



Labor Update No.55 Feb. 22, 2019

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) Finally, a widening move to give recognition to non-regular public employees for accidents in the line of duty

According to the Interior Ministry, the number of non-regular public employees working in temporary or part-time positions at all the country's city, town and village governments and the 23 wards of Tokyo was 480,000 as of April 2016. This is about thirty percent of the total number of public employees.

It amid this context that a 27-year-old woman who was a part-time employee of Kita-Kyushu City committed suicide. Her parents, saying that the cause was "power harassment" (*pawahara*, workplace bullying) by her superiors, filed a claim for recognition as an "accident in the line of duty", equivalent to industrial-accident recognition for workers in the private sector. But the city, citing ordinances relating to part-time public employees as their reason, responded that "neither she nor her family members have a right to claim this". The case is currently pending.

NHK, has used a freedom-of-information request to obtain and analyze Interior Ministry statistical data on all the nation's prefectures, cities, towns and villages and the 23 wards of Tokyo Prefecture.

The total number of non-regular employees in all municipalities nationwide in 2005 was approximately 343,000, accounting for 20.7% of all public employees. However, by 2016 it had risen to over 488,000, or 30.3%.

In 2005, there were only 13 municipalities where over 50% of employees were non-regular. But by 2016 there were 92. The number increased seven times in a little over a decade.

Also, according to the Interior Ministry, of municipalities with temporary or part-time "office-work assistants", those that had no established system of leave before and after giving birth (so-called maternity leave, legally recognized for all workers) as of April 2016 numbered 750, or 35% of the total.

(2) Justice Ministry releases "Concerning the Reception of New Foreign Personnel"

"Concerning the Reception of New Foreign Personnel" linked below (in Japanese):

<http://www.moj.go.jp/content/001282796.pdf>

(3) Bill to require *pawahara* prevention goes to the Diet

The Ministry of Health, Welfare and Labor will submit a bill to the current regular session of the Diet to amend the General Promotion of Labor Measures Act. They say the new law will come into effect within a year after it passes.

The amendment defines *pawahara* (“power harassment”, workplace bullying) as “words or actions, based on a relationship of dominance, that cause harm to a worker’s work environment beyond the limits of what is appropriate to the job”. It will impose an obligation on companies to make and implement prevention measures.

“Summary of Bill to Amend Parts of Act Relating to the Promotion of Women’s Participation in Working Life, Etc.” linked below (in Japanese):

<https://www.mhlw.go.jp/content/000478860.pdf>

(4) Use of health insurance by foreign nationals to be limited to those living in Japan

The government has made a cabinet decision on a proposed amendment to the Health Insurance Act. The amendment would in principle restrict family use of the public health insurance that company employees enroll in, “Employees’ Insurance (Kenpo)”, to family members living in Japan. This is without regard to nationality, and would apply to Japanese enrollees as well. The aim is to pass it at the current session of the Diet, and have it come into effect beginning in April 2020.

With regard to Kokumin Kenko Hoken (Kokuho), which covers only the enrollee him/herself (such as foreign exchange students or business proprietors), in order to prevent dishonest use of the system by those who enter Japan on false pretenses to get medical treatment, a cabinet decision was made on an amendment to the National Health Insurance Act. This would strengthen the investigation powers of local municipalities, and enable Health Insurance Offices to check with schools or business contacts to verify enrollees’ school or work situations.

As for Kosei Nenkin, the public pension that employees enroll in, a provision restricting the eligibility of spouses to collect the pension to those living in Japan was included in the National Pension Act amendment bill.

“Proposed Bill to Amend Part of the Health Insurance Act in Order to Enable Appropriate and Effective Use of the Medical Insurance System” linked below (in Japanese):

<https://www.mhlw.go.jp/content/12601000/000469066.pdf>

(5) Ministry of Health, Welfare and Labor publishes pamphlet on “Basic Policy on Labor Measures” (decided Dec. 28, 2018)

“Pamphlet: ‘A Basic Policy on Labor Measures Has Been Drawn Up’” linked below (in Japanese):

<https://www.mhlw.go.jp/content/000479773.pdf>

Full text of “Basic Policy on Labor Measures” linked below (in Japanese):

<https://www.mhlw.go.jp/content/11602000/000465363.pdf>

2. Legal Violations/Struggles

(1) Dry-cleaning “owners in name only” form union: “don’t make the service stores pay for damages”

Among major companies in the laundry industry, the most usual business model is for the main company to build a cleaning factory and then position large numbers of service stores around it. Some of these stores are run directly by the corporations, but some are managed by owners. However, these owners have almost no discretion in running the stores, and some seem to be “owners in name only”.

At a particular company in January 2019, store owners formed a labor union of owners--still a rarity in the industry. They demanded a reform to the current system, in which service stores must pay for damage to clothing even if it was the corporate factory that made the mistake, and are engaging in collective bargaining.

(2) Taxi company employees “refused continuation of employment for requesting overtime pay”: Superior Court, too, orders Kokusai Jidosha to pay compensation

Tokyo Superior Court has given a verdict on appeal in the lawsuit that was fought by twelve employees and their union against major taxi company Kokusai Jidosha. The employees claimed that, when they sued for back-payment of unpaid overtime, they were refused continued employment. On appeal, the Superior Court mostly upheld the previous judgement, granting compensation to all twelve employees and their union, and awarding six of the twelve the amount of unpaid overtime from the refusal of continued employment until the present. The total payment ordered from the company was approximately 44 million yen.

(3) Ruling awards bonus to non-regular worker: lawyers call it “epoch-making”

A woman who worked as a secretary in non-regular employment at a university research lab, and who sued claiming that it was unfair for there to be a disparity in pay between her and the regular staff despite the contents of their duties being the same, has been given a verdict by the Osaka Superior Court that awards her the payment of bonuses. Her lawyers say that “it is epoch-making for a judicial decision to grant a bonus to a non-regular worker”.

The appeal ruling says that “this university’s bonuses are paid in exchange for working. It is difficult to find any reason for there to be none at all paid to non-regular staff”. It orders the university to pay two years’ worth of bonuses, etc., for a total of over one million yen.

(4) “Pay severance to contract employees too”, Tokyo Superior Court orders

Tokyo Superior Court has handed down a verdict on appeal in a case filed by four contract employees of a subsidiary company working at station kiosks in the Tokyo Metro. They claimed that, since they did the same work as regular staff, the disparity in treatment between them was in violation of the Labor Contract Act. They were suing for a total of about 50 million yen to cover the difference in wages, etc. The initial decision, by the Tokyo District Court, had already judged the gap in early-shift and overtime allowances to be illegal. But the Superior Court recognized the differences in

housing allowance, severance pay, and awards to also be illegal, and ordered a total of approximately 2.2 million yen be paid to three of the employees. The first trial had granted compensation of about 4,000 yen to one person. According to the plaintiffs' lawyers, this is the first time payment of severance has been ordered in a lawsuit of this type.

The Superior Court ruling holds on the one hand that it is not illegal in and of itself for contract employees not to be paid severance; but on the other hand points out that in this case, the plaintiffs' contracts were in principle renewed every year, and contained a retirement age of 65. In regard to two plaintiffs who had been on the job for about ten years, the Court ordered that they be paid one-fourth of what a regular employee would get.

3. Situation/Statistics

(1) Four-tenths of sexual-minority people experience hardship in job-hunting; 96% do not seek help

An investigation by a non-profit organization has made it clear that, of members of sexual minorities (LGBT etc.) who have experienced searching for work, over forty percent had either been on the receiving end of harassment during interviewing or felt hardship in other ways. Furthermore, 96% of these had not sought advice from support organizations such as university career centers, etc., even if they had trouble while job-hunting.

42.5% of LGBT etc. and 87.4% of transgender people felt difficulty while applying for jobs. When asked to choose more specific answers from a list, frequent answers were such as "questions or statements from HR or interviewers that presupposed not being of a sexual minority" and "faced difficulty because of being unable to communicate anything related to my sexuality in interviews, etc." For transgender people, "being required to list my sex on my resume" was mentioned as a difficult point.

Furthermore, 78% said they had not "come out" at all to the companies they applied to. The most common reason given was "because I might face discrimination or harassment" at 71%, while 69% also answered that "because it may have negative effects on getting job offers".

(2) Half of municipalities have worries about treatment of foreign workers: compensation levels equal to those of Japanese, etc.

With the expanding intake of foreign workers, employers will be expected to provide proper treatment, such as support for living and levels of compensation at least equivalent to those of Japanese nationals. A nationwide survey by Kyodo Tsushin has made it clear that nearly half of cities, towns, and villages have worries about being able to realize this. The subpar work environments and other problematic issues with the technical internship system are being simply left as is, while no clear picture of how the new system is to work has been indicated—a situation that has municipalities strongly discontented.

12 percent of municipalities answered that they "are afraid of not being able to guarantee" proper treatment of foreign workers, while 35% answered that "if

anything, [they] are afraid of not being able to guarantee” proper treatment, for a total of 47 percent. This was well over the total 20% answering that they “can guarantee” it (2%) or “if anything [they] can guarantee” it (18%). There were also 30 percent that answered “other”, due to details being unclear or for other reasons.

(3) 700 million working poor in the world: ILO report

The International Labor Organization (ILO) has published a report saying that approximately 700 million people worldwide are working poor, living on purchasing power of less than 3.2 dollars (about 350 yen) per day, that many of them work under inadequate labor conditions, and that improvement of these conditions is an issue to be solved.

The majority of these individuals are in unstable forms of employment, such as non-regular employment; the report points out that “getting a job does not necessarily guarantee being able to live a proper life”.

The rate of employment for women is 48%, while that for men is 75%, a large gap; the report calls for strengthening policy measures to achieve gender parity in employment. The worldwide unemployment rate as of 2018 was 5%. If the current economic situation continues, the analysis is that this figure will remain largely unchanged in 2019 and 2020.

ILO report “World Employment and Social Outlook--Trends 2019” downloadable from link below (in English):

http://www.ilo.org/global/research/global-reports/weso/2019/WCMS_670542/lang--en/index.htm

(4) LGBT couples and “common-law marriages” to be certified as equivalent to marriage: Soja City creates new system

Soja City, Okayama Prefecture, will be introducing a “partnership certification system” to recognize sexual-minority (LGBT etc.) couples and those in de-facto (“common-law”) marriages as having a relationship equivalent to marriage. According to the City, it is the first municipality in the Chugoku or Shikoku regions to have such a system. Relevant ordinances will be put forth at the regular City Council meeting in February with an aim to put them into effect starting in April.

(5) Non-regular workers number 21.2 million, or 37.9% of all workers

The Labor Force Survey for 2018 (2018 mean preliminary figure) released by the Ministry of Internal Affairs and Communications shows that, of the total 55.96 employed persons nationwide (excluding executives), regular workers accounted for 34.76 million, while non-regular workers numbered 21.2 million or 37.9% of the total number.

By income, the largest category for both men and women in irregular employment (with 29% and 44.1% respectively) was those earning 1 million yen or less. Those earning up to 1.99 million yen accounted for 57.6% and 83.2% respectively.

“Labor Force Survey (Detailed Count), Heisei 30(2018), Average (Preliminary) Figure”

linked below (in Japanese):

<https://www.stat.go.jp/data/roudou/sokuhou/nen/dt/pdf/index1.pdf>