

## 6. Securing Equal Opportunity and Treatment between Men and Women in Employment

### ■ Focus of the Act on Securing, Etc. Equal Opportunity and Treatment between Men and Women in Employment (hereinafter referred to as Equal Employment Opportunity Law)

#### Prohibition of gender discrimination

- Prohibition of gender discrimination during all stages of employment and management (Articles 5 and 6)
  - Prohibition of gender discrimination in terms of recruitment and hiring, assignment (including allocation of work and authority), promotion/demotion, education and training, provision of certain social benefits, change in the types of work and employment styles, encouraging resignation, retirement age/dismissal, renewal of a labour contract
  - Prohibition of indirect discrimination (Article 7)
  - Among non-gender-based requirements, those that may lead to gender discrimination as provided by the ordinance of the Ministry of Health, Labour and Welfare are prohibited, unless there are reasonable grounds to apply such requirements
- [Examples of indirect discrimination included in the ordinance of the Ministry of Health, Labour and Welfare]
- Requiring certain physical height or weight in recruitment and hiring
  - Requiring nationwide mobility in recruitment and hiring for main career track
  - Requiring past experience of transfers involving changes of residence for promotion
  - \* Requirements not included in the ministerial ordinance are not in breach of the Equal Employment Opportunity Law, but may be judged as “indirect discrimination” and declared “illegal” by the court.
  - Exception relating to measures associated with female workers (Article 8)
  - While discriminatory treatment on the basis of gender is prohibited in principle, Article 8 provides that measures solely for female workers to eliminate gaps which in fact exist at the workplace between male and female workers as well as preferential measures for female workers are not against the law.

#### Prohibition of disadvantageous treatment by reason of pregnancy or childbirth (Article 9)

- Provisions for marriage, pregnancy or childbirth as a reason for retirement are prohibited
- Dismissal of a female worker by reason of marriage is prohibited
- Dismissal or disadvantageous treatment by reason of taking a maternity leave by other reasons provided by ordinance of the Ministry of Health, Labour and Welfare is prohibited
- Dismissal within a year of pregnancy or childbirth will be null and void, unless business owners can prove that dismissal is not by reason of pregnancy, etc.

#### Measures against sexual harassment (Article 11)

- Place obligations on business owners to take necessary measures to prevent sexual harassment at work

#### Measures for maternity protection (Articles 12 and 13)

- Place obligations on business owners to take necessary measures, to secure time for female workers to receive health guidance and have medical check-up during pregnancy and postnatal period, and to put a structure in place to allow these workers to observe instructions based on such guidance and check-up

#### Assistance from the national government for implementation of positive action measures (Article 14)

- Consultation and other assistance will be provided by the national government for business owners taking positive action measures for eliminating the gap which in fact exists between male and female workers

#### Remedial measures for settlement of disputes between workers and business owners

- Voluntary settlement of complaints within a corporation on a voluntary basis (Article 15)
- Assistance by the Director of the prefectural Labour Bureau for dispute settlement (Article 17)
- Mediation by the Disputes Adjustment Commission (Articles 19 - 27)
- Mediation procedures will be invoked by application from either one or both of the parties to said dispute.
- Disadvantageous treatment by reason of requesting the assistance and/or application for mediation to the Director of the prefectural Labour Bureau is prohibited

#### Guidance if necessary for enforcement of Equal Employment Opportunity Law

- Collection of reports and issuing advice, guidance and recommendations by the Minister of Health, Labour and Welfare or by the Director of the prefectural Labour Bureau (Article 29)

- Public announcement of those corporations that have not complied with a recommendation by the Minister of Health, Labour and Welfare (Article 30)
- Fine of up to JPY 200,000.00 to be imposed on business owners refusing to respond to a request for a report or making a false report (Article 33)

## ■ Focus of the Labour Standards Act (related to issues for female workers)

### Principle of equal wages for men and women (Article 4)

- Discriminatory treatment of a woman as compared with a man with respect to wages by reason of the worker being a woman is prohibited

### Perinatal leave and other measures for maternity protection

- Limitation on dangerous and injurious work for pregnant women, etc. (Article 64.3)
- Limitation on the employment of a pregnant woman for certain types of work which may have harmful effects on pregnancy, childbirth and child-rearing
- Limitation on the employment of a woman who is not pregnant for certain types of duties which may have harmful effects on her reproductive function
- Perinatal leave (Article 65)
- Limitation in principle on the employment of a pregnant woman within 6 weeks (or within 14 weeks in the case of multiple births) when requested by such person, or within eight weeks after childbirth
- Necessity of transferring a pregnant woman to other light duties if she so requests
- Application of flexible working hours for a pregnant woman and limitation of overtime work, work on a day-off and night work if requested by a pregnant woman (Article 66)
- Time for child care (Article 67)
- A woman raising an infant under the age of one full year may request 30 minutes for infant care twice each day.

### Ban on underground labor and other measures for female workers

- Ban on underground labor (Article 64.2)
- Limitation on the employment of a woman, with regard to duties to be carried out by a pregnant woman and a parturient woman (limited only to those declaring themselves as such) as well as work specified by ordinance of the Ministry of Health, Labour and Welfare
- Measures for women if work during menstrual periods would be especially difficult (Article 68)
- Limitation on employment during her menstrual periods, if a woman for whom work during such periods would be especially difficult has requested leave

## ■ Promotion of Measures to Secure Equal Opportunities and Treatment between Men and Women in Employment

According to the Equal Employment Opportunity Law, guidance is given so that men and women will be treated equally and thorough measures will be taken against sexual harassment in the workplace, and supports are provided so that any disputes that arise between employers and workers can be resolved smoothly and quickly.

In addition, in order to secure truly equal treatment between men and women in corporations, corporations' voluntary and proactive efforts (positive action) to eliminate actual disparities that arise between male and female workers will be promoted.

## ■ Creating an Employment Environment for Irregular Employment

### Comprehensive Promotion of Measures for Part-Time Work

In order to create an employment environment in which part-time workers can more effectively utilize their abilities, efforts are being made to secure equality between part-time workers and regular workers. Such efforts, based on the Act on Improvement, etc. of Employment Management for Part-Time Workers (Act No. 76 of 1993), include consultations with and support of business owners, government guidance, as well as provision of financial grants to business owners that work to secure equal treatment of part-time workers.

In addition, there is a “short-time regular employee system” that is expected to bring about working styles that match individuals’ lifestyles and life stages, such as caring for children or people who need nursing care, or conducting activities in the community. Financial grants are being provided to business owners that have introduced this system, and efforts are being made to promote the system and get it widely used, by developing models of how to introduce the system and making such models well-known.

“Part banks” are being established to provide employment referral services for part-time employment, and supply and demand for part-time work is being smoothly adjusted.

### Promotion of Measures for Worker Dispatching Undertakings

Based on the Act for Securing the Proper Operation of Worker Dispatching Undertakings and Improved Working Conditions for Dispatched Workers (Act No. 88 of 1985; hereinafter referred to as the “Workers Dispatch Law”), efforts are being made to spread knowledge of and obtain thorough introduction of the system among companies who dispatch workers or receive dispatched workers, in order to secure proper business operation, and responses are being made to consultations from dispatched workers and others.

As for the Workers Dispatch Law, in order to improve measures to protect dispatched workers and stabilize their employment, an amendment bill consisting of things such as fundamental prohibitions of registered dispatch and dispatch for manufacturing, and improvement of the treatment of dispatched workers was submitted to the 174th session of the National Diet and is currently under deliberation.

### Review of the Direction of Measures for Fixed-Term Employment Contracts (Labor Contracts Concluded based on a Fixed Term)

Fixed-term workers increased from 4.47 million in 1985 to 7.51 million in 2009 (13.8% of the total number of workers). In order to improve management of employment of such fixed-term workers, things that business owners that employ such workers need to do and efforts that they should consider were summarized as guidelines. In addition to efforts to inform and enlighten business owners about those guidelines, financial grants and support are provided to small and medium-sized business owners that introduce systems to turn fixed term workers into regular employees, or systems in which full-time fixed-term workers are treated the same as regular employees or systems in which they receive education and training.

As for fixed-term employment contracts, it has been pointed out that compared with the situation of regular employees such contracts pose problems including unstable employment, disparities in treatment, and insufficient development of occupational skills.

In August 2012 a bill was enacted to amend a portion of the Labour Contract Act in order to introduce a mechanism by which a fixed-term employment contract should be an open-ended contract by employee’s application if the contract is renewed repeatedly over 5 years.

## ■ Support for Promoting Realization of Women's Abilities

Measures such as awareness promotion, information provision, and ability development are being actively taken in order to bring about appropriate career choices by women. In particular, for women raising children and who would like to go back to work, consistent employment support through a system with individual guidance has been conducted since fiscal 2006 through Public Employment Security Office such as Mothers’ Hello Work

Public vocational training for displaced workers, employed people, and graduates is conducted at public vocational ability development facilities established and operated by national, prefectural, and city governments. In addition, the Project to Support Emergency Personnel Training continues to be carried out. This project began at the end of July 2009 and is intended to provide vocational training and life security during that training for people who cannot receive employment insurance benefits.

In order to support education and training conducted by business owners, things such as aid through financial grants to promote career creation, training for employed people at public vocational ability development facilities, loaning such facilities to business owners, and dispatching trainers to such facilities to conduct vocational training are also carried out, in addition to things such as information provision and consultation assistance.

Further, in order to promote workers’ voluntary vocational ability development, aid, information provision, and consultation assistance are provided for business owners that support workers’ voluntary efforts in addition to use of an education and training benefits system.