



Labour Update

労組周辺動向 No. 168



2023 - 06 - 23

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) Amended Immigration Act passes; rules revised for refugee application and deportation

A bill amending the Immigration Act to revise the rules on detaining and deporting foreign nationals was voted on by the House of Councillors (upper house), passing with a majority. Votes in favor came not only from the LDP and Komeito, but also from Nippon Ishin no Kai and the DPP.

Under the current Immigration Control and Refugee Recognition Act, once a person applies for recognition as a refugee, they cannot be deported as long as the application is being processed. Because of this, it has been said that in some cases, individuals have applied repeatedly in order to keep evading deportation.

This amendment makes it so that, for a person's third and subsequent applications, as

long as there is no “appropriate reason” why the person must be granted refugee status, they are no longer covered by the non-deportation rule.

The CDP and the Communist Party opposed the bill, saying there is a chance that persons subject to persecution in their home countries might be deported anyway.

During debate, the CDP attempted to stop the bill from going to a vote by submitting a resolution to dismiss Sugi Hisatake, chair of the upper-house Judicial Affairs Committee, and a motion to censure Justice Minister Saito Ken. Both of these were voted down.

(2) In Regard to Making Additional Fields Eligible for the Specified Skills #2 Visa (June 9, Reiwa 5 [2023] Cabinet Decision): Immigration Bureau

https://www.moj.go.jp/isa/policies/ssw/03_00067.html

(3) Support for those raising children while working: MHWL panel

The Expert Panel on Support for Combining Work with Child and Family Care, a research group within the Ministry of Health, Welfare and Labor (MHWL), finalized a report on the 12th dealing with expanding support for working parents. It proposes requiring companies to offer multiple types of work schedule to employees who have children between 3 years old and elementary-school age: they could introduce such systems as shortened work hours, remote work, or flextime, offering the working parent options to choose from. The MHWL aims to have an amendment to the Childcare and Family Leave Act submitted to next year’s regular Diet session.

These ideas would be under consideration for introducing as a new “Work-Style Options System for Parents and Children” (working title). The report also includes suggestions such as lengthening the period for which an employee is exempt from overtime, and expanding the leave given to parents to care for a sick or injured child.

The current system requires companies to grant permission for shortened work hours (in principle, six hours per day) to any employee with a child under 3 years old, if the employee requests it. The report points out that “for those with children over 3, there are increasing needs, not just for shorter hours, but for the ability to have flexible ways to work full-time”, and that it is desirable for the worker to be able to choose.

Also, the proposal would lengthen the period a worker is exempt from overtime, from the current rule of “until the child reaches 3 years of age” to “until the child enters elementary school”.

“Research Panel Report on Combining Work with Child and Family Care” June 19, 2023, MHWL Expert Panel on Support for Combining Work with Child and Family Care, 9th Mtg.

<https://www.mhlw.go.jp/content/11909500/001108929.pdf>

(4) Basic Policy on Economic and Fiscal Management and Reform, 2023: New Capitalism Gathers Speed--Growing Investment in the Future and Realizing Structural Wage Increases (Honebuto Hoshin 2023: June 16, 2023, Cabinet Decision)

2. Legal Violations/Disputes

(1) Patagonia Japan union submits petition with 30,000 signatures to withdraw “5-year firing of non-regular staff”

The Japanese subsidiary of outdoor goods maker Patagonia gave notice of “termination” to a woman who worked as a member of “non-regular staff” (part-time, temporary, etc.) at the company’s Sapporo store, saying her employment would end this year. In response, the union to which the woman belongs submitted a petition to the company on June 13 with “about 30,000 signatures”, calling for withdrawal of the rule that limits non-regular staff employment to five years or less.

The woman started working part-time at the store in Sapporo in April of 2019. After a fellow staff member was let go after working four and a half years, she joined the Sapporo General Union in December of 2021. In July of 2022, the Patagonia Union was formed and held repeated collective bargaining, but the company says the “non-regular five-year firing” rule has not been withdrawn.

The woman planned on gaining the “right to switch to unlimited-term” next April 1. But in April of this year, she was given notice that she would be let go within the year.

Under the 2013 amendment to the Labor Contract Act, if someone works at the same company on limited-term contracts for a total of five years or more, they can request to change over to unlimited-term employment. In 2017, then Prime Minister Abe Shinzo spoke in the Diet and said that “terminating employment for the purpose of evading the rule is not desirable, in light of the spirit of this law”. But the truth is that terminations for “unlimited-switch evasion” are common.

Ending employment just before the switch to unlimited-term has been a problem at other companies too. A man who worked as a contract employee for Nippon Express filed suit for confirmation of status, saying he was let go the day before gaining the right to switch, but the Tokyo Superior Court did not grant his claim, rejecting his appeal in October of 2022.

According to the Sapporo General Union, if Patagonia does not withdraw the woman’s firing, they are considering filing a lawsuit next year.

(2) Citation to Nihon University Mishima H.S. over non-payment to part-time teacher: criminal charges considered

A labor union called the “Capital Region University Part-Time Teachers’ Union”

(Yokohama) told reporters on the 15th that Nihon University Mishima High School (Mishima, Shizuoka) had received a citation in March from the Mishima Labor Standards Inspection Office (LSIO) for not paying wages to a part-time teacher, a man in his 40s. the union insists that the total amount unpaid is more than ¥2 million. Saying that Nihon University (Nichidai) still refuses to pay, and that this is a violation of the Labor Standards Act, the union is also considering pressing criminal charges.

According to the union, the man was paid according to his lesson hours. But the LSIO found that he was not paid for work he did outside of lessons, such as making teaching materials. The Office also found that the man's working conditions were not made clear, and ordered this to be rectified.

(3) Unfair to take classes away from freelance yoga studio instructors for forming union: Tokyo Labor Commission order

The Yoggy Instructors' Union, a union of instructors who work freelance for major yoga studio chain Studio Yoggy, held a press conference at the MHWL on June 16 to announce that the Tokyo Labor Commission had issued an order for relief of unfair labor practices. The company had cut union leaders' classes to zero; the Labor Commission has ordered them to restore some of these instructors' classes and pay an amount corresponding to lost pay. The order is dated June 1.

The instructors, on freelance contracts (*gyomu itaku*), formed a union in 2019. They repeatedly held collective bargaining, demanding that the company withdraw their policy of not letting anyone teach classes without paying to get qualifications.

The company's studios closed in April 2020 due to the COVID-19 pandemic. They reopened that June, but the total number of classes was reduced by 50% from what it had been before; in particular, the union leaders had no classes at all, which they saw as problematic. They filed a complaint at the Labor Commission, saying the company was *de facto* refusing work to union leaders.

The Commission's ruling recognized that the freelance instructors counted as workers under the Labor Unions Act, based on the fact that they were integrated into the business organization as a workforce essential to the carrying out of the company's business, and that their *gyomu itaku* contracts were decided unilaterally and uniformly by the company. In regard to them having their classes cut to zero, the Commission decided that, for those classes that required qualifications, this was not an unfair labor practice. However, for other classes, the Commission found that it "constituted disadvantageous treatment on account of being union members, and of engaging in union activity".

The company has appealed to the Central Labor Commission for a re-investigation, so the dispute will now move to that arena.

(4) McDonald's lawsuit: appeal decision still finds variable-hours system "invalid"--Nagoya Superior Court

The Nagoya Superior Court issued an appeal verdict in a suit filed by a Nagoya man, formerly an employee of McDonald's Japan (headquartered in Shinjuku, Tokyo), who said he had impossible goals imposed on him by an improvement plan for employees with poor performance records, and was thereby forced to quit. The man sued the company to void his dismissal and seek monetary compensation. The appeals court upheld the previous Nagoya District Court decision, which had found that the "variable work hours system" applied by the company to the former employee was invalid, and had ordered the man be paid approximately ¥610,000 in back wages. However, it rejected the man's claim that he had "been forced to quit".

The company introduced the variable-hours system on a monthly basis in each of its locations setting the details out in its work rules. However, the former employee worked shifts that differed from the work rules. Because of this, the District Court judged the system invalid on the grounds that "a shift unique to this store, not set down in the work rules, does not fulfill the conditions of the Labor Standards Act."

The Nagoya Superior Court rejected the company's claims, quoting the District Court's ruling that had stated that "the Labor Standards Act allows for variable work hours systems within the bounds of what does not harm a worker's plan of life; it does not permit employers to change working hours arbitrarily for business convenience".

3. Situation/Statistics

(1) Japan's gender equality index ranks 125th in the world, the country's lowest ranking ever--worst in G7, with low scores for political participation and economic activity

The World Economic Forum (WEF) published its 2023 gender equality rankings on the 20th; Japan was ranked at 125th out of 146 countries. This is nine positions lower than the rank of 116th that Japan had last year, and the country's lowest ranking ever. Large gender disparities in the fields of politics and economics gave Japan the worst score of any G7 nation.

The rankings are based on an index of gender equality in four fields: political participation, economic activity, educational opportunity, and health. Iceland scored highest this year, for the fourteenth year in a row. Next was Norway, then Finland, followed by New Zealand and then Sweden.

By field, Japan was 138th in political participation, and 123rd in economic activity. No woman has ever been prime minister, and the number of women corporate executives is also remarkably small. In educational opportunity--where Japan ranked at the top last year--it fell to 47th place due to a low-ranked proportion of female students enrolled in higher education.

The WEF holds a conference every year in Davos, at which political and economic top

leaders gather to discuss world issues.

"Global Gender Gap Report 2023", June 20, 2023, World Economic Forum

https://www3.weforum.org/docs/WEF_GGGR_2023.pdf