



Title	Promoting Gender Equality in Japan : An Examinaion of Labor Law
Author(s)	Mizushima, Ikuko
Citation	Osaka University Law Review. 64 P.161-P.166
Issue Date	2017-02
Text Version	publisher
URL	http://hdl.handle.net/11094/59677
DOI	
Rights	

Osaka University Knowledge Archive : OUKA

<http://ir.library.osaka-u.ac.jp/dspace/>

Promoting Gender Equality in Japan: An Examination of Labor Law

*Ikuko MIZUSHIMA**

1. Introduction

According to the World Economic Forum's 2016 global gender gap index, which tracks areas of gender inequality in major and emerging economies, Japan ranks 111 out of the 144 countries surveyed¹⁾. An inspection of the statistics reveals that while gender equality has almost been achieved in educational attainment (0.990) and health and survival (0.979), gender inequality persists in economic participation and opportunity (0.569) and in political empowerment (0.103).

Even so, women have made advances in certain aspects of economic participation. In the past, under the traditional male-centered Japanese employment system, women were often treated as non-regular, peripheral, and ancillary employees²⁾. Eventually, the participation rate of women in the labor market began to increase, and today female employees make up 70% or more of the workforce in most age groups (Fig. 1).

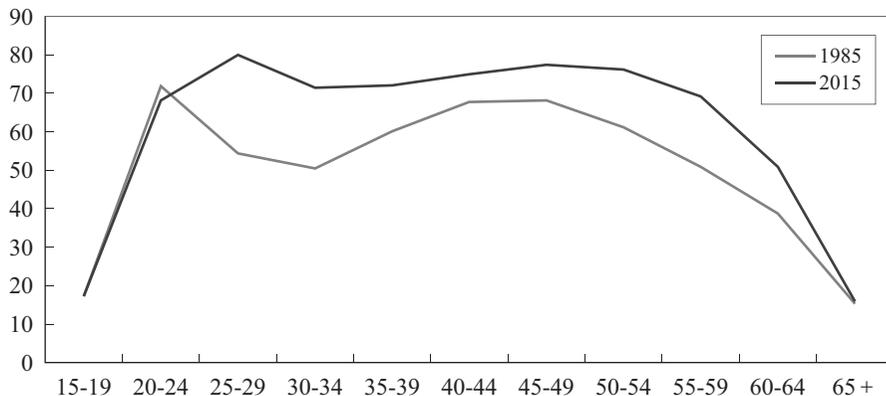


Figure 1. Labor force ratio of women by age group³⁾.

* Professor of Labor law, Osaka University Law School. Member of the Osaka University Center for Gender Equality Promotion.

1) <http://reports.weforum.org/global-gender-gap-report-2016/rankings/>

2) Takashi Araki, *Labor and Employment Law in Japan*, 104 (Tokyo, 2002).

3) Ministry of Health, Labor and Welfare, <http://www.mhlw.go.jp/bunya/koyoukintou/josei->

The increasing number of women in the labor market has revealed various discrimination issues that exist under the traditional male-centered Japanese employment system.

The labor force ratio of female Japanese employees is characterized by an M-shaped curve. As shown in Fig. 1, the number of female workers has tended to decline when women are in their late 20s through 30s and then increase again they are in their late 30s through 40s. This can be explained by the fact that, in the 20th century, many female employees retired when they got married to begin raising children. After child care duties were completed (e.g., when children reached school age), many returned to work, only to find that the only jobs available to them were poorly paid part-time positions.

As gender-related labor laws have been implemented and revised, female employees now tend to keep their jobs throughout marriage and the child-rearing years. These improved labor laws have contributed to the restructuring of the M-shaped curve. The following sections review the development of some of Japan's labor laws that specifically address gender inequality.

2. Equal Employment Opportunity Law (EEOL)

(1) Enactment of the EEOL (1985)

To ensure equality between employed men and women, the Act on Securing, Etc. of Equal Opportunity and Treatment between Men and Women in Employment (Equal Employment Opportunity Law: EEOL) was enacted in Japan in 1985. The EEOL was a significant step toward equality in employment relations; however, it was ultimately insufficient.

The EEOL was not sanctioned by criminal provisions, which means it was only able to provide administrative guidance. Because of this, there are serious problems in actual effect. Furthermore, the EEOL "prohibited" employers from discriminating against women when it came to determining seniority limitations or dismissal based on gender, however, the employers were only required to "endeavor" to offer fair treatment for both men and women in recruitment and promotion practices.

The EEOL did not prohibit employers from providing job opportunities only for women. Therefore, companies introduced the so-called "separate-track employment system," in which employers began to provide employees with a choice of two or more career tracks: a "general track," which involves routine jobs

and no obligation to comply with transfer orders entailing changes of residence, and a “career track,” which means an elite management track and necessitates the working of long hours. New male employees entering a company are typically given no choice in this matter and are required to select the career track in most companies, while female recruits can typically choose either. Under the EEOL, most female employees choose the “general track” and work as ancillary employees in the workplace due to the difficulties associated with managing a “career track” while also caring for children. This dual-track personnel system emerged only after the enactment of the EEOL.

Although the EEOL was intended to provide women with equal employment opportunities and treatment, in reality only those few women who could afford to choose the career track were blessed with equal employment opportunities and treatment.

(2) Revision of the EEOL (1997, 2006)

The EEOL was dramatically revised in 1997, at which time its very conceptual foundation was changed. The revised version forbade employers from discriminating against women not only in the sphere of dismissals but also of recruitment and promotion. It also prohibited the practice of job opportunities that were limited to women. Positive actions were the one exception in terms of equal opportunity and treatment; they were allowed because they mitigate the current employment disparity between men and women. In 2006, the EEOL altered the one-sided nature of gender discrimination, in which protection is offered only to women, by adding a prohibition of indirect sexual discrimination, regardless of gender. Thus, although the EEOL was implemented as a non-discrimination employment law, it could not solve all de facto discrimination. The realities of the workforce revealed that traditional gender stereotypes could not be altered in a short time span. Male bosses continued to preferentially promote male employees, and female employees continued to struggle to find a balance between childcare and work responsibilities.

3. Child Care and Family Care Leave Act

To support employees in the childrearing years, the Act on Child Care Leave etc. (Child Care Leave Law: CCLL) was enacted in 1991. The CCLL gave both male and female employees the right to take child care leave from a child’s birth until the child reached one year of age.

In 1995, the CCLL was revised and expanded to include family care and was

renamed the Child Care and Family Care Leave Law (CCFCLL). That same year, the child care leave allowance system was implemented by Employment Insurance Law. Employees were entitled to 20% of wages from employment insurance during child care leave. After they returned to the job, the child care leave allowance equivalent to 5% of their wages would be paid.

In time, the CCFCLL and the Employment Insurance Law were revised, improved, and expanded. Initially, the right to child care leave could be refused by agreement between employees and employer, particularly if an employee's wife/husband was a housewife/husband. Now, such employees are also permitted to take child care leave. If both the father and mother take child care leave, it may be extended to when the child reaches the age of one year and two months. The child care leave allowance has gradually increased, too: today, it provides two-thirds of an employee's wages for the first six months and half of the wages after six months.

A driving force to improve and expand employment protections relating to child care has been the promotion of child care leave for male employees (Fig. 2).

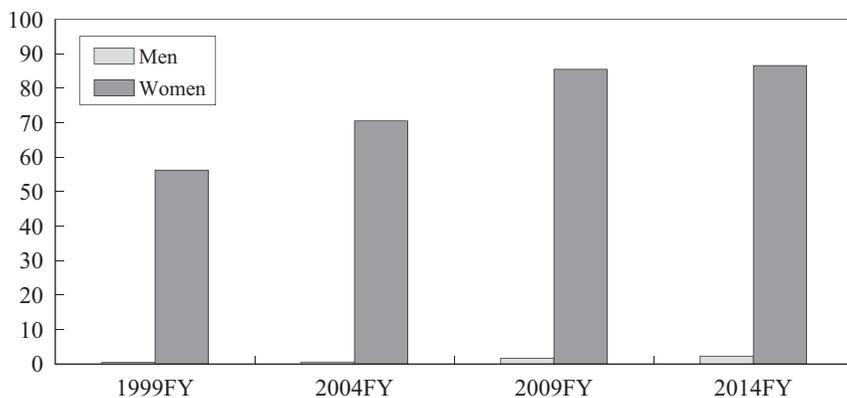


Figure 2. Child care leave acquisition ratio by sex⁴⁾.

Although labor laws have contributed to the promotion of gender equality, they are by no means perfect. It is necessary to change the traditional gender stereotypes. The Ministry of Health, Labor and Welfare recognized that in order to change the traditional gender stereotypes, it is critical that men become more sensitive to child care and change their work style. Therefore, the Ministry, to give an example, encourages men to be “Iku-men (men who care for their children; Iku is an abbreviation of child care or Ikuji)” or “Iku-boss (male bosses who are

4) Ministry of Health, Labor and Welfare, <http://www.mhlw.go.jp/toukei/list/dl/71-27-07.pdf>

considerate toward the work–life balance of their subordinates)⁵⁾.

4. Enactment of the Act of Promotion of Women’s Participation and Advancement

The factors that prevent women’s participation and advancement in employment are continually decreasing thanks to labor laws. However, although the promotion of women in the workplace has been gradually progressing, it remains slow (Fig. 3).

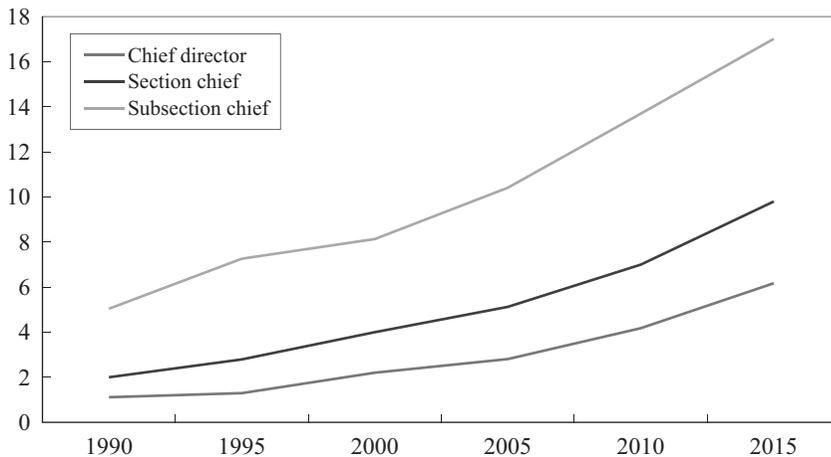


Figure 3. Percentage of females in leadership positions in private companies⁶⁾.

Also, the World Economic Forum’s 2016 global gender gap index shows an extremely low score in “Legislators, senior officials, and managers” (0.128) in Japan⁷⁾. This is one factor in the low overall ranking.

Realistically, it may take another 20 years or more to achieve true equality between men and women in the Japanese workforce. Now, we need a new wave.

One recent effort in this vein is the “Japan Revitalization Strategy Revised in 2014,” which was put forth by the Japanese cabinet. This strategy includes the

5) Another reason to encourage “Iku-men” etc. is the low Japanese birth rate, which as of 2015 was just 1.46.

6) Gender Equality Bureau Cabinet Office, http://www.gender.go.jp/about_danjo/whitepaper/h28/zentai/html/honpen/b1_s02_02.html

7) The other scores in economic participation and opportunity were as follows: “Labor force participation”, “Wage equality for similar work” and “Estimated earned income” are up to the average in 144 countries that were surveyed. “Professional and technical workers” is under the average with 0.629 score.

target of “women occupying 30% of leadership positions by 2020”. Prime Minister Shinzo Abe presented this “package of measures for all women to shine”. The objective of this policy is to ensure that women in any work environment can achieve their self-set goals and can use their abilities to their maximum potential in society in order to better the lives of all people. Particularly important in this package are initiatives relating to child-rearing support and female achievement in vocational life.

To enhance the latter, the Japanese parliament adopted the Act of Promotion of Women’s Participation and Advancement in the Workplace, which was fully implemented in April 2016. Under this act, the national government, local authorities, and private companies with over 300 employees are required to implement the following measures: 1) ascertain and analyze data on issues relating to gender and employment, 2) formulate and provide notification of action plans that include numerical targets for the employment of women and their promotion to managerial positions, and 3) publish information regularly on the current status of women’s participation and advancement.

5. Closing Remarks

Although labor laws in Japan have greatly contributed toward gender equality, more efforts are required to adequately promote women’s participation and advancement in the workplace and society. By accelerating this direction, gender equality need not wait another 20 years or more to become a reality.