s in particular, with regard to full-time non-regular workers including fixed-term contract workers and dispatched workers, non-regular compensation for males was actually higher. Among females, non-regular compensation was at a level over 90 per cent of that of regular employees. During their younger years, non-regular employees receive wages at levels that compare favourably to those of regular employees. Conversely, this can be viewed as one of the factors behind the high share of non-regular employment among young people and the difficulties they encounter in achieving regular-employee status.

In any case, viewed in aggregate, there are considerable wage gaps between regular and non-regular categories even when combining attributes, underscoring the conclusion that this is a serious issue in Japan.

Figure 2.
Wage differential index by gender and age after major
grouping by academic background and occupation
(regular employees = 100)



Source: Trial calculations are based on tabulations contained in the General Survey on Diversified Types of Employment (Ministry of Health, Labour and Welfare).

1.6 Impact of the financial crisis on non-regular employment

Decrease in the non-regular labour force with significant labour market contraction

The Japanese economy moved into a business downturn phase in the fall of 2007. After this, under the impact of substantial economic contraction caused by the global financial crisis in the wake of the collapse of Lehman Brothers in September 2008, the employment situation rapidly worsened. From the fall of 2008, the total unemployment rate, which was at the 3 per cent level at the beginning of that year, moved up to the mid-5 per cent level. The effective job-opening to application ratio, which had been close to one job per application, plunged to 0.7 openings per application. The total unemployment rate subsequently climbed to an all-time high of 5.6 per cent in July 2009, with the job-opening to application ratio falling to a new low of 0.42 in August of that year.

Behind this swift worsening in the employment situation was the increase in the number of business establishments that began retrenching non-regular employees including dispatched workers, mainly by terminating their employment contracts, in the fall of 2008. According to the results of a survey conducted by the Ministry of Health, Labour and Welfare, a total of approximately 270,000 non-regular employees lost or were scheduled to lose their jobs due to the expiry of employment contracts, early termination (prior to expiry), and other reasons during the period from October 2008 through June 2010. Among those who were targeted for contract termination and other forms of retrenchment, the single largest group comprised dispatched workers at about 149,000 people, followed by fixed-term contract workers at around 63,000 people, and individual contractors/sub-contracted workers at 21,000 people. By industry, those whose contracts were terminated in the manufacturing sector reached approximately 231,000 people, followed by 12,000 in wholesaling and retailing, and 5,000 in the transportation industry.

As a result, the number of non-regular workers, which had charted a largely unbroken upward trend from the 1980s through 2008, declined. In the January-March 2009 quarter, the number of part-timers, dispatched workers, fixed-term contract workers, and other non-regular workers fell by 380,000 compared to that in the same period the previous year. This broad-based decrease continued in the April-June quarter of that year at 470,000 people, and in the July-September quarter the decline was tracked at 360,000 people.

With regard to regular employees, as compared with the same period in the previous year, there was observed in 2009 an increase of 150,000 employees in the January-March quarter, but a decline of 290,000 employees in the April-June quarter and a drop of 150,000 employees in the July-September quarter. Thus, the changes in the number of regular workers were smaller than those observed for non-regular workers such as part-timers, dispatched workers, and fixed-term contract workers. This reflected the move, in the midst of efforts to cope with major economic contraction prompted by depressed external demand, to mobilize government employment adjustment subsidies for maintaining employment of regular workers through a wide range of measures including suspension of operations (layoffs) and reshuffling or transfer. The number of people targeted under this program peaked at about 2.65 million in August 2009. During this time, employment adjustments accompanied by job cuts were carried out with a concentrated focus on non-regular workers (table 5).

As a result of such employment adjustments, the share of non-regular employment, which had continued to grow over the years, dropped to 33.4 per cent (a 0.6-point decline from the previous year) in 2009. This was the first year-on-year drop in the non-regular-employment share since it became possible to track its annual average in 2002. However, this employment trend was a result of a proportionately larger decline in non-regular employment in the context of overall drops in both regular and non-regular jobs and is definitely not a reflection of the end of the trend toward non-regularization of work in

general. In fact, the January-March quarter of 2010 witnessed a renewed increase in non-regular employees, especially female part-time workers, with the non-regular-employment share moving back up, to 33.7 per cent.

Table 5.
Status of decisions to provide employment adjustment subsidies and other support

Year, month	Number of business establishments	Number of targets (people)
2008, April	43	1,214
May	52	1,287
June	61	1,532
July	56	1,864
August	86	2,099
September	75	1,608
October	103	2,409
November	76	1,590
December	83	2,716
2009, January	127	4,150
February	461	21,583
March	3,665	212,129
April	7,681	544,626
May	18,691	1,127,148
June	34,485	1,870,582
July	64,072	2,515,716
August	79,015	2,646,760
September	87,372	2,475,844
October	97,724	2,287,451
November	85,929	1,847,292
December	90,201	1,824,759
2010, January	77,670	1,466,804
February	71,993	1,370,325
March	80,181	1,463,267

Source: Ministry of Health, Labour and Welfare survey

Notes:

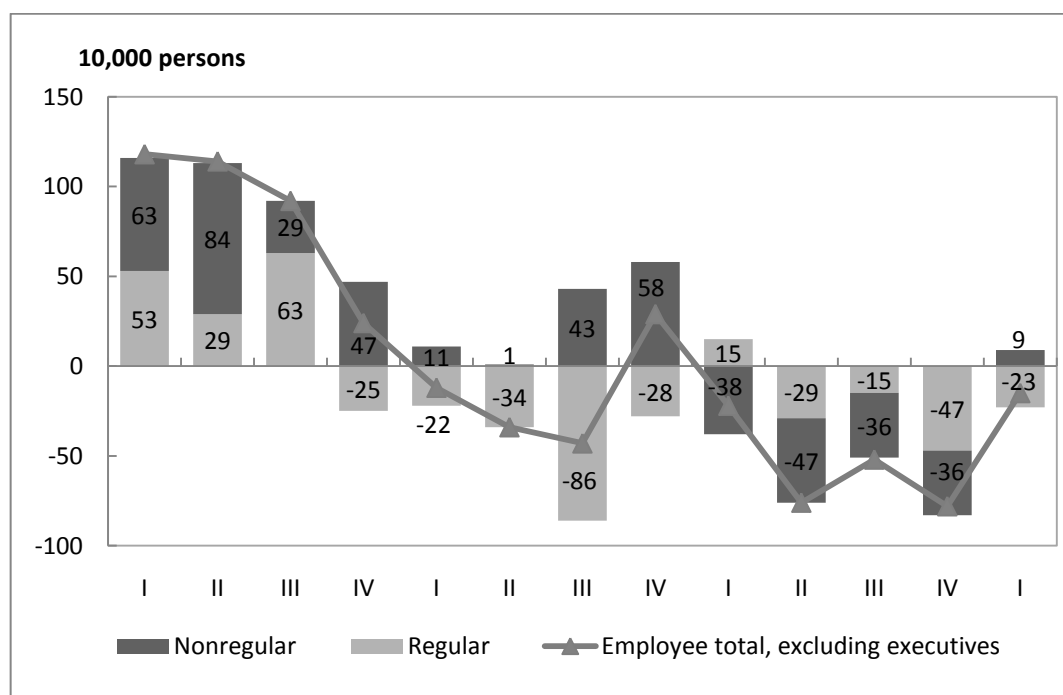
1. From January 2009, figures include payments of urgent employment stabilization grants to small and medium-sized businesses.
2. These are preliminary figures and are subject to change in the future.

Changes in the employment situation of non-regular employees before and after the financial crisis

The Labour Force Survey shows annual average employment developments by work pattern before and after the collapse of Lehman Brothers, which triggered a global recession. Upon entering the business downturn that began prior to the Lehman shock, Japanese companies carried out moves in which they appeared to be cutting back on regular employment and replacing them with non-regular employees. The quarterly trends

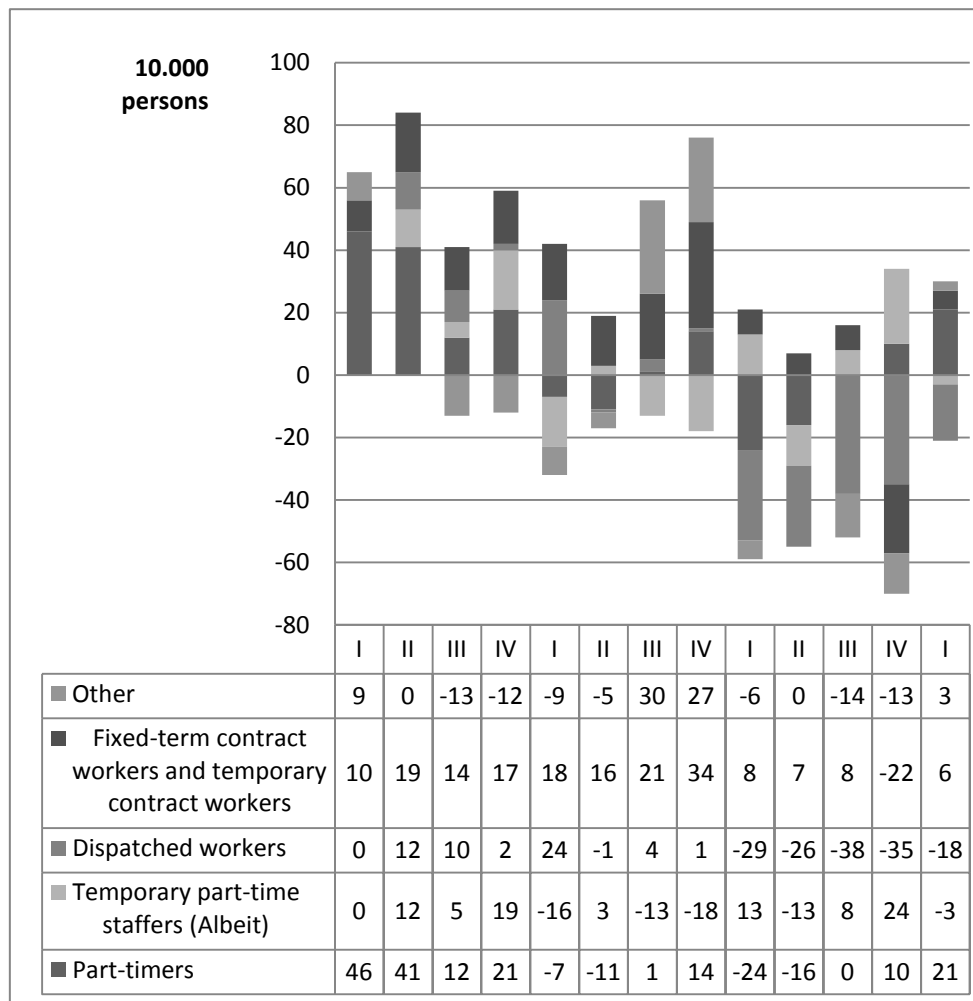
in regular and non-regular employment show that from the second half of 2007 the degrees of increase in the numbers of both regular and non-regular employees from the previous year were already sharply retrenching from those experienced up to that point (Figure 3). By 2008, the number of employees fell below the levels recorded during the same period in the previous year. In 2008, non-regular employment generally grew even as regular employment continued to decline considerably. Then came the collapse of Lehman Brothers and the ensuing economic crisis.

Figure 3.
Increase/decrease in the number of regular and non-regular employees
(vs. same quarter in the previous year)



Source: Labour Force Survey, detailed tabulation (Ministry of Health, Labour and Welfare).

Figure 4.
Non-regular employment pattern
(vs. same quarter in the previous year)



Source: Labour Force Survey, detailed tabulation (Ministry of Health, Labour and Welfare).

Figure 4 presents a compilation of non-regular employment developments by work pattern expressing differences from those of the same periods in the previous year. According to this data, within the increase in non-regular employment from 2007 onwards, fixed-term contract workers and shokutaku (temporary contract workers) made up a considerable share. In the latter half of 2008 in particular, the third quarter shows an increase of 210,000 workers compared to the same quarter in the previous year, followed by an increase of 340,000 workers in the fourth quarter. As indicated, this particular pattern accounts for approximately half or more of the overall increase in non-regular employment. This segment, i.e. fixed-term contract workers and shokutaku, is considered to include a large number of Japan's baby boomers who have reached mandatory retirement age and became shokutaku. As noted previously, this can be viewed as the ageing of non-regular employees.

As to trends in other work patterns, arbeit (temporary part-time staffers) showed clear decreases in the third and fourth quarters of 2008. Along with this, the number of dispatched workers, an employment pattern that had sustained an ascending trend up to that point, can be seen to have halted its upward climb.

In conclusion, dispatched workers, part-timers, and temporary part-time staffers emerged as major targets for employment adjustments during the swift contraction of economic activity in the immediate wake of the Lehman shock. With regard to dispatched workers, no job increases have been noted up to the point of this writing.

Sharp decrease in the number of dispatched workers

In 2009, the decline in the number of dispatched workers was significant among the entire non-regular workforce: it dropped by 290,000 (20.0 per cent) in the first quarter, by 260,000 people (19.8 per cent) in the second quarter, by 380,000 people (27.1 per cent) in the third quarter, and 350,000 people (24.0 per cent) in the fourth quarter. In the first quarter of 2010, even as most of the other employment patterns shifted to positive growth, dispatched workers continued to decline substantially by 180,000 people (15.5 per cent).

In the fourth quarter of 2003, the number of dispatched workers was 530,000. This rapidly grew to 620,000 in the first quarter of 2004 (when the ban on dispatched workers in the manufacturing industry was lifted) and 900,000 in the second quarter. By the first quarter of 2008, the total had jumped to 1,450,000. Among various factors contributing to this increase during this period, the aforementioned lifting of the ban on this category of workers in manufacturing industry had the greatest impact. This employment pattern, however, displayed a sharp decline towards 2009, associated with the rapid contraction in production activities following the recession triggered by the Lehman shock.

2. Policy developments concerning non-regular employment and tripartite dialogue processes

Within the labour law policy of Japan, regulation and deregulation targeting non-regular employment take on rather complex aspects. On certain fronts, the regulation of non-regular employment can be characterized as extremely lax, with movements toward labour law regulation only just recently gotten off the ground. On other fronts, however, regulations aimed at specific types of non-regular employment are extremely prohibitive. Although deregulation has been advancing over the past decade or so, only just recently have there been moves to once again tighten the controls. Moreover, there are also fields that are simply not considered feasible targets for labour law regulation.

Specifically, part-time employment and fixed-term contract employment have been the most typical forms of non-regular employment over the years, and the issues regarding equal treatment in terms of wages and working conditions, renewal and termination of fixed-term contracts have been debated over the past few decades. Not until very recently, however, has legal-policy-based regulation been pursued with any noticeable vigour. In Japan, principles of equal treatment based on equal pay for work of equal value are not achieved; equality issues have traditionally been dealt with by promoting equal opportunities for both men and women to be incorporated into so-called “long-term employment practices”. In other words, the underlying equality policy was to ensure equal treatment among those who were on equivalent career tracks to those of regular employees, while leaving non-regular employees out of its scope, their terms and conditions of work being determined practically depending on the external labour market conditions. Since employment management practices as well as how terms and conditions are determined are so different between those who are incorporated in the internal labour market (regular employees with long-term employment security) and those who are absorbed in the external labour market (non-regular employees with fixed-term and temporary employment), it has de facto been unrealistic to articulate common indicators in determining what is equal treatment for the two categories. Thus in Japan the term “balanced treatment” is frequently used in lieu of the term “equal treatment”.

In contrast, temporary agency work was legally banned until 1985, and even after the lifting of that ban the dispatching business was placed under extremely severe regulation. Even so, no regulation on equal treatment in terms of wages and working conditions was enforced. In recent years, the trend has been a repeating cycle of relaxation and tightening of regulations. So-called individual contract work which is not associated with employment relationships has been excluded from labour law regulation (with the exception of industrial homeworking), although this sector has gained attention in recent years.

The next chapter provides a summary of the evolution of labour law policy on non-regular employment at the national level, including how tripartite social dialogue took place and how the social partners engaged in formulating policy vis-à-vis the non-standard work forms.

2.1 Labour law policy on part-time work

Part-time work law

In 1980s, two opposition parties (Socialist and Komeito) proposed bills for the prohibition of discrimination against part-time workers. In 1990, four opposition parties agreed on a single bill which prohibited discrimination against part-time workers on wage, leave, assignment, promotion, and mandatory retirement and dismissal. In response to parliamentary discussions, the Ministry of Labour set up the Study Group on Part-time Work in 1992. Based on the report, it proposed a bill for part-time workers in 1993. The bill did not include any provisions on equal treatment for part-time workers. The Diet modified the bill to include one phrase, “considering the balance with regular workers”. The Law Concerning the Improvement of Employment Management, Etc. of Part-Time Workers was then enacted.

Balanced treatment

It took 10 years to define the term “balance with regular workers”. The Ministry of Labour set up a series of study groups in 1996, 1998, and 2001 and eventually produced a report entitled “The challenge and response of part-time work” in 2002. The report recommended “balanced treatment” of part-time workers indicating that where the two types of workers engage in identical duties and bear the same level of responsibility, their wage determination systems should be linked to each other, and; where there are logical reasons to apply different wage determination systems to these workers, employers should consider the balance of wage levels if both groups of workers currently engage in identical duties and bear the same amount of responsibility in practice.

Based on the report and subsequent discussions at the tripartite Labour Policy Council, the Guidelines for Employers on Improving, Etc., Employment Management of Part-Time Workers were revised, adopting the abovementioned “balanced treatment” principle.

2007 revision

In the parliamentary discussion on the revision of the Law on Equal Opportunity between Men and Women in Employment in 2006, the Diet passed a resolution stipulating that the Government should enact legislation on the balanced treatment of part-time workers. Responding to this resolution, the Ministry of Health, Labour and Welfare launched a discussion on the topic in the tripartite Labour Policy Council. The trade union side demanded that the new regulation should cover those workers who work full-time but are called “part-timers” in the company – so-called “full-time part-time workers”. This situation is a result of labour market trends, in which almost all non-regular workers

(including full-time workers) are called “part-timers”, usually signalling their precarious status. However, the union demand was rejected by the secretariat on grounds that these were not “part-time workers” as defined in the Law.

At the end of 2006, the Council reported to the Minister that part-time workers whose human resource management and contractual status are the same as those of regular workers should not be discriminated against. However, such part-time workers are very few. Almost all part-time workers receive a different human resource management from their regular counterparts. It therefore seemed likely that only workers who are hired as regular workers but work part time temporarily because of childcare would be covered by this legislation. For other types of part-time workers, employers are required to endeavour to consider the balance of wage levels if both groups of workers currently engage in identical duties and bear the same amount of responsibility in practice.

The revised Part-Time Work Law was enacted in 2007. The Law stipulates regarding “part-time workers equivalent to ordinary workers” that “the employer shall not engage in discriminatory treatment in terms of the determination of wages, the implementation of education and training, the utilization of welfare facilities and other treatments for workers by reason of being a part-time worker” (Article 8). Such part-time workers are those “for whom the description of his/her work and the level of responsibilities associated with said work are equal to those of ordinary workers employed at the workplace, who have concluded an open-ended labour contract with the employer, and whose job description and assignment are likely to be changed within the same range as the job description and assignment of the ordinary workers, in light of the practices at the workplace and other circumstances, throughout the entire period until the termination of the employment relationship with the employer”. Very few part-time workers would satisfy these strict requirements. For other types of part-time workers, the employer “shall endeavour to determine their wages (excluding commutation allowances, retirement allowances and others) with due consideration to a balance with ordinary workers, and by taking into consideration such matters as the job descriptions of those part-time workers, the performance of their jobs, their motivation, and their abilities or experience” (Article 9).

2.2 Labour law policy on fixed-term contracts

Civil Code and case laws

In the letter of the Civil Code, an open-ended employment contract enjoys less security than a fixed-term contract. It provides that “if no period for the service has been fixed by the parties, either party may at any time give notice to the other party to terminate the contract; in this case the contract of service shall come to an end upon the expiry of two weeks after such notice has been given” (Article 627) and that “even where a period for the service has been fixed by the parties, either party may, if any unavoidable cause exists, immediately terminate the contract; but if such cause has arisen by the fault of one of the parties, that party is liable for damages to the other party” (Article 628). The requirement of “unavoidable cause” protects fixed-term workers from dismissal during the period of service. But where case laws protect workers with open-ended contracts from dismissal, there is no consolation for fixed-term workers who may see their contracts terminated on the expiry of the period.

This issue had already emerged in the pre-Second World War era under the name of “the temporary workers issue”. At that time, the focus was on dismissal allowance corresponding to two weeks’ wages. Since the war, successive case laws have protected the open-ended contract from dismissal using “the doctrine of abusive dismissal”. But fixed-term workers cannot use the doctrine directly because they are not “dismissed” but just see their contract terminated on expiry. To overcome this difficulty, the Supreme

Court judged in 1974 that “where there was a desire for continued employment on the part of both contracting parties, and where the fixed-term contracts were repeatedly renewed so that they were de facto indistinguishable from open-ended contracts, the refusal to renew is tantamount to a dismissal” (Toshiba Yanagi-cho Factory case).

However, this judgment did not admit a fixed-term contract as an open-ended contract. An employer’s refusal to renew the fixed-term contract may be “tantamount to a dismissal” in certain situations, but it cannot be regarded as a dismissal. In response to the judgment, employers became cautious in concluding fixed-term contracts. When they conclude a fixed-term contract, they expressly declare that the contract shall not be renewed on expiry. But after the termination of the contract, they conclude a new fixed-term contract with the worker.

Recent legislation on fixed-term work

In the process of the 1998 revision of the Labour Standards Law, the trade union side demanded the introduction of regulations on concluding or renewing fixed-term contracts. At that time, however, the issue was not included in the legal provisions. The Ministry of Labour set up the Study Group on Renewal of Fixed-term Contracts in 1999, and issued a circular entitled Guidelines on Conclusion, Renewal and Refusal of Renewal of Fixed-Term Labour Contracts, based on the report of the Study Group in 2000. The Guidelines required employers to explain to fixed-term workers whether they were being renewed or not and the reason. These guidelines were not a Ministerial Announcement, which would carry the force of legislation in itself, but just a director-general’s circular with no legally binding effect.

In 2003 a revision of the Labour Standards Law, a new framework provision which gives the Minister the competence to draw up guidelines on conclusion, renewal and refusal of renewal of fixed-term labour contracts, was published. Based on this, the legal Guidelines on Conclusion, Renewal and Refusal of Renewal of Fixed-Term Labour Contracts were issued in the form of a Ministerial Announcement in 2003. The Guidelines stipulated that employers must clearly state whether workers were being renewed or not and in each case explain the criteria used. It also stipulated that an employer wishing to terminate (or refusing to renew) the fixed-term contract must provide at least 30 days’ notice. The last point resembles Article 20 of the Labour Standards Law.

In 2007, the Labour Contract Law was enacted. It stipulates that “an employer may not dismiss a worker with a fixed-term contract until its expiry, unless any unavoidable cause exists” (Article 17(1)). This provision reproduces Article 628 of the Civil Code. The Law also stipulates that “an employer must give consideration to not renewing a fixed-term contract repeatedly by setting an unnecessarily short term” (Article 17(2)). This provision can be seen as a softer restatement of the abovementioned guidelines.

Recently, equal treatment in working conditions between fixed-term workers and open-ended workers has also been discussed. The European Union adopted a Directive on fixed-term work in 1999 which stipulated the equal treatment principle. This issue became the focus of debate on fixed-term workers in the tripartite Labour Policy Council in 2006. The topic was abandoned in the last report of the Council because the employer side adamantly resisted such an idea. However, the Diet modified the proposed Labour Contract Law and inserted a new provision on consideration of balance. “The labour contract shall be concluded or modified by an employer and a worker with due consideration to the harmony between work and private life” (Article 3(4)). There are no references to the term “balance.” But this provision implies that there shall be some “balance” between workers with open-ended contracts and workers with fixed-term contracts. The amendment was motivated by the revision of the Part-Time Work Law in 2007 which incorporated the equal treatment of a particular type of part-time workers and balanced treatment of other types of part-time workers.

Fixed-term Contract Work Bill submitted by the opposition party (current ruling party)

In December 2008, in the midst of a worsening employment situation due to the financial crisis, the Democratic Party of Japan, the leading opposition party at the time, submitted to the Diet a legislative bill to partially revise the Labour Contract Law for the sake of regulating fixed-term labour contracts.

The most important point of this bill was the attempt to limit the basis for entering into fixed-term labour contracts to the following circumstances: a) cases of hiring workers for provisional or temporary operations; b) cases of hiring substitute workers for workers taking leave or who are absent from work; c) cases of hiring workers for business operations scheduled to be concluded within set periods of time; d) cases of hiring workers with, for example, specialized knowledge, etc; and so forth.

Another pillar of this bill was its elucidation of the ban on discrimination, namely, “employers, in the absence of rational reasons, shall not engage in discriminatory treatment pertaining to the wages or other working conditions of fixed-term contract workers or part-time workers compared to the conditions of regular workers.”

This bill was rejected by the ruling party of that time.

Study group on fixed-term labour contracts

In February 2009, the Ministry of Health, Labour and Welfare inaugurated a study group to investigate fixed-term labour contracts. This group published its interim report in September 2010, which includes the following recommendations.

With regard to limits on consecutive years of service as well as contract renewal and termination, a positive stance is expressed in view of the fact that regulations on the number of renewals and periods of possible employment are clearly defined, thereby allowing both labour and management an extremely high forecast potential which contributes to the prevention of disputes.

With regard to equal treatment and conversion to regular-employee status, it is suggested that “equal treatment between fixed-term contract workers and regular employees should be promoted along with the promotion of changes in fixed-term contracts to open-ended contracts and/or conversion to regular-employee status.” However, a negative view is also expressed in the Study Group toward the principle of equal treatment, which is internationally acknowledged such as in the EU and the ILO: “The Japanese wage structure is not the kind of job-based system that is seen in various other countries, under which wages are determined by each job duty. The general approach adopted in Japan in determining wages is to view the element of job performance as a central factor but also take into account other factors including job duties and human management resources schemes and functioning. Regular-employee wage determination systems are thus designed on the basis of long-term perspectives. As a result, it would be difficult to make comparisons with regular employees solely on the grounds that the contents of duties are the same.”

With regard to converting to regular-employee status, it is noted that efforts are being made to provide job stability by offering open-ended labour contracts, with the report suggesting the feasibility of opting for open-ended labour contracts with restrictions on working time, place of assignment, and occupation.

2.3 Labour law policy on temporary agency work

Enactment of Employment Security Law – prohibition of labour supply businesses

By the enactment of the Employment Security Law in 1947, almost all labour supply businesses were prohibited unless they were carried out by trade unions. The backdrop was the policy of GHQ (General Headquarters of the Allied Powers) for democratization of Japanese society, and in particular the enthusiasm of Mr. Collett, who was responsible for GHQ labour market policy, for the eradication of any feudal labour practices such as intermediate exploitation or forced labour.

This policy was also based on the international trend that these businesses should be prohibited, in line with ILO Convention No. 34 (1933) concerning Fee-Charging Employment Agencies, which required that “fee-charging employment agencies conducted with a view to profit ... shall be abolished within three years” with exceptions for specific categories of workers.

Mr. Collett of GHQ ordered that even if conducted in the legal form of a sub-contract, such an enterprise should be regarded as a labour supply business when the workers were not directed by the sub-contractor but by the user. The four requirements to be recognized as a sub-contract including this requirement were stipulated in the Enforcement Regulation for Employment Security Law (issued by the Ministry of Labour) of 1948.

Restrictive liberalization of temporary agency work

Very ironically, this prohibitive regulation ordered by GHQ was undermined by the impact of US-based temporary work agencies. Manpower Japan, the subsidiary of the US-based Manpower Company, started as a temporary work business under the legal form of a sub-contractor of office work from 1966. The Ministry of Labour examined the case and suspected this might be a labour supply business. But the Administrative Management Agency of the Government recommended in 1978 that this type of business should be allowed because it contributed to the employment promotion of women and elderly people.

This recommendation prompted a policy debate on whether this type of business should be allowed or prohibited. The supporters of deregulation insisted that such a business was very effective and efficient in matching demand and supply of workforces and could contribute to the employment promotion of married women and elderly persons. The opponents insisted that it might cause precarious employment and negatively affect Japanese employment practice characterized by lifetime commitment.

The Ministry of Labour set up the Study Group on the Workforce Demand and Supply Adjustment Systems in 1978, and the Group published a suggestion in 1980 that this type of business be termed “worker dispatch business”. It recommended that such businesses should be allowed only with a permit from the Minister of Labour and that the employment contract between the agency and the worker should be without limit of time (meaning that these should be permanent workers). After that, the Research Group on the Worker Dispatch Business which comprised both the social partners and relevant agencies was set up in 1980. But consensus could not be reached and the debate was interrupted for two and a half years.

In 1984, the Group published a report without reaching perfect consensus. The report recommended that such business should be restricted to specific jobs which require professional knowledge, skills and experiences or different personnel management. This system, later called the “positive list system”, was a compromise between the pros and

cons of deregulation. Under the system, worker dispatch businesses are generally prohibited and are permitted only within specific jobs which are regarded as not negatively affecting Japanese employment practice.

Based on the report, the Ministry of Labour drafted a proposal for a Law Concerning Securing the Proper Operation of Worker Dispatching Undertakings and Improved Working Conditions for Dispatched Workers (hereafter, “Worker Dispatching Law”). After heated discussion in the Diet, the Law was adopted in 1985 and came into force in 1986.

(a) Positive list system

The Enforcement Order for the Worker Dispatching Law, issued by the Government in 1986, specified 16 jobs which could be permitted for worker dispatch businesses. These jobs were 1) computer programming; 2) machinery design and drafting; 3) machinery operation for producing sounds and images for broadcast programs; 4) production of broadcast programs; 5) operation of office machinery; 6) interpretation, translation and shorthand; 7) secretarial work; 8) filing; 9) market research; 10) management of financial affairs; 11) the drafting of foreign exchange documents; 12) the presentation and explanation of manufactured goods; 13) tour guide; 14) cleaning of buildings; 15) operation and maintenance of building equipment; and 16) building receptionist and guide.

This positive list system was the most conspicuous characteristic of Japan’s deregulation of temporary agency work. In European countries such as Germany and France, the prohibitions on temporary agency work were also deregulated in the 1970s and 1980s with very strict conditions and regulations. Rather than being restricted to specific jobs, however, agencies were permitted in almost all jobs. The rationale behind the positive list system was that temporary work should be segregated from regular employees who were hired fresh from school and supposed to develop their career through in-house training and education.

(b) Regular type and registration type

The Law admits two types of dispatching business and establishes corresponding regulations. Regular-employment-type worker dispatching (specified worker dispatching), in which a dispatched worker is hired on a permanent basis, requires notification to the Labour Minister. Registration-type worker dispatching (general worker dispatching), in which the agency has workers registered with it in advance and concludes an employment contract with the worker at the request of a user company, is more unstable because employment relations depend on the contract between a dispatching agency and a user company.

(c) Protection of dispatched workers

Dispatched workers maintain their relationship only with the dispatching agency and not with the user company. Therefore, a dispatching agency is in principle responsible for compliance with the protective labour laws. However, because the user company actually directs the dispatched workers, the user company should be responsible for certain matters such as working time and health and safety.

General liberalization of temporary work agencies

In 1999, the Worker Dispatching Law was completely revised, and the positive list system was replaced by the “negative list system”. Behind the revision was the international trend which favoured deregulation of private placement services. The International Labour Conference in 1997 adopted a new Convention No. 181 and Recommendation No. 188 concerning Private Employment Agencies.

Deregulation policy also lay behind the complete revision of the Law. In 1995, the Administrative Reform Committee of the Government demanded the deregulation of worker dispatching businesses, and the Cabinet approved this in 1996. The deregulation of the labour market became Government policy.

The Ministry of Labour consulted the tripartite Labour Policy Council on the revision of the Worker Dispatching Law in 1997 and the Council reported “on the fundamental direction of the revision of worker dispatching systems” in 1998. The report clearly proposed a negative list system, in which worker dispatching businesses are generally allowed, irrespective of the jobs concerned, with a permit (general worker dispatching) or on notification (specified worker dispatching). The Ministry presented a proposal for a Law revising the Worker Dispatching Law to the Diet in 1998. In the Diet, the opposition demanded numerous amendments to the text and some of them were incorporated into the revised Law in 1999. The revised Worker Dispatching Law came into force in 2000.

The most important point in the 1999 revision of the Law was of course the transition from the positive list system to a negative list system. An enterprise could now operate a worker dispatching business except in construction work, dock work and other specific jobs. However, because of very strong opposition from the trade union side, worker dispatching for direct production processes in manufacturing industries continued to be prohibited.

Another important point in the 1999 revision was the setting of an upper limit on the duration of dispatching. The revised Law prohibits a user company from receiving a dispatch worker at the same post in the workplace for more than one year continuously. This brought the “temporary” concept into worker dispatching. In 1986, the Japanese Government adopted the term “worker dispatching” instead of the more commonly used “temporary work” because such work was not necessarily “temporary” in nature. Now it became legally “temporary”. However, the one-year limit does not apply to the previously permitted 26 jobs (10 jobs added in 1996).

2003 revision of the Law

In 2003, the Worker Dispatching Law was revised again. The ban on worker dispatching in manufacturing industries was lifted. This had been advocated by the Council for Regulatory Reform in the Cabinet Office. One reason that the trade union side did not resist strongly was the existence of disguised sub-contract workers in manufacturing industries, who were actually dispatched workers. This situation made the trade union side decide to admit worker dispatching in manufacturing industries and protect these workers in the framework of the Worker Dispatching Law (on the principle that less protection is better than no protection at all).

Another revision in 2003 was an extension of the upper limit on the duration of dispatching from one year to three years (except for manufacturing industries, where the upper limit was set at one year temporarily). The “temporary” concept introduced in 1999 faded out again. Also introduced was the employer’s obligation to propose a direct employment contract to the dispatched worker after this three-year limit.

Trend reversal toward re-regulation

Although moves toward deregulation further intensified thereafter, the widening disparities evolved into a major social issue in 2006 and 2007 and temporary agency work attracted attention as a typical work form affected by this issue. One key focus was on those who were dispatched as day labourers. It was widely reported that these workers were spending nights at such places as Internet cafes and a certain degree of support was obtained for the regulation of temporary agencies with the aim of adjusting the disparity. As a result, the tripartite Labour Policy Council’s deliberations on revising the Worker Dispatching Law

were tentatively suspended in December 2007 and it called for further studies into the fundamental principles of worker dispatching systems.

In February 2008, the Government established a study group to look into the worker dispatching system. In July of that year, the study group issued a report of its findings, which called for a ban, in principle, on dispatching day labourers (dispatches of less than one month) and efforts to promote the move to regular-employee status for registered dispatched workers. In November, the Government submitted a bill to this end to the Diet. At the time, however, the financial crisis due to the collapse of Lehman Brothers was already affecting the economy, accompanied by significant cuts in the number of dispatched workers in the automobile industry and other manufacturing sectors. Dispatched workers whose contracts were abruptly terminated were evicted from dormitories run by temporary work agencies and left with nowhere to live. In response to this, from the end of 2008 through early 2009, a New Year's Shelter for Temp Workers (known as *Toshikoshi Haken Mura*) was set up in central Tokyo by a non-profit organization to accommodate homeless workers. Tents, subsistence goods, emergency food, and life counselling services were provided at this shelter. Faced with these conditions, Yoichi Masuzoe, the Minister of Health, Labour, and Welfare at the time, suggested an outright ban on dispatched labour in the manufacturing industry, with moves toward the further tightening of regulations accelerating.

In June 2009, the Democratic Party of Japan, the Social Democratic Party, and the People's New Party (opposition parties at the time) submitted to the Diet a proposal to revise the Worker Dispatching Law, aiming at intensifying regulation. This proposal contained stipulations that dispatched labour in manufacturing industry as well as registered dispatched labour be banned in principle and that equal treatment be provided for dispatched workers. The proposal also contained a provision that in cases where workers are illegally dispatched, or dispatched for longer periods than prescribed, user companies are deemed to recruit/employ said workers upon their acceptance. The Lower House election in August 2009 produced a regime change in Japan's government, with a coalition of former opposition camp members (the Democratic Party of Japan, the Social Democratic Party, and the People's New Party) becoming ruling parties. The election manifestos of these parties contained pledges to strengthen the regulation of dispatched labour, and in keeping with such policy planks the tripartite Labour Policy Council's deliberations on revising the Worker Dispatching Law were resumed. The Labour Policy Council announced its findings in December of that year, and in March 2010 the government submitted a new draft revision to the Diet. The contents of this proposal included bans on both dispatched labour in the manufacturing industry and registered dispatched labour, in principle, as well as a provision that user companies are deemed to have offered employment contracts in effect to the concerned dispatched workers in cases where they were dispatched illegally, dispatched for periods that exceed given limits, or dispatched to user companies but under sub-contracting arrangements (so-called disguised contract labour in Japan). The Liberal Democratic Party, the former ruling party, is not in agreement with this proposal.

This draft revision was deliberated on several times by the Diet. However, under the impact of the subsequent resignation of Prime Minister Yukio Hatoyama in June 2010, the adoption of the amendments was shelved, and the matter was instead consigned to continued discussion. With the ruling Democratic Party of Japan and its junior coalition partners suffering setbacks in the Upper House election of July 2010, the outlook for the bill to amend this law has been rendered uncertain.

2.4 Labour law policy on economically dependent work

Minimum wage for industrial homeworking

The 1947 Labour Standards Law excluded home workers from its coverage. But in 1950, the Central Labour Standards Council recommended the enactment of the Law Protecting Industrial Home Workers. In 1957, the then Socialist Party submitted a bill for an Industrial Home Work Law, which provided that industrial home workers may organize a home workers' union that can negotiate and conclude a collective agreement with those ordering such work, or their organization.

The first provisions for home workers were established in the Minimum Wage Law in 1959. Chapter 3 of the Law stipulated that a minimum homeworking wage could be fixed if there was already a fixed minimum wage for employed workers. But no minimum homeworking wages were fixed for seven years.

The breakthrough was a series of industrial accidents (benzene intoxication) suffered by many home workers engaged in sandal manufacturing in 1959. It raised a health and safety issue for home workers. The Ministry of Labour set up a Temporary Research Group on Industrial Homeworking which recommended that industrial home workers should be protected by the fixing of minimum wages and health and safety measures in 1960. In 1966, the first industrial homeworking minimum wage was fixed in Nara Prefecture, based on the Minimum Wage Law.

In 1970, the Industrial Homework Law was at last enacted. Minimum homeworking wages are fixed by the Prefectural Homeworking Council. Legally speaking, they are fixed by the Chief of the Prefectural Labour Office based on the opinion of the Council.

Guidelines concerning homeworking with telecommunications

The Industrial Homework Law targets only commodity manufacturing and processing and thus does not target homeworking using telecommunications equipment, a category that has grown considerably in recent years. In 1998, the former Ministry of Labour established a study group to investigate problems involving homeworking. Based upon the report submitted by this group in 2000, the Ministry released guidelines to be applied to homeworking. These stipulate the clear mention of contractual terms, moves to appropriate the payment of compensation, and other provisions. However, the guidelines possess no legal binding force.

Studies concerning individual contractors

In addition to those doing homeworking, the ranks of individual contractors are likewise increasing. Individual contract workers operate independently without employment contracts but work in a similar way, in effect, to those who are employed. In 2009, the Ministry of Health, Labour and Welfare established a study group to examine the state of individual contractors. In April 2010, the group released a report that cited the need to clarify recruiting conditions, prepare guidelines to be upheld by hiring companies, and establish a hotline that offers consultation on problems that may arise, among other pertinent steps.

3. Non-regular employment: Industrial relations developments and good practices

3.1 Trends in unionization and improved treatment of non-regular labour

Part-timer unionization helping to halt the decline in the unionization rate

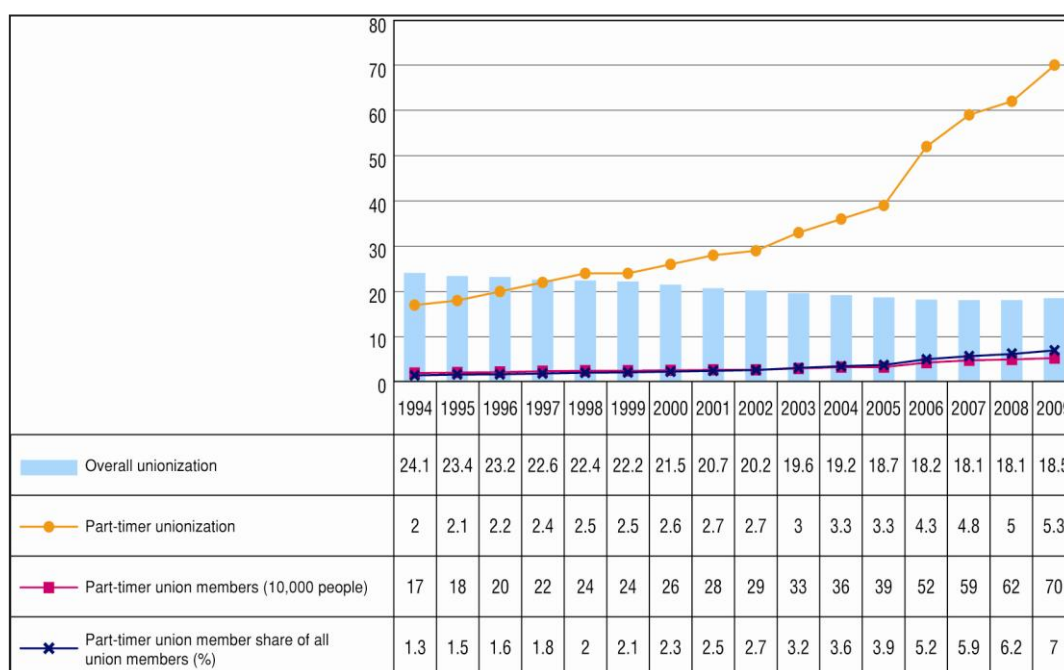
According to the results of the 2009 Basic Survey on Labour Unions, reported by the Ministry of Health, Labour and Welfare, the estimated unionization rate at the end of June 2009 (the percentage of all workers who are union members) increased 0.4 points from that in the previous year, to 18.5 per cent. The last time the unionization rate exceeded the previous year's figure was in 1975 (when it was reported at 34.4 per cent), but the rate had been in decline ever since. Thus, last year represented the first time in 34 years that the unionization rate recorded a year-on-year gain. A major factor behind this upward shift was a decline in the number of employed workers (as the denominator) caused by the economic crisis that began in the fall of 2008. However, due to the organization of non-regular employees (especially part-time workers), increases in the number of actual workers have been achieved. This can be said to provide an illustration of the fruits of steady efforts by trade unions to better organize their ranks.

According to this survey, the number of union members totalled 10.078 million people, an increase of only 13,000 people (0.1 per cent) over the previous year's figure. The ranks of female union members, however, rose by 75,000 people over the year before, to a total of 2.933 million. Although the number of employees plunged by 1.1 million to 54.55 million people, versus the previous year's level under the impact of the economic crisis, the increase in the number of union members (as the numerator), particularly female members, contributed to the improvement in the unionization rate.

Behind this increase in the number of female union members can be seen an advance in the unionization of part-timers, a group in which women are the vast majority. The number of part-timer union members roughly doubled from 168,000 recorded in 1994 to 331,000 people in 2003. Steady growth continued in this category thereafter, with the share of part-timers of all trade union members rising from a mere 1.3 per cent in 1994 to 3.2 per cent in 2003 and then to an all-time high of 7.0 per cent in 2009. The number of part-timer union members in 2009 was 700,000, an increase of 84,000 people over 2008.

Women are believed to be responsible for the lion's share of this increase in part-timer union membership. In reflection of this trend, the share of female union members rose from 27.7 per cent in 2004 to 29.1 per cent in 2009. In the midst of an overall decline in the unionization rate, therefore, the ratios of part-timers and female workers can be said to have recorded steady increases (see table 6).

Table 6.
Trends in trade union organization rates
and part-timer union members



Trade union approaches to organizing non-regular workers

Trade unions in Japan, which effectively consist of company-based unions focused on regular employees, were not actively engaged in the non-regular workforce issues traditionally. Recent years, however, have witnessed an increase in the number of trade unions moving to unionize non-regular employees. As noted above, to halt the overall decline in the ratio of unionized labour, it will be indispensable to advance the unionization of the some 12 million part-timers and temporary part-time staffers who currently make up the single largest force among non-regular employees. Factors behind this reality include not only a sense of crisis about the declining impact of unions due to growth in the number of non-regular employees but also the fact that it will become impossible to gain representation – through the signing of labour agreements and other practices – in workplaces where non-regular workers account for more than half of all employees.

Taking this situation to heart, the Japanese Trade Union Confederation (RENGO) adopted Action Plan 21 at its seventh regular convention in 2001, determined that the organizing of part-time workers and other employees would be targeted as a top-priority field. This plan emphasized that organizing to expand the sphere of union members to include part-timers, dispatched staffers, and other non-regular employees is a matter that demands immediate action. The two-year period from October 2001 through September 2003 was targeted for the first action plan, with the goal of expanding overall unionization, including that of both regular employees and part-timers, by 600,000 people. However, an expansion of about only half the target, or 293,000 people, was reached.

Table 7.
Percentages of trade unions by type of employee viewed
with particular importance as targets for unionizing
expansion approaches (unit: %)

Classification	2003	2008	2003	2008	2003	2008	2003	2008	2003	2008
By industry										
All industries	27.2	27.9	32.3	27.4	20.2	14.8	9.7	12.6	0.3	4.2
Manufacturing	29.2	26.3	39.9	33.3	7.2	4.5	4.1	7	0.1	10.9
Telecommunications	10.7	15.9	30.3	18.2	19.2	6.5	30.9	44.1	-	0.9
Transportation	27.1	46.8	38.1	16.7	15.7	3.2	14.7	18.1	0.9	6.5
Wholesaling and retailing	13	8	1	13.4	68.4	62.4	9.7	4.5	-	0.8
Financial and insurance	26.5	3.6	63.5	61.1	5.9	16.7	1	10	-	-
Real estate	32.2	32.9	12.9	19.9	16.7	5.6	38.2	16.9	-	-
Restaurants and lodging	13.6	11.5	14.6	36.5	16.5	32.8	50	11.3	-	0.9
Health care and welfare	44.3	25.5	42.4	43.3	8.7	19.1	1	3.8	-	0.8
Multiple-service businesses	40.3	16.1	21.2	30.9	12.8	11.2	3.2	7.8	-	0.7
Service industry (sectors not classified elsewhere)	42.4	21.1	35.0	33.1	2.1	4.9	8.6	22.7	-	0.4
By corporate scale										
5,000 people or more	22.7	22.6	31.1	20.3	29.5	24.9	9.7	21.1	0.2	3.5
1,000-4,999 people	22.8	20.9	24.4	27.6	28.3	13.9	12	6.8	-	9.3
500-999 people	41.3	19	17.6	35.1	12.7	14.4	8.8	16.6	-	0.3
300-499 people	24.9	33.5	42.3	27.7	6.3	11.7	4.2	9.4	-	1.7
100-299 people	27.6	37.2	45.4	34.8	6.6	6.2	11.5	6.4	1.3	5.6
30-99 people	34.5	37.4	42.1	28.7	13.4	3.3	8.2	6.3	-	-

Source: Survey on Status of Trade Unions (Ministry of Health, Labour and Welfare).

Note: The table indicates percentages of individual trade unions for which the expansion of unionization is a priority issue in their activities.

Under the second action plan, the goal to grow union membership by 540,000 people over a two-year period starting October 2003 was set. The unionization achieved during this phase, however, was less than 20 per cent of the target number, with the union organizing of part-timers languishing in a state of stagnancy. This was followed by the third action plan, which sought to expand unionization over two years, from October 2005, by 600,000-plus (including the organizing of 120,000 non-regular employees, such as part-

timers). The outcome of this push was the unionizing of 363,000 people, improving the achievement rate to 60.5 per cent. A distinguishing characteristic of the approaches in the third-phase plan was that some 47 per cent of new union members were part-timers. For that matter, the unionization of 170,000 part-timers achieved during this period was well above the target of 120,000 people. Playing major roles in this approach were the Japanese Federation of Textile, Chemical, Food, Commercial, Service and General Workers' Unions (UI Zensen), the nation's largest private sector industrial union (membership of 1 million people), and the Japan Federation of Service and Distributive Workers Unions (JSD), a service and distribution union federation made up of workers in supermarkets and other distribution businesses (200,000 members). Combined, these two organizations account for more than 90 per cent of all part-timers unionized by RENGO.

UI Zensen, in fact, was the first industrial union that strove to unionize part-timers. In 1973, the federation formulated its Unionizing Policy for Temporary Employment Workers, setting forth on a quest to unionize temporary contract factory staffers, part-time workers, and others. The 1980s were marked by an expansion in part-time employment in supermarkets and other distribution and retail businesses, a key factor leading up to the establishment of the federation's Countermeasures for Temporary and Part-Time Workers, Etc. in 1989. Based on the number of working hours, classification was divided into the following categories: full time (working hours the same as those of regular employees), regular time (less than 35 hours per week), and short time (less than 20 hours per week). Full time is treated as the unionization target for the time being.

After this, working hour restrictions on unionization targets were gradually removed, with the sphere of union membership qualifications expanded to shorter working hours and steady efforts advanced to organize part-timers. As a result, the number of part-timer union members in UI Zensen grew to 400,000 people. As noted, this is the largest private sector industrial union in the nation, with a membership of 1 million people, some 40 per cent of which came to be composed of part-timers. A key factor behind this healthy expansion in unionization lies in the decision to lower the target for organizing to as low as 20 working hours per week. The results in 2006 were particularly conspicuous. That year alone, UI Zensen made major strides in unionizing part-timers at the two major supermarket chains in Japan: Aeon (42,000 new members) and Ito-Yokado (15,000 new members). In addition to this, unionization at major second-tier supermarket Mycal produced 10,000 new union members along with other major volume entries.

Unionization of part-timers has been gaining momentum at JSD as well. Organization of part-timers at Odakyu and Kintetsu, both major department stores, along with Summit, Tokyu Store, and other supermarkets has contributed strongly to this trend. At the regular JSD convention in 2008, a report stated that the goal of 200,000 union members had been passed and that a total of 204,000 members was reached. As with UI Zensen, supporting this rapid growth in the number of part-time union members was an expansion in the sphere of unionization from part-timers who actually work full-time hours to part-timers clocking 20 or more hours per week. At JSD, results included a rise in the share of non-regular employment, to around 40 per cent of all union membership.

3.2 Labour-management relations and social partners' attempts to improve treatment of non-regular employees

Japan's minimum wage system and the role of the social partners

Japan's minimum wage system is founded on the Minimum Wages Law enacted in 1956, which aims at prohibiting employers from paying their workers wages that are lower than the applicable minimum wage amounts. The 1968 revision of the Law set out the framework that has been used up until the recent revision, in which minimum wages are

established based on two principal methods: a) regional minimum wages established by the collective-agreement extension method; and b) minimum wages established on the basis of investigation and deliberation by central and regional minimum wages councils with tripartite structures. However, the collective-agreement extension method was rarely used, and it was abolished in the recent revision because most trade unions in Japan are constituted in individual enterprises. Most minimum wages have therefore been and are determined in each prefecture on the basis of investigation and deliberation by regional minimum wages councils, in reference to the suggested change to minimum wages for the year concerned presented by the Central Minimum Wages Council, consisting of representatives of the social partners and experts.

With the emergence of an issue of working poor, however, due to the increase in the number of non-regular workers, a phenomenon has been observed in some prefectures whereby minimum wage levels fell below social assistance benefit levels. Against this background, the Minimum Wages Law underwent a major revision in 2007, requiring that minimum wage amounts be consistent with public assistance policies, so that “all people shall enjoy the right to maintain the minimum standards of wholesome and cultured living” guaranteed in Article 25 of Japan’s Constitution. Most notably, the revision placed the regional minimum wages established by the prefectures clearly at the core of the entire minimum wage system. As a result, the hourly rate of regional minimum wages was raised for four consecutive years by a national weighted average of 14 yen in 2007, 16 yen in 2008, 10 yen in 2009, and 17 yen in 2010. The national weighted averaged minimum wage amount in 2010 reached 730 yen (US\$ 8.80 approx.).

In the meantime, tripartite agreements have been reached in terms of guideline increases to the regional minimum wages. In the Roundtable to Promote a Strategy to Enhance Growth Potential, comprising representatives of the Government and workers’ and employers’ organizations and set up during the LDP-Liberal-New Komeito Coalition Administration, agreement was reached in June 2008 to target a rise in the level of minimum wages over five years, taking into consideration consistency with public assistance standards and parity with the lowest starting pay of high-school graduates in small businesses. Thereafter, at a meeting in June 2010 of the Employment Strategy Dialogue newly established under the current Democratic Party of Japan (DPJ)-led administration, with participation by representatives of the Government and the social partners, consensus was reached that a guaranteed national average minimum wage floor of 800 yen should be implemented as soon as possible, with a subsequent target of 1,000 yen should the economic situation permit it.

New movements for dispatched workers and others whose employment has been terminated due to the financial crisis

From 31 December 2008 to 5 January 2009, as part of the Anti-poverty Campaign, twenty concerned organizations, including mainstream labour organizations, citizen groups (NPOs) and individuals, established a New Year tent village (*toshikoshi haken mura*) in Tokyo for over 300 temporary workers (mostly dispatched workers and *kikankou*) who had lost both their jobs and their homes as a result of the global financial crisis. This movement was widely reported in the media. The participants jointly offered the unemployed workers meals and a roof over their heads during the New Year period, and provided them with consultation services on jobs and life. Furthermore, they demanded an immediate end to the mass dismissals and asked for employment and housing security. They also demanded a revision to the Worker Dispatch Law. The Anti-Poverty Network (NPT) representative said that the success of the tent village was due to the cooperation between trade unions and citizen groups.

Another issue widely reported in the media was the practice of disguised contract labour (*giso ukeoi*). General unions such as the Tokyo Metropolitan Area Youth Union

(Shutoken Youth Union), which organize individuals outside the workplace, led the movement against this illegal practice. These are cases where contracting companies dispatch workers to client companies under disguised contracts and have them work as if they were temporary agency workers without providing the protection which is their due. A number of lawsuits concerning *giso ukeoi* were brought to court, supported by these individual community unions. Most of the rulings gave encouragement to the many workers who are obliged to work in unstable employment and fall victim to companies' illegal contracting practices.

Joint declaration for improving the treatment of dispatched workers and contract workers

RENGO has worked on engaging in consultation with two temporary staffing business groups as part of the 2010 spring labour offensives (*shunto*) aiming at better treatment of dispatched and contract workers, which resulted in joint declarations being concluded: first with the Japan Production Skill Labour Association (JSLA) in April, and then with the Japan Staffing Services Association in May. JSLA and RENGO have carried out consultations on the demands and issues that each side has had in order to improve the treatment of dispatched and contract workers and ensure the appropriate and sound operation of dispatching and contracting businesses. The Joint Declaration affirmed that JSLA and RENGO will: 1) examine how the laws should be revised so as to change the current notification system to a licensing system in specific dispatch businesses, to place tighter requirements for business licensing, and to tighten regulations for penalties and business revocation, with a view to excluding crooked and abusive operators; 2) re-examine the framework for cooperation between dispatch agencies and user firms in order to promote the career development of dispatched and contract workers; 3) examine which measures might contribute to improving the welfare of dispatched and contract workers; and 4) examine policy challenges in promoting fair and equal treatment between dispatched workers and those who are directly employed by user firms.

RENGO and the Japan Staffing Services Association (hereafter, the Association) carried out consultations and negotiations continuously from February to May 2010 and reached a joint declaration confirming the challenges to be addressed in full respect of each other's views, with the aim of promoting the proper operation of Worker Dispatch Enterprises and better treatment for dispatched workers. It includes a commitment by the Association that for the proper operation of worker dispatching businesses, its member companies, as operators of dispatch enterprises, would make efforts to ensure compliance with the laws and regulations concerning worker dispatch, such as the Worker Dispatch Law, the Labour Standard Law, the Industrial Safety and Health Act, and legislation on Labour or Social Insurance, as well as maintaining employment opportunities for dispatched workers in accordance with the guidelines. RENGO, on the other hand, gave a commitment that its member organizations (trade unions in the workplace that work with dispatched workers) would promote labour-management consultations toward reviewing and improving terms and conditions of work for dispatched workers during the period of dispatch.

RENGO's efforts through the part-timer united front

As the national centre of trade unions in Japan, RENGO not only strives to organize workers but also mounts appeals for improvements in the treatment afforded to non-regular employees. In 2006, RENGO inaugurated its Part-Timer United Front, placing a focus on industrial-based trade unions with large numbers of part-timers and other non-regular workers. At the time, 15 industrial unions joined forces and worked through the annual spring labour offensive in a push to raise hourly wages. To further bolster its non-regular-employment action plan, RENGO opened the Non-regular-Worker Centre at its

headquarters in 2008, initiating a full-fledged program aimed at improving the treatment of non-regular staffers.

With the launch of the Part-Timer United Front, three goals were proclaimed: (1) the creation of personnel and wage systems that secure compatibility between regular employees and part-timers and other staffers, based on the principle of “equal pay for equal work”; (2) the conclusion of in-house minimum wage agreements that include part-timers and other staffers together with hikes in the agreed amounts; and (3) improvements in hourly wages and other treatment of part-timers. Following this, from the spring labour offensive of 2008, four key pillars were proclaimed, and the approach on this front was strengthened: (1) realize equal and balanced treatment between part-timers and regular employees; (2) improve hourly wages; (3) establish in-house agreements on minimum wages and pay hikes in accordance with improved hourly wages, and (4) unionize and create unions for part-timers. Also added were three provisions that effectively surpassed the contents of the revised Act on Improvement, etc. of Employment Management for Part-Time Workers enforced in April of that year. This consisted of the payment of a commuting allowance and granting of matrimonial, parental and compassionate leave to the same standards as for regular employees, as well as the introduction of systems for converting to regular-employee status. As an even more concrete target standard and a yardstick for enhanced hourly wages, the decision was made to include either approximately 1,000 yen as the absolute value for hourly wages or an increase in the hourly wage of about 25 yen.

As a result, the hourly wage hike that emerged from the 2008 spring labour offensive averaged 14.37 yen across 201 unions (computations at the end of April), an improvement of 0.46 yen compared to the previous year’s achievement.

This was followed by an increase in the number of unions undertaking improvements in the treatment of non-regular employees (particularly part-timers). Thus, within the basic vision of the 2010 spring labour offensive proposed by RENGO, it was declared that negotiations would develop in such a way that all workers are targeted. In more specific terms, achieving improvements in wages and other conditions for all workers, including non-regular workers, was viewed as a minimum demand to be advanced by all trade unions. As a result, by the end of May 2010, 3,145 unions had made demands on behalf of non-regular workers, an increase of 684 unions from the previous year’s figure and a clear reflection of the increase in the number of unions taking action in this direction. With regard to improvements in hourly wages based on RENGO Part-Timer United Front tabulations, as of July 2010 replies had been received from 242 unions, which reported average pay hikes of 11.35 yen.

Meanwhile, the Japan Business Federation (Nippon Keidanren) in the annual Report released on January 2010 of its Committee on Management and Labour Policy, which serves as a roadmap for management in *shunto*, also showed its stance on issues regarding non-standard forms of work. Nippon Keidanren recognized the need to develop a system which is more neutral with regard to diversified forms of work and can be accepted by both labour and management. While acknowledging the importance of considering long-term employment in principle, it urges the active use of non-regular forms of work, including part-time and temporary agency work, in compliance with the law, on the basis that the numbers of those who wish to engage in fixed-term or short-time work are growing. It clarified that its position is not to oppose the idea of equal pay for equal value of work. It added, however, that equal value of work should be considered to be the work which can bring about equal added value to enterprises, taking into consideration expectations in the long run.

Nippon Keidanren also reported that progress has been made toward the use of wage formulation mechanisms associated with assessment of jobs, responsibilities and performance of individual workers, with the recognition that seniority-based wage formulation based on years of service favours only long-term employees. Nippon Keidanren voiced support for progress on this issue and expressed its wish that fair

treatment among workers be steadily implemented based on their jobs, responsibilities and performance.

3.3 Company cases where treatment of non-regular workers was improved

In this section, we examine two cases in which the treatment of non-regular workers was improved through labour-management negotiations at specific companies.

For the first example, we turn to Japan Post Holdings Co., Ltd. (JP), which was privatized in October 2007, making it Japan's largest private-sector enterprise. During the spring labour offensive of 2008, although the JP trade union deferred its demands for a raise in the basic wage rate for general employees, it sought to negotiate pay hikes for monthly salary fixed-term contract employees. The response received was that a 2,000-yen increase would be made in the basic monthly salaries of these employees.

During the 2010 spring labour offensive, while backing off on demands for wage improvements for regular employees, in view of the fact that the number of fixed-term contract workers, part-timers, temporary part-time staffers, and other non-regular workers had grown to some 200,000 people (or approximately half of all JP employees), priority was placed on improving conditions for these non-regular employees. Subsequent demands included (1) a 10,000-yen increase in the basic monthly wages of fixed-term contract workers under a monthly salary system, (2) a 30-yen raise in the hourly wage unit of employees under an hourly wage system, and (3) a boost in the percentage of regular employees. As a result of these efforts, a 2,000-yen hike in the basic monthly wages of fixed-term contract workers under a monthly salary system was obtained, and a compromise was reached in which JP pledged to hire 2,000 contract staffers under a monthly salary system as regular employees.

In addition to this, reflecting the strong wishes of the People's New Party, the junior coalition member of the Government headed by the Democratic Party of Japan, a schedule to adopt a regular-employee appointment test was announced in June 2010. This test would target the approximately 65,000 contract workers who are under a monthly salary system and who fulfil such conditions as having provided three or more years of consecutive service. Plans called for hiring applicants who have passed the test as regular employees from around November 2010, with JP to advance a policy aimed at converting 100,000 people to regular-employee status over the next three to four years.

The second case concerns Aeon, a major general merchandise store. As the result of labour-management deliberations conducted at the company, an agreement was reached to integrate a qualification system for regular employees and part-timers from the spring of 2004. Targeting the 79,000 part-timers at Aeon, who accounted for 80 per cent of the company's employees at the time, the qualification examination and personnel evaluation for people seeking promotion were unified with those adopted for regular employees. Also, the wage system was largely linked to qualifications, with the pay of highly competent part-timers approaching that of regular employees possessing the same qualifications. The goal of these moves was to narrow the gap in treatment between part-timers and regular employees, thereby heightening worker motivation.

Under the system that Aeon used in the past, part-timers were divided into four categories (including contract staffers and part-timers skilled in specialized technology), with separate qualifications systems set up for each of the categories. With the new system, all part-timers have been unified into so-called community employees who will not be relocated. Part-timers wishing to advance to positions with greater responsibilities are now evaluated using the same appointment tests and promotion screenings used for regular employees, with the decision made to integrate training as well. To date, in addition to a large number of part-timers appointed to managerial positions at their respective stores, about 150 of those workers have been converted to regular-employee status.

Subsequent spring labour offensive sessions at Aeon have produced discussions toward equal treatment with regular workers. This has paved the way to labour-management agreements to extend the mandatory retirement age to 65, provide children's education allowances, and advance other progressive changes.

Conclusion

The greatest issues pertaining to the state of non-regular work issues in Japan are that the expectations about and burdens placed on legislative policy at the national level are simply too high, and the routes for resolution through labour-management autonomy based on social partnership are exceedingly narrow and inadequate.

These are not common to all labour issue in Japan. In fact, with regard to wages and general working conditions, national lawmaking impacts on only a very small portion of workers at a minimum level. The wages and working conditions of the majority of regular workers are determined autonomously at the individual-company level through labour-management deliberations. This, rather, is indicative of the general situation existing on the Japanese labour market today.

However, due to the trend among the majority of Japan's company-based unions to limit union membership qualifications to regular workers, large numbers of non-regular workers fail to be covered under this enriched micro-level autonomous control mechanism exercised by labour and management. As a result, a paradoxical situation has arisen in which relief measures through legislative policy, a process that should normally be turned to only as a last resort, are in fact demanded from the outset. The complicated twists and turns of legal policies adopted for non-regular workers that we have examined in this paper provide eloquent testimony to the truth of this assertion.

On a brighter note, as examined in Chapter III, there are avenues open to achieve improvements in the treatment of non-regular workers, albeit confined to extremely limited fields and groups, in which trade unions strive to organize such non-regular personnel and raise their status. It is hoped that strenuous efforts will be made to uphold and further develop such inroads, facilitating the advancement of measures targeting non-regular workers that are supported by the twin critical forces of legislative policy and social partnership.

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