



Labor Update No.30 March 23, 2018

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) LDP moves to curb overtime work in education, debates pay structures

Saying that laws relating to pay are one of the causes of teachers' long working hours, the Liberal Democratic Party's Headquarters for the Revitalization of Education (chaired by Hiroshi Hase) has begun debating measures for improvement. One focus is the system where, instead of any overtime being paid, a flat rate of 4% is added on top of base pay.

While the gap between the law and reality is a problem, on the other hand adjusting the flat-rate added amount to match the real situation would require the national government alone to budget an additional 300 billion yen. For this reason, the debate over measures such as maximum limits on working hours is likely to be prioritized over making drastic revisions of the system.

(2) National Pension (*Kosei Nenkin*), health, labor, employment: insurance procedures all in one go

The Ministry of Health, Welfare and Labor has finalized a plan to unify the procedures for *kosei nenkin*, health, labor and employment insurances starting in fiscal 2019.

Under the current system, the forms for these insurances are filed at separate places, such as the Pension Office, the Labor Standards Inspection Office and so on, but a one-stop window will be set up for all of them. This will be moved forward in combination with the shift to electronic application procedures, so as to reduce the burden on companies.

(3) Workplace harassment measures: will there be legislation?

MHWL's expert-panel meetings to discuss measures against workplace "power harassment" (*pawahara*) are reaching an important juncture. The focus of debate is

whether or not to obligate companies, by law, to take harassment-prevention measures. Panel members from the labor side are insisting on legislation, but those from the employers' side, fearing it would be a burden on management, have not altered their wary stance on this.

“Panel on Measures to Prevent Workplace Power Harassment, documents distributed at 8th meeting” linked below (in Japanese):

<http://www.mhlw.go.jp/stf/shingi2/0000194798.html>

2. LEGAL VIOLATIONS/STRUGGLES

(1) Yamagata University: memo directs using “cooling” to avoid unlimited-term conversion

It has come to light that Yamagata University sent a memo to departments, etc., in 2013 directing them to use “cooling periods” to avoid switching people onto unlimited-term contracts.

The university claims that “there was no intention of using this cooling to avoid unlimited-term contracts”.

Two university administrators, including the president, have had accusations brought against them at the Yamagata Labor Standards Inspection Office on the basis that, when amending working rules to set a 5-year maximum limit on employment contracts, the process of choosing a workers' representative was conducted in violation of the Labor Standards Law.

(2) Institute of Physical and Chemical Research withdraws dismissals of some staff

The Institute of Physical and Chemical Research, which has a rule that limited-term contract staff will be dismissed after a maximum of five years' employment, has notified certain staff that they will be exempt from being subject to this rule.

On the other hand, they have not changed their policy of dismissal after a maximum of five years for the approximately 850 staff members hired since April of 2016.

(3) Unfair Labor Practice recognized at Nissan: refusal of collective bargaining with dispatch workers' union

Kanagawa Prefectural Labor Relations Commission has recognized an unfair labor practice in the case of Nissan Motors (Yokohama City) refusing collective bargaining with a union to which three former dispatch workers belong, and has issued an order for relief.

The prefectural Labor Commission recognized Nissan as the employer, and ordered

them to accept collective bargaining. According to the Labor Commission, it is unusual for a dispatch client to be recognized as an employer.

(4) Dismissal for refusing transfer invalid: Osaka District Court

Osaka District Court gave its verdict in a lawsuit filed by a prefecture man in his 50s who had been an employee of the National Cerebral and Cardiovascular Center. He had claimed it was unfair for the Center to dismiss him for refusing their order to transfer, and sued the Center for confirmation of employee status, etc. The Court recognized the dismissal as invalid, and ordered the payment of his unpaid salary and bonuses.

The ruling stated that the man's wife was suffering from a mental disorder with symptoms judged severe, such as attempting suicide. Pointing out that "if he had obeyed the transfer order, it could easily be imagined the change in environment might worsen her condition", the judge ruled that the man's motive in refusing the order was not unreasonable, and that the Center had abused its authority over personnel and disciplinary matters.

(5) Supreme Court to make its first ruling on cases of disparity with regular workers

The Supreme Court has decided to hear arguments in April from both sides in two cases fought over whether a difference in conditions between regular and contract employees amounted to an unreasonable disparity, forbidden by the Labor Contract Law, or not. It is seen as likely that the Supreme Court will give its first judgment on what sort of difference in conditions might constitute an unreasonable disparity.

Article 20 of the Labor Contract Act forbids making unreasonable disparities in treatment between limited-term contract employees, etc., and regular employees. Temporary and contract employees of a shipping company in Yokohama and a logistics company in Hamamatsu filed two suits over this point, seeking equal treatment. The Second Petty Bench of the Supreme Court has decided to hear the arguments of both sides in these cases on April 20th and 23rd.

The Supreme Court's decision may have an influence on the debate over "equal pay for equal work".

(6) Nagasaki Prefectural University withdraws dismissal and evasion of unlimited-term conversion; Labor Bureau gives guidance

It has become known that Nagasaki Prefectural University, which had indicated plans to dismiss two irregular staff members this spring who were employed on repeatedly-renewed limited-term contracts, has withdrawn the dismissals after receiving guidance from the Nagasaki Labor Bureau that they were "not acceptable under the norms of society". The two, if their contracts were renewed, would be

eligible for the “unlimited-term conversion rule”, whereby when the total contract period exceeds five years, the contract can be changed to one without a term limit.

However, the University, while notifying the two in October last year of its plans to dismiss them, recruited new SEs under the condition that “the total employment period at the Prefectural University will not be more than five years”. The two employees demanded withdrawal of the dismissals, calling them “an evasion of unlimited-term conversion”, and sought guidance from the Labor Bureau for the University.

According to the document presented to the University by the Labor Bureau last December, the Bureau judged that, in light of the University’s having placed the condition of “total employment period not exceeding five years” on the new recruitments after having repeatedly renewed the two employees’ contracts, “the dismissals are lacking in an objectively justifiable reason, and cannot be recognized as appropriate under social norms”. The Bureau also pointed out that “we request you strictly abstain from operating in such a way as to avoid the unlimited-term conversion rule”.

Having received this notice, the University will continue to employ the two after this April, and will also *de facto* withdraw the upper limit of five years on other irregular office staff contracts.

(7) Taking childcare or family-care leave means no promotions!? For Osaka City employees, since 10 years ago...

Osaka City’s selection criteria for promotion of teachers, which include a specification that “those who take childcare leave or family-care leave for over 45 days in a year will not be eligible for promotion”, are being called into question. Amid this debate, a further new problem has surfaced: this same condition has been placed on teachers’ promotion tests since ten years ago.

Osaka City Mayor Yoshimura has indicated an intention to review the outlines of this system.

3. Situation/Statistics

(1) Examiner at nursing exam removes Muslim woman’s scarf

During the national qualification test for nurses, which was conducted all over the country, there was a case of an examiner removing a headscarf from a Muslim woman who had come to Japan through an Economic Partnership Agreement. The examiner claimed it was “to prevent cheating”. This was the first time that the Ministry of Health, Welfare and Labor had outsourced the running of exams to a private company. Saying that “the treatment was inappropriate”, the Ministry directed the company on the 23rd to send an apology letter to all the approximately 400 test-takers.

(2) Toward official recognition for LGBT couples: Fukuoka City to introduce system in fiscal-year 2018

Fukuoka City has announced their intention to introduce a “Partnership Oath System”, which would grant sexual-minority (LGBT) couples public recognition as partners, starting in fiscal 2018. The sex listed on the couples’ family registers would not matter. Fukuoka is the second ordinance-designated city, after Sapporo, to do this.

The system would have couples sign a written oath and submit it to the City to receive a certificate. This would not create legal rights or obligations, as a marriage registration does, but is expected to be useful in moving into municipal housing as a couple, in obtaining treatments at municipal hospitals that require the consent of kin, etc.

The City is giving consideration to those whose gender identity does not match their bodily sex. Not only same-sex couples, but those of opposite sexes would also be eligible. The thought is to also work on supporting measures, such as establishing an LGBT consultation service or holding exchange gatherings; details of the system are still under consideration.

(3) Elimination of nationality discrimination clearly specified, grievances also to be handled: Ordinance soon to be passed in Setagaya Ward

A proposed ordinance specifically meant to eliminate discrimination based on differences of nationality or ethnicity, as well as that against sexual minorities passed a committee vote on the 26th in Setagaya Ward, Tokyo. It is expected to pass and become law on March 2 at the plenary session of the council. It sets no penalties, but does establish a grievance committee to investigate complaints filed by Ward residents.

“Ordinance to Promote Diversity, Gender Equality and Multicultural Coexistence in Setagaya Ward (draft outline)” linked below (in Japanese):

http://www.city.setagaya.lg.jp/kurashi/107/157/801/d00156498_d/fil/1708093-2.txt

(4) Women’s wages increase slightly; gap between regular and irregular workers widens

The Basic Survey on Wage Structure for 2017, released on February 28 by the Ministry of Health, Welfare and Labor, shows that the average scheduled earnings for women working full-time were 246,100 yen. This is 0.6% more than the previous year, setting a new high record for the fourth year in a row. On the other hand, influenced by the increase in the number of women working as irregular employees, the wage disparity between regular and irregular employees widened in comparison to the previous year.

“Heisei 29[2017] Basic Survey on Wage Structure: summary of results” linked below (in

Japanese):

<http://www.mhlw.go.jp/toukei/itiran/roudou/chingin/kouzou/z2017/index.html>

(5) Foreign nationals increase in number in 75% of Japan's 1,741 municipalities

As population decline becomes a serious issue, on the other hand the number of foreign nationals living in Japan has been seen to increase in 75% of Japan's total 1,741 municipalities over the past four years. The number is increasing rapidly not only in the major cities, but in other regions as well.

Experts [who?] point out that "In Japan, the image of foreigners is that they will someday return home. But the number of permanent residents is also constantly increasing, and they are becoming important members of Japan's society. In the future, there will be a need to consider how to build a Japanese society where Japanese and foreign nationals can live together, and make a place for the existence of these foreign residents, not only in the labor force but in the whole of the society."

(6) Nagoya City moves to abolish club activities at all municipal elementary schools in 2021

On March 5, the Nagoya City Board of Education made clear its intention to abolish all club activities at all municipal elementary schools at the end of the 2020 school year. As teachers' long working hours become a problem, the BoE is planning to reduce the workload. From the 2021 school year on, some sort of activities will continue, but without the involvement of teachers.