A SPECIALIST OFFERS ADVICE

A Smorgasbord of Things to Know If You're Running a Firm in Japan

By Thomas J. Nevins, President, TMT Inc.

Long-time subscribers who have read Japan specialist Tom Nevins' earlier contributions in this column know that he usually focuses on case studies of real-world client assignments in restructuring, compensation, negotiating with employees, and changing Rules of Employment (ROE) and benefits plans. In his own irreverent style, he usually describes in great detail the personnel challenges his clients face, and how they eventually meet those challenges to achieve breakthroughs or new arrangements which provide the basis for new or renewed growth.

Tom continues to monitor the many newspaper and trade journal articles relevant to his labor and compensation consulting practice in Japan. So in a change from his familiar format, we asked him if he would like to expand a bit on a myriad of topics of his own choosing which, while important, may not on their own merit full-length contributions here. In this assignment, he has come up with alot of interesting insight on a number of such topics.

So, in Part One of the first-ever three-part contribution to the A Specialist Offers Advice column in SSJ's history, Tom focuses on the topic of retirement benefits. Parts Two and Three will focus on Japan's administrative legal process for labor issues, flextime, overtime, compensation and more than a few other subjects. We encourage readers to let us know their view and thoughts on each part.

Most companies are reducing their retirement benefits, and/or switching to cash pay-out or 401k-type defined contribution (DC) plans.

According to a recent article in *Nikkei Weekly*, a survey by the Ministry of Health, Labor and Welfare found nearly forty percent of pension funds have reduced or entirely dissolved retirement benefits since fiscal 1997. A *Japan Times* article around the same time reported on a government announcement that the stock market slump of 2002 and 2003 and other unfavorable investment conditions had prompted 291 domestic firms to adopt 401(k)-style retirement plans in fiscal 2002, up from just seventy the previous year.

In one example, the Resona bank retirement benefit reduction was expected to cut personnel expenses by at least ¥2 billion yen a year, and shrink future pension and retirement obligations by about ¥40 billion. Mizuho had plans to reduce its future obligations by ¥104.5 billion yen. Even Mitsubishi Tokyo Financial Group was reducing by some twenty percent.

Take a look and see what's been happening at your company's Japan unit. The trend is continuing today after corporate pension funds in Japan lost about ten percent of their value in 2000, four percent in 2001, and about twelve percent in 2002. According to an April, 2003 *Nikkei* article, employee pension funds (excluding minor ones) held roughly ¥80 trillion worth of assets. In those three years alone, then, assets shrank by more than ¥20 trillion, even though they need increase three to five percent each year to meet contractual pension obligations. It is likely that your firm has had to be making up for these losses by infusing cash into its plan. But as this *Nikkei* article mentioned, when companies become unable or unwilling to continue doing so, "pension plans would have no choice but to dissolve themselves."

On an individual level, according to the Overview of a Comprehensive Survey of Working Conditions for 2003, released in November 2003 by the Ministry of Health, Labor and Welfare, the average retirement benefit received by college graduate retirees fell by approximately ¥4 million from the survey conducted five years previously. A survey by the same Ministry showed that, as of the end of June, 2004, only 2.5 years after the law made them possible, over one million employees were covered by DC plans, as opposed to what many employees traditionally had —a defined benefit (DB) plan. At first, mostly only large firms like Toyota moved to the new DC plans, but from October, 2004, the upper limit of installment payments allowed under DC plans was increased. This will make the plans even more viable, and more firms are on their way towards implementing them.

Many firms have been coming by our office to get help in this area, in order to become more competitive. But they would much rather be in a better position to implement something they have more control over, such as paying more competitive salaries to their strongest performers. It is indeed disheartening to see valuable corporate resources getting flushed down the drain year after year. Just as lawyers, accountants, and self-employed professionals, on to part-timers and 'freeters', are hesitant and refusing to pay into social insurance programs and the national/government pension program (nearly forty percent are not paying their legally mandatory premiums), some employees are also realizing that it might be smarter to take their money now, as an extra payment in lieu of retirement benefit, even if doing so will cause those funds to be subject to the higher income tax rate.

This is not surprising. The Japan Research Institute calculates, for example, that a non-working wife and a salaried husband, both born in 1940, will pay a combined ¥25.33 million in premiums before retiring, and receive ¥67.97

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million back in benefits when they retire, or a ratio of 2.68 times the premiums paid in. A similar couple born in 1980 will pay ¥63.45 million in premiums, but get back in a retirement benefit only ¥46.54 yen, or only 73 cents per dollar of what they paid in. Obviously, this is not perceived to be a good deal, is widely known to young people, and is just another reason why many young people are less that enthusiastic about becoming full-time, full-steam contributors in the labor market.

But it is not as difficult as you might think to obtain the understanding of employees in restructuring or cutting back retirement benefits. Even if merely cutting back the present DB plan, the tax-qualified pension (TQP) funding institutions, if at all pressed, have noticeably stopped saying that 'cutbacks in the benefit require the permission of the National Tax Agency, and your company must be in the red', etc. Actually, our clients have experienced that their funding institutions fall on the side of recommending that their plans be canceled and replaced by a 'sum point' plan, a DC plan, or even no plan at all. And with regard to less lucrative smaller plans, could the funding institutions be getting tired of being criticized for losing fund value? More likely they are just becoming reconciled to the inevitability that more and more of their plans will be canceled. The funding authorities will even point out to us that the current plans need not even be topped-up or fully funded. Only the current funding level need be distributed on a proportional basis to the employees covered in the plan. I personally wish that business would be successful enough that employees could lead wholesome, comfortable lives in their retirement, and that firms would not have to focus on not losing too much money in their plans. But I guess we all have to be realistic about the constraints and pressures companies face in competitive markets today. I guess we have to have the data, and know what our peers are doing.

However, when making adjustments, watch-out for moving to Career Sum Point Plans, or any accruing liability that is not based on final salary.

Almost all traditional retirement benefits in Japan, and very likely the one your company has, is based on final salary at the time of reaching the retirement age, or final salary at the time the person either quits or is dismissed from the company. Although there is the very uncommon, even remote, possibility that someone's salary could be jacked up the last minute to enjoy a better retirement benefit, the advantages of calculating retirement benefit on final salary are of critical importance in Japan. Only extremely rarely will I see the approach sometimes seen in other countries, of calculating the retirement benefit based on the last three or five years average salary. That averaging method may appear to save some retirement money, but its disadvantage in Japan is clear. Unlike in other countries, in Japan, it can become extremely expensive to terminate someone if they are unreasonable, and simply decide they do not want to be terminated. When the retirement benefit calculation is based on final salary, it becomes possible to have some leverage over the troublesome person and the situation. You are able to say: 'Okay, we don't/can't terminate you at any cost, you can stay on, but, very sorry, we will have to reduce your pay by thirty percent' (or what-

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ever). That means the accrued retirement benefit will be reduced by the same thirty percent. If there is a fairly large retirement benefit on the line, and so at risk, it really is a helpful and sometimes necessary tool. It is a shame such a tool has to be used, but it is also a shame that the courts can make it so difficult and expensive to terminate someone. Japanese industry has always known about, and made great use of this tool to handle problem employees and to revitalize their firms, encouraging or even forcing early retirements with the threat of otherwise facing major pay reductions.

The serious drawbacks of career sum point plans are that, by definition, when a salary is reduced at the end of a career, to perhaps encourage a resignation or help with a dismissal, there is virtually no effect on the accrued/payable retirement benefit. This is because it is based on the sum total of yen point values that were determined based on the positions the employee held throughout his or her career. The supposed advantage of such sum point plans is that they are supposed to be de-linking salary levels and service years from the pay-out of the retirement benefit. But an objective analysis and careful look show that they do neither. Such plans were and are simply an item, trigger, or handle for benefit consultants to make an extra buck. They are troublesome for personnel departments that have to create from thin air the grade levels and point value data, and then all this data has to be maintained and filed for years into the future. With changes in hardware and software technologies, these plans will continue to be just an enormous headache and extra expense for companies.

There is a new trend for Japanese companies to cancel their retirement benefits for members of the Board of Directors.

In a related issue, according to a February, 2004 article in the *Nihon Keizai Shimbun*, in fiscal 2003 about fifteen listed companies abolished their retirement benefit for members of their Board of Directors. These companies included Hoya Corp. and Daikin Industries. Even before 2003, Kao Corporation and Nomura Holdings had done the same. Under the former systems, the longer a director's years of service (and also often depending on his or her particular director level or title), the greater the amount automatically received. But in the new arrangement, based on their performance, an amount will be added to their annual salary payments. Presumably such a payment is taxed as income to the director, but unfortunately, if it is an extra performance bonus, it would normally not be tax-deductible to the firm, and would have to come out of after-tax profits. This after-tax, payed-from-profits drawback could probably be avoided if there were paperwork describing this as a standard practice with a set standard of payment level replacing the former directors' retirement benefit. But a lot of companies don't know to take it that extra step.

Over the years at most of our foreign-capitalized clients' firms, often there are no retirement benefits for directors. It is clear that members of the board are not to be formally covered by the retirement benefit provided in the Rules of Employment (ROE) for employees. In reality, however, when it comes time to retire a director (or *torishimari-yaku*), companies have often paid out on the basis of the tables they use for non-director employees. And since directors usually had their annual income divided by twelve (instead of by sixteen to eighteen pay periods as is common for employees with traditional summer and winter bonuses), they did have some advantage on their retirement pay-out. When there are no retirement regulations for directors, sometimes by way of the employment contract or offer letter, a company might stipulate that something like 1.5 months of salary will be paid for each year of service. But, as with employees, there probably should be a significant discount, or penalty, when a director voluntarily leaves for his or her own reasons — and maybe also if they have to be terminated.

Fixed term contracts regulation revised

By the way, with the Labor Standards Law revisions passed from June 2003, the former maximum one-year term limit on a fixed-term employment contract became three years. For workers involved in highly-specialized duties, and for those sixty years old and over, the maximum limit has been extended from the previous three years to five. The opposition parties requested that a clause be added, and it states that 'the worker in question may retire whenever he (or she) wishes after serving one year'. It's good to always be mindful that Japan regulates a great many mundane things like fixed-term employment terms.

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In Part Two of the first-ever three-part contribution to the A Specialist Offers Advice column in SSJ's history, our Japan labor consultant and long-time specialist contributor focuses on administrative changes to labor laws. Last month in Part One, he discussed retirement benefit issues, and next month, Part Three will touch on flex-time, overtime, compensation and more than a few other subjects. We encourage readers to let us know their view and thoughts on each part.

Industrial Court

A new 'Industrial Court System' is on the way. According to a February, 2004 report from the government-affiliated Japan Institute of Labor, in December 2003, the commission investigating labor issues affiliated with the government's task force on judicial reform drew up an outline of this 'Industrial Court System'. Its purpose is to resolve individual labor disputes in a fast, appropriate, and effective way.

Under the planned system, a trial can be held a maximum of three times, in principle, and will be overseen by a panel of three individuals: one labor examiner-in-chief who is a real judge in the traditional sense, and two industrial 'judges' chosen from the labor and management sides, who will have extensive experience in employment and labor-management issues. Proceedings can be initiated by either party, with a majority opinion required to reach a decision. If no objections are filed within two weeks of the verdict, the trial is finalized, and the arbitration is complete. This arbitration will have the same validity as a court settlement; however, as with Labor Relations Commission hearings, if there are objections, the case is forwarded to a traditional district court.

One difference from a hearing before the Labor Relations Commission (*Rodo Inkai*) is that the LRC hears matters in which a union is involved. An interesting thing about the new industrial court is that a determined client could more easily initiate action there, and because of the limited hearings and time constraints, could be less dependent on legal assistance. The scaled-down procedure should not necessarily require the hiring of a lawyer. On the other hand, this could be problematic if employees find it easier to initiate actions. So much will depend on the firmness, clarity, and commitment of the neutral traditional judge. The position of the other two judges will probably be predictable, but perhaps helpful when working out the details of a recommended settlement.

A revision to the Trade Union Law also speeds up and adds muscle to the LRC. Because of mounting criticism over the slowness of remedial relief from it (averaging about two years for just the first trial phase), the revised Trade Union Law requires that prior to the start of investigations, the LRC must construct a plan that details the number of investigations, as well as a schedule for the issuance of relief orders. In addition, the law incorporates such other measures as the adoption of evidence submission and witness attendance orders. Frankly, I am reading about this development, but it leaves me a bit cold, and I do not quite visualize that it will make much of a difference. I can also say it does not ring true based on my personal experience. The few times that our work with clients involved the LRC, we always were able to get very fast settlement — usually within a maximum of three hearings and within two or three weeks. (It should be noted, however, that in these case the client was in attendance, no attorney was hired, and I was on a fixed fee with no incentive to stretch it out or not react creatively.).

LSL Revisions

As a key part of his regulatory and structural economic reform policy, and to encourage labor turnover, Prime Minister Koizumi wanted to make it easier to be able to fire employees. But the effort backfired. Recent changes in the Labor Standards Law (LSL) has actually made it harder to dismiss staff. Presumably to keep Japan from losing out so greatly to countries like China, Koizumi and his LDP party had initially drafted a revision to the Labor Standards Law that simply stated that "employers have a right to dismiss their employees." That sounds fair enough, right? And probably the way it needs to be.

In postwar Japan employers had always had this right by way of the Civil Code. And according to Article 20 of the LSL, it was possible to terminate with thirty days notice, or thirty days pay, or a combination of the two, even without 'just cause'. But for a number of reasons, such as Article 27, Section 1 of the Constitution, which provides that the right to work is a fundamental human right of the Japanese people (and which has been interpreted so as to make the promotion of job security a matter of public order), the Japanese courts came all too readily to hold that this right of dismissal could be abused, and hence invalidated. This interpretation has meant that, over the years, companies and their good employees have had to tolerate the presence of all too many undeserving colleagues. Koizumi, and many of us, under-

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stands that it also makes it too expensive and difficult for many firms to trim staff in an effective way.

Judicial decisions had formed a body of case law forging 'so-called' legal principles restricting the right of dismissal. So when a revised LSL was approved, for the first time rules concerning dismissal were made explicit. But the big backfire for Koizumi and employers was that the legal principles making dismissals difficult were now formalized in the new LSL. From that point on, dismissals had to be based on "objectively reasonable grounds that are acceptable in the light of current social norms." Hmmm.... The labor unions, opposition parties, and Japan Federation of Bar Associations did not want employers to have a right to dismiss their employees. Perhaps the lawyers decided money was to be made from the increased number of termination suits in recent years. Regardless of the reason, with these revisions we can expect there will be even more frivolous termination lawsuits that end up being just costly and troublesome.

The Four Conditions

Not only were Koizumi's eight words sponged away, but the LDP coalition yielded to union-influenced opposition party language that, for companies with ten or more staff, requires that employees cannot be dismissed unless something occurs to justify it. So the muddle of Japanese termination and labor relations practices gets murkier. Since the Koizumi cabinet had first introduced the idea that something was needed to make dismissals easier, the discussion had centered on introducing a clear financial solution of dismissals, as practiced in countries such as Hong Kong and Singapore. Then *Rengo* (the Japanese Trade Union Confederation united and launched by a Mr. Yamagishi, a gentleman this author used to teach a little English to when I worked part-time at the NTT union almost 30 years ago) and other unions called for a clear stipulation of the famous four conditions traditionally used to judge the validity of a termination.

Although I have heard them recited, or referred to several hundred times, I am still not clear about their meaning. Here they are, with my comments on each following: 1) "necessity for dismissal" (Yes, something you need to do before you lose money, or lose out to the competition because there is no money left for development or investment); 2) "obligation to endeavor to avoid dismissals" (Yes, this is why you should perhaps be cutting back other overly expensive benefits and entitlements, revising salary systems and Rules of Employment, and fixing the foundation, so fewer staff need be reduced); 3) "reasonable selection of people to be dismissed" (Yes, this is why it is so foolish to have a *kibotai-shoku*, an across-the-board, voluntary, early retirement program that would cripple your organization by giving your very best people an incentive to be the first ones out the door); and 4) "obligation to follow due process, communicate fully, and hold labor-management discussions" (Yes, for sure, and one of the best ways to do this is to have, if possible, every employee in a room for a full day with lots of time for questions and answers. If it is a reasonable union, you would want to work on it with them first as well. If it is a radical union, often only a quick surprise attack will win the results you need.).

These famous four conditions were not included in the revision

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of the LSL statute, but despite this, to Koizumi's chagrin, and to the yawns of many of us, a supplementary resolution in favor of the four conditions was approved in the House of Councilors, requesting that employers be familiarized with the four conditions. So there they are. Now, you too, are familiar with them.

Discretionary Labor

Applications of discretionary labor (*sairyo rodo)* have been made easier, to the advantage of employers. In 1998 there were also revisions to the Labor Standards Law, and a system for providing a "discretionary working style of planning duties" for workers engaged in planning, proposals, surveys, and analysis concerning management was adopted. Now, under the latest revision, the rule no longer applies just to planning staff at headquarters or equivalent business establishments. Also, conditions for adopting the discretionary system have been relaxed, so that adoption does not require a unanimous resolution by a labor-management committee. Instead, an agreement with the approval of eighty percent or more of the participants is sufficient.

Government Handling of Disputes

In one six month period in Tokyo alone, individual employees made 51,444 requests for consultation, advice or assistance from authorities related to labor disputes with employers. Is Japan a country of *wa* (harmony), or were you and your firm just lucky? To implement a system for resolving individual labor disputes under the Law for Promoting the Resolution of Individual Labor Disputes, the Tokyo Labor Bureau has set up labor consultation corners at 21 locations in Tokyo to provide information on methods for resolving disputes, and on how to contact dispute-settlement institutions. The 51,444 requests represented a 7.6 percent increase over the prior year, but 7,294 were requests for consultations on individual civil labor disputes, up a whopping 148 percent from the previous year. The largest number of requests, 33 percent, pertained to dismissals, with 15.5 percent related to the alleged lowering of labor conditions, and 9.6 percent related to alleged bullying and harassment. When cases could not be resolved through labor-management discussions, the Tokyo Labor Bureau deployed the following system for alternative /extrajudicial dispute settlement: A system in which labor bureau directors provide advice and instructions; and a system where a Dispute Coordinating Committee would mediate. Labor bureau directors ended up providing advice and instructions in 238 cases, while in 418 cases, mediation by the Dispute Coordinating Committee was requested.

Industrial Injury Claims

For the first time, an industrial injury claim (*rosai*) for the reason of not being given any work to do was approved. That classic Japanese harassment tactic of isolating someone and assigning absolutely no work (that I have never approved of mainly because it keeps costing money, is not productive, and some people actually enjoy it) may be less common now. According to a Kyodo News Agency report at the end of 2003, two males aged 35 and 36, working at a health food manufacturing company in Yokohama, applied for *rosai*, claiming that they had become clinically depressed after being intentionally given no work to do. The West Yokohama Labor Standards Office (LSO) granted their request for 'industrial accident' financial support in August, 2003. The two staff had been ordered to transfer to a subsidiary in April 2001, but had refused to comply. The following month they had been transferred to the personnel department, and given absolutely no work to do. Several months later, they were ordered to sit at a desk that was physically separated from the rest of the office by a partition, and to do nothing all day long. (While most of us would have welcomed this as a chance to be on full pay while covering the papers and magazines, reading or writing a book, memorizing poetry, or studying to transition to another career), these two corporate warriors chose to complain of headaches, nausea, and other symptoms, and were diagnosed (by their neighborhood Communist doctor), as having clinical depression. After they had obtained the 'industrial accident' financial support ruling, they demanded compensation for damages from the company and filed a lawsuit with the Yokohama District Court. Presumably they are still slugging it out with their former company, no doubt still clinically depressed, with no work, but on full salary. This is a case where management and labor deserve each other. It truly is an 'industrial accident' in the full meaning of the term. Unfortunately, we, the taxpayers of Japan, also end up picking up the tab. Japanese labor law indeed is a maze of incongruities.

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In the final installment of the first-ever three-part contribution to the A Specialist Offers Advice column in SSJ's history, our Japan labor consultant and long-time specialist contributor Tom Nevins discusses a wide variety of compensation and overtime practices while offering a few anecdotes about Japan's changing society. Overall, he paints a picture that suggests society's traditional covenant has been frayed. We encourage readers to let us know their views and thoughts on each part.

Unpaid Overtime

'Unpaid overtime' has recently become a troublesome issue, with increasing numbers of random inspections by the Labor Standards Office and call-in hotlines clearly visible to employees. With labor unions unable to stop companies from carrying-out staff reductions or reducing wage increases, the focus has shifted to the excess unpaid overtime issue. The Ministry of Health, Labour, and Welfare (MHLW) designated November, 2004, as 'Unpaid Overtime Work Elimination Campaign Month' and set up a toll-free phone line of consultations on the Japanese November 23 'Labor Thanks Day' holiday. That day alone, a total of 1,053 requests were received nationwide for consultations on unpaid wages for overtime work. Of these, 442 calls related to claims of complete nonpayment for overtime work, and 144 to nonpayment for overtime work exceeding 100 hours per month.

The onsite inspections in 2004 by the Central Labour Standards Inspection Office did not spare the Japan Chamber of Commerce and Industry (JCCI). The JCCI voluntarily paid about ¥10 million to its roughly 70 staff, covering the period from January to July, 2004. This past November, Hiroshima University paid ¥36 million to 280 staff. In an internal survey whose results were announced on November 18, Tokyo Electric Power Company (TEPCO) admitted that during the prior two years they had found they had to pay 2,800 head office staff for total of 412,700 hours of overtime, averaging ¥3,492 per hour. This ¥1.441 billion was added to their November salary payments. Did electric bills around Tokyo jump recently?

This is all pretty scary stuff. In most countries other than Japan, many of these categories of employees would not be entitled to overtime, even from the beginning of their career. All around the world, if one has any college or higher technical training, or is in development, R&D, sales, or any kind of professional work, overtime is not available. It is not that Japan is strange in that so much 'service overtime' is tolerated and not paid — what is strange is that the subject is even at issue. Although some Japanese 'work' hours that are too long, or feel they have to be around the workplace longer than they need to, that is a cultural issue, and should not be solved by the government making firms pay out hard cash for these less than productive hours.

A MHLW survey conducted in late September, 2004, found that a total of 1,184 firms received corrective guidance in fiscal 2003 from the Labor Standards Office. The amount of unpaid overtime that had to be paid totaled ¥23.9 billion, averaging ¥20.186 million per firm— an unbudgeted and unexpected pay-out that must have been difficult for many of those firms. In 2002, 17,000 companies, or thirteen percent of those visited by labor officials as part of routine inspections, admitted to sometimes failing to pay overtime or night-time overtime allowances. In 2003 the number increased to 18,511 firms. Some foreign-capitalized and joint venture companies have come to our firm after being visited by the Labor Standards Office. They have been given instructions to make certain corrections by stipulated dates. Quite a large number of these firms have not been paying overtime to any of their staff, or only to a very small number of their staff. Staff have usually been accepting of this, not only considering themselves discretionary workers, but as professionals also usually realizing that being in the office and wanting to charge overtime to their firm for doing so are two very separate issues. The authorities enter. There are misunderstandings. Things can get unnecessarily complicated and costly. The reaction of not-a-few miffed clients has been to, for starters, increase scheduled working hours to the legal maximum, of say, 9AM to 6PM (if there is an hour lunch break), in order to reduce the number of hours even subject to overtime.

Many other actions need to be taken and can be done, including working out guidelines on how work gets done; how overtime gets approved; the specification of categories of workers involved in discretionary labor; a stipulation in employment contracts that the salary includes say, 'up to 45 hours of overtime per month'; the pay-out of additional special cash allowances in lieu of overtime, that could, on rare, very busy months, have some additional amount added to it; the assigning of a qualification grade from which overtime is no longer payable; the offering of a choice to lower level staff at their time of hire, of either a higher salary and

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no overtime, or a lower salary and the potential to make overtime; or any combination of these. The key is, unlike a couple of our firm's clients who became fearful of the inspections and had a knee-jerk reaction, your company does not have to take the suggestion of a personnel manager who may be telling you that your company must start paying hourly calculated overtime 'because the government authorities are after us, or it is illegal not to do so'. One company that did so saw its costs rise by ¥4 million a month with just twenty people on the payroll. The reverse of that is a company with about fifty employees that had always paid overtime. Using our firm's approaches above, they were able to save on average ¥8 million per month. Companies realize that labor is their greatest cost. But what many otherwise very sharp executives fail to see is how personnel and human resources costs can go down greatly, and even become an exciting profit center.

Flextime

Are you thinking that flextime might be a good thing to implement at your Japan unit? Maybe you should think twice about that. It is no solution, and just further complicates the pressures from the authorities on the overtime issue.

Fujitsu and Sharp discontinued their flextime programs early in 2002, concluding that people missing key meetings, was hindering intra-company communications. Canon has always been seen as a cutting-edge, creative firm, not only because of their products and technology, but also because of their personnel practices and the way they manage their people. Well, after having flextime in place for twelve years, Canon terminated the practice from April, 2004, maintaining that it actually hurt operations by hindering smooth communications among employees. Since 1991, except for their presence during core time, about half of their (non-assembly line) employees were free to set their arrival and departure times. But, from April, 2004, all employees had to work from 8:30AM to 5PM. Canon has decided that employee use of e-mail lengthens the time it takes to communicate compared to face-to-face contact and meetings, and decided it can no longer afford to risk slowing new product development, new manufacturing processes or other key processes.

This has always been a no-brainer for us and most of our astute clients. Actually, a quick morning meeting at the start of the day, just to count heads, keep everybody honest, and maybe pass some information or get a laugh, is in my view indeed the best way to start the day. People don't really need or want a choice about what time they are going to go to bed at night, or how many drinks they can swill down. Staff and even executives watch each others' behavior and have a sense of fairness. One to three minutes of shared face time at an all-staff meeting in the morning (gathering centrally and standing in at remote workplaces is also fine) is probably just as important for morale and office relations, as making sure some employees don't book too much overtime while others refrain from doing so and live off their salary even when they put in extra hours.

Entry-Level Hiring

Female high school students have the hardest time lining up jobs on their way out of school—the number employed at graduation dipped below thirty percent in 2003 for an all-time low, and

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rose only slightly in 2004 to 33.1 percent. This means nearly seventy percent have no job prospects! This might be another reason why male society sometimes assists with *enjo kosai* (financially assisted dating). According to the results of a survey carried out jointly by MHLW and the Ministry of Education, Culture, Sports, Science and Technology, the percentage of the students planning to graduate in the spring of 2005 from high school or university who found work as of October 1, 2004, (the time by which post-graduation jobs are traditionally lined up in Japan) was higher than recorded at the same time last year. The percentage of university students who had found work was 61.3 percent, and exceeded the previous year's level for the first time in three years. The rate for male high school students was lower at 44 percent. This surpassed forty percent for the first time in three years. As written above, the rates for females were lower, closer to thirty percent.

In the old days, there was traditionally virtually no unemployment among new school graduates. Even down to the junior high school graduate level, they were called the *kin no tamago* (golden eggs) because they were so scarce and valuable. Domestic manufacturing was booming and perennially hungry for fresh blood. Now there are very few junior high school graduates. Even university students will work in factories, but they quickly get bored, and turnover is high. Also more and more companies realize they don't necessarily have to hire new, untrained college graduates who have been pampered by usually not having to study very hard at their university. There are now more than enough mid-career hires available, and labor markets have become far less structured, with multiple career entry points and increasing numbers initially hired on some kind of contract (non-permanent) basis.

Outside Board Members

A survey published in August, 2004 by *Nihon Keizai Shimbun* shows that one-third of listed companies now have external *torishimariyaku* (directors) on their boards. Only a few years ago, board members were almost exclusively corporate employees who had been promoted from within. Now 630 companies, or nearly one out of three firms, have one or more external directors. Out of the 2,108 firms in the survey, last year 493 had one or more external directors. The 630 represents a 28 percent increase, and about thirty percent of all surveyed companies. Last year's 918 total of external directors increased 27 percent to 1,165. Now fully one out of five board members comes from outside the company.

This is truly an amazing transformation given recent past practices in this area. Thirty companies, including pharmaceutical company Eisai and optical glass manufacturer Hoya, have appointed over half of their board directors from the outside, up forty percent over last year. Is this a good thing, or a bad thing? Is money wasted paying these outside directors, who are particularly unlikely, given Japan's insular culture and group-based, vertical society, to be able to meaningfully contribute on internal policy issues? Wasn't the traditional practice of having lots of high-prestige board positions available for employees one of the great motivators for a comparatively large number of internal executives? And didn't it motivate an even greater number of employees to work hard for the company in hopes of landing one of those many board positions? The chance of getting one of those positions was a not-unrealistic goal for so many. I guess some people must think that this new trend of trimming down the number of directors, and mostly merely socializing with outsiders, will help companies more than hurt them, but I think it's too early to tell.

Board Compensation

A *Nihon Keizai Shimbun* survey in July 2004 showed that annual remuneration of board directors at the top 100 firms in terms of total stock market capitalization, as of the fiscal year ended March, 2004, averaged ¥32 million and was on the increase, but it still was only four times the average employee salary of ¥8 million. Nissan's average director's pay of ¥235 million was off the charts and moves up the average. There were still 26 companies that paid at the more traditional level of ¥10 to ¥20 million, and only four companies did not disclose the amount of their board director's remuneration. The averages for the top five companies were Nissan (¥235 million), Takeda Chemical (¥149 million), Nitto Denko (¥73 million), Mitsubishi Estate (¥66 million), and Nomura Securities (¥55 million).

In comparison, top executives of US companies average over ¥900 million. We read recently that salary levels of top executives in Germany and some other European countries are also going up. Lower level managers in many of these companies continue to have the screws put to them. Retirement benefits and job security are often in jeopardy. How many

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A SPECIALIST OFFERS ADVICE

A Smorgasbord of Things to Know If You're Running a Firm in Japan

By Thomas J. Nevins, President, TMT Inc. (Part Three — Continued)

houses and neckties do we really need? As one who has been a part of putting the screws to people, this author thinks we should at least pause, take a look around, and not get carried away with ourselves.

Returning to Nissan for a moment, in just one year from fiscal 2002 to fiscal 2003, Toyota's average pay for their 26 directors went from ¥17.79 million to ¥38.96 million. That seems like a case of Toyota copying Nissan and 'keeping up with the Jones'. Or was Toyota afraid Nissan would headhunt some of its directors? While Toyota had received attention in recent years for not giving across the board increases to employees despite record profits, it appears that their directors were treated more favorably. There must have been some push back and rebellion in the ranks, because finally in 2004 employees received a decent pay increase and enjoyed nice bonuses. Another reason for Toyota's directors' pay more than doubling was that all directors below the managing director level were eliminated — a debatable gesture for sure. Still, the tens of thousands of Toyota employees worldwide probably welcomed the June, 2003 headlines that Toyota's directors were being paid only one-seventh of the pay provided to Nissan's directors.

Changing Lifestyles

I'm not turning into a Socialist and my track record certainly doesn't lean that way, but I'll give you something that seems really depressing. Maybe the haves do need to care a little bit more about the have-nots, lest the have-nots someday get their backs up and decide to look at the world with more resentful eyes. How would you like to have only ¥38,300 of spending money per month? GE Consumer Finance conducted a survey of 500 male corporate employees throughout Japan. Their average age was 39.8 years. Their monthly spending money averaged ¥38,300. This was ¥4,400 less than the prior year and the lowest amount in 22 years in nominal, not inflation-adjusted, terms. Back in 1990, they had a monthly average of ¥76,000. This means their spending ability has fallen to one-half its peak level.

Now, obviously, a larger percentage of pay has to be turned over to the wife and the family. Married men had an average ¥14,700 less per month to spend than single men, and men who had children had close to ¥8,000 fewer than those who did not. So it is no wonder that so many men and women are hesitating to get married and start families. Along with everything else, these men have to economize on lunch as well. In 2001, the daily average they spent on lunch was ¥710. This dropped by ¥20 each year to ¥650 by 2004. Those surveyed ate and drank out after work an average of only 3.8 times per month, spending an average of ¥4,500 each time on themselves or themselves and a friend or partner. One clear message to sales managers, or companies that wish to get a bigger motivational bang for their compensation buck, would be to devise some creative, off-stream reward payments that would not directly go into the spouse or family-controlled bank account but would be reserved for the employees own use. Those that have done so have found an important motivator to help out their poor corporate warriors and add a little cheer to their lives by giving them a little something extra for themselves to look forward to.

Quality of Life

According to results announced by the OECD in early 2004, Japan ranked overall 14th out of the thirty OECD countries on overall lifestyle. Japan was rated tops in terms of average life span, infant mortality rate, circulation of daily newspapers, and GDP deflator hike rate, but was rated the worst in terms of *per capita* international tourism income, economic growth rate, and cumulative government debt. The OECD also noted that crime has gone up as has unemployment, especially since 1995. Separately, based on the 2003 version of the World Bank's World Development Indicators, and as prepared in The Japan Productivity Center for Socio-Economic Development's *People's Quality of Life (or Affluence) Index* released in April, 2004, Japan ranked in six categories as follows: health (4th), environment (13th), the labor economy (13th), education (23rd), civilization (8th), and the macro economy (17th). Evaluations were made by comprehensively assessing material abundance and 'environmental power' (which is held to be inversely proportional to material abundance).

I don't know how valid these surveys are. As the anecdotes above show, Japan is certainly full of contradictions. Yet crime touches very few of us living here. And if you are thinking of living in Tokyo even for just a few years, I can tell you that most of the foreigners here like the place very much. I hope Japan continues to work through its problems so that it gets even better from here.

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