



Labor Update No.60 May 3, 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) “The indigenous people, the Ainu...” stated clearly in new law, greeted by various opinions

The new Ainu law, which for the first time defines the Ainu people as “indigenous people”, has passed. The law makes it a national duty to take measures to protect and nurture the Ainu culture, which is praised as “a step in the right direction”. On the other hand, it still leaves some problems, such as by not touching on the rights of the Ainu as indigenous people, including to land and resources.

Many applaud the fact that the government has officially recognized the Ainu as “indigenous people” by law.

However, the new law’s purpose is simply the promotion of culture, economy, and tourism. The “indigenous rights” included in the United Nations “Declaration on the Rights of Indigenous Peoples”, which the Ainu people have long sought, are not mentioned; nor does the law include support for life or education.

(2) Pension recipients to be able to choose to start receiving after 70: Fiscal System Council debates social-security reforms

Within the Finance Ministry, a subcommittee of the Fiscal System Council has been debating social-security reform, and, in line with the policies of the Abe administration, has urged making it possible for pension recipients to select an age over 70 as their age to begin receiving a public pension. On the other hand, in the debate over revising the “Pension System for the Working Elderly”, which reduces or stops pensions for those who earn at least a certain income by working, they called for cautious consideration, citing the influence on pension finances.

In principle, the age to start receiving *Kokumin Nenkin* or the base portion of *Kosei Nenkin* is 65, but it is currently possible to delay receiving one’s pension until any age up to 70, in order to increase the future pension amount.

Finance Ministry Fiscal System Council, Fiscal System Subcommittee (April 23, Heisei 31 [2019] meeting) document “Regarding Social Security” linked below (in Japanese):
https://www.mof.go.jp/about_mof/councils/fiscal_system_council/sub-of_fiscal_system/proceedings/material/zaiseia310423/01.pdf

(3) Harassment bill passes

The “Women’s Participation and Harassment Restrictions Bill”, which strengthens measures against workplace harassment so that promotion of women’s participation at work can be extended to small and mid-size businesses, has passed.

The bill states clearly that harassment based on workplace hierarchies, etc., is “unacceptable”. But it stops short of using penalties to ban acts themselves.

To deal with *pawahara* (“power harassment”, i.e. workplace bullying other than sexual harassment), the bill obligates companies to take preventive measures. For sexual harassment and “maternity harassment” based on pregnancy or childbirth, it forbids disadvantageous treatment of employees who make a complaint.

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

http://www.shugiin.go.jp/internet/itdb_gian.nsf/html/gian/honbun/houan/g19809038.htm

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

<https://www.mhlw.go.jp/content/000486033.pdf>

(4) To promote the hiring of disabled people as teachers, MEXT announces plan

Heading towards building a society where people with disabilities will find it easier to participate, the Ministry of Education, Culture, Sports, Science and Technology (MEXT) has announced a “Plan to Promote Disabled People’s Participation”. This includes promotion of the hiring of people with disabilities as teachers, as well as initiatives for continuing education, support for cultural and artistic activities by disabled people, and promotion of the hiring of people with disabilities at MEXT itself.

Employment of people with disabilities at Boards of Education nationwide as of June 1, 2018, in terms of actual employment rate, was at 1.90%, falling short of the statutory employment rate of 2.4%. In employment tests for public-school teachers, out of 68 municipalities in the country that have Boards of Education, 67 Boards carried out special selection processes for people with disabilities, and 51 people were hired nationwide.

To promote the hiring of people with disabilities at MEXT, the plan set forth ideas such as assignment of people in charge and expansion of staff training to promote understanding, as well as varying the types of appointments, including pre-employment or a step-up system. According to the MHWL’s “Survey Results on the Situation of Employment of People with Disabilities by National Agencies, Etc.”, as of June 1, 2018, the actual employment rate at national government agencies was 1.22%, while that at MEXT was 0.79%.

“Ministry of Education, Culture, Sports, Science and Technology Plan to Promote Disabled People’s Participation” linked below (in Japanese):

http://www.mext.go.jp/component/a_menu/education/micro_detail/_icsFiles/afieldfile/2019/02/25/1413125_02.pdf

2. Legal Violations/Struggles

(1) Chair's draft plan for anti-bullying law: Otsu City and bereaved families indicate opposition

Otsu City, Shiga Prefecture, and a group of families (including bereaved families) of bullying victims have sent a written opinion to former Education Minister Hiroshi Hase, chair of the nonpartisan study group of Dietmembers who are debating an amendment to the Act to Promote Measures to Prevent Bullying, expressing opposition to the chair's tentative plan as indicated by the group. At a press conference held at MEXT, the families denounced the plan as a step backward due to its having had many articles deleted, and said "our expectations have turned to great disappointment".

The families gave strong criticism, saying "we were in agreement with the draft plan, but after hearings with the elementary, junior-high and high school principals' associations, many parts were deleted from the chair's plan. Would the draft plan rally make teachers feel daunted? Would their workplace burden increase? The law is meant to protect children's lives, but they are giving priority to the convenience of schools and Boards of Education".

They also pointed out, in regard to disciplinary action against teachers, that "the current situation forces all the responsibility on homeroom teachers and club activity advisors. Administrators should be held responsible".

(2) Labor Standards Inspection Office issues citation to NHK Takamatsu over unpaid leave allowance

It has become clear that the Takamatsu Labor Standards Inspection Office issued a citation to NHK's Takamatsu broadcasting station due to their failure to properly pay a leave allowance to a female part-time employee who had taken a leave of absence from work.

The woman had begun work there in August of last year, but became ill in December and began taking leave. About one month later, she communicated her intention to return to work, but was told to remain on leave. In February, she consulted with the Takamatsu LSIO over having lost her income.

(3) Bus drivers' extra wages for holiday work go unpaid: Mie Kotsu receives citation from LSIO, back-pays two years' worth to approximately 1000 people

It has come to light that Mie Kotsu (Tsu City, Mie Prefecture) received a citation from the Yokkaichi Labor Standards Inspection Office after having failed to pay premium wages to their bus drivers for working on holidays, and back-paid the past two years' worth to about one thousand drivers. The total amount of the payment seems to be as much as three hundred million yen.

The LSIO investigated after a male bus driver filed a complaint in February 2018, and issued the citation in March of the same year.

(4) Osaka District Court recognized illegality at Kindai in denying pay raise due to taking childcare leave

Osaka District Court has given a verdict in the case of a male full-time lecturer at Kindai University who had sued the University for a total of 1.66 million yen. He claimed that his being denied a pay raise because of having taken childcare leave was a violation of the Child Care and Family Care Leave Act, which forbids disadvantageous treatment of those who take such leave. The Court ordered the University to pay approximately 500,000 yen.

According to the verdict, the man lectured in social studies in the education Department at Kindai beginning in 2012. He took childcare leave for nine months, starting in November 2011, when his fourth child was born. The man had received regular pay raises each year in April. But in 2016, due to his leave, he did not fulfill the condition of “working for twelve months in the previous school year”, listed in the pay regulations as one of the conditions for promotion. Therefore, even after returning to work, he received no raise.

The verdict pointed out that the regular pay raise was given across the board according to number of years on the job, and therefore was based on the principle of seniority pay. Finding that denying a raise to an employee for taking childcare leave went against the spirit of this, could delay his pay raises even into the future, and was therefore illegal, the Court ordered the University to pay the difference between what the man was paid and what he would have expected to get with a raise, both in base pay and in bonuses, etc.

(5) Part-timers , after switching to unlimited-term, sue seeking equal treatment with full-timers

Two male part-time employees at a distribution company have filed suit in Osaka District Court against the company, seeking conditions equal to those given full-time regular employees. They claim it is illegal for there to still be a disparity in pay despite their having switched from contract employment to unlimited-term. The two men say that “we do the same work as the regular employees (*seishain*), so it is discrimination for us to be treated differently”. This is the first time anyone has sued to rectify a disparity with *seishain* after switching from limited-term contracts to unlimited.

The two work as truck drivers at a company branch in Shiga Prefecture. In October, 2018, they switched from being limited-term contract employees to unlimited-term part-timers. But since there is still a disparity in wages of approximately 90,000 yen per month between them and the *seishain*, they are suing for confirmation that they have equal status, as well as for back-payment of the difference.

(6) Actual overtime twice the amount: “illegal to calculate workers’ compensation payment based on fixed overtime allowance” says Tokyo District Court

In a court battle over the way of calculating worker’s-compensation payments for a restaurant manager who died from overwork (*karoshi*), Tokyo District Court has handed down a ruling that overturns a government decision, saying that the actual hours of overtime worked by the man were about twice the hours paid for by his fixed overtime allowance and that this fixed amount was far removed from reality.

Five years ago, the man, who worked as a manager at a restaurant in Mobarra City, Chiba Prefecture, and was then in his fifties, died suddenly. The Labor Standards Inspection Office ruled that it was a case of overwork death (*karoshi*) due to long working hours, and granted workers'-compensation payments to his family.

The LSIO calculated the amount of payments based on the "fixed overtime allowance" system used by the company running the restaurant. But the man's surviving family insisted the amount should be calculated based on the hours of overtime he actually had worked.

In the verdict, the Court ruled that "The manager's actual hours of overtime work were from 123 hours to 141 hours. This is nearly twice the figure of 67 hours assumed by the 'fixed overtime allowance', so far removed that this company's 'fixed overtime allowance' cannot be considered paid as compensation for overtime hours worked". Furthermore, the Court judged that it was illegal to calculate on the assumption of the "fixed overtime allowance" being valid, thus overturning the decision of the Labor Standards Inspection Office.

3. Situation/Statistics

(1) Certificates for same-sex couples: first in Tochigi Prefecture to start in June, in Kanuma City

Kanuma City has decided to introduce a "City partnership oath system", the first city in its prefecture to do so. They will hear oaths from same-sex couples and issue oath certificates. This will fulfill conditions enabling same-sex couples to be treated as equivalent to married couples for the purposes of applying for public housing and other services. In a regular press conference on the day of the announcement, mayor Shin Sato explained that "the system is planned to come into operation in June. We hope people gain a deeper understanding of sexual-minority people, and that this will be reflected in all sorts of policies".

(2) Increase in number of non-regular employees three times that of regular employees: trend not changing

"Labor Force Survey (Basic Statistics), March 2019 (preliminary figures)", released by the Office of the Prime Minister on April 26, 2019, linked below (in Japanese):

<http://www.stat.go.jp/data/roudou/sokuhou/tsuki/pdf/201903.pdf>