

Karōshi, Karō Jisatsu, and Gender Discrimination: Japan’s Human Rights Violations

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I. INTRODUCTION

“Worldwide, there is an endeavor to provide safe and healthy workplaces for all working populations as a basic human right.”¹ What is a safe and healthy workplace? Does it include gender equality? Or an employee’s right to a physically, emotionally, and mentally healthy and safe work environment?

This article will discuss two prominent workplace issues in Japan: (1) *karōshi*² and *karō jisatsu*³; and (2) gender discrimination. Both of these issues violate human rights. The discussion will focus on Japanese adult citizens.⁴ There are many other issues that migrants and minors face in the workplace in Japan. While there is some cross-over between minors and adults with regards to the human rights issues presented in this article, the cross-over has not been noted.

The goal of this article is to highlight some of the egregious working conditions that violate human rights. The secondary goal is to bring attention to the NGOs working to make local changes and Japan’s various responses to the human rights violations. The third goal is to present recommendations for change and future research.

This article will begin with a general overview of working conditions followed by an in-depth discussion of *karōshi*, *karō jisatsu* and gender discrimination. Next, this article will present the current domestic laws in Japan, along with international obligations in Japan followed by a discussion of the current responses by the Japanese government, and the

¹ Maureen F. Dollard, Akhito Shimazu, Rusli Bin Nordon, Paula Brough, & Michelle R. Tuckey, *The Context of Psychosocial Factors at Work in the Asia Pacific*, in PSYCHOSOCIAL FACTORS AT WORK IN THE ASIA PACIFIC, at 3 (Maureen F. Dollard et al. eds., 2014).

² Health conditions, such as cardiovascular disease, caused by the stress in the workplace and the overwork of people.

³ Suicide caused by overwork and stress in the workplace.

⁴ “Adults” is defined based on the age of the majority.

NGOs in Japan. The international response to the Trans-Pacific Partnership Agreement will be presented. The article will conclude with the author's recommendations for change and future research.

II. WORK CONDITIONS FOR JAPANESE CITIZENS

Problematic working conditions are present around the world, and Japan has not escaped this issue. There are two human rights issues affecting Japanese citizens that are at the forefront of the news in Japan and globally. The first is the health of Japanese workers; both health problems caused by overworking, known as *karōshi*, and people committing suicide due to the stress of work, known as *karō jisatsu*.⁵ The second is gender discrimination, mostly targeting women.

In evaluating the work-place conditions in Asian countries, Maureen Dollard et al. examines the employment conditions and reasons behind them.⁶ One characteristic of East Asia, including Japan, is that social support comes predominantly from the family.⁷ However, “it exemplifies a productive world of welfare—where nations emphasize economic development over social policy and “productivist” economic goals drive social policy.”⁸

External forces directly impact workplace health, safety, and policy. One of these forces is the presence of unions and their density⁹ throughout the country.¹⁰ “Although union strength within enterprises is an important consideration for working conditions, union density at a national level may give some indication of the power of employees to influence national labor policy (work, health and safety legislation, workplace rights and conditions) and welfare policies in favour of employees.”¹¹ A study of European countries showed the “psychosocial^[12] safety climate” was in relation to

⁵ *Karōshi* and *karō jisatsu* will be combined into the same section due to most of the literature and research using the one term to describe both.

⁶ Maureen F. Dollard, et al., *supra* note 1.

⁷ *Id.* at 10.

⁸ *Id.* (citing J. Hudson & S. Kühner, Analyzing the Productive Dimensions of Welfare: Looking Beyond East Asia in *NEW WELFARE STATES IN EAST ASIA: GLOBAL CHALLENGES AND RESTRUCTURING*, 35-59 (G.J. Hwang ed. 2011)).

⁹ Density is defined as the ratio of those in unions divided by all wage earners in the country. *Trade Union Density*, OECD Employment & Labour Market Statistics (Mar. 25, 2018), <http://dx.doi.org/10.1787/data-00371-en>.

¹⁰ Maureen F. Dollard, et al., *supra* note 1, at 11

¹¹ *Id.* at 11.

¹² *Id.* at 4 (“Psychosocial risk factors at work refer to those aspects of work organisations that are of human design and construction, that have the potential to cause psychological or physical harm.”).

the density of unions.¹³ Management policies that are concerned with workplace stress, bullying, and other violence are included in the study.¹⁴ In addition, there is a correlation between union density and health, including life expectancy.¹⁵ At the time Dollard et al. published their book, Japan had a unionization rate of 18%¹⁶—a rate that is below other countries identified as social-democratic.¹⁷

According to the U.S. Department of State's 2015 country reports, Japan provides legal protections for employees. Workers have the right to form unions or join unions.¹⁸ Employees joining unions have the right to do so without authorization, and the ability to bargain and strike—without the fear of retaliation¹⁹—with some exceptions.²⁰ Most public-sector employees have the right to bargain collectively, but do not hold the ability to strike. For example, employees of local government utilities are allowed to organize and take part in collective bargaining, but are not allowed to strike.²¹ However, some groups such as firefighters and prison guards, do not hold a right to strike or engage in collective bargaining.²² Additionally, notice of a strike must be given 10 days in advance if striking employees provide services such as electricity, health care, transportation, and mail. The requirement is an added limit to their ability to strike.²³ Moreover, some companies change their structure “to a holding-company structure” to escape compliance with union laws.²⁴ Labor unions lend to the ability to use collective bargaining, however, as will be discussed in the Domestic Laws section, the unions have different rules that may not always be more favorable to the employee.

¹³ *Id.* at 11.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ U.S. DEPARTMENT OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, JAPAN 2015 HUMAN RIGHTS REPORT, available at www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2015&dclid=252767.

¹⁹ The law provides for union members fired for activities related to unions to be reinstated. *Id.*

²⁰ *Id.*

²¹ Kazutoshi Koshiro, *Japanese Public Sector Employment*, in STRATEGIC CHOICES IN REFORMING PUBLIC SERVICE EMPLOYMENT at 155 (Carlo Dell’Arling et al. eds., 2001).

²² JAPAN 2015 HUMAN RIGHTS REPORT, *supra* note 18; Kazutoshi Koshiro, *supra* at 155.

²³ *Id.*

²⁴ *Id.*

A. *Health Problems (Karōshi) and Suicide (Karō Jisatsu) Caused By Overworking*

In Japan, there are two phenomena associated with the health and wellbeing of working citizens. The first is known as *karōshi*, which are health problems resulting in injury or other illnesses. The second is suicide due to overwork, known as *karō jisatsu*.

One of the first court cases to address the issue of *karō jisatsu* was *Dentsu v. Oshima*.^{25,26} The case was based on the death of Mr. Oshima, a 24-year-old working for Dentsu, Inc. (an advertising agency).²⁷ Due to depression and being overworked,²⁸ Mr. Oshima hung himself in his apartment.²⁹ Mr. Oshima's family brought a claim against the Dentsu, Inc. for employer negligence involving Mr. Oshima's health and life.³⁰ The resolution of the case cost the company 168 million yen,³¹ which was paid to the deceased's family.³² Other cases have resulted in awards netting 50 to 100 million yen.³³ The settlement included a pledge that Dentsu would take steps to prevent future incidents.³⁴

One of the earliest cases of *karōshi* happened in the late 1980s.³⁵ After three years with Tsubakimoto Seiko's S-2 factory, Hiraoka Satoru

²⁵ *Dentsu v. Oshima*, 54 Minshu 1155 (S. Ct., Mar. 24, 2000) (Japan) (dismissing the appeal by Dentsu, Inc., and quashing the original decision against plaintiffs and remanding to the original court); *Details of 1998 (O) 217*, Supreme Court of Japan (Mar. 25, 2018), http://www.courts.go.jp/app/hanrei_en/detail?id=1243.

²⁶ Norito Kawakami, Jungsun Park, Maureen F. Dollard, & Junming Dai, *National Status of Psychosocial Factors at Work in Japan, Korea, Australia, and China*, in *PSYCHOSOCIAL FACTORS AT WORK IN THE ASIA PACIFIC*, at 28 (Maureen F. Dollard et al. eds., 2014).

²⁷ *Dentsu Admits Fault in Worker Suicide*, JAPAN TIMES (June 24, 2000), <https://www.japantimes.co.jp/news/2000/06/24/national/dentsu-admits-fault-in-worker-suicide/#.WrhKEmbMz-Y>.

²⁸ Mr. Oshima would work past 2:00 a.m. approximately four times each month, which then increased to more than five times a month. In the end, Mr. Oshima was working late "two out of every five days" and most of the time, he was there until 6 a.m.; leaving to go home to change and return to work. *Id.*

²⁹ *Id.*

³⁰ Norito Kawakami, *supra* note 26, at 28.

³¹ For reference, on December 31, 2001, 130.97 yen equaled 1 US dollar. *US Dollar to Japanese Yen Spot Exchange Rates for 2001 from the Bank of England*, PoundSterling Live (Feb. 16, 2018), <https://www.poundsterlinglive.com/bank-of-england-spot/historical-spot-exchange-rates/usd/USD-to-JPY-2001>.

³² Kawakami, *supra* note 26.

³³ *Id.* at 28.

³⁴ *Dentsu Admits Fault in Worker Suicide*, *supra* note 27.

³⁵ Robert Scott North, *Karōshi Activism and Recent Trends in Japanese Civil*

passed away at his home of a heart attack.³⁶ Mr. Hiraoka rose through the ranks over 28 years to be a section chief with the company.³⁷ However, due to an increase in workload without any increase in the number of employees to take on the work, the existing employees suffered.³⁸

For workers in the S-2 plant, this meant an increase in workload. Saturday holidays were abolished, and the plant was operated around the clock. However, to keep costs down, it was done with only two shifts of workers each putting in large amounts of overtime and holiday work. Meeting production quotas was difficult because of labor shortages and mechanical breakdowns.³⁹

Due to the demands, the section chiefs, including Mr. Hiraoka and seven others, worked to cover the missing two section chiefs.⁴⁰ They each worked a double shift once a week.⁴¹ Section chiefs were tasked with training, repairs, quality control, supervision, and line work, among other duties.⁴²

The work demands also impacted Mr. Hiraoka's family life.⁴³ His daughter began to resent her father for his absence from the family.⁴⁴ At times, she had heated arguments with her father over his working hours.⁴⁵ His son "had few memories of his father, but he remembered offering to walk with him to the train station 'to eat ice cream' when he had to work the night shift . . ."⁴⁶

Sure that the company's policies directly caused Mr. Hiraoka's early death, Mrs. Hiraoka found support from attorneys that had started a coalition to sue employers for deaths by *karōshi*.⁴⁷ On July 7, 1988, Mrs. Hiraoka, along with her children, the media, and her attorneys, filed for

Society: Creating Credible Knowledge and Culture, 11 JAPANSTUDIEN 79, 85 (2017).

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.* at 87.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.* at 85-86.

workers' compensation.⁴⁸ Fortunately, Mrs. Hiraoka found her husband's schedule, which outlined his work hours because his employer refused to provide time cards to the family.⁴⁹ Mrs. Hiraoka also found evidentiary support in Mr. Hiraoka's notes reflecting his feelings about the pressures at work.⁵⁰ Finally, when the paystubs and time sheets were made available, it became clear that

Mr. Hiraoka did not have a single 24-hour period off between 4 January 1989 and 23 February when he collapsed. According to his pay receipts, paid overtime in the last three months of his life averaged 150 hours a month, exceeding the 110 hour limit imposed by the firm's Article 36 agreement with the company union.⁵¹

In sum, Mr. Hiraoka had been subjected to terrible conditions due to working 150 hours a month and a lack of a 24-hour rest period for several weeks.

Through testimony, it became apparent the company did not see Mrs. Hiraoka as deserving of any additional compensation.⁵² Even more apparent was that Mr. Hiraoka was not valued by the company due to the fact that the factory manager was unable to recall the date Mr. Hiraoka died.⁵³ This lack of knowledge "caused the judge to wonder aloud from the bench how a firm with such managers could stay in business."⁵⁴ Mrs. Hiraoka saw this as a lack of compassion on behalf of the employer.⁵⁵ In response, Mrs. Hiraoka and her supporters handed out leaflets in front of the business on the 23rd of every month—the day Mr. Hiraoka died.⁵⁶

The case settled with the help of the court.⁵⁷ "The court proposed a compromise that both parties accepted."⁵⁸ The accepted compromise was that Mrs. Hiraoka received a public apology and 50 million yen, Mrs.

⁴⁸ *Id.* at 88.

⁴⁹ *Id.* at 86-88.

⁵⁰ *Id.*.

⁵¹ *Id.* at 93.

⁵² The testimony included claims that Mr. Hiraoka's "health was his responsibility." *Id.* at 94. In addition, there was testimony by those within the company highlighting that not only were they not told of any health conditions, they believed Mr. Hiraoka was negligent in maintaining his own health by smoking and drinking. *Id.*

⁵³ *Id.* at 94-95, 97.

⁵⁴ *Id.* at 95.

⁵⁵ *Id.* at 97.

⁵⁶ *Id.*

⁵⁷ *Id.* at 95.

⁵⁸ *Id.*

Hiraoka dropped the remaining claims, and both sides bore their own costs.⁵⁹ The Hiraoka case was the start of a movement that started with one prefecture⁶⁰ and expanded to the entire country.⁶¹

Recent cases involving work-related deaths and illnesses continue to plague Japan. In 2010, for example, an employee of a restaurant chain hanged himself after being forced to work excessively long hours.⁶² In 2014, the court ordered the restaurant to pay the worker's family 58 million yen.⁶³ It was later revealed, during the seven months of trial, that the man had worked around 200 hours of overtime per month.⁶⁴ In 2015, a 24-year-old Dentsu employee took her own life by jumping from a Dentsu owned dormitory.⁶⁵ In 2013, a 31-year-old broadcaster for NHK died of heart failure, which was attributed to overwork.⁶⁶ These are only a handful of many such cases.

1. Background and Statistics

Currently, Japan's Ministry of Health, Labour and Welfare ("MHLW") recognizes *karōshi* in two cases: (1) "death from cardiovascular illness linked to overwork[;]" and (2) "suicide following work-related mental stress."⁶⁷ Rachel Middleton, citing an unknown Japan Times article, has suggested that the death will be considered *karō jisatsu* after the employee has worked at least 160 overtime hours in a month, or in excess of 100 overtime hours in a three-month period.⁶⁸

⁵⁹ *Id.*

⁶⁰ A Japanese prefecture is equivalent to a state in the United States.

⁶¹ North, *supra* note 35, at 95-101.

⁶² Justin McCurry, *Clocking off: Japan Calls Time on Long-Hours Work Culture*, GUARDIAN (Feb. 22, 2015, 8:34 EST), <http://www.theguardian.com/world/2015/feb/22/japan-long-hours-work-culture-overwork-paid-holiday-law>.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ Kirk Spitzer, *Japanese Are Working Themselves to Death—Literally*, USA TODAY (Oct. 17, 2016), <https://www.usatoday.com/story/news/world/2016/10/17/japanese-working-themselves-death--literally/92277952/>; Brett Molina, *Japan Struggles with 'karoshi,' or Death by Overwork, After Deaths of 2 Young Women*, USA TODAY (Oct. 6, 2017), <https://www.usatoday.com/story/news/world/2017/10/06/japan-struggles-karoshi-death-overwork-after-deaths-2-young-women/738915001/>.

⁶⁶ Molina, *supra* note 65.

⁶⁷ Rachel Middleton, *More Japanese workers dying from overwork or karōshi*, INTERNATIONAL BUSINESS TIMES (Apr. 5, 2016), <http://www.ibtimes.co.uk/more-japanese-workers-dying-overwork-karoshi-1553133>.

⁶⁸ *Id.*

To track both issues, *karō jisatsu* and *karōshi*, the Japanese government conducts surveys every five years.⁶⁹ Since 1982, The *National Surveys of Health Status of Workers* have been utilized to track both issues.⁷⁰ The results of the surveys revealed that “[s]ixty-one percent of employees in Japan reported strong worry, anxiety, or stress at work or in their working life in 2012[.]”⁷¹ In comparison, the 2007 survey showed a slight decrease to 58%.⁷² Additionally, 0.79% of Japan’s 6 million people in the workforce are estimated to be on leave due to mental disorders.⁷³

Through the surveys, it became evident the rate of suicide initially increased and then remained steady.⁷⁴ In 1997, the number of suicides was approximately 6,000.⁷⁵ This increased to approximately 9,000 in 1998 and remained at this level until 2007.⁷⁶ In contrast, there was a decline in 2011 to 8,207 suicides and 7,421 suicides in 2012.⁷⁷ Out of the 25,427 reported suicides for 2014, the fourth-largest reason was work-related.⁷⁸ While the government has administered these surveys, the response to the suicides has been slow and insufficient. As discussed later, attempts such as the “Premium Friday plan” fell short.⁷⁹ Additionally, changes in law are slow, confusing, and not well enforced.

According to a recent news article, the amount of claims filed for worker’s compensation was “a record high of 1,456 in the year ending March 2015.”⁸⁰ These claims are mostly centered in four main fields of work, which have been experiencing a decline in the number of employees: (1) health care services; (2) construction; (3) shipping industry; and (4) social services.⁸¹ Additionally, Hiroshi Kawahito, the secretary-general of the National Defense Counsel for Victims of Karoshi, informed the International Business Times that 95% of the cases he has worked on since

⁶⁹ Kawakami, *supra* note 26, at 28.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ JAPAN 2015 HUMAN RIGHTS REPORT, *supra* note 18.

⁷⁹ See discussion *infra*, Section III.A.1.

⁸⁰ Middleton, *supra* note 67.

⁸¹ *Id.*

the 1980s involved middle-aged men.⁸² Kawahito now estimates around 20% of the cases involve women.⁸³ Lastly, the percentage of suicides due to work-related issues has risen 45% for those 29 years old and younger and 39% among women.⁸⁴

The businesses and government have also felt an impact. Loss of labor due to mental health related sick leave is estimated at 950 billion yen.⁸⁵ In 2012, 169 out of 1,257 claims filed for mental health disorders from work were for suicide-related claims.⁸⁶ This is an increase of four times over ten years.⁸⁷ Of the claims submitted, 38% of those for mental health were approved,⁸⁸ and of those approved, 55% were for suicide.⁸⁹

These staggering statistics demand a drastic change in Japan's inadequate policy.⁹⁰ Businesses have responded to this crisis by increasing activities that promote mental health.⁹¹ However, employers may start cutting these programs due to the current economic crises.⁹² A new public policy will need to be created to protect employees who lose their job(s) or are working on contracts that may end at any time.⁹³ As the workforce ages, mental health resources will continue to be needed.⁹⁴

At this time, employees are entitled to take an average of 18.5 days of paid leave each year.⁹⁵ This total falls short of the international average of 20.5 days.⁹⁶ In one year, there are fifteen paid holidays.⁹⁷ Additionally, ten days each year are required as a minimum to be made available to employees.⁹⁸ Generally, the laws regarding time off are enforced

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ Kawakami, *supra* note 26, at 28.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ McCurry, *supra* note 62.

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

effectively.⁹⁹ Penalties for violating labor laws regarding time off may include imprisonment and fines.¹⁰⁰

Loyalty and peer pressure are the driving motives behind some of the intense working behavior. According to the government, “[a]bout 22% of Japanese work more than 49 hours a week.”¹⁰¹ One worker, Erika Sekiguchi, indicated that she has not used many of her vacation days because no one else uses his or hers.¹⁰² A health ministry official, Yuu Wakebe, has been working one hundred hours of overtime each month and “blames the irresistible pressure to match one’s colleagues, hour for hour.”¹⁰³ The strenuous work habits, including both perceived and actual peer pressure, are causing roughly two hundred *karōshi* type deaths each year.¹⁰⁴

There may, however, be some inconsistencies involving the news that is being reported. Journalist Rachel Middleton’s article states that there are no limits to the hours worked by employees.¹⁰⁵ However, a prior news source starts its article by acknowledging an eight-hour limit to the day.¹⁰⁶ As will be discussed later in the article, there is the Labor Standard Act, which includes articles regarding limits on daily hours and weekly hours.¹⁰⁷ However, there are no laws that cap overtime hours.

2. Literary Review

Social movements set trends and have a way of creating changes in laws and policies. Robert Scott North, faculty member at Osaka University, School of Human Sciences, examines the social movement to end *karōshi* in his work, *Karōshi Activism and Recent Trends in Japanese Civil Society: Creating Credible Knowledge and Culture*.¹⁰⁸ Following the Hiraoka case, the social movement targeted the phenomena of *karōshi*.¹⁰⁹ Following the settlement, two different groups produced and performed a play based on

⁹⁹ JAPAN 2015 HUMAN RIGHTS REPORT, *supra* note 18.

¹⁰⁰ *Id.*

¹⁰¹ McCurry, *supra* note 62.

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ Middleton, *supra* note 67.

¹⁰⁶ McCurry, *supra* note 62.

¹⁰⁷ This will be further discussed in the Domestic Laws, International Treaties and Agreements section below.

¹⁰⁸ North, *supra* note 35, 79-84, 95-101.

¹⁰⁹ *Id.* at 95.

the events.¹¹⁰ The play “mobilizes images of protection, mutual care, and love and insists that compassion and familial relations are the essential foundation of both a good society and a good business.”¹¹¹ It also added to the movement through culture.¹¹² After the success of the play, the two groups—which had combined into one for the production of the play—“published a volume of reflections and opinions about the play and the movement entitled No More Karōshi (Nō Moa Karōshi).”¹¹³ Part of the social movement took a hit when the focus of some involved turned away from the social aspect, and instead turned toward the individual cases of *karōshi*.¹¹⁴ Even with the disruption in the social movement, the lawyers at the National Defense Counsel for Victims of Karoshi, along with other professionals, victims, and families, have continued to make progress for victims’ families.¹¹⁵

North also criticizes the drawn-out process citizens must go through to apply for compensation from the government in the event of *karōshi*.¹¹⁶ The process involves an evaluation of the cause and effect between the harm and the work.¹¹⁷ If the worker or the worker’s family petitions for compensation and clear cause/effect is easy to establish, such as the worker being killed on the job, the compensation is paid out without delay.¹¹⁸ In *karōshi* cases, however, the cause/effect relationship is difficult to establish and it often takes years for compensation to be approved.¹¹⁹ The Ministry’s unwillingness to recognize *karōshi*, along with the lengthy court process—if one can make it to the process—deters many from starting the process.¹²⁰ The evidentiary procedure further complicates redress/compensation.¹²¹ In these cases, the plaintiff (employee/family) is not allowed to see the evidence the defense (employer) has submitted until later in the process.¹²² Without being able to see the evidence that the employer is submitting, the

¹¹⁰ *Id.* at 98-100.

¹¹¹ *Id.* at 98.

¹¹² *Id.*

¹¹³ *Id.* at 99.

¹¹⁴ *Id.*

¹¹⁵ *Id.* at 80.

¹¹⁶ *Id.* at 83.

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.* at 83-4.

¹²¹ *Id.* at 84.

¹²² *Id.*

employee/family is not able to fully present their case without knowing what the defendant has or is using in their defense.

In an article in the *Journal of Business Ethics*, Atsuko Kanai also wrote about *karōshi*. Kanai focuses more on the overall situation in Japan since the 1990s, following Japan's economic collapse.¹²³ Kanai examines the amount of deaths from cerebral and cardio diseases in relation to the number of workers' compensations claims that are approved.¹²⁴ There are no reported compensation statistics on deaths from these diseases prior to 1997.¹²⁵ However, in 2006 Kanai did find that there were 355 workers' compensation claims approved based on cerebral and cardio diseases and mental health problems.¹²⁶ Of those reported, 147 were deaths while 205 were mental health cases, including 66 suicide cases (deaths and attempted).¹²⁷ Kanai opines there may be a discouraging factor based on the low approval of workers' compensation claims.¹²⁸

Kanai also focuses on the distribution of the workers in Japan. The people working longer hours are men in their late twenties to early forties.¹²⁹ In contrast, those outside of this age range are working shorter hours.¹³⁰ There has been a decrease in regular employees and in the amount of people working thirty to sixty hours.¹³¹ However, the problem lies in the void that is created by these decreases in employees.¹³² For example, approximately 20% of those between 15 and 24 years old fall into one of three categories: those employed as part-time or temporary employees, those currently unemployed but looking for part-time work, or those currently unemployed and not in school but interested in part-time work.¹³³ This is causing an increase in the number of workers who work less than thirty hours or more than sixty hours.¹³⁴

Kanai also explores the job title of those affected by overwork and its effect on family life. Kanai writes that most people who are overworked

¹²³ Atsuko Kanai, "Karoshi (*Work to Death*)" in *Japan*, 84 J. BUS. ETHICS 209 (2008).

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.* at 210-11.

¹³⁰ *Id.* at 211.

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.* at 212.

¹³⁴ *Id.* at 211.

are in managerial positions, specifically assistant managers.¹³⁵ There was also a finding that in situations when there is a conflict between work and family life, the family life appears to suffer.¹³⁶ There is also a correlation as to the quality and time of family life. With a full-time housewife, the working husband had little connection to their family life and would even feel the family was taking away from their work life.¹³⁷

“People work to live, not to die.”¹³⁸ Kanai presents recommendations on how to deal with the *karōshi* problem in Japan. Kanai argues for awareness all around and that responsibility should also lie with the organization, not just the individual working.¹³⁹ Organizations should turn to human rights and a sense of social ethics when deciding appropriate work hours.¹⁴⁰ The shared responsibility makes *karōshi* a social problem, requiring cooperation from everyone involved to fix it.

B. Gender Discrimination

Several stories of gender discrimination in Japan are starting to make their way to the press. The stories include women being forced out of the workforce either by the employer or the public policies and shortcomings of the government. One such story about a single mother trying to go back to work after giving birth to her first child made a huge impression on the people and the government.¹⁴¹ An anonymous blog posting in February 2016 told the story of a mother who was unable to find daycare services for her child, including government provided childcare.¹⁴² The author, due to the lack of daycare, was forced to leave her job to care for her child.¹⁴³ The government-funded daycare system was implemented in the 1970s.¹⁴⁴ During this time, it was accepted that a woman in Japan would leave the workforce after she gave birth.¹⁴⁵ Daycare was created for families in need of two incomes and available spots are distributed

¹³⁵ *Id.* at 213.

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.* at 215.

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ Kirk Spitzer, *Japan Gets The Message as Working Mom's Complaint Goes Viral*, USA TODAY (Mar. 16, 2016), <http://www.usatoday.com/story/news/world/2016/03/14/japan-gets-message-working-moms-complaint-goes-viral/81764680>.

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

according to the family's income and the child's age.¹⁴⁶ Recently, due to the rising costs in raising a child, mothers are returning to work, which is causing a higher demand for daycare services than is available at government facilities.¹⁴⁷ The blog went viral and entered Japan's mainstream media.¹⁴⁸

The government's initial response caused a public outcry.¹⁴⁹ While addressing the *Diet*¹⁵⁰ on February 29, 2016, Prime Minister Shinzo Abe commented, "[s]ince it (the blog post) is anonymous, there's no way to tell if it's genuine."¹⁵¹ Picketers converged on the *Diet* building.¹⁵² Many brought small children and held signs saying "'*Watashi da*' – 'It's me!'"¹⁵³ A petition seeking better daycare was started and received 28,000 signatures over four days.¹⁵⁴ The Minister of Health, Labour and Welfare received the petition on March 9, 2016.¹⁵⁵ Public outcry led to Prime Minister Abe promising in March 2016 to create 500,000 new spots in the daycare system by the end of 2017.¹⁵⁶ However, in 2017, Prime Minister Abe stated it would take until 2020 to eliminate the daycare waitlists.¹⁵⁷

The anonymous mother's story and experience is not an isolated event. Tomoko Nakazawa gave an interview to another newspaper while at the protests.¹⁵⁸ "[A] single mother from the Tokyo suburbs, [Tomoko Nakazawa] told the *Mainichi Shimbun* newspaper last week that she took part in the Diet protest because she had failed to find day care for her 10-

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ The Diet, or National Diet, is the bicameral legislature in Japan. *Diet: Japanese government*, ENCYCLOPEDIA BRITANNICA, <http://www.britannica.com/topic/Diet-Japanese-government> (last updated Feb. 23, 2016).

¹⁵¹ Spitzer, *supra* note 141.

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *Japan Extends Deadline to Eliminate Day Care Waiting List*, NIKKEI ASIAN REVIEW (June 1, 2017), <https://asia.nikkei.com/politics-economy/policy-politico/japan-extends-deadline-to-eliminate-day-care-waiting-list>; Isabel Reynolds, *Abe Has to Run to Keep Up as Demand for Childcare Grows in Japan*, BLOOMBERG (June 12, 2017), <https://www.bloomberg.com/news/articles/2017-06-12/abe-has-to-run-to-keep-up-as-demand-for-childcare-grows-in-japan>.

¹⁵⁸ Spitzer, *supra* note 141.

month-old daughter, despite a long search.”¹⁵⁹ When her mother became too sick to take care of the child, Tomoko Nakazawa left her job to care for her child as she had no other option.¹⁶⁰ ““For the past two months, I’ve had no income and I don’t know what to do. I really empathized with this blog. I hope something will change—albeit a small change—by us coming here,” she told the newspaper.”¹⁶¹

Women also endure sexual harassment in the work place. One of those reported is the story of Rina Bovrisse.¹⁶² A manager for Prada Japan, Rina oversaw five hundred employees in stores located in Japan, Saipan, and Guam.¹⁶³ In 2010, the manager of the human resources department, Takahashi Hiroyuki, informed Rina that in order to keep her job, she was required to lose weight so that her appearance would conform to the popular perception of Prada employees.¹⁶⁴ Thirteen other employees were transferred to remote locations for not having the look Prada felt was necessary for their product.¹⁶⁵ The transfers were centered on age, weight, or physical beauty.¹⁶⁶ In 2011, Judge Morioka Reiko ruled against Rina, declaring that Prada was within their right to transfer their employees based on their looks due to the visibility of the employees in the industry.¹⁶⁷ While Rina’s story did not end in a verdict in her favor, it did start the discussion on the effectiveness of Japan’s gender discrimination laws.¹⁶⁸

Even lawmakers are not immune to criticism and harassment resulting from gender discrimination. Shiomura Ayaka, a lawmaker, received criticism and harassment over her marital status and having no children.¹⁶⁹ On June 18, 2014, Shiomura was giving a speech on the floor of the Tokyo Metropolitan Assembly regarding “the implementation of

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² Stephanie Assmann, *Gender Equality in Japan: The Equal Employment Opportunity Law Revisited* (日本における男女平等 雇用機会均等法再考), 12 ASIA-PAC. J.: JAPAN FOCUS (Nov. 3, 2014), <http://apjif.org/2014/12/45/Stephanie-Assmann/4211.html>.

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

gender equality and maternity support” when Suzuki Akihiro made sexist remarks and engaged in “aggressive criticism” of Shiomura.¹⁷⁰

Each of these stories illuminate a larger problem surrounding “traditional” and outdated gender roles for women in the work place. Instead, these are only a couple of the countless stories of gender bias and discrimination in Japan’s workforce.

1. Background and Statistics

According to the 2015 United States Department of State’s Country Report on Japan, there are several ongoing issues in Japan’s workforce. In this section, the article will discuss gender-based discrimination in the workplace.¹⁷¹ This will be followed by a discussion about sexual harassment.¹⁷² Next will be a discussion about discrimination faced by pregnant women.¹⁷³ Finally, this section will discuss the wage gap based on gender.

Japan has taken steps to address these issues. The Japanese government made itself available to the workers to report employment problems. Japan opened hotlines in the prefectures through the local bureau handling labor issues.¹⁷⁴ These departments handle work-related complaints and issues, including sexual harassment.¹⁷⁵

Currently, there are laws in Japan regarding discrimination of women in the workplace, including both direct and indirect forms of discrimination.¹⁷⁶ When an employer violates the law, the MHLW will step in and make recommendations to the employer.¹⁷⁷ When the employer fails to comply with the recommendations, the government may publicly recognize the employer as having not complied.¹⁷⁸ Additionally, if the employer is found to have filed false statements or reports, the government can assess a fine of no more than 200,000 yen.¹⁷⁹ Even with the implementation of these laws, NGOs in Japan are reporting that the attempts in all gender-equality laws in Japan are insufficient.¹⁸⁰

¹⁷⁰ *Id.*

¹⁷¹ JAPAN 2015 HUMAN RIGHTS REPORT, *supra* note 18.

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ *Id.* The laws are further discussed in detail *infra*, in Section III.A.

¹⁷⁷ JAPAN 2015 HUMAN RIGHTS REPORT, *supra* note 18.

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ *Id.* While the report doesn’t specify specific NGOs, there are several NGOs currently active in Japan. These include the Women’s Action Network, National Women’s

The New York Times explored the issue of sexual harassment in Japan evaluating the responses received by the Japanese government from a survey.¹⁸¹ The Japanese government received over 96,000 responses¹⁸² from women that are employed.¹⁸³ Twenty-nine percent of the respondents reported sexual harassment.¹⁸⁴ Of the respondents who reported being subjected to sexual harassment, 54% reported that the harassment was based on age or their appearance, 40% reported unwanted touching, and 38% reported questions that were sexual in nature.¹⁸⁵ Lastly, 27% of the respondents had been asked to go on dates.¹⁸⁶ The New York Times article followed a survey published by the Japanese Trade Union Confederation (“JTUC-RENGO” or “RENGO”).¹⁸⁷ According to RENGO, about 49% of women “had suffered sexual or power harassment in the workplace[,] and 31 percent of those women did not a file a complaint or seek consultation.”¹⁸⁸

While there are no laws that outlaw sexual harassment in the workplace, the Japanese government offers assistance and guidance to address the problem.¹⁸⁹ If the problem persists after the aid of the government, the only recourse is for the government to make it publicly known that the company is not adhering to the recommendations the government has made.¹⁹⁰ According to the U.S. State Department report, there have been no public announcement of companies not complying with the recommendations in sexual harassment cases by the MHLW.¹⁹¹

In addition to sexual harassment, pregnant women face discrimination. Women who become pregnant while working are often

Education Center, Asia-Japan Women’s Resource Centre, and Working Women’s Network. Joyce Wan, *4 Women’s Rights Organizations You Can Support in Japan*, Gaijin Pot (Jan. 16, 2017), <https://blog.gaijinpot.com/4-womens-rights-organizations-can-support-japan/>.

¹⁸¹ *Japan: Survey Of Working Women Says Sexual Harassment is Widespread*, N.Y. TIMES (Mar. 1, 2016), http://www.nytimes.com/2016/03/02/world/asia/japan-survey-of-working-women-says-sexual-harassment-is-widespread.html?_r=0.

¹⁸² Responses were made by mail or online and had an 18% response rate. Additionally, a margin of error was not noted. *Id.*

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ See JAPAN 2015 HUMAN RIGHTS REPORT, *supra* note 18.

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

forced to resign or are demoted.¹⁹² In two separate incidents during 2014, there was a forced resignation and a demotion of pregnant women—both cases resulted in the imposition of penalties on the employer.¹⁹³ One employer forced a woman to resign from her job when she became pregnant.¹⁹⁴ The MHLW consulted with the employer, who refused to follow the recommendations to correct the situation.¹⁹⁵ The penalty for not following the recommendations was to be publicly named by the MHLW.¹⁹⁶ The 2015 Human Rights Report noted that there had not been any incidents of publicly naming employers for sexual harassment, instead this company was named for discrimination.¹⁹⁷ The 2017 Human Rights Report states that the naming of employers has begun for sexual harassment and continues for discrimination.¹⁹⁸ The 2017 Human Rights Report does note that it is rare that this tactic is used.¹⁹⁹ In a separate incident, a hospital in Hiroshima was penalized 1.75 million yen by the Hiroshima High Court for the demotion of a pregnant physical therapist who requested to be put on lighter work duty.²⁰⁰

In addition to forced resignation and demotion, women in Japan are also faced with issues when trying to return to work after giving birth. According to a recent USA Today News article, while there is a focus on increased opportunities for women at work, approximately 30% of women in Japan return to work after having a child.²⁰¹ In 2016, Prime Minister Abe vowed to increase the amount of government-run daycare facilities by 500,000 new slots by the end of 2017.²⁰²

There is also a wage gap between men and women. “Women’s average monthly wage was approximately 70 percent of that of men.”²⁰³ In November 2015, it was reported that the employment rate for women

¹⁹² *Id.*

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ U.S. DEPARTMENT OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, JAPAN 2017 HUMAN RIGHTS REPORT, available at <https://www.state.gov/j/drl/rls/hrrpt/2015humanrightsreport/index.htm?year=2015&dclid=252767#wrapper>.

¹⁹⁹ *Id.*

²⁰⁰ See JAPAN 2015 HUMAN RIGHTS REPORT, *supra* note 18.

²⁰¹ Spitzer, *supra* note 141.

²⁰² *Id.*

²⁰³ JAPAN 2015 HUMAN RIGHTS REPORT, *supra* note 18.

ranging in age from 15 to 64 was up to 65.4%.²⁰⁴ However, women were still earning, on average, 30% less than their male counterparts.²⁰⁵ The wage gap has been attributed to the type of work women go into and the availability of the industries needing employees.²⁰⁶

2. Literary Review

This section will review the work of five authors. The first is Darlene Budd, who wrote about the gender-based discrimination in Japan. The second is Justin Charlebois, who discussed the role of men in changing the gender gap. The third review is of Stephanie Assmann's evaluation of the Equal Employment Opportunity Law in Japan. Fourth, this article will review Haruhiko Hori's article discussing the gender wage gap. Finally, Kumiko Nemoto's article proposing that long work hours intertwined with culture impact women in the workplace will be discussed.

Darlene Budd, writing for the *Journal of the Institute of Justice and International Studies*, evaluated gender-based discrimination in Japan. The article looked at the possible movement of women consciously choosing to not marry and asserts that the choice to not marry is correlated with gender discrimination in the workplace.²⁰⁷ According to Budd, this trend stems from younger women living with their parents.²⁰⁸ Living at home and working allows them to accumulate disposable income.²⁰⁹ The ability to have freedom in movement while also having disposable income is being used to rebut society's stereotypical expectation that the younger woman will marry a 'salaryman' and being a homemaker.²¹⁰ "More women are staying single longer as many women think twice about the idea of marrying a 'salaryman,' having children, and replicating the family relations experienced by the mothers and fathers, and themselves."²¹¹ This has been

²⁰⁴ Yoshiaki Nohara, *A Pay Gap Persists as Even More Japanese Women Join the Workforce*, Bloomberg Markets (Nov. 19, 2015), <http://www.bloomberg.com/news/articles/2015-11-19/pay-gap-persists-as-even-more-japanese-women-join-the-workforce>.

²⁰⁵ *Id.*

²⁰⁶ *Id.*

²⁰⁷ Darlene Budd, *Japan's Silent Revolution: Saying No to Marriage and The System?*, 5 *JJIS* 43, 2005.

²⁰⁸ *Id.* at 50.

²⁰⁹ *Id.*

²¹⁰ *Id.*

²¹¹ *Id.* at 52.

a factor in the decrease of the population in Japan,²¹² and rebukes the traditional role of women in Japan.²¹³

Budd writes, “[g]overnment policies, Japan’s corporate culture, and rigid gender role definitions serve to institutionalize the second-class status of women.”²¹⁴ A UNDR report in 2004 ranked Japan as “the ninth most developed country in the world”²¹⁵ In comparison, Japan ranked 35th in 2004 on the gender empowerment measure (“GEM”), which measures “the participation of females in making political and economic decisions, as well as the ability of females in each country to have and control their own economic resources.”²¹⁶ According to a 2004 report, out of the legislators and managers in Japan, only 10% were women.²¹⁷

Post-World War II, Japan was among many countries which experienced a labor shortage.²¹⁸ While most countries included women in the workforce to address the shortage, Japan discouraged businesses from hiring women and encouraged doubling the working hours for existing employees instead.²¹⁹ “Such extreme measures were intended to reinforce the role of women as wives and caretakers, and that of men as primary breadwinner.”²²⁰ When the labor force started to open up to women, the industries hired “older, married, women as part-time workers” based on the notion that work inside the home takes priority over work outside the home.²²¹ Due to this, women would marry earlier in their lives.²²² They then had children and raised them.²²³ Only after raising their children did they enter the workforce, but only as part-time laborers.²²⁴ These activities were still limited by the woman’s household duties.²²⁵ Additionally, the economic downturn in the 1970s made things worse for women in Japan.²²⁶

²¹² *Id.*

²¹³ *Id.* at 53.

²¹⁴ *Id.* at 43.

²¹⁵ *Id.*

²¹⁶ *Id.* at 44.

²¹⁷ *Id.*

²¹⁸ *Id.*

²¹⁹ *Id.* at 45.

²²⁰ *Id.*

²²¹ *Id.* at 46.

²²² *Id.*

²²³ *Id.*

²²⁴ *Id.*

²²⁵ *Id.*

²²⁶ *Id.*

Due to oil volatility in the 1970s, Japan changed their welfare spending to “maintain an orderly and prosperous society.”²²⁷ Based on the cutbacks, “the government stated that the ‘family’ would be responsible for child rearing and the care of elderly or sick dependents.”²²⁸ The duty fell to the women in the household.²²⁹

Darlene Budd also acknowledges that the tax code in Japan encourages women to be dependents in the household.²³⁰ Due to the code’s structure, the household income suffers if the wife works even part-time.²³¹ “Households with moderately high second income also risk losing valuable company benefits such as family allowance payments traditionally paid to male head-of-households by large Japanese corporations.”²³² This structure encourages women not to work, or work only part-time, as the alternative would be to increase work hours for either or both parties to make up the loss of benefits.²³³

Darlene Budd is also critical of the Equal Employment Opportunity Law²³⁴ from 1986.²³⁵ Budd indicates that some corporations are still hiring based on looks, and encouraging young women to live at their parents’ houses.²³⁶ Additionally, the creation of in-house committees to enforce the law has failed due to the amount of women in managerial positions.²³⁷ Lastly, penalties for noncompliance with the Equal Employment Opportunity Law tend to be insignificant – partially due to a lack of women in political roles.²³⁸

Justin Charlebois writes about the “nonhegemonic masculinities” some men show in Japanese culture and discusses the impact this has on the gender gap in society and employment.²³⁹ These men “challenge and

²²⁷ *Id.*

²²⁸ *Id.*

²²⁹ *Id.*

²³⁰ *Id.*

²³¹ *Id.*

²³² *Id.* at 47.

²³³ *Id.*

²³⁴ The Equal Employment Opportunity Law will be discussed in Gender Based Employment Laws: Discrimination/Equality, Pregnancy and Childbirth, Marriage section.

²³⁵ Budd, *supra* note 207, at 47.

²³⁶ *Id.*

²³⁷ *Id.*

²³⁸ *Id.*

²³⁹ Justin Charlebois, *Herbivore Masculinity: Opposition or Accommodation to Hegemonic Masculinity*, in ROUTLEDGE INTERNATIONAL HANDBOOK OF RACE, CLASS, AND GENDER 117, 117 (Shirley A. Jackson, ed., 2015).

interrogate cornerstone elements of hegemonic masculinity[[][,]” including “contest[ing] many of the time-honored practices associated with hegemonic masculinity such as excessive tobacco and alcohol consumption, chronic workaholicism, emotional illiteracy, and the subordination of women.”²⁴⁰

Starting with the housewife in post-World War II Japan, Charlebois compares her to the salaryman with a focus on the gender roles each played.²⁴¹ In post-World War II Japan,

middle-class men and women could access a stable lifestyle by enacting the complementary roles of salaryman hegemonic masculinity and fulltime housewife emphasized femininity. . . . [A] heterosexual patriarchal family ideology underlies salaryman masculinity, thus men are expected to perform the roles of husband and daikokubashira (‘family breadwinner’). It is a commonplace practice for a salaryman’s wife to undertake nonpermanent part-time work; however, men are expected to serve as the primary family providers Men are expected to be not only productive in the workforce but also reproductive in the sense of starting and financially supporting a family. . . . Salarymen . . . accrue material wealth, social prestige, and institutional authority. Specifically, corporations regard their employees with benefits that can include health care, a housing subsidiary, marriage bonus for newly married employees, subsequent bonuses for each child, and pension coverage for nonworking women and for this reason can be viewed as ‘total providers’[242].²⁴³

Another writer, Stephanie Assmann, evaluates the effectiveness of the Equal Employment Opportunity Law in Japan. Assmann discusses the current status of gender equality in employment under Prime Minister Abe.²⁴⁴ Reviewing the Gender Inequality Index,²⁴⁵ she concludes that Japan ranks low when it comes to the representation of women in politics and

²⁴⁰ *Id.* at 117.

²⁴¹ *Id.* at 118-20.

²⁴² *Id.* at 119 (citing Masanori Sasaki, *The Mentality of Post-Company People*, in YURAGU SARARIIMAN SEIKATSU (UNCERTAIN SALARYMAN LIFE) (F. Taga, ed., 2011) at 159-85).

²⁴³ *Id.* at 118-19.

²⁴⁴ Assmann, *supra* note 162.

²⁴⁵ “The [UNDP’s] Gender Inequality Index (GII) examines gender inequality in the three broad areas: reproductive health, empowerment, and economic activity.” *Id.*

ranks mid-range in regards to labor and gender equality.²⁴⁶ Examining the Gender Gap Index,²⁴⁷ Assmann comes to the conclusion Japan ranks low in gender equality, resulting in “105 out of 136 countries[.]”²⁴⁸ Assmann also analyzes the history and trends of Japan’s laws regarding gender equality and discrimination in the workplace.²⁴⁹

Haruhiko Hori evaluates the reason for the gender wage gap in his article, *Labor Market Segmentation and the Gender Wage Gap*.²⁵⁰ Using a 2000 Population Census, the author compares the number of women and men in different fields of employment.²⁵¹ Hori points out that certain industries are predominantly male employees and others are predominately female employees.²⁵² Then, using an equation (the Duncan Index²⁵³), Hori concludes that “men’s and women’s occupational distributions would not be the same unless 51.1% of men (or women) changed occupation.”²⁵⁴ Based on calculations through varying equations, the author concludes that the segregation in the different types of industries explains only a small portion of the gap in pay: approximately 5.1%.²⁵⁵ The author also suggests that further research into the segregation of industries by sex be done, as there were limited resources available in doing the calculations for this article.²⁵⁶ However, if the segregation in the industries is due to bias of the employer, future policy changes may be needed.²⁵⁷

²⁴⁶ *Id.*

²⁴⁷ *Id.* (“The Gender Gap Index, which was introduced by the World Economic Forum in 2006 as ‘a framework for capturing the magnitude and scope of gender-based disparities and tracking their progress’[.]”).

²⁴⁸ *Id.*

²⁴⁹ *Id.*

²⁵⁰ Haruhiko Hori, *Labor Market Segmentation and the Gender Wage Gap*, 6 THE JAPANESE INSTITUTE FOR LABOUR POLICY AND TRAINING 5, (Winter 2009).

²⁵¹ *Id.* at 5-7.

²⁵² *Id.* at 5-7.

²⁵³ The Duncan Index is used to “estimate[] occupational/node/value chain gender segregation.” *Duncan Index*, Development Practitioner (Aug. 12, 2013), <http://practitioner.tools4valuechains.org/tool/duncan-index>. The index is used to show how many women are in certain occupations. It also shows the breakdown of women in certain occupations based on the different tasks of the occupation, such as “skilled-non-skilled.” *Id.*

²⁵⁴ *Id.* at 7.

²⁵⁵ *Id.* at 16.

²⁵⁶ *Id.* at 16-17.

²⁵⁷ *Id.* at 17.

Another possible explanation for the wage gap in Japan is the balance of preferred working conditions and pay.²⁵⁸ If the wage is low, but the working conditions are preferable due to things such as hours, commute, or workday times, one may choose to take the lower pay.²⁵⁹ If more women find these conditions favorable and men find the salary to be more important, the distribution of wages may be negatively impacted.²⁶⁰ If this explanation is the prevailing one, Hori suggests that future policy will not affect the wage gap.²⁶¹

Kumiko Nemoto investigated the correlation between long working hours and a culture that is keeping women from succeeding in management roles.²⁶² Through interviews with participants in Nemoto's research, it was clear that the stereotypes and perceived notions of the work environment are causing a gap in women taking part in management roles.²⁶³ Working women are expected to tend both to family and to their jobs.²⁶⁴ Many women have either felt that childrearing and work are not compatible, or that they could not return after giving birth.²⁶⁵ Additionally, the workplace atmosphere is more masculine based on the aggressive nature of competition between co-workers, the long hours (which there is a claim working women do not want to work), and stress in management.²⁶⁶

Ryoko Sakuraba looked at the issue by asking if discrimination in the workplace is a human rights issue or a policy problem.²⁶⁷ "The 'human rights' approach treats differences of treatment based on the prohibited grounds . . . as a violation of the human rights of the individual to equal treatment."²⁶⁸ Additionally, "reverse discrimination" [²⁶⁹] is also considered to be against the principle of equality."²⁷⁰ Another approach, the

²⁵⁸ *Id.*

²⁵⁹ *Id.*

²⁶⁰ *Id.*

²⁶¹ *Id.*

²⁶² Kumiko Nemoto, *Long Working Hours and the Corporate Gender Divide in Japan*, 20 GENDER WORK AND ORGANIZATION 512 (Sept. 2013).

²⁶³ *Id.* at 512-25.

²⁶⁴ *Id.* at 512.

²⁶⁵ *Id.* at 515.

²⁶⁶ *Id.* at 513, 519-25.

²⁶⁷ Ryoko Sakuraba, *Employment Discrimination Law in Japan: Human Rights or Employment Policy?*, 6 THE JAPAN INSTITUTE FOR LABOUR POLICY AND TRAINING 181 (2008), www.jil.go.jp/english/reports/documents/jilpt-reports/no6.pdf.

²⁶⁸ *Id.* at 181.

²⁶⁹ When preferential treatment is given to the protected class. *Id.*

²⁷⁰ *Id.*

“employment policy approach[,]’ uses a variety of policy instruments to support individual workers, paying attention to their different attributes, such as their age or disability.”²⁷¹ Sakuraba comes to the conclusion that the issue in Japan is a human rights issue due to the progression of the laws, which are presented below.²⁷² While the courts interpret the laws conservatively, Sakuraba believes that without the laws, the courts would still nullify discriminatory acts of employment.²⁷³

III. DOMESTIC LAWS AND INTERNATIONAL LAWS, TREATIES AND AGREEMENTS

Through Japan’s Constitution and other laws, there appears to be respect for human rights. According to the Constitution of Japan, the fundamental rights enumerated in the Constitution are guaranteed to all citizens of Japan.²⁷⁴ These rights are conferred on today’s citizens and future citizens.²⁷⁵ “All of the people shall be respected as individuals. Their right to life, liberty, and the pursuit of happiness shall, to the extent that it does not interfere with the public welfare, be the supreme consideration in legislation and other governmental affairs.”²⁷⁶ The government is to use its powers to further the public health, social welfare, and security.²⁷⁷ This includes recognition of both a right and an obligation for citizens to work in order to further the social welfare.²⁷⁸ Lastly, the public health and welfare when it comes to work—minimum wage, work hours, etc.—will be enumerated by law.²⁷⁹

A. *Domestic Laws*

Beyond the Constitution of Japan, Japan passed several laws targeted at employment, further showing a commitment to human rights. The primary laws are the Labor Standards Act and the Act on Securing, Etc. of Equal Opportunity and Treatment between Men and Women in Employment.

²⁷¹ *Id.* at 181.

²⁷² *Id.* at 181–97.

²⁷³ *Id.* at 199–200.

²⁷⁴ KENPŌ, art. 97.

²⁷⁵ *Id.* art. 11.

²⁷⁶ *Id.* art. 13.

²⁷⁷ *Id.* art. 25.

²⁷⁸ *Id.* art. 27 (emphasis added).

²⁷⁹ *Id.*

1. Work Hours, Wages, Rest Periods, Vacation Time, Medical Leave and Compensation

On April 7, 1947, Japan enacted the Labor Standards Act (Act. No. 49) and has since amended the Act, with revisions in 2012,²⁸⁰ and new revisions went into effect on January 1, 2017.²⁸¹ The act has the goal of setting the working conditions for Japanese citizens consistent with the Japan Constitution.²⁸² These conditions provide the minimum standards for employment terms and conditions.²⁸³ The act explicitly prohibits contracting around the standards if the standards are lower.²⁸⁴ Should this happen, the contract is unenforceable and the Act takes the place of the contract.²⁸⁵

The set hours an employee is allowed to work²⁸⁶ is covered by both the Act and the MHLW.²⁸⁷ The Act sets a working limit of eight hours per day working limit and forty hours per week.²⁸⁸ A labor union contract, however, can change this requirement as follows: (1) the average hours per week cannot exceed 40 hours during a set period of time lasting no longer than a month, and (2) the excess daily and weekly amounts are set to a specific week(s) and specific day(s).²⁸⁹ To contract in this manner, the employer must notify the MHLW.²⁹⁰ Lastly, a worker that sets his/her start and end times may work more extended hours per day/week, so long as the average hours do not exceed the maximum hours during a “settlement period” where the average hours will not exceed the maximum during a period of no longer than one month.²⁹¹

²⁸⁰ Labor Standards Act, Act No. 49 of 1947, translation available at <http://www.japaneselawtranslation.go.jp/law/detail/?id=2236&vm=&re=> (Japan).

²⁸¹ Joanne Martin, *Japan: Annual Update – Expected Labour Law Changes in 2017*, iGlobal Law (Jan. 10, 2017), <https://www.igloballaw.com/japan-annual-update-expected-labour-law-changes-in-2017/>

²⁸² Labor Standards Act, *supra* note 280, art. 1(1).

²⁸³ *Id.* art. 1(2).

²⁸⁴ *Id.*

²⁸⁵ *Id.* art. 13.

²⁸⁶ Some employees are exempt from these limits due to the “necessity in order to avoid public inconvenience or other special needs” and will be set by the MHLW. *See Id.* at art. 40. Also excluded are those “in positions of supervision or management or persons handling confidential affairs, regardless of the type of [b]usiness.” *Id.* at art. 41(ii).

²⁸⁷ *Id.* art. 15.

²⁸⁸ *Id.* art. 32(1)–(2).

²⁸⁹ *Id.* art. 32-2(1).

²⁹⁰ *Id.* art. 32-2(2).

²⁹¹ *Id.* art. 32-3.

Overtime hours are discussed in Articles 36 and 37 of the Act. The MHLW is charged with setting the standards and wages for overtime work.²⁹² The Ministry will also supply assistance to the employer and any labor unions involved in an advisory capacity.²⁹³ When an employer requires longer working hours, the employer must pay the employee between 25% and 50%²⁹⁴ over the standard wages for the working hour.²⁹⁵ If the employer requires more than sixty hours of overtime per month, the employer must pay more than 50% of the normal wage the employee would earn per hour.²⁹⁶ However, if under a written agreement, the employer allows the employee to take time off in lieu of payment,²⁹⁷ the employer is not required to compensate the employee the premium wage as long as the employee takes time off.²⁹⁸

Rest periods and days off are stipulated in the same Act. During a six-hour workday, the employee is entitled to a minimum of 45 minutes of rest periods in the day.²⁹⁹ If the workday exceeds eight hours, there is a minimum 60 minutes of rest periods.³⁰⁰ The employer must permit the employee to use the rest period as they wish, and the employer must give the breaks to all employees at the same time unless it has been stipulated differently through a union or of the majority of the workers if there is no union.³⁰¹

For days off, at least one full day must be given to employees each week, unless the employee(s) have had four or more days off in a four-week period.³⁰² If the employer has a written agreement with the labor union or the majority of the workers, they may have workers come in on their days off.³⁰³ The arrangement, however, must comply with the standards set by

²⁹² *Id.* art. 36(2).

²⁹³ *Id.* art. 36(4).

²⁹⁴ This percentage is set by the MHLW. *Id.* art. 37(1).

²⁹⁵ *Id.*

²⁹⁶ *Id.*

²⁹⁷ This is known as compensatory time off, or comp time. *Compensatory Time Off*, UNITED STATES OFFICE OF PERSONNEL MANAGEMENT (Apr. 17, 2016), <https://www.opm.gov/policy-data-oversight/pay-leave/pay-administration/factsheets/compensatory-time-off/> (see page for an in depth explanation).

²⁹⁸ Labor Standards Act, *supra* note 280, art. 37(3).

²⁹⁹ *Id.* art. 34(1).

³⁰⁰ *Id.*

³⁰¹ *Id.* art. 34(2) – (3).

³⁰² *Id.* art. 35(1) – (2).

³⁰³ *Id.* art. 36(1).

the MHLW.³⁰⁴ If an employer requires an employee to work on their day off, the employee will be paid between 25% and 50%³⁰⁵ of the normal working day.³⁰⁶

The government of Japan has also codified a premium payment for employees working overnight. When the employee works between the hours of 10 p.m. and 5 a.m., that employee is compensated at a rate higher than 25% over the normal hourly wage.³⁰⁷ If the MHLW deems that work between 11 p.m. and 6 a.m. is a necessity during a specific season or geographic location, the employee is also to be compensated at a rate higher than 25% over the normal hourly wage.³⁰⁸

The laws of Japan also account for paid vacation. Employers are required to provide ten working days of vacation.³⁰⁹ The time can be provided in consecutive days or it can be divided.³¹⁰ However, this time is not provided to all employees. To be eligible, the employee must have been continuously employed for six months.³¹¹ Additionally, the employee must have worked 80% of the working days³¹² since they started.³¹³ Employees that have been with the employer for at least one and one-half year get paid time off based on a chart that adds days³¹⁴ to the base ten working days.³¹⁵ The employee must have worked at least 80% of the working days to receive the increase.³¹⁶ There are two exceptions to the standard rule: (1) when the working days are considerably lower and (2) when the worker bases their work week on a unit of time other than a week.³¹⁷ In these events, the

³⁰⁴ *Id.* art. 36(3).

³⁰⁵ This percentage is set by the MHLW. *Id.*

³⁰⁶ *Id.* art. 37(1).

³⁰⁷ *Id.* art. 37(4).

³⁰⁸ *Id.*

³⁰⁹ *Id.* art. 39(1).

³¹⁰ *Id.*

³¹¹ *Id.*

³¹² Those on medical leave, including pregnancy, are considered to have reported to work. *Id.* art. 39(8).

³¹³ *Id.* art. 39(1).

³¹⁴ Based on the number of years after the initial 6 months you add the following: one day for one year; two days for two years; four days for three years; six days for four years; eight days for five years; and ten days for six years or more. *Id.* art. 39(2).

³¹⁵ *Id.*

³¹⁶ *Id.*

³¹⁷ *Id.* art. 39(3)(i) – (ii).

MHLW sets the standard.³¹⁸ Additionally, the labor union or majority of employees can contract different milestones and number of days.³¹⁹

Under the Act, employees on medical leave due to illness or injury obtained at work are covered by the law.³²⁰ Article 19(1) prohibits the firing of an employee when he/she is absent from work for any injury or illness caused by work.³²¹ An employer is prohibited from dismissing the employee up to 30 days after the employee's absence.³²² Additionally, if an employee requests payment of their wages to cover expenses from an illness, the employer must pay the accrued amount before the set pay date.³²³

Chapter VII of the Labor Standards Act discusses compensation for workplace accidents and death. If an employee gets injured or has an illness due to their job (but not due to their own "gross negligence"³²⁴), and the MHLW recognizes the injury/illness, the employer must bear the burden of the expenses.³²⁵ While the employee is unable to work based on a workplace injury or illness, the employer is required to compensate the employee at 60%³²⁶ the average wage of the employee.³²⁷ However, if the worker has not returned to work after three years, the employer can pay the employee their average salary multiplied by 1,200 days as a discontinuance of further wages.³²⁸ If the employee is permanently disabled, the employer will pay the average wage multiplied by a certain number of days, which is provided in a table in the Act.³²⁹ If the employer has paid the employee under the

³¹⁸ *Id.* art. 39(3).

³¹⁹ *Id.* art. 39(4).

³²⁰ If the employer is bound by the Industrial Accident Compensation Insurance Act (Act No. 50 of 1947) or other laws/decisions of the MHLW, the employer will be bound by those laws/decisions and not the Labor Standards Act. *Id.* art. 84(1).

³²¹ *Id.* art. 19(1).

³²² *Id.*

³²³ *Id.* art. 25. Article 25 applies to the request of payment "to cover emergency expenses for childbirth, illness, disaster, or any other emergency as set forth by Ordinance of the Ministry of Health, Labour, and Welfare[.]" *Id.*

³²⁴ *Id.* art. 78.

³²⁵ *Id.* art. 75.

³²⁶ If the employee's wages over a quarter are in excess of 120% or below 80% of the average workplace as provided by the MHLW, the amount may be adjusted by the employer. *Id.* art. 76(2).

³²⁷ *Id.* art. 76(1).

³²⁸ *Id.* art. 81.

³²⁹ *Id.* art. 77.

Labor Standards Act, the employer cannot be held liable to the employee in a civil action up to the amount they have already paid.³³⁰

When an employee dies due to their work, his/her family can receive compensation. Upon the death of the employee, the employer pays the family compensation in the amount of the average wage multiplied by 1,000 days.³³¹ Additionally, the employer will pay the family the average wage multiplied by 60 days for funeral costs.³³² If the employer pays the family under the Labor Standards Act, the employer is not liable under any civil action up to the amount already paid.³³³

Intimidation in the workplace, a growing concern, was highlighted by Mr. Hiraoka's story. For example, there was a claim Mr. Hiraoka and his coworkers were intimidated by the supervisors to work longer hours to complete the tasks of several people due to the lack of employees.³³⁴ Under the Act, workers cannot be forced to work through undue influences.³³⁵ The Act also restricts any physical violence or other means of forcing someone to work which would "restrict the mental or physical freedom" by the employer.³³⁶

Following the recent reports of death, the federal government imposed a new measure called a "Premium Friday plan."³³⁷ Under this model, employees are given the option to leave work at 3 p.m. on the last Friday of the month.³³⁸ The "Premium Friday plan" campaign is ineffective as people tend to be busier at the end of the month and there is no incentive to take advantage of this option – outside of one's health.³³⁹ Businesses tried to offer sales to attract people taking time off, but saw little to no success

³³⁰ *Id.* art. 84(2).

³³¹ *Id.* art. 79.

³³² *Id.* art. 80.

³³³ *Id.* art. 84(2).

³³⁴ *See* North, *supra* note 35.

³³⁵ Labor Standards Act, *supra* note 280, art. 5.

³³⁶ *Id.* art. 5.

³³⁷ Chris Weller, *Japan is Facing a "Death by Overwork" Problem – Here's What it's All About*, BUSINESS INSIDER (Oct. 18, 2017), <http://www.businessinsider.com/what-is-karoshi-japanese-word-for-death-by-overwork-2017-10>.

³³⁸ *Id.*

³³⁹ *Id.*; *see also* Tomoko Otake, *Adjusted Premium Friday: Government Eyes Moving Up Campaign Aimed at Boosting Fund and Spending*, JAPAN TIMES (Sept. 26, 2017), <https://www.japantimes.co.jp/news/2017/09/26/business/adjusted-premium-friday-government-eyes-moving-campaign-aimed-boosting-fun-spending/>; *see also* Jiji, *Unpopular 'Premium Friday' Campaign in Danger of Fizzling Out*, JAPAN TIMES (July 29, 2017), <https://www.japantimes.co.jp/news/2017/07/29/business/premium-friday-campaign-danger-running-steam/>.

due to employees not being able to take the time off to participate in the sales.³⁴⁰

The Labor Standard Act is the base law for employment in Japan. The MHLW interprets and applies the laws.

2. Gender Based Employment Laws: Discrimination/Equality, Pregnancy and Childbirth, Marriage

Japan codified laws regarding gender discrimination in the workplace. The Act on Securing, Etc. of Equal Opportunity and Treatment between Men and Women in Employment³⁴¹ was enacted July 1, 1972, and amended in 2006.³⁴² The purpose of the Act is to promote equality through equal treatment, ensuring equality through laws, and protect the employment of childrearing women.³⁴³ Under the Constitution of Japan, everyone is equal and there cannot be discrimination on the basis of sex, among other things.³⁴⁴ Additionally, all citizens of Japan are afforded a right, and an obligation, to work.³⁴⁵ Lastly, the Labor Standards Act (Act No. 49 of April 7, 1947) also directs that employers cannot use sex as a basis for treating employees differently.³⁴⁶

Under the Act on Securing, Etc. of Equal Opportunity and Treatment between Men and Women in Employment, “[t]he basic principle . . . is that workers be enabled to engage in full working lives, with respect for maternity in the case of women workers but without discrimination based on sex for all workers.”³⁴⁷ Through coordination and compliance, the employer and government will work to protect the working life of employees.³⁴⁸ The law entrusts the government with the task of teaching the public about this law and how to apply it.³⁴⁹ Employers have a duty to establish a method to assist employees when there are claims of sexual

³⁴⁰ Jiji, *supra* note 339.

³⁴¹ In addition, the Employment Security Act (Act No. 141 of November 30, 1947) prohibits discrimination in job placements or vocation groups based on sex.

³⁴² Act on Securing, Etc. of Equal Opportunity and Treatment between Men and Women in Employment, Act No. 113 of 1972, <http://www.japaneselawtranslation.go.jp/law/detail/?vm=04&re=02&id=60&lvm=01> (Japan).

³⁴³ *Id.*

³⁴⁴ KENPŌ, art. 14.

³⁴⁵ *Id.* art. 27.

³⁴⁶ Labor Standards Act, *supra* note 280, art. 4.

³⁴⁷ Act on Securing, Etc. of Equal Opportunity and Treatment between Men and Women in Employment, *supra* note 342, art. 2(1).

³⁴⁸ *Id.* art. 2(2).

³⁴⁹ *Id.* art. 3.

harassment and a duty to help employees with other problems that may relate to gender discrimination.³⁵⁰

The MHLW oversees the working policy regarding employment discrimination.³⁵¹ The policy addresses two matters: (1) “[m]atters relating to each trend in men and women workers’ working lives; and [(2)] [b]asic matters concerning the measures to be taken with regard to the securing, etc. of equal opportunity and treatment between men and women in employment.”³⁵² Additionally, the Minister’s policy will be based on working conditions, and the situations facing men and women.³⁵³

Section One of the Act on Securing, Etc. of Equal Opportunity and Treatment between Men and Women in Employment explicitly states there must be equal opportunities afforded to every citizen, regardless of the person’s sex.³⁵⁴ There are four specific areas where employment discrimination based on sex is prohibited:³⁵⁵

- (i) Assignment (including allocation of duties and grant of authority), promotion, demotion, and training of workers;
- (ii) Loans for housing and other similar fringe benefits as provided by Ordinance of the Ministry of Health, Labor and Welfare;
- (iii) Change in job type and employment status of workers; and
- (iv) Encouragement of retirement, mandatory retirement age, dismissal, and renewal of the labor contract.³⁵⁶

However, there is a provision allowing a special circumstance for women. Articles 5–7 allows employers to improve the conditions for women that may impede men.³⁵⁷

One of the common complaints of discrimination is when a woman gets married or becomes pregnant. The law states that a reason for forced retirement cannot be marriage or childbirth.³⁵⁸ In regards to pregnancy, an employee cannot be dismissed from their job or demoted, due to pregnancy, including doctor appointments and bed rest.³⁵⁹ Any dismissal of a pregnant woman or a woman who has given birth within a year of the dismissal is

³⁵⁰ *Id.* art. 11(1).

³⁵¹ *Id.* art. 4(1).

³⁵² *Id.* art. 4(2).

³⁵³ *Id.* art. 4(3).

³⁵⁴ *Id.* art. 5.

³⁵⁵ *Id.* art. 6.

³⁵⁶ *Id.*

³⁵⁷ *Id.* art. 8.

³⁵⁸ *Id.* art. 9(1).

³⁵⁹ *Id.* art. 9(3).

void unless the reason for dismissal is legitimate and not for any protected reason.³⁶⁰ Additionally, marriage cannot be a reason for an employer to dismiss an employee.³⁶¹

Japan's laws do have special provisions for pregnant or nursing women. The Labor Standards Act imposes limitations on pregnant women and nursing mothers when it comes to working underground,³⁶² and potentially dangerous work that could cause injury.³⁶³ Additionally, "[e]mployers shall secure the necessary time off pursuant to the provisions . . . so that women workers they employ may receive the health guidance and medical examinations prescribed in the Maternal and Child Health Act (Act No. 141 of 1965)."³⁶⁴ Employers also must "take necessary measures" to allow women employees to follow the medical advice of their doctors, including a reduction of hours and work.³⁶⁵ These measures are according to a guideline that is issued by the Minister of Health, Labor and Welfare.³⁶⁶ Additionally, there is a requirement that measures are taken by the employer to protect the mother from harassment based on pregnancy or a request for child care leave.³⁶⁷

Additional laws under the Labor Standards Act provide for women to make a choice when to stop working when pregnant and after childbirth. Under the Act, a woman that is within six weeks of giving birth to one baby, or fourteen weeks if twins, can request to start her time off for the birth of her child/children and the employer must honor the request.³⁶⁸ Once the employee has given birth, she may return after six weeks with doctor's approval and limitations, or after eight weeks.³⁶⁹ Lastly, if the pregnant employee requests a transfer to an area with lighter work, the employer must honor the request.³⁷⁰ The newly enacted provisions of the Act also increase the flexibility of child care leave by allowing the person to split the time off into three periods.³⁷¹

³⁶⁰ *Id.* art. 9(4).

³⁶¹ *Id.* art. 9(2).

³⁶² Labor Standards Act, *supra* note 280, art. 64-2.

³⁶³ *Id.* art. 64-3.

³⁶⁴ Act on Securing, Etc. of Equal Opportunity and Treatment between Men and Women in Employment, *supra* note 342, art. 12.

³⁶⁵ *Id.* art. 13(1).

³⁶⁶ *Id.* art. 13(1).

³⁶⁷ Joanne Martin, *supra* note 281.

³⁶⁸ Labor Standards Act, *supra* note 280, art. 65(1).

³⁶⁹ *Id.* art. 65(2).

³⁷⁰ *Id.* art. 65(3).

³⁷¹ Joanne Martin, *supra* note 281.

The law also covers paid maternity leave. Under the Employment Insurance Act, if an employee is covered by the national insurance, they are afforded some pay for their maternity leave.³⁷² If a father, for example, takes leave from work to care for his child, who is under the age of one-years old, he is eligible for payment through the Employment Insurance Act.³⁷³ The basic benefit is calculated as “an amount equivalent to 30 percent of the amount obtained by multiplying the amount equivalent to the daily amount of wages”³⁷⁴ by a set amount of days prescribed by the Article depending on different situations.³⁷⁵ According Nagoya International Center, an NGO, Article 61-4 of the Employment Insurance Act allows for 50% of their regular salary during the leave to take care of a child younger than one-years old.³⁷⁶

Temporary workers will now enjoy “child care” leave if the temporary employee has worked with the employer for more than a year unless the contract would end before the child is 18 months old.³⁷⁷ Adding an additional layer of confusion, if the temporary employee’s contract will expire six months prior to the end of the allotted family care leave (93 days), the employee is not eligible for family leave.³⁷⁸

The Health Insurance Law allows for maternity pay in Article 102.³⁷⁹ The benefit amount under this law is approximately two-thirds of the employee’s standard daily wage.³⁸⁰ The amount of days the payment is available depends on two things: (1) the delivery date; and (2) if the mother gives birth to a single child or twins, etc.³⁸¹ The amount of days pre-delivery does not change, only the amount of days post-birth changes.³⁸² In general, maternity leave under the Health Insurance Law is paid “from 42 days preceding the delivery date until 56 days after the delivery.”³⁸³ If the

³⁷² Employment Insurance Act, Act No. 116 of 1974, <http://www.ilo.org/dyn/travail/docs/2009/Employment%20Insurance%20Act%201974.pdf> (Japan).

³⁷³ *Id.* art. 61-4.

³⁷⁴ Pursuant to the Article 17 definition. *Id.* art. 64-1.

³⁷⁵ *Id.*

³⁷⁶ *Your Rights: Pregnancy Child birth, Maternity Leave*, NAGOYA INTERNATIONAL CENTER, www.nic-nagoya.or.jp/en/e/archives/5679 (last visited Apr. 24, 2016) [hereinafter *Your Rights*].

³⁷⁷ Joanne Martin, *supra* note 281.

³⁷⁸ *Id.*

³⁷⁹ *Your Rights, supra* note 376.

³⁸⁰ *Id.*

³⁸¹ *Id.*

³⁸² *Id.*

³⁸³ *Id.*

pregnancy lasts longer than the delivery date, the benefit is paid “from 42 days preceding the expected delivery date.”³⁸⁴ Lastly, if there is more than one baby born, the benefit is paid “from 98 days preceding the delivery date.”³⁸⁵

Additionally, the National Health Insurance Act provides for a payment, in the form of a lump sum, for childcare.³⁸⁶ The Act facilitates the national health insurance service and is available to pay for childbirth³⁸⁷ to reimburse for expenses.³⁸⁸ This payment, however, is subject to the rules, laws, and constitutions of each prefecture.³⁸⁹ According to the Nagoya International Center, this is set at 350,000 yen.³⁹⁰

There are also provisions in the law providing protections for mothers who are nursing. For example, a nursing mother cannot be forced to work overtime.³⁹¹ She also cannot be forced to work more than an eight-hour day.³⁹² Moreover, an employer cannot force a nursing mother to come in on her day off.³⁹³ Lastly, a nursing mother can request to not work the night shift, and the request must be honored.³⁹⁴

The Labor Standards Act also provides child care protections to women with children. Under the Act, a mother may request to have two thirty-minute breaks per day to take care of her child and cannot be expected to do work during that time.³⁹⁵ However, this is limited to mothers whose child is under one-years old.³⁹⁶

There is also a provision for women who are experiencing menstrual cramps. Under the Labor Standards Act, if a woman is in her menstrual

³⁸⁴ *Id.*

³⁸⁵ *Id.*

³⁸⁶ National Health Insurance Act, Act 192 of 1958, translation at <http://www.japaneselawtranslation.go.jp/law/detail/?id=2453&vm=04&re=02> (amended 2012) (Japan).

³⁸⁷ *Id.* art. 1–2.

³⁸⁸ *Your Rights*, *supra* note 376.

³⁸⁹ Employment Insurance Act, *supra* note 372, art. 58.

³⁹⁰ *Your Rights*, *supra* note 376.

³⁹¹ Labor Standards Act, *supra* note 280, art. 66.

³⁹² *Id.*

³⁹³ *Id.*

³⁹⁴ *Id.*

³⁹⁵ *Id.* art. 67(1)–(2).

³⁹⁶ *Id.* art. 67(1).

period and unable to perform her work duties, she may request to have the day off.³⁹⁷ Under the Act, the employer must grant the request.³⁹⁸

In addition to protections for employees, Japan law also provides employers with assistance from the state in order to be in compliance with the law. According to the Act on Securing, Etc. of Equal Opportunity and Treatment between Men and Women in Employment, “the State may provide consultation services and other assistance to said employers in order to promote the securing of equal opportunity and treatment between men and women in employment.”³⁹⁹ These services and assistance include “[a]nalysis of the assignments and other employment-related circumstances of the employers’ workers[.]”⁴⁰⁰ Additionally, the State helps with: (1) “[p]reparation, based on the analysis . . . of plans concerning measures necessary in improving circumstances that prevent the securing of equal opportunity and treatment between men and women in employment;” (2) “[i]mplementation of the measures provided for” in (1); (3) “[e]stablishment of the system necessary to implement the measures” above; and (4) “[d]isclosure of the implementation measures”⁴⁰¹ Employers that are in violation also see repercussions from the state. These can include publication if the employer does not abide by the recommendations given.⁴⁰² Additional recourses can be sought through conciliation through a commission.⁴⁰³

The Labor Standards Act established an arm of the government specifically for women in the workforce. Under the Act, the Director-General of the Women’s Management Bureau is “responsible for matters relating to [l]abor issues associated with the unique characteristics of women [w]orkers” and is under the MHLW.⁴⁰⁴ The Director-General is tasked with the interpretation and implementation of any articles in the Act that pertain to women.⁴⁰⁵

Finally, the Equal Opportunity Employment Law (“EOEL”) from 1986 was introduced to address gender inequality in the workplace. The EOEL was first introduced in 1984 with the intent to make the genders equal

³⁹⁷ *Id.* art. 68.

³⁹⁸ *Id.*

³⁹⁹ Act on Securing, Etc. Of Equal Opportunity and Treatment between Men and Women in Employment, *supra* note 342, art. 14.

⁴⁰⁰ *Id.* art 14(i).

⁴⁰¹ *Id.* art 14(ii) – (v).

⁴⁰² *Id.* art. 30.

⁴⁰³ *Id.* art. 18-27.

⁴⁰⁴ Labor Standards Act, *supra* note 280, art. 100(1).

⁴⁰⁵ *Id.* art. 100(1).

in the workplace.⁴⁰⁶ The EOEL was passed by the *Diet* on May 17, 1985 and became law on April 1, 1986.⁴⁰⁷ The bill saw opposition from employers and some feminist groups.⁴⁰⁸ Employers opposed the bill⁴⁰⁹ on one of two main grounds: 1) women are different from men and therefore there should be a difference in the workplace or 2) women need to be protected and therefore should not be subjected to certain work environments that men are subjected to.⁴¹⁰ Feminist groups⁴¹¹ opposed the bill because there was not any remedy or method for the government to enforce the protections.⁴¹² Feminist groups also felt that the bill did not protect mothers enough, and that the bill would reverse some of the changes in protections that were already being implemented by previous laws.⁴¹³

B. *International Obligations*

The Constitution of Japan recognizes the people's will is to take a part in upholding international attempts to enforce such things as human rights. The following is a discussion of the international obligations of Japan.

1. United Nations: Universal Declaration of Human Rights, International Covenant on Economic, Social and Cultural Rights, and Convention on the Elimination of all Forms of Discrimination Against Women

Through the United Nations ("UN"), countries have ratified two resolutions which relate to conditions in the workplace and gender discrimination. Japan has ratified both the International Covenant on Economic, Social and Cultural Rights ("ICESCR")⁴¹⁴ and the Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW").⁴¹⁵

⁴⁰⁶ Barbara Molony, *Japan's 1986 Equal Employment Opportunity Law and the Changing Discourse on Gender*, SIGNS 268, 273 (Winter 1995).

⁴⁰⁷ *Id.* at 273.

⁴⁰⁸ *Id.* at 274.

⁴⁰⁹ Nikkeiren, an employer association, published a book prior to enactment of the law that explained ways to get around the law, including their interpretation of what the bill was meant to accomplish and how it would be accomplished. *Id.* at 287.

⁴¹⁰ *Id.* at 274.

⁴¹¹ While opposing the bill, feminist groups also published a book shortly before the law was enacted, countering the Nikkeiren book. *Id.* at 287-88.

⁴¹² *Id.* at 274.

⁴¹³ *Id.*

⁴¹⁴ International Covenant on Economic, Social and Cultural Rights, United Nations, Dec. 16, 1966, 993 U.N.T.S.
3.<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>.

⁴¹⁵ *Convention on the Elimination of All Forms of Discrimination Against*

These two documents, in addition to others, have ties to the Universal Declaration of Human Rights (“UDHR”). On December 10, 1948, the UDHR was adopted by the general assembly.⁴¹⁶ Even though Japan did not join the UN until December 18, 1956,⁴¹⁷ the declaration was meant to be “a common standard of achievements for all peoples and all nations.”⁴¹⁸ As a response to the atrocities of World War II, this document set out to enumerate specific human rights and is still a part of the UN today. One of the rights important to this article is Article 23. Article 23 provides that “[e]veryone has the right to work, free choice of employment [and] to just and favourable conditions of work”⁴¹⁹ Additionally, “[e]veryone, without discrimination, has the right to equal pay for equal work.”⁴²⁰ While this is not binding, nor was it required to be ratified by the individual states, it is the basis for the work that followed.

2. International Covenant on Economic, Social and Cultural Rights

The International Covenant on Economic, Social and Cultural Rights (“ICESCR”) was adopted on December 16, 1966.⁴²¹ Japan signed the Covenant on May 30, 1978 and ratified it on June 21, 1979.⁴²² Japan signed with reservations.⁴²³ This article will intertwine the applicable sections of the Covenant with the appropriate reservations.

The ICESCR covers both work conditions and discrimination. First, ICESCR covers work conditions in Articles 7 and 12.⁴²⁴ Article 7 gives direction for the quality of the work environment calling for “just and favourable conditions of work[.]”⁴²⁵ This is done through both “safe and healthy working conditions” and also by affording the worker “rest, leisure

Women, UNITED NATIONS ENTITY FOR GENDER EQUALITY AND THE EMPOWERMENT OF WOMEN (Feb. 19, 2018), <http://www.un.org/womenwatch/daw/cedaw/cedaw.htm>.

⁴¹⁶ Universal Declaration of Human Rights, G.A. Res. 217 (III) A (Dec. 10, 1948), <http://www.un.org/en/universal-declaration-human-rights/index.html>.

⁴¹⁷ *Member States*, UNITED NATIONS (Apr. 13, 2016), <http://www.un.org/en/member-states/#gotoJ>.

⁴¹⁸ G.A. Res. 217, *supra* note 416.

⁴¹⁹ *Id.* art. 23.

⁴²⁰ *Id.*

⁴²¹ International Covenant on Economic, Social and Cultural Rights, *supra* note 414.

⁴²² *United Nations Treaty Collection*, UNITED NATIONS (Apr. 14, 2016 1:29 PM), https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg_no=IV-3&chapter=4&lang=en.

⁴²³ International Covenant on Economic, Social and Cultural Rights, *supra* note 414.

⁴²⁴ *Id.* at 6, 8.

⁴²⁵ *Id.* at 6.

and reasonable limitation of working hours and periodic holidays with pay” in addition to paid public holidays.⁴²⁶ Japan submitted a reservation to the paid public holidays during ratification and are not bound to this part of the treaty.⁴²⁷

Article 12 is concerned with the mental health of the people of Japan.⁴²⁸ Under Article 12, the State Parties agree that everyone has the right to the “highest standard of physical and mental health.”⁴²⁹ The subdivision that is most important for purposes of this article is 2(c). Under this subdivision, the State Parties are responsible for “the prevention, treatment and control of epidemic, *endemic*, [and] *occupational* and other diseases.”⁴³⁰ Both Articles 7 and 12 speak directly to the obligations Japan has to react to and prevent the *karōshi/karō jisatsu* endemic.

The ICESCR also covers gender discrimination at work. Articles 3, 6, 7, and 10 covers gender discrimination at work.⁴³¹ Article 3 provides that both men and women are equal in their right to economic ventures.⁴³² Article 3 is meant to carry forward through the rest of the Articles in the ICESCR.⁴³³

Under Article 6, State Parties are obligated to recognize that everyone has a right to work, which includes the ability to choose the work they want to participate in.⁴³⁴ To meet this “right to work” obligation, the State Parties are to make policies and opportunities to enable workers to become trained and allow individuals to participate and receive the benefits of work.⁴³⁵ Article 6 is followed by one that is packed with equality measures.

Article 7 is the richest Article in the ICESCR in regard to equality between men and women. As previously noted, Japan submitted reservations when the ICESCR was ratified, including reservations on Article 7.⁴³⁶ However, none of the three reservations were specific to the Article’s subdivisions regarding equality. Article 7 provides for every

⁴²⁶ *Id.*

⁴²⁷ *United Nations Treaty Collection, supra* note 422.

⁴²⁸ International Covenant on Economic, Social and Cultural Rights, *supra* note 421, at 8.

⁴²⁹ *Id.* at 8.

⁴³⁰ *Id.* (emphasis added).

⁴³¹ *Id.* at 5-7.

⁴³² *Id.* at 5.

⁴³³ *Id.*

⁴³⁴ *Id.* at 6.

⁴³⁵ *Id.*

⁴³⁶ *United Nations Treaty Collection, supra* note 422.

person to have the opportunity to work in conditions that meet a certain standard.⁴³⁷ The standards include those discussed above, in addition to “fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work[.]”⁴³⁸ Additionally, there is a provision for promotions to be equal in opportunity and only based on seniority and the worker’s competence.⁴³⁹

Article 10 is directed at the protection of mothers.⁴⁴⁰ Under Article 10, there is a recognition of family being paramount to society.⁴⁴¹ Under section 2, “[s]pecial protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.”⁴⁴² Japan has ratified the convention with no reservations to these sections but has not been successful at meeting the obligations of the ICESCR when the background, statistics, and stories are taken into account.

3. Convention on the Elimination of all Forms of Discrimination Against Women

The Convention on the Elimination of All Forms of Discrimination Against Women (“CEDAW”) was ratified by Japan on July 17, 1980, without reservations.⁴⁴³ The preamble of CEDAW points out the fact that it is drawn on the UDHR and the concept of human rights.⁴⁴⁴ Sex is enumerated as an unacceptable basis upon which to discriminate and explicitly a violation of human rights.⁴⁴⁵ The State Parties are in agreement to undertake the responsibility to ensure that there is equality between men and women, including in the economic realm.⁴⁴⁶

The parties to the Convention have tasks outlined in the document. Among other things, the parties to the Convention will:

- (a) embody the principle of the equality of men and women

⁴³⁷ International Covenant on Economic, Social and Cultural Rights, *supra* note 411, at 6.

⁴³⁸ *Id.*

⁴³⁹ *Id.*

⁴⁴⁰ *Id.* at 7.

⁴⁴¹ *Id.*

⁴⁴² *Id.*

⁴⁴³ *United Nations Treaty Collection, supra* note 422.

⁴⁴⁴ Convention on the Elimination of All Forms of Discrimination Against Women, United Nations, Dec. 18, 1979, 1249 U.N.T.S. 13.

⁴⁴⁵ *Id.*

⁴⁴⁶ *Id.*

in their national constitutions or other appropriate legislation . . .; (b) [] adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women; (c) [] establish legal protections of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination; . . . (e) [] take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise[.]⁴⁴⁷

These actions are to be done to encourage “the full development and advancement of women” in society.⁴⁴⁸ Additionally, steps must be taken to change the “social and cultural patterns . . . which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women[.]”⁴⁴⁹

Article 11 of CEDAW is focused on gender discrimination in the workplace. Particular rights are explicit in the document.⁴⁵⁰ Of the rights, the following are the ones most important to this article. First, there is an acknowledgment the right to work is a right that is afforded to everyone and cannot be taken away.⁴⁵¹ Another is the right to equal opportunities in employment criteria and selection, and the right to choose one’s profession.⁴⁵² These rights include (1) equal benefits; (2) equal pay; (3) “promotion, job security[;]” and (4) protections of health at work.⁴⁵³

Article 11 also focuses on discrimination in the workplace based on marital status and maternity. First, Article 11 states that a person cannot be let go from a job because the person is pregnant or for their marital status.⁴⁵⁴ Party States must support maternity leave either in the form of “leave with pay or with comparable social benefits without loss of former employment, seniority or social awareness.”⁴⁵⁵ Additionally, the State must “encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities” by “promoting the establishment and development of a network of child-care

⁴⁴⁷ *Id.* art. 2.

⁴⁴⁸ *Id.* art. 3.

⁴⁴⁹ *Id.* art. 5(a).

⁴⁵⁰ *Id.* art. 11(1).

⁴⁵¹ *Id.* art. 11(1)(a).

⁴⁵² *Id.* art. 11(1)(b)-(c).

⁴⁵³ *Id.* art. 11(1)(c)-(d), (f).

⁴⁵⁴ *Id.* art. 11(2)(a).

⁴⁵⁵ *Id.* art. 11(2)(b).

facilities[.]”⁴⁵⁶ Lastly, there must be protection for pregnant women in work conditions that are hazardous.⁴⁵⁷

Having ratified CEDAW without reservations, Japan is bound to the Convention and its terms. Japan has taken steps to enact these provisions, however, based on the discrimination described in the *Gender Discrimination* section, the steps have been inadequate. Japan needs to do more to meet its obligations under CEDAW.

C. *International Labour Organization*

One of the national organizations Japan is a member of is the International Labour Organization (“ILO”). Japan is an original member of the ILO, joining in 1919.⁴⁵⁸ Japan left the ILO in 1940 but was readmitted in 1951.⁴⁵⁹ The ILO is an international organization that is a bridge between “governments, employers and workers representatives of 186 member States, to set labour standards, develop policies and devise programs promoting decent work for all women and men.”⁴⁶⁰

Japan is a signor of many treaties under the ILO. Equally, Japan is also not a signor to some of the treaties that are directly related to discrimination and work conditions.

1. Equal Remuneration Convention, 1951 (No. 100)

One treaty that Japan ratified on August 24, 1967, is the Equal Remuneration Convention, 1951 (No. 100).⁴⁶¹ Under the Convention, the rate of remuneration, including wages and salary, are to be done equally, without sex being a determination.⁴⁶² Each Member State has a responsibility to pass legislation, collective agreements, or other mechanisms for wage determination which reflects an equal work for equal pay goal.⁴⁶³ Japan has passed legislation, as discussed above, to meet this treaty. However, the enforcement of the laws has not been sufficient to meet the obligation.

⁴⁵⁶ *Id.* art. 11(2)(c).

⁴⁵⁷ *Id.* art. 11(2)(d).

⁴⁵⁸ *The ILO Office in Japan*, INTERNATIONAL LABOUR ORGANIZATION (Sept. 18, 2012), <http://www.ilo.org/public/english/region/asro/tokyo/>.

⁴⁵⁹ *Id.*

⁴⁶⁰ *About the ILO*, INTERNATIONAL LABOUR ORGANIZATION (Apr. 14, 2016), <http://www.ilo.org/global/about-the-ilo/lang--en/index.htm>.

⁴⁶¹ Equal Remuneration Convention, May 23, 1953, 165 U.N.T.S. 303, available at http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312245:NO.

⁴⁶² *Id.* art. 1.

⁴⁶³ *Id.* art. 2-3.

2. Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

One of the treaties Japan is not a signor of is the Discrimination (Employment and Occupation) Convention. This treaty went into effect on June 15, 1960.⁴⁶⁴ In the document, the treaty refers to the UDHR, acknowledging that discrimination is a violation of the UDHR.⁴⁶⁵ The treaty states “the term ‘discrimination’ includes: (a) Any distinction, exclusion or preference made on the basis of . . . sex . . . which has the effect of nullifying or impairing equality of opportunity or treatment in employment in occupation or occupation[.]”⁴⁶⁶

The ILO treaty includes responsibilities for the ratifying Member. Under Article 2, the Member has the responsibility to “declare and pursue national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof.”⁴⁶⁷ Additionally, the Member is responsible for promoting the education of employers on the terms and working with employers to enforce the terms.⁴⁶⁸ This is similar to the Act on Securing, Etc. of Equal Opportunity and Treatment between Men and Women in Employment in Japan’s domestic laws.

The ILO treaty also contains two provisions which permit a form of discrimination. The first is in Article 1(2), which states “[a]ny distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof shall not be deemed to be discrimination.”⁴⁶⁹ The second is Article 4 which allows for a State to act in their interest of security as long as there is an appeals process in place.⁴⁷⁰ This allows a balance in the protections of the individual and the interest of the State.

3. ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up (adopted June 18, 1998, revised June 15, 2010)

The ILO adopted a declaration which encouraged Member States to embrace previous agreements.⁴⁷¹ Since it is a declaration, it is non-binding

⁴⁶⁴ Discrimination (Employment and Occupation) Convention, June 25, 1958, 362 U.N.T.S. 31.

⁴⁶⁵ *Id.* at 32.

⁴⁶⁶ *Id.* art. 1(1)(a).

⁴⁶⁷ *Id.* art. 2.

⁴⁶⁸ *Id.* art. 3(a)-(b).

⁴⁶⁹ *Id.* art. 1(2).

⁴⁷⁰ *Id.* art. 4.

⁴⁷¹ *The Text of the Declaration and its follow-up*, INTERNATIONAL LABOUR ORGANIZATION (Apr. 14, 2016 8:27 PM),

on the Member States. The Declaration extends an obligation to recognize key principles of fundamental rights in past Conventions, regardless if the Member State has ratified the Convention.⁴⁷² Of these fundamental rights, “the elimination of discrimination in respect of employment and occupation” is on the list.⁴⁷³ The Declaration also seeks to assist Member States who have not yet ratified the Conventions in doing so.⁴⁷⁴ While the Declaration’s main point is to encourage Member States, it is symbolic in the attempt of the ILO to work towards the protection of fundamental rights.

IV. CURRENT RESPONSES

In response to the epidemics, *karōshi/karō jisatsu* and gender discrimination, the Japanese government, NGOs, and international pressure through treaty negotiations, have addressed ways to tackle the epidemics. The following will look at each groups’ reaction to the issues.

A. Japan’s Response

The government of Japan is facing growing pressure to correct both issues presented in this article. The following will be broken down into two sections, allowing for a discussion on each of the topics.

1. Japan’s Response to *Karōshi* and *Karō Jisatsu*

In 2015, Japan started a campaign to react to what is causing *karōshi*. The government was considering making it mandatory that employees take five days of holiday pay each year.⁴⁷⁵ The law was a hope by the government that people will start following their peers in other western countries.⁴⁷⁶ However, this push has not gained enough traction as the Labor Standards Law still does not reflect a change indicating that workers are *required* to take the vacation time.

2. Japan’s Response to Gender Discrimination

The Japanese *Diet* passed a law in 2015, which was enacted in 2016. The Act Concerning Promotion of Women’s Career Activities takes effect April 2016.⁴⁷⁷ The new law requires companies who hire more than 301

<http://www.ilo.org/declaration/thedeclaration/textdeclaration/lang--en/index.htm>.

⁴⁷² *Id.*

⁴⁷³ *Id.*

⁴⁷⁴ *Id.*

⁴⁷⁵ McCurry, *supra* note 62.

⁴⁷⁶ *Id.*

⁴⁷⁷ *Japan’s Act Concerning Promotion of Women’s Career Activities Enacted: Companies Should Establish Action Plan by March 2016*, BAKER & MCKENZIE (Sept. 2015), https://www.bakermckenzie.co.jp/wp/wp-content/uploads/ClientAlert_150914_PWCA_E.pdf.

employees to create and implement plans to promote women.⁴⁷⁸ The companies must also disclose the ratio of men to women in categories that include new hires and management.⁴⁷⁹ The government has a goal for businesses to employ 30% female managers by the year 2020.⁴⁸⁰ The government does not penalize the company if they do not reach their goal, however, there is a feeling that there will be a social implication, with top graduates of universities not joining the company.⁴⁸¹

B. Non-Governmental Organizations

One of the most prominent NGOs dedicated to the issue of *karōshi* is the National Defense Counsel for Victims of Karoshi.⁴⁸² Launching a national hotline in 1988, the group offers help by giving consultations through the phone or in person.⁴⁸³ The website, offered in both Japanese and English, seems outdated, but the group is still cited in current news articles. Recently, the secretary-general of the group, Hiroshi Kawahito, was included in the article written by Rachel Middleton, discussed *supra*.⁴⁸⁴ According to the article, Kawahito estimated that the number of cases could actually be ten times higher than what the government is officially reporting due to the reluctance of the Japanese government to acknowledge the issue in reported cases.⁴⁸⁵

The group believes the government is not going far enough. “The government hosts a lot of symposiums and makes posters about the problem but this is [propaganda]’ [Kawahito] alleges.”⁴⁸⁶ The group believes the key to ending this problem is decreased hours of work.⁴⁸⁷ Another group, Families Dealing with Karoshi,⁴⁸⁸ reports there are also complaints of hiring tactics, such as hiring someone and telling them there is a set number of

⁴⁷⁸ Mizuho Aoki, *Japan Firms Begin Challenge of Boosting Women in the Workplace*, JAPAN TIMES (Apr. 1, 2016), <http://www.japantimes.co.jp/news/2016/04/01/national/japan-firms-begin-challenge-boosting-women-workplace/>.

⁴⁷⁹ *Id.*

⁴⁸⁰ *Id.*

⁴⁸¹ *Id.*

⁴⁸² Karoshi Hotline, NATIONAL DEFENSE COUNSEL FOR VICTIMS OF KAROSHI (Apr. 17, 2016), <http://karoshi.jp/english/>

⁴⁸³ *Id.*

⁴⁸⁴ Middleton, *supra* note 67.

⁴⁸⁵ *Id.*

⁴⁸⁶ *Id.*

⁴⁸⁷ *Id.*

⁴⁸⁸ The head of the group, Emiko Teranishi, lost her husband to suicide which was work-related—long hours. *Id.*

overtime hours included in their pay—which if not met, must be paid back to the employer.⁴⁸⁹

The Japanese Trade Union Confederation, discussed *supra*, also known as RENGO, was created in 1989.⁴⁹⁰ RENGO has 6.82 million members.⁴⁹¹ The goal of RENGO is to “maintain and improve working conditions, work on policy, organize, and . . . assist in the recovery from the disastrous Great East Japan Earthquake.”⁴⁹² RENGO has been involved in many aspects of employment law, including in 1996 when they participated in a national call for gender equality.⁴⁹³

Nagoya International Center is a non-profit group focused on “multi-cultural harmony” while it “provides free information and consultation services for foreign residents.”⁴⁹⁴ One of the many areas the organization provides help in is pregnancy, childbirth, and childcare information for employees.⁴⁹⁵ Beyond providing the law in a way a layperson could understand it, they also offer in-person services.⁴⁹⁶ A phone number with set times for English speakers is included in the law.⁴⁹⁷

Two other NGOs, Japan NGO Network for CEDAW⁴⁹⁸ and the Japan Federation of Bar Associations (“JFBA”), are working together to end gender discrimination in the workplace. Both are pushing the government to fully implement their March 7, 2016 CEDAW recommendations.⁴⁹⁹ Moreover, both NGOs are seeking to push the government to rectify the issues the CEDAW Committee focused on,

⁴⁸⁹ *Id.*

⁴⁹⁰ *About RENGO*, JAPANESE TRADE UNION CONFEDERATION (RENGO), www.jtuc-rengo.org/about/ (last visited Apr. 24, 2016).

⁴⁹¹ *Id.*

⁴⁹² *Message of the President*, JAPANESE TRADE UNION CONFEDERATION (RENGO), www.jtuc-rengo.org/about/message_of_the_president.html (last visited Apr. 24, 2016).

⁴⁹³ *History*, JAPANESE TRADE UNION CONFEDERATION (RENGO), www.jtuc-rengo.org/about/history.html (last visited Apr. 24, 2016).

⁴⁹⁴ *About NIC*, NAGOYA INTERNATIONAL CENTER, <http://www.nic-nagoya.or.jp/en/e/about-us> (last visited Apr. 24, 2016).

⁴⁹⁵ *Your Rights*, *supra* note 376.

⁴⁹⁶ *Id.*

⁴⁹⁷ *Id.*

⁴⁹⁸ The Japan NGO Network for CEDAW (“JNNC”) is a group of NGOs that work together. *JNNC-Index*, JAPAN NGO NETWORK FOR CEDAW, www.jaiwr.org/jnnc/english/index.html (last visited Apr. 24, 2016).

⁴⁹⁹ *Women’s NGOs urge gov’t to implement recommendations by UN panel on elimination of gender discrimination*, JAPAN PRESS WEEKLY (Mar.

11, 2016), www.japan-press.co.jp/modules/news/index.php?id=9413.

including the ability to access the judicial system for cases of discrimination in the workplace and the ability for women to exercise their rights in the workplace.⁵⁰⁰

The JFBA is the Japanese equivalent of the American Bar Association. While governing the roles of attorneys and other bar associations, the group also works to protect human rights⁵⁰¹ Using committees, JFBA focuses on “realization of a gender-equal society in which both men and women can participate fully, dealing with various issues concerning the equality of men and women in the areas of labor, education, [and] welfare” in addition to “labor and poverty issues,” among other areas.⁵⁰²

The Action Center for Working Women is another organization focused on gender related issues including employment discrimination. Only women, including transgender women, are able to be a member of the group.⁵⁰³ However, anyone can be a supporter⁵⁰⁴ by donating 1,000 yen per year.⁵⁰⁵ The actions the group takes include: (1) fighting for a decent wage and decent work for all women; (2) “to create a social structure where women are respected and encouraged[;]” (3) support women through conflict resolution; (4) propose new policies; and (5) awareness through education.⁵⁰⁶

The Women and Work Research Center is another organization in operation in Japan. Its goals are to increase the role women play in the workplace while also increasing profits to the corporation.⁵⁰⁷ Additionally, the organization works towards the realization of a new society based on smaller families, while striking a better work-family balance.⁵⁰⁸ In order to achieve these goals, the group promotes new possible legislation, such as

⁵⁰⁰*Id.*

⁵⁰¹ *What is the JFBA?*, JAPAN FEDERATION OF BAR ASSOCIATIONS, www.nichibenren.or.jp/en/about/us/profile.html (last visited Apr. 24, 2016).

⁵⁰² *Protection of Human Rights*, JAPAN FEDERATION OF BAR ASSOCIATIONS, www.nichibenren.or.jp/en/about/activities/protection.html (last visited Apr. 24, 2016).

⁵⁰³ ACTION CENTER FOR WORKING WOMEN, acw2.org/index-eng.html (last visited Apr. 24, 2016).

⁵⁰⁴ In the Action Center for Working Women Statute, the 1,000 yen per year is indicated as a “Membership Fee.” *ACW2 Statute*, ACTION CENTER FOR WORKING WOMEN, acw2.org/statute?lang=en (last visited Apr. 24, 2016).

⁵⁰⁵ ACTION CENTER FOR WORKING WOMEN, *supra* note 503.

⁵⁰⁶ *ACW2 Statute*, *supra* note 504.

⁵⁰⁷ *About us – NPO Women & Work Research Center*, WOMEN AND WORK RESEARCH CENTER), www.women-work.org/english/about-us/ (last visited Apr. 24, 2016).

⁵⁰⁸ *Id.*

the Revised Equal Opportunity Law and the Fundamental Law Designed to Promote a Gender Equal Society.⁵⁰⁹

The Asia-Japan Women's Resource Center is another organization with the mission of ending gender inequality. Of the missions, one is to end violence and discrimination based on gender.⁵¹⁰ Among the specific goals in this mission are (1) sexual harassment and (2) discrimination based on gender and other grounds.⁵¹¹ The organization does this through education and training, building networks, and through campaigning/advocacy.⁵¹²

There are many NGOs in Japan, mostly focused on gender discrimination. The list above shows only a handful of many that can be accessed widely on the internet.

C. *International Response*

A new agreement emerged internationally as a possible way to address workplace conditions. The original Trans-Pacific Partnership Agreement was the work of twelve countries,⁵¹³ including Japan.⁵¹⁴ The agreement established a new partnership goal of a new partnership for trade and also focused on living standards and labor protections.⁵¹⁵ One of the provisions in Chapter 19 dictated that the Members to the agreement would recognize the ILO 1998 Declaration on Fundamental Principles and Rights at Work, *supra*.⁵¹⁶ The members would also “agree to have laws governing minimum wages, hours of work, and occupational safety and health.”⁵¹⁷ Additionally, the member-countries agreed on “fair, equitable and transparent administrative and judicial proceedings and to provide effective remedies for violations of its labour laws.”⁵¹⁸ The agreement contained thirty chapters that include trade ramifications and requires ratification by its members. The United States withdrew from the negotiations through an

⁵⁰⁹ *Id.*

⁵¹⁰ *About AJWRC*, ASIA-JAPAN WOMEN'S RESOURCE CENTER (Apr. 24, 2016 5:43 PM), www.ajwrc.org/eng/modules/pico1/index.php?content_id=1.

⁵¹¹ *Id.*

⁵¹² *Id.*

⁵¹³ The 12 countries are: Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, United States, and Vietnam.

⁵¹⁴ *Summary of the Trans-Pacific Partnership Agreement*, OFFICE OF THE U.S. TRADE REPRESENTATIVE (Oct. 2015), <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2015/october/summary-trans-pacific-partnership>.

⁵¹⁵ *Id.*

⁵¹⁶ *Id.*

⁵¹⁷ *Id.*

⁵¹⁸ *Id.*

executive order under the new administration.⁵¹⁹ However, the remaining countries of the Trans-Pacific Partnership Agreement worked to create a new agreement, which appears to have the same basic principles with some changes made to speed up negotiations.⁵²⁰

After the United States withdrew from the Trans-Pacific Partnership, the remaining countries⁵²¹ developed the Comprehensive and Progressive Agreement for Trans-Pacific Partnership. The new agreement incorporates the original Trans-Pacific Partnership with the exception of four Article changes.⁵²² The Articles that have been changed are not ones that impact the research of this article. This new agreement was signed in Santiago, Chile on March 8, 2018.⁵²³ The impact this agreement has on workers' rights, Japan's willingness to adopt the ILO provisions, and the application of those adopted provisions will become apparent over time.

V. PROPOSALS FOR CHANGE AND FURTHER RESEARCH

A. *Proposals for Change*

In light of the current status on human rights in the workplace in Japan, this writing presents five proposals for change. Many of these proposed changes will require action by the government of Japan. Although these will not end the human rights violations discussed in this article, they are pathways to change. Many of the solutions include stricter enforcement of the current laws.

The first proposal is to meet the conditions of the CEDAW. Japan has ratified CEDAW. While the government has made strides through the legislation and Constitution of Japan, enforcement of the laws remains an

⁵¹⁹ *Trump executive order pulls out of TPP trade deal*, BBC NEWS (Jan. 24, 2017), <http://www.bbc.com/news/world-us-canada-38721056>.

⁵²⁰ Reuters Staff, *TPP Talks Without U.S. Near Final Stretch Ahead of APEC*, REUTERS (Nov. 1, 2017), <https://www.reuters.com/article/us-trade-tpp-japan/tpp-talks-without-u-s-near-final-stretch-ahead-of-apec-idUSKBN1D14MB>.

⁵²¹ "The [Comprehensive and Progressive Agreement for Trans-Pacific Partnership] is a new free trade agreement between Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore and Vietnam." *Comprehensive and Progressive Agreement for Trans-Pacific Partnership [CPTPP]*, GOVERNMENT OF CANADA, <https://international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/cptpp-ptpgp/index.aspx?lang=eng> (last visited Mar. 27, 2018).

⁵²² *Comprehensive and Progressive Agreement for Trans-Pacific Partnership*, art. 1 Feb. 4, 2016, GOVERNMENT OF CANADA, <http://international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/cptpp-ptpgp/text-texte/cptpp-ptpgp.aspx?lang=eng>.

⁵²³ *Statement by Minister Champagne on Signing of Comprehensive and Progressive Agreement for Trans-Pacific Partnership*, GOVERNMENT OF CANADA, <https://www.canada.ca/en/global-affairs/news/2018/03/statement-by-minister-champagne-on-signing-of-comprehensive-and-progressive-agreement-for-trans-pacific-partnership.html> (last visited Mar. 27, 2018).

issue. The government needs to enhance the penalties and make a stronger effort for compliance.

The second proposal is to meet the conditions of ICESCR. Again, Japan has ratified the ICESCR. Through legislation and the Constitution of Japan, the government has implemented the ICESCR. However, there is a problem with enforcement. The government needs to take steps to enhance the penalties and compliance of ICESCR through their existing laws, such as the Labor Standards Act.

The third proposal is to ratify and enforce domestic laws in accordance with the ILO's Discrimination (Employment and Occupation) Convention. While many of the obligations have been included in the domestic laws of Japan, there is an enforcement problem. Ratifying this treaty would enforce the need for adhering to the obligations, while also enforcing the view that the Japanese government is taking active steps to correct the issues.

The fourth proposal is to adhere to the obligations of the ILO's Equal Remuneration Convention. Japan has ratified this convention. The obligations have been reflected in domestic laws of Japan. Again, there is an enforcement problem. The enforcement and adherence to the law fall short of the obligation.

The fifth proposal is that Japan should actively work towards meeting the goals for labor prescribed in the Comprehensive and Progressive Agreement for Trans-Pacific Partnership. Part of the consideration should be in abiding by the 1998 ILO Declaration on Fundamental Principles and Rights at Work. Even more so, Japan should consider ratifying the Discrimination (Employment and Occupation) Convention and meeting its obligations under the Convention. Due to the politically charged debate, and the numerous considerations Japan must work through regarding the Trans-Pacific Partnership Agreement, I will not make a blanket recommendation on ratification of the Agreement. Currently, the status of this agreement remains unclear. Since the United States will most likely not participate in the agreement, I strongly encourage Japan and the other nations to move forward with an agreement that enshrines the human rights goals.

B. *Proposals for Further Research*

As noted in the introduction, there are limitations to the research in this article. Due to the volume of information available, this article focused on adult citizens of Japan. As such, this article does not discuss migrant workers or minors working in Japan. This article does not delineate when the law has explicit application to both adults and minors, or when the law applies to citizens and migrant workers. Additionally, the government of Japan, NGOs, and the international community are looking at several changes. Lastly, many of these topics have already been researched, however, with the ongoing changes the research needs to be updated.

The first proposal for future research is on policies protecting the human rights of migrant workers in Japan. While migrant workers may face the same violations in this article, they are vulnerable to other human rights violations such as unfair wages, unsafe work conditions, and barriers to immigration status. This should be further researched.

The second proposal is future research into the protection of minors. Minors face many of the same violations as addressed in this article. Additionally, minors are historically a vulnerable population. Not only should these violations be researched, but other human rights violations should be addressed as well.

The third proposal is an evaluation of the addition of daycare facilities. Prime Minister Abe has promised an additional 500,000 spots in the state ran childcare facilities by the end of 2017, however the goal has been changed to eliminating daycare waitlists by 2020. The first part of the proposal evaluates what steps the government is taking to actualize this promise. Second, needs to address whether the promise has been fulfilled. The third part, if the second has been answered in the affirmative, needs to look at the effectiveness of the additional spots. This includes the ability of women to return to work post-birth.

The fourth proposal is to evaluate the changes in the law and additional laws. These include the ones enacted/amended after the date of this article, and those the NGOs are currently working on. This evaluation should focus on the process, passage or failure to pass, the implementation, and the impact on the workforce of Japan. Additionally, future research will need to be done on any strides NGOs are making regarding *karōshi* and *karō jisatsu*.

The fifth proposal is to evaluate the effects of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership. The evaluation should look at any impact the Agreement has had on domestic laws in Japan and their enforcement. This would also involve the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up.

VI. CONCLUSION

Though human rights are extensive, and the violations are present in many areas, Japan has two prevalent violations when it comes to their citizens and the workplace. The laws in place are not sufficient to end gender discrimination in the workplace. Nor are they effective enough to end *karōshi* and *karō jisatsu*. Moreover, the current legislation meets most of the international obligations Japan has, but falls short in enforcement. The MHLW is empowered to implement the labor laws in Japan, with a particular division in charge of labor laws with respect to women.

There are many NGOs in Japan that deal with gender discrimination. There is a lack of NGOs with a focus on *karōshi* and *karō jisatsu*. The NGOs currently present in Japan are making strides both through policy/legislation and through education. Additionally, the *karōshi* and *karō jisatsu* NGOs are

using the judicial system to hold employers accountable. However, they need the help of the government to finalize and enforce the laws currently implemented.