

Shire, Karen A.; Imai, Jun

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Flexible equality: Men and women in employment in Japan

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No. 30/2000

**Flexible Equality:
Men and Women in Employment in Japan**

Karen A. Shire and Jun Imai

**Institut für Ostasienwissenschaften (Institute for East Asian Studies)
Gerhard-Mercator-Universität Duisburg
D-47048 Duisburg, Germany
Tel.: +49-203-379-4191
Fax: +49-203-379-4157
e-mail: oawiss@uni-duisburg.de**

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Authors/Autoren:

Karen Shire and Jun Imai

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Abstract/Zusammenfassung:

Changes in the structure and regulation of employment in Japan differentially impact men and women. The labor force participation of Japanese women is increasing, but women's employment is concentrated in relatively deregulated and *flexible* forms of non-standard and precarious employment. Women and men have relatively equal levels of unemployment at present, but the *flexibility* which characterizes part-time and temporary work lands women into the ranks of the unemployed throughout their life course, while men are more likely to experience unemployment at the entry and exit points to the labor market. Unemployment measures are directed mainly at alleviating the sources of male unemployment. Employment deregulation in Japan embodies varying degrees of re-regulation depending on the gender composition of work types. Part-time work is undertaken primarily by women, and remains relatively deregulated and unprotected. Temporary work regulations vary according to whether the occupations are typically performed by women (deregulated temporary work) or men (tightly regulated temporary work). Working hours have been deregulated for both men and women, but coupled with the deregulation of temporary work in female-dominated occupations, the change poses a greater disadvantage for women. The recent reform of the Equal Employment Opportunity Law in Japan, while responding in part to social demands for strengthening the regulation of equality, remains unenforceable. The analysis concludes that rather than more equality in employment, recent Japanese developments point to the institutional embedding of a gender segmented labor market, with men continuing in relatively protected and regulated standard employment and women relegated to flexible and deregulated employment.

Keywords/Schlagwörter: employment, flexibility, regulation, labor, gender, Japan

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D-47048 Duisburg

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Introduction

At century's end, a number of developments marked a fundamental shift in gender relations in Japan. The declining fertility rate, the rising age of marriage for women, and the highest ever divorce rate all implied a shift away from the dominant roles of wife/mother, and the site of family/household as the foundation of female identity. Women reached their highest labor force participation rates, and moreover, were working more continually throughout their lifecycles in 1999. In the political sphere, the presence of women as ministers, heads of parties, and prominent Diet members was more evident, as was the leading role of women in new social movements. A shift seemed clearly underway from a „domestic gender regime“ with a male breadwinner supporting and cared for by a dependent wife, to a „public gender regime“ according to which women's lives no longer were based in the private household or in the exclusion from the public sphere (Walby 1997).

The shift from a domestic to a public gender regime does not guarantee progress in the social and economic position of women. Whether gender equality accompanies a shift to a public gender regime is, as Walby (1997) has clearly argued, an empirical question. In the case of Great Britain, Walby found that younger educated women were increasingly integrated into employment on a relative par with men. Improved policies regarding equal opportunities as well as the expansion of women's education and activism were positive contributions to this development. The conditions for all women however, were polarizing, with less educated women and women of color subject to low-wage, *flexible* employment relations, while young, educated, ethnically British women enjoyed higher wage jobs with career opportunities.

Our argument is that Japan is presently on the path to institutionalizing a gender segmented employment structure, with little opportunity for even educated women to achieve a degree of parity with men. This segmentation is related to the effects of two main lines of employment policy. First, equal employment policy in its original and reformed versions in Japan, does not effectively contribute to the reversing of the historical exclusion of women from regular employment relations. As Gottfried and O'Reilly (2000) imply, the insider/outsider effects of the traditional strong male breadwinner model in Japan are being carried over into the public domestic regime in the form of excluding women from regular employment. Second,

employment policy, including laws regulating and deregulating non-standard employment, and policies to deal with unemployment, are gender coded. Non-standard forms of employment are implicitly designed for women. The recent re-regulation of non-standard employment forms (analyzed below) aim at preventing encroachment upon regular (male) employment. Men and women have comparable levels of unemployment in Japan, yet both regular and emergency measures focus almost entirely on the reemployment and security of the male workforce. Recent measures aimed at improving employment opportunities for women have contributed more to rendering women a flexible labor force than to establishing legal resources for struggles against discrimination. The notion of equality present in the emerging Japanese „public gender regime“ is one of *flexible equality*. Women may be integrated into standard employment forms and relations, but primarily in response to labor market demand and employer willingness rather than on the basis of educational level, willingness to undertake careers or other supply related factors.

The nature of the public regime in Japan is evident in the gradual institutionalization of a gender segmented labor market. The latest wave of employment and unemployment policies, and the varying elements of de- and re-regulation contained within them, create a restructured labor market with a shrunken yet protected core of male regular workers and a flexible periphery of female temporary and part-time workers. Some of the new employment regulations, such as the dispatched workers law revision of 1999 which regulates temporary employment, contain both new regulations and de-regulated elements. The mix is aimed at deregulating female temporary work, while carefully regulating dispatched workers in areas of regular employment. Other employment forms, such as part-time work, have been meticulously studied to demonstrate that they do not encroach upon regular employment (rodosho 1999). Part-time work remains weakly regulated in Japan as a result.

The annual Ministry of Labor *Labor White Paper* is the most important source for scholars interested in the development of the Japanese labor market and labor relations from the perspective of public policy makers. Since 1953, the Ministry of Labor's Women's Bureau has published a survey of women's employment. In 1999 the publication was renamed the *Women's Labor White Paper*. The change is symbolic of the important public role of female labor in Japan. At the same time, the publication of a labor white paper for women, alongside a general labor white paper

indicates a policy consciousness that labor market measures be segmented along gender lines.

The year 1999 marked an important watershed in policy aimed at improving the public role of women. The Fundamental Law for a Gender-equal Society is at least an important symbolic resource for improving equality under the emergent public gender regime in Japan. A much needed reform of the 1986 Equal Employment Opportunity Law also came into effect, at least making it easier to file for mediation in cases of discrimination in employment. The latest wave of employment policies and labor market measures move against these developments. It is too early to judge whether gender equality policies will impact the consciousness of policy makers, who continue to operate under a „strong male breadwinner model“ of employment. Unlike the US case, where legal recourse provides a resource for fighting discrimination, and the European case where European Community level directives and recourse to the European Court provide supra-national resources for improving equal opportunities, Japanese women at present have few resources for improving their own integration into the labor market and employment. The current trend in labor market restructuring in Japan is on the way to institutionalizing gender segmentation in employment to such a degree that it may be more difficult in the future than at present to equalize the opportunities even for young educated women, ready to undertake careers.

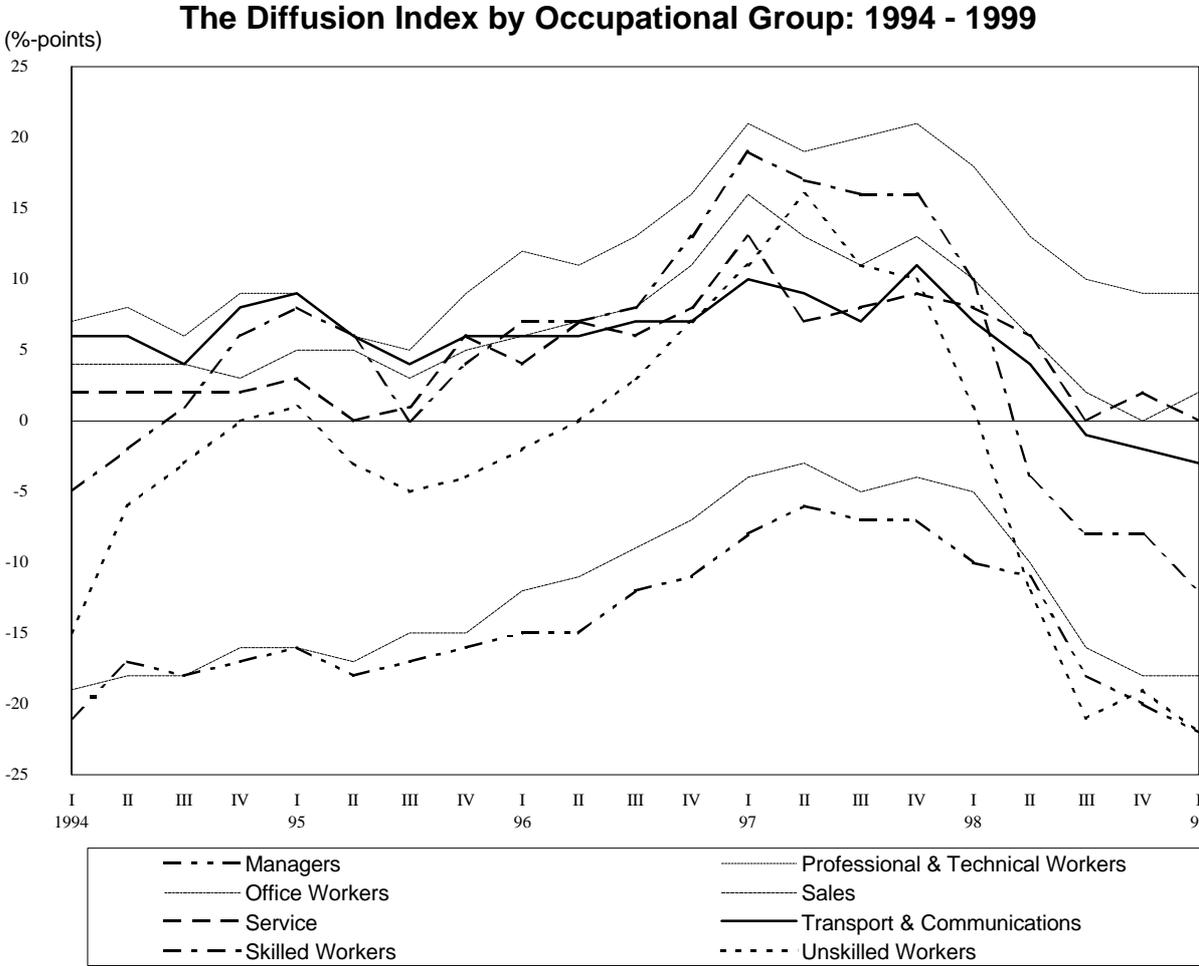
In the next section we outline the contours of the emerging gender segmented labor force in Japan. review the latest statistical surveys of men and women’s employment and unemployment in Japan. Then we interpret recent employment and labor market policies in relation to their gender implications. The conclusion returns to consider the contours of the emerging public gender regime in Japan, in relation to employment aspects.

Gender and the Restructuring of Employment

Over the past two years evidence of labor market changes in Japan has been plentiful. For the first time since the mid-1950s the average number of employees in 1998 declined and continued to do so in 1999 (*rôdôsho* 1999; www.mol.go.jp; www.jil.go.jp). The drop was dramatic in the construction and manufacturing sectors, but growth also slowed in the expanding service sectors. As employers found ways to

shed labor, unemployment reached post-war highs, as did budget allocations to promote employment security and reemployment measures. Yet, labor shortages also became more evident, especially in knowledge-intensive types of work (Figure 1). The only type of work to grow significantly was non-standard work, especially part-time work (*rôdôsho* 1999). The co-developments of labor surplus with rising unemployment, and labor shortage with attempts to source labor through new employment forms highlight the extent to which the Japanese labor market is undergoing a fundamental restructuring, across sectors, within the occupational structure and among types of employment.

Figure 1



Source: rôdôshô 1999 (CD Rom: 1999 rôdôhakusho)

Men and Women in Regular and Non-Standard Employment

Table 1 presents the distribution of men and women in full-time, part-time and temporary work in 1992 and 1997.

Table 1

Percent and Change of Men and Women in Regular and Non-regular Employment
By Age of Employees
1992 and 1997

Men									
-----	--	--	--	--	--	--	--	--	--

	1992			1997			+/-%		
--	------	--	--	------	--	--	------	--	--

	F-T	P-T	Temp	F-T	P-T	Temp	Ä F-T	Ä P-T	Ä Temp
All ages total	81.4	1.0	0.2	80. 9	1.3	0.2	-0.5	.3	0
15-24	78.5	0.7	0.3	72. 5	1.2	0.3	-6	.5	0
25-34	93.0	0.3	0.1	91. 9	0.5	0.2	-1.1	.2	.1
35-54	85.9	0.3	0.1	87. 2	0.4	0.1	1.3	.1	0
55 & over	57.4	4.0	0.2	57. 8	4.6	0.2	.4	.6	0

Women									
-------	--	--	--	--	--	--	--	--	--

	1992			1997			+/-%		
--	------	--	--	------	--	--	------	--	--

	F-T	P-T	Temp	F-T	P-T	Temp	Ä F-T	Ä P-T	Ä Temp
All ages total	58.3	27.5	0.6	53. 8	30.0	0.9	-4.5	2.5	.3
15-24	78.5	4.5	0.5	66. 7	6.9	0.9	-11.8	2.4	.4
25-34	70.2	18.1	1.5	68. 0	18.6	2.3	-2.2	.5	.8
35-54	48.9	39.5	0.3	46. 8	41.5	0.5	-2.1	2.0	.2
55 & over	42.9	33.8	0.2	39. 4	38.8	0.2	-3.5	5.0	0

Source: Compiled and % Change Computed by Authors from Rôdôshô 1999, Table 7, pp. 451

The overall picture is one of stability for men in full-time *regular* employment and a tendency for greater proportions of female employees to move from regular to non-regular employment, (in 1997 primarily part-time). Men experienced a slight decline in full-time employment from 1992 to 1997 (0.5%) while regular female employees dropped by 4.5%. Meanwhile expanding proportions of part-time and temporary work was almost fully taken up by women. Further, all of the decline in the proportion of male regular employment was concentrated in the early career years, while for women the decline was over all age groups. Reading various statements by the Labor Ministry, the most problematic age group for men was between 60 – 64. But the above comparison indicates that full-time employment continued to cover greater proportions of older men, while 3.5% fewer of the female labor force over 55 were in regular employment in 1997.

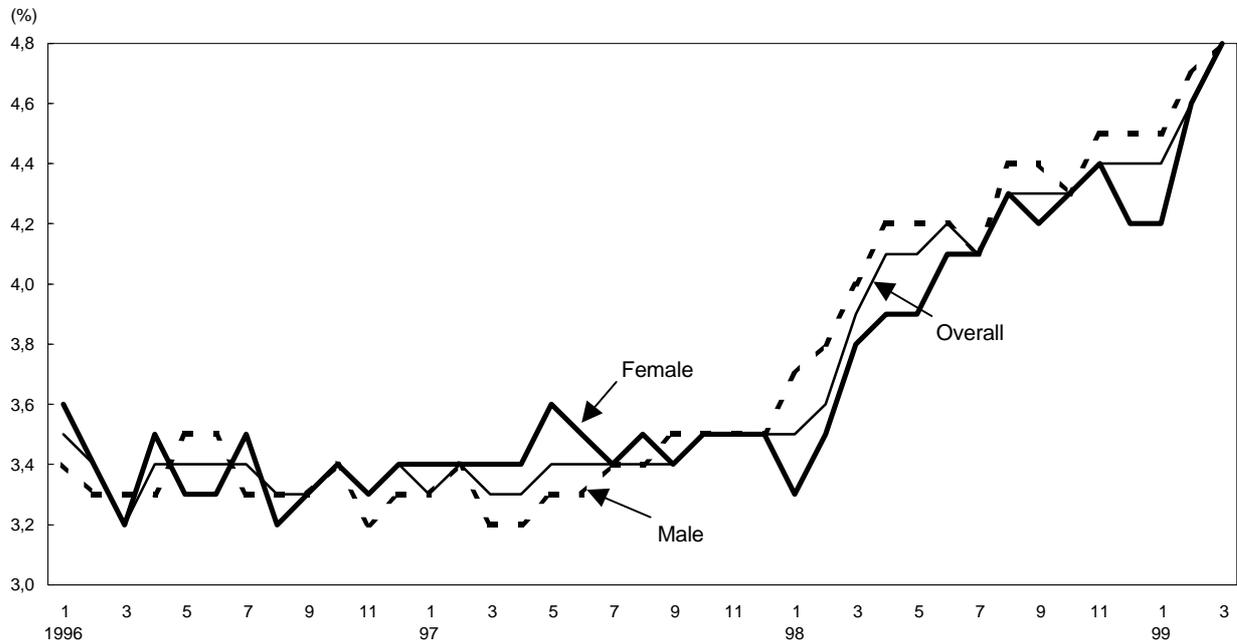
The traditional pattern of men in regular employment and women in non-regular employment has become even more characteristic of the Japanese labor market structure at century's end. Non-standard employment increased by 380,000 workers in 1998 while overall there were 540,000 fewer employees than in 1997. Increases in female employment accounted for two-thirds of the increase in non-standard employment. By 1998, 40.9% of women were working in part-time or temporary jobs (Japan Institute of Labor 1999). Most of these were part-time and not temporary workers since until 1999, temporary work remained heavily regulated (see below). Between 1983 and 1999, the proportion of women working part-time grew by 10% (Hanami 2000).

Men and Women Unemployed

In 1998 for the first time, the unemployment rate climbed over 4%, and peaked at 4.9% in June 1999. The unemployment rate was higher than that in the US, an issue which provoked a defensive analysis of comparative unemployment rates in the 1999 Labor White Paper (rôdôshô 1999). The decline in traditional industrial sectors might suggest that male unemployment was higher than female. In fact this was hardly the case. At least in unemployment, men and women are presently quite equal in Japan. The unemployment rate of women and men has climbed more or less in parallel, and in 1999 men and women shared roughly the same rates of unemployment (Figure 2).

Figure 2

Trend in Unemployment Rate by Gender: 1996 - 1999



Source: rôdôshô 1999 (CD Rom: 1999 rôdôhakusho)

Breaking down the unemployment rate by specific age groups reveals some important gender differences however.

Table 2

Unemployment of Men and Women in 1998

Age Group	Men	Women	Gap (W-M)
All ages	4.2	4.0	-.2
20-24	7.3*	6.9*	-.4
25-29	4.9*	6.7*	1.8
30-34	3.1	5.6*	2.5
35-39	2.8	3.7	.9
40-54	2.5	2.6	.1
55-59	3.6	2.8	.8
60-64	10.0*	3.1	-6.3

SOURCE: *rodosho* 1999, computed from Table 5, pp. 449.

*indicates above average unemployment

For men, the increase in unemployment was concentrated among young entrants to the labor market (who voluntarily separate from their employers), but also among older workers (60-64 years), laid off by firms undergoing restructuring or going

bankrupt (rôdôshô 1999). Female unemployment was similar for young labor market entrants, but comparatively much less for elderly workers. Most significantly, the unemployment of women was concentrated in the early career development years, from 25 to 35 years old. The analysis of the gap between women's and men's unemployment in Table 2 shows that women remained less integrated into employment well into mid-life when the rate of part-time employment among women was greatest. Men on the other hand, suffered similar rates of unemployment in their early years when voluntary separations are most likely, but settled into regular and uninterrupted employment by the time they reach their thirties.

For Japanese men, unemployment is a problem late in life, shortly before they reach retirement. For Japanese women, unemployment is a problem throughout the early and middle years of their employment histories, exactly when it is most important, in the context of personnel policies in Japanese companies, to settle into regular employment. Some official accounts still claim that women exit the labor force for family reasons during these years. Contrary to the traditional interpretation, women's unemployment in the late 1990s has been growing during the so-called childbearing years. Since 1995, when unemployment first rose above 3% in Japan, the unemployment of women aged 30–39 has grown more rapidly than the rate for men in the same age group. Yet unemployment measures, including recent emergency measures, tend to ignore the unemployment of women, and focus budgetary allocations and new policy initiatives on programs aimed at unemployed men.

In the mid-1990s employment policy moved from an issue of social policy, to an issue of economic policy and came under the deregulation programs of the Japanese government (Araki 1999). Two major changes since then characterize employment security policies in the late 1990s: huge increases in the subsidies for companies reemploying redundant workers, and a new emphasis on activating the external labor market to aid employment adjustment between declining and growing sectors of employment. In 1994 the regular budget for employment policy measures was the highest ever in Japanese history, surpassed by an even higher budget in 1995. From 1995 new programs were added to the old repertoire, all under the new policy direction of creating employment and activating the external labor market. The new measures included „measures which promote labor mobility without unemployment,“ „job creation measures“ and „measures for small- and medium-sized

enterprises“ (rôdôshô 1999). Most of these measures were aimed at subsidizing companies to pay wages to reemployed older workers, and aimed at „smoothly“ adjusting regular employment of older (male) workers from declining sectors to growth areas of the economy(Araki 1999). In both 1998 and 1999 the special emergency budgets of the Japanese Diet included an additional 1 trillion yen (the regular budget in 1998 was 331 billion yen) for similar programs. In 1999, 32 billion alone was earmarked to support employment adjustment of small- and medium-sized subcontracting companies forced to lay-off regular workers because of core company (e.g. Nissan) redundancies and production cut-backs.

In its 1999 White Paper, the Ministry of Labor has clearly conceived of the labor market crisis in Japan as a crisis of older, male, skilled and unskilled labor, especially in the construction and manufacturing sectors. The 1998 Women’s Labor White Paper contains no discussion of women’s unemployment. The 1999 Women’s Labor White Paper is not yet published at this writing. It can be expected that most of the subsidies for reemploying redundant workers will effectively result in the further promotion of regular employment. This focus is hardly warranted by the gender comparison of unemployment statistics which clearly shows that female workers, in office roles for example, are also suffering record high levels of unemployment. Further, the boom in the levels of part-time employment growth draws a picture of redundant women moving into irregular employment with low wages and low employment security, while redundant men are „smoothly“ transferred into regular employment in growth sectors with the aid of generous government subsidies for wages and employment adjustment.

Gender and Japanese Employment Policy

Despite the inclusion of employment policy in the *deregulation* programs of the Japanese government since the mid-1990s, measures regarding employment continue to exhibit varying degrees of regulation. The variation itself in the extent of regulation/re-regulation/de-regulation has a gender dimension. In this section we analyze four recent employment policies, each exhibiting a different degree of regulation. We demonstrate that strong regulations are made in employment policy areas where the protection of core employment is at stake. Employment policy covering non-standard employment varies depending on how much a threat it poses

to the erosion of regular employment of men. Where there is no threat, or where stronger regulations would integrate women into traditional areas of male employment, weak or lax regulations are present. Even where deregulation affects both male and female employment, within the broader institutional context of a gender segmented labor market structure, women are more exposed to less regulated working conditions.

Strong Regulation of Temporary Work

In June 1999 a new regulation took effect for temporary work. The original 1985 law conceptualized temporary work as specific to certain occupations which required specialized skills not otherwise available on the internal labor markets of most corporations. The law was specifically constructed to avoid the replacement of (male) regular workers with temporary staff. The occupations where temporary workers may be employed under the first regulation were „new“ types of work, most requiring „professional knowledge, skills or experience (e.g. computer programmers, production of broadcast programs, interpretation, translation and shorthand, etc.)“ (Araki 1999). Several revisions of the temporary work law in 1994 and 1996 removed occupational restrictions on workers over 60 (i.e. for men no longer in regular employment) and extended the allowable occupations by 10. The 1999 revision, demanded by employers but resisted on the basis that change would erode (male) regular employment, lifted nearly all allowable occupations. A further change is more specific to gender aspects. Under the previous law, which at the time of revision included 26 occupations, the typical temporary worker in Japan was an educated female white-collar worker. The new revision which allows almost all occupations includes a clause meant to quiet fears that temporary work would erode (male) regular employment. For all the newly allowed occupations, temporary workers are only allowed for temporary adjustments of one year duration. This one year clause however, does not apply to the original 26 occupations wherein the proportion of female temps was greater. Temporary workers in these fields can be employed indefinitely in a temporary status (Araki 1999).

In effect, two types of temporary work have been created by the new regulation, a long-term temporary segment populated mainly by female staff in new areas of work not occupied by regular male workers, and a short-term temporary

segment which may be in areas of regular male work, but which does not threaten to replace regular work with temporary work.

Weak Regulation of Part-Time Work

The current part-time labor law has been in effect since 1992, and what is significant here is that it has not been revised despite a number of clearly demonstrated disadvantages for part-time workers under the law (Sato 1998). This is a case of minimal regulation, and like the Equal Employment Opportunity Law, compliance depends on the voluntary cooperation of corporations. Sato names two problems in particular with the present regulation: (1) the lack of social benefits which force many women under the present taxation and social welfare system to adjust their employment levels and (2) the problem of „quasi-part-time workers“ who in fact work hours close to or identical to full-time regular workers. Part-time work allows for some employment insurance contributions at 22 hours per week or more, and better employment insurance provisions at 33 hours per week or more. Most housewives engaging in „employment adjustment“ however must keep their hours below 25 hours under the present tax and welfare systems.¹ This aspect of the gendering of social policy is well known in Japan, and well documented by Japanese scholars (Osawa 1992).

Even the problem of „quasi-part-time workers“ most likely affects female *paato*. According to Sato, 20% of female part-time staff are not married, and 30% of all *paato* work at least 35 hours/week (Sato 1998). In many cases, such *paato* staff may be engaged in the same work tasks as regular workers, but with de-facto less job security, lower wages and the requirement to contribute oneself to state-run pension and health insurance schemes known to be inferior to corporate run plans.

From an employment policy point of view it should be emphasized that the present lack of regulations for part-time work results in the creation of a low wage sector of work, which aside from student workers and retired workers, is nearly all-female. Moreover, this is the sector of the labor market that is growing the most at present.

¹ This calculation is based on a typical *paato* wage of 850 yen per hour, and a 52 week/year working period. Income is tax free up to 1,030,000 yen. From 1,300,000 most employers no longer pay for spousal health and other benefits, and from 1,400,000 yen, spousal tax deductions are forfeited. If part-time jobs pay more, for example 1,500 yen per hour, the rate my graduate assistants at International Christian University received, then the maximum number of working hours would be below 15 per week.

De-regulation of Working Time

Aside from the regulation of non-standard employment forms, the most important change in Japanese employment regulations in the late 1990s was the progressive deregulation of working hours. The deregulation comes at a time when scheduled working hours have reached a low yearly total of 1,938 hours (rôdôhakusho 1999, p. 53), and long-time union demands to institutionalize the 40 hour work week seem fulfilled. In fact, Nikkeiren (the association of management interests in Japan) cites reduced working hours as a reason for needing a complete deregulation of what has already been described as a rather flexible regime of working hours (Dore 1986). The deregulation has come in two separate changes to the Labor Standards Act, one regulating the working time of female workers, and the second covering discretionary working (time) relations in selected occupations. Both changes are cloaked in a discourse of modernizing the Japanese style employment system, in the former case by improving equal opportunities for women in employment, and in the second in adapting Japanese personnel management to the requirements of managing professional and knowledge workers.

In a revision of the LSA in effect from 1988 (passed in 1986), a system of discretionary work relations was established whereby rewards, in the form of wages and advancement, would be decided on the basis of working results, without regard to (overtime) working hours in selected occupational groups. The working system was *discretionary* in terms of the hours needed to complete a piece of work. The selected occupations were characterized by irregular working hours, as a consequence of a task rather than a time orientation, and originally included research & development, editing & reporting, information systems design, other design occupations, film and broadcast producing. In 1993 (effective from 1994) a further provision opened the possibility to add additional occupations to the group. From 1997, the Labor Ministry's central advisory committee on labor standards (*Chûô rôdô kijun shingikai*) added another six occupations to the group subject to discretionary work rather than working hours regulations (auditing, law, architecture, real estate appraisal and patent attorneys) (rôdôshô 1997). As categories of discretionary work, employers were not required to consider enterprise agreements on scheduled working hours.

In 1995 Nikkeiren publicized its demand to extend the deregulation of working time under the discretionary work clause in the LSA to broad segments of white collar

administrative work. Arguing that „white-collar productivity is not a function of the length of working hours“ and that changes in the quality of white-collar working tasks makes them „more and more unsuitable to time-based management,“ Nikkeiren called for the deregulation of working time in administrative work (Nikkeiren 1995, p. 92). In 1996 Nikkeiren submitted a „deregulation demand“ to the government, and the matter was deliberated in the Labor Ministries‘ advisory committee in 1997 and 1998 (nikkeiren 1996 reproduced in rengo 1997).

In 1996 and 1997 negotiations were also underway for a revision of the Equal Employment Opportunity Law, and from the beginning employers‘ groups argued that no revision was necessary. Employers groups soon took the position that any revision would also have to include a deregulation of working hour limits on female labor in the LSA. One line of argument was that working hour limits for women represented an outdated form of protection, and that the equal employment of women was hampered by regulations preventing nightwork and holiday work. These provisions did not cover female professional workers however. Further, temporary workers strongly favored limits on night work and holiday work to prevent employers from using temporary workers to fill-in for times when regular workers preferred not to work. Given the gender composition of temporary work, the so-called protection provisions provided woman with an important loophole for regulating their working hours despite the non-standard nature of their working relations.

Labor representatives involved in the EEOL revision negotiations also favored keeping the weekly and yearly limits, but not because of their status as protective measures. Instead, Rengo favored extending some of the working time regulations to male workers as well, and thereby accepted a principle of equalizing men’s and women’s employment regulations. The debate over the deregulation or further regulation of working time within the context of the EEOL negotiations became heated. A compromise was reached whereby labor agreed to the lifting of the protective clauses covering female workers, thereby equalizing their working hour regulations. The issue of whether to reduce the 360 hours of overtime per year limit for men (and now women) was to be taken up in the *Chuô rôdô kijun shingikai* (Asahi Shinbun 1.21.98). In the meantime, the major employer demand had been fulfilled.²

² The protections remain for the first three years of the new Law, which took effect in 1999, but will then be out of effect (Hanami 2000).

The debates over the deregulation of the discretionary work system were very much centered on the future regulation of working time. In addition to the vague meaning of discretionary work management, and fears that managers would abuse such a system in the absence of objective evaluation and promotion practices in Japanese companies, Rengo was particularly concerned that the deregulation would result in an increase in undocumented (and unpaid) overtime work (so-called service overtime -- *sabisu zangyou*). Thus Rengo argued for reducing the average yearly overtime guidelines, for retaining a 40 hour work week as the scheduled working time and for the enterprise-level documentation and regulation of overtime work (Rengo 1995, 12/5). Already in 1997, after promising to reconsider the average yearly overtime guidelines, the Labor Ministry announced that no revision would be made in the present guidelines. In late 1997 and through the Spring of 1998, labor unions and networks staged a number of public demonstrations against the deregulation of discretionary working time, as the Ministry moved more in the direction of accepting the employers' proposals. Particularly visible was the network of temporary workers (*haken rôdô nettowaaku*), which clearly saw the possible effects of such a deregulation not only on male white-collar workers, but on female temporary workers (dispatched in white-collar work areas) (Asahi Shinbun 11.28.97; Asahi Shinbun 5.1.98). Since the most deregulated part of the temporary labor law (the part covering the original 26 occupations) is an area of strong female labor presence, the lack of any limits on temporary labor in these areas, coupled with the deregulation of working time in qualified white-collar work posed a further threat to the quality of working life of female temporary workers.

In 1998 the deregulation of discretionary work was pushed through the Diet, (despite social protest), and takes effect in April this year. In effect, the law renders national guidelines on overtime work of less relevance, and displaces any further negotiation of overtime work in white-collar areas to the enterprise level, where labor-management committees are instructed to continue to negotiate working time in areas of discretionary white-collar as well as other work areas. This is a classic scenario of deregulation through decentralization. While this decentralization aspect still preserves a role for enterprise level agreements, since temporary workers are not represented at the enterprise level, the deregulation promises to disadvantage women more than men, though men are also clearly disadvantaged. In short, the deregulation of working time strengthens managerial prerogative over the control of

white-collar labor time, by shifting employment relations from a time-based working schedule negotiated with labor, to a performance-based system designed and evaluated by management without the need for consulting employee representatives.

Lax Regulation of Equal Employment Opportunities

The revision of the protective clauses of the Labor Standards Act were agreed to by labor and public representatives in the reform negotiated in exchange for strengthening the language of the equal employment law and improving aspects of enforcement. The new law prohibits discrimination, allows for women to undertake mediation without the employer's consent, and provides for the publicization of the names of companies who violate the law. Since the law has only been in effect since 1999 it is difficult to judge whether these changes have had any effect or not. It is important to note however, that the need for reform was strongly argued by a range of social groups in Japan, including a number of academics, legal experts, labor unions and women's advocacy groups and networks. In this respect, in contrast to the first law which was a response to external UN directives, the new reform is the result of domestic public debate and social demands. This in itself is an important point, since the presence and mobilization of a pro-equal-employment coalition of social actors in Japan is perhaps the best resource for eventually countering discrimination in Japanese companies.

But groups such as the new Women's Union (*josei union*) have few legal resources at present to fight the discrimination cases they receive.³ The law continues to lack any form of recourse to the court system (though some violations are enforceable under the Labor Standards Act), or punitive measures. Some opinion leaders, such as Tadashi Hanami, the Research Director of the Japan Institute of Labor, while calling for a law with enforceable provisions, continue to claim that the EEOL is a Japanese-style law, relying instead on guidance rather than punitive provisions. This claim hardly seems tenable however, when we take a broader look at employment regulation in Japan. In the post-war period, the court system proved quite important in establishing case precedents for long-term employment (Tackney 199X). The new temporary work law, which aims to prevent the replacement of regular with temporary work by limiting new occupational areas to a one-year clause includes a fine for companies that violate it. The regulations concerning the

³ Our source is Prof. Tanaka, Kazuko who is presently doing research with and about the *Josei Union*.

employment of foreign laborers also include fines for companies that violate it. It seems that when regulations involve the protection of employment conditions for regular workers (guaranteeing long-term employment, preventing replacement by temporary or foreign workers), legal rights and fines are not uncommon. In the case of the EEOL however, the neglect of similar demands (as were made by Rengo and others) have been justified on the basis of being inconsistent with some imagined Japanese style.

In this light, it is not surprising that employers do not seem to be taking the new revision any more seriously than its original weaker version. According to the results of the 1999 Survey on Women Workers' Employment Management, „discriminatory policies, particularly in recruitment, hiring, job assignment and promotion remain essentially unchanged.“ (Hanami 2000) The two-track employment system which essentially creates a *gender queue* (Reskin & Roos 1990) sorting women into work roles without advancement opportunities (Shire 2000) is still practiced by most large companies. Not only has the proportion of female managers in Japan remained low in international comparisons, the proportions actually declined throughout the 1990s (Hanami 2000).

In summary, the extent of deregulation and aspects of re-regulation in Japanese labor markets vary in relation to the gender composition of employee groups targeted by employment policy. Strong regulations are found in the case of temporary work, precisely because deregulation might threaten the long-term employment relations men enjoy. Weak regulations cover part-time work, where mainly female workers are a flexible and easily expendable source of labor, without any threat to the full-time employment practices covering men.⁴ Working time is the policy area which most easily fits a clear deregulation pattern, though here there are also gendered differences. Lax regulations characterize the most recent reform to the equal employment opportunity law, and as a result, the law continues to be an ineffective means for integrating women into regular employment opportunities. In reference to labor market segmentation theory, the secondary labor market in Japan is undergoing considerable deregulation, while the primary labor market continues to be carefully regulated.

⁴ The 1998 Labor White Paper included a careful and thorough analysis, broken down by sector of employment, to demonstrate that part-time work is not replacing regular work.

Conclusion

The public gender regime emerging in Japan, from the point of view of women's labor force participation, holds little promise of structural equality in employment outcomes. The model of gender which at present seems to characterize the role of women and men in employment is one of *flexible equality*, where the prerogatives over the shape of women's labor force supply as well as the demand for women's labor continues to be determined by a male breadwinner type of employment policy and labor market structure. Women are gaining entry to public life in terms of their levels of labor force participation, but an emerging clear gender segmented labor market subjects women to so-called *flexible* forms of non-standard employment and more precarious employment relations. Women and men have relatively equal levels of unemployment at present, but the *flexibility* which characterizes part-time and temporary work lands women into the ranks of the unemployed throughout their life course, while men are more likely to experience unemployment at the entry and exit points to the labor market.

Employment deregulation in Japan embodies varying degrees of re-regulation depending on the gender composition of work forms undergoing deregulation/re-regulation. *Flexible* employment poses a potential threat to the employment security of all workers, but Japanese employment regulations are careful to curb this threat wherever female dominated work forms could in fact, pose an alternative labor market supply for the full-time regular work of men. The case of qualified temporary work demonstrates the point clearly.

The deregulation of working time also equally affects men and women, but women are subject to a double deregulation, first in the removal of nighttime and overtime loopholes (under the guise of *protections for female workers*) strategically used by female temporary workers to avoid overexploitation, and then again by the discretionary work clauses which decentralize, and thereby exclude female temporary workers from the regulation of working time at the enterprise-level.

The lax character of equal employment law in Japan is less a result of a *Japanese style legal system*, than the persistent unwillingness of the Japanese Labor Ministry and employers, despite strong social demands from labor and women's groups (and now also the Ministry of Health and Welfare), to integrate women into areas of regular core employment. Again, it seems that the Labor Ministry continues

to formulate employment policy with the male breadwinner model in mind, and the result is the presence of very weak political measures to support women's activism in fighting discrimination at work. Finally, employment security and adjustment policy, including the large emergency budget sums to fight unemployment, are channeled into programs aimed at employment adjustment of regular workers, an employment category dominated by men.

Walby's (1997) important study into the transformation of gender relations in Britain suggests that conditions of equality are not shared by all women even in the best of cases. The Japanese case however, may be the worst of cases, where women become a category of secondary employment themselves in a regime of public gender segmentation. The institutional perspective in the social sciences argues that once established, institutional change is path dependent (Scott 1995; Steinmo et. al. 1992). The present conjuncture in the restructuring of Japanese labor market institutions is very important in this respect, in shaping future chances for instituting gender equality in employment.

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