



Labor Update No.73 November 1, 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

Labor and industry at odds over *pawahara* policies: MHWL gives concrete examples

In preparation for the coming into effect of the recently-passed Women's Participation and Harassment Restrictions Act, which for the first time requires companies to prevent workplace harassment ("power harassment", or *pawahara*) the Ministry of Health, Welfare and Labor (MHWL) has shown a draft proposal for a harassment policy to a subcommittee of the Labor Policy Council. The draft includes concrete examples of acts that would be considered harassment. While representatives of business approved of the plan, those from the labor side opposed it, saying the "contents [were] inadequate". The MHWL's intention is to draw up a policy within this year.

The draft lists examples of acts that do or do not constitute harassment, dividing them into six typical categories such as "mental attacks" and "unreasonable demands". As examples of acts that do count as harassment, the list includes such items as ignoring a particular person *en masse* to isolate them in the workplace, insulting someone's sexual orientation or gender identity, or "outing" such orientation or identity against the person's will.

"Draft Policy Regarding Employment Management Measures Necessary Against Power Harassment in the Workplace", October 21, 2019 (MHWL Labor Policy Council 20th Employment Environment and Equality Subcommittee) linked below (in Japanese):
<https://www.mhlw.go.jp/content/11909500/000559314.pdf>

Concrete examples presented for expanding employment to age 70: introduction to another company on condition of prior contract

Working towards creating an environment where those who wish to work until age 70 can more easily do so, the MHWL has shown a specialist panel of the Labor Policy Council a list of concrete examples of efforts companies will be required to make. These efforts would protect the working elderly. For example, in case of arranging reemployment at another company, there would need to be a preexisting contract between the two companies to ensure that the person could definitely be hired.

Flexibility in taking time off to care for children or elderly: from half-days to by-the-hour

In regard to family-care leave and childcare leave which currently can be taken in

half-day units, the MHWL has settled on a plan to amend enforcement regulations under the Family and Child Care Leave Act so that this leave could in principle be taken by the hour.

Part-time workers and others whose specified working hours are less than four hours per day are not currently eligible for half-day family care leave. With this amendment, the plan is to make them eligible to take leave by the hour.

“21st Labor Policy Council Employment Environment and Equality Subcommittee (Document 2): Regarding Flexibility in Family Care Leave, etc.” linked below (in Japanese):

<https://www.mhlw.go.jp/content/11909500/000560133.pdf>

Short-term contract employees considered for Employee Pension: MHWL’s eligibility expansion plan

As part of the plan to expand eligibility for the Employees’ Pension (*Kosei Nenkin*), it has become known that the MHWL is considering amending the system so that contract employees (and part-timers, etc.) whose contract period is two months or less may be able to enroll, provided certain conditions are met (such as having the expectation of contract renewal). The aim is to increase future pension amounts by enabling workers who have only been enrolled in the National Pension (*Kokumin Nenkin*, the basic pension) to enroll in *Kosei Nenkin* as well.

“13th Social Security Council Pension Subcommittee Documents” linked below (in Japanese):

<https://www.mhlw.go.jp/content/12601000/000561886.pdf>

With move to electronic data, pension booklets to become obsolete, be replaced with “notice”

The MHWL will be abolishing the pension booklets (*nenkin techo*) that have long been handed out to people enrolled in the public pension system. For the purpose of keeping track of insurance premium payment records, these booklets contain the person’s basic pension number. But with the move towards managing records with electronic data, this has become unnecessary. People newly enrolling in the system will, instead of a pension booklet, be issued with a “Basic Pension Number Notice (temporary working name)”. The plan is to settle on a timeframe and submit a bill to amend relevant laws to the regular session of the Diet next year.

The pension booklets were introduced in 1960, and enrollees were required to present them for some procedures relating to their pensions, but this is now said to have become unnecessary. 2,275,000 of the booklets were issued or reissued in fiscal year 2016, at an expense of about 270 million yen. By switching to a simple notice, it is hoped there may also be some reduction in this cost. However, existing pension booklets will still be accepted as certification of one’s Basic Pension Number.

Revision of *karoshi* recognition standard considered: MHWL

In regard to the standards for recognizing a death as *karoshi* (due to overwork, such as from over-long working hours etc.), the Ministry of Health, Welfare and Labor has

begun deliberating a revision for the first time in 20 years.

The criteria currently used for approving industrial-accident compensation in *karoshi* cases are still those announced by the MHWL in 2001. Among these is the so-called “*karoshi* line” for overtime hours: if this number goes over an average of 80 hours per month, the chance of having compensation approved increases.

In regard to this criterion, lawyers and others dealing with the issue have called for the *karoshi* line to be set at a shorter number of hours. In addition, from a medical standpoint, recent progress in research has made new information available.

Furthermore, with guidelines for a definition of workplace harassment (“power harassment”, *pawahara*) being drawn up this year for the first time, there are also plans to revise the approval standards for cases of *karo-jisatsu* (suicide from overwork).

Measures to prevent non-enrollment in *Kosei Nenkin*: Japan Pension Service to have increased authority

Since there is still no end to companies failing to enroll employees in *Kosei Nenkin* (Employees’ Pension), and thus getting out of paying their share of pension premiums, the MHWL has decided to strengthen the authority of the Japan Pension Service so that this agency will be able to carry out compulsory on-site inspections.

Enrollment in *Kosei Nenkin* is mandatory for all corporate businesses and for sole-proprietor businesses with five or more employees. A total 2.36 million workplaces are enrolled, with about 40 million employees.

However, there are approximately 360,000 “non-enrolling” companies that willfully refuse to pay premiums, get away without enrolling as they are required to, and leave approximately 1.56 people without a *Kosei Nenkin* pension.

Legal Violations/Disputes

Anime company Studio 4°C sued for overtime pay: “discretionary labor system applied illegally”

A male employee of *anime* production company Studio 4°C, known for the animated film *Children of the Sea* among other works, has sued the company at Tokyo District Court for 2.85 million yen in overtime pay, claiming he was not paid the overtime he should have received. He asserts that a discretionary labor system was applied illegally.

Mitaka Labor Standards Inspection Office gave the company a citation in June for unpaid overtime, but the company insisted that “the hours shown on the timecard are not the actual working hours”, and has been refusing to pay.

“Refusal of collective bargaining is unjust”: Obirin University part-timers file complaint at Labor Commission

A union that organizes part-time faculty members at Obirin University has filed an unfair-labor-practice complaint at the prefectural Labor Relations Commission. They

are demanding that Obirin Gakuen Educational Corporation, which runs the university, agree to collective bargaining for guarantees of employment and stable pay.

The school corporation announced in July that the English education program in the School of Arts and Culture would be outsourced beginning the next school year. This program's 72 class periods a year are all taught by part-time lecturers (*hijokin koshi*). That same month, the union requested collective bargaining, fearing the decision to outsource could lead to firings, dismissals, or large reductions in classes.

However, arrangements ran into difficulties between the union, which demanded negotiators and the people concerned be present, and the Gakuen, which preferred a negotiation between representatives of the two sides. Even when the union complained and suggested a new negotiation schedule, the corporation still continued to refuse collective bargaining.

Situation/Statistics

“Don't call them non-regular”: MHWL policy

The Ministry of Health, Welfare and Labor (MHWL) has issued an internal memo saying that people who work part-time or are dispatched should not be called “non-regular” (*hiseiki*). The reason is due to the work *hiseiki* connoting a negative image. Prime Minister Abe Shinzo has also announced that he will “do away with the word *hiseiki*”. On the other hand, the reality is that non-regular employment is on the rise, now accounting for four in ten of the total working population. Some have criticized the new policy, saying “they are evading the real nature of the problem”.

Numbers of working and of employed people rise for 80th month in a row, yet voluntary and early retirements at listed companies go over 10,000 for the first time in six years

According to the “Labor Force Survey (Basic Statistics) for August 2019/Reiwa 1” released by the Interior Ministry, the number of working persons in August was 67.51 million, or 690,000 more than the same month of the previous year, the 80th month in a row to show a year-on-year increase. Meanwhile, the number of employed persons was 60.25 million, or 720,000 more than the same month of the previous year, also the 80th month in a row to show a year-on-year increase.

By form of employment, 34.97 million of those employed were regular (*seiki*) staff and employees, a decrease of 180,000 from the same month of the previous year; this was the first time in 57 months that this number has decreased year-on-year. Meanwhile, the number of those employed as non-regular (*hiseiki*) staff or employees was 21.90 million, or 820,000 more than the same month of the previous year, and the 23rd month in a row of year-on-year increases.

The number of completely unemployed persons was 1.57 million, a decrease of 130,000 from the same month of the previous year, and the third month in a row of year-on-year decreases. By gender, 940,000 of the unemployed were men, a decrease of 60,000 year-on-year, and 630,000 were women, a decrease of 70,000. Also, the unemployment rate (after seasonal adjustment) was 2.2%, continuing at the same levels as the previous month, so the employment situation in August was steady.

Meanwhile, on October 9, Tokyo Shoko Research released the results of their “Survey of the Situation of Voluntary and Early Retirement at Listed Companies”.

The number of companies that solicited applicants for early or voluntary retirement from January through September of 2019 reached 27, many more than the 12 companies that did so from January through December of 2018, and coming close to the figure of 32 for January through December of 2014.

The number of people who took voluntary or early retirement from January through September of 2019 was 10,342, the first time in six years that this number has gone over ten thousand.

“Labor Force Survey (Basic Statistics) for August 2019/Reiwa 1 (preliminary figures)” linked below (in Japanese):

<https://www.stat.go.jp/data/roudou/sokuhou/tsuki/pdf/gaiyou.pdf>

“Survey of the Situation of Voluntary and Early Retirement at Listed Companies, 2019” linked below (in Japanese):

https://www.tsr-net.co.jp/news/analysis/20191009_01.html

“Partnership” to be retained at new address: Fukuoka and Kumamoto to recognize each other’s certifications, first such system nationwide

In regard to their “Partnership Oath” systems, which give sexual-minority couples (LGBT etc.) recognition equivalent to marriage, the cities of Fukuoka and Kumamoto have announced that they are beginning work on giving mutual recognition to each other’s partnership certifications. If the persons concerned should move from one of the cities to the other, they would be able to continue using their certificate, without the need to go through the oath process over again.

According to the Fukuoka city government, there are 27 municipalities all over Japan that have introduced similar partnership systems, but this is the first time two municipalities have given recognition to each other’s certification.

Up until now, in Fukuoka, couples needed to turn in their certificate of one or both of them moved out of the city. In Kumamoto, they had to do so if both moved away. From now on, if they apply at local government offices in person or by mail, they will be able to keep using their oath certificates at their new address.

Fukuoka City made a statement the same day, saying “we wanted to lighten the burden on people who, having got up the courage to take an oath, would have to do the procedure over again after they moved. In the future we hope to cooperate further with more cities that have similar systems”.