



Labor Update No.40 August 6, 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) Bank of Japan to discuss need for downward revision in price predictions for 2020

In preparation for the Monetary Policy Meeting on the 30th and 31st, the Bank of Japan is analyzing the causes of the sluggish rise in prices.

Among other things, there is an increasing chance that a need to revise predictions downward for fiscal year 2020 (the last year of the projection period) will be discussed in the new “Outlook for Economic Activity and Prices (Outlook Report)”.

This has been heard from multiple competent sources. Thus there is also a possibility that a corresponding apprehensiveness will grow in the market.

(2) “Rules for Publicizing the Names of Companies with Illegal Overtime”: effectiveness in preventing *karoshi* questioned

The system of publicizing the names of companies that make their employees work illegally long hours is not functioning well enough.

The Ministry of Health, Welfare and Labor introduced the system with the aim of preventing *karoshi* (overwork death).

The number of companies it applied to turned out to be small, so beginning in January of last year the Ministry broadened the criteria for publicizing names.

However, even then there was only one company it applied to.

Some are saying that “the standards for applying the rule ought to be lowered”.

Under the current system’s criteria, a company’s name is only made public after three violations.

For this reason, it is known as the “three-strike rule”.

First, a company must have two cases of either (1) making at least ten employees work illegally over 80 hours' overtime in a month; or (2) an employee getting industrial-accident recognition for death or suicide (attempted suicides included) due to 80 hours or more of illegal overtime in a month.

For these companies that had two "strikes", the Labor Standards Inspection Office will summon the person in charge of labor to give them guidance.

If an on-site inspection after that still finds illegally long working hours, that will be the third "strike", and the company's name will be made public.

There are also special rules for publicizing names of companies with two "strike" in some situations, such as when there were two cases of overwork death or suicide after illegally working 80 hours or more of overtime in a month.

However, the information made public is only the company's name and how much illegal overtime there was. It does not include whether there was a death from overwork or not.

Some can be heard to point out that "Apart from the worst companies, most will improve at least for a while after getting guidance from the Inspection Office.

Since *karoshi* has become such a major social issue, company names ought to be publicized if there is a death.

Even if that cannot be done, they should be made public after two strikes, or the standard should be lowered some other way".

Notice dated January 20, 2017, from Director-General of Labor Standards Bureau of Ministry of Health, Welfare, and Labor to Directors-General of Prefectural Labor Bureaus (LSB Notification 0120 #1: "Regarding Guidance by Prefectural Labor Bureau Directors, etc., for Top Management of Enterprises at which Illegally Long Work Hours or Cases of *Karoshi*, etc., Have Been Recognized in Multiple Workplaces, and Publication of Company Names, etc.") linked below (in Japanese):

<https://www.mhlw.go.jp/kinkyu/dl/151106-05.pdf>

(3) Minimum wage: with 26-yen raise, national average guideline figure becomes 874 yen

The Central Minimum Wage Council Subcommittee on Guidelines, meeting in Tokyo to amend the regional minimum wages, has decided on raising the national average by 26 yen, to a guideline of 874 yen per hour.

This is the largest raise since the current system of expressing the amounts as an hourly wage started.

The positions of labor and business were opposed to one another, but with severe labor shortages in the background, the decision was made to match the government's target of a 3% raise mentioned in the "Work-Style Reform Implementation Plan".

The raise is larger than even the 25-yen raises of 2016 and 2017, making the third year in a row of approximately 3% increases.

The current national average minimum wage is 848 yen per hour; if regional minimums are raised in accordance with the guideline, the national average will be 874 yen per hour.

"Central Minimum Wage Council Subcommittee on Guidelines (4th Meeting) Documents" linked below (in Japanese):

https://www.mhlw.go.jp/stf/shingi2/0000213056_00004.html

(4) Number of foreign workers increasing; Immigration Agency being considered: Justice Ministry to make general improvements

The government, which is considering creating a new residence status to expand the acceptance of workers from overseas, held its first ministerial conference on the subject on July 24.

In addition to confirming measures to deal with the increase in numbers of foreign residents, such as enhancing Japanese-language education and opening consultation desks to give advice on living in Japan, Prime Minister Shinzo Abe asked for a "fundamental reorganization" of the Justice Ministry.

The Ministry has begun considering creating an "Immigration Agency".

"Ministerial Conference on Accepting and Coexisting with Foreign Personnel" linked below (in Japanese):

https://www.kantei.go.jp/jp/98_abe/actions/201807/24gaikoku.html

2. Legal Violations/Struggles

(1) Terminations of veteran dispatch workers rampant ahead of September--avoidance of mandatory "*seishain* after three years" rule?

"Dismissals", chiefly of veteran dispatch workers, are becoming frequent ahead of September 30, which will mark three years since the amended Worker Dispatch Act came into effect.

The amended law made it mandatory to take employment stability measures, including the rule that a dispatch worker may only be dispatched to the same workplace for

three years at most - if the length goes over three years, the dispatch company must ask the dispatch client to hire the worker directly.

If the contract is terminated before this becomes mandatory, the company can get away with not promoting the worker to *seishain* (regular employee) or giving them more generous conditions.

Workers are criticizing this as “terminations that go against the spirit of the law”.

(2) You can get all your *yūkyū-kyuka* (Annual Paid Leave) even if you quit in the middle of the year: Twitter user in the news for giving company brush-off

In case you resign from a job in the middle of a fiscal year, how many days of Annual Paid Leave (*yūkyū*) will you be given?

A July 11 tweet about this has become a talked-about topic.

The poster, Mugi (@MUGI1208), will resign from a job at a company this August.

Therefore, there was a consultation between Mugi and a supervisor regarding *yūkyū*.

The supervisor directed that the leave should be divided proportionally. Mugi became entitled to 20 days of paid leave in April of this year, but the supervisor said “since you are quitting in the middle of the fiscal year, we will only allow you eight days”.

In response, Mugi rejected this as “nothing more than a request from the company”, and retorted that “in that case, I will also take off all my past *yūkyū* that expired”.

The tweet reporting this exchange was retweeted over 4000 times, and the satisfying comeback was widely praised.

(3) Labor tribunal over dismissals at Tohoku U.: three more people move to regular lawsuit

Sendai District Court broke off labor tribunal proceedings on the 20th in the case of three former irregular faculty members who had sought confirmation of status.

They will now be moving to a regular lawsuit.

The three were on limited contracts renewed every year. All of them had worked for over five years, making them eligible to request unlimited-term contracts based on the amended Labor Contract Act. Then they were let go at the end of March.

Another labor tribunal, for two female former members of faculty who had similarly sought confirmation of status, was broken off in May; the two proceeded to a regular

lawsuit, which is currently pending in the same district court.

(4) Dismissed for suing “unfair”

Saying it constituted an unfair labor practice for the company to dismiss a labor union member who had sued the company for unpaid overtime, the Tokyo Prefectural Labor Commission on the 23rd ordered taxi company Kokusai Jidosha (Tokyo) to pay the union member approximately 60 million yen in back wages for the period since the dismissal.

The company states that “we have objections to the order, and will appeal to the Central Labor Commission for a reexamination”.

(5) Dismissed just before changing to unlimited employment: former contract employee sues Hakuodo

A woman in Fukuoka Prefecture has filed a lawsuit in Fukuoka District Court against advertising company Hakuodo, where she formerly was employed, claiming her dismissal immediately before she could change to unlimited employment was invalid, and seeking confirmation of status as an employee, etc.

The first oral proceeding is to be held on the 25th, and the company has sought to have the case dismissed.

The woman began work at Hakuodo’s Kyushu branch in April of 1988. Her one-year employment contract was renewed 29 times; up until March this year she was in charge of accounting and other tasks.

With the passage of the amended Labor Contract Act, she planned to gain the right to change to unlimited employment in April 2018.

However, Hakuodo notified her in December 2017 that they would not be renewing her contract for the 2018 fiscal year.

Fukuoka Labor Commission gave the company written advice regarding the termination of the woman’s contract in March this year, stating that “Termination before the employee gains the right to change to unlimited term, with the purpose of evading the unlimited-term conversion rule, is undesirable in light of the spirit of the Labor Contract Act”.

3. Situation/Statistics

(1) Number of irregular workers 21 million, the highest ever; still at 40%--Interior Ministry 2017 Employment Status Survey

According to the Employment Status Survey for 2017, published by the Interior Ministry on July 13, the total number of people working was 66.21 million, an increase of 1.79 million over the previous survey in 2012.

Of these, the number of part-timers, limited-term contract workers, dispatch workers, etc., was 21.33 million, an increase of 900 thousand and the highest figure ever.

This appears to be caused by the populous baby-boom generation reaching retirement age, and being re-employed on limited-term contracts or as dispatch workers.

“Results of Heisei 29 [2017] Employment Status Survey” linked below (in Japanese):
<http://www.stat.go.jp/data/shugyou/2017/index2.html>

(2) Number of mothers working goes over 70% for the first time

The Labor Ministry has released the results of their “Heisei 29 [2017] Comprehensive Survey of Living Conditions”.

Of mothers in households with children under 18, the percent who are working was 70.8%.

This is the highest percentage since 2004, when this figure began being surveyed.

Looking at the work situation of the mother of the youngest child in households that include children under 18, those who responded that they “have a job” totaled 70.8%, while those who answered they had “no job” were 29.2%.

Of those with jobs, 24.7% were regular staff or employees, while 37.0% were irregular or part-time.

This is the first time, since this item was added to the survey in 2004, that the percentage of mothers who “have a job” has reached over 70%.

It is an increase of 2.7 percentage points over the previous record of 68.1% recorded in the survey for 2015.

“Summary of Heisei 29 [2017] Comprehensive Survey of Living Conditions” linked below (in Japanese):
<https://www.mhlw.go.jp/toukei/saikin/hw/k-tyosa/k-tyosa17/dl/10.pdf>