

# Has the Equal Employment Opportunity Law Protected Women Workers?

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Since the enactment of the Equal Employment Opportunity Law in 1985, the legal framework of women workers has drastically changed: the Equal Employment Opportunity Law and Labor Standards Law were amended, and the Part-Time Work Research Committee issued its final report. This article will explore how the change of the legal framework affected working women, based on information I collected over the last fifteen years.

## **Corrective Action Against Discrimination was Non-Binding**

The Equal Employment Opportunity Law was expected to play a central part in the legal framework for women workers. However, discrimination against women in recruitment, hiring, assignment, and promotion was not prohibited but merely stipulated as non-binding. This is why the law has been described as full of loopholes from the very beginning. On the other hand, protective regulations for women were reduced in certain types of jobs, such as administrative work, because the business industry claimed that women must share the same workload as men if they would like to seek equal rights. Women had to assimilate and adopt men's lifestyles in order to eliminate discrimination against them.

However, complete assimilation is impossible for women, who also work or are forced to work for an enormous amount of unpaid work, such as household chores, childcare, and nursing elders. Women find

themselves unable to fully "assimilate" because they know that it would be difficult to enter the workforce without solving these unpaid labor issues based on the realities of their daily experience.

Many women's organizations at the time the law was initiated, insisted that protection towards women should not be abolished and that overtime work should be restricted regardless of gender. However, the Equal Employment Opportunity Law was enacted without taking their suggestions seriously.

## **A Decade to Prove its Loopholes**

Loopholes in the Equal Employment Opportunity Law were very large. In the process of recruitment and hiring, discrimination against female students hardly improved. A decade after the enactment of the law, the first half of the 1990s was still hard times for college-graduate job seekers. In this period, gender-segregated recruitment continued in order to restrain the number of female employees. This tendency triggered an outpouring of criticism from women's organizations complaining the absence of equal opportunities even in entry level jobs. Following the criticism, the Ministry of Labor revised the law in April 1994, by stipulating a new guideline that the number of women in recruitment and hiring shall not be limited.

However, corporations began to use more sneaky ploys for gender-segregated recruitment. A female student of Japan Women's University who attended the information orientation

meeting of a major beverage manufacturer said that even though the application guidebook mentioned nothing about gender, when she asked a question about the job description, the answer she received was: “only male employees are engaged in sales, project planning, and the development of major products. Female employees deal with sales of new products.” The company tried to justify shutting the door on female students by separating men and women according to types of job descriptions.

This type of personnel management system was popular in banking institutions and trading firms. These corporations separated career-track and non-career track jobs. The former course has a promotion system and guarantees lifetime job security. The latter, on the other hand, has none of these benefits. Male employees occupy a high proportion of career track jobs. Only a few women workers were allowed to be in career track jobs, while all the employees in non-career track jobs were

women workers.

Even though only women fill non-career track jobs, this was not illegal under the Equal Employment Opportunity Law before the amendment. The recruitment of only women workers into non-career track jobs was accepted in the name of promotion of women’s participation in society. Such gender-based discrimination in recruitment took place based on a “norm” of a man-with-wife worker model, where he devotes all his time for work, disregarding time with his family.

### **A Series of Lawsuits on Wages Discrimination**

Women did not remain silent about these challenges and difficulties. The most significant role of the Equal Employment Opportunity Law of 1985 was giving “official” permission to women, in principle, to participate in the workplace and increase the number of employed women. A 27-year-old female engineer who worked for a mid-size

manufacturing enterprise demanded a revision of wage differences from her boss. She thought that it was proper that all employees be treated equally. In the winter of 1993, when she had a conversation with two other colleagues about how they spent their salary, she learned that her younger male colleague received a higher monthly payment than hers by more than 13,000 (approximately \$100). She asked her boss, the company executives, and the president for an explanation about this wage difference. However, she only found that the difference became slightly smaller at the next regular payment raise. She



protested again, but the company ignored her allegation. Then she consulted the Prefectural Women's and Young Workers' Office (currently called the Equal Employment Office) and Labor Standards Supervision Office on the matter. A few weeks later, the company suddenly announced that they would eliminate gender-based wage differences for college graduate employees. Later, however, the assessment of the abilities of all of the women workers was downgraded resulting in lower wages. The company insisted that this reduction in salary was not gender-based discrimination but due to gap in abilities.

Although the principle of gender-equal payment is stipulated in the fourth article of the Labor Standards Law, this principle does not prohibit indirect discrimination. According to a survey by the Ministry of Labor in 1993, the average wage of regular Japanese woman workers was only 62% that of men workers (when part-time women workers are included, the figure decreases to 52%). The wage gap between male and female employees was not reduced even after the enforcement of the Equal Employment Opportunity Law.

At the time of the enactment of the Equal Employment Opportunity Law, consulting the director of the Women's and Young Workers' Office and reconciliation at the Equal Opportunity Mediation Commission were ways to seek solutions to the problems of women workers. However, the results of an administrative inspection published by the Management and Coordination Agency in 1991 showed that even advice from the Women's and Young Workers' Office did not necessarily lead to a solution, and problems were prolonged. As a matter of fact, the Equal Opportunity Mediation Commission has assembled only once in Osaka, even though there were more than 100 applications to it from across the country. This is due to two

main obstacles; a committee meeting can only take place when the director of the Women's and Young Workers' Office considers it necessary, and when the company accepts an offer to convene a meeting.

The only case heard by the Mediation Commission was that of the female employees of Sumitomo Metal Industries, Ltd., who submitted an application for a committee meeting to address gender discrimination in promotion and wages. The mediation plan was not satisfactory to improve individual treatments; therefore the employees did not accept it.

The Equal Employment Opportunity Law merely brought a superficial change, but nothing had really improved. Women workers continued to struggle with having no functioning organization to work for their claims. The only option left for women was a lawsuit. In the 1990s, the wide gap between the ideals and the realities of the law caused recurrent lawsuits for wage disparity adjustment. Support networks such as the Working Women's Network also appeared in order to assist female employees in taking legal action against gender discrimination in the workplace.

### **Transition from Welfare to Equal Employment**

The Equal Employment Opportunity Law was amended in 1997 reflecting the problems pointed out by the women's movement and actions taken by independent groups and women. A booklet supervised by a lawyer, Ms. Michiko Nakajima, "Working Women and Labor Laws 2002, hataraku Josei to Roudou-hou 2002 nendo-ban" by the Bureau of Industrial and Labor Affairs in the Tokyo Metropolitan Government, summarized the changes of the 1997 amendment in six points:

1. It is prohibited to discriminate against

women in recruitment, hiring, assignment, and promotion. Discrimination in education and training, which used to be partly banned, is now totally prohibited;

2. A sanction measure is included to disclose the names of companies which infringe the law;
3. The clause which necessitated “consent of the other party” to initiate arbitration was abolished;
4. Positive action is introduced;
5. An obligation to create measures to prevent sexual harassment is included;
6. The Protection of pregnant and childbearing women is reinforced.

The clause, which confined women into certain job categories, was also eliminated. Every measure was taken to fix the flaws found in the 1985 law. The title of the law also changed from “Law Respecting the Improvement of the Welfare of Women Workers Including the Guarantee of Equal Opportunity and Treatment between Men and Women in Employment” to the “Law on Securing etc. of Equal Opportunity and Treatment between Men and Women in Employment.” This shows, according to the report that the law has developed from a welfare law for women into a law for gender equality.

In 1997, the Labor Standards Law was revised to abolish all of the provisions for the protection of women such as the prohibition of women’s night shift work and overtime work. Before the revision, women were able to work overtime without limit if both women workers and their company agreed. It would have been almost impossible to achieve a reasonable daily schedule if the women worker’s protection clauses had been abolished without any consideration of the double standard for women overtime work and unpaid work at home. The protection clause was abolished on the premise of setting a limit on overtime

work of employees of both genders.

Furthermore, in 1998, another clause which applies to both genders was added so that agreements between workers and companies in overtime work were subject to limits set by the Ministry of Health, Labor and Welfare. Although it was still not sufficiently effective, it was the first step toward recognition of a reasonable human life which includes some activities other than work.

### **The Creation of “Exceptions”**

At the same time, however, a new trend, which might ruin these hard-won efforts, emerged. That was the reduction of labor costs to cope with intensifying global competition in the globalization of market economies.

Japanese women performed all unpaid work in the areas of family care and childrearing. Welfare costs, therefore, could be cut down, and public funds were concentrated on economic development. In return, employers gave middle-aged men, who were considered the head of the household, high salaries, parts of which were supposed to be distributed to women.

In this system, however, a man was expected to be solely responsible for a family’s living expenses, which increased as the standard of living went up. To keep up with the surge in living expenses during the “bubble” economy era, the income of full-time male workers rapidly increased while women were employed in part-time jobs without social security, or worked in supporting roles in non-career track jobs with no opportunities for increases in salaries regardless of length of service. As a result, the disparity in the salaries of women and men widened.

Many companies found part-time workers useful in order to lower labor costs. Part-time work in Japan mostly entails fixed-term

employment in which the contract of employment expires at a certain point, rather than referring to less than full time hours each week/day. It was hard for part-time workers to demand improvement in employment conditions because they were afraid that their contracts would be terminated. For employers, it was easy to fire part-time workers.

While wage differences between women and men in full-time jobs were strictly subject to the law, the next tactic taken by employers was “indirect discrimination.” Inequality in wages or the treatment of part-time workers was not considered to be gender discrimination because the form of employment is different from full-time employment.

Due to concern surrounding the declining birth rate, the Child Care and Family Care Leave Law was enacted in 1991, and was amended in 2002 to include a ban on discrimination for taking maternity leave. However, this law does not apply to part-time workers. It was found in a Labor Force Survey conducted by the Ministry of Public Management, Home Affairs, Posts and Telecommunications that the number of part-time female workers constituted nearly 50% of all women workers in the past few years. This means that half of women workers cannot enjoy the benefits of the law. A new strategy of employers was to contract out more workers because the law then could not apply to them even if it was strengthened.

### Expanding Networks to Use Laws Effectively

The 1985 Law was designed on the assumption of a worker having a wife that undertook unpaid work and, accordingly, women workers had to assimilate to this model. There should have been more day-care centers established in order for women to be able to work like men. Nevertheless, in the 1980s, public day-care centers and nursing centers were reduced as administrative reform proceeded. As a consequence, many women had no other choice but to engage in part-time jobs with little payment, and wage differences did not change.

Some women were forced to delay marriage and birth to adjust themselves to the male worker model. Declining birth rates and wage disparity came as a natural result of the 1985 Law which expected women to be devoted to welfare work, excluding them from the model of a “worker,” which presupposed a male worker.

Amendments of the Equal Employment Opportunity Law and Child Care and Family Care Leave Law intended to solve these problems, given vigorous protests from women, including lawsuits. However, the next



strategy of employers was to mass-produce positions for part-time or fixed-term workers so that they did not have to comply with the law that intended to protect women workers. A final report released in July 2002 by the Part-Time Work Research Committee of the Ministry of Health, Labor and Welfare pointed out that part-timers' working conditions and employment security were not good enough although they were becoming a central part of the nation's workforce, and addressed the need for improvement. This final paper can be considered as a big step.

Yet a clause was included which justified different treatment towards full-time workers and part-time workers who occupy the same positions at work. That is, the former was bound by restrictions, such as assignment, conversion of work positions, and overtime. These conditions put women workers at a disadvantage since women tend to be in charge of family responsibilities. Since Japan ratified the Workers with Family Responsibilities Convention, the inclusion of a clause which places part-time workers, who are most likely to be women, at a disadvantage could be considered a violation of this convention.

Companies transitioned from discriminatory recruitment by gender to discriminatory recruitment by job category. As has been criticised, they changed tactics to employ women as part-time workers, who are as a result, suffering from indirect discrimination. It can be said that this final report by the Part-Time Work Research Committee of the Ministry of Health, Labor and Welfare prepares for a shift towards another type of indirect discrimination, that is, discrimination against women with family responsibilities from discrimination against part-time workers.

Despite the fact that attention is paid to work sharing, which reduces labor hours per person and increases the number of employees as unemployment rates go up, companies often take measures to shorten a full-time worker's hours along with wage reduction, and give priority to reducing labor costs by such measures as employing more part-time workers with insecure employment.

Organizations and unions of part-time workers, most of which are community unions, are being formed throughout the country in order to challenge these changes. Labor unions for women were established in major cities and local areas as well. With Support from unions, some part-time workers won childcare leave or annual leave in spite of being fix-term workers.

There have been two transitions taking place in the regulations for women workers since the establishment of the Equal Employment Opportunities Law; one was to move away from considering women as disposable and convenient labor engaged in welfare work without payment, and the other was a shift in the labor model from the head of a household supporting a family to a worker with family responsibilities. It is women's close networks of information and action that have played a vital role in this transition. It is important to expand these networks further to make laws effective and useful to us.

#### **References:**

All references are written in Japanese. If you would like to obtain the list, please contact Asia-Japan Women's Resource Center (ajwrc@jca.apc.org).

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