



Labor Update No. 128 Dec. 10, 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) Estimate says ¥1.3 trillion reserve can be secured: support systems may continue

The ministry of Health, Welfare and Labor (MHWL) has released an estimated calculation that, if the ¥2.2 trillion included in this year's supplementary budget is put into employment insurance, then as of March next year, a reserve of ¥1.3 trillion can be secured. With employment adjustment subsidy (EAS) payments piling up in response to the pandemic, there was fear that funding for employment insurance would dry up. But it appears that this has been avoided for the time being.

(2) "Guide to Amended Points of the Family and Childcare Leave Act, to Take Effect in Three Stages Starting on April 1, Reiwa 4 [2022]" MHWL

<https://www.mhlw.go.jp/content/11900000/000789715.pdf>

(3) Employment insurance premium to be raised next year: funds drying up due to COVID-19--gov't.

The government has decided on a plan to raise the amount of employment insurance premiums, which fund unemployment allowances, etc., in fiscal year 2022. The amount of the increase is now being discussed. The COVID-19 pandemic resulted in a sudden increase in the amount of payouts of employment adjustment subsidies, paid to companies that cooperate with keeping people employed. The government judged that funds would dry up, and that there would be a need to increase the share of costs borne by workers themselves and by their employers. Final discussions are to be held during the drawing up of next fiscal year's budget, work on which will begin in earnest as we move toward the end of the calendar year.

(4) LDP decides general outline for next years tax amendments: "wage-raise tax system" etc.

In regard to the tax system amendment for next fiscal year, the Liberal Democratic Party's Tax Commission has solidified a general outline of main points for a "wage-raise tax system". This would support companies that are active in raising wages. The outline

includes increasing the amount of corporate tax deduction from the current 15% to a maximum of 30% for large companies and 40% for smaller businesses.

Relating to this “wage-raise tax system”, which was the main point of contention, the plan is to increase the rate that can be deducted from corporate tax--currently set at 15%--depending on the state of the company’s efforts to raise wages, up to a maximum rate of 30% for large companies, and a maximum of 40% for small and mid-sized businesses.

As a concrete example, for large and mid-scale enterprises, if the total amount of wages paid to continuing employees is at least 4% more than the previous year, then the deduction would become 25%; and if the amount spent on employees’ education and training was at least 20% higher than the previous year, this would be increased by another 5%.

Meanwhile, for smaller-scale companies, if the total wages paid to all employees were at least 2.5% more than the previous year, the deduction would be 30%; and if the amount spent on education and training was at least 10% more, this would be raised by another 10%.

(5) Unemployment benefits for those whose own businesses fail: period to be extendable up to four years

The MHWL has shown a plan to a subcommittee of the Labor Policy Council (an advisory body to the Minister) that would make it possible for a worker, after quitting a job in order to start a business, to extend the period for receiving unemployment benefits up to a maximum of four years. The basic rule is one year. This would enable a worker who tried and failed in starting their own business to then still receive benefits, which would encourage employees in attempting to go into business for themselves.

“Labor Policy Council Employment Stability Subcommittee, Employment Insurance Section, 162nd mtg.--Related Documents” Dec. 8, 2021

<https://www.mhlw.go.jp/content/11601000/000863499.pdf>

2. Legal Violations/Disputes

(1) ¥870 million in overtime unpaid: LSIO citations for 18 national universities

Of the 56 national university corporations that operate elementary, junior and senior high schools, 20--including Saitama University and Kochi University, among others--did not pay overtime rates for work done outside of working hours by teachers at their affiliated schools, according to a survey result released by Kyodo News on the 5th. Eighteen of these had received citations from Labor Standards Inspection Offices (LSIO). The total amount of overtime that went unpaid, at the fourteen institutions that disclosed this, was about ¥869.9 million.

University corporations with unpaid overtime also included such ones as Yamagata University, Tsukuba University, Kyoto Education University and Nagasaki University.

If Mie University--currently calculating the unpaid amount after receiving a citation in November--is added, along with the five that have not disclosed their amounts, this will give an even larger total of unpaid overtime.

(2) "We are a platform", insists Uber management to Tokyo Labor Commission

Do delivery drivers for food delivery company Uber Eats have the right form a union and seek collective bargaining? A Tokyo Labor Relations Commission case filed by Uber Eats Union is coming to a head. In a Commission hearing held on the 6th, a representative of Uber management took the stand for the first time to insist that "we are nothing more than a platform", arguing against the union's position that the company must comply with collective bargaining.

The company's operations in Japan began in September of 2019, in the Shibuya and Minato wards of Tokyo. It has since spread to all 47 prefectures, with more than 130,000 restaurants participating. There are about 100,000 active delivery drivers.

These delivery workers formed Uber Eats Union in October of 2019. They requested collective bargaining over compensation in case of accidents, cancellation of accounts on the app, and the calculation of pay, among other issues, but Uber would not negotiate. So in March of 2020 the union filed a complaint at the Labor Commission, claiming that Uber had unjustly refused collective bargaining.

Point of contention: legally considered "workers"?

The legal framework of the problem is as follows. The point of law in dispute is: are they "workers" under the Labor Unions Act? If they are considered workers under to this law, then they have a recognized right to collective bargaining.

The Union claims that, according to past Supreme Court rulings, their members fulfill the conditions to be considered workers. Uber is a transport company, they assign drivers work using their app, and they unilaterally decide how much they pay for the delivery work. The compensation received by the delivery drivers is in exchange for carrying out work duties.

On the other hand, Uber claims that they are not a transport company, but only a platform. The transport contract is between the restaurant and the driver, and the amount of pay for delivery is merely "recommended" by Uber. The management representative explained that "there are many delivery orders, and it is difficult to negotiate a delivery fee each time. We indicate an amount to make the service easy to use".

The two sides' positions contradict each other in particular over the treatment of delivery orders.

According to the Union, if a driver refuses a delivery order, they stop getting further orders, and are forcibly logged out of the app. The delivery drivers call this "being hung out to dry". In a hearing on November 22, one delivery worker testified that "I can

show proof of 'being hung out to dry' right away if i use the app here and now".

Uber has repeatedly claimed that "it is the drivers' free choice to accept a delivery order or not". They admit that the app is set to automatically log drivers out who refuse three orders in a row within a certain time limit; but they say this setting is necessary in order to match orders with drivers speedily.

The company and the union also have differing views on the cancelling of accounts of drivers who receive poor reviews from restaurants and customers. Uber insists this is justified, saying "it is to preserve safety and trust in the platform".

If the drivers are workers under the Labor Unions Act, they can form a union and demand collective bargaining.

(3) Panasonic apologizes for "take-home overtime" work, settles with family of employee who committed suicide: Toyama

The suicide in 2019 of a man who worked for Panasonic was due to his overly long working hours, including "take-home" work, as the company has now admitted. The company has made an apology, and a settlement has been reached with the man's surviving family.

Lawyers representing the both company and the family announced the settlement on the 7th. It is said to be rare for a company to admit to overtime work not acknowledged by the LSIO.

The man was working at the company's Toyama factory, in the city of Tonami, Toyama, when in April 2019 he was promoted from the position of subsection chief in the manufacturing department to that of section chief in the engineering department. With both a change in the type of work and an increased workload, the man fell into depression, and in October of 2019 he killed himself at home.

At the time, the company directed employees to leave the office by 8:00 P.M. The man brought a work computer home with him, and, in the 6 months leading up to his death, did as much as 54-110 hours of work per month at home. According to his wife, aged 41, there were times when he stayed up doing work until 4:00 in the morning.

In March of 2021, the Tonami LSIO found that the man had suffered severe mental stress from the change in work assignment, recognized a cause-and-effect connection to his suicide, and granted workers' compensation. But in regard to the long working hours, including "take-home" work, the LSIO denied recognition of this, saying that "there was no concrete instruction from a supervisor".

(4) "Percentage pay is not overtime pay": verdict orders taxi company to pay ¥105 million

A verdict was reached on the 9th at Kyoto District Court in the lawsuit filed by 27 taxi drivers working for Rakuto Group. They had claimed that it was unfair for their overtime to be included in their percentage pay, and sought back-payment of a total of approximately ¥109 million in overtime. The verdict states that "percentage pay cannot be interpreted as augmented pay for overtime work", ordering the company to pay a

total of about ¥105 million.

The plaintiffs were drivers and former drivers who worked for Rakuto Taxi and Hotel Hire, both part of the Rakuto Group. At both companies, pay included an “extra allowance” that changed according to sales, in other words a percentage pay amount. The drivers claimed that “the percentage pay is in exchange for the whole time worked, and cannot be considered as pay for working particular hours”. Therefore they sought back-payment for their overtime hours that had not been paid. The company, on the other hand, had insisted that the “extra allowance” included pay for overtime hours.

The verdict recognizes that no mention of the “extra allowance” being pay for overtime hours can be found in the drivers’ employment contracts or elsewhere, and that the allowance, calculated based on sales, cannot be called an augmented wage. Furthermore, the court also judged that the drivers’ long hours in a car without passengers, considered by the company not to constitute working time, should indeed be included in working hours.

3. Situation/Statistics

(1) Total population down by 0.7%, to 126.14 million; foreign residents number 2.74 million, a new high record--2020 national census final figures

According to the final figures from the national census of October 2020, released on the 30th by the Interior Ministry, the total population of Japan (including foreign residents) was 126,146,099. This is a decrease of 948,646 (or 0.7%) compared to the previous census in 2015. That previous census showed the first decrease in total population since the census began in 1920. This one now is the second to show a decrease.

While the number of Japanese people shrank, the number of foreign nationals in the country increased by 834,607 (or 43.6%) since the last time, reaching a new record of 2,747,137.

“Summary of Results of Reiwa 2 [2020] National Census: Basic Statistics on Population, Etc.” Nov. 30, 2021 Interior Ministry

https://www.stat.go.jp/data/kokusei/2020/kekka/pdf/summary_01.pdf

(2) Tokyo to introduce same-sex partner system within fiscal 2022, announces Governor Koike

Tokyo governor Koike Yuriko announced on the 7th at a meeting of the prefectural council her intention to introduce a “same-sex partnership system”, giving public recognition to LGBT and other sexual-minority couples, within fiscal year 2022. She will make her basic ideas about the system clear within fiscal 2021.

Governor Koike explains that, in hearings with sexual-minority support groups and surveys of Tokyo residents, most opinions expressed a need for such a system. She says

that “it will lighten the burden of difficulties in living, and encourage greater understanding towards diverse sexualities among people of the prefecture”, stating that “we will give consideration to ways of making this system one that as many people as possible can benefit from”.

(3) Uber drivers equivalent to employees, says new EU bill: guaranteed minimum wage, paid holidays

The European Commission, corresponding to the executive branch in the EU, has announced a bill that would make so-called “gig workers”, such as delivery drivers who undertake one-off work through smartphone apps, able to receive the same treatment as regular employees of a company. It would require operating companies to guarantee a minimum wage and give paid holidays according to the style of work. This creates a possibility of great change in the type of work called the “gig economy”, which grew rapidly during the pandemic.