

7. Employment and Labor.

[Awareness of the Issues]

Amidst massive economic and societal changes, labor market and employment situations have also changed significantly. Accordingly, labor regulations also need to change.

First of all, working lives are increasing along with structural changes in population and the aging of society. On the other hand, international competition is growing in the ever more global economy, domestic competition is getting fiercer as there are more choices now available to consumers, and technological structure is also rapidly changing. Under these conditions, companies and industries are exposed to ups and downs at an unprecedented pace, and can only guarantee shorter employment periods.

Moreover, highly advanced industries and the diversification of work options produce a greater number of white-collar workers with highly specialized skills. Consequently, labor conditions have been individually (separately) determined as more businesses introduce performance- or result-oriented pay systems. At the same time, more people are choosing atypical work patterns, such as part-time or temporary work, depending on their desired balance between life and work.

Traditional regulations are not necessarily appropriate for these new types of workers and it is important for individuals to choose work options in accordance with their personality and capability.

From the above viewpoints, regulations on employment and the labor market should be reformed in response to structural changes of the economy and society so that they can further guarantee employment through a more market-oriented system and meet diverse needs with respect to working and employment status. Regulation reform to enable the smooth movement of human resources and the diversification of work options in accordance with new types of workers has been promoted at these meetings.

As a result, certain progress has been made. However, some big problems regarding the work dispatching system, fixed-term work contracts and the discretionary work system remain unsolved. Hence regulation reform is indispensable for solving these outstanding issues.

In addition, the “Comprehensive measures for promoting reform” was

established on October 30 of this year. The enhancement of safety nets for employees accompanied with an acceleration in the disposal of bad loans is an urgent task. The early implementation of regulation reform such as job placement services is also urgent from the viewpoint that sufficient employment information should be provided.

Besides, with regard to promoting regulation reform, if labor conditions for dispatching workers are sufficiently secured through ex-post-facto monitoring and if job seeker benefits are secured, due attention should be given to the opinion that it is preferable to in principle abolish the temporary work period limitation for temporary workers, limitations on allowable job categories and limitations on fees charged to job seekers.

(Strengthen the function of ex-post-facto monitoring for advance deregulation)

Reducing the risk that workers might be breaking employment and labor regulations is of fundamental importance. However, in order to promote advance deregulation, it is crucial to remove concerns that risk may occur with it. Ex-post-facto monitoring ("Ex-post-facto check" is used below) can work to alleviate this risk. If there is the possibility that greater risk may occur due to advance deregulation, the establishment of ex-post-facto checking should be examined.

[Specific Measures]

1 Deregulation to enable smoother job transition

(1) Improvement of skill development programs

In order to give workers greater employment opportunities, skills development should be encouraged to increase their potential. The educational training benefit system has been under review, specifically on the issue of its mechanism to designate qualified courses, with consideration given to the designation of more advanced educational training courses for workers to be provided at universities and graduate schools, and the provision of more focused courses relevant to specific occupations. With a view to improving the potential of the whole labor market, it is necessary to conduct further study about a desirable system to assist educational training programs, including the scope of qualified workers, with due consideration given to actual situations in the operation of the system after its

inception. **[Required measures for a bill that is to be submitted to the next ordinary session of the Diet]**

Moreover, in order to spread career counseling services, the measures for active use of the career building promotion subsidy will be implemented for the purpose of promoting accurate evaluation of career counselors' capability. At the same time, both the addition of job categories by a specified examination institutional system for skill tests and the measures specified by the examination institution have just been implemented. Also, in the future, it is necessary to enhance support for workers' self-help efforts for ability development, by improving career counseling services and evaluation systems for professional skills, and encouraging the active use of loans. **[To be implemented in successive steps]**

(2) Fundamental deregulation of job placement services

Deregulation of fee-charging to job seekers [To be implemented by FY 2003 (Prompt implementation)]

The prohibition on charging fees to job seekers, a principle set forth in ILO Convention 181 on Private Employment Agencies, which was ratified by Japan, is beneficial to protect workers in one sense, but a strict free-of-charge principle hinders the provision of quality services to job seekers. Therefore, charging fees to scientists, technical experts and business executives who have annual allowances of more than twelve million yen become available as a result of the revision of the ministerial ordinance in February of this year.

However, the required measures should be taken by promptly reaching a conclusion after the regulation on fee-charging to job seekers will be examined concerning issues such as the large reduction in the amount of annual allowances required and an increase in the number of job candidates following the expansion of job categories so that fee-charges can meet the needs of the labor market, while considering the real situation of job seekers.

Deregulation of free job placement services [Required measures for a bill that is to be submitted to the next ordinary session of the Diet]

In regard to free job placement services, the Government has already started examining and reviewing the whole system regarding the job placement services of both companies providing fee charging and free services. However, there are views that free job placement services pose some problems because there is room for discretionary

administration. In the approval system for such services provided by non-school entities, it is a requirement that job placement services can be provided to the extent deemed necessary and appropriate in view of the objectives, operation status and rules of the service company.

Moreover, under the recent severe employment situation, it is necessary to fully utilize the job placement capacity by all organizations such as national, local or private, etc., and the municipalities (local governments) should provide free job placement services.

Deregulation of fee charging job placement services [Required measures for a bill that is to be submitted to the next ordinary session of the Diet]

The approval system for the present fee charging job placement services that requires approval for all job placement offices should be reexamined in terms of a simplification of procedures, including deregulation of the approval system so that offices can be established only by reporting if they are approved as a corporation. The required measures for a bill that is to be submitted to the next ordinary session of the Diet should be taken by promptly reaching a conclusion. Besides, consideration is given to regulation on side-line businesses concerned with job placement services including this abolition as a rule. The required measures for a bill that is to be submitted to the next ordinary session of the Diet should be taken by promptly reaching a conclusion.

Relaxation of reference requirement from public job security office

As for employment subsidies, including those for employment development for certain job seekers, the reference requirement from a public job security office was relaxed and a measure was taken to make employment through private job placement services also eligible for subsidies on the condition of reporting to prefectural labor department heads. With close attention paid to the prevention of fraudulent practices, the objectives and contents of the deregulation should be thoroughly publicized. **[To be appropriately implemented]**

The objectives of such subsidies should also be reexamined from a cost-benefit standpoint. **[Required measures for a bill that is to be submitted to the next ordinary session of the Diet]**

As for the clause detailing employment promotion benefits as set forth in the Employment Insurance Law (Law 116, 1974) that consists of re-employment allowances and money provided for regular employment, again a reference from a

public job security office is a requirement for payment, to avoid misuse. However, this requirement should be reexamined with possible relaxation in mind, while giving due consideration to the tight situation of employment insurance finance.

[Required measures for a bill that is to be submitted to the next ordinary session of the Diet]

Deregulation associated with job placement service representatives [Required measures for a bill that is to be submitted to the next ordinary session of the Diet]

In addition to the study and review of the job placement system as a whole, the following issues as stated in "the Three-Year Program for Promoting Deregulation" should also be reexamined. Moreover, the required measures for a bill that is to be submitted to the next ordinary session of the Diet should be taken by promptly reaching a conclusion.

- a. Review of requirements (personnel numbers) in assigning job replacement personnel.

To pinpoint responsibility, this issue should be substantially reexamined on the assumption of the duties review.

- b. Simplification of procedures to change the personnel needed each time a personnel reshuffle is performed.
- c. Review of the training seminar system regarding its objectives and specific contents.

(3) Deregulation in work force recruitment [Required measures for a bill that is to be submitted to the next ordinary session of the Diet]

In addition to the job placement system review as a whole, the approval system of commissioned recruitment should be reexamined to find a better method, with consideration given to progress of the revised Law in 1999 and the situation in other countries. Moreover, the required measures for a bill that is to be submitted to the next ordinary session of the Diet should be taken by promptly reaching a conclusion.

(4) Deregulation and abolished discrimination in recruitment

"Guidelines" under the revised Employment Measures Law enacted in September 2001 require recruiting companies to explicitly state reasons for age limits, if they assign such age requirements for their recruitment. For now, guidance on the

guideline should be thoroughly publicized and implemented, and at the same time, due attention should be paid to the validity of the exemption clause that approves the upper limit of age under the appropriate Guideline. **[To be appropriately examined]**

Moreover, in the mid- and long term, consideration should be given to the possibility that for example, recruiting companies are obliged to explain the reasons for legally establishing the upper age limit or prohibiting the age limit itself as well. **[To be examined in the mid- and long term]**

Moreover, as for items regarding recruitment, labor conditions and other labor relationships, the "Human Rights Protection bill" prohibiting discrimination based on ethnicity, creed or social status, etc has just been submitted to the Diet. However, smooth movement after the establishment of the bill should be implemented. **[To be implemented promptly after the law enforcement]**

2 Deregulation to enable diversified work options

(1) Increase in employment opportunities for temporary workers [Required measures for a bill that is to be submitted to the next ordinary session of the Diet]

As for the worker dispatching system, by considering the recent rapid change in the employment situation and in terms of the objectives for the expansion of work options and the increase of employment opportunities, etc., and with due consideration given to a desirable approval system for worker dispatching services, expansion of the temporary work period, the abolition of its limitation and the removal of the prohibition of temporary work in the "manufacturing" sector, the required measures for a bill that is to be submitted to the next ordinary session of the Diet should be taken by promptly reaching a conclusion following review and examination.

Expansion of the temporary work period limitation or its abolition [Required measures for a bill that is to be submitted to the next ordinary session of the Diet]

With regard to the temporary work period limitation, the one- and three-year work period limitation on the basis of the law and the administrative guidelines respectively should be examined including issues such as the expansion of the temporary work period limitation and its abolition, while considering the voice of temporary workers. The required measures for a bill that is to be submitted to the next

ordinary session of the Diet should be taken by promptly reaching a conclusion following review and examination.

Expansion of allowable job categories for temporary work [Required measures for a bill that is to be submitted to the next ordinary session of the Diet]

The Supplementary Provision of the current Workers Dispatching Law prohibits dispatching work service to the "manufacturing" sector for the time being. However, with consideration given to the situation in other countries, including the lifting of the prohibition, the required measures for a bill that is to be submitted to the next ordinary session of the Diet should be taken by promptly reaching a conclusion of the issues.

At that time, temporary workers should be enlightened and receive guidance in order to secure proper labor conditions regarding their security and sanitation.

Deregulation of worker dispatching services [Required measures for a bill that is to be submitted to the next ordinary session of the Diet]

The approval system for current worker dispatching services whereby an approval is needed for all worker dispatching offices should be reexamined in terms of a simplification of procedures, including deregulation of the approval system so that offices can be established only by reporting if they are approved as a corporation. The required measures for a bill that is to be submitted to the next ordinary session of the Diet should be taken by promptly reaching a conclusion of the issues.

Review of worker dispatching on a trial basis for future employment [Required measures for a bill that is to be submitted to the next ordinary session of the Diet]

There are certain limitations when regulating the trial-based placement in the same clause as regular dispatch services. Based on a survey of the actual situation, a review of the current system should be implemented, while considering advance interviews, requests for sending resumes, and the legal system of the lifting of a prohibition regarding behavior such as promised employment, etc.

Others

a. Review temporary staff service representatives assignment [To be implemented by FY 2003]

The current method for assigning temporary staff service representatives should be reexamined and at the same time, consideration should be given to

simplification of the course system for temporary staff.

b. Simplification of procedures for dispatching workers [Required measures for a bill that is to be submitted to the next ordinary session of the Diet]

With consideration given to simplification of the procedure for dispatching workers including a reduction in the amount of documents reported, the required measures for a bill that is to be submitted to the next ordinary session of the Diet should be taken by promptly reaching a conclusion of the issues.

c. Notification in electronic form from client companies to dispatching companies [To be implemented by FY 2003]

Notification from client companies to service companies should be reviewed to allow for electronic notification, with consideration given to worker protection.

d. Review of regulation on side-line business for both dispatching and trial-based placement services [Examination to start in FY 2003 and conclusion by the end of November 2004]

As for the criteria on worker dispatching services etc., it mentions as follows; (a) The representative from worker dispatching companies should not be a representative from trial-based placement service companies. (b) The chain of command for both services should be definitely separated and that staff in charge of both businesses should not be involved in side-line business for both services. The issue of the current services requirement should be examined by the date that the interim measures approved for side-line business based on specific conditions will expire.

(2) Expansion of fixed-term work contracts [Required measures for a bill that is to be submitted to the next ordinary session of the Diet]

As for fixed-term work contracts, in order to expand work options and increase employment opportunities, items such as those pertaining to the upper limit of fixed-term work contract periods for professional workers being extended to five-years and at the same time, that of one-year contract periods as a rule being extended to three-years are considered. Following consideration, the required measures for a bill that is to be submitted to the next ordinary session of the Diet should be taken by promptly reaching a conclusion of the issues.

(3) Expansion of the discretionary work system [Required measures for a bill that is to be submitted to the next ordinary session of the Diet]

From the viewpoint of improving the environment to help workers fulfill their creative capabilities in response to the diversification of values regarding labor, it is necessary to expand the discretionary work system under which people can work flexible working shifts at their own discretion.

As for the discretionary work system for planning jobs, the procedures to introduce the system are complicated and the business places for its application are restricted. Therefore, substantial simplification of the procedures and an expansion of the business places for its application should be considered. Following consideration, the required measures for a bill that is to be submitted to the next ordinary session of the Diet should be taken by promptly reaching a conclusion of the issues.

Moreover, in regard to the actual situation of services at the work place, both employers and employees are aware of the best system. Therefore, it is appropriate to review the system whereby the scope of business for the discretionary work system will also depend on the self-governing capability of labor-management administrators at such work places in the future.

3 Reform of the appropriate system for new types of workers

(1) Revision of the Labor Standards Law

The current discretionary work system applies to a de facto working hour system and does not approve the exemption from working hour regulations. But the main point lies in the principle that "No specific instructions should be given to workers who engage in the relevant jobs with regard to the ways of performing jobs and decision of allocating time." Given that point, it is natural to approve the exemption of white collar workers from working hour regulations, as in the case of managerial jobs. Thus, in the mid and long term, it is necessary to examine the adoption of an exemption clause for those job categories with a high level of discretion, with reference to the white collar exemption system in the United States. At that time, the current exemption system for administrators and supervisors should be also reviewed, including the question of the propriety of the exemption of regulations regarding night business. **[Prompt examination]**

Moreover, as for faculty members who are involved in job categories with the highest degree of discretion, the current working hour regulations should be immediately examined. **[To be examined in FY 2003]**

Moreover, the Labor Standards Law prescribes for only the procedures of advanced notice regarding dismissal. At present, the judicial precedent method regulates dismissal, following the so-called principle of law in abusive use of dismissal rights. However, in order to improve the predictability of both labor and management regarding the validity/invalidity of dismissal, it is necessary to consider legislative proof of the criteria and rules of dismissal. Following this, the required measures for a bill that is to be submitted to the next ordinary session of the Diet should be taken by promptly reaching a conclusion of the issues. At that time, a trial period will also be examined with consideration given to not only returning to work as a relief measure at the time of dismissal but also introducing the option of a "Money Compensatory System." The required measures for a bill that is to be submitted to the next ordinary session of the Diet should be taken by promptly reaching a conclusion of the issues.

(2) Reform of social insurance systems

It is necessary to promptly examine reform of social insurance systems in response to the diversification of work (employment) options. The pension and medical insurance system should be thoroughly applied to those who can fulfill the application standard of part-time workers. At the same time, an expansion of the scope for its application should be immediately examined. **[Prompt examination/conclusion]**

Moreover, the employment insurance system covers, in principle, all employees in the private sector. Private school teachers whose rate of participation in employment insurance remains low should be promptly encouraged to join the insurance system. **[To be implemented in successive steps]**

Moreover, it is necessary that the preferential system comprising traditional pension and retirement money for long-term continuous service workers will not cause the mobility of capable persons to be stopped. As for corporate pensions, in order for job-switching not to be a disadvantage, it is necessary to increase the fixed-benefits pension plan due to the development of a low-cost and efficient operation system, while trying to improve the portability of a fixed-benefits pension plan with consideration given to the structure of an expansion of the total system for customers with halfway cancellation of a fixed-benefits pension plan and asset transfer to the personal fixed-contributions-type pension (401k) plan. In addition to the above, with respect to

retirement allowances, the current system which treats long-term continuous service workers excessively well should be reexamined. **[Prompt examination]**

4 Strengthen the function of ex-post-facto monitoring

(1) Strengthen the measures for individual labor and management disputes [To be Implemented at the latest in FY 2004]

A scheme to appropriately and promptly settle disputes of individual labor relations at a low cost is required. Therefore, with immediate consideration given as to whether or not the labor mediation system and improvement of legal proceedings peculiar to a labor relation incident is necessary, the required measures should be taken.

(2) Agency of the person concerned with an individual labor relation dispute by certified social insurance and labour consultant [To be appropriately implemented]

With regard to mediation at the legal dispute adjustment committee which is related to promoting the settlement of individual labor relation disputes, the Law (Law 116, 2002) to revise part of the certified social insurance and labour consultant law that included the new clause whereby part of the certified social insurance and labour consultant's duties is to act for the person concerned with the dispute was proclaimed on November 27, 2002. However, the smooth enforcement of the Law should be implemented.