



Labor Update No. 72 October 18, 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.

Law/Policy

Variable-hours system to be introduced for teachers: work-style reform amendment decided

The government has made a cabinet decision on a proposed amendment to the Special Measures Law (*Kyu-Toku-Ho*, Act on Special Measures Regarding School Teacher Salaries). This would allow municipalities by their own judgment to introduce a variable work hours system for school teachers, whereby their working hours would be adjusted on a yearly basis. This is being positioned as part of work-style reforms for teachers, whose long hours are a severe issue. The aim is to make it easier for teachers to take long vacations when school is out for the summer, in exchange for working longer hours during busy term times.

Opposition voices have been heard saying that this “will not lead to real reductions in the working hours”, and the proposal is likely to generate controversy in the Diet. The proposed amendment also includes language giving legal basis to the plan to set an upper limit of 45 hours a month on public school teachers’ overtime hours.

Expanding the range of choice of when to begin receiving pensions--proposal made to extend to 75: MHWL

The Ministry of Health, Welfare and Labor (MHWL) has shown a proposal to the Social Security Council Pension Subcommittee that would expand the range of choices for when one could begin receiving one’s pension. Pensioners can currently choose an age from 60 to 70, but deliberations are proceeding in the direction of raising the upper limit to 75. By making the monthly pension amount increase the later one starts receiving it, the intention is to increase incentives for elderly people who are healthy to continue working longer.

“Social Security Council Pension Subcommittee 12th Mtg. Document: Making the Deferment System More Flexible” October 18, 2019 linked below (in Japanese):

<https://www.mhlw.go.jp/content/12601000/000558227.pdf>

Legal Violations/Disputes

Man on outsourcing contract, refused collective bargaining over “dismissal”, sues TEPCO affiliated company

A man who worked on an outsourcing (*ukeoi*) contract for a company engaged in installation and replacement of meters for Tokyo Electric Power Company (TEPCO) has filed suit at Tokyo District Court. He claims he was “dismissed” from work unfairly by having his contract terminated for a “work error”, and is seeking withdrawal of the firing as well as a total of 14 million yen in compensation.

The man signed an outsourcing contract with the company’s predecessor in 1995, and until March 20, 2019, was responsible for replacing electric meters. The company announced in late June of 2018 that certain tasks, which workers had previously been allowed to skip, would henceforth be subject to penalties if skipped. Following this, the company told the man that his having skipped these tasks in the past constituted an error, and notified him on March 20, 2019, that his contract was being terminated.

Three organizations, including the union to which the man belongs, requested collective bargaining over the company’s change in policy. But the company refused, claiming that since the man was on an outsourcing contract “he is not a worker as defined by the Labor Unions Law”.

30,000 signatures opposing “variable work hours system” for teachers: voices from the workplace say “we’ll collapse before the summer holidays”

A “yearly-basis variable work hours system” is being considered for adoption in public schools. This would extend teachers’ working hours during busy times of year in exchange for shortening their hours during less busy times (such as the summer vacation period), and make it possible for them to take long holidays in these “off” periods.

In response to this, a woman who lost her husband to *karoshi* (overwork death)--the husband had been a teacher at junior and senior high schools in Gifu--held a rally at the House of Councillors members’ Office Building, saying the matter should be given proper discussion first rather than being pushed through in haste.

Certain experts have called for a halt to the rushed introduction of the “variable hours system”, saying “they must first create less-busy periods before introducing this”. Furthermore, pointing out that the national government has not taken any statistics regarding teachers’ monthly work hours, they state that “this system reform is being done without any evidence. First they should guarantee what will happen to the annual leave teachers have been taking during summer vacation; then they must wait to introduce this until the monthly work hours have been substantially reduced”.

Other experts assert that “this system will create the appearance of overtime hours decreasing on paper, but the workload will not be lightened in practice, and teachers will be as busy as ever”. They express concern that extending the regular working hours will simply reduce the number of hours counted on paper as overtime.

Illegal contract with technical-intern sending organization: supervising groups see permits canceled

Groups in Chiba and Saitama that supervise the taking in of foreign technical interns have been found to have illegally contracted to receive payments of money from a sending organization in Vietnam. The national government has canceled these groups’

permit to operate.

According to the Ministry of Health, Welfare and Labor (MHWL), these groups had made a contracts with the organization in Vietnam whereby, in case an intern disappeared, the organization would pay them 200,000-300,000 yen in compensation. Also, they had made an agreement hat the training-course expenses they had paid to the sending organizations would be returned to them later.

Dismissal of English teacher ruled invalid

Tokyo Superior Court has handed down an appeal verdict in the dismissal case of a British man who taught on a limited-term contract at an English conversation school. He had claimed the dismissal was unfair, and filed suit against the company that runs the school, seeking to have it declared void. The Superior Court ruled that the firing was indeed invalid, overturning the previous District Court decision that had rejected the plaintiff's claim.

According to the verdict, the man signed a one-year contract with the company in March of 2015. In 2016, he renewed the contract for one more year, but then was dismissed from the job in 2017.

The suit was fought over whether fourteen days of paid leave the man had taken during his two years on the job could be counted as absence from work, which was stated as the reason for the dismissal.

The Superior Court has ruled that "the company failed to distinguish between paid leave the employee can take freely, and vacation days that specified by the company. The fourteen days cannot be counted as absences".

Situation/Statistics

Company holidays become work days: "if you want the day off, take paid leave"

Beginning this year, Doutor Coffee, the company that runs Doutor Coffee Shops, has fixed the number of "company holidays" at 119 days per year, regardless of the number of public holidays on the calendar. It has become known that, for those employees wanting to take more days off than this, the company "encourages" them to use their annual paid leave.

With this year having more public holidays than usual due to the enthroning of a new Emperor and the change in imperial era, employees who want time off in accordance with the calendar have no choice but to use up some of their annual leave. This is causing some dissatisfied voices to be heard from Doutor employees.

"We are changing the company rules, to fix the number of company holidays at 119 per year". One employee was shocked at the words that followed this. "Due to this, some national holidays will become working days. At the same time, these will also become days when taking paid annual leave is encouraged".

Up until now, Saturdays, Sundays and national holidays, as well as the New Year period (Dec. 31 - Jan. 3) had been set as company holidays. This employee had mostly had time off following the calendar.

However, on the company holiday calendar from March on, presented along with this notice, four of the ten days of Golden Week, as well as Ocean Day in July, Respect for the Elderly Day in September, and Coming of Age Day next January, were designated as “work days”. This was in order to make the number of company holidays 119 in the year.

In order to have these “work days” off, there was no choice but to use one’s annual leave, as “encouraged” by the company. If they followed the former rules, there would be 126 or 127 days off in this year. Employees were angry that “this means our total number of days off, including annual leave days, is being cut. We can’t accept this”.

“What do I do if I’ve used up my annual paid leave because my child was sick or something, and then one of these ‘work days’ comes around? Nursery school isn’t even open on national holidays.” Employees in dual-income households, with a children in nursery school or daycare, were at their wits’ end. Some considered this to be the company *de facto* specifying which days to take paid leave.

Experts say that “supposing the work does not go well because there are too few operating days, a company should consider hiring more personnel. If this is too difficult, they are supposed to get employees’ cooperation with coming to work on holidays by paying a premium wage for holiday work. From now on, every time a year has more holidays than usual, the employees will suffer.”

MHWL has expressed the position that changing work rules to make holidays or vacation days into work days, and then specifying workers should take their paid leave on those days, “does not lead to promotion of actually taking annual paid leave, and is not desirable”.

What I heard from a union, which should be protecting employment: a letter to a newspaper

My company recommended I should voluntarily resign, and said if I refused they might transfer me. When I went for a to the government-run Labor Consultations office, they introduced me to the local branch of a labor union, which they said would be a more appropriate place for me to go for advice. But the advice this union gave me was “you should take the voluntary resignation”. The company had threatened to use their personnel authority to force a transfer that would be tantamount to harassment. I am getting old, and don’t think I would be able to find another job. If I resign I may well end up unemployed. When a union, which ought to protect employment, told me I should resign, I felt both sad and furious.

Economic assessment revised downward to “worsening”, the harshest category, for first time in four months

The Cabinet Office has made a downward revision in their overall assessment of the economy, based on the business conditions diffusion index (DI) for August (preliminary figure), from the previous judgement of “leveling out” to “worsening”. This expresses a high likelihood of recession; it is the first time in four months to see an assessment of “worsening”. The increase in the consumption tax has led to even greater risk of a downturn, and this is sure to cause debate over policy measures.

According to the preliminary DI figures that have been released, the index of

coincidence showing the current state of the economy (2015 = 100) was 99.3, 0.4 points lower than the previous month. Trade friction between the U.S. and China was an influence in the background. “Worsening” is the worst level of overall assessment .

With production and shipping worsening since the Autumn of last year, in March this year the assessment fell to “worsening” for the first time in six years and two months. In May, with the ten-day holiday as a major factor, the assessment improved temporarily. But although the assessment was raised to “leveling out”, in August it went back to “worsening”.

The diffusion index is calculated by combining statistics that respond sensitively to the economic situation, including production and shipping as well as the ratio of job openings to applicants among other things. The overall assessment is derived mechanically from the movement of the index over a certain period.

“Diffusion Index, August, Reiwa 1 [2019] (preliminary figures)” linked below (in Japanese):

<https://www.esri.cao.go.jp/jp/stat/di/201908psummary.pdf>