

**Representation to the Governing Body
of the
International Labour Organization
by the
National Union of Welfare and Childcare Workers under
Article 24
of the International Labour Organization's Constitution
regarding
Japan's violation of ILO Convention 159 concerning the
Employment Policy for Persons with Disabilities**

15th August 2007



福祉保育労

全国福祉保育労働組合

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15 August 2007

Dear Mr. Juan Somavi,

The National Union of Welfare and Childcare Workers (Zenkoku Fukushi Hoiku Rōdōkumiai) of Japan submits this representation under Article 24 of the Constitution of the International Labour Organization, for the consideration of the ILO Governing Body regarding Japan's violation of Convention 159, Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983.

Yours sincerely,

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TABLE OF CONTENTS

Letter to the Director General, ILO	i
Representation Statement	iii
National Union of Welfare and Childcare Workers	iv
The Need for Making the Representation Regarding Japan’s Violation of ILO Convention and Recommendations Concerning Employment Policy for Persons with Disabilities	1
Section I. Introduction	4
Section II. Violations of ILO Convention and Recommendations	5
Section III. Background	8
• Employment Policy for Persons with Disabilities in Japan	
• Employment Quota System for Persons with Disabilities	
• Welfare Work Program: Workshops and Welfare Factories	
Section IV. Claim and Evidence	12
• Failure to Meet the Employment Rate Quota and Improper Counting Method	
• The Establishment and Effects of the New Law “Shōgaisha Jiritsu Shien Hō”	
• Failure to Provide Employment Assistance and Exclusion of PWDs in Welfare Work	
• Failure to Accommodate Working Persons with Disabilities	
Section V. Recommendations for the Japanese Government	20
Notes	21

Documents

- Document 1:** Pamphlet and registration form of National Union of Welfare and Childcare Workers
- Document 2:** Pamphlet of Workability International
- Document 3:** Pamphlet of Japan Council on Disability
- Document 4:** Japan Organization for Employment of the Elderly and Persons with Disabilities, 2007, “Supporting the Employment of Persons with Disabilities”
- Document 5:** “Law for Employment Promotion, Etc., of the Disabled”
- Document 6:** Internal Auditing Bureau, 1996, “Shōgaisha koyō taisaku no genjō to kadai”
- Document 7:** Asahi Shinbun, April 16, 2007
- Document 8:** Social Employment Centers in Japan 1997

Representation Statement

National Union of Welfare and Childcare Workers (Zenkoku Fukushi Hoiku Rōdōkumiai, also known as Fukushi-Hoikurō), under Article 24 of the International Labour Organization submits this representation to the International Labour Organization Governing Body in that the Japanese Member has failed to secure in certain respects the effective observance within its jurisdiction elements of Convention 159, Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 to which it is a party and ratified on 12th June 1992.

We request that the Governing Body of the International Labour Organization communicate this representation to the Japanese Government, against which it is made and seek their early application and effective observance.

Our representation submits that Japan, under Convention 159, Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 and supporting Recommendations, has failed effective application regarding:

- Applying the definition of persons with disabilities based on an individual's work abilities;
- Services and support be applied equally to all people with disabilities, regardless of categorisation;
- Setting up "sheltered employment" policy and facilities, for whom access to open employment is not practical;
- Binding equal opportunity between workers with disabilities and workers generally;
- Ensuring that competent authorities shall take measures with a view to providing and evaluating vocational guidance, vocational training, placement, employment and other related services to enable disabled persons to secure, retain and advance in employment, and in these measures existing services for workers generally shall, wherever possible and appropriate, be used with necessary adaptations.

National Union of Welfare and Childcare Workers (Fukushi-Hoikurō)

National Union of Welfare and Childcare Workers (Zenkoku Fukushi Hoiku Rōdōkumiai, also known as Fukushi-Hoikurō) is registered as a trade union of Japan Central Labour Committee (registration number 624, document with supporting translation in the pack).

Fukushi-Hoikurō is a national trade union of welfare and childcare workers. The organization consists of 36 branches and regional offices across Japan. There are 12,000 union members, of which 3,000 members work as welfare service providers for persons with disabilities.

Its main objectives and activities are: advocate for humane working conditions and wages for welfare and childcare workers; promote fair working environment; campaign for the increasing commitment to social welfare programs and policy at all government levels; and manage a benefit cooperative for its union members.

Fukushi-Hoikurō and Japan Council on Disability (henceforth JD) are linked by a shared understanding that Japanese government's recent change in the welfare policy for persons with disabilities is adversely affecting members of both organizations. Many employers of Fukushi-Hoikurō members belong to JD.

In preparing this representation, National Union of Welfare and Childcare Workers received support and additional information from JD as well as Workability International, who are on the ILO's Special List of Non-Governmental Organizations.

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The Need for Making the Representation Regarding Japan's Violation of ILO Convention and Recommendations Concerning Employment Policy for Persons with Disabilities

National Union of Welfare and Childcare Workers (Fukushi-Hoikurō) as a registered trade union of Japan Central Labour Committee hereby submit this representation to the Governing Body of the ILO. This representation is supported by the Japanese Workability International (WI) members and Japan Council on Disability (JD), who have contributed information included in Section I to V.

Japan, despite being the second largest economic power in the world and recognized as the leading social welfare nation in Asia, has been knowingly and consistently violating ILO convention and recommendations concerning vocational rehabilitation and employment policy for persons with disabilities.

The Japanese government has failed to observe the ILO convention and recommendations that it has ratified, including C159 Vocational Rehabilitation and Employment (Disabled Persons) Convention of the year 1983 (ratified by Japan in 1992), R99 Vocational Rehabilitation (Disabled) Recommendation, and R168 Vocational Rehabilitation and Employment (Disabled Persons) Recommendation.

For more than 30 years, the Japanese government has received instruction from WI members, JD, organizations for disabled persons, and its own internal auditors to fix its employment policy for persons with disabilities. Yet the government has consistently manipulated the employment rate of persons with disabilities, which is a key benchmark used to regulate the public and private sectors. The current policy also excludes persons with severe disabilities from unemployment benefits and vocational training programs. So far, no remedy has been implemented.

This is an urgent request. Fukushi-Hoikurō is filing this representation prior to the scheduled ILO review because Japan is currently seeking to ratify the United Nations Convention on the Rights of Persons with Disabilities, while dismissing calls to overhaul the current employment policy for persons with disabilities. This moment presents a unique opportunity for the world community to make certain that Japan will correct these problems and observe the ILO convention and recommendations.

We are submitting this representation now also because in 2006 the Japanese government put into effect a policy change that has undermined the already limited vocational and rehabilitation opportunities for persons with disabilities.

We demand that the Japanese government make a thorough overhaul of the policies and laws concerning the employment of persons with disabilities, starting with the repeal of the 2006 law *Jiritsu shien hō*. We also demand that Japan be disqualified from ratifying the United Nations convention on the rights of persons with disabilities if they fail to take appropriate actions to correct the problem.

In Japan, the basic needs of persons with severe disabilities have been neglected far too long. The current policy prevents persons with disabilities from leading independent and productive lives. Through this petition, the signatories hope it will send a word of warning to not only the Japanese Government but also to employers, labour unions, rehabilitation specialists, social service providers, disabled people's organizations, and to all those who

have persistently neglected the fundamental needs of their fellow countrymen with severe disabilities.

Someko Mogi, President of Fukushi-Hoikurō

Frank Flannery, President of Workability International

Kazuo Katsumata, Chairman of Japan Council on Disability

About Workability International and Japan Council on Disability

Workability International (WI) is the world's largest group representing providers of work and employment services to people with disabilities. It is a not-for-profit company limited by guarantee registered in the United Kingdom.

Workability International Secretariat

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Japan Council on Disability (JD) is an umbrella organization founded in 1980 which consists of more than 70 organizations for disabled persons, including all of the Japanese members of WI.

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Note: since Japan does not use English for public documents, many laws do not have official English translated names, this petition does not necessarily use publicly recognized terms. Where necessary, terms in the original Japanese will be used.

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SECTION I. Introduction

We list the following violations of the government of Japan in regard to the employment policy for persons with disabilities (PWDs):

- Failure to reach the quota during the 30 years of the program and efforts to manipulate statistics by an improper method of counting
- Establishment of a new law that places unreasonable financial burden on working PWDs who are subject to social welfare policy
- Failure of government-run employment assistance programs to offer adequate support for unemployed PWDs due to the exclusion of many persons with severe disabilities from employment benefits and vocational rehabilitation services
- Refusal to provide support and incentives for the private sector to hire low-productive PWDs and offer reasonable accommodation for potential employees with disabilities.

The above violations demonstrate the Japanese government's non-observance of the following ILO convention and recommendations it has ratified:

- C159 Vocational Rehabilitation and Employment (Disabled Persons) Convention of the year 1983 (ratified by Japan in 1992)
- R99 Vocational Rehabilitation (Disabled) Recommendation
- R168 Vocational Rehabilitation and Employment (Disabled Persons) Recommendation.

These non-observances violate, in spirit and in practice, the following provisions of the above convention and recommendations:

- Work-based definition of PWDs
- Equal treatment of all PWDs
- Sheltered employment and production workshops
- Equal opportunity between PWDs and non-disabled
- Vocational training, employment assistance, and reasonable adaptation

For the Japanese government to become an upstanding member of the above convention and recommendations, it needs to correct its employment policy for PWDs.

SECTION II. Violations of ILO Convention and Recommendations

It is an absolute failure of Japanese employment policy that for more than 30 years Japan has been unable to achieve the employment quota rates, which are set at an extremely low level. Realization of complete employment for all PWDs has been overlooked and disregarded for too long despite repeated petitions submitted by domestic organizations of disabled persons since the 1970s. Most of persons with severe disabilities have been excluded from employment policy and forced to work with no protection from labour laws. These violations of ILO convention and recommendations are listed below.

1. Definition of PWDs Based on Work Ability

In the ILO convention and recommendations, the definition of persons with disabilities is based on an individual's work ability. For example, persons with disabilities is defined as "an individual whose prospects of securing, retaining and advancing in suitable employment are substantially reduced as a result of a duly recognised physical or mental impairment" (C159 Article 4, and R168.I.1). In the ILO definition of a PWD, the beneficiary of vocational rehabilitation and employment services has disabilities that substantially hinder that individual from leading a productive and satisfying working life.

In Japan, many PWDs do not receive benefits because laws for the employment promotion of the disabled do not identify individual PWDs according to their work ability. Instead, they use the criteria stipulated in social welfare laws, which determine disabilities according to impairments based on a medical model. PWDs are misrepresented in the reported statistics used in the self-regulatory quota system and miscategorized so as to obstruct access to employment assistance programs. With the current definition used in the law, many PWDs who hardly need help are eligible for government support, while those who actually need assistance are cheated from these benefits and even forced to pay for the system that ends up benefiting those with fewer needs.

These problems could have been resolved had the government followed the recommendation by the former Internal Auditing Bureau who conducted an internal audit concerning the implementation of the employment policy on PWDs in 1996. They advised the government to redefine persons with severe disabilities according to their actual work ability. However, the government has ignored this call to revise the criteria even after a decade since the audit report.

2. Equal Treatment for all PWDs

The ILO convention and recommendations ask that services and support be ensured equally to all PWDs, regardless of the subcategorization. To illustrate, C159 states that "appropriate vocational rehabilitation measures" as well as "promoting employment opportunities...in the open market" "are made available to all categories of disabled." (C159 Article 3). This is echoed in R168 that "vocational rehabilitation measures should be made available to all categories of disabled persons." (R168.I.4)

In Japan, those PWDs who work in workshops receive services under the welfare law, while those who work for welfare factories are protected under the labour law. This situation creates a discriminatory treatment among PWDs in such areas as wage, work conditions,

worker compensation, joining labour union, etc.. In other words, a great number of PWDs working under the welfare work program are not entitled to the rights secured by labour laws.

3. Sheltered Employment and Production Workshops

ILO recommendations encourage governments to set up “sheltered employment” for those PWDs “for whom access to open employment is not practical.” (R168.11,(b)). These sheltered employment centers are recommended to co-operate with “production workshops” “to help prepare them for employment under normal conditions.” (R168.11, (c)) In order to “facilitate transition to the open labour market,” the government should provide support (R168. 11, (m)). The same idea is addressed in Article 99 (33), and (35), which further specifies that the wages and work conditions of sheltered employment should meet the standard for workers in general.

However, the Japanese government has failed to administer sheltered employment centers in accordance to the provisions in the above ILO recommendations. In Japan, the meaning of “sheltered employment” is not that of a rehabilitation facility. Rather, the role of welfare factories, which the government considers as sheltered employment, remains the same as workshops in essence because they employ only a small number of PWDs in workshops. Very few PWDs in welfare work programs are actually able to find work in the open market. Others have no means and access to move beyond the program.

Furthermore, their wages in welfare work program have decreased over the years. Nonetheless, almost all of them, except for a small number of those in welfare factories, have no protection under labour laws, thus not entitled to the rights secured for general workers. To make it worse, the unreasonable financial share required by the new law is now forcing many to quit the program altogether.

4. Equal opportunity between PWDs and non-disabled

ILO convention and recommendations bind members to ensure equal employment opportunities between PWDs and non-disabled. For instance, Article 4 of C159 insists that the employment policy concerning PWDs must “be based on the principle of equal opportunity between disabled workers and workers generally.” R168 also addresses equal opportunities between PWDs and non-disabled in “employment and salary standards” (II. 10). Furthermore, discrimination against PWDs concerning wages and other work conditions is clearly prohibited in Article 25 of R99.

The Japanese government has continued to fail in its effort to ensure that PWDs are given equal opportunities to train for and procure employment. The employment quota rates have been set much lower than the national percentage of PWDs, thereby excluding a large part of the PWD population. In addition, during the past 30 years Japan has never reached the quota in a real sense, thus clearly indicating the failure of the government’s employment policy. Furthermore, severely disabled persons specifically have long been excluded from its employment policy and services, as they have been pushed aside and forced to work under welfare work program with extremely low wages and unfair work conditions.

5. Vocational training, employment assistance, and reasonable accommodation

Article 7 of C159 states that “the competent authorities shall take measures with a view to providing and evaluating vocational guidance, vocational training, placement, employment and other related services to enable disabled persons to secure, retain and advance in employment; existing services for workers generally shall, wherever possible and appropriate, be used with necessary adaptations.” The need to apply “the principles, measures and methods of vocational training” for non-disabled populations to PWDs is also addressed in R99 (5). Similarly, the training should be given to PWDs “with and under the same conditions as non-disabled persons” (R99 (7)). Employers should be encouraged to provide training, including “financial...assistance” (R99 (9)). Similarly, the significance of making “reasonable adaptations” (II.11.(a)) to facilitate employment and rehabilitation service delivery to the PWD is also stated in R168. Finally, chapter V of R99 specifies that PWDs should be provided access to “all available vocational rehabilitation services,” “appropriate and adequate financial assistance,” and “free vocational rehabilitation services.”

Currently in Japan, the number of PWDs seeking jobs at the Public Employment Security Office (PESO) is increasing. They are left without any plans or support in employment assistance. In addition, severely disabled persons under welfare service are not even allowed to register as job seekers at PESO. Furthermore, with the establishment of the new law, PWDs who are eligible for these services now have to share a financial burden in order to receive those services. Regarding the issue of reasonable accommodation, private employers are not provided with any directives or support from the government, which prevents employment opportunities of PWDs, especially those with severe disabilities.

SECTION III. Background

Employment Policy for Persons with Disabilities in Japan

This representation demands that the government of Japan revise the employment policies and laws for PWDs. The problem with the employment policy for PWDs in Japan is caused by a motley collection of laws that make it legal to infringe upon the spirit of support and protection found in the ILO convention and recommendations. Government programs have relied upon loopholes in the law, which are made possible by the existence of many sets of laws that all provide different definitions for PWDs and hence with different levels of protection and varied access to public services. These loopholes also drive down the employment rate quotas, effectively excluding over half of Japan's PWD population from employment programs and benefits. While these violations are legal on paper, these violations result from a legal regime that, in its implementation, robs PWDs of their desire to work and thus their dream of leading productive, independent, and active lives.

According to the Cabinet Office of the Japanese government, approximately 6.56 million Japanese are persons with disabilities (PWDs), or 5% of the total population.¹ As noted in Figure 1, of the 6.56 million, 3.52 million people have physical disabilities, 0.46 million have intellectual disabilities, and 2.58 million have mental (psychiatric) disabilities. Unlike in other countries, these three types of disabilities are differently recognized under Japan's social welfare laws; each type of disabilities has a legal definition and is subject to different welfare service laws. Note that these numbers correspond to the legal definitions as they are designated by the three welfare service laws; the numbers would be different if definitions in other laws were to be used, such as education, employment security, and worker compensation.

Figure 1: Number of Persons with Disabilities in Japan²

	Persons living at home	Persons living in institutions	<u>Total</u>
Persons with physical disabilities	3,327,000	189,000	3,516,000
Persons with intellectual disabilities	329,000	130,000	459,000
Persons with mental disorders	2,239,000	345,000	2,584,000
<u>Total</u>	5,895,000	664,000	<u>6,559,000</u>

Note: The figures are rounded off to the nearest thousands.

It is also important to note that compared to other countries these legal definitions are less inclusive, thus resulting in a low ratio of PWDs relative to the total population. This is why the figure of 5% reported by the Japanese government is considerably smaller compared to the 10% figure claimed by the United Nations (that 10% of the each country population are persons with disabilities) and even smaller compared to the 15-25% announced by most North American and Western European countries (Document 4, p.1-9).

One distinct characteristic of Japanese employment policy is that it does not have its own set of definitions on disability; rather, it employs definitions used in social welfare laws. To be specific, the term "physically disabled person" under the "Law for Employment Promotion, Etc., of the Disabled" (translation of "Shōgaisha koyō sokushin tō ni kansuru hōritsu," hereafter referred to as "the Law", Document 5) is defined the same as in the welfare law, and is explained as "those who, because of physical, intellectual and/or mental

impairment, are subject to considerable restriction in their vocational life, or who have great difficulty in leading a vocational life, over a long period of time.”

However, when the definition is applied to determine actual disability, the Law applies different criteria, which are mostly based on a medical model of disability. For instance, the extent and degree of physical disability are referred to the List of Degree of Physical Disabilities (Document 4, page 71), which categorizes disabilities based on the type of impairment. The same is true for the definition of intellectual disability and mental disability. In other words, determination of disability in the Japanese employment policy is based mostly on a medical model and falls short of measuring work ability.

Employment Quota System for Persons with Disabilities

To ensure that PWDs are given the opportunity to work in the labour market, Japan’s national program relies on an employment quota system. Put into use in 1976, the employment quota system as described by the Law made it compulsory for employers to hire PWDs by requiring the public and private sectors to reach the set quotas. Currently, the employment quota rate is set at 2.1% for the public service sector, 2.0% for the board of education, and 1.8% for the private sector.

Although this quota system at first glance appears to be well-implemented, there are in fact many hidden problems. In 2006, the public sector was reported to have reached the quota with a 2.17% employment rate, but that figure is based on a calculation method that counts every “severely disabled person” as two persons. Counting one person twice, or double-counting, of severely disabled persons started in 1977 because the Japanese government needed to encourage employers who could not meet the initial quota rate for a long time. While the figure for the public sector has been manipulated so as to hide the government’s failure to meet the quota, the figure for the private sector shows that private employers have never collectively reached the quota. In fact, the practice of violating the employment quotas has become commonplace and the norm in both the private and public sectors.

A more serious problem with the set quotas is that they are considerably lower than the national percentage of disabled persons, which is determined to be at 5% of the total population. This discrepancy reflects the failure of Japan’s employment policy to ensure work for PWDs. These rates are very low because severely disabled persons who have both ability and will to work are excluded from employment policy and services. Indeed, the low quotas are a result of excluding from the calculation persons with severe disabilities from the total number of unemployed PWDs.

To determine the employment quotas, Japan’s Ministry of Health, Labour and Welfare (MHLW) uses a formula as explained in article 14-2 of the Law. It states that “the employment quota for the disabled shall be fixed on the basis of the ratio of total workers out of the number obtained by subtracting the aggregate of the numbers obtained by multiplying the total number of workers in each exclusion rate fixed trade by the exclusion rate for the trade concerned from the total number of workers, and such rate shall be set by the Cabinet Order at least once every five years, with due consideration in the ratio concern.”³ The following is a mathematical rendition of the formula.

$$\text{Employment Quota} = \frac{\text{Number of working PWDs} + \text{Number of unemployed PWDs}}{\text{Number of workers} + \text{Number of unemployed} - \text{Number of exempt workers}}$$

The number of unemployed PWDs used in the above formula is taken from the number of job seekers who are registered at the Public Employment Security Office, or PESO. Note that MHLW does not count persons with severe disabilities in the number of the unemployed. In addition, most severely disabled persons, especially those who work in workshops, are not registered at PESO. This exclusion of persons with severe disabilities is the main reason the quota is set at a low level.

The Welfare Work Program: Workshops and Welfare Factories

In Japan, there are two major types of work for PWDs who are not employed in the open labour market. These types of work are defined by a set of social welfare policies called *fukushiteki shūrō* (welfare work), which is a term peculiar to Japan (Document 8). Currently approximately 240,000 PWDs work under this program. The two types are *jusan shisetsu* (workshops) and *fukushi kōjō* (welfare factories), where about 115,000 PWDs work. This program also includes small scale workshops and other social welfare facilities.

Jusan shisetsu is legally defined as a rehabilitation service facility. The 1949 law “Shintai shōgaisha fukushi hō” (“welfare law for physically disabled persons”), which is the first rehabilitation legislation in Japan, provided a definition of workshops: “A workshop is to provide disabled persons facing employment difficulties with work preparation and jobs, thus help them achieve self support in the community.”⁴ Local governments, with matching funding from the national government, subsidize the building and operation costs of these workshops.

In the 1960s, nearly 30% of the PWDs who had undergone the rehabilitation program at the *jusan shisetsu* workshops annually succeeded in finding employment in the open labour market. But after the enactment of the Law in 1964, the transition rate from workshop to open labour market began to drop. By the 1980s, the rate fell to 1%.

During this period of the declining transition rate, workshops ceased to function as vocational rehabilitation facilities and instead became long-term workplaces for severely disabled persons. In 1972, workshops developed *fukushi kōjō* or welfare factory, which under the welfare policy employed PWDs working in workshops on a longer term basis. Today, welfare factories are categorized into three types: factories for physically disabled, mentally disabled, and intellectually disabled. It remains, to the detriment of persons with severe disabilities, that unlike those who work at workshops, those who work in welfare factories are protected by labour laws although they both are categorized under welfare policies.

According to a 2006 national survey conducted by Zenkoku Shakai Shūrō Sentā Kyōgikai (a national council of social employment) within the National Council of Social Welfare, there are about 3,600 institutions under the welfare work program, including 3,506 workshops and 119 welfare factories, with more than 115,000 PWDs working⁵.

As Figure 2 demonstrates, the average monthly wage for workers in workshops in 2006 was ¥14,252 (US\$119), which was even lower than ¥23,314 (US\$194) earned in 1988. As a point of comparison, the minimum hourly wage in Tokyo was about ¥719 (US\$6) in 2006. As can be seen from these numbers, the working condition for PWDs in workshops has been hideous for years. More shockingly, the transition rate from workshop to open employment had remained less than 1% for almost 15 years until 2006.

When in 1997 International Association of Provision of Work for Persons with Disabilities, the former body of WI, observed the working conditions of workshops, the members of the observation team concluded that these PWDs would be working in sheltered (social) employment if they were in Europe or Oceania and receive almost same wages as non-disabled workers.

Figure 2: Workshops and Welfare Factories in Japan in 2006⁶

	<i>Jusan Shisetsu (Workshops)</i>	<i>Fukushi Kōjō (Welfare Factories)</i>
Number of Institutions	3,506	119
Number of PWDs	111,822 persons	3,400 persons
Number of Staff Members	37,161 persons	
Average Monthly Wage in 2006	¥14,252 (US\$119) (¥23,314 in 1988, US\$194)	Average ¥138,189 (US\$1,152) Factory for physically disabled ¥190,442 Factory for mentally disabled ¥26,311 Factory for intellectually disabled ¥84,796 (¥145,182 in 1988, US\$1,210)
Working days and hours	1,284 hours/year, 230 days/year 5.6 hours/day	
Average Annual Sales per Facility (excludes government subsidy)	¥22,521,365(US\$187,678)	¥294,985,801(US\$2,458,215)
	Average sales for workshops and welfare factories ¥32,479,907(US\$270,666)	
Average Public Subsidy per Facility (national and local government)	¥78,024,543(US\$650,240) (¥102,333,000 (US\$853,000) in year 1996)	
Transition Rate from Workshop to Open Employment in 2006	2%	1.6%
	(remained less than 1% until 2006 for almost 15 years)	

In the past, the Ministry of Labour has made excuses that welfare factories were a Japanese version of “sheltered employment” as stated in ILO recommendation 99. At present, however, this Japanese version of sheltered employment employs only 3,400 people nationwide, only about 3% of those working in workshops.

Section IV. Claim and Evidence

Failure to Meet the Employment Rate Quota and Improper Counting Method

(a) Failure to Meet the Employment Rate Quota

As shown in Figure 3, 1.26 million are estimated to be engaged in work. Among them, about 45% are estimated to be employed. Also, 19% (240,000) work under welfare work program, of which about 115,000 work in workshops and welfare factories. The rest are self-employed, work in family business, or have made other arrangements.

Figure 3: Number of PWDs according to Employment Status and Type of Disabilities⁷

PWDs	Physically Disabled (Age 15 to 64)	Intellectually Disabled (Age 15 to 64)	Mentally (Psychiatrically) Disabled (Age 20 to 64)	<u>Total</u>
1. Working age living at home (excluding those in institutions)	1,246,000	264,000	1,490,000	3,000,000
2. Engaged in Work	520,000	130,000	610,000	1,260,000
a. Employed	214,000	31,000	13,000	258,000
b. Workshops: Small-scale workshops and other welfare programs	26,000 (in workshop)	70,000 (in workshop)	140,000 (This number also includes PWDs with physical and intellectual disabilities in small-scale workshops)	236,000
c. Others: Family business, self employment, and part-time work	259,000	27,000	N/A	N/A
d. Unknown	21,000	1,000	N/A	N/A
3. Not working	707,000	132,000	N/A	N/A
4. No answer	19,000	2,000	N/A	N/A

Similarly, the total number of employed PWDs in the year 2003 was approximately 521,000 as shown in Figure 4. Among them, 483,000 worked in private companies with five or more employees, 181,000 of whom worked in private companies with 56 or more employees, and about 38,000 were employed in the public sector. Only private companies with 56 or more employees are subject to the quota system because for the 1.8% rate for companies with less than 56 employees translates to less than one person. In this representation, we pay special attention to the employment problems in the private companies with 56 or more employees because they are subject to the quota system.

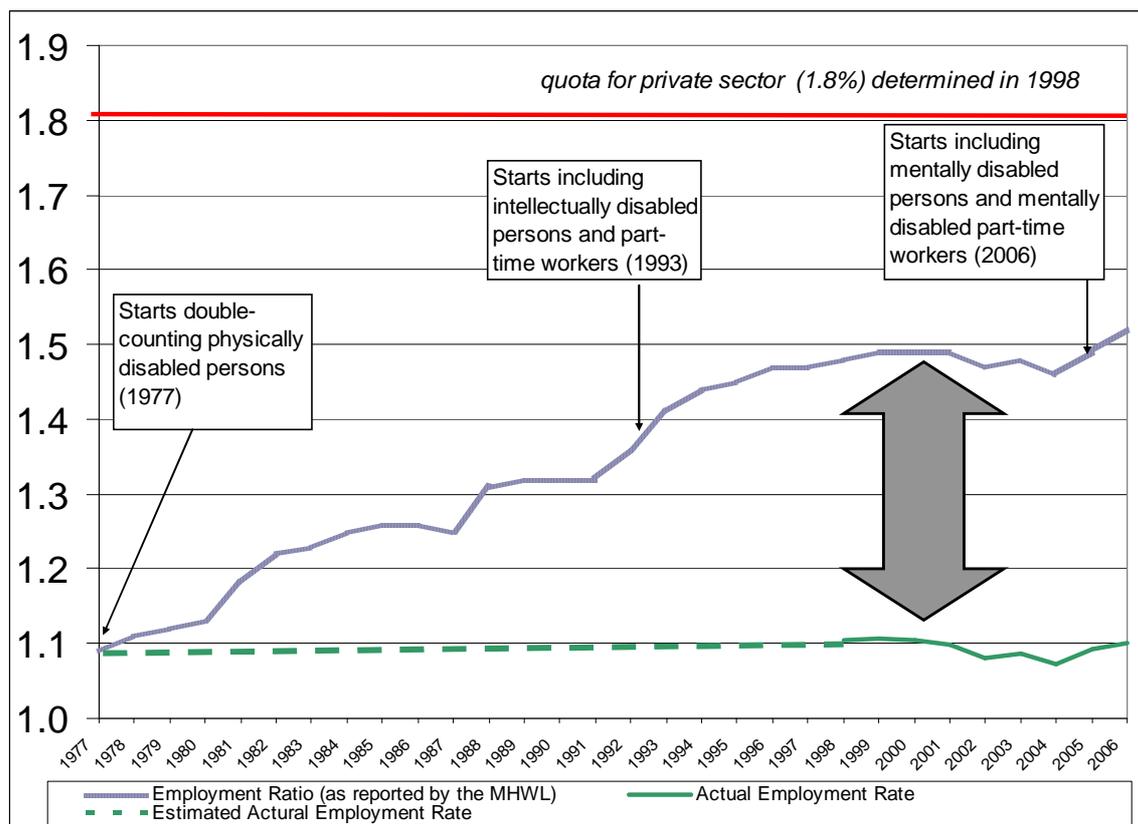
Figure 4: Number of PWDs Employed in the Private and Public Sectors (2003)⁸

		Number of PWDs
Subtotal: Private Sector		483,000
(Five or more employees)		
56 or more employees (<i>quota required</i>)		181,000
Subtotal: Public sector		38,000
Total		521,000

MHLW reports the results every year based on the survey of the previous year. In the latest report on the employment of PWDs announced by the MHLW in December 2006, it claimed “the employment rate is 1.52% which has increased 0.03% from last year.”⁹ It also announced a significant spike in the rate, after ten years (1993-2003) of the total number of PWDs either remaining at roughly the same level or even declining.

This reported increase, however, is deceptive because it is a result of using a new method of calculation. From the 2006 calculation on, the MHLW began to include mentally disabled workers as well as mentally disabled “short-term” workers, or those who are employed part-time for 20 to 30 hours per week, in the number of employed disabled persons.

Figure 5: The Rate of PWDs in the Private Sector (1977-2006): A Comparison of the Inflated Employment Rate as Reported by MHLW against the Actual Employment Rate¹⁰



Both Figure 5 and Figure 6 show a comparison between the actual employment rate as calculated by JD (who has based its calculation on the number reported by MHLW) and the inflated employment rate as reported by the MHLW. The actual employment rate in 2005 of 1.09% has remained the same as the rate in 1993, also at 1.09%; starting in 2000 there has been a significant drop. Yet the reported rate has increased 0.11%, from 1.41% in 1993 to 1.52% in 2006. Similarly, as shown in Figure 7, the total number of PWDs employed in the

private sector either remained the same or decreased during the ten-year period between 1993 and 2003.

Figure 6: Reported Employment Rate versus Actual Employment Rate¹¹

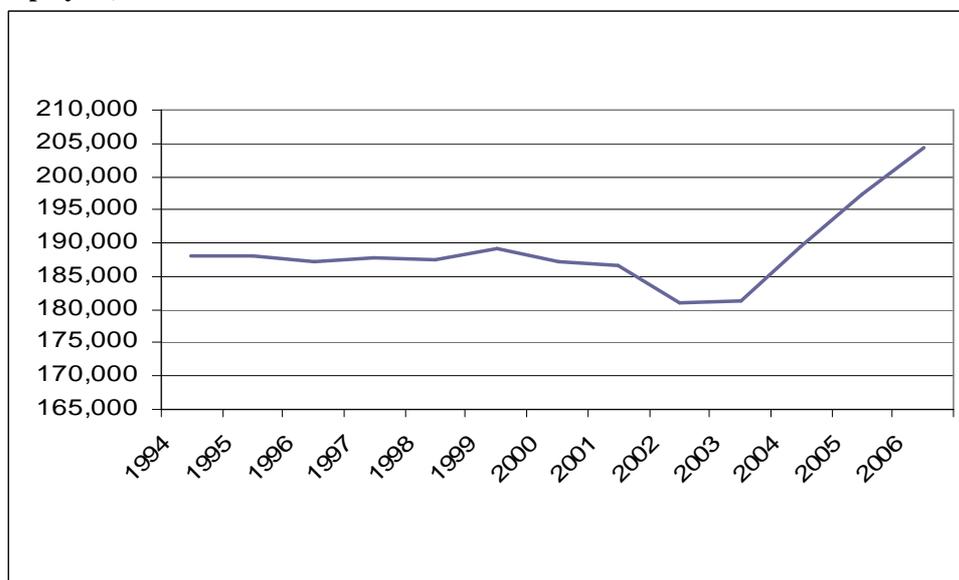
Year	①Employment rate (as reported by MHLW) (⑤/⑥)(%)	②Number of double-counted PWDs (severely disabled) (A)	③Number of PWDs who are single counted (not severely disabled) (B)	④Total number of PWDs	⑤Inflated number of PWDs (Ax2+B)	⑥Number of total employment	⑦Actual employment rate (as calculated by JD) (④/⑥) (%)
1993	1.41	54,267	132,451	186,718	240,985	17,091,135	1.09
1994	1.44	57,211	130,926	188,137	245,348	17,038,056	1.10
1995	1.45	59,120	128,837	187,957	247,077	17,039,793	1.10
1996	1.47	60,722	126,538	187,260	247,982	16,869,524	1.11
1997	1.47	62,362	125,306	187,668	250,030	17,008,844	1.10
1998	1.48	63,858	123,727	187,585	251,443	16,989,392	1.10
1999	1.49	65,366	123,830	189,196	254,562	17,084,698	1.11
2000	1.49	65,536	121,764	187,300	252,836	16,968,859	1.10
2001	1.49	66,293	120,284	186,577	252,870	16,971,141	1.10
2002	1.47	65,179	115,926	181,105	246,284	16,754,014	1.08
2003	1.48	65,652	115,789	181,441	247,093	16,695,473	1.09
2004	1.46	68,539	120,861	189,400	257,939	17,667,055	1.07
2005	1.49	71,678	125,710	197,388	269,066	18,058,121	1.09
2006	1.52	74,993	*129,446	204,439	**283,750.5	18,652,344	1.10

* This number includes mentally disabled persons.

** This number includes mentally disabled persons and mentally disabled part-time workers (20-30 hours/week), who are counted as .5 person.

This rise is not an isolated incident but is part of an on-going effort to disguise the actual number of persons with disabilities in the work force. In fact, such reports announcing an increase in the rate give the illusion that the rate is approaching the 1.8% quota that became compulsory in 1976 as part of the Law, when in reality this is not the case. More importantly, this and earlier announcements paint a rosy picture of the working condition for PWDs when their difficulties have actually not improved.

Figure 7: Number of PWDs Employed in the Private Sector (1983-2005) (Employers With More Than 56 Employees)¹²



In the past three decades, the private sector has never achieved this quota of 1.8% as shown in Figure 5. In fact, it has become common practice among employers to ignore this regulation and the norm for government overseers of this program to look the other way. The amount of levy, which is set at ¥50,000 (US\$417) per month per person and paid by private sectors when failing to reach the quota, peaked at ¥280 billion in 1993 and has been decreasing every year. The levy amount in 2005 was approximately ¥227 billion¹³.

If this levy rule were carried out properly, the private employers would have had to hire more than 335,000 additional PWDs to have met the required employment quota for 2006. Because the private sector was actually short of more than 131,000 PWDs, the total sum of the levy should have been about ¥787 billion (US\$657 million) – a figure that is significantly higher than the sum of the actual payment. This fact is another confirmation that although the actual employment rate has remained the same, the inflated employment rate allows for a loophole for the private employers to exploit.

In the early days of the quota system, employers sought PWDs without vocational disability, such as former tuberculosis patients, for employment. These PWDs did not receive any social welfare benefits even though they were entitled under the “List of Degree of Physical Disability.” This type of hiring practice, common among private employers, was used to increase the quota rate of the company and decrease the amount of levy to pay.

A similar situation can be seen in the public sector. On paper, the quota of 2.1% designated for the public sector appears to have been met and the sector is recognized as a model for the private sector. But the reported numbers have been consistently manipulated and do not accurately reflect the real number of employed disabled persons in the public sector. These numbers are made to appear as if the quota is reached because in their calculations they treat a person with severe disabilities as two persons. The board of education has continuously failed to meet the quota, which is set even lower at 2.0%; their employment rate is at 1.46% even by this counting system.¹⁴

(b) Improper Counting Method

Furthermore, the criteria used to determine persons with “severe disabilities” do not correspond to their vocational ability. The current practice of counting a person with severe disabilities as two persons, although this is a practice permissible by law, creates an illusion of an increase in the employment rate even when the actual number of employees decreases. This practice also discourages employers from hiring PWDs because a higher number absolves them of their obligation to pay the levy when they fail to reach the quota. Because a levy sum that corresponds to the real employment rate is never fully paid, the system has always been short of funding and hence has been unable to pay for vocational rehabilitation services for the severely disabled.

In 1996, this problem of the criteria for “severe disability” was identified by the former Internal Auditing Bureau (*gyōsei kansatsu kyoku*) of the Agency of Internal Affairs (*sōmuchō*) of Japanese Government in their report “Shōgaisha koyō taisaku no genjō to kadai.” The audit was conducted internally by the national government concerning the implementation of the employment policy on PWDs. The Agency made a recommendation to the MHLW (Document 6), specifically on the need to revise the definition of persons with severe disabilities and improve support for them.

Yet to this day after a decade from the audit, the MHLW has failed to revise the criteria for “severe disabilities,” thus contributing to the fictitious employment rate and preventing the private sector from actively hiring persons with severe disabilities. The ministry, by their inaction, has further excluded persons with severe disabilities from the workplace.

The Establishment and Effects of the New Law *Shōgaisha Jiritsu Shien Hō*

Shōgaisha jiritsu shien hō, which literally means “law to support the independence of persons with disabilities,” was established in 2006 to sustain present service system for PWDs along with a series of financial reforms of public services to save the disastrous income deficit of national government. However, due to a new and unprecedented financial burden stipulated by the new law, it has served to exploit the very people it aimed to protect. Although the title of the law suggests offering support for disabled persons, no new provisions to actually support and promote the independence of PWDs were added. Instead, this law has unloaded the cost of programs to its service users. In fact, when this law was being planned, it was officially known inside the government as “*Shōgaisha fukushi sabisu kyūfu hō*” (law to allocate service costs).

For the first time in the history of social welfare services for PWDs in Japan, this new law demands a flat-rate fee of 10% of all the program cost regardless of the severity of disability or amount of income of individual service users. Now they must pay the fee every time they use any of the services provided, such as rehabilitation programs, support for independent living, and social participation programs. This means a significant financial loss for many PWDs whose average monthly income is basic disability pension of ¥60,000 (US\$500) (the average of second class disability pension), which is enough to pay for only half of the monthly public assistance payment. As a result, a great number of PWDs have lost the motivation and desire to actively participate in society.

The typical reaction of PWDs regarding the new financial burden is well summarized by Satoshi Fukushima, a deaf-blind person and an Associate Professor of the Research Center for Advanced Science and Technology at Tokyo University: “Co-payment by the law is like telling someone to pay for a crime he did not commit.” (Document 7) Even an MHLW officer in charge of implementing this law acknowledges that PWDs are critical of this law, calling it “*Shōgaisha jimetsu shien hō*” (law to promote self-destruction among PWDs), or “*Shōgaisha jiritsu sogai hō*” (law to prevent the independence of PWDs).

For many PWDs working in workshops, this law has created a situation in which they are forced to pay a participation fee that exceeds the wage they earn from that very program. The new law forces PWDs working in workshops to pay 10% of all the program costs, including the administrative cost. When this law was first implemented, MHLW forced the service users whose average wages were below US\$200 to pay US\$210. More astonishingly, about 3,400 PWDs working in welfare factories, which in theory is considered as sheltered employment and therefore should be operated under the same condition as regular employment, must pay this fee on top of tax and social insurance fees they have already been paying.

As a result of this law, many were forced to abandon their work, which occupied a significant, and often the only part of their social life. JD calculates that at least 10% of workers, nearly 12,000 PWDs have decided to quit coming to the workshops and stay home

with nothing to do. Those who remained at the workshops have had their wages significantly reduced or cut to zero, and in some cases have been forced to pay on their pay day.

Zencolo Association, a Japanese member of WI consisting of the 12 groups of most productive workshops and welfare factories located in 10 different cities of Japan and serving more than 1,300 severely disabled persons who are long-term workshop workers but were unable to find employment in the open labour market, reports that nearly 10% of service users have quit work after this law was implemented. Furthermore, half of them reportedly quit only because the new burden was too much to bear; others listed reasons such as recommendation by family members. The average monthly wage of those who quit was ¥23,661 (US\$197).

The total sale of the Zencolo Association is over ¥8 billion (US\$67 million). For some of its members, like Tokyo Colony, their total payment of tax and social insurance for all workers, both PWDs and non-disabled persons, is almost the same as the public funding provided for the operation of workshops and welfare factories. Zencolo's financial returns prove the economic contributions of workshop and welfare factory in addition to the positive contribution to the community in its role as the primary supporter for the working lives of persons with severe disabilities. This shows that the Japanese government has placed unreasonable financial burden on PWDs. It also clearly confirms that social welfare organizations operating workshops and welfare factories in Japan have reached a high level of productivity. Although this level of productivity should be recognized for contributing socially and economically to the broader society, they are penalized with this extra fee. With their amount of sales, there is no need to impose financial burden on individual service users.

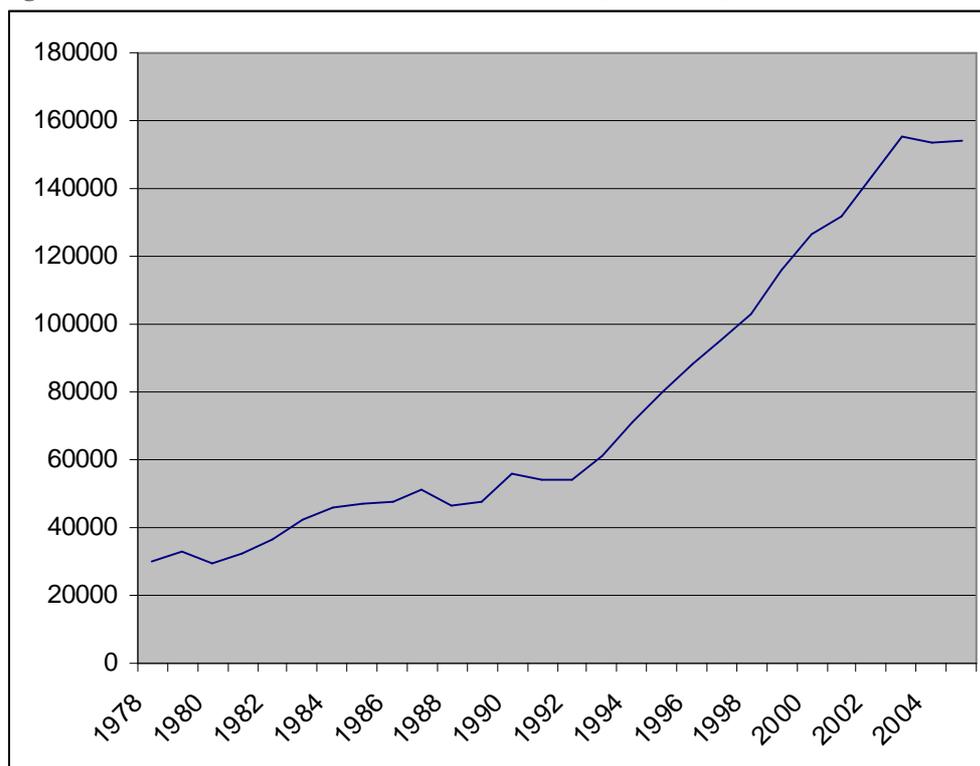
Currently, the MHLW is making temporary provisions and reducing the amount of the fee after strong protest by PWDs all over Japan. However, they have refused to formally amend the law. At the present time, legal actions are being carried out to challenge this law.

Furthermore, while those PWDs receiving vocational rehabilitation services under the labour laws are encouraged to work with no added financial burden and for some even receiving allowances, those PWDs receiving the vocational rehabilitation services under social welfare laws are burdened with this new fee. In a similar fashion, while staff members with disabilities who work at either workshops or welfare factories are exempt from paying the fee, those who use services there are mandated to pay the program fee. This discrimination creates a friction among PWDs according to the severity of their disabilities. As can be seen, Japanese policy on vocational rehabilitation and employment discriminates less productive PWDs.

Failure to Provide Employment Assistance and Exclusion of PWDs in Welfare Work

In 2004, approximately 154,000 job seekers with disabilities who are registered at the Public Employment Security Office (PESO) were left without any effective plans or support¹⁵. As seen in the figure below, the number of these remaining job seekers has been increasing every year. This fact again confirms that the policy has failed to facilitate employment of PWDs in real numbers.

Figure 8: Number of Effective Job Seekers at PESO (1978-2005)¹⁶



Furthermore, almost all PWDs who work under welfare work program are not even allowed to register as job seekers at PESO¹⁷. As explained earlier, most of them earn extremely low wages with no protection or rights secured under labour laws, all of which contradicts the UN's mandate on human rights. Because this group of PWDs involved in welfare work program is not recognized by the MHLW as unemployed, their access to the usual unemployment benefits, including vocational rehabilitation services, is also prevented.

Failure to Accommodate Working Persons with Disabilities

The most significant reason why employers fail to reach these quotas despite active recruitment is that the private sector has been reluctant to provide reasonable accommodation for potential workers with disabilities. Employers have exhausted the pool of adequately productive PWDs who can work without the need for additional assistance. Because they do not make the effort to provide accommodation, the employers see these disabled persons as workers with low productivity and come to the wrong conclusion that they cannot find appropriate work for them. Instead, private employers compete for workers with adequate level of productivity or with a level of productivity that needs only simple accommodation.

The problem in part stems from the refusal of the MHLW to support the private sector in their efforts to provide reasonable accommodation to workers with disabilities. At this current stage, in order to achieve the quota rate of 1.8%, private employers must begin to hire those with severe disabilities. Yet private employers have not received any directive or support in this matter.

The principle of "reasonable accommodation," which originated from the idea of "reasonable adaptation" described in Article 11 of ILO R168, is clearly stated in the UN "Convention on the Rights of Persons with Disabilities" (2006) as necessary for ensuring the human rights of PWDs. The Japanese government's refusal to make any change in the

employment policy on PWDs demonstrates to the world community that Japan must be disqualified from ratifying the convention.

SECTION V. Recommendations for the Japanese Government

The Japanese government is in violation of ILO convention and recommendations and must immediately correct its employment policy for PWDs in order to protect the right of all workers. We demand that the following changes to be implemented.

1. Repeal the 2006 law *Jiritsu shen hō*.
2. Abolish welfare service fees for PWDs.
3. Give all PWDs, including disabled persons with low productivity, legal protection and support under the labour laws and policies by ending the practice of treating them under social welfare laws. To accomplish this, the government must do the following:
 - Raise the employment quota rate to an appropriate level and include severely disabled persons in its calculation.
 - Legally recognize people working under *fukushiteki shūrō* (welfare work) as unemployed so that they are allowed access to unemployment benefit such as retraining and rehabilitation.
 - Register all PWDs as job seekers at PESO.
 - Acknowledge all working PWDs as workers and apply labour laws and policies to them.
4. Abolish, completely and unequivocally, the statistical method of counting persons with severe disabilities as two persons.
5. Implement Internal Auditing Bureau's 1996 recommendations.
6. Ensure consistency in the different categories of PWDs across the many sets of laws and revise the laws so that the criteria for these categories are based on actual vocational ability of disabled persons.
7. Open vocational rehabilitation centers for persons with severe disabilities.
8. Incorporate into labour laws and policies a provision for arranging "reasonable accommodation" as described in the ILO convention and recommendations, and also United Nations Convention on the Rights of Persons with Disabilities.

Notes

- ¹ Cabinet Office, Japan. “Annual Report on Government Measures for Persons with Disabilities (Summary) 2005.” Taken from <http://www8.cao.go.jp/shougai/english/annualreport/2005/mokuji.html> on May 1 2007.
- ² Cabinet Office, Japan. “Annual Report on Government Measures for Persons with Disabilities (Summary) 2005,” p.1.
- ³ Law for Employment Promotion, Etc., of the Disabled.
- ⁴ “Shintai shōgaisha fukushi hō”, article 31, 1949.*
- ⁵ Zenkoku Shakai Shūrō Sentā Kyōgikai and Zenkoku Shakai Fukushi Kyōgikai, Heisei 18 nenndo shakai shūrō senta jittai chōsa houkokusho, May, 2007
- ⁶ National survey by Zenkoku Shakai Shūrō Kyōkai (1988, 1977, 2006)*
- ⁷ Ministry of Health, Labour and Welfare, “Shintai oyobi chiteki shougaiisha shūgyō jittai no chōsa kekka nit suite” (March 27, 2003). Taken from <http://www.mhlw.go.jp/houdou/2003/03/h0327-3.html> on May 1, 2007. Ministry of Health, Labour and Welfare, “Seishin shōgaisha shakai fukki sabisu nizu nado chōsa kentōkai no kentō kekka ni tsuite” (November 11, 2003). Taken from <http://www.mhlw.go.jp/shingi/2003/11/s1111-2.html> on May 1, 2007.
- ⁸ Ministry of Health, Labour and Welfare, “Kōyō Jittai Chōsa,” 2003; Ministry of Labour, “Survey on the Condition of Employment,” 2003; Ministry of Health, Labour and Welfare, “Kōyō Jōkyō Hōkoku,” 2003.
- ⁹ Ministry of Health, Labour and Welfare, “Minkan kigyō no shōgaisha no jitsukoyōritsu wa 1.52%” (Dec. 14, 2006). Taken from <http://www.mhlw.go.jp/houdou/2006/12/dl/h1214-2a.pdf> on May 1, 2007.
- ¹⁰ Based on various data provided by Ministry of Labour, Ministry of Health, Labour, and Welfare since 1993, Sōmu Chō Gyōsei Kansatsu Kyoku, *Shōgaisha koyō taisaku no genjō to kadai*, 1996, and Kikuchi, et al, *Nihon Shokugyō rihabiriteshon gaku*, 2006, Kyōdōisho, Tokyo, Japan, 62, Figure 3-1.
- ¹¹ Annual reports by Ministry of Labour, Ministry of Health, Labour, and Welfare since 1993.
- ¹² Annual reports by Ministry of Labour, Ministry of Health, Labour, and Welfare since 1993.
- ¹³ Japan Association for Employment of Persons with Disabilities, *Employment and its promotion of disabled persons in Japan*, 1998, and Japan Organization for Employment of the Elderly and Persons with Disabilities, 2006*, *Supporting the Employment of Persons with Disabilities*.
- ¹⁴ Ministry of Health, Labour and Welfare, “Minkan kigyō no shōgaisha no jitsukoyōritsu wa 1.52%” (Dec. 14, 2006). Taken from <http://www.mhlw.go.jp/houdou/2006/12/dl/h1214-2a.pdf> on May 1, 2007.
- ¹⁵ Japan Organization for Employment of the Elderly and Persons with Disabilities, *Supporting the Employment of Persons with Disabilities*, 2006.
- ¹⁶ Japan Association for Employment of Persons with Disabilities, *Employment and its promotion of disabled persons in Japan*, 1998, and Japan Organization for Employment of the Elderly and Persons with Disabilities, *Supporting the Employment of Persons with Disabilities*, 2006.
- ¹⁷ JD, based on national survey on physically and intellectually disabled 2001 by MHLW, and survey on rehabilitation needs for mentally disabled in 2003 by MHLW, and Kikuchi, et al, *Nihon Shokugyō rihabiriteshon gaku*, 2006, Kyōdōisho, Tokyo, Japan, 62, Figure 3-1.