



Labor Update No. 125 October 29, 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) Subsidy special measures: details unchanged, extended through December--MHWL

The Ministry of Health, Welfare and Labor (MHWL) has announced, in regard to the special measures for Employment Adjustment Subsidies (EAS) paid to companies that cooperate in maintaining employment, that these measures will be extended until the end of December with no change in the subsidy details. Originally the measures were set to expire at the end of November.

In a press conference on the 14th, Prime Minister Kishida Fumio declared his intent to extend the EAS special measures until March of next year. The MHWL will make an announcement sometime next month on what the details of subsidies will be from January on.

The EAS is a system that subsidizes employers for the cost of leave-of-absence payments they make to employees. The special measures mean that the full cost of these payments (up to a maximum of ¥15,000 per day) will be paid. Businesses are eligible if their sales suffered a great amount due to the spread of COVID-19, or if they are in an area of State of Emergency or Priority Prevention Measures, and cooperated with requests to shorten opening hours.

2. Legal Violations/Disputes

(1) Kansai U. settles with school teacher who blew whistle on illegal overtime, withdraws firing: Osaka District Court

A teacher at a school affiliated with Kansai University was dismissed from his employment four years ago after filing a complaint with the Labor Standards Inspection Office (LSIO) over illegal overtime work. His suit in the Osaka District Courts, in which he demanded withdrawal of the firing and ¥1 million in damages on grounds that the firing was an unfair labor practice, has now ended in a settlement. The university corporation has agreed to withdraw the firing and treat it as a resignation. The man belonged to a union of teachers at the University's affiliated elementary, junior-high and high schools (Takatsuki, Osaka). In March 2017, when he was teaching at the junior-high and high schools, he filed a complaint at the Ibaraki LSIO to report over-long hours and an excessive workload.

The LSIO determined that it was a violation of the law for the school to make teachers work overtime without a labor agreement and to not keep detailed track of the hours they worked. They issued several citations to the university corporation, starting in April 2017, for unpaid overtime. The Labor Standards Act requires employers to sign a labor agreement if they are to have employees work more than eight hours per day.

When the corporation, after these citations, investigated the working hours of teachers at the affiliated schools, they found that the majority were working more than the legally specified eight hours. This included finding that at least one teacher had actually worked more than 2000 hours of overtime in a year, greatly exceeding the so-called “*karoshi* line” for overtime of 80 hours per month.

Meanwhile, in October 2017, half a year after he had filed his complaint, the teacher was ordered by the principal to stay home, citing problems with his teaching as reasons. Then in April of 2018 he was dismissed from his job. The following May, the man sued the corporation, claiming that the firing was unreasonable retaliation against him for complaining to the LSIO. The university corporation argued that “the reason for dismissal was his words and actions lacking in competence as an educator, and is unconnected to the LSIO complaint”. But according to those concerned, the District Court in July 2021 advised both parties to settle.

(2) Managerial allowance unpaid due to “hatred of union members”: unfair labor practice at disabled people’s facility--Tokyo Superior Court

In regard to an unfair labor practice by NPO Corp. Setagaya Shiraume, which operates a “continuous employment support” facility for people with disabilities, the Tokyo Superior Court has followed the decision of the Tokyo Labor Commission and that of the lower courts, rejecting the corporation’s appeal.

The union to which the facility’s staff members belong has urged the corporation not to make another appeal.

Starting in April of 2017, the corporation failed to pay a managerial position allowance of ¥5000 per month to a staff member who was general secretary of the union. When the staff member filed a complaint at the Labor Commission, the Commission found the non-payment to be an unfair labor practice. In 2020 an order was issued for the allowance to be paid.

The corporation sued seeking to have the order canceled, but on February 22 of this year, the Tokyo District Court rejected the claim. The corporation’s appeal was then rejected by the Superior Court this October.

The verdict states that the non-payment by the facility was due to hatred of the employee for being a central figure in the union, that it was an attempt to eliminate the union’s influence, and that it is therefore appropriate to consider it an unfair labor practice.

When the union branch was formed in 2014 to deal with concerns over the facility's workplace environment, the corporation fired those employees who joined. This also went to court, ending in a settlement; the union says that "there is continued motion to eliminate the union".

Lawyers for the employee's side have said that "we have been involved with this case for seven years. The union members filed complaints with the Setagaya local government multiple times. Since the facility is under local government direction, we want the government to give guidance. The verdict becoming finalized does not mean relations between labor and management will calm down. We hope to be able to proceed with talks aimed toward normalization".

(3) "Suffering in poverty": part-time university lecturers send demand to government and opposition parties for improvement in pay

Concerned members of the Japanese Association for the Improvement of Conditions of Women Scientists (JAICOWS), a group made up of women researchers who are members or former members of the Science Council of Japan, held a press conference inside the Diet building on the 27th. They announced the demands for improvement in conditions they had sent to, and answers they had received from, eight government and opposition parties. Their complaint is that most part-time (*hijokin*) university lecturers earn low pay of about ¥1 million per year, said to be from one-tenth to one-sixth of what a professor or an associate professor would be paid.

Eight parties gave responses: the LDP, CDP, Komeito, JCP, Ishin, DPP, Reiwa Shinsengumi, and SDP. The LDP answered that "Salaries and titles as a rule are the responsibility of each university to judge and decide", but that "we promote improving pay and conditions". The CDP replied that "We aim to legislate 'equal pay for work of equal value' in order to eliminate disparities in treatment". The responses will soon be uploaded to JAICOWS's web page.

The group made 10 demands: in addition to improvement in pay for part-time lecturers, they asked for such things as making part-timers eligible for research funds (grants-in-aid for scientific research) and exempting them from paying purchase costs for equipment necessary for online work. Professor Emeritus Haba Kumiko of Aoyama Gakuin University stated that "university part-time lecturers are the 'cutting edge' of non-regular workers. Neither the system nor their pay has changed in the past 30 years. The reality is that those doing university education are suffering in poverty".

According to Professor Haba, about 60 percent of university teachers are part-time, and half of these are women. As for salary, regular professors and associate professors at major private universities earn from ¥6 million to ¥10 million per year, those at national universities from ¥6 million to ¥9 million; but most part-time lecturers make only from about ¥500,000 to ¥1.5 million. She says that, despite having masters' or doctors' degrees, it has become the norm for them to worry about losing their jobs and livelihoods in the position of "high-educated working poor".

(4) Emails after clocking out are “working time”: Tokyo District Court orders *karoshi* compensation

In a lawsuit by the surviving family of a man who worked for a fashion goods maker, and who died in 2015 of causes related to long working hours (death from overwork=*karoshi*), the Tokyo District Court has handed down a verdict ordering the company to pay approximately ¥11 million in compensation. The court accepted the family’s claim that, even after clock-out time, if emails are sent or computer files are updated and the time can be confirmed, that can be judged part of working hours.

The man, who was employed by SG Corporation (Tokyo), suffered a fatal cardiac arrhythmia in November 2015. In August of 2017, work-accident compensation was granted on the grounds that he had worked an average of more than 80 hours’ overtime for the previous 2-6 months. The family sued in August 2018, seeking about ¥72 million in damages.

The company insisted that email and remote work the man did after leaving the office should not be counted as work time. The court ruling, however, points out that there were no timecards or other ways of properly keeping track of hours worked. Based on the time logs of emails sent and files updated, the court found that the man’s worked, on average, even 10 more overtime hours than what had been recognized for work-accident compensation. The ruling also finds that the company, despite being aware of the over-long work hours, did not take appropriate steps to deal with the issue.

3. Situation/Statistics

(1) Only 2% of technical interns return after childbirth over past three years: some give up to avoid family separation

In the approximately three years since the passage of the Technical Interns Protection Act, 637 foreign trainees suspended their internships on account of pregnancy and childbirth. Of these, only eleven--barely even 2 percent--have returned to training, according to data gathered by the MHWL. The law stipulates that, after having a baby, those who wish it can re-start their internships. But most have given up and returned to their home countries instead.

The government is promoting expanded intake of foreign interns to make up for the labor shortage caused by a declining birthrate and an aging population. But in principle, these interns are not allowed to bring family with them to this country. So the reality is that, in order to return to training, an intern must leave her baby behind in her home country and live apart from the child. This may be a reason why so many give up on returning. This inhumane system is in urgent need of a change.

(2) Deaths from work accidents on the rise again, pandemic a burden: transport, retail, and elder-care

The number of deaths from workplace accidents has been increasing since the start of

this year. The increase is especially notable in the land cargo transport industry, in retail, and at elder-care facilities. This is believed to be an effect of increased workloads caused by the COVID-19 pandemic. In September, the government urged industry groups to strengthen accident prevention efforts.

According to the MHWL, the total number of persons (in all industries) who suffered workplace accidents from January to August of this year that kept them from work for four days or more, or caused death, was approximately 85,000. This is a 23% increase over the same period of the previous year. Among these, the pace of increase was fastest in land transport, in retail, and at social welfare facilities, with each of these accounting for about 10,000 cases.

The view of the MHWL is that, if this pace continues, the number of deaths from work accidents in these three industries for this calendar year will be much higher than last year. Cargo transport, where there were 16,000 cases last year, will have about 17,000; retail, with 15,000 last year, will also have 17,000; and social welfare facilities, which had 12,000 case last year, will have 14,000. This estimate does not include industrial accident compensation for COVID-19 infections.

Broken down by cause of accident: in cargo transport, falls while handling cargo accounted for three-tenths of the total. In retail, falls also accounted for four in ten of the accidents counted, while in care facilities, four-tenths were caused by strained actions or motions during work.

According to the MHWL's interpretation, factors leading to the rise in accidents include increased use of online shopping and nearby supermarkets due to people staying home on account of the pandemic, and infection prevention measures adding to the workload at care facilities.

The Ministry in late September sent urgent messages to industry group leaders requesting steps to prevent workplace accidents. Groups say they will take steps including employee training.

(3) RENGO to demand 2% raises, aims to fix disparities: 2022 *Shunto* plan

RENGO has held their Central Executive Committee meeting, at which they confirmed their plan for the 2022 *Shunto* to demand raises to base pay of around 2 percent. This will be the ninth year in a row of base-pay raise demands. They will seek "about 4 percent" in raises including regular yearly raises or equivalent, and are aiming to raise the "floor" for pay standards and to correct disparities.

The level of base-pay raise demanded has kept steady for sixteen years. The *Shunto* plan will be formally decided at the Central Committee meeting of December 2. RENGO chair Yoshino Tomoko, pointing out that "[improving labor conditions] is also good for a company's development. It is essential to send demands and keep negotiating", expressed an intent to put effort into treatment of non-regular employees and into correcting the gender gap in pay.