

KWDI Issue Paper

Research for Improving the Effectiveness of Women and Family-Related Legal Systems (V): The Act on Equal Employment and Support for Work-Family Reconciliation on its 30th Anniversary: Achievements and Issues

The Act on Equal Employment and Support for Work-Family Reconciliation on its 30th Anniversary: Achievements, Limitations, and Alternatives Reviewed via the Survey of Experts.

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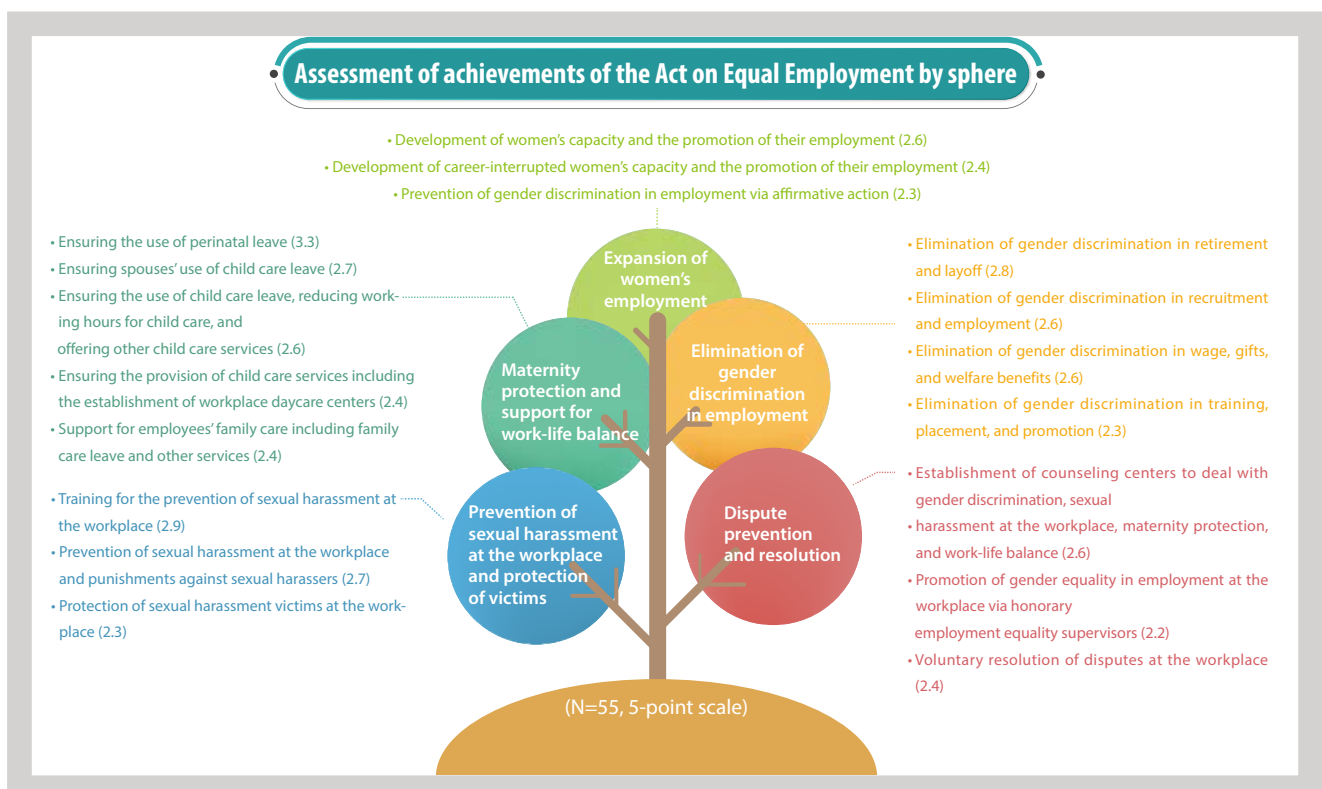
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Abstract

- Marking the 30th anniversary of the Act on Equal Employment and Support for Work-Family Reconciliation (hereinafter, the Act on Equal Employment), this paper analyzes changes in the labor market for women, its use for the past 30 years, and its achievements and limitations, and ultimately seeking ways to improve its effectiveness. In particular, conducting a survey of researchers, NGO activities, labor union leaders, legal experts, and human resources (HR) managers who have experiences in implementing studies on women's labor or managing practical affairs therein, we evaluate the application of the law and discuss ways to improve it.
- Specifically, five areas such as 'gender discrimination in employment,' 'sexual harassment at the workplace,' 'the expansion of women's employment,' 'maternity protection and support for work-life balance,' and 'dispute prevention and resolution' are further segmented into eighteen sub-themes. With respect thereto, the achievements of the law are evaluated on a five-point scale, discussing alternatives in connection with spheres whose limitations are exposed.

- For the following eighteen sub-themes, the achievements of the law are assessed on a five-point scale, discussing alternatives in connection with spheres whose limitations are exposed: 1) elimination of gender discrimination in recruitment and employment; 2) elimination of gender discrimination in wage, gifts, and welfare benefits; 3) elimination of gender discrimination in training, placement, and promotion; 4) elimination of gender discrimination in retirement and layoff; 5) prevention of sexual harassment at the workplace and punishments against sexual harassers; 6) protection of sexual harassment victims at the workplace; 7) training for the prevention of sexual harassment at the workplace; 8) development of women's capacity and the promotion of their employment; 9) development of career-interrupted women's capacity and the promotion of their employment; 10) prevention of gender discrimination in employment via affirmative action; 11) ensuring the use of perinatal leave; 12) ensuring spouses' use of child care leave; 13) ensuring the use of child care leave, reducing working hours for child care, and offering other child care services; 14) ensuring the provision of child care services including the establishment of workplace daycare centers; 15) support for employees' family care including family care leave and other services; 16) establishment of counseling centers to deal with gender discrimination, sexual harassment at the workplace, maternity protection, and work-life balance; 17) promotion of gender equality in employment at the workplace via honorary employment equality supervisors; and 18) voluntary resolution of disputes at the workplace.



The Act on Equal Employment was enacted in 1987 to ensure equal opportunities and treatment for men and women in accordance with the ideology of equality as stipulated in the Constitution, protect maternity, develop vocational capabilities, and thereby contribute to improving the social position of female employees and promoting their welfare. In 2007, the Act on Equal Employment was renamed the Act on Equal Employment and Support for Work-Life Reconciliation via the 8th amendment in order to clearly prescribe the responsibilities of the government and businesses for promoting the family lives of male and female employees and to include more diverse systems.

In accordance therewith, in the whole process of employment including recruitment, employment, and layoffs, gender discrimination is prohibited, regarding sexual harassment as illegal acts that violate labor rights. This also makes it mandatory for employers to work hard to prevent sexual harassment and to take actions if sexual harassment is committed. Moreover, affirmative action was introduced to relieve gender inequality in labor markets, along with spouses' child care leave, shorter working hours for child care, and family care leave for supporting work-life balance.

However, in spite of the development of the Act on Equal Employment and Support for Work-Life Reconciliation (hereinafter, 'the Act on Equal Employment'), taking into account women's employment rates, the share of non-regular female employees, the share of low-income female employees, the gender wage gap, glass ceiling, and so forth, gender inequality in employment structure has yet to be effectively handled. In other words, gender discrimination in labor markets remains solid and for women to secure their rights to work is still considered as a very difficult issue.

Against this backdrop, considering that the Act on Equal Employment marks its 30th anniversary this year, this paper analyzes changes in the labor market for women, the process of the Act applying for the past 30 years, and the achievements and limitations thereof, lastly seeking ways to improve its effectiveness.

To collect opinions on the achievements and limitations of the Act on Equal Employment and ways to revise it, we conducted a survey of experts. Considering the provisions included therein, a total of five main areas were chosen, selecting 3 to 5 sub-themes by sphere (a total of 18 sub-topics).

<Table 1> Main areas and sub-themes for the survey of experts

| Main areas | Sub-themes |
|--|--|
| Elimination of gender discrimination in employment | <ul style="list-style-type: none"> • Elimination of gender discrimination in retirement and layoff • Elimination of gender discrimination in recruitment and employment • Elimination of gender discrimination in wage, gifts, and welfare benefits • Elimination of gender discrimination in training, placement, and promotion |
| Prevention of sexual harassment at the workplace | <ul style="list-style-type: none"> • Training for the prevention of sexual harassment at the workplace • Prevention of sexual harassment at the workplace and punishments against sexual harassers • Protection of sexual harassment victims at the workplace |
| Expansion of women's employment: | <ul style="list-style-type: none"> • Development of women's capacity and the promotion of their employment • Development of career-interrupted women's capacity and the promotion of their employment • Prevention of gender discrimination in employment via affirmative action |
| Maternity protection and support for work-life balance | <ul style="list-style-type: none"> • Ensuring the use of perinatal leave • Ensuring spouses' use of child care leave • Ensuring the use of child care leave, reducing working hours for child care, and offering other child care services • Ensuring the provision of child care services including the establishment of workplace daycare centers • Support for employees' family care including family care leave and other services |
| Dispute prevention and resolution | <ul style="list-style-type: none"> • Establishment of counseling centers to deal with gender discrimination, sexual harassment at the workplace, maternity protection, and work-life balance • Promotion of gender equality in employment at the workplace via honorary employment equality supervisors • Voluntary resolution of disputes at the workplace |

A survey of and focus group interviews with experts were conducted for this study. For the survey, based on the above 19 sub-themes, the achievements of the Act on Equal Employment were evaluated on a 5-point scale. The reasons for their responses and how to improve the Act were identified via open-ended questions. The focus group interviews were conducted by realm (the aforementioned five main areas), focusing on the achievements and limitations of the current Act and ways to improve it. From May 22 to June 29, 2017, we implemented a survey of 100 experts in the field of the Act on Equal Employment (researchers, NGO activities, labor union leaders, legal experts, and human resources (HR) managers who have experiences in carrying out studies on women's labor or managing practical affairs therein). Sixty six professionals gave their answers to our questions.

<Table 2> Survey participants

(N=66)

| Classification | | Persons | % |
|--|--|---------|------|
| Gender discrimination/sexual harassment at the workplace | Researchers | 16 | 24.2 |
| | Labor union leaders | 14 | 21.2 |
| | Legal experts | 13 | 19.7 |
| | NGO activists | 13 | 19.7 |
| | HR managers | 10 | 15.2 |
| Expansion of women's employment | Less than five years | 16 | 24.2 |
| | Five years or more ~ less than ten years | 17 | 25.8 |
| | Ten years or more | 33 | 50.0 |

<Table 3> Survey overview

| | |
|----------------|---|
| Survey targets | Researchers, labor union leaders, legal experts, NGO activists, and HR managers |
| Sample size | 66 persons |
| Survey method | Self-administered; online survey |
| Sampling | Purposive sampling; stratified random sampling |
| Survey period | May 22 ~ June 29, 2017 |

The survey results show that the achievements of the law are a little higher than the average only in 'ensuring the use of perinatal leave' belonging to the sphere of 'maternity protection and support for work-life balance.' (3.3) In the other 17 areas, it is found to be below-average. In other words, experts recognize the achievements of the law a little negatively. In particular, the lowest point (2.2) was given to the honorary employment equality supervisor system in the area of 'dispute prevention and resolution,' in which the achievements of the law were evaluated to be the most unsatisfactory.

Focus group interviews with experts who agree to participate therein were held in July 2017 once for each of the two groups (researchers and legal experts + NGO activists and labor union leaders). Considering that opportunities for opinion exchange are reduced in case the size of the group is too big, the interviews were conducted for two hours for each group consisting of five members.

Results from the survey and focus group interviews by area are as follows:

A. Elimination of gender discrimination in employment

- The achievements of the Act on Equal Employment in the 'elimination of gender discrimination in employment' are a little unsatisfactory. The achievements thereof in the field of the 'elimination of gender discrimination in retirement and layoff' are found to be relatively better than in other areas while the achievements thereof in the 'elimination of gender discrimination in training, placement, and promotion' are evaluated to be more unsatisfactory. However, given improvements in businesses and employees' awareness of the 'elimination of gender discrimination in employment,' a certain level of achievements is recognized in leading related parties to comply with legal provisions and reducing explicit discrimination.

<Table 4> Achievements of the Act on Equal Employment in the elimination of gender discrimination in employment

(N=66, 5-point scale)

| Items | All | Resear chers | Labor union leaders | Legal experts | NGO activists | HR managers |
|---|-----|-----------------|---------------------------|------------------|------------------|----------------|
| Elimination of gender discrimination in recruitment and employment | 2.6 | 2.8 | 2.3 | 2.5 | 2.3 | 3.5 |
| Elimination of gender discrimination in wage, gifts, and welfare benefits | 2.6 | 2.7 | 2.5 | 2.3 | 2.1 | 3.8 |

| | | | | | | |
|--|-----|-----|-----|-----|-----|-----|
| Elimination of gender discrimination in training, placement, and promotion | 2.3 | 2.4 | 2.1 | 1.9 | 2.1 | 3.2 |
| Elimination of gender discrimination in retirement and layoff | 2.8 | 2.8 | 2.9 | 2.7 | 2.0 | 3.6 |

B. Prevention of sexual harassment at the workplace

- Among areas for the 'prevention of sexual harassment at the workplace,' the achievements of the law in the field of 'training for the prevention of sexual harassment at the workplace' is found to be second only to the performance in the area of 'ensuring the use of perinatal leave' among the 18 sub-themes. However, its point is only 2.9 (lower than the average of 3), showing that the achievements of the law therein are relatively higher than in other areas but are a little unsatisfactory. The point for the achievements of the law in the 'prevention of sexual harassment at the workplace and punishments against sexual harassers' is as low as 2.7 while the performance in the 'protection of sexual harassment victims at the workplace' receives only 2.3 points, which is lower than those for the other sub-themes in the sphere of the 'prevention of sexual harassment at the workplace.' In particular, legal experts and NGO activists give 1.7 and 1.8 points to the area, respectively, which are lower than those for the other realms. This implies that lawyers, labor attorneys, and counselors (, etc.) representing sexual harassment victims are aware of the limitations of the Act on Equal Employment in protecting victims. In sum, the achievements thereof in the 'prevention of sexual harassment at the workplace' are evaluated to be below-average. In particular, the performances of the Act on Equal Employment in protecting victims are assessed to be the lowest.

<Table 5> Achievements of the Act on Equal Employment in the prevention of sexual harassment at the workplace

(N=66, 5-point scale)

| Items | All | Resear chers | Labor union leaders | Legal experts | NGO activists | HR managers |
|---|-----|-----------------|---------------------------|------------------|------------------|----------------|
| Prevention of sexual harassment at the workplace and punishments against sexual harassers | 2.7 | 2.5 | 2.9 | 2.3 | 2.0 | 4.0 |
| Protection of sexual harassment victims at the workplace | 2.3 | 2.2 | 2.4 | 1.7 | 1.8 | 3.7 |
| Training for the prevention of sexual harassment at the workplace | 2.9 | 2.9 | 2.8 | 2.6 | 2.3 | 4.0 |

C. Expansion of women's employment

- In connection with affirmative action, the achievements of the law in the 'development of women's capacity and the promotion of their employment,' the 'development of career-interrupted women's capacity and the promotion of their employment,' and the 'prevention of gender discrimination in employment via affirmative action,' are given 2.6 points, 2.4 points, and 2.3 points, respectively, which are deemed to be below-average. In the development of career-interrupted women's capacity and the promotion of their employment, HR managers assess the achievements of the law as low. HR managers give higher points to each area than the other groups but only in the aforementioned sphere, they evaluate the performances of the law as below-average, implying that businesses have not actively employed career-interrupted women.

<Table 6> Achievements of the Act on Equal Employment in the expansion of women's employment

(N=66, 5-point scale)

| Items | All | Resear chers | Labor union leaders | Legal experts | NGO activists | HR managers |
|--|-----|-----------------|---------------------------|------------------|------------------|----------------|
| Development of women's capacity and the promotion of their employment | 2.6 | 2.6 | 2.6 | 2.2 | 2.4 | 3.5 |
| Development of career-interrupted women's capacity and the promotion of their employment | 2.4 | 2.5 | 2.6 | 2.0 | 2.2 | 2.8 |
| Prevention of gender discrimination in employment via affirmative action | 2.3 | 2.1 | 2.4 | 2.2 | 2.1 | 3.2 |

D. Maternity protection and support for work-life balance

- Among the 18 sub-areas, in the sphere of 'ensuring the use of perinatal leave,' the achievements of the law are evaluated to be the highest. In this survey, the achievements of the law only in the aforementioned field are given points higher than 3, with all of the five expert groups offering high points thereto. In particular, HR managers give an average of 4.2 points thereto that can be translated into 'outstanding,' with researchers, legal experts, and labor union leaders (other than NGO activists) awarding 3 points (average) thereto.

<Table 7> Achievements of the Act on Equal Employment in maternity protection and support
for work-life balance

| Items | All | Resear chers | Labor union leaders | Legal experts | NGO activists | HR managers |
|---|-----|-----------------|---------------------------|------------------|------------------|----------------|
| Ensuring the use of perinatal leave | 3.3 | 3.3 | 3.3 | 3.2 | 2.9 | 4.2 |
| Ensuring spouses' use of child care leave | 2.7 | 2.3 | 2.7 | 2.6 | 2.5 | 3.4 |
| Ensuring the use of child care leave, reducing working hours for child care, and offering other child care services | 2.6 | 2.4 | 2.5 | 2.2 | 2.5 | 3.8 |
| Ensuring the provision of child care services including the establishment of workplace daycare centers | 2.4 | 2.4 | 2.5 | 2.1 | 2.2 | 3.0 |
| Support for employees' family care including family care leave and other services | 2.4 | 2.1 | 2.4 | 2.2 | 2.4 | 3.2 |

E. Dispute prevention and resolution

- In the field of 'dispute prevention and resolution, the achievements of the law are assessed to be generally low. In the 'establishment of counseling centers to deal with gender discrimination, sexual harassment at the workplace, maternity protection, and work-life balance, the performances are given 2.6 points closer to 'average' than 'unsatisfactory.' The achievements thereof in the 'voluntary resolution of disputes at the workplace' are given as low as 2.4 points. Moreover, in the 'promotion of gender equality in employment at the workplace via honorary employment equality supervisors,' the achievements are evaluated to be the lowest (2.2 points) in this survey. In particular, legal experts award an average of 1.8 points to the performances in the spheres of the 'promotion of gender equality in employment at the workplace via honorary employment equality supervisors,' and 'voluntary resolution of disputes at the workplace,' which is deemed to be lower than 'unsatisfactory.'

<Table 8> Achievements of the Act on Equal Employment in dispute prevention and resolution

| Items | All | Resear chers | Labor union leaders | Legal experts | NGO activists | HR managers |
|---|-----|-----------------|---------------------------|------------------|------------------|----------------|
| Establishment of counseling centers to deal with gender discrimination, sexual harassment at the workplace, maternity protection, and work-life balance | 2.6 | 2.6 | 2.4 | 2.7 | 2.2 | 3.4 |

| | | | | | | |
|--|-----|-----|-----|-----|-----|-----|
| Promotion of gender equality in employment at the workplace via honorary employment equality supervisors | 2.2 | 2.3 | 2.3 | 1.8 | 2.1 | 3.0 |
| Voluntary resolution of disputes at the workplace | 2.4 | 2.6 | 2.6 | 1.8 | 2.1 | 3.1 |

3

Policy suggestions (specific policy direction and agendas + expected benefits)

Experts participating herein deliver the following suggestions:

A. Elimination of gender discrimination in employment

- ▶ In recruitment and employment, gender classification and discrimination against female applicants due to childbirth and child care are conducted implicitly and explicitly, showing that related laws don't function properly. In relation thereto, the following alternatives are presented: 1) reinforcing the Ministry of Employment and Labor's management and supervision; 2) prohibiting information gathering that enables gender classification at the phase of employment; 3) excluding marriage-and childbirth-related questions in the process of having interviews, and so forth. In the area of 'wage, gifts, and welfare benefits,' the gender pay gap is still deemed to be high, showing the lack of guidelines for 'equal pay for equal work.' In order to improve the current situation, the following alternatives are delivered: 1) specifying guidelines for 'equal pay for equal work'; 2) including similar jobs when judging work of equal value; 3) distinguishing similar work from work of equal value, and so forth. In addition, in training, placement, and promotion, gender discrimination is deemed to remain a key issue. To resolve this issue, the following plans are asked to be prepared: 1) prepare guidelines for making a decision on discrimination in business assessment and promotion; 2) craft plans to prevent discrimination in promotion, and so forth. In the realm of 'retirement and layoff,' forcing female employees to retire due to marriage, pregnancy, childbirth, and child care and prioritizing laying off female employees during the period of restructuring are pointed out as realities facing women, proposing the introduction of the concept of 'layoff' as a discrimination-related practice.

B. Prevention of sexual harassment at the workplace

- ▶ In terms of the definition and scope of sexual harassment, the narrow scope of the parties, the limitations of requirements in job relevance, and so forth are raised as issues. The following alternatives are presented: 1) Persons in special types of employment (, etc.) whose employee status is not acknowledged should be included in the category of victims; 2) Employees at the same workplace and job-related persons such as clients, partners, prime contractors, and so

forth should be included in the category of harassers. In the field of the prevention of sexual harassment and the management of related incidents, the following are raised as issues: 1) lack of punishments against sexual harassers; 2) lack of guidelines for punishments against sexual harassers other than employers; 3) lack of regulations on sexual harassment-related complaints handling procedures and responsible agencies, and so forth. In connection therewith, the following alternatives are identified: 1) imposing higher fines on employers who fail to take actions against sexual harassers; 2) crafting new regulations on punishing sexual harassers; 3) making it mandatory to prepare procedures for handling sexual harassment incidents and redressing related damage, and so on. Moreover, in the area of the protection of sexual harassment victims, experts point out the following problems: 1) uncertain measures for the protection of victims; 2) vague scope of measures unfavorable to employers; 3) lack of measures for preventing and handling the secondary victimization of victims and their assistants; 4) lack of employers' duties to control sexual harassment committed by clients (, etc.), and so forth. In the context of the prevention of sexual harassment, in connection with perfunctory training, experts point out limitations in training types, the degree of participation, training contents, instructors' expertise, and so forth, raising lack of sexual harassment prevention measures other than training as another issue. The proposed solutions include the expansion of face-to-face training, the preparation of plans to encourage high-ranking managers to take part in training programs, and the implementation of sexual harassment prevention training when proceeding with business registration.

C. Expansion of women's employment

- ▶ In the development of women's capacity and the promotion of their employment, legal provisions are deemed to be abstract and declaratory, not including specific guidelines and punishments. Moreover, job training is conducted based on existing jobs for women, thereby failing to contribute to improving conditions for women's employment and maintaining women's employment. Therefore, the following additional provision is presented as an alternative: organize all projects for the development of vocational capabilities in a gender-sensitive way. In the area of the development of career-interrupted women's capacity and the promotion of their employment, the following limitations are pointed out: 1) lack of policies for the prevention of career-interruption, which is more important than support for career-interrupted women; 2) limitations in setting the scope of career-interrupted women; 3) worse employment conditions and difficulties in maintaining employment seen when career-interrupted women are reemployed; 4) low awareness of projects for supporting career-interrupted women, and so forth. In affirmative action, the following problems are delivered: 1) limitations in how to calculate the baseline rates for the employment of female employees and managers; 2) vague definition of female managers; 3) lack of affirmative action in areas other than the share of women. In response thereto, the following alternatives are presented:

1) establishing criteria for managers by setting the share of high-ranking employees among all workers; 2) support for businesses that develop and adopt affirmative action in accordance with the characteristics of factories, as well as the share of female employees and managers; 3) a wider range of punishments in connection with the types of employment of female employees and managers.

D. Maternity protection and support for work-life balance

- ▶ In the sphere of ensuring the use of perinatal leave, 'difficulties in the use of parental leave,' 'employment insurance-based benefit systems,' 'employers' lack of cooperation in applying for benefits,' and so forth are raised as key issues. In response, the following improvement measures are presented: 1) the automatic implementation of child care leave in case employers do not allow its use; 2) submitting vacation requests to government agencies including employment support centers, and so forth. In the realm of ensuring spouses' use of child care leave, 'difficulties in the use of parental leave,' 'low awareness of the system,' 'short leave or paid leave,' and so forth are presented as issues. In response, the following alternatives are proposed: 1) eased conditions for child care leave; 2) longer parental leave; 3) expansion of benefits, and so on. Even in the field of child care leave, 'difficulties in the use of parental leave' are raised as an issue. To improve the situation, the following measures are proposed: 1) allow or automatically implement parental leave in case certain requirements are met, even though employers don't allow the use thereof; 2) make it possible to submit vacation requests to government agencies including employment support centers, and so forth. In the context of reducing working hours for child care, 'ways to reduce working hours,' 'disadvantages from the use of shorter working hours,' and so forth are delivered as issues. In connection to this, the following improvement measures are discussed: 1) make it mandatory to reduce working hours; 2) allow daily working hours to be reduced by less than two hours; 3) revise conditions for limiting extended work; 4) prohibit the change of business hours when using shorter working hours; 5) extend the period during which shorter working hours apply, and so forth. In the area of 'ensuring the provision of child care services including the establishment of workplace daycare centers, the lack of workplace daycare centers, low awareness of outsourcing contracts with regional daycare centers, and so on are pointed out as key issues. In relation to this, the following alternatives are presented: 1) additional financial assistance for and stronger punishments against workplaces and 2) expansion of regional public daycare centers and reinforcement in the public nature of child care. Lastly, in the realm of the support for employees' family care including family care leave and other services, the following are raised as key issues: 1) 'lack of awareness of family care leave,' 2) 'short period of leave,' 3) 'absence of family care leave systems,' 4) 'absence of regulations on family care leave benefits,' and so forth. In response thereto, 'longer family care leave,' 'the establishment of new family care leave systems,' and 'the phased use of paid family care leave,' and so on are presented as possible improvement measures.

E. Dispute prevention and resolution

- ▶ In the sphere of dispute prevention and resolution, the following are raised as main issues: 1) regionally concentrated counseling center; 2) lack of budget; 3) lack of information services; 4) limitations in linking to employees, and so forth. Against this backdrop, it is deemed to be necessary to increase the budget and support for counseling centers, expand the number of counseling centers by region, and strengthen connection with employees. In terms of promoting gender equality in employment at the workplace via honorary employment equality supervisors, the following are presented as key problems: 1) limitations of non-mandatory provisions; 2) low awareness and use of the systems; 3) absence of requirements for qualification and training; 4) issues in recommendation methods; 5) limitations of authorities and business; 6) limitations of the principle of part-time and unpaid services; and so forth. In the area of the voluntary resolution of disputes at the workplace, the main issue is as follows: The lack of implementation provisions makes it difficult to voluntarily resolve disputes at the workplace. In connection with the establishment of discrimination elimination procedures and systems, the systems for effectively eliminating discrimination and redressing damage are yet to be set up, thereby failing to ensure substantial law enforcement and making it difficult to specify judgment criteria via accumulated discrimination cases. Therefore, labor supervisor systems should be strengthened by expanding the number and roles of labor supervisors and appointing labor supervisors in charge of dealing with gender discrimination and sexual harassment. At the same time, gender discrimination needs to be more effectively and thoroughly controlled and corrected by setting up a gender discrimination prevention committee under the National Labor Relations Commission.

Responsible Ministries: Women's Policy Team, Ministry of Employment and Labor; Women Resources Development Team, Ministry of Gender Equality and Family.

Related Ministry: Discrimination Remedy Bureau, National Human Rights Commission of Korea