

Toward the realization of equal pay for equal work

Policy outline

Keidanren
July 19, 2016

Key points of Japanese government approaches toward
**The realization of equal pay for equal work
and other steps to improve treatment of non-regular workers**
(from “Japan’s Plan for Dynamic Engagement of All Citizens”;
approved by Japanese Cabinet on June 2, 2016)

- To ensure equal or balanced treatment regardless of form of employment (such as regular employment, non-regular employment, etc.)
- To not hesitate to pursue preparations for legal reform, while sufficiently taking into account Japan’s employment practices
- **Formulate guidelines** for the appropriate application of existing laws that prescribe rules regarding the treatment of non-regular workers (Labor Contracts Act, Part-Time Employment Act, and Worker Dispatching Act)
- **Consider the possibility of collectively revising, etc. existing laws**, including developing stipulations that form the basis for judicial rulings regarding unreasonable differences in treatment and developing corporate accountability (“obligation to explain”) regarding differences in treatment between non-regular and regular workers, etc.

Aim is to bring wage gaps between regular and non-regular workers to levels equivalent with those of the European nations

In order to pursue a system of “Japanese-style equal pay for equal work” that gives due consideration to Japan’s employment practices, this policy sets out the Keidanren's fundamental approach and proposes specific measures for improving the treatment of non-regular employees, taking into account the differences between Japan’s employment practices and personnel/wage systems and those of European nations.

I. Comparison of Japanese and European systems and practices

Europe (Germany, France)

Japan

Wage systems

- Labor-management relations are fundamentally industry-based.
- Wage rates that correspond to work type/skills grade are determined by **industry-based collective agreements**. These are applied to workers regardless of whether they are regular or non-regular employees.

- Labor-management relations are fundamentally company-based.
- **Content of wage systems varies** from company to company.

Employment practices

- Recruitment involves looking for people with experience/qualifications when a post becomes available. **Contracts limit the scope of work duties**.
- In many cases, career paths are limited to within the scope of a specific job.

- Recruitment is mainly of **new graduates/people without practical work experience**. This contributes significantly to the low unemployment rate among young people.
- Companies have established internal human resources development systems by which **workers develop their careers by experiencing various jobs** through job rotation.

Legal systems

- **It is prohibited to give non-regular employees working conditions that are less favorable** than those of a regular employee in a comparable role. In the event of differences in working conditions that are in violation of this principle, **the company is requested to provide evidence of reasonable grounds** for those differences (Prerequisite that differences are *reasonable*).

- Based on the premise that wage systems vary, **it is prohibited for there to be unreasonable differences in working conditions** between regular and non-regular employees (Labor Contracts Act, Article 20; Part-Time Employment Act, Article 8). Whether differences are unreasonable is determined on the basis a comprehensive range of factors including job content (Prerequisite that differences are *not unreasonable*).

When investigating steps toward the realization of equal pay for equal work, it is important to develop a system that suits Japan by considering what approaches are compatible with Japanese employment practices and other aspects of the socioeconomic foundations.

I. Approaches for the realization of “Japanese-style equal pay for equal work”

- ❑ As Japan’s wage systems are varied, it is difficult to introduce European-style equal pay for equal work, which is based on the premise of job-based pay (principle of paying the same wages to workers who have identical or equal job content)
- ❑ Japan should maintain the fundamental approach adopted in existing laws (Labor Contracts Act, Part-Time Employment Act), which determines “equal work,” etc. on the basis of a comprehensive range of factors, rather than job content alone.
- ❑ In working toward solving the following three challenges, efforts should be made to realize “Japanese-style equal pay for equal work” on the basis of the approaches set out below.

The three challenges

1. Personnel and wage systems differ between regular and non-regular employees, and it is difficult for non-regular employees to understand the differences in treatment.
2. It is difficult for non-regular employees to seek legal remedies from the courts.
3. Opportunities for career and skills development for non-regular employees tend to be limited.

“Japanese-style equal pay for equal work”

- Companies making it **their fundamental approach** to determine whether work is “equal work” **on the basis of a comprehensive range of factors** such as job content and the work, role, and level of contribution expected of a worker (how they will be utilized as a human resource) and to **pay equal wages if it is determined to be “equal work.”**
- Increasing the effectiveness of existing laws through the **formulation of guidelines, revision of legal systems, and use and application of simple legal remedies, etc.**
- Pursuing **comprehensive improvements to treatment of non-regular workers**, such as enhancing education and training, and developing systems that allow non-regular employees to switch to regular employment

Ensures
equal/balanced
treatment
regardless of
employment type

II. Necessary steps toward the realization of Japanese-style equal pay for equal work

Formulation and utilization of guidelines

- Guidelines should provide examples that demonstrate **treatment that can be recognized as clearly unreasonable** by individual workers and employers and **treatment for which improvement is required**.

(1) Examples of cases that companies can check for themselves

Area	Cases that can be self-checked
Allowances paid to employees in managerial positions	Cases in which non-regular employees are not paid managerial allowances despite holding a managerial role identical to that of a regular employee and being utilized as a human resource in exactly the same way
Improvement in treatment according to level of proficiency in work duties	Cases in which non-regular employees do not receive improvements in their treatment to correspond to their proficiency (e.g. raises in hourly pay), despite increases in their level of proficiency
Bonuses/one-time payments when expecting non-regular employees to improve performance	Cases in which non-regular employees do not receive such bonuses, etc. at all, solely on the basis that they are non-regular employees

(2) Examples of cases in which it is particularly advisable to consider revision/alternative measures

Area	Cases that can be self-checked
Safety management, travel allowances, use of cafeteria/break rooms, etc.	Cases in which the treatment of non-regular employees differs from that of regular employees, solely on the basis that they are non-regular employees

II. Necessary steps toward the realization of Japanese-style equal pay for equal work

Revision of legal systems

“Dynamic Engagement of All Citizens” Plan, Approach (1): “Impose accountability on companies regarding differences in treatment”

- Article 4 of the Labor Contracts Act prescribes that employers are to ensure that all workers understand the content of their labor contracts, but employers are only “obliged to endeavor” to do so, and measures to provide such explanations to “full-time fixed-term contract workers” are insufficient.
- **It is necessary to improve explanations to “full-time fixed-term contract workers” regarding wage systems, etc.**

“Dynamic Engagement of All Citizens” Plan, Approach (2): “Develop stipulations that form the basis of judicial rulings”

- The point at issue is whether to change the existing system of “legislation that prohibits unreasonable working conditions” (**prerequisite that differences in working conditions are not unreasonable**) to “legislation that states that working conditions must be reasonable” (**prerequisite that differences in working conditions are reasonable**), and thereby ensuring that companies have the burden of proving these differences are reasonable.
- If the system is changed to adopt the prerequisite that any differences in working conditions between regular and non-regular employees must be reasonable, companies will have to rigorously prove reasonable grounds for such differences. It is anticipated that this will result in companies establishing clear divisions between the work of regular and non-regular employees in order to avoid conflict. This entails the risk of a decrease in the opportunities for non-regular employees to switch to regular employment, and the risk that it may become difficult for older people to pursue roles in the workplace after returning to employment post-retirement.
- In light of the actual circumstances, Japan **should maintain the policy of the burden of proving that differences are unreasonable, which is adopted in existing laws (Labor Contracts Act, Part-Time Employment Act)**

Reference table: Difference between the “prerequisite that differences are not unreasonable” and the “prerequisite that differences are reasonable”

*If the system is changed to adopt the prerequisite that differences in working conditions must be reasonable, the scope of differences in working conditions that are permitted will become narrower.

Judge’s determination	Recognized as reasonable	Not quite recognized as unreasonable	Recognized as unreasonable
Prerequisite = differences must be <i>not unreasonable</i> (Japan)	○ (Legal)	○ (Legal)	× (Illegal)
Prerequisite = differences must be <i>reasonable</i> (Europe)	○ (Legal)	× (Illegal)	× (Illegal)

Worker Dispatching Act

- Article 30, Clause 3 of the Worker Dispatching Act prescribes that employers are to ensure balanced treatment between “dispatched workers” and “employees who are directly employed by the company to which the worker is dispatched and who engage in the same type of work,” but employers are only “obliged to consider” this, and it is not a provision that can serve as grounds for a judicial decision.
- **It is necessary to consider revision of the Worker Dispatching Act**, with the proviso that consideration should be given to the actual circumstances of worker dispatching.

III. Comprehensive improvement of treatment of non-regular employees

- In order to improve the standard of living of the nation as a whole and ensure positive economic cycles, it is important for the public and private sectors to cooperate to pursue the **realization of Japanese-style equal pay for equal work**, and the **comprehensive improvement of treatment of non-regular employees**.

Voluntary efforts by companies

1. Ensuring that more ambitious and talented non-regular employees are able to switch to regular employment/employment with an indefinite term
2. Pursuing further efforts to increase hourly pay or enhance measures for human resources development, etc.
3. Adopting more diverse recruitment methods and developing environments in which it is easy for women to return to work/remain in employment after childbirth/raising children.
4. Enhancing communication with non-regular employees

Government efforts

1. Expanding the measures implemented as part of school education with the aim of preventing people from pursuing jobs not suited to them. This includes expanding systematic careers education programs that correspond with students' stages of development in junior/senior high school
2. Implementing tax and social insurance systems that do not differ according to a person's way of working
3. Providing support for improving the productivity of small- and medium-sized businesses, such as support for introduction of ICT

- ❑ “Employment management categories” (employee categories based on job type, form of employment, etc.) and personnel/wage systems change with the times.
- ❑ With decline in the labor force population tightening the labor market, companies face difficulty **securing talented human resources** from within and beyond Japan.



How companies will respond with a view to the future:

- By enhancing initiatives to improve the treatment of non-regular employees and expand options for ways of working. It is possible that there will be a change in the conventional image of non-regular employees (the image that they are employees on fixed-term contracts who mainly engage in routine work duties).
- By pursuing revision of the system in order to ensure work-life balance for regular employees. It is also important for companies to develop environments such that talented workers from outside of Japan are able to work as they would in their home country.

The following approaches are expected to become widespread in the future:

- (1) **Employees employed as a member of the company as a whole** (who have no restrictions on their potential place of work and type of work) will **receive treatment that takes into account expectations toward their future work, role, or level of contribution.**
- (2) **Employees employed for a specific position** (who choose to limit their work type and develop their specialist skills) will **receive treatment based on their current work, role, or level of contribution.**

It is anticipated that speeding up efforts by public and private sector bodies to work together to improve the treatment of non-regular employees and encourage varied ways of working that allow each worker to find the balance between their "work-related needs" and their "satisfaction with their treatment/sense that their work is rewarding" will make it possible to transcend the division between regular and non-regular employment, and achieve a society in which the term "non-regular employees" (and the concept it entails) do not exist.