



Labor Update No.15 August 11, 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. Law/Policy

(1) Minister of Welfare and Labor declares intent to unify bill: “zero overtime”, overtime limits

Minister of Welfare and Labor Yasuhisa Shiozaki, referring to the “high-level professional system” that would exempt high-income individuals in specialized occupations from regulations on working hours, made it clear on July 28 that this would be unified with the Labor Standards Act amendment including upper limits on overtime work, with penalties, and submitted to this autumn’s special session of the Diet.

A bill to amend the Labor Standards Act, including a “high-level professional system” as well as a flexible-hours system, was submitted to the Diet in April 2015, but was harshly criticized by opposition parties and labor unions as a “Zero Overtime Bill”, and was never debated.

(2) In hiring elementary school teachers, preferential treatment for English ability: 42 of 68 Boards of Education

In advance of English becoming an official subject in elementary schools in 2020, Boards of Education in many places are putting effort into obtaining people with high levels of English ability. When Asahi Shimbun carried out a survey of 68 Boards of Education that are hiring elementary school teachers, 42 Boards answered that “in this year’s hiring, we plan to either add points, or exempt candidates from certain tests, based on their ability in English”.

The Ministry of Education gave notice to BoE’s nationwide in January of this year that they should give thought to the specialized nature of foreign language teaching in carrying out their employment tests. In regard to the preferential treatment, they

explain that it is “to increase the number of teachers who can promote English-language education”(Nara Prefecture) or “to improve children’s English ability”(Ibaraki Prefecture). Some also worry that “There are few teaching staff with the specialized skills, which presents a problem for instruction”(Yamanashi Prefecture), and seven BoE’s, including Kawasaki City and Fukuoka City, are either cooperating with *eikaiwa* schools or universities to train teachers, or considering doing so.

In elementary schools, the New Government Curriculum Guidelines will be fully implemented starting in 2020. In the fifth and sixth grades, English will become an official subject, using textbooks and assigning marks. “Foreign Language Activities”, in which students become familiar with English through songs, games, etc., will be moved earlier, from fifth and sixth grades (as now) to the third and fourth grades.

To improve their teachers’ English ability, about 10 percent of Boards of Education hiring teachers nationwide are partnering with private English schools, etc., to do teacher training, or are considering doing so.

(3) Keeping track of working hours to become compulsory: amendment to the Ordinance for Enforcement of the Industrial Health and Safety Act

In order to prevent overwork deaths, the Welfare and Labor Ministry has settled on a plan to amend the Ordinance for Enforcement of the Industrial Health and Safety Act, making it clearly compulsory for companies to keep track of working hours appropriately.

The Government plans to submit a “bill relating to work-style reforms” to the autumn special session of the Diet. The Ordinance for Enforcement of the Industrial Health and Safety Act will be amended before the related law is to take effect.

The Industrial Health and Safety Act is a law to protect the health of working people. It sets a structure that assumes working hours will be kept track of, such as requiring face-to-face guidance from a doctor at the request of anyone who has worked over 100 hours overtime in a month. However, measures are said to be inadequate at some companies.

Accordingly, relating to keeping track of hours, language such as “must be carried out in an objective and appropriate way” will be included in the Ordinance for Enforcement of the Industrial Health and Safety Act. It imagines recording the starting and ending times using an IC card or by using a computer. It will apply to all workers, including managerial personnel.

(4) Limiting orders to companies not enrolled in *Shakai Hoken*: Ministry of Land,

Infrastructure, Transport and Tourism amends notice on public works

The Ministry of Land, Infrastructure, Transport and Tourism, aiming to promote construction workers' enrollment in *Shakai Hoken*, settled on a plan on August 7 to make stricter evaluations (used when selecting contractors for public works projects) of companies that fail to enroll. The standards for evaluation, which have an effect on the selection of a company, will be changed by amendment to the notice. The points lost for not enrolling workers in *Shakai Hoken* will become more easily reflected in the overall evaluations. The aim is to improve the working environment in order to secure personnel to work in construction.

Also, since April this year, for public-works projects ordered by the Land and Transport Ministry, eligible contractors have been limited to those where "even their subcontractors are enrolled in *Shakai Hoken*". The Ministry is considering expanding this rule to cover projects ordered by cities and towns as well.

According to a survey by the Ministry, only 76% of all construction workers are enrolled in employment insurance, health insurance, and pension insurance. A full 13% are not enrolled even in any one of the three. As well as enrollment rates being low among subcontractors who have not received legal welfare expenses (the company-paid portion of *Shakai Hoken*) from the principal contractor, there are noticeable cases of skilled workers who move from site to site (such as form builders) not being enrolled.

A personnel shortage is being seen due among other things to aging, with one in three construction workers now being 55 or older. There is also fear that this may have a negative impact on the maintenance of infrastructure, so securing personnel by improvime the work environment is an urgent task.

(5) Information session to be held on project to accept foreign construction workers

The Transport Ministry began accepting foreign personnel to work in construction in April 2015 as an urgent and time-limited measure, citing the temporary increase in demand for construction in order to complete facilities related to the 2020 Tokyo Olympics and Paralympics. Now, they have revised the running of the foreign-worker acceptance project, seeing a need to call in even more workers from overseas in order to remedy the shortage of workers. They have announced information sessions to be held in 8 places across the country.

Press announcement linked below (in Japanese):

https://www.mlit.go.jp/report/press/totikensangyo14_hh_000683.html

Public comment is invited; link below (in Japanese):

<http://search.e-gov.go.jp/servlet/Public?CLASSNAME=PCMMSTDETAIL&id=155170306&Mode=0>

2. Legal violations/struggles

(1) Citation for Osaka Gas subsidiary: security guards' breaks are "work hours"

A security company subsidiary of Osaka Gas has received a citation from the Yodogawa Labor Standards Inspection Office. The citation says that the company's "break time" in fact counts as working hours, and thus they must pay back wages.

The security guards were working in 24-hour shifts. Even during their breaks, they were required to go to work in case of emergencies. The Yodogawa Labor Standards Inspection Office stated that "this does not count as break time".

The labor Standards Act requires a one-hour break when a work shift is over 8 hours. The company says it will pay 2 years' worth of unpaid back wages, and revise their working style, such as by not calling guards to work during their breaks.

(2) Waseda University settles in part-time lecturer dismissal case

In 2013, Waseda University suddenly set part-time lecturers' term of employment at 5 years. Part-time lecturers objected to this and took the case to court; in April of this year, a settlement was reached between the lecturers and the university.

The reason for setting lecturers' term of employment at 5 years was said to be due to a rule in the amended Labor Contract Act passed in 2013. This rule specified that when limited-term employment contracts have been repeatedly renewed for a total of over 5 years, they can be changed to unlimited-term at the workers' request. The university also set an upper limit on how many classes a part-time lecturer could take charge of. This would mean both dismissals and large pay cuts, and part-time lecturers began collective bargaining with the university.

The university showed no signs of changing their policy, saying among other things that "in setting working regulations, when we tried to do it according to procedure, we were not in fact able to do this". Due to this, the union ended up pressing criminal charges against the university regents for violation of the Labor Standards Act.

Furthermore, the university also attempted to set a rule where lecturers would have to take one term off after working for five years (though this is forbidden by the Welfare and Labor Ministry); cut the number of the lecturers' classes; and offered them classes in the form of fake subcontracting, a legally problematic approach. These self-defeating

steps seem to have led the way to a settlement.

News coverage linked below (in Japanese):

<http://www.zaikei.co.jp/article/20170808/391035.html>

(3) Miyagi Labor Bureau instruction and supervision results: illegal overtime work 49%

On August 8, the Labor Bureau in Miyagi Prefecture announced the results of instruction and supervision carried out in fiscal year 2016 330 workplaces in the prefecture suspected of overlong working hours. Illegal overtime work and other related legal violations were found at 244 places, or over 70% of the total.

Among the main violations, illegal overtime work was found at 162 workplaces (49.1% of the total); unpaid overtime at 54 places (16.4%); and failure to implement measures for preventing harm to health due to overwork at 50 places (15.2%).

Of the 162 workplaces that had illegal overtime work, at 115 there were workers who had worked over 80 hours of overtime and holiday work in a month. At 20 places there were those with over 150 hours, and at 5 places there were those with over 200 hours. Looking at these workplaces by industry, service and entertainment had the highest rate of violations, 90.5%. Also high were commerce, with 80.0%, and manufacturing, with 72.2%.

Guidance for reform aimed at preventing harm to health due to overwork was carried out at 273 workplaces, or 82.7% of the total. "reduction to under 80 hours per month" (at 189 places) and "study and deliberation by a health committee, etc." (at 69 places) were asked for. At 77 workplaces, management of working hours was considered insufficient, and instruction was given to keep track of hours appropriately.

(4) Labor Standards Act violations at 70% of companies accepting Foreign Technical Interns

On August 9, the Ministry of Health, Welfare and Labor announced the results of their inspection of corporations that had accepted Foreign Technical Interns in 2016. At 4,004 of the 5,672 companies inspected, or 70.6%, there were legal violations relating to labor standards. Among these were some extremely bad cases, such as companies that made interns do illegal overtime work or those that failed to pay wages.

According to the Ministry's inspection results, the top type of violation by these companies was working hours, at 1,348 companies (or 23.8% of the total). Second was safety standards (1,097 companies, 19.3%); then payment of overtime rates (771 companies, 13.6%), followed by health standards (531 companies, 9.4%).

In the working hours category, the worst offender was a company that made an intern do up to 130 hours of illegal overtime work. For safety standards, there were

companies that failed to take safety measures such as installing a cover on a machine that could cause injury when used. As for overtime rates, there were cases interns were paid only a low rate of 300-450 yen per hour for overtime and holiday work.

Furthermore, there were 88 cases where interns requested correction of their working environments from labor standards authorities. The great majority of these reports—83 cases, or 94%—concerned unpaid wages or overtime rates. There was even a corporation that, over a period of two years, had failed to pay a total of 12 million yen in wages to 5 technical interns.

“State of Instruction and Supervision, Prosecutions, Etc., of Organizations Training Foreign Technical Interns for Heisei 28 [2016]” linked below (in Japanese).

<http://www.mhlw.go.jp/stf/houdou/0000174090.html>

<http://www.mhlw.go.jp/file/04-Houdouhappyou-11202000-Roudoukijunkkyoku-Kantokuka/0000174260.pdf>

(5) Ministry of Health, Welfare and Labor publishes “Heisei 28 [2016] Statistical Survey of Labor Disputes”

On August 10, 2017, the Ministry of Health, Welfare and Labor published the “Heisei 28 [2016] Statistical Survey of Labor Disputes”

According to this, in labor disputes in 2016, the total number of dispute cases was 391, and the total number of people participating was 69,533. Compared to the previous year, total cases declined by 34 (8.0%), while total participants declined by 104,510 (60.0%). The total number of cases was the lowest since 1957, when comparable records began to be kept.

Details linked below (in Japanese):

<http://www.mhlw.go.jp/toukei/list/14-28.html>

(6) Unpaid wages for pre-opening exercises, etc., at Suzuki Motor Corporation

Suzuki announced on July 24 that there had been cases of unpaid wages at their Sagara factory (Makinohara City, Shizuoka Pref.) for pre-opening exercises and morning assemblies. By that day, they had paid out a total of approximately 10 million yen to about 500 people in back wages for the period of June 2016 to February 2017. The company had received a citation from the Shimada Labor Standards Inspection Office in June.

At the Sagara factory, there is a voluntary exercise period of about 5 minutes before the start of working hours, and a morning assembly of 1-2 minutes after starting time. As

well as some departments failing to convey that participation in the exercises was voluntary, some had also carried out their morning assemblies before starting time, and therefore there were unpaid wages.

3. Situation/statistics

(1) Rate of men taking childcare leave while their spouses are on maternity leave after birth is only 1.49%: results of 2016 Basic Survey of Gender Equality in Employment Management

The Ministry of Health, Welfare and Labor has compiled results from the 2016 Basic Survey of Gender Equality in Employment Management. According to this, the rate of women taking childcare leave (of women who gave birth during the one year from October 1, 2014, to September 30, 2015, while employed, the percent of those who began childcare leave by October 1, 2016. Includes those who applied for leave) was 81.8% (same as in the preliminary report announced on May 30, 2017). This is an increase of 0.3% compared to the figure for fiscal 2015 (81.5%).

On the other hand, the rate of men taking childcare leave (of men whose spouses gave birth during the one year from October 1, 2014, to September 30, 2015, the percent of those who began childcare leave by October 1, 2016. Includes those who applied for leave) was 3.16% (same as in the preliminary report announced on May 30, 2017). This is an increase of 0.51% compared to the figure for fiscal 2015 (2.65%). It is also the highest number recorded since the first survey (Heisei 8 [1996]).

Moreover, of male workers whose spouses gave birth between October 1, 2014, and September 30, 2015, the proportion of those who took childcare leave during their spouse's post-birth maternity leave was 1.49%.

In addition, the proportion of women in managerial positions, for positions corresponding to section chief and above (including executives), was 12.1% (it was 11.9% in fiscal 2015). By type of position, it was 6.5% for positions corresponding to division head (5.8% in 2015), 8.9% for those corresponding to section chief (8.45 in 2015), and 14.7% for those corresponding to subsection chief (14.7% in 2015).

Ministry of Health, Welfare and Labor 2016 Basic Survey of Gender Equality in Employment Management (final report) linked below (in Japanese):

<http://www.mhlw.go.jp/toukei/list/71-28r.html>

(2) Nominal wages for June decrease for the first time in 13 months: possible influence for decrease in summer bonuses

According to the Monthly Labor Survey (preliminary report) for June, released by the

Health, Welfare and Labor Ministry on August 4, workers' total cash earnings *per capita* (including part-timers), corresponding to nominal wages, were 429,686 yen, a decrease of 0.4% compared to the same month of the previous year, and the first decrease in 13 months. This seems to be the influence of summer bonus amounts decreasing from those of the previous year.

Of total cash earnings, "regularly provided pay" —including base pay, overtime, etc.—was 261,583 yen, an increase of 0.4% over the previous year. On the other hand, summer bonuses and other "specially provided pay" was 168,103 yen, a decrease of 1.5%, which pushed the total earnings figure down.

The real wage index, expressing the change in wages apart from price fluctuations, was down by 0.8%, its first decrease in 3 months. In addition to the decrease in nominal wages, the rise in the consumer price index due to increasing energy costs (such as electricity bills) also had an effect.

Preliminary report of Monthly Labor Survey for June, Heisei 29 [2017] linked below (in Japanese):

<http://www.mhlw.go.jp/toukei/itiran/roudou/monthly/29/2906p/2906p.html#download>

Summary is linked below (in Japanese):

<http://www.mhlw.go.jp/toukei/itiran/roudou/monthly/29/2906p/dl/pdf2906p.pdf>

(3) National Personnel Authority releases summary of survey results on private-sector wages and executive remuneration by occupational category

The National Personnel Authority has released two survey results relating to private-sector wages, which form the basis of their pay recommendation for national public servants.

Private-sector wages linked below (in Japanese):

http://www.iinji.go.jp/kankoku/h29/pdf/29sankou_minkan.pdf

Executive remuneration linked below (in Japanese):

http://www.iinji.go.jp/kankoku/h29/pdf/29sankou_yakuin.pdf