



Labor Update No. 122 Sep. 17, 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) Workers' comp. criteria revised for first time in 20 years: brain, heart conditions--starting Sep. 15

The Ministry Of Health, Welfare and Labor (MHWL) announced on the 14th that they have revised the standards for granting industrial accident compensation in cases of brain and heart disorders, and that the new rules will be in use starting on September 15. It is the first update to these criteria in 20 years. Even if the worker's overtime hours do not reach the so-called "karoshi line" of 80 hours a month, the new rules will make it possible to be more flexible in granting compensation by taking overall conditions into consideration, such as irregular work schedules or heavy physical burdens.

Currently, the standard for acknowledging *karoshi* (death from overwork) is for overtime hours to be either "over 100 hours in the one month prior to the onset of symptoms" or "an average of over 80 hours per month for the 2-6 months prior to the onset of symptoms". Under the new standards, in addition to overtime hours close to this line, work burdens other than lengthy hours can be considered strongly tied to the onset of any symptoms.

Specifically, irregular work schedules (including short times between the end of a shift and the start of the next), as well as working every day with no day off, are among the things that have been added as subjects for evaluation in giving compensation. In addition, physical burdens, such as tough physical labor, will also be taken into consideration.

Even under the current rules, work systems and working environments were meant to be taken into account when deciding whether to grant workers' compensation. However, of the cases with brain and heart conditions in fiscal year 2020, fewer than 10% were granted compensation with less than 80 hours of overtime work. It had been pointed out that it was easy for cases to end up being judged only on the hours of overtime.

"Summary of Revisions to Industrial Accident recognition Standards for Brain and Heart Conditions"

<https://www.mhlw.go.jp/content/11201000/000832041.pdf>

(2) Extensions to applicable period and application deadlines for COVID-19 Leave Support and Benefit Payments

“Notice of Extensions to Applicable Period and Application Deadlines for COVID-19 Leave Support and Benefit Payments, and Local Exceptions, Etc. Associated with Declaration of State of Emergency, etc.”, MHWL

<https://www.mhlw.go.jp/content/11600000/000811767.pdf>

2. Legal Violations/Disputes

(1) Fuji Soba’s firing of union officials ruled “invalid”; fraudulent receipt of Employment Adjustment Subsidy found, money returned

In a labor tribunal case filed by two union officers fired from their jobs at the company that operates noodle-bar chain Fuji Soba, the Labor Tribunal Committee of Tokyo District Court has judged the firing to be invalid and ordered the company to back-pay ¥3.18 million in wages to each. The company has filed an objection, and plans to continue fighting in court.

The validity of this firing was disputed at the labor tribunal. The company then claimed, in documents they presented to the tribunal on the 2nd, that they had discovered new forgeries by the two. They gave warning that the two union officers would be dismissed by “ordinary dismissal” in one month, on October 2. However, the labor tribunal declared this to be outside the scope of their ruling, judging only the first “disciplinary dismissal” to be invalid.

The two officers, in the name of Fuji Soba Union, had in the past accused the operating company of fraudulently receiving Employment Adjustment Subsidies.

In regard to part of these accusations, the MHWL found that there was indeed fraud, and issued an order for the company to return approximately ¥3 million, including a penalty.

(2) Part-time lecturers at Osaka U. call for “direct employment” if put in charge of classes: MEXT investigates

Osaka University (Handai) has been entrusting part-time lecturers, who are on outsourcing (*gyomu itaku*) contracts, with classes, including grading. Concerning this, it has recently emerged that the Ministry of Education, Science, Technology, Culture, and Sports (MEXT) is investigating the situation, and says “it is inappropriate for anyone but teachers directly employed by the university to be placed in charge of classes”. the lecturers say that “despite being *de facto* in charge of the classes, we are forced into insecure employment”. They are seeking a change to direct employment.

According to a union of Kansai-area part-time university lecturers, including those at Osaka University, Handai puts its lecturers on outsourcing contracts of up to a

maximum length of 10 years. MEXT allows outsourcing contracts, but they are intended only for assisting with lessons. In April the Ministry issued a notice to universities saying that “it is inappropriate to place those not directly employed in charge of classes”.

The union insists that a situation like that at Handai, where part-timers are in charge of lesson planning and grading all by themselves, is problematic. MEXT is also said to be proceeding with ascertaining the situation.

Furthermore, the union has also pointed out that, since 80 of the 210 part-timers in Handai’s Foreign Languages Department will be reaching their 10-year limit in the 2022 school year, “there is a danger of mass dismissals”. This is because--although the Labor Contract Act contains a rule that gives workers on limited-term contracts the right to change to unlimited-term after their contracts have been repeatedly renewed for a certain period of time--those on outsourcing contracts are not treated as workers, but as independent freelancers, and the rule does not apply to them.

The union stated in a news conference that “since it isn’t an employment contract, the university can terminate the contracts easily. Universities in other places, including Tokyo University, have switched to direct employment. Handai should do so too.” Handai has said in answer to a reporter from the Asahi Shinbun that “the University takes responsibility for deciding the form of employment, but if there is a demand, we will negotiate”.

(3) Toyota employee’s suicide ruled work-related: depression caused by demanding tasks and harassment--Nagoya Superior Court

The suicide of a man who worked at Toyota Motors (40 years old at the time) was caused by overly demanding work tasks and by “power harassment” (workplace bullying) by supervisors, according to a verdict by the Nagoya Superior Court. The man’s wife, 50, had sued seeking to cancel a judgement by the Labor Standards Inspection Office in Toyota City, Aichi, which had denied workers’ compensation. The Nagoya District Court had denied the plaintiff’s claim, but now the Superior Court has overturned this ruling, handing down a verdict that recognizes the cause as work-related and granting compensation.

3. Situation/Statistics

(1) 24.5% say “standard of living declined” due to COVID: survey

One in four people says that their “standard of living has declined” compared to before the spread of COVID-19, according to a survey by an independent administrative agency. The survey concludes that prospects for improvement are more difficult the lower a household’s income is, that this means there is a danger of widening disparity, and that consideration should be given to whether enough public assistance is reaching those who need it.

The Japan Institute for Labor Policy and Training (JILPT), an independent administrative body, has conducted ongoing surveys of over 4800 people aged 20 to 64 who either are employed at private companies or work as freelancers. They have published the results for June of this year.

According to this, when respondents were asked how their standard of living had changed compared to before COVID-19 began spreading, 71.1% answered that it had “not changed”. Meanwhile, the number who replied that it had “gone down slightly” or “gone down substantially” added up to 24.5%, or nearly one in four.

If we look at the percentage answering that their standard of living decreased, broken down by household income, for those with incomes of:

- ◆ “¥7 million or more”, the number was 17.5%;
- ◆ “less than ¥3 million” it was 35.1%.

This made it clear that, the lower a household’s income, the harder they were hit by the impacts of the pandemic.

Furthermore, when these respondents were asked about their circumstances from now on, the number saying their lives “will improve” was:

- ◆ 15.2% of those with incomes of ¥7 million or more;
- ◆ Only 7.7% of those with less than ¥3 million.

So prospects for the future also get bleaker the lower the household’s income.

Nakai Masayuki, JILPT’s senior research director, explains that “Non-regular workers (part-timers etc.), women, young people, and others with low household incomes continue to feel the effects of the pandemic, and are being left behind. Proper consideration must be given to whether enough assistance is reaching them”.

“JILPT Panel Survey on the Impact of COVID-19 on Work and Daily Life (JILPT #5)”,
Japan Institute for Labor Policy and Training

<https://www.jil.go.jp/press/documents/20210727.pdf>

(2) Racial disparity remains in U.S. unemployment rate; rate for African-Americans worsens to 8.8%--August employment statistics

According to employment statistics for August published on the 3rd by the United States Department of Labor, the overall unemployment rate was 5.2%, an improvement over July’s 5.4%. However, the unemployment rate among African-Americans worsened from 8.2% to 8.8%. The U.S. Federal Reserve Board (FRB) has stated a goal of “widespread and comprehensive” realization of full employment. But these statistics make it even more clear how difficult that will be.

On the other hand, the percentage of employed persons in the population was 56.2% for African-Americans, an increase from the figure of 54.7% seen in January. For the White population it was 58.8%, also an increase from the previous 57.9%; but the number for the Black population increased by a larger amount.

Daniel Zhao, senior economist at Glassdoor, points out that, if the increase in employment slows down, African-American workers will suffer the impact. “Black workers are the first to be laid off, and the last to be re-employed. Therefore, if the pace of recovery slows, they will be heavily affected”.

“THE EMPLOYMENT SITUATION – AUGUST 2021” U.S. Department of Labor

<https://www.bls.gov/news.release/pdf/empsit.pdf>

(3) Uber drivers are not independent contractors, but employees, says Dutch court

The District Court of Amsterdam in the Netherlands has ruled that drivers for ride-sharing giant Uber are not independent contractors, but rather employees, and qualify for more rights as workers.

A similar ruling has also been made in the U.K., where a suit was won by a union calling for rights for workers who take on one-off work in the gig economy.

In the Amsterdam lawsuit, the Dutch Trade Union Federation (Federatie Nederlandse Vakbeweging, FNV) argued that Uber drivers were in reality employees of a taxi company, and had the right to receive the same level of compensation and allowances as workers for other companies in the same industry. The Amsterdam District Court granted FNV’s claim. Uber has objected to the ruling and indicated that they will appeal. They say “we have no plans to employ drivers in the Netherlands”, insisting that “we are disappointed in this verdict. The great majority of drivers wish to continue being independent contractors. They do not want to give up the freedom to work when and where they want”.

The Amsterdam District Court has stated that “the relationship between Uber and the drivers matches all the characteristics of an employment contract”.

FNV says “this is a big victory for these drivers”, expressing hope that the drivers’ pay and benefits will increase.

In march of this year, in response to the verdict of the U.K. Supreme Court, Uber indicated a plan to expand the rights as workers of their more than 70,000 drivers in that country, including paying at least the minimum wage.