



Labor Update No.41 August 10, 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) Education and Training Benefits to be extended to as long as 4 years: MHWL to support gaining national qualifications

In order to support those wanting to gain certain national qualifications, such as nurse, registered dietician, etc., the Labor Policy Council (an advisory body to the Minister of Health, Welfare and Labor) has said the maximum period to receive Education and Training Benefits from Employment Insurance will be extended to four years.

The Minister's notice will be amended and put into practice starting next year.

The benefit whose term will be extended is the Specialized Practical Training and Education Benefit funded by Employment Insurance. The change also includes making the new Professional Universities (4 years) and Professional Junior Colleges (3 years), set to open starting next year, eligible.

“Labor Policy Council Personnel Development Subcommittee, 8th Meeting” information linked below (in Japanese):

https://www.mhlw.go.jp/stf/newpage_00730.html

“Summary of Proposed Notification by Minister of Health, Welfare and Labor to Amend the Criteria for Designation of Education and Training as per the Employment Insurance Act, Article 60 part 2 paragraph 1” linked below (in Japanese):

<https://www.mhlw.go.jp/content/11801000/000340674.pdf>

(2) Private universities in financial trouble may be made to stop accepting applicants or be dissolved--Education Ministry

With an increasing number of private universities facing financial difficulties, the Ministry of Education, Culture, Sports, Science and Technology has notified such universities that, in case a danger of insolvency is seen, they may give directions for suspension of admissions or for dissolution of the school corporation.

Out of approximately 600 private universities across the country, about 40% currently have a shortage of students owing to the influence of the declining birthrate among other things. The financial situation has become tight.

Due to this, the Ministry has given these universities notice that they will be giving more in-depth management guidance.

Specifically, first of all, if a university's finances have been "in the red" for three years in a row, or if the amount of debts payable becomes more than their amount of savings, then based on an improvement plan submitted by the university, a Ministry committee will give management advice for improvement over three years.

However, if the university's finances still fail to improve, or if there is seen to be a danger of falling into insolvency, the Ministry says they will give instructions to stop accepting applicants or to dissolve the educational corporation.

(3) Marriage leave for part-timers: national public servants to see gap closed between full- and part-timers--National Personnel Authority

The National Personnel Authority has begun deliberation aiming to grant marriage leave to part-time national public servants. Regarding special leave for part-timers, they currently get bereavement leave under certain conditions, but they do not have any special leave that comes with getting married.

With reference to the government's policy of aiming for "equal pay for equal work" in the private sector, they aim to eliminate the gap in conditions between full-timers and part-timers.

Also, in relation to bereavement leave, the plan is to ease the conditions for taking this as well.

The National Personnel Authority aims to include this in a report to be submitted to the Diet and the Cabinet along with the public-servant salary revision recommendations for 2018.

(4) Cabinet Office releases "Heisei 30 [2018] Annual Economic and Fiscal Report" (Economic and Fiscal White Paper)

The Cabinet Office has released their economic white paper for 2018. Its analysis is that, based on the advancement of AI (artificial intelligence) and IT (information technology), the labor market is becoming polarized into jobs that require specialized knowledge on the one hand, and unskilled-labor jobs on the other. Moreover, it points out that "it will be essential to develop personnel with skills that are hard to replace with machines".

"Heisei 30 Annual Economic and Fiscal Report" linked below (in Japanese):

(5) Employee numbers requirement to be loosened; expansion of eligibility for part-timers in employee pensions etc.--Labor Ministry to make adjustments

In order to expand the eligibility of part-time employees, etc., to enroll in employee pensions (*Kosei Nenkin*) and company health insurance (*Kenpo Kumiai* and *Kyokai Kenpo*), the Ministry of Health, Welfare and Labor has started working on adjustments to lower the required number of employees in the workplace (501 or more) that is one of the conditions for this.

The Ministry plans to put together a proposed amendment to the system by the end of 2019, and submit the related bill to the Diet in 2020.

(6) Guideline for overtime agreements: “close to the general rule of 45 hours”--Labor Ministry

On the 9th, the Ministry of Health, Welfare and Labor published a proposed guideline calling for labor and management, when signing an agreement to set a maximum limit on overtime (3-6 agreement, *sabu-roku kyotei*), to keep the maximum low and “stay as close as possible” to the general rule of 45 hours per month.

The proposed guideline was presented to the Labor Policy Council (an advisory body to the Minister of Health, Welfare and Labor) on the 9th and accepted in summary.

The guideline seems likely to be promulgated in September and to take effect starting in April of next year, when the regulated maximum limit begins for large companies. However, this guideline will not have legal binding force.

The Ministry also published a new form for labor and management to use when they register a 3-6 agreement.

For cases such as where employees will be made to work more hours than the general rule, the reasons will have to be given in more detail than before.

The proposed guideline says this must be determined “as specifically as possible”.

“145th Meeting, Labor Policy Council (Labor Conditions Subcommittee)” linked below (in Japanese):

https://www.mhlw.go.jp/stf/shingi/shingi-rousei_126969.html

(7) Public servants’ retirement age to be raised to 65, with 30% reduction in pay: National Personnel Authority submits position paper to Diet and Cabinet

Concerning the retirement age of national public servants, the National Personnel Authority has put together a position paper calling on the one hand for the system to be quickly revised so as to raise the retirement age for civil servants in stages from the current 60 to 65, while on the other hand for the pay of those over 60 years old to be reduced by 30% from the previous standard. The Authority submitted this paper to Prime Minister Abe on the 10th.

“Offer of Opinion Regarding Amendment to the National Public Servants Act in Order to Raise the Retirement Age in Stages to 65” linked below (in Japanese):

<http://www.jinji.go.jp/iken/30mousidehonbun.pdf>

2. Legal Violations/Struggles

(1) Dismissal right before switch to unlimited-term “unfair”: Former Nittsu employee files suit

A man who had worked under a limited-term contract at major distribution company Nippon Tsuun (Nittsu) filed suit against the company on the 31st in Yokohama District Court, Kawasaki Branch, seeking confirmation of his employee status, etc., and claiming it was unfair for his employment to be terminated immediately before the time when he could have requested a switch to unlimited term.

The man worked as a dispatch employee (*haken shain*) at the company’s Kawasaki branch starting in September of 2012. He became a directly hired employee of the company in July of 2013, after the newly-amended Labor Contract Law introduced the rule that one could request an unlimited contract once one’s total contracted period went over five years.

After renewing his one-year contract four times, he says his employment was terminated on June 30 of this year--the day before his contract period would go over five years.

Nittsu’s PR department states that “we cannot comment, as the written complaint has not yet been delivered”.

In April, a different former employee filed a similar lawsuit against the same company in Tokyo District Court.

(2) Discretionary labor frequently implemented illegally: premium wages unpaid, work outside the system--MHWL survey

Regarding the “discretionary labor system”, under which employees work freely within a framework of pre-estimated “presumed working hours”, the Ministry of Health, Welfare and Labor has released the results of self-inspections by businesses nationwide that make use of the system.

Many instances came to light of cases where that may be in violation of law or policy, such as non-payment of premium wages for work on holidays or late at night, or assignment to tasks that should not be eligible for the system. The Ministry plans to give guidance and direction going forward so as to correct the situation.

Self-inspections were carried out this year between February and May at 12,167 workplaces across the country that have introduced a discretionary labor system.

Of the problematic cases, for the “Management-related Work” category dealing with the management of the company, such as with the running of operations, the most common case was working at tasks not eligible for the system, at 2.7% of all responses or 74 total cases.

Cases where the worker did not actually have discretionary authority, such as when being given instructions by superiors on a daily basis, accounted for another 2.5%, or 71 total cases.

In addition, for the “Specialized Work” category requiring a high level of specialization, such as designers or financial analysts, the most frequent problem was cases where workers were not informed of labor agreements including the presumed working hours, making up 4.9%, or 389 total cases. Long working hours accounted for 4.4%, or 354 cases.

“We Announce the Results of Self-Inspections Aiming for Improvement in the Implementation of the Discretionary Labor System” linked below (in Japanese):

https://www.mhlw.go.jp/stf/newpage_00768.html

(3) Suntory Group receives fourth citation

On July 26, the Labor Standards Inspection Office issued its fourth citation to Suntory Group’s major vending-machine operator, Japan Beverage.

It is very rare for one company to receive four citations from the Labor Standards Inspection Office.

The company was cited in December last year for illegally long working hours (a violation of Labor Standards Act, Article 32), and in April this year for unpaid overtime (a violation of the same Act, Article 37).

Then they received two more citations last month, also for unpaid overtime (violating Article 37).

The question is why Japan Beverage, a major company and member of the Suntory Group, would keep on doing such blatantly illegal acts.

Japan Beverage and their lawyers say there is a chance the Labor Standards Inspection

Office was “underestimated”.

3. Situation/Statistics

(1) “Improve the working hours of teachers”--OECD

The Organization for Economic Cooperation and Development (OECD) released their observation results regarding Japanese education policy on the 27th.

In addition to lessons, characteristics of Japanese education such as school lunches, cleaning, and a wide range of extracurricular activities, etc., were praised as contributing to children’s growth.

The release stated that there was a need, while keeping up these qualities, to improve teachers’ long working hours and raise their skills.

“Japan : Overview of the Education System (EAG 2017)” linked below (in English):

<http://gpseducation.oecd.org/CountryProfile?primaryCountry=JPN&treshold=10&topic=EO>

Japanese version of the summary linked below:

http://gpseducation.oecd.org/Content/EAGCountryNotes/JPN_Japanese.pdf

(2) MHWL releases “Results of Heisei 29 [2017] Statistical Survey of Labor Disputes”

Main points:

- The number of overall disputes (sum of disputes involving dispute action and those that did not involve dispute action, but where a third party (such as the Labor Commission) was involved) was 358 (391), a decreasing for the eighth year in a row, and the lowest figure since Showa 32 [1957], before which comparison is not possible.
- Compared to the previous year, disputes that involved dispute action increased in total number of cases, in total number of participants, and in number of participants in dispute action.
- The main demands of labor disputes, in order of frequency, were those concerning: “wages” with 181 cases (167); “management/employment/personnel” at 122 cases (160); and “union guarantees and labor agreements” with 117 cases (99).

Details linked below (in Japanese):

<https://www.mhlw.go.jp/toukei/list/dl/14-29-08.pdf>