

# **Anti-Discrimination and Disability Employment Quota in Japan**

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## Two Main Questions

In Japan the quota-levy system has played a major role in disability employment. Now, the Japanese government intends to ratify **the Convention on the Rights of Persons with Disabilities (CRPD)** and to introduce an anti-discrimination law requiring employers to provide **reasonable accommodation (RA)** to **persons with disabilities (PWD)**. RA is a new legal concept in Japanese law.

Thus, we are examining the relationship between the quota-levy system and the anti-discrimination law, focusing on the RA mandate. As a first small step in examining this big issue, we consider two important economic questions:

- (1) How much cost should employers incur to provide RA in Japan?**
- (2) How should the Japanese government financially support these employers who are providing RA?**

## Some Basic Facts

### *What are the basic facts about disability employment policy in Japan?*

- (1) The quota-levy system under the **Disability Employment Promotion Act (DEPA)** has played a major role in Japanese Disability Policy.
- (2) Under the DEPA, each employer is legally obligated to achieve **the statutory employment rate**, which is 1.8% or more of the total workers.
- (3) Over half of all employers do not comply with the statutory employment rate (1.8%). The percentage of employers complying with this rate is 47%.
- (4) The number of PWD, who are hired by employers with 56 or more regular workers, has been increasing slowly.

2006: 284,000 PWD	2008: 326,000 PWD	2010: 343,000 PWD
2007: 303,000 PWD	2009: 333,000 PWD	

# Three Models of Quota System

*What are the models of quota system in the world?*

According to the International Labour Organization (ILO), quota systems in various countries can be divided into three basic models:

- (a) a binding quota with a sanction (**DEPA: Japanese quota-levy system**),
- (b) a binding quota without a sanction
- (c) a non-binding quota.

In Japan, employers who fail to meet the **statutory employment rate (1.8 %) under the DEPA** shall pay ¥50,000 (\$625) per person per month as a levy.

## The Levy-Grants Scheme under the DEPA

Under the DEPA, there are two main schemes to enhance disability employment: **the levy-grants scheme** and **the levy-allowance scheme**.

### *What is the levy-grants scheme under the DEPA?*

**The levy-grants scheme** creates disability employment incentives by providing grants to employers who hire PWD. The employers use these grants to hire PWD and modify their working environments.

A number of grants can be provided to all employers, based upon an examination of their application. There are nine categories of grants (see footnote 44 of the draft paper by Kawashima and Matsui) in the levy-grants scheme.

# The Levy-Allowance Scheme under the DEPA

## *What is the levy-allowance scheme under the DEPA?*

**The levy-allowance scheme** has the economic burden distribution function. Since there are imbalances in the economic expenses between employers who hire PWD and employers who do not, the imbalances are adjusted under this scheme in the spirit of social solidarity. (Y Nemoto, Shōgaisha Koyō Gaido, 1998)

When an employer has failed to meet **the statutory employment rate (1.8%)**, he must pay **a levy of ¥50,000 (\$625)** per month per person he lacks below the number required by the rate.

On the other hand, when an employer hires more PWD than the number mandated by **the statutory employment rate (1.8%)**, he is entitled to receive **an adjustment allowance of ¥27,000 (\$337)** per month per person he employs above the number required by the rate.

## Another Interpretation

### *What is another Interpretation of the Levy-Allowance Scheme?*

In spite of its name “quota,” **the levy-allowance scheme** under the quota-levy system is considered a textbook example of a **tax-subsidy scheme**. The levy is a kind of ad-valorem tax, while the adjustment allowance is a subsidy. When an employer does not meet the statutory employment rate, **the levy works as a tax** against under-employment. On the other hand, when an employer exceeds the rate, **the adjustment allowance works as a subsidy**.

Both the levy for under-employment and the adjustment allowance beyond the rate reduce the marginal cost of employment of PWD and, therefore, give employers positive incentives to hire them. Employers would hire PWD if positive incentives exceeded negative incentives often driven by prejudice, stereotypes and other factors.

## Another Interpretation (Cont.)

Let's consider an employer with **1,000 regular workers**. He is legally obligated to hire **18 PWD** since the statutory employment rate is 1.8%.

### *The Levy as a Tax*

If he hires 10 PWD, he has to pay a levy of ¥400,000 ( $= ¥50,000 \times (18 \text{ PWD} - 10 \text{ PWD})$ ) per month. If he increases the number of workers with disabilities by one person, he pays ¥350,000 ( $= ¥50,000 \times (18 \text{ PWD} - 11 \text{ PWD})$ ) per month. Thus, he reduces the marginal cost of employment by ¥50,000

### *The Adjustment Allowance as a Subsidy*

If he hires 25 PWD, he receives an adjustment allowance of ¥189,000 ( $= ¥27,000 \times (25 \text{ PWD} - 18 \text{ PWD})$ ) per month. If he increases the number of workers with disabilities by one person, he receives ¥216,000 ( $= ¥27,000 \times (26 \text{ PWD} - 18 \text{ PWD})$ ) per month. Thus, he reduces the marginal cost of employment by ¥27,000.



# The CRPD Mandate: Quota + Anti-Discrimination

## *What is the CRPD mandate in the employment field?*

The CRPD includes provisions on (1) **affirmative action** and (2) **non-discrimination including RA**. (Articles 2, 4, 5, 27)

The quota-levy system in Japan may be included in affirmative action as a corrective justice measure, unless it is inconsistent with the CRPD. Today, the Japanese government is in the process of adopting a new approach to disability employment, the so-called anti-discrimination law, out of a necessity to ratify the CRPD.

In the age of the CRPD, we consider the changing structure of the disability employment system in Japan as it changes from the “**quota system**” to the “**anti-discrimination plus quota system**.”

# Characteristics of Quota & Anti-Discrimination

*What are the characteristics of Quota & Anti-Discrimination?*

## *The Quota-levy System: Employer Initiative & Social Responsibility*

The quota-levy system gives employers the incentive to hire PWD through its schemes (both the levy-grants scheme and the levy-allowance scheme). This system works through the collective social responsibility among employers.

## *The Anti-discrimination Law: PWD Initiative & Enforceable Right*

The anti-discrimination law enables PWD to take the initiatives to realize equal employment opportunities through the creation of enforceable rights, including the right to RA.

## The Two Main Questions (as noted before)

The existing quota-levy system and the anticipated anti-discrimination law can complement each other to promote equal employment opportunity for PWD in light of the CRPD. But, the optimal complementary relationship between the anti-discrimination law and the quota-levy system is unknown and will not be generated automatically.

As a first small step in examining this big issue, we consider two important economic issues: **(1) the minimum threshold cost for RA** and **(2) the governmental financial assistance to employers for RA**, in order to ensure the effectiveness of the RA mandate through appropriate relationships between the anti-discrimination law and the quota-levy system.

# The Minimum Threshold Cost for RA

## *How much cost should employers incur to provide RA to PWD in Japan?*

From the perspective of **opportunity costs**, employers should pay the following amount of money as a minimum threshold cost for RA:

- When an employer is subject to **the levy program**, the minimum threshold cost for RA is ¥50,000 (\$625) /mo. (¥600,000 (\$7,500) /FY).
- When an employer is subject to **the adjustment allowance program**, the minimum threshold cost for RA is ¥27,000 (\$337) /mo. (¥324,000 (\$4,050) /FY).
- When an employer is subject to **the reward program**, the minimum threshold cost for RA is ¥21,000 (\$262) /mo. (¥252,000 (\$3,150) /FY).

## The Minimum Threshold Cost for RA (Cont.)

The implication of this proposal is that an employer requested to provide RA has to prove, at a minimum, that its cost exceeds ¥600,000 (\$7,500), ¥324,000 (\$4,050) or ¥252,000 (\$3,150) in a fiscal year.

Under this proposal, the cost of most RA could be covered by most employers in Japan, given the mean and median costs of RA in the US.

According to **Professor Peter Blanck**, the average direct cost of RA for each employer in the US was \$45 (from 1993 to 1996) or \$121 (from 1978 to 1992). According to **the Job Accommodation Network (JAN)**, the median cost of RA was \$600, and the mean cost was \$1,183.

## The Governmental Financial Support for RA

*How can and should the Japanese government financially support these employers who are providing RA?*

One member of the research unit under the Japanese Ministry of Health, Labor and Welfare said that RA could be effective by utilizing **the levy-grants scheme** of the quota-levy system.

**The levy-grants scheme** can be used as subsidies to reduce the employers' RA burden. If this burden was reduced, the effectiveness of RA could be better ensured, and thus the inclusion of PWD would be facilitated.

## The Governmental Financial Support for RA (Cont.)

In considering the possibility of this proposal, it is important to take note that the quota-levy system is in a financial crisis.

Since the fiscal year 2008, the quota-levy system has been operating in the red. In the fiscal year 2009, the income of levy revenue was **about ¥15 bn.** (\$187 m.). The total expenditure was **about ¥19 bn.** (\$237 m.). The amount of the total deficit is **about ¥4 bn.** (\$50 m.).

If **the levy-grants scheme** of the quota-levy system, which could be used for financial support for RA, were transferred to another system (*e.g.*, the existing “Disability Employment Grant Program” under **the Employment Insurance Act**), the quota-levy system would no longer be in deficit.

## Conclusion

The optimal complementary relationship between the anticipated anti-discrimination law including **the RA mandate** and the existing quota-levy system is possible. But it will not be generated automatically.

The possible reform options with regard to **(1) the minimum threshold cost for RA** and **(2) the governmental financial assistance for RA**, as proposed above, can provide a basis for further examination of the optimal relationship.