

Childcare Leave and Other Labor Issues Concerning Maternity and Childcare

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Abstract

Women's employment in Japan has improved in recent years while the country continues to face a declining birth rate and an aging population. Meanwhile, various legal and systemic changes have been introduced regarding leaves from work for childbirth and childcare. Nevertheless, problems have been indicated regarding the implementation of current laws and systems. Male childcare acquisition rates are low. Reasons cited for this include anxiety about income decline and difficulties companies encounter in securing substitute workers. There are also issues related to the continuation of employment after childcare leave. Upon returning to their jobs after childbirth and childcare, many women are often forced against their will to perform only support-type work. Furthermore, bearing children can be accompanied by a decline in working income. Facing these career-path and other difficulties, many women choose to leave their jobs or are unwillingly "forced out." Moreover, non-regular (temporary and part-time) workers and freelancers are not eligible for employment insurance, and their vulnerable position has made it difficult for them to take leave from work before and after childbirth. There is also the issue of supporting a balance between work and fertility treatment, with related issues regarding establishing and implementing leave systems that provide security and privacy and function efficiently. This paper takes up issues and problems related to leave from work and days off (e.g., vacations) for childbirth and childcare leave. As it discusses these issues, this paper takes into consideration the 2021 Amendment of the Childcare and Caregiver Leave Act and the application of insurance coverage for fertility treatment that began in 2022. The current status and problems of

childbirth and childcare leave are clarified, as well as the issues that should be addressed in the future.

Introduction

Women's employment in Japan has improved in recent years while the country continues to face a declining birthrate and an aging population. Meanwhile, various legal and systemic changes have been implemented regarding leave from work for childbirth and childcare.

Nevertheless, various problems have been indicated regarding the implementation of laws and systems. Despite improved related systems, childcare-leave acquisition rates (below "acquisition rates") for men remain low. Only in 2020 did this rate exceed 10% of the target numbers set in 2003⁽¹⁾ at the time of passage of the Act on Advancement of Measures to Support Raising Next-Generation Children (Act No. 120 of 2003; below "Next-Generation Act"). Thus, even with fledged systems in place, it is still thought that women and men who take advantage of these will be removed from employment-promotion tracks they may otherwise enjoy. These problems are not limited to regular company employees. Another issue is how to provide people with non-regular jobs, including freelancers and part-timers, with childcare-related time off without the threat of these persons losing their job due to their absence from the workplace.

This paper examines these issues and provides considerations regarding the current situation and future tasks. It also considers the related issue of balancing fertility treatment with work life.

I Male Childcare Leave

1 *2021 Amendment of the Childcare and Caregiver Leave Act*

We first look at the Act on Childcare Leave, Caregiver Leave, and Other Measures for the Welfare of Workers Caring for Children or Other Family Members (Act No. 76 of 1991; below the "Childcare and Caregiver Leave Act"). This Act states that for parents who have children, without any difference between men and women, leave from work may be taken until a child is one year old (if certain conditions are met, such as that the

* The last date of access to Internet information cited in this paper was May 12, 2023.

(1) 厚生労働省「少子化対策プラスワン（要点）」2002.9.20 (Ministry of Health, Labor, and Welfare, "Declining Birthrate Countermeasures Plus One (Key Points)," 2002.9.20).

parents are unable to enroll the child in a childcare facility, two years old at maximum)⁽²⁾. The employer has no obligation to pay wages during the leave. From employment insurance, childcare leave benefits are to be paid to an amount equivalent to 67%, or 50%, of wages⁽³⁾.

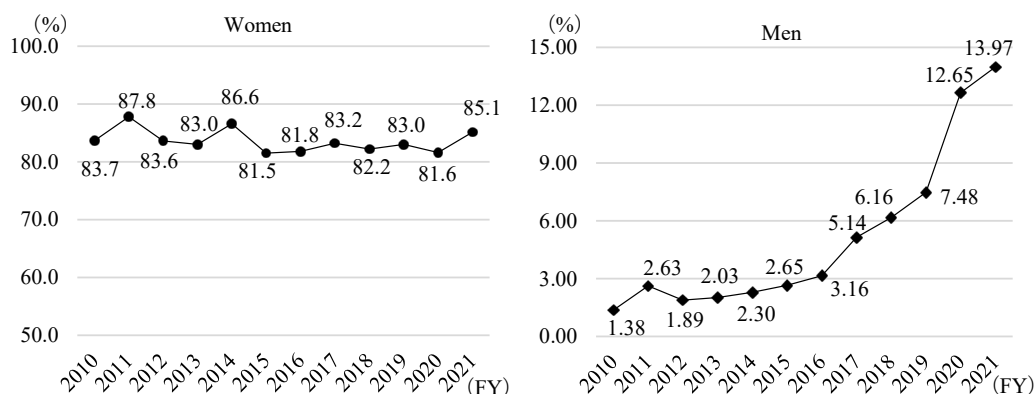
According to the FY2021 Basic Survey of Gender Equality in Employment Management, while leave acquisition rates for women⁽⁴⁾ are at 85.1%, acquisition rates for men⁽⁵⁾ are still low at 13.97%, although this percentage has continued to rise in recent years (Figure 1). The acquisition period is also short; women whose leave period is 12 months or more comprise approximately 50%, while men who take two weeks or less comprise approximately 50% (Figure 2).

(2) To promote both the father and mother to take childcare leave, in accordance with the “Childcare Leave for Both Parents (Father and Mother) Plus,” both the father and mother may take, at longest, up to a one-year leave from work until their child reaches the age of one year and two months, so long as the following three conditions are met: (1) the other spouse acquires childcare leave before the child has reached age one year, (2) the date scheduled for one spouse to start childcare leave is before the child has reached age one year, (3) the date that one spouse begins childcare leave is on or after the first day that the other spouse begins childcare leave (in accordance with Article 9-6 of the Act on Childcare Leave, Caregiver Leave, and Other Measures for the Welfare of Workers Caring for Children or Other Family Members (below the “Childcare and Caregiver Leave Act”). 「両親で育児休業を取得しましょう！」厚生労働省ウェブサイト (“Both parents should be encouraged to take childcare leave!” Ministry of Health, Labor, and Welfare Website).

(3) Benefits payment amount shall be determined by the average (monthly) wage for the six-month period prior to the start of the childcare leave. However, because temporary (special) wages paid are not included in the calculation, the calculation shall be made without the inclusion of any bonus received. The following percentages shall be paid: 67% from the start of the childcare leave to the 180th day; 50% from the 181st day and thereafter. A maximum limit as to how much is to be paid is as follows: When the number of payment days is 30 days, the maximum payment limit shall be, at 67% of the payment rate, 305,319 yen, and at 50% of the payment rate, 227,850 yen (until July 31, 2023). Childcare leave benefits shall be non-taxable, and in regard to social insurance fees (health insurance, employee’s pension insurance), said fees shall be waived for the insured person during the childcare leave period as well as the employer contribution. Article 61-6-9 of the Employment Insurance Act (Act No. 116 of 1974); 厚生労働省ほか「育児休業給付の内容と支給申請手続」2022.10, p.9 (Ministry of Health, Labor, and Welfare et al., “Details of Childcare Leave Benefits and Payment Application Procedures,” 2022.10, p.9); 厚生労働省・都道府県労働局「育児休業、産後パパ育休や介護休業をする方を経済的に支援します令和4年度版」2022.12, pp.2-4 (Ministry of Health, Labor, and Welfare and Prefectural Labor, Bureau, “Economic assistance to be provided for childcare leave, post-childbirth leave of father, and caregiver leave: Fiscal Year 2022 Version,” 2022.12, pp.2-4).

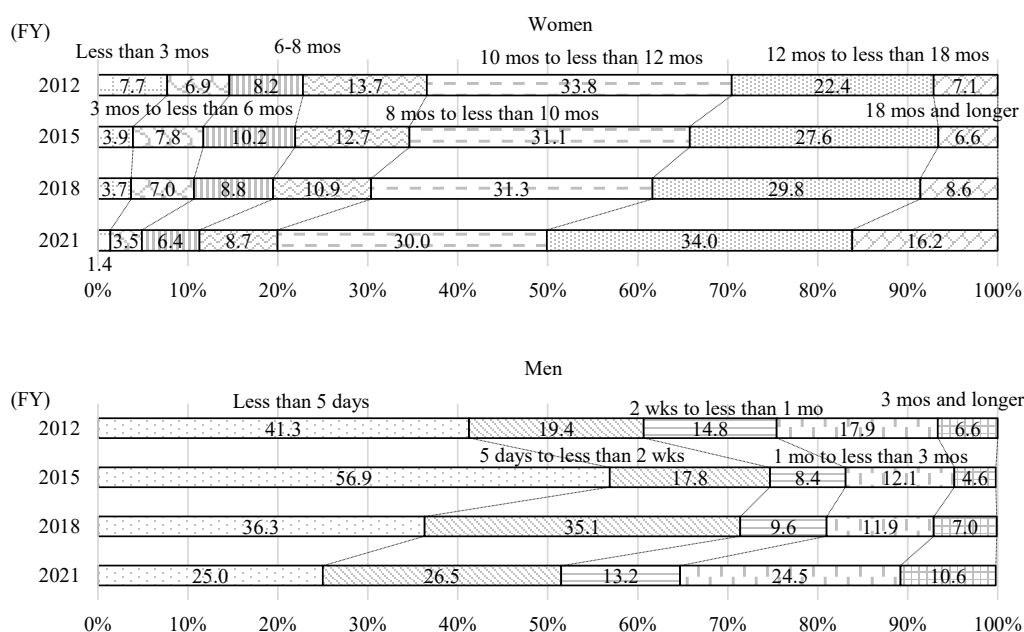
(4) As for the results for FY2021, for the one-year period from October 1, 2019, through to September 30, 2020, from among women who experienced childbirth during their employment period, the percentage of women who began their childcare leave up until October 1, 2021. 厚生労働省「『令和3年度雇用均等基本調査』の結果概要」2022.7.29, p.21 (Ministry of Health, Labor, and Welfare, “Overview Results of FY2021 Basic Survey of Gender Equality in Employment Management,” 2022.7.29, p.21).

(5) As for the results for FY2021, for the one-year period from October 1, 2019, through to September 30, 2020, from among men whose wives experienced childbirth, the percentage of men who began childcare leave up until October 1, 2021. *ibid.*

Figure 1. Trends in childcare leave acquisition rates for men and women

*Japan nationwide results for FY2011 with the exception of Iwate, Miyagi, and Fukushima.

(Source) Created by the Author based on 「雇用均等基本調査 育児休業者割合」 e-Statウェブサイト
 (“Basic Survey of Gender Equality in Employment Management; Percentages of Persons on
 Childcare Leave.” the e-Stat Website).

Figure 2. Trends in length of time of childcare leave acquired for men and women

*Surveyed were persons who, during the one-year fiscal period before the survey, had returned to work after finishing their childcare leave.

(Source) Created by the Author based on 「雇用均等基本調査 取得期間別育児休業後復職者割合」
 e-Stat ウェブサイト (“Basic Survey of Gender Equality in Employment Management;
 Percentages of persons who returned to work after childcare leave for each separate period of
 acquired childcare leave.” the e-Stat Website) .

With the June 2021 amendment of the Childcare and Caregiver Leave Act, a new system, “Parental Leave” (also called “paternity leave,” meaning “post-childbirth childcare leave of father”) was established in October 2022. The aim was to raise leave acquisition rates, with the government goal set at 30% male acquisition rates by 2025 as the result of system penetration⁽⁶⁾.

In addition to childcare leave⁽⁷⁾, “paternity leave” is leave from work that can be acquired by men for a maximum four-week period of childcare within the eight-week period after childbirth; the said period can be split up to two times. The request for childcare leave is made one month before childcare leave and while, in principle, this request for paternity leave can be made until two weeks before paternity leave begins. To match this, childcare leave may also be split up to a maximum of two times until the child reaches one year of age⁽⁸⁾. During paternity leave, parental leave benefits are paid at an amount equivalent to 67% of wages. In the case where an Employer-Employment Agreement has been signed, work may be performed during the paternity leave period within the scope agreed to by the employee⁽⁹⁾.

(6) 「別添 2 施策に関する数値目標」『少子化社会対策大綱』(2020 年 5 月 29 日閣議決定) p.2. 内閣府ウェブサイト (“Appendix 2 Numerical Goals for Countermeasures,” *Outline of Declining Birthrate Countermeasures* (Cabinet Decision of May 29, 2020), p.2. Cabinet Office Website). Regarding government goals for father acquisition rates, these are intended to be raised to 50% by FY2025 and 85% by FY2030. こども政策担当大臣「こども・子育て政策の強化について (試案)」2023.3.31, p.15. 同 (Minister in charge of Policies Related to Children, “Regarding the Strengthening of Policies Related to Children and to Raising Children (Draft Plan),” 2023.3.31, p. 15. *ibid.*)

(7) In this paper, “childcare leave,” as stipulated in Article 5, Paragraph 1, of the Childcare and Caregiver Leave Act is called “childcare leave,” whereas the “parental leave” stipulated in Article 9-2(1), when such applies to the father, shall be called “paternity leave” (meaning, “post-childbirth leave of father”).

(8) Article 5 of the Childcare and Caregiver Leave Act; 厚生労働省, 都道府県労働局雇用環境・均等部 (室)「育児・介護休業法 改正ポイントのご案内」2021.11(2022.12 改訂) (Ministry of Health, Labor, and Welfare and Prefectural Labor Bureau, Employment Environment and Equal Employment Bureau, “Points regarding the Amended Act on Childcare Leave, Caregiver Leave, and Other Measures for the Welfare of Workers Caring for Children or Other Family Members,” 2021.11 (Revised 2022.12)).

(9) When a person is to perform work (be employed) during the childcare leave period, said person must make an application up to the day prior to the day on which the parental leave begins. Regarding the number of days of employment during the childcare leave period, maximum limits exist such as half of the scheduled working days and/or scheduled working hours. Article 21-17 of the Ordinance for Enforcement of the Act on Childcare Leave, Caregiver Leave, and Other Measures for the Welfare of Workers Caring for Children or Other Family Members (below, “Ordinance for Enforcement of the Childcare and Caregiver Leave Act”. Ordinance of the Ministry of Health, Labor, and Welfare No.25 of 1991.); 厚生労働省雇用環境・均等局職業生活両立課「育児・介護休業法の改正について～男性の育児休業取得促進等～」2022.11.18, pp.24-31 (Ministry of Health, Labor, and Welfare, Employment Environment and Equal Employment Bureau, Work and Life Harmonization Division, “Regarding the Amended Act on Childcare Leave, Caregiver Leave, and Other Measures for the Welfare of Workers Caring for Children or Other Family Members: Promotion of the Acquisition of Childcare Leave by Men.” 2022.11.18, pp.24-31).

From April 2022, employers have been obligated to individually notify employees who reported pregnancy or childbirth about their childcare leave system, and confirm their the intention of said employees to acquire such leave. From April 2023, companies employing over 1,000 persons are obligated to make public announcements of their male leave acquisition rates⁽¹⁰⁾.

2 Background of Low Acquisition Rates

The number of male employees who desire to take childcare leave has steadily increased. One survey found that nearly 80% of new company employees wanted to take childcare leave⁽¹¹⁾. Beyond this growing need in Japan, studies from outside Japan have shown that even when men only take short-term childcare leave, it leads to a future increase in the father performing housework and the time dedicated to childrearing. Improvements have also been observed in the rates of mothers engaged in full-time employment⁽¹²⁾. The FY 2022 Declining Birthrate White Paper states that “For couples with children, the longer the time the husband spends on housework and childcare on his day off, the higher the rate of birth of a second (or more) child.”⁽¹³⁾

Nevertheless, acquisition rates for men remain rather stagnant. Numerous awareness surveys have been conducted to investigate the attitudes of men toward childcare leave.

In a 2020 survey consigned by the Ministry of Health, Labor, and Welfare (MHLW)⁽¹⁴⁾, the following results were obtained. For male employees with a child or children under the age of three, among those asked about “reasons for not using a

(10) Article 22-2 of the Childcare and Caregiver Leave Act; Article 71-4 of the Ordinance for Enforcement of the Childcare and Caregiver Leave Act; Ministry of Health, Labor, and Welfare, Employment Environment and Equal Employment Bureau, Work and Life Harmonization Division (*ibid.*, pp.32-34).

(11) 「2017 年度 新入社員 秋の意識調査」 2018.2.16. 日本生産性本部ウェブサイト (“FY2017 Fall Awareness Survey of New Employees,” 2018.2.16. Productivity Center Website)

(12) Survey results for Canada based on an average six-week childcare leave. Ankita Patnaik, “Reserving Time for Daddy: The Consequences of Fathers’ Quotas,” *Journal of Labor Economics*, Vol.37 No.4, 2019.10, pp.1009-1059; Allison Dunatchik and Berkay Özcan, “Reducing Mommy Penalties with Daddy Quotas,” *Journal of European Social Policy*, Vol.31 No.2, 2021, pp.175-191. With consideration of these results, Professor Yamaguchi Shintaro of the University of Tokyo proposes for men acquisition of childcare leave for one to two months. 山口慎太郎「産後パパ育休」開始 短くとも大きな効果」『日本経済新聞』 2022.10.10 (Yamaguchi Shintaro, “Paternity Leave Begins: Even Short-time Leave Can Have major effects,” *Nihon Keizai Shimbun*, 2022.10.10).

(13) 内閣府編『令和 4 年版 少子化社会対策白書』2022, p. 27 (Cabinet Office, ed. FY 2022 Declining Birthrate White Paper, 2022, p.27).

(14) 日本能率協会総合研究所「令和 2 年度仕事と育児等の両立に関する実態把握のための調査研究事業—仕事と育児等の両立支援に関するアンケート調査報告書＜労働者調査＞—」 2021.3, pp.138-143. 厚生労働省ウェブサイト (JMA Research Institute Inc. “FY2020 Survey Research Project to Ascertain the Actual Situation of Work and Childcare, balance—Questionnaire Survey Report concerning support for work-childcare balance ‘Labor Force Survey’,” 2021.3, pp.138-143. Ministry of Health, Labor, and Welfare Website)

childcare leave system,” 41.4% (the highest response) responded that they “did not want to experience a decline in income.” This was followed by 27.3% who responded, “Because the workplace atmosphere made it difficult to use the childcare leave system (and/or) because my company/my superior had no understanding of childcare leave acquisition in the workplace.” Subsequently, 21.7% responded, “I had to work myself or I was in charge of work that only I could do.” Another 21.3% responded that “there was no childcare system in place at my company” (Table 1).

Table 1. Reasons for not using a childcare leave system (men, multiple responses permitted)

Did not want to experience a decline in income	41.4%
Because the workplace atmosphere made it difficult to use the childcare leave system (and/or) Because my company/my superior had no understanding in regard to childcare leave acquisition in the workplace	27.3%
I had to work myself or I was in charge of work that only I could do	21.7%
Because there was no childcare leave system in place at my company	21.3%

* n =769. Surveyed were male regular company employees in their 20s through 40s, with a child or children younger than the age of three.

(Source) Created by the Author based on 日本能率協会総合研究所「令和2年度仕事と育児等の両立に関する実態把握のための調査研究事業—仕事と育児等の両立支援に関するアンケート調査報告書〈労働者調査〉—」2021.3, pp.138-143. 厚生労働省ウェブサイト (JMA Research Institute Inc. “FY2020 Survey Research Project to Ascertain the Actual Situation of Work and Childcare Balance—Questionnaire Survey Report Concerning Support for Work-Childcare Balance ‘Labor Force Survey’,” pp.138-143, 2021.3. Ministry of Health, Labor, and Welfare Website).

Similarly, for men in their 20s through 50s who wanted to have children in the future, a survey⁽¹⁵⁾ by Persol Career Co., Ltd., a major human resources company, found that the most frequent response related to “concerns in regard to childcare leave” was that their “income might decline” (Table 2).

(15) 「男性育休に関する意識調査 第2弾」2022.1.18. パーソルキャリア株式会社ウェブサイト (“Awareness Survey Regarding Childcare Leave for Men: Second Part,” 2022.1.18. Persol Career Co., Ltd. Website); 「進まぬ男性育休 職場の壁なお」『日本経済新聞』2022.7.6. (“Progress Stalled on Childcare Leave for Men: Workplace Hurdles Still Exist,” *Nihon Keizai Shimbun*, 2022.7.6).

Table 2. Concerns in regard to acquiring childcare leave (men, multiple responses permitted)

My income might decline	40.9%
My leave might cause problems for my superiors, colleagues, and/or the people I am in charge of	38.0%
I might gain a more negative reputation in my workplace	27.2%
It might become more difficult for me to be promoted or career promotions might be delayed	27.0%

* Surveyed were men (other than students) in their 20s through 50s whose spouse was currently pregnant or who wanted to have a child in the future.

(Source) Created by the Author based on 「男性育休に関する意識調査 第2弾」 2022.1.18. パーソルキャリア株式会社ウェブサイト (“Awareness Survey Regarding Childcare Leave for Men: Second Part,” 2022.1.18. Persol Career Co., Ltd. Website).

Cybozu teamwork labo performed a questionnaire survey of managerial-level (supervisors) company employees⁽¹⁶⁾. Considering how long childcare period their male subordinates should have, 61.1% stated that a “realistic period” would be less than one month. When asked if, hypothetically, a subordinate man wanted childcare leave for one month, many responded that, as supervisors, they would be concerned about the following: “an increased work burden for the subordinate’s colleagues,” “securing a substitute worker,” and “whether current work tasks could be continued or whether adjustments would be required.”

One issue for small- and medium-sized companies is the lack of replacement workers⁽¹⁷⁾. According to a survey by the Tokyo Chamber of Commerce and Industry⁽¹⁸⁾, 52% of the companies indicated that “they have no extra workers inside the company.” The MHLW provides assistance to small and medium firms to perform new hiring of substitutes when male employees are on childcare leave⁽¹⁹⁾. However, recruitment difficulties make it difficult to secure substitute employees⁽²⁰⁾.

(16) n = 2000. Male regular company /government employees who are in a superior position over their staff (Section Chief or equivalent, to Manager). サイボウズチームワーク総研「男性育児休業期間の理想と現実、上司と取得希望者で大きなギャップ」 2022.5.19 (Cybozu teamwork labo, “Length of Childcare Leave Period for Men, Ideals and Actualities: A Large Gap Between Superior and Persons Seeking Leave Acquisition,” 2022.5.19).

(17) 「多様化するパパ育休」『毎日新聞』2022.10.12 (“Diversification of Paternity Care Leave,” *Mainichi Shimbun*, 2022.10.12).

(18) 日本・東京商工会議所「「女性、外国人材の活躍に関する調査」調査結果」 2022.9.21, p.16 (The Tokyo Chamber of Commerce and Industry, “Survey Concerning the Activities and Non-Japanese Human Resources: Survey Results,” 2022.9.21, p.16).

(19) 「事業主の方への給付金のご案内」厚生労働省ウェブサイト (“Information for Business Owners concerning Benefits,” Ministry of Health, Labor, and Welfare Website)

(20) 日本・東京商工会議所 前掲注(18), p.16 (The Tokyo Chamber of Commerce and Industry,

The fact that men on paternity leave are allowed to perform work reflects the burden of reduced income on the family budget, as well as the general worker shortage in Japan. Making it possible to work leads to the concern that some men on leave would be forced to work against their will; yet, if this system is used properly and effectively, then male employees would be allowed to take leave without leaving a “work gap” in the company⁽²¹⁾. As a consideration of the actual situation for working men, one can argue that this system represents an effort to allow men to perform some extent of childcare work after their child is born; on the other hand, there is the fear that enabling work during the leave period would reduce leave-taking to a mere formality⁽²²⁾.

3 *Assessment of Japan’s Childcare Leave System and Future Prospects*

Japan’s childcare leave system is evaluated as robust and thorough.

The United Nations Children’s Fund (UNICEF) performs international comparisons⁽²³⁾ of policies that support childcare. Japan has the longest childcare leave for men among major countries⁽²⁴⁾. Japan is also praised because men and women can acquire roughly the same length of childcare leave and the national government is generous with guaranteed leave benefits⁽²⁵⁾. Even when reduced income is considered, a frequently cited point of concern in questionnaire surveys regarding childcare leave acquisition, non-

op.cit.(18), p.16); 田野口遼「取得率 13.97% 男性育休 職場改革なお途上」『読売新聞』2022.9.24 (Tanokuchi Ryo, “Male Childcare Leave Acquisition Rate of 13.97%: Workplace Changes Still Incomplete,” *Yomiuri Shimbun*, 2022.9.24).

(21) 『毎日新聞』前掲注(17) (*Mainichi Shimbun*, *op.cit.*(17))

(22) 常見陽平「育児・介護休業法の曖昧な不安 「産後パパ育休」は社会を変えるのか？」『季刊労働者の権利』348号, 2022. Aut, pp.9-14 (Tsunemi Ryohei, “Vague Concerns about the Childcare and Caregiver Leave Act: Will ‘Paternity Leave’ Change Society?” *Quarterly Magazine Roudosha no Kenri (Worker’s Rights)*, No.348, Autumn 2022, pp.9-14).

(23) Anna Gromada and Dominic Richardson, “Where Do Rich Countries Stand on Childcare?” June 2021. UNICEF Office of Research – Innocenti Website; Yekaterina Chzhen et al., “Are the World’s Richest Countries Family Friendly? Policy in the OECD and EU,” June 2019. *ibid*.

(24) The survey of the 41 member countries of the OECD and the EU was conducted. In Japan, childcare leave for men provides, on average 58% of wages, which is paid for 52 weeks of leave. This is equivalent to 30 weeks of fully paid wages, and country comparisons are based on this calculation. Only four countries—Japan, Iceland, South Korea, and Portugal—have childcare leave for fathers that comprises one-third or more of the period when the leaves of both parents are combined. 「子育て支援策新報告書—日本の結果についてのコメント—」2021.6.18. 日本ユニセフ協会ウェブサイト (“New Report on Childcare Support Measures: Comments on the Results for Japan,” 2021.6.18. Japan Committee for UNICEF Website)

(25) 「男性育休 日本で根付く? 「制度は一流、実態は二流」」『日本経済新聞』2020.3.30, 夕刊 (“Will Childcare Leave for Men Become Rooted in Japan? ‘The System is First-Class, The Actual Situation is Second-Class,’” *Nihon Keizai Shimbun*, 2020.3.30, Evening Edition); 山口慎太郎ほか「論点 男性の育休」『毎日新聞』2020.4.10 (Yamaguchi Shintaro, et al. “Point of Discussion: Childcare Leave for Men,” *Mainichi Shimbun*, 2020.4.10); 川本裕子ほか「論点 男女平等への育休制度」『毎日新聞』2022.9.28 (Kawamoto Yuko, et al. “Point of Discussion: A Childcare Leave System That Can Lead to Gender Equality,” *Mainichi Shimbun*, 2022.9.28).

taxable leave benefits are provided and insurance fee exemptions; thus, almost no such reduction occurs⁽²⁶⁾. The UNICEF evaluation, however, does cite its concern that the acquisition rate for men is low.

Although the acquisition rate is currently low, some “hidden childcare leave” is performed, as annual paid leave is used to perform childcare, etc. It has been pointed out⁽²⁷⁾ that if companies could provide more information about their paternity leave system to employees, then more male regular employees would acquire paternity leave and be less inclined to use “hidden leave.” It is noted, however, that two goals of childcare leave for men are “to be responsible for housework and childcare during the wife’s postnatal period” and “to support the wife in returning to work after childbirth.” Thus, there is a need to increase the rates not only for paternity leave (designed to meet the first goal) but also for childcare leave for men while their wives are resuming their working lives (the second goal). This latter goal is based on the perspective of equal opportunity for women and men in employment.⁽²⁸⁾

II Treatment After Returning to Work After Childcare Leave

Women who return to work after childbirth may be treated differently from others and moved onto a so-called “mommy track.”⁽²⁹⁾ This may include transferring to a section or division where she is given light work duties, such that she can finish work at the scheduled time, or, if she working in the same section as before her leave, she may be unwillingly assigned only assistant-like work duties. The result of using a work-life balance support system such as childcare leave can, thus, be a long period of restricted work duties and job-related limitations, all against one’s own will, negatively affecting the employee’s career

(26) 「多様な働き方、制度が後押し」『日本経済新聞』2021.12.4 (“Systemic Backing for Diversification of Working Styles,” *Nihon Keizai Shimbun*, 2021.12.4).

(27) 宇多川はるか「取得しやすい雰囲気できたかも」『毎日新聞』2022.11.12 (Udagawa Haruka, “There May Exist an Atmosphere That Makes Acquisition Easier,” *Mainichi Shimbun*, 2022.11.12).

(28) 同上 (*ibid.*); 池田心豪「男性育休の考え方」『Business Labor Trend』2022.3, pp.3-6 (Ikeda Shingo, “Ways of Thinking About Childcare Leave for Men,” *Business Labor Trends*, 2022.3, pp.3-6).

(29) 所浩代「2021 年改正育児介護とワーク・ライフ・バランス支援法制の課題—原職復帰原則の検討—」『ジュリスト』1578 号, 2022.12, pp.30-35 (TOKORO Hiroyo, “The 2021 Amendment of the Leave and Care Law and Systems for Work-Life Balance: Investigation of the Principle of Returning to One’s Original Job,” *Jurist*, 1578, 2022.12); 吉田理栄子「待機児童、呼び出し、マミートラック… 最初にぶつかる「保育園の壁」」『週刊東洋経済』6797 号, 2018.6.9, pp.24-26 (YOSHIDA Rieko, “The Waiting List, the Call, the ‘Mommy Track’: The Childcare Facility ‘Wall,’ The First Obstacle One Meets With,” *Weekly Toyo Keizai*, No.6797, 2018.6.9, pp.24-26).

path⁽³⁰⁾.

Considering the return after childcare leave, the Childcare and Caregiver Act obliges the employer to, for employees raising a child up to the age of three, provide a short working hours system, which reduces the number of designated working hours⁽³¹⁾. While an employee takes childcare leave, childcare leave benefits are provided; however, for users of a short working hours system, employers are permitted to decrease wages by shortening working hours⁽³²⁾. The government is currently investigating to introduce new benefits that will ensure that, even when the short working hours system is selected, the worker will not experience a change in take-home pay⁽³³⁾.

However, even if a company has in place a work-life balance support system, such as the short working hours system, most of the users will be women⁽³⁴⁾. This practice of women primarily using the short working hours system makes it easier for them to become fixed in a female gender role as a housekeeper and the person in charge of childcare and raising⁽³⁵⁾. There are other considerations, including husbands who are not using a work-

(30) 伊岐典子「【ダイバーシティ経営の意義と実践】第9回 両立支援策とママートラック 男性も含めて改革を 半数がキャリア展望なし」『労働新聞』2022.12.5 (Iki Noriko, “‘Diversity Management: Awareness and Practice’ (Part 9), Work-life Balance and the Mommy Track: Revision Needed, Even for Men, with Half of the People Sensing no Hope for Career Development,” *Rodo Shimbun*, 2022.12.5). Article 10 of the Childcare and Caregiver Leave Act prohibits an employer from dismissing “or otherwise treating a worker disadvantageously” a worker who has applied for childcare leave. Nevertheless, it does not oblige an employer to return the worker to the post they had just prior to taking leave (所 同上) (Tokoro, *ibid.*).

(31) The Childcare and Caregiver Leave Act, Article 23-1. This is stipulated to be, in principle, six hours in one working day (Ordinance for Enforcement of the Childcare and Caregiver Leave Act, Article 74-1).

(32) 「子の養育又は家族の介護を行い、又は行うこととなる労働者の職業生活と家庭生活との両立が図られるようにするために事業主が講ずべき措置等に関する指針」(平成21年12月28日号外厚生労働省告示第509号 最終改正：令和3年9月30日号外厚生労働省告示第366号) 第2の11(3)ニ(イ) (“Guidelines Concerning Measures to be Considered by Employers to Promote the Balance of Working Life and Family Life of Workers (Employees) who are Performing Childcare or Home Care (caregiving), or who Anticipate the Performance of Said Care in the Future” (2009.12.28 Extra Notification of Notification 509 of the Ministry of Health, Labor, and Welfare, Final Revision: 2021.9.30 Extra Notification of Notification 366 of the Ministry of Health, Labor, and Welfare) Article 2-11(3) d(a)); 厚生労働省・都道府県労働局雇用均等室「改正育児・介護休業法のあらまし」2010.7, p.43 (Ministry of Health, Labor, and Welfare and Prefectural Labor Bureau, “Summary of the Revised Childcare and Caregiver Leave Act,” 2010.7, p.43).

(33) こども政策担当大臣 前掲注(6), p.16. Minister in Charge of Policies Related to Children, *op.cit.*(6), p.16. In addition to support for reduced wages due to reduced working hours, the purpose is to provide back-up for career design via continuation of work or return to normal work.

(34) According to the Survey of Business Establishments in the FY2021 Basic Survey of Gender Equality in Employment Management, 3.6% of business establishments had both men and women users, 94.4% had women users only, and 2.0% had men users only. 厚生労働省 前掲注(4), p.30 (Ministry of Health, Labor, and Welfare, *op.cit.*(4), p.30).

(35) 筒井淳也「女性の労働参加と性別分業—持続する「稼ぎ手」モデル—」『日本労働研究雑誌』56巻7号, 2014.7, pp.70-83 (Tsutsui Junya, “Female Labor Participation and Sexual Division of Labor: A Consideration on the Persistent Male-Breadwinner Model,” *The Japanese*

life balance support system and companies that have not, despite their obligation to do so, deliberated nor implemented measures that will bring their employment rules and regulations in line with previously existing systems. Other concerns include companies getting a “free ride” in comparison to those companies that have work-life balance support systems fully in place, meaning that are employed in a workplace where superiors and colleagues understand their positions and are able to point them to the company’s full-fledged support systems. Consequently, such companies bear the burdens of system management and implementation⁽³⁶⁾.

Research is currently underway on the so-called “child penalty,” which is the reduction in employment income that accompanies childbirth⁽³⁷⁾. This has also been called the “motherhood penalty,” as women are the ones who chiefly bear this burden. Even in Europe and North America, where movements have emerged to correct gender differences in employment by providing men and women with equal pay for equal work, the motherhood penalty is seen as a remnant form of gender inequality⁽³⁸⁾. Much of the related research has focused on using panel data⁽³⁹⁾ to analyze to what extent the wages of the father and mother have decreased due to childbirth. In Japan, too, this has been an important factor in wage inequalities between men and women, with research demonstrating this “motherhood penalty.”⁽⁴⁰⁾

The main hypotheses used to explain the effects of childcare leave on promotion and wages are the “signaling theory” and the “human capital depreciation theory.”⁽⁴¹⁾ The

Journal of Labor Studies, Vol.56 No.7, 2014.7, pp.70-83); 武石恵美子「短時間勤務制度の現状と課題」『生涯学習とキャリアデザイン』10 巻, 2013.2, pp.67-84 (Takeishi Emiko, “Measures to Shorten Working Hours: Their Current State and Areas of Concern,” *Lifelong Learning and Career Studies*, Vol.10, 2013.2, pp.67-84).

(36) 浜田敬子「すれ違う女性活躍と両立支援」『ひろばユニオン』711 号, 2021.5, pp.34-37 (Hamada Keiko, “The Gap Between Women’s Activities and Work-life Balance Support,” *Hiroba Union*, No.711, 2021.5, pp.34-37); 治部れんげ「夫の会社が妻の会社の育児支援にタダ乗り—カネカショックで露呈した現実」2019.6.11. Business Insider ウェブサイト (JIBU Renge, “The Husband’s Company is Free-Riding on the Childcare Assistance of the Wife’s Company: The Reality Exposed by the ‘Kaneka Shock’,” Business Insider Website).

(37) 古村典洋「第3章 チャイルドベナルティとジェンダーギャップ」『「仕事・働き方・賃金に関する研究会——一人ひとりが能力を発揮できる社会の実現に向けて」報告書』財務省財務総合政策研究所, 2022.6, pp.42-56 (KOMURA Norihiro “Chapter 3: The Child Penalty and the Gender Gap,” *Research Group on Work, Working Style, and Wages: Report on “Towards the Realization of a Society Where Each and Every Person will be Able to Demonstrate Their Abilities,”* Policy Research Institute, Ministry of Finance, 2022.6, pp.42-56); 「出産・子育て 「不利」にしない」『日本経済新聞』2022.9.19 (“Will not Make Childbirth and Childcare ‘Disadvantageous’,” *Nihon Keizai Shimbun*, 2022.9.19).

(38) 古村 同上, pp.42-43 (Komura, *ibid.*, pp.42-43).

(39) Data from repeated continuous surveys of the same individuals.

(40) 竹内麻貴「現代日本における Motherhood Penalty の検証」『フォーラム現代社会学』17 巻, 2018, pp.93-107 (Takeuchi Maki, “Motherhood Penalty in Japan,” *Kansai Sociological Review*, 17, 2018, pp.93-107).

(41) 周燕飛「第6章 育児休業が女性の管理職登用に与える影響」労働政策研究・研修機

signaling theory posits that the person who uses parental leave is signaling their weak desire for a rising career path. In other words, taking childcare leave in a work environment where generally such leave is not taken, or taking childcare leave longer than the standard period, is perceived as showing that the person who does so is not passionate about their career path. This may lead to delays in promotion and assignment to a managerial position. Meanwhile, human capital depreciation theory posits that, due to taking leave from work, the worker experiences decline or their work skills, related knowledge, and human networks deteriorate, which in turn results in a “depreciation” in their value as human capital⁽⁴²⁾.

Especially in Japan, numerous work offices operate under a membership-type⁽⁴³⁾ personnel system. This entails a seniority wage system where one receives a raise after working for a specific number of years and is exposed to a wide variety of jobs and work experiences. The prerequisite is that employees must accept transfers and long working hours. Yet, transfers and long hours are not possible for a woman who is married with children, which makes workplace promotion difficult. Women also find it difficult to balance work and childcare, and sometimes they quit their jobs. The above have been indicated as factors in men-women wage differences⁽⁴⁴⁾.

Likewise, men who choose childcare leave will be seen as having no aim to rise in the

構編『男女正社員のキャリアと両立支援に関する調査結果2 分析編』(JILPT 調査シリーズ No.119) 2014.3, pp.167-185 (Zhou Yanfei, “Chapter 6: Effects of Childcare Leave on Women’s Accession to a Management Job,” The Japan Institute for Labor Policy and Training, ed. *Results 2 of Survey Concerning the Careers of Men and Women Regular Employees and Work-life Balance Support (Analysis Version)* (JILPT Survey Series No.119), 2014.3, pp.167-185).

(42) 同上, p.170. *ibid.* p.170.

(43) The assumption is that based on the premise of regular-period personnel transfers (post reassignments), there is a connection between workers and their wages. A seniority-based wage system is adopted. In contrast, employment wages determined on the basis of a specific job are called “job-based wages”. 濱口桂一郎『ジョブ型雇用社会とは何か—正社員体制の矛盾と転機—』岩波書店, 2021, pp.24-36. (Hamaguchi Keiichiro, *What is a ‘Job-Based Employment’ Society? Inconsistencies in the Regular Company Employee System and Transitions*, Iwanami Shoten, 2021, pp.24-36). It is noted that some have argued that if roles and duties can be clearly specified within job-based employment, careers will take on individual trajectories, within management and specialist posts granted from time to time as appropriate. In contrast, others have indicated that even with the job-based system, promotions will also be accompanied by subjective evaluations. 中村天江「役割明確 女性働きやすく」『日本経済新聞』2020.10.8 (Nakamura Akie, “Clear Roles and Responsibilities to Make it Easier for Women to Work,” *Nihon Keizai Shimbun*, 2020.10.8); 江口匡太「職務給と働きぶりの評価」『日本経済新聞』2022.11.28 (Eguchi Kyota, “Job-Based Pay and Work-Performance Evaluations,” *Nihon Keizai Shimbun*, 2022.12.28).

(44) 大沢真知子「女性の活躍は保護から戦力化の時代へ」『保健の科学』59(10), 2017.10, pp.688-693 (Osawa, Machiko, “Women’s Empowerment: From an Era of Safeguards to One of Proactive Efforts,” *Health Care*, Vol.59 No.10, 2017.10, pp.688-693); 共働きを阻む「日本型雇用」『週刊東洋経済』6797号, 2018.6.9, pp.46-47 (“‘Japan-Style Employment’ Hinders Dual-Income Possibilities,” *Weekly Toyo Keizai*, No.6797, 2018.6.9, pp.46-47).

company⁽⁴⁵⁾. Men who seek to use such systems will be exposed to words and actions that suggest that they might be removed from the steady career track, which has been noted as a hindrance to men taking childcare leave⁽⁴⁶⁾.

Another issue is that, in the workplace, unmarried male employees experience frustration and dissatisfaction when they have to take over for an employee using a work-life balance system⁽⁴⁷⁾. These dissatisfactions can make it more difficult to choose childbirth and childcare leave and lead to division in the workplace. Measures designed to eliminate these frustrations include (1) for bosses and colleagues who take over for the employee on leave, having their “sacrifices” reflected in their personnel evaluations, (2) arranging for worker substitutes, and (3) introducing long-term vacation systems that can be used even by employees who do not use work-life support systems.⁽⁴⁸⁾ Some companies have introduced measures to facilitate balancing work with childcare, including morning work hours restrictions on evening overtime work.⁽⁴⁹⁾ These frustrations originally stem from issues of long working hours, where overtime work has become a regular practice, with leaving work at the designated hour perceived as violating the workplace’s shared consensus or with workload too heavy to finish within regular working hours.⁽⁵⁰⁾ It is

(45) Sometimes this is called a “pappy track,” the situation in which a man factually encounters reduced pay and a reduction in rank (status) after returning to work from childcare leave. 「出費はかさむ一方 2 人目なんて無理 子持ち夫婦の実態」『週刊東洋経済』6669 号, 2016.7.9, pp.54-56 (“A Second Child is Impossible, Since Expenses Just Pile Up: Actual Status of Couples with Children,” *Weekly Toyo Keizai*, No.6669, 2016.7.9, pp.54-56).

(46) 「家事・子育てに見る性差 「男性育休」申請 異動に」『毎日新聞』2022.6.2 (“Differences Between the Sexes in Housework and Childcare: Transfer of Employee After Requesting Childcare Leave for Men,” *Mainichi Shimbun*, 2022.6.27). It is noted that, regardless of sex, any dismissal from work, reduction of pay, and demotion of a worker for the reasons that the said worker has used the childcare leave system is prohibited as “disadvantageous treatment” under the Childcare and Caregiver Leave Act. Childcare and Caregiver Leave Act, Article 10; 「ハラスメント基本情報」ハラスメントの定義」厚生労働省・あかるい職場応援団ウェブサイト (“Basic Information on Harassment: The Definition of ‘Harassment’,” Ministry of Health, Labor, and Welfare and the Bright Workplace Support Group Website).

(47) 溝上憲文「割を食う育児のない社員 資生堂ショックが問う 子育てで優遇の是非」『週刊東洋経済』6669 号, 2016.7.9, pp.62-63 (Mizoue Norifumi, “Employees Without Childcare are Disadvantaged: Questioning the ‘Shiseido Shock’ and Pros and Cons of Preferential Treatment for Childcare,” *Weekly Toyo Keizai*, No.6669, 2016.7.9, pp.62-63).

(48) 小酒部さやか「独身は損してると思わせない、産休・育休の穴をどう埋めるのか論争の解決策はこれだ!」2019.6.25. YAHOO! JAPAN ニュースウェブサイト (Osakabe Sayaka, “No Need to Fret About the Disadvantages of Being Single: Here’s a Solution to the Debate About How to Close the Gap with Those who Acquire Childbirth and/or Childcare Leave,” 2019.6.25. YAHOO! Japan News Website)

(49) 「人口と世界 生き方重視 企業の価値に」『日本経済新聞』2022.11.25 (“Population and the World: Companies Should Adopt as Their Value a Priority for Lifestyle,” *Nihon Keizai Shimbun*, 2022.11.25); 「朝型勤務で産み育てやすく 伊藤忠、出生率が 2 倍に 生産性向上と一石二鳥」『日経ビジネス』2164 号, 2022.10.31, pp.14-18 (“At Itochu, Morning Work Makes it Easy to Have and Raise a Child: One Bird and Two Stones, as the Birthrate Doubles and Productivity Increases,” *Nikkei Business*, No.2164, 2022.10.31, pp.14-18).

(50) 濱口桂一郎『働く女子の運命』文藝春秋, 2015, pp.223-226 (Hamaguchi Keiichiro, *The Fate of Working Women*, Bungei Shunju, 2015 pp.223-226).

argued that engagements that seek to eliminate related frustrations will be linked to improved working environments⁽⁵¹⁾.

III Job Quitting for Childbirth

Childcare leave acquisition rates are calculated in surveys targeting employees. For women, this rate is that of those who have taken childcare leave after childbirth that occurred while she was employed. Women who have left their jobs before childbirth are not included in these surveys. Therefore, some observers state that there may be women who left their jobs as a result of childbirth and childcare and that these should be considered separately from percentages in acquisition-rate surveys⁽⁵²⁾.

According to a survey by the National Institute of Population and Social Security Research⁽⁵³⁾, for women (wives) who bore their first child in the period from 2010 through 2014, 42.5% had continued to work. This rate rose to 53.8% for women who bore their first child from 2015 through 2019; it is noted, however, that this rate is still only around half of the women⁽⁵⁴⁾. The rate of women (wives) who used a childcare leave system yet continued to work rose from 31.6% to 42.6%.⁽⁵⁵⁾ Further, in the 2017 Employment Status Survey, for the five-year period from October 2012 through September 2019, the number of women who left their previous job “to bear and raise a child” was 1.025 million people⁽⁵⁶⁾.

Prescriptive factors for a woman’s continuation of her job (employment) in the period before and after childbirth are the existence of a childcare leave system, husband’s income status, division of housekeeping duties between husband and wife, educational background,

(51) 小酒部 前掲注(48) (Osakabe, *op.cit.*(48))

(52) 是枝俊悟「女性の育児休業取得率も、まだ4割程度」2021.4.26. 大和総研ウェブサイト (Koreeda Shungo, “Even the Childcare Leave Acquisition Rate for Women is Still at Around 40%,” 2021.4.26. Daiwa Institute of Research Website)

(53) 国立社会保障・人口問題研究所「第16回出生動向基本調査 結果の概要」2022.9.9 (National Institute of Population and Social Security Research, “16th Annual Population and Social Security Survey (The National Fertility Survey): Overview of Results,” 2022.9.9).

(54) These numbers combine the “Continued Employed (Usage of Childcare Leave): Employment from the period when pregnancy is known to the acquisition of childcare leave to when the child is one year old” and the “Continued Employed (Non-usage of Childcare Leave): Employment from the period when pregnancy is known to the acquisition of childcare leave to when the child is one year old.” It is noted that in the case where it is not known if there was or not the usage of the childcare leave system, these figures are included in the “Non-usage of Childcare leave” classification. *ibid.*

(55) 国立社会保障・人口問題研究所 前掲注(53), p.67 (National Institute of Population and Social Security Research, *op.cit.*(53), p.67).

(56) 総務省統計局「平成29年就業構造基本調査 結果の概要」2018.7.13, p.3 (Statistics Bureau, Ministry of Internal Affairs and Communication, “Employment Status Survey: Overview of Results,” 2018.7.13, p.3).

employment type, and company scale.⁽⁵⁷⁾ Research using panel data since the year 2000 indicated the following as statistically significant factors that raise the rate of continued employment after childbirth: high hourly wage, working at a company where it is easy to take childcare leave, the husband's income is not high, (for those with permanent employment) a short commuting time, and being employed as a full-time worker⁽⁵⁸⁾.

The Act on Equal Opportunity and Treatment between Men and Women in Employment (Act No. 113 of 1972), as well as the Childcare and Caregiver Leave Act, Article 10, prohibit disadvantageous treatment such as dismissal or demotion of a worker on the grounds of pregnancy and childbirth, as well as harassment that suggests disadvantageous treatment.⁽⁵⁹⁾ These laws also obligate employers to take measures that will prevent said disadvantageous treatment⁽⁶⁰⁾.

It is noted that in its Outline of Declining Birthrate Countermeasures, decided by the Cabinet on May 29, 2020, the government set a target of 70% by 2024 for the rate of women continuing to work before and after the birth of their first child⁽⁶¹⁾.

IV Leave for Childbirth and Childcare for Diverse Working Styles

The discussion hitherto has mainly focused on regular (permanent) employees; however, childcare leave issues also exist for non-regular employees (i.e., persons with non-standard or contingent employment) and freelancers.

First, we will consider childcare leave acquisition for fixed-term⁽⁶²⁾ (limited-term) employees, one type of non-regular employees. Here, the condition for their said acquisition is that in the period up to the time the child turns one year and six months, it is

(57) 大島敬士・佐藤朋彦「就業構造基本調査の個票データを用いた出産前後の女性の就業継続に関する要因分析」『統計研究彙報』78号, 2021.3, pp.3-4. 総務省統計局ウェブサイト (Oshima Keiji and Sato Tomohiko, "Analysis of Factors Influencing Women's Job Continuation Before and After Childbirth using Micro Data in the Employment Status Survey," *Research Memoir of Official Statistics*, No.78, 2021.3, pp.3-4. Statistics Bureau, Ministry of Internal Affairs and Communication Website)

(58) 樋口美雄ほか「結婚・出産後の継続就業」阿部正浩・山本勲編『多様化する日本人の働き方—非正規・女性・高齢者の活躍の場を探る—』慶應義塾大学出版会, 2018, p.110 (Higuchi Yasuo et al. "Continued Employment After Marriage and Childbirth," Abe Masahiro and YAMAMOTO Isamu, eds. *The Diversification of Japanese Working Styles: A Search for the Sites of Activity of Non-regular Workers, Women, and Aged Persons*, Keio University Press, 2018, p.110).

(59) Act on Equal Opportunity and Treatment between Men and Women in Employment, Article 9-3, Childcare and Caregiver Leave Act, Article 10.

(60) Act on Equal Opportunity and Treatment between Men and Women in Employment, Article 11-3, Childcare and Caregiver Leave Act, Article 25.

(61) 「別添 2 施策に関する数値目標」前掲注(6) ("Appendix 2 Numerical Goals for Countermeasures" "Outline of Declining Birthrate Countermeasures," *op.cit.*(6))

(62) Workers who have a contract to work for a stipulated period, such as one year or three years.

not clear that their contract expires⁽⁶³⁾. Among the conditions for childcare leave acquisition, the condition that the period the individual has been employed is one year or longer was abolished in April 2022, and now said persons are treated the same as regular employees⁽⁶⁴⁾. However, in the case where said individual has not fulfilled the condition of enrolling in the employment insurance system, and in the case where said individual has not had a specified employment record (history)⁽⁶⁵⁾, then even if childcare leave is acquired, said individual will not receive payment of childcare leave benefits. In order for an employee to be enrolled in the employment insurance system, he/she must have a working style that approaches that of a regular (permanent) employee: be an employee whose regular (stipulated) working hours are 20 hours or more per week, be an employee who is expected to work for 31 days or longer, etc.^{(66),(67)}

When childcare leave cannot be obtained, the woman might leave her job. In the above-cited survey⁽⁶⁸⁾ by the National Institute of Population and Social Security, the research cited above, the employment continuation rate was 83.4% for women who responded “I am a wife who is a regular (permanent) employee.” Meanwhile, although this rate has increased over recent years, the employment condition rate was only 40.3% for women who responded: “I am a wife who has fixed-term employment, such as a part-timer or a seconded temporary worker.”

Furthermore, freelancers are not eligible for employment insurance, have no income support such as childcare leave benefits, and have only limited exemption from the payment of social security premiums⁽⁶⁹⁾. This means that they are not able to take sufficient leave

(63) Childcare and Caregiver Leave Act, Article 5.

(64) 厚生労働省雇用環境・均等局職業生活両立課 前掲注(9), pp.22-23 (Ministry of Health, Labor, and Welfare, Employment Environment and Equal Employment Bureau, Work and Life Harmonization Division, *op.cit.*(9), pp.22-23). However, workers who have been employed at one and the same employer continuously for less than a one-year period, regardless of whether they are regular or non-regular employees, may be excluded from acquiring childcare leave with stipulation thereof in their Employer-Employee Agreement.

(65) Regardless of whether a person is a regular or non-regular employee, if they do not meet the condition (in the two-year period prior to the first day of leave, the employee worked for 11 days or more and/or 80 hours or longer for 12 months or longer), then they are not subject for the payment of childcare leave benefits. 厚生労働省ほか 前掲注(3), p.7 (Ministry of Health, Labor, and Welfare et al., *op.cit.*(3), p.7).

(66) Except when it's clear that the person will not work continuously for 31 days or longer, this condition shall apply. 「平成 22 年 4 月 1 日から雇用保険制度が変わりました！」厚生労働省ウェブサイト(“The Employment Insurance System Changed from April 1, 2010!” Ministry of Health, Labor, and Welfare Website).

(67) Employment Insurance Act, Article 6.

(68) For each of these, a first child born in the period from 2015 through to 2019. 国立社会保障・人口問題研究所 前掲注(53), p.68 (National Institute of Population and Social Security Research, *op.cit.*(53), p.68).

(69) Regarding the National Pension System, from April 2019, for the No. 1 insured person under the National Pension System, during the period before and after childbirth, insurance fees are exempted. Additionally, for the childcare period, the investigation is underway toward the new establishment of insurance fee exemption measures. As for National Health Insurance, regarding

from work after childbirth; accordingly, they tend to return to work at an early period and may even work during periods designated as obligatory work vacation (leave) guaranteed to workers under the Labor Standards Act. From the perspective of maternal health, the Labor Standards Act stipulates that, in principle, women who have not passed eight weeks after childbirth must not be forced to work⁽⁷⁰⁾. Meanwhile, in a survey of freelancers, 59.0% of freelancers returned to work within two months after childbirth, and 44.8% of all freelancers returned to work within one month after childbirth⁽⁷¹⁾.

Freelancers and non-regular employees are in an especially vulnerable position. There are known examples of maternity harassment, sudden dismissals from jobs, and contract discontinuations, for said persons⁽⁷²⁾. The Act on Ensuring Proper Transactions Involving Specified Entrusted Business Operators⁽⁷³⁾ (the so-called “Freelance Act”) includes special considerations regarding working environments to enable freelancers to perform consigned work which permits a balance between work duties and childcare and/or caregiving.⁽⁷⁴⁾ These provisions were added to this law at the request of freelance-related stakeholder groups.

the per capita rate for the four-month period, that is, the applicable period before and after childbirth, deliberation is underway on a draft law for exemption from January 2024. 「国民年金の産前産後期間の保険料免除制度」厚生労働省ウェブサイト (“The Insurance Fees Exemption System of the National Pension System for the Before and After the Childbirth Period,” Ministry of Health, Labor, and Welfare Website); こども政策担当大臣 前掲注(6), p.16 (Minister in Charge of Policies Related to Children, *op.cit.*(6), p.16); Outline of the Act Partially Amending the Health Insurance Act and Other Acts in Order to Establish a Sustainable Social Security System That Covers All Generations,” (211th session of the Diet Cabinet Act No. 16, Article 3).

(70) Labor Standards Act (Act No. 49 of 1947), Article 65.

(71) プロフェッショナル&パラレルキャリア・フリーランス協会「雇用関係によらない働き方と子育て研究会緊急アンケート調査」2018.2.22 (Professional & Dual Career Freelance Association, “Emergency Questionnaire Survey of the Research Group on Childcare and Work Styles That are Unrelated to Employment,” 2018.2.22).

(72) 杉村和美「メディア関連フリーランスの実態と保護の課題 (1) コロナ禍と子育て中のフリーランス」『労働法学研究会報』72(19), 2021.10.1, pp.4-9 (Sugimura Kazumi, “Current Status of Media-related Freelancers, and Issues related to their Protection (1) The Coronavirus Pandemic and Freelancers who are Raising Children,” *Rodo Hogaku Kenkyukai Ho (Report of the Labor Law Research Group)*, Vol.72 No.19, 2021.10.1, pp.4-9).

(73) The “Outline of the Act on Ensuring Proper Transactions Involving Specified Entrusted Business Operators” (211th Session of the Diet Cabinet Act No. 23) was passed and enacted by the House of Councilors on April 28, 2023.

(74) Act on Ensuring Proper Transactions Involving Specified Entrusted Business Operators (Act No. 25 of 2023), Article 13; 「フリーランスが安心して働けるように」『朝日新聞』2022.9.15 (“Ensuring that Freelancers Can Work with Security,” *Asahi Shimbun*, 2022.9.15).

V Fertility Treatment and Work

1 Systemic Changes in Recent Years Regarding Fertility Treatment

An expansion of insurance coverage has been provided for fertility treatment since April 2022. Artificial insemination⁽⁷⁵⁾, and in vitro fertilization⁽⁷⁶⁾ became eligible for coverage⁽⁷⁷⁾. Despite limitations concerning the age of the person who can use this insurance and the number of times in vitro fertilization can be performed,⁽⁷⁸⁾ the amount paid upfront at the clinic is now 30% of the treatment fees for covered procedures.

At the same time, the amendment of the Ordinance for Enforcement of the Act on Advancement of Measures to Support Raising Next-Generation Children (Ordinance of the Ministry of Health, Labor, and Welfare No. 122 of 2003) added a “Plus” system for the “Kurumin” certification system for companies that support childcare⁽⁷⁹⁾. This means that, among Kurumin-certified companies⁽⁸⁰⁾, those engaged in support for a balance between work and fertility treatment will be certified as “Kurumin Plus.” The following are the requirements for Plus certification: (1) Provision of a leave-from-work system for fertility treatment; (2) Demonstration of guidelines concerning a balance between work and fertility treatment, together with details of the related measures taken, as well as making the system well known within the company; (3) Performance of engagements that promote the

(75) Fertility treatment act whereby, at a period when pregnancy is possible, sperm is injected into the uterus with a syringe.

(76) Fertility treatment act whereby sperm and eggs are collected; after successful fertilization, the fertilized egg is returned to the uterus.

(77) 「不妊治療に関する取組」厚生労働省ウェブサイト (“Initiatives Concerning Fertility Treatment,” Ministry of Health, Labor, and Welfare Website). Hitherto, insurance coverage was limited to examinations to clarify cause of infertility, and for treatment for the causative disease. 厚生労働省「不妊治療に関する支援について」2022.3.25, p.5 (Ministry of Health, Labor, and Welfare, “Regarding Support Related to Fertility Treatments,” 2022.3.25, p.5).

(78) As an upper age limit, the woman must be less than age 43 years at the time she begins treatment; as for limits to the number of times in-vitro (external) fertilization can be performed, for a woman less than age 40 years at the time she begins treatment, a total of up to six (6) times, and for a woman age 40 years to less than age 43 years, a total of up to three (3) times; both of these are limited to one child each. 厚生労働省 同上, p.42 (Ministry of Health, Labor, and Welfare et al., *ibid.*, p.42).

(79) 「子育てサポート企業「くるみんマーク」が新しくなります！ 新たな認定制度「トライくるみん認定」・不妊治療と仕事との両立企業に「プラス」もスタート！」2022.3.14. 厚生労働省ウェブサイト (“Renewal of the ‘Kurumin Mark’ for Companies That Support Childcare: A New Certification System, ‘Try Kurumin Certification,’ and the Launch of the ‘Plus’ Certification for Companies That Support a Balance Between Work and Fertility Treatment,” 2022.3.14. Ministry of Health, Labor, and Welfare Website)

(80) As of the end of March 2023, among companies approved for certification, 4,124 companies permitted public notification of their Kurumin certification (among these, ten companies with Kurumin Plus), with 548 companies certified for Platinum Kurumin, with its stricter certification standard (among these, 19 companies with Platinum Kurumin Plus). 「くるみん認定、プラチナくるみん認定及びトライくるみん認定企業名都道府県別一覧」厚生労働省ウェブサイト (“List of Companies, by Prefecture, with Kurumin Certification, Platinum Kurumin Certification, and Try Kurumin Certification,” Ministry of Health, Labor, and Welfare Website).

understanding of workers concerning a balance between work and fertility treatment; and (4) Selection and assignment of a person in charge who can consult with the worker undergoing fertility treatment regarding a balance between work and fertility treatment and making this service well known within the company. When an enterprise is certified as a Kurumin company, it can use a special identifying mark on its products and the company website. A Kurumin-certified company also receives additional evaluation points in public procurements⁽⁸¹⁾. “Kurumin Plus” certification means that the company can appeal to the public that it is committed to and engaged in support for a work fertility treatment balance, which is hoped to improve the company’s image. The Next-Generation Act provides the stipulations⁽⁸²⁾ for Kurumin certification. Its aim is to stimulate focused and intensive promotion of measures that support raising next-generation children.⁽⁸³⁾ It is temporary legislation in place until FY2024⁽⁸⁴⁾.

2 Support for a Balance Between Work and Fertility Treatment

The number of people who use fertility treatment and percentage among all childbirths of children born as the result of fertility treatment have increased. In 2020, 60,381 children⁽⁸⁵⁾ were born through in vitro fertilization and embryo transfer, accounting for approximately 7% of childbirths⁽⁸⁶⁾.

Cited as backdrop phenomena for fertility treatment increases are late marriage and

(81) 「子育てサポート企業「くるみんマーク」が新しくなります！ 新たな認定制度「トライくるみん認定」・不妊治療と仕事との両立企業に「プラス」もスタート！」前掲注(79) (“Renewal of the ‘Kurumin Mark’ for Companies That Support Childcare: A New Certification System, ‘Try Kurumin Certification,’ and the Launch of the ‘Plus’ Certification for Companies That Support a Balance Between Work and Fertility Treatment,” *op.cit.*(79))

(82) Next-Generation Act, Article 13-Article 15.

(83) 労務行政編『次世代育成支援対策推進法』2004.12, p.159. Institute of Labor Administration, ed. *Act on Advancement of Measures to Support Raising Next-Generation Children*, 2004.12, p.159. It is noted that in regard to the purpose, at the time of the establishment, this was the “draft Next-Generation Act intended to promote concentrated and planned engagements within local governments and companies over a ten-year period”. 「次世代育成支援に関する当面の取組方針」(平成 15 年 3 月 14 日少子化対策推進関係閣僚会議決定) 厚生労働省ウェブサイト (“Engagement Policies for the Time Being Concerning Support for Next-generation Childrearing” (March 14, 2003 Resolution of the Office for the Promotion of Policy to Cope with a Declining Birthrate) Ministry of Health, Labor, and Welfare Website).

(84) At the time of its establishment, this was to be temporary legislation until FY2014; however, the Act was extended through the amendment in 2014 (Act for Partial Amendment of the Act on Advancement of Measures to Support Raising Next-Generation Children with the Aim of Healthy Development of Children who will Support the Next-generation of Society (Act No. 28 of 2014), Article 1).

(85) 「2020 年 ART データブック」2022.12.27, [p.37]. 日本産婦人科学会ウェブサイト (“2020 ART Data Bank,” 2022.12.27, [p.37], The Japan Society of Obstetrics and Gynecology Website)

(86) The number of births in 2023 was 840,835 persons. 内閣府編 前掲注(13), p.4 (Cabinet Office, ed. *op.cit.*(13), p.4).

late childbirth. Studies have indicated⁽⁸⁷⁾ that one reason for this is the perception that there will be a negative impact on career-path formation if a woman were to leave her job in her childbearing years, that is, during her 20s and 30s. Meanwhile, fertility treatment involves (1) economic, (2) physical, (3) time-related, and (4) psychological burdens. Specifically, this includes frequent visits to a hospital or fertility clinic and unexpected events, such as ovulation days that do not occur as scheduled. Considering the economic burdens, if a woman leaves her job, there are major repercussions on the family budget. Moreover, fertility treatment does not necessarily guarantee successful pregnancy and childbirth⁽⁸⁸⁾.

Not a few women have been unable to successfully balance work with fertility treatment⁽⁸⁹⁾. Although systems exist that aim at enabling this balance of treatment and work, there are cases where system usage does not proceed as expected. In a survey by the nonprofit corporation Fertility Information Network (FINE), several reasons were given for why a woman might not use an existing system. These reasons include that the woman does not want to make her fertility treatment known to others and the need to make an application in advance, which makes the system difficult to use, since, as stated above, treatment does not always go as planned and the woman might need to make sudden and unscheduled visits to her hospital or clinic.⁽⁹⁰⁾ Some companies have established names for such leaves of absence that do not reveal their purpose (that is, there is no reference in said names of “fertility treatment,” or “monthly period,” etc.).⁽⁹¹⁾ This is not only for employees who don’t want others to know their fertility treatment but also for employers who want to avoid being perceived as giving preferential treatment for certain company employees.

Reports have noted that women are harassed or subjected to negative words and behavior specific to their fertility treatment. The MHLW revised guidelines related to anti-

(87) 倉澤健太郎「不妊治療が増えている要因は何だろう？」『厚生労働』2021.5, p.10 (Kurasawa Kentaro, “What are the Reasons for the Increase in Infertility Treatments?” *Kosei Rodo*, 2021.5, p. 10).

(88) 永池明日香「仕事と不妊治療の両立支援に向けて」『経営センサー』223号, 2020.6, pp.31-38 (Nagaike Asuka, “Towards Balanced Support for Work and Fertility Treatment,” *Keiei Sensor*, No.223, 2020.6, pp.31-38).

(89) Survey results by the Ministry of Health, Labor, and Welfare were as follows: “Quit my job because of the inability to achieve a balance” 16%; “Stopped fertility treatment because of the inability to achieve a balance,” 11%; “Changed my employment type because of the inability to achieve a balance,” 8%; “I am able to balance both,” 53% (n=265). 「平成29年度 不妊治療と仕事の両立に係る諸問題についての総合的調査研究事業 調査結果報告書（本編）」

2018.3.16, p.39. 厚生労働省ウェブサイト (“FY2017 Comprehensive Survey Research Project on Various Issues Regarding the Balance Between Work and Fertility Treatment, Survey Results Report (Main Edition),” 2018.3.16, p.39. Ministry of Health, Labor, and Welfare Website).

(90) NPO 法人 Fine 「「仕事と不妊治療の両立に関するアンケート Part 2」結果」2017.10.5 (FINE (Fertility Information Network), a nonprofit corporation, “Results of a Questionnaire on the Balance Between Work and Fertility Treatment, Part 2,” 2017.10.5).

(91) 「不妊治療と仕事両立 企業の対応は」『朝日新聞』2022.4.25 (“Company Response to Achieving a Balance Between Work and Fertility Treatment,” *Asahi Shimbun*, 2022.4.25); 「福利厚生」株式会社サイバーエージェント ウェブサイト (“Employee Welfare and Benefits,” CyberAgent Inc. Website)

harassment measures and provided new stipulations to prevent this type of harassment⁽⁹²⁾.

In Conclusion

Numerous issues and problems must be tackled within working environments to ensure appropriate management and implementation of leaves of absence and days off work for childbirth and childcare. These issues are also important in terms of Japan's declining birthrate and aging population. Thanks to legislative amendments, in recent years, improvements have been made to childcare leave systems for men.⁽⁹²⁾ Much remains to be done, however. Key issues include promoting childcare leave acquisition by men and resolving the problem that many women are quitting their jobs or forced into a “mommy track” in their careers as a result of having had children. Measures are also needed for workers who have difficulties in acquiring time off and leave to raise children, especially for non-regular workers. Further, there is the issue of supporting a balance between work and fertility treatment.

There is also the question as to whether individual companies have in place full-fledged systems for childcare leave. Interest in this aspect is growing among people who look at non-financial indicators, including students currently in the job recruitment/employment process, as well as investors and other stakeholders.⁽⁹³⁾ While work-related issues that accompany childbirth and childcare arise for the first time directly in the workplace when employees have children, these are also issues that are intricately related to the decision to have children in the first place. Today, as society progresses towards a greater diversity in working styles, not only must existing systems be appropriately operated and managed under changing circumstances, but also working environments must be arranged to enable workers to work securely while bearing, caring for, and raising children.

(92) 「事業主が職場における優越的な関係を背景とした言動に起因する問題に関して雇用管理上講ずべき措置等についての指針」（令和 2 年 1 月 15 日厚生労働省告示第 5 号）2(7)へ（イ）②（Article 2(7)f(a) of the “Guidelines Concerning Measures To Be Taken by Employers in Terms of Employment Management in Connection with Problems Arising as a Result of Behavior that Constitutes Bullying in the Workplace,” Public Notice of the Ministry of Health, Labor, and Welfare, No. 5 of January 15, 2020）；「事業主が職場における妊娠、出産等に関する言動に起因する問題に関して雇用管理上講ずべき措置等についての指針」（平成 28 年 8 月 2 日厚生労働省告示第 312 号 最終改正：令和 2 年 1 月 15 日厚生労働省告示第 6 号）4(1)（Article 4(1) of the “Guidelines Concerning Measures To Be Taken By Employers in Terms of Employment in Connection with Problems Arising as a Result of Behavior That Constitutes Harassment in the Workplace Due to Pregnancy, Childbirth or Other Event,” Public Notice of the Ministry of Health, Labor, and Welfare, No. 312 of August 2, 2016, last revision: Public Notice of the Ministry of Health, Labor, and Welfare, No. 6 of January 15, 2020）.

(93) 坂爪洋美「男性育休 働き方改革の一步」『読売新聞』2022.8.24 (Sakazume Hiromi, “Paternity Leave: One Step Toward Working Reform,” *Yomiuri Shimbun* 2002.8.24).

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ISBN: 978-4-87582-943-0