

Jan 4, 2016

Dear Members of the
Committee on the Elimination of Discrimination against Women

Working Women's Network (WWN) *is sending herewith its shadow report on the situation of working women in Japan.

The Shadow Report of Working Women's Network on the Situation of Working Women

Summary

In Japan, non-regular workers, including part-time workers and fixed-term contract workers comprise 40% of the workforce, and 70% of those non-regular workers are women. Further, the Dispatched Workers Act was amended in 2015, making it possible for companies to use 'dispatched workers' indefinitely.

Against this backdrop, the Equal Employment Opportunity Act, the Labor Standards Act and other laws should provide the legal guarantees for gender equality. But there are important gaps and omissions in the law, such as those we point out below, that allow discrimination to continue.

The first is the insufficient prohibition of discrimination including indirect discrimination. Because the current prohibition of indirect discrimination is limited, discrimination in wages and promotion persist, in the use of performance evaluations, and in track-based personnel systems.

The latter, as well as the disadvantageous treatments of non-regular workers might be overcome with the principle of equal pay for work of equal value, however, despite continued recommendations from the Committee and other international bodies, there is still no legal provision on the principle. Women continue to suffer sexual harassment in the workplace as well as "maternity harassment," in which women are treated unfairly due to pregnancy and childbirth. The laws provide insufficient means of redress for the victims.

* WWN was established in 1995 to support the plaintiffs of the Sumitomo court cases on gender wage discrimination. For 20 years since then, we worked to contribute to the improvement of the status of working women, including conducting interviews with women in regular and non-regular employment, as well as visiting companies to study the situation of women in management. WWN has continued to support women bringing cases to court such as those on wage discrimination, discrimination in promotion, termination of contracts and sexual harassment.

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1. Indirect discrimination

[Concluding Observations (2009) paragraph 22 on the definition of discrimination]

There is no definition of discrimination in line with the Convention in the domestic laws. The Ministry of Health, Labor and Welfare Ordinance lists three cases, which are prohibited as indirect discrimination under the Equal Employment Opportunity Act, but as the list is exhaustive, other cases are not recognized as discrimination. The amendment of the Equal Employment Opportunity Act in 2013 has been limited, prohibiting the requirement of “acceptance of transfers” for promotion or changes in job types, and not just for recruitment and hiring for “main career track employees.” The problem remains unsolved.

We would like to show the following three cases concerning indirect discrimination.

1) The low evaluation given to women who cannot accept transfers or long working hours is indirect discrimination

A statistics officer of the Statistics and Information Department of the Ministry of Health, Labor and Welfare, the Ministry responsible for the implementation of the Equal Employment Opportunity Act filed suit for discrimination in wages and promotion in October 2014.

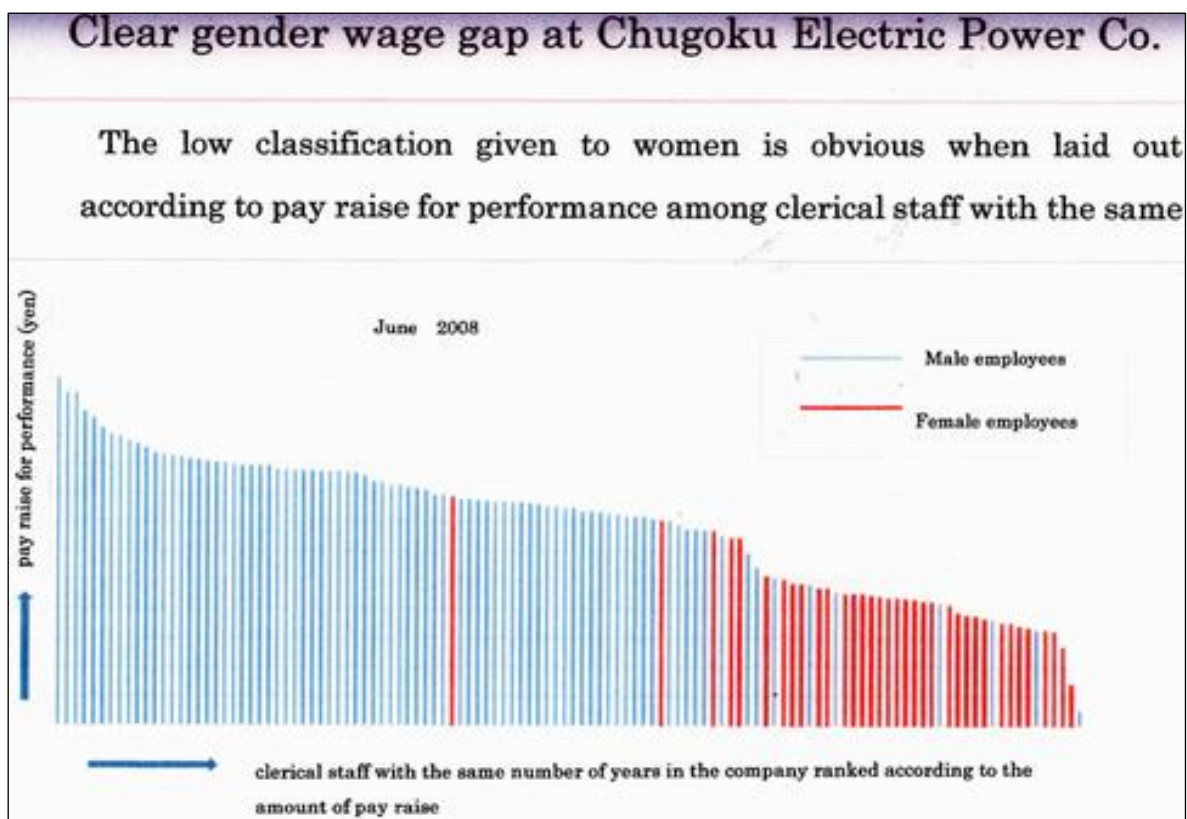
The male staff, who were hired in the same tracks with the same educational background were being promoted at a higher rate than women. The statistics section, to which she was assigned, has 31 staff, of which 28 were women. The statistics officers were performing difficult tasks, yet they were not evaluated accordingly, and they would not be promoted beyond a certain level.

The plaintiff found that her male colleagues, who can accept transfers and long working hours were given higher assessment and were being promoted, while

women were regarded as having lower abilities, and were given lower assessment, even when they were performing well. The case is still pending.

2) Indirect discrimination through performance evaluation

The Supreme Court dismissed the gender discrimination case against Chugoku Electric in March 2015, upholding the Appeals Court judgment dismissing the plaintiff's claims. The plaintiff had worked for the company for 30 years, and had aspired to work and be promoted as her male colleagues. The wage difference according to gender is given in the graph below.



Although it is obvious from the graph that women's pay is at a lower level than that of men, the court, while finding that there was a gap in promotion and wages between men and women, held that it was not gender discrimination for the following reasons:

*The men and women are not divided into clear strata.

*The female employees' attitudes towards work, including their reluctance to be promoted into management positions.

As the graph shows, the majority of women in the company are promoted later than men. The performance evaluation, on which the pay and promotion is based, includes many items for evaluation, that are effectively disadvantageous to women,

even though they may not be directly referring to gender. These items for evaluation are “indirectly discriminatory.” An expert on statistics analyzed the situation, and submitted a statement pointing out that “the gap did not arise by chance, but indicates an existence of a notable difference in the ratings of men and women and in wages.”

Questions that may be raised

1. How is the examination of laws to include the definition of discrimination in the domestic laws progressing?
2. Performance evaluations used by many companies to determine promotion include items that may be effectively disadvantageous to women, even when they do not refer to gender directly. Is this not indirect discrimination?

3) Indirectly discriminatory track-based personnel system

[Concluding Observations (2009) paragraph 45]

May larger companies, including trading and financial companies, have introduced the “track-based personnel system,” consisting of the main career track in which employees can be promoted to management positions, and the clerical track, in which employees are excluded from promotion. However, today, 30 years since the enactment of the Equal Employment Opportunity Act, women comprise only 9.1% of the main career track (2014, Ministry of Health, Labor and Welfare). The clerical track consists mostly of women.

Companies using the track-based personnel system (Ministry of Health, Labor and Welfare

Year	No. of companies	Proportion of women in the main career track
2000	215	2.20%
2003	236	3.10%
2004	180	5.10%
2011	129	5.60%
2014	118	9.10%

Article 6 of the Equal Employment Opportunity Act prohibits discrimination in assignment, promotion, demotion and training based on gender, but according to

the Guideline under the Act, difference in treatment in the same employment management category is prohibited discrimination, but difference in treatment in different categories is not. The Guideline explains that the "Employment Management Category" means the category of worker by job type, as in "main career track job" or "clerical track job," or employment status as in "regular employee" or "part-time employee." Many women are placed in low paying "categories" with no prospects of promotion in this indirectly discriminatory system.

Comparison of the Guideline and the Equal Employment Opportunity Act

Equal Employment Opportunity Act	Guideline
(Article 5) prohibition of discriminatory treatment in recruitment and hiring on grounds of sex	(related to Article 5) prohibition of exclusion of either men or women from recruitment and hiring, in a single employment management category
(Article 6) prohibition of discriminatory treatment in assignment, promotion, demotion, training, etc. on grounds of sex	(related to Article 6) prohibition of exclusion of either men or women from promotion to positions of certain levels in a single employment management category , same provision regarding assignment and training.

Questions that may be raised

1. Is not the track-based personnel system that is disadvantageous to the vast majority of women indirect discrimination?
2. What is the government's view on the "Employment Management Category" under the Guidelines of the Equal Employment Opportunity Act that allows the track-based personnel system to exist, and to create indirect discrimination?

2. Legislation of the principle of equal pay for work of equal value

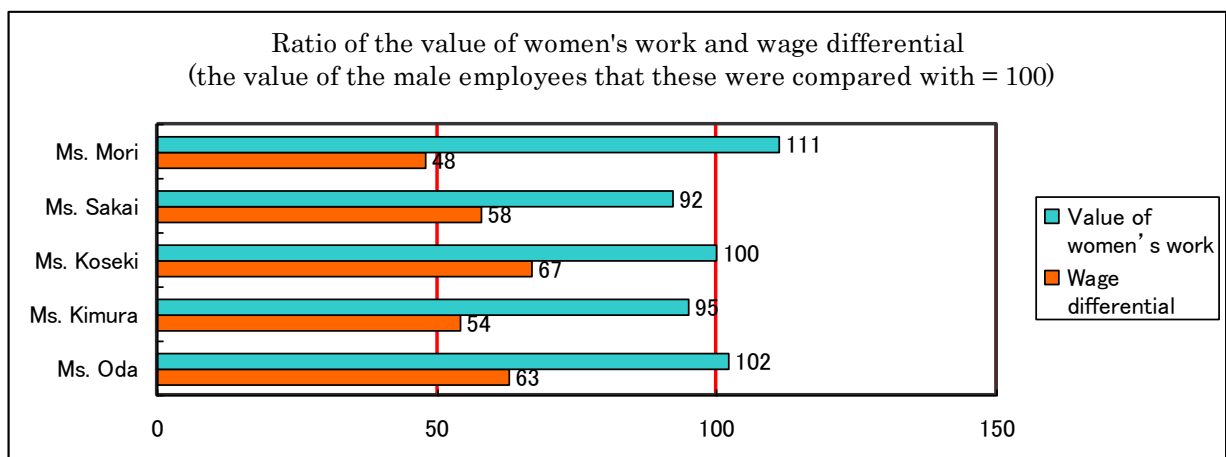
[Concluding Observation (2009) paragraph 45]

The ILO Committee of Experts on the Application of the Conventions and Recommendations noted in its 2008 Observation regarding Japan's application of Convention No. 100 that Article 4 of the Labor Standards Act "does not fully reflect the principle of the Convention, because it does not refer to the element of equal remuneration for work of equal value" and asked the government "to take steps to

amend the legislation to provide for the principle of equal remuneration for men and women for work of equal value.”

Because there is no explicit reference to the principle in the laws, the wage discrimination case against Kanematsu, a trading company took 14 years to be resolved. In 2009, the Appeals Court judgment became final, stating that the wage gap that was created by the track-based personnel system was gender discrimination and a violation of Article 4 of the Labor Standards Act. This judgment was achieved after a group of experts and other individuals formed a job evaluation committee to compare the plaintiffs’ work with that of their male counterparts to clarify the discrimination.

The group selected the male colleagues or superiors of the plaintiffs, and compared their work. The results are shown in the chart below. Ms. Mori’s work was evaluated at 111 to her male counterpart’s 100, but she received only 48% of his pay. Ms. Koseki was evaluated at 100, but received only 67% of that of her male counterpart. The gender-neutral job analysis and evaluation made it possible to overcome the absence of an explicit provision on the principle of equal pay for work of equal value, and to explain the discrimination to the judges. It proved the effectiveness of the job evaluation in closing the gender wage gap.



Questions that may be raised

How is the government proceeding with legislating the principle of equal pay for work of equal value, which has been recommended by CEDAW and ILO?

3. Sexual harassment

- The Equal Employment Opportunity Act cannot prevent sexual harassment

There is no explicit laws prohibiting sexual harassment, and the Equal Employment Opportunity Act only requires employers to put in place measures for prevention and procedures for addressing allegations of harassment. Sexual harassment should be defined as a form of discrimination on the grounds of sex, and should be prohibited as such under the Equal Employment Opportunity Act. Moreover, remedies that the court could order as legal consequences of violation of prohibition should be explicitly included.

1) Prada Sexual Harassment Case

After graduating from a university in New York, Ms. Rina Bovrisse worked for almost 20 years in the fashion industry, in Paris and New York, mostly at Chanel. She then built her career at the U.S. Headquarters of Prada in New York, and started to work for Prada Japan in Tokyo in April 2009. She was the General Manager overseeing 2 sections, and was directly under the Italian President.

However, inside Prada Japan, there were daily incidents of sexual and other harassments directed against her and other female employees by the President and the Personnel Manager. She was surprised and reported the incidents to the Headquarters in Milan, calling for a more safe and healthy workplace for women. In Autumn 2009, she received notice of her dismissal. After attempting to solve her case through the labor tribunal, she brought her case to court in March 2010.

On October 26, 2012, however, the Tokyo District Court dismissed her case, on both claims submitted by Ms. Bovrisse: the recognition of her status, arguing that her demotion and dismissal were void, and her claims for mental and emotional damages caused by the harassment by the Personnel Manager. In the main reasoning regarding the sexual harassment, the court admitted that the Personnel Manager had asked her to change her hairstyle and to lose weight, but not that she was ugly. According to the court, comments about her physical shape was not directly related to the plaintiff's work, and it could not be denied that in general the representative of the company is lacking in consideration for the plaintiff if he had made such comments. However, the court found that comments did not cause emotional damages that should be atoned with monetary compensation.

Also, the court held that the plaintiff had provided information regarding the case to the Japan Times, a newspaper, and it was reported in the paper. This was considered an act injuring the trust and honor of the company, a grounds for dismissal in the company regulations.

2) Cover-up of the sexual harassment case in Canon Marketing Japan

Canon Marketing Japan is a company in the Canon group, selling and providing support services for Canon products. Its stocks are publicly listed, and it has more than 5,000 employees. Canon Inc. sends one of its executives as the President.

Ms. Amemiya has worked for the company for more than 25 years, and was Acting Manager in May 2005, when she was assigned to organize a retirement party for an executive. The incident occurred at the party, in front of the approximately 60 participants. When they were taking the group photograph of the participants, she was asked to sit on the knee of an executive. When she tried to get away, her colleague presiding over the party forced her to sit. (The photo as below)

A male employee shouted “that is sexual harassment” on the microphone, but none of the 60 participants stepped in to stop.

Immediately after that, the executive pulled her aside, and told her “it felt good.” She says that she felt like fainting. She hurt her ankles when she was pulled by the executive, and later suffered from PTSD, as well as serious stress symptoms. She had to go to the hospital, and she applied for payments under the workers’ accident compensation scheme. However, the company refused the application, claiming that the incident did not happen during her work, and that it was not sexual harassment. She found out later, that the company had submitted written statements from the executive and other organizers of the party to the Labor Standards Inspection Office, explaining that nothing had happened. It had also submitted her attendance records, omitting the reference on sexual harassment in her reasons for taking leave.

She sued the company for compensation from the perpetrators. The District Court found that sexual harassment had occurred, but the act was considered not serious, and the compensation amounted to approximately one month’s pay. The company refused to admit to the facts or the intention, and the court did not understand her fear of being ganged-up on. Because of the inappropriate response by the company, her symptoms worsened, and she had to take leave for 3 years. She underwent rehabilitation and gradually recovered, and her doctor told her that she could go back to work. However, the company doctor did not recognize this diagnosis, and she was dismissed after exhausting



her sick leave. She filed for guarantee of her status, but her claims were dismissed at the Appeals Court in 2013 and the Supreme Court in 2014.

Question that may be raised

- 1) Why is sexual harassment not prohibited under the Equal Employment Opportunity Act?
- 2) How are the remedies provided for victims of sexual harassment?

4. Ratification of the Optional Protocol

[Concluding Observation (2009) paragraph 20]

In the last two years, there were two cases regarding women in the workplace that reached the Supreme Court, but were dismissed.

The first is the sexual harassment case against Canon Marketing Japan in October 2014, and the second is the wage discrimination case against Chugoku Electric Power Co. in March 2015.

The plaintiffs in both cases were women who had been working in the major companies for many years. Ms. A was sexually harassed by her superior in the work place, and suffered PTSD. But she was dismissed after she exhausted her sick leave. Ms. B has suffered discrimination in wages and promotion. Both women attempted to fight the discrimination and disregard of human rights by the companies, but their claims were both dismissed by the Supreme Court, and they were shattered. There are many problems in the laws in Japan, including the lack of a definition of discrimination or the absence of sanctions for sexual harassment. If Japan had ratified the Optional Protocol, the Convention would have had an effect on the judiciary, and the plaintiffs would have had the opportunity to use the individual communication system to present the continuing discrimination to the Committee. The ratification would bring hope and will to live to the women in Japan.

Employment cases continue to be brought to court, including wage discrimination involving track-based systems, termination of contracts as in the Hello Work case, discrimination in promotion as in the case against the Ministry of Health, Labor and Welfare, refusal of rehiring after retirement, and sexual harassment cases.

The Optional Protocol is ratified by the majority of States around the world.

We ask that the Committee confirm whether progress towards ratification has been made, and what the government considers as obstacles to ratification.