



# Labour Update

## 労組周辺動向 No. 147



2022 - 09 - 02

*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) "Birth Leave for Dads (Parental Leave at Time of Birth) in Effect Starting October 1": Aug. 22, 2022, MHWL

"Guide to Amended Points of Childcare and Family Care Leave Act"

<https://www.mhlw.go.jp/content/11911000/000977789.pdf>

(2) "All prefectures' reports on regional minimum wages have been made": Aug. 23, 2022, MHWL

"Reiwa 4 [2022] Regional Minimum Wage Report Status"

<https://www.mhlw.go.jp/content/11302000/000978544.pdf>

(3) Proposed budget for Reiwa 5 [2023]: budget demands summarized--set to be over

## ¥110 trillion for second year in a row

Budget demands for the proposed budget for fiscal-year Reiwa 5 (2023) have been submitted to the Finance Ministry by each government agency and ministry. With the demands of the Defense Ministry--which is aiming for a fundamental strengthening of national defense capability--being the highest ever, among other factors, the total general budget demands seem likely to be more than ¥110 trillion for the second year in a row.

With the government continuing to be in a tough financial situation, there is likely to be scrutiny given to how to secure funding for important policies whose expenditures are expected to grow as the budget is compiled towards the end of this year.

## **2. Legal Violations/Disputes**

### (1) Overtime pay for teachers denied again on appeal: public-school overtime lawsuit

The Tokyo Superior Court on August 25 rejected an appeal from a man who taught at a public school in Saitama. The man's claim was that, based on orders from the school principal, he had worked in excess of legally stipulated working hours; and that therefore it was illegal for him to receive no overtime pay. He sued for back-payment of approximately ¥2.4 million. The Superior Court has supported the decision of the Saitama District Court, which rejected the man's claim.

This verdict states, just as the lower court's ruling did, that "it is difficult to accurately distinguish between those duties taken on of one's own accord, and those performed on the orders of the principal", and that therefore the augmented-wage system, based on a premise of strict timekeeping, is not suited to teaching work. Saying that this is why, under the Teachers' Salary Special Measures Law, teachers receive a "teaching adjustment allowance" in lieu of overtime, the court denied the man's claim to overtime pay.

### (2) Mitsubishi electric admits *pawahara*, settles with employee's family in 2019 suicide case

In the case of a young man (20 years old at the time) who was a newly hired employee at Mitsubishi Electric when he committed suicide in 2019, the man's surviving family members have reached a settlement with the company. A lawyer representing the family explained this at a press conference on the 26<sup>th</sup>. According to the written agreement, Mitsubishi Electric admits that "power harassment" (workplace bullying, or *pawahara* for short) by a trainer at the company was a cause.

The man left a note saying he had been told by the trainer to "kill yourself", among other things. In February of last year, the Amagasaki, Hyogo, Labor Standards Inspection Office granted workers' compensation to the family.

### (3) Instructor's "rotten orange" comment was Otemon Gakuin's intent: worker's compensation approved for former staff member

The Ibaraki, Osaka, Labor Standards Inspection Office (LSIO) has granted workers' compensation in a case where a staff member, at a staff training held by school corporation Otemon Gakuin (Osaka), was told "we can't keep a rotten orange like you". The man developed depression due to being repeatedly demanded to quit his job, according to the LSIO's decision. Calling the comment "a remark that can be called both a push to resign, and a denial of the man's personhood", the LSIO recognized this as being the intent of Otemon Gakuin, which invited the outside trainer.

According to the document released by the LSIO detailing their decision, the man was encouraged to quit at a meeting with school corporation management, and directed to take part in the training from August 22 to 26 of 2016. At the training, an external instructor from Tokyo consulting company Brain Academy repeatedly demanded he resign by the end of March 2017.

The man did not wish to quit, and hoped for continued employment as a member of full-time staff. But the external instructor refused this, saying "maintenance of the status quo is impossible" and "we cannot keep a rotten orange like you". After the training, the man was pressured repeatedly by management that "there is no choice for you but a change of position after you resign". In February of 2017, he was diagnosed with depression.

In the judgement of the LSIO, although it was an external instructor making the remark, since the school's personnel manager was present at the training, if the remark had been contrary to their intentions the manager would have requested it be corrected. Therefore the remark was within the intent of the school corporation. The LSIO thus recognized that the man was under a severe mental burden caused by his work, and granted him compensation.

#### (4) Two former part-time lecturers at Suzuka U. sue for confirmation of status

A man and a woman who both taught as part-time lecturers for a university in Suzuka, Mie, have filed suit against the university corporation at the Tsu District Court on the 30<sup>th</sup>, seeking confirmation of their employment status. They claim that after switching to contracts with no term limit (so-called unlimited-term conversion), they had their contract terminated with no indication of any appropriate reason. This was illegal, they say.

The plaintiffs are a man in his 50s and a woman in her 40s, both of whom taught classes as part-time lecturers (*hijokin koshi*) at Suzuka University until March of last year. From academic year Heisei 14 (2002) to Heisei 30 (2018), the two signed one-year contracts that were renewed every year. Starting with academic year Reiwa 1 (2019), they made a switch to contracts with no limit on length--known as "unlimited-term conversion".

However, they both were handed documents in February of last year saying their contracts were ending, with no indication of an appropriate reason. Their contracts were terminated at the end of March.

The two claim it was unfair for their contracts to be ended without a reason. On the 30<sup>th</sup>,

they filed a suit at Tsu District Court against Kyoei Gakuen, the school corporation that runs the university, seeking confirmation of their status as part-time lecturers there.

(5) Two part-timers at Handai, after working there over ten years, sue for unlimited-term contracts

Two individuals who have worked for over ten years as part-time lecturers (*hijokin koshi*) at Osaka University (Handai) have filed a suit seeking to switch their contracts to unlimited-term.

The two are both *hijokin koshi*, including on Canadian man who teaches English.

In order to secure stable status for non-regular (part-time etc.) workers, the Labor Contract Act includes an "unlimited-term conversion rule". This stipulates that, when someone has worked at the same employer for over five years, if the person in question wishes it, the employer is required to switch them to a contract with no time limit (so-called "unlimited-term" employment).

According to the suit, since more than ten years ago, both lecturers have repeatedly renewed their "quasi-outsourced contracts", under which they carry out duties under their own discretion. In September last year, they applied to the university to change to "unlimited-term employment". But the university said that their contracts so far had not been as workers, but as contractors, and that therefore the labor contract law did not apply.

The two followed the school's teacher manual in performing duties such as making lesson plans and grading students' work, just as did other teachers who were on employment contracts. Therefore they have filed suit at the Osaka District Court, claiming that this makes their contracts equivalent to employment, and, as they have worked longer than five years, seeking to be switched to unlimited-term.

The Canadian lecturer who sued says "I have worked for over twenty years, and feel that I've been treated unfairly because my contract isn't an employment contract. I want to make sure I can keep working without fear".

(6) Popular cake shop "eS Koyama" sued by employee: 342 hours of overtime in a month, back-payment sought--Kobe District Court

It became known on the 31<sup>st</sup> that a man in his 30s who worked for popular cake shop "Patissier eS Koyama" in Sanda, Hyogo, has filed suit at Kobe District Court against the company that runs the shop. He is seeking a total of ¥31 million, including back-payment for overtime and compensation for his contracting depression. The suit is dated June 22. The man says his overtime work was recognized to reach up to 342 hours a month.

The man began working there in 2003. He often had to work from early in the morning until late at night, with one day off per week. He says his "net monthly pay, including overtime, was only about ¥200,000". Then in April of last year, he was diagnosed with depression and took leave. In June he returned to work, but currently does desk work for the company.

The man says that, starting in June last year, he began procedures for the payment of his

overtime, but that the company failed to go forward with this for him, and therefore the matter has come to a lawsuit. He is claiming an amount calculated as unpaid overtime for the period of May 16, 2018 to May 15, 2021, plus compensation for his depression, plus an additional amount as punitive damages.

### (7) Surrounded and scolded for 3-and-a-half hours, 100 hours of overtime: Kyoto District Court verdict orders company to pay ¥7.7 million

The Kyoto District Courts handed down a verdict on August 31 in a lawsuit filed by an employee of metal recycling company Iwamoto Kinzoku, who had sought ¥19.1 million in compensation. The man claimed that, while working long hours, he had been surrounded by multiple supervisors who pressured him to quit, and that this caused him to suffer from depression. Judge Mitsuyoshi Keiko stated that there was indeed a cause-and-effect relationship between the man's being scolded under the heavy burden of overtime work and his mental condition, and ordered the company to pay approximately ¥7.7 million.

According to the verdict, from April to September of 2015 the man worked about 60-100 hours of overtime a month, and at least once had to work thirteen days in a row. On the evening of September 7, the man was called out to the factory where he worked. Surrounded by a total of eight supervisors, he was scolded continuously for at least three-and-a-half hours. The next day the man was transferred to different duties, and after that became depressed.

In the reasons given for the ruling, the Court points out that the long hours of work at the company put a burden on the man. In regard to the surrounding and scolding by supervisors, the Court says the man's treatment from now on was talked about in front of him, and remarks were made that negated him as a person. This were criticized as "things that should never happen from an employer".

## **3. Situation/Statistics**

### (1) COVID-19 aftereffects could leave 4 million unable to work, U.S. think tank analyzes

The Brookings Institution, a think tank in Washington (U.S.A.), released an analysis on August 24 regarding the effects of the COVID-19 pandemic on society.

According to this, in the U.S. there are currently about 16 million people between age 18 and 65 who, after having contracted COVID-19, are suffering from aftereffects (known as "long Covid") such as shortness of breath or the sensation of brain fog.

Also, of these, 2-4 million (amounting to 1.8% of the total U.S. workforce) are in a condition that leaves them unable to work. The damage to the economy could be up to 230 billion dollars (or ¥31 trillion).

On top of this, Brookings analyzes that, if the number of people affected should continue

to increase by 10% per year, in ten years the economic damage could reach 500 billion dollars (¥70 trillion). To deal with the problem, the report calls for increasing the available options to prevent and treat the disease, and for increasing the amount of paid leave companies make available to employees.