



Labor Update No.37 June 25, 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) Taking childcare leave separately to be encouraged: Declining Birthrate Strategy Council makes proposal

The Council on Strategies to Overcome the Declining Birthrate, a private advisory body to the Minister in Charge of Measures for the Declining birthrate, has made a policy proposal.

Its main point is to amend the Childcare and Family Leave Act so that childcare leave can be split in order to encourage men to take part in childcare.

The proposal also encouraged companies to introduce a system where paid leave can be taken by the hour to deal with circumstances such as infertility treatment or taking care of a sick child.

The contents of the proposal will be reflected in the “*Honebuto no hoshin*” (Basic Policies for Economic and Fiscal Management and Structural Reform).

(2) Government proposes draft *Honebuto no hoshin* (Basic Policies for Economic and Fiscal Management and Structural Reform) to Council on Economic and Fiscal Policy

The government has shown a draft of this year’s *honebuto no hoshin* to the Council on Economic and Fiscal Policy. In addition to setting a new goal for fiscal soundness of having a primary fiscal surplus by 2025, it clearly stated a plan to raise the consumption tax rate in October of next year.

Also, in order to take in more foreign talent, the draft policy includes creating a new status of residence to allow people possessing certain skills, such as those who have completed the current “Technical Internship Program” to learn on the job in Japan, to stay a further five years.

Draft of “*Honebuto no hoshin*” (Basic Policies for Economic and Fiscal Management and Structural Reform) linked below (in Japanese):

(3) Legal scholars begin deliberating on financial settlements for dismissal

The Ministry of Health, Welfare and Labor has set up a commission of six legal scholars to consider a “system for financial settlement of dismissals”, which would use money to resolve disputes over dismissals from work. They have begun deliberation on introducing such a system. They aim to put together the legal arguments within the year. After that, the plan is to have the concrete points debated by the Labor Policy Council (an advisory body to MHWL).

“Commission on Technical Points of Law Relating to a Financial Relief System for Invalid Dismissals: meeting documents, 1st meeting” linked below (in Japanese):

<http://www.mhlw.go.jp/stf/shingi2/0000211235.html>

(4) Regarding the statute of limitations on the right to claim unpaid wages

Deliberation is ongoing on the idea to extend the statute of limitations on claiming back pay, from the current two years to five years. The current state of deliberations has been publicly released.

“Council on the Status of the Statute of Limitations for Claims of Wages, etc., 4th Meeting” details linked below (in Japanese):

<http://www.mhlw.go.jp/stf/shingi2/0000211192.html>

(5) High-Pro: current Labor Standards Inspectors apprehensive--“unable to give guidance on long work hours”

Voices of apprehension have been heard from current Labor Standards Inspectors, who police illegal work-styles, over the High-Professional System (High-Pro) included in the Work-Style Reform Bill. Since it exempts employers from regulations on working hours, they will be unable to give guidance over long hours, and furthermore they say it will also be difficult to expose companies that apply the system illegally.

“However long the working hours may be, there will be nothing we can do.” So says an Inspector in the Kanto area who has 20 years’ experience.

He also worries about the effect on industrial-accident approvals. Companies will need only keep track of “Health Management Hours”, a sum of time spent on the premises and time spent working outside the premises, so the actual working hours, necessary for approval of workers’ compensation, may be impossible to find out.

Another Inspector points out the difficulty in exposing illegal application of the system. This is because, in order to ascertain whether a worker is actually doing tasks to which

the High-Pro system can legally apply, there is believed to be a need to spend several days confirming what tasks are actually done.

(6) “Heisei 29 [2017] Fact-Finding Survey on Negotiations between Labor and Management: Summary of Results” has been released.

Looking at the situation of labor disputes that occurred between unions and employers over the past five years, 1.7% “had a labor dispute” (compared to 3.6% in the Heisei 24 [2012] survey), while 98.1% “had no labor disputes” (96.4% in Heisei 24).

Regarding reasons for not having any labor disputes, looking at unions’ answers (main three) the most frequent was “had no issues in conflict” at 53.6% (compared to 44.7% in Heisei 24 [2012]).

“Heisei 29 [2017] Fact-Finding Survey on Negotiations between Labor and Management: Summary of Results” linked below (in Japanese):

<http://www.mhlw.go.jp/toukei/list/18-29gaiyou.html>

2. Legal Violations/Struggles

(1) Former employee lodges complaint against Jasmac Plaza: “working up to 124 days in a row”

Four former employees of Jasmac Plaza, a hotel management company located in Chuo Ward, Sapporo City, filed a complaint against the company at the Sapporo Central Labor Standards Inspection Office charging violations of the Labor Standards Law (holiday work, overtime pay rates).

They claim that not only were they made to work illegally long hours, including having to work up to 124 days in a row, but that overtime was also not paid.

Prior to this, they also filed a civil suit at Sapporo District Court to seek payment of a total of 26.7 million yen in back pay for overtime.

The four were not given the once-weekly day off required by the Labor Standards Act; one cook, aged in his 50s, was made to work as long as 124 days in a row without a break in 2016-17, while another cook, also in his 50s was made to work 86 days in a row in 2017. The other two also worked up to 42 and 31 days in a row, respectively.

They say the hours of overtime work could be up to more than 200 hours in a month.

(2) Two Labor Standards Offices give citations to Ritsumeikan over changes in upper limit on faculty contract renewals

It has come to light that educational corporation Ritsumeikan has received citations

from both the Otsu and Ibaraki Labor Standards Offices on the grounds that they failed to hear an opinion from a representative of the majority of workers when they changed their work rules to add an upper limit of five years on contract renewals for part-time teaching staff.

(3) Maternity leave two weeks shorter than that of *seishain*: female irregular employee sues for rectification of disparity, saying “we do the same work”

A woman employed on a limited-term contract at social-welfare corporation “Aoi Tori” has sued the corporation at Yokohama District Court, claiming it was unfair for there to be a disparity between herself and *seishain* (regular full-timers) in wages paid during maternity leave (taken before and after giving birth) and in the length of the leave.

The woman started working for the corporation, which runs daycare centers for children with disabilities and local activity support centers, as a limited-term *keiyaku shain* (contract employee) in May of 2013. She worked as a social worker at an employment-support center for persons with disabilities, and renewed her contract five times.

The woman gave birth to two children during her term of employment. Under the working rules, *seishain* on maternity leave are paid the same wage as when they work, for a total of 16 weeks (eight weeks before the birth, and eight after). On the other hand, limited-term employees receive no wage during the leave period; and there is also a disparity in the length of leave, as they get only six weeks before giving birth.

Claiming this was an unreasonable disparity in violation of Article 20 of the Labor Contract Act, since the contents of her duties and her extent of reassignments were no different from those of a *seishain*, she is seeking payment of the difference between the maternity allowance she received from the Japan Health Insurance Association and the equivalent wage amount.

(4) Suit to be filed for “evading unlimited employment”: contract employee in Fukuoka City switched to *seishain* just one year before retirement age

A Fukuoka City man employed as a *keiyaku shain* (contract employee) is soon to file suit against his employer’s parent company, NTT Comware, in Fukuoka District Court seeking confirmation of status and payment of a difference in wages.

His claim is that when the company promoted him to *seishain* (regular employee) for only the one year right before retirement age, after employing him as a *shokutaku shain* on limited contracts for 13 years, this was done in order to evade having him request a change to permanent employment, and was invalid.

The man was employed from the summer of 2004 through the end of fiscal year 2016 as a *shokutaku* at NTT Comware’s Kyushu branch with monthly pay of 350,000 yen, and

renewed his one-year contract a total of twelve times.

Had the man remained a *shokutaku*, he would have gained the right to request a change to permanent employment this April.

However, one year before this, at age 59, he was not renewed as a *shokutaku* for fiscal year 2017, but was instead promoted to area-limited *seishain* (monthly pay: 294,440 yen). He turned 60 years old in February of this year and retired at the end of March due to reaching retirement age.

Then he was re-employed, this time as a limited-term *keiyaku shain* (pay: 176750 yen monthly).

He had been seeking permanent employment since the amended law was promulgated in 2012, but had not had his request accepted.

The man claims that “if this way of evading unlimited employment, by pretending to promote you for just a short time, goes unchallenged, it will become a loophole in the law”.

3. Situation/Statistics

(1) Number of births in 2017 lowest ever: 946,060

The number of Japanese children born in Japan in 2017 (number of births) was 946,060, the lowest recorded since records began being kept in 1899. On the opposite side, the number of deaths (which reflects the aging of the population) was the highest ever since the War at 134,433.

Population decline, the number of deaths subtracted from the number of births, was 394,373, the largest decline since records began to be kept. These numbers come from the demographic statistics published by the Ministry of Health, Welfare and Labor on June 1.

“Summary of Heisei 29 [2017] Demographic Statistics: Annual Total of Monthly Reports (Approximate Figures)” linked below (in Japanese):

<http://www.mhlw.go.jp/toukei/saikin/hw/jinkou/geppo/nengai17/dl/gaikyou29.pdf>

(2) Tax and *Shakai Hoken* burdens grow, consumption declines: working families in the Heisei Era

It has become clear that, over the approximately 30 years of the Heisei Era, ordinary working households' tax and *shakai hoken* burden grew by 34,000 yen a month, or as a percentage by 36%. Over the same period prices went up by about 10 percent, but the amount spent on consumption on the other hand went down by about 4,000 yen. With

the burdens of pension insurance and medical care, the worried future of working families has been thrown into sharp relief.

Based on Family Income and Expenditure Surveys, etc., the average monthly real amounts (nominal) for households of two people or more with a member working in 1988 and 2017 were compared.

On the other hand, what has grown is the amount of cash held by the corporate sector. According to the Finance Ministry's Financial Statements Statistics of Corporations by Industry, corporate monetary capital (excluding finance and insurance) at the end of fiscal year 2016 was at its highest ever figure of 211 trillion yen, an increase of more than 40 percent over the end of fiscal 1988. with the corporate tax rate also having been lowered from 42% to 23.2%, the pattern is for wealth created in the Heisei Era to flow to corporations.

(3) Kumamoto City reconsiders "sex" field on forms: consideration for sexual minorities

Kumamoto City is proceeding with a change for application forms, etc., that citizens submit at City Hall, introducing new forms that do not require filling in one's sex. The prefecture is also considering doing this.

The city this year changed the application forms for their high-level personnel employment exam to make indicating one's sex optional. They also plan to revise the one for entry-level positions, and have put together a handbook for staff to deepen understanding towards LGBT people. They are considering also releasing this for the public.

(4) Sexual harassment treaty aims for international standard--ILO begins work on a draft

It was decided on the 8th at the general meeting of the International Labor Organization (ILO, 187 member countries) to aim to create a treaty to eliminate workplace violence and harassment (or bullying). The worldwide #MeToo movement, which opposes sexual harassment and assault, gave support.

An ILO committee report discussing international standards for violence and harassment was adopted on the 8th. The aim is to adopt a legally-binding treaty at next year's general meeting. Work on making a first draft will now begin. The move this time is in the direction of combining a treaty with non-binding warnings to create international standards.

Report linked below (in English):

<http://www.ilo.org/ilc/ILCSessions/107/committees/violence-harassment/lang--en/index.htm>