



Labor Update No.80 February 7, 2020

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) Cabinet decides on work-'til-70 bill; companies to be obligated to make efforts

The Government has decided in cabinet on a proposal that would amend the Elderly Persons Employment Stability Act, among others, so that companies would be required to make efforts to ensure their employees could work until age 70. As the birthrate continues to decline and the population continues to get older, the aim is to encourage those elderly with the will and ability to participate in the workforce, thus expanding support for social security. If the proposed bill passes at this year's regular Diet session, it will come in to effect in April 2021.

In addition to abolishing or extending the compulsory retirement age of 65 to continue employment, the bill would allow companies other options, such as giving support to those who opt to start their own businesses or engage in activities that contribute to society.

2. Legal Violations/Disputes

(1) "Hourly pay about 300 yen": citation to Japanese-language school--teachers moonlighting at convenience store

Part-time teachers teaching Japanese at Sendagaya Japanese Institute, a leading Japanese language school, have held a press conference after Best Communications Co., Ltd., which runs the school, was issued a citation by the Shinjuku Labor Standards Inspection Office.

According to the teachers who held the conference, part-timers at the school are paid per lesson. But there is considerable work to be done outside of lesson times, so the reality is that they are forced to work unpaid overtime. Therefore these part-time teachers filed a complaint at the Shinjuku LSIO in December of 2019.

Following this, the LSIO did an on-the-spot inspection. They found that there were procedural violations in the making of work rules, as well as that there was no pay for grading and student care, a violation of Article 15 of the Labor Standards Act. They

therefore issued a citation.

The pay per 45-minute *koma* (lesson period) differed from teacher to teacher, but one teacher in their fourth year on the job was paid 2,010 yen per *koma*. In addition to lesson time, there is also time set aside for grading, student interviews, and lesson preparation. In some cases preparation could take up to six hours; when unpaid working time is included in the total, the pay is said to work out to “about 300 yen per hour”.

Part-time teachers basically need to work two jobs, with most of them working in convenience stores or supermarkets. A part-time teacher doing more or less full-time hours at the school, starting at 8:00 in the morning and working sometimes until 7:00 in the evening, earned about 1.64 million yen last year. Under these conditions, the rate of new teachers leaving the job within two years is high, said to be about “80%”.

(2) Line-of-duty accident compensation not granted to former teacher: “under 100 hours”

The Kumamoto District Courts have rejected the claim of a man who formerly worked as an elementary school teacher. He collapsed due to a cerebral hemorrhage, and was left with after-effects. He had sued claiming that his long working hours were the cause.

The man suffered a brain hemorrhage immediately after returning home from work in December of 2011. He was left with aftereffects including paralysis in his limbs and language impairment. In the one month before he collapsed, his workload had suddenly increased, including not only duties done at school but also work he had to do at home. Claiming that his overtime work amounted to more than 100 hours that month, the criterion for determining it was an accident in the line of duty, he filed for compensation (translator’s note: “compensation for accidents in the line of duty”, or *koumu saigai*, is the equivalent for public servants of “compensation for industrial accidents” or worker’s compensation). The claim was turned down, so the man turned to the courts seeking to overrule this decision. In their ruling, the Kumamoto District Courts rejected the man’s claim, saying that “although the man worked about 90 hours of overtime, it did not reach the threshold of 100 hours that can cause a cerebral hemorrhage. It cannot be said that the man’s work hours were overly hard or overly long”. The plaintiff is planning to appeal.

(3) “Stop discriminating against part-timers”: class-action suit seeking overtime pay and bonuses

Unpaid overtime and the treatment of bonus payments is discriminatory between regular and non-regular staff, say twenty-three employees of a long-term care service company who have now filed a group suit against the company in the Shizuoka District Courts, Numazu Branch, seeking payment of a total of 37,314,256 yen.

Their working conditions included being unable to take breaks during their night shift,

and having to begin working 30 minutes before the start of their shift. But this was not calculated as work outside of statutory hours (overtime work), and no overtime was paid.

Also, concerning the fact that no lump-sum payments were made to part-timers at all, they are claiming that this violates Article 20 of the Labor Contract Act (prohibition of unreasonable working conditions based on having a limited term of employment) and seeking back-payment of these bonuses.

(4) Unfair labor practice at Asahi Broadcasting, Osaka--Osaka Labor Commission: "refusal of bargaining is against the law"

The Osaka Prefectural Labor Relations Commission has found that an unfair labor practice was committed by Asahi Broadcasting Group Holdings (HD) when they refused collective bargaining over the termination of dispatch workers' contracts. Saying "the dispatch system was used in order to avoid direct hire", they recognized the company as the *de facto* employer of the dispatched workers, and ruled they had no valid reason to refuse bargaining.

The company commented that "the contract came to an end because its term was completed. Our company bears no responsibility". They say they will appeal for review to the Central Labor Commission.

(5) Tokyo Labor Commission finds unfair labor practice at All Japan Seamen's Union

The Tokyo Prefectural Labor Relations Commission has found that there was an unfair labor practice, forbidden by the Trade Unions Act, committed when the All Japan Seamen's Union terminated the employment contracts of two men who were members of the All Japan Seamen's Union Employees' Union, a union of employees who work for the Seamen's Union. The Seamen's Union, as employer, is in conflict with the employees' union; the Prefectural Labor Commission ruled that "this amounts to interference with a labor union with intent to weaken the employees' union by getting rid of union members".

The two worked for the Seamen's Union as re-hired employees on one-year contracts. But in 2016 and 2017, they had their contracts terminated one after the other. The reason given was that they had reached 65 years of age. However, since there were others working for the Seamen's Union who continued in employment past age 65, the Labor Commission judged that the termination was disadvantageous treatment based on an intent to get rid of the two men.

3. Situation/Statistics

(1) Number of foreign workers higher than ever at 1.65 million: number doubles over five years

The number of foreign nationals working in Japan was 1,658,804 as of the end of

October, 2019. This was an increase of approximately 198,000 (13.6%) compared to one year before, and the seventh year in a row to set a new high record. While the number of those with the new “specialized skills” visa status, established in April 2019, still remains low, the number on “Technical Intern” visas--despite this system’s problems, such as low wages, receiving recent attention--increased by 75,000, accounting for nearly one-fourth of the total.

The number of foreign workers in Japan has recently been growing at a rate of 200,000 people per year. In the five years since 2014, it has more than doubled.

“Summary of Reporting Situation for ‘Situation of Employment of Foreign Nationals’” (as of end of October, Reiwa 1 [2019]) linked below (in Japanese):

<https://www.mhlw.go.jp/content/11655000/000590310.pdf>

(2) Active opening rate for 2019 down for the first time in 10 years: restraint spreads in manufacturing

Currents are changing for the employment environment, which had been continuing to improve until recently. The active opening rate, which shows how many job openings there were per job applicant, averaged 1.60 for the year 2019. This was a decrease of 0.01 points from the previous year’s figure. It was the first time in 10 years--since 2009, just after the Lehman Shock--that the yearly average was lower than the previous year. The spreading move to curb hiring among manufacturers, in particular automotive makers, is having an effect.

The number of new job openings, said to be a leading economic indicator, was down in 2019 by 1.8% from the previous year, also the first decrease in 10 years.

With car makers’ sales slow overseas, including in the U.S. and in China, they are moving to curb hiring of limited-term employees here in Japan. Mazda stopped hiring limited-term employees at both their head factory and their factory in Hofu, Yamaguchi, last November. Honda also stopped hiring last autumn at their factory in Yorii, Saitama.

In Aichi Prefecture, where there are many factories contracted with Toyota Motors, the number of new openings had declined year-on-year for twelve months in a row as of December 2019. According to the Aichi Labor Bureau, there is a noticeable move by companies that make parts for export to China to cut down on new hiring.

“Status of General Job Placements (December, Reiwa 1 [2019], and Reiwa 1 Yearly Figures) linked below (in Japanese):

<https://www.mhlw.go.jp/content/11602000/000589011.pdf>

(3) Hamamatsu to introduce “Partnership Oath”: LGBT and “common-law” couples to be eligible

The city of Hamamatsu will be introducing a “Hamamatsu City Partnership Oath System” starting on the first of April. In this system, the City will grant a certificate to

sexual-minority couples (LGBT etc.) as well as to those in so-called “common-law marriages” when they submit a written oath to have each other as life partners.

Systems to give recognition to same-sex couples have now spread to more than 30 municipalities nationwide, after first being adopted in 2015 by Shibuya and Setagaya Wards, both in Tokyo. This will be the first one in Shizuoka Prefecture. Hamamatsu will also be making “common-law” couples eligible, as did the city of Chiba in 2019.

Couples will be eligible if both are 20 years of age or over and have no spouse, and if at least one or the other lives in Hamamatsu or has plans to move there. Couples will fill out a written oath, addressed to the mayor, saying they will be each other’s life partners, and sign it in the presence of City Hall staff, before submitting it with copies of their resident register and family register.

Certificates issued by the City will have no legal binding force, but it is expected that it will enable partners to obtain family discounts on mobile-phone plans, qualify as beneficiaries for some life-insurance plans and take out home loans as a couple, among other things.