



Labor Update No. 114 May 28, 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) “Regarding Points for Caution When Universities Make Use of Persons on Outsourcing Contracts in Carrying Out Lessons (Information)”, Apr. 8, 2021: University Promotion Division, Higher Education Bureau, MEXT

<http://www.hijokin.org/doc/080421monkasho.pdf>

(2) Three small-business groups explain “requests regarding minimum wage” to HWL Minister Tamura

Chairman Mimura of the Japan Chamber of Commerce and Industry (JCCI), along with the Central Federation of Societies of Commerce and Industry (CFSCI, Mori Yoshihisa, Chair) and the National Federation of Small Business Associations (Mori Hiroshi, Chair) gave an explanation of their “requests concerning the minimum wage” to Health, Welfare and Labor Minister Tamura on Tuesday, May 18.

They began by asserting that “if the minimum wage is raised, and business conditions worsen due to a further recession, it is quite likely that businesses will have no choice but to make adjustments to employment. A convincing standard should be decided after proper deliberations based on concrete data, such as increases in prices”.

Minister Tamura stated that “while on the one hand the Ministry would like to raise wages, we also have the mission of protecting employment. We will be giving proper thought to both those things”.

(3) Being LGBT “goes against preservation of species”, says LDP Dietmember Yana

It has come to light that Yana Kazuo, an LDP member of the House of Representatives, remarked concerning LGBT and other sexual minority people that “biologically, it goes against the preservation of the species. They resist the basis of biology”. The lawmaker has commented that “I will refrain from answering about the remark or its contents, as it was [in] a closed meeting”.

(4) Employment adjustment subsidy special measures to be maintained: support to

businesses in trouble

The government and the ruling party have begun deliberations concerning the special employment adjustment subsidy measures that were expanded to cope with the COVID-19 pandemic, with an intent to maintain these for businesses that are in severe trouble and/or for areas under the State of Emergency. The original plan was to continue them until the end of June, then reduce them in stages starting in July. But it has been judged that, in order to protect employment, there is a need to continue giving more generous support.

2. Legal Violations/Disputes

(1) “Forced to get the vaccine”: when nurses refuse, hospitals pressure them to sign resignations--series of labor consultations about vaccination (Hyogo)

The Hyogo labor bureau is seeing repeated cases of labor consultations concerning COVID-19 vaccinations for medical workers.

There has even been at least one case where a nurse who refused the vaccine was pressured by the hospital to sign a resignation, and the labor bureau had to issue advice and guidance.

The labor bureau set up a special labor consultation desk in February to deal with cases relating to the effects of the pandemic. As of the end of April, the desk had heard about 61,852 cases. Since January, there have been six cases from medical workers, including cases of being “forced by employers to get the vaccine”.

According to the labor bureau, the nurse who was pressured to resign was on a limited-term contract for one year at a time. When the nurse refused to be vaccinated, it is said the hospital drew up a “voluntary resignation” without waiting for the contract expiration, and urged the nurse to sign it. It is also said that, since April, the hospital has been informing employees that if they won’t get vaccinated, they will be made to stay home without pay.

Responding to this consultation, the labor bureau explained to the hospital that “unless there are circumstances that leave no choice, you cannot terminate a worker before the end of the contract”. The bureau, in seeking the hospital’s understanding, also brought up the supplemental resolution to the amended vaccination laws that says “unvaccinated persons may not be given unfavorable treatment”.

The hospital acknowledged that they had been “lacking in understanding”, and changed their stance, continuing the nurse’s employment. The labor bureau says that “Vaccination should be by one’s own judgement. If you receive unfavorable treatment at work, please consult with us”.

(2) Part-time lecturers switched to direct employment at Kagawa U.--outsourcing contract issue reconsidered in April

It has become clear that Kagawa University, whose outsourcing (*gyomu itaku*) contracts with part-time lecturers had become problematic, changed in April to direct employment. The university explains that “we reconsidered it from the point of view of guaranteeing the quality of education”.

Kagawa University has about 400 part-time lecturers (*hijokin koshi*) in charge of subjects such as foreign-language classes. The university has already signed outsourcing contracts with approximately 330 of these lecturers; for those who agree to the change in form of employment, the contracts are being switched over one by one (as of April 1) to direct employment. The other 70, including those in charge of short-term courses, will also basically be switched to direct employment.

The Ministry of Education, Culture, Sports, Science and Technology (MEXT) allows universities to have outsourcing contracts with outside teachers to carry out lessons. However, these contracts involve a client contracting to entrust a company with doing the work; universities cannot give direct instructions to teachers with whom they do not have an employment contract. Meanwhile, besides everyday lessons, there are other tasks in the education workplace, such as lesson planning and marking (grading). If these tasks are entrusted to an outsourced teacher, the “fake outsourcing” and “wholesale delegating” of work to a company can lower the quality of education. For this reason, the Ministry takes the position that such teachers’ duties in these areas “are probably limited to advising the professor in charge”.

Since 2005, a year after the national universities were reorganized as independent corporations, Kagawa University has had all its part-time lecturers on outsourcing contracts. One such lecturer who worked there until recently testifies that “I was in charge of syllabus planning, grading and so on by myself”. MEXT in April issued a memorandum saying that “There have been situations that may be thought inappropriate, in which universities put persons not directly employed in *de facto* charge of a lesson subject”, and calling for caution from universities across the country.

The university is also considering changing work rules to allow those who have worked there over five years--who until now had to renew their outsourcing contract each year--to change to unlimited contracts with no need for yearly renewal.

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(3) Concluding arguments in Saitama teacher’s lawsuit: teacher calls for labor law compliance, saying “a teacher is a person, too”

Final arguments have been heard in a lawsuit filed by a man who taught at a public elementary school in the prefecture of Saitama. The man had claimed it was illegal for teachers not to be paid overtime for their work outside of working hours, and had

sought back-payment of about ¥2.42 million from the prefecture. In his final opinion statement, he said, “what is on trial in this case is whether or not teachers’ overtime work counts as work under the Labor Standards Act. What is work? What does it mean to be working? I would like you to consider it carefully one more time.”

(4) “Something wrong” with special enrollment in workers’ comp. insurance, says Uber union, expressing opposition

In regard to the MHWL considering making it possible for independent business operators who engage in food and drink delivery services to enroll themselves in workers’ accident insurance, Uber Eats Union, a union of delivery workers, has held a press conference to express their opposition.

The cost of enrollment in workers’ accident compensation insurance is normally meant to be paid by the employer, not by the employee. But in fields where accidents happen easily, independent operators have been allowed to enroll themselves, known as “special enrollment”. Examples of this include entertainers and animators, among others.

At the press conference, the Uber Eats Union chair asserted that, since enrolling will be optional even if special enrollment is allowed, “if an unenrolled delivery worker has an accident, it will be made their own responsibility. We are the work force within the company’s system; there is something wrong if the company can get out of paying insurance and taking any responsibility for accidents”. The union demanded the Ministry consider applying the normal rules for workers’ compensation insurance, where the employer pays.

3. Situation/Statistics

(1) Over 740,000 deaths due to long working hours worldwide; measures needed for work at home too: WHO

The WHO (World Health Organization) and others have released estimates--the first analysis of this kind--saying that, in 2016, the number of people who died because of overlong work hours in that one year reached over 740,000.

The WHO states that working at home as a measure against COVID-19 could end up leading to long work hours, and calls on national governments, companies, etc., to take steps to prevent this.

According to the estimate, the overall worldwide number of people who died of heart disease or stroke as a result of having worked 55 hours or more a week was as high as 745,000.

The WHO and others say that people who work 55 hours or more a week not only increase their risk of suffering a stroke by 35% compared to those who work 35-40 hours, but also have a 17% higher risk of dying from ischemic heart disease.

They also state that people working 55 hours or more per week currently constitute 9% of the world population, and that this proportion is rising every year.

"Long working hours increasing deaths from heart disease and stroke: WHO, ILO"
<https://www.who.int/news/item/17-05-2021-long-working-hours-increasing-deaths-from-heart-disease-and-stroke-who-ilo>

"Environment International"
<https://www.sciencedirect.com/science/article/pii/S0160412021002208>

(2) Jan.-Mar. GDP shrinks by 5.1% (annual rate), first negative figure in three quarters

The first preliminary report of the gross domestic product (GDP) for the January-March quarter of 2021, published by the Cabinet Office, shows that the real GDP (seasonally adjusted figure), exclusive of the effects of changes in prices, declined by 1.3% from the previous quarter (Oct.-Dec. 2020). This is the first time in three quarters that negative growth has been seen. On an annualized basis, this represents a 5.1% decline. The second State of Emergency declaration, issued at the start of the year to fight COVID-19, once again put large constraints on economic activity, and this has shown an effect.

The most important factor was the 1.4% slump in personal consumption, which accounts for more than half of GDP. When another wave of coronavirus infections started, four prefectures in the capital region entered another State of Emergency on January 8. With shortened restaurant hours, and residents called on to avoid non-essential outings, consumption of services such as dining, accommodation and leisure services was pushed down.

This is the second year in a row of negative growth, coming after the 2019 fiscal year, when the consumption tax was raised to 10%. The last time there was negative growth two years in a row was 11 years ago, when the financial crisis dubbed in Japan the "Lehman Shock" affected the 2008 and 2009 fiscal years.

"Preliminary Report of GDP, Jan.-Mar. 2021 (First Preliminary Figures)"
https://www.esri.cao.go.jp/jp/sna/data/data_list/sokuhou/gaiyou/pdf/main_1.pdf

(3) "Avoid eating with foreigners" says health center in public information document on disease prevention

On June 19 and 20, the Itako Health Center in Ibaraki Prefecture e-mailed a document on COVID-19 prevention, aimed at farms with foreign workers, to farmers' cooperatives and city halls within its jurisdiction area. In this document it was written that "there have been many cases where COVID-19 patients may have caught the infection from a foreign national".

The document adds that one should "please make sure to wear a mask when speaking with foreigners" and "please avoid having meals together with foreigners".

The health center has withdrawn the document, saying its contents were inappropriate.

(4) One in four men face harassment for taking paternity leave; four in ten give up after interference from bosses

Of men who tried to make use of parental leave systems at their workplace within the last five years, 26% answered that they had experienced harassment on account of taking child-care leave (“paternity harassment”), according to an MHWL survey released on June 23. Acts of interference by supervisors were often seen, with 42.7% of those experiencing this having given up on using their parental leave.

When respondents were asked from whom they had encountered harassment, with multiple answers possible, the most frequent answer (at 66.4%) was supervisors other than company executives.