



Labor Update No. 107 Feb. 19, 2021

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.

Law/Policy

(1) Employment adjustment subsidies: conditions for full subsidy relaxed--covering the cost for leaves of absence

The Ministry of Health, Welfare and Labor (MHWL) has announced, in regard to the employment adjustment subsidies that cover the cost when companies pay employees a leave of absence, that they will relax the conditions of eligibility for a full subsidy. Up until now, to qualify, a company had to have not engaged in any dismissals since January 24 of last year. The new rules will make small to mid-size businesses, along with some larger companies, eligible as long as they have not dismissed anyone since January 8 of this year.

Based on the worsening of the employment situation caused by the spread of COVID-19, the special measures for employment adjustment subsidies began last year, making small and medium-sized companies eligible for, at maximum, a full subsidy. Since the start of this year, the subsidy has been raised to a full amount also for large companies nationwide that have seen large drops in sales over the past three months, as well as those (such as restaurant companies) that have cooperated with shortened opening hours due to the State of Emergency.

“Concerning the Treatment of Non-Regular Workers at Large Companies in Regard to Leave Support and Benefits, and the Relaxing of the Maintenance of Employment Condition for Employment Adjustment Subsidies” MHWL

https://www.mhlw.go.jp/stf/houdou/0000107715_00003.html

(2) Leave support payments for non-regular workers at large companies: 60% of wages for last spring

The MHWL has announced new employment measures to deal with the lengthening COVID-19 pandemic. Leave support payments, given to workers who cannot get an allowance for leave of absence, will be available to non-regular (part-time, etc.) workers--such as shift workers at large companies--for periods of absence from work as far back as last spring. For absences from April to June of last year, 60% of the wage will be provided. From last autumn onwards--when prefectures requested shortened

opening hours--the current rate of 80% will apply.

The MHWL explained the reasons for lowering the payment level for last spring, and for making last summer exempt, by saying “we took into consideration the balance with cases where the basic Employment Adjustment Subsidy was used”.

“Concerning the Treatment of Non-Regular Workers at Large Companies in Regard to Leave Support and Benefits” MHWL

https://www.mhlw.go.jp/stf/newpage_16671.html

(3) Employment adjustment subsidies “back to normal from July, as long as employment situation does not worsen”--MHWL

The government will continue the current expansion measures for employment adjustment subsidies until the end of April. These subsidy special measures provide for raising the maximum subsidy amount to 100%, up to a limit of ¥15,000 per worker per day. The special measures are set to be reduced gradually in stages from May through June.

Tamura Norihisa, Minister of Health, Welfare and Labor, has explained that “basically, starting in July, as long as the employment situation does not worsen too greatly, we are considering along the lines of returning [the subsidies] to normal”. He also stated on the other hand that “if the situation is predicted to be severe, then we will have to think of proper steps to meet the situation”, leaving room for future measures as necessary.

2. Legal Violations/Disputes

(1) “Discrimination against part-timers”: woman working for restaurant chain files for mediation, seeking *kyugyo teate* payment

A woman who works part-time for Fujio Food Systems, the company behind restaurant chains “Maido Okini Shokudo” and “Kushiya Monogatari” among others, filed for mediation at the Kanagawa Labor Bureau in December of last year, seeking payment of *kyugyo teate* (allowance for absence from work).

The mediation has already been scheduled to go ahead.

When a commercial facility closed last April because of the (first) State of Emergency, a cake shop located there also had to close until the end of May.

The woman was paid *kyugyo teate* only for the few days for which her shifts had already been scheduled. She was not paid anything for the month of May at all.

The union that the woman is a member of demanded collective bargaining, and even went on strike in September and in December, but the company still refused to pay.

Regular full-time employees (*seishain*) are paid 100% *kyugyo teate*.

“There is no major difference between the tasks done by part-timers (*paato* and *arubaito*) and full-timers (*seishain*), so isn’t this unreasonable discrimination?” the woman says, and on December 25 of last year, she filed a request for mediation at the Kanagawa Labor Bureau seeking payment of ¥13,353 in *kyugyo teate*.

(2) Fuji Soba fires two union officers--conflict over unpaid overtime

It has come to light that the Daitan Group operating company that runs standing noodle-bar chain “Nadai Fuji Soba” fired two union officers on January 29. The officers are the chair and the general secretary of Fuji Soba Labor Union, which is in dispute with the company over their demand for back-payment of unpaid overtime. The union has objected that “the reasons for punishment are groundless”, and says they will fight to void the firings.

One of the disciplinary dismissals was given to union chair Abe Shigeto. He and the other union officer both worked as subsection chiefs for the operating company, Daitan Dish. The notice of reasons for dismissal said that ① in order to gain advantage in the labor tribunal hearings over their claims of unpaid overtime, they had forged or falsified work records, such as business reports, after the fact; and ② in order to make it hard for the company to present counter-evidence at the labor tribunal, they had altered the company’s systems that contained branch managers’ attendance data.

(3) 540 hours of unpaid overtime at Yamagata University: supervisor directs staff to record leaving work on time? LSIO gives citation

It has become known that Yamagata University failed to pay overtime to a man who works for the engineering department at the Yonezawa Campus, and that the Yonezawa Labor Standards Inspection Office issued a citation on October 14, 2020, stating that this was a violation of the Labor Standards Act. The university is planning to back-pay the unpaid amount on February 17.

The unpaid period was from August 2019 to December 2020, and the total amount of overtime is said to have been 540 hours. The LSIO issued a citation after receiving a report from the employee.

The university asked the man about his overtime situation, and made a close inspection of his working hours.

The staffer indicated that he had instructions “from the supervising professor to record leaving work at the regular time”. The man followed these instructions, but was dissatisfied with them. So, he says, he kept an accurate record of his working hours in the office “attendance register”.

3. Situation/Statistics

(1) Bonuses for part-timers up by 20% from previous year: effect of “Equal Pay for Equal Work”?

The MHWL has released their Monthly Labor Statistics Surveys for 2020, which survey movements in workers' wages among other things. Part-timers' "specially paid earnings", corresponding to bonuses, etc., averaged ¥3,000, which is an increase of 20.1% compared to the year before, and the greatest yearly amount of increase since 2001. The MHWL considers this to be in part due to the effect of the law on "Equal Pay for Equal Work", which forbids unreasonable disparities in treatment between regular and non-regular workers, and which came into effect for large companies starting in April of 2020.

The amount of "special earnings" for part-timers has increased now for three years in a row. But the amount of increase this time was far higher than 2018 number of 4.2% or the figure of 1.6% for 2019. On the other hand, monthly average total cash earnings per worker, corresponding to nominal wages, were ¥318,299, down 1.2% compared to the previous year, and the second year in a row to show a decrease. Scheduled cash earnings, including base pay, grew by 0.2% compared to the year before; but due to the effects of the COVID-19 pandemic, non-scheduled cash earnings--such as overtime pay--declined by 12.1%. The real wage index, indicating the movement of wages exclusive of the effects of changes in prices, also declined by 1.2% from the year before, decreasing for the second year in a row.

"Monthly Labor Statistics Survey: Preliminary Results, Reiwa 2 [2020]" MHWL
<https://www.mhlw.go.jp/toukei/itiran/roudou/monthly/r02/02cp/dl/pdf20cp.pdf>

(2) Transport allowances for *seishain* vs. non-regular staff: disparities at two in ten companies--Kumamoto Labor Bureau survey

A survey by the Kumamoto Labor Bureau has made it clear that two in ten companies within Kumamoto Prefecture have disparities in the commuting allowances they pay to *seishain* (regular full-time staff) versus non-regular employees (part-timers etc.). The "Equal Pay for Equal Work" guidelines, which forbid "unreasonable disparity in treatment" between regular and non-regular employees, call in principle for equal payment of transport allowances.

The Part-Time and Limited-Term Employment Act, which stipulates "Equal Pay for Equal Work" and which came into effect for large companies in April of last year, will apply to small and medium-sized companies as well starting in April of this year. If a worker asks for an explanation of a disparity in treatment, companies will be required to give one.

The Kumamoto Labor Bureau carried out this survey by distributing a voluntary check list to companies whose headquarters functions were located in the prefecture. Of the 546 companies that had non-regular employees, 109, or 20.0%, answered that there were disparities in treatment of transport allowances. Of these 109, 37, or 33.9%, answered that they "can not explain" the disparities.

There were also disparities in systems for sick leave at 76 companies, or 13.9%, with 19 of these companies also answering that they could not explain the reasons.

The Kumamoto Labor Bureau Employment Opportunity and Equality Office points out that “where they cannot give a reasonable explanation, there is a chance that this would be judged an unreasonable disparity in treatment”. They say they will provide consultation on concrete ways to deal with the problem.