



# Labour Update

## 労組周辺動向 No. 174



2023 - 09 - 15

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) Revisions to Employment Insurance begin: discussions on expanded support for skills training, increases to childcare leave benefit

The Ministry of Health, Welfare and Labor (MHWL) held a meeting of its Labor Policy Council on September 7, starting discussion on revisions to the Employment Insurance system. Main points under consideration include expanding education and training benefits for “re-skilling” (retraining); raising the childcare leave benefit in effect to 100%; and widening eligibility to include short-hours workers (those who work less than 20 hours per week). The Council will also debate raising the insurance rates in order to cover the expanded programs. The plan is to work out the details by the end of this year, and then submit a bill to next year’s regular Diet session to amend the Employment Insurance Act.

“Employment Insurance System Study Group, Interim Report” Sep. 7, 2023, MHWL 182<sup>nd</sup> Labor Policy Council Occupational Stability Subcommittee, Employment Insurance Section

<https://www.mhlw.go.jp/content/11601000/001143635.pdf>

(2) Wage guidelines to improve conditions on construction sites; lowball contracts will be subject to administrative guidance: MLIT

In order to improve working conditions for carpenters, plasterers, and others working in construction, the Ministry of Land, Infrastructure and transport (MLIT) will soon be instituting new wage guidelines.

When making construction contracts, if wages are set too far below these guidelines, the plan is for these businesses to be subject to administrative guidance.

This policy has been decided on by a conference of experts convened by MLIT. The purpose is to avoid the situation in which companies skimp on wages in order to compete with other companies for construction outsourcing contracts.

For those who work at construction sites, including carpenters, plasterers and others, the government will now establish and publish guidelines for wages.

Based on this, when contracts for construction are being signed, if either the client company or the contractor sets a wage well below the guideline amount, the Ministry plans to carry out administrative guidance.

By creating an environment in which subcontracting companies can bid fairly while still accounting for adequate wages, the aim is to improve conditions, and thereby avoid the so-called "2024 problem" of labor shortages that the construction industry fears will come with strengthening restrictions on out-of-hours work.

The MLIT will soon begin discussions on how the wage guidelines will be calculated, as well as on conditions for administrative guidance. The aim is to submit relevant legislative amendments to next year's regular Diet session.

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

(1) Suicide of medical resident at city hospital "caused by long working hours: parents sue city of Itami for ¥130 million; LSIO grants compensation--Hyogo

A male doctor in training (resident) aged 25, who worked at Itami City Hospital, took his own life in 2018. His parents claim that his overly long working hours were the cause of his suicide, and have filed suit against the city of Itami at Kobe District Court, seeking approximately ¥130 million in damages. The Itami Labor Standards Inspection Office (LSIO) says it has recognized the death as work-related and granted compensation; the parents in their suit make the case that "the facts must be investigated, and ways to prevent repeat incidents must be considered, including revising the training system".

The suit is dated July 3. According to the formal written complaint, the man began work at the hospital after graduation from Osaka University. After receiving orientation, he was assigned to surgery in May and to respiratory medicine from June onwards.

On July 11 of that year, the man was absent from work without leave; on the next day, the 12<sup>th</sup>, a colleague came to check on him at the dormitory, located near the hospital, and found him dead in his room. The Itami LSIO granted workers' compensation on March 1 of this year, saying he seems to have suffered symptoms of depression before his death.

According to the man's parents, the LSIO ruling states that, in the month leading up to his death (June 13-July 12, 2018), the man worked about 80 hours of overtime (work in excess of legally specified hours); in the previous one-month period (May 13-June 12), he worked 70 hours' overtime. The parents say that, based on records of entering and exiting the hospital building, the amount of overtime he worked was about 100 hours in May and 97 hours in June. They say that, on overnight shifts, he sometimes worked more than 30 hours straight.

### (2) Moccos Ramen employee sues company, claiming "I asked for improvement, but nothing changed"

A 29-year-old man employed by Moccos Foods (headquarters: Nada-ku, Kobe), which operates ramen noodle restaurants in Hyogo, has sued the company at the Kobe District Court. He claims that he suffered from an adjustment disorder that was caused by his long hours of overtime work, which were up to more than 175 hours in a busy month. He is seeking a total of approximately ¥17.35 million in back-payment of wages and compensation for damages.

The man held a press conference on the 4<sup>th</sup>, saying that "When a company works you until this happens, without solving any of the problems, I think it's tantamount to attempted murder." The suit is dated July 20.

According to the official complaint, the man was hired as a part-timer (*arubaito*) in 2011 to work at a Moccos branch in Ishiyagawa. In September of 2019, he was promoted to a full-time (*seishain*) position. In January of last year, after being promoted to branch manager, he was diagnosed with an adjustment disorder. He has been on leave since February that year; in November, the Kobe LSIO ruled that his adjustment disorder was work-related.

In his suit, the man says that after multiple other employees at his branch quit, there was a shortage of personnel; and that the company's president directed him to cut labor costs. Therefore he had to work longer and longer hours. He asked the president and the board director for improvements in the situation, but nothing changed, and his physical and mental health began to suffer.

### (3) Lawsuit over firing at Kyushu University of Health and Welfare: school loses, ordered to pay ¥20 million

The Miyazaki District Court, Nobeoka Branch, handed down a verdict on September 6 in the case of a woman in her 40s, who taught as an Assistant Professor in the pharmacy department at Kyushu University of Health and Welfare (Nobeoka, Miyazaki), and who sued the university after losing her job in 2018. She was seeking preservation of status and payment of salary. Presiding judge Wada Shoki gave a ruling that recognized the woman's status as Assistant Professor, and ordered the university to back-pay her ¥20.66 million yen in salary for the period since she was fired.

According to the verdict, the woman was consulted by colleagues who complained of being sexually harassed by male professors. She was fired after submitting a written complaint to the university on behalf of the harassment victims. She was given notice by the university of "workforce reduction due to financial difficulties", and her contract was not renewed after April of 2018. She then went to court to seek confirmation of status and back-payment of salary.

Judge Wada ruled that, in relation to an Assistant Professor with a two-year term, in the Pharmacy Department a contract could expect to be renewed for 10 years. He judged that "the plaintiff had a reasonable expectation that her employment contract would be renewed". Recognizing her employment as continuing until March of 2024, he ordered payment of salary for this period.

#### (4) Piece-rate pay at Sakai ruled illegal: "extra effort not reflected"--District Court branch verdict makes waves in transport industry

A ruling in August by the Tokyo District Court, Tachikawa Branch, in a lawsuit over the appropriateness of the wage structure at Sakai Moving Service Co. (Sakai, Osaka), which is based around a "piecework rate" according to the amount of work done, is making waves in the transport industry. The court rules that "the company's system does not constitute a piecework rate", and ordered the company to back-pay for overtime. Similar piece-rate systems are common in the transport industry; Sakai appealed the ruling right away. Other companies in the industry are carefully watching what the Superior Court may say.

The suit was filed by three men formerly employed by the company as movers and drivers. They claimed it was illegal to make performance-based pay into a piece rate, and sought a total of approximately ¥12 million in back-pay for what they say should have been their overtime.

The August 9<sup>th</sup> ruling defined a piece rate as "an amount determined by a consistent ratio to the results of the amount of work done". Part of the company's performance pay is fixed beforehand by negotiations between management and the customer, with the employee doing only what the company directs them to do. The court verdict points out that "it is hard to call this a wage reflecting [the employee's] voluntary extra efforts", and that therefore it cannot be considered a piece rate.

The court also recognized time the workers spent changing into their uniforms as work

hours, and ordered back-payment of a total of about ¥9.5 million in overtime. It also ordered the company to pay an additional ¥6.2 million in punitive damages.

#### (5) “Kurokeko DM-Bin” individual contractors form union after given notice of termination

Independent contractors working for “Kuroneko DM-Bin”, a mailbox delivery service run by delivery giant Yamato Transport to deliver catalogs and flyers, have formed a union, they announced at a press conference on the 11<sup>th</sup> in Tachikawa, Tokyo. With the Kuroneko DM-Bin delivery work set to be transferred completely to Japan Post starting at the beginning of next year, these contractors were given notice that their contracts were ending. They then demanded collective bargaining with Yamato Transport. Despite being contractors, they claimed that the real situation of their work made them actually workers.

The union was formed in late July by Takamoto Hirozumi (74), who works for the company’s Kunitachi Branch. At the press conference, he said that “there was no explanation given for our contracts being canceled. I’d like to keep earning an income to live, the same as I have been. So I want them to withdraw the terminations”. He says the union is considering filing a complaint at the Metropolitan Labor Commission.

#### (6) Hakodate Bus union files criminal charges against company: “overtime and holiday work without agreement”

When Hakodate Bus--which single-handedly operates transit bus services in two cities and fifteen towns in southern Hokkaido, including Hakodate--made employees work overtime and on holidays without signing a labor agreement, this was illegal, says union Shitetsu Soren, Hakodate Bus Branch. The union has filed criminal charges at the Hakodate Labor Standards Inspection Office (LSIO) against the company president Mori Kenji, the Board of Directors, and the company itself. They claim the company violated the Labor Standards Act.

The union branch says that the company has unfairly fired union members to punish them, and has sued the company, as well as filing unfair labor practice complaints at the Labor Commission. The dispute is growing more and more heated.

### **3. Situation/Statistics**

#### (1) At listed companies, *seishain* salaries for women only 70% of men’s: why the gap?

The salaries paid to women who work as *seishain* (full-time regular employees) at listed companies average only 71.7% of those given to male *seishain*, according to a survey by Tokyo Shoko Research. Since companies all say the salaries they pay vary in accordance with seniority and duties, and not by gender, Tokyo Shoko’s interpretation is that the lack of women in managerial posts is causing the salary gap.

The average proportion of women in managerial positions is 9.4%. This is far away from

the government's goal of 30%; there were even 76 companies with no women in such posts at all, mainly in the manufacturing sector. By industry, the lowest ratio, 3.2%, was in construction. On the other hand, the highest was 19.8%, in the service industries.

## (2) Welfare applications up 3.8% in June: MHWL

The MHWL released figures on September 6 showing that the number of applications for welfare benefits in June was 21,681. This was an increase of 3.8% compared to the same month of last year, and the sixth month in a row to show a year-on-year increase. The rate of increase has slowed, having been over 10% for the four months up to May.

The number of households that started receiving benefits in June was 18,398, an increase of 2.6% year-on-year. The total number of households receiving benefits in that month (including those that were already receiving them before) was 1,649,300, an increase of 0.5%.

"Results of Survey of Welfare benefit Recipients (June, Reiwa 5 [2023], Estimated Figures) Announced" Sep. 6, 2023, MHWL

<https://www.mhlw.go.jp/toukei/saikin/hw/hihogosya/m2023/dl/06-01.pdf>

## (3) Real wages down 2.5% in July, shrinking for 16<sup>th</sup> month in row; rate of decrease accelerates

According to the Monthly Labor Statistics Survey for July (preliminary figures, for workplaces with five or more employees) published by the MHWL on September 8, the average wage per worker, in real terms (reflecting changing prices), shrank 2.5% from the same month of last year. This is the sixteenth month in a row to show a year-on-year decrease. Nominal wage increases have failed to keep pace with inflation in prices. The rate of decrease in the real wage figure went up, from 1.6% in June to 2.5% in July.

Total cash earnings *per capita*, corresponding to nominal wages, were 380,656, a 1.3% increase over the same month of last year. Of this, special wages (such as bonuses) averaged 108,536, increasing by 0.6%.

Bonus amounts have grown over the past few months; the increase rate in special wages was 35.9% in May and 3.5% in June. The weakening of this upward trend put downward pressure on real wages in July.

"Monthly Labor Statistics Survey, July, Reiwa 5, Preliminary Results" Sep. 8, 2023, MHWL

<https://www.mhlw.go.jp/toukei/itiran/roudou/monthly/r05/2307p/dl/pdf2307p.pdf>

## (4) Eight in ten term-limited researchers get continued employment: MEXT survey

The Ministry of Education, Culture, Science, Technology and Sports (MEXT) released sur-

vey results on September 12 relating to the employment situation of researchers and teachers at universities and research institutes. Of those who were term-limited (*ninki-tsuki*) and whose contracts reached the ten-year mark at the change of academic year, it turns out that about eight in ten maintained their employment after that point.

Based on the Labor Contract Act amendment that came into force in April of Heisei 25 (2013), when researchers with *ninki-tsuki* contracts reach a total of ten years under these limited-term contracts, the rule is that they can then switch to unlimited-term employment. Ahead of April, Reiwa 5 (2023), when the first group of people became eligible for this, terminations to stop the unlimited-term switch became a problem.

The MEXT survey covered 847 institutions, including public and private universities as well as research and development corporations. Answers were obtained from 801 of these. The number of employees at these institutions to whom the rule applied as of April this year (those who had reached a total of ten years under their contracts) was 12,397. Of these, 511 (4.1%) signed unlimited-term contracts. A further 9,466 (76.4%) gained the right to switch to unlimited-term at their next contract renewal.

On the other hand, 101 (0.8%) were job-hunting, with their next employment not yet decided. There were 1,398 people (11.3%) whose next employment or job-search status was unknown to their institution. The most common reasons given for ending contracts were revisions to personnel assignments due to the needs of society (27.4%) and the ending of the projects researchers were involved in, or of courses they were teaching (23.8%).

“ Results of ‘Survey on the Employment Situation of Researchers, Lecturers, Etc.’ (Reiwa 5) Announced” Sep. 12, 2023, MEXT

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