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Country Report

The background and current state of implementing a legal system for stress checks in Japan

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Abstract: This paper discusses the development process, outline, main design points, post-enactment operation, and related research trends based on my own experiences from the formulation of the stress check system. Additionally, it surveys related literature and is the first of its kind to discuss future developments from a legal point of view. The ultimate purpose of the stress check system is to stimulate concrete measures for workplace environment improvements. However, despite frequent group analysis, effective measures for improving the environment have been limited. In this paper, based on past studies, I argue that reduced stress and other effects can be observed in workplaces in which such measures have been implemented, providing qualitative outcomes for workers. In addition, basic data can and has been accumulated for subsequent policies and measures. I conclude that realizing human and organizational individuality as well as supporting growth and environmental adaptation are key to the implementation of effective mental health measures.

Key words: Stress checks, Brief Job Stress Questionnaire (BJSQ), Group analysis, Workplace improvement, Health information, Unfair treatment, Industrial Safety and Health Act (ISH Act), Labor law

Introduction

In 2014, Japan was, to the best of my knowledge, the first country in the world to make it legally mandatory for employers to implement stress checks. I was involved in the formulation of this legal system as a member of the Ministry of Health, Labour and Welfare (MHLW) council as well as other bodies. Furthermore, I presented my opinion as an unsworn academic witness when the Japanese National Diet considered the legislative bill that included this system.[1]

This paper discusses the development process, outline, post-enactment operation, and trends in related research for this legal system from this perspective.

At present, there is no legal definition of mental health, but occupational mental-health-related issues include not only worker suicides but also absenteeism, presenteeism, easy dismissal of employees in a slump, increased workload for colleagues due to continued unreasonable employment, a reduced sense of belonging to the organization, and decreased workplace communication. These are challenges that most post-industrial countries have in common[1)].

I understand the system to prevent situations where experts and circumstances provide objective evidence of restricted labor capacity for extended periods of time (generally two weeks or more) due to primarily psychosocial

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and physical risk factors as well as to facilitate conditions that allow individuals to harmonize with the demands of the organization they belong to and realize satisfactory health and workstyles. In addition to this, we now need a perspective of preventing violations of personal interests due to unfair discrimination, regardless of whether or not bad health is observable[1].

Different countries deal with mental-health-related issues in different ways. In the EU, we note that issues have been considered in terms of PSRs (psychosocial risks) that include harassment,[2] but responses vary from country to country as well. In Denmark and other countries, original questionnaires have been developed, and authorities are intervening to improve working environments with the primary aim of improving absenteeism and presenteeism related to psychosocial stress. Additionally, in post-Brexit UK, the authorities use a tool called management standards (MS) based on the Health and Safety at Work etc. Act (HSWA) to improve psychosocial working environments. On the other hand, in countries such as Germany, working hours are strictly regulated, but the authorities do not devise measures against psychosocial stress. Likewise, although disability discrimination legislation is well developed in the USA, no such measures have been devised[1]. Amid such circumstances, I believe Japan is the first country in the world to make it legally mandatory for businesses to implement stress checks.[3]

In the same way that MacKay, Cousins, Kelly, Lee, and McCaig (2004)[6] discussed the process leading to the formulation of the UK's management standards approach (MSA) for international reference, in this paper, I am to discuss the background, features, and effects of Japan's legal system for stress checks for reference to occupational health policymakers, scholars and professionals of labor law, and scholars and professionals of occupational health, HR and labor management, and organizational psychology.

The system has been outlined in the past[7]; however, this paper takes a legal perspective rather than an occupational health technology perspective to discuss the details of the system, the political aspects of its formation, its compatibility with other legal systems, its new value as a legal system, and its impact on those working with occupational health and society as a whole.

Japan's stress check system began as a suicide-prevention measure, but its aim is to prevent poor mental health (House of Representatives Committee of Health, Labor, and Welfare, Supplementary Resolution on a Bill for the Partial Revision of the Industrial Safety and Health Act [June 18, 2014]). Poor mental health "includes not only mental disabilities and suicide but also stress, great distress, anxiety, and a wide range of other mental and behavioral issues that may influence workers' mental and physical health, social life, and quality of life"[8]. It is difficult to define stress scientifically or rationally[9], but if the classical definitions by Selye (1956)[10] and Lazarus (1966)[11] are taken into consideration, then we might understand it as something akin to subjective and objective non-specific (more or less the same, regardless of cause) responses that come about when a living being recognizes that they are under demands or stimuli that exceed their endurance or preparedness. It is fairly well established that even mental stress will lead to a variety of health disorders if it persists or becomes excessive[9].

Development process

From 1998 to 2011, the number of suicides in Japan exceeded 30,000 per year, of which approximately 9,000 were estimated to be worker suicides[12, 13]. When the decision to create a legal system for stress checks was taken in 2010, it was estimated that reducing the number of suicides to pre-1997 levels would increase Japan's GDP by a cumulative total of about 4.7 trillion yen over 10 years[14]. There was an upward trend both in the number of people applying for and in the number being awarded compensation for psychological disabilities due to occupational accidents[15], while the proportion of workers who feel high stress at work remained high[16].

Given this, Diet members moved to adopt a legislative system including the enactment of the Basic Act on Suicide Prevention (Act No. 85 of 2006). The act promoted investigation and research, the training of specialized human resources, an understanding of mental health in schools and workplaces, and the development of counseling regimes as well as the development of regimes for early detection of people at risk for suicide and the introduction of psychiatrists (the so-called "gatekeeper regime"). However, partly because no improvements were observed, the MHLW established a "Suicide and Depression Project Team" in January 2010 under a left-of-center administration. Based on analysis of the causes of suicide, "enriching mental health measures in workplaces and support for return to work" was included as one of the five key policies devised by the team. The Minister of Health, Labour and Welfare at the time, Nagatsuma Akira, instructed the MHLW to make depression testing in regular health examinations mandatory,[4] as was already stipulated in the Industrial Safety and Health Act (ISH Act) as a part of this policy, based on pro-

posals by NPO representatives.

In response, the MHLW convened an evaluation conference in May 2010, which prepared a report in only three months proposing a new system. However, psychiatry-related academic societies criticized various aspects, such as difficulties associated with testing for depression with a short, structured test; subsequently, the construct to be tested was revised from depression to a more general state of psychological health. Moreover, the new testing system was supposed to differ from conventional regular health examinations, but the two were similar in terms of content even as workers were required to undergo both. A national research institute proposed a testing method with a nine-item questionnaire to measure "mental and physical stress reactions" on three scales for fatigue, anxiety, and depression. These were selected from the Brief Job Stress Questionnaire (BJSQ), which, in its full version, consists of 57 items in four areas: (1) job stressors, (2) mental and physical stress reactions, (3) support from surroundings, and (4) job and lifestyle satisfaction. The simpler version was intended for small enterprises.

The BJSQ was developed by experts with reference to the United States National Institute for Occupational Safety and Health (NIOSH) Generic Job Stress Questionnaire and other tests, and the results of pilot surveys involving about 12,000 participants confirmed that it was comparatively reliable and that the factor structure mostly corresponded to the scale composition from factor analysis. Furthermore, it has already been used widely in the occupational health field in Japan and is reportedly effective in improving work environments[17, 18].

This system was incorporated into a bill (the "First Bill") and submitted to the Diet, but it had not been fully deliberated by the end of the term and was abandoned. Through the drafting of both the First Bill and the Second Bill, employers feared that this legal system would increase legal liability for civil damages and the like above existing levels. For this reason, they argued in council meetings that mental health measures should prioritize self-help for individual workers. Nevertheless, they recognized the importance of the measures themselves and did not oppose either bill.

Subsequently, following a change in administration to the conservative Liberal Democratic Party, the MHLW made adjustments together with relevant academic societies and others, and an amending law was passed with new content that made it mandatory for employers to test workers' "degree of psychological burden (stress)", which entered into force in June 2014 (Act No. 82 of 2014). In fact, a similar mechanism was defined in Section 6(3)C of the guidelines that the MHLW had formulated and sought to disseminate (MHLW, Guidelines to Maintain and Improve Workers' Mental Health, March 2006; "Mental Health Guidelines"), so this bill could be considered to have given these guidelines legal status. Moreover, the requirement for measures such as relocation and shortening work hours based on a physician's opinion after testing and physician interviews is the same as for the health examination system that was already defined in the Act (ISH Act, Arts. 66, 66-3 to 66-7) and the physician interview system for those who work long hours ("Long Work Interview System"; ISH Act, Art. 66-8). Nevertheless, unlike statutory health examinations, workers are under no obligation to undergo this testing; they do not have the freedom to choose their physician, and the diagnostic results are not given to or stored by the employer without the worker's consent.

In the adjustment process for the Second Bill, a committee from the governing party removed the legal obligation for workers to undergo testing[5] and, for the time being, also amended it to an obligation to make sincere effort in the case of a workplace with fewer than 50 regular employees (the latter was included in Article 4 of the supplementary provisions of the ISH Act).[6]

After the Second Bill was passed, three evaluation conferences consisting primarily of experts (on (1) stress check items, (2) physician interviews for people with high stress, (3) and management of personal information and unfair treatment) were held over approximately six months to negotiate the details of the system. The outcomes were summarized in the MHLW's report on evaluation conferences on the stress check system under the Industrial Safety and Health Act (December 2014; "Stress Check System Evaluation Conference Report"). Based on this report, the Ordinance on Industrial Safety and Health was amended, and it served as the basis for the formulation of new guidelines: the Guidelines on Implementing Testing and Physician Interviews to Ascertain the Degree of Psychological Burden and Measures to Be Implemented by Employers Based on Physician Interview Results ("Stress Check Guidelines"; April 2015, last revised August 2018). The Stress Check Guidelines recommend using the BJSQ. Moreover, when selecting workers with high stress who were eligible for physician interviews, the Stress Check Guidelines focus more on the strength of workers' subjective physical and mental reactions to psychological burden while recommending the selection of workers with more powerful psychological stressors and with insufficient support from those around them, even if their reactions are not as strong

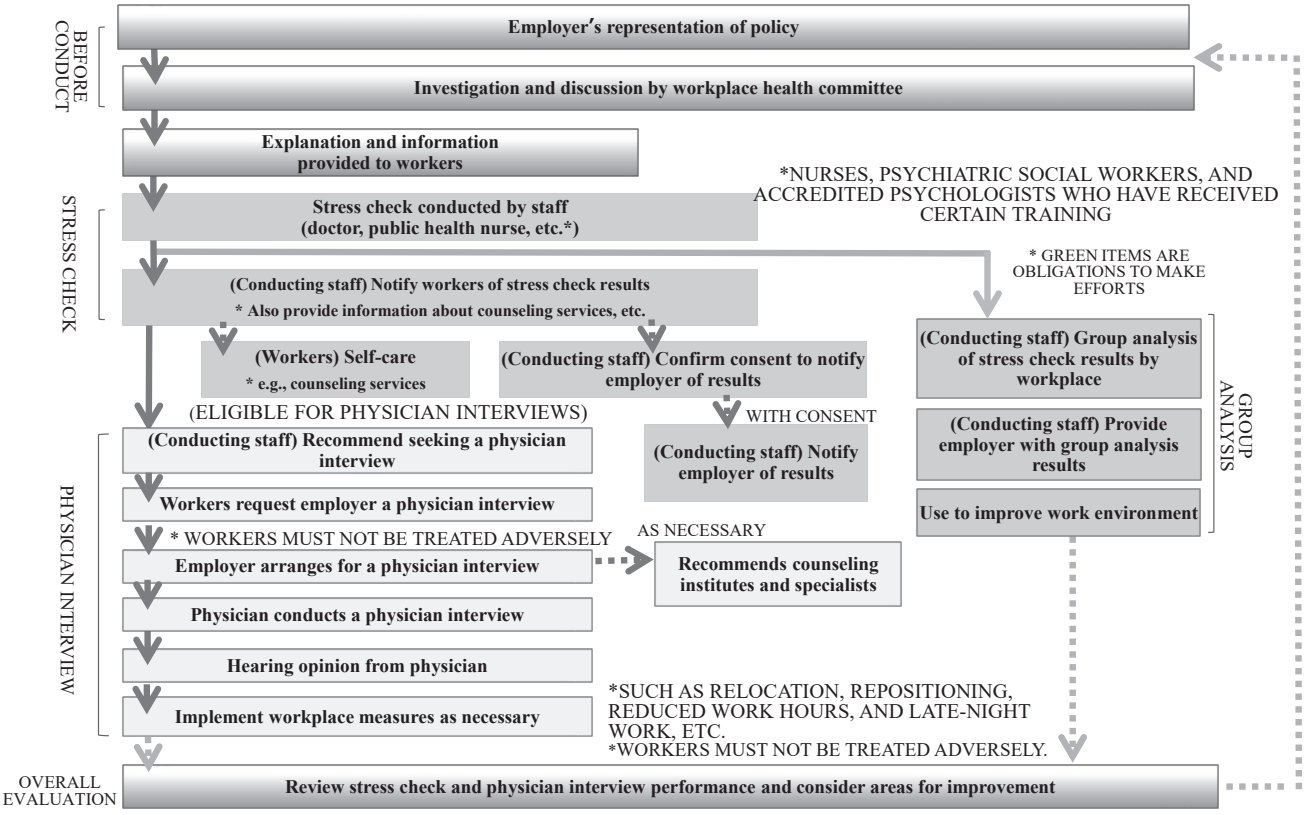

Fig. 1. Overview of conduct. (Source: MHLW)

(Fig. 2). In addition, based on expert-led surveys, a 170-page implementation manual ("Stress Check Manual"; with a revised edition of 200 pages) was prepared[19]. In the process of preparing this manual, consideration was given to the shortage of physicians capable of handling the system, and participants debated whether it was appropriate to conduct physician interviews remotely with people with high stress using information and communications technology (ICT). The final policy concluded that the use of such technology is not illegal but that it generally should be used when there has been past face-to-face contact and that technology for sensing facial expressions and atmosphere should be utilized.[7]

Outline of the system

The system is outlined below, as shown in Fig. 1.

Employer policy representation

This system cannot operate unless workers trust their employer because otherwise, they will not undergo testing in the first place, or, if they do, they are unlikely to respond honestly. On the other hand, if participants aspire to make this system work, this can improve the psychosocial environment in the workplace. Thus, the employer is first required to confirm that it will use the system and move forward with mental health measures in good faith (Stress Check Guidelines, 4.A). The specific measures must be worked out by the person in charge of the workplace as well as by a health committee that includes an occupational health physician, a health manager, and others (Industrial Safety and Health Act, Art. 18; Stress Check Guidelines, 4.B).[8][9]

Conducting the stress checks

ISH Ordinance Article 52-10 limits eligibility to conduct stress checks to physicians (Item (i)), public health nurses (Item (ii)), dentists, nurses, psychiatric social workers, and accredited psychiatrists who have received prescribed training (Item (iii)).[10] As is clear from both the qualifications of the staff conducting the checks and the standard test items, stress checks are not a medical examination. Stress checks are often performed with ICT, but because the staff are expected to set the test items,[10] select people with high stress for a physician interview, perform group analysis of the test results, advise employers based on the results of the group analysis, and collaborate with the physician who interviews those with high stress, among other

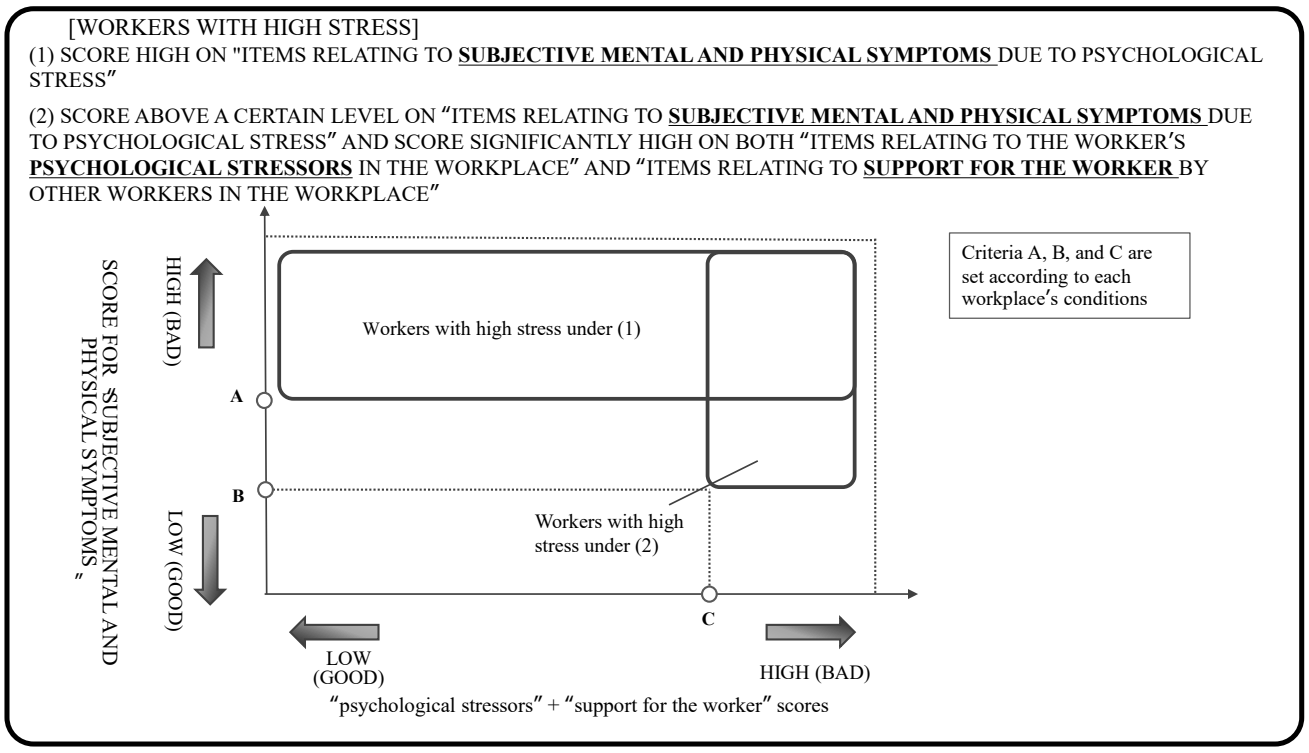

Fig. 2. How to identify workers with high stress.
(Source: MHLW)

duties, they must command certain expertise and hold the trust of the participants. Accordingly, they need national qualifications specializing in medicine, public health, or psychology. Originally, it would have been desirable for them to have standard expertise and also be well versed in the people, operations, environment, and other aspects of the workplace, but the large number of employers who outsource the stress checks to external specialist organizations suggests that few workplaces have successfully achieved this.

A person who assists with testing is called "an assistant", and they do not need any particular qualification. It is assumed that they are psychologists or similar, and stress checks may be conducted by these assistants who effectively conduct interviews on behalf of the implementing staff to improve testing accuracy, after which the implementing staff give their approval (e.g., Stress Check Guidelines, 7(1)C(b)(2)). The same applies for the physician interviews of workers with high stress, as described below, and this flexibility was permitted to make the best use of psychologists without national qualifications. The people in charge of administrative operations for conducting the tests are referred to as "implementing administrative staff", and staff from human resources and labor affairs departments can also assume this role. It is not desirable, but it was considered necessary for this system to work in practice.

Article 52-9 of the ISH Ordinance imposes obligations to measure three areas: stressors, stress reactions, and support from those around the participant. In response, Stress Check Guideline 7(1)B states that although an employer may decide on a selection based on the implementing staff's opinion and the investigations and deliberations carried out by the workplace health committee, as long as it includes these three areas, it is "preferable to use the attached Brief Job Stress Questionnaire". The attached questionnaire presents the standard version with 57 items, but the Stress Check Manual presents the abridged version with 23 items. These consist of (1) nine items on "physical and mental stress" (fatigue, anxiety, depression) as well as two items on physical complaints (appetite, sleep) for a total of 11 items, and (2) six items on "job stressors" (quantitative burden of work and degree of control) and six items on "support from people around me", which refers to support from superiors, colleagues, and others, for a total of 12 items.

The Stress Check Manual states that testing work aptitude or personality should not be the direct objective of the stress check (Stress Check Manual, 6(2)B), but it goes

without saying that work aptitude is closely related to work-related stress, and according to legal theory, it can be tested occasionally without the consent of the person being tested. In fact, in the case of stressors, A-16 of the 57 items of the standard version ask whether "the job essentially suits" the respondent. On the other hand, personality tests can easily infringe on the right to privacy.

These items (questions) can be replaced with other items at the decision of the implementing staff or through deliberation by the workplace health committee if they are confirmed to have the same scientific purport. However, since the BJSQ has the advantages of already being in use and facilitating comparisons with national averages, it is practically difficult to replace the items. Conversely, adding questions is easy and, in fact, commonly done.

Group analysis

The main objective of this system is to have workers notice and manage their own stress (self-care) as well as to have employers improve the psychosocial environment of the workplace through group analysis of the test results. If preventative activities are classified into primary prevention (preventing problems from occurring), secondary prevention (early detection of and early response to problems), and tertiary prevention (responding after problems have occurred and preventing them from recurring), the main objective of this system is primary prevention, and its subsidiary objective is secondary prevention. Given this, Article 52-14 of the ISH Ordinance imposes on employers an obligation to make sincere efforts to analyze the state of stress of each group within the organization (attributes: department, gender, age, etc.) and take appropriate measures for each organization based on the results. The Stress Check Manual recommends using the "Job Stress Assessment Map", which was developed with the BJSQ, as a tool for this. A study conducted during its development stages found that the Job Stress Assessment Map enabled the prediction of risk factors for depression and circulatory diseases[20]. The appropriate measures required by the ISH Ordinance differ depending on the background, characteristics, and other aspects of the individual organizations, but ultimately, they often consist of qualitative improvements to human resources and labor affairs management with the participation of both workers and the employer. In other words, the key is to have the manager improve the four items of personnel appointments, work assignment, motivation, and education and training as well as vertical and horizontal communication within the organization while maintaining the enterprise's independence[21].

The results of individual workers' stress checks are given to the individuals by the implementing staff, and they cannot be provided to the employer without each individual's active consent (ISH Act, Art. 66-10(2)).[11] This is intended to reassure workers about undergoing stress checks, and the system heavily protects workers' privacy overall. However, because the group analysis results cannot be used to identify individuals, they can be provided to the employer without the participants' consent unless the group has fewer than 10 members, in which case each member's consent is required. Moreover, at my advice, employers are required to ensure that the group analysis results are not used to evaluate or disadvantage the manager of the group (Stress Check Guidelines, 9(1)).

Incidentally, the MHLW distributes tools to support the implementation of stress checks, exporting stress check results, performing group analysis, etc., for free on a dedicated website.[12]

Selecting workers with high stress and requesting physician interviews

The stress check results are measured along three axes: (1) stressors, (2) stress reactions, and (3) support from those surrounding the participant. The MHLW considers workers who have a high score for (2) or who have a score for (2) above a certain level and significantly high scores for both (1) and (3) to have high stress (e.g., Stress Check Guidelines, 7(1)C(b); Stress Check Manual, 6(2)C), but employers may refer to the workplace health committee and use criteria suited to that workplace. Note that Shimomitsu[18] argues that workers with high stress should generally be selected solely on the basis of (2), and the nature of each individual's scale (periods that arouse stress reactions, identifiability, etc.) should be taken into account.

If a worker has high stress and the implementing staff member in charge of the worker's test finds it necessary (ISH Ordinance, Art. 52-15), the worker may request a physician interview from the employer if they so desire. The employer is prohibited from treating the worker disadvantageously on the grounds of the request for a physician interview (ISH Act, Art. 66-10(3)). The aim of this approach is to encourage workers with high stress to make requests and also to remove the prejudice that requesting a physician interview means that that person is incapable of working (Stress Check System Evaluation Conference Report, 4(5)A).

Nevertheless, foreseeing that workers with high stress may not seek physician interviews from their employers but, rather, seek counseling with external counselors and

other services by themselves, the MHLW set up a dedicated telephone counseling contact.[13] The counseling contact responds not only to workers but also, for example, to inquiries from family members as well as corporate human resources and labor affairs officials regarding how the stress check system works. The MHLW set up a general information website focusing on mental health called "Kokoro no mimi" (Ears of the mind) before the stress check system was enacted, and the MHLW subsequently added information on the system and developed the site further.[14] From April 2019 to April 2020, the number of hits exceeded 10 million, and an average of 20 email inquiries per day are sent through the website.

Physician interviews

If a worker with high stress requests a physician interview and the staff implementing the stress check find it necessary, the employer must accept the request (ISH Act, Art. 66-10(3)). The employer is responsible for arranging the interview, bears the interview costs, and chooses the interviewing physician. Selecting a physician (preferably an occupational health physician) who is familiar with the circumstances at the respective workplace is primarily intended to ensure the accuracy of the physician interview and the opinion given to the employer afterward. For this reason, it is desirable for the interviewing physician to be a full-time occupational health physician at that workplace and to also be the individual conducting the worker's stress check, but the law does not impose this as an obligation. When a small- or medium-sized enterprise not under obligation to appoint an occupational health physician conducts stress checks and a worker requests a physician interview, the enterprise may use the occupational health support centers established by the MHLW in each prefecture (Stress Check Manual, 12(4)).

The interviewing physician may be provided with the results of the stress check by the employer (Stress Check Manual, 7(4)). This is because this information is useful in the physician interview and because the worker can be construed as having given consent for the provision of the information when they requested the interview.

In the physician interview, the interviewee's (1) state of employment, (2) state of stress, and (3) mental and physical state beyond (2) are confirmed (ISH Ordinance, Art. 52-17), after which that person is provided guidance regarding health, such as self-care methods, seeking treatment from medical institutions, and other such guidance. The specific method for physician interviews is described in the Stress Check Manual, 7(4). The Manual also introduces three best-practice cases in which the interviewee was diagnosed with an adjustment disorder, advised to seek treatment and guidance regarding health, and told about potential adjustments such as changes in their duties or relocation, which, when successful, allowed them to resettle into their duties. A collection of tips for physician interviews developed by Professor Hiro Hisanori under a grant for health and labor sciences research has also been published[22]. The collection advises using somewhat structured questions to investigate depression and sleep and cautions against failing to listen when discussing the interviewee's private life and career, for example. The Japan Organization of Occupational Health and Safety, a group affiliated with the MHLW, has also published audiovisual teaching materials for beginner occupational health physicians[23].

Follow-up measures

After the physician interview ends, the employer bears an obligation to record and save the results, hear the opinion of the interviewing physician, and implement follow-up measures based on the opinion, such as reducing work hours or relocating the worker (ISH Act, Art. 66-10(4) to (6)). The method for interviewing physicians to report to employers is also outlined in a manual issued by the MHLW.[24] The sample reports shown in the manual classify guidance for workers as assessed by the interviewing physician into five types: (1) no steps required, (2) health guidance required, (3) continued observation required, (4) further interview required (in three months), and (5) continuation of treatment for current illness or introduction of medical institution. As this assessment may cause harm to a person's health if not performed by a specialist physician, it is construed as being a medical act.[15]

The contents of the measures that employers should take based on the physician's opinion has not been determined in advance. To distinguish between reasonable measures to ensure health and unfair or disadvantageous measures, employers must make judgments by considering "the worker's actual situation", as stipulated in the provisions (ISH Act, Art. 66-10(6)), as well as the actual situation in the workplace and other factors. When employers do so, having followed reasonable procedures that emphasize 1) "respect for the expert opinions" of the treating physician and the interviewing physician and 2) "autonomous decision-making" (making decisions by agreement through discussion between the worker and other stakeholders), or what I call "procedural rationality", this gives rise to an inference that the measures taken are reasonable[25].

Major points for debate in designing the system

In the section below, I disclose points that were given significant consideration during the system design process and the concrete plans that were developed.

Protection of the privacy and personal information of workers tested

At the commencement of the MHLW evaluation conference on this subject, I presented the following principles, which formed the foundation for the concrete plan[16]:

(1) Creating provisions that reassure workers about undergoing tests,

(2) Promoting mental health,

(3) Ensuring consistency with existing statutes and legal theories,

(4) Ensuring feasibility in reality in individual workplaces, and

(5) Avoiding disadvantages for people other than those being tested.

An example of the final point is ensuring that the person responsible for a department in an organization is not unfairly disadvantaged because the group analysis results for that department are used as an indicator in personnel evaluations. For example, the responsibility for conducting the stress check is restricted to physicians and other experts, and the responsibility for administrative duties concerning the conduct of the stress check is also restricted to people with no authority in personnel management over the worker as they would have access to information about the worker's health. The company president, the head of the human resources department, and others directly involved in the personnel management of the worker are excluded from both processes (Stress Check Manual, 6(1)). Further, as discussed earlier, the results of the stress check are not to be provided to the employer without the worker's consent.[17] It has also been stipulated that opting out is excluded from the methods of obtaining consent (ISH Ordinance, Art. 52-13; Stress Check Guidelines, 11(3)A). The guidelines also recommend that consent be given after the test results (for instance, stress profile) are presented to allow the worker to properly decide whether it is appropriate to provide information to the employer (Stress Check Guidelines, 11(3)A).

The employer provided with information after the worker has given their consent is the entity to which the business profits belong and, in general, is the representative in the case of a corporation and the owner in the case of a sole proprietorship, but it also includes people acting as agents of or on behalf of these positions (for occupational health work, management personnel, occupational health stakeholders, etc.).[19] However, because privacy rights impose restrictions on information transmission even within organizations, each workplace must enact regulations on how information is handled, appoint a suitable information manager, and ensure that no more information than necessary is dispersed (Stress Check Guidelines, 11(3)D).

Test results should be stored by the implementing staff and implementing administrative staff. If the employer outsources stress checks to an external specialist organization, that organization will store them. However, because this will cause difficulty if the employer changes outsourcing partners or the specialist organization ceases operations, it is recommended that occupational health staff in the workplace act as joint implementing staff and manage test results together with the specialist organization (Stress Check Manual, 6(1)).

Incidentally, in Japan, the implementing staff provides the results of statutory health examinations to the employer, who stores them. Statutory health examinations also include questions about objective and subjective symptoms. In contrast, stress checks may be conducted verbally by the implementing staff. This raises questions about criteria and methods for distinguishing statutory health examinations from stress checks. My understanding is that the examination conducted on the basis of unstructured (i.e., variable according to the patient's situation), interactive communication with the aim of comprehensively measuring an individual's mental and physical condition, which only physicians are permitted to do, is an interview examination portion of the statutory health examination. However, because distinguishing them is difficult in practice, clarifying the intentions of the implementing staff, such as by using different record forms, is recommended (Stress Check Guidelines, 7(1)D).

Unfair treatment of workers tested

The Stress Check Guidelines prohibit unfair treatment based on the worker's request for a physician interview (Stress Check Guidelines, 10(1)), which is also prohibited by law, and they further prohibit disadvantageous treatment based on (1) stress check results (Stress Check Guidelines, 10(1), (2) refusal to undergo stress checks, (3) refusal to provide test results to the employer, and (4) refusal to request a physician interview (id., 10(2)A) as well as disadvantageous treatment based on the results of the physician interview (id., 10(2)B).

As the guidelines are not legally binding, the "prohibitions" have no significance except as instructions. The fol-

lowing suggestions regarding unfair treatment based on the results of the physician interview reflect my own advice on the basis of civil court precedents.

> The employer must not engage in the following unfair treatment …:
> (Omitted)
> B. (Omitted)
> (1) When implementing measures, … failing to follow the procedures required by legislation regarding necessary measures based on the results of a physician interview, such as hearing the opinion of the physician, and engaging in unfair treatment.
> (2) When implementing measures based on the results of a physician interview, engaging in disadvantageous treatment, … such as treatment not falling within the scope considered necessary or not considering the worker's actual situation, … such as having content or a degree significantly different from the physician's opinion.
> (3) (Omitted)
> (a)–(d) (Omitted)
> (e) Otherwise taking measures in breach of the Labor Contracts Act or other labor-related laws.

Of these, the content regulated by "the Labor Contracts Act and other labor-related laws" can be broadly summarized as follows[26]:

A. The treatment required for people who are ill differs according to whether the event giving rise to the illness occurred during the course of work.

B. In Japan, the idea of paying fixed wages to individual workers (based on their positions) held more power than the actual work being performed. Accordingly, demoting or reducing the wages of a person who is ill due to an event not in the course of their work is generally illegal unless the person consents or it is founded upon a provision of the employment regulations, for example. However, if the person cannot perform their original work under their employment contract for a prolonged period of time, the employer may dismiss them or take measures for forced resignation. Adding or amending employment regulation provisions to allow demotion or wage reductions requires the fulfillment of strict conditions, such as a high degree of necessity.

C. The employer may demote a person who is ill due to an event that did not occur in the course of their work without a reduction in wages at the employer's discretion but only if it does not constitute an abuse of rights. Furthermore, non-payment of small allowances for job positions because the worker is removed from the position can be justified.

D. If a person who is ill due to an event that occurred in the course of work becomes unable to work or produces unsatisfactory results, he/she must be guaranteed at least the wages that they would have earned had they been healthy. Moreover, in general, dismissal is not permitted.

E. Even if employment regulations or similar provide for the disadvantageous treatment, such as demotion or wage reduction, of people who are ill due to an event that did not occur in the course of work, the employer must respond based on (i) the living guarantee character of wages as intended by the Labor Standards Act and other laws, (ii) legal systems (including the adult guardianship system, curatorship system, and assistance system) and legal theories (including theories concerning the rescission of transactions by people lacking competency) for the protection of people lacking the normal ability to make decisions, and (iii) the potential for ongoing employment based on treatment commensurate with ability and reasonable consideration based on the Act on Employment Promotion, etc., of Persons with Disabilities, among others.

Implementation since enactment

According to the MHLW's latest survey, the proportion of all workplaces, including those not under obligation to perform stress checks, that had performed stress checks amounted to about 63%, of which about 73% had performed group analysis and, subsequently, of which about 80% had made use of the group analysis results. However, based on the content, review of work distribution accounted for about 27%, review of personnel structure and organization accounted for about 29%, and holding work environment improvement workshops for employees accounted for only about 5%, and the most frequent items were reducing overtime work (about 47%) and deliberation in the workplace health committee (about 38%)[27].

For mental health, the MHLW sought to start from secondary preventative measures such as the physician interview system for workers working long hours and develop them into primary preventative measures. This system is truly emblematic of that. However, primary prevention for mental illness takes effort and often has implications for the very management style of companies, so managers are hesitant in regard to mandatory intervention through legislative policy. There remain few cases in which mental health is viewed as a management issue and that actively use this system[1]. Many managers believe that it is enough to follow the law and that they can leave this issue to internal staff in

charge of health management or external specialist organizations. It appears that for external specialist organizations as well, there are few cases in which their role in implementing this system has sparked involvement in the reform of internal regimes in the companies in question. Many managers seem to think that their workers' health is important but that merely improving psychological health management will not increase workers' job satisfaction or labor productivity.[18]

Commissioned occupational health physicians are frequently tasked with implementing this system in small- and medium-sized enterprises, and most of them are clinicians who feel burdened by work in regard to stress checks. A survey conducted by the Japan Medical Association in March 2017 revealed that commissioned occupational health physicians received low fees (about 30,000 yen per month per location) and visited each location only once a month. Moreover, fewer than 20% of physicians saw an increase in their fees because of the addition of stress check-related work. In addition, the proportion of workers with high stress who desire physician interviews is larger in smaller workplaces, but it is possible that the workplaces are not, in fact, able to conduct the interviews[29]. Training systems are being improved, but it is difficult to ask general clinicians to engage in dialogue with industry.

Relevant research trends

Evaluations of the effects of the stress check system itself are still few in number,[19] but one example of a retrospective cohort study on 2,492 workers showed that the improvement in psychological suffering was statistically significant, although the effective amount was not great, among workers in workplaces that experienced improvements to the psychosocial work environment in addition to stress checks[30].

Conversely, verification of the validity of the BJSQ, the use of which is recommended by the government, is progressing, and the predictability of sick leave has been supported to an extent[31]. By way of explanation, this study reported that workers with high scores in a stress check (workers with high stress) accounted for over 20% of workers on long-term sick leave (i.e., excluding workers with high stress would reduce the number of workers on long-term sick leave by over 20%) among both men and women. In addition, effects such as improvement of the workplace environment based on group analysis, for which there is currently no more than an obligation to make a sincere effort, were measured by Kawakami[32] and in other studies, which reported a significant relationship between improvements to psychological stress reactions and increases in labor productivity.[20] The same research project shows that workers with high stress generally represent 10–20% of the people tested, that few workers with high stress request physician interviews (generally less than 5% to under 20%), that the usefulness of stress reduction from workers' perspectives is rated high for physician interviews as well as work environment improvements (50% or greater) and low for returning results to individuals and providing information on stress management (about 30%), and that workplaces that have occupational health physicians, nurses or public health nurses, and counselors have higher participation rates for stress checks.

In addition, in response to criticism that the conventional BJSQ is oriented to secondary prevention rather than primary prevention, Professor Kawakami Norito and others developed a new stress check model (New Brief Job Stress Questionnaire of 2012) that is capable of evaluating psychosocial stressors in the workplace and workers' positive interactions with their jobs.[21]

Conclusion

Japan led the world in making it legally mandatory to implement stress checks. This was strongly driven by the high numbers of suicides. However, it appears that the improving economy and the development of arrangements for those who are ill has played a role.[22] The number of cases of mental illness is increasing,[23] and no particular improvement can be seen in other indicators relating to mental health. There has also been little progress in improving the psychosocial work environment based on the group analysis results, which was the main objective of this system. This is similar to the situation in European countries in which proactive measures against work-related stress are taken on a legal basis[1].

In my view, the key to resolving problems concerning mental illness lies in courageously becoming aware of our own idiosyncrasies and aptitudes as individuals and organizations, in recognizing these in each other, and in striving to grow and adapt. Measurement results using psychological scales cannot be evaluated with uniform criteria and should be understood as tools for learning about one's own individuality.[24] Nevertheless, because individuals and organizations are both living creatures, they compete for survival. Forging a path to survive from a condition that is not adapted to the environment requires repeated trial and error. Those providing support and supervision need to act

paternally and maternally toward both individuals and organizations.

The obligation to conduct stress checks does not contain any punitive provisions. However, the obligation to report information on stress check implementation to the chief of the labor standards office (ISH Ordinance, Art. 52-21) does contain punitive provisions. Employers do not have to implement the system as is, and they can take mental health measures suited to their workplaces. This system is itself a huge social experiment premised on trial and error, and it assumes (perpetual) improvement based on the actual circumstances.

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Footnotes

[1] Mishiba[1)] describes the outcomes of the author's comparative study of legal systems at this time.

[2] That said, the original meaning of "PSRs" is broad, referring to new and emerging varieties of psychosocial risk factors, such as the combined exposure to physical and psychosocial risks, job insecurity, work intensification and high work demands, high emotional load related to burnout, work-life balance problems, and violence and harassment at work[2, 3)]. Please refer to Chiriko[4)] for the relationship between PSRs and adjustment disorder, which is a psychiatric diagnosis.

[3] Only a few developed countries have enacted legal requirements for programs to evaluate Psycho-Social Hazards (PSH) and Workplace Violence (WV), and Japan appears to be the only nation that requires stress checks by law. Chirico, Heponiemi, Pavlova, Zaffina, and Magnavita (2019)[5)] is a pioneering survey of the global legal system for PSH and WV prevention through a systematic literature review based on LEGOSH (the ILO Global Database on Occupational Safety and Health Legislation). According to this study, some developed countries, such as the Scandinavian nations, have enacted legislation requiring PSH and WV evaluation programs, whereas other developed countries, such as the United States and Australia, do not even have national legislation to address workplace PSRs. Among developing countries, there are few that have enacted such legislation, and even where they have, the relevant provisions are limited to the prevention of sexual or religious harassment, as in many developed countries.

[4] The health examination systems under Japan's Industrial Safety and Health Act include the special health examination system aimed mainly at investigating and implementing countermeasures against occupational risk factors, such as harmful substances in the workplace, and the general health examination system aimed mainly at health management according to the state of individual workers' health. The test items for the latter include blood lipids, blood sugar, liver function, urine, and BMI, which are unusual internationally.

[5] The reasons given included the presence of workers unsuited to testing because they already had a psychiatric illness.

[6] The reasons given included the absence of a requirement that workplaces with fewer than 50 employees appoint an occupational health physician.

[7] MHLW notice (Ki-Hatsu 0915 No. 5, dated 15 September 2015). Recently, Minister for Regulatory Reform Kōno Tarō opined that the obligation to have an occupational health physician permanently stationed at workplaces should be broadly waived based on the reality that an increasing number of occupational health physicians have been offering counseling online during the COVID-19 pandemic (*Nikkei Shinbun*, October 10, 2020. https://www.nikkei.com/article/DGXMZO64860340Q0A011C2EA3000/. Accessed October 11, 2020).

[8] Workplace health committees are required to be established in workplaces where more than 50 employees are usually employed and have the role of deliberating on matters relating to preventing damage to worker health and actively

maintaining and promoting health (ISH Act, Art. 18(1); ISH Ordinance, Art. 22). The members include the work supervisor at the workplace as well as an occupational health physician and a health manager, among others (ISH Act, Art. 18(2) to (4)).

[9] Article 22(x) of the Ordinance on Industrial Safety and Health (ISH Ordinance) states that the employer should table mental health measures for consideration by the health committee.

[10] However, it is less common that a workplace adds its own test items in addition to the typical BJSQ test items for analysis.

[11] Even if health risks due to high stress are evident, the conducting staff may not provide the results to the employer without the worker's consent. However, they can call the employer's attention to him and request consideration of some type, and they may be required to do so if necessary to fulfill a civil responsibility to ensure safety.

[12] https://stresscheck.mhlw.go.jp/. Accessed October 14, 2020.

[13] https://kokoro.mhlw.go.jp/tel-soudan/. Accessed October 15, 2020. At present, it operates about half of the days of each month and responds to approximately 35 requests for counseling on average each day.

[14] The author is a member of the committee that operates this website.

[15] An administrative interpretation concerning medical acts has been given in a notice from the Health Policy Bureau of the MHLW dated July 26, 2005 (I-Sei-Hatsu No. 0726005).

[16] Minutes of the first session of the MHLW's Evaluation Conference on Information Management and Disadvantageous Treatment Concerning the Stress Check System (October 3, 2014). https://www.mhlw.go.jp/stf/shingi2/0000067429.html. Accessed October 17, 2020.

[17] This is despite that employers may be informed as to whether a worker has undergone a stress check without the worker's consent, primarily to encourage workers to undergo the check (Stress Check Manual, 7(3)). Nevertheless, employers are not permitted to force workers to have the check.

[18] Moreover, the analyses of business administration scholars like Misihiba[1(pp115–118))] on the basis of data from MHLW[28)] and elsewhere show a tendency for managers to delegate mental health measures to the EAP and other external specialist organizations wholesale rather than changing their own workings arrangement. At a minimum, it is clear that few managers change their working arrangements based on the results of group analyses of stress checks.

[19] This is likely because the system has a multilayered structure, which makes it difficult to decide which parts to look at when determining its effects, and that it possesses many facets, such that its effects are not limited to alleviating mental distress but also include helping people concerned about stress factors become aware of issues and create opportunities for dialog as well as facilitating test participants' ability to come to terms with the situation.

[20] This investigation research appears to share data with that discussed by Imamura *et al., op. cit.*,[30)] but the analysis method is different; thus, this paper treats them as separate research.

[21] Schaufeli *et al.*[33)] termed this "work engagement". In Japan, Professor Shimazu Akihito[34)] and others have spread this concept.

[22] This paragraph is my own personal view. However, considering the coincidence of the timing of suicides decreasing and the economic situation improving, I think that we can see a clear expansion of the gatekeeper system to prevent suicide, the system of clearing persons with mental illnesses for work at companies, etc., and the system to support workers to return to work after temporary retirement or other leave.

[23] MHLW website. https://www.mhlw.go.jp/kokoro/speciality/data.html. Accessed October 19, 2020.

[24] I have proposed from an early stage that there should be assessments of positive aspects in addition to psychosocial risks[35)].