

Law for Labor Market
Law and Economics: Part 3

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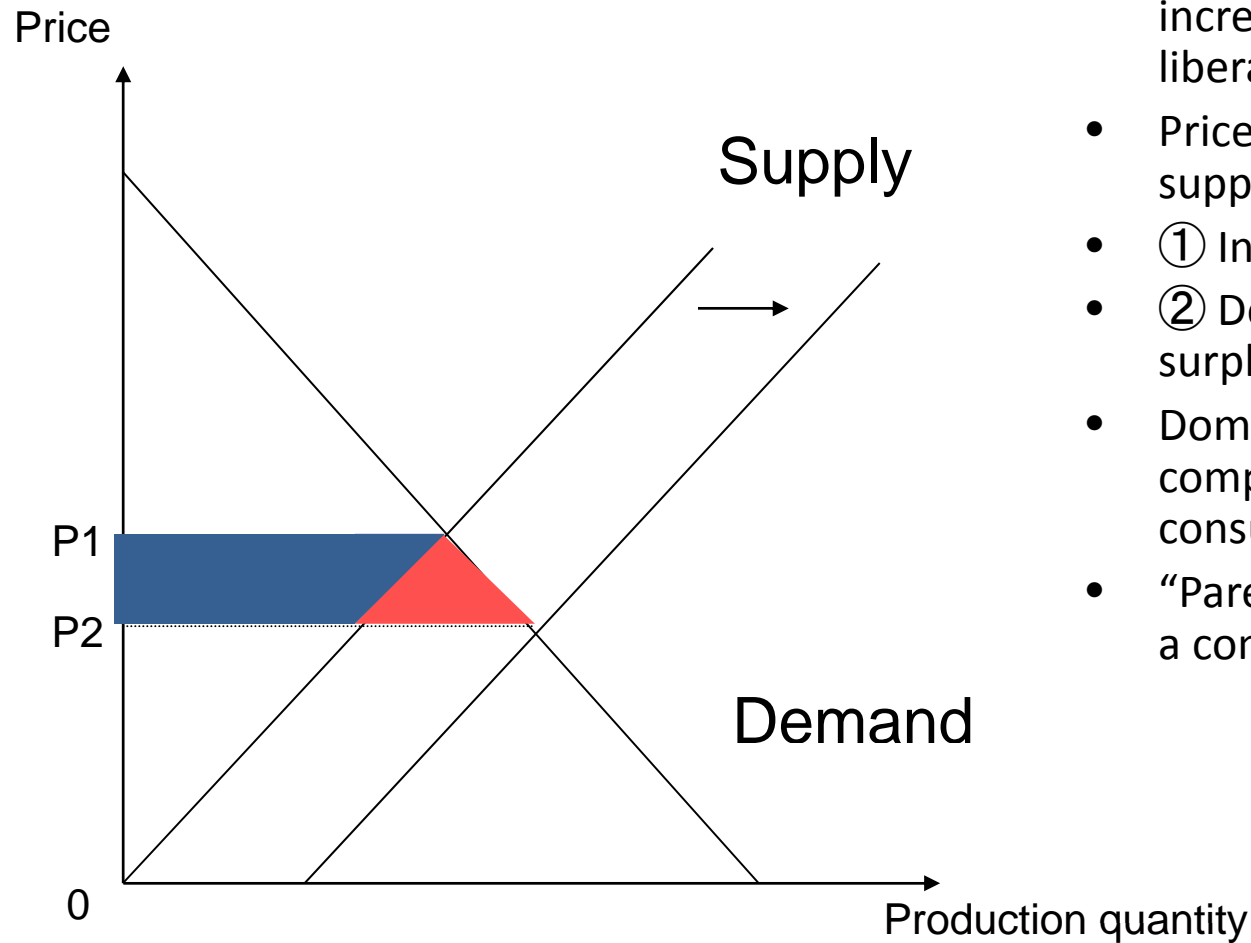
Comments on the Lecture

- While economics turns phenomena in the real world into quantitative models, is it not difficult to use them in the realities of life?
- In addition to just an economic aspect or efficiency, shouldn't a person's feeling be considered as well (where one wants to live and such)?
- Won't an economic way of thinking lead into totalitarianism?
- Unable to afford high-priced houses, long-distance commuters can be called "the weak," and isn't it necessary to pay them an aid or allowance?
- Is it not contrary to guarantee of personal liberty to plot eviction by raising the municipal tax on real estate against the farmland in an urban center?

Comments on the Lecture (sequel)

- Won't a compact city bring upon further impoverishment of local communities?
- As for outsourcing crackdown on parking violation to the private sector, the business won't pay if there should be no offender. What should be done then?
- What about medium and small retailers that went out of business as the Large-scale Retail Stores Law was abolished?

Benefit of Free Trade (re-insertion)



Expansion of consumer benefit: $a + b$

Reduction in domestic producer's surplus: a

- Supply shifts to the right with an increase in imports due to trade liberalization.
- Price falls off due to an increase in supply.
- ① Increase in consumer surplus
- ② Decrease in domestic producer's surplus
- Domestic producer's loss to be compensated by an increase of consumer's surplus
- "Pareto Efficiency" to be realized with a compensation for producer

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- For example, if a childcare facility raises its fares, the demand declines. Those who really need a childcare facility are the households that have low incomes requiring mothers to work. Is it not disregarding the socially disadvantaged to apply marketplace principles in all areas?

Approach to Labor Law

- The ground for the government to intervene in an employment contract is to straighten out unfair bargaining power between a company and worker.
- To set up a minimum standard regarding working conditions (a minimum wage, limit on long working hours) and to protect a labor union
- To supplement income security, like unemployment, disease, pension, etc., with social insurance
- Labor law be premised on a tacit assumption of a conflict of interests between labor and management.
- “Labor-labor conflict” (employed workers vs. other)
- Problems that have existed for a long time come to light in a period of low economic growth
- Toward an “efficient regulation” amid changes in economic and social circumstances

Dismissal Regulation

- “Labor Standards Law”: to guarantee minimum standards as to the way of working
- Dismissal restrictions (workers who take sick or maternal leave) and notice of dismissal
- “Labor Contract Act”: the general rules on employment
- Dismissal, in short of an objectively rational reason and not recognized appropriate based on a socially accepted idea, becomes void being considered to be an abuse of the employer’s rights. (Art. 16)
- “Legal principle on the abuse of the right of dismissal (Case Law)”
- ①Necessity for dismissal, ②effort made to evade dismissal, ③impartial selection of discharged person, ④consultation with a union and such

Concrete Examples of Legal Principle on Abuse of Right of Dismissal

○Precedents of ordinary dismissal

- Kochi Broadcasting Co.: Invalid dismissal of a newscaster who overslept twice
- Invalid dismissal of a company director who hindered business due to alcohol dependency (Sendai district court)
- Ford Motor Co.: Invalid dismissal of a personnel director who was not competent for the job

○Judge's logic

- Corporation's responsibility for management and education of its employees
- ⇒Impartiality between employees with cordial job security and others?
- Compensation for a corporation's great amount of discretion on personnel matters
- ⇒Chronic long working hours, frequent personnel reshuffles and job transfers

Issues of Dismissal Regulation Based on Case Law

- Unreliability owing to dependence on the judge's discretion (low predictability)
- Regional differences in the dismissal judgment (Otake, 2002)?
- Impartiality in relief opportunities by a trial (extent of backing by the labor union)
- Workers with cordial job security vs. other workers and unemployed persons
- Toward the positive law that places emphasis on objective procedural impartiality
- ⇒ Monetary compensation and career transition support in the wake of dismissal due to economic conditions
- Substitution for the “effort made to evade dismissal” stated in the legal principle on the abuse of the right of dismissal
- ⇒ Impartiality between those workers who can stay in a corporation and those who go on the retired list
- Objective of Labor Contract Act (2008) is to clarify the dismissal rules.

Commonalities between Land Lease and House Lease Law and Dismissal Regulation

- Objective of the regulations is to give relief to a party concerned at the expense of another party involved in a contract.
- ⇒ Compulsion of housing and employment security that is supposedly realized by the government
- Changes in behaviors of house owners and employers attributable to the regulations (general equilibrium)
- ⇒ Curb on the supply of house lease, shifting to the supply of apartments for singles
- ⇒ Curb on the hiring of new employees, shifting to the demand for hiring nonpermanent employees
- Protection of benefits of existing tenants and employers at the expense of the weak
- ⇒ Conflict of interests between existing tenants and new tenants, workers already employed and ones hunting for a job

Definition of Nonpermanent Employee

- The worker who lacks such requisites for the permanent employee as direct hire, a contract without a fixed date, full-time, being paid by the month and covered by social insurance, etc.

Breakdown of Nonpermanent Employees				
	2009		2001	
	Persons in 10,000	%	Persons in 10,000	%
Part time	1153	65.5	1022	74.2
Contract/temporary	321	18.2	229	16.6
Temp dispatched from agency	108	8	45	3.3
Other	139	8.4	82	6
Total nonpermanent employees	1721	100	1377	100
(Ref) Total permanent employees	3380		3597	

Origin: Ministry of Public Management, *Labor Force Survey*

Substantial Deregulation of “Act for Worker Dispatching*” in 1999

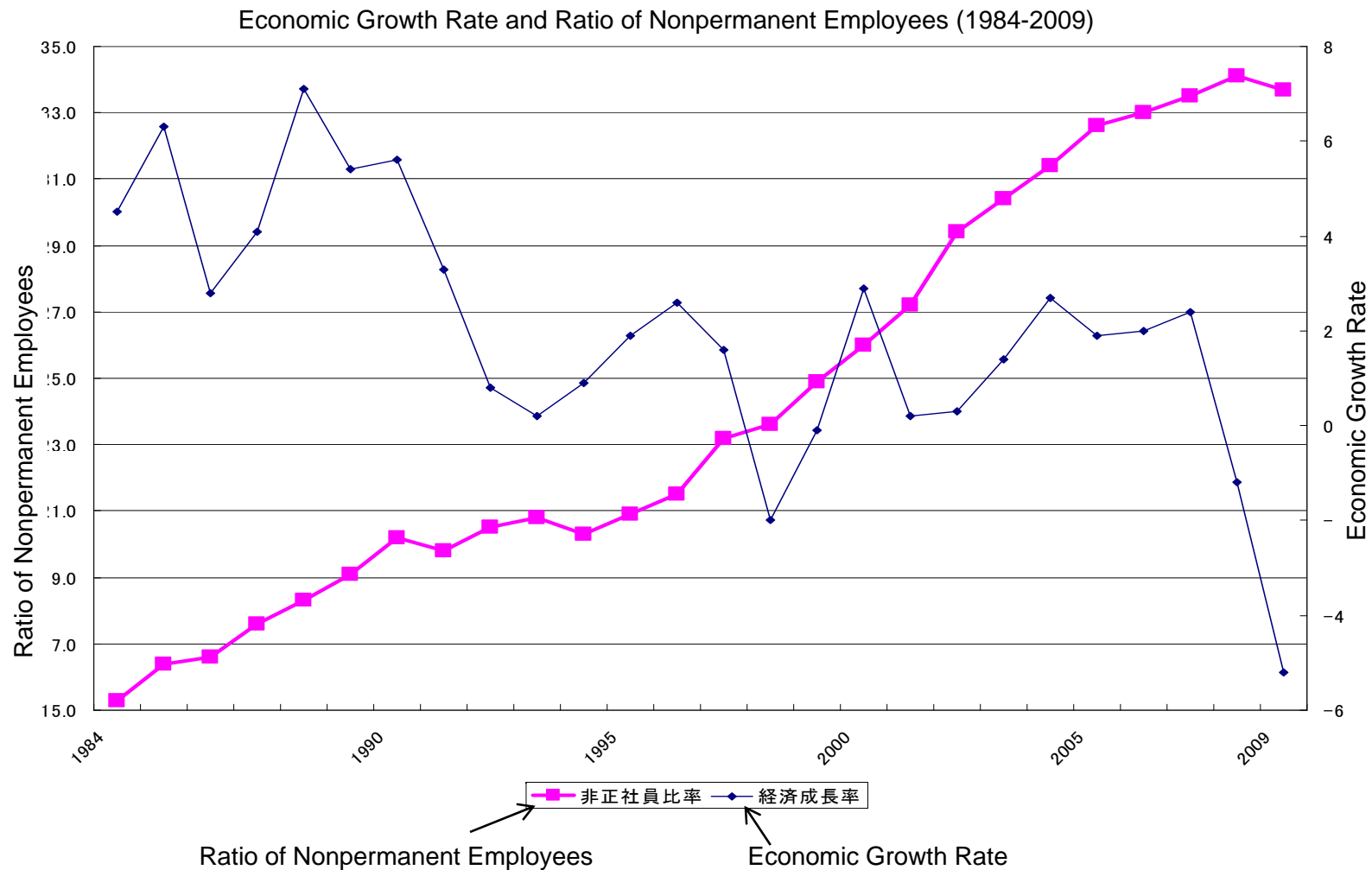
- Pattern in which a worker serves at a business establishment (a company where this worker is assigned) which is different from the one (a personnel placement agency) that has employed this worker: indirect employment
- Routine-type dispatching (long-term employment at a personnel placement agency) and the registration-type dispatching (employment by a placement agency every time a company where this worker is assigned gets decided)
- “Recognizing the role which private employment agencies may play in a well-functioning labour market, and recalling the need to protect workers who take advantage of them...” (ILO C181)
- Deregulation of restrictions on occupational categories for 26 types of industry (free in principle, restricted for exceptional cases)
- Port transport, construction, guarding, and medical service as exceptionally prohibited occupations
- Lifting of a ban in 2004 on the dispatching to manufacturing industry (which was “prohibited for the time being”)

*Act for Securing the Proper Operation of Worker Dispatching Undertakings and Improved Working Conditions for Dispatched Workers

Proposal to Tighten Regulation on Agency-dispatched Labor

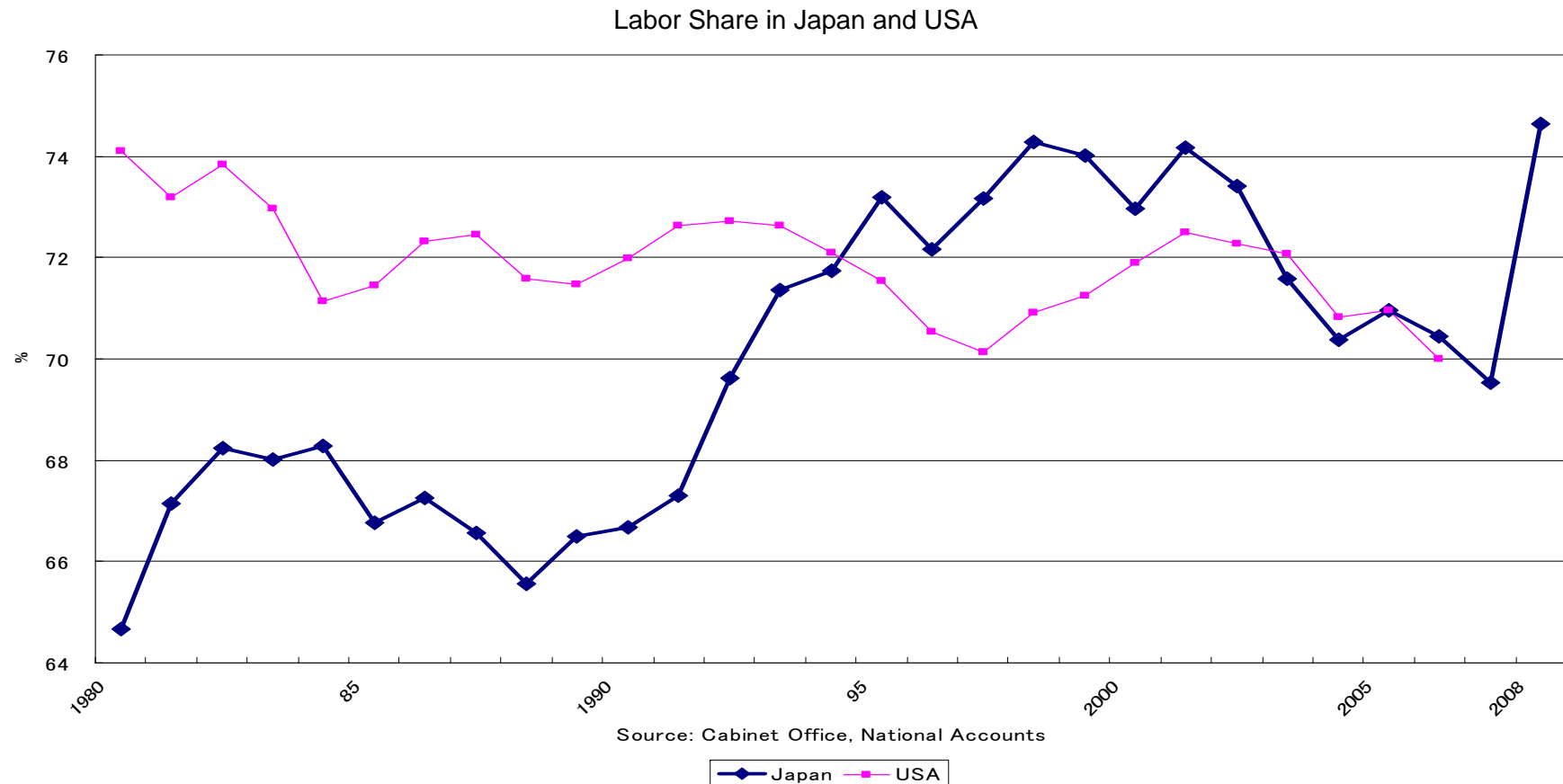
- Protection of Japanese employment custom ⇒ Restriction on employment for a definite term
- Assumption that the deregulation relative to dispatched labor increases nonpermanent employees and constitutes the primary cause of a pay differential
- Problems such as the violation of Employment Security Law and “Act for Worker Dispatching” like dual dispatching, the violation of Labor Standards Law like arrears of “portal-to-portal” pay, and the frequent occurrence of work-related accidents at premises where workers are dispatched
- ⇒ Letting offenses against the existing laws continue unchecked
- “If agency-dispatched labor is banned and workers get employed directly by a business establishment, their wage goes up by the amount equal to the commission that a personnel placement agency takes.”?
- Due to an increase in agency-dispatched labor, labor costs go up, companies’ demand for employment falls off, and unemployment rises?

Upturn in Nonpermanent-employee Ratio Following Drop in Economic Growth from the 1990s



Meaning of Labor Share

- Ratio of compensation of employees (wage + social insurance premium borne by a business proprietor) against the national income; inversely-correlated to the economy



Status Quo of Agency-dispatched Daywork

- Labor dispatched by placement agencies expands alternative ways of working.
- Agency-dispatched daywork: work dispatched by placement agencies based on an employment contract by the day
- 57% males, 43% females, and 70% being 34 years old or under
- 54% being job-hopping part-time workers, 23% students
- 8.9 working days per month in average
- Business: warehouses/conveyance, manufacturing, events, shops, restaurants
- Reasons for choosing a short-term agency-dispatched work:
 - Free choice of working days, income, stopgap until obtaining a job
- (Origin): Ministry of Health, Labour and Welfare, *Survey Regarding the Realities Of Agency-dispatched Daywork Laborer, 2008*

Wish for Diverse Ways of Working

- Half of the workers voluntarily desire to work in the way of dispatching.
- They do not wish for a way of working as a permanent employee under highly restrictive circumstances.

Ways of Working Desired by Agency-dispatched Temp						
	Agency-dispatched Temp	Contracted Employee	Permanent Employee	Other		
Male	33.8	1.9	41.8	22.6		
Female	34.3	8.5	40.2	17.0		
Total	34.0	5.6	40.8	19.5		

Origin: Ministry of Health, Labour and Welfare, *Fact-finding Survey on Agency-dispatched Temp in 2008*

Will Control over Dispatching from Agency Lead to Growth in Permanent Employees?

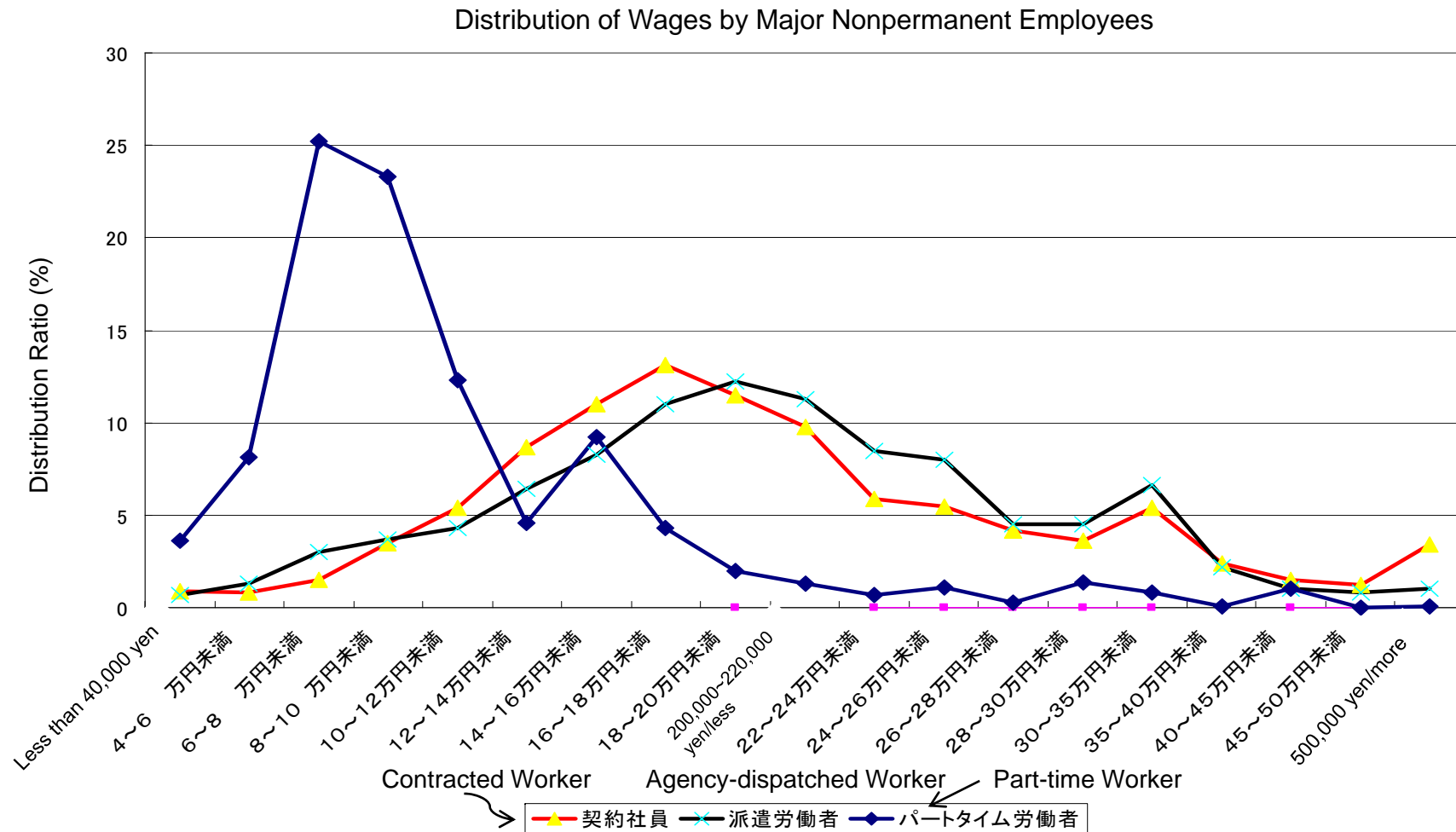
- There is no social expenditure according to a survey on the impact of control which was conducted by Ministry of Health, Labour and Welfare.

Survey by Questionnaire Regarding Response to Control by "Act for Worker Dispatching"		
	Asahi Shimbun Nov. 2009	Staff Service Oct. 2009
Number of firms surveyed	100 nationally leading firms	91 smaller businesses nationwide
Countermeasures	(Multiple response)	(Singular response)
Contracted employees	36	74
Contract/commission	30	5
Part time	22	
Addition of permanent employees	15	4
Relocation to overseas	6	
Coping with existing employees		6
Other	32	2
(Subtotal)	141	91

Desirable Way the Amendment of “Act for Worker Dispatching” Should Be

- To approve of diverse ways of working (not for the protection of Japanese employment custom)
- To change the current “Act for Worker Dispatching” to an “act for the protection of dispatched workers”
- To expand the list of occupational categories for dispatched workers (construction, harbor, guarding, and medical service)
- To remove the virtual restriction on the term of dispatching (within 3 years)
- To lift a ban on prior interviewing, and equalize social services and education and training
- To reinforce responsibilities of a dispatching firm as a joint employer together with a company where a dispatched worker is assigned
- To apply to a dispatched worker the principle of the identical job with the identical wage
- To incentivize a placement agency firm to strengthen education and training
- To position agency-dispatched labor as having a role to bridge part-time work with permanent employment

Distribution of Wages for Agency-dispatched Worker, Contracted Worker, and Part-time Worker



Monthly Wage Distribution: Ministry of Health, Labour and Welfare, Overall Fact-finding Survey on Diversification of Employment Pattern, 2007

Statement by Jinzai* Service General Union

(<http://www.jsgu.org/pointofview.html>)

- On the occasion of discussion concerning social disparities, an opinion that comes out very often is that indirect employment is their main cause.
- We feel quite awkward about particular viewpoints such as agency-dispatched labor being equal to “working poor,” a “reluctant way of working” which are asserted by the mass media, some of the labor world and political parties.
- Judged as being “unstable,” “miserable,” and a “cruel way of working” because of indirect employment, those who work as agency-dispatched fellows with their creed and pride sustain an emotional hurt.
- Under the freedom to choose one's occupation, both indirect employment and direct employment should be valued on equal terms as “work.”

*human resource