



Labor Update No.75 Nov. 29, 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

### Pawahara to be added to list of reasons to approve workers' compensation

The Ministry of Health, Welfare and Labor (MHWL) has announced that they will be holding a meeting of a Labor Policy Council subcommittee to revise the list of reasons for approving industrial-accident compensation for mental disorders, including for cases of overwork suicide, and will be giving consideration to adding “events relating to power harassment (workplace bullying)” to the list. One aim is to make the number of cases more clear by adding this as an item to the list, and thereby help contribute to prevention.

“Nov. 15, 2019, 80<sup>th</sup> mtg., Labor Policy Council Labor Conditions Subcommittee, Industrial Accident Insurance Subsection: Document 2” linked below (in Japanese):

<https://www.mhlw.go.jp/content/11601000/000566975.pdf>

### Concrete examples of workplace “power harassment” (pawahara): draft outline accepted--MHWL Employment Environment and Equality Subcommittee

With measures by employers to prevent “power harassment”, or “pawahara”, in the workplace to be required by law beginning next spring, the MHWL has shown a draft outline--including a definition of *pawahara* and concrete examples--to a subcommittee of the Labor Policy Council. They have accepted it. The law will take effect for large companies beginning in June of next year, and for small and mid-size companies from April of Reiwa 4 (2022).

The relevant laws and the outline define “power harassment” as “(1) based on a superior position, (2) by words or actions exceeding the bounds of what is appropriate or necessary for the job, (3) to damage the work environment”. Workers for whom prevention measures will be required include not only full-time regular employees (*seishain*), but also part-timers, contract employees and other non-regular staff.

“22<sup>nd</sup> Mtg., Labor Policy Council Employment Environment and Equality Subcommittee Document: Concerning a Draft Outline in Regard to Measures Required in Employment Management, etc., in Connection with Problems Caused by Words and Actions Taken Against a Background of an Employer’s Superior Relationship in the Workplace (Summary) (Revised)” linked below (in Japanese):

<https://www.mhlw.go.jp/content/11909500/000568624.pdf>

## Criteria for part-timers' enrollment in *Kosei Nenkin* to be extended in two stages, to "over 51 employees"

The MHWL has begun making arrangements towards expanding the range of eligibility of part-timers for *Kosei Nenkin* (employees' pension) in two stages. Currently the size of the employing company must be "501 employees or more", but in October 2022 this will be lowered to "101 or more", and in October 2024 to "51 or more". The thought is to establish a preparation period out of consideration for the pension costs to be newly required of small to mid-size businesses.

The Ministry plans to submit a bill to expand eligibility to next year's regular session of the Diet. To gain agreement from small and mid-size businesses, they are also considering support measures such as subsidies.

## **Legal Violations/Disputes**

### Unfair labor practice recognized at Tohoku U. over non-regular employment: Miyagi Prefectural Labor Commission

In connection with the collective bargaining in which the Tohoku University staff union had demanded the University shift limited-term non-regular employees onto unlimited-term contracts and continue their employment, the Miyagi Prefectural Labor Commission has issued an order acknowledging an unfair labor practice, saying Tohoku University "could not be recognized to have given a good-faith explanation".

The order judged it to be an unfair labor practice that the University did not submit documentation of their financial situation, which they claimed as the reason for not switching all those who wished it to unlimited-term employment.

### "Selfishly got pregnant": "you idiot": woman gives birth prematurely due to "maternity harassment" from bosses, files for labor tribunal seeking compensation

A woman in her 30s, who works for an organization in Tokyo engaged in corporate consulting (currently on leave), has filed for a labor tribunal at the Tokyo District Court. She claims that, when she notified her supervisors that she was pregnant, she encountered "maternity harassment" such as being pressured to quit, and as a result gave birth prematurely. She is seeking a total of 5.5 million yen in compensation, etc.

The woman is a researcher. In 2016, when she informed her supervisors of her pregnancy, she was told by a female assistant manager that "working while raising a child isn't something that fits here" and was encouraged to quit the job, and that furthermore this assistant manager said to the woman's colleagues that "she selfishly went and got pregnant, so now you're all going to have to do more work to cover for her--don't you hate that?" Also, a male assistant manager said "what are you thinking, you idiot" to her, among other things, and she was even forced to work six days a week for two months "because you'll be taking childcare leave and you won't be here".

The woman received a mental shock, and ended up giving birth prematurely due to ill health. Even during her maternity leave and childcare leave, she continued to be pressured to quit and to be subjected to abusive language, and was diagnosed with depression due to the harassment.

## Overwork suicide even at Mitsubishi Electric subsidiary: over 100 hours of overtime in a month

A male employee at a subsidiary of major machinery maker Mitsubishi Electric committed suicide at the end of 2017 due to overwork, and industrial-accident compensation was granted in October this year. Mitsubishi Electric had in 2016 announced a plan to cut back on long working hours in the name of “work-style reform”, and had been giving guidance on this to its subsidiaries as well, but this was not enough to prevent another suicide.

Repeated cases of industrial-accident compensation approved at Mitsubishi Electric and connected companies (approval granted by Labor Standards Inspection Office in brackets):

### At Mitsubishi Electric itself

August, 2012 Suicide--approval granted Dec. 2014 (Nagoya-Kita)

June, 2013 Stroke--approval granted Mar. 2015 (Itami)

April, 2014 Mental disorder contracted--approval granted Nov. 2016 (Fujisawa)

February, 2016 Suicide--approval granted June 2017 (Amagasaki)

April, 2016 Subarachnoid hemorrhage--approval granted Aug. 2017 (Central)

### At subsidiary companies

December, 2017 Suicide--approval granted Oct. 2019 (Tajima)

## **Situation/Statistics**

### Public high school application forms to eliminate “sex” field, in consideration toward LGBT people: Miyagi, beginning in 2021

The Miyagi Prefectural Board of Education, out of consideration for students who may be transgender (whose gender identity does not match their sex at birth), has announced a plan to eliminate the field to enter one’s sex on application forms for public high school entrance exams to be taken in March 2021 and after.

For the exams to be taken in March of next year, the BoE will stop releasing the numbers of applicants listed by gender. When high schools need to know a student’s gender, they will be able to use documents prepared by the students’ junior high schools.

### Yomeiri-Bune (“bridal boats”) to include LGBT couples too: Itako, Ibaraki

The city of Itako, in Ibaraki Prefecture, has begun recruiting newlywed couples to participate in the customary *yomeiri-bune*, or “bridal boat”, ceremony that is part of their tourist event the *Suito Itako Ayame Matsuri*. All applicants are welcome regardless of birthplace or nationality, and the city says sexual-minority couples (LGBT etc.) will be accepted equally.

In Itako, it is said to have been common until about 60 years ago to see newlywed brides arrive at their new husbands' homes by boat. The *Yomeiri-bune*, which began in 1984, are a reenactment of this scene. The boats on the river in town are a sign of the start of summer, and every year about 800,000 tourists visit the town.

Women who are newly married or about to be married can experience wearing *shiomuku* and being congratulated by the spectators. It is a popular event; every year there are said to be applications from over 50 couples.

Applications are now beginning to be accepted for next summer's *Yomeiri-bune*. However, every year the limit is 29 times for the boat to go down the river. This year there were 55 couples who applied; 26 couples were rejected after screening of application documents, including an essay explaining their reasons for wanting to participate.

The mayor has stated in a press conference that, regarding sexual minorities, "we will accept and screen their applications fairly and equally to those of all other applicants". The city also accepts sexual-minority couples to live in municipal public housing. To inquire, contact Itako City (0299-63-1111).

#### Part-time public employees to get bonus--and pay cut?

The "Fiscal-yearly appointment" system, a new system for non-regular (part-time etc.) staff working for local governments, is set to begin in April of next year. It is supposedly meant to put in order the formerly vague basis for their employment, as well as making all non-regular public servants eligible for the payment of bonuses. However, the reality is that municipalities are conspicuously cutting monthly pay in order to pay these bonuses. It is becoming doubtful whether this can be a solution to the problem of "government-made working poor".

A woman who works as a part-time librarian at a public library in East Japan received an explanation of the new pay structure in March of this year. The new system will start next April, because she will become "fiscal-yearly appointed staff".

The municipality that runs the library says that they will pay these fiscal-yearly appointees a bonus of 1.3 months' worth every six months. They explained, however, that at the same time, the amount of their monthly pay would be reduced by about 20,000 yen. Their yearly income of around 2-and-a-half million yen would therefore barely change at all. "If my monthly pay is cut, living alone will be a real challenge. It can feel as if I've had a bad evaluation. They call it a bonus, but they just mean the money will come later. If it means a cut in monthly pay, I don't need any bonus".

The regulation to introduce the new system was passed by the Council in September. What will happen to salaries? There is no union in their workplace, and still no explanation from the person in charge of personnel.

With local governments suffering from financial difficulties on the one hand, while their workload keeps on growing on the other, the number of part-time public servants has continued to increase. But since rules were made on the assumption of full-time staff, the basis for employing part-timers was vague. Even with the same "non-regular

public servant” status, conditions varied widely; some got bonuses and others didn’t depending on which city they worked for.

The fiscal-yearly appointment system was instituted to solve this problem. The Local Government Act was amended at the same time to give a clear basis for paying bonuses even to part-time non-regular public employees. For the private sector, laws relating to “Equal Pay for Equal Work” will come into effect beginning next April. But these do not apply to public servants.

The total number of non-regular public employees was 643,000 as of 2016, but their actual working conditions depend on the judgement of each local government. Among these, the ones that stand out the most are those that, as mentioned, are cutting monthly pay.

The reason for cutting monthly pay when providing a bonus is to avoid increasing personnel costs. But in reference to the purpose of the amended law, can it really be called an appropriate step?

The Interior Ministry’s position is that “reducing monthly pay solely for budgetary reasons goes against the spirit of the amended law”; but it is not forbidden to change the monthly pay amount in line with revisions to the contents of an employee’s work or their responsibilities.

By their September council meetings, almost all prefectures and designated cities had proposed regulations, as had six out of ten regular cities and Tokyo wards, and three-tenths of towns and villages. All the other local governments in the country seem likely to have made such proposals by the time of their December meetings.

Among these local governments, there are some that, fearing increases in labor costs, are moving to outsource their part-timers’ work.

Furthermore, another worry that comes with the shift to the new system is “part-timerization”. Even among fiscal-yearly appointees, there are differences in allowances paid to those who are full-time versus part-time. The only allowance clearly given to part-timers by the newly amended law is the bonus. On the other hand, those who work full-time will also become eligible for other allowances as well as the bonus, such as severance pay among others.

So now there is a move by some municipalities to make (for example) full-time positions of 7 hours 45 minutes a day into part-time ones of 7 hours and 30 minutes. The Interior Ministry views this as problematic and says that “unreasonably shortening hours solely for budgetary purposes is inappropriate”. But there is a more-than-zero chance some local governments may do this anyway when moving to the new system.