



Labor Update No.13 July, 2017

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. Towards better working conditions in the *anime* industry: Labor Standards Inspection Offices hold seminar

Hoping to improve the work environment in the animation industry, including long hours and low wages, the two Labor Standards Inspection Offices in charge of Tokyo's Suginami and Nerima Wards held a seminar on June 30, 2017. These two wards are home to more *anime* production companies than anywhere else in Japan. About 190 animators and production company labor managers were in attendance at the seminar.

Japanese animation has gained a high reputation abroad. Yet according to a survey carried out 3 years ago by an industry organization, its creators' average working hours were as much as 11 hours per day. Average time off was just a little over four days a month.

At the seminar, Labor Standards Inspectors took the role of instructors. They explained how, when they carried out on-site inspections in the past at *anime* production companies, they found cases of pay less than the minimum wage, of more than 100 hours' overtime worked per month, and so on. They called on companies to manage employees' working hours properly and pay them wages appropriate to their work.

2. Supporting irregular workers to gain qualifications: long-term vocational training, Labor and Welfare Ministry

The Ministry of Welfare and Labor has finalized plans to offer long-term training courses of 1 or 2 years for irregularly-employed workers aiming to acquire national qualifications, etc.

The courses for people who have left (or lost) their jobs are based on Hello Work introducing those who are judged to need training to a course. Apart from study materials, etc., the person need not bear any of the cost themselves. There are courses for such fields as metalwork, nursing care, and office work. They typically last from 3 to 6 months.

The new long-term courses be for acquiring qualifications such as Second-Class Architect, Social Worker, and Psychiatric Social Worker. The actual training will in some cases be entrusted to private vocational schools. Most of the courses are expected to start next April.

3. Number of public elementary- and junior-high-school teachers more than 700 short nationwide

It has become clear that the total number of teachers in public elementary and junior high schools nationwide, as of April this year, was at least 700 short of the number needed. At some schools, lessons could not be conducted according to plan. A leading cause seems to be the shortage of temporary-hire teachers, who were used to fill vacancies before.

The number of teachers needed is calculated by the national government every year based on the number of students in each school, and local boards of education assign teachers based on this.

In the background of this teacher shortage is a shortage of temporary-hire teachers. These temporary hires were previously used to fill vacant positions. Now more and more schools are unable to carry out all their scheduled lessons.

Amid all this, there are some schools that, unable to find temporary hires, are resorting to the “Exception System” to get teachers.

Teaching licenses are divided into categories of Kindergarten, Elementary, Junior High School and so on. But these schools are making use of the legally-recognized Exception System, whereby teachers “with any one of these licenses, and having the ability to teach, can teach beyond the limits of their license for a maximum of 3 years”.

In response to the continuing teacher shortages in elementary and junior high schools, the Education Ministry stated that “recently, an increasing number of teachers are taking leave, particularly maternal and childcare leave, and we admit that there is a problem of temporary teachers becoming harder to obtain. In order to maintain a learning environment for children, it is essential to find the necessary number of teachers. So we must take measures on a national basis to solve this”. They also said that “Teachers are very busy, and have a heavy workload. This is a barrier that can make it hard to find enough people wanting to be teachers. We believe that teachers’ working style is inseparable from their sense of mission and their job satisfaction, so we hope to have wide-ranging discussion on improvements to make an environment that will attract people.”

Also, some have pointed out that there is a need for the national government to rethink how teachers are employed, including by increasing their budget.

4. Labor Standards Inspection Office on-site inspections in Fukui Prefecture: legal violations in 72% of workplaces

The Fukui Labor Bureau has compiled results of on-site inspections conducted in 2016 at a total of 1,002 workplaces by the Labor Standards Inspection Offices in Fukui, Takefu, Tsuruga and Ono. Violations of the law were found at 722 of these (72.1%). The

rate of work-hours violations was 26.9%, the highest it had been in the past five years.

On-site inspections are carried out by Inspection Offices in response to consultations or reports from workers. If there is a problem, Inspectors issue citations or other administrative guidance.

According to the compiled results, violations related to working hours were confirmed at 270 workplaces. The rate of violations was 5.4 percentage points up from the 21.5% recorded in 2015. The main causes are considered to be failure to accurately keep track of and record hours worked; shortage of people; and long hours of work associated with deadlines changing at clients' request, among others.

Wage violations such as unpaid overtime were found at 230 workplaces (violation rate 23.7%); failure to conduct yearly health checks, etc., at 230 (23.0%); and failure to give working conditions in writing at 140 (14.0%).

By type of industry, the transport industry, including truck transport, had the highest rate of violations at 83.7%. Health and sanitation, including nursing care, was the second highest at 81.5%. Commerce, including retail such as supermarkets and drugstores, had 81.4%, while manufacturing was 75.9% and construction was 58.9%.

As well as engaging in guidance and supervision of workplaces where overtime and holiday work totalling over 80 hours a month has been found, Fukui Labor Bureau will proceed with measures to deal with excessive work and mental health issues, aiming for "Karoshi Zero (Zero Overwork Deaths)".

5. Labor agreement at Dentsu was "invalid"

Dentsu Headquarters, which was charged with forcing workers illegally to work longer hours of overtime than permitted by their labor agreement, has found that the agreement between them and the union ("3.6 agreement") was not valid. This could be considered part of the sloppiness of the company's labor management.

The Labor Standards Act sets working hours at up to 8 hours per day, 40 hours per week. For a company to require overtime work, management and labor must agree to a "3.6 agreement" that sets an upper limit.

To make such an agreement, a union must include the majority of all employees, including irregular workers, at the company. If the number of union members falls below half the employees, the union ceases to be the representative, and it is necessary to make the agreement with a "workers' representative" who represents the majority.

Dentsu explains that "while the union did include the majority of regular employees, the increase in the number of limited-term employees caused the number to fall below half the total".

In response to the incident, some have begun questioning the Labor Inspection Office's responsibility, saying "the labor Standards Inspection Office just kept casually accepting the 3.6 agreements without caring to check the details".

On having the problem pointed out by the inspecting authorities, Dentsu elected a workers' representative and signed a new agreement. They claim that this one now fulfills the legal requirements.

6. Rengo changes course to approve of "Zero Overtime Pay Law"—opposition from within the organization

Regarding the "High-Level Professional System", which would exempt high-income individuals in specialized jobs from legal limits on working hours, Rengo has decided to request amendments from the government. This plan from the executive is meeting with strong opposition from within the organization.

The government has already submitted a bill to the Diet to amend the Labor Standards Law, including introducing this system. The "Work-Style reform Implementation Plan" finalized in March clearly indicates an aim to pass the bill soon. The government plans to have the bill debated at this Autumn's special Diet session.

For people in specialized jobs with yearly incomes of over 10.75 million yen—on condition of thinking out some sort of measures such as granting 104 days off per year, setting an upper limit on working hours, or introducing a "work interval system" to ensure a given minimum length of time between finishing work and starting the next day's work—the amendment bill would mean they would not be paid any wage premium, even if they worked overtime, late at night or on holidays.

Opposition parties criticize this as a "Zero Overtime Pay Bill", and it has not been debated since being submitted to the Diet in April of 2015. Rengo up until now has called for the withdrawal of the bill, saying it "will encourage long working hours", but they have now effectively changed their position.

Rengo will request that the government strengthen the health-preservation measures in the system. Specifically, as well as having companies be required to grant at least 104 days off per year, they seek implementation of multiple measures from among the following: an upper limit on working hours; a "work interval system"; granting two days off per week; extra health checks depending on the worker's mental and physical condition; etc.

This sudden change of direction has seen opposition erupting from within the organization. The leadership of the main industrial unions has not hid their bewilderment, saying "We were always against it, and then we're told that we're suddenly changing our policy without even any debate within our organization. Our union members won't agree to it".

7. Bank of Japan "Sakura Report": worry of increased bankruptcies due to labor

shortage

The “Sakura Report” (the BoJ’s Regional Economic Report) includes the expression “expansion” in the overall judgements for 6 regions, and otherwise also gives the impression that the Japanese economy is finding a stronger footing. On the other hand, points of concern have also started to come up, such as the “bottoming out” of the downward trend in corporate bankruptcies. Bankruptcies due to shortages of labor are increasing, and the reality is that companies without physical strength are dropping out.

According to nationwide corporate bankruptcy statistics published by Teikoku Databank on July 10, 2017, the number of corporate bankruptcies from January through June was 4,247, an increase of 3.2% over the same period of the previous year, and the first upturn in 8 years. The increases in the transportation and communications industry and in retail were especially noticeable.

Among these, those bankruptcies caused by being unable to obtain labor increased by 44.1%, to 49, an increase for the second year in a row. Compared to four years ago, when the BOJ began large-scale monetary easing, the number increased by 2.9 times.

Those in charge of these companies point out that if more companies become unable to meet planned sales targets due to a shortage of people, or their earnings come under pressure because they are unable to pass the increase in labor cost on to consumers in their prices, there is a worry of further increases in the number of labor-shortage bankruptcies.

Regarding labor shortages, while the BOJ says that “at this point positive effects, such as wage increases making the economy more optimistic, are stronger”, they also showed that they have their eyes closely on the future, saying that “labor shortages are a tough problem for individual companies”.

July 2017 Bank of Japan regional Economic report (Sakura Report) below (in Japanese):
<https://www.boj.or.jp/research/brp/rer/rer170710.pdf>

8. Debate begins on revising the statute of limitations on unpaid-wage claims

On July 12, 2017, the Welfare and Labor Ministry’s Labor Policy Council began debate on revising the rule that limits workers’ claims on companies for unpaid overtime, etc., to “the past two years”. The debate is in response to the civil law amendment that passed in May, which standardizes the period for suing for monetary payment in principle to 5 years. But conflict is unavoidable between management, who will want to shorten the period, and labor, who will want to extend it.

The Labor Standards Act sets the limit when a worker loses the right to sue for unpaid wages at “2 years”.

The Civil Law, promulgated in 1896, sets the limit when the right to sue for monetary

payment at “in principle 10 years”, but also sets many kinds of “shorter limitations” as exceptions to this.

For claiming wages, it set the limit originally at 1 year, but when the Labor Standards Act was promulgated in 1947, from the worker-protection point of view that “one year is too short for workers”, a special exception of “2 years” was made. The limit in the Labor Standards Act was based on the exceptional provision in the Civil Law.

The rule that unused yearly paid leave can be carried over to the following year, up to a maximum of 20 days in one year, is also based on this 2-year limit.

The amended Civil Law, passed in May and promulgated in June, changed the legal rules on exchanges of money (law of obligations) to place importance on consumer protection. The period when monetary claims can be made was unified to “in principle, 5 years” and the shorter limitations were all abolished.

In accordance with this, the special limitation on wage claims, originally “1 year” in the civil Law, also disappears. The labor Standards Act limit of “2 years” has thus become shorter than the period set in the Civil Law, and can no longer be called helpful to “worker protection”.

In April 2017, the Welfare and Labor Ministry answered to the House of Councillors Standing Committee on Judicial Affairs that “we will consider what the limitation ought to be”, and made clear that the Labor Policy Council would begin debate on it. On the 12th of July, official debate began, with participation from representatives of both labor and management.

On this day, the labor side claimed that the limitation on the right to claim wages “ought to be made 5 years” to bring it in line with the civil law. To keep it at 2 years, shorter than the period set by the civil law protecting rights for society at large, would be antithetical to worker protection.

Keidanren only went so far as to state that “amending (the statute of limitations) will have a considerably large effect on business practice. There is a need to debate it fully, from all points of view.” However, economic organizations’ real desire is to keep the limit as short as possible. If the statute of limitations is extended, the period when unpaid overtime pay will have to be granted will also be extended, and if the limit becomes “5 years”, then paid leave might go up to a maximum of 100 days in a year.

Yamato Transport, where unpaid overtime became a problem, had to include the previous two years’ worth of unpaid overtime (approximately 19 billion yen) in their March 2017 balance, so their operating profit was down by almost half from the previous year, to 34.8 billion yen. If the limitation had been 5 years, and if we assume the same magnitude of unpaid overtime every year, by a simple calculation a further 28.5 billion yen would have needed to be paid out, and the majority of their operating profits would have been blown away. Extending the statute of limitations will have a huge effect on corporate management. Diametric opposition between the opinions of

labor and management on this is unavoidable.

The amended Civil Law is likely to come into force in 2020, so the Welfare and Labor Ministry is thinking to submit a bill to amend the Labor Standards Act to the Diet as early as 2019. At that day's Labor Policy Council meeting there also was an opinion that "there will be a need to refer to the opinions of specialists in law", and the Ministry is planning to set up a deliberation committee of legal scholars and other experts to summarize the points of debate.

Labor Conditions Subcommittee, Labor Policy Council, Ministry of Welfare and Labor, below (in Japanese):

<http://www.mhlw.go.jp/stf/shingi/shingi-rousei.html?tid=126969>

Documents handed out at July 12, 2017 meeting of above subcommittee below (in Japanese):

<http://www.mhlw.go.jp/stf/shingi2/0000170998.html>

9. Education Ministry: integrate teachers' colleges, education departments

The Education Ministry, citing the fact that demand for teachers will decrease due to the declining birthrate, has finalized a plan to talk to national teacher-training colleges and university education departments on the following: 1) integrating the teacher-training functions of university education departments with teachers' colleges, or of teachers' colleges with one another; 2) public and private universities near one another, or in the same prefecture, cooperating to share teacher-training duties, etc. There is a possibility this may lead to shrinking, or even closing, of national teachers' colleges and education departments.

On July 12, 2017, the ministry's "Panel of Experts on Reforming National Educator-Training Colleges and Departments, Graduate Schools, and Attached Schools" came to an agreement on this idea. There are currently 44 national teachers' colleges and education departments, one in nearly every prefecture. After receiving the Panel's final decision, the Ministry plans to ask these colleges and universities for a conclusion by the end of the 2021 school year.

The Panel has pointed out that with the current organization and scale, "it will be difficult to pursue both strengthened function and efficiency. We have come to the point where there is a need to consider universities working together and concentrating the training function as it becomes smaller in scale." At first, they say, each college and university should revise their student acceptance numbers based on the shrinking demand for teachers in each region, and give their conclusion by the end of the 2021 school year.

In addition, as well as unifying colleges, they are asking not only public institutions but also nearby private colleges to be included in collaboration to consolidate training for subjects where fewer teachers are needed, and to consider sharing training functions according to which subjects each university or college is strong in or specializes in. They

say the national government should also provide financial support in accordance with how these measures progress. Specifically, when combining, they imagine not simply eliminating one college or department, but keeping some campuses in existence, or leaving some with only elementary-school teacher training departments.

Regarding teacher-training colleges and departments, in 2001 another expert panel suggested the idea of reorganizing and consolidating, but the only consolidation across prefectural lines was between Tottori university and Shimane University, which consolidated their education departments into Shimane University.

Panel of Experts on Reforming National Educator-Training Colleges and Departments, Graduate Schools, and Attached Schools (9th meeting):

http://www.mext.go.jp/b_menu/shingi/chousa/koutou/077/index.htm#pagelink3