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Author(s)	Kojima, Noriaki; Fujikawa, Keiko
Citation	Osaka University Law Review. 2003, 50, p. 21-32
Version Type	VoR
URL	https://hdl.handle.net/11094/10849
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Three Issues on Amendment of the Workers Dispatch Law¹⁾

– Amendment should be based on proper data reflecting agency workers' voice –

Noriaki KOJIMA²⁾

Keiko FUJIKAWA³⁾

The Workers Dispatch Law⁴⁾ (hereinafter, “the Law”) in Japan is going to be amended at the ordinary session of the Diet summoned in January 2003. Upon amendment of the Law, it is supposed to reflect the voice of agency workers according to the 3-year Plan for Deregulation Promotion. We present three issues which must be considered on this amendment.

1. Restriction of the contract term should be abolished

For present, the contract term of agency work is restricted to the maximum of 3 years for the 26 jobs⁵⁾ prescribed in a government ordinance by an administrative guidance, and restricted to the maximum of 1 year for other jobs including sales by

1) This article was originally written by Noriaki Kojima for the Nihon Keizai Shimbun “Keizai Kyoshitsu” (an economics class) issued on November 22, 2002, and titled as “*Regulatory Reform of the Workers Dispatch Law is a must.*” Tables and notes are added and some corrections are made by the authors for this issue.

2) Professor, Osaka University, Graduate School of Law, and a special member of the Council for Regulatory Reform, an advisory council of the prime minister of Japan.

3) Visiting researcher of Works Institute, Recruit Co., Ltd. Ph.D of Law, Osaka University.

4) Although we use the term “Workers Dispatch Law” here in this article according to the custom, it is actually more adequate to use the term “Agency Work Law” to represent the nature of the Law.

5) The 26 jobs are as follows: 1) computer software development, 2) machine design, 3) broadcasting equipment operation, 4) broadcasting program direction, 5) office equipment operation, 6) translation, interpretation, and stenography, 7) secretary, 8) filing, 9) investigation, 10) accounting, 11) trade document preparation, 12) demonstration, 13) tour conductor, 14) janitor, 15) operation, inspection and maintenance of construction equipment, 16) receptionist and parking attendants, 17) research and development, 18) business planning, 19) production and edit of books and magazines, 20) ad design, 21) interior coordinator, 22) announcer, 23) OA instruction, 24) telemarketing sales, 25) sales engineer/sales of investment merchandise, and 26) stage setting. Exactly speaking, neither the Workers Dispatch Law nor administrative guidance does restrict the contract term or renewal for No.14 through No.16 and No.24 exceptionally.

the Law. According to a agency workers survey, which the Japan Staffing Services Association (hereinafter, "the JASSA") conducted (hereinafter, "the Survey")⁶⁾ in August 2002, 47.1% of the respondents said, "it is better to abolish the 3 year restriction for the 26 jobs, and 47.4% agreed to abolish the 1 year restriction for other jobs. (See Figures 1-1 and 1-2). This figure increases to nearly 60% by adding the number of the respondents who want extension of the contract term. About 90% of respondents, who agree to abolish or extend the 3 year restriction, and Nearly 70% who are for abolishing or extending the 1 year restriction, think so because "it is not understandable to finish the job when I like the job itself and the workplace." (See Figures 2-1 and 2-2). On the other hand, only 9.3% agrees to the 3-year restriction and 6.1% to the 1-year restriction. (See Figures 1-1 and 1-2).

Agency work has traditionally been viewed as a temporary or casual work style⁷⁾ since the last amendment of the Law in 1999, however many agency workers do not consider their work as "temporary" or "casual."

According to the Survey, 51.6% of the respondents prefer to continue to work as an agency worker, whereas 36.4% prefer to be hired as a regular worker. They want to work as an agency worker for 42.6 months on average, which exceeds 3 years. (See Figures 3-1 and 3-2).

It has been explained that the contract term for agency work should be limited to protect the jobs of regular workers from temporary jobs. Agency workers should quit their jobs at client firms within a certain period so that they would not replace regular workers of client firms. This is such a harsh treatment to agency workers.

Indeed, it is natural that regular workers at client firms using agency workers want to protect their jobs especially when the economy is not strong and companies are desperate for downsizing. Thus, in a case that client firms use agency workers for a long period it may be appropriate to consider obliging them to "make an effort to have their regular workers understand the situation and cooperate," modeling the case of company division⁸⁾.

Furthermore, trade unions at client firms should consider taking responsibilities to support agency workers at the same workplace and discuss with employers

6) The Survey was entrusted to NLI Research Institute for preparation and conduct.

7) For example, the word "temporary" had been used for 90 times during the Labor Committee meetings of the House of Representatives for the 1999 amendment of the Workers Dispatch law (which introduced the negative listing for agency work and expanded jobs from the special and technical 26 jobs to all jobs except those on the list). The idea that all agency works are "temporary" is rather fixed.

8) See Article 7 of the Law Relating to the Succession of Labor Contracts along with Company Divisions.

(client firms) on improving their working conditions. This is difficult when there is no direct employment relationship between client firms and agency workers. It could be possible to start negotiation or consultation if the aforementioned legal scheme is set.

Even in Germany where they have stricter contract term limit, an amendment bill to abolish the limit was introduced to the Federal Congress on November 8, 2002, the bill passed on November 15⁹⁾. Trade unions in Germany agreed to the bill upon the condition that the collective agreement should be applied to agency workers, or if not the working conditions of agency workers should be equal to those of regular workers at client firms¹⁰⁾.

Why do only agency workers have to have restriction on how long they want to work? Now is the time for Japanese trade unions to answer this question.

2. Agency workers want the prior interview

The Law and guidelines prescribe that client firms shall not do any conduct to aim to specify what agency worker they want to use. The purpose of this provision is to prevent vagueness of the employment relationship. To interview agency workers prior to the start of the contract job is prohibited by the provision.

But the reality differs from law. The prior interview has been done extensively. The staffing agency survey conducted by the Ministry of Health, Labor and Welfare (hereinafter, "the MHLW") in June 2002 shows 33.2% of client firms admit that they *often* do the prior interview, and in total 47.2% adding the number of *sometimes*. For client firms using the temp-to-hire service¹¹⁾, these figures increase to 52.8% and 69.7%. (See Figures 4-1 and 4-2).

Actually agency workers prefer to have the prior interview according to this MHLW survey. For instance, only 4.5% of agency workers are against legalizing the prior interview, and it is only 7.7% even if you add the number of "better not legalize in certain cases." Contrarily, 48.0% agree to legalize the prior interview,

9) See Information office of German Federal government (Bundesregierung Deutschland, <http://eng.bundesregierung.de/frameset/index.jsp>), "German parliament passes job market legislation," November 19, 2002.

10) The draft of the EU Directive regulating working conditions for temporary agency workers published in March 2002 also permits to exclude the principle of equal treatment between agency workers and regular workers of client firms in case the collective agreement applies to agency workers (Article 5-3).

11) Temp-to-hire services are popular in the United States and European countries. The Japanese version of temp-to-hire services is different, and actually called "job search type agency work."

and this figure goes up to 86.2% including the answer “ok to legalize in certain cases.” (See Figure 5-1). The reasons why they agree with the prior interview are, for instance, “it makes agency workers see and understand what kind of jobs they are really assigned to” (86.5%), “agency workers can feel the atmosphere of the workplace” (63.3%), or “client companies can understand what I am (45.5%).” (See Figure 5-2). Agency workers want to know about bosses and coworkers at workplaces and also want them to understand what kind of person they are. It does not matter if they work for a week, a month, or 3 years. For the same reason, 85.5% of client firms ask for legalizing the prior interview. (See Figure 6-1 and 6-2).

Mismatches will reduce steadily once the prior interview becomes legitimate. Agency workers are not machines providing services called “dispatched or temporary work.” They are living beings.

It is almost odd that the prior interview for temp-to-hire services is presently prohibited. There is no country that prohibits the prior interview. By contrast, the trial period is permitted for agency workers in France¹²⁾.

3. Agency work for manufacturing jobs should be permitted

In Japan, many jobs have been prohibited in the field of agency work by the Law and the government ordinance such as harbor transportation, construction, security guard, medical related and manufacturing jobs. Jobs such as lawyers or licensed tax accountants are also prohibited by an administrative guidance.

The upcoming amendment seems to focus on lifting the ban of manufacturing jobs. There is no country that prohibits agencies handle manufacturing jobs and, the agency work in this sector occupies an important role in the United States and European countries.

Whereas agency work has been prohibited, in-house outsourcing (outsourcing on the premises or plants) has come a long way in the manufacturing industry and manufacturing jobs. But some problems occur in case of in-house outsourcing, namely client firms are unable to control or direct the workers of outsourcing companies. Some point out issues on work related accidents. Lifting the ban of manufacturing jobs against agency work, these issues will be solved. But the contract term limit of 1 year will be the barrier for agency work to replace in-house outsourcing.

12) See Yoichi Shimada, France, THE RESEARCH ON THE SITUATIONS AND ISSUES OF THE EXTERNAL LABOR MARKET, at 65 through 75, Business Policy Forum Japan, April 2002.

The Ministry of Health, Labor and Welfare conducted the survey, in June 2002, of in-house outsourcing in the manufacturing industry asking client firms of in-house outsourcing “if they want to use agency work in manufacturing jobs.” Results show 40.4% of respondents “do not want to use agency work if the 1-year term limit remains.” This figure goes down to 25.8% if the 1-year term limit is abolished, and 70.3% says they want to use agency work. (See Figure 7-1 and 7-2).

Upon lifting the ban, it is necessary to define the responsibilities of client firms in occupational safety and workers compensation. No just reason can be found to restrict the contract term only for manufacturing jobs.

The Japanese constitution secures people’s right to choose their occupation (Article 22), and of course this applies to agency workers. Thus, the ban of manufacturing jobs should be lifted without any restriction.

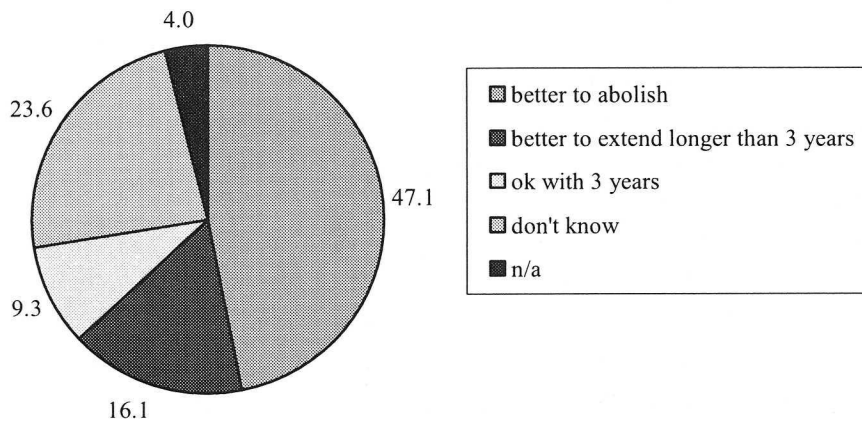
In Europe, Belgium abolished the ban of construction jobs in January 2002¹³⁾, and Germany will follow this trend on condition that the collective agreement is extendedly applied to agency workers who are not union members¹⁴⁾. No significant jobs has been prohibited other than construction in European countries¹⁵⁾. To lift the ban of manufacturing in Japan is the first step towards the world standard of agency work.

13) Staffing Industries, Inc., GLOBAL STAFFING NEWS FLASH, October 16, 2001, “*Belgium opening construction sector to temporary help.*”

14) We would like to express our gratitude to Professor Takayasu Yanagiya of Kwansei Gakuin University (Department of Law) for giving us detailed information about the amendments of the law in Germany.

15) Article 4-1 of the draft of the EU Directive mentioned above (note 10) prescribes as follows: “The Member States, –omitted–, shall review periodically any restrictions or prohibitions on temporary work for certain groups of workers or sectors of economic activity in order to verify whether the specific conditions underlying them still obtain,” and “if they do not, the Member States should discontinue them.”

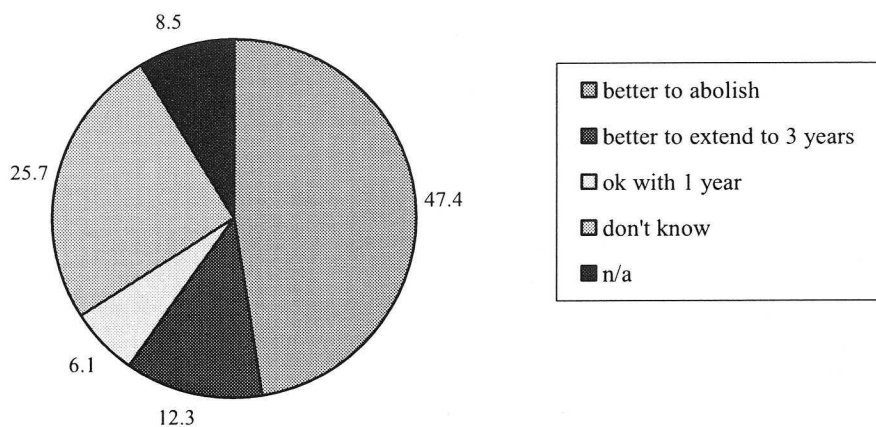
Figure 1-1 How do you feel about the 3-year contract term limit ?
(26 jobs)



(Unit: %, n=5010)

Source: JASSA, "Agency Workers Survey", August 2002

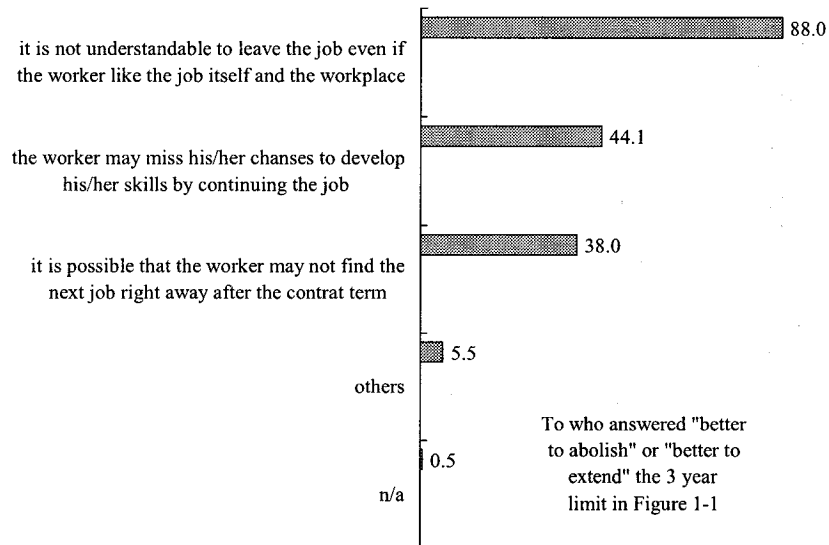
Figure 1-2 How do you feel about the 1-year contract term limit ?
(other jobs)



(Unit: %, n=5010)

Source: JASSA, "Agency Workers Survey", August 2002

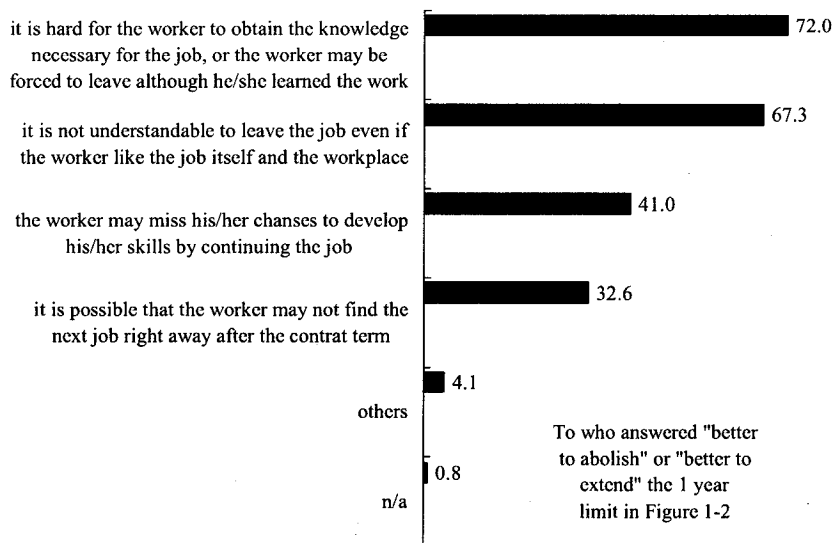
Figure 2-1 Why do you think so ?



(Unit: %, n=3163, MA)

Source: JASSA, "Agency Workers Survey", August 2002

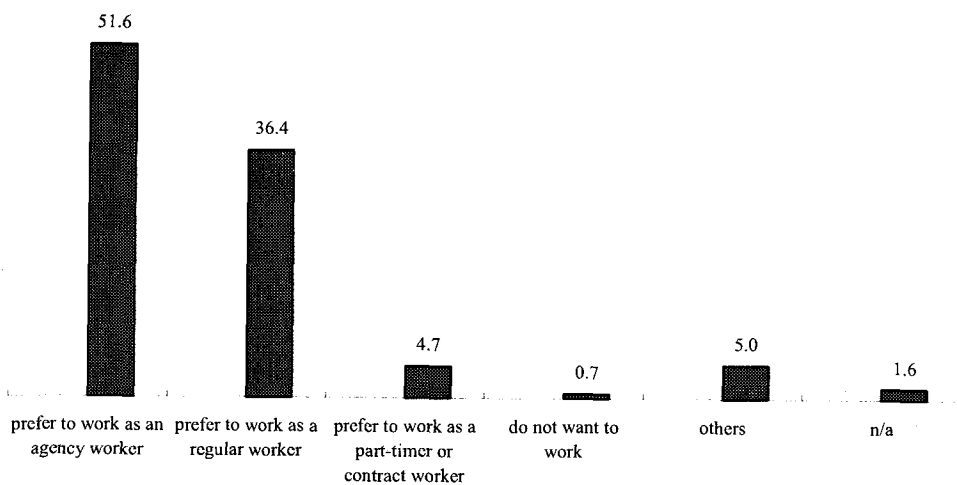
Figure 2-2 Why do you think so ?



(Unit: %, n=2990, MA)

Source: JASSA, "Agency Workers Survey", August 2002

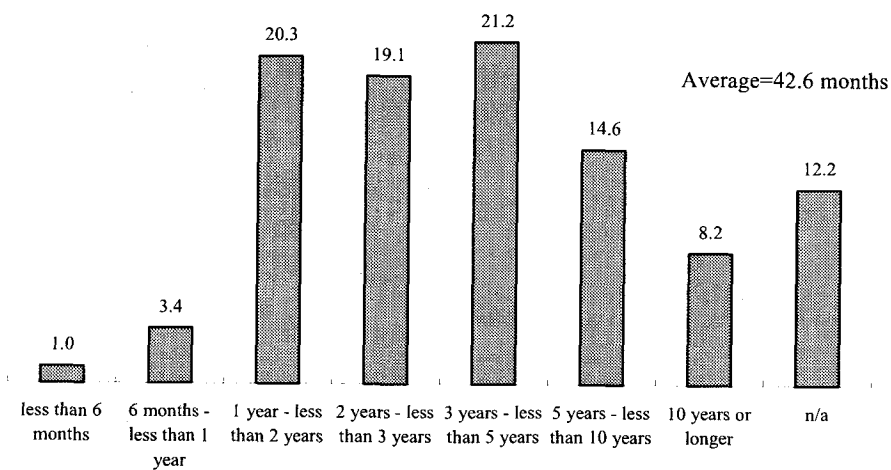
Figure 3-1 What work style do you prefer in the future ?



(Unit: %, n=5010)

Source: JASSA, "Agency Workers survey", August 2002

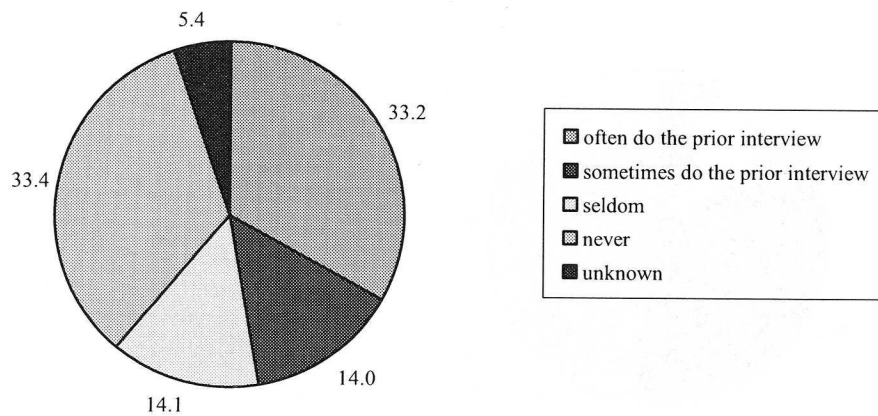
Figure 3-2 How long do you want to work as an agency worker ?



(Unit: %, n=5010)

Source: JASSA, "Agency Workers Survey", August 2002

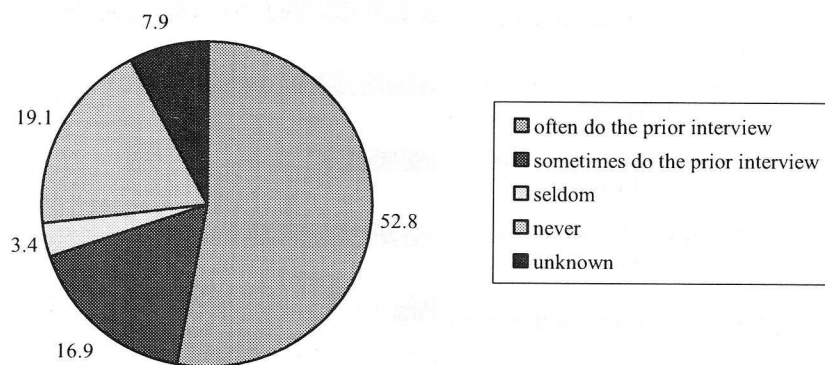
Figure 4-1 The fact of the prior interview at client firms



(Unit: %, n=2006)

Source: MHLW, "Worker Dispatch Agency Survey", June 2002

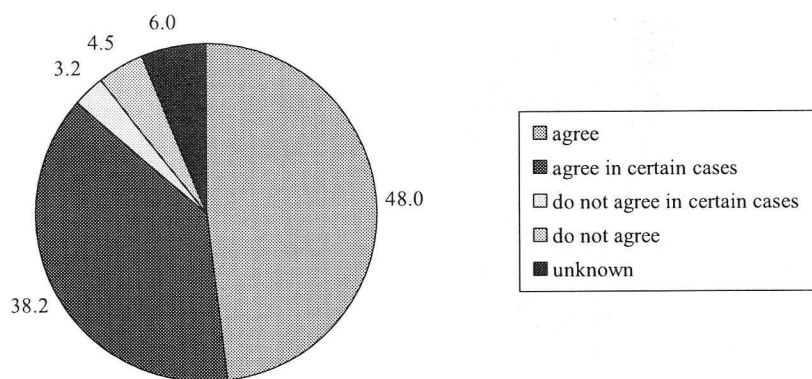
Figure 4-2 The fact of the prior interview at client firms which use temp-to-hire services



(Unit: %, n=89)

Source: MHLW, "Worker Dispatch Agency Survey", June 2002

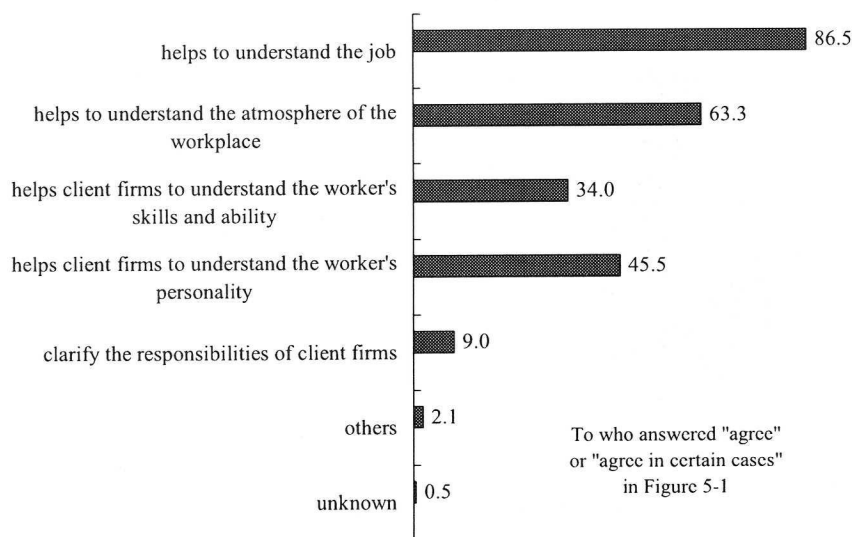
Figure 5-1 Do you think the prior interview should be legalized ?
(Question for agency workers)



(Unit: %, n=3460)

Source: MHLW, "Worker Dispatch Agency Survey", June 2002

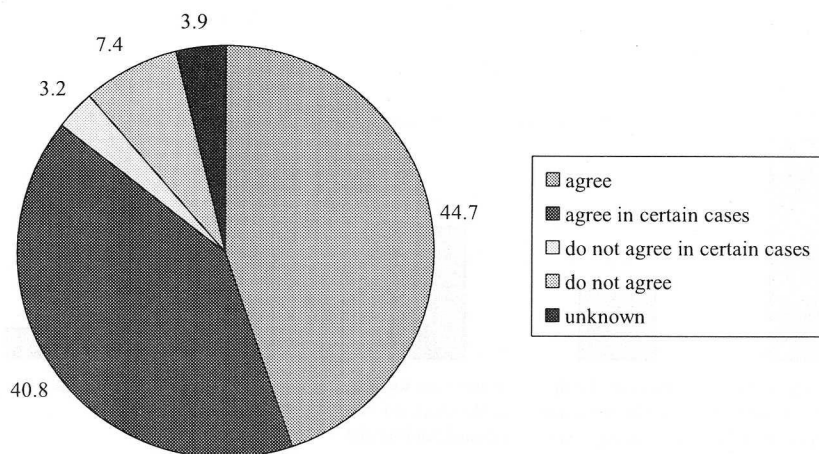
Figure 5-2 The reason why the prior interview should be legalized
(Question for agency workers)



(Unit: %, n=2984)

Source: MHLW, "Worker Dispatch Agency Survey", June 2002

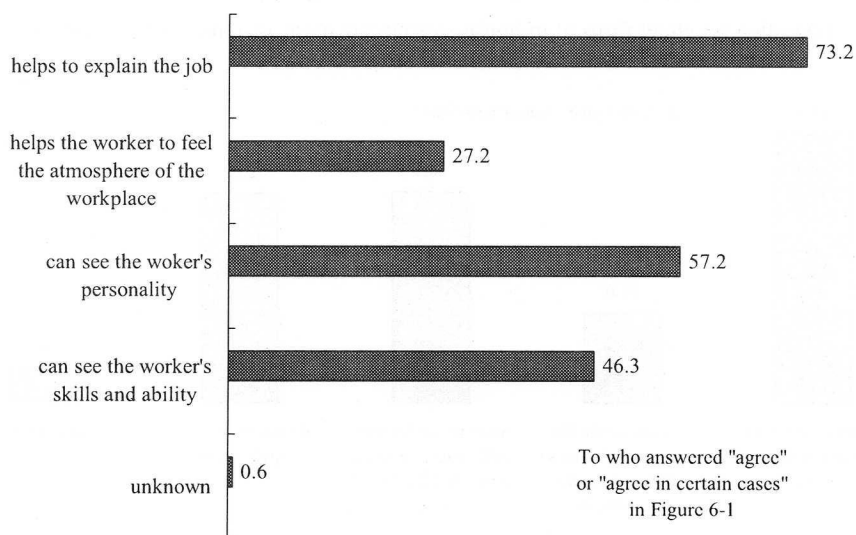
Figure 6-1 Do you think the prior interview should be legalized ?
(Question for client firms of agency work)



(Unit: %, n=2006)

Source: MHLW, "Worker Dispatch Agency Survey", June 2002

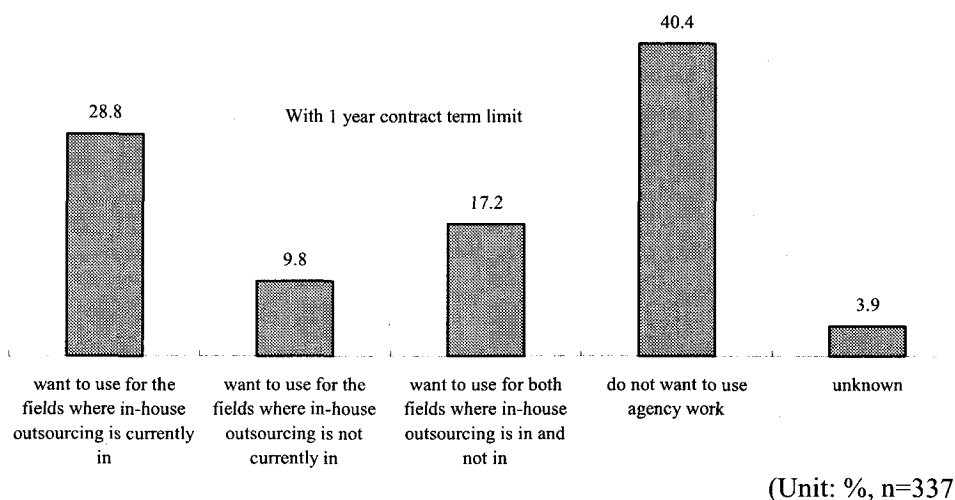
Figure 6-2 The reason why the prior interview should be legalized ?
(Question for client firms of agency work)



(Unit: %, n=1714)

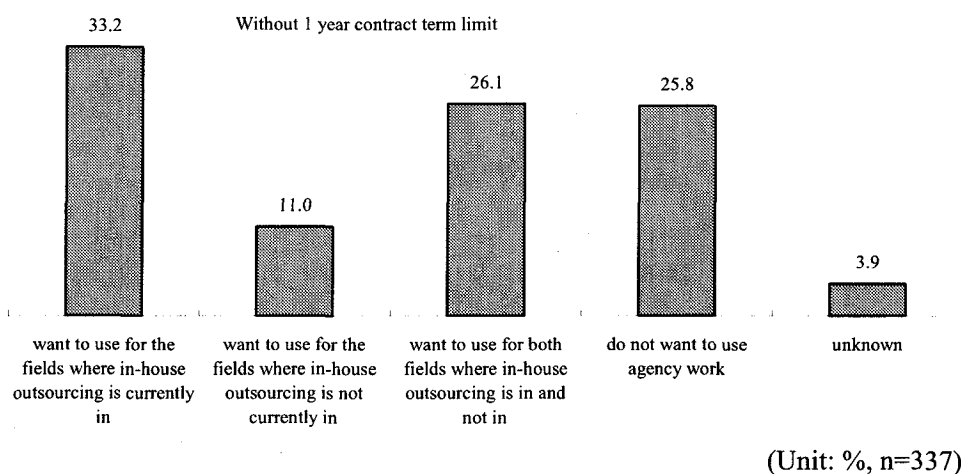
Source: MHLW, "Worker Dispatch Agency Survey", June 2002

Figure 7-1 Do you want to use agency work ?
(Question for client firms of in-house outsourcing in the manufacturing industry)



Source: MHLW, "Survey for in-house outsourcing in the manufacturing industry", June 2002

Figure 7-2 Do you want to use agency work ?
(Question for client firms of in-house outsourcing in the manufacturing industry)



Source: MHLW, "Survey for in-house outsourcing in the manufacturing industry", June 2002