



## Labor Update No. 108 March 5, 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.*

### 1. Law/Policy

(1) Expanded health and pension insurance eligibility for short-hours workers starting in October of Reiwa 4

<https://www.nenkin.go.jp/oshirase/topics/2021/0219.html>

(2) Free job training, maximum ¥100,000 benefit for those with monthly income under ¥120,000: MHWL

The Ministry of Health, Welfare and Labor (MHWL) will be expanding the scope of the job-seekers' support program that provides free vocational training to those looking for jobs while unable to receive unemployment insurance.

Those who fulfill certain criteria are able to take training courses free of charge, and to receive a benefit of up to ¥100,000 per month. Currently, only those with monthly income up to ¥80,000 are eligible. But for those who do shift work, etc., this will be broadened to include people with monthly incomes of up to ¥120,000. This is a special exception that will be in effect until September.

“Written Questions Concerning ‘Summary of Proposed Ministerial Ordinance to Amend Part of the Enforcement Regulations in Regard to Support for Specified Job-Seekers Through Provision of Vocational Training. Etc.’”--25th Labor Policy Council Personnel Development Subcommittee

<https://www.mhlw.go.jp/content/11601000/000741809.pdf>

(3) “Manual to promote Employment Until 70”: Elderly and Disabled Jobseekers’ Support Agency

<https://www.jeed.go.jp/elderly/data/q2k4vk000000tf3f-att/q2k4vk000003n1kz.pdf>

(4) “In Regard to the Treatment of Non-Regular Workers at Large Companies by the Leave-Support Fund and Benefit”--MHWL

[https://www.mhlw.go.jp/stf/newpage\\_16994.html](https://www.mhlw.go.jp/stf/newpage_16994.html)

(5) Latest “COVID-19 Special Exemption for Employment Adjustment Subsidies”

<https://www.mhlw.go.jp/content/11600000/000743293.pdf>

(6) Proposal decided on for men's childcare leave: taking two two-week breaks, etc.

In order to encourage more men to take childcare leave, the government has decided on a proposed legal amendment. The decision was made in Cabinet on the 26<sup>th</sup>. The amendment would allow a total of four weeks' leave within the eight weeks after a child is born, which could, among other things, be taken at two different times.

The proposal also includes making it a requirement for large companies to publish the proportion of their employees taking childcare leave.

“ Bill to Amend Parts of the Act on the Welfare of Workers Who Take Care of Children or Other Family Members Including Child Care and Family Care Leave, and of the Employment Insurance Act (submitted Feb. 26, Reiwa 3 [2021]), Summary”

<https://www.mhlw.go.jp/content/000743976.pdf>

(7) Parents who took time off due to school closings to receive subsidies by applying on their own

Last year, many parents and guardians of school-age children had no choice but to take time off work when schools were temporarily closed nationwide. Since there have repeatedly been cases where such parents were unable to receive subsidies because their employers failed to apply, the government has now decided on a policy of changing the subsidy system so that these parents and guardians will be able to apply on their own.

In order to support parents and guardians who had to take time off work because of the COVID-19 school closings, the MHWL set up a subsidy system in March of last year that would pay out up to ¥15,000 per day. But with cases being seen one after another where people were unable to receive these payments due to their company not applying, the total amount paid out by the system so far has only amounted to about three-tenths of what was budgeted for it.

Therefore the government has decided to alter the system so that, even without an application from an employer, if parents or guardians themselves file an application, they will be able to receive up to ¥15,000 per day.

(8) MHWL proposes new guidelines for remote work: different treatment for non-regulars banned, measures to prevent over-long hours

The MHWL has indicated a new proposed set of guidelines to a subcommittee of the Labor Policy Council (an advisory body to the Minister) for companies introducing “tele-work” (remote work) in response to the COVID-19 pandemic. These guidelines would forbid distinctions on the basis of form of employment, such as not allowing remote work for “non-regular employees” (part-timers, temps etc.). Also, as a way of dealing with the problem of long working hours, they would encourage agreements to be made between labor and management to set limits on overtime, weekend and

holiday work.

Furthermore, the guidelines would also forbid discriminating in workload or personnel evaluations between those who come into the office and those who work remotely. They would also ask that work rules be made so as to avoid having the costs of materials such as computers or the connection costs be an excessive burden on remote workers.

“Guideline for Appropriate Introduction and Promotion of Tele-Work (Proposal)”  
--MHWL 38<sup>th</sup> Labor Policy Council Employment Environment and Equality Subcommittee

<https://www.mhlw.go.jp/content/11901000/000748338.pdf>

## 2. Legal Violations/Disputes

### (1) Uber drivers are employees, says UK Supreme Court--impact on “gig economy”

In a case over the rights of drivers for the ride-hailing service run by major US company Uber Technologies, the UK Supreme Court has handed down a verdict recognizing that these drivers are “employees” of the company.

"Uber Loses Supreme Court Ruling over Rights of Drivers"--The Irish Times

[http://bit.ly/uber\\_drivers\\_ruling](http://bit.ly/uber_drivers_ruling)

### (2) Charges filed against president of bankrupt department store for failing to pay allowances in lieu of notice when dismissing employees

The Yamagata Labor Bureau has filed charges with the Yamagata District Prosecutor's Office against department store Onuma, which went bankrupt in January, and its president, they have announced. The company and the president are charged with violating the Labor Standards Act by having failed, when dismissing their employees, to pay them any allowance in lieu of advance notice of their termination.

When the company laid off 185 employees, despite not giving them any advance notice, they are suspected of not paying them a total of ¥40 million in allowances in lieu of notice. The company filed for voluntary bankruptcy at Yamagata District Court.

### (3) Former dispatch employee's claim dismissed--Osaka District Court, in transport allowance suit

A former dispatched employee of Recruit Holdings group company Recruit Staffing has had his lawsuit against the company, for about ¥600,000 in damages, rejected by the Osaka District Court. He had claimed that the company, by paying a transportation allowance only to *seishain* (regular full-time employees), had violated Article 20 of the Labor Contract Act, which forbids unreasonable disparities in work conditions.

The verdict points out that the payment of the travel allowance has the intent of

“consideration for the risk of unexpected burdens and effect on lifestyle” for regular staff, who are subject to transfers of work location. It also states that, since the hourly wages the man earned were relatively high, it was not unreasonable for him not to be paid an allowance.

The man’s wages were ¥1100-¥1350 per hour.

(4) Charges filed against Takenaka Corp. for fake outsourcing

Osaka construction giant Takenaka Corporation has been charged with violating the Employment Security Act by engaging in so-called “fake outsourcing”, in which employees of a contracted company actually worked under direct orders from the Corporation.

Between August and September of the year before last, a total of four employees from both Takenaka and a subsidiary gave direct commands a total of about 60 times to employees of a company with which the Corporation had signed an outsourcing contract for the drawing of blueprints to be used at a construction site in Osaka Prefecture. Documents have been sent to the prosecutor’s office charging the Corporation with violating the Employment Security Act.

(5) “No improvement even after LSIO investigation”: complaint claims ¥790,000 of unpaid overtime

A man who worked for a wholesale and distribution company in Urasoe, Okinawa, has filed a letter of complaint at both the Naha and Okinawa Labor Standards Inspection Offices alleging that he was not paid for his overtime work.

The company has not signed a “3-6 agreement” with its employees (translator’s note: *sabu-roku kyotei*, or “3-6 agreement”, refers to the labor agreement legally necessary in order for an employer to require overtime work). In November of 2018, the Okinawa LSIO investigated the company for overtime without an agreement and for not paying. However, even after the investigation the situation did not improve; and in December of that year, it became worse, as it became impossible to even keep records of overtime hours.

(6) “Maternity harassment” against nursery teacher acknowledged, dismissal ruled void--Tokyo Superior Court

“I’ll be back after I have the baby”--a nursery-school teacher who promised this to the children in her class was then dismissed from her job right before returning from her maternity leave. The Tokyo Superior Court, in a ruling on appeal, has now acknowledged that there was “maternity harassment”--harassment at work because of pregnancy or birth--and ruled that the dismissal of the teacher was invalid.

The Equal Employment Opportunity Act stipulates that “it is in principle invalid to dismiss a worker while pregnant, or within one year after giving birth”. But if an

employer can prove that the pregnancy or birth were not the reasons for dismissal, then this is considered an exception.

In regard to the nursery school's claim that the reason for dismissal was the teacher's criticizing the school principal, the ruling states that "while she did state some opinions, this was not an action problematic enough to merit firing". The court supported the judgment of the lower Tokyo District Court in finding the dismissal to be in violation of Article 9, Section 4 of the Equal Employment Opportunity Act.

Furthermore, the verdict also mentions the intent of this legal rule, saying "because a physical and mental burden is expected due to pregnancy and birth, this stipulation is meant to make it possible to give birth and raise a child without undue worry".

According to the MHWL, the total number of consultations over the Equal Employment Opportunity Act in fiscal 2019 was about 20,000, of which approximately 35% were concerned either with marriage or maternity harassment.

### **3. Situation/Statistics**

#### **(1) Akashi introduces "familyship system", eliminates "sex" from seal certificates**

The city of Akashi in Hyogo, which has introduced a "partnership/familyship system" granting official recognition as families to sexual-minority couples (LGBTQ+) and their children, will also be eliminating the listing of "sex" from *inkan* certificates (seal certificates). A municipal ordinance amendment was submitted to the city council in March; if it passes, it will be the first time in that city for the listing of sex on documents to be eliminated by such an amendment. The city states that "except for cases where it is necessary for City duties, we plan to continue eliminating [listing of sex on public documents]".

#### **(2) 5.6% identify as LGBT; one in six young people--U.S. survey**

U.S. polling company Gallup released survey results showing that 5.6% of American adults (18 and older) say they are gay or other sexual minorities (LGBT). This is an increase over the figures of 3.5% in 2012 and 4.5% in 2017, showing that as awareness in society has progressed, the number of people self-identifying as LGBT has increased. There were also large differences between age groups: the number was 1.3% for those 74 or older, while it was 15.9% for those aged 18-23.

#### **(3) COVID-19 survivors' benefit for same-sex partners too: Setagaya, Tokyo**

In connection with the special measures for surviving family members of those who died from COVID-19 to be able to receive an allowance from National Health Insurance, Setagaya Ward in Tokyo has introduced its own system to provide this benefit to same-sex partners as well.

The national government has set up a system whereby, if a non-regular (part-time etc.)

worker enrolled in NHI is infected with COVID-19 and becomes unable to work, they can receive *shobyō teate-kin* (sickness benefits). In case the enrolled person dies, their surviving family members can receive the benefit. But under the national system, same-sex partners are not eligible.

Therefore, Setagaya decided to set up its own system and provide an equivalent amount of benefits to same-sex partners, putting this system into operation in February.

(4) “1.30 million women, 430,000 men” *de facto* unemployed due to COVID-19: NRI

The number of non-regular workers who are in a state of *de facto* unemployment has reached “1.03 million women and 430,000 men”, according to a survey by Nomura Research Institute (NRI). The survey defined the “*de facto* unemployed” as those part-time and *arubaito* workers whose “shifts had been reduced by 50% or more” and who “had not received any *kyūgyō teate* (allowance for absence)”.

The percentage of women who had seen their shifts cut by 50% or more due to the pandemic was a full 45.2%. Furthermore, of those part-timers and *arubaito* workers who had decreased shifts because of the virus, 74.7% of women and 79.0% of men replied that they “had not received any *kyūgyō teate*”.

Over the past two months, the number of these “*de facto* unemployed” has grown by more than 10%. Moreover, the people who were defined here as “*de facto* unemployed” are not included in the statistical categories of either “unemployed persons” or “persons absent from work”.

This is all the more reason why more channels for support, whether public or private, will need to be created.

“NRI estimates ‘*de facto* unemployed’ among part-time and *arubaito* workers to number 1.03 million women, 430,000 men”

[https://www.nri.com/jp/news/newsrelease/1st/2021/cc/0301\\_1](https://www.nri.com/jp/news/newsrelease/1st/2021/cc/0301_1)

(5) EU requires publication of gender gap in pay; penalties to be introduced

The European Union (EU), seeking to eliminate disparities in pay between men and women, has decided on a plan to require companies in the region, when requested by their employees, to publish the average wage they pay to men and to women doing the same type of work. Companies that employ 250 people or more will be required to openly publish their gender gaps every year, with an aim of ensuring “equal pay for equal work”.

"Pay Transparency: Commission proposes measures to ensure equal pay for equal work" European Commission

[https://ec.europa.eu/commission/presscorner/detail/en/ip\\_21\\_881](https://ec.europa.eu/commission/presscorner/detail/en/ip_21_881)