



## **Current Status and Problems of Legislation and Policies for Employment of Persons with Disabilities in Europe and the United States**

**(Research Report No.110) Summary**

### **【Key Words】**

Legislation for employment of persons with disabilities, anti-discrimination, employment quota, reasonable accommodation, sheltered employment, vocational rehabilitation, income security

### **【Usage of This Report】**

Current status and problems of legislation and policies for employment of persons with disabilities in Germany, France, the UK and the US are described and perspective and possible influence on legislation and policies in Japan are explored. Convention on the Rights of Persons with Disabilities is to be finalized and this report offers useful information to relevant researchers and companies along with Material Series No.58 “Current Legislation and Measures for Employment of Persons with Disabilities in Western Countries” which gives a detailed explanation to a table titled the same.

**April 2012**

**Japan Organization for Employment of the Elderly, Persons with Disabilities and Job Seekers**

**National Institute of Vocational Rehabilitation**

## **1. Authors (in the order of chapters that they wrote, titles at the time of writing)**

Karibe Takashi, special researcher, National Institute of Vocational Rehabilitation

Takahashi Kenji, associate professor, Faculty of Law, Rissho University

Fukushima Go, associate professor, Faculty of Law, Kansai University

Nagano Hitomi, associate professor, Faculty of Law, Sophia University

Hasegawa Tamako, associate professor, Faculty of Administration and Social Sciences, Fukushima University

Terashima Akira, professor, Faculty of Comprehensive Welfare, Urawa University

Hasegawa Satoshi, associate professor, Faculty of Law, Chuogakuin University

Ogawa Yoshimichi, professor, Department of Welfare Systems Engineering, Kanagawa Institute of Technology

## **2. Research period**

2010 to 2011

## **3. Composition of the research report**

Foreword: Research purpose and method

Chapter 1: Germany

Chapter 2: France

Chapter 3: The US

Chapter 4: The UK

## **4. Background and purpose**

Ministry of Health, Labour and Welfare (MHLW) has been reviewing domestic legislation in order to ratify Convention on the Rights of Persons with Disabilities and has been asking us to obtain and analyze the latest data in Germany, France, the UK and the US where legislation and policies for employment of persons with disabilities are advanced.

For this reason, we conducted a series of researches and analyzed the latest legislation and policies as well as current status and problems in employment of persons with disabilities in these countries.

## **5. Method**

(1) Establishment of a committee for research

(2) Research on reference materials

(3) On-the-spot oversea survey

## **6. Summarized results of the study**

A committee for research was established with specialists of welfare for the disabled and labor legislations in other countries, in order to collect and analyze relevant data, to report and discuss the subject, to examine and organize key points, and to draw a conclusion. It also conducted on-the-spot survey and collected detailed data in the US, Germany and France.

In response to MHLW's request, in the first year, the committee compiled reference materials into a table titled "Current Situation on Legislation and Measures for Employment of Persons with Disabilities in Western Countries" along with a series of reference materials with detailed explanation to the table, titled the same. (Material Series No. 58 "Current Situation on Legislation and Measures for Employment of Persons with Disabilities in Western Countries")

This year, the committee compiled the results of researches into the final report together with analysis on the procedure of disability assessment and overview of income security, legislation and measures for employment, problems and perspective, and possible influence on legislation and measures in Japan.

This report consists of foreword, which describes purpose and method of the study, and 4 Chapters, which explains status in Germany, France, the US and the UK. Chapters have similar structure each other to facilitate comparison between countries, as in the reference materials. Outline of each Chapter is as follows.

### **(1) Chapter 1 : Germany**

Section 1 in this Chapter describes how Germany which has taken the employment quota of severely disabled persons and levy system similar to Japan, has developed the anti-discriminatory legislation such as the General Equal Treatment Act (AGG), in order to cope with Directive/2000/78/EC and decisions of domestic lawsuits. .

Section 2 thoroughly describes the conventional legislation on employment quota of severely disabled persons as well as levy system that ensures employment obligation. The disability assessment plays significant role because the quota system applies to severely disabled persons (degree of disability of 50 and over) and people whose disability is classified as equivalent to a severe disability (degree of disability over 30 and under 50 and interrupt work ability), and Section 3 goes into detail of the disability assessment system, whose summary is given below:

The competent authority under the Federal War Victims Relief Act (BVG) assesses disability and its levels in terms of employment. The application is processed by the assisting authority (assisting centers in city or land government and assisting physicians who make disability assessments). Formerly, "Guidelines for medical expert examinations" was used, but it is no longer used after Relief Medicine Ordinance in December 2008. However, the employment agency certifies persons with disabilities equivalent to severe disability.

The assessment process starts by the person submit application themselves to the assisting authority. The application should be submitted with physician's report, comments and other related documents. The documents include comments on: ① impairments and ② symptoms. The physician adds their comments and submits them to the assisting authority.

The physicians at the assisting authority make comments on the exam with communicating with the applicant's physician and hearing about the condition from them. Any disability including disease as well as dysfunction in the social life such as difficulty in walking and difficulty in sitting work are factors in assessment. Then the name of disability is given. They make assessment by the documents writing about presence and degree of disability, together with occasional counseling. Observation on treatment is necessary depending on disease.

Assessment is made and its reason is shown in the name of the assisting authority. Instruction signs are added to the severely disabled person's pass. No certificate will be issued for a degree of disability of 30 or 40 and applicants will be notified.

Section 4 provides detailed information about sheltered workshops, which provides jobs and job training to help disabled persons who usually have hard time finding a job to make transitions to general labor market. Section 4 also describes integration projects (integration firms) which enable persons with severe disabilities who have difficulty finding a job to obtain employment. It is concerned as an intermediate stage between general labor market and workshops.

Section 5 guides through current status and issues of the vocational rehabilitation systems. Section 6 provides overview of income security, such as disability pension (reduced earning capacity pension) and occupational accident pension.

Figure 1 Types of rehabilitation benefits and classification

	vocational rehabilitation (participation in working life)	medical rehabilitation	participation in community life
occupational accident pension	○	○	○
social compensation	○	○	○
health insurance	×	○	×
pension insurance	○	○	×
employment promotion	○	×	×
social assistance	○	○	○
child and youth assistance	○	○	○

## (2) Chapter 2: France

Section 1 in this Chapter explains about France, where they have employment quota system as in Germany. France has introduced the principle of anti-discrimination in 1990 and developed it along with legislation on employment quota. It also describes how France has enforced and begun forming anti-discrimination legislation in employment after the EC directive in 2000, the assessment of disability and relief system for discrimination.

Section 2 describes details of operation status of the employment quota system, including eligible persons with disabilities, current status of employment obligation, and exact calculation of levies.

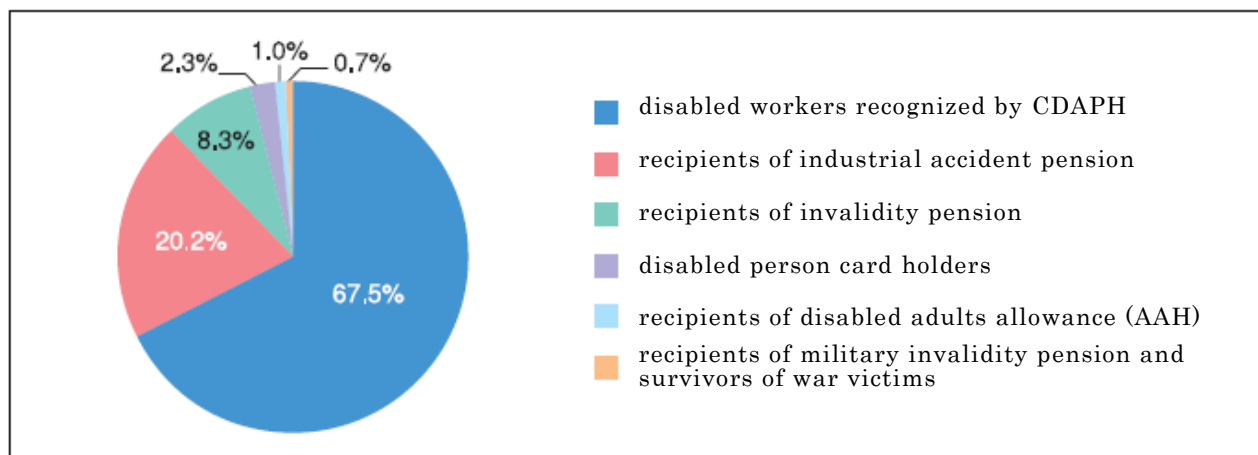


Figure 1 Beneficiaries of employment obligation (private sector) in 2007

Table 2 Current status of employment obligation in private sector (%)

	2006	2007	2008	2009
direct employment of workers with disabilities	53	56	58	65
employment of workers with disabilities	26	26	27	29
employment of workers with disabilities and protected sector	8	7	8	9
employment of persons with disabilities, protected sector and levies	7	9	9	12
employment of workers with disabilities and levies	12	15	15	15
no direct employment of workers with disabilities	40	37	34	26
levies only	35	29	25	11
levies and protected sector	5	8	9	15
execution of obligation with concluding a collective agreement	6	7	8	9
total	100	100	100	100

In the employment quota system, there are advantages for employers who hire persons with severe disability recognition, employers receive either aid for employment of disabled workers (AETH) or discount on levies. The recognition of severe disability is conducted by Fund Management Organization for the Professional Integration of People with Disabilities (AGEFIPH), which manages and supervises levies and grants.

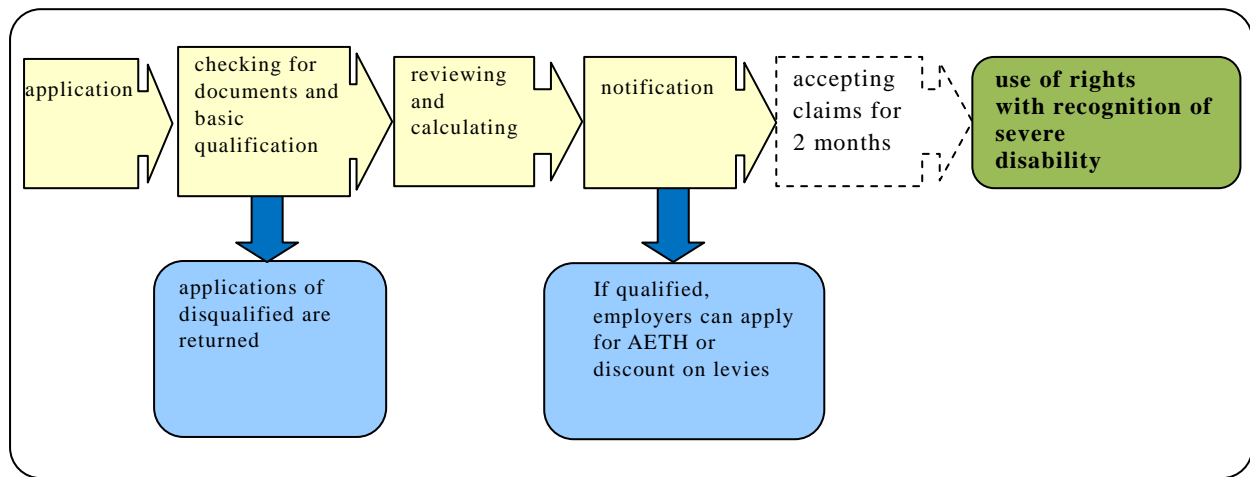


Figure 2 Application process in recognition of severe disability

There are 3 ways for persons with disabilities to obtain employment in France.

- ① employment in private companies or public sector
- ② employment in accessible companies or distribution centers for home work (CDTD)
- ③ employment in work support institution or service (ESAT)

Of these, ① and ② are considered works in the regular labor market and the Labor Code can be applied. Accessible companies in ② indicate the companies where they hire many persons with disabilities who have less work ability. They used to be called sheltered workshops and were places for sheltered employment.

ESAT in ③ are medical and welfare facilities and they provide support for employment as well as medical and welfare support and education support (so-called a social welfare employment). Therefore, employment at ESAT is considered sheltered employment and the Labor Code is not applied except some rules for safety and health. Section 3 explains accessible companies and ESAT, where many persons with disabilities can obtain employment and public support. Recent issues include modernizing the way those organizations and jobs function, in accordance with changes in social and economic situation.

Section 4 describes vocational rehabilitation system by the Commission for the Rights and Autonomy of People with Disabilities (CDAPH) starting with recognition of workers with disabilities. Section 5 provides overview of key income security systems, such as invalidity pension, occupational accident pension and disabled adult allowance (AAH), focusing assessment of disability and its conditions. It also mentions current status and problems in France where welfare support system exists along with many kinds of operating organizations, target persons, and qualification methods.

### (3) Chapter 3 : the United States

In the US, legislation to prohibit discrimination against persons with disabilities, such as The Americans with Disabilities Act of 1990(ADA) allow persons with disabilities to have equal rights to nondisabled persons.

Section 1 in this Chapter introduces recent movements including The ADA Amendments Act of 2008. It also gives example lawsuit cases in labor discrimination and reasonable accommodation.

There is no employment quota system in the US, which is supposed to be mentioned in Section 2.

Section 3 shows the employment situation of persons with disabilities in sheltered employment. This sheltered employment has actively been developed based on legislation against disability discrimination. These facilities are called sheltered workshop or work center. Disabled persons were expected to receive enough training to make transition to a regular labor market, but they rarely make this move once start working in sheltered workshops. The possible reasons are that they can work for only short time in safe work environment that is close to their home, not only that they have a chance to work even with their limited skills. They also receive help at work and services including housing and transportation and they don't have to lose their disability benefits. Some from the government question the way those workshops are, because their support do not generate best result in terms of cost effectiveness and they do not meet purposes of ADA, such as equal opportunity, participation, independence and financial satisfaction.

Table 3 Facilities receiving exemption of minimum wage

types of employer	number of facilities	rate (%)
work centers	4,724	84.2
companies	506	9.0
medical institutions	294	5.2
schools	88	1.6
total	5,612	100.0

Government Accountability Office (2001)

Work centers receive income mostly through subsidiaries from state and county government and contract work ordered by federal government. (Figure 3)

Subsidiaries from state and county government usually include consigned training fee and running expense support. Although the income source varies by facilities, subsidiaries and contract work still make up most. Classified by hourly wage, 80% of their clients receive lower than legal minimum wage, which

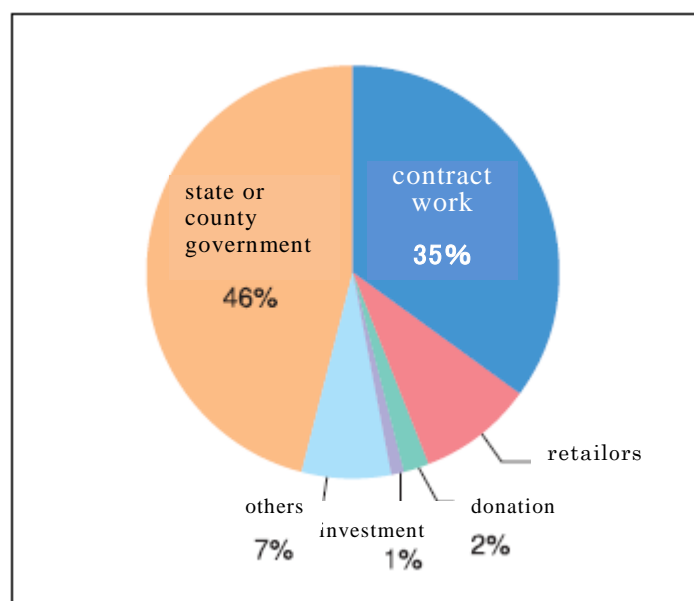


Figure 3 Income source of work centers

was \$5.15 at that time.

Section 4 mentions vocational rehabilitation and introduces One-Stop Career Center, which was established under the Workforce Investment Act, in order to create and encourage employment. It is a coordinated project by companies in states and municipals. The centers offer a full range of assistance to job seekers, including persons with disabilities, under one roof. They are to offer job listings and vocational rehabilitation and to help pensioners to make transition to labor market. Currently they do not have sufficient support for disabled persons, though federal government is expected to help employment services for disabled persons, which used to receive help mainly by state government.

Section 5 provides overview of Social Security Disability Insurance (SSDI) and permanent disability benefits in California workers' compensation system, focusing assessment of disabilities and its conditions. It is interesting that the income security is fairly and thoroughly determined by applicants' employment status and disability level with clinical features, compared to the definition of disability in ADA.

#### **(4) Chapter 4 : the United Kingdom**

Section 1 in this Chapter describes how the employment quota system following Disabled Persons (Employment) Act 1944 has been replaced by anti-discrimination legislation for persons with disabilities based on Disability Discrimination Act 1995(DDA) in the UK , and how Equality Act 2010 was enacted in order to organize and assemble anti-discrimination acts. It also explains current status of legislation against discrimination in employment, reasonable accommodation, and relief measures against discrimination.

There is no employment quota system in the UK, which is supposed to be mentioned in Section 2.

Section 3 introduces current status and problems of sheltered employment for persons with disabilities who have difficulty finding a job in labor market depending on their disabilities and its levels. The system has a supporting role for disabled persons to obtain employment in the regular labor market as well as work providing function. Encouraging independence for regular employment as an open sheltered employment has been their focus these days. Supported factories and supported businesses are sheltered employment system where over 50% of workers have disabilities and many of these workplaces provide support for transition to regular employment. Each workplace can tailor their service under WORKSTEP program run by Department for Work and Pensions. This program is to be enforced and developed to the advanced program called Work Choice after October 2010.

Section 4 describes vocational rehabilitation service developing to encourage independency at work.

The UK currently has an integrated system called Work Choice, which replaced Work Preparation, WORKSTEP

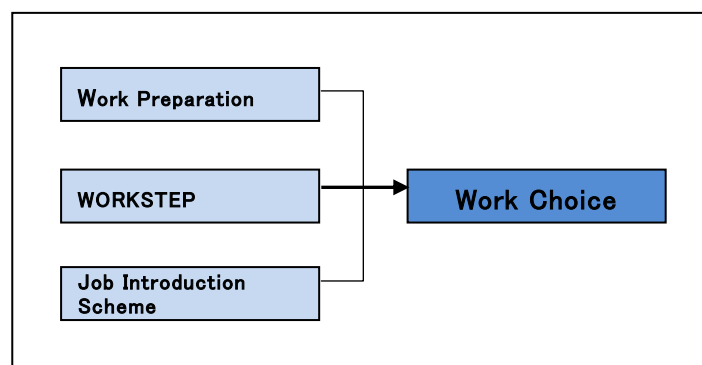


Figure 4 Transition to Work Choice



and the Job Introduction Scheme (Figure 4) so that they can provide integrated support for regular employment. Persons with disabilities get actively involved in the system and vocational advisors for persons with disabilities provide supports. Work Choice consists of 3 modules and provides tailored support by individual condition and demand.

Module 1: work entry support

6-month support with guidance to employment, improving self-confidence, advice on finding a job, filling out job application, and skills for maintaining employment

Module 2: short-medium term in-work support

2-year support at workplace with knowledge and skills for disabled persons to work without support

Module 3: longer term in-work support

Focuses on their improvement through work experience

Section 5 explains the Employment and Support Allowance (ESA) as a disability pension and industrial injuries disablement pension. They compensate for income loss for limited choices of employment due to disability, rather than for disability itself. Compared to the definition of disability in the anti-discrimination legislation, it is particularly strict about assessing work ability and filter disabled persons who are eligible for pensions.