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## **Work style reforms endanger labour rights in Japan, 11 Nov 2019**

The UN International Covenant on Economic, Social and Cultural Rights require countries that have ratified this agreement to protect various labour rights and to develop plans and government policies for the realization of these rights. These rights include labour standards on equal pay for equal work, gender equality between men and women, rest and leisure, limits on working hours, and the ability to strike by forming unions. Japan has been considered a society where such rights are legally recognized. However, these rights are now under attack in the name of “work style reforms.”

### **The bipolarization of the labour market**

A major problem in Japan’s labour market is its bipolarization characterized, on one hand, by death and suicide among regular employees due to overtime work and, on the other hand, unstable, low-wage work—associated with poverty—among non-regular employees.

Over the past 10 years, the total number of hours worked in Japan has decreased from approximately 2,000 to 1,700 hours. As a result, some say that Japan’s working hours are now at the level of other developed countries. However, this number has only decreased because the total number of hours worked among full-time employees...continues to be around 2,000 hours while the percentage of part-time employees...has increased by 30%.

Recently, the eligibility requirement for social security set by the Ministry of Labour, Health and Welfare has been reduced to 20 working hours a week, leading some workers to intentionally reduce their working hours to avoid paying insurance costs. At the same time, the fragmentation of labour has also increased. These two trends have further deepened the bipolarization of Japan’s labour market.

With these changes in the labour market, death and suicide by overwork has gained attention as a serious issue.

According to a 2018 white paper on preventing death by overwork, the number of deaths by overwork due to brain and blood-related illnesses fell from 50,000 people in 1995 to 27,000 people in 2015. However, the number of suicides by overwork has been significant. Without any reforms on long working hours on the horizon, the negative impact of this labour practice on women—whom the government is encouraging to participate in the labour force—has been highlighted with the deaths

of a female Dentsu employee and a female NHK reporter, both by overwork. In addition to the unrealistic demands set by companies, the government's demands on workers also drew critical attention when a 20-year-old man died by overwork at an Olympic construction site.

While regular workers face the dangers of overwork, the majority of non-regular workers continue to be paid below the minimum wage, earning below two million yen annually. This places them in the category of "working poor" (those who cannot achieve financial independence despite working legally-mandated hours). Because these workers are employed on a short-term basis, their contracts can easily be revoked if they raise concerns about labour conditions; they also face difficulty joining labour unions. Work style reforms are thus depriving non-regular workers, who make up nearly two out five people in the workforce, of their basic right: the right to organize, bargain, and act collectively.

Among non-regular workers, temporary workers face particular difficulty in negotiating better treatment at their assigned workplaces because they are considered employees of staffing agencies.

### **The bipolarization of the labour market widens gender inequality**

The impact of work style reforms on labour rights is also widening the economic gap between men and women.

In Japan, the gendered division of labour has been deeply rooted: men are pushed to work hours that have led to death by overwork in order to support their families while women, who take care of household responsibilities without pay, have been relegated to short-term work. Using "gender equality" as a reason, the Gender Equality in Employment Act, which was passed in 1985, has further reinforced the role of women as caretakers, which has restricted many of them from working the same long hours expected of male workers and thus taking on non-regular work.

Europe has been successful in promoting gender equality in employment through regulations on working hours, which allow both men and women to balance their jobs and private lives. Men can take care of their families after work while women are ensured their right to financial independence. While Europe and Japan may appear similar in terms of gender equality in employment, Japan's policies have led to an opposite outcome for women's financial independence.

As women have entered the workforce, the number of non-regular workers have exploded. Women's concentration in non-regular work is reinforced by the social norm that women can accept the instability and low pay of this type of position because they will be financially supported by men. Facing this type of bias, women continue to make up nearly 70% of non-regular employees. However, since the bankruptcy of Yamaichi Securities in 1997, businesses have increasingly operated by cutting workers' wages. This labour practice has also expanded the number of non-regular employees among youth and men, creating a breeding ground for poverty.

The bipolarization of Japan's labour market is now evolving into a new stage. As the number of non-regular employees increase, key work traditionally done by regular employees will be paid at the minimum wage level—a change that would eliminate the need to explain the differential treatment between regular and non-regular workers. In this context, higher pay for regular workers may be justified by arguing that they earn more because they are required to work overtime and to accept job transfers.

Some researchers are also rationalizing these changes by saying that Japan is not a country of equal pay for equal work, but rather equal pay for equal “compulsory” labour. They throw around new names for worker categories, such as “membership-based employment” and “unconstrained employees.” As such, regular employees, who were once defined by the fact they could work indefinitely for an organization, now face increasing restrictions from their employers.

In the end, these labour practices have the potential to impact irregular workers, and overtime work will be required for these employees as well. The idea that greater restrictions on workers necessitate higher pay will disappear, and regular workers—who are paid low wages despite these constraints—will increase but in name only.

The spiralling bipolarization of the Japanese labour market explains why Japan is known as the only developing country where wages have continued to decrease since 1997.

### **The hidden dangers of work style reforms**

It is commonly reported that the 2018 Work Style Reform Law is aimed at improving the lives of regular and non-regular workers. For regular workers, the law sets a limit on overtime hours and establishes penalties for any violations; for non-regular workers, the law ensures equal pay for equal work. However, examining the core of the law reveals the exact opposite outcome for these workers.

First, the law sets the overtime limit to an average of 80 hours per month over a two to six-month period and 100 hours per month—barely below the number of working hours that have been accepted as contributing to death by overwork.

The Labour Standards Law, however, states that working hours are eight hours per day. While this definition has been rendered meaningless as labour-management agreements allow companies to implement limitless overtime, it did serve to protect the number of hours that workers were entitled to spend outside of work. However, the work style reforms have added a requirement that sets legal overtime hours to just below the level which contributes to death by overwork, thereby overturning the work-life model established by the Labour Standards Law. In other words, workers whose lives were somewhat protected by a work-life balance have now become those who must serve as tools of productivity until they die.

In addition, the government has introduced a pay system for highly professional workers, which eliminates the need to establish legal working hours for those who fall into this category. This law thus legalizes the existence of workers whose right to rest and to leave work at a timely hour is no longer guaranteed.

The pay system for highly professional workers also allows companies to determine whether equal pay for equal work applies to non-regular employees. If non-regular employees have the same knowledge, performance, and employment duration as a regular employee, the law states that workers must be paid the same amount. Furthermore, the law includes references to when non-regular is eligible for changes in work responsibilities, job transfers, and “other circumstances.”

The International Labour Organization recommends that the standard on equal remuneration for work of equal value be determined by asking an entity external to an employer to score a job by such criteria as skills, responsibilities, working conditions, and effort. This evaluation method attempts to overturn the idea that non-regular workers (women) only do low-level jobs and thereby correct workplace discrimination. However, the equal pay for equal work model in Japan’s work style reforms perpetuate wage discrimination between regular and non-regular workers by permitting employers to evaluate employees based on the arbitrary criteria of knowledge and performance.

Meanwhile, the Supreme Court has ruled that gaps in workplace benefits between regular and non-regular workers must be corrected—a move which has strengthened the view that wage discrimination will be addressed. However, the Supreme Court has yet to rule on whether differences in basic wage between these two employee categories are legal. Because of the Japanese model of equal pay for equal work, it is difficult for the courts to rule on the legality of labour practices outside of areas where employers have discretionary power, such as in the case of employee benefits. In reality, companies have begun to take protective measures by expanding their ability to make arbitrary decisions, such as incorporating benefits into workers’ baseline wage.

At the same time, work style reforms for public officials have been passed at the local government level, establishing a new category of workers called “fiscal year employees,” non-regular workers employed by the government for a one-year period. As a result, some non-regular employees in the government, whose basic labour rights were once protected, will not see any improvements in working conditions and continue to be treated as “public officials” who are deprived of their labour rights.

The incident regarding the Kansai Ready Mix Concrete branch [of the All-Japan Construction and Transport Solidarity Union] sheds light on the move to shut down basic labour rights in Japan. Since 2018, union members have been arrested on charges of obstruction, extortion, and coercion after they conducted onsite investigations, held strikes, and made demands to employers. Of the 80 members arrested, 50 have been prosecuted so far.

Confronting these changes head-on, we must push, once again, for work style reforms that ensure people are not treated as tools for the sake of corporate growth.