



Labor Update No.66 July 26, 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) MHWL publishes pay-raise guidelines for dispatch workers: some confusion seen

The Director-General of the Employment Security Bureau, part of the Ministry of Health, Welfare and Labor, has issued a memo to the heads of the Labor Bureaus in each prefecture (*shokuhatsu* 0708 #2) indicating guidelines for wage increases for dispatch workers in the name of guaranteeing them fair conditions.

There is some confusion within the Ministry as to the interpretation and application of this.

The memo in question is linked below (in Japanese):

<https://www.mhlw.go.jp/content/000526710.pdf>

(2) “Work hours in side jobs not to be added up”: proposal to abolish companies’ management obligation

The Ministry of Health, Welfare and Labor, in order to promote working second jobs and side work, has put together a report including a proposal to remove the stipulation from the Labor Standards Act that has heretofore required work hours at multiple workplaces to be added together. If this ends up being removed, it will become possible to make a worker work a number of hours that, when their main and side jobs are added together, would be over the *karoshi* line. The restrictions on overtime that were decided as part of the work-style reform laws in April may have their teeth removed. Now the proposal will be debated at the Labor Policy Council (an advisory body to the Minister of Health, Welfare and Labor), made up of representatives of both labor and capital. Opposition from the labor side is a given.

If working hours stop being added up, there is fear that hours so long as to be illegal under current law may become legal.

Furthermore, for overtime that exceeds the work hours specified by law, an increased amount of wages must be paid (time-and-a-quarter, etc.). This obligation would also disappear. Companies would see their pay burden lighten, while it would become harder to put a stop to over-long working hours.

Under the current Labor Standards Law, if one works for multiple employers, and the sum total of working hours exceeds the legal limit of eight hours a day, forty hours per week, then whichever company signed the employment contract later is required to

pay the extra wages.

“Report (Proposed) Accepted at 9th ‘Meeting to Discuss Work-Hours Management in the Case of Second Jobs and Side Work’ (July 25, 2019)” linked below (in Japanese):
<https://www.mhlw.go.jp/content/11909500/000532495.pdf>

2. Legal Violations/Struggles

(1) National government repeatedly mistakenly demands repayment of worker’s compensation from victim

A man who became unable to work due to an injury suffered on the job, and who received payment from workers’ compensation insurance, has seen the government repeatedly and mistakenly demand he return the payment.

When workers’ compensation is paid, the Labor Standards Inspection Office collects the money from the other party in the accident. But in this case, the other party was unable to pay, so the Office tried to recover the payment from that other party’s compulsory automobile insurance, which the man (the victim) was set to receive.

The Supreme Court made a judgment last year that, in this type of case, victim protection should take priority over recovering the money. But the Labor Standards Inspection Office continued repeatedly sending the man demand letters until May of this year.

(2) Advisor to three different school clubs at once, but still paid less than a regular teacher

Two men who worked as “non-regular” teachers at a private high school in Tokyo have filed a lawsuit claiming it was illegal for them to receive no housing allowance due to being in non-regular employment, and seeking compensation from the school. The two men have already had their contracts terminated, but they say about 150 students signed a petition for them to stay on the job. One of them says, “A school where such unfairness rules can’t raise students to have a dream for their future”.

The two worked at the school full-time, on limited contracts as “limited-term full-time”(yuuki sennin) teachers. While working there, they became aware that regular sennin teachers were paid a housing allowance, apparently about 30,000 yen. Limited-term teachers, including the two plaintiffs, were not paid any such allowance.

The two men also claim that, although they were forced to work long hours, such as by taking charge of school club activities, they were not paid overtime. They say there were no timecards at the school, and no proper system for keeping track of teachers’ working hours at all. They say they sought improvements from the school in collective bargaining, but the school would not recognize their long work hours and refused to pay overtime, saying that “club activities are volunteer work that the teachers do by their own choice”.

The two plaintiffs had their contracts terminated at the end of March this year. They have already filed a separate suit claiming that this dismissal was illegal, and seeking continued employment.

(3) New model “three-six agreement” draws opposition from *karoshi* victims’ families: “goes against the movement towards limiting overtime”

In response to the passing of the work-style reform laws, which for the first time establish an upper limit on overtime work, with penalties, the Ministry of Health, Welfare and Labor has drawn up and published a new model “template” for agreements to determine the extent of overtime work, aimed at businesses. However, the upper limit mentioned in this suggested model is close to the national government’s standard “*karoshi* line”, the criterion for recognizing death due to overwork. A group of family members of people who died from overwork will soon be submitting a petition to the Ministry calling for a reconsideration of this limit.

“Example 3-6 Agreement” (produced by MHWL) linked below (in Japanese):

<https://jsite.mhlw.go.jp/tokyo-roudoukyoku/var/rev0/0145/3501/201417145916.pdf>

(4) Citation from Labor Standards Inspection Office to security company over unpaid wages

Naha Labor Standards Inspection Office (Okinawa Prefecture) has issued a citation to Central Security Patrols (CSP) for labor standards violations including unpaid wages for marine security operations in Henoko, Nago City. The Office has judged that “break times” when security guards are unpaid, but still confined on board their boats, are *de facto* work hours, and has ordered payment of back wages to December 2017, when the operations began. CSP states, “it is true that we have received a citation, and we are taking it seriously”.

CSP has been treating eight hours out of every 24-hour shift as a “break”. If these hours are added in, the total work hours will be far over the limit to be illegal. The LSIO has demanded improvement on this point as well, asking the company to make a concrete improvement plan within one month.

Multiple current and former security guards had filed unpaid-wage reports at the Labor Standards inspection Office. Even during “breaks”, they were still restricted to shipboard, and needed to respond in case of sudden emergencies. Therefore the LSIO judged this to be “standby time” and part of working hours.

The marine security work at Henoko, ordered by the Okinawa Defense Bureau, was previously done by a different company that was also cited for unpaid wages by the LSIO. Responding to this second judgment of illegality, the Defense Bureau has stated only that “we will confirm the citation and CSP’s response to it, and take appropriate measures”.

(5) “Farming pays no overtime” is wrong: poultry-farming company worker to sue employer

The Labor Standards Law stipulates that there is no need to pay overtime in farming, because it is affected by the weather and therefore has no fixed hours. Now an employee of a poultry farming company, which pays no overtime based on that legal clause, is soon to sue the company in the Fukuoka District Courts. He claims that with increased automation in the workplace, the stipulation no longer fits the reality.

The man's main task was management of data, including the number of eggs and their weight, etc., and the work was done with a computer. He started working at about 7 A.M., earlier than the start time of 8:30 A.M., and often worked until later at night than the official ending time of 5 P.M. However, he says he has never been paid any overtime since beginning work at the company in April of 2012.

(6) “Reducing hours for zero overtime” not allowed--the reason: unfair labor practice found

The Tokyo Labor Bureau has found that distribution company Toll Express Japan (Osaka City) committed an unfair labor practice when they reduced the working hours of ten employees who were members of a minority labor union, and forbid them from working overtime. The Bureau ordered the company to pay a total of 560,000 yen to make up for the reduction in the ten workers' wages.

The ten had refused some overtime, claiming that it was unfair for overtime to be deducted from their percentage pay. In response, the company reduced the amount of their work and forbade them to work any overtime at all, leading to reductions in percentage pay and to members leaving the union.

(7) Tokyo Labor Commission issues order for relief to Seirindo

The Tokyo Labor Commission has issued an order for relief from unfair labor practices to Seirindo, the publishing company best known for the comic magazine *Garo*. They say it constituted an unfair labor practice for the company to publish a book that criticized the union with which they were involved in collective bargaining.

In September of Heisei 28 [2016], the company was still in the midst of negotiation with Tokyo Kanrishoku Union over the working conditions of a man whom they had dismissed from his job after he joined the union, and who had returned to the job after a settlement was reached. Nevertheless, they published a book titled *When Small Businesses are Crushed by Unions*. The man's name and photo were printed in the book, and its author attended negotiations as an advisor to the company.

(8) Citation recognizes club activities as “work hours”

It has come to light that the Central Labor Standards Inspection Office issued a citation for labor standards law violations to Keika Shogyo High School, a private school, saying that there had been unpaid overtime. The Office recognized club activities, which had been considered “voluntary” on the part of teachers, as work hours. This judgment may have wider effects going forward.

The union says of a teacher who took charge of both the dance club and the volleyball club that “with club activities and so on, the teacher works about 50 hours of overtime per month, which means approximately 6 million yen worth of unpaid overtime over the past two years”.

(9) Unpaid doctors are a Labor Standards Law violation: doctors' union demands emergency check from MHWL

In regard to the problem of “unpaid doctors” who engage in treatment at university

hospitals, etc., without being paid, a union of hospital doctors has made a request to the Ministry of Health, Welfare and Labor for an emergency check to clarify the whole picture.

The Ministry of Education, Culture, Sports, Science and Technology admitted last month for the first time that there are 2,191 of these “unpaid doctors” nationwide.

In response to this, Zenkoku Ishi Union (National Doctors’ Union, a union that organizes hospital-employed doctors) and others have submitted a request to the MHWL calling for a comprehensive check of university hospitals by Labor Standards Inspection Offices, and for thorough guidance to avoid a repeat of the problem.

3. Situation/Statistics

(1) In consideration for LGBT people, Gifu Prefecture eliminates need to enter one’s sex on voting-place admission ticket

The movement to eliminate the need to enter one’s sex on voting-place admission forms, out of consideration for sexual minorities (LGBT etc.) is proceeding at municipalities in Gifu Prefecture. For the House of Councillors election on the 21st, 33 cities and towns (or 78.57% of a total 42 cities, towns and villages) eliminated the “sex” field on the form. Among LGBT people, having one’s official birth sex listed on the form was especially a problem for those who are transgender (whose gender identity does not match their bodily sex), preventing some people from going to the polls. People concerned are welcoming the move to eliminate the “sex” field, but also say they hope for increased understanding from those in charge of checking ID at polling places, saying “transgender people are self-conscious about how they are looked at. If one looks different from the sex listed in one’s family register, we still hope to be treated naturally in a flexible way”.

(2) Failure to recognize same-sex marriage is “a severe violation of human rights”: Japan Federation of Bar Associations seeks change in law

The Japan Federation of Bar Associations has prepared and released a position statement saying that it is a “severe violation of human rights” for same-sex marriage not to be recognized by law. The JFBA received requests for human-rights relief from approximately 450 sexual-minority (LGBT etc.) people in 2015. This is the first time they have made a statement regarding same-sex marriage.

The statement points out that the view of marriage in society has changed from being “for the purpose of reproduction and child-rearing” to being “for a couple to live in a close relationship together”, and asserts that “same-sex couples should also be guaranteed marriage freedom”. Regarding Article 24 of the Constitution, which states that marriage shall be based only on the agreement of “both sexes”, they say “this does not mean a ban on same-sex marriage”.

“Statement on Marriage Between Persons of the Same Sex” (July 16, 2019, Japan Federation of Bar Associations) linked below (in Japanese):

https://www.nichibenren.or.jp/library/ja/opinion/report/data/2019/opinion_190718_2.pdf

