



The New Japanese Act on Retirement Allowances

by

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Owing to the special conditions of the employment market in Japan, the Government of the country holds that a system of unemployment insurance would prove too heavy a burden on the public treasury, and it has instead introduced a measure known as the "Retirement Reserve Fund and Retirement Allowance Act", which was passed by the Diet in May 1936 and will come into force on 1 January 1937. The basic idea of this Act is derived from the practice, common in Japan, of the payment by employers of a dismissal or leaving allowance to workers who go out of their service. In the following pages Mr. Kitaoka, after describing this system of voluntary allowances and the reasons for which the Government decided that it should be made compulsory as a fairly general measure, analyses the main provisions of the Act and discusses its significance.

ON 26 May 1936, at its sixty-ninth session, the Imperial Diet of Japan passed an Act whose title may be translated "Retirement Reserve Fund and Retirement Allowance Act". The aim of this Act, which is to be enforced as from 1 January 1937, is to provide for the compulsory payment of allowances to workers on leaving employment, and to provide guarantees for this payment by obliging the employers to set up reserve funds. The Act is based on the custom of paying discharge or leaving allowances, which has long been prevalent in Japan, but on a voluntary basis. As it has no exact parallel in other countries, it may be of interest to explain both the existing custom and the new Act.

The title of the Act calls for some preliminary comment. As will be seen later, the Act contains two distinct provisions : first, for the deduction from the worker's wages of a certain percentage, which is set aside to form a kind of individual savings fund ; secondly, for the constitution by the employer of a reserve fund consisting of a certain percentage of his total wages bill. The former fund is regarded as the worker's own property, being of the nature of deferred pay, and is paid over to him on leaving his employment, for whatever reason ; the latter is used to pay allowances, varying with length of service and the circumstances (sickness, old age, etc.), to workers leaving the undertaking, and special dismissal allowances to workers dismissed for reasons arising out of the working of the undertaking. While the basic purpose of the scheme is to protect workers retiring after long service on account of old age or invalidity, or in case of involuntary unemployment, it will be seen that in fact young and healthy workers, who have been only a few years in employment and will probably find new work without difficulty, also benefit by the scheme. Thus the term " retirement " is not altogether appropriate, but it has been retained as it suggests the original purpose of the Act.

THE EXISTING SYSTEM OF LEAVING ALLOWANCES

Nature of the System

Both the origin and the development of the leaving allowance system practised in Japan are often ascribed by the employers to the family system which is still the basis of Japanese life and customs. The explanation given is that as the employer regards the workers as members of his family he is unable, or at least unwilling, to discharge them ; and that when he is obliged to do so on account of old age or because for economic reasons he is forced to reduce the number of his workers, he feels a moral obligation to care for them after dismissal as far as circumstances allow. Some regard the system as a measure of social policy applied by private employers, there being no old-age pensions or unemployment or invalidity insurance in Japan. Others regard it as an incentive devised by the employers to attract and retain efficient workers, and to ensure their loyalty and long service. It is in any case quite distinct from the dismissal compensation, payment of which is compulsory under the Civil Code and the Factory Act when a worker is dismissed contrary to the provisions of his contract or without due notice.

To some extent the terms "dismissal allowance" and "retirement allowance" are used interchangeably to describe these payments. Strictly speaking, however, the term "dismissal allowance" applies to payments made by the employer to workers discharged solely for the employer's convenience, mainly when the number of workers is reduced owing to economic difficulties, and usually against the workers' will and through no fault of their own; while the term "retirement allowance" as generally used applies to payments made to workers leaving the establishment for any cause whatever, whether at the employer's convenience, on their own initiative, or owing to inevitable circumstances such as sickness, injury, old age, etc. The amount of the retirement allowance is always based on the number of years of service, usually on a progressive scale; the rate differs according to the reason for leaving the establishment, being naturally higher for a worker discharged for no fault of his own and solely for the employer's convenience. The dismissal allowance, too, is sometimes computed on the basis of the number of years of service, but is sometimes a fixed sum independent of the period of service. In many cases dismissal allowances only are paid, and workers leaving on their own initiative receive nothing.

The principal characteristics of the system may be summed up as follows:

(1) Allowances to workers leaving their employment are granted voluntarily by the employer, and are not ordinarily enforceable either by law or by contract. Recently, however, many employers have voluntarily included provisions concerning such allowances in their rules of employment, thus giving the workers a legal claim to them. But in most cases the employer reserves some discretion as to the grant of allowances.

(2) When a worker is dismissed for no fault of his own, but to suit the employer's convenience (e.g. when the staff has to be reduced for economic reasons), the employer is expected to pay a dismissal allowance; if, however, a worker leaves at his own request, the allowance is often reduced or withheld, especially if he has had only a short period of employment.

(3) Allowances are granted not only to workers retiring owing to old age after a long period of employment, but also to those who are still young and have been employed only a short time.

(4) Allowances are granted to wage earners as well as

to salaried employees, though the latter benefit by the system more often and the scale of allowances granted them is higher.

(5) Allowances are always granted in the form of a lump sum, not of a pension.

(6) The cost of allowances is borne entirely by the employer, partly from a special reserve fund, but mostly from the current expenses account.

Extent of Application

In July 1935 the Bureau of Social Affairs carried out an investigation into the extent to which the system is applied in Japanese factories and mines. The investigation showed that the total number of factories and mines (other than State establishments) employing at least 50 workers where written regulations concerning leaving allowances had been adopted was 1,582 (1,446 factories and 136 mines), employing altogether 737,992 workers (604,855 in factories and 133,137 in mines). These figures represented 25 per cent. of all establishments employing at least 50 workers (25 per cent. for factories and 33 per cent. for mines), and 43 per cent. of the total number of workers employed in them (29 per cent. for factories and 63 per cent. for mines). Fuller details (for establishments employing at least 50 workers) are shown in table I.

TABLE I. STATISTICS OF ESTABLISHMENTS EMPLOYING AT LEAST 50 WORKERS AND HAVING WRITTEN REGULATIONS CONCERNING LEAVING ALLOWANCES

Branch	Establishments granting leaving allowances	Per cent. of all establishments considered	Workers employed in establishments granting allowances	Per cent. of workers in all establishments considered
Factories :				
Textiles	370	12	208,688	27
Machines and tools	430	51	207,660	69
Chemicals	329	38	100,095	50
Food and drink	83	25	14,891	38
Miscellaneous	155	23	27,835	29
Gas and electricity	79	66	45,686	97
Total	1,446	25	604,855	39
Mines :				
Coal	52	23	90,326	55
Oil	16	76	2,955	90
Others	68	42	39,856	76
Total	136	33	133,137	63
Factories and mines together	1,582	25	737,992	43

It should be noted that in addition to the establishments having written regulations, there were many others where leaving allowances were granted as a tradition, though no written regulations had been adopted.

Table II shows the average number of workers per year over the period 1928-1933 who received leaving allowances, and the average value of the allowances, in factories and mines (other than State establishments) employing at least 50 workers.

TABLE II. NUMBER OF WORKERS WHO RECEIVED ALLOWANCES
AND VALUE OF ALLOWANCES
(*Annual Averages, 1928-1933*)

Item	Workers discharged at employer's convenience	Workers discharged for other reasons, or leaving on own initiative	Total
Number of workers discharged	65,295	523,489	588,784
Number who received allowances :			
Total	43,596	57,046	100,642
Per cent. of workers discharged	66.8	10.9	17.1
Allowances granted :			
Total	Yen 6,972,065	Yen 5,221,139	Yen 12,153,204
Average per worker	Yen 159	Yen 91.1	Yen 120

The annual average of 12 million yen represents about 2 per cent. of the total wages bill in factories and mines employing at least 50 workers.

The scale of the allowances differs in different undertakings, so that no general statement can be given. As a rule the scale increases with years of service, and is highest for workers dismissed for economic reasons. The allowance often reaches a considerable amount, and it is quite usual for dismissed workers to use it to start a small restaurant, a workshop, or a trade, or to buy a farm to settle on.

Table III shows the average scale of the existing provisions in the factories and mines investigated by the Bureau of Social Affairs.

TABLE III. AVERAGE SCALE OF LEAVING ALLOWANCES
IN ESTABLISHMENTS INVESTIGATED

Period of service (years)	Average number of days' wages paid when reason for leaving establishment was :		
	Discharge at employer's convenience	Non-occupational illness	Worker's own initiative
1	27	21	16
2	38	30	24
3	51	41	33
4	67	54	44
5	84	70	60
7	125	103	88
10	194	162	144
15	296	270	239
20	433	383	353
25	550	490	446
30	897	593	651

MOTIVES AND HISTORY OF THE ACT

Since the end of the Great War, unemployment has been a serious problem in Japan, and unemployment insurance schemes have been continually under consideration by the competent Government department, the Bureau of Social Affairs. Since 1929, when Japan adopted a policy of deflation in preparation for the return to the Gold Standard, which took place in 1930, the situation has been particularly serious. But the menace of the burden placed by unemployment insurance on the public treasury, as illustrated by the experience of Great Britain, stood in the way of any such scheme. It was in fact natural to expect that this burden would be even heavier in Japan, where floods of newly recruited young workers are continually pouring into the labour market ; this makes it difficult for the unemployed to find new employment, and it is generally considered that the period of unemployment is inevitably longer in Japan than in other countries. There has accordingly been considerable support—mostly in employers' circles—for the view that dismissal and retirement allowances are more suitable to Japanese conditions than unemployment insurance, and are indeed the only way of coping with the situation. For example, in April 1933, after opposing unemployment insurance, the National Federation of Industrial Organisations expressed the following opinion : " The way to relieve unemployment lies in developing industry, thus increasing the opportunities of

employment, on the one hand, and in extending and rationalising the use of the system of dismissal allowances, on the other."

The trade unions agree with the employers in advocating the payment of leaving allowances; unlike the employers, however, they at the same time support the adoption of a system of unemployment insurance.

When the idea took shape of making it compulsory for employers to pay dismissal or retirement allowances, there was but little opposition in employers' circles to the principle of legal regulation of the system. The problem, however, was how to fix the amount of the payment to be made and how to guarantee its payment.

The Government hesitated to apply compulsion to the payment of dismissal allowances alone. There were various reasons for this reluctance. Foremost was the difficulty of ensuring the payment of such allowances, as it would be impossible for the employer to constitute a reserve fund for so incalculable an eventuality as dismissal; payment of dismissal allowances from public funds would be equally impossible, as it would be difficult to determine whether a worker was discharged for his own or his employer's convenience, and agreement between the parties would make abusive demands on the funds only too easy.

A further reason was that dismissal, i.e. discharge at the employer's convenience, represented only a small proportion of the total labour turnover (only about one-tenth, even in such depressed years as 1928-1933, as shown in table II above); retirement allowances, on the contrary, payment of which was the prevailing practice, not only for wage earners in industry but also for salaried employees and professional workers in banks, shops, commerce, shipping, etc., provided considerable sums for the benefit of workers with a long period of service. Legislation providing for dismissal allowances alone would accordingly have been of less significance than legislation providing also for compulsory payment of retirement allowances.

A third reason was the difficulty of drawing any clear line of distinction between dismissal and retirement allowances, the former being in fact usually only a special form of the latter.

There was, on the other hand, a strong body of opinion in favour of rationalisation of the system of leaving allowances, the existing practice having many obvious defects. In particular,

very few employers had special reserve funds for this purpose, so that in most cases the allowances had to be paid out of the current expenses account. And even if an employer tried to establish a reserve fund, this was treated as profit and was liable to various taxes. A further defect was the wide differences between the allowances paid in different establishments, causing trouble to both employers and workers, and often leading to labour disputes.

The last and most important impetus which prompted the Bureau of Social Affairs to prepare a scheme for the regulation of leaving allowances came from the revival of industry since 1932, combined with the prevailing tendency to employ workers on a temporary basis. As is well known, the Takahashi financial policy of the Gold Embargo (November 1931) produced a certain revival of Japanese industry. The employers, however, anticipated that the boom would be only a temporary phenomenon and they tried to free themselves of the burden of leaving allowances by engaging workers who agreed to accept dismissal at any time at short notice, or even without notice, and without receiving any allowances. But even if anxiety to get a job at any cost made the workers accept these conditions, it can easily be imagined that they would change their minds after working perhaps several years side by side with other workers engaged on the ordinary basis, and would demand the payment of dismissal allowances if they were discharged owing to economic depression. Subsequent depression was thus likely to bring many troubles with it: and the Bureau of Social Affairs felt that measures must be taken to avert these troubles.

A Bill was accordingly drafted by the Factory Inspection Section of the Bureau of Social Affairs; it was submitted to the Committee on Unemployment Policy for approval and was issued to the press early in June 1935. The majority of the Committee approved it; one member, representing the employers, opposed it. The Bill was almost unanimously approved by the press, and was supported by the trade unions. It was criticised by the National Federation of Industrial Organisations; it seems reasonable to suppose, however, that the employers' opposition was merely on details and that they still agreed with the fundamental principle, as the system provided for by the Bill was just what they themselves had recommended as the most suitable policy for dealing with unemployment, as expressed in the resolution quoted above.

With certain amendments, the Bill, as already mentioned, was passed by the Diet on 26 May 1936, and the resulting Act will come into force on 1 January 1937.

PROVISIONS OF THE ACT

It is the general custom in Japan to include only the main points of the proposed legislation in the principal Act, and to leave details—often relating to quite important points—to be regulated by Imperial or Ministerial Decree. In the present case some very important points are thus left to be dealt with by Decree. A preliminary plan has, however, been published by the Bureau of Social Affairs, and in the following summary of the new provisions the Act itself has in some cases been supplemented by details taken from the Government's plan.

Scope

The Act will apply to all factories and mines employing at least 50 persons. The figure proposed in the original plan of the Bureau of Social Affairs was 10 or more persons. Realising, however, that in small factories and mines the application of the Act would be a heavy burden and would be liable to cause trouble, the Government first raised the figure to 30 persons, and the Lower House again raised it to 50. Thus the total number of factories and mines coming under the Act will be about 6,300, employing about 1,700,000 workers. Government undertakings are not covered, as they already have a better scheme in operation.

The Act will apply only to wage earners, not to salaried employees or professional workers. As already mentioned, leaving allowances are more usual for salaried employees than for wage earners, but the conditions of employment of the two categories are too different for the same standard to be imposed by law in the two cases. The Bureau of Social Affairs, however, is of opinion that the Act will stimulate employers to extend the custom, to raise the scales of payment, and to build up a reasonable reserve to guarantee the payment of leaving allowances to salaried employees.

The Act will not apply to casual workers engaged by the day unless they have worked more than 60 days consecutively. It will not apply to temporary workers engaged for a limited

period of less than six months (one year in the case of seasonal work); temporary workers, however, who have actually worked in the same factory or mine for more than six months (one year in the case of seasonal work) will have the same rights as permanent workers.

Resources and Benefits

The Act provides for the constitution, in each establishment covered, of three distinct types of fund : (a) a retirement reserve fund for each worker, consisting of percentages deducted from his wages ; (b) a retirement allowance fund for each worker, consisting of contributions from the employer ; (c) a dismissal allowances fund, consisting of the unexpended balances of all the retirement allowance funds.

Retirement Reserve Fund.

It is a long-standing custom in Japan for the employer to deduct a certain percentage from the worker's wages and to accumulate it in a savings fund for the worker's future needs ; the employer cannot, however, make these deductions without permission from the competent authority. The policy of the Government as expressed in the new Act was to encourage saving in this way, by making it compulsory for employers to deduct a certain percentage from wages, and to supervise the safety of the sums so saved, while limiting the deductions to a reasonable amount.

The Act provides that the employer shall deduct 2 per cent. of the wage each pay-day. This sum is deposited in the Government Savings Bank in the name of each worker, and is refunded to the worker with the accrued interest on the cessation of his employment. In contrast to the provisions mentioned below for the retiring allowance, there is no restriction whatever on the right to the refund of these savings. Creditors of the worker have no claim on the savings fund thus constituted.

Retirement Allowance Fund.

The resources of this fund will consist, for each worker, of a contribution by the employer, to be paid at least once a year, equal to 2 per cent. of the total wages paid, and of an additional contribution, varying for different establishments. The amount of this second contribution must be approved by the

Government in each case; it is to be dependent on profits, but may not exceed 3 per cent. of the wages paid.¹

While the reserve consisting of the various retirement allowance funds is the property of the employer, each worker's fund is treated as a separate legal entity or trust deposit, the employer acting as trustee. The money must be deposited in a Government or other approved savings bank, or invested in bonds of the central or local Governments, or in debentures of the companies specified in a special Act. A separate account must be kept for each worker; the interest on the reserve will be distributed over the separate accounts in proportion to the amount credited to each of them. The use of the reserve by the employer for other purposes than those laid down by the Act is prohibited. This reserve is exempt from all taxation, and cannot be attached by the creditors of either employer or worker. The maximum amount of exemption from tax and attachment is 7 per cent. of wages. This limit is important, as otherwise the employer might be tempted to increase the reserve above the obligatory requirements of the Act in order to evade taxation.

The right to receive a retirement allowance is subject to important restrictions, to be specified by Decree. The general plan as published by the Bureau of Social Affairs contains the following provisions:

(a) The employer is entitled to pay no allowance at all in the following cases: (i) when a worker is dismissed for grave fault; (ii) when a worker with a period of service of less than three years leaves his employment on his own initiative, without due cause.

¹ While no decisions have yet been taken by the Government regarding the scale of this second contribution, the Bureau of Social Affairs has published a draft regulation according to which the employer shall set aside (in addition to the first contribution) the following amount:

A. When the employer is a legal person:

Dividend per year	Second contribution
5 to under 8 per cent.	1 per cent. of wages
8 " " 12 " "	2 " " " "
12 per cent. and over	3 " " " "

Provided that the second contribution is limited to 10 per cent. of the amount of the dividend in excess of 5 per cent. of the paid-up capital.

B. When the employer is a natural person:

Net profit per year	Second contribution
10,000 to under 20,000 yen	1 per cent. of wages
20,000 " " 30,000 "	2 " " " "
30,000 yen and over	3 " " " "

Provided that the second contribution is limited to 10 per cent. of the net profit above 6,000 yen.

(b) The employer is entitled to reduce the allowance to one-third when a worker with a period of service of three years or more leaves his employment on his own initiative, without due cause.

(c) The exact interpretation of the words "due cause" will be determined later: at present it is understood that a worker leaving on account of illness or marriage has "due cause".

(d) The worker can at any time appeal to a Committee specially set up for the purpose and including representatives of the workers; he can also appeal to the ordinary courts.

Dismissal Allowances Fund.

When all or part of the retirement allowance fund in respect of any worker is withheld, the unexpended balance will be paid into a dismissal allowances fund, to be used for the payment of an additional allowance when the employer dismisses a worker for reasons connected with the working of the establishment and without any fault on the part of the worker. This allowance is to be 20 days' wages when the period of service in the establishment is more than one and less than three years, and 35 days' wages when it is three years or more.

The employer's responsibility is limited to the amount accumulated in the special fund. If this amount is insufficient to meet all requirements when more than one worker is dismissed at the same time, it will be divided among the workers concerned in proportion to their claims; if no sums have been placed to reserve in the fund the allowances may be withheld.

Alternative Schemes

Certain exceptions and alternatives to the general scheme are authorised by the Act. In particular, certain employers have already adopted arrangements to ensure the payment of retirement allowances; it is provided that these may be regarded as equivalent to the legal requirements if the competent authority is satisfied that the workers are better protected by these arrangements than by the legal provisions, or if the application of the legal provisions is considered impracticable.

A more important exception, however, is that any employer who adopts regulations providing a specified minimum scale of allowances may be exempted from the obligation to constitute the funds described above. This scale is as follows:

(a) A retirement allowance equal to 12 days' wages for each year of service. The wage will be the standard remuneration as calculated for purposes of health insurance at the time of retirement, which is the daily average of the total earnings (including not only the basic wage, but also overtime payments, housing allowance, and bonuses and premiums of various kinds) during the 90 calendar days preceding 1 June of each year. It is the general custom to raise the wages of manual workers once or twice a year; the rate of wage promotion of course differs according to circumstances, but is roughly estimated at about 3 per cent. per year. As this is the same as the rate of interest on a postal savings account, it follows that the prescribed allowance is approximately the same as if 12 days' wages ($3\frac{1}{3}$ per cent. of the total wages for the year) had been set aside each year and allowed to accumulate in a postal savings account for the worker's benefit. If the worker is dismissed for his own fault or leaves on his own initiative, the same reductions are allowed as in the general scheme.

(b) In addition to the above, a special dismissal allowance of 20 days' wages for a period of service of more than one and less than three years, and of 35 days' wages for a period of three years or more. In both cases the employer is responsible for payment of the whole sum, there being no limitation of his responsibility as in the general scheme.

An adequate reserve fund must be established for both the retirement allowances and the special dismissal allowances.

A comparison of the general scheme and the alternative scheme shows that the charge to the employer under the former is from 2 to 5 per cent. of wages, while under the latter it is $3\frac{1}{3}$ per cent. of wages (less in the case of workers leaving on their own initiative or dismissed for their own fault, so that the allowance may be withheld) plus the cost of the special dismissal allowances.

Enforcement and Appeals

Penalties are prescribed for any failure by the employer to fulfil his duties under the Act. Illegal use of the reserve fund is punishable by imprisonment and any other contravention of the law by a fine.

A local committee for supervision of the allowance funds will be established in each prefecture and a central committee at the Bureau of Social Affairs. These committees will consist

of representatives both of employers and of workers, together with officials ; their exact composition and method of appointment will be settled by Decree. Any worker who is dissatisfied about the payment of allowances can complain first to the local committee ; if still not satisfied, he can appeal to the central committee, and finally to the ordinary courts.

A special supervisory official will also be appointed.

CONCLUSION

The above survey of the main provisions of the new Act will have shown that it may be regarded as a special social measure to help the unemployed, and especially workers who are forced to leave their employment on account of age, invalidity, or other circumstances beyond their own control, whose hardships it will certainly help to mitigate. It has of course some defects as compared with a system of unemployment insurance. Against these defects, however, may be set off certain merits. It will impose no burden on the Government. It will encourage long and loyal service on the part of the workers and will tend to promote good relations between employers and workers. Further, while unemployment insurance is sometimes accused of assisting the idle at the expense of the industrious, the system proposed by the Act can incur no such blame. And while it is true that the Act imposes a burden on the employer similar to that of unemployment insurance contributions, it is a burden which is already familiar to him as part of a practice which has developed spontaneously, and will therefore not be hard to bear.

Owing to the limitation of the scope of the Act to factories and mines employing 50 or more workers, the number of workers directly affected will not be very large (about 1,700,000). The scale of the allowances, too, is rather lower than the scale in practice in many establishments. It is hoped, however, that the moral effect of the Act will be considerable. In particular, it is anticipated that by fixing a legal minimum it will help to raise the general standard of allowances ; that it will foster the introduction of similar schemes in small factories and mines and in undertakings of other kinds such as shops, railways, shipping, etc. ; and that it will stimulate the existing practice of paying retirement allowances to salaried employees, ultimately rendering this practice a right instead of a favour.