



Labor Update No. 110 April 2, 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) Documents for first “Review Meeting on Employment Measures for Foreign Nationals” (held online): MHWL Employment Security Bureau

https://www.mhlw.go.jp/stf/newpage_17476.html

(2) May and June Employment Adjustment Subsidies, etc./Leave Support Funds, etc.

<https://www.mhlw.go.jp/content/11603000/000758405.pdf>

(3) Summary of “amended Elderly Persons Employment Stabilization Act”, taking effect from April 1, 2021

<https://www.mhlw.go.jp/content/11600000/000694689.pdf>

(4) Application limit for Leave Support Funds extended to end of May: MHWL

The Minister of Health, Welfare and Labor has announced, in regard to the Leave Support Funds available to workers unable to receive a leave allowance, that the application limit for those at small and mid-sized businesses will be extended from the end of March to the end of May. This applies to absence from work between April and December (inclusive) of 2020. For absence during the period of January-April 2021, applications will be accepted until the end of July, as previously decided.

There are many cases where workers have not yet applied for the support payments due to not being informed about the system. This is why the application deadline is being extended.

“Application Limit Extended for Leave Support Funds and Benefits to Deal with COVID-19”: Ministry of Health, Welfare and Labor (MHWL)

https://www.mhlw.go.jp/stf/newpage_17588.html

(5) Government issues guidelines to protect freelancers: applicability of

Anti-Monopoly Act clearly indicated

The government has released a set of guidelines for protection of those who do freelance work, in which it is clearly stated that for the party that orders such work to delay payment of fees or unilaterally cancel work would be an abuse of a superior bargaining position, forbidden by the Anti-Monopoly Act.

In the guidelines, freelancers are treated as independent proprietors, and it is clearly stated that the Anti-Monopoly Act, meant to encourage free and fair competition, applies to transactions between a freelancer and the party that orders work done.

Moreover, it is stated that to set the fee amount extremely low or delay payment without a proper reason, or to cancel work unilaterally, would constitute abuses of a superior bargaining position.

In order to avoid unilateral changes to the conditions of a transaction, the guidelines also call for such conditions to be made clear in writing.

In addition, if the ordering party has control of the place and time of work, they state that the freelancer is then to be considered a worker, and rules in the Labor Standards Act, such as limitations on work hours, would then apply.

The government says their intention is to create an environment where freelancers can work with some security, thereby supporting diversification of work styles.

“Guidelines for Developing an Environment Where Working Freelance is Easier”: Cabinet Secretariat, Fair Trade Commission, Small and Medium Enterprise Agency, MHWL

<https://www.mhlw.go.jp/content/11911500/000759477.pdf>

“Guidelines for Developing an Environment Where Working Freelance is Easier (Summary)”: Cabinet Secretariat, Fair Trade Commission, Small and Medium Enterprise Agency, MHWL

<https://www.mhlw.go.jp/content/11911500/000759478.pdf>

(6) Collected Results in Worker Dispatch Report for Fiscal Year Reiwa 1 [2019] (preliminary figures)

<https://www.mhlw.go.jp/content/11654000/000762009.pdf>

2. Legal Violations/Disputes

(1) Invalid to terminate high-school teacher’s contract right before switch to unlimited term--Tokyo District Court

Once a worker in limited-term employment has worked for over five years, a rule requires they be switched to unlimited term if they wish it. In a suit filed by a woman who was a teacher at a private high school in Tokyo, the Tokyo District Court has ruled in the woman's favor by acknowledging it was invalid for her to have her contract terminated just before this rule was to come into effect. The court has ordered the school to pay over ¥11 million in compensation.

The ruling notes that "the reprimand measures that the school used as a reason for the firing were in excess of the *Rijicho's* discretionary powers, and can be seen to have the intent of creating a reason for dismissal". [translator's note: *rijicho*=head of the board of directors]

The verdict goes on to say "it can be seen that they were trying to get rid of this teacher before she could use her right to change to unlimited-term employment". As well as judging the firing invalid, the court therefore ordered the school corporation to pay over ¥11 million in compensation.

(2) Firing for not wearing a mask "illegal"--KDDI subsidiary to be sued

It has become known that a man in his 40s in the Kinki region (Kansai) will soon be filing suit at Osaka District Court against KDDI subsidiary "KDDI Evolva" (Tokyo). The man claims it was illegal for the company to terminate his employment because he did not wear a mask at work, and is seeking confirmation of his employment contract. He says the reason he did not wear a mask was to avoid aggravating his chronic dermatitis. The company objects that it was legitimate to terminate the man's employment for violating work rules.

(3) COVID causes budget crunch: part-time government worker faces termination after 10 years on the job

A "non-regular (part-time) public employee" in her 30s, who works in a welfare-related post at the Kanagawa Prefectural Government, has done her job of specialized counseling for over ten years. But last month, she was notified that her contract will not be renewed for next fiscal year.

The prefecture says that it is eliminating the post as part of reorganizing operations because of budget cuts caused by the effects of COVID-19. But the tasks of the post will not disappear.

In the private sector, when one works for over five years for the same company, the company is required--if the person in question wishes it--to grant unlimited-term employment. But there is no such rule for "non-regular public employees" at local governments.

In regard to this, Kanagawa Prefecture states: "in line with the rearranging of our operations, as part of overall downsizing, we judged the woman's post to be no longer necessary. We have explained this to her as well. In any case, she was appointed on a

one-year contract. The timing just happened to coincide with her pregnancy”.

3. Situation/Statistics

(1) Part-time civil servants still struggle: despite getting allowance, base pay is cut, and employment limited--Hokkaido

In order, supposedly, to improve the conditions of non-regular (part-time etc.) government employees, who work for low pay and are referred to as the “government-issue working poor”, a new system was introduced in fiscal year 2020. But at city and town governments in the prefecture of Hokkaido, many still work for about ¥2 million yen a year, and in case after case their term of employment has been shortened. Under the new system, the name of their job has changed from “temporary/part-time staff” to “fiscal-yearly appointed staff”. But since the term of appointment is for one year at a time, their employment is as insecure as ever. Experts point out that “there is a need for fundamental reforms to the system”.

A woman in her 40s who has worked for eighteen years as a part-time member of office staff at Sapporo City Hall has received an end-of-term allowance of ¥300,000 thanks to the new system. However, her monthly salary has decreased to about ¥140,000, which is ¥30,000 less than what it was before. So her total yearly income came to ¥1,980,000, a decrease of ¥100,000.

(2) Employment system changing in April: “Equal Pay for Equal Work” extended to smaller companies; duty of effort to employ until 70

“Equal Pay for Equal Work” is the idea that workers doing the same work (or work of equal value) should be paid the same amount. This principle is included in the Part-Time and Limited-Term Labor Act. According to the Interior Ministry’s Labor Force Survey, non-regular (part-time etc.) workers made up four-tenths of all employed persons in the year Reiwa 2 (2020). By introducing “Equal Pay for Equal Work”, the government aims both to alleviate economic disparity and to encourage consumer spending by increasing part-timers’ pay. The principle came into force for large companies in April of last year, and will apply starting now (one year later) to small and medium-size companies, where it will have a bigger effect on management.

Securing the opportunity to work until age 70 is set out in the amended Elderly Persons’ Employment Act, to take effect in April 2021. The goal of this is to expand the field of activity for elderly people who have the desire to work.

*Companies are required to guarantee employment until 65 *Raising of the retirement age *Continued employment *Eliminating retirement age --Also, signing of outsourcing contracts as independent operators *Involvement in projects by the company to contribute to society --these are established as new options.

(3) Okinawa’s first “sexual diversity ordinance” passes in Urasoe: discrimination banned, couples recognized

An “Ordinance to Realize a Society that Respects Sexual Diversity” was passed unanimously by the Urasoe City Council in the final plenary session of their March regular meeting. The ordinance includes the introduction of a “partnership system”, whereby the municipal government gives public recognition to LGBT and other sexual-minority couples. This is the first time an ordinance related specifically to sexual or gender diversity has passed anywhere in the prefecture of Okinawa. It will come into effect on October 1.

Urasoe is the second city in Okinawa, after Naha, to introduce a partnership system. The details of the system will be set out in bylaws in the near future.

(4) Why so low? Japan ranked 120th in the world in gender equality

The World Economic Forum has released their “Gender Gap Report 2021”, which analyzes the gender gap (gender disparity) by country. Of the 156 countries included in the survey, Japan was ranked at number 120. It was the lowest-ranked country of the G7, and of the East Asia-Pacific region. The report points out problematic points in Japan, such as that the proportion of women in “leadership positions” in political or economic fields is low.

In the 2021 report, the first-ranked country is Iceland; the second is Finland, the third Norway, number 4 is New Zealand, and Sweden is in fifth place. After this, Africa shows up, with Namibia ranking sixth and Rwanda seventh. The Philippines, ranking seventeenth worldwide, is the highest-ranked country in East Asia.

With political participation and income disparity also points of concern, Japan, while having relatively high scores for education (92nd place) and health (65th), scores low in politics (147th place) and economics (117th). Looking more closely, Japan ranks first in the world in literacy, primary education, and birth sex ratio, but in secondary education (129th place) and higher education (110th) it falls below 100th place worldwide.

In the field of politics, countries were ranked on their ratio of women in the legislature (Japan in 140th place), ratio in ministerial positions (Japan 126th), and total terms in office as head of state or government within the past 50 years (76th place). The report explains in regard to Japan, as causes of its low ranking, that the proportion of women in the Diet is 9.9%, that of women in the Cabinet is no more than 10%, and that within the past 50 years there has never been a female Prime Minister.

In the economic category, Japan had relatively high scores for workforce participation (68th) and for ratio of wages of women to men in similar jobs (83rd place). But the country ranked low in proportion of women in leadership positions, (139th) and ratio in specialized or technical occupations (105th).

The ratio of women in managerial positions was only 14.7%. Pointed out as problems were the fact that 22% of men, but 50.8% of women, are in non-regular employment (part-time etc.); and that women’s income in Japan, on average, is a full 43.7% lower than that of men.

“Global Gender Gap Report 2021”, World Economic Forum
<https://www.weforum.org/reports/global-gender-gap-report-2021>

(5) Gender pay gap 100 to 74.4--2020 statistics

With scheduled cash earnings for men working full time (monthly) set at 100, that for women was 74.4, representing an improvement of 0.1 points, but still a large gap--this is the finding in the 2020 General Survey on Wage Structure that has been released by the MHWL.

One major factor in the wage gap between men and women is said to be the low number of women in managerial posts, such as those of department head or section chief. Looking at average pay for new graduates, for university graduates this was ¥227,200 for men and ¥224,600 for women; while for high-school graduates it was ¥179,500 for men and ¥174,600 for women. This survey takes a sample each year in June of the wages of people who have worked for at least 18 days. Last year, with people off work due to the coronavirus crisis, a larger number of people than usual were ineligible. There were also changes to parts of the survey method. The average of scheduled cash earnings for full-time workers as a whole was ¥307,700 per month, or 0.6 percentage points higher than the previous year.

“Summary of Survey of Basic Wage Structure, Reiwa 2 [2020]”--MHWL
<https://www.mhlw.go.jp/toukei/itiran/roudou/chingin/kouzou/z2020/dl/13.pdf>