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The Rights of Non-Regular Workers in Japan

By: Bailey Cook Dailey



Lifetime employment used to be the norm in Japan.[1] Workers who are “regular” lifetime employees receive a livable salary, great benefits, a retirement pension as well as protections from termination.[2] “non-regular” workers are workers who aren’t lifetime employees. They have increased rapidly since the 1990s when Japan’s economy faced a significant downturn, and then again in the following decade during the global 2008 recession. The population of non-regular employees has grown from 8.8 million (20% of all workers) in 1990 to 21.6 million (38% of all workers) in 2019, almost doubling in that 30 year range.[3]

Unfortunately, non-regular workers earn much less than regular workers, creating a vast income gulf between the two groups. For instance, in 2019 the average annual income for non-regular employees was only 1.75 million yen (~\$12,000), whereas the figure for regular employees was 5.03 million yen (~\$35,000).[4] Women are most affected by this situation. As of 2021, more than half of all female employees in Japan were working in non-regular employment, compared to

approximately 22% of men. However, men are not immune, and the share of men in non-permanent employment increased by nearly seven percent in the last two decades.[5]

Women are often forced to work in non-regular jobs due to having children and being pushed out of regular work.[6] This is a giant problem for Japanese society, because non-regular workers do not receive the same social safety nets as regular workers. They often miss out on the public supports they should receive. One recent Japanese study demonstrated that non-regular employees with children, most often single mothers, tend to drop out of the social security system, including health insurance.[7]

In 2013, aiming to fix the disparities between regular and non-regular employees, Japan passed a law outlawing unreasonable discrimination between regular and non-regular employees working the same job (Article 20 of the Labor Contract Law).[8] However, there have been three recent Japanese Supreme Court Cases that deal with what constitutes unreasonable discrimination, two of which significantly set back efforts at equality between the two classes of workers.[9]

The first case involves Ms. Hikata, a non-regular worker who sold snacks and newspapers at a train station kiosk.[10] She earned around \$10,000 less than her co-workers in the same position over the course of ten years and was denied a retirement benefit. She sued to get equal retirement benefits under Article 20. The Supreme Court held that this treatment was not unreasonable.[11] The court distinguished the type of work she did was in fact different enough from regular workers, pointing to the fact that regular workers sometimes covered for others when they were absent or oversaw the operation of multiple kiosks.[12]

In the second case, a woman working at a medical university sued in order to get a bonus equal to that of regular workers.[13] The court ruled that her bonus was not illegal and differentiated the fact that regular workers could perform jobs across a broader range of tasks, including editing an academic journal.[14] Other factors they found noteworthy include the ability of employers to transfer regular staff to new positions that weren't available to non-regular employees, as well as the employer having a system for non-regular workers to become regular workers eventually.[15]

According to a 2014 survey, 86% of regular workers receive a bonus and 80% will be paid retirement benefits, whereas only 30% of non-regular workers receive bonuses and only 10% are paid retirement benefits.[16] This difference could be catastrophic as the "lost generation" of workers who began their careers in the 1990s and were not able to secure regular employment retire in the next 20 years. This class of non-regular workers will not have retirement benefits or personal assets to retire on and the government will have to support them.[17] According to Japan's 2015 census, there are 3.4 million 40 to 50 year olds who are married and still lived at home with their parents.[18] In addition to being an economic problem, this is also a contributing factor in the birth decline in Japan. Uncertain economic futures make workers hesitant to marry and have children. Among non-regular employed men in their early 30s, fewer than 30% are married, as opposed to 60% of men who are regularly employed. In a country where 98% of children are born to married couples still, these declining marriages rates can be linked directly to the low birth rate.[19]

The third case makes the question of what is and is not reasonable even more unclear. Several days after ruling that not giving bonuses was reasonable, the court ruled that failure to pay family allowance and other peripheral benefits constituted unreasonable discrimination against non-regular workers.[20]

Conclusion

These recent Japanese Supreme Court cases have been a blow to the equal protection and rights of non-regular employees, who make up almost 40% of the Japanese workforce and are predominantly women. This vast inequality between workers is not beneficial to society, and has caused many problems and will continue to cause more problems as Japan's "lost generation" ages into retirement. There needs to be more protection for non-regular Japanese workers, as well as more routes to becoming a regular worker.

Bailey Cook Dailey is a Staff Editor at CICLR.

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[3] Mariko Inoue, Mariko Nishikitani, & Shinobu Tsurugano, *Female Non-Regular Workers in Japan: Their Current Status and Health*, *Indus. Health* 521 (2016).

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[5] *Share of Employees in Non-Permanent Employment Japan 2002-2021, By Gender*, Statista (Mar. 7, 2022), <https://www.statista.com/statistics/1126055/japan-share-employees-non-regular-employment-by-gender/> [<https://perma.cc/4LXQ-VH39>].

[6] *Japan Labor Law*, Blueback Glob. (Sept. 16, 2020) <https://bluebackglobal.com/japan-labor-laws-2/> [<https://perma.cc/C8QS-UZLN>].

[7] Inoue, Nishikitani, & Tsurugano, *supra* note 3.

[8] Inoue & Dooley, *supra* note 1.

[9] *Id.*

[10] *Id.*

[11] *Id.*

[12] Simbun, *supra* note 4.

[13] *Japan's Top Court Backs No Bonus Payment for Employee on Hourly Wage*, *The Japan Times* (Oct. 13, 2020), <https://www.japantimes.co.jp/news/2020/10/13/national/crime-legal/japan-court-no-bonus-hourly-wage/> [<https://perma.cc/559T-TWLP>].

[14] Simbun, *supra* note 4.

[15] *Id.*

[16] *Id.*

[17] *The Distinction Between "Regular" and "Non-Regular" Employees is Crucial to Managing a Japanese Workforce—We Must Go Back to World War II to Understand Its Origins*, O'Melveny & Myers LLP (Jan. 12, 2021),

<https://www.omm.com/resources/alerts-and-publications/alerts/japanese-workforce/> [<https://perma.cc/K42K-47HM>].

[18] Yoshiaki Nohara, *Japan's Lost Generation Is Still Jobless and Living With Their Parents*, Bloomberg (Oct. 1, 2020), <https://www.bloomberg.com/features/2020-japan-lost-generation/?leadSource=verify%20wall> [<https://perma.cc/PQG4-VX9V>].

[19] Andrew Gordon, *New and Enduring Dual Structures of Employment in Japan: The Rise of Non-Regular Labor, 1980s-2010*, 20 Soc. Sci. Japan J. 9 (2017).

[20] O'Melveny & Myers LLP, *supra* note 17.