



## Labor Update No.9 June, 2017

***This bulletin contains information on law changes that have either passed, or are being discussed, in parliament, court decisions, and other labor issues in Japan that are of interest to activists.***

### **1. Raise civil servants' retirement age to 65, expand employment for fourth-generation *nikkeijin*: LDP's Headquarters for Promoting Dynamic Engagement of All Citizens**

The LDP's Headquarters for Promoting Dynamic Engagement of All Citizens has announced a proposal for continuing economic growth in the era of shrinking population and an aging society.

Aiming to produce a ripple effect in private industries, where securing a labor force will be an issue, the proposal includes extending the retirement age for civil servants. They are hoping for this to be reflected in the "Basic Policy on Economic and Fiscal Management and Reform" (Big-Boned Policy) to be decided on by the Government in June.

The retirement age for civil servants currently is 60. Although there is a system of re-employment for those who have retired, this mostly involves short hours and simple tasks. The proposal seeks to extend the retirement age to 65 by fiscal year 2025, when the age to begin receiving a pension will also be raised to 65. The aim is to encourage private companies to do likewise, compensating for the reduction in the labor force by keeping elderly people active.

Furthermore, regarding *nikkeijin* (people of Japanese descent) from Brazil, Peru, etc., up until the third generation these people are able to have a status of residence with no restrictions on finding work in Japan. But the fourth generation and after face significant restrictions. Because of this, they propose to create a working-holiday system aimed at fourth-generation *nikkeijin*, so they can have opportunities to work while learning the Japanese language. The proposal also seeks to open discussion on expanding the qualifications for residence.

The proposal is in the link below (in Japanese):

[https://jimin.ncss.nifty.com/pdf/news/policy/134900\\_1.pdf](https://jimin.ncss.nifty.com/pdf/news/policy/134900_1.pdf)

### **2. Committee on Promoting Regulatory Reform proposes outsourcing part of the work of Labor Standards Inspectors to the private sector**

On May 10, a Task Force of the Government's Committee on Promoting Regulatory Reform put together proposals on the 8<sup>th</sup> to entrust private social insurance consultants with part of the tasks of Labor Standards Inspectors. For workplaces that have not filed a "3.6 agreement" between labor and management to set an upper limit on overtime work, social insurance consultants would examine whether there was any overtime work. In case there was a problem, they would then hand over the case to an Inspector with the authority to make compulsory investigations. This will be included in the report submitted in June. The Ministry of Health, Welfare and Labor is planning to accept the proposal.

The Labor Standards Law sets the upper limit on working hours at 8 hours a day and 40 hours a week. To have workers work overtime in excess of this limit, employers must sign a 3.6 agreement with their employees and file it with the Labor Standards Inspection Office.

According to the Labor Ministry's 2013 survey, 45% of employers nationwide did not have a 3.6 agreement on file. 35% of were not aware of the existence of such an agreement. Of the more than 4 million workplaces in the country, those that have been regularly supervised by a Labor Standards Inspector amount to only about 3%. Therefore, the Regulatory Reform Committee was discussing a need to complement their numbers with social insurance consultants.

The Regulatory Reform Committee will include this in their report to be submitted in June.

According to the proposal, licensed social insurance consultants would make requests to companies to carry out a self-inspection of their maximum working hours and compliance with work rules. If the company agreed, they would engage in voluntary inspection on the premises and/or consultation and guidance. Circumstances unable to be dealt with by a private agency would be handed over to a Labor Standards Inspector. Compulsory administrative guidance would be carried out by Labor Standards Inspectors, just as it is now.

Proposal in the link below (in Japanese):

<http://www8.cao.go.jp/kisei-kaikaku/suishin/meeting/committee/20170516/170516honkaigi01.pdf>

### **3. Health, Welfare and Labor Ministry begins publishing names of businesses charged with illegal overtime on their webpage**

On May 10, the Ministry of Health, Welfare and Labor began posting the names of companies that had had charges filed against them on suspicion of illegal overtime and other labor law violations on their homepage. The lists posted by Labor Bureaus nationwide on their web pages will be compiled and listed all together on the Ministry's page.

On that same day, 330 names of companies and workplaces that had had charges filed against them since October of last year for violating the Labor Standards Law, among other laws, were posted publicly. They are listed with the name of the law and type of violation, as well as the date when charges were filed. The list is to be updated once a month. Business names will remain on the list for a period of approximately one year, but those that rectify the illegal situation within that time will have their names removed from the list.

The Ministry has instructed Labor Bureaus before to publish the names of companies that have been charged. But up until now, most Bureaus only distributed a list to the news media. Only seven Bureaus, including Osaka and Iwate, had posted the list on their webpage before. From now on, all companies charged with violations will have their names listed on the page of their Labor Bureau, as well as on that of the Ministry.

This policy was part of the emergency measures to prevent overwork death (*karoshi*) that were put together at the end of last year in response to the overwork suicide of a new employee at advertising giant Dentsu. Ministry officials say they “hope this will lead to improved awareness on the part of companies regarding violations of the law”.

The relevant page on the Health, Welfare and Labor Ministry’s site is linked below (in Japanese):

<http://www.mhlw.go.jp/kinkyu/151106.html>

List posted on May 10, 2017, is linked below (in Japanese):

<http://www.mhlw.go.jp/kinkyu/dl/170510-01.pdf>

#### **4. Regulate overtime for teachers too: *karoshi* victims’ families sign Net petition**

Members of the “Project to Promote Work-Style Reforms for Teachers”, a group including bereaved relatives of teachers who died from overwork and education researchers, held a press conference at the Education Ministry on the 12th, calling for limits to be set on overtime work for teachers just as they are for other workers.

They began collecting signatures online on May 1, aiming to collect those of about 40,000 people by early June and submit the petition to both the ministers of Education and Labor.

Teachers in public schools do not receive overtime pay. Instead, an amount equivalent to 4% of their salary is paid to them as a “teaching adjustment”. Group representative Nobumoto Higuchi, professor at Meisei University, argued that “real work situations in excess of the *karoshi* line are rampant, but the mechanisms for keeping track of long hours are not functioning”. He called for improvement of the working environment, including through amending the laws.

According to a survey done by the Education Ministry in 2016, 30% of elementary-school teachers and 60% of middle-school teachers worked more than 60 hours per week. This is equivalent to 80 hours of overtime a month, the number set by the Labor Ministry as a guideline for recognizing overwork death.

Petition is here (in Japanese):

<http://bit.ly/2qxNXyx>

#### **5. Echizen City, Fukui Prefecture, removes “sex” field from civil service employment exam: consideration for minorities**

Echizen City, Fukui Prefecture, has removed the “sex” field from the application form for this year’s civil service employment exam. The step was taken in consideration of sexual minorities. There are other municipalities that have deleted the “sex” field from certain types of application forms, but for a civil service employment exam it is unprecedented. Even the Civil Servants Department of the Interior Ministry says they have “never heard of” it before.

This field was abolished on applications being accepted from the 8<sup>th</sup> to the 31<sup>st</sup> of this month, for the exam for employment starting next spring. On last year’s application form, there was a field where everyone was required to check “male” or “female”.

The city has been carrying out training for civil servants to expand understanding toward sexual minorities since 2014. During this process, the opinion that “when applying for employment, it is difficult to pick one or the other sex” is said to have been heard.

The exam will be held starting in June. It includes general knowledge, an aptitude test, and an interview. Takao Kawasaki, head of the city’s Office of Administrative Management, stated that “there are individuals who feel uncomfortable writing male or female. We judged that distinctions of sex are irrelevant to employment”.

In the private sector, there are examples such as a job-hunting site, in an effort to support sexual-minority students seeking work, adding a choice of “other” to the “sex” field.

Mikiya Nakatsuka, chair of the GID (Gender Identity Disorder) Society and professor of reproductive medicine at Okayama University Graduate School, praised the move, saying “it is very meaningful in spreading understanding of sexual minorities in society. There probably will be people who feel encouraged by this to take the exam”.

## **6. Towards preventing prolonged work hours: deliberation begins on “work interval”**

To prevent overlong hours of work, the Ministry of Health, Welfare and Labor has begun holding discussions on whether to recommend the spread of a “work interval” system, which would set a required number of hours’ rest between finishing work and beginning the next day’s work. Representatives of labor unions and economic organizations were among those participating in the meetings held at the Ministry.

Based on a national survey carried out in 2015, only just over 2% of companies had introduced a “work interval” system. In the “Work-Style Reform Implementation Plan” announced by the government in March of this year, companies will be required to make efforts toward introducing such a system.

Opinions such as “will the system only go well if there is a requirement to make efforts?” and “if one company introduces the system, it could cause difficulties in their relationships with clients and consumers”.

Going forward, the Health, Welfare and Labor Ministry plans to carry on discussion with an aim toward producing guidelines or a manual for spreading the system within this fiscal year.

Details are in the link below (in Japanese).

<http://www.mhlw.go.jp/stf/shingi/other-roudou.html?tid=444910>

## **7. “Napping is part of working hours: Aeon-associated company ordered to pay overtime**

Chiba District Court handed down a verdict on May 17 in the case of a 52-year-old male employee of a security company associated with Aeon. Claiming that time spent napping on night-watch duty should be included in working hours, he had sued for payment of overtime. The judge decided mostly in favor of the plaintiff, on the grounds that “he cannot be said to be guaranteed a release from work” in that time, and ordered the company to pay a total of 1.8 million yen in overtime pay and fees.

According to the ruling, the man was hired in 2011 and worked as a security guard at supermarkets in Tokyo and in Chiba City. From January to August of 2013, when he was working at the store in Chiba, he had a 24-hour shift with a 30-minute break and a 4-and-a-half-hour nap time.

The plaintiff claimed that “even during this nap time, I could not remove my uniform, and had to remain able to respond immediately in case of any emergency. Therefore, it was not a release from duty”. Judge Obama pointed out that “neither the nap time nor the break time can be said to be a release from work”.

After court adjourned, the man spoke to the press, saying “I have colleagues working under similar conditions. I hope this ruling can lead to improvements in working conditions in the security industry”. The company commented that “we would like to examine this ruling closely, and take the appropriate measures”.

## **8. Unprecedented “full trial” for prolonged working hours**

A supermarket accused of illegally making workers work more than 100 hours of overtime has been put on trial.

This type of case usually results in a “summary order” to simply pay a fine. This time, however, it went to an official trial. Why is this?

The supermarket is accused of having made four employees work unfairly long hours in 2014 and 2015.

The employee with the longest hours worked 105 hours of overtime in a month, and received hardly any overtime payment.

The prosecutor at first sought a summary order to pay a fine, rather than going to trial, but the court made the decision that there should be a public trial.

The supermarket's company president stated in court on the 18<sup>th</sup> that "we are sorry that our attendance management was not good enough".

The company's lawyers, claiming that "the company has already paid 170 million yen for the past two years of unpaid overtime, and has improved their management", asked for a lenient judgment.

On the other hand, the prosecutor claimed that "this supermarket has already received warnings 31 times from the Labor Standards Inspection Office", and requested a fine of 500,000 yen.

It is unprecedented for the Osaka Summary Court to decide, in a case of long working hours or unauthorized labor, that "a summary order is not appropriate" and hold a full-fledged trial.

**## Documents distributed at the 2<sup>nd</sup> Labor Policy Council Labor Conditions Section, Occupational Security Section, and Employment Equality Section, Equal Pay for Equal Work Subcommittee (held May 12, 2017) (in Japanese):**

<http://www.mhlw.go.jp/stf/shingi2/0000164682.html>

Document No.1: Arguing points (proposed) (concerning short-hour workers and limited-term contract workers)

[http://www.mhlw.go.jp/file/05-Shingikai-12602000-Seisakutoukatsukan-Sanjikanshitsu\\_Roudouseisakutantou/0000164685.pdf](http://www.mhlw.go.jp/file/05-Shingikai-12602000-Seisakutoukatsukan-Sanjikanshitsu_Roudouseisakutantou/0000164685.pdf)

Document No.2: Reference materials concerning the current system

[http://www.mhlw.go.jp/file/05-Shingikai-12602000-Seisakutoukatsukan-Sanjikanshitsu\\_Roudouseisakutantou/0000164686.pdf](http://www.mhlw.go.jp/file/05-Shingikai-12602000-Seisakutoukatsukan-Sanjikanshitsu_Roudouseisakutantou/0000164686.pdf)

Document No.3: Reference materials for interim report of deliberation committee concerning equal work for equal pay "Opinions of committee members from their specialist viewpoints" (Dec. 16, 2016)

[http://www.mhlw.go.jp/file/05-Shingikai-12602000-Seisakutoukatsukan-Sanjikanshitsu\\_Roudouseisakutantou/0000164687.pdf](http://www.mhlw.go.jp/file/05-Shingikai-12602000-Seisakutoukatsukan-Sanjikanshitsu_Roudouseisakutantou/0000164687.pdf)

**## Documents distributed at the 3<sup>rd</sup> Labor Policy Council Labor Conditions Section, Occupational Security Section, and Employment Equality Section, Equal Pay for Equal Work Subcommittee (held May 16, 2017)**

Document No.1: Arguing points (proposed) (concerning dispatched workers)

[http://www.mhlw.go.jp/file/05-Shingikai-12602000-Seisakutoukatsukan-Sanjikanshitsu\\_Roudouseisakutantou/0000165056.pdf](http://www.mhlw.go.jp/file/05-Shingikai-12602000-Seisakutoukatsukan-Sanjikanshitsu_Roudouseisakutantou/0000165056.pdf)

Document No.2: Reference materials concerning the current system

[http://www.mhlw.go.jp/file/05-Shingikai-12602000-Seisakutoukatsukan-Sanjikanshitsu\\_Roudouseisakutantou/0000164946.pdf](http://www.mhlw.go.jp/file/05-Shingikai-12602000-Seisakutoukatsukan-Sanjikanshitsu_Roudouseisakutantou/0000164946.pdf)