



## Labor Update No.19 October, 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) Can monitoring of long work hours be strengthened? Toward private outsourcing of guidance for companies that fail to report a “3-6 agreement (overtime agreement)”

Guidance for companies that have failed to file a “3-6 agreement” (the agreement between labor and the employer setting an upper limit on overtime) with the Labor Standards Inspection Office is to be outsourced by the national government to private agents, such as Social Insurance labor consultants, and this is to begin next fiscal year. The aim is to strengthen monitoring of long working hours by easing regulations. But specialists with knowledge of labor issues have voiced concerns and doubts about private outsourcing.

According to the Ministry of Health, Welfare and Labor (MHWL), there were 1.7 million workplaces nationwide that did not file a 3-6 agreement with the Labor Standards Inspection Office in fiscal 2016. There are said to be a number of companies that illegally make workers work overtime without a 3-6 agreement, or that are unaware of the existence of these agreements.

Outsourced operators will send a “self-check sheet” to workplaces, requesting answers on working hours and on whether working conditions are made appropriately clear to employees. After collecting the sheets and checking the contents, they will contact workplaces that seem to need guidance, and those that fail to answer. With the employers’ consent, they will inspect employees’ work records, etc., and if improvement is required they will consult and give guidance. For workplaces that do not answer even when reminded, or that fail to follow guidance, the cases will be handed over to a Labor Standards Inspector with compulsory inspection powers, and the Inspector will engage in further guidance and instruction.

For three years beginning next fiscal year, the self-check sheets will be sent to all the approximately 500,000 workplaces that have ten employees or more. After that, the plan is to expand this to companies with fewer than ten employees. Agencies to be outsourced to will be chosen by bidding.

Debate on private outsourcing of the work of Labor Standards Inspectors began in

mid-March at the government's Regulatory Reform Promotion Council.

The Regulatory Reform Promotion Council proposed privately outsourcing only the sending and collecting of self-check sheets and the providing of guidance to companies that fail to file a 3-6 agreement. MHWL included the contents of this proposal nearly as-is in their yearly budget request for 2018.

There are voices of concern and doubt regarding this private outsourcing.

Social Insurance labor consultants are unlike Labor Standards Inspectors in that finding out facts companies attempt to conceal is not their main job. If companies give vague answers on the self-check sheets, consultants might fail to notice, and misjudge them as having no problems, potentially overlooking illegalities.

Some concerned voices also note that "Social Insurance labor consultants advise companies on how to deal with Labor Standards inspections. It is doubtful whether monitoring can be effectively strengthened by outsourcing Labor Standards Inspection Office work to them".

(2) Tax-cut effects from lowering corporate taxes questioned: taxing internal reserves is considered

Within the Government of Japan, separately from the proposed tax cut for companies that are proactive in raising wages or increasing productivity, a proposal to make a large reduction in the effective corporate tax rate has surfaced. However, there are many with doubts about the effects of these tax cuts.

The tax rate in Japan, which was 37% at the start of the second Abe administration, was cut to 29.97% by fiscal 2016, and is planned to be further reduced to 29.74% by 2018. There is even a move to seek reduction of the effective corporate tax rate to the vicinity of 25%.

However, internal reserves, expressing the amount of profit saved up by companies, reached over 400 trillion yen for the first time in 2016. Labor share—of the added value generated by companies, the proportion spent on labor costs such as wages—sank to 43.5%, its lowest point in about 46 years. It has become clear that reducing corporate taxes has not led to rising wages or to expanded infrastructure investment.

For this reason, there is now a move within the government party to consider an "internal reserve tax" that would add to corporate taxes on companies that did not put a certain amount of their profits into raising wages or investing in infrastructure.

## **2. Legal Violations/Struggles**

(1) 1,140 people subject to dismissal at Tohoku University, 90% employed for over five years: worries of illegality

At Tohoku University, where irregular staff with repeated contract renewals are to be dismissed at the end of next March, it has turned out that the number of people subject to this will be 1,140. Of these, 1,050—more than 90 percent—have worked a total of over five years, and are therefore legally eligible for conversion to unlimited term.

Tohoku U. has about 10,000 teaching staff, of whom approximately 3,700 are in irregular employment. The university plans to dismiss those whose contract term will be reaching five years at the end of next March, just before the right to unlimited conversion comes into effect.

The bylaws of Tohoku U. set contract renewals at a maximum of five years, but in reality employment for longer than that has become common. The university is taking the stance that irregular staff who have been employed since before 2004, when it became a national university, will be shifted to unlimited term, but that other limited-term staff with over five years in service will be dismissed.

Nagoya University, also a national university, is planning to move their approximately 750 limited-term employees with over 5 years on the job to unlimited term as of next April. Nagoya U. officials point out that “Those who have worked for over five years gain a ‘right to expectation’ of continued employment, so dismissal is illegal. An agreement signed in a situation where one cannot refuse is surely invalid”.

Tohoku U. will introduce new positions as “limited regular staff” next year, with limits on their duties, etc., for the staff who will be dismissed. They will begin recruiting in August, and after an employment test, will decide in November who will be accepted. They have not made clear how many they will hire.

According to a national government survey, of the 86 national universities in Japan, only 6 will be converting limited-term staff to unlimited term next April. The Faculty and Staff Union of Japanese Universities estimates that about 10,000 people will lose their jobs.

“Survey Results on the Situation of Compliance with the Unlimited-Term Conversion Rule at National University Corporations and Inter-University Research Institute Corporations” published by MEXT on March 31, 2016, linked below (in Japanese):

<http://gu.generalunion.org/20170331Universities5YearSurvey.pdf>

(2) Sapporo U. loses again on appeal in re-employment pay-cut lawsuit, is ordered to pay the amount of the reduction

On October 4, Sapporo High Court rejected Sapporo University’s appeal, deciding to uphold the decision of Sapporo District Court that had ordered the university to pay a total of about 14 million yen, the amount of a pay cut, to 14 professors and former professors of the university. The professors had claimed that their salaries had been unilaterally cut when they were re-employed after retirement age, and sued for the amount of the pay cut plus consolation money.

According to the verdict, Sapporo U. changed the retirement age from 70 to 65 in 2007, proposing to the faculty union a system of extended employment where those who wished it could be re-employed at lower pay. In 2008 a labor agreement was signed,

but in 2011 the university unilaterally announced the cancellation of this agreement, and having amended their bylaws on salary payment, lowered the professors' yearly pay starting in April of 2013.

### 3. Situation/Statistics

(1) Doutor introduces a system of retirement allowances for irregular employees: born from the employees' voice

Doutor Coffee introduced a system of retirement pay for irregular employees on September 1. According to the company, this is the first such system in the food-and-drink industry. The aim is to encourage employees to stay with the company longer by improving their conditions.

Employees who are enrolled in Social Insurance (*Shakai Hoken*) and work over 30 hours per week will be eligible. About 17,000 irregular employees work for the company, including at franchise stores. But at first, about 330 of these who work at directly-managed branches, factories or at the corporate offices will be eligible.

Employees will be able to set aside up to 10% of their monthly pay, from 1000 yen to 20,000 yen, and receive it when they resign as a retirement allowance. Doutor will pay in 100 yen each month.

This retirement allowance uses a defined-benefit corporate pension plan. The annual percentage interest rate is 0.3 percent, which is more interest than saving in a bank. For someone who puts aside 8,000 yen per month, the calculation is that they will be able to receive 1.05 million yen in retirement after 10 years.

(2) Widening pay gap for irregular workers: National Tax Agency survey

The difference between the average pay received by regular and irregular employees at companies in 2016 was 3.15 million yen, increasing for a fourth year in a row, according to the National Tax Agency's Statistical Survey of Actual Status for Salary in the Private Sector. The gap between regular and irregular employees is expanding.

Approximately 21,000 workplaces were sampled for the survey. The average salary (average age 46.0 years old) was 4.22 million yen, an increase for the fourth year in a row. But compared to the average for regular employees (excluding executives) of 4.87 million yen, that for irregular workers was only 1.72 million yen, a gap of 3.15 million yen.

In 2012, when statistics began to be taken separately for regular and irregular employees, the gap was 3.0 million yen. Over the four years since then, while the average pay for regular workers has risen by 190,000 yen, that for irregular employees has only gone up by 40,000 yen, so the gap has widened.

"About the Heisei 28 [2016] Statistical Survey of Actual Status for Salary in the Private Sector" linked below (in Japanese):

<https://www.nta.go.jp/kohyo/press/press/2017/minkan/index.htm>

Summary of survey results linked below (in Japanese):

<https://www.nta.go.jp/kohyo/tokei/kokuzeicho/minkan2016/minkan.htm>

(3) Personnel shortages to continue, even as AI evolves? MHLW white paper on declining workforce population

Even if automation by robots or artificial intelligence (AI) progresses, the problem of personnel shortages will not be solved—this is the view expressed in the 2017 edition of the Ministry of Health, Welfare and Labor’s “Analysis of the Labor Economy” (Labor Economy White Paper). This is said to be because, while the number of job openings will fall due to automation, the workforce population will decrease even more. The white paper introduces an estimate by the Ministry of Economy, Trade and Industry (METI) claiming that the number of job openings will go down by 1.61 million in thirty years due to automation. Moreover, although the number of jobs requiring technical skills or communication ability, such as in engineering and elderly care, will increase, there will be large decreases in openings for factory-line work and simple office work. On the other hand, in this analysis the working population would drop by 2.25 million. “For growth, it will be essential to train personnel with technical skills who can use AI well”, the paper says.

“Analysis of the Labor Economy, Heisei 29 [2017] edition” original text:

<http://www.mhlw.go.jp/wp/hakusyo/roudou/17/dl/17-1.pdf>

“Analysis of the Labor Economy, Heisei 29 [2017] edition” summary:

<http://www.mhlw.go.jp/wp/hakusyo/roudou/17/dl/17-2.pdf>

(4) Guarantee the rights of sexual minorities: Science Council of Japan suggests legislation

As of the 4<sup>th</sup>, in order to protect the rights of sexual minorities (LGBTQ), a committee of the Science Council of Japan has for the first time put together and released a proposal calling for legislation, etc., to include a ban on discrimination.

The proposal points out, based on a survey by a private agency, that 7.6% of Japan’s total population are LGBTQ and asserts that, with many of these people experiencing hardship in living, it is urgent that their rights be protected, especially in such fields as marriage, education and labor.

Full text of the proposal linked below (in Japanese):

<http://www.sci.go.jp/ja/info/kohyo/pdf/kohyo-23-t251-4.pdf>

(5) Overwork Death White Paper, 2017 edition: MHWL says “countermeasures to be strengthened after Dentsu incident”

On October 6, the Ministry of Health, Welfare and Labor published the 2017 edition of their “White Paper on Countermeasures for Prevention of Overwork Death etc.” This

paper deals with the present situation of overwork death and overlong work hours. Following last year's white paper, this is the second time such a paper has been released. This year's edition focuses on the transport industry, where labor shortages are severe. It reports that, compared to other industries, this industry has more hours of overtime, and the workload is also concentrated at the end of the year, a situation that can easily lead to overwork deaths.

The report is about 380 pages long, 100 pages longer than the previous edition. MHWL claims that "although it is not mentioned by name, the case of overwork suicide of a new employee at Dentsu, and how this led to strengthening of measures to prevent overwork deaths, is dealt with over four pages".

In fiscal 2016, there were 191 cases of overwork death or overwork suicide (attempted suicides included) that received recognition as industrial accidents (*rousai nintei*). This was two more than the previous year. By industry, the transport and postal industry had the highest number, 41, accounting for over two-tenths of the total. Second highest was manufacturing with 35 cases, followed by construction with 23.

The white paper also reported on the labor situation in the transport industry. Between December of 2016 and February of 2017, a survey of approximately 40,000 bus, taxi and truck drivers was carried out (4,678 people replied). Asked about the reasons why there was overtime work, about 30% of respondents mentioned "personnel shortage".

It was also noticeable how many replies mentioned the amount of late-night work and holiday work in December, when movement of people and goods tends to be concentrated. Pointing out the remarkable number of cases of disease leading to industrial-accident recognition in the following January-March period, the paper proposes that "reducing the December workload to smooth out the extremes of busy and slack periods could be effective in preventing overwork deaths".

"White Paper on Countermeasures for Prevention of Overwork Death etc., 2017 edition" linked below (in Japanese):

<http://www.mhlw.go.jp/stf/houdou/0000179592.html>