

# WOMEN'S JOB HUNTING IN THE "ICE AGE": FROZEN OPPORTUNITIES IN JAPAN

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## INTRODUCTION

Traditionally, Japanese society has been plagued by many impediments to women's employment, but the enactment of the Equal Employment Opportunity Law (EEO) in 1986, the year marking the beginning of Japan's most recent economic boom, led to expectations that the situation would improve. At the time of its passage, the EEO was criticized as focusing only on the opening of managerial positions to university graduates and the promotion of middle-class professional women. Even if the law was not expected to transform the work environment overnight, its passage led numerous observers to predict a better situation for professional women. Indeed, coinciding with the EEO's passage and a national labor shortage, the employment rate for female students rose and newspaper headlines boasted, "The Employment Door is Open Wide for Women."<sup>1</sup>

After the 1991 recession, however, the media began referring to those same employment gates as "narrow."<sup>2</sup> The recession led to cuts in hiring of all new graduates, but college-educated women were affected more strongly than their male peers.<sup>3</sup> Despite their legal pro-

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In this article Ms. Miller refers to several articles and interviews that were either written or conducted in Japanese. Unless otherwise indicated, the author is responsible for the accuracy of all Japanese translation.

1. YOKO KUROIWA, KANAGAWA CHIHIKI RÔDÔ UNDÔ KÔRYŪ BUKKURETTO NO. 2: JOSHI GAKUSEI SHŪSHOKU HOTTORAINU KARA MIETEKURU JOSEI SABETSTU NO JITAI TO KIGYÔ SHAKAI NO BYÔRI [KANAGAWA WORKERS' MOVEMENT EXCHANGE BOOKLET NO. 2: THE SITUATION OF GENDER DISCRIMINATION AND THE PATHOLOGY OF ENTERPRISE SOCIETY AS SEEN FROM THE FEMALE STUDENTS' WORK HOTLINE] 3 (Law. for Working Women's Rts., Yokohama, Japan, 1996).

2. See *Josei ni wa shôsha semakimon ni* [Narrow Gates for Women Seeking Employment at Trading Companies], ASAHI SHIMBUN, Apr. 2, 1996. [Through her contact with Senator Owaki's office, the author obtained many photocopies of Japanese newspaper articles; page numbers for these articles are not available and are on file with the author].

3. The term "college-educated" is used throughout this article to refer to students in either four-year universities or two-year junior colleges.

tections, these women have fared poorly in the present job market—a phenomenon the press has dubbed the “ice age” (*hyōgaki*) for landing a job.<sup>4</sup> In fact, the media has characterized women’s job-hunting difficulties using a metaphoric escalation of bad weather: the situation, first described as a “heavy rain” (*doshaburi*), soon became known as a “period of severe cold” (*genkanki*), which intensified to the level of an ice age (*hyōgaki*) and culminated in the image of an “ultra ice age” (*chōhyōgaki*).<sup>5</sup>

The year 1996 marked a curious milestone in Japanese women’s labor: the most difficult year for women’s job hunting, with just 0.45 job offers for every university-educated female applicant, corresponded with the ten-year anniversary of the EEOL.<sup>6</sup> Given the severity of the circumstances, it is not surprising that descriptions of female students’ job-hunting troubles in the ice age appeared concurrently with media criticisms of the EEOL as a “Powerless Law in Times of Recession.”<sup>7</sup>

As the statistical data illustrates, although the employment rate of university women is lower than that of men, the majority of job-hunting male and female university graduates do land jobs. The reality of the ice age is that the hiring outcome for university-educated female job hunters, though less than expected, is not hopeless. This article addresses the ice age phenomenon that has arisen in Japan despite the backdrop of legal protections and explores a two-pronged analysis. The article focuses on the law’s relation to the changes that have taken place in recruitment and hiring over the last two decades and investigates what obstacles impede university women’s employment prospects in the ice age.

The ice age issue deserves attention for several reasons. The ice age coincides with the EEOL’s anniversary and revision. More than a decade after its enactment, the EEOL has not been able to secure equal treatment for women at the hiring stage. The ice age provides the perfect opportunity to evaluate the present law’s effectiveness within the narrow discussion of labor market entrance. Moreover, work in this area is a necessary addition to the academic study of Japanese women’s labor. Although previous studies have addressed the differential treatment women receive once hired,<sup>8</sup> the existing litera-

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4. Some feel that the ice age is continuing, but this study focuses on the years 1993-1996.

5. See Kuroiwa, *supra* note 1, at 3; Keiko Fukuzawa, *Shinsotsu joshi no shūshokunan: kanōjyotachi wa doko e iku?* [*The Job Hunting Difficulties of New Female Graduates: Where Will These Women Go?*]. KINGYŌSHINDAN: TOKUSHŪ DANJYŌ KOYŌ KINTŌHŌWA HABAMU KABE [EXAMINING INDUSTRY: SPECIAL EDITION ON THE WALL IMPEDING THE EQUAL EMPLOYMENT OPPORTUNITY LAW], Nov. 1995, at 37.

6. See *infra* Table 1-2.

7. *Joshi e no shūshoku sabetu ōhaba zōka: fukyōka kintōhō wa muryōku* [*A Large Increase in Job Discrimination Against Female Students: The EEOL Is Powerless in Times of Recession*], CHŪGOKU SHIMBUN, Feb. 7, 1994 (Evening Edition).

8. See generally MARY SASO, *WOMEN IN THE JAPANESE WORKPLACE* (1990).

ture leaves a gap concerning women's entrance into the labor force and the difficulties women encounter at this juncture. Furthermore, there have been no in-depth academic studies on the ice age, in Japanese or in English. This article examines the EEOL's effectiveness solely in the context of hiring, taking into account the ice age brought on by the recession of the 1990s.

The ice age is surprising for several reasons. First, women's rights are anchored by Japanese law, both in the 1947 Constitution's explicit equal rights amendment<sup>9</sup> and in the 1986 EEOL.<sup>10</sup> Assuming effective implementation of women's legal protections in the constitution and in the statute, one would not have predicted the ice age. Next, a comparison of the experiences of female workers during recessions in the United States indicates that once a protective legal structure is in place, even in recessions, women often maintain the gains they have made in the labor market. As companies start admitting women to the work force, a gradual change in social attitudes and a greater acceptance of female workers is expected. Finally, increased levels of education should intuitively translate into gains in hiring, but Japanese female college graduates have experienced otherwise. Although an economic slump should not lead to disproportional firing or reduced hiring of women, the ice age illustrates that this has not been the case in Japan.

#### WOMEN'S JOB OPPORTUNITIES IN RECESSIONS: JAPAN COMPARED TO THE U.S.

Women in the Japanese labor market have not done well relative to women in other industrialized countries.<sup>11</sup> As one study indicates, "[i]ndeed. . . the Japanese employment system exploits women more extensively than is the case in any other industrialized country."<sup>12</sup> This is evidenced by looking at statistical data on women's income and position, both of which are indicators of employment status. In 1992, working women in Japan made only 51.1% of what men earned—ranking Japan lowest among industrially advanced nations.<sup>13</sup> Simi-

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9. See Article 14 of the Japanese Constitution, which states, in part: "All of the people are equal under the law and there shall be no discrimination in political, economic or social relations because of race, creed, sex, social status or family origin." KENPŌ [Constitution], art. 14 (Japan).

10. See THE INSTITUTE OF LABOR ADMIN., *LABOUR LAWS OF JAPAN* 249-255 (1995) [hereinafter *LAWS*].

11. For a discussion of the problems confronting women in the workplace, see SUSAN J. PHARR, *LOSING FACE: STATUS POLITICS IN JAPAN* 61-64 (1990).

12. Alice H. Cook & Hiroko Hayashi, *Working Women in Japan*, in *INSIDE THE JAPANESE SYSTEM: READINGS ON CONTEMPORARY SOCIETY AND POLITICAL ECONOMY* 136 (Daniel I. Okimoto & Thomas P. Rohlen eds., 1988) [hereinafter *INSIDE THE JAPANESE SYSTEM*].

13. See Kazue Suzuki, *Equal Job Opportunity for Whom?*, *JAPAN Q.*, July-Sept. 1996, at 58 (quoting International Labor Organization reports).

larly, in 1991 only 7.9% of all managers in Japan were women, compared with 42.4% in the United States.<sup>14</sup>

Japanese women are also comparatively worse off than their American counterparts when their countries are suffering economic recessions. In Thomas Rohlen's study of the lifetime employment system's operation in times of recession, he states that "no aspect of the Japanese employment system distinguishes it more from the system in the United States and Western Europe than the role played by women."<sup>15</sup> He finds that the 1973-1977 recession was particularly hard on young women and older men approaching retirement because they were pressured to leave their companies early.<sup>16</sup> In addition to the pressure exerted on females to leave their jobs, some companies also froze the hiring of new women, reducing their female work force by almost 10% per year.<sup>17</sup>

Overall during recessions in Japan, the number of women and part-time employees declines more rapidly than the number of men and full-time workers. Furthermore, after a recession, Japanese companies have a tendency to hire women as temporary workers who can be fired in the event of another economic downturn.<sup>18</sup>

Unlike Japan, where women constitute a safety valve to protect permanent male employees, in the United States men experienced a greater net job loss than women in the last five recessions.<sup>19</sup> In fact, during the first three of the five most recent recessions, although individual women lost jobs, the number of women on the payrolls actually rose, indicating that hiring was greater than firing.<sup>20</sup> The major cause of the difference between men's and women's situations during recessions is the relative performance of the industries in which they are represented. Many men work in goods-producing industries, which typically suffer the most during recessions, while many women work in service-sector industries, which have a tendency to continue to grow even during economic contractions.<sup>21</sup> Although women have lost jobs

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14. See *id.* at 56.

15. Thomas P. Rohlen, *Permanent Employment Policies in Times of Recession*, in *INSIDE THE JAPANESE SYSTEM*, *supra* note 12, at 140 [hereinafter Rohlen, *Recession*]. The Japanese style of management has two distinctive qualities: lifetime employment and seniority-based promotions. The hiring of new regular employees occurs primarily at entry-level jobs, and new graduates of both high school and college are the targets of such recruitment. These graduates will constitute the backbone of corporate society as they advance systematically within the company structure, receiving the necessary training along the way. See *id.*

16. See *id.*

17. See *id.*

18. See *id.*

19. These recessionary periods are as follows: 1969-70, 1973-75, 1980, 1981-82, and 1990-91. See William Goodman et al., U.S. Dep't of Labor, *Women and Jobs in Recessions: 1969-92*, MONTHLY LAB. REV., July 1993, at 34.

20. See *id.* at 26.

21. See *id.* at 34; Jennifer M. Gardner, U.S. Dep't of Labor, *The 1990-91 Recession: How Bad Was the Labor Market?*, MONTHLY LAB. REV., June 1994, at 4.

on a net basis in the last two U.S. recessions, this has been attributed to weaknesses in the service-producing industries.<sup>22</sup> Such an explanation makes sense, because during those recessions men still lost between nine and nineteen times as many jobs as women.<sup>23</sup> Thus, in the past five recessions in the U.S., the bulk of net job losses were experienced by men, with women's employment actually rising in the first three of those recessions.<sup>24</sup>

According to the U.S. Department of Labor, "a disproportionate increase in women employees during recessions is a continuation of a long-term trend towards greater utilization of women."<sup>25</sup> Studies show that affirmative action policies are effective both in times of economic expansion and recession.<sup>26</sup> Women's ability to maintain labor market gains despite the economy reflects legal policy of gender equality.

Based on the legal protections of women's rights and on the experiences of women in the U.S. during times of recession, it would have been expected that the Japanese recession in the early 1990s would affect college-educated men and women proportionately. However, Japan experienced an unexpected gap between the unemployment rates of the sexes. To illustrate, every year between 1987 and 1993, the percentage of unemployed women in the U.S. aged 20-24 has been comparable to the percentage of unemployed males in the U.S. aged 20-24. For instance, in 1993 the figures were 16.1% and 16.4%, respectively.<sup>27</sup> Whereas in Japan, in 1993, the first year that the effects of the ice age became apparent, the annual percentage of unemployed females in this age group jumped from 21.7% to 25.4%, while the annual percentage for men actually declined from 17.1% to 16.8%.<sup>28</sup>

In the early 1990s, new U.S. graduates, including those from prestigious universities, experienced difficulty finding work.<sup>29</sup> A 1992 Labor Department study estimated that thirty percent of new graduates through the year 2005 would be jobless or underemployed.<sup>30</sup> According to the director of one university's career placement center, "[f]or many graduating seniors, the door to the employment office has been slammed shut—and bolted."<sup>31</sup> Headlines in the New York Times read

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22. See Goodman et al., *supra* note 19, at 26, 34.

23. See Gardner, *supra* note 21, at 4.

24. See *id.*

25. Goodman et al., *supra* note 19, at 29.

26. See *id.*

27. Note that statistics include all educational levels. See 32 INTERNATIONAL DEP'T, BANK OF JAPAN, COMP. ECON. AND FIN. STATS.: JAPAN AND OTHER MAJOR COUNTRIES, Aug. 10, 1995, at 119-20.

28. See *id.*

29. See Alan Farnham, *Out of College, What's Next?*, FORTUNE, July 12, 1993, at 58-64.

30. See John Greenwald, *Bellboys with B.A.s.*, TIME, Nov. 22, 1993, at 36-37.

31. Robert D. McFadden, *Degrees and Stacks of Resumes Yield Few Jobs for Class of '91: In Downturn, Companies Cut Entry-Level Hiring*, N.Y. TIMES, Apr. 22, 1991, at A1.

that "Low Pay and Closed Doors Confront Young Job Seekers."<sup>32</sup> But men and women were hit equally hard, as the percentage of unemployed males and females remained comparable. Unlike the situation in Japan, articles and studies on the recession did not mention a discrepancy between the recession's effect on male and female students.

#### LEGAL BACKGROUND

The Japanese EEOL explicitly guarantees the equality of opportunity and treatment in employment.<sup>33</sup> The emergence of the EEOL was spurred by the United Nations Convention on the Elimination of All Forms of Discrimination Against Women.<sup>34</sup> In order to ratify this convention, Japan was required to adjust its domestic laws to international standards. For this purpose, Japan adopted the EEOL, which went into effect on April 1, 1986.<sup>35</sup>

The EEOL grants equal opportunities and treatment to men and women, as individuals, according to their individual ambitions and skills. The legislation provides for equal employment opportunity with regard to every aspect of employment.<sup>36</sup> The EEOL contains two types of provisions for equal treatment: recommendations and prohibitions. Articles 7 and 8, the recommendation sections of the EEOL, urge employers to endeavor (*doryoku-gimu*) to provide men and women with equal opportunities in the areas of recruitment, job assignment, and promotion.<sup>37</sup> On the other hand, Articles 9, 10 and 11 prohibit (*kinshi kitei*) discrimination against women in the areas of training, fringe benefits, retirement and dismissal.<sup>38</sup> The two types of provisions have a legal difference: whereas the prohibitions have force in court, the endeavor provisions are not legally enforceable and

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32. Tamar Lewin, *Low Pay and Closed Doors Confront Young Job Seekers*, N.Y. TIMES, Mar. 10, 1994, at A1.

33. See generally Mutsuko Asakura, *Current Legal Problems Concerning Women Workers in Japan*, 13 WASEDA BULL. OF COMP. LAW 7 (1994).

34. The United Nations Decade for Women began in 1975. At the World Conference of the U.N. Mid-Decade for Women, held in Copenhagen in 1980, Japan signed the Convention. In 1985, the last year of the Decade for Women, Japan ratified the Convention. See YAMASHITA YASUKO, JOSEI SABETSU TEPPAI JYŌYAKU NO KENKYŪ [THE STUDY OF THE TREATY TO ABOLISH DISCRIMINATION AGAINST WOMEN] 522 (1996).

35. See Asakura, *supra* note 33, at 6-7; FRANK K. UPHAM, LAW AND SOCIAL CHANGE IN POSTWAR JAPAN 148 (1987). The revised EEOL passed in June of 1997 and will be enforced beginning in April of 1999.

36. See Japan Institute of Workers' Evolution (JIWE), Japan's Working Women Today 24 (1995) [hereinafter WORKERS' EVOLUTION].

37. Articles 7 and 8 of the EEOL state "With regard to the recruitment and hiring of workers, employers shall endeavour to provide women equal opportunity with men . . . With regard to the assignment and promotion of workers, employers shall endeavour to treat women workers equally with men workers." LAWS, *supra* note 10, at 251. The revised EEOL will prohibit gender discrimination in these areas covered by Articles 7 and 8, however, this article deals primarily with the law and its effects before the reforms. *Id.*

38. See *id.*

rely on advisory administrative guidance<sup>39</sup> to give them effect.<sup>40</sup> Under administrative guidance, the Ministry of Labor offers advice and recommendations to employers and mediates disputes between employees and employers.<sup>41</sup> This enforcement is based on interpretations that are dependent upon guidelines created by the Ministry of Labor.<sup>42</sup>

For women with complaints of discrimination in hiring and recruitment, the EEOL offers two grievance alternatives: litigation or mediation. Mediation is only possible after an employment contract is established; therefore disputes at the entrance level are excluded.<sup>43</sup> As for litigation, although a series of court decisions in the 1960s led to some advancement in women's employment, the issue of discrimination in hiring was never touched upon. Even after the EEOL's enactment, it is extremely difficult for the prosecution to prove that discrimination has taken place.<sup>44</sup> Therefore, administrative guidance offered by the prefectural offices represents the main avenue open for women with complaints of discrimination in hiring and recruitment.

Scholars differ in their opinions of the effectiveness of administrative guidance. One scholar praises administrative guidance, and the EEOL's enforcement through mediation, commenting that "to bring legal suit in Japan . . . can be a form of social suicide . . . . Most women would prefer to accept unequal treatment. . . ." <sup>45</sup> However, the mediation procedure was not used at all until 1994; and in the end, the parties refused to accept the settlement proposal and the dispute remained unsettled.<sup>46</sup> On the other hand, another scholar notes the danger of mediation in that it "may make it more difficult for women to use the courts even in cases where a legal suit might be

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39. Administrative guidance has been defined as "administrators tak[ing] action of no coercive legal effect that encourages regulated parties to act in a specific way in order to realize some administrative aim." Michael K. Young, *Judicial Review of Administrative Guidance: Governmentally Encouraged Consensual Dispute Resolution in Japan*, 84 COLUM. L. REV. 923, 923 (1984).

40. No other country in the world has legislation that stipulates the equal treatment of men and women in recruitment and placement in terms of an endeavor provision. See YASUKO, *supra* note 34, at 530.

41. Note that under the revised EEOL, the Ministry of Labor will have the authority to publicly announce the names of companies that do not comply with the law.

42. See Tasdashi Hanami, *Discrimination in the U.S. and Japan from a Legal Viewpoint*, THE J. OF AM. & CANADIAN STUD., Autumn 1991, at 10; ALICE LAM, WOMEN AND JAPANESE MANAGEMENT: DISCRIMINATION AND REFORM 101-04, 106 (1992) [hereinafter LAM, DISCRIMINATION].

43. See KAZUO SUGENO, JAPANESE LABOR LAW 135 (Leo Kanowitz trans., Univ. of Wash. Press 1992) [hereinafter SUGENO, LABOR LAW].

44. Interview with Asakura Mutsuko, Professor, Tokyo Metropolitan University, in Tokyo, Japan (Aug. 9, 1996).

45. Loraine Parkinson, *Japan's Equal Employment Opportunity Law: An Alternative Approach to Social Change*, 89 COLUM. L. REV. 604, 653-54 (1989).

46. See JAPAN LAB. BULL., Apr. 1998, at 7.

best."<sup>47</sup> Frank Upham makes the same point; he examines a string of successful court cases brought by women in the 1960s and anticipates that the EEOL will function to take power away from the women's initiative in the courts and place it in the hands of the Ministry of Labor's bureaucrats.<sup>48</sup> True to his prediction, there has been only one case of sex discrimination filed since the EEOL's enactment. On November 27, 1996, twelve women won the first gender discrimination suit filed since the EEOL's enactment.<sup>49</sup> The Ministry of Labor commented on the case saying, "The EEOL is currently under revision to make it more effective. The ruling was in line with that effort."<sup>50</sup> Thus, neither the mediation nor the litigation option has been widely utilized in the past decade since the law's enactment. In the words of one scholar, "while the [EEOL] leaves the option of litigation, it does not foresee nor expect litigation to serve as a way to implement its provisions. In short, the [EEOL] has no effective way to force offenders to observe it."<sup>51</sup>

Although the EEOL applied to all women, it appeared to be aimed at improving hiring conditions for newly graduated university women.<sup>52</sup> According to one study, "the ordinances and guidelines issued by the Ministry of Labor to implement the legislation indicated that opening up managerial positions to university-educated women was the prime governmental concern."<sup>53</sup> Because the law was expected to contribute mainly to the progress of university graduates, this article examines their performance in the entrance level of hiring in comparison with that of women from junior colleges throughout the years 1980 to 1996. Close examination reveals that women experienced only qualified improvements in the area of hiring during this period; and most significantly, that these quasi-improvements were not attributable to the EEOL alone.

#### RECENT RECRUITMENT HISTORY: 1980-1996

Japan experienced a prolonged recession in the early 1980s, followed by a period of growth and expansion in the mid-1980s.<sup>54</sup> According to the Economic Planning Agency, the "bubble economy"

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47. Barabara Molony, *Japan's 1986 Equal Employment Opportunity Law and the Changing Discourse on Gender*, 20 SIGNS, Winter 1995, at 288.

48. See UPHAM, *supra* note 35, at 148.

49. See JAPAN LAB. BULL., Feb. 1997, at 4. The case concerned discrimination in promotion and wages.

50. *Women Win Discrimination Case*, DAILY YOMIURI, Nov. 28, 1996.

51. Masako Kamiya, *A Decade of the Equal Employment Opportunity Act in Japan: Has It Changed Society?*, 25 L. IN JAPAN 1995, at 56.

52. See Linda N. Edwards, *Equal Employment Opportunity in Japan: A View from the West*, 41 INDUS. & LAB. REL. REV., 240, 247-48 (1988).

53. Kathleen Cannings & William Lazonick, *Equal Employment Opportunity and the 'Managerial Woman' in Japan*, 33 INDUS. REL., Jan. 1994, at 45.

54. See JAPAN LAB. BULL., Oct. 1982, at 2.

began in December 1986 and soon led to a labor shortage.<sup>55</sup> Both the boom and the shortage lasted until the economy turned downward in April 1991. Throughout these boom years, university women experienced changes at the entry level of the job market at a time that unmistakably corresponded with the enactment of the EEOL and the bubble economy. A severe recession, possibly the worst Japan had faced since World War II, followed.<sup>56</sup> A more detailed analysis of these two decades will elucidate the nature of these changes.

#### PRE-EEOL: 1980-1985

Even before 1980, employers openly divided the recruitment and hiring of new graduates across gender lines, devising separate recruitment procedures for men and women.<sup>57</sup> Men, expected to take on positions of responsibility, were subjected to rigorous tests and interviews. Women, not expected to stay with the company for long, were hired to perform routine clerical tasks through an abbreviated recruitment process or through personal connections.<sup>58</sup> Thus, before the passage of the EEOL, working women were office ladies (OLs); they had virtually no chance of promotion and could not be hired, even in theory, for jobs that led to managerial positions.<sup>59</sup>

Companies preferred to hire high school and junior college graduates to fill the OL's decorative role of "*shokuba no hana*" (office flowers).<sup>60</sup> In comparison, the career prospects for female university graduates were especially slim: seventy-three percent of the companies questioned by the Ministry of Labor in 1981 expressed their unwillingness to hire university women.<sup>61</sup> By the early 1980s, the employment rates for male university students and female junior college students were extremely close, with university women lagging behind both.<sup>62</sup>

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55. *See id.*

56. *See* JAPAN LAB. BULL., Feb. 1994, at 1.

57. *See* THOMAS P. ROHLEN, FOR HARMONY AND STRENGTH: JAPANESE WHITE-COLLAR ORGANIZATION IN ANTHROPOLOGICAL PERSPECTIVE 64-65 (1974) [hereinafter ROHLEN, HARMONY AND STRENGTH].

58. *See id.* at 68.

59. *See id.* at 79; Cannings & Lozonick, *supra* note 53, at 46; UPHAM, *supra* note 35, at 127.

60. *See* Millie R. Creighton, *Marriage, Motherhood, and Career Management in a Japanese "Counter Culture"*, in RE-IMAGING JAPANESE WOMEN 194 (Anne E. Imamura ed., 1996); DOROTHY ROBINS-MOWRY, THE HIDDEN SUN: WOMEN OF MODERN JAPAN 163, 170 (1983).

61. *See* Creighton, *supra* note 60, at 218.

62. In 1983, the employment rate for male graduates and junior college graduates was 78.7% and 78.4% respectively. In contrast, the rate for female university graduates was only 69.4%. *See* Machiko Osawa, *Changing Role of Education and Women Workers in Japan*, 24 KEIO BUS. REV. 95 (1987), *quoted in* Cannings & Lozonick, *supra* note 53, at 47.

University women were unattractive workers for several reasons. Their advanced education made them costlier labor than their less-educated counterparts. In addition, the younger graduates from high school and junior college were considered less strong-minded, and, because of their age, they were able to provide the company with a few more years of work before quitting in order to marry.<sup>63</sup>

Thus, work-oriented women tended to avoid universities because employment prospects were better for junior college graduates.<sup>64</sup> This twist inverts the pattern common in most countries, where a higher status education correlates with greater career-mindedness and employability.<sup>65</sup> However, the systematic exclusion of university-educated women in Japan stemmed from social expectations of women as mothers and wives.

In the 1980s, company policies required women to quit upon marriage, reflecting the attitudes of employers toward female workers. For a woman, work was seen as an "interim activity," filling the time between her graduation ceremony and wedding ceremony. According to Thomas Rohlen, "in the final analysis, the [company] is run by older men, and it is a universal opinion among them that married women belong in the home. Only an extreme labor shortage could change their minds."<sup>66</sup>

In fact, only when faced with a labor shortage did companies experiment with hiring female university graduates. In response to a shortage of recruits qualified to become technical experts,<sup>67</sup> companies recognized the trainability of the previously ignored female university graduates and, in 1983, gradually began to increase the number of university women in their employ.<sup>68</sup> In 1984 and 1985, the employment rates for female graduates from both junior colleges and four-year universities began to rise.<sup>69</sup> By 1986, the year the EEOL was enacted, firms had increased their hiring of college-educated women to the extent that there were more job openings than job seekers.

In sum, during the first half of the 1980s, hiring trends had begun to shift. Companies' policies that had previously excluded female

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63. See Yoko Kawashima, *Female Workers: An Overview of Past and Current Trends, in JAPANESE WOMEN: NEW FEMINIST PERSPECTIVES ON THE PAST, PRESENT, AND FUTURE* 271, 281 (Kumiko Fujimura-Fanselow and Atsuko Kameda eds., 1995)[hereinafter *NEW FEMINIST PERSPECTIVES*].

64. See Kumiko Fujimura-Fanselow, *College Women Today: Options and Dilemmas, in NEW FEMINIST PERSPECTIVES*, *supra* note 63, at 125, 133.

65. See Cook & Hayashi, *supra* note 12, at 136.

66. ROHLEN, *HARMONY AND STRENGTH*, *supra* note 57, at 78-79.

67. "Technical experts" refers to fields related to computers, new materials technology, and biotechnology.

68. See *JAPAN LABOR BULL.*, Oct. 1982, at 2.

69. The employment rate for female university students who graduated in the spring of 1984 surpassed 70% for the first time in twenty years. In addition, the rate for junior college graduates was 79.97%, a record high. See *JAPAN LAB. BULL.*, Dec. 1984, at 2.

university graduates from recruiting demonstrated an inclination to utilize female university graduates in the face of a labor shortage of technological graduates.<sup>70</sup> Significantly, this trend is fully apparent in the statistics for students graduating in March 1986, one month before the enactment of the EEOL.

#### POST-EEOL: 1986-1991

The year 1986 marks the beginning of widespread change: the EEOL went into force at a time when the booming economy's rapid expansion created a shortage of all workers, this time the expansion was not limited to technology-related fields.<sup>71</sup> In order to adjust to this shortage, companies augmented their hiring and competed vigorously in the seller's market for new graduates. They wined, dined, and wooed their prospective employees relentlessly, offering gifts and trips as incentives to accept jobs.<sup>72</sup> In the wake of these two events, female graduates of four-year universities began to experience a tangible difference in their position in the job market: companies not only began recruiting male and female students together for the first time, but also opened fields and positions to women that had previously been reserved for men.

During this boom period, companies demonstrated their intentions to comply with the EEOL. Along with general increases in hiring, the nature of companies' sex-based recruitment and hiring policies began to change as firms expanded the opportunities available to women and made observable changes in job advertisements.<sup>73</sup> The percentage of companies recruiting both male and female university students was 24% in 1981 and 36.7% in 1986, but significantly increased to 79.1% in 1987, the year after the law went into effect.<sup>74</sup> In addition, by 1988, between 96% and 98% of the companies responding to a survey reported they had improved discriminatory recruiting conditions.<sup>75</sup> For example, many companies eliminated the requirement that women must commute from their parental

70. See JAPAN LAB. BULL., Oct. 1985, at 2.

71. See JAPAN LAB. BULL., Jan. 1990, at 2.

72. See Takashi Kawakita, *Changing Nature of College Grads' Job-Hunting*, JAPAN LAB. BULL., Dec. 1989, at 4-8; C.S. Manegold, *Hang Up the Help-Wanted Sign: The Japanese Cope with a Growing Labor Shortage*, NEWSWEEK, July 16, 1990, at 39; Kay Itoi, *Desperately Seeking Akio*, NEWSWEEK, Sept. 16, 1991, at 51.

73. See Alice C. L. Lam, *Equal Employment Opportunities for Japanese Women: Changing Company Practice*, in JAPANESE WOMEN WORKING 210 (Janet Hunter ed., 1993) [hereinafter Lam, *Changing Company Practice*]; JAPAN LAB. BULL., Oct. 1987, at 5.

74. See JAPAN LAB. BULL., Oct. 1987, at 5; Hiroko Hayashi, *Japan*, in WOMEN WORKERS IN FIFTEEN COUNTRIES: ESSAYS IN HONOR OF ALICE HANSON COOK, 58-59 (Jennie Farley ed., 1985).

75. See JAPAN LAB. BULL., Jan. 1988, at 2. Surveys of this nature bring into question the reliability of self-reporting.

homes.<sup>76</sup> Female university graduates made noticeable advances during these years as their employment rates increased dramatically; by 1990, they were employed at a rate of 81%, equal to that of male university graduates.<sup>77</sup>

Perhaps most significantly, the EEOL's passage accelerated the adoption of a new career-tracking system, channeling employees into different tracks on the basis of their abilities, and, ostensibly, opening management positions to both sexes based on merit. The "career" or "managerial track" (*sôgô-shoku*), traditionally reserved for men, requires the performance of judgment-based tasks and includes geographical transfers as well as promotions to the highest levels of the company. In contrast, the "general" or "clerical track" (*ippan-shoku*) involves administrative work and lacks the possibility of transfer or promotion.<sup>78</sup> Thus, jobs with responsibility were finally opened to women and it was left to them to decide which route to take.

This period of increased opportunities coincided with a noticeable shift in women's behavior. After the passage of the EEOL, women's enrollment in four-year universities increased at a faster rate than men's, and women increasingly began to choose college majors that would be useful toward a career.<sup>79</sup> Concluding that women's educational decisions reflected their increased career ambitions and expectations, one scholar suggests a causal link between the passage of the EEOL and women "putting themselves in a position to better take advantage of career opportunities should they become available."<sup>80</sup>

With the bubble economy's labor shortage and the EEOL's enactment in the background, the tentative change that began in the early 1980s grew steadily throughout the decade. And as female university graduates were inundated with broader opportunities at the entrance level of employment, they increased their participation in higher education.

#### RECESSION: 1991-1996

It was generally assumed that the plentiful employment opportunities would last indefinitely; the public was confident that students could "expect full mailboxes [of job information] and free meals [encouraging them to join a company] for years to come."<sup>81</sup> But the 1991

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76. Older, more traditional Japanese believe that unmarried women must live with their families; however, more importantly for employers, this requirement is economical because they must pay employees living alone a higher housing allowance.

77. See *infra* Table 1-1.

78. See Kawashima, *supra* note 63, at 286-87; Asakura, *supra* note 33, at 11; Lam, *Changing Company Practice*, *supra* note 73, at 212.

79. See Linda N. Edwards, *The Status of Women in Japan: Has the Equal Employment Opportunity Law Made a Difference?*, 5 J. ASIAN ECON. 217, 226 (1994) [hereinafter *Status of Women*].

80. *Id.*

81. Itoi, *supra* note 72, at 51.

recession brought the expanding economy and its hiring frenzy to a halt: the bubble had burst.

The economic slowdown, coupled with excessive hiring during the economic boom, prompted enterprises to cut labor costs in an effort to boost profits. Constrained by the lifetime employment system, companies made personnel cuts by decreasing hiring or ceasing it altogether.<sup>82</sup> In 1992, new graduates entering the labor market began to feel the repercussions of labor cuts, which were fully implemented by 1993. Companies were sending a clear message that the "super-seller's market" of the labor shortage years had reached a turning point.<sup>83</sup>

Women most acutely felt the reductions in hiring as companies hiring new graduates favored men.<sup>84</sup> The job market climate for women, chilly in the early 1990s, grew even colder through 1996. To gauge the development of the ice age, it is helpful to refer to the employment rate, the ratio of job offers to applicants, and the number of jobless. These three measurements indicate that, although the majority of university women were able to find employment (even at worst, over 60% were employed), they still bore the brunt of hiring cutbacks.

TABLE 1-1  
THE EMPLOYMENT RATE FOR NEW GRADUATES

	'80	'85	'86	'87	'88	'89	'90	'91	'92	'93	'94	'95	'96
4-Year Univ. Total	75.3	77.2	77.5	77.1	77.8	79.6	81.0	81.3	79.9	76.2	70.5	67.1	65.9
4-Year Univ. Male	78.5	78.8	78.9	78.3	78.8	80.1	81.0	81.1	79.7	76.5	71.8	68.7	67.1
4-Year Univ. Female	65.7	72.4	73.4	73.6	75.2	78.5	81.0	81.8	80.4	75.6	67.6	63.7	63.5
Junior College Female	76.4	81.3	82.2	82.2	83.0	86.1	88.1	88.0	86.6	80.8	70.7	66.0	—

Source: Ministry of Education, Basic Statistical Survey on Schools (March 1995 and October 1996).<sup>85</sup>

In 1996, employment rates for all students dropped for the fifth consecutive year, marking a point much lower than ten years previous.<sup>86</sup> Between 1993 and 1996, the rate was lower for female university graduates than both male university and female junior college graduates;<sup>87</sup> despite the lower employment rate for female university graduates, recently it seems that a university degree was

82. See Mami Nakano, *Ten Years Under the Equal Employment Law*, in VOICES FROM THE JAPANESE WOMEN'S MOVEMENT; Akira Ikeya, *Recession, Industrial Hollowing-out Threaten Lifetime Employment Deals*, JAPAN ECON. ALMANAC 50, 51 (1996).

83. See JAPAN LAB. BULL., June 1992, at 1-2.

84. See Beverly Findlay-Kaneko, *Corporate Recruiters in Japan Sun Female Graduates*, 42 CHRON. OF HIGHER EDUC., Sept. 1995, at A4.

85. See Ministry of Education, RÔSEIJIHÔ, Nov. 24, 1995, at 80 n.3234 [hereinafter RÔSEIJIHÔ].

86. 65.9% as opposed to 77.5%. See *supra* Table 1-1.

87. See *supra* Table 1-1.

considered beneficial for women. In fact, according to the media, a "four year university [b]oom" has developed since 1991, as junior college women, hit harder by the ice age than their university counterparts in terms of job-offer-to-applicant ratios, transfer to four-year universities.<sup>88</sup> Therefore, it is useful to look at another indicator of the opportunities available to women relative to men: the ratio of job offers to applicants.

TABLE 1-2  
JOB-OFFERS-TO-APPLICANTS RATIO FOR NEW GRADUATES

Year of Graduation	'87	'88	'89	'90	'91	'92	'93	'94	'95	'96	'97
Male (4-Yr. Univ.)	2.61	2.79	3.05	3.12	3.14	2.72	2.22	1.81	1.43	1.33	(1.8)
Female (4-Yr. Univ.)	1.36	1.39	1.42	1.67	1.98	1.48	1.04	0.87	0.61	0.45	(.64)
Female (Jr. College)	0.99	1.1	1.18	1.33	1.39	1.22	0.88	0.75	0.55	0.41	—

Job-Offers-To-Applicants Ratio For New Graduates

Source: Recruit Research, Inc.<sup>89</sup>

The ratio of job offers to applicants indicates the number of available jobs divided by the number of students seeking them. After the EEOL's passage and the onset of the labor shortage, the ratio increased steadily for male and female university graduates, reaching a peak in 1991 of 3.14 jobs per male student and 1.98 jobs per female student.<sup>90</sup> In 1993, the differential effects of hiring cuts on women became obvious: there were 2.22 potential jobs available for each male, compared to only 1.04 openings for each female job hunter.<sup>91</sup> Between 1994 and 1996, the ratio continued to plummet and the situation for women became increasingly grave. In 1996, for every 100 male graduates there were 133 entry-level jobs, but only forty-five for every 100 females.<sup>92</sup> This marked the fifth consecutive year of the hiring decline, the longest since 1978, the first year for which statistics exist.<sup>93</sup>

It is puzzling that the job-offers-to-applicants ratio is lower for junior college graduates while their employment rate is higher. It is possible that the job-offers-to-applicants ratio measures only permanent employment positions. The employment rate does not

88. See *Yondaisei ni hen' nyū yo: joshi tandaisei hashiru* [Junior College Women Run to Transfer to Four Year Universities], KYOTO SHIMBUN, Jan. 29, 1996 (Evening Edition). According to the Ministry of Education's Basic Statistical Survey on Schools, in 1991, approximately 4,700 students transferred, compared with 8,500 in 1994. See *id.*

89. RECRUIT RESEARCH, INC., DAI 13 KAI DAISOTSU KYŪJIN BAIRITSU CHŌSA: DAISOTSU KYŪJIN BAIRITSU 6 NEN BURI NI ZŌKASHI, 1.45 BAI NI 10 [THE THIRTEENTH REPORT ON THE JOB-OFFERS-TO-APPLICANTS RATIO FOR UNIVERSITY GRADUATES: THE RATIO RISES FOR THE FIRST TIME IN SIX YEARS, REACHING 1.45], (July 16, 1996) [hereinafter RECRUIT RESEARCH, INC., DAI 13 KAI].

90. See *supra* Table 1-2.

91. See *id.*

92. See *id.*

93. See JAPAN LAB. BULL., Jan. 1994, at 2.

distinguish what type of jobs the students have chosen, but it is likely that the employment rate for junior college women exceeds that of university women because the former have settled in lower level jobs, such as part-time, contract, or temporary positions. A further explanation may be that university women are turning down job offers that do not meet their expectations.<sup>94</sup> In any case, even though their employment rate is higher, it is commonly thought that junior college women have been affected by the ice age to a greater extent than university women have.<sup>95</sup> The fact that junior college women are transferring to four-year universities indicates that there must be some perceived benefit to a university education.

TABLE 1-3  
THE NUMBER OF JOBLESS UNIVERSITY GRADUATES

Year	Jobless
1965	7,100
1975	30,808
1985	33,488
1990	22,348
1991	22,121
1992	25,107
1993	31,766
1994	52,254
1995	67,844
1996	80,300

Source: Ministry of Education, Basic Statistical

SURVEY ON SCHOOLS (MARCH 1995 AND OCTOBER 1996).<sup>96</sup>

The final indicator of the severity of the ice age, the number of "jobless" (*mugyôsha*), has been increasing steadily for male and female university graduates.<sup>97</sup> Over the past five years the number of jobless graduates has increased 360%, from 22,121 in 1991 to 80,300 in 1996.<sup>98</sup> In 1996, 15.7% of university graduates were jobless. Broken down by gender, one out of every 7.5 male graduates and one out of every five female graduates were jobless.<sup>99</sup> Thus, like the employment rate and the job-offers-to-applicants ratio, the percentage of jobless

94. This explanation is the author's speculation based on an Interview with Nakono Mami, Attorney, in Tokyo, Japan (Aug. 13, 1996).

95. See discussion *supra* pp. 409-11.

96. See РОСЕИНО, *supra* note 85, at 80 n.3234. There was also an increase in the number of university graduates over this period of time. See *id.*

97. According to the Ministry of Education, "jobless" refers to those students still in the midst of job hunting after graduation, studying for the public servant exam, and waiting for openings to be hired as teachers. See *id.*

98. See *supra* Table 1-3.

99. See РОСЕИНО, *supra* note 85, at 80 n.3234.

students illustrates how the ice age has affected male and female university graduates differently.

With the onset of the recession, companies became cautious in hiring and employment opportunities for women diminished vis-à-vis men. Even so, the majority of university women still found employment. Thus, the statistics somewhat belie the media's metaphor of an "ultra ice age" for female students. The data indicates that the gap between hiring men and women, though not necessarily as severe as portrayed by the media, is significant.

#### CHANGES IN RECRUITMENT: ADVANCES AND SETBACKS

Over the past two decades, the nature of female university students' labor has undergone both advances and setbacks. The ice age stimulates many questions concerning the nature of university women's employment opportunities, including considerable confusion as to what empirical advances women have made in the labor market and why opportunities for women appear to have frozen.

In order to evaluate these changes and identify their causes, it is necessary to clarify what "advancement" for women workers means. On the most basic level, advancement consists of unlocking the employment gates by extending recruitment opportunities to female university graduates. However, this alone is not an effective criterion for measuring progress; the next step is to ensure that recruiting leads to hiring. The final measurement of progress is the types of jobs women are hired to perform. This section uses these criteria to determine what advances women have made.

Despite the setback of the ice age, between 1980 and 1996, the gap between male and female university students' employment rates has narrowed. As predicted, the EEOL contributed to the advancement of university graduates in the work force. With its enactment, companies began to rectify discrimination at the entrance level; for the first time they included female university graduates in the recruitment process, giving them both the opportunity to be hired and access to permanent employment. But with the law also came setbacks to women's position. In the workforce, the situation for university women has improved, the question is to what extent.

Undeniably, increased job openings represented a significant breakthrough for women. However, many scholars expressed skepticism at the time of the law's passage, emphasizing the importance of differentiating between superficial changes in the form of recruitment policy and genuine changes in the substance of hiring women.<sup>100</sup> They posed the following question: Would the change in policy result in increased hiring of women, especially for management jobs? Often, they found that job offers "for both sexes" raised women's ex-

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100. See JAPAN LAB. BULL., Oct. 1987, at 5; Lam, *Changing Company Practice*, *supra* note 73, at 210.

pectations in a job market where the companies still privately expressed their preference for hiring men.<sup>101</sup>

Changes in recruitment policy did not guarantee subsequent increases in hiring, especially for positions of responsibility. Yet, the employment rate for university women did rise during this time because, while career-path opportunities for women remained stagnant, the number of female clerical workers continued to increase. For example, only 1.3% of female employees are hired to the managerial track, but 99% of male employees join automatically.<sup>102</sup> In fact, although 78.5% of the companies surveyed in 1995 interviewed both men and women for managerial track, 72.3% decided to employ only men.<sup>103</sup> In comparison, over the past ten years, "[f]emale clerical workers have shown the largest increase in terms of the ratio of women to the total," and, among the female university graduates who found jobs, the percentage holding clerical positions has increased steadily from 36.6% in 1980 to 47.0% in 1992.<sup>104</sup> Thus, during the labor shortage—when companies were frantically hiring women into a two-track system—the managerial positions open to women did not increase substantially, but the percentage of four-year university women in clerical positions did.

Overall, university women in 1990 may have been as likely to find jobs as men with comparable educational backgrounds, but they were not entering the same career track as their male counterparts and they were not hired for positions commensurate with their educational level.<sup>105</sup>

The EEOL has provided women with a definite improvement over their limited options of the past, yet the course of university-educated women's employment seems to be dependent upon the economy as well as the law. Many of the gains for women influenced by the EEOL began to disappear with the onset of the latest recession. The evidence demonstrates that the law led companies to change recruitment policies without significantly altering hiring practices.

#### ALTERNATIVE EXPLANATIONS: THE LAW VERSUS THE ECONOMY

The question that remains is what, then, caused these changes in women's opportunities and why they appear to be frozen in the ice age. Just as the EEOL's passage, coupled with the labor shortage, led to the comprehensive inclusion of female university graduates in

101. See Lam, *Changing Company Practice*, *supra* note 73, at 210.

102. See JAPAN INSTITUTE OF WORKERS' EVOLUTION (JIWE), JAPAN'S WORKING WOMEN TODAY (1990), *quoted in* Lam, *Changing Company Practices*, *supra* note 73, at 214-15.

103. See Suzuki, *supra* note 13, at 55.

104. A compilation of the Ministry of Education's Basic Survey on Schools, see Sachiko Imada, The Japan Institute of Labor, *Female Employment and Ability Development*, JAPAN LAB. BULL., Sept. 1994, at 6.

105. See Edwards, *Status of Women*, *supra* note 79, at 232.

recruiting, a combination of the law and economics also contributed to the setbacks women have experienced.

Some women have complained that the law, enacted in a time of economic prosperity, has been "conveniently forgotten when times are lean."<sup>106</sup> The ice age provides the opportunity to measure the present EEOL's effectiveness in the absence of a labor shortage. The EEOL, lacking teeth, has not been able to protect women during the ice age. Although the present EEOL does not legally bind companies to do anything more than "endeavor," the law has the potential to influence employers through the non-legal means of administrative guidance which, in Japan, has the potential to be a very strong incentive for compliance.<sup>107</sup> One would expect the government to pressure firms, but there is no evidence that administrative guidance has been aggressively carried out in the case of the EEOL.<sup>108</sup> The failure of administrative guidance was confirmed in a 1991 report that concluded that administrative guidance in this area is "insufficient" and needs "much improvement."<sup>109</sup> If administrative guidance had been effectively enforced, industry would not be able to afford to discriminate against women, even during an economic downturn.

An alternative explanation for the increased hiring of university women in the post-EEOL years is that employers' attitudes temporarily changed out of economic necessity.<sup>110</sup> The course of university-educated women's employment seems to have followed a pattern dependent upon the economy as well as the law. This does not imply that the recession caused women's difficulties; discrimination was always latently present. However, the labor shortage led companies to suppress such attitudes, and "the recession brought out the true features of Japanese corporate society."<sup>111</sup>

#### THE MYTH OF OPPORTUNITY

Since the passage of the EEOL, university women have experienced both advances and setbacks in hiring due to legal and economic factors, but the law also created a Myth of Opportunity. In 1980, female university graduates were not job hunting alongside their male classmates.<sup>112</sup> In 1996, the streets of Tokyo were swarming

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106. *Japan: Job Market for Women Closing Again*, N.Y. TIMES, Dec. 1, 1992, quoted in *Reports From Around the World: Asia and Pacific*, WIN NEWS (Women's International Network News), Winter 1993, at 55.

107. See Edwards, *Status of Women*, *supra* note 79, at 218.

108. See PHARR, *supra* note 11, at 193-94.

109. See Hanami, *supra* note 42, at 11, (quoting the Management and Coordination Agency's survey entitled, *Report of the Result of Administrative Inspection on Labor Administration in Female Labor*).

110. See Nakano, *supra* note 82, at 69.

111. Yumiko Ehara, et al., *The Movement Today: Difficult but Critical Issues*, in VOICES FROM THE JAPANESE WOMEN'S MOVEMENT 38, 38 (AMPO-Japan Asia Q. Rev. ed., 1996).

112. See discussion *infra* pp. 428-31.

with both male and female students donning recruit suits. But, as the ice age has attested, job hunting in equal force does not guarantee proportional hiring. Companies have allowed women to play the recruiting game, and female graduates are all dressed up, legal protections in hand, ready to cash in on the equal opportunities they have been guaranteed. However, in the ice age, women are often sent from company to company on a wild chase, facing multiple indirect obstacles that render their job hunt fruitless.

#### AN ILLUSTRATION OF THE MYTH: THE FRONTLINE OF THE 1996 JOB HUNT

Escaping the mid-afternoon bustle and the summer sun, a couple laughs over iced coffee in an air-conditioned Tokyo cafe. Nervously checking their watches and daily planners, with cellular phones and briefcases by their sides, the man and woman hardly appear to be students. Yet, their matching navy suits immediately identify them as college seniors engaged in job hunting. As they talk animatedly about interviews and job offers, at times their mannerisms seem incongruous with their formal attire. On the way to their next company visit, they have stopped to relax and compare notes before heading back to the frontlines (*sensen*) of the job search.

Even in crowded Tokyo, young job hunters are easily recognizable by their trademark apparel. Clad in conservative recruit suits, male and female students—all cookie-cutter images of each other—begin flocking to companies as soon as their senior year begins. The necessary job-hunting “uniform” can be purchased at any major department store, and the stores’ annual recruit suit fairs symbolize the start of yet another recruiting season.

During the height of the recruiting season, hopeful job hunters are everywhere—except in school. Even in the sweltering heat, the army of recruit suits swarms the sidewalks and subways. It is generally accepted that seniors prioritize the job search over attending classes, and professors accommodate this decision. Pounding the pavement rather than hitting the books, these students focus their studies on job-hunting manuals and company brochures.

Upon departing, the couple in the café reconfirms their plans; no longer free to meet at school, they arrange to talk that night. Eagerly anticipating calls from the companies they have visited, they both intend to stay home waiting by the phone.

As the couple in the café illustrates, male and female students now conduct their job hunt side-by-side—a scenario inconceivable before the 1980’s, that is now considered commonplace. Theoretically, the recruitment system should function to include women; but in order for it to work, the cooperation of employers and government agencies (especially those with ties to the Ministry of Labor) is indispensable. Women’s entry-level success depends, in part, upon employers’ willingness to treat prospective employees equally regardless

of sex and government agencies' commitment to the law. But these requirements are not always met.

Although employers and government agencies have expressed a desire to help women and have made well-intentioned efforts to provide them with opportunities, their attempts are not always effective. Legal constraints and a lack of cooperation from female students often hinder the process. Despite such efforts, the job hunt for women in the ice age has been characterized by obstacles, which exist in spite of the law. In many ways, employers and government agencies are tacit approvers of women's status under current arrangements.

Employers and, ironically, the government have created barriers to women's advancement in the job market. What could be a smooth recruitment process is presently enveloped in a Myth of Opportunity—women are provided with superficial guarantees of opportunity, yet are fundamentally blocked.

### THE JOB-HUNTING PROCESS

The recruitment process in Japan is a serious venture for both students and companies since the decisions made during this time can conceivably lock the employer and the employee into an agreement that lasts until retirement.

The typical job-hunting process begins with students gathering company information by mail. Students write postcards to request further information about companies, supplying biographical information about themselves. This sets up an exchange of information that continues when companies reply by sending students more detailed pamphlets and notifications about informational meetings.

From this point on, the procedure differs with each company, however, the components are essentially the same: students fill out entry sheets, take written exams, and attend company-specific information sessions. The students who successfully pass these steps move on to a series of interviews, after which they may receive an informal guarantee of employment (*naitei*). Despite its apparent rigidity, it is not uncommon for companies to alter or skip steps in this formal process.

In addition to the formal recruitment process, the recruiter system (*rikurūto seido*), known as the "back route," also exists. In this system, companies contact students through their university alumni employees (recruiters). Unlike students proceeding in the formal process who must pass a series of steps before being interviewed, this system allows students to skip the preliminary steps and move straight to the interview stage. In fact, informal meetings with recruiters are actually interviews. However, this system usually only benefits students from prestigious universities.

## CREATING OPPORTUNITIES FOR WOMEN: EMPLOYERS AND THE MINISTRY OF LABOR

Although the same recruitment process applies to both men and women, employers and government agencies claim to make an effort to provide women with special treatment and services. These arrangements were designed to assist women by extending new opportunities and enhancing old ones. Employers reserve positions for the preferential recruitment of "women only" and the Ministry of Labor has established special prefectural consultation windows to handle women's EEOL-related job-hunting problems.<sup>113</sup> Although successful in many ways, they are not without problems.

Employers assist women by offering "women only" (*joshi nomi*) positions. According to the EEOL's guidelines, the recruitment or hiring of "men only" (*danshi nomi*) is considered discriminatory, but the recruitment or hiring of "women only" is permitted. The rationale behind permitting "women only" recruiting is that it expands women's opportunities, while the hiring of "men only" runs counter to the spirit of the law by restricting the job fields open to women.<sup>114</sup>

Though an attempt to benefit women, the specification of "women only" functions as a mechanism to segregate them into jobs with less responsibility and prestige as illustrated by the dearth of men employed on the clerical track.<sup>115</sup> By treating women preferentially rather than equally, the recruitment of "women only" perpetuates discrimination against women under the guise of providing them with increased opportunities.

The Ministry of Labor responded to female students' employment difficulties in 1993 by creating special consultation windows within the Women's and Young Workers' Office to deal specifically with hiring and recruitment concerns.<sup>116</sup> These consultation windows receive students' complaints and when a company's actions are deemed contrary to the law, the office administers guidance to ensure that companies respect the spirit of the law.<sup>117</sup>

At first glance, the consultation windows appear to protect women's employment opportunities. In reality, however, the windows are less effective than they could be because officials do not use administrative guidance to its utmost potential. In addition, in order for consultation window officials to administer guidance to a company, the student registering the complaint must be willing to give her name as well as the company's. It is not uncommon for students to

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113. The "windows" are consultation areas set-up within the Ministry of Labor offices.

114. See JAPAN LAB. BULL., Jan. 1996, at 4.

115. Under the revised EEOL, the clerical track will be open to men.

116. The official name of the consultation window is *joshi shinkigakusotsusha no shushokumondai ni kansura tokubetsu sodan madoguchi* (the special consultation window dealing with the job-hunting problems of women who are new graduates).

117. See WORKERS' EVOLUTION, *supra* note 36, at 34.

report an instance without leaving their name or the name of their school, out of fear of jeopardizing their own job search and even perhaps that of other women from their university.<sup>118</sup> If a student is willing to give her name, the office then contacts the company to discuss the candidate's claims as well as her job application and the reasons she was denied employment.<sup>119</sup> If the company admits to treating women and men differently, officials advise the company to obey the EEOL.<sup>120</sup> The company is not required to hire the woman who initiated the complaint, so this guidance—when successful—benefits future female applicants.<sup>121</sup> As a result, the majority of female students under-utilize the consultation windows' resources. Most students claim to be unaware of the windows, but many who are aware are unwilling to consult with them.<sup>122</sup> Busy with their job hunt, women choose to focus on companies that accept women rather than worrying about those that do not.<sup>123</sup> Without the students' cooperation, the consultation windows are unable to assist them.

Although employers and government agencies attempt to provide women with employment opportunities, their endeavors to promote and protect women do not always succeed. In fact, regardless of their efforts to further women's opportunities, they are also guilty of creating obstacles that hamper the job search for university women.

#### OBSTACLES IN THE HIRING PROCESS: EMPLOYERS AND THE MINISTRY OF LABOR

The obstacles facing women in the ice age gained media attention and the vocabulary of their struggle has become pervasive in pop-

118. Interview with Kitai Kumiko, Section Chief, Women's Policy Planning Division, Ministry of Labor's Women's Bureau, in Tokyo, Japan (Aug. 20, 1996). *See also* CHÔHYOGAKI DATTE NAKINEIRISHINAI! JOSHIGAKUSEI SHŪSHOKU KOKUSHO [WE WILL NOT GIVE UP AND CRY, EVEN IN THE ULTRA ICE AGE: THE BLACK PAPER ON FEMALE STUDENTS' JOB HUNTING] 162 (1996) [hereinafter THE BLACK PAPER].

119. Interview with Informant 20, Official, Ministry of Labor, Tokyo Women's and Young Workers' Office, in Tokyo, Japan (June 27, 1996). [Names of some interviewees are not disclosed. Interviewees mentioned in the main text have been given pseudonyms. Those not mentioned in the main text have been assigned informant numbers. All interviews are on file with the author].

120. *See id.*

121. *See id.*

122. *See* THE BLACK PAPER, *supra* note 112, at 162, *quoting* Interview with Sugiyama Keiko, Group Representative, Shūshokunan ni Nakineirishinai Joshigakuseinokai [The Association for Female Students Who Will Not Give Up in Spite of the Tough Job Market], in Tokyo, Japan (July 10, 1996) and Interview with Yamamoto Yoko and Sakai Nozomi, Co-Founders of Shūshokunan ni Nakineirishinai Joshigakuseinokai [The Association for Female Students Who Will Not Give Up in Spite of the Tough Job Market], in Tokyo, Japan (Aug. 7, 1996).

123. Interview with Informant 13, Official, Keio University Career Planning Center, in Tokyo, Japan (July 2, 1996); Interview with "Sachiko," Female student, Sophia University, in Tokyo, Japan (July 8, 1996). *See also* THE BLACK PAPER, *supra* note 118, at 163.

ular culture. The same media that once praised women's career advancements reevaluated women's employment in the mid-1990s; characterizing the ice age as a "struggle" or a "war," the media depicts women striving to clear the "high walls" and squeeze through the "narrow gates" that obstruct them.<sup>124</sup> Thus, in contrast with the resources seemingly available to women, the job-hunting experiences of individual students illustrate the day-to-day setbacks that women face.

#### EMPLOYERS

In the ice age, employers place hurdles in front of women at every stage of the recruitment process. Of course, not all companies discriminate against female students—some companies treat women better than others. But the ones that discriminate do so by excluding women from the recruiter system, denying them access to information, giving highest priority to male hiring, harassing women during interviews, and restricting the number of positions open to women.<sup>125</sup>

Motivated by fierce competition for the best students, companies routinely select new employees using the recruiter system. However, the system applies almost entirely to men. "Open entry is just a facade," says one male student, "entry sheets exist, but companies take many students through the recruiter system. I am using it extensively in my job hunt."<sup>126</sup>

Whereas many men receive phone calls inviting them to interviews from companies they have never contacted, women have to approach the companies themselves.<sup>127</sup> By the time the men selected from the recruiter system sit for the scheduled paper test, their success is secure and the actual test is just a formality. According to one student, "If you do well in your interviews with alumnae, you can't fail the test—all you really have to do is write your name."<sup>128</sup> Yet, if women do not pass the entry sheets and written tests, they do not progress on to be interviewed.<sup>129</sup> One student's testimony illustrates how men are actively pursued by companies: "You cannot tell that I am female from my name, so I receive a lot of phone calls from recruiters requesting to meet me. But when they hear my voice they say that the meetings are just for men. One company that called to invite me to an information session let me reserve a spot, and then called me back

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124. See *supra* notes 2, 5.

125. See *infra* pp. 424-28 and note 124.

126. Interview with Informant 23, Male student, Keio University, in Tokyo, Japan (Apr. 24, 1998).

127. Interview with Informant 24, Female student, Keio University, in Tokyo, Japan (Apr. 15, 1998).

128. Interview with "Akiko," Female student, University of Tokyo, in Tokyo, Japan (July 14, 1996).

129. Interview with Informant 25, Female student, Sophia University, in Tokyo, Japan (May 14, 1998).

later to say not to come because it was men-only this time."<sup>130</sup> Thus, by not giving women access to the "back route," the recruiter system functions to exclude women.

The key to a successful job-hunt is information acquisition, but women have unequal access to company information.<sup>131</sup> Many companies send their "direct mail" pamphlets—unsolicited expensive promotional materials—exclusively to male students.<sup>132</sup> At this initial stage, companies should treat all students equally, but employers can easily differentiate between students because the postcards include the student's personal data. Companies respond to students' postcards with communications of future information sessions. Without this correspondence, women cannot progress to the next stage of recruiting. During the ice age, companies have limited their mailings, ostensibly in an effort to cut costs.<sup>133</sup> However, only women report not having received responses to a large percentage of the postcards they send.

Recently, students have begun to make use of the Internet more extensively in their job hunt. One would assume this would provide equal access to information, however, even when women use the Internet to request information, companies ignore them. "Tomomi" did not receive responses to half of her Internet requests.<sup>134</sup> "Miki," who also had trouble acquiring company information, explains how she resorted to using the direct mail her boyfriend, who plans to go to graduate school and is not job hunting at all, received.<sup>135</sup> When responses fail to arrive by mail, some women contact the companies by telephone to inquire about information sessions, but many companies simply assert that they are not hiring women that year and hang up.<sup>136</sup> By limiting women's access to information, employers preclude some women from participating in company information sessions, tests, and interviews.

Even when female students receive information and are allowed to attend meetings, it is apparent that some employers have no intentions of hiring them. In accordance with the Myth of Opportunity, employers allow women to proceed with the recruitment process without harboring sincere intentions to hire them. Rather than being carried out surreptitiously, the realities of the Myth are known to most

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130. Interview with Informant 26, Female student, Waseda University, in Tokyo, Japan (May 20, 1998).

131. The belief of unequal company information was persistent throughout most of the student interviews.

132. See JAPAN LABOR BULL., Dec. 1989 at 5.

133. Interview with Informant 26, *supra* note 130.

134. Interview with "Tomomi," Female student, Meiji Gakuin University, in Tokyo, Japan (May 28, 1998).

135. Interview with "Miki," Female student, Sophia University, in Tokyo, Japan (June 22, 1998).

136. Interview with "Yukako," Female student, University of Tokyo, in Tokyo, Japan (June 25, 1996).

students. "Manabu" recalls that during his job hunt, "Companies would tell me in private that they would only be hiring men, but I would see women at the information sessions and tests. They said it would look bad if they did not let women take the test."<sup>137</sup>

Companies preserve the Myth by conducting what superficially appears to be an open recruitment process, but in reality they have many unfair requirements which apply only to women and serve to block them from employment. For example, some companies stipulate, in direct violation of the EEOL's guidelines, that female applicants must live "at home" or "within a ninety-minute commuting distance."<sup>138</sup> Purportedly, companies create these stipulations for women primarily to cut down on costs.<sup>139</sup> Women's differential treatment results from the efforts companies make to concentrate on male hiring.

In addition, the recruitment process moves more swiftly for men so that by the time women are afforded the opportunity to compete for jobs, most of the available positions have already been filled.<sup>140</sup> As one student put it, "When half of my male friends had received job offers, none of my female friends had."<sup>141</sup>

Even female students lucky enough to obtain interviews have not yet safely scaled the wall separating them from employment. The ice age has ushered in a period in which companies increasingly ask applicants inappropriate or personal questions at interviews. Students recently began referring to these interviews as *appaku mensetsu* for "pressure interview," and *sexu hara mensetsu* for "sexual harassment interview."<sup>142</sup> Granted, not all female students have negative interviewing experiences,<sup>143</sup> but many women are subjected to insults, sexual

137. Interview with "Manabu," Male student, Keio University, in Tokyo, Japan (Aug. 1, 1996).

138. SHIBAYAMA ZEMI, NAGOYA SHIRITSU JOSHITANKIDAIGAKU 21 SEIKI SUTEKINI IKITAI ANATA E "CHŌHYŌGAKI JIDA" WO KAKENUKERU ON'NA TACHI 1995 NEN SHŪSHOKUKAT-SUDŌ [TO THOSE LOOKING TOWARD THE 21<sup>ST</sup> CENTURY FANTASTICALLY, THE WOMEN WHO RAN THROUGH THE 'ULTRA ICE AGE': A DIARY OF THE 1995 JOB HUNT] 10 (Nov. 1995). See also Fujimura-Fanselow, *College Women Today*, in *NEW FEMINIST PERSPECTIVES*, *supra* note 63, at 145; Yoko Hani, *Doors Close on Women: Job Seekers Battle Sexist Setbacks*, JAPAN TIMES, MAY 10, 1994, at 3; Akira Watanabe, The Japan Institute of Labor, *Ordinance and Guidelines of Implementing the Equal Employment Opportunity Law*, JAPAN LAB. BULL., Jan. 1986, at 6; Interview with Informant 27, Female student, Sophia University, in Tokyo, Japan (May 18, 1996); Interview with Informant 28, Female student, Waseda University, in Tokyo, Japan (May 31, 1998).

139. Because companies usually pay for employees' transportation to and from work, requiring an employee to live close to work reduces costs. However, the same restriction is not placed on male applicants.

140. Interview with Informant 26, *supra* note 130; Interview with Informant 29, Female student, Waseda University, in Tokyo, Japan (May 11, 1998).

141. Interview with Informant 29, *supra* note 140.

142. See generally *infra* p. 426 and notes 145-48 (referring to terms commonly used by the Japanese media).

143. One student reports being surprised when she heard about "sexual harassment interviews" on the television news because she never had an experience like that

innuendoes, and questions not related to job performance. These interviews serve two functions simultaneously: they discourage women from pursuing employment with the company and test their reactions to unpleasant situations. By observing women's reaction to provocation, companies hope to determine whether or not the woman will cry when faced with adversity on the job.<sup>144</sup>

Women's testimonies indicate that employers pose a wide range of socially inappropriate questions. Most women report being asked if they have a boyfriend, whether or not they plan to continue working after marriage, and what they will do once they have children.<sup>145</sup> Men are also asked personal questions, but of a different nature. For instance, according to "Takashi," when men are asked if they have a girlfriend, it is done in a conversational manner, much different from the way women are accused of sleeping over at their boyfriend's apartments.<sup>146</sup>

Most shocking are the "sexual harassment interviews," where interviewers ask questions with sexual connotations. For example, "Yukako," a student at the prestigious University of Tokyo, was asked her "three sizes" (physical measurements).<sup>147</sup> Testimonies from other students indicate that this is a not an uncommon question.<sup>148</sup> At another interview, "Yukako" was told that if she wanted the job, she must go out with the interviewer that night.<sup>149</sup> "Yukako's" experiences illustrate that even women from elite universities must contend with "pressure interviews" and sexual harassment during recruitment.<sup>150</sup>

When asked how the ice age affects them, the most prevalent complaint among students is the fact that companies have dramatically reduced hiring women. Supporting this complaint, the number of women hired has decreased across the board—the responsibilities formerly relegated to the clerical track are increasingly being performed by the cheaper labor of temporary workers, and the positions open to women on the managerial track have always been few.

Company entrance gates have narrowed for women as large corporations have dramatically reduced, and in many cases eliminated,

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herself. Interview with Informant 9, Female student, Hitotsubashi University, in Tokyo, Japan (Aug. 2 1996).

144. Interview with "Miyuki," Female student, Waseda University, in Tokyo, Japan (June 30, 1996); Interview with Kitai Kumiko, *supra* note 118.

145. Interview with Informant 26, *supra* note 130; Interview with "Midori," Female student, International Christian University, in Tokyo, Japan (Aug. 1, 1996). See also THE BLACK PAPER, *supra* note 118, at 50, 80.

146. Interview with "Takashi," Male student, Waseda University, in Tokyo, Japan (July 5, 1996); Interview with "Yukako," *supra* note 136.

147. Interview with "Yukako," Female student, University of Tokyo, in Tokyo, Japan (June 15, 1996).

148. Interview with Informant 28, *supra* note 138.

149. Interview with "Yukako," *supra* note 147.

150. Based on a comparison of interviews conducted in 1996 and 1998, the author believes that the extensive media coverage of the problem, coupled with the law's revision, has lead to a decline in the instances of sexual harassment interviews.

hiring for clerical positions.<sup>151</sup> Citing workers' increased length of service and prevalent computer use as the reasons behind this decision, many companies insist that women are still welcome to apply for the managerial track.<sup>152</sup> But the reduction of clerical positions severely limits women's options. According to one journalist, considering the scarcity of managerial-track women, "[a] decision not to hire for clerical positions is, in more everyday terms, a decision not to hire women."<sup>153</sup>

Indeed, a female student with hopes of entering the managerial track is constrained by the scarce availability of these positions. Students explain: "Companies say they hire based on merit, but their hiring records show that in previous years they hired fifty managerial track workers—two of which were women. Also, for a fair number of companies the number of women hired was zero."<sup>154</sup> Some companies openly state that the only positions open to women are on the clerical track; other companies merely say that they have not hired a managerial-track woman in the past five years, but this does not necessarily mean that they will not hire one this year.<sup>155</sup> Overall, companies' commitment to hiring managerial-track women has been questionable at best.

Companies have recently become increasingly cautious about taking actions that overtly oppose the EEOL. At information sessions, it is not uncommon for companies to mention the law and imply that because of it they must hire some women.<sup>156</sup> "I was told that in light of the law and its revision, the company can't say that they won't hire women, but they will say that the number of women hired will be extremely low."<sup>157</sup> Thus, companies manage to sidestep the EEOL by hiring only one or two women for the managerial track, claiming that a shortage of suitable women left them no choice but to hire men.<sup>158</sup> "Hitomi" knows from experience, as she was the only woman hired for the managerial track by a major bank. Expressing her frustration she states, "When I found out that it was just me and fifty male students, I felt like 'Oh, this is what the EEOL is all about.'"<sup>159</sup> Because the EEOL does not mandate the hiring of a certain number of women, the bank is within legal bounds; after all, they did hire a woman.

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151. See Fukuzawa, *supra* note 5, at 156-57.

152. See *id.*

153. *Id.*

154. Interview with Informant 24, *supra* note 127; Interview with Informant 30, Female student, Keio University, in Tokyo, Japan (Apr. 14, 1998).

155. Interview with Informant 31, Female student, Japan Women's University, in Tokyo, Japan (June 22, 1998).

156. Interview with Informant 26, *supra* note 130.

157. Interview with Informant 32, Female student, Meiji Gakuin University, in Tokyo, Japan (May 28, 1998).

158. See Fukuzawa, *supra* note 5, at 156.

159. Interview with "Hitomi," Female student, Hitotsubashi University, in Tokyo, Japan (Aug. 2, 1996).

The reluctance to hire managerial-track women is also evident in the fact that many companies encourage women to apply for the clerical track over the managerial track. Often times, when women request information on the managerial track they are sent brochures for the clerical track.<sup>160</sup> Some companies have even actively tried to steer women away from the managerial track to the clerical track, implying that this is the only way for the student to enter the company.<sup>161</sup> "Yoko" intended to apply for the managerial track, but was told that it would probably be impossible to enter the company that way.<sup>162</sup> They suggested that she apply for the clerical track and consider the possibility of attempting to transfer to the managerial track after a few years. "I was disappointed," she says, "but I decided to apply for the clerical track because if I try for the managerial track I will not be hired. If I am really interested in this company's work, my only choice is to enter from the position they will take me from and then try to move up—but not many women at this company are successful in passing the test to change tracks. If I had my choice, of course I would prefer to enter through the managerial track."<sup>163</sup> Thus, even though the clerical track is slowly being eliminated and the managerial track is still not fully open to women, companies encourage women aiming for managerial positions to apply for the clerical track.

#### THE MINISTRY OF LABOR

One of the most bewildering obstacles for women is the government's hypocritical approach to the EEOL guideline specifying that the recruitment of "men only" (*danshi nomi*) constitutes discriminatory treatment towards women. It is difficult to expect private employers to abide by the EEOL when government agencies fail to uphold the spirit of the law.

The Ministry of Labor has established Student Employment Centers in every prefecture to assist students in their job hunt.<sup>164</sup> Under the authority of the Ministry of Labor's Bureau of Occupational Security, the centers aim to supplement the school career centers by making company information publicly available.<sup>165</sup> Students often visit the centers to seek advice and to research companies using the job descriptions available at the center.<sup>166</sup>

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160. Interview with Informant 28, *supra* note 138.

161. Interview with Informant 26, *supra* note 130.

162. Interview with "Yoko," Female student, Keio University, in Tokyo, Japan (Apr. 21 1998).

163. *Id.*

164. The Student Employment Centers are within every prefecture located in the governmental offices that deal with employment issues.

165. Interview with Informant 21, Official, Tokyo Student Employment Center, Ministry of Labor's Bureau of Occupational Security, in Tokyo, Japan (July 17, 1996).

166. *See id.*

Companies apply to the center by filling out the job description proposal forms provided by the center.<sup>167</sup> The center's walls are lined with bookshelves overflowing with notebooks, each filled with descriptions of job offerings.<sup>168</sup> When students enter the office, they are requested to complete registration forms (red for females and black for males) before perusing the library.<sup>169</sup>

Despite the EEOL guideline pronouncing "male only" recruiting unacceptable,<sup>170</sup> included on the preprinted proposal forms is an area for employers to circle whether a job is directed towards men, women, or both. Many of the job offers at the Tokyo Student Employment Center are marked in accordance with the law's guidelines. However, countless descriptions of all types of jobs, from companies in all industries, indicate that only men will be considered for the advertised position. Some employers even go so far as to cross out the Japanese characters for "woman" and "both."<sup>171</sup> This discovery is troubling, not only because it is in direct defiance of the EEOL's guidelines, but also because it exists in a government agency with direct ties to the Ministry of Labor.

When confronted with this contradiction, representatives from the Tokyo Student Employment Center, the Ministry of Labor's Women's Bureau, and the Ministry of Labor's Employment Stability Bureau defend the practice on various grounds.<sup>172</sup> One employment center official insists that the center encourages employers to open their jobs to both men and women, and when companies return "men only" forms, the center requests an explanation.<sup>173</sup> Typical company responses include rationalizing that the job requires physical strength, overtime work, or that the company is trying to reach a balance between male and female employees by taking only men this year.<sup>174</sup> Justifying the companies' recruitment of "men only," one official construes it as an up-front admission that spares female students from wasting their time applying to companies where their refusal is guaranteed.<sup>175</sup>

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167. *See id.*

168. The author has made several visits to the center and these statements are based on her personal observation.

169. *See id.*

170. *See LAWS, supra* note 10, at 261-265.

171. Photocopy of job description (on file with author).

172. Interview with: Tsuruoka Shima, Sub-section Chief, Women's Policy Planning Division, Ministry of Labor's Women's Bureau; Kokubu Kazuyuki, Youth Employment Measures Sub-section Chief, Work Coordination Division, Ministry of Labor's Employment Stability Bureau; and Sadamitsu Kamiichi, Assistant Section Chief, Public Employment Office, Work Coordination Division, Ministry of Labor's Employment Stability Bureau, in Tokyo, Japan (Sept. 4, 1996) [hereinafter Joint Interview].

173. *See id.*

174. *See id.*

175. Interview with Kitai Kumiko, *supra* note 118.

Although unable to explain why the center uses preprinted forms that grant employers the opportunity to choose "men only" in the first place, officials from the Ministry of Labor elucidate the legal issues behind the center's acceptance of job descriptions marked "men only." Acknowledging that such job descriptions do not satisfy Article 7 of the EEOL, they emphasize that a center's role is to fulfill the EEOL obligations while providing students with as many job opportunities as possible—especially considering the shortage of jobs in the slow economy.<sup>176</sup> Because of the EEOL's endeavor provision, the centers can only suggest that companies change "men only" to "either"; they cannot force the company to comply with administrative guidance.

Even if a company refuses to alter its "men only" specification, the centers must accept the job description. While the EEOL applies to employers, the services performed by the employment agencies are regulated by the Employment Security Law (*Shokugyō Anteiho*).<sup>177</sup> Article 16 of this law mandates that the centers must accept all job offer proposals submitted by companies, provided that their contents are not illegal (*hōritsu ni ihan shiteiru*) or remarkably unsuitable (*ichijirushiku futekitō*).<sup>178</sup> Thus, even though "men only" recruitment violates the EEOL's guidelines, the Bureau of Employment Security regards the guidelines as non-binding and the Employment Security Law as mandatory law. To regard the "men only" job descriptions as *ichijirushiku futekitō* would have the effect of treating the guidelines as constituting a definite prohibition rather than an endeavor obligation.<sup>179</sup> Therefore, although they realize that "men only" recruitment conflicts with the EEOL's intentions, under the present EEOL the centers conclude that they cannot legally refuse an application.

Using different colored registration forms to separate male and female students, ostensibly for administrative purposes, is not a violation of the EEOL.<sup>180</sup> However, it is indicative of an underlying passive attitude toward the segregation of male and female students engaged in the search for employment. The separation of men and women for the purposes of "classification" and "distinction" can easily lead to discrimination.<sup>181</sup> Interestingly, two years after calling the practice of separate registration and the overabundance of "men only" job descriptions to the attention of the Ministry of Labor, both conditions persist at the same employment center.<sup>182</sup> Whether the job centers'

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176. See Joint Interview, *supra* note 172.

177. See SUGENO, LABOR LAW, *supra*, note 43, at 150.

178. E-mail from Kazuo Sugeno, Professor, University of Tokyo, to author (Jan. 6, 1997) (on file with author) [hereinafter Sugeno, E-mail].

179. See *id.*

180. See Joint Interview, *supra* note 172.

181. See *id.*

182. See *id.* The author called this illegal practice to the attention of the Minister of Labor.

hands are truly tied, as the officials claim, because they are trapped between two conflicting laws (the EEOL's guidelines being the weaker of the two), or whether an overwhelmingly large number of "male only" job offers indicates the government's lack of commitment to the EEOL, the fact remains that by providing employers with forms which facilitate job descriptions that openly counter the guidelines, and then by accepting those descriptions, the agencies are implicitly endorsing the companies' flagrant disregard of the spirit of the EEOL.

As the second half of this article illustrates, on the surface the two students in the cafe appear to be conducting very similar job hunts. A closer examination of their situations has revealed that the woman—despite the programs established specifically to provide her with opportunities and job-hunting advice—is likely to encounter obstacles: companies may shun her and many of the job descriptions she may come across at government agencies will be inapplicable to her.

#### CONCLUDING REMARKS

After a period of economic growth and increased hiring, the onset of the 1991 recession led companies to cut back on hiring and, in a period of labor surplus, the weakness of the EEOL was revealed, resulting in an ice age—a time of frozen opportunities for female graduates. The effects of the economic downturn reached all new graduates, but its influence has been felt more distinctly by women. Although media coverage has at times exaggerated its effects, the ice age is real. However, the fundamental problem is not that women have fared even worse relative to men in recent years than in the past. The central issue is that women have been afforded inferior opportunities, which are exacerbated during a recession. The fact that women have fared worse than men in the ice age is a new symptom of this fundamental problem. Nevertheless, to focus on recent developments gives insight into the lack of opportunity for women. Arguably, resolving this problem would resolve the ice age as well.

The EEOL calls for employers to provide each man and woman with equal treatment and opportunity in accordance with their individual "abilities and willingness to work." More precisely, according to the EEOL, companies should not judge women collectively on the basis of their sex.<sup>183</sup> Nonetheless, not all companies have based their hiring policies on applicants' individual characteristics. Instead, some employers summarily refuse to hire women, in a pattern that initially appears to follow probability discrimination.<sup>184</sup> Probability discrimination occurs when a company uses a group's average qualities as a guide on which to base decisions—hiring decisions, for example;

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183. See SUGENO, *LABOR LAW*, *supra* note 43, at 130; Nakano *supra* note 82, at 66.

184. See Paula England & Lori McCreary, *Gender Inequality in Paid Employment*, in *ANALYZING GENDER: A HANDBOOK OF SOCIAL SCIENCE RESEARCH* 296-97 (Beth B. Hess and Myra Marx Ferree eds., 1987).

thus, group differences between men and women's productivity could lead employers to choose to hire men.<sup>185</sup> Yet, there is more to the explanation.

Diverging from probability discrimination in several ways, the actions of employers approach sabotage. While probability discrimination may be an economically rational hiring method because it allows employers to estimate an applicant's productivity without screening each individual, employers that allow women to go through the recruitment process have already made the monetary expenditure necessary to identify promising employees.<sup>186</sup> Furthermore, employers' actions extend beyond choosing not to hire women; employers intentionally block women at every phase of the recruiting process.

Sabotage, the act of deliberately undermining a situation, is a strong accusation to cast toward employers and government-run employment centers. However, I conclude that their combined actions result in a subversion—although not necessarily conspiratorial—of women's job-hunting efforts. This complicated stratagem to bring about the failure of female students' job-hunts amounts to sabotage, and unless dealt with effectively, job opportunities for women will remain a problem.

Despite the ice age, some scholars are optimistic about the future of working women in Japan. They point out that demographically, Japan is on the cusp of change. Studies conclude that demographic factors such as Japan's aging society and declining birthrate will eventually lead to a shrinking labor pool, which will inevitably propel employers to utilize women's labor.<sup>187</sup> Given these circumstances, one scholar asserts:

Changes . . . will take place whether or not government and business make a more serious effort to abide by the EEO Law. These changes will be brought about by the needs of the economy. . . . I believe that the outlook for career-minded young women in Japan is more hopeful for the future.<sup>188</sup>

In contrast to these optimistic evaluations, the ice age has laid bare some of the fundamental issues of inequality that are less evident when the economy is prosperous. Demographic change will most likely lead to the greater utilization of women's labor, which in the long run, could foster toleration of women in the workplace and greater equality. However, while this would seem to guarantee greater opportunities for women, it does not necessarily mean that the employment situation for university women, especially those seeking career-track jobs, will change dramatically. According to one author,

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185. *See id.*

186. *See id.*; Charles C. Fischer, *Toward a More Complete Understanding of Occupational Sex Discrimination*, 21 J. OF ECON. ISSUES 118, 118 (1987).

187. *See* Edwards, *Status of Women*, *supra* note 79, at 232, 234.

188. *Id.*

"Large corporations have said they plan to deal with the shortfall [of labor] by restructuring the labor market to reinforce separate recruitment of principal employees—permanent, full-time workers—and to deny such benefits as promotion or retirement allowances to the rest."<sup>189</sup> Thus, the labor shortage may actually have the effect of further segregating the labor force and limiting women's opportunities.

A reliance on a labor shortage to improve women's career potential does not adequately address the questions of the legal enforcement of equal opportunity. Instead, this approach effectively abandons women's legal rights, leaving them at the mercy of the ebb and flow of the economy. If external forces, such as economic or demographic factors, translate into an improvement in conditions for women, an economic downturn can just as quickly lead to a second ice age.

Although the ice age provides a window of insight into the effectiveness of the EEOL, in both the presence and absence of a labor shortage, the future for equal employment in Japan remains uncertain. Will the EEOL's revision, to take effect on April 1, 1999,<sup>190</sup> provide women with greater opportunities? The ice age encourages observers to consider the importance of ensuring the enforcement of the revised EEOL in order to protect women from discrimination at the entrance level and generate more concrete employment opportunities for women in the long-term.

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189. Suzuki, *supra* note 13, at 60.

190. Interview with Masako Owaki, Senator, in Tokyo, Japan (Aug. 23, 1998) (transcript on file with author).

